

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 12

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under Clause 14 of the First
Schedule to the Act

BETWEEN R MONK

(ENV-2011-CHC-7)

Appellant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J R Jackson
Environment Commissioner J R Mills
Environment Commissioner H-A McConachy
Deputy Environment Commissioner K D F Fletcher

Hearing: at Queenstown on 14, 15, 16 and 17 May 2012
(Final submissions received 15 June 2012)

Appearances: Mr I Gordon for R Monk
Ms J E Macdonald for Queenstown Lakes District Council
Mr J M Hanan for himself
Dame Elizabeth Hanan for herself and Ms J M Hanan
Mr D Hanan for himself and Ms J C Rutherford
Ms V Couper for Arrowtown Residents Association

Date of Decision: 1 February 2013

Date of Issue: 4 February 2013



DECISION

A: Under Clause 15 of the First Schedule to the Resource Management Act 1991 the Environment Court directs that the Queenstown Lakes District Council amend the district plan as follows:

- (1) Amend policy (4.9.3) 7.12 and 7.13 by deleting the phrase “Arrowtown Urban Boundary” and substituting “Arrowtown Urban Growth Boundary”.
- (2) Add policy (4.9.3) 7.14 as follows:

7.14 To recognise the importance of the open space pattern that is created by the inter-connections between the golf courses and other Rural General land.

B: The Environment Court also directs subject to Order C, that the Queenstown Lakes District Council amend the planning maps showing the urban growth boundary for Arrowtown by moving the boundary south as shown on the attached map marked “B” provided that rules are introduced:

- provide for no buildings on the escarpment face¹;
- fence off the waterway (minimum setback from the stream on the northwest side should be 15 metres) on both sides to the southern limit of the current title;
- plant the scarp and remove or suppress weeds;
- minimise access off the road by use of a shared accessway;
- include tree planting to soften the domestication of the landscape;
- provide foot and bike access along the stream and up the escarpment face.

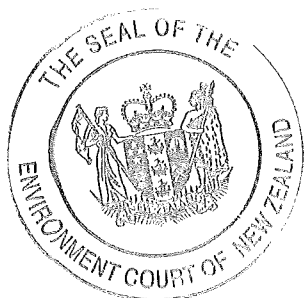
C: If the rules directed by the proviso in Order B cannot be obtained in this proceeding as a matter of jurisdiction, then it is adjourned pending the outcome of the appeal (ENV-2011-CHC-6) on Plan Change 39, and if they cannot be achieved in substance under that appeal then this Appeal is refused completely insofar as moving the urban growth boundary is concerned.

D: (1) Except as stated in Orders A, B and C the appeal is refused, and the council’s decision on Plan Change 29 is confirmed.

(2) For the avoidance of doubt this Decision is final on the location of the urban growth boundary, (i.e. it is not moved) except as stated (provisionally) in Orders B and C in respect of the small area along McDonnell Road in respect of which this Decision is interim.

E: Costs are reserved. Any application should be made within 20 working days of issue of this decision and any reply within a further 20 working days.

¹ F Boffa, evidence-in-chief para 7.5 [Environment Court document 3].



- F. The Court reserves leave for the Queenstown Lakes District Council to apply:
- (1) under section 292 of the Act to amend the definition of “Urban growth” by changing the phrase “urban zone” to read “urban zones” (i.e. make it plural); and/or
 - (2) under section 293 of the Act to amend the definition of “urban growth” in the district plan.

REASONS

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1. Introduction

1.1 Urban growth at Arrowtown

[1] There are two issues in this proceeding about the future growth of Arrowtown in the Wakatipu Basin. The first is, what should be the policies to implement the district-wide objectives and policies of the district plan and the new specific objective that the scale and distribution of urban development be managed effectively? The second is whether the southern boundary of Arrowtown should remain where it is or be moved further to the south? The outcome to both questions depends primarily on landscape, economic and planning evidence, but of course the answer to the second question also hangs on the answer to the first.

[2] On 19 August 2009 the Queenstown Lakes District Council notified Plan Change 29 ("PC29") to its district plan. PC29 proposed two new "Urban Growth" policies for Arrowtown:

...

Arrowtown

- 7.12 To limit the growth of Arrowtown so that
 - 7.12.1 Adverse effects of development outside the Arrowtown Urban Boundary are avoided;
 - 7.12.2 the character and identity of the settlement, and its setting within the landscape is preserved or enhanced.
- 7.13 To ensure that the development within the Arrowtown Urban Boundary provides:
 - 7.13.1 an urban form that is sympathetic to the character of Arrowtown, including its scale, density, layout and legibility in accordance with the Arrowtown Design Guidelines 2006;
 - 7.13.2 a designed urban edge with landscaped gateways that promote or enhance the containment of the town within the landscape where the development abuts the urban boundary for Arrowtown;
 - 7.13.3 for Feehley's Hill and land along the margins of Bush Creek and the Arrow River to be retained as reserve areas as part of Arrowtown's recreation and amenity resource.

[3] PC29 also contained a map showing the proposed urban growth boundary of Arrowtown. This shows that the southern urban growth of Arrowtown was proposed to remain the same, i.e. the existing zone boundary. A number of submissions were made on various aspects of PC29. After a hearing the council confirmed PC29 on 10 November 2010.

1.2 The debate about Arrow South

[4] Because the Arrowtown urban boundary remained as notified in PC29 the appellant, who was a submitter to the council, lodged a notice of appeal with the Registrar of the Environment Court. The notice of appeal² requests as relief the deletion and replacement of policies (4.9.3), 7.12 and 7.13, and the redrawing of the Arrow South urban growth boundary to include another 30 hectares (approximately) of rural general land. The area in contention ("Arrow South") is shown on the attached plan

² Dated 10 January 2011.



marked “A” called “Site Analysis – Physical Landscape”³ is bounded by McDonnell Road to the west, Centennial Avenue to the east, the Arrowtown urban area to the north and the front nine of the Arrowtown Golf Club to the south. The largest landowners in the group are the Adamson Family (eight hectares), the appellant, Mr R Monk, and Cook Adam Trustees (18 hectares). All Arrow South is zoned Rural General.

[5] Various persons lodged section 274 notices with the Registrar. Appearing to oppose the appeal are: Dame Elizabeth Hanan and Ms J M Hanan, Mr J M (Murray) Hanan, Mr David Hanan and Ms J C Rutherford, (collectively called “the Hanan Family”) and the Arrowtown Village Association.

[6] We also record that, with the exception of one landowner, there has been a general agreement between the owners of Arrow South to promote a private plan change (“PC39”) for their land. That has gone through the Schedule One process⁴ so that it too is now at the same stage, although not before the court at this hearing – we were advised that in fact the appellant in that proceeding – Mr Monk and another⁵ - and the council have reached agreement that the sole outstanding issue between them is whether or not the land subject to PC39 is to be incorporated within the new urban growth boundary defined under PC29. We understand that the council has agreed to allow the appeal on PC39 if the court finds that the PC29 urban growth boundary should be positioned so as to include the PC39 land. Conversely, if the court finds that the PC29 boundary should exclude the PC39 land, then the appellants in PC39 have agreed to withdraw that appeal⁶. The reality is likely to be more complicated than that because the section 274 parties in this proceeding are also parties to the appeal on PC39. While they would be happy with the withdrawal of that appeal, we record that they oppose the council’s proposed settlement of that appeal if the court finds that the urban boundary of Arrowtown should move. Further, we consider that the council’s decision to agree to isolate PC39 causes difficulties in this proceeding as will become apparent.

1.3 The environment of Arrowtown

Arrowtown

[7] Arrowtown is well-known for its heritage buildings located in and around the main shopping and commercial centre at the town’s northern end. The heritage features and its setting in the wider landscape of the Wakatipu Basin define Arrowtown’s character. They make the town an attractive place and a tourist destination despite its cold and (in winter) relatively sunless location.

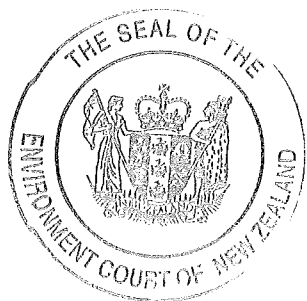
[8] Most of the town’s expansion (since the 1860s and accelerating since the 1970s) has taken place in a southerly direction. Primarily that is because the Arrow River and

³ A copy of Appendix 1 in B Espie, evidence-in-chief, Appendix 1 [Environment Court document 4].

⁴ Schedule One to the RMA.

⁵ ENV-2011-CHC-6

⁶ I Gordon, submissions, para 12.



mountains to the north and east of Arrowtown have constrained expansion in those directions. Indeed, Arrowtown is now well bounded on three sides:

- to the north by Bush Creek and the hills beyond (German Hill and Big Hill);
- to the east by the Arrow River, the slopes of Crown Terrace and, above that, the Crown Range;
- to the southwest of Butel Park by Millbrook;

Arrow South

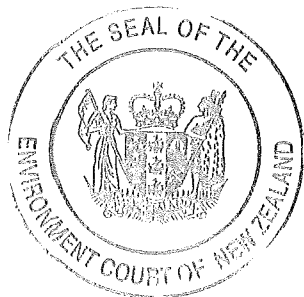
[9] There is no physical feature restraining Arrowtown to the southwest. The boundary here is an abrupt cessation of the houses a few hundred metres along McDonnell Road from the cross roads (where Berkshire Street meets McDonnell Road, Malaghans Road and the Arrowtown Lake Hayes Road) which is the principal entrance to Arrowtown. The rocky ridge (“the Arrowtown Ridge”) which runs parallel with the Arrow River and which formerly separated Arrowtown from the rest of the Wakatipu Basin, has largely been built on as a result of a controversial Planning Tribunal decision about 20 years ago. To the south the urban boundary is not well defined on the ground, other than by an abrupt halt to houses.

[10] The flat-topped Arrowtown Ridge extends south, separating the parallel Centennial Avenue and McDonnell Road, for two kilometres. Nearly 1.5 kilometres of the ridge is now included in the existing urban area. The southern end of the ridge is a steep feature readily visible from public roads including Tobins Track. Below the ridge’s western escarpment on the southwestern side of the ridge is a flat through which runs a spring-fed stream. This stream originates in a private golf course (the “Michael Hill” course) to the west of McDonnell Road, and then runs through land owned by the section 274 parties, the Hanan family. It then flows under the road in a culvert and turns down the flat underneath the Arrowtown Ridge.

[11] There are several heritage buildings and one tree located on the lower terraces either side of the ridge. On the McDonnell Road side, these include an old farmhouse, stables and shed. The homestead is listed in the district plan in the council’s heritage categories as the “Muter Homestead”. On the Centennial Avenue side, there are the ‘Doctor’s House’ at 152 Centennial Avenue and a “Wellingtonia” (*Sequoiadendron giganteum*) tree⁷. The New Zealand Historic Places Trust does not list any of the buildings.

The Visual Amenity Landscape to the south

[12] Immediately south (and east) of Arrow South is the Arrowtown Golf Course. West of Arrow South and McDonnell Road are several private properties – lifestyle



⁷ J B Edmonds, evidence-in-chief para 3.7 [Environment Court document 16].

blocks, a farm, and the large area of the Michael Hill Golf Course. Mr F Boffa, a landscape architect called by the appellant, wrote of the golf courses⁸:

The[ir] location ... on the edge of settlements with their well-managed landscapes can effectively announce arrival at or departure from an area of more intense human activity and associated structures. These open space facilities can be very effective buffers and transitional areas between urban and rural areas and zones.

We consider that while Mr Boffa may be correct generally, he has misconceived the position at least in terms of the landscapes of Wakatipu Basin. Here the golf courses are not a buffer between the urban and the visual amenity landscape, they are (part of) the latter landscape, as indeed is, at present, the Arrow South land. We consider the implications of this later.

1.4 Matters to be considered

[13] Because PC29 was notified prior to 1 October 2009 when the Resource Management Amendment Act 2009 came into force, the law to be applied is the RMA as it was before the Resource Management (Simplifying and Streamlining) Amendment Act 2009. In *High Country Rosehip Orchards Limited v Mackenzie District Council*⁹ the Environment Court set out the matters to be analysed. Omitting matters which are irrelevant to this proceeding, the list reads:

A. General requirements

1. A district plan (change) should be designed to **accord with**¹⁰, and assist the territorial authority **to carry out** – its functions¹¹ so as to achieve, the purpose of the Act¹².
2. ...
3. When preparing its district plan (change) the territorial authority shall:
 - (a) **have regard to** any proposed regional policy statement¹³;
 - (b) **give effect to** any operative regional policy statement¹⁴.
4. ...
5. When preparing its district plan (change) the territorial authority must also:
 - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register¹⁵ ...; and
 - **not** have regard to trade competition¹⁶;
6. ...
7. The formal requirement that a district plan (change) **must**¹⁷ also state its objectives, policies and the rules (if any) and may¹⁸ state other matters.

⁸ F Boffa, evidence-in-chief para 5.8 [Environment Court document 3].

⁹ *High Country Rosehip Orchards Limited v Mackenzie District Council* Decision [2011] NZEnvC 387.

¹⁰ Section 74(1) of the Act.

¹¹ As described in section 31 of the Act.

¹² Sections 72 and 74(1) of the Act.

¹³ Section 74(2) of the Act.

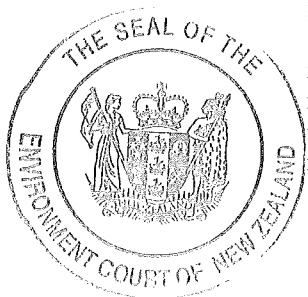
¹⁴ Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

¹⁵ Section 74(2)(b) of the Act.

¹⁶ Section 74(3) of the Act.

¹⁷ Section 75(1) of the Act.

¹⁸ Section 75(2) of the Act.



- ...
- C. Policies and methods (including rules) [the section 32 test for policies and rules]
9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies¹⁹;
10. Each proposed policy or method (including each rule) is to be examined, **having regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives²⁰ of the district plan:
- (a) **taking into account:**
- (i) the benefits and costs of the proposed policies and methods (including rules); and
- (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods²¹; and
- (b) ...
- ...
- F. (On Appeal)
15. On appeal²² the Environment Court must **have regard to** one additional matter – the decision of the territorial authority²³.

Setting an urban growth boundary with policies to manage its application clearly fall within the function of the integrated management²⁴ of the effects of the use and development (and protection) of land.

[14] As for the applicable statutory instruments: by far the most important document is the operative district plan. However, at least two others are relevant. We consider all of them in next section of this decision.

2. The relevant statutory instruments

2.1 The Queenstown Lakes District Plan

Chapter 4

[15] Chapter 4 of the operative district plan²⁵ contains objectives and policies, which apply district-wide, that is across zones. The relevant²⁶ district-wide issues to this proceeding relate to:

- the natural environment (chapter 4.1);
- landscape and visual amenity (chapter 4.2);
- open space and recreation (chapter 4.4);
- energy (chapter 4.5);
- urban growth (chapter 4.9).

¹⁹ Sections 5(1)(b) and (c) of the Act (also section 76(1)).

²⁰ Section 32(3)(a) of the Act.

²¹ Section 32(4) of the Act.

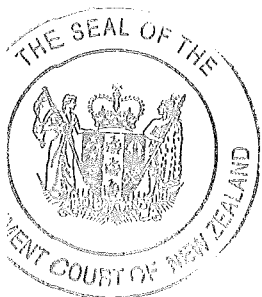
²² Under section 290 and Clause 14 of the First Schedule to the Act.

²³ Section 290A of the RMA as added by the Resource Management Amendment Act 2005.

²⁴ Section 31(1)(a) RMA.

²⁵ We will call the different “sections” of the district plan “Chapters” to avoid confusion with sections of statutes, and the RMA in particular.

²⁶ See J B Edmonds, evidence-in-chief para 8.2 [Environment Court document 16].



and of those landscape and visual amenity and urban growth are the most important. We will refer to the other relevant policies in part 5 of this decision.

[16] The relevant “nature conservation value” objective is “[t]he preservation of the remaining natural character of the District’s lakes, rivers, wetlands and their margins”²⁷. This objective applies to the stream running through Arrow South and the small wetland adjacent to the downstream Arrowtown Golf Course.

[17] On its landscape values the district plan policy is²⁸ (relevantly):

4. Visual Amenity Landscapes

- (a) To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:
 - highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); and
 - visible from public roads.
- (b) To mitigate loss of or enhance natural character by appropriate planting and landscaping.

...

[18] On the relationship between urban development and urban edges and the landscape the district-wide policies are²⁹ (relevantly):

Urban Development

- (a) ...
- (b) To discourage urban subdivision and development ... in the visual amenity landscapes of the district.
- (c) ...
- (d) To avoid remedy and mitigate the adverse effects of urban subdivision and development in visual amenity landscapes by avoiding sprawling subdivision and development along roads.

[19] The “urban edge” policy in the landscape section is³⁰:

Urban Edges

To identify clearly the edges of:

- (a) Existing urban areas;
- (b) Any extensions to them; and
- (c) Any new urban areas
 - by design solutions
 - and to avoid sprawling development along the roads of the district.

...

What is “urban development”?

[20] PC30 introduced a definition of urban development to be inserted in the “Definitions” chapter of the district plan. It states³¹ that “Urban Development”:

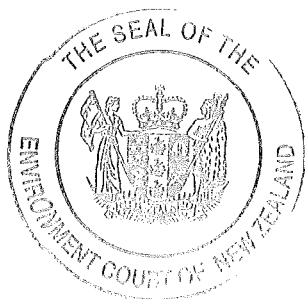
²⁷ Objective (4.1.4) 1 (third point) [Queenstown Lakes District Council – District Plan (October 2010) p 4-3].

²⁸ Policy (4.2.5) 4 Queenstown Lakes District Council – District Plan (October 2010) p 4-10.

²⁹ Policy (4.2.5) 6 Queenstown Lakes District Council – District Plan (October 2010) p 4-11.

³⁰ Policy (4.2.5) 7 Queenstown Lakes District Council – District Plan (October 2010) p 4-11.

³¹ PC30 p X-3.



... means any development/activity within any zone other than the Rural Zone, including any development/activity which ... could be established as of right in any such zone; or any activity within an urban boundary as shown on the District Planning maps.

It also defined an “Urban Growth Boundary” as³²:

Mean[ing] a boundary shown on the Planning Maps identified as an Urban Growth Boundary which provides for and contains existing and future urban development within an urban area.

A more ambivalent and circular set of definitions would be hard to find. Immediate difficulties are:

- (1) there is no “Rural Zone” as such (we consider this is probably intended to read “Rural zones”);
- (2) there is a reference in the “urban development” to an “urban boundary as shown on the District Planning maps” but there are no “urban boundary[ies] only “urban growth boundary[ies]”;
- (3) the two definitions refer to each other so that at least in part “urban development” is defined by reference to an “urban growth boundary” and vice versa;
- (4) the definition refers to “any development/activity within any zone” rather than to “any development/activity permitted or controlled within a zone”. That suggests, nonsensically, that any activity found, as a matter of fact, in a non-rural zone is “urban development”.

[21] The first part of the definition could mean any development/activity which is proposed to occur:

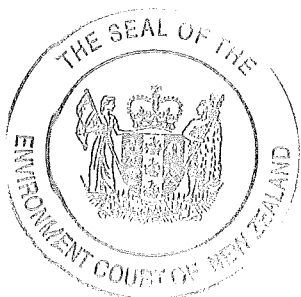
- (a) in any zone which is not in the rural areas; or
- (b) anywhere (including in rural areas) but which is a non-rural activity or development.

If the first alternative is adopted then the concept of managing residential development within the district is rendered useless, because it is that type of urban development which PC30 is expressly aimed at: an urban growth boundary “... signals the council’s intention that urban ... development should not extend into a rural area through the resource consent process”³³.

[22] Further it must be remembered it is a definition being considered, not a rule. That means that the meaning (b) in the previous paragraph is more likely. That is reinforced by both the second and third parts of the definition. The second part states that “urban development” includes:

³² PC30 p X-3.

³³ Explanation ... for Adoption: PC30 p X-2.



“any development/activity which in terms of its characteristics (such as density) and its effects (apart for bulk and location) could be established as of right in any such zone”.

In that sentence “any such zone” must refer to any non-rural zone. The idea of the first and second parts of the definition appears to be to create an implied list of “urban” type activities which can be created by looking up the permitted and controlled activities in the Residential, Commercial and other non-rural zones. It aims at identifying “urban activities” which people might seek to develop and carry out on rural land.

[23] The third part of the definition simply adds that any activity within an urban (growth) boundary is, by definition, urban development or activity. This is designed to define urban growth within urban boundaries.

[24] In summary we conclude that “urban development” as defined means:

... any development/activity which:

- (a) is of an urban type, that is any activity of a type listed as permitted or controlled in a residential, commercial, industrial or other non-rural zone; or
- (b) takes place within an “urban growth boundary” as shown on the district’s planning maps.

We use that understanding of “urban development” in the remainder of this decision. However, a definition is not satisfactory if it relies on an exercise of statutory interpretation. In our view the definition should be made simpler by the council and we will reserve leave for the council to apply to improve the definition if it wishes to³⁴.

2.2 Urban development under PC30

[25] The district-wide³⁵ objectives contain an objective³⁶ seeking residential growth “sufficient to meet the District’s needs” and another³⁷ which states that growth should have regard for the built character and amenity values of the existing urban areas. On urban growth the district-wide provisions in Chapter 4 of the operative district plan have been amended by PC30, which is now effectively in force. PC30 introduced a policy framework into the district plan which established urban growth boundaries within the district and gave (subordinate) legislative weight to some of the growth management methods identified in the Growth Management Strategy and to various community plans such as the Arrowtown Plan.

³⁴ It is not relevant here because Arrow South is zoned Rural General. However the interpreted definition may also need to be subject to an exception ... unless the development/activity is a permitted, controlled or discretionary activity in the applicable Rural Zone”. That is because, subject to certain standards, residential activity is a permitted activity in the Rural Lifestyle and Rural Residential Zones even though the activity falls within the definition of “urban growth”.

³⁵ Section 4 of the operative district plan.

³⁶ Objective (4.9.3) 3 [Operative district plan p 4-54].

³⁷ Objective (4.9.3) 2 [Operative district plan p 4-53].



[26] A further district-wide objective³⁸ for urban growth is (now) to manage the “scale and distribution” of urban development effectively. The second³⁹ policy provides for the majority of such development to occur at Queenstown and Wanaka. The third policy (7.3) seeks⁴⁰:

To enable the use of Urban Growth Boundaries to establish distinct and defensible urban edges in order to maintain a long term distinct division between urban and rural areas.

We observe in passing that placing the words “to enable” in front of a restrictive policy does not make a policy “enabling” in terms of section 5 of the RMA. This is a restrictive policy. That does not of course make it a poor one, there is clear justification in other objectives and policies for trying to keep the landscape qualities that make the southern lakes famous.

[27] Subsequent implementing policies are⁴¹:

- 7.4 To include land within an Urban Growth Boundary where appropriate to provide for and contain existing and future urban development, recognising that an Urban Growth Boundary has a different function from a zone boundary.
- 7.5 To avoid sporadic and/or ad hoc urban development in the rural area generally and to strongly discourage urban extensions in rural areas beyond the Urban Growth Boundaries.
- 7.6 To take account of the following matters when defining or redefining an Urban Growth Boundary through a plan change:
 - 7.6.1 Part 4 district-wide objectives and policies.
 - 7.6.2 The avoidance or mitigation where appropriate of any natural hazard, contaminated land or the disruption of existing infrastructure.
 - 7.6.3 The avoidance of significant adverse effects on the landscape, the lakes and the rivers of the district.
 - 7.6.4 The efficient use of infrastructure, including transport infrastructure, and its capacity to accommodate growth.
 - 7.6.5 Any potential reverse sensitivity issues, particularly those relating to established activities in the rural area.
- 7.7 To ensure that any rural land within an urban growth boundary is used efficiently and that any interim, partial or piecemeal development of that land does not compromise its eventual integration into that settlement.
- 7.8 To recognise existing land use patterns, natural features, the landscape and heritage values of the District and the receiving environment to inform the location of Urban Growth Boundaries.

[28] In her closing submissions for the council Ms Macdonald candidly submitted⁴² that there is a “clear disconnect” between the definition of urban development and “[p]olicy 7.5 [which] ... is not capable of resolution”. We sympathise with counsel’s struggle. However, if we insert our understanding of the definition of “urban growth” into policy 7.5 it reads (relevantly):

³⁸ Objective (4.9.3) 7— [PC30 p X-1].

³⁹ The first, poorly worded, policy (4.9.3) 7.1 is “To enable urban development to be maintained [we ask what that means?] in a way and at a rate [and there follows a partial paraphrase of section 5(2) RMA]. PC30 p X-1.

⁴⁰ PC30 p X-1.

⁴¹ PC30 p X-1.

⁴² QLDC Closing submissions para 16 [Environment Court document 19].



- 7.5 To avoid sporadic and/or ad hoc development/activity [which is of an urban type, that is any activity listed as permitted or controlled in any residential, commercial, industrial or any other non-rural zone], in the rural area generally ...

In our view the policy makes sense when the interpreted definition⁴³ is inserted. It asserts a stringent version of a common resource management policy that little clusters of urban (non-rural) activity should not break out sporadically in rural areas (unless justified under other policies).

[29] The matters to be considered in defining an urban growth boundary require the avoidance⁴⁴ of any significant adverse effects on the landscape of the district. The landscape architects have agreed that Arrow South is within the wider “visual amenity landscape” category under the district plan.

2.3 Residential densities in the district plan

[30] If Arrow South were brought within the urban boundary then a table requested of, and supplied by, counsel for the council shows the sort of densities to which the land might be developed under various sets of rules for different zones. We summarise the most relevant zones and densities in a smaller table here⁴⁵:

Zone	Minimum Lot Size (m ²)	(Maximum) Building coverage (%)
...		
Arrowtown [Residential]	600	40
Arrowtown Historic Management	800	30
Rural Residential	4,000	15
Rural Living	10,000 to 20,000	15

We infer that a “residential” lot is anything less than a minimum lot size of 4,000 m².

[31] Of the 30 hectares in Arrow South about 18 hectares are potentially able to be developed. The remainder are probably too steep, or too close to the stream. Due to the Arrowtown density of subdivisions (say minimum lot size of 800m²) there would be room for 225 lots in the 18 hectare free for development⁴⁶.

⁴³ In square brackets.

⁴⁴ Policy 7.6 of Plan Change 30.

⁴⁵ QLDC Closing submissions Appendix A [Environment Court document 19].

⁴⁶ QLDC Closing submissions Appendix A [Environment Court document 19].



2.4 The Otago Regional Policy Statement

[32] Policies⁴⁷ in the Otago Regional Policy Statement (“the Otago RPS”) seek to minimise the adverse effects of urban development and settlement, including structures, on Otago’s environment through avoiding, remedying or mitigating visual intrusion and a reduction in landscape qualities. They also seek to avoid, remedy or mitigate significant irreversible effects on heritage and amenity values. The council argues that maintaining the existing urban growth boundary around Arrowtown would prevent inappropriate urban expansion into the rural landscape thus giving effect to the policies in the Otago RPS. As usual the policies in the Otago RPS are too broad to be of much assistance in this case, although we accept that they do give some encouragement to the council’s position.

2.5 Other strategies and management plans

[33] We are required⁴⁸ to have regard to management plans and strategies prepared under other legislation. The council argues that the district’s 2007 Growth Management Strategy and the Arrowtown Community Plan prepared under the Local Government Act 2002 are relevant.

[34] The council developed the Queenstown Lakes District Growth Management Strategy 2007 (“the GMS”) for managing growth in the district. In the absence of any argument to the contrary we accept that this strategy qualifies and is relevant. Principle 1 of the GMS seeks “to ensure that growth is located in the right place”⁴⁹. The main elements of the strategy include:

- 1a) All settlements are to be compact with distinct urban edges and defined urban growth boundaries.
- 1c) Settlements in the Wakatipu Basin (Arthurs Point, Arrowtown, Lake Hayes Estate and Jacks Point) are not to expand beyond their current planned boundaries. Further development and redevelopment within current boundaries is encouraged where this adds to housing choices and helps to support additional local services in these settlements.

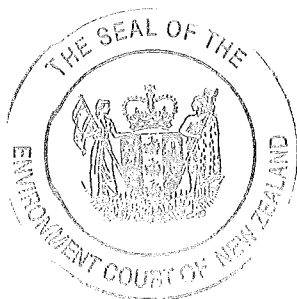
Those matters reinforce the urban growth policies in the district plan.

[35] The Arrowtown Community Plan, dating back to March 2003, concluded that urban development should not extend southwards along McDonnell Road and Centennial Avenue from its then limits. By continuing a boundary that runs along the current edge of the Low Density zone, PC29 as decided by the council appears to meet the community aspirations described in the Arrowtown Plan and the GMS. However, we give that factor minimal weight since, while the issue was not argued, we consider that the Arrowtown Community Plan is not a “management plan” as referred to in section 74(2) RMA. Consequently we give little weight to the evidence of Ms Couper for the Arrowtown Residents Association. However, it can be consoled that the

⁴⁷ 9.5.4(c), (d)(v) and (d)(vi).

⁴⁸ Section 74(2)b RMA.

⁴⁹ J Richards, evidence-in-chief para 5.4.3 [Environment Court document 8].



Arrowtown Design Guidelines 2006 will be relevant (if the policy including the guidelines survives a challenge we consider later).

3. Predictions

3.1 Population and housing growth

[36] We had evidence from three economists on the future supply and demand for residential housing in Arrowtown. They were Dr J D M Fairgray for the appellant, Mr M Copeland for the respondent and Mr P Roberts for J M Hanan. Dr Fairgray and Mr Copeland produced a joint statement of evidence⁵⁰. They stated⁵¹ that the estimates and forecasts of the future demand for and supply of residential dwellings in Arrowtown (as prepared⁵² by Dr Fairgray and Mr Lucas) were not in dispute. Those forecasts show that the supply of residential land in Arrowtown will last until 2016.

[37] Mr Roberts disagreed with the assumptions underlying the Fairgray/Lucas projections⁵³. In essence, he considered that the Fairgray/Lucas projections took a too optimistic view of the world, and did not take adequate account of the global financial crisis, as it assumed that demand growth rates post 2008 would be essentially similar to those before 2008⁵⁴. He considered that under post global financial crisis conditions, the supply of land for residential dwellings in Arrowtown would last until 2023⁵⁵.

[38] The differences between Dr Fairgray and Mr Copeland on one hand, and Mr Roberts on the other over the quantity of housing that has been demanded since the 2006 population Census (the last firm data point), and over the future quantity of demand, were not able to be reconciled during the hearing. Fortunately, we do not consider that we need to decide between them. Both sides of the debate were in agreement that, if the urban growth boundary was set as proposed in PC29, with no extension to the current urban limit of Arrowtown, at some point the land supply for residential development within the urban boundary would be exhausted, and residential growth of the township would cease. They differed only in their views on how long it would take to reach that point. Mr Copeland agreed with the Lucas/Fairgray projection of 2016, while Mr Roberts considered that the available supply would last until 2023.

[39] The Fairgray/Lucas projections assumed that the Arrow South land could supply a further 226 dwellings. This increased supply would see their projected demand being met for a further six to seven years, out to 2022⁵⁶. We understand the figure of 226 came from a planners exercise for the council hearing, based on the average section size and allowances for open space requirements⁵⁷.

⁵⁰ M Copeland and J D M Fairgray, joint statement, para 3 [Environment Court document 7A].

⁵¹ M Copeland and J D M Fairgray, joint statement, para 3 [Environment Court document 7A].

⁵² J D M Fairgray and T W Lucas, Joint Statement [Environment Court document 6].

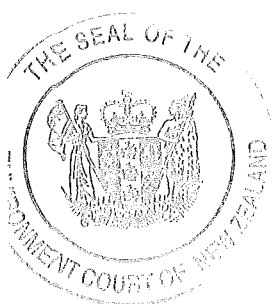
⁵³ P Roberts, evidence in chief, para 5.1 [Environment Court document 15].

⁵⁴ P Roberts, evidence in chief, para 5.2 [Environment Court document 15].

⁵⁵ P Roberts, evidence in chief, para 5.20 [Environment Court document 15].

⁵⁶ J D M Fairgray and T W Lucas, para 2.17 [Environment Court document 6].

⁵⁷ Transcript p 217.



[40] We note that the landscape architect, Mr Boffa, while he had not done a formal design exercise⁵⁸, considered that the sort of development he envisaged on the Arrow South land would be less than that, and more likely to be in the order of 80 to 100 dwellings⁵⁹. Mr B Espie⁶⁰, another landscape architect, endorsed Mr Boffa's approach. The difference between the 226 additional dwellings used in the Fairgray/Lucas projections and the 80-100 suggested by Mr Boffa is significant. Dr Fairgray acknowledged that if only 100 dwellings were developed on the land, then the supply of land for the residential expansion of Arrowtown would be exhausted in 2019 rather than 2022/23 as suggested in the projections based on 226 additional dwellings⁶¹. He also acknowledged that if the lesser number of dwellings eventuated on the land, the benefits that he suggested would flow from the development would be proportionately reduced - they would still arise, just at a lesser magnitude⁶².

3.2 Benefits of increased Residential land supply in Arrowtown

[41] Dr Fairgray considered that limiting the urban boundary of Arrowtown as proposed by PC29 would have several detrimental effects on Arrowtown, and, conversely, that allowing the expanded urban boundary as proposed by the appellant would act to reduce or ameliorate those effects. He considered that the effects of the current boundary arise from the "signal to the residential property market that future supply of residential land in Arrowtown will be constrained and that only a further 4-8 years of demand can be accommodated"⁶³. The effects he identified relate to⁶⁴:

- the intensification of residential development in Arrowtown;
- the resultant effects on the town's character;
- housing affordability; and
- the extent of (or demand for) rural residential development around Arrowtown.

Dr Fairgray also suggested that the increased population arising from the Arrow South development would expand the market for locally-focused businesses in Arrowtown and that the range of household needs that would be met locally would expand⁶⁵.

[42] Underlying Dr Fairgray's concern was his view that demand for residential property in Arrowtown would continue to grow at the rate seen in the past. In the absence of land for new development, there would be an increased push to redevelop and intensify residential activity in Arrowtown's Low Density Residential Zone

⁵⁸ Transcript p 53.

⁵⁹ Transcript p 60.

⁶⁰ Transcript p 90.

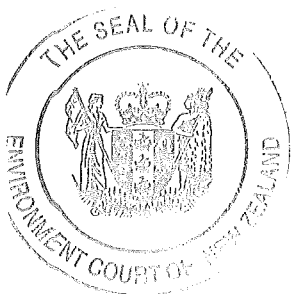
⁶¹ Transcript p 182.

⁶² Transcript p 218.

⁶³ J D M Fairgray, supplementary statement of evidence, para 2.4 [Environment Court document 9].

⁶⁴ J D M Fairgray, supplementary statement of evidence, para 2.5 [Environment Court document 9].

⁶⁵ J D M Fairgray, supplementary statement of evidence, para 2.20 [Environment Court document 9].



(“LDRZ”), resulting in increased infill housing in the LRDZ. He was concerned that this would result in detrimental changes to the character of residential areas of Arrowtown⁶⁶, something the Growth Management Strategy introduced by PC30 was designed to avoid. He was also concerned that unsatisfied demand for residential property in or around Arrowtown would result in increased rural residential development around Arrowtown⁶⁷; in particular that there would be increased price pressure resulting from the constrained supply, leading to decreased affordability, and increased pressure for intensification by infill housing development of both existing urban and rural residential land⁶⁸. He considered that the Arrow South development would support initiatives for affordable housing and avoid adverse effects on the living environment from increased residential intensification and the encroachment of residential uses into rural areas⁶⁹. He also considered that providing for greater future population growth would provide economic benefits to the township via larger markets and enhanced viability for local businesses⁷⁰.

[43] Mr Copeland considered that increased social and economic benefit were unlikely to arise from the expansion of the urban boundary proposed by the appellant. He considered that the population would continue to increase without a shift to the urban boundary, and that the small additional increase provided by the proposed expansion to the boundary was “unlikely to be sufficient to significantly improve the retail and service offering in Arrowtown”⁷¹. He did not consider that the increased land supply provided by the expansion of the urban boundary would exert any downward influence on house prices or increase housing affordability. He considered that the Arrow South sections would be priced at the upper end of the market and consequentially have more expensive houses built on them. Thus there would be no ‘affordable housing’ built upon them nor have any indirect lowering effect on prices generally⁷².

[44] Mr Copeland did not comment on whether increased infill development within the LDRZ was appropriate⁷³, but noted that any reduction in infill housing due to the Arrow South development would only be temporary and would not by itself prevent infill housing within the LDRZ even in the short term⁷⁴. He also commented that economists generally favour direct intervention to correct for a market failure (the ‘cost’ to the heritage character of residential intensification). He considered that appropriate planning controls would be both more transparent and more effective in controlling intensification in the LDRZ and in controlling rural residential development⁷⁵.

⁶⁶ J D M Fairgray, supplementary statement of evidence, para 2.34 [Environment Court document 9].

⁶⁷ J D M Fairgray, supplementary statement of evidence, para 2.35 [Environment Court document 9].

⁶⁸ J D M Fairgray, supplementary statement of evidence, para 2.22 [Environment Court document 9].

⁶⁹ J D M Fairgray, supplementary statement of evidence, para 3.7 [Environment Court document 9].

⁷⁰ J D M Fairgray, supplementary statement of evidence, para 2.20 [Environment Court document 9].

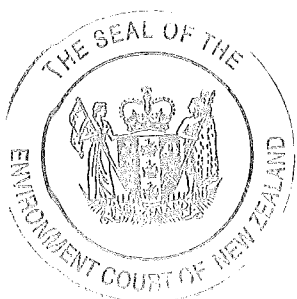
⁷¹ M Copeland, rebuttal evidence, para 10 [Environment Court document 7].

⁷² M Copeland, rebuttal evidence, para 24 [Environment Court document 7].

⁷³ M Copeland, rebuttal evidence, para 30 [Environment Court document 7].

⁷⁴ M Copeland, rebuttal evidence, para 31 [Environment Court document 7].

⁷⁵ M Copeland, rebuttal evidence, para 32-33 [Environment Court document 7].



[45] On that issue we note the opinion of the council's planning witness⁷⁶ that the application of existing district plan provisions will ensure that the town's character is retained; further, these provisions would be bolstered with the introduction of PC29 policy 7.13 which introduces into the district plan the need for new development to be consistent with "Arrowtown Design Guidelines".

[46] Dr Fairgray noted that there was a wide variety of location and housing preferences in the Wakatipu market, and that it is possible that preferences for an Arrowtown location that are unable to be met within the urban boundary may remain focused on the Arrowtown environment, rather than be redirected elsewhere in the basin⁷⁷. He did acknowledge that there is capacity within the Wakatipu Census Area Unit ("CAU"), which includes Lake Hayes Estate, Frankton Flats, and Quail Rise, to absorb any preferences that are not able to be satisfied in Arrowtown⁷⁸. We also note that in October 2011 QLDC notified its decision to approve private Plan Change 41 ("PC41") which seeks the creation of a new Shotover Country Special zone. This new zone will cater for the development of between 750 and 1,200 residential units within the Wakatipu CAU on land located between the Lake Hayes Estate and the Shotover River. Plan Change 41 is currently under appeal. Without PC41, there is still sufficient land identified for residential development in the Wakatipu CAU to meet the overflow demand from Arrowtown for at least the next 20 years.

[47] We consider that the proposed development of Arrow South is not likely to have any impact on housing affordability in Arrowtown or the wider Wakatipu basin. The developer is likely to want to maximize the return on the land, and prices will be at the upper end of the market. Thus it is unlikely that any form of 'affordable housing' will be constructed on the site. Further, the entry into the market over a possibly extended period of sections and/or houses at the top end of the market is unlikely to place any downward pressure on the local housing market. While any increased population arising from the development may increase the profitability of those businesses in Arrowtown that are focused on the local market, we agree with Mr Copeland⁷⁹ that the improved profitability of trading in Arrowtown arising from the development would be unlikely to result in any expansion of local trading opportunities. The additional local patronage from 80-100, or even 226, additional dwellings is unlikely, on its own, to induce any new business investment in Arrowtown. Finally any impact on the level of residential infill or rural residential development in and around Arrowtown is likely to be minimal and certainly of limited duration. We agree with Mr Copeland that these activities are more effectively and transparently controlled through appropriate planning provisions.

⁷⁶ J Richards, evidence-in-chief para 4.6 [Environment Court document 5].

⁷⁷ J D M Fairgray, supplementary evidence, para 2.15 [Environment Court document 9].

⁷⁸ J D M Fairgray, supplementary evidence, para 2.35 [Environment Court document 9].

⁷⁹ M Copeland, rebuttal evidence, para 27 [Environment Court document 7] and M Copeland and J D M Fairgray, joint statement, para 8 [Environment Court document 7A].



3.3 Effects on the landscape of maintaining or extending the boundary of Arrowtown *The options*

[48] The options for the urban growth boundary to the southwest and south of Arrowtown are:

- (1) the existing zone boundary (between residential and rural general);
- (2) the Arrowtown golf course to the south and McDonnell Road to the southwest;
- (3) something between those.

[49] Dr Read identified three sets of effects of the proposed extension of the urban growth boundary on landscape values. They are⁸⁰:

- (1) the effects on the four entrances to Arrowtown although only two - those along McDonnell Road and Centennial Avenue - were considered to be affected;
- (2) the effects on the coherence of the urban boundaries and their relationship to the topography and the surrounding landscape;
- (3) the effects on views from around the Wakatipu Basin (e.g. from Tobins lookout, from Coronet Peak and from the Crown Range Road);

McDonnell Road

[50] Dr Read considered⁸¹ that development within the Arrow South extension would have a “significantly adverse” effect on this approach to Arrowtown. The further extension of the residential development on the ridge would exacerbate the currently degraded entry experience and the development on the valley floor would extend the sprawl along the roadway, extending the sense of ‘passing by’ Arrowtown that she attributes to the existing dwellings on McDonnell Road. She noted⁸² that for over half the length of the extension the carriageway was above the land to be developed, so travelers would be looking through and over dwellings. She maintained the view that McDonnell Road was not an entrance to Arrowtown but an approach, and that the entrance along this route was at the intersection of McDonnell Road and Berkshire Street. She did note that the management of the escarpment face would be a ‘distinct improvement’ over its current weedy condition. However, she also noted⁸³ that there is a legal obligation to clear the broom, a noxious weed.

⁸⁰ M Read, evidence-in-chief para 5.1 [Environment Court document 2].

⁸¹ M Read, evidence in chief, para 5.4.3.3 [Environment Court document 2].

⁸² M Read, evidence in chief, para 5.4.3.2 [Environment Court document 2].

⁸³ Transcript p 20.



[51] Mr F Boffa wrote for the appellant⁸⁴:

While Ms Mellsop [a council reporting officer] appears to support some development in this area, she sees the existing creek as being a logical⁸⁵ boundary with the narrow strip of land between the creek and McDonnell Road becoming an open space buffer ... however I consider there to be a more effective buffer to the west of McDonnell Road, much of which comprises of the Hills Golf Course. I also consider some development in this area would reinforce the development that currently exists to the north along McDonnell Road and in doing so, would transition this out in terms of density and form. In my view, development of the land to the east of the creek could potentially appear very much as a strip of isolated development below the escarpment ridge, whereas an integrated development focusing in part on the creek and with varying set backs and densities along McDonnell Road would, in my opinion, provide a more balanced and attractive development and addition to Arrowtown.

We see here the effects of the misconception that Mr Boffa was suffering from as alluded to earlier. He relied on the Hills Golf Course as a buffer, but it is (part of) the visual amenity landscape to be “protected” under the new district-wide policy (4.9.3) 7.6.3 quoted earlier. Secondly, his concern about a thin strip of development to the east of the creek and below the steep escarpment of the Arrowtown Ridge can be met by the most obvious solution: it should not be developed.

[52] Mr Boffa continued⁸⁶:

If the creek were to be used to delineate a buffer between the road and future urban development this could possibly be successful if the alignment of the creek were altered to bring it closer to the road in places. This would also enable improvement of the creek’s margins so that it became more of a feature in the landscape. This approach has been successful at the nearby Millbrook resort where the Mill Creek was diverted and remodeled to improve its landscape setting and associated amenity values.

This solution ignores the obvious solution mentioned in the previous paragraph; and rather indirectly seems to suggest that the answer to the thin strip of development is to move the stream closer to the road. We can see why that might be worthwhile if the land to the east of the stream was north-facing but it is not, it faces southwest and so is not well-oriented to the sun (except in the afternoon). Finally we consider the reference to Millbrook is rather misleading: the site coverage of buildings over Millbrook as a whole is no more than 1% of the total land area. Clearly both the appellant and Mr Boffa contemplate more than that on the Arrow South site.

[53] Finally on this area we record his evidence that⁸⁷:

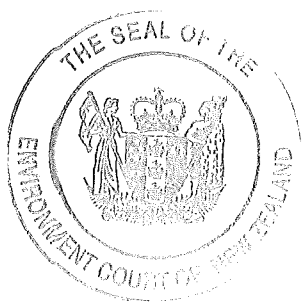
Cluster development on the creek margins and in the vicinity of the historic farm buildings could provide a sensitive solution to justifiable concerns about the effects of ribbon development along McDonnell Road. Variation in separation distances from the road itself and provision for appropriate open spaces could further enhance the transition from rural to urban between the landscape buffers provided by the golf course.

⁸⁴ F Boffa, evidence-in-chief paras 6.13 to 6.15 [Environment Court document 3].

⁸⁵ H Mellsop’s report is Appendix 1 to the evidence-in-chief of M Read [Environment Court document 1].

⁸⁶ F Boffa, evidence-in-chief para 6.14 [Environment Court document 3].

⁸⁷ F Boffa, evidence-in-chief para 6.15 [Environment Court document 3].



We accept the clustering concept – it is after all contemplated in the district plan at least within the Rural General Zone.

[54] Mr Espie was of the view⁸⁸ that adopting the Arrowtown Golf Course as the southern edge of the UGB would be a ‘significant change’ to the entry experience provided by this route. However, he did not consider the change to be detrimental, agreeing⁸⁹ with Mr Boffa that the nature of the change would depend on the nature of the development, and that having a new edge to the urban area “represents an opportunity to create a more positive and creative entrance than currently exists”. Mr Espie and Mr Boffa also agreed⁹⁰ that more could be done with the present entrance on McDonnell Road to enhance and improve it. Mr Espie asserted⁹¹ that McDonnell Road was not “widely used by visitors or tourists; it is essentially used as a bypass road by local residents”. The extent to which this is true was discussed in court. Although it was not conclusively resolved⁹², it was generally accepted, including by Mr Espie, that McDonnell Road is the avenue by which visitors to the Hills golf course would enter the course. As such it may be an entrance to Arrowtown of some significance, more so than Mr Espie’s comments above suggest.

Centennial Avenue

[55] Dr Read and Mr Espie agreed that the current approach to Arrowtown along Centennial Avenue presents a peri-urban transition to the entry into Arrowtown. Dr Read considered this approach to be quite coherent at present. She considered⁹³ the extension of the urban area along the western side of the road to the golf course would have a significant adverse effect. She considered the entry point would remain the same as currently, but it would be preceded by an experience of travelling past urban sprawl before entering the township. Mr Espie⁹⁴ did not place such high value on the peri-urban transition as Dr Read. He considered there was potential for a considerably different but just as attractive and pleasant, or potentially improved, entrance experience as the current one, but further to the south.

[56] Mr Espie was of the view⁹⁵ that both entrances would benefit from the transition from rural, to recreational, to residential, noting that it was a “... common and pleasant experience throughout small town New Zealand”. He concluded⁹⁶ in relation to both entrances that “there was no merit in preserving the existing situation simply because it is what has come about over time” and that the proposed extension to the urban boundary provided an opportunity to have “positive effects” on the entrances,

⁸⁸ B Espie, rebuttal evidence, para 5.10 [Environment Court document 4].

⁸⁹ B Espie, rebuttal evidence, para 5.11-5.12 [Environment Court document 4].

⁹⁰ Transcript pp 43 and 69.

⁹¹ B Espie, rebuttal evidence, para 5.8 [Environment Court document 4].

⁹² Transcript pp 75 and 137.

⁹³ M Read, evidence in chief, para 5.4.4.3 [Environment Court document 2].

⁹⁴ B Espie, rebuttal evidence, para 5.5 [Environment Court document 4].

⁹⁵ B Espie, rebuttal evidence, para 5.6 [Environment Court document 4].

⁹⁶ B Espie, rebuttal evidence, para 5.15 [Environment Court document 4].



particularly in relation to McDonnell Road. He agreed⁹⁷ with Mr Boffa that the success of the new entrance experiences would depend on the nature of the design and controls placed on the development.

[57] We agree that an extension of the urban boundary to the Arrowtown Golf Course would present an opportunity to create an attractive edge to urban development along Centennial Avenue, and that the edge could be protected, unlike the existing hedge on Centennial Avenue. We find that the extension of the urban boundary would increase the sense of 'passing by' urban development as one approaches Arrowtown along the routes, before one reached the entrance to the town at the hedge on Centennial Avenue.

[58] As for the McDonnell Road, we predict that the sense of 'passing by' urban development would significantly increase the impression of urban sprawl as one approached the town along that road, something which is to be avoided under policy 4.2.5.6 (d) of the District Plan.

Coherence and defensibility of the Urban Boundary options

[59] As noted above, all witnesses accepted that the current urban boundary is somewhat arbitrary. Dr Read⁹⁸ held the view that the part of the boundary to the east of the ridge was coherent, despite its arbitrariness, being linear and clearly demarcated by the existing hawthorn hedge. Even if the hedge, which has no protection, was removed she considered the coherence would remain. She noted⁹⁹ that the appellant's proposed southern boundary follows property boundaries in dog-leg fashion, which appears incoherent on a map but is currently disguised by mature trees on some of the properties. She considered the removal of these trees to facilitate development under the proposed extension likely, and so the mitigation of the incoherence would be lost. She considered that the new boundary would be just as arbitrary as the current one, while the length of incoherence, currently limited to that part to the west of the ridge at McDonnell Road, would be lengthened considerably. The problem of having urban development on one side of the road with rural activity on the other that she identified with the northern part of McDonnell Road would be exacerbated by being extended by over a kilometre (more than doubling of the current length) and created afresh on Centennial Avenue.

[60] Mr Espie acknowledged¹⁰⁰ that the appellant's proposed urban boundary represented a risk of creating a new boundary no better, and possibly worse, and longer, than the existing one. He identified¹⁰¹ the difference between Dr Read, and himself and Mr Boffa, being in their views on the acceptability of roads and golf courses as suitable boundaries to urban areas. He considered¹⁰² that the golf courses would be effective buffers to further expansion of urban development and thus be more defensible than the

⁹⁷ B Espie, rebuttal evidence, paras 5.5 and 5.12 [Environment Court document 4].

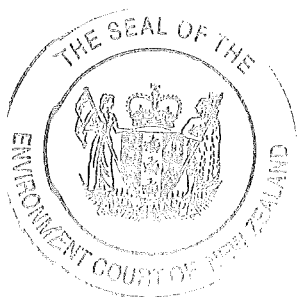
⁹⁸ M Read, evidence in chief, para 5.3.3 [Environment Court document 2].

⁹⁹ M Read, evidence in chief, para 5.3.5 [Environment Court document 2].

¹⁰⁰ B Espie, rebuttal evidence, para 4.1 [Environment Court document 4].

¹⁰¹ B Espie, rebuttal evidence, para 4.4 [Environment Court document 4].

¹⁰² B Espie, rebuttal evidence, para 4.7 [Environment Court document 4].



current situation. The land of the Arrowtown Golf Course is approximately two-thirds owned by the council and one-third by the club itself (effectively by its members), creating a considerable barrier to any change in the use of the land, while the Hills golf course has covenants under its resource consents preventing further residential or visitor accommodation. He considered that those parts of the boundary not buffered by golf courses were at low risk of further sprawl as, being the first development to “jump McDonnell Road ... would be particularly anomalous in relation to the overall form of Arrowtown”. He considered¹⁰³ that the golf courses would be less arbitrary than the current situation and create a “relatively simple and visually legible”, attractive transition from rural to urban activity.

[61] Dr Read was of the view¹⁰⁴ that McDonnell Road had become the effective urban boundary because it coincided with the edge of the residential zone. She considered that urban character had already breached the road boundary in a minor way by the creation of a small park on the northern side of the road. She would have placed more value on the golf courses as an urban boundary if they were protected in some way¹⁰⁵. Mr Richards¹⁰⁶ pointed out that relocation of golf courses and the original land being converted to urban uses is not uncommon and that if the golf courses become accepted as urban boundaries, then the pockets of land where the proposed boundary is not bounded by golf courses could come under pressure to be urbanised¹⁰⁷. However we have already recorded that both golf courses are less likely than normal private courses to be developed because there are various factors suggesting that would be difficult here.

Effects on Wider Views

[62] Dr Read identified views from Coronet Peak, Slope Hill, Tobins Track and the Crown Range as adversely affected by the proposed southward extension of urban development. In her opinion the proposed development would increase the impression of development sprawling along the Arrowtown ridgeline and spilling over it¹⁰⁸; would have a significant adverse effect on the coherence of the town boundaries¹⁰⁹, would make the ribbon nature of the development apparent¹¹⁰, significantly increase the amount of visible built form, and would reduce the arcadian quality of the views and have a significant adverse effect on the legibility of Arrowtown¹¹¹.

¹⁰³ B Espie, rebuttal evidence, para 4.9 [Environment Court document 4].

¹⁰⁴ Transcript p 24.

¹⁰⁵ Transcript p 34.

¹⁰⁶ J Richards, evidence in chief, para 9.13 [Environment Court document 8].

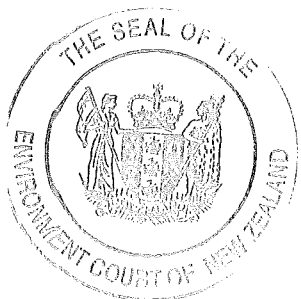
¹⁰⁷ J Richards, evidence in chief, para 9.14 [Environment Court document 8].

¹⁰⁸ M Read, evidence in chief, paras 5.5.1.3, 5.5.2.3 [Environment Court document 4].

¹⁰⁹ M Read, evidence in chief, para 5.5.3.3 [Environment Court document 2].

¹¹⁰ M Read, evidence in chief, para 5.5.4.2 [Environment Court document 2].

¹¹¹ M Read, evidence in chief, para 5.5.4.3 [Environment Court document 2].



[63] Mr Boffa considered¹¹² the development would be perceived as purely a local effect, with no wider *macro* issues arising from the development, and, while acknowledging that the extension to Arrowtown would be clearly visible, would leave the quality of the elevated views uncompromised. Mr Espie considered that when the possible design of the development, and the degree of possible tree planting, was taken into account, the view from elevated positions would be considerably softened¹¹³, and that Arrowtown is a relatively minor part of an overall dramatic vista¹¹⁴, that the extension “will be adjoining, connected to, and will appear as part of the Arrowtown township”¹¹⁵. He considered the urban pattern of the township on the basin floor will not be a negative part of the view but will appear as “a pleasant, fitting and relatively green element (due to trees and open space) within the overall view”¹¹⁶. He considered the effect on views from Tobins Track would be “slight to moderate at worst”¹¹⁷, while those from Coronet Peak and the Crown Range would be “slight at worst”¹¹⁸.

[64] Having carefully considered the various evidence on the effect of the extension on elevated views, the various plans, photos and photo montages provided, and our own impressions from Tobins Track particularly, we consider that from that view development to residential densities inside the proposed boundary will appear as an obvious extension and expansion of Arrowtown into the surrounding rural landscape. We find that wider views from remoter viewpoints will not be significantly affected because Arrow South is such a small part of the Wakatipu Basin, and because of the distance to Arrow South. We are divided on whether the effect of some “rural residential” or “rural living” type development - provided it is not too dense¹¹⁹ – on the crest of the Arrowtown Ridge, and some limited residential development south of the ridge near the enclave by the Arrowtown Golf Course – would affect views in any significant way from Tobins Track or remoter viewpoints. However, that sort of development is not urban and so is outside the scope of this hearing. We do not decide the issue here.

3.4 Positive effects

[65] We have already discussed the possible positive benefits of the appellant’s proposed urban boundary location in some detail. We have concluded that the Arrow South development is unlikely to have any impact on housing affordability or place any

¹¹² F Boffa, evidence in chief, para 6.17 [Environment Court document 3].

¹¹³ B Espie, rebuttal evidence in chief, para 6.7 [Environment Court document 4].

¹¹⁴ B Espie, rebuttal evidence in chief, para 6.8 [Environment Court document 4].

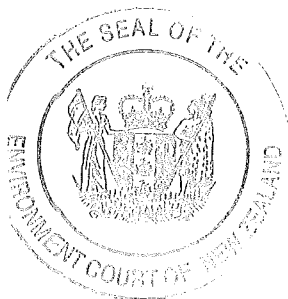
¹¹⁵ B Espie, rebuttal evidence in chief, para 6.10 [Environment Court document 4].

¹¹⁶ B Espie, rebuttal evidence in chief, para 6.9 [Environment Court document 4].

¹¹⁷ B Espie, rebuttal evidence in chief, para 6.11 [Environment Court document 4].

¹¹⁸ B Espie, rebuttal evidence in chief, paras 6.4 and 6.14 [Environment Court document 4].

¹¹⁹ i.e. meets the minimum lot size of 4,000 m² or should this be “Rural Living” minimum 10,000 m² or neither?



downward pressure on the local housing market. While the increased population may enhance the profitability of those Arrowtown businesses that are locally focused, we do not consider that there is likely to be any increase in the number or range of those business arising from the slight increase in population. Any impact on residential infill or rural residential development is likely to be minimal and will be of short duration and appropriate planning controls are likely to be much more effective in addressing such issues.

[66] While the positive benefits identified in the previous paragraph are minimal, we do accept the rather general (and conditional) evidence of Mr Boffa¹²⁰ that the "... effects of a southern extension of the urban edge on Arrowtown's rural setting would be positive, given the opportunity to sensitively define a more appropriate, visually meaningful and sustainable buffer between the rural and urban areas...". We agree especially that sensitive development along the creek could improve its water and visual quality. We do not overlook that housing (especially at the development stage) causes sedimentation problems – and Mr D M Hanan, an engineer, quite correctly pointed out potential ongoing problems with sedimentation and heavy metals from urban development¹²¹. However, we consider those can be managed whereas at present stock are allowed to wander into the creek and downstream wetland at will. In places it is (as when we inspected it) a puggy quagmire.

[67] We find it difficult to reconcile Mr Boffa's evidence with his estimate that 100 houses could be developed on the area. We do not accept Mr Boffa's evidence on these matters completely because as we recorded early in this decision he sees the issue as a simple urban/rural contrast; whereas under the district plan it is an "urban" versus "visual amenity" landscape issue. We consider that while some housing development might be appropriate we question whether it should be at residential densities as described earlier. Further there is no sign in Mr Boffa's evidence that he understands that this is what the plan describes as a "visual amenity landscape" (i.e. not simply a rural zone), let alone that he has read and applied the relevant policies controlling management of the visual amenity landscape of the Wakatipu Basin.

3.5 Other effects

[68] The section 274 parties questioned the potential adverse effects of up to 225 houses (if developed on the Arrow South land) in respect of traffic on McDonnell Road, air pollution, effect on the commercial centre of Arrowtown, school capacity, and in addition to their concerns about the effects on their immediate rural and heritage

¹²⁰ F Boffa, evidence-in-chief para 6.12 [Environment Court document 3].

¹²¹ D M Hanan, evidence-in-chief page 5 [Environment Court document 13].



landscape. We read evidence from various members of the wider Hanan family who have owned a property at 82 McDonnell Road since 1964:

Dame Elizabeth Hanan¹²²

Ms J M Hanan¹²³

Mr D M Hanan¹²⁴

Ms J C Rutherford¹²⁵ (wife of Mr D M Hanan)

[69] Ms Rutherford wrote eloquently of the amenities enjoyed by her family¹²⁶:

During our holiday stays at our property, I walk every day along the McDonnell Road pathway and have loved the peaceful pastoral aspect of the surrounding farm land. I have often stopped to admire the historic farm cottage and its fine herd of black cattle. It's quiet except for the sounds of birds and the few vehicles that drive past. It's a walk that I treasure for exactly those qualities. We come up to Arrowtown precisely to get away from suburban life – not to be surrounded again by houses and cars and people. This proposed subdivision of 215 houses would completely and irrevocably destroy the rural and pastoral qualities of life we currently enjoy and which have characterized the area since it was first settled.

We take the effect on amenities of existing residents seriously and will weigh that under the related policies later.

[70] The other adverse effects alleged by the section 274 parties we can deal with briefly. First there was insufficient evidence¹²⁷ that the Arrowtown School could not take the increased number of children that might result. As for traffic effects Mr Edmonds wrote¹²⁸ for the appellant that reports from transport engineers confirmed that:

... the inclusion of the [Arrow South] land within the UGB and its urban zoning would reduce any redundancy in those systems without having any meaningful impact upon the level of service currently enjoyed by existing residents.

In any event those and the other issues would be more relevant in relation to rezoning of the land, which is the next step if we decide to move the urban boundary.

4. Deciding the appropriate policies

4.1 The competing policies

[71] We heard evidence on the competing policies from two experienced resource management/planning witnesses – Mr J Richards for the council and Mr J B Edmonds for the appellant. As noted in our Introduction, the appellant seek to delete and replace

¹²² Environment Court document 11.

¹²³ Environment Court document 12.

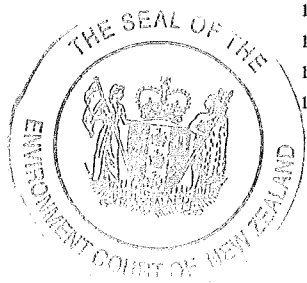
¹²⁴ Environment Court document 13.

¹²⁵ Environment Court document 14.

¹²⁶ J C Rutherford, evidence-in-chief para 9 [Environment Court document 14].

¹²⁷ See e.g. Transcript pp 283-286.

¹²⁸ J B Edmonds, evidence-in-chief para 8.38 [Environment Court document 16].



policies 7.12 and 7.13, and to move the urban boundary so as to include the Arrow South land. The appellant's alternate policies, as put forward by Mr Edmonds, are:

- 7.12 *To carefully manage the growth of Arrowtown and to enable the character and identity of the settlement, and its setting within the landscape to be preserved or enhanced.*
- 7.13 *To encourage an urban form within the Arrowtown Urban Growth Boundary that is sympathetic to the character, scale, density, layout and legibility of Arrowtown.*

4.2 Policy 7.12 – Urban growth limits as a tool

[72] The essential change to policy 7.12 the appellant seeks would change the focus of the plan change from limiting the growth of Arrowtown (i.e. stabilising the population of Arrowtown at some point in the future) to managing the growth. Where the policy as notified and decided places a maximum limit on the growth of the urban area of Arrowtown, the appellant's version would be about managing on-going growth, a wording that Mr Richards described¹²⁹ as “weakened significantly thereby markedly reducing its effectiveness”.

[73] Mr Edmonds wrote of policy 7.12¹³⁰:

The intent of policy 7.12 is to limit the growth of Arrowtown, which in itself concerns me, and I suggest that to ‘carefully manage the growth of Arrowtown’ would be more appropriate.

Mr Edmonds did not then go on to state why the limitation of the growth of Arrowtown concerns him. The bulk of his primary evidence is about the location of the boundary, which is a separate issue. Only in his rebuttal evidence did he make a reference to the growth issue, stating¹³¹:

My concern is that any policy that is directed at limiting growth and that applies to land inside the growth boundary for Arrowtown, may be misinterpreted to effectively limit the growth of Arrowtown within the boundary. It would have the unintentional effect of placing a moratorium on development. The policy is likely to result in administrative confusion and cost. It is not a well worded policy.

In cross-examination¹³² Mr Edmonds accepted that the evidence before the court of the functions of the golf courses as buffers effectively limits the development of Arrowtown beyond those boundaries. Despite accepting that there is currently a (somewhat wider) limit to the potential growth of Arrowtown, he was reluctant to accept that the use of the word ‘limit’ in policy 7.12 could not be improved upon.

Is continual population growth in Arrowtown required?

[74] It was common ground that without the Arrow South expansion of the urban boundary, at some point in the next decade or so there would be no land available for new residential development within Arrowtown. Thus, in the absence of increased

¹²⁹ J Richards, evidence-in-chief para 7.5 [Environment Court document 5].

¹³⁰ J B Edmonds, evidence-in-chief para 7.7 [Environment Court document 16].

¹³¹ J B Edmonds, rebuttal evidence, para 6.10 [Environment Court document 16].

¹³² Transcript p 271.



intensification, the population of Arrowtown would at some point stabilise at a maximum. Although it was not directly argued before us, we consider this raises the question of whether a policy for no growth from some point in the not too distant future is sustainable? Indeed this is an issue for the Wakatipu Basin as a whole.

[75] There are three components to this question:

1. Given expected continued population growth in the wider region, does some part of that growth need to be allowed for in Arrowtown? As noted above, the evidence before us was that there is sufficient capacity within the wider Wakatipu area to accommodate the expected growth within the region over the next 20 years. Thus, there is no need for the population of Arrowtown to increase at all to accommodate future population growth of the region.
2. Given continuing preferences of households to seek an Arrowtown location, does this need to be provided for? Dr Fairgray considered that demand for residential location within Arrowtown would continue into the future¹³³. He did concede to the court¹³⁴ that in circumstances of supply constraints, prices would rise until demand was reduced until the market cleared, leaving some preferences unsatisfied. Thus, if expansion is limited to that currently within the urban boundary, effective demand for Arrowtown locations would be satisfied, while some preferences to locate in Arrowtown would remain unrealised. Ms Macdonald submitted¹³⁵ that the existence of demand to live in Arrowtown does not oblige the Council to provide for it.
3. Does the on-going viability of the township require continual population growth? Dr Fairgray considered that population growth had benefits including larger markets and **enhanced** viability for locally-focused businesses¹³⁶, but he made no suggestion that a stable population would be detrimental to locally-focused businesses. He did not suggest that population growth was necessary for continuing viability of those businesses. He did acknowledge that the majority of Arrowtown businesses would be focused on the tourism market rather than the local population¹³⁷.

[76] In summary, we do not consider that a stabilising of the Arrowtown population at some point in the future to be unsustainable. This does not mean that Arrowtown's population should necessarily be stabilised at some point, just that sustainable management of natural and physical resources does not preclude population stabilisation. On the other hand, to extend the town to provide for this demand presupposes that continued growth and expansion should be provided for in Arrowtown

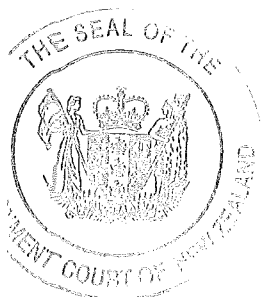
¹³³ J D M Fairgray, supplementary evidence, para 1.10 [Environment Court document 9].

¹³⁴ Transcript p 211-213.

¹³⁵ J Macdonald, opening submissions, para 31.

¹³⁶ J D M Fairgray, supplementary evidence, para 2.20 [Environment Court document 9].

¹³⁷ Transcript p 216.



as a matter of course. Providing for more urban development land through an expansion of the town needs to be weighed against the need to preserve the town's character.

Limiting urban expansion

[77] Mr Richards pointed out that¹³⁸:

Limiting growth of towns of special character and heritage value is an established technique and is common in planning policy in other countries. For example, in the UK, growth boundaries in the form of Green Belts have been a major part of planning policy since the 1930s and are primarily used to prevent urban sprawl of the main urban conurbations. However, another stated aim of these growth management tools is to preserve the setting and special character of historic towns. The York green belt is a prime example of this. This boundary was drawn tightly around the existing built up area of York to limit its further expansion thereby preserving the scale of the town, preserving its setting, character and heritage values. It is acknowledged, that whilst there is high demand for residential land within York, the need to limit its size and thereby preserve its character is seen to outweigh this demand issue and instead this demand has been met by supply elsewhere in the local area.

He considered¹³⁹:

That the special characteristics of Arrowtown require that to manage growth appropriately, we should state that this means that growth needs to be limited.

We accept that in the council's proposed policy 7.12 taken in isolation the phrase "to limit the growth of Arrowtown" could be interpreted as focused within the township itself. However, immediately following that phrase are the words "so that", and the first rider that is very clearly focused on what happens outside the boundary. The second rider also brings an outward focus with the conjunctive 'and' putting the preservation or enhancement of the character and identity of Arrowtown clearly in the context of the landscape setting within which Arrowtown sits. Further, it is the next policy (7.13) that is clearly focused on development within the boundary.

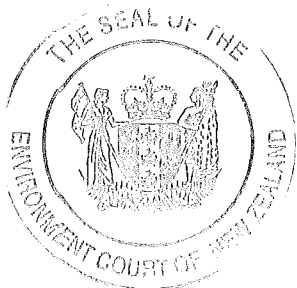
[78] Mr Edmonds' further objections to the proposed wording of policy 7.12 concern the two aims of the policy. He noted¹⁴⁰ that the first deals with "land outside ... the UGB, and the second with the character of the settlement inside the UGB". We consider this mis-reads the wording of the two purposes of the policy:

1. The first is not about the land outside the urban growth boundary but about **development** outside the urban growth boundary and, given the context of the part of the Plan in which this policy will appear, it is clear that it deals with urban development outside the urban growth boundary. Mr Edmonds' concerns could have been better addressed by explicitly placing that qualifier directly into the aims – viz. "adverse effects of **urban** development ...".

¹³⁸ J Richards, evidence-in-chief para 7.3 [Environment Court document 5].

¹³⁹ J Richards, evidence-in-chief para 7.5 [Environment Court document 5].

¹⁴⁰ J B Edmonds, evidence-in-chief, para 7.8 [Environment Court document 16].



2. As noted above, the second purpose is clearly concerned with the character and setting of Arrowtown in the context of the landscape setting in which it sits.

We consider that the wording of policy 7.12 as proposed in the decision version of the plan change is superior to the alternative suggested by Mr Edmonds in that it better achieves the objective of managing the scale and distribution of urban development.

4.3 Policy 7.13 – Development within Arrowtown

[79] Mr Richards succinctly summarised policy 7.13 and Mr Edmonds' proposed changes to it¹⁴¹:

The current PC29 Policy 7.13 states that to ensure that development within Arrowtown is sympathetic to the town's character; it needs to be undertaken in accordance with the Arrowtown Design Guidelines, 2006. The revised policy promoted by Mr Edmonds deletes the specific requirement for these Guidelines to be adhered to. Furthermore, rather than seek to ensure that new development is sympathetic to the town's character, the revised wording only looks to encourage new development to be designed sympathetically.

Mr Edmonds also suggested¹⁴² that the “designed urban edge with landscaped gateways” that is to be provided under policy 7.13.2 is unachievable, other than on private land. In his rebuttal¹⁴³ he went further, noting that the term “landscaped gateways” was undefined, and that the lack of obvious public space for them could result in the policy being interpreted to suggest that the gateways should be located on the applicants private land. He pointed out¹⁴⁴ that the Design Guidelines are a non-statutory document and can be changed without any public process, and so he considers it unwise to reference them within the policy. Mr Richards responded¹⁴⁵ that the provisions for the Meadow Park Zone are similar to those promoted by Mr Edmonds in his version of policy 7.13, and that the council has concluded that the effectiveness of this wording is “limited” and that the zone has since been developed in a way that “has little regard to Arrowtown's heritage resource and character”.

[80] We note that policy 7.13.1 refers specifically to the Arrowtown Design Guidelines **2006**. Any revision to those guidelines would result in a later year of publication, and would have no relevance under policy 7.13.1 without a change to the plan, which would require a public process. Mr Edmonds' view on this point is erroneous. His point that there is currently no obvious place for the ‘landscaped gateways’ may be valid at the moment, but if ever there is some appropriate development on the urban edges, the policy states that it should include a (better) designed urban edge with a landscaped gateway to Arrowtown. This is preferable to not

¹⁴¹ J Richards, evidence-in-chief para 7.6 [Environment Court document 5].

¹⁴² J B Edmonds, evidence-in-chief, para 7.11 [Environment Court document 16].

¹⁴³ J B Edmonds, rebuttal evidence, para 6.17 [Environment Court document 16A].

¹⁴⁴ J B Edmonds, rebuttal evidence, para 6.14 [Environment Court document 16A].

¹⁴⁵ J Richards, evidence-in-chief para 7.7 [Environment Court document 5].



having a policy as to what should eventuate if there is any such development in the future. We consider that the decision's version of policy 7.13 is more effective in achieving Objective 7 than Mr Edmonds' proposed alternative.

4.4 A possible Policy 7.14 - the importance of golf courses in the Wakatipu Basin

[81] For the appellant, Mr Edmonds proposed an additional policy, namely:

7.14 To recognise the importance of the open space pattern that is created by the inter-connections between the golf courses and other Rural General land.

He considered¹⁴⁶ that the open recreational space created by the golf courses, although not always permanent, has "more present meaning than an arbitrary line currently promoted by the Council decision". He noted¹⁴⁷ that issues around any potential relocation of the courses and their land becoming available for urban development would be subject to plan change processes and "those issues should not influence the location of the Urban Growth Boundary through the PC29 process".

[82] For the council, Mr Richards wrote about this possible policy¹⁴⁸:

Two of the golf courses lie within the Rural General Zone and the other lies within the Millbrook Resort Zone. Accordingly, Rural General Zone (and Millbrook Resort Zone) provisions would apply in these locations. Whilst the openness of the rural area outside the urban growth boundary needs to be recognised and maintained, I consider that the application of the current relevant zone provisions will ensure this. I also consider that by including this policy, undue importance would be placed on the presence of these golf courses.

[83] We conclude that policies 7.12-7.13 as proposed by Mr Edmonds would be less effective and less efficient at achieving the objectives of the plan, than those included in the Council decision. However, we consider his policy 7.14 should be included because the open space of the golf courses should be maintained and encouraged – but as part of the visual amenity landscape rather than for the reasons given by Mr Edmonds.

5. What is the more appropriate urban growth boundary for Arrow South?

5.1 The existing urban boundaries

[84] We have recorded the general agreement that while the Arrow River to the east and the hills to the north of Arrowtown are natural boundaries to urban development, the present southern boundary to Arrowtown is rather arbitrary. The question of where the southern boundary to the urban growth of Arrowtown should be is at the core of this case. The PC29 urban growth boundary on the southern end of Arrowtown is defined by the following features:

- to the east of Centennial Avenue it is defined by the existing urban area to the north of Jopp Street;

¹⁴⁶ J B Edmonds, evidence-in-chief, para 7.14 [Environment Court document 16].

¹⁴⁷ J B Edmonds, rebuttal evidence, para 7.7 [Environment Court document 16A].

¹⁴⁸ J Richards, evidence-in-chief, para 7.8 [Environment Court document 5].



- an established hawthorn hedge to the west of Centennial Avenue;
- the ridgeline to the rear of residential properties on Advance Avenue;
- the garden boundaries which mark the current extent of the built-up area on McDonnell Road¹⁴⁹.

[85] On the southwest side Mr Boffa considered that McDonnell Road is “an effective barrier to the growth of Arrowtown”¹⁵⁰, while Dr Read did not¹⁵¹. Dr Read considered the western limit of Arrowtown along McDonnell Road to be ‘more incoherent’, describing development along the ridgeline (both atop, on and below the escarpment) as like “a tide spilling over a breakwater”. With development both on the ridge, the escarpment face and the valley floor along the northern part of McDonnell Road, she considered the road was ‘neither a strong nor reliable counterbalance to development’¹⁵².

5.2 Assessment against the district-wide Landscape and Urban Growth Policies

[86] Under the district-wide landscape objectives¹⁵³ the principal policy¹⁵⁴ for visual amenity landscapes is to avoid, remedy or mitigate the adverse effects of development on them which are highly visible from public places or visible from roads. A second policy allows for mitigation for loss of natural character by appropriate planting and landscaping. It is at this point that Mr Monk’s and the council’s agreement to defer the hearing of PC39 comes back to haunt them, because it is very difficult for us to assess what planting or landscaping might be appropriate in a general way in Arrow South since little evidence was given on that¹⁵⁵.

[87] Of course the landscape policy now has to be read in the light of the new urban growth policy¹⁵⁶ which requires us to take into account, bluntly, the avoidance of significant adverse effects on the landscape¹⁵⁷ of the district¹⁵⁸. In view of our finding that even low density residential (below 4,000 m² minimum lot size) development on Arrowtown Ridge would have a significant adverse effect when viewed from Tobins Track (a public road), we consider this policy is not met for that part of Arrow South which contains the Arrowtown Ridge and land to the east of it down to Centennial Avenue.

¹⁴⁹ J Richards, evidence-in-chief para 7.3 [Environment Court document 8].

¹⁵⁰ F Boffa, evidence-in-chief, para 4.4.

¹⁵¹ M Read, evidence-in-chief para 4.3 [Environment Court document 2].

¹⁵² M Read, evidence-in-chief para 5.3.4 [Environment Court document 2].

¹⁵³ Objective 4.2.1.

¹⁵⁴ Policy (4.2.5) 4 QLDC District Plan (Oct 2010) pp 4-10.

¹⁵⁵ We have an “indicative development concept” plan produced by F Boffa [Environment Court document 3].

¹⁵⁶ Policy (4.9.3) 7.6.3 [P-C30 p X-1].

¹⁵⁷ This singular word will prove an embarrassment in future: what landscape? or does it mean ‘landscape type’? “Lakes and ... rivers” are plural in the policy, so why not “landscapes”.

¹⁵⁸ Policy 7.6.2 [P-C30 p X-1].



[88] The most relevant district-wide urban growth policies in Part 4.9 of the district plan are:

- Objective (4.9.3) 1 policy 1.1¹⁵⁹ - we find that the appellant's proposal would on balance have an adverse effect on the landscape and visual amenity of the area, contrary to this objective and policy;
- Objective (4.9.3) 2 policy 2.1¹⁶⁰ - this objective is enabling of people's and communities' provision for their social, cultural and economic well-being. The people and communities that are the beneficiaries of this objective are the present and future residents. Of course the present and future residents do not necessarily have the same interests. Current residents – judging from the position of the Arrowtown Residents Association – want no extension in the urban growth boundary. Potential future residents might like such an extension into Arrow South because it increases the chances of the potential becoming reality.
- Objective (4.9.3) 3 policies 3.1 – 3.4¹⁶¹. We find that the needs for residential growth within the district are well-catered for without any expansion in Arrowtown. Further, the development as supported by the landscape witnesses for the appellant would be of medium or low density (in the Arrowtown context) and thus is neutral in respect of policy 3.3.

[89] We turn to the new district-wide urban development policies (added by PC30) implementing objective (4.9.3) 7.

*A Distinct and Defendable urban edge*¹⁶²

[90] Policy 7.3 is an enabling policy that uses urban growth boundaries to establish urban edges that are distinct and defendable. It was agreed that the current southern boundary to Arrowtown is arbitrary, but that is not the same as indistinct. The present boundary is distinct as it rises to the ridge from both McDonnell Road in the west and Centennial Avenue in the east. While this is spoilt somewhat by the development extending further south on the ridge itself, overall the PC29 proposed boundary is distinct. The fact that it is arbitrary does raise some questions as to how defendable it is.

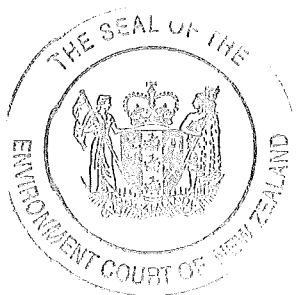
[91] The appellant's proposed southern boundary may be somewhat less distinct, given its dogleg nature, but this may be hidden by mature trees if they are retained. It may be more defendable while, and where, it butts against the Arrowtown Golf Club. However this comes at the expense of a considerable extension of the urban boundary being delineated by McDonnell Road and Centennial Avenue which is less defendable than it might be. The defendability is also dependant on the continuation of the current

¹⁵⁹ QLDC district plan, p 4-52.

¹⁶⁰ QLDC district plan, p 4-53.

¹⁶¹ QLDC district plan, p 4-54.

¹⁶² Policy (4.9.3) 7.3 [added by PC30].



land use of the land to the south as a golf club, which has no formal protection. Overall, we find that the appellant's proposed boundary offers little improvement in terms of policy 7.3.

*Extending the urban growth boundary to provide for future development (where appropriate)*¹⁶³

[92] This policy is really only mechanistic: it provides for extending urban growth boundaries to provide for (relevantly) future urban development "where appropriate". It does not in itself say what is appropriate; the other policies do that.

*To avoid sporadic and/or ad hoc urban development in the rural area*¹⁶⁴

[93] We consider "residential" zone densities along the entire frontages of either or both of McDonnell Road and Centennial Avenue would be sporadic if designed with "[v]ariation in separation distances" as suggested by Mr Boffa¹⁶⁵, and if continuous along the roads would offend the district-wide policy against sprawl¹⁶⁶.

*Matters to be taken into account*¹⁶⁷

[94] Some of these matters are either neutral or in favour of moving the urban growth boundary as sought by the appellant, e.g. there is no real natural hazard on the land (there may be minor flooding potential); and there is no substantiated allegation of disruption of infrastructure. The extension of the urban growth boundary might even lead to increased use of the roads which traffic engineers (not residents) tend to see as a benefit. No reverse sensitivity issues were raised.

*Efficient use of land within the urban growth boundary*¹⁶⁸

[95] This is a rezoning issue if the urban growth boundary is changed, and is relevant here only minimally, i.e. to the extent the urban growth boundary should not be maintained in, or moved to, an inefficient point. Any urban growth boundary that follows a road is arguably inefficient from an energy and infrastructure point of view because only one side of the road is using the services. In our view that is a factor against increasing development down one side of either or both of McDonnell Road and/or Centennial Avenue.

*Recognition of existing land use patterns, natural features, the landscape and heritage values*¹⁶⁹

[96] This is a crucial policy. We accept that in general a golf course can make for an aesthetic transition from rural to urban activities. However, that in itself says little about its suitability as a defensible urban boundary. Without some form of protection of the

¹⁶³ Policy (4.9.3) 7.4 [added by PC30].

¹⁶⁴ Policy (4.9.3) 7.5 [PC30].

¹⁶⁵ F Boffa, evidence-in-chief para 6.15 [Environment Court document 3].

¹⁶⁶ Policy (4.2.5) 7 [ODP p 4-11].

¹⁶⁷ Policy (4.9.3) 7.6 [PC30].

¹⁶⁸ Policy 7.7.

¹⁶⁹ Policy 7.8.



use of the land for the recreational activity, there is not much about them that makes them significantly less arbitrary than the existing boundary.

[97] While in this case the golf courses do have a measure of protection against being developed – especially around the margins – with houses, they are also, as we have said, part of the visual amenity landscape on which the district-wide policies require us to avoid, remedy, or mitigate the adverse effects of subdivision and development. The appellant’s witnesses suggested the roads (especially McDonnell Road)¹⁷⁰ and the golf course as a defensible boundary. We find that the escarpment, the stream and the farm land between the stream and the road make a more coherent and defensible boundary. That is because the escarpment and stream need to be treated “thoughtfully” or “carefully”¹⁷¹, as Mr Boffa acknowledged, and so any residential (as opposed to low-density clustered) development southwest of the stream would:

- be isolated from the rest of Arrowtown;
- be sprawl along McDonnell Road;
- reduce the heritage value of the Muter homestead.

[98] We consider that the appellant’s proposal to rely on an existing land use pattern – the roads and golf courses – to establish a buffer to the remainder of the visual amenity landscape, is inappropriate for three reasons. First and most fundamentally it is simply too great an extension of urban Arrowtown into the Wakatipu Basin’s visual amenity landscape; second it ignores the three topographical and physical features which, in combination, could form a more legible and defensible boundary to the urban area. Third, the golf courses could prove to be poor boundaries themselves. There is a trend around New Zealand for golf courses to develop a ring of houses around their edges¹⁷². Mr Edmonds saw the Hills Course as developing “like Millbrook”, and there is a proposal by the council to build affordable housing between that part of the Arrowtown Golf Course which it owns and the Arrow River. Extending the urban growth boundary as sought might encourage and exacerbate these trends.

[99] Mr Boffa acknowledged the “sensitivity of the McDonnell Road area”¹⁷³, and stated that development in this location “... would need to respect the creek and ridge”¹⁷⁴. He considered “... these aspects could be well catered for within a sensitive design framework”¹⁷⁵. However his attached “indicative development concept” shows no sensitivity to the escarpment or creek. Indeed his “development areas” straddle the creek. Nor do they have any regard to the two small hillocks that give character to the McDonnell Road frontage of Arrow South.

¹⁷⁰ F Boffa, evidence-in-chief para 4.4 [Environment Court document 3].

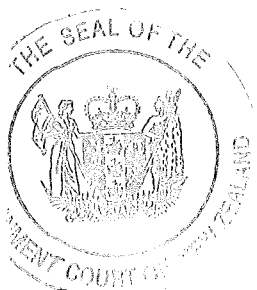
¹⁷¹ F Boffa, evidence-in-chief para 5.6 [Environment Court document 3].

¹⁷² Transcript p 166.

¹⁷³ F Boffa, evidence-in-chief, para 6.7 [Environment Court document 3].

¹⁷⁴ F Boffa, evidence-in-chief para 6.8 [Environment Court document 3].

¹⁷⁵ F Boffa, evidence-in-chief para 6.8 [Environment Court document 3].



[100] The difficulty with the western side of the Arrowtown Ridge is that if the creek and escarpment are treated as related parts of the landscape, there is really no room for housing between them; with the result that if the urban growth boundary is moved to follow McDonnell Road, any housing to the south and west of the ridge and the creek would be isolated from the rest of Arrowtown. In our view the logic of the landscape dictates that the escarpment and creek form the natural southwestern edge to Arrowtown. Another advantage of confining most development to the northeast of the stream is that the Muter homestead retains its rural setting east of the creek.

[101] Along Centennial Avenue, the situation is different. The Doctor's House on the other hand already reads as part of the golf course enclave so we have fewer concerns about its heritage values being lost.

*The Arrowtown urban growth policies*¹⁷⁶

[102] We do not consider policy 7.12.1 is relevant since this proceeding is about where the urban growth boundary should be.

[103] Policy 7.12.2 requires us to limit the growth of Arrowtown so that its character and identity, and setting with the landscape is preserved or enhanced. We accept the evidence of Mr Richards¹⁷⁷ that the character and setting of Arrowtown are better preserved if the urban growth boundary stays as in the council decision subject to a small adjustment on the McDonnell Road frontage.

[104] Policy 7.13 requires us to ensure that there is a designed urban edge with landscaped gateways. We do not consider McDonnell Road will ever be much of a gateway rather than a boundary (which should not be extended). Centennial Avenue provides some sort of gateway at present. We are somewhat puzzled by the policy's requirement that the feeling of an entrance must be within the urban growth boundary. In our view it could be at a zone boundary or indeed outside it.

*The golf courses*¹⁷⁸

[105] This policy is only marginally relevant. However it reinforces the care that needs to be taken with development adjacent to the golf courses (and we refer to the recreation policies discussed under the next heading.

5.3 The other district-wide policies

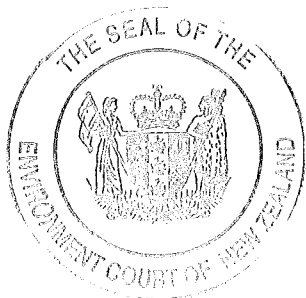
[106] The energy policies require compact urban forms to reduce the length of and need for vehicle trips¹⁷⁹. We accept that Arrowtown is at present a relatively compact community, and that a small extension along McDonnell Road will maintain that compact shape.

¹⁷⁶ Policies 7.12 and 7.13.

¹⁷⁷ J Richards, evidence-in-chief [Environment Court document 8].

¹⁷⁸ Policy 7.14.

¹⁷⁹ Objective (4.5.3) 1.1 and 1.2 [ODP p 4-29].



[107] The open space and recreation policies¹⁸⁰ encourage provision of access (at least on foot (or bike) along the stream on the Arrow South land. We also need to bear in mind the objective¹⁸¹ that the adverse effects on recreational areas (such as the golf courses) from residential growth should be avoided, remedied, or mitigated. This strengthens the theme that it is not the golf courses which should be the buffer between urban Arrowtown and the Rural General Zone (as Mr Boffa saw it), but the Arrow South land itself between Arrowtown and the golf courses.

5.4 The Council decision and Part 2 of the RMA

[108] While we have not explicitly referred to it, we have had regard to the decision of the Council - indeed we largely agree with it. That is not to say we totally disagree with Mr Boffa that some carefully designed development would in fact improve the southern entrances to Arrowtown. Where we disagree is in the intensity of the development, and in the reliance on the road and the golf courses as buffers. We consider it is the Arrow South land itself which should provide the buffer. Consequently the intensity of development should be less than Mr Boffa contemplates, and in fact, on average¹⁸², should not be at residential densities at all.

[109] Mr Boffa wrote that¹⁸³:

While in some situations it may be desirable to have a “hard edge” between urban and rural, I would have thought in this instance that there is merit [in] seeking to achieve a feathered edge, or some sort of transition between the two areas. Golf courses with their carefully managed landscapes can contribute to a softening of the transition between rural and urban. Given that the golf courses exist and are essentially seen as an integral part of the local landscape, I would have expected this to have been exploited and used as the logical buffer and transition between urban and rural activities. Similarly, other landscape techniques and designs can equally contribute and play their part in enhancing this experience.

One of our principal concerns is that in fact Mr Boffa’s proposed concept would introduce a too-hard urban edge against – and sprawl along - the golf courses and the roads because it would introduce residential densities along Centennial Avenue and McDonnell Road. With much lesser rural living (or perhaps rural residential) densities his concept might work. But that would be outside the urban growth boundary and so is not an issue for this decision.

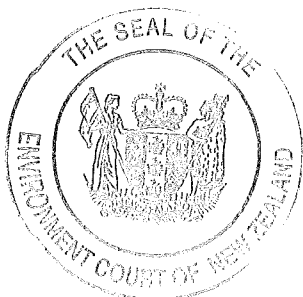
[110] We consider that the “peoples and communities” that Part 2 of the Act is directed at is the current community of Arrowtown, that of the wider Wakatipu Basin, and those who become part of these communities in the future. However, as discussed above, sustainability does not require that there be on-going population growth in Arrowtown. Maintaining the present urban boundary will more likely sustain the natural and physical

¹⁸⁰ Objective (4.4.3) 4 [ODP p 4-26].

¹⁸¹ Objective (4.4.3) 1 [ODP p 4-24].

¹⁸² We see a potential exception at the southern foot of the Arrowtown Ridge.

¹⁸³ F Boffa, evidence-in-chief para 8.9 [Environment Court document 3].



resources of Arrowtown¹⁸⁴, particularly the character and landscape setting of the town. By preserving the rural environment of the heritage sites on the appellant's land s 6 (f) is provided for. Maintaining the landscape setting and character of Arrowtown maintains the quality of the environment¹⁸⁵ and has regard to the finite characteristic of the landscape (natural) and the character (physical) resources of Arrowtown¹⁸⁶. Beyond these matters we consider all other Part 2 matters are subsumed in the objectives and policies of the district plan.

5.5 Conclusion

[111] Mr Boffa stated¹⁸⁷ that he "... agree[d] that a special zone with its own concept or structure plan is appropriate here, and that the district-wide residential zone provisions are unlikely to provide for a sensitive response or one that I could fully support". We accept and agree with that evidence. However, Mr Boffa also contemplated¹⁸⁸ higher densities on the ridge top, and development to medium densities¹⁸⁹ along McDonnell Road albeit in clusters¹⁹⁰. As we have stated, we do not consider it is appropriate to have residential densities on most of Arrow South.

[112] After carefully weighing all the relevant matters including the undoubted positive effects of the appellant's proposal, we conclude that neither the council's nor the appellant's option is preferable but something in-between, although closer to the council's view. Overall, we find that the PC29 urban boundary better represents sustainable development than that proposed by the appellant with one relatively small exception at the northwestern end of Arrow South being an extension of the McDonnell Road urban area.

[113] Consequently the only urban growth boundary change relates to a small area¹⁹¹ in the northwestern corner of Arrow South, adjacent to McDonnell Road and northwest of the creek. We recall Ms Mellsop's views in her report attached to Dr Read's evidence¹⁹² on the "sharp boundary between existing urban development and the open escarpment" above McDonnell Road, and about long term management of weeds on the escarpment. We also recall the various comments made in court about the quality of urban boundary on McDonnell Road, and those relating to the quality of the creek running through the site below the escarpment. We find that development would be appropriate between McDonnell Road and the scarp at the northern end of the Arrow South land if designed so as to:

¹⁸⁴ RMA s 5 (2) (a).

¹⁸⁵ RMA s 7(f).

¹⁸⁶ RMA s 7(g).

¹⁸⁷ F Boffa, evidence-in-chief para 7.2 [Environment Court document 3].

¹⁸⁸ F Boffa, evidence-in-chief paras 6.5 and 7.6 (Area 2) [Environment Court document 3].

¹⁸⁹ F Boffa, evidence-in-chief para 7.6 (Area 3) [Environment Court document 3].

¹⁹⁰ F Boffa, evidence-in-chief para 6.15 [Environment Court document 3].

¹⁹¹ Part of the "north" subarea in Mr Boffa's Area 3.

¹⁹² M Read, evidence-in-chief Appendix 1 [Environment Court document 2].



- provide for no buildings on the escarpment face¹⁹³;
- fence off the waterway (minimum setback from the stream on the northwest side should be 15 metres) on both sides to the southern limit of the current title;
- plant the scarp and remove or suppress weeds;
- minimise access off the road by use of a shared accessway;
- include tree planting to soften the domestication of the landscape;
- provide foot and bike access along the stream and up the escarpment face.

We regard these matters as important – the urban growth boundary should not be moved unless they can be ensured.

[114] We accept of course that such foot and bike access will, in the short-term, “go nowhere” but anticipate in the long-term that there will be some subdivision and housing on the balance of the Arrow South land (but not at residential densities).

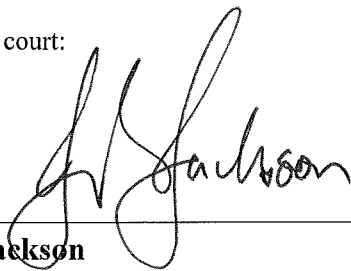
[115] We attach marked “B” a map showing approximately the extent of the urban growth boundary extension marked pink. Where there is a conflict between the map and the text of these reasons the latter prevails.

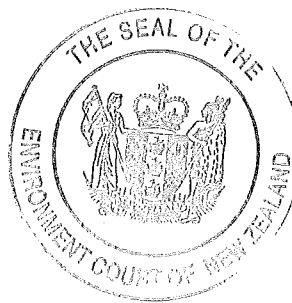
[116] Finally, we reiterate (with PC39 in mind) that a soft edge to the southern boundary of Arrowtown does not have to be within the urban growth boundary. Indeed, given the rather wide landscape provisions and high densities of the Residential Zones it seems preferable to us that most of the land within Arrow South be outside the urban growth boundary. As hinted above, at least one of the court contemplates that some subdivision and development (but not at residential or urban scales) might be desirable in the remainder of Arrow South, but is unsure as to whether that should be under the current Rural General rules, or whether it would be better as a Rural Living or Rural Residential or other special (Rural) zone or a combination of those.

6. Costs

[117] Due to non-compliance with prehearing order(s), costs issues are likely to be complex in this proceeding, so we will give an extended time for the making of any application and for any response.

For the court:


J R Jackson
Environment Judge

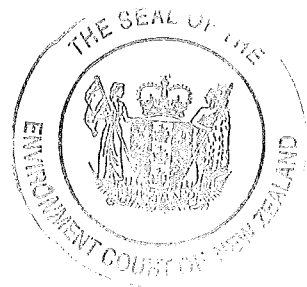


¹⁹³ F Boffa, evidence-in-chief para 7.5 [Environment Court document 3].

Attachments:

- A: Arrow South – Site Analysis – Physical Landscape.
- B: Map showing approximate indicative extent of urban growth boundary hatched pink¹⁹⁴.

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¹⁹⁴ This map is originally Mr B Espie's "Site Analysis – Human Influence Map". [Environment Court document 4].