

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

Decision No. [2023] NZEnvC 263

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First
Schedule of the Act

BETWEEN A FEELEY, E BORRIE & LP
TRUSTEES LIMITED

(ENV-2019-CHC-21)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

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

Hearing: In Chambers on the papers

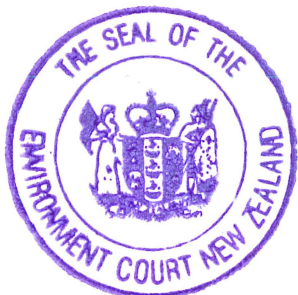
Last case event: 5 October 2023

Date of Decision: 6 December 2023

Date of Issue: 6 December 2023

**FINAL DECISION OF THE ENVIRONMENT COURT
Topic 31: Feeley – LCU 23: Millbrook**

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



- (1) amend the PDP by incorporating the confirmed Policy 24.2.1.15A as set out at [6];
 - (2) incorporate the new and amended provisions (excepting 24.2.1.15A) into Chs 24, 27 and Sch 24.8 as set out in Annexure 1;
 - (3) update the planning maps as shown in Annexure 2; and
 - (4) 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 final decision relating to an appeal by A Feeley, E Borrie and LP Trustees Ltd ('Feeley') in the Queenstown District Plan Review ('PDP'). Feeley own a 6.2 ha parcel of land, on the outskirts of Arrowtown, at 508 Arrowtown-Lake Hayes Road ('the Site') at its junction with McDonnell Road.¹

[2] The Site was proposed to be included in the Wakatipu Basin Rural Amenity Zone ('WBRAZ') under the notified Wakatipu Basin variation to the PDP. Under Sch 24.8, the Site is included in 'land use character unit' LCU 23 Millbrook. The interim decision² traversed the relevant background, including how the relief sought by this appeal was modified throughout the course of the proceeding. Feeley ultimately pursued WBRAZ Precinct sub-zoning for the site subject to

¹ The Site is legally described as Section 9 BLK VII Shotover Survey District.

² *Feeley v Queenstown Lakes District Council* [2023] NZEnvC 189.

bespoke provisions.

[3] The interim decision determined that the Site is to be re-zoned to WBRAZ Precinct sub-zoning, subject to specified modifications to Chs 24, 27 and Schedule 24.8 of the PDP. The court also made provisional findings that the modified zoning option should include a new Pol 24.2.1.15A. Parties were given leave to file supplementary submissions on that but none did so. However, by memorandum dated 5 October 2023 QLDC reported on consultation it undertook with parties about this matter. The memorandum was filed in response to directions for QLDC to provide, for the court’s approval, an updated set of planning maps and provisions formatted and suitable for inclusion in the PDP.

Provisional Policy 24.2.1.15A

[4] The interim decision found that there should be a policy associated with the rules relating to the requirement for a staggered setback along part of McDonnell Road so that those rules are “applied on the basis of a clear understanding of the policy intention”.³ That decision proposed for consideration a new Pol 24.2.1.15A as follows:⁴

Require buildings, or building platforms identified through subdivision, to maintain a staggered setback from McDonnell Road for all sites of the triangular Precinct that are located within 250m of the intersection of McDonnell Road and Arrowtown-Lakes Hayes Road.

[5] The memorandum of counsel for QLDC records the Council’s acceptance as to the need for the proposed policy but proposes that it be by replacing “Require” with “Avoid a linear pattern of built development by requiring.”⁵ Ms Scott explains that this is to achieve better alignment with the rule and better consistency with the structure of Pol 24.2.5.7.a as included in Ch 24 by the court’s

³ *Feeley v Queenstown Lakes District Council* [2023] NZEnvC 189 at [95].

⁴ *Feeley v Queenstown Lakes District Council* [2023] NZEnvC 189 at [95].

⁵ QLDC memorandum dated 5 October 2023 at [6].

interim decision on another Topic 31 rezoning: *Hanan v Queenstown Lakes District Council*.⁶ The memorandum also records that this proposal is made following consultation with other parties.⁷

[6] We accept counsel's submissions on those matters and find the refinement to the court's drafting appropriate. Therefore, Pol 24.2.1.15A is confirmed as:

Avoid a linear pattern of built development by requiring buildings, or building platforms identified through subdivision, to maintain a staggered setback from McDonnell Road for all sites of the triangular Precinct that are located within 250m of the intersection of McDonnell Road and Arrowtown-Lakes Hayes Road.

Final set of plan maps and provisions

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

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

- (a) insert into the PDP the confirmed drafting of Pol 24.2.1.15A as set out at [6] above;
- (b) amend the PDP incorporating the new and amended provisions (excepting 24.2.1.15A) into Chs 24, 27 and Sch 24.8 as set out in Annexure 1;
- (c) update the planning maps as shown in Annexure 2; and
- (d) file a reporting memorandum as to that once completed.

⁶ QLDC memorandum dated 5 October 2023 at [8]-[10]; *Hanan v Queenstown Lakes District Council* [2023] NZEnvC 200.

⁷ QLDC memorandum dated 5 October 2023 at [7].

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

[10] As stated in the interim decision, the court's view is that this is not an appropriate case for an order as to costs.⁸ Nonetheless, costs are reserved although not encouraged.

For the court



J J M Hassan
Environment Judge

⁸ *Feeley v Queenstown Lakes District Council* [2023] NZEnvC 189 at [118].

Annexure 1

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

PART 4

WAKATIPU BASIN 24

24.2.1.15A Require buildings, or building platforms identified through subdivision, to maintain a staggered setback from McDonnell Road for all sites of the triangular Precinct that are located within 250m of the intersection of McDonnell Road and Arrows-town-Lake Hayes Road.

Commented [SG1]: Provisional policy

<p>24.5.9</p>	<p>Setback from roads</p> <p>24.5.9.1 The minimum setback of any building from any road boundary (other than an unformed road or as specified in Rule 24.5.9.4) shall be 75m in the Precinct and 20m in the Rural Amenity Zone.</p> <p>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.</p> <p>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.</p> <p>24.5.9.4 For the site(s) in the triangular Precinct located at the intersection of Arrows-town-Lake Hayes Road and McDonnell Road and within 250m of that intersection (measured from the centre of the intersection with Arrows-town-Lake Hayes Road), the minimum setback of any building from the McDonnell Road boundary shall be 20m provided that the minimum setback shall be 50m where any building on any adjacent site in the Precinct along that part of the frontage is or is proposed to be setback at less than 50m but not less than 20m from that frontage.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> Building location, character, scale and form; External appearance including materials and colours; Landscaping/planting (existing and proposed). 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.
<p>24.5.9.4A</p>	<p>Maximum Number of Dwellings</p> <p>For the site(s) in the Precinct located at the intersection of Arrows-town-Lake Hayes Road and McDonnell Road a maximum of six residential dwellings shall be allowed.</p>	<p>NC</p>

24.8 Schedule 24.8 Landscape Character Units

23: Millbrook

Landscape Character Unit	23: Millbrook
Landform patterns	The unit predominantly comprises an elevated moraine landform with plateaus, hummocky hills and remnant kettle lakes. The exceptions to this are a band of flat land (effectively part of Malaghans Valley) running along the northern margins., a roche moutonnée (ONF) in the north-eastern quadrant adjacent Malaghans Road and a small flat triangular parcel at the eastern end of the unit.
Vegetation patterns	Extensive exotic amenity planting around buildings and throughout golf course, native riparian and pond edge plantings. Dense evergreen shelterbelt plantings along much of the Malaghans Road frontage. Appreciable stand of native bush in steep-sided gully around Waterfall Park. Generally, manicured lawn and parkland plantings dominate.
Hydrology	Numerous watercourses and amenity ponds.
Proximity to ONL/ONF	Unit includes an ONF (roche moutonnée). Mid to long-range views to surrounding ONL mountain context.
Character Unit boundaries	North: Malaghans Road. East: McDonnell Road, cadastral boundary, Arrowtown Lake Hayes Road. South: Millbrook Special zone boundary. West: Millbrook Special zone boundary.
Land use	Golf course, commercial and rural residential uses dominate. A small area of grazing land around the roche moutonnée.
Settlement patterns	Generally, the area is relatively intensively developed with substantial clusters of two-storey semi-detached and terraced housing units throughout the golf course area, accessed via a complex patterning of semi-rural lanes. Generally, development is set into either a comprehensive parkland setting (Millbrook) or a comprehensive bush setting (Waterfall Park Special Zone – undeveloped). Pockets of more spacious rural residential development in places along Arrowtown Lake Hayes Road. Additional and similarly-scaled development is anticipated throughout the western portion of the Millbrook Special Zone. This area will be flanked by a golf course and landscape protection areas on its ‘exposed’ western margins. Large lot single ownership.
Proximity to key route	Located on Malaghans Road which comprises an important scenic route between Queenstown and Arrowtown. Also located on Arrowtown Lake Hayes Road – a popular route between Queenstown and Arrowtown.

Landscape Character Unit	23: Millbrook
Heritage features	Two heritage buildings/features identified in PDP.
Recreation features	Council walkway/cycleway through Millbrook (forms part of the Queenstown Trail 'Countryside Ride'). Golf course, restaurant, etc.
Infrastructure features	Reticulated sewer, water and stormwater.
Visibility/prominence	<p>The dense evergreen shelterbelt plantings along Malaghans Road mean that the majority of development within Millbrook is screened from the much of Malaghans Road.</p> <p>The more open character at the eastern end of the unit is such that the eastern portion of Millbrook is visible from the eastern end of Malaghans Road, Arrowtown Lake Hayes Road and the elevated north western margins of Arrowtown. Buildings are however relatively unobtrusive in these views as a consequence of the well-established parkland plantings.</p> <p>The far eastern triangular area is visually connected to Arrowtown.</p> <p>Waterfall Park (unbuilt) obscured from view by landform and vegetation patterns.</p> <p>The unit is also visible from the western edges of the Crown Terrace, the tracks throughout the ONL to the east (Mt Beetham environs) and the zigzag lookout. 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 (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 Arrowtown Lake Hayes Road and the north-western margins of Arrowtown which comprise a relatively attractive, golf course / parkland landscape on the edge of Arrowtown.</p> <p>The unit affords attractive long-range views to the surrounding ONL mountain setting.</p> <p>The containment of vegetation and localised hummocks means that a relatively limited number of dwellings are visible from the surrounding area (excepting areas at high elevation).</p>
Enclosure/openness	A variable sense of enclosure and openness deriving primarily from vegetation patterns.
Complexity	Generally, a relatively complex unit as a consequence of the landform and vegetation patterns, together with the dense arrangement of buildings.
Coherence	The relatively consistent planting treatment and architectural forms lend a reasonably strong degree of coherence to the Millbrook development. The varying planting and architectural styles associated with the handful of rural residential lots on Arrowtown Lake Hayes Road means that these parts of the unit display a reduced perception of coherence.
Naturalness	The unit displays a low level of naturalness as a consequence of the level of existing and anticipated development.

Landscape Character Unit	23: Millbrook
Sense of Place	<p>Generally, the unit reads as an intensively-developed attractive urban settlement set within a parkland landscape. The area also forms part of the swathe of golf courses that frame the western and southern edges of Arrowtown and effectively function as a greenbelt to the village.</p> <p>Much of the far eastern triangle comprises a discrete flat area that contrasts with the more rolling golf course/parkland landscape to the west and south (LCU 22).</p>
Potential landscape issues and constraints associated with additional development	<p>Existing density of development and the issue of absorbing additional development without compromising existing (urban) parkland feel.</p> <p>Ensuring urban residential development is constrained within defensible boundaries and does not sprawl westwards from Arrowtown. Ensuring existing development character within the Millbrook Special Zone does not sprawl westwards and southwards into the existing, 'more rural' areas.</p> <p>Private golf course and previous (recent) resource consent processes suggests limited further capability for development.</p>
Potential landscape opportunities and benefits associated with additional development	<p>Relatively visually discreet nature of the location (due to landform and vegetation patterns).</p> <p>Close proximity to Arrowtown.</p> <p>Urban infrastructure.</p> <p>Large-scaled lots suggest potential for subdivision.</p>
Environmental characteristics and visual amenity values to be maintained and enhanced	<p>Attractive urban parkland character.</p> <p>Landscape coherence.</p> <p>Reinforcing a robust and defensible edge to Arrowtown.</p>
Capability to absorb additional development	<p>Moderate: majority of unit</p> <p>Moderate - High: triangular area at far eastern end of the unit</p>

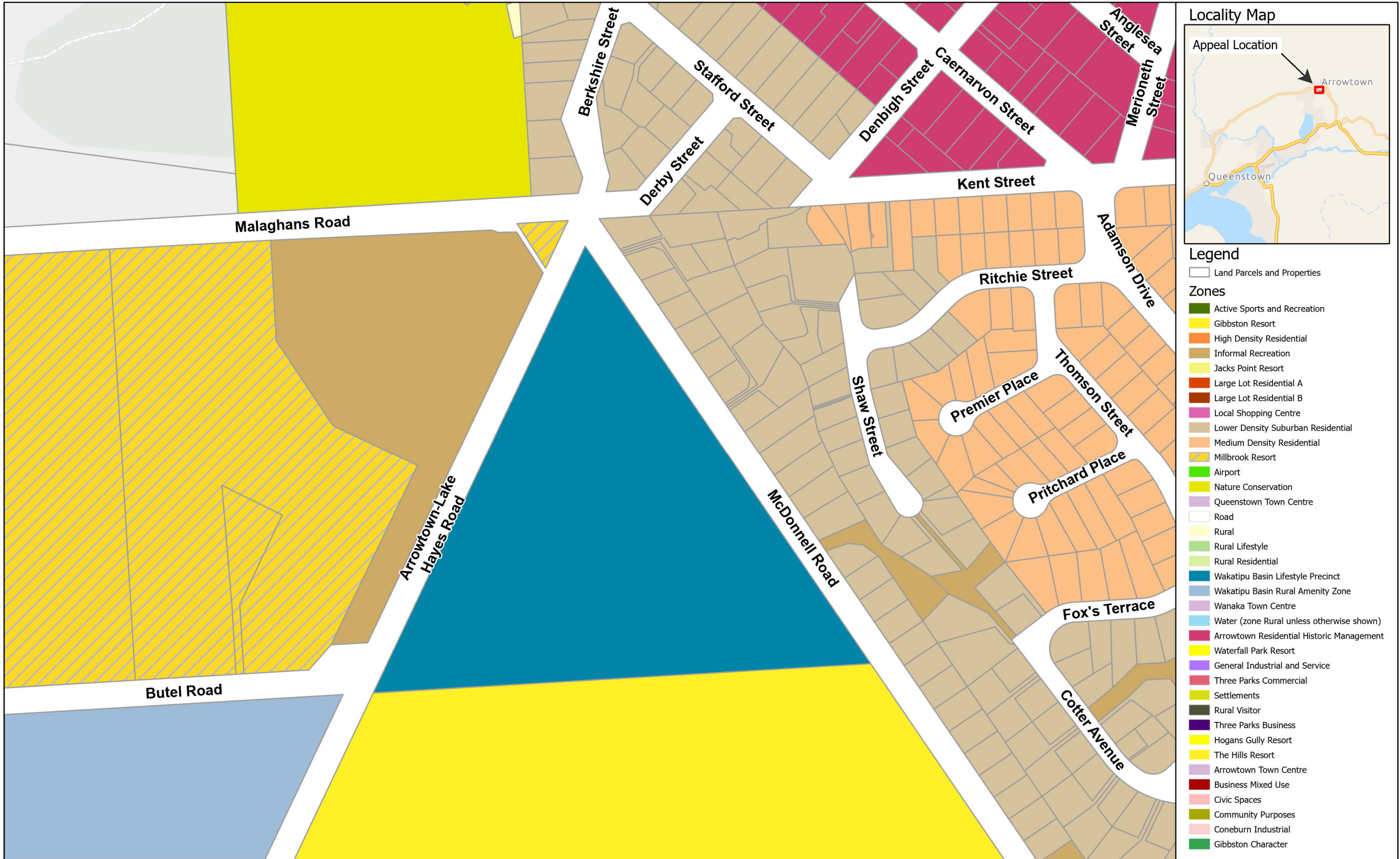
27.7.18	<p>Wakatipu Basin Rural Amenity Zone</p> <p>Setback from Roads</p> <p>27.7.18.1 The minimum setback of any building platform identified through subdivision from any road boundary (other than an unformed road or as specified in Rule 27.7.18.3) shall be:</p> <ul style="list-style-type: none"> a. 75m in the Lifestyle Precinct; and b. 20m in the Rural Amenity Zone. <p>27.7.18.2 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>27.7.18.3 For the site(s) in the triangular Precinct located at the intersection of Arrowtown-Lake Hayes Road and McDonnell Road and within 250m of that intersection (measured from the centre of the intersection with Arrowtown-Lake Hayes Road) the minimum setback of any building platform from the McDonnell Road boundary shall be 20m provided that the minimum setback shall be 50m where any building on any adjacent site along that part of the frontage in the Precinct is or is proposed to be setback at less than 50m but not less than 20m from that frontage.</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). 	RD
---------	---	----

Annexure 2

Agreed plan map for incorporation into the Proposed District Plan.



[2023] NZEnvC 189 - Topic 31 - Feeley v QLDC



The information provided on this map is intended to be general information only. While considerable effort has been made to ensure that the information provided on this map is accurate, current and otherwise adequate in all respects, Queenstown Lakes District Council does not accept any responsibility for content and shall not be responsible for, and excludes all liability, with relation to any claims whatsoever arising from the use of this map and data held within.

