

Appendix C

Relevant Parts of Decision

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report and recommendations of Independent Commissioners
regarding mapping of Wakatipu Basin and Arrowtown
(includes Stage 1 submissions not previously heard)

Report 18.7
Area E – Eastern Basin

Commissioners

Denis Nugent (Chair)

Rachel Dimery

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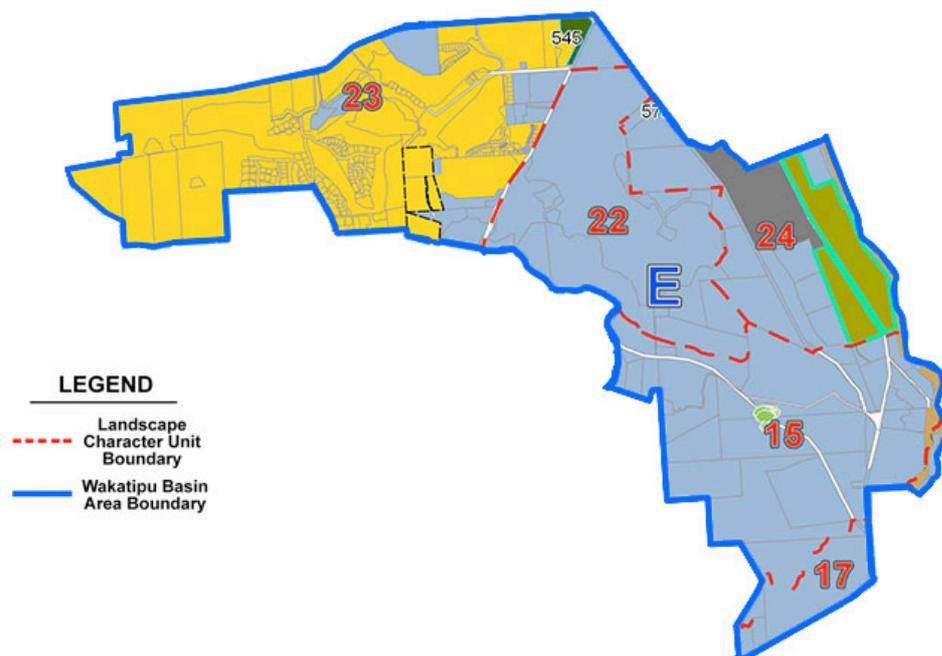
1. INTRODUCTION

1.1 Preliminary

1. This report needs to be read in conjunction with Reports 18.1 and 18.2. Report 18.1 sets out the overall hearing process for Stream 14 and the approach we have taken to assessing the submissions in terms of the statutory requirements. In addition, it contains the Stream 14 Hearing Panel's recommendations on Chapter 24 Wakatipu Basin and the various variations to the text in Stage 1 of the PDP notified in conjunction with Chapter 24.
2. The abbreviations we use in the report are set out in Report 18.1, as is the list of persons heard.
3. Report 18.2 set out the background to the zoning issues dealt with in Stream 14 and explains how we divided the area subject to our deliberations for the purposes of preparing the recommendation reports.

1.2 Overview

4. Figure 1 below shows the location of the area we have called the Eastern Basin.



Area E – Eastern Basin

Figure 1: the Eastern Basin

5. This area comprises LCUs 23 Millbrook (other than the small area south of the Waterfall Park Zone identified below), 22 The Hills, 24 South Arrowtown, 15 Hogans Gully and the portion of LCU 17 Morven Ferry north of State Highway 6. This includes the part of LCU 23 referred to in the hearings as 'the wedge', for which Waterfall Park Zone was sought. This area excludes the part of LCU 23 south of the Waterfall Park Zone that applies to part of the property known as Ayrburn Farm. That part of LCU 23 is dealt with in Report 18.5. Although encompassed by LCUs 23 and 24, the Millbrook Resort Zone, Waterfall Park Zone (both of which were dealt with in

Stage 1 and are beyond challenge) and the Arrowtown South Special Zone (in the ODP and excluded from the PDP) are not part of this area.

6. Excluding those parts of this area covered by three settled zoned discussed above, this area was generally zoned Rural Amenity in Stage 2, with some areas of Open Space and Recreation Zones, notably the Millbrook Reserve and the Arrowtown Golf Course. The Open Space and Recreation Zones have been dealt with in Stream 15.
7. The Millbrook Resort, Hills Golf Course and scattered rural residential uses dominate roughly half of this area. The land to the south of Arrowtown and the Hills Golf Course has a mix of rural and rural residential uses. The Arrowtown urban area adjoins this area to the north and northeast.
8. The number of approved building platforms yet to be built upon exceeds the number of existing buildings.
9. The notified version of Chapter 24 listed the capability of this area to absorb additional development as follows:

LCU Number	LCU Name	Capability to Absorb Additional Development
15	Hogans Gully	Moderate
17	Morven Ferry	Moderate-Low
22	The Hills	Moderate
23	Millbrook	Moderate: majority of unit High: triangular area at far eastern end of the unit
24	Arrowtown South	High

1.3 Submissions Covered in this Report

10. The submissions at issue in this area can be grouped as follows:
 - a. Submissions relating to the zoning of the land east of the Waterfall Park Zone, including the “wedge” that split that zone in two¹;
 - b. Submissions seeking Precinct sub-zone on sites in McDonnell Road²;
 - c. Submissions seeking to be rezoned Millbrook Resort Zone, which can be split into three groups:
 - i. Relating to those sites completely surrounded by Millbrook Resort Zone³;
 - ii. Those sites accessed off Arrowtown-Lake Hayes Road⁴;
 - iii. The site located at 1124 Malaghans Road⁵;
 - d. Submissions seeking extension of the Arrowtown urban zoning⁶;

¹ Submissions 2320 and 2388 (opposed by FS2710, FS2772, FS2773)

² Submissions 2386 (supported by FS2769) and 2400 (supported by FS2795, FS2796)

³ Submissions 2501 (supported by FS2773, FS2720, FS2723, FS2724) and 2580 (supported by FS2720, FS2723, FS2724)

⁴ Submissions 2444 (opposed by FS2773) and 2512 (opposed by FS2773). Submissions 2413 and 2419 also related to all or parts of this area and while they were not represented at the hearing, the legal submissions and evidence in support of Submissions 2444 and 2512 covered the matters raised in the submissions.

⁵ Submission 2513 (opposed by FS2773)

⁶ Submissions 2299 and 2397 (supported by FS2716, FS2796)

e. Submissions seeking bespoke resort zones⁷.

11. We discuss the submissions in those groups, in that order.

2. WATERFALL PARK AREA

12. Mr Goldsmith, counsel for Waterfall Park Developments Ltd⁸, told us that the area described as the 'wedge' is an historical zoning anomaly that probably reflected previous land holdings, and submitted that it should be incorporated within the Waterfall Park Zone. There was also a submission⁹ relating to the neighbouring land between Arrowtown Lake Hayes Road and the Waterfall Park Zone, which requested Precinct with an average lot size of 4,000m². These requests are shown on Figure 2 below

13. Ms Gilbert described the 'wedge' as an artificial cut out and could see no reason not to zone this area Waterfall Park. She also recommended that part of the land between Arrowtown Lake Hayes Road and the 'wedge' be rezoned Precinct. She did not consider it appropriate from a landscape perspective to apply Precinct to the steeper slopes to the west and south.

14. Mr Langman accepted Ms Gilbert's evidence on landscape issues, but opposed the wedge being zoned Waterfall Park, as he considered there was insufficient information on infrastructure capacity and ecology. He supported Precinct in respect of part of the land adjacent to the 'wedge', as recommended by Ms Gilbert.

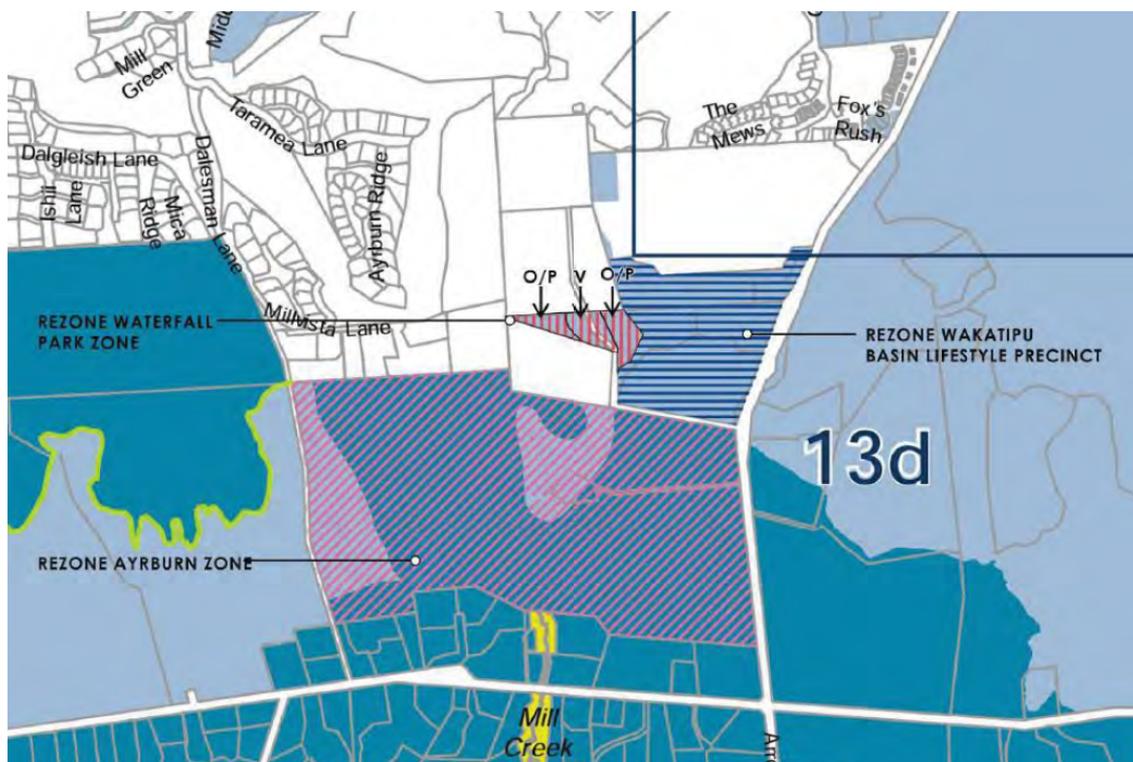


Figure 2: The 'wedge' is annotated 'Rezone Waterfall Park Zone' and the land the subject of Submission 2320 is annotated 'Rezone Wakatipu Basin Lifestyle Precinct'. (Source: B. Gilbert, Evidence in Chief at Figure 75)

⁷ Submissions 2313 (opposed by FS2794) and 2387 (supported by FS2701, FS2716, FS2733, FS2769)

⁸ Submission 2388

⁹ Submission 2320

15. Mr Brown disagreed with Mr Langman’s opinion on the ‘wedge’ on the basis that ecological and infrastructure issues were appropriately dealt with in the evidence of Dr Goldsmith and Ms Richards.
16. We adopt Mr Brown’s reasons and find that the most appropriate zone for the ‘wedge’ is Waterfall Park Zone and that the Structure Plan in Chapter 42 should be amended to this area as open space and visitor. We attach as Appendix 1 a copy of the recommended amended Waterfall Park Structure Plan.
17. Mr Brown provided very brief evidence in support of the rezoning of the adjacent land to Precinct¹⁰. While there was agreement between Mr Langman and Mr Brown at least in relation to the suitability of the upper flat part of the site for Precinct zoning, neither of them considered the issue of water quality in Lake Hayes which we discussed in Section 2.8 of Report 18.1. This area is not within a reticulated wastewater scheme. Consistent with our conclusions in Report 18.1, we do not recommend this land be rezoned Precinct in the absence of a reticulated wastewater scheme.
18. For completeness, we note that the “wedge” also lies outside the area of reticulated wastewater, but the remainder of the Waterfall Park Zone is contained within a wastewater scheme. Most of the area of the “wedge” will remain open space, but we consider it would be appropriate to include the small area of visitor activities be included within the existing scheme.

3. MCDONNELL ROAD

19. We heard evidence concerning two sites in McDonnell Road where the submitters sought the land be zoned Precinct¹¹. These areas are shown on Figures 3 and 4 below.

¹⁰ J Brown, EIC on behalf of Lake Hayes Investments Limited & Ors, at paragraph 8.4

¹¹ Submissions 2386 and 2400



Figure 3: Site sought to be rezoned by Banco Trustee & Ors (Submission 2400)



Figure 4: Site sought to be rezoned by Boxer Hills Trust (Submission 2386)

20. The Boxer Hills Trust also requested a variation on the minimum site size to enable development to 2500m², but still with an average density of 1ha.
21. The evidence presented for Boxer Hills Trust and Banco Trustees Limited was comprehensive. Ms Pflüger and Mr Skelton presented landscape evidence, while Mr Brown and Mr Geddes presented planning evidence.
22. Dame Elizabeth and Mr Murray Hanan, the neighbouring landowners to the Banco Trustees' land, tabled submissions opposing rezoning of the site, emphasising in particular the role of McDonnell Road as the boundary between urban development on the one side, and rural backdrop on the other.

23. As noted in section 3.19 of Report 18.1, when we discussed the impact of the Retirement Village development with Ms Pflüger and Mr Skelton, they both highlighted the impact this had on their respective assessments. Ms Pflüger commented that the first cut is the deepest and Mr Skelton told us that in a lot of ways the horse had bolted.
24. Ms Gilbert advised in her rebuttal evidence that she did not oppose Ms Pflüger's evidence. However, she raised concerns about Mr Skelton's argument that rural living areas can be up-zoned to accommodate urban development at a future date.
25. Mr Langman acknowledged that from a landscape perspective, Precinct was not opposed in the WB Landscape Study in this area, as that study identified LCU24 South Arrowtown as having a high capacity to absorb additional development. Mr Langman did not, however, consider that Precinct was the most appropriate zone for land that may potentially be urban in the future, as in his view, the fragmentation of land would make future urbanisation difficult¹².
26. The position is complicated by the Retirement Village development that was occurring immediately to the south of the Boxer Hills Trust land at the time of our hearing. That development was approved under the Housing Accords and Special Housing Act 2013 and clearly will have an urban character once completed. It means, in our view, that even though, the location of the urban growth boundary along McDonnell Road has (as the Hanans emphasised in their submissions) only recently been confirmed by the Environment Court, regarding that road as a hard boundary precluding all development beyond it is now problematic at best. In light of this, we think that it would be prudent for Council to address this situation by undertaking a structure planning exercise for this area.
27. Against that background, we considered that a Future Urban Zone might have been appropriate, but no party to the hearing suggested that we had scope to recommend this, and we did not identify any basis for the contrary view. As we discuss in Report 18.11, we think that submitters are entitled to rely on the WB Landscape Study and it is untenable to expect that this land be reserved for some indeterminate time. If anything, the submitters in this case were on stronger ground than those at Ladies Mile, because we had no evidence of any Council resolution that would support the view that urban development of this land was more than a possibility. We note that it is still open to Council to withdraw this land from the PDP review if it deems that course to be appropriate.
28. As it stands, however, we consider Precinct is appropriate in respect of the Banco Trust land and Boxer Hills Trust land and recommend those sites be rezoned.

4. MILLBROOK RESORT ZONE EXTENSIONS

4.1 Millbrook Country Club Limited Evidence

29. As we noted above in Section 1.3, several submitters requested that their land be rezoned Millbrook Resort Zone. For the most part, Millbrook Country Club Limited opposed these requests¹³.

¹² M Langman, Section 42A Report at paragraph 62.4

¹³ FS2773

30. We discussed the submissions with Mr Craig, who gave landscape evidence on behalf of Millbrook Country Club Limited. He told us that the Underdown Trust¹⁴ and Archibald¹⁵ properties that appear on the planning maps as a small island of Rural Amenity zoned land entirely surrounded by Millbrook Resort Zone land, had large mature trees and an historic building, which would all contribute to the Millbrook ethic to retain historic buildings and enhance them. In contrast, Mr Craig was critical of the level of development sought by the other submitters who had requested to include additional land in the Millbrook Resort Zone. For example, he pointed out that the density sought by the submitters was at far greater densities than that applied over the recent ‘Dalgleish Farm’ block that had recently been rezoned to Millbrook Residential Zone. He concluded that the existing character and amenity of Millbrook cannot be delivered to the proposed sites via the District Plan standards alone¹⁶.

31. Mr Edmonds described the requests thus;

“Any ad hoc additions will not add to or supplement any of the established facilities or provide any benefit to the functioning of the resort. The ‘add-on’ areas almost without exception do not have access from within the resort (Griffin, Archibald and Egerton excluded), and so will not have any physical connection, and simply will not feel part of that.”¹⁷

32. Mr Edmonds concluded that the requests should be rejected. The exception to this was the Underdown Trust and Archibald properties, which he considered appropriate, subject to their utilising access from internal Millbrook roads and accepting covenants to incorporate the design guidelines.

4.2 Underdown Trust and Archibald Properties

33. These properties are completely surrounded by Millbrook Resort Zone and are accessed off Middlerigg Lane. We were advised by Mr Langman at the hearing that he supported the Archibald and Underdown Trust (nee Griffin) properties being incorporated in the Millbrook Resort Zone, subject to there being an agreement with Millbrook Country Club. On 26 July 2018 we were advised¹⁸ that such an agreement had been reached and were provided with a set of plan provisions to amend Chapter 43 Millbrook Resort.

34. We are satisfied that the properties could be developed in a way to successfully integrate into the resort and would fulfil the objectives for the Millbrook Resort Zone. In particular, the closure of the Middlerigg Lane access upon development would assist in integrating the development with the resort. We therefore find that Millbrook Resort Zone is the most appropriate zone for this land.

35. As well as rezoning these two sites, giving effect to these requests requires an amendment to the Millbrook Resort Structure Plan and amendments to Chapter 43. The recommended amendments are attached in Appendices 2 and 3 respectively.

¹⁴ Successor to Submission 2580 (Griffin)

¹⁵ Submission 2501

¹⁶ A. Craig, Rebuttal Evidence at 22

¹⁷ J. Edmonds, Evidence in Chief at 101

¹⁸ Provided under cover of a Memorandum of Counsel dated 26 July 2018

4.3 Extensions Sought to North and East

36. These two areas were heard together as the submissions by Spruce Grove Trust¹⁹ related to both areas. We were not satisfied that these areas were suitable to be rezoned Millbrook Resort Zone. Objective 43.2.1 of the PDP (now beyond challenge) focusses on integration of activities within the Millbrook Resort Zone. The definition of “resort” (also now beyond challenge) likewise identifies a resort, among other things, as an “integrated and planned development”. Counsel for Spruce Grove Trust and Boundary Trust, Mr Leckie, accepted that it was a valid question to consider whether the land could integrate with Millbrook and that it was more than just coherence of design. We also discussed the density of the development with several witnesses, including Ms Leith, Ms Smetham, Ms Gilbert and Mr Langham. We agree with Mr Langman that the density sought was not dissimilar to an urban density and was not capable of being offset by open space, given the subject land has no association with, nor is it integrated with, the adjacent Millbrook development.
37. We think that Mr Langman is correct: even if this land could be included in the Millbrook Zone from a landscape perspective, we still need to be satisfied that the subsequent development would integrate into the Millbrook development. We do not believe that this would be the case. In both locations the submitters’ proposals involved direct connection to the adjoining road (Malaghans Road for the northern site and Arrowtown-Lake Hayes Road for the eastern group) rather than linkage through the Millbrook Resort private road system. In addition, there appeared to be no possibility of the additional sites being incorporated into the Millbrook visitor accommodation arrangements, or the golf courses. Finally, while accepting that they are preliminary and indicative, we consider the indicative Structure Plans produced by Ms Smetham²⁰ demonstrate that the likely outcome in each location would amount to a small urban enclave. As the development would not constitute a resort as defined, such enclaves would be contrary to the Strategic Direction Objectives and Policies which seek to limit urban development to being located within an urban growth boundary.
38. We considered whether one or both sites might be rezoned Precinct. The northern site is subject to a consent granted by the Environment Court for 4 residential building platforms²¹. When we asked Ms Leith whether we should not take our cue regarding the capacity of the site to accommodate development from that decision, she sought to confine it to the context of a resource consent application under the ODP Rural General Zone. While that is technically correct, our reading of the Environment Court decision was that the Court undertook the ‘holistic’ assessment of the situation Ms Leith and Mr Leckie, as counsel, urged on us as part of our inquiry. Having considered the evidence we heard in this hearing, we consider that the existing consent probably represents the maximum development potential of the site. We note also that that site is within the Lake Hayes catchment. Indeed, the lower part of the site is close to Mill Creek. We would not be minded to change the notified Rural Amenity Zone for the northern site.
39. Parts of the eastern site are outside of the Lake Hayes catchment, so there is no absolute impediment to zoning this land Precinct. Mr Leckie, in answer to our questions, confirmed that we would have jurisdiction to apply the Precinct sub-zone, but his clients were not seeking that.

¹⁹ Submissions 2512 and 2513

²⁰ N Smetham, Summary of Evidence

²¹ *Spruce Grove Trust v QLDC* [2011] NZEnvC 147

Having reviewed the options, we have concluded that, as the total area of the block is a little over 5ha containing 5 existing dwellings, and density in the Precinct limits residential units to an average of 1 per hectare, no practical purpose would be served by rezoning this land. It would also avoid the anomaly of leaving a single residential site zoned Rural Amenity north of Butel Road surrounded by Millbrook Resort Zone on all sides. That site was not the subject of any submission.

40. We therefore recommend that this land retain Rural Amenity Zone as notified, as this would be the most appropriate way to achieve the objectives of the plan

5. QUEENSTOWN LAKES COMMUNITY HOUSING TRUST – JOPP STREET, ARROWTOWN

41. Queenstown Lakes Community Housing Trust²² requested that the Lower Density Suburban Residential Zone be applied to some 6.8 hectares of land on the southern side of Jopp Street, together with the corresponding extension of the Urban Growth Boundary. Mr Place recommended that this submission be accepted in his Section 42A Report, subject to some bespoke provisions governing access and linkage to adjacent track networks that he had drafted. His concerns mainly arose from the submission seeking to rezone land along Centennial Avenue which is presently part of the Arrowtown Golf Course.



Figure 3: Lot 2 DP 300390 shown outlined in yellow

42. Ms J Scott advised us that the Trust had been in discussions about the property since 2009. She also advised that the Trust was solely focussed on Lot 2 DP 300390 (as shown in Figure 3) and no longer sought rezoning of part of the golf course. Mr Williams told us that he was satisfied that given the smaller area, the provisions in Chapter 27 were adequate to secure an appropriately designed subdivision layout.

²² Submission 2299. Submission 2511 also sought the rezoning of Lot 2 DP 300390 for housing but was not represented at the hearing.

43. Mr Place advised us in his reply evidence that he no longer considered it necessary to apply bespoke provisions, given the much smaller area of land to be zoned Lower Density Suburban Residential.
44. We observed on our site visit that, as can be seen in Figure 3 above, the northern side of Jopp Street contains established residential properties. We agree with Mr Place that it would be a 'seamless extension to the existing urban landscape'²³. We also find that extension of the urban growth boundary to include this site would not compromise its integrity, or make it less defensible. Rather the contrary. Given the site is surrounded on its south and west side by the Arrowtown Golf Club (zoned Community Purposes (Golf Course), that zoning being beyond challenge with the withdrawal of the Trust's submission affecting it), this site currently presents as an anomaly sitting outside the urban growth boundary. We therefore find that the most appropriate zone for this land to be Lower Density Suburban Residential, and that this land should be included in the urban growth boundary. This zone best gives effect to the strategic direction of the PDP, as it will provide additional land for housing in a high growth area.

6. 508 ARROWTOWN-LAKE HAYES ROAD, ARROWTOWN

45. A Feeley, E Borrie & LP Trustees Limited²⁴ requested Lower Density Suburban Residential zoning of the triangular shaped block of land at 508 Arrowtown-Lake Hayes Road (where the Arrowtown Lake Hayes Road meets McDonnell Road) and that the urban growth boundary be amended to include this land. Mr Feeley told us that while he and his family live on the property and do not propose leaving it, the land is available to assist in coping with Arrowtown's growth.
46. Mr Kyle gave planning evidence for the submitter. He proposed an amendment to the proposal to request Lower Density Suburban Residential Zone apply over part of the site fronting McDonnell Road and that the balance of the site be zoned Rural Residential Zone – Arrowtown West Sub Zone, with a building restriction area fronting Arrowtown Lake Hayes Road and in the vicinity of the elevated rocky outcrop near the south-western corner of the site, all as shown in Figure 4 below.

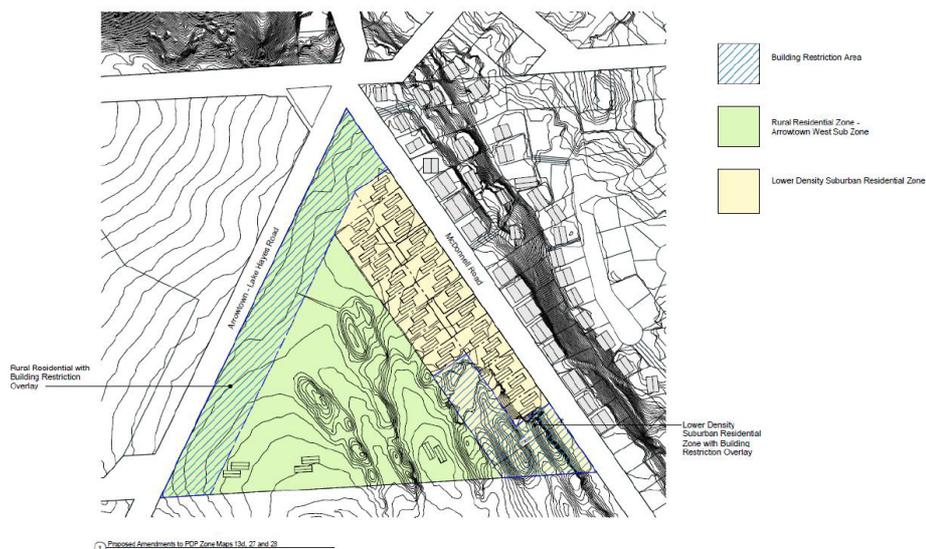


Figure 4: Zoning as proposed in J. Kyle, Evidence in Chief at 1.30

²³ L. Place, Section 42A Report at 11.15

²⁴ Submission 2397, supported by FS2716, FS2796

47. Mr Kyle's evidence highlighted the differences between the findings of the WB Landscape Study and the landscape evidence of Ms Mellsop (for Council). He noted that the WB Landscape Study classified the site as having a high potential to absorb change and that the study concluded that the Arrowtown Lifestyle Retirement Village and associated residential development on the Hills and Millbrook golf courses had impacted on Arrowtown's containment²⁵.
48. Mr Kyle set out the details of the site-specific provisions he recommended be included in the Rural Residential Zone relating to density, setbacks, landscaping, fencing and vehicle access on Arrowtown Lake Hayes Road. He noted that the large stand of pine trees on the McDonnell Road boundary of the site were in the process of being removed and as a result views across the site will be more open. He considered that the use of the Rural Residential Zone to be appropriate as:
- a. it would avoid the use of a site specific 'special zone';
 - b. the current framework in Chapter 22 allows bespoke provisions for specific sites or areas;
 - c. it would enable a similar density to that proposed by the submitter (5 residential units in 23,035m²)²⁶.
49. He did not favour using the Precinct sub-zone for the western part of the site as he considered the land was capable of being developed more intensively than that sub-zone enabled without giving rise to adverse environmental effects. He did, however, consider that setbacks and landscaping requirements greater than the Rural Residential Zone standard would be required²⁷.
50. Mr Kyle appended a comprehensive Section 32AA Evaluation in support of the rezoning proposal, which included a servicing report and visual simulations. He concluded that the proposal is the most appropriate way to give effect to the relevant objectives and policies of the PDP.
51. Ms Mellsop told us in her rebuttal evidence that we should treat the visual simulations with caution. She considered the layout and form of buildings shown on the Rural Residential Zoned area to be doubtful given the minimum lot sizes. In term of the Lower Density Suburban Residential Zoned part of the site, she considered the dwellings would be likely to be significantly more prominent than the simulations suggested given the zone provisions do not control external appearance or fencing. Because Mr Kyle appended the simulations to his planning evidence, Ms Mellsop's expert views were effectively uncontradicted in this regard.
52. Mr Place and Ms Mellsop told us that this block of land sits at the 'gateway' to Arrowtown. Mr Place described it as *forming 'a significant area and visually prominent part of the open rural landscape at Arrowtown's primary gateway.'* He considered that any form of urban development and associated planting would significantly alter the sense of openness. While we think that this rather overstates matters, we do think that the Arrowtown-Lake Hayes Road frontage needs careful consideration. In our view, however, McDonnell Road was already compromised when urban development was permitted to come down off the escarpment, quite apart from the implications of the Retirement Village proceeding further south that we have discussed above. For these reasons, we also have difficulty with Ms Mellsop's conclusion that the development on this land would not appear as a 'cohesive residential form'²⁸. We think it would mirror the development on the eastern side of McDonnell Road, as it would be subject

²⁵ J. Kyle, Evidence in Chief at 2.4 and 2.5

²⁶ J Kyle, EiC at paragraph 1.27

²⁷ Ibid at paragraphs 1.28 – 1.29

²⁸ H. Mellsop, Rebuttal Evidence at 7.7

to the same zoning provisions as that development. The more difficult question is how a defensible edge might be identified that prevents expansion of any urban development onto the Arrowtown-Lake Hayes Road frontage.

53. We consider that the McDonnell Road frontage of the site is suitable for urban development from a landscape perspective, if properly controlled. We also think that it is past time that the Council undertook a comprehensive assessment of the Arrowtown urban growth boundary as far south as the Retirement Village, as was recommended in the WB Landscape Study. While we note that the WB Landscape Study did consider this land to be an anomaly and excluded it from the recommendation for a structure plan²⁹, in the absence of landscape evidence from the submitter in support of the proposed provisions, we are in a somewhat unsatisfactory position. We agree with Mr Kyle that a building restriction around the rock feature on McDonnell Road would be appropriate, but consider that further work is needed to assess the visual amenity effects on Arrowtown-Lake Hayes Road, particularly given Ms Mellsop's caution to us regarding the visual simulations that were supplied. In the absence of supporting landscape evidence on this issue, we are not satisfied that the provisions and zoning as proposed by Mr Kyle would be the most appropriate way to achieve the objectives of the PDP.
54. We note that we do not have scope to recommend a Future Urban Zone and therefore recommend the site remain Rural Amenity Zone as notified; that being the most appropriate way to achieve the objectives of the PDP given the alternatives open to us.

7. BESPOKE RESORT ZONES

7.1 Introduction

55. Two submissions requested stand-alone zones³⁰: the Hogan Gully Zone and the Hills Resort Zone. The cases for the submitters were supported by extensive evidence, as listed in Section 1.4 of Report 18.1. The key issues related to landscape and planning issues and we have therefore not discussed the other evidence at length.
56. In relation to infrastructure, we note that Council's infrastructure evidence did not oppose the proposed Hills Resort Zone but did oppose the Hogans Gully Zone. However, Mr Vail, who gave infrastructure evidence for Hogan Gully Farms Limited, provided provisioning letters from Council to confirm wastewater and water supply services could be provided with the provision of financial contributions.
57. Mr Smith opposed both zones from a transport perspective. That position was contested by Mr Bartlett and Mr Penney. Our findings on the capacity of the Shotover Bridge, and its implications for development of the Basin east of the Shotover River are addressed in Report 18.1.
58. Mr Todd, counsel for Hogans Gully Farms Limited, argued that the Council's experts had overstated the cumulative adverse effects. He highlighted the economic benefits that would accrue from golf tourism and that the ecological restoration proposed would have significant ecological and natural conservation benefits. Mr Todd urged us to not give preference to the resource consent process over the Hogans Gully Zone. He submitted that this was not an

²⁹ WB Landscape Study at 5.34 and 6.16

³⁰ Submissions 2313 and 2387 respectively

effective way of managing the land and suggested to us that, if the use of land is in accordance with the statutory instruments, it should be provided for through rezoning³¹.

59. Ms Wolt, counsel for Trojan Helmet Limited, submitted that the Hills Resort Zone is the most appropriate and that the Council's evidence did not seriously challenge this. She noted that Mr Colegrave's evidence quantified the benefits and when weighed with the costs, the Hills Resort Zone was the optimal outcome. We asked Ms Wolt about how we should approach the issue of cumulative effects and she said we needed to determine each submission on its merits. She also cited the landscape evidence of Ms Pflüger that there would not be cumulative effects because all of the stand-alone zones requested would not be viewed together.

60. We discuss each zone in turn and our conclusions.

7.2 Hogans Gully Zone

61. Mr Baxter gave landscape evidence that addressed the proposal and also provided comment on the cumulative effects of the proposal. He summarised the key features of the rules which he had input to including: the 3.8m height limit for dwellings, which would be achieved by horizontal roof forms; rules on cladding and colour; extensive ecological plantings surrounding the dwellings; and natural land shaping up to 1.5 – 2 metres in height³².

62. Mr Baxter was critical of Ms Gilbert and Ms Mellsop's evidence that the proposal would result in an 'urban parkland'. He considered Millbrook Resort to be an accepted part of the landscape of the basin. He considered the cumulative effects of Millbrook, the Hills and Hogan Gully Farm and said:

"From distant views the golf course landscape, even though it is fertilised and manicured, is perceived and reads as a similar colour to surrounding pastoral spaces from those views and is read as a continuation of open space".³³

63. He went on to suggest that the development proposed by the Hogan Gully Zone and Hills Resort Zone would not resemble Millbrook Resort in scale, density or form. He commented that the levels of open space proposed by the two zones would be far in excess of that at Millbrook³⁴. Mr Baxter concluded that the proposed zones would not read as a continuation of urban parkland from Malaghans Road to McDonnell Road and rather, would be consistent with Strategic Objective 3.2.2.1(e).

64. Subsequent to the hearing, we were provided with expertly prepared visual simulations from the top of the zig-zag that we have found helpful in understanding Mr Baxter's evidence.

65. In her reply evidence, Ms Mellsop maintained her view that the proposal '*would substantially alter the character of the visible landscape from the lookout and other elevated viewpoints*'³⁵. She concluded that while people's appreciation of the pleasantness and coherence of views from surrounding roads may not be affected, it would adversely affect the associative and perceptual values of the wider rural amenity of the Basin³⁶. She also recommended that we

³¹ At paragraphs 23 to 25

³² P. Baxter, EIC at paragraph 7

³³ Ibid at paragraph 21

³⁴ Ibid at 28

³⁵ H. Mellsop, Reply Evidence at 8.4

³⁶ Ibid at 8.5

treat the visual simulations with caution, as the assumptions were not clearly stated. In particular, she noted they appeared to assume that all planting and built development would occur at the same time without staging³⁷.

66. Mr Brown gave planning evidence that considered the Hogans Gully Zone and also addressed the cumulative effects when considered with the Hills Resort Zone and Ayrburn Zones³⁸. He concluded that there would not be adverse effects on landscape and visual amenity values when considering these proposals alongside the development promoted by the Council³⁹. He reminded us that the Hogans Gully Zone development would be largely invisible from surrounding roads and is only visible from the zig-zag. He emphasised to us that the view from the zig-zag takes in a far wider panoramic view. Relying on the evidence of Mr Vail and Mr Bartlett, he was satisfied with regards to infrastructure servicing and transport effects.
67. Mr Langman advised in his reply evidence that while his concerns had been addressed in part by the revised provisions supplied by Mr Brown following the hearing, he remained of the view, however, that the Rural Amenity Zone is the most appropriate zone. He noted that there was nothing that would prevent the gradual urbanisation of the land and viewed this as a significant concern.

7.3 Hills Resort Zone

7.3.1 Landscape Evidence

68. We received expert landscape evidence from Ms Yvonne Pflüger. As noted in Report 18.1, she told us she considered that the WB Landscape Study was well done and she supported its conclusions.
69. Ms Pflüger provided a detailed evaluation of the landscape characteristics of the site and wider area and an assessment of the visual effects and landscape character effects of the proposed Hills Resort Zone. Her overall conclusion was that adverse effects on landscape character and values can be avoided. She considered the visual amenity of the site to be high and that the proposed development controls would ensure development would be subservient in the landscape and integrated with the golf course.
70. Ms Pflüger, when addressing the issue of cumulative effects, stated:

“As stated above, Millbrook and the Hills Resort Zone will not be readily perceived in the same viewshaft/from the same viewpoint, so it can be concluded that any adverse cumulative visual effects would be limited to a few high-lying viewpoints. I consider that in respect of the developments referred to by Mr Langman (Hogans Fully Farm, Ayrburn, Waterfall Park) it would be impossible to see these developments in their entirety together with the Hills Resort Zone even from elevated viewpoints, since they are located in different visual catchments.”⁴⁰

71. She considered that Ms Gilbert had omitted some important aspects from her assessment, including the retention of over 95% of the land in Millbrook and the Hills Resort as open space; the extent to which topography breaks up and contains views; the proposed mitigation such as

³⁷ Ibid at 8.2 and 8.3

³⁸ We note that Mr Brown had the benefit of having also presented planning evidence in respect of the Hills Zone and Ayrburn Zone and therefore had a thorough knowledge of the three proposals

³⁹ We took this to mean the zones as notified

⁴⁰ Y. Pflüger, Evidence in Chief at 94

controls on buildings and landscaping and the positions where the development would be viewed from together.

72. Ms Pflüger concluded that the proposal would not be perceived as urban sprawl associated with Arrowtown and that the controls would work together to continue to provide the sense of place and identity provided by the existing private golf course.
73. Ms Gilbert's rebuttal evidence acknowledged the design led process that had informed the request for the Hills Resort Zone. She described the proposal as *'the introduction of 150 dwellings into a golf course setting'*⁴¹. She was concerned that the scale and character of the landscape change would significantly alter the identity and sense of place throughout the north eastern portion of the Basin.
74. In her reply evidence, Ms Gilbert maintained her view that the Hills Resort Zone development outcome would *'read as an urban parkland type character that is overtly 'not rural' and displays relatively domesticated character'*⁴².

7.3.2 Economic Evidence

75. Mr Fraser Colegrave provided economic evidence in support of The Hills Resort Zone. He summarised the proposal's economic rationale as:
 - a. it would enable the Hills to gradually improve its financial viability over time;
 - b. it would allow higher and better uses of the land, which would improve economic efficiency in the underlying land market; and
 - c. it would create a compelling tourist destination for wealthy golf visitors and their friends/family, which would generate enduring benefits for the District via increased spending⁴³.
76. We understood his assessment was based on the development of the property under the zone rules proposed as a combination of high-end visitor accommodation and a high quality and limited access golf course⁴⁴.

7.3.3 Planning Evidence

77. Mr Brown gave planning evidence in support of the proposed Hills Resort Zone. He considered that the zone should be preferred to the Rural Amenity Zone as it would better achieve the rezoning principles and would be the most appropriate way to achieve the purpose and principles of the Act.
78. Mr Brown considered the cumulative effects of the Hills Resort Zone, Hogans Gully Zone and Ayrburn Zone. His conclusions were the same as we have discussed above in relation to his conclusions in his evidence for the Hogans Gully Zone.
79. Mr Brown did not consider that Council's evidence had given sufficient regard to the 'moderate' rating for LCU 22. He stated that despite this, the land was subject to the same objectives, policies and methods as the various areas in the Basin with a 'Low' or 'Very Low' rating⁴⁵. He was critical of Mr Langman's assessment and suggested that if taken literally, it would mean

⁴¹ B. Gilbert, Rebuttal Evidence at 16.17

⁴² B. Gilbert, Reply Evidence at 10.10

⁴³ F Colegrave, EiC, paragraph 11

⁴⁴ Ibid, paragraph 33

⁴⁵ J. Brown, Evidence in Chief at 97

that no development from anywhere visible from an elevated position would be able to meet Section 7(c)⁴⁶.

80. Mr Langman considered Mr Colegrave's economic evidence in his rebuttal evidence. He agreed that it quantified the economic benefits, but noted it did not address the costs that might be associated with increased infrastructure demand. He also highlighted a concern that if the golf course was not able to maintain its financial viability, this would lead to future pressure for further development⁴⁷.
81. Mr Langman commented on the amended provisions in his reply. He continued to hold the view that the zone represented a density of development that was not appropriate individually or cumulatively. He also thought that the provisions did not sufficiently safeguard the outcome of a resort and considered that the provisions should require the majority of the residences to provide for visitor accommodation to qualify as a resort⁴⁸.
82. We should note also the tabled submissions of Dame Elizabeth and Mr Murray Hanan opposing the proposed Hills development. As with their submission on the Banco Trustees' submission discussed above, their principal issue was in maintaining McDonnell Road as a boundary for development, and maintenance of the rural backdrop beyond it.

7.4 Discussion and Conclusions

83. We have carefully considered the addition of two resort zones in the eastern part of the basin. As we have noted above, we discussed how we might approach our consideration of these and other stand-alone zones in terms of the potential cumulative effects.
84. In his reply evidence, Mr Langman told us that we should consider each request on its individual merits and then made a decision on any cumulative impacts of one or more of the requested zones⁴⁹. We agree that this is the correct approach.
85. Firstly, considering the Hogans Gully Zone, we find that this would not be the most appropriate zone for the site. We think that the landscaping proposed will stand out because it is not where it would naturally be (i.e. in the gullies). We also find that the view from zig-zag is important. The simulations provided by the submitter support both Ms Gilbert's comments in her reply evidence, that it is an artificial configuration driven primarily by the golf course layout⁵⁰, and Ms Mellsop's view that the density of the visible built development would result in a visible spread of intensive rural living. In our view, the development enabled by the zone would be obtrusively visible.
86. We agree with Mr Todd that the 55ha of indigenous planting proposed is a potentially significant ecological benefit that we should take into account. However, in our view, it will not in this instance counter the adverse effects of the proposal. We also think that the benefit is lessened by the way it fails to follow natural patterning, by being located on higher points rather than in the gullies. Even if the restoration had been more well-conceived, we do not think it sufficient to counter the intensive level of rural living that will be clearly visible from a significant

⁴⁶ Ibid at 104

⁴⁷ At 25.13 and 25.14

⁴⁸ M. Langman, Reply Evidence at 21.4 and 21.5

⁴⁹ M. Langman, Reply Evidence at 6.1 to 6.3

⁵⁰ B. Gilbert, Reply Evidence at 10.12

viewpoint. Had the development not been concentrated on the ridgelines and been coupled with revegetation in the gullies we may have reached a different view.

87. Turning now to the Hills Resort Zone, we find that the landscape effects of the proposed development are less than those of Hogans Gully. While Ms Wolt, counsel for Trojan Helmet Limited, sought to rely on unimplemented consents for 10 additional dwellings as part of the 'existing environment', we heard no evidence indicating that those consents are likely to be exercised before they lapse later this year (2019) and we do not consider them relevant to our assessment of the effects of the proposed zone. What is relevant, however, is the fact that the site has already been extensively modified by the existing golf courses and, to a lesser extent, the three dwellings that have been built or which are in the process of being built, along with the golf 'clubhouse' and other golf-related buildings on the site. We acknowledge that the submitter has gone to a lot of effort to make the residential elements it proposes to introduce to that modified environment unobtrusive. We agree with Ms Gilbert's comments in her reply that the revised provisions do not go far enough: there are no detailed design guidelines (the design principles Ms Chin discussed in her evidence are highly conceptual and left us with no clear impression as to the likely end result, other than that it would not have the standardised approach of Millbrook) and buildings would be a controlled activity (related to the previous point, we think at the very least, buildings should be a restricted discretionary activity). However, we also agree with her that should we be minded to enable additional resort land use in the Basin, The Hills is a reasonable candidate from a landscape perspective⁵¹.
88. This raises the question, however, whether The Hills Resort Zone would in fact be a resort, as defined. This is significant because the submitter proposed identification of a series of "Activity Areas" within which residential development was envisaged at urban densities. The largest activity area provided for a maximum of 36 residential units within a 2.7 hectare area.
89. The objectives and policies in Chapters 3 and 4 of the PDP seek to avoid urban development outside the urban development boundaries shown on the planning maps⁵². The definition of "urban development" states that a resort development in an otherwise rural area is not urban development. The definition of resort is:
- "Means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on onsite visitor activities."*
90. While The Hills Resort Zone would satisfy the first part of the definition, we heard no evidence that it would principally provide visitor accommodation, although we note that Mr Colegrave's evidence was based on visitor accommodation being a principal component. Rather the contrary; the impression we had was that the intention was that this would be a gated residential community surrounding a golf course.
91. The same is the case with Hogans Gully. Mr Todd, however, sought to argue that it would meet the definition of "resort", because the residential units constructed as part of the development were able to be used for visitor accommodation. We do not think this is sufficient and note that

⁵¹ B Gilbert Reply evidence at 10.23

⁵² See e.g. Policies 3.3.14 and 4.2.1.3.

the same applies to development in the residential zones throughout the District. The definition quoted above focusses on what is actually occurring as a matter of fact; whether the development is principally providing visitor accommodation, not whether it might do so. The importance of this being 'locked in' was emphasized by evidence we heard that the character of Millbrook 'Resort' has changed over time as it has grown in size, such that it would probably not be considered a resort if constructed today.

92. We contemplated the possibility of amending The Hills Resort Zone provisions to express them in terms that would ensure the development met the requirements of a resort (as well as addressing the other issues identified above), but concluded that this is such a fundamental element of the development that we ought not to undertake the redrafting required in the absence of clear evidence that the submitter actually sought to undertake a development within the definition set out above.
93. We have concluded, therefore, that what is proposed is urban development that the strategic chapters of the PDP seek to avoid. In our view, that is decisive, and leads us inexorably to the conclusion that the submission should not be accepted. We considered whether this conclusion puts too much weight on Stage 1 provisions that are the subject of appeal. The key definitions we have relied on are not the subject of appeal, and while the policy approach of avoiding urban development outside urban development boundaries is challenged, it is fundamental to the approach the strategic chapters take to management of urban development. It would be inconsistent for us to take an alternative approach unless and until the Environment Court directs that course.
94. The same conclusion follows for Hogans Gully, although there we have identified additional reasons supporting rejection of the proposed zone. Those additional reasons are important because Hogans Gully sought, in the alternative, imposition of Precinct zoning on the elevated terraces identified for residential development in its proposed zone. The alternative proposal was not fully fleshed out and we were left unclear how it could be reconciled with the information Mr Baxter provided to us on the pattern of residential development. Be that as it may, high density Precinct development (down to 2500m²) would, in our view, have unsatisfactory results. It would not, in particular, maintain or enhance landscape character and visual amenity values in the eastern part of the Basin.
95. We conclude that, whether considered individually or cumulatively, the Hogans Gully Zone and The Hills Resort Zone are not the most appropriate zones for the properties. We consider the most appropriate zone among the options available to us, to be Rural Amenity Zone as notified.

8. RECOMMENDATIONS

96. For the reasons given above, we recommend that:
 - a. Submissions 2299, 2388, 2501, 2511 and 2580 be accepted, further submissions in support of those submissions be accepted, and further submissions in opposition be rejected;
 - b. Submissions 2295, 2386 and 2400 be accepted in part, further submissions in support of those submissions be accepted in part, and further submissions in opposition to those submissions be rejected;

- c. Submissions 2281, 2313, 2320, 2387, 2397, 2413, 2419, 2444, 2512, 2513 and 2605 be rejected, further submissions in support of those submissions be rejected, and further submissions in opposition to those submissions be accepted;
- d. The Waterfall Park Zone be extended on to the 'triangle' area separating the north and south parts of the zone, as shown on Figure E1 below;
- e. the Waterfall Park Zone Structure Plan in Section 42.7 and Section 27.13.3 of the PDP be replaced with that included in Appendix 1;
- f. the land at Middlerigg Lane (held in Computer Freehold Registers 594920, 594921 and 416330) be zoned Millbrook Resort Zone as shown on Figure E2 below;
- g. the Millbrook Resort Zone Structure Plan in Section 43.7 and Section 27.13.4 of the PDP be replaced with that included in Appendix 2;
- h. Chapter 43 be amended by including the provisions set out in Appendix 3;
- i. that Lot 2 DP 300390 in Jopp Street, Arrowtown be zoned Lower Density Suburban Residential Zone as shown on Figure E3 below;
- j. the Urban Growth Boundary be moved to include Lot 2 DP 300390 in Jopp Street, Arrowtown, as shown on Figure E3 below;
- k. that 112-116 McDonnell Road be zoned Wakatipu Basin Lifestyle Precinct as shown on Figure E4 below;
- l. that the land on McDonnell Road legally described as Lot 2 DP 392663 be zoned Wakatipu Basin Lifestyle Precinct, as shown on Figure E5 below;
- m. that all other land in Area E retain the zoning and relevant notations as notified.

For the Hearing Panel



Denis Nugent, Chair

Dated: 15 February 2019

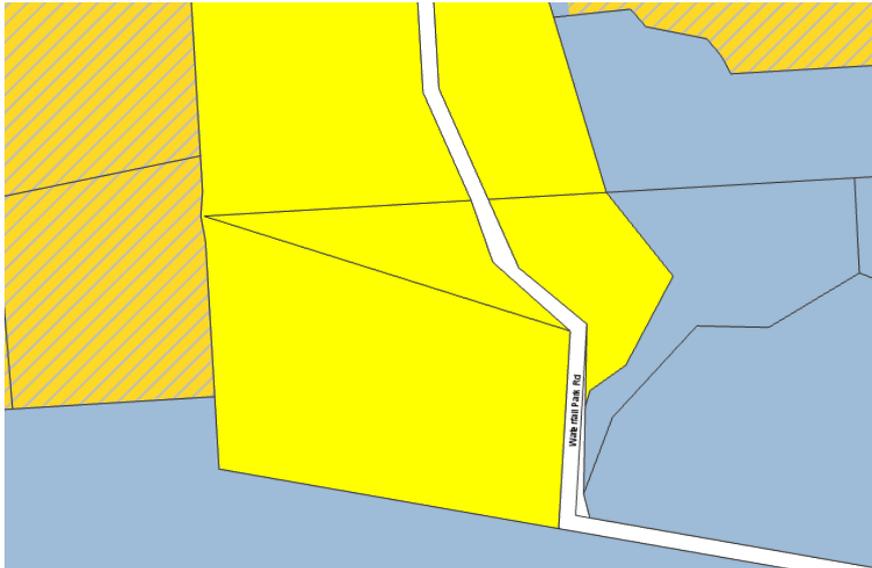


Figure E1: Recommended extension to Waterfall Zone

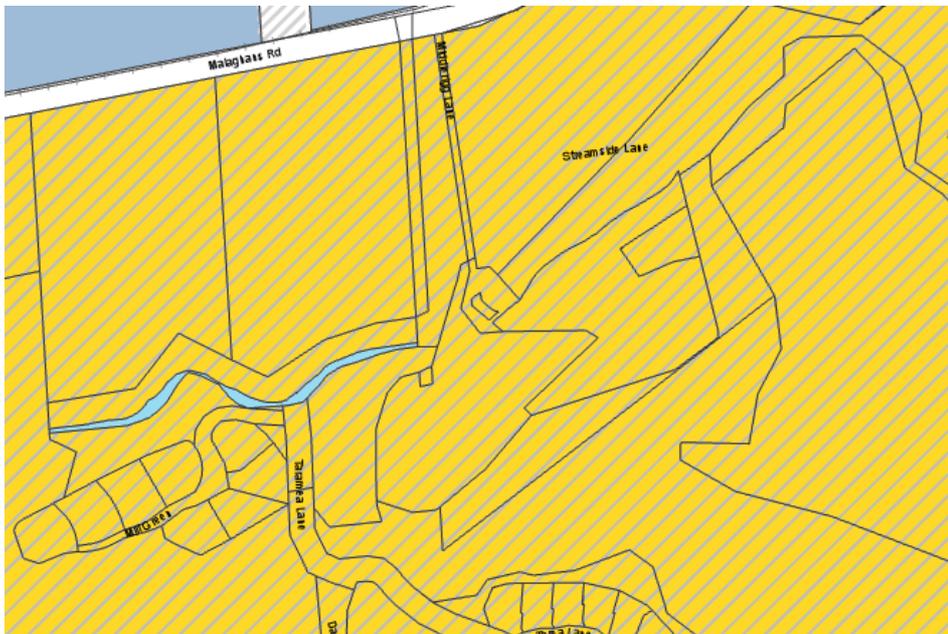


Figure E2: Recommended extension to Millbrook Resort Zone

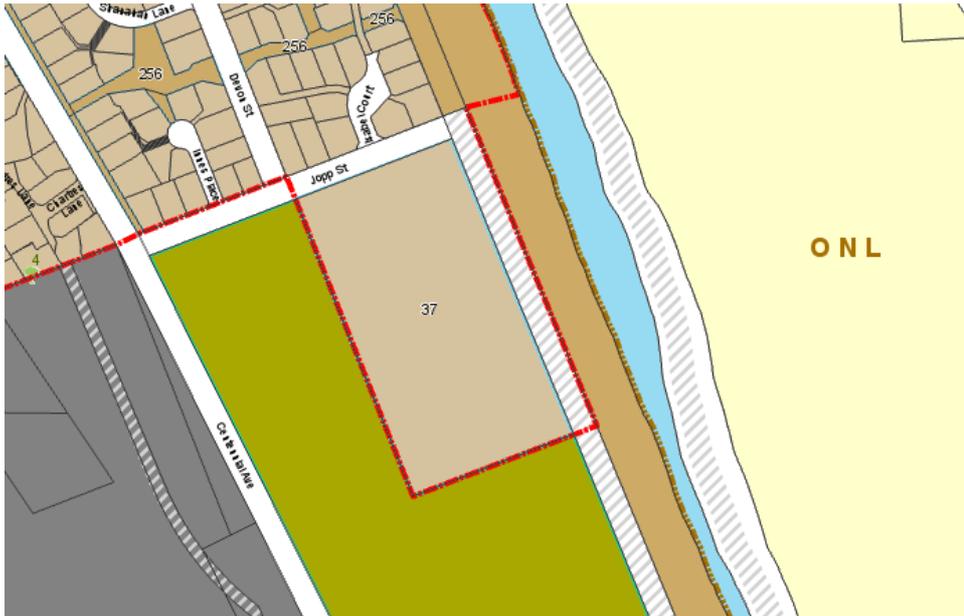


Figure E3: Recommended zoning of Lot 2 DP 300390, Jopp Street and relocation of Urban Growth Boundary

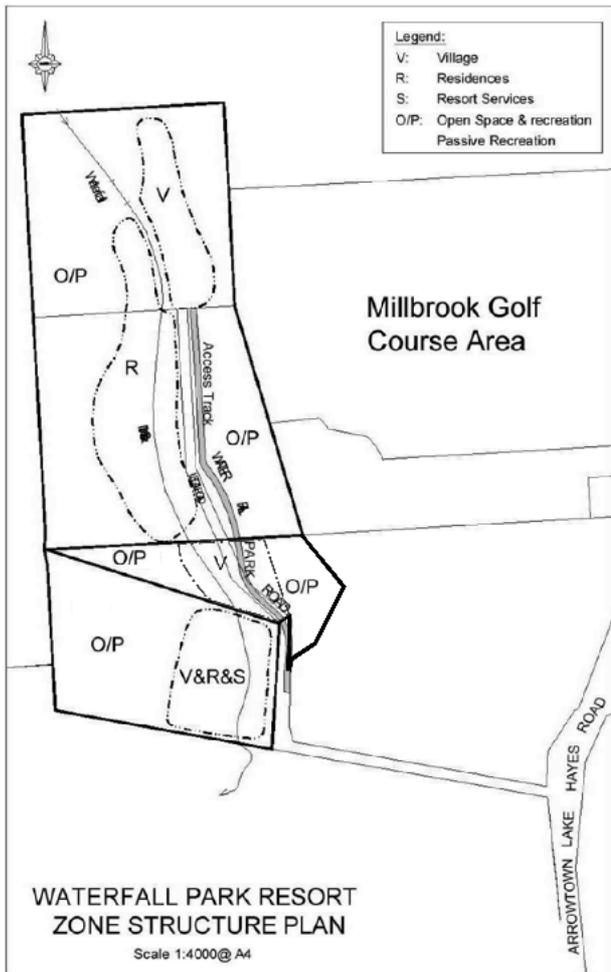


Figure E4: Recommended zoning of 112-116 McDonnell Road, Arrowtown

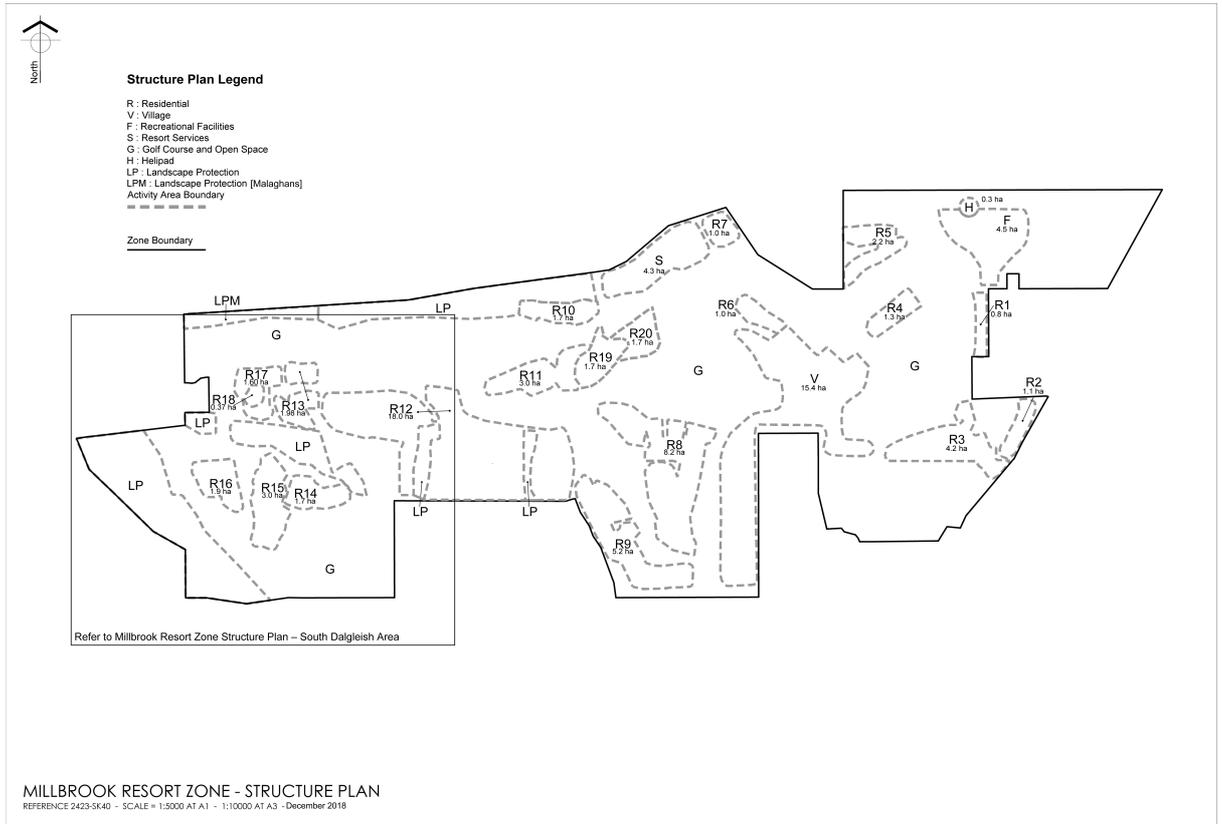


Figure E5: Recommended zoning of Lot 2 DP 392663, McDonnell Road, Arrowtown

Appendix 1: Recommended Waterfall Park Zone Structure Plan



Appendix 2: Recommended Millbrook Resort Zone Structure Plan



Appendix 3: Recommended Amendments to Chapter 43 Millbrook Resort Zone

Amend provisions in Chapter 43 as below (insertions shown underlined, deletions with ~~strike-through~~)

a. Amend Rules 43.4.10 and 43.4.11:

43.4.10	<p>Buildings</p> <p>a. Village Activity Area</p> <p>b. R1 to R13 <u>and R19</u> of the Residential Activity Area</p> <p>c. The Recreational Facilities Activity Area</p> <p>Control is reserved to:</p> <p>i. The appearance of the building</p> <p>ii. Effects on visual and landscape amenity of the area including coherence with the surrounding buildings</p>	C
43.4.11	<p>Buildings</p> <p>a. R14, R15, and R16 <u>and R20</u> of the Residential Activity Area</p> <p>Discretion is restricted to the following:</p> <p>i. The appearance of the building</p> <p>ii. Associated landscaping controls</p> <p>iii. The effects on visual and landscape amenity values of the area including coherence with the surrounding buildings</p>	RD

b. Amend Rules 43.5.4, 43.5.5 and 43.5.6:

43.5.4	<p>Residential Density</p> <p>The maximum number of residential units in the Millbrook Resort Zone shall be limited to 450 <u>458</u>.</p>	NC																								
43.5.5	<p>Residential Density</p> <p>a. In the following parts of the Residential Activity Area the total number of residential units shall not exceed:</p> <table border="0" data-bbox="427 1384 911 1641"> <tr> <td>i.</td> <td>R13</td> <td>10 residential units</td> </tr> <tr> <td>ii.</td> <td>R14</td> <td>6 residential units</td> </tr> <tr> <td>iii.</td> <td>R15</td> <td>15 residential units</td> </tr> <tr> <td>iv.</td> <td>R16</td> <td>6 residential units</td> </tr> <tr> <td>v.</td> <td>R17</td> <td>7 residential units</td> </tr> <tr> <td>vi.</td> <td>R18</td> <td>1 residential units</td> </tr> <tr> <td><u>vii.</u></td> <td><u>R19</u></td> <td><u>4 residential units</u></td> </tr> <tr> <td><u>viii.</u></td> <td><u>R20</u></td> <td><u>4 residential units</u></td> </tr> </table> <p>b. In addition there shall be no more than one residential unit per Indicative Residential Site</p>	i.	R13	10 residential units	ii.	R14	6 residential units	iii.	R15	15 residential units	iv.	R16	6 residential units	v.	R17	7 residential units	vi.	R18	1 residential units	<u>vii.</u>	<u>R19</u>	<u>4 residential units</u>	<u>viii.</u>	<u>R20</u>	<u>4 residential units</u>	NC
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<u>viii.</u>	<u>R20</u>	<u>4 residential units</u>																								
43.5.6	<p>Building Height – Residential Activity Areas R1 – R13, <u>R19 and R20</u></p> <p>The maximum height of buildings shall be:</p> <p>a. Visitor accommodation, clubhouses, conference and theatre facilities, restaurants, retail and residential buildings – 8m</p> <p>b. Filming towers – 12m</p> <p>c. All other buildings and structures – 4m</p>	NC																								