

Before Queenstown Lakes District Council

In the matter of the Resource Management Act 1991

and **The Queenstown Lakes District Proposed District Plan –
Wakatipu Basin Hearing Stream 14**

Legal Submissions for Underdown Trust (Nee: Griffin) and Archibald

Underdown Trust (Nee: Griffin) #2580

Archibald # 2501

25 July 2018

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**anderson
lloyd.**

May it please the Panel:

Introduction

- 1 These legal submissions are presented on behalf of the Trustees of the Underdown Trust (**Underdown Trust**) and Ms Philippa Archibald (**Archibald**). These parties own neighbouring blocks of land within the area of the Wakatipu Basin known as Millbrook.
- 2 The Underdown Trust recently purchased land owned by Mr John Griffin (**Griffin**). Griffin lodged a submission on the Variation and as successor in title, and pursuant to s2A of the RMA, Underdown Trust have the ability to continue the Griffin submission.
- 3 The Archibald property is approximated 1.523ha in area and the Underdown Trust property is approximated 1.8ha in area (made up of two titles 1.67ha and 1,855m² respectively). Both properties have one residential dwelling established and access Malaghans Road via Middlerigg Lane.
- 4 The Underdown Trust property is contained within two titles as a result of a recent subdivision. There is a large lot that includes the existing dwelling and a smaller lot with an identified residential building platform. Copies of the relevant titles are attached to Mr Carey Vivian's evidence.
- 5 Griffin purchased his block of land in 1988 and Archibald purchased the adjoining piece of land in 1989. At that time these blocks of land were surrounded by farmland, Millbrook resort was being developed but had not yet opened. The first stage of Millbrook resort was officially opened in 1993.
- 6 Also at that time Griffin and the neighbouring farm owners (the Blacks) each owned half the right of way now known as Middlerigg Lane, which gave access to the Archibald and Griffin properties.
- 7 When Millbrook resort opened the Griffin and Archibald blocks were located outside Millbrook resort. In approximately 2006 Griffin and Archibald were approached by the owners of the resort (Millbrook Country Club (**MCC**)) about expansion of the resort development as MCC had purchased farmland from the Blacks.
- 8 Archibald and Griffin entered into lengthy discussions with MCC. These discussions resulted in both parties agreeing to give their support to the expansion of the resort zone around their properties in exchange for the protection of their access, privacy and MCC support of limited future development on their properties consistent with the Millbrook aesthetic. The parties entered

into comprehensive private agreements in 2007 to record the agreements reached (**Private Agreements**).

- 9 The preservation of existing access onto Malaghans Road via Middlerigg Lane was of particular importance to Griffin and Archibald for existing activities. It was agreed that there would be a land swap so that MCC owned Middlerigg Lane, on the condition existing access would be maintained for the current users (Griffin and Archibald). Those access rights are secured by a registered right of way instrument which cannot be varied, surrendered or cancelled by MCC.
- 10 The Private Agreements record that once Streamside Lane was formed by MCC, MCC will cease to use the Malaghans Road entrance to Middlerigg Lane or use any part of Middlerigg Lane as an access road/right of way to Millbrook Resort, except for service vehicles. MCC also agreed to use its best endeavours to impose this restriction on all Millbrook's contractors, all private residences at Millbrook Resort, subcontractors, owners, invitees, tradesmen or guests.
- 11 The Private Agreements also record that if the Griffin and Archibald land is used for commercial or visitor accommodation (e.g. bed and breakfast) that activity must use Middlerigg Lane and not MCC roads.
- 12 The use of Middlerigg Lane by these properties was considered in resource consent decision RM071224 and an upgrade was not considered necessary. This consent was granted to undertake the boundary adjustments to give effect to the Private Agreements. The registration of the covenants, easements, boundary adjustments and land swap pursuant to the Private Agreements was completed in 2010.

The position today

- 13 As a result of the implementation of the Private Agreements the two parcels of land (Archibald and Underdown Trust) are currently a "spot zone" of Rural General zone within the Millbrook Resort Zone (**MRZ**).
- 14 Archibald and Underdown Trust now seek inclusion of both parcels of land within the MRZ.
- 15 The Private Agreements anticipated the relief sought and there are specific provisions included that MCC will support each party if they requested inclusion within the MRZ. MCC initially lodged submissions in opposition to the re-zoning sought but has now changed its position to one of support.
- 16 Attached to these submissions is a marked up copy of the Chapter 43 provisions incorporating the Archibald and Underdown Trust land into the MRZ, as agreed with MCC.

- 17 Mr Gordon for MCC was questioned by the Panel about the fact the existing dwellings do not fit exactly within the Millbrook Design Guidelines and if the aesthetic is so critical, why is it on principle that these two parcels of land can be treated as an exception. Mr Gordon advised, in principle it is a historic issue that Millbrook has always had to live with and make the best of. He advised Millbrook has not been able to secure the Archibald and Underdown land so has to live with these properties as they are. He noted that if the properties are developed further, they will need to meet the Millbrook Design Guidelines which has been achieved by registered covenant instruments and the encumbrance.
- 18 I have been advised by Griffin and Archibald that MCC has never sought to purchase these properties and in their view they have had to live with the encroachment of MRZ in respect of their properties. They were always concerned with protecting their privacy and amenity with the expansion of the zone. The reason they seek inclusion within the zone now is because the proposed Wakatipu Basin Rural Amenity Zone (**WBRAZ**) zoning or alternative Wakatipu Basin Lifestyle Precinct (**WBLP**) zoning is entirely at odds with the properties current position and does not represent sustainable management of these properties.

Wakatipu Basin Variation

- 19 Both blocks of land (Archibald and Underdown Trust) are within the Millbrook Landscape Character Unit (**LCU**). Although the parcels are surrounded by the MRZ on all sides, both parcels of land are proposed to be zoned WBRAZ.
- 20 The Council evidence is generally supportive of the rezoning (Mr Marcus Langman and Ms Bridget Gilbert). Ms Gilbert agrees with the inclusion of the Archibald and Underdown Trust land within the MRZ subject to the full suite of MCC and QLDC design instruments that guide the MCC aesthetic.
- 21 The only change suggested by Council to the rules put forward by Mr Vivian is that the activity status for buildings is "restricted discretionary" (**RD**) rather than "controlled". Mr Langman states in this evidence:

9.4 Mr Edmonds sets out at para 36 that Millbrook, and submitters Archibald and Griffin, have reached separate agreement that, subject to certain limitations, two new Residential Activity Areas (19 & 20) would be acceptable. Mr Edmonds considers that in his view such building would need to be subject to the design guidelines that sit outside the rules. He acknowledges that there is a blurring of private agreements and public policy and sets out some bottom lines that he considers would need to be fulfilled to be included as part of the Resort Zone, including:

- (a) *use of existing formal Millbrook roads for access;*

- (b) *registration of Millbrook's standard Memorandum of Encumbrance;*
- (c) *adoption of the design guidelines; and*
- (d) *agreement to a maximum density.*

22 All of these matters have already been addressed by Private Agreements in respect of the Underdown Trust land including the registration of a memorandum of encumbrance. I understand that Mr Edmonds was not aware of this before preparing his evidence.

23 The requirement to register the encumbrance under the Private Agreement was triggered for the Griffin land when Mr Griffin subdivided his property to create a second allotment with an identified building platform. As noted by Mr O'Malley for MCC, the registered encumbrance requires compliance with the Millbrook Design Guidelines and contains restrictions and obligations for the owners of the property. There is also a consent notice registered on the second title (with the identified residential building platform) requiring compliance with the Millbrook Design Guidelines and imposing a height restriction.

24 Future development of the Archibald land is also subject to strict design controls for future development under the Private Agreement and registered covenants (including height restrictions, sets backs and compliance with the MCC Design Guidelines). However the requirement to register the encumbrance has yet to be triggered. Accordingly MCC and Archibald have agreed that a "restricted discretionary" activity status for buildings on her land is appropriate. This is consistent with Mr Langman's evidence.

25 Mr Langman states in his rebuttal evidence:

9.6 In relation to the request by Archibald and Griffin to be included in the Millbrook Resort Zone, I consider that this better implements the policies and objectives of the plan, particularly given the isolated nature of the sites being fully enclosed in the Millbrook Resort, and their discrete size. With the exception of density, I consider that the remaining matters with which Millbrook Country Club are concerned are best addressed by way of private agreements and not included in the plan. If agreement has been reached between the submitters, it would assist if an agreed amended version of the Chapter 43 provisions were tabled for the Panel. I note that there is no scope to amend any matter that was already decided as part of Stage 1, but that amendments to provisions that apply to the submitter's land only will be within scope (ie. site specific provisions)...

26.2 Section 58 of my s42A report identifies that there are no ecology, infrastructure, or landscape recommendations opposing the relief. Transport concerns were not site specific.

- 26.3 *There is no dispute that an Amenity Zone as notified does not represent the most appropriate method for achieving the provisions of the Plan for the site.*
- 26.4 *In my s42A Report I recommended a 'Precinct' zone, as this reflected the capability of this land, which is surrounded on all sides by MRZ, and as recommended by Ms Gilbert could absorb additional demand as either MRZ or Precinct.*
- 26.6 *It appears that, in both the evidence of Mr Vivian and Mr Edmonds, that agreement for the two sites to be included in the MRZ has been reached. I consider this important from the view of achieving an integrated resort zone development.*
- 26.7 *I recommend that the MRZ be applied to the Archibald and Underdown (nee Griffin) sites, as set out in the evidence of Mr Vivian at para 2.9, with the exception that the introduction of the area to the wider MRZ warrants a higher level of discretion as to Residential Buildings, and accordingly Rule 43.4.11 should apply to new buildings on the site to ensure cohesion with the wider MRZ context.*
- 26.8 *The rule could be structured as follows:*

Activities – Millbrook Activity Status

43.4.11 Buildings

- a. *R14, R15 and R16, and R20 (Archibald (2501) and Underdown (nee Griffin, 2580)) of the Residential*

Activity Area

RD

Discretion is restricted to the following:

- i. The appearance of the building*
 - ii. Associated landscaping controls*
 - iii. The effects on visual and landscape amenity values of the area including coherence with the surrounding buildings*
- 26.9 *Ms Gilbert has identified in her evidence in chief that the subject site is low lying and visually discreet and that development would effectively read as part of the resort.*
- 26.10 *A yield of 8 residential units would represent a density close to 2.5 units per hectare, which is high for the MRZ, but development of this site would be consistent with the R11 Residential Activity Area to the west which is of a similar scale (3ha) and density (8 units), and the area would remain surrounded by large open spaces (Activity Area G) to the north, south and east.*

26.11 Overall, in my view application of an MRZ zone would better ensure that development on this site is integrated and avoids sensitive parts of the site (Objective 43.2.1 and associated policies 43.2.1.1).

Summary of provisions sought

- 26 The provisions now sought are attached as an appendix to my submissions and are agreed to by MCC.
- 27 The only outstanding issue in respect of Council's position is that "controlled activity" status is sought for buildings on the Underdown Trust land. This is considered entirely appropriate for the following reasons:
- (a) There a significant level of control over buildings secured by registered instruments on the titles for this land that specifically address the matters of discretion Mr Langman has outlined above (the appearance of buildings, landscape controls and effects on landscape and visual amenity values of the area including coherence with surrounding buildings). This level of control together with the provisions of the zone will ensure future development is consistent with the MRZ aesthetic.
 - (b) This relief is not inconsistent with the activity status for building in other activity areas within MRZ for example in R1-13 the activity status for buildings is "controlled".
 - (c) It preserves the current activity status for building within the identified building platform under the operative rural general zone regime.
 - (d) In considering what rule may be the most appropriate in the context of the evaluation under s32 of the RMA, the correct approach remains as expressed in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*¹ namely where the purpose of the RMA and the objectives of the Proposed District Plan (**PDP**) can be met by a less restrictive regime then that regime should be adopted. Such an approach reflects the requirement in s32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by being enabling so that people can provide for their well-being while addressing the effects of their activities.²

¹ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* Decision C153/2004 at [56].

² *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*, [2017] NZEnvC 051, at [59].

Conclusion

- 28 Overall we adopt the evidence of the Council that the inclusion of these properties within the MRZ better implements the policies and objectives of the PDP, particularly given the isolated nature of the sites being fully enclosed in the MRZ, and their discrete size.
- 29 The WBRAZ as notified does not represent the most appropriate method for achieving the provisions of the PDP for the properties.
- 30 Case law has determined that the least restrictive rule framework is appropriate where this gives effect to the objectives and policies of the PDP and this is consistent with the enabling purpose of the RMA.
- 31 As notified the WBRAZ provisions impose unnecessary and onerous controls on these properties which are ideally suited for inclusion within the MBZ where visitor, residential and recreation activities are developed in an integrated manner with particular regard for landscape, heritage, ecological and water quality values.

Dated this 25th day of July 2018



Vanessa Robb
Counsel for the Submitters

Appendix

43.1

Resort Zone Purpose

The purpose of the Millbrook Resort Zone is to provide for a visitor resort of high quality. The Zone provides for recreational activities (including golf), commercial, residential and visitor accommodation together with support facilities and services. The general amenity of the Zone is one of development enclaves located in the open rural countryside with well landscaped grounds. Well located and designed development is expected throughout the Zone. To achieve this, integrated planning in accordance with a Structure Plan is required.

The Millbrook Structure Plan includes several 'Activity Areas' which correspond with rules. The purpose of the various Activity Areas is summarised as follows:

- Village Activity Area (V) – to provide for residential and visitor accommodation activities and commercial activities associated with a resort
- Golf / Open Space Activity Area (G) – To provide for outdoor recreation activities and open space
- Residential Activity Area (R) – to provide for residential activities (different areas are individually numbered so as to correspond with rules)
- Recreational Facilities Activity Area (F) – to provide for recreational activities
- Landscape Protection Area (LP) – to manage sensitive landscape areas in a manner which prevents inappropriate development
- Landscape Protection (Malaghans) Activity Area - to maintain a mature tree lined edge to Malaghans Road
- Resort Services Area (S): To provide for service and maintenance activities which support the functioning of a resort
- Helicopter Landing and Takeoff Activity Area (H) – to enable the consideration of applications for helicopter landings and take offs from this location

43.1.3 The Structure Plan also includes the following overlays which apply in addition to the Activity Areas that cover the same areas. The purpose of these overlays is summarised as follows:

- Amenity Landscaping Overlay (L) – to identify those locations where measures will be undertaken to avoid adverse effects on landscape amenity.
- Height Restriction Overlay (HR) – used to specify height restrictions on Indicative Residential Sites 10 and 11.
- Earthworks Overlays (E1 and E2) - to identify where earthworks will be undertaken to mitigate effects on neighbouring properties, and prevent buildings in those areas.
- Gully Planting (GP) and Open Planting (OP) Overlays - to specify where landscape planting is required for ecological restoration purposes.
- Indicative Residential Sites - to identify locations of future buildings and specify height limits and recession plane controls.

43.2

Objectives and Policies

43.2.1 Objective – Visitor, residential and recreation activities developed in an integrated manner with particular regard for landscape, heritage, ecological, water and air quality values.

- Policies
- 43.2.1.1** Require development and activities to be located in accordance with a Structure Plan so as to promote orderly and integrated development and prevent the inappropriate development of sensitive parts of the site.
 - 43.2.1.2** Require the buildings and associated landscaping to have regard to landscape and heritage values.
 - 43.2.1.3** Protect valuable ecological remnants and promote the enhancement of ecological values where reasonably practical.
 - 43.2.1.4** Require the take-off and landing of aircraft to be controlled.
 - 43.2.1.5** Require an integrated landscape management plan for the South Dalglish part of the zone
 - 43.2.1.6** Reduce nutrient levels and other pollutants entering Mill Creek.

43.3

Other Provisions and Rules

43.3.1 District Wide

Attention is drawn to the following District Wide chapters. All provisions referred to are within Stage 1 of the Proposed District Plan, unless shown in italics.

1 Introduction	2 Definitions	3 Strategic Direction
4 Urban Development	5 Tangata Whenua	6 Landscapes
24 <i>Signs</i>	25 <i>Earthworks</i>	26 Historic Heritage
27 Subdivision	28 Natural Hazards	29 <i>Transport</i>
30 Energy and Utilities	31 <i>Hazardous Substances</i>	32 Protected Trees
33 Indigenous Vegetation	34 Wilding Exotic Trees	35 Temporary Activities and Relocated Buildings
36 Noise	37 Designations	Planning Maps

43.3.2 Explanatory Rules

43.3.2.1 Where an activity does not comply with a Standard listed in the Standards table, the activity status identified by the ‘Non-Compliance Status’ column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.

43.3.2.2 The following abbreviations are used within this Chapter.

P	Permitted	C	Controlled	RD	Restricted Discretionary
D	Discretionary	NC	Non Complying	PR	Prohibited

43.4 Rules - Activities

Activities – Millbrook		Activity Status
43.4.1	Any activity which complies with the standards for permitted activities and is not listed as a controlled, discretionary, non-complying or prohibited activity.	P
43.4.2	Residential Activity a. Resort Services Activity Area, except for residential activity ancillary to a permitted or approved activity b. Golf / Open Space Activity Area, except for residential activity ancillary to a permitted or approved activity c. Recreational Facilities Activity Areas, except for residential activity ancillary to a permitted or approved activity	D
43.4.3	Visitor Accommodation outside of the Village Activity Area	D
43.4.4	Golf Courses a. In the Landscape Protection Activity Area b. In the Landscape Protection (Malaghans) Activity Area	NC
43.4.5	Commercial and Community Activities , except for: a. Commercial recreation activities b. Offices and administration activities directly associated with the management and development of Millbrook or ancillary to other permitted or approved activities located within the Resort Services and Village Activity Areas; or c. Bars, restaurants, theatres, conference, cultural and community facilities in the Village Activity Area; or d. Retail activities which comply with rule 43.5.10 (Retail Sales)	D

	Activities – Millbrook	Activity Status
43.4.6	<p>Commercial Recreation Activities, except for:</p> <ul style="list-style-type: none"> a. Golf courses; or b. Within the Recreation Facilities Activity Area or Village Activity Area 	D
43.4.7	<p>Licensed Premises in the Village Activity Area</p> <p>Premises licensed for the consumption of alcohol on the premises between the hours of 11pm and 8am, provided that this rule shall not apply to the sale and supply of alcohol: to any person who is residing (permanently or temporarily) on the premises; or to any person who is present on the premises for the purpose of dining up until 12am.</p> <p>Control is reserved to:</p> <ul style="list-style-type: none"> a. The scale of the activity b. Car parking and traffic generation c. Effects on amenity (including that of adjoining residential zones and public reserves) d. The configuration of activities within the building and site (e.g. outdoor seating, entrances) e. Noise issues and hours of operation 	C
43.4.8	<p>Licensed Premises Outside Village Activity Area</p> <p>Premises licensed for the consumption of alcohol on the premises between the hours of 11pm and 8am, provided that this rule shall not apply to the sale and supply of alcohol:</p> <ul style="list-style-type: none"> a. To any person who is residing (permanently or temporarily) on the premises b. To any person who is present on the premises for the purpose of dining up until 12am 	NC
43.4.9	<p>Farm Buildings</p> <p>All Activity Areas except for the Landscape Protection (Malaghans) Activity Area.</p> <p>Control is reserved to effects on heritage and landscape values.</p>	C
43.4.10	<p>Buildings</p> <ul style="list-style-type: none"> a. Village Activity Area b. R1 to R13 <u>and R19</u> of the Residential Activity Area c. The Recreational Facilities Activity Area <p>Control is reserved to:</p> <ul style="list-style-type: none"> i. The appearance of the building ii. Effects on visual and landscape amenity of the area including coherence with the surrounding buildings 	C

Activities – Millbrook		Activity Status
43.4.11	<p>Buildings</p> <p>a. R14, R15, and R16 <u>and R20</u> of the Residential Activity Area Discretion is restricted to the following:</p> <ul style="list-style-type: none"> i. The appearance of the building ii. Associated landscaping controls iii. The effects on visual and landscape amenity values of the area including coherence with the surrounding buildings 	RD
43.4.12	<p>Buildings</p> <p>a. R17 and R18 of the Residential Activity Area Discretion is restricted to the following:</p> <ul style="list-style-type: none"> i. The appearance of the building ii. Effects on visual and landscape amenity of the area including coherence with the surrounding buildings and heritage values 	RD
43.4.13	<p>Buildings</p> <p>a. Golf Course and Open Space Activity Area, except for utilities, service and accessory buildings up to 40m² in gross floor area</p>	D
43.4.14	<p>Buildings in the Landscape Protection and Landscape Protection (Malaghans) Activity Area, except for:</p> <ul style="list-style-type: none"> a. One farm building relocated from within the zone and restored the Landscape Protection (Malaghans) Activity Area (refer Rule 43.4.9) b. Utility buildings up to 25m² in gross floor area 	NC
43.4.15	<p>Buildings in the E1 and E2 Earth Moulding Overlay Areas</p>	PR

	Activities – Millbrook	Activity Status
43.4.16	<p>Amenity Landscaping Works</p> <p>Landscaping works within the Gully Planting Overlay, the Open Planting Overlay the Amenity Landscaping Overlay, the Earth Mounding Overlay, the Landscape Protection (Malaghans) Activity Area and the Landscape Protection Activity Area.</p> <p>Discretion is restricted to the following:</p> <p>a. An integrated landscape management plan that incorporates:</p> <ul style="list-style-type: none"> i. Landscape designs and planting plans that indicate how the Gully Planting and Open Planting Overlays will be planted and maintained with at least 90 % of plants listed in Appendix 1 ii. Practical and reasonable measures within the Amenity Landscaping overlay to avoid or mitigate adverse effects on the amenity values enjoyed within properties beyond the Zone boundary, utilising the species lists for the Gully Planting and Open Planting Overlays in Appendix 1 iii. Removal of all Pinus, Pseudotsuga and Cystisus from the E1, E2, Open Planting, Gully Planting and Amenity Landscaping overlay areas iv. Earthworks to be undertaken in E1 for the purpose of visually screening all residential properties within the R14 and R15 Residential Activity Areas from approved Residential Building Platforms on Lot 1 DP 475822 and Lot 2 DP 475822 v. Earthworks to be undertaken in E2 for the purpose of mitigating views of golfing activities as viewed from approved Residential Building Platforms on Lot 1 DP 475822 and Lot 2 DP 475822 vi. Details on and commitments to prompt establishment, density of planting, replacement of dead and diseased plants, restrictions on removal of other vegetation, irrigation, fertiliser, composting, rabbit control and use of gender dimorphic stock sourced from local seeds where practical vii. The measures that shall be employed to maintain or enhance the quality of water within MillCreek viii. Landscape designs and planting plans for the Landscape Protection (Malaghans) Activity Area that ensures a predominantly screened effect when viewed from the road 	RD
43.4.17	<p>Helicopter Landing and Take Off</p> <p>a. Helicopter Landing and Take-off Activity Area</p> <p>Discretion is restricted to the following:</p> <ul style="list-style-type: none"> i. Safety ii. Effects on amenity values 	RD
43.4.18	<p>Airports, except for:</p> <ul style="list-style-type: none"> a. Helicopter landings and take-offs approved under rule 43.4.17 b. The use of land and water for any emergency landings, rescues and fire-fighting. 	NC
43.4.19	<p>Service Activities, except where:</p> <ul style="list-style-type: none"> a. Directly related to other approved or permitted activities within the Zone and located within the Resort Services Activity Area; or b. Located within the Golf / Open Space Activity Area and which have a gross floor area of no more than 40m² 	NC

Activities – Millbrook		Activity Status
43.4.20	Industrial Activities; except for: a. Activities directly related to other approved or permitted activities within the Zone b. Activities located within the Resort Services Activity Area	NC
43.4.21	Mining	NC
43.4.20	Panelbeating, spray painting, motor vehicle repair or dismantling except for activities directly related to other approved or permitted activities within the Zone and located within the Resort Services Activity Area.	NC
43.4.21	Forestry Activities	NC
43.4.22	Fibreglassing, sheet metal work, bottle or scrap storage, motorbody building or wrecking, fish or meat processing (excluding that which is ancillary to a retail premises such as a butcher, fishmonger or supermarket), or any activity requiring an Offensive Trade Licence under the Health Act 1956.	PR
43.4.23	Factory Farming	PR

43.5 Rules - Standards

Rules – Millbrook		Non-compliance status
43.5.1	Structure Plan Development shall be undertaken in general accordance with the Structure Plan.	D
43.5.2	Setbacks a. No building or structure shall be located closer than 6m to the Zone boundary b. No building shall be located closer than 10m from Malaghans Road or the Arrowtown Lake Hayes Road c. On Residential Activity Sites 14 and 19 buildings shall be located at least 7m from the Residential Activity Area boundary	RD

	Rules – Millbrook	Non-compliance status
43.5.3	<p>Building Colours and Materials in Residential Activity Areas R14, R15, R16 and R17</p> <p>a. Roof materials and colours will be limited to:</p> <ul style="list-style-type: none"> i. Dark grey corrugated iron ii. Dark grey tray profile iii. Slate iv. Copper (left to weather) v. Gutters and downpipes to match the roof colour <p>b. Claddings will be limited to:</p> <ul style="list-style-type: none"> i. Millbrook quarry stone ii. Painted or stained weatherboards iii. Steel sheeting iv. Textured concrete v. Painted plaster 	RD
43.5.4	<p>Residential Density</p> <p>The maximum number of residential units in the Millbrook Resort Zone shall be limited to 450 <u>458</u>.</p>	NC
43.5.5	<p>Residential Density</p> <p>a. In the following parts of the Residential Activity Area the total number of residential units shall not exceed:</p> <ul style="list-style-type: none"> i. R13 10 residential units ii. R14 6 residential units iii. R15 15 residential units iv. R16 6 residential units v. R17 7 residential units vi. R18 1 residential units vii. <u>R19 4 residential units</u> viii. <u>R20 4 residential units</u> <p>b. In addition there shall be no more than one residential unit per Indicative Residential Site</p>	NC
43.5.6	<p>Building Height - Residential Activity Areas R1 – R13, <u>R19 and R20</u></p> <p>The maximum height of buildings shall be:</p> <ul style="list-style-type: none"> a. Visitor accommodation, clubhouses, conference and theatre facilities restaurants, retail and residential buildings - 8m b. Filming towers - 12m c. All other buildings and structures - 4m 	NC

	Rules – Millbrook	Non-compliance status																		
<p>43.5.7</p>	<p>Building Height – Residential Activity Areas R14, R15, R16 and R17</p> <p>a. In the following parts of the Residential Activity Area the following maximum building heights shall apply:</p> <ul style="list-style-type: none"> i. R14 6.5m ii. R15 6.5m except within those parts subject to the Height Restriction Overlay where the height limit shall be 5.5m iii. R16 6.5m iv. R17 5.5m <p>b. No part of a building shall exceed the following heights above sea level (excluding chimneys which may exceed the height control by 2.0m with a maximum horizontal dimension of 1.5m):</p> <table border="1" data-bbox="517 555 1872 820"> <thead> <tr> <th>Indicative Residential Activity Area as shown on the Structure Plan</th> <th>Datum (masl) using the “Mt Nic 2000 & MSL” datum</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>481.8</td> </tr> <tr> <td>3</td> <td>478.8</td> </tr> <tr> <td>6-13</td> <td>475.8</td> </tr> <tr> <td>14</td> <td>476.8</td> </tr> <tr> <td>19</td> <td>472.8</td> </tr> </tbody> </table> <p>c. No part of a building on Indicative Residential Activity Areas 1 and 3 shall protrude through a recession plane running due south at an angle of 30 degrees commencing at the boundary of the indicative residential sites noted below and as measured from the following heights above sea level:</p> <table border="1" data-bbox="517 938 1872 1086"> <thead> <tr> <th>Indicative Residential Activity Area as shown on the Structure Plan</th> <th>Datum (masl) using the “Mt Nic 2000 & MSL” datum</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>478</td> </tr> <tr> <td>3</td> <td>475</td> </tr> </tbody> </table>	Indicative Residential Activity Area as shown on the Structure Plan	Datum (masl) using the “Mt Nic 2000 & MSL” datum	1	481.8	3	478.8	6-13	475.8	14	476.8	19	472.8	Indicative Residential Activity Area as shown on the Structure Plan	Datum (masl) using the “Mt Nic 2000 & MSL” datum	1	478	3	475	<p>NC</p>
Indicative Residential Activity Area as shown on the Structure Plan	Datum (masl) using the “Mt Nic 2000 & MSL” datum																			
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14	476.8																			
19	472.8																			
Indicative Residential Activity Area as shown on the Structure Plan	Datum (masl) using the “Mt Nic 2000 & MSL” datum																			
1	478																			
3	475																			
<p>43.5.8</p>	<p>Glare</p> <p>a. All fixed lighting shall be directed away from adjacent roads and properties</p> <p>b. Any building or fence constructed or clad in metal, or material with reflective surfaces shall be painted or otherwise coated with a non-reflective finish</p> <p>c. No activity shall result in a greater than 3.0 lux spill, horizontal and vertical, of light onto any property located outside of the Zone, measured at any point inside the boundary of the adjoining property</p> <p>External lighting shall be limited to down lighting only, not more than 1.5 metres above the finished floor level of the dwelling with the light source shielded from horizontal view.</p>	<p>NC</p>																		

	Rules – Millbrook	Non-compliance status
43.5.9	<p>Nature and Scale of Activities</p> <p>a. Except within the Village and Resort Services Activity Areas:</p> <ul style="list-style-type: none"> i. No goods, materials or equipment shall be stored outside a building, except for vehicles associated with the activity parked on the site overnight ii. All manufacturing, altering, repairing, dismantling or processing of any materials, goods or articles shall be carried out within a building 	NC
43.5.10	<p>Retail Sales</p> <p>No goods or services shall be displayed, sold or offered for sale from a site except:</p> <ul style="list-style-type: none"> a. goods grown, reared or produced on the site b. goods and services associated with, and ancillary to the recreation activities taking place (within buildings associated with such activities) within the Recreation Facilities Activity Area; or c. Within the Village Activity Area 	NC
43.5.11	<p>Maximum Total Site Coverage</p> <p>The maximum site coverage shall not exceed 5% of the total area of the Zone. For the purposes of this Rule, site coverage includes all buildings, accessory, utility and service buildings but excludes weirs, filming towers, bridges and roads and parking areas.</p>	NC
43.5.12	<p>Golf Course Development</p> <p>Development of residential units in the South Dagleish part of the zone or more than 27 holes of golf without prior certification by the Council of the implemented plans for the Gully Planting Overlay, Open Planting Overlay and Amenity Landscaping areas (refer Rule 43.4.16).</p>	NC
43.5.13	<p>Helicopter Landing Areas</p> <p>More than one permanent helicopter landing area within the Zone.</p>	NC

APPENDIX 1

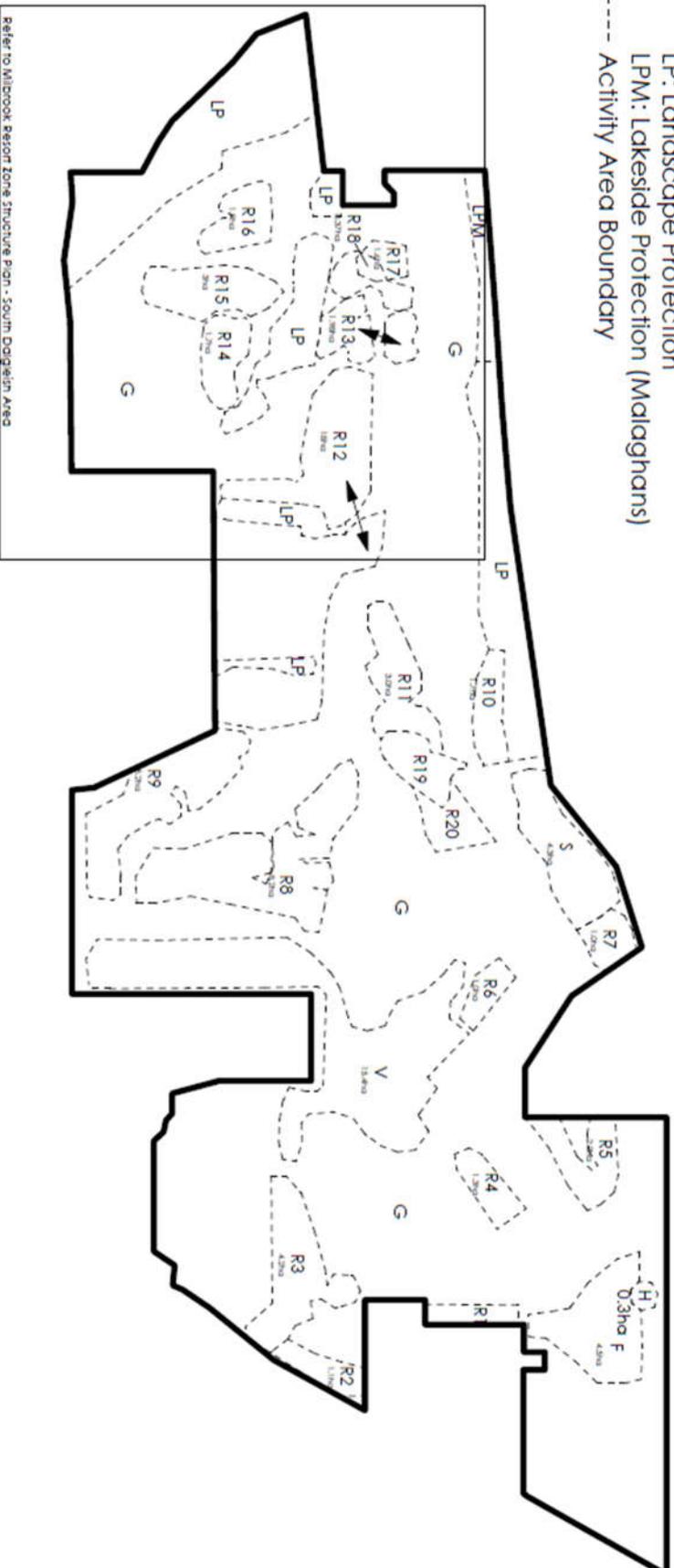
Overlay Area	Plant List
Gully Planting Overlay	Carex secta Hebe salicifolia Aristotelia serrata Coprosma lucida Coprosma propingua Fluscopora solandri var. cliffortioides Olearia lineata Cortaderia richardii Phormium tenax
Opening Planting Overlay	Coprosma propingua Leonohebe cupressoides Olearia odorata Melicyrus alpin us Sophora microphylla Olearia avicenniifolia

43.6

Non-Notification of Applications

- 43.6.1 Except as provided for by the Act, all applications for controlled activities and restricted discretionary activities will be considered without public notification or the need to obtain the written approval of or serve notice on affected persons.

- Structure Plan Legend
- R: Residential
 - V: Village
 - F: Recreational Facilities
 - S: Resort Services
 - G: Golf Course and Open Space
 - H: Helipad
 - LP: Landscape Protection
 - LPM: Lakeside Protection (Malaghnans)
 - Activity Area Boundary



Refer to Millbrook Resort Zone Structure Plan - South Design Area

