BEFORE THE ENVIRONMENT COURT

Decision No. [2014] NZEnvC 117

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal pursuant to clause 14 of the First Schedule to the Act
BETWEEN	COOK ADAM TRUSTEES LIMITED & R MONK
	(ENV-2011-CHC-006)
	Appellants
AND	QUEENSTOWN LAKES DISTRICT COUNCIL
	Respondent

Court:	Environment Judge J R Jackson Environment Commissioner J R Mills Environment Commissioner I Buchanan
Hearing:	At Queenstown on 15 and 16 April 2014
Appearances:	Mr I M Gordon for the appellants Mr M A Ray for the Queenstown Lakes District Council Mr John M Hanan for himself and for Ms Judith M Hanan (section 274 parties) Dame Elizabeth Hanan for herself and for Mr D Hanan (section 274 parties) Mrs V Couper for the Arrowtown Village Association (section 274 party)
Date of Decision:	27 May 2014.
Date of Issue:	27 May 2014.

DECISION

A: Subject to Orders B and C, under section 290 of the Resource Management Act 1991, the Environment Court directs that the appellant amend Plan Change 39 to the Queenstown Lakes District Plan by:

(1) amending policy (12.X.4) 2.2 to read along these lines:

To ensure that public trails are established and formed:

- to and along the stream, on its eastern side;
- connecting the stream trail with Advance Terrace, and with Centennial Avenue around the toe of the ridge, and to the Arrowtown golf course to the south; and
- where possible, using existing formed trails on the steeper faces.

(2) lodging an amended Structure Plan with:

(a) proposed Lots 7, 13 and 22 deleted;
(b) the location and names of adjacent roads and streets identified;
(c) amended and additional trails as required by the attached Reasons;

(3) lodging amended rules which
(a) provide for private open space ("POS") management plans in a way which is *intra vires*;
(b) provide for the Open Space Management plans;
(c) keep POS-P2 and POS-P3 free of houses and other buildings and structures including fences.

B: Under section 293 of the Act, the Environment Court directs the Queenstown Lakes District Council to consult with the parties and then, if it considers it has sufficient certainty that future subdivision of the appellant's land beyond that shown in attachment "B", as further amended, is precluded for at least one generation, to lodge an amended Structure Plan (which may include Lots 7, 13 and 22).

C: Leave is reserved for the parties to make submissions on the lawfulness of the Management Plan rules if notice of that intention is given within 10 working days of issue of this decision.

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

REASONS

Introduction

The controversy over development to the south of Arrowtown

[1] For decades there has been some community concern over the spread of Arrowtown into the Wakatipu Basin within the Queenstown Lakes District. The village has steadily expanded over and along the rocky ridge separating the Arrow River from the wider Wakatipu Basin. There are now houses at the northern end of McDonnell Road and along most of the crest of the ridge which form the current southern edge to the built form of Arrowtown.

[2] Beyond the existing built edges of the south side of Arrowtown, there are 30 hectares (approximately) of rural land which contain some smaller sections with houses on them. That area is shown (approximately) as the subject site ("Arrowsouth") on the attached plan[1] marked "A". The proposed Arrowsouth Zone applies to the nine certificates of title which include the 30 hectares. Most of the proposed zone is contained in two (adjoining) titles owned respectively by the Adamson Family Ltd and the appellant Cook Adam Trustees Ltd and Mr Monk. The Cook Adam/Monk land contains the existing historic Muter Homestead. The other seven titles are separately owned small lifestyle lots that contain existing dwellings.

[3] The Arrowsouth land was the subject of a recent decision of the Environment Court locating the southern urban growth boundary ("UGB") for Arrowtown. In *Monk v Queenstown Lakes District Council*[2] ("the *Monk* decision") the court decided that the UGB should move south into the site but only a relatively small distance along McDonnell Road — not the full distance and extent sought by the appellant in that proceeding.

[4] The issues in this proceeding are:

(1) whether some rural living type development should be allowed in the Arrowsouth land?
(2) if so, whether the Structure Plan with its implications for the pattern and yield of subdivision (see the "Indicative Subdivision Layout Plan")[3] are appropriate for Arrowsouth, and in particular whether Lots 7, 13 and 22 provide over-dense development?
(3) how the open space areas should be managed?
(4) are the proposed objectives, policies and rules appropriate?

1 B Espie, evidence 30 August 2013 Figure 1 [Environment Court document 10].
2 *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12.
3 Indicative Subdivision Layout Plan 21.03.14 [Exhibit 10.1].

The site

[5] We adopt the description of Arrowsouth given in the *Monk* decision[4]. To recap briefly, the site consists of two flat terraces (at different heights) separated by a ridge of schist rock. The western part of the site — the McDonnell terrace — has a stream running through it from northwest to south. The stream runs under McDonnell Road from the west and then flows out through the Arrowtown Golf Course to the south. There is a steep escarpment on the northeastern side of the stream which rises to the ridge top for the northern three-quarters of the zone and to the Centennial terrace for the southern quarter of the zone. This terrace in fact folds around the southern end of the ridge so that all the land along Centennial Road is approximately level.

[6] There are several houses in an enclave at the southeastern corner of the property and two on the ridge crest adjacent to the development on Advance Terrace[5].

[7] The proposed zone includes areas of ecological and landscape significance. These are mainly contained within the two larger, undeveloped, sites. These values have not been specifically protected under the Rural General zoning and the land has been traditionally farmed with little apparent regard to water quality. The rezoning process has, with some tentative suggestions from the court in the *Monk* decision, made suggestions to enhance these areas, provide public access, and generally to maintain a visual amenity landscape.

[8] Ms D Palmer, the ecologist called by the appellant, described the vegetation of Arrowsouth as "dominated by woody weeds and pasture grasses"[6]. In particular[7]:

> The vegetation of the ridge and escarpments is dominated by browntop (*Agrostis capillaris*), broom (*Cytisus scoparius*) and hawthorn (*Crataegus monogyna*) but also contains briar (*Rubus rubiginosa*) and gooseberry (*Ribes uva-crispa*). On the southern escarpment a few sycamore (*Acer pseudoplatanus*), larch (*Larix decidua*) and Douglas fir (*Pseudotsuga menziesii*) were also present. The north-western escarpment has Rowan (*Sorbus hupehensis*(?)) and mulberry (*Morus* spp.) [and] *Prunus* saplings some of which may have been planted; the latter two are deciduous and provide a colourful autumn display.

[9] The dry pasture in the southwest of the Arrowsouth Zone is dominated by browntop and common pasture weeds and herbs; elsewhere, higher soil moisture supports Yorkshire fog (*Holcus lanatus*), cocksfoot (*Dactylis glomerata*), along with browntop, yarrow, clover (*Trifolium repens*), curled dock (*Rumex crispus*) and common pasture herbs. Woody weeds are browsed by cattle[8].

---

4 [2013] NZEnvC 12.
5 This is the name of a road, not of a geological feature.
6 D Palmer, evidence-in-chief, Attachment 1 para 27 [Environment Court document 9].
7 D Palmer, evidence-in-chief, Attachment 1 para 32 [Environment Court document 9].
8 D Palmer, evidence-in-chief, Attachment 1: para 35 [Environment Court document 9].

[10] The stream in Arrowsouth runs through minor wetlands at the upstream end of the proposed zone and through a larger wetland at the southern end. It is extensively pugged by stock along its margins[9]. The stream contains "very limited diversity with introduced watercress (*Rorippa microphylla*), starwort (*Callitriche stagnalis*), floating sweetgrass (*Glyceria fluitans*) creeping buttercups (*Ranunculus* sp.), moss, filamentous algae and pasture species dominating the stream vegetation"[10].

[11] The only remaining indigenous vegetation (apart from isolated plants) is a *Carex* sedgeland (*Carex secta, C coriacea* and *Juncus effusus*) which remains in the southern portion where the stream has been released from under the canopy of willows[11]. *Juncus effusus* (leafless rush) is also found "within the small spring fed seepage near the southern boundary in the area identified as RL-6, east of the pond"[12].

[12] Apart from the ridge there are two schist outcrops. The southern outcrop hosts lichen, at least two moss species including wire moss (*Polystichum juniperinum*)[13] as well as introduced grass and herb species common in dry pastures. The western outcrops adjacent to McDonnell Road are obscured by broom and gorse (*Ulex europaeus*) but also host moss and lichen.

The history of PC39

[13] PC39 was initiated in September 2009 when the appellants requested the council to make a plan change (creating a "special zone" for Arrowsouth) to the operative district plan under clause 21 of the First Schedule to the RMA. The council accepted the request as Plan Change 39 on 24 November 2009.

[14] The plan change was duly notified by the council. The public notification by the council stated that the purpose of the plan change was:

> To rezone approximately 30 hectares of Rural General zoned land, located to the south of Arrowtown, to a new residential Arrowsouth Special zone. The development will be located between Centennial Avenue and McDonnell Road, will adjoin the Arrowtown Low Density Residential Zone along its northern boundary and the Arrowtown Golf Course to its south. The proposed changes to the Operative Queenstown Lakes District Plan will include new provisions within Section 12 that will provide for a special residential zone and provisions for a small commercial village precinct.

[15] PC39 was put in jeopardy by the decision in *Monk*[14]. That amended some of the relevant Part 4 (district-wide) objectives and policies which affect urban growth around Arrowtown. These additional policies read (relevantly)[15]:

---

9 D Palmer, evidence-in-chief, Attachment 1 figure 9 [Environment Court document 9].
10 D Palmer, evidence-in-chief, Attachment 1 para 31 [Environment Court document 9].
11 D Palmer, evidence-in-chief, Attachment 1 para 29 [Environment Court document 9].
12 D Palmer, evidence-in-chief, Attachment 1 para 30 [Environment Court document 9].
13 D Palmer, evidence-in-chief, Attachment 1 para 36 [Environment Court document 9].
14 *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12.
15 PC30 p X-1 as amended by *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12 (and subject to final confirmation by the court after correction of typographical mistakes).

(4.9.3) 7.12 To limit the growth of Arrowtown so that:

7.12.1 adverse effects of development outside the Arrowtown Urban Growth Boundary are avoided;

7.12.2 the character and identity of the settlement, and its setting within the landscape is preserved or enhanced.

(4.9.3) 7.13 To ensure that the development within the Arrowtown Urban Growth 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.

(4.9.3) 7.14 To recognise the importance of the open space pattern that is created by the interconnections between the golf course and other Rural General land.

[16] Because the urban growth boundary as settled in *Monk* excluded most of Arrowsouth from residential development, the new urban growth objectives and policies in Chapter 4 of the district plan posed difficulties for the appellants in this appeal on their PC39. Faced with those difficulties they sought to amend the PC39's special zone so that:

- inside the new UGB will be urban density housing; and
- outside the UGB is a type of rural living zone so as to not to offend Chapter 4.9.3 of the district plan.

The appellants put forward amended objectives, policies and rules and an alternative Structure Plan for the area.

[17] In a procedural decision[16] in this proceeding dated 10 July 2013 the court declared that the amended application — seeking a rural-residential type zoning[17] — with a much reduced intensity of residential development was within jurisdiction.

The matters to be considered

[18] We adopt the tests set out in the *Monk* decision[18] with one qualification as a result of the Supreme Court's decision in *Environmental Defence Society Inc v The New*

16 Order A of [2013] NZEnvC 156.

17 Albeit to come under Section 12 (Special Zones) rather than Section 8 (Rural Living Areas) of the Queenstown Lakes District Plan.

18 *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12 at [13] to [14].

Zealand King Salmon Co Ltd[19]. Because this is a plan change it now seems that resort should be had to Part 2 of the Act only if there is a problem with any of the statutory documents we have to consider. As the Supreme Court stated in that decision (about the NZCPS, rather than a district plan)[20]:

> ... it is difficult to see that resort to pt 2 is either necessary or helpful in order to interpret the policies, or the NZCPS more generally, absent any allegation of invalidity, incomplete coverage or uncertainty of meaning. The notion that decision-makers are entitled to decline to implement aspects of the NZCPS if they consider that appropriate in the circumstances does not fit readily into the hierarchical scheme of the RMA.

[19] In this case the relevant statutory instruments are, in descending order in the hierarchy:

- The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ("*NES – Soil*")[21] and
- The National Policy Statement for Freshwater Management ("*NPS – Freshwater*") (1 July 2011);
- The Regional Policy Statement for Otago ("*the RPS*");
- The Otago Regional Plan: Water ("*the ORP*");
- The Queenstown Lakes District Plan ("*the district plan*").

The national documents

[20] No issue was raised in respect of the *NEC – Soil*. In the *NPS – Freshwater* there are four objectives including (most relevantly) an objective[22] to maintain or improve freshwater while:

> (a) protecting the quality of outstanding freshwater bodies
> (b) protecting the significant values of wetlands and
> (c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

The regional documents

[21] At the next tier down in the statutory hierarchy there are two relevant Regional planning documents. The RPS was made operative on 1 October 1998. The relevant policies are:

> Land (Chapter 5)
> 5.4.2 To avoid, remedy or mitigate degradation of Otago's natural and physical resources resulting from activities utilising the land resource.

---

19 *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.
20 *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38 at [90].
21 Contained in the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
22 Objective A2 [*NPS – Freshwater*].

5.4.4 To ensure that public access opportunities exist in respect of activities utilising Otago's natural and physical land features.

Water (Chapter 6)

...

6.4.4 To maintain and enhance the ecological, intrinsic, amenity and cultural values of Otago's water resources.

6.4.5 To avoid, remedy or mitigate degradation of water resources resulting from the use, development or protection of the beds and banks of Otago's water bodies and of adjacent land areas.

6.4.7 To maintain and enhance public access to and along the margins of Otago's water bodies.

Built Environment (Chapter 9)

9.4.3 To avoid, remedy or mitigate the adverse effects of Otago's built environment on Otago's natural and physical resources.

[22] The *ORP* contains the following relevant objectives — from Chapter 7 (Water Quality) and Chapter 10 (Wetlands) respectively:

7.5.1 To maintain or enhance the quality of water in Otago's lakes and rivers so that it is suitable to support their natural and human use values and people's use of water.

...

10.3.1 To maintain or enhance the following values of Otago's remaining wetlands:

(a) Habitat for flora and fauna;
(b) Natural character;
(c) Hydrological values; and
(d) Kai Tahu cultural and spiritual beliefs, values and uses.

[23] The Regional Council incorporated the *NPS — Freshwater* into the *ORP* through Plan Change 6A. Within the proposed Arrowsouth Zone stormwater collected from the proposed Residential Activity Area and also from approximately half of the proposed dwellings within the Rural Living Activity Area would discharge to the watercourse and wetland area. The current rules in the *ORP* require that such water is treated prior to discharge.

[24] The removal of weed species is a permitted activity under the Regional Plan[23]. The formation of an accessway within seven metres of the top of the bank of the watercourse is also permitted[24]. Any alteration to the stream channel requires a discretionary consent[25].

23 Rule 13.5.1.5 [Otago Regional Plan: Water].
24 Rule 14.4.1 [Otago Regional Plan: Water].
25 Rule 13.5.3.1 [Otago Regional Plan: Water].

The district plan

[25] Finally we turn to the *district plan*. Section 4 of the plan sets out district-wide matters, including subsections that deal with:

- Natural Environment (Section 4.1);
- Landscape and Visual Amenity (Section 4.2);
- Open Space and Recreation (Section 4.4); and
- Urban Growth (Section 4.9).

[26] Particularly relevant district-wide objectives relating to the natural environment are[26] to "... preserve[e] ... the remaining natural character of the District's lakes, rivers, wetlands and their margins" and to "... manage ... the land resources of the District in such a way as to maintain and, where possible, enhance the quality and quantity of water in the lakes, rivers and wetlands". The most relevant implementing policies are[27] to maintain or enhance the natural character and nature conservation values of the beds and margins of the lakes, rivers and wetlands, and to encourage and promote the regeneration and reinstatement of indigenous ecosystems on the margins of lakes, rivers and wetlands.

[27] The most relevant district-wide policies relating to landscape and visual amenity are, first[28]:

> To ensure subdivision and/or development harmonises with local topography and ecological systems and other nature conservation values as far as possible.

Second, the policies for 'Visual Amenity Landscapes', which are[29]:

> (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.
>
> (c) To discourage linear tree planting along roads as a method of achieving (a) or (b) above.

[28] In relation to open space there is an objective requiring a level of public access to and along the district's rivers and wetlands which is adequate to provide for the

---

26 Objective 4.1.4(1) [Queenstown Lakes District Council Plan p 4-3].
27 Policy (4.1.4), 1.13 and 1.16 [Queenstown Lakes District Council Plan p 4-3].
28 Policy (4.2.5) 1 [Queenstown-Lakes District Council Plan p 4-9].
29 Policy (4.2.5) 4 [Queenstown Lakes District Council Plan p 4-10].

foreseeable recreational and leisure needs of residents and visitors to the district[30]. This is an important policy which, as we shall see, has been inefficiently implemented.

[29] We have already referred to most of the relevant (district-wide) urban growth policies being those added to Section 4.9 of the district plan by PC29. Three existing urban growth policies are also relevant[31]:

> 7.3 To enable the use of Urban Growth Boundaries to establish distinct and defendable urban edges in order to maintain a long term distinct division between urban and rural areas.
>
> ...
>
> 7.5 To avoid sporadic and/or ad hoc urban development in the rural area generally. To strongly discourage urban extensions in the rural areas beyond the Urban Growth Boundaries.
>
> ...
>
> 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.

[30] We have regard to all those matters in the following consideration. On the whole we consider all the higher level objectives and policies have been particularised in the district plan so for all practical purposes that is all we need to have regard to.

The proposed Arrowsouth Special Zone

[31] PC39 as amended proposes to insert a new subsection in Section 12 (Special Zones) in the Queenstown Lakes District Plan. In the collective opinion of the experts, PC39 is justified because while achieving the objectives and policies of the district plan as amended by PC29, there are opportunities for:

- up to 20 separate dwelling units to be developed within the Residential Activity Area;
- a total of between 28 to 30 dwelling units in the Rural Living Activity Area (including the eight existing houses).

The Structure Plan

[32] The zone uses a Structure Plan (a copy of the Arrowsouth – Structure Plan dated 21 March 2014 attached to the Joint Statement of the planning witnesses is annexed marked "B") to identify and manage the relevant resource management issues including natural features, access locations, walkways, development areas and building platform locations. The development areas include one "Residential Activity Area" and seven

30 Objective (4.4.3) 4 Esplanade Access [Queenstown Lakes District Council Plan p 4-26].
31 Policies (4.9) 7.3, 7.5 and 7.8 [Queenstown Lakes District Council Plan p 4-57].

"Rural Living Activity Areas" based on topography, existing settlement pattern and location.

[33] Other areas are defined as "open space activity areas". The proposed rules attempt to ensure that house sites are only created once the process of enhancement of an associated area of open space is commenced.

[34] We have a number of difficulties with the Structure Plan which we list later. However, for present purposes we consider that:

- adjacent roads should be identified and named;
- the open space areas should be identified as private open space — "POS" — to avoid confusion with Open Space Zones (in Part 20 of the district plan).

The Residential Activity Area

[35] The Residential Activity Area is that area within the urban growth boundary identified in the court's decision in *Monk v Queenstown Lakes District Council*[32]. The rules for the Residential Activity Area contain an enhancement plan for the escarpment, fencing and enhancement of the waterway, and public walking trails along the stream and another which provides access up to the Advance Terrace/Cotter Avenue area.

[36] There is a restriction on the number of crossing points on to McDonnell Road; and a 'roadside protection area' — that excludes building and where a comprehensive landscape plan is required for a 6m wide frontage alongside McDonnell Road.

[37] Subdivision would be controlled to a minimum freehold lot size of 600m^2; with a building height up to six metres. Bulk and location controls mirror the Low Density Living Zone. Buildings are a controlled activity to ensure the consistent use of materials and colours.

The Rural Living Activity Areas

[38] There are seven proposed Rural Living Activity Areas, two of which contain existing housing (see Attachment C to this decision for an indicative subdivision plan).

(a) RL-1 contains four proposed platforms alongside Centennial Avenue. These house sites can be created without any associated open space enhancement.
(b) RL-2 comprises the northern half of the ridge, and contains two existing houses that overlook McDonnell Road.

32 *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12.

(c) RL-3 contains the southern half of the ridge and escarpment, with two proposed house sites. Development of these two house sites is associated with POS-E2. Housing in this location is a restricted discretionary activity.

(d) RL-4 contains four house sites around the southern end of the ridge, and is associated with POS-E3.

(e) RL-5 contains the remaining developed land, with five existing houses. One of those landowners is currently in the process of subdivision, and that proposed platform has been identified on the proposed Structure Plan.

(f) RL-6 is located at McDonnell Road level in the south-west corner of the zone and occupies either side of the stream. These five proposed houses are associated with POS-W3 and the small hillock OS-E6.

(g) RL-7 is also at McDonnell Road level, and contains the existing homestead and four additional building platforms. This land is associated with OS-W2.

(h) RL-8 is an additional area comprising a further two platforms, located in between RL-7 and the Residential Activity Area, located within land owned by the Adamson Family Trust Ltd. This area is the subject of disagreement between the landscape witnesses.

[39] Particular features of the Rural Living Activity Area rules are the provisions for an enhancement plan for the escarpment and watercourse; fencing and enhancement of the waterway; and a public walking trail alongside the stream, which then provides access up the escarpment to the Advance Terrace/Cotter Avenue area. Finally, it is proposed to protect the area surrounding the rock outcrop near McDonnell Road.

[40] As for access it is a requirement that only the crossing points shown on the Structure Plan are used for vehicle access — one on Centennial Avenue and two on McDonnell Road.

[41] Building platforms have been identified for all proposed house sites (not for existing developed sites). The building platforms are relatively small (550m^2) and almost all are rectangular. To enable consideration of specific building designs, it is a restricted discretionary activity to adjust the shape of a platform. The discretion includes the extent of change from the original platform shape and position. All buildings inside building platforms require a controlled activity consent, except for RL-3 which is restricted discretionary.

[42] Alterations and extensions to existing buildings (RL-2 and RL-5) are also controlled activities.

[43] Building outside a platform is a discretionary activity, as is any farm building in the (Pastoral) Open Space Activity Area, while any other building is non-complying. In particular, any building in the Escarpment POS is a non-complying activity.

[44] The density of proposed housing is capped at about 28 residential units (including the existing houses) — any additional house is a non-complying activity.

[45] Building height is 7 metres in all but the RL-3 and RL-6 areas. In RL-3 there is a 4.5 metre height limit — to keep structures below the ridgeline and skyline, while in RL-6 two of the platforms have a reduced ground level.

Subdivision

[46] The planners intend that all subdivision is contingent upon the preparation and approval of "Open Space Management Plans"[33]. However the very brief proposed amendments[34] to Section 15 (Subdivision) of the district plan do not necessarily have that effect. In any event there are more major difficulties with the management plans which we discuss later.

Is a rural-living type development appropriate?

[47] The landscape and planning experts[35] are agreed that with suitable mitigation the land in the Arrowsouth Zone outside the urban growth boundary is suitable for rural-residential development for a limited number of houses. An important consideration is the potential ecological enhancement offered by the rezoning and development under it.

[48] The section 274 parties are concerned that any buildings in the proposed rural-residential type zoning will either urbanise Arrowsouth or lead to later urbanisation of the area. They referred to Dr Read's description of the proposal as "peri-urban". Given the history of the development of the ridge to the south of Arrowtown, their concerns are well-founded at first sight.

[49] We accept the evidence of the experts that a relatively soft edge is appropriate to Arrowtown where topographical features cannot be used. A special "rural-living" zoning allowing development under a Structure Plan would achieve that while potentially remedying the degraded stream and wetlands. However, we are also conscious that subsequent subdivision could jeopardise the desired landscape effects. For the appellant, Mr Gordon submitted that the proposed rules would preclude any harmful subsequent subdivision. Further, he advised in closing that the appellants were prepared to volunteer (in respect of their land) a limited covenant against further subdivision for 15 years. We will consider that later.

[50] Mr John Murray Hanan and Ms V Couper both stated in evidence that there was no evidence of demand for the sections so the plan change should be disallowed. The

---

33 J B Edmonds and B J Devlin "Joint Witness Statement" 1 April 2014 at 5.10 [Environment Court document 11B].

34 Proposed Arrowtown South Special Zone Provisions p 126: Attached to "Joint Witness Statement" 1 April 2014.

35 Mr B Espie for the appellant and Dr M Read for the council were the landscape experts, and Messrs J B Edmonds (for Cook Adam Trustees Ltd) and B J Devlin (for the council) were the planning experts who gave evidence.

answer is that questions of demand should be left, in the absence of relevant matters of national importance (or policy directions in a national policy statement or regional plan), to the market. We consider it is not necessary to make any findings on the issue.

[51] After weighing all the relevant matters, we adopt the almost unanimous evidence of the experts and find that a rural-living type zoning is appropriate for Arrowsouth (outside the urban growth boundary) and a Residential Living Zoning is appropriate inside the urban growth boundary (on the Adamson FT Ltd land).

Is the Structure Plan appropriate?

[52] We annex, marked "B", a copy of the proposed Structure Plan. The Structure Plan shows the residential activity and rural living activity areas described earlier. It also shows three sets of "Open Space Activity Areas" for:

- the escarpment;
- the watercourse, and
- pastoral areas.

These open space areas are split into units corresponding to existing or likely future property boundaries.

[53] Since that plan is difficult to understand, we also attach, marked "C", a copy of the "Indicative Subdivision Layout Plan"[36]. The latter also shows, rather faintly, 20 proposed building platforms[37].

The number and density of houses

[54] Read together the two plans show the likely development conceived by the experts. The only disagreement between them was that Dr Read considered that Lots 7 and 22 (and their associated building platforms) would be inappropriate and she also favoured two extra building platforms on the Adamson FT land. Mr Espie favoured the indicative subdivision plan as shown.

The Centennial terrace

[55] The Hanan family and the Arrowtown Residents Association did not agree with Dr Read, and were unhappy with Lot 13 because it filled in a gap on the Centennial Road frontage and would show as sprawl along that road.

[56] Subject to consideration of overall density, we may be prepared to allow a Lot 13 and associated building platform because this type of allotment is part of a pattern in the existing enclave (within the zone) along Centennial Avenue at the golf course end of the zone.

36 Exhibit 10.1 dated 21 March 2014.

37 The numbering appears to go from 1 to 22 but there are no longer any Lots 9 and 10. It should also be noted that Lots 13 and 22 are, as a result of re-arrangements, out of their numerical sequence.

The McDonnell Terrace

[57] The situation is rather different along McDonnell Road. Dr Read proposed two extra lots on that part of the Adamson Family Trust land which is proposed to be zoned Rural Living in order to create a soft boundary to Arrowtown. The appellant was neutral on this. The Hanan family and the ARA opposed the lots as sprawl. They have a good point especially when the district-wide policies are considered.

[58] We accept that the court contemplated a soft edge to Arrowtown in the *Monk* decision[38]. We consider it was a valid point to make about the ridge, the Centennial terrace and the southern end of Arrowsouth. In each of those locations there is no natural (topographical) limit to development especially given the existing sprawl of development along the ridge and in the southeastern corner of Arrowsouth around "the Doctor's house".

[59] However, the court's suggestions in the *Monk* decision must defer to topographical realities and to the strong district-wide objectives and policies, especially the policy[39] requiring recognition of existing land use patterns and natural features to inform the location of the urban growth boundary. It would scarcely implement that policy if the Residential Living Activity Area — which attempts to use the stream as an end to urban Arrowtown — is undermined by too soft an edge along McDonnell Road. We consider the existing pasture on the sides of the stream, with the escarpment backdrop behind together with the policy strictures against sprawl[40], mean that houses, fences and other structure should be avoided so far as possible between the Muter house and the UGB.

[60] The pastoral areas along McDonnell Road — identified as POS-P2 and POS-P3 — and the escarpment are important as background as a well-defined edge along the road. Some compromise to this is justifiable in view of the presence of the Muter homestead, but it is a matter of judgement. Too much infill between the homestead and the UGB would definitely look like sprawl. However, in our view there is a potential building platform between the rocky outcrop and the stream and we would be prepared to grant a building platform for that area, subject to special rules as to floor levels (to avoid flooding) and ecological protection of the waterway and the outcrop's structure and native flora.

Overall density

[61] Overall we consider Lots 7, 13 and 22 are three steps too far — especially if an extra lot is to be provided on Adamson Family Trust Ltd land (OS-P3) to the east of the rock outcrop (OS-E5) — and would lead to a slightly greater density than is desirable especially given uncertainties over future subdivision applications. The limited

38 [2013] NZEnvC 12 at [116].
39 Policy (4.9) 7.8 [Queenstown Lakes District Council Plan p 4-57].
40 Policy (4.2) 7 [Queenstown Lakes District Council Plan p 4-11].

covenant volunteered at the end of the hearing does not allay our concerns. The objectives and policies of the district plan are better met if proposed Lots 7, 13 and 22 (and their building platforms) are excluded from the structure plan. Accordingly those lots should be removed from the structure plan (and a further building platform added on OS-P3 below OS-E5).

[62] On the other hand, if the landowners of the Monk land were to volunteer "no further subdivision" covenants for a generation, say 25 years, then that would provide some extra benefit. There would be (much) greater certainty over that period, that Arrowtown was not going to break its urban banks again by flooding onto Arrowsouth rural living land. If the appellants were to offer that certainty to the community we consider that would assist a different balance whereby three[41] extra allotments with adverse effects are added as a tradeoff for certainty. We will reserve leave for the Council to come back to the court under section 293 of the Act on that issue if, after consultation, it receives adequate assurance that future subdivision is precluded for, say, 25 years.

Trails and accessibility

[63] One of the stated purposes[42] of the proposed zone is to "provide connection between Centennial Avenue and McDonnell Road". Another is to "... create a network of walking trails". The first is only achieved in a very roundabout way as inspections of Annexure B may show.

[64] The issues statement proposed for the Arrowsouth Special Zone states that[43]:

> The escarpment creates a topographical barrier that has inhibited easy connections between McDonnell Road and Centennial Avenue to the north of the Zone. Pedestrian/cycling connection between these roads is provided in the Structure Plan.

Neither the policies nor the Structure Plan actually accomplish that.

[65] The experts agree that an issue for the Arrowsouth Zone is how to attain "an integrated well-connected neighbourhood with good pedestrian connections and walkability"[44]. The policy suggested to achieve that is[45]:

> To ensure that a public trail is established within the Open Space Activity Areas, on a route similar to that shown on the Structure Plan.

41 Four when an allotment on OS-P3 is added.
42 Para 12.X.1 [Arrowtown South Special Zone p 1210].
43 Para 12.X.3 iii Arrowtown South Special Zone p 126].
44 Para 12.X.3 (iii) [*Arrowsouth Special Zone provisions* p 126].
45 Policy (12.X.4) 2.2 [*Arrowsouth Special Zone provisions* p 127].

We have described the route shown on the Structure Plan (Attachment "B") to this decision. In our view that is insufficient. There would not be an integrated pedestrian (and cycling) network. Indeed we consider the policy is inadequate and should be:

> To ensure that public trails are established and formed:
>
> - to and along the stream, on its eastern side;
> - connecting the stream trail with Advance Terrace, and with Centennial Avenue around the toe of the ridge; and to the Arrowtown golf course to the south; and
> - where possible, using existing formed trails on the steeper faces.

[66] A convoluted walkway is shown passing from the Residential Activity Area over [Private] Open Space Area E1. In our view that should be simplified by passing across the residential area to the northwest and then connecting as soon as practicable to the existing formed farm track which happens to have several attractive ornamental tree species beside it. The trail would then diverge from the formed track to connect with an existing right of way from the northeastern corner of the Adamson FT land.

[67] A second walkway (to be protected by easements) is proposed to follow the true left (eastern) side of the stream from where the latter enters Arrowsouth Zone after running underneath McDonnell Road, and then three-quarters of the way down the zone it would double back on itself and climb the hill at an angle to an existing right-of-way that meets Advance Terrace on the crest of the ridge.

[68] Since there are two landowners involved and there is no certainty as to timing of subdivision and development of each major piece of land, the appellant also volunteered a connecting right-of-way (easement in gross) close to its northern boundary. That would run from McDonnell Road over an existing culvert to the eastern side of the stream to connect with the streamside walk- and cycle-way.

[69] As amended, those are meritorious proposals but in our view they are still inadequate to meet the district-wide and transport policies of the district plan.

[70] There is another natural line for a (relatively) more direct connection back to Centennial Avenue. The proposed walkway runs down the stream until it meets the boundary of Lot 6 and then turns east along that boundary until it meets the escarpment when it turns through another 90° to run north and up the escarpment. The second right hand turn would be close to the northeastern corner of Lot 6. Close to that point an existing bulldozed track runs southeast up onto the Centennial Avenue terrace. A natural walkway line would be up that track around the southern toe of the ridge and would connect up with the new private road into Lots 19 to 21. It would then follow that road out to Centennial Avenue. An even more direct alternative would be to follow a boundary of Lot 15 out to the road. We consider that to meet the objectives of the special zone, a trail should be created and protected as an easement in gross.

How the Private Open Space Areas should be managed

[71] Ms Palmer concluded that[46] without the removal and control of willows, pest plants and stock, the sedgelands will not be self-sustaining and the escarpment will continue to harbor weeds and rabbits. As we have recorded, she saw the amended PC39 proposal as providing an opportunity to implement goals and objectives of the structure documents through the:

- control of pest plant infestations on the escarpment and wetlands;
- improvement and enhancement of the natural values and the life-supporting capacity of the wetlands through better management of water quality and
- reinstatement of some of the diversity lost to this site as a representative of the proportion of acutely and chronically threatened environments where indigenous vegetation is absent or degraded.

[72] Mr Espie agreed with the court that the pasture areas (POS2) between McDonnell Road and the building platforms for Lots 22[47], 1 and 2 (and 3, 4, 5) should be kept fence free, although we accept that POS-P2 may need to be divided into two so that a drive or private road into Lots 1, 2, 3 and 4 can be fenced off.

[73] Houses, fences and other structures should generally be prohibited from POS-P3. The rules should be amended to provide for those changes.

[74] Analysis of the mechanisms in the rules is deferred due to more general difficulties with PC39. For that reason this decision will need to be interim.

The proposed objectives, policies and rules

[75] The latest iteration is attached to the Joint Statement of the planning witnesses, Messrs Edmonds and Devlin dated 1 April 2014. A key component is intended to be the preparation of open space management plans. This is to be achieved by "staging" which the joint statement of the planning witnesses Messrs Edmonds and Devlin describes as follows[48]:

> The first stage to occur, prior to any development — is the approval of an 'Overarching Open Space Management Plan'. This plan creates the framework for enhancement of all of the open space Activity Areas, and includes a 'structural tree planting plan'. The approved plan (Controlled activity status) becomes the base plan against which subsequent more detailed enhancement plans within individual Activity Areas are assessed.

46 D Palmer, evidence-in-chief, Appendix 1 para [48] [Environment Court document 9].

47 If there is to be a Lot 22.

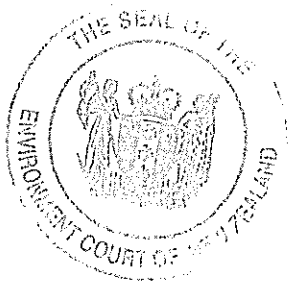
48 Joint Statement 1 April 2014 of planning witnesses para 4.9 *et ff* [Environment Court document 11B].

> The second stage is the creation of individual open space management plans, which need to be consistent with the 'Overarching Open Space Management Plan', while also providing the detail of how a particular open space area will be enhanced together with the on-going management and maintenance of that area. This step includes the creation of a body corporate or similar entity that will become responsible for the management of open space area. There may be one or more such entities, depending upon the final land ownership structure within the zone. The subdivision of land for housing is contingent upon the approval and implementation of these plans.
>
> It is at this second stage that details emerge such as the subdivision and lot boundary pattern, the detailed planting and re-vegetation plans and public walkway details.
>
> It is only after the open space plans are approved and implemented that physical works can proceed.

[76] In addition to the details listed which need attention, we see one major potential flaw. The proposals for development of the area rely on a future Overarching Open Space Management Plan ("OOSMP") and future Open Management Plans underneath that. The concept of such plans is laudable although — for reasons given earlier —they should be renamed "Private Open Space Plans". However, the mechanism for achieving them is flawed. The proposed rules[49] provide for approval of the OOSMP as a controlled activity. But a plan is not an activity, and the Environment Court (differently composed) has, it appears, recently decided this technique is illegal — see *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council*[50]. We will reserve leave for submissions on that issue, although we should indicate our preliminary view is that the court was correct in its conclusion.

[77] If the parties all accept that the proposed rules are *ultra vires* the council, then we will direct the applicant and the council to confer and for the latter then to consult with all interested parties about satisfactory rules to achieve the objectives and policies of PC39 as amended by this decision.

For the Court:



J R Jackson
Environment Judge

Attachments: A – Plan of the subject site within the Wakatipu Basin.
B – Structure Plan (21 March 2014).
C – Indicative Subdivision Plan.

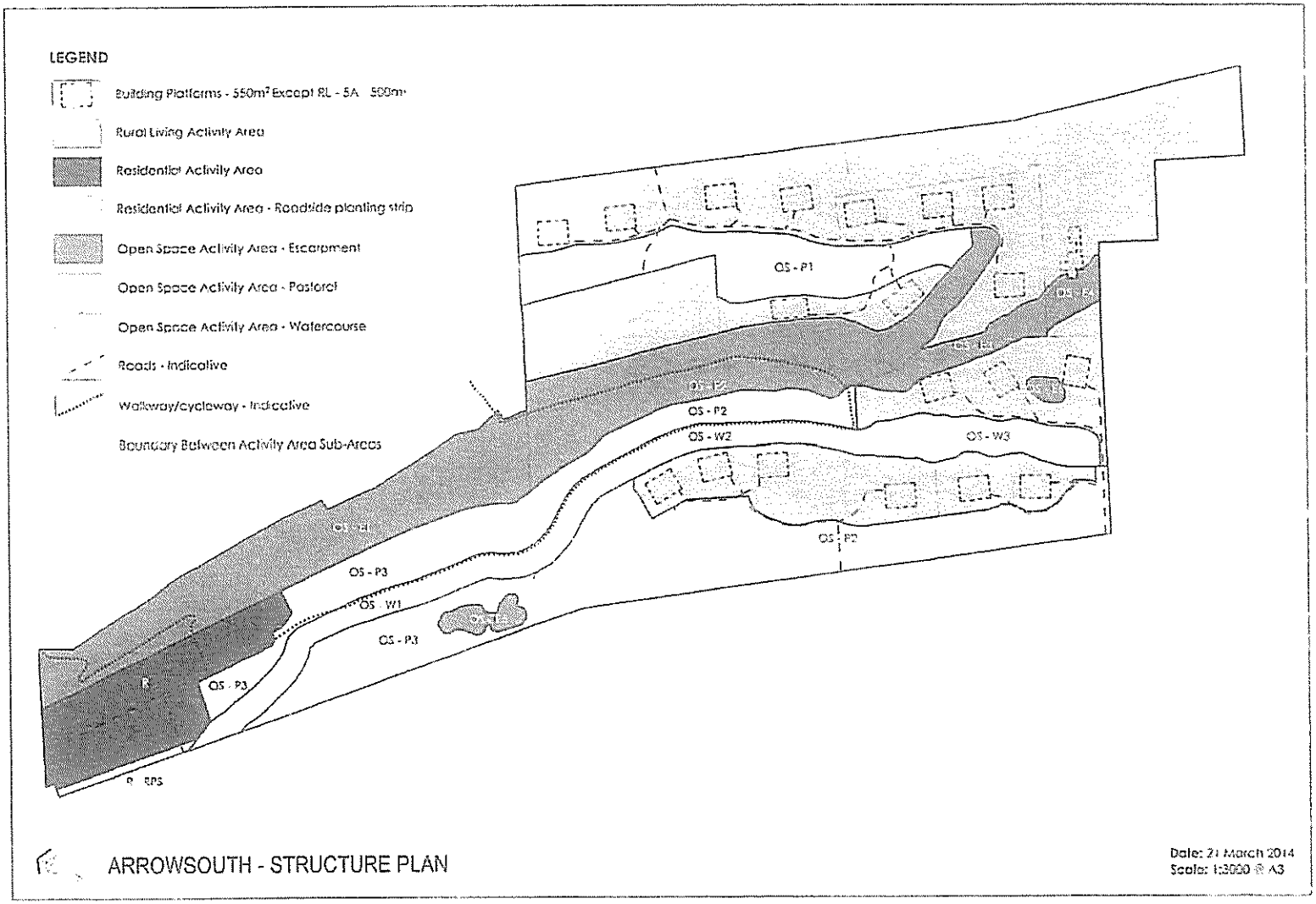
---

49 See Rule 12.X.3.2 (p 1210) in the attachment to the Joint Statement of the Planning Witnesses dated 1 April 2014.

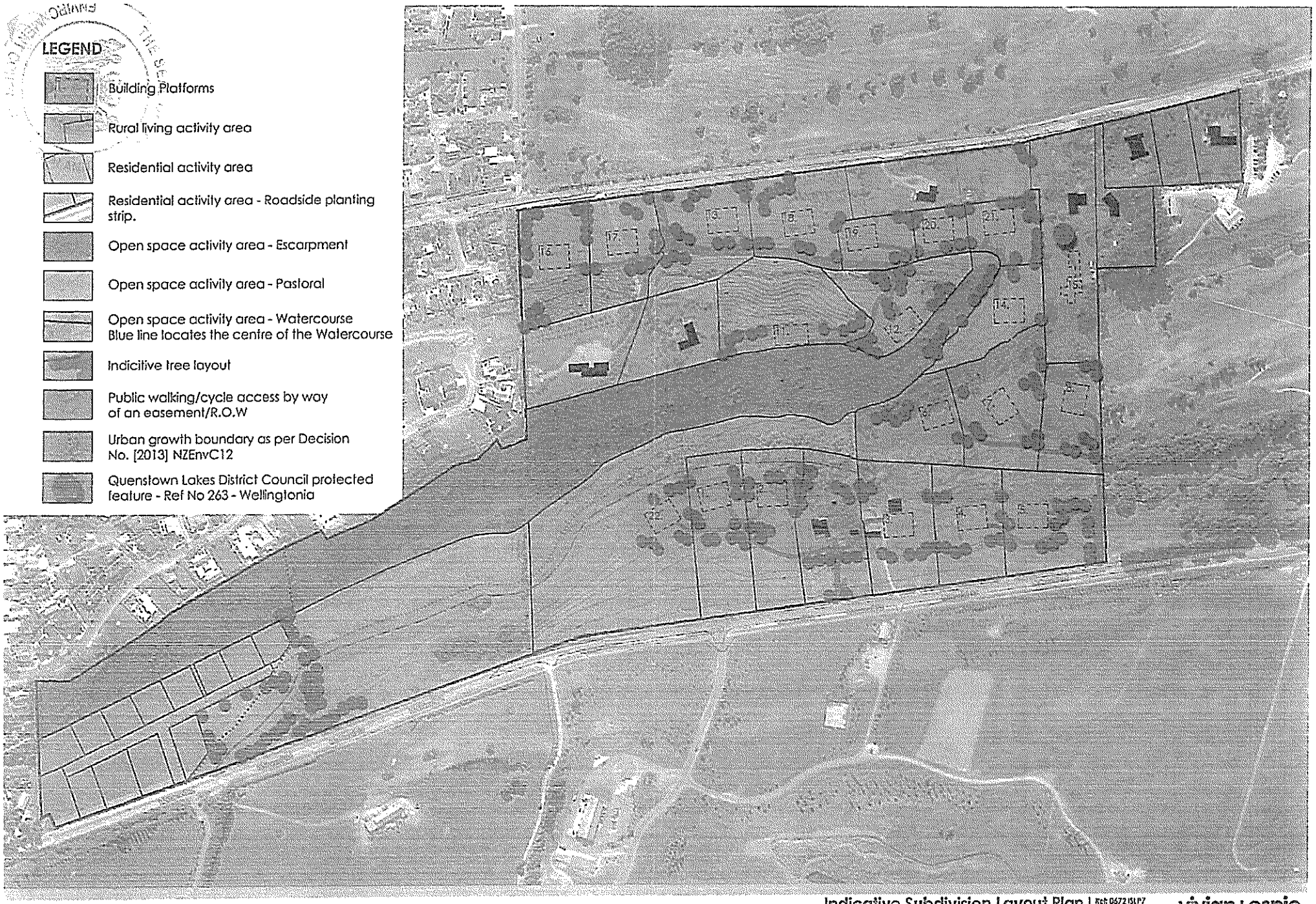
50 *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC [93].

Figure 1: Existing development and land use within the relevant part of the Wakatipu Basin. The two existing golf courses (excluding the Millbrook courses) have been shaded in green and the subject site has been shaded in red. Existing dwellings are shown as black outlines while existing but un-built consented building platforms are shown as

ARROWTOWN SOUTH SPECIAL ZONE



ATTACHMENT B



Indicative Subdivision Layout Plan
Arrowsouth

Ref: 0672ISLP7
Date: 21.03.14
Scale: 1:3000 @ A3

vivian+espie
resource management and landscape planning

ATTACHMENT C