

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2023] NZEnvC 278

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First
Schedule of the Act

BETWEEN E HANAN

(ENV-2019-CHC-16)

AND BANCO TRUSTEES, McCULLOCH
TRUSTEES 2004 LIMITED AND
OTHERS

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner J T Baines

Hearing: On the papers

Last case event: 13 December 2023

Date of Decision: 21 December 2023

Date of Issue: 21 December 2023

**FINAL DECISION OF THE ENVIRONMENT COURT
Topic 31: Hanan and Banco – LCU24: McDonnell Road**

A: Directions are made for Queenstown Lakes District Council to:

HANAN & BANCO v QLDC – TOPIC 31 – McDONNELL ROAD – FINAL DECISION



- (a) amend the PDP by inserting the new and amended provisions in Chs 24 and 27 and Sch 24.8 as set out in Annexure 1;
 - (b) update the planning maps as shown in Annexure 2;
 - (c) amend the PDP by inserting the provisions of Chs 24 and 27 as set out in Annexure 3; and
 - (d) file a reporting memorandum as to that once completed.
- B: On all points of appeal in Topic 31, the appeals are allowed to the extent specified and otherwise dismissed.
- C: Costs are reserved although not encouraged. Any application is to be made and served within 10 working days and any reply within a further five working days.

REASONS

Introduction

[1] This is the second decision relating to appeals by Dame Elizabeth Hanan ('Hanan'), and Banco Trustees Limited, McCulloch Trustees 2004 Limited and others ('Banco') as to the zoning of two parcels of land ('Sites') on McDonnell Road, near Arrowtown, as part of Stage 2 of the Queenstown Lakes District Plan review ('PDP').

[2] Under the Wakatipu Basin variation to the PDP, the Sites were initially proposed to be zoned Wakatipu Basin Rural Amenity Zone ('WBRAZ'). For both sites, this was changed by QLDC's decisions to Wakatipu Basin Lifestyle Precinct ('Precinct'), a subzone of the WBRAZ. The interim decision¹ confirmed Precinct zoning for the sites subject to specified modifications to Chs 24 and 27 and Sch 24.8 of the PDP.

¹ *Hanan v Queenstown Lakes District Council* [2023] NZEnvC 200.

[3] QLDC was directed to provide a final set of updated provisions and planning maps for the court’s final approval for inclusion in the PDP.² This was filed by reporting memorandum dated 30 October 2023.

[4] On 30 November 2023 the court issued an erratum correcting two minor errors it identified in the interim decision.³ Specifically, the correction was to replace some references to the “BHT Site” with the “Banco Site”.

[5] In the reporting memorandum, counsel for QLDC brings to the court’s attention a further lacuna in the court’s interim decision. Despite the court finding, on the basis of Ms Mellsop’s evidence, that the appropriate capacity rating for the part of LCU 24 outside of the two appeal sites should be Moderate, the interim decision did not specify directions for related Chs 24 and 27 provisions that work alongside that Moderate capacity rating for the WBRAZ land within LCU 24. Ms Scott properly points out that determinations concerning these bespoke provisions were reserved through Topics 25 and 30 with the intention that they be confirmed through the appeals relating to LCU 24. Hence, this lacuna can now be resolved by the making of directions in this decision for associated provisions to be included in this final decision on the appeals.⁴

The related Chs 24 and 27 provisions

[6] The provisions to be included are:⁵

- (a) Pol 21.2.1.1B, the subclauses of which sets specified outcomes for the relevant LCU areas;⁶
- (b) Pol 27.5.18A which pertains to the subdivision activity status as

² At [102] and Order B.

³ *Hanan v Queenstown Lakes District Council* [2023] NZEnvC 257.

⁴ Memorandum of counsel dated 13 December 2023 at [4]-[7].

⁵ Memorandum of counsel dated 13 December 2023 at [8].

⁶ The court confirmed the inclusion of this provision in *Barnhill Corporate Trustee Limited v Queenstown Lakes District Council* [2022] NZEnvC 58 at [83]-[91], with LCU specific wording confirmed in subsequent decisions.

discretionary for land within LCU 24;⁷

- (c) rr 24.5.1.6 and 27.6.1 which apply the “dual standards approach” of having both a minimum and minimum average lot size which applies to those parts of the WBRAZ that are allocated Moderate capacity.⁸

[7] The inclusion of those provisions in the PDP gives effect to the findings in the interim decision as pertaining to the discretionary activity status that the court found appropriate to be applied to Moderate landscape capacity areas within the WBRAZ.⁹

[8] Under s278 RMA,¹⁰ an Environment Judge has the same powers that the District Court has in the exercise of its civil jurisdiction. Rule 11.10 DCR¹¹ specifies (relevantly) that a judgment may be corrected by the court if it contains a clerical mistake or an error arising from an accidental slip or omission. I am satisfied with the explanation provided by counsel and determine that the omission of the sub-clause for Pol 24.2.1.1B and the associated minimum and minimum average lot sizes put forward by Ms Mellsop, can and should be corrected under s278. That is in light of the court’s findings in the interim decision on the evidence noted.¹²

Final set of plan maps and provisions

[9] Having reviewed the final set of plan maps and provisions, the court is

⁷ The court confirmed the inclusion of this provision in *Barnhill Corporate Trustee Limited v Queenstown Lakes District Council* [2022] NZEnvC 58 at [122] and [128]. The court reserved the determination of the expression of the matters in clauses (a)-(j) pending determination of the possible mapping of LCU areas.

⁸ These provisions were also confirmed in *Barnhill Corporate Trustee Limited v Queenstown Lakes District Council* [2022] NZEnvC 58 at [108]-[109].

⁹ The modified regime endorsed in the Topics 25 and 30 decision anticipates discretionary activity status be applied to Moderate landscape capacity areas alongside bespoke minimum and minimum average lot sizes. This reserves non-complying activity status and the associated 80 ha minimum lot size instead for parts of the WBRAZ that have Very Low, Low or Moderate-Low landscape capacity.

¹⁰ Resource Management Act 1991.

¹¹ District Court Rules 2014.

¹² Memorandum of counsel dated 13 December 2023.

satisfied it reflects the interim decision and accordingly it is appropriate that the requested direction to effect the changes sought to the PDP be made. Directions are made accordingly.

Directions

[10] Under ss 279(1)(b), 290(2) and s278 RMA, QLDC is directed to:

- (a) amend the PDP by inserting the new and amended provisions in Chs 24 and 27 and Sch 24.8 as set out in Annexure 1;
- (b) update the planning maps as shown in Annexure 2;
- (c) amend the PDP by inserting the provisions of Chs 24 and 27 as set out in Annexure 3; and
- (d) file a reporting memorandum as to that once completed.

[11] On all points of appeal in Topic 31, the appeals are allowed to the extent specified and otherwise dismissed.

[12] Costs are reserved although not encouraged.



J J M Hassan
Environment Judge



Annexure 1

Agreed plan provisions for incorporation into Chs 24, 27, and Sch 24.8 of the
Proposed District Plan.

24. Wakatipu Basin

24.2.5.7 Within the Lifestyle Precinct in LCU24 – South Arrowtown at McDonnell Road, when viewed from McDonnell Road, or distant public elevated viewpoints in Arrowtown, on Tobin’s Track, and Feehley Hill:

- a. avoid a linear pattern of built development where that may contribute to a perception of urban sprawl along McDonnell Road, taking into account building form, location, setback and mitigation proposed;
- b. maintain an open space buffer and the visual legibility of the boundary between development within the Precinct and the Arrowtown Retirement Village.

24.2.5.8 For development within Lot 2 DP 392663, Part Lot 7 DP 392663, and Part Lot 2 DP 501981 (or subsequent title/s), avoid additional vehicle crossings onto McDonnell Road by utilising existing vehicle access through The Hills Resort Zone.

24.5.7	<p>Setback from internal boundaries</p> <p>24.5.7.1 The minimum setback of any building from internal boundaries shall be 10m, except where Rule 24.5.7.2 applies.</p> <p>24.5.7.2 The set back of buildings from the southern boundary of Lot 2 DP 392663, Part Lot 7 DP 392663, and Part Lot 2 DP 501981 (or subsequent title/s) (adjacent to the Arrowtown Retirement Village, McDonnell Road, Arrowtown) shall be defined by a line between:</p> <ul style="list-style-type: none"> (i) a point at the McDonnell Road boundary 75m from the southern boundary of Lot 2 DP 392663; and (ii) a point at the western boundary of the Precinct and 25m from the southern boundary of Part Lot 7 DP 392663. 	<p>RD</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. Building location, character, scale and form; b. External appearance including materials and colours; c. Landform modification/planting (existing and proposed). d. For any building within the setback defined in Rule 24.5.7.2: <ul style="list-style-type: none"> (i) Effects on the visual legibility of the boundary between Lifestyle Precinct development within Lot 2 DP 392663, Part Lot 7 DP 392663, and Part Lot 2 DP 501981 (or subsequent title/s) and the Arrowtown Retirement Village; (ii) Maintaining an open space buffer between Lifestyle Precinct development and the Arrowtown Retirement Village; (iii) Avoiding a linear pattern of built development when viewed from McDonnell Road or distant public elevated
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PART 4

WAKATIPU BASIN 24

		viewpoints through building location and landscaping.
24.5.9	Setback from roads	RD
	24.5.9.1 The minimum setback of any building from any road boundary (other than an unformed road) shall be 75m in the Precinct and 20m in the Rural Amenity Zone.	Discretion is restricted to:
	24.5.9.2 The minimum setback of any building from any unformed road shall be 20m in the Rural Amenity Zone and Lifestyle Precinct.	a. Building location, character, scale and form;
	24.5.9.3 Rules 24.5.9.1 and 24.5.9.2 do not apply to the construction of buildings for residential activity pursuant to Rule 24.4.5.	b. External appearance including materials and colours;
		c. Landscaping/planting (existing and proposed).
		d. Where Electricity Sub-transmission Infrastructure or Significant Electricity Distribution Infrastructure as shown on the District Plan web mapping application is located within the adjacent road, any adverse effects on that infrastructure.
		e. Within Lot 2 DP 392663, Part Lot 7 DP 392663, and Part Lot 2 DP 501981 (or subsequent title/s) and Part Section 1 SO 23541 (or subsequent title/s), avoiding the potential effects of a linear pattern of built development when viewed from McDonnell Road or distant public elevated viewpoints in Arrowtown, on Tobin's Track, and Feeley Hill, that may contribute to a perception of urban sprawl along McDonnell Road taking into account building form, location, setback and mitigation proposed.

24.8 Schedule 24.8 Landscape Character Units

24: Arrowtown South

Landscape Character Unit	24: Arrowtown South
Landform patterns	The unit encompasses the flat to gently rolling land on the south side of Arrowtown and includes the steep escarpment that currently defines the south western edge of the village. It includes small humps of glacially scraped schist bedrock.
Vegetation patterns	Extensive exotic amenity planting around buildings and throughout the public golf course. A mix of native and weeds species along watercourses. Native and amenity pond edge plantings (in golf course) Some productive and shelter belt tree plantings and open space for grazing/hay. Scrub and weeds throughout escarpment. Extensive amenity plantings anticipated throughout the Arrowtown Lifestyle Retirement Village SHA.
Hydrology	A watercourse (running roughly parallel with McDonnell Road) and amenity ponds.
Proximity to ONL/ONF	Unit adjoins ONL (WB) along east boundary. Mid to long-range views to surrounding ONL mountain context.
Character Unit boundaries	North: Arrowtown Urban Growth Limit. East: ONL/study area boundary. South: cadastral boundaries. West: McDonnell Road, toe of hummocky hill landform pattern.
Land use	Golf course, rural living including rural residential (Arrowtown South Structure Plan) and retirement village (Arrowtown Lifestyle Retirement Village SHA) uses dominate. Open grazing land is required along the McDonnell Road frontage of the Arrowtown South Structure Plan area.
Settlement patterns	The Arrowtown South Special Zone anticipates a reasonably spacious patterning of rural residential development together with extensive riparian and escarpment restoration, pastoral areas and a landscape framework throughout the south western edges of Arrowtown to create an attractive edge to the settlement in conjunction with the adjacent golf courses and roads. The Arrowtown Lifestyle Retirement Village SHA anticipates an urban patterning of buildings ranging from one storey units along the McDonnell Road edge to three storey buildings in the central western margins of the area. Rural living expressed as individual dwellings well separated from other dwellings is also present. Typical lot sizes: <ul style="list-style-type: none"> • Predominantly 4-10ha. • Some larger lots 10-20ha. The Arrowtown Lifestyle Retirement Village has implications for future settlement patterns for the land around it south and west of McDonnell Road.

Landscape Character Unit	24: Arrowtown South
Proximity to key route	Located on Centennial Avenue and Mc Donnell Road, both of which comprise a popular routes between Arrowtown and SH6 / Arrow Junction.
Heritage features	Four heritage buildings/features identified in PDP.
Recreation features	No Council walkways/cycleways through the unit.
Infrastructure features	Reticulated sewer in part. No reticulated water and stormwater although it is expected that the Arrowtown Lifestyle Retirement Village SHA will be fully serviced.
Visibility/prominence	<p>The area is visible from the elevated streets along the western edge of Arrowtown, public walkways and private properties. The relatively close proximity means that the unit is prominent in the outlook.</p> <p>The unit is also visible from McDonnell Road and Centennial Avenue.</p> <p>Like The Hills, the unit is also visible from the western edges of the Crown Terrace, the tracks throughout the ONL to the east (Mt Beetham environs), Tobins Track and the zigzag lookout. There are views across the unit from Feehlys Hill. The diminishing influences of distance and relative elevation in conjunction with the relative unimportance (visually) of the unit within the wider panorama reduces the unit's prominence.</p>
Views	<p>Key views relate to the view out over the area from the tracks throughout the ONL to the east (Tobins Track, Mt Beetham environs) and the zig zag lookout. In these views the area reads as a part of the swathe of relatively low lying, undulating rural/rural residential land flanking Arrowtown.</p> <p>The outlooks from McDonnell Road, Centennial Avenue and the western margins of Arrowtown comprise rural living, and golf course landscape on the edge of Arrowtown. The relatively wild and unkempt escarpment forms a prominent element in views from McDonnell Road. The Arrowtown Lifestyle Retirement Village SHA comprising a distinctly urban one - three storey high density retirement village development is visible in each of these outlooks (albeit to a varying degree depending on location).</p> <p>From within the unit, key views are expected to relate to the attractive long-range views to the surrounding ONL mountain setting and the short range views to open rural land/rural parkland.</p>
Enclosure/openness	A variable sense of enclosure and openness deriving primarily from localised landform and vegetation patterns. The escarpment to the north east of the unit and the hummocky landform of The Hills to the south west provide containment to the McDonnell Road portion of the unit.
Complexity	Generally, a relatively complex unit as a consequence of the landform and vegetation patterns (golf course area), together with the dense arrangement of buildings (SHA area).
Coherence	A limited perception of coherence as a consequence of the varying landform and vegetation patterns and the somewhat anomalous urban character of development associated with the approved SHA located at some distance from the legible village edge (i.e. the escarpment).

Landscape Character Unit	24: Arrowtown South
Naturalness	The unit displays a low level of naturalness as a consequence of the level of existing and anticipated built development together with the golf course patterning. The vegetated character of the escarpment and the water course, and the prominent schist outcrops counters this to a limited degree.
Sense of Place	Generally, the unit reads as part of the swathe of golf courses and rural living development that frame the western and southern edges of Arrowtown and effectively function as a 'greenbelt' to the village. However, this 'greenbelt' effect, together with the legibility of the escarpment as a robust defensible edge to Arrowtown has been somewhat compromised by the Arrowtown Lifestyle Retirement Village SHA which confers a distinctly urban character in part of the unit.
Potential landscape issues and constraints associated with additional development	Extent to which the unit continues to operate as a 'greenbelt' to Arrowtown. Role of the escarpment, McDonnell Road and the Arrowtown Golf Course as an edge to the village. Ensuring urban residential development is constrained within existing defensible boundaries and does not sprawl westwards and southwards in an uncontrolled manner into the existing, 'more rural' areas. Public golf course facility.
Potential landscape opportunities and benefits associated with additional development	Golf course landscape potentially suited to accommodating a reasonably high level of development (e.g. Millbrook). Close proximity to Arrowtown. Close proximity to urban infrastructure. Large-scaled lots suggest potential for subdivision. Potential for integration of walkways/cycleways. Riparian restoration potential. Easy topography.
Environmental characteristics and visual amenity values to be maintained and enhanced	Views from McDonnell Road and Centennial Avenue to the surrounding mountain/river context. Reinforcing a robust and defensible edge to Arrowtown.
Capability to absorb additional development	Moderate-high: areas of Precinct Moderate: remainder of LCU 24.

27 Subdivision and Development

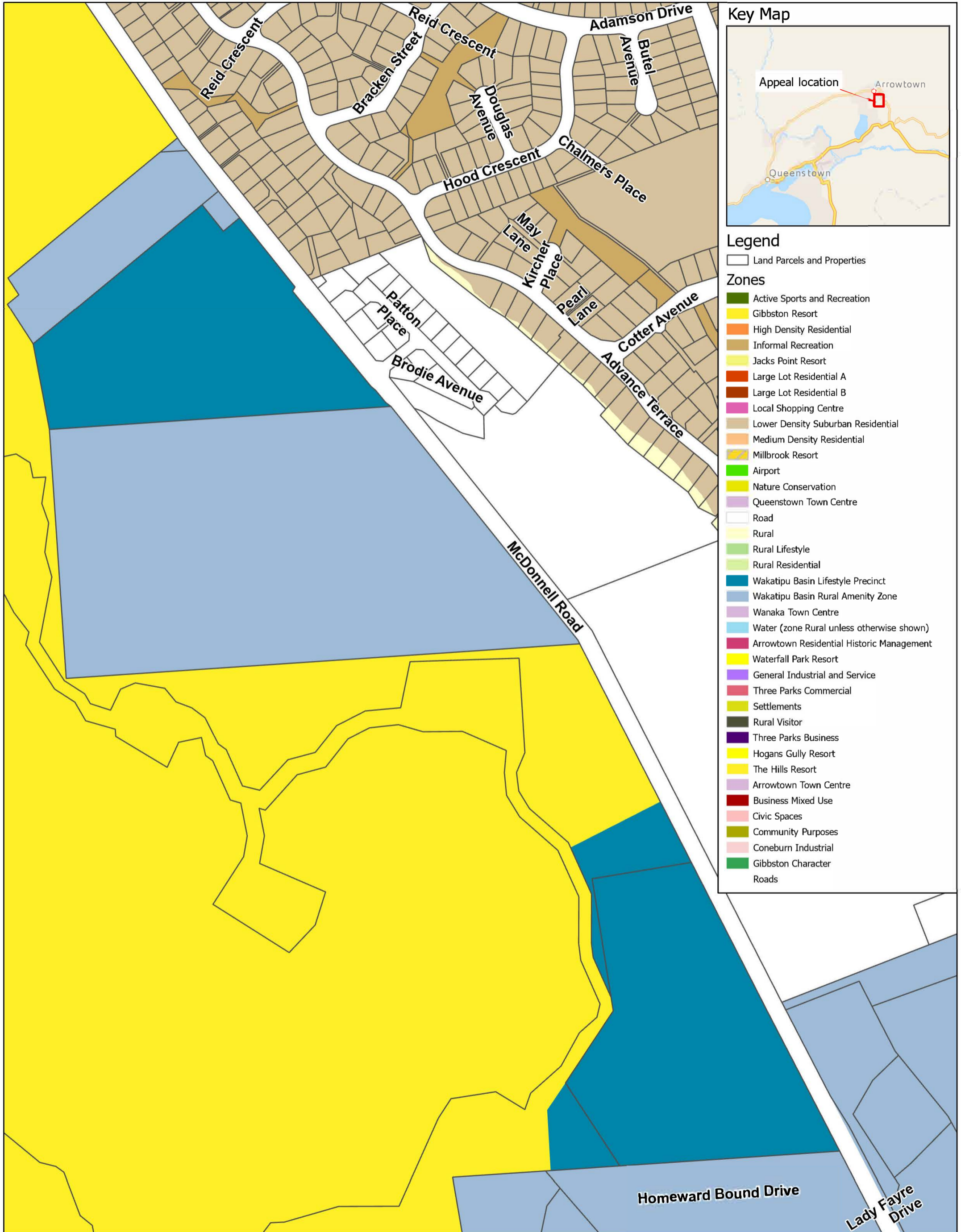
27.7.18	<p>Wakatipu Basin Rural Amenity Zone</p> <p>Setback from Roads</p> <p>27.7.18.1 The minimum setback of any building platform identified through subdivision from any road boundary (other than an unformed road) shall be:</p> <ul style="list-style-type: none"> a. 75m in the Lifestyle Precinct; and b. 20m in the Rural Amenity Zone. <p>27.1.1.2 The minimum setback of any building platform identified through subdivision from any unformed road shall be 20m in the Rural Amenity Zone and Lifestyle Precinct.</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. Building Platform location as it relates to views from the road or unformed road to ONFs and ONLs and other mapped features; b. Scale of future buildings; c. Landscaping/planting (existing and proposed); d. Within Lot 2 DP 392663, Part Lot 7 DP 392663, and Part Lot 2 DP 501981 (or subsequent title/s) and Part Section 1 SO 23541 (or subsequent title/s), avoiding the potential effects of a linear pattern of built development when viewed from McDonnell Road or distant public elevated viewpoints in Arrowtown, on Tobins Track, and Feeley Hill, that may contribute to a perception of urban sprawl along McDonnell Road taking into account building platform location, setback and mitigation proposed. 	RD
27.7.18.A	<p>Wakatipu Basin Rural Amenity Zone – Lifestyle Precinct</p> <p>Setback from Arrowtown Retirement Village</p> <p>The set back of buildings from the southern boundary of Lot 2 DP 392663, Part Lot 7 DP 392663, and Part Lot 2 DP 501981 (or subsequent title/s) (adjacent to the Arrowtown Retirement Village, McDonnell Road, Arrowtown) shall be defined by a line between:</p> <ul style="list-style-type: none"> (i) a point at the McDonnell Road boundary 75m from the southern boundary of Lot 2 DP 392663; and (ii) a point at the western boundary of the Precinct in this location and 25m from the southern boundary of Part Lot 7 DP 392663. <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. Effects on the visual legibility of the boundary between Lifestyle Precinct development within Lot 2 DP 392663, Part Lot 7 DP 392663, and Part Lot 	RD

	<p>2 DP 501981 (or subsequent title/s) and the Arrowtown Retirement Village;</p> <p>b. Maintaining an open space buffer between Lifestyle Precinct development and the Arrowtown Retirement Village;</p> <p>c. Avoiding a linear pattern of built development when viewed from McDonnell Road or distant elevated viewpoints, through building location and landscaping;</p> <p>d. Scale of future buildings;</p> <p>e. Landscaping/planting (existing and proposed).</p>	
27.7.18.B	<p>Wakatipu Basin Rural Amenity Zone – Lifestyle Precinct</p> <p>Access</p> <p>Access to lots created within Lot 2 DP 392663, Part Lot 7 DP 392663, and Part Lot 2 DP 501981 (or subsequent title/s) shall be from the western boundary of the Lifestyle Precinct and shall connect to McDonnell Road via existing roading within The Hills Resort Zone. There shall be no direct access from the Lifestyle Precinct to McDonnell Road.</p>	NC
27.7.18.C	<p>Wakatipu Basin Rural Amenity Zone – Lifestyle Precinct</p> <p>Lot layout</p> <p>Within Part Section 1 SO 23541 (or subsequent title/s), there shall be no more than two residential building platforms located east of the 398masl contour closest to McDonnell Road.</p>	NC

Annexure 2

Agreed plan map for incorporation into the Proposed District Plan.

[2023] NZEnvC 200 Hanan and Banco v QLDC



Annexure 3

Ch 24 and 27 provisions to be included into the Proposed District Plan.

24.2.1.1B Ensure the following outcomes in the consideration of any proposal for subdivision or residential development:

....

g. in the part of LCU 24 outside Precinct and Arrowtown South Special Zone:

(i) minimise visibility of development from McDonnell Road and Centennial Road;

(ii) ensure development is visually recessive from elevated public places including Cotter Avenue and Tobins Track.

24.5 Rules – Standards

	Table 24.2 - Standards	Non-compliance status
24.5.1.6	Any site located within a Landscape Character Unit or area identified on the District Plan web mapping application a maximum of one residential unit per net site area and average area: ... <u>24.5.1.6.11 LCU 24 South Arrowtown (limited to the area zoned WBRAZ): 1ha minimum and 3ha average.</u>	NC

	Subdivision Activities District Wide	Activity Status
27.5.18A	Subdivision of any site within the Wakatipu Basin Rural Amenity Zone (outside the Lifestyle Precinct) where located within the following areas identified on the district plan web mapping application: ... j. <u>LCU 24 South Arrowtown.</u>	D

27.6.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, an average net site area less than the minimum specified.

Zone		Minimum Lot Area
	Wakatipu Basin Rural Amenity Zone	80ha
	Within the following areas of the Wakatipu Basin Rural Amenity Zone identified on the district plan web mapping application the minimum net site area and the average area of all lots in the subdivision is not less than:	
	<u>LCU 24 South Arrowtown</u>	<u>1ha minimum and 3ha average</u>

