

## **DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL**

### **RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	J Guthrie, R Newman, Banco Trustees Ltd & McCulloch Trustees 2004 Ltd and Others
<b>RM reference:</b>	RM180637
<b>Location:</b>	112 McDonnell Road, Arrowtown
<b>Proposal:</b>	To undertake a 14 lot subdivision involving the identification of 12 new residential building platforms; the identification of a residential building platform around the existing dwelling; and the creation of an access lot. In addition land use consent is sought to breach internal boundary setbacks.
<b>Type of Consent:</b>	Subdivision and Land Use
<b>Legal Description:</b>	Section 1 Survey Office Plan 23541 held in Computer Freehold Register OT14A/295
<b>Zoning:</b>	Rural General - Operative District Plan N/A - Proposed District Plan (Stage 1 Decisions Version) Wakatipu Basin Rural Amenity / Wakatipu Basin Lifestyle Precinct - Proposed District Plan Stage 2
<b>Activity Status:</b>	Discretionary Activity
<b>Public Notification:</b>	23 August 2018
<b>Commissioners:</b>	David Mead and Jane Sinclair
<b>Date of Decision:</b>	1 April 2019
<b>Decision:</b>	<b>CONSENT IS REFUSED</b>

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of an Application to **QUEENSTOWN LAKES DISTRICT COUNCIL** by **E GUTHRIE, R NEWMAN, BANCO TRUSTEES LTD & McCULLOCH TRUSTEES 2004 LTD and OTHERS**

Council Reference: **RM180637**

**DECISION OF COMMISSIONERS DAVID MEAD AND JANE SINCLAIR APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL PURSUANT TO SECTION 34A OF THE RMA ACT 1991**

**The Hearing and Appearances**

**Hearing Date:**

Wednesday 20 February 2019, in Queenstown

**Appearances for the Applicant:**

Mr Graeme Todd, Legal Counsel;  
Mr Richard Newman, representing the owners of the site;  
Mr Stephen Skelton, Landscape Architect and Director of Patch; and  
Mr Nicholas Geddes, Planning Consultant of Paterson Pitts Limited Partnership.

**Appearances for Submitters**

Dame Elizabeth Hanan & Mr John Hanan;  
Mr Dave Hanan;  
Mr Swain; and  
Mrs Barrowclough.

**Appearances for the Council:**

Ms Erin Stagg, Senior Planner;  
Ms Kris MacPherson, consultant Landscape Architect of Helen Mellsop Landscape Architect;

Mr Cameron Jones, Resource Management Engineer; and  
Ms Charlotte Evans, Hearings Secretary.

**Abbreviations:**

The following abbreviations are used in this decision:

Queenstown Lakes District Council

‘the Council’

The Operative Queenstown Lakes District Plan	'the ODP'
The Proposed Queenstown Lakes District Plan	'the PDP'
Assessment of Environmental Effects	'AEE'
Resource Management Act 1991	'RMA'
Wakatipu Basin Land Use Planning Study	'WBLUPS'

## INTRODUCTION

1. This decision is made on behalf of the Queenstown Lakes District Council ('the Council') by Independent Hearings Commissioners Mr David Mead and Ms Jane Sinclair, appointed and acting under sections 34 and 34A of the Resource Management Act 1991 ('the RMA') to hear and determine the application by E Guthrie, R Newman, Banco Trustees Ltd & McCulloch Trustees 2004 Ltd & Others ("the Applicant").
2. In considering and reaching this decision we have considered:
  - a) The application, its AEE and all its supporting documents;
  - b) The Council officer's section 42A report, along with the attached supporting reports;
  - c) The pre-circulated evidence from the applicant;
  - d) The applicant's evidence at the hearing;
  - e) The submissions received by Council;
  - f) The submissions presented at the hearing;
  - g) The responses to our questions during the hearing;
  - h) The applicant's right of reply;
  - i) The site visit;
  - j) Non-statutory documents;
  - k) The Wakatipu Basin Land Use Planning Study; and
  - l) The relevant provisions of both the Operative and Proposed Queenstown Lakes District Plans, including reports and recommendations of the Independent Hearing Panel on hearings of submissions on the PDP.

## SITE DESCRIPTION

3. The site is located on the western side of McDonnell Road, Arrowtown and comprises 6.5458 hectares. The site is a rural site containing a residential dwelling and associated accessory buildings. The site contains an established garden with mature trees, an apple orchard and boundary planting. An electrical sub-station is located adjacent to the site's north eastern boundary. An existing small stream is located near the northern corner of the site and we understand that this flows to the boundary and continues on to the south in the road reserve.

4. Topography varies over the site, with the more easterly parts of the site being moderately flat and covered in pastoral grass with a 'hummock' feature located near the centre of the site. The more westerly parts of the site are also covered in pastoral grass which extends up a slope towards a ridge which adjoins the Hills Golf Club to the west.
5. On the eastern side of McDonnell Road is the Low Density Residential zone and its associated urban residential development. The Low Density Residential zone terminates in the vicinity of the site and the Arrowfields development is currently under construction opposite the site.

## **THE PROPOSAL**

6. The application as notified is described in detailed within the applicant's AEE and involves the subdivision of the existing rural site into 14 allotments which provides for one allotment around the existing dwelling, 12 allotments containing a new Residential Building Platform on each lot, and one access lot to vest as public road. Land use consent is sought to breach internal boundary setbacks. At the time of notification, consent was sought for breaches to the road boundary and internal boundary setback rules. The proposal includes infrastructure to service the development, landscaping and earthworks.
7. A number of amendments have been made to the application since it was notified, which were drawn to our attention either prior to the hearing or during the course of the hearing. We were advised that:
  - (i) There was an oversight in that no proposed residential building platform was shown around the existing dwelling located on proposed Lot 3;
  - (ii) Amendments were made to the location of some of the residential building platforms to achieve compliance with road boundary and internal boundary setbacks;
  - (iii) Proposed Lot 1 is no longer to be vested as road and ownership will now be divided equally across Lots 2-14;
  - (iv) The water supply reticulation will be owned by a management company rather than the Council; and
  - (v) Static firefighting reserves will be provided on site for each lot.
8. A revised scheme plan (Revision H) was submitted at the hearing identifying the above amendments made to the application.
9. We are of the view that the proposed changes are within the scope of the application as notified.

## **NOTIFICATION AND SUBMISSIONS**

10. The application was publicly notified on 23 August 2018, with submissions closing on 20 September 2018. Eighteen submissions were received in opposition to the application. A supporting submission was received after the close of the submission period. There was no objection to the late submission; therefore this late submission was received and accepted. The Commission has given consideration to the contents of the submissions received in response to the application.

## **AFFECTED PARTY APPROVALS**

11. Written approvals were originally provided from the following parties:
  - R Monk and Cook Adam Trustees Ltd, 175 McDonnell Road;
  - C & E Lamont, 276 McDonnell Road;
  - Arrowsouth Properties Ltd, Lot 29 369201.
12. Subsequently, the applicant submitted further written approvals from:
  - A J J Feeley & E E Borrie & L P Trustees Limited, 508 Arrowtown-Lakes Hayes Road;
  - The owners of the Hills golf course;
  - Peter McLean and Katy Loader, 219 McDonnell Road;
  - Andrew and Michelle Green, Lot 3 DP 57831;
  - Sandra and George Page, 148 McDonnell Road.

## **THE HEARING AND SITE VISIT**

14. We undertook a site visit in the afternoon of 19 February 2019, before the commencement of the hearing.
15. Pre-circulated expert evidence was received from the applicant before the hearing. The applicant presented legal submissions at the hearing and each expert witness provided a written summary of their evidence. Following the presentation of their summary statements, each witness answered questions from the Commission.
16. The section below is a summary only of the evidence that we heard. The detail of the expert evidence in particular is addressed below in the assessment of environmental effects and in our section addressing the relevant planning provisions.

## For the Applicant

17. **Mr Todd**, Legal Counsel, presented opening legal submissions addressing the proposal; activity status; appropriate determination under the RMA; effects of the activity on the environment; the Wakatipu Basin Land Use Planning Study (WBLUPS); provisions of the ODP and the PDP and Part 2 of the RMA.
18. Mr Todd considered that the key issue under debate was the opposing views of the applicant's and council's landscape architects on the effects of the development on the landscape. These include effects on:
  - a) Natural and pastoral character;
  - b) Visibility of development;
  - c) Form and density;
  - d) Cumulative landscape effects;
  - e) Rural amenity and character.
19. In regard to the differences of opinion, Mr Todd submitted that the applicant had major misgivings and concerns about the legitimacy, accuracy and objectivity of the landscape assessments prepared by Council's consultant landscape architect, Ms MacPherson. He submitted that Ms MacPherson had failed to consider the WBLUPS which was completed in 2017 and adopted as part of Stage 2 of the PDP. He informed us that this report provided a comprehensive study of the Wakatipu Basin's landscapes and the various different landscape units' capacities to absorb development.
20. Mr Todd informed us that the subject site is located within the Arrowtown South Landscape Character Unit (LCU) and that this LCU was found to have the highest capability for development in the Basin and could cater for high density residential living on lots of a minimum size of 250 – 400m<sup>2</sup>. He reiterated the importance of having regard to the findings of this study, that the Commissioners' recommendations on Stage 2 of the PDP have recommended that, based on the WBLUPS, the application site is rezoned Wakatipu Basin Lifestyle Precinct and that this zoning anticipates and allows for development of the kind proposed in this application.
21. Referencing the expert evidence, Mr Todd submitted that in the context of the receiving environment, which includes the Arrowtown Lifestyle Retirement Village to the south; the landscape impact of further rural living as proposed would be low and would fit into the now established character of this part of McDonnell Road. He submitted that Ms MacPherson's assessment has ignored or not given due consideration to approved developments in the area.
22. Mr Todd submitted that visibility of the site from McDonnell Road when travelling north or south is minimal and that when looking west over the site, views are predominately blocked or significantly screened by existing vegetation, land forms and the sub-station. These elements mean there are no open views of the Wakatipu Basin. He reiterated that further vegetation can occur and further obstruct views as of right and that this forms part of the permitted baseline.

23. Mr Todd submitted that Mr Skelton's landscape assessment should be given more weight in our decision making and that the proposal is consistent with and not contrary to the objectives and policies of the ODP and PDP. Furthermore, he was critical of Ms Stagg's s.42a report, as it did not consider the WBLUPS and that the objectives and policies of the PDP must be read in light of the findings of this study.
24. Finally Mr Todd submitted that the proposal is consistent with Part 2 of the RMA and that the consent should be granted.
25. **Mr Newman**, part owner of the site, outlined developments that have occurred in the vicinity over a period of 18 years. He stated that in his experience as a real estate agent in the area, that there is a significant demand for one or two acre blocks close to Arrowtown and that in his view the proposal will help to address this demand. He explained that the adjoining Hanan property contains two dwellings and an accessory building and that the effect on the Hanan property will be minimal.
26. **Mr Skelton**, Landscape Architect, presented a summary of his key findings, addressing the concerns raised by submitters and issues raised in Ms MacPherson's assessments. He submitted that while the site and much of the surrounding landscape displays an open, rural character the landscape is in a state of change from consented development and possible re-zoning of land through the PDP submission process. He considered the site to be part of a remnant rural character area wedged between the urban area of Arrowtown, the Hills golf course to the west and the urban character of the retirement village currently under construction to the south. He further submitted that the site is part of a landscape unit which is not widely visible from other parts of the Wakatipu Basin and that this visual seclusion along with the changing character of the area results in a landscape with a high capacity to absorb change. He submitted that his findings were consistent with the findings reached in the WBLUPS.
27. He reiterated that the applicant was not seeking an urban development and the development proposed was akin to a rural residential type development. He informed us that the decision and recommendations of the Independent Hearings Panel for Stage 2 of the PDP have recommended that the subject site (and adjoining land) be zoned 'Wakatipu Basin Lifestyle Precinct' which would allow subdivision down to 6,000m<sup>2</sup> with an average of 1ha lot sizes. In his opinion, the rural residential development proposed in the application, with spacious lots and proposed tree planting would be a logical transition between the park like character of the Hills golf club and the urban area of Arrowtown and that the site would continue to act as a greenbelt gateway to Arrowtown.
28. Mr Skelton responded to issues raised in the submissions. In his opinion the proposal would not be urban in character; the site has a high ability to absorb additional development; the proposal will maintain a level of openness and rural character; the proposal will not degrade the existing wetland area on site and that natural character values will be increased by proposed planting.

29. Mr Skelton considered that from distant elevated views the proposal will be well absorbed by existing and proposed vegetation and landforms, and from lower elevations will only be visible from within the immediate vicinity of the site. He acknowledged that from McDonnell Road there would be some loss of open views but these views are not in the context of an ONL or ONF and are not memorable. In his opinion, the views from Cotter Avenue are dominated by the distant mountains which are the memorable and valued views and that, while the site is visible, the development will be seen in the context of urban areas of Arrowtown and the views will continue to be dominated by the mountains and the wider Wakatipu Basin.
30. Finally, Mr Skelton submitted that Ms MacPherson has not taken into account the existing landscape or the proposal; the existing trees located on site; the effects of the proposed vegetation; the effects of the design control conditions; and the effects of the consented development in the area.
31. **Mr Geddes**, Planning Consultant, presented a summary statement updating the status of the affected party approvals and clarifying the amendments made to the application. He submitted that the proposal should now be considered as a discretionary activity. He noted that the Detailed Site Investigation report had now been received which has resulted in consent no longer required for this aspect of the proposal. He submitted that the previously identified issue relating to feasibility of infrastructural connections has now been resolved subject to conditions recommended by Council's Resource Management Engineer.
32. Mr Geddes went on to outline the planning framework. He stressed that the Independent Panel had now released their decisions on Stage 2 of the PDP recommending that the site be rezoned as Wakatipu Basin Lifestyle Precinct. He clarified that this recommendation was set down to be decided by QLDC's full Council on 7 March 2019. He disagreed with the conclusions of the s.42A report and submitted that based on the findings of Mr Skelton in relation to effects on natural and pastoral character; the level of visibility; cumulative effects of development and effects on rural character and amenity, he considered that the development can and should be granted.

## Submitters

33. **Dame Elizabeth Hanan & Mr John Hanan** presented a joint written statement. They are the owners of 82 McDonnell Road adjacent to the northern boundary of the site which they have owned since 1964. Their submission set out their previous involvement in Environment Court proceedings on various plan changes relating to the setting of urban growth boundaries, specifically those around Arrowtown. They drew our attention to Part 4 of the ODP, specifically section 4.9 Urban Growth, with its supporting policy 7.5 relating to avoiding urban extensions into rural areas beyond the Urban Growth Boundary. Their submission set out the relevant policies of Objective 7 relating to limiting the growth of Arrowtown through urban growth boundaries. In their opinion, the proposal is contrary to these policies and is against the values of the ODP and PDP as well as the Environment Court decisions in relation to urban/rural zones. They submitted that the unique qualities and special character of Arrowtown will be compromised by the development. Their submission also referenced Policy 4 of Objective 4.2.5 relating to Visual Amenity



Landscapes and Policy 6 Urban Development and in their opinion, the subdivision contradicts all these principles and effects will be more than minor. In their view, rural ambience will be lost; air quality will be diminished; setbacks will affect neighbouring properties and proposed planting will change the rurality of the site and create urbanisation. The submission emphasised that in their view, the relevant document was the ODP. The submission also addressed the WBLUPS and that the area was recognised as having a low or very low capacity for housing before it was compromised by the approval of the Arrowtown Lifestyle Village.

34. The submission also provided information and photographs on the existing water course located in the vicinity of the northern boundary and that this water course can be prone to flooding at certain times. They informed us that the waterway originates from the Hills Golf course and flows across the paddock of their site and then onto the applicant's site in the vicinity of the sub-station and then out onto the road reserve.
35. The Hanans submitted that there was no need for further residential development in the Rural General zone as there was now several consented developments. Ad hoc subdivision is not a sustainable approach for the Basin as such developments undermine visual amenity values. They further submitted that if Rural General zone land allows for rural living type developments, the whole of the Wakatipu Basin will become an area of rural lifestyle living and the boundary between urban and rural will be eroded. In their opinion, 'spotted' housing is disruptive to the arcadian landscape and that to lose visual amenity will destroy values enjoyed by residents and tourists alike. Finally, that as immediate neighbours, the proposal will have a major effect on the use of their rural property.
36. Mr Hanan was critical of the applicant's approach in relying on the findings of the WBLUPS and addressed the status of the study, submitting that it is untested and that the ODP is the only plan to be considered and any other approach is inappropriate.
37. **Mr Dave Hanan** presented a written submission covering a broad range of issues. He highlighted the need for Council to defend their District Plan. He considered there to be a wide range of adverse effects, including effects on the people who live in the area; effects on ecology; effects associated with rural views and amenity, and effects on the life supporting capacity of soils. He submitted that new structures enabled by the application will not be in keeping with rural productive farming; and that adverse effects on landscape values cannot be mitigated as the site will be viewed from elevated locations. Mr Hanan was of the opinion that the proposal does not promote the values of the Treaty of Waitangi and that farming and crop production in the area is under threat and needs to be preserved for future generations. He noted that the proposal will degrade visitor experience and reduce safety along McDonnell Road. Finally, he sought that the values of the ODP relating to the protection of landscapes be upheld.
38. **Mr Swain** represented various residents of Arrowtown in opposition to the proposal. He clarified that he represented owners of properties on the south side of Cotter Avenue which overlook McDonnell Road and the subject site. He emphasised that the group were opposed to the application because the development was outside the Urban Growth Boundary and that they all agreed with the Council's reporting planner that the application

is contrary to the ODP and PDP. He submitted that the Urban Growth Boundary is in place to prevent urban sprawl into the rural landscape and that the proposal is in direct contrast to this.

39. **Mrs Barrowclough**, a landowner on Cotter Avenue, presented an opposing submission which set out her family's history in the area. She submitted that the proposed development would have more than minor effects on the enjoyment of their property and that screening could not mitigate adverse visual effects. She submitted that infill housing of existing residential areas was preferable to encroaching into rural land and that the site should be allowed to regenerate to its natural state or at least continue to be used for agricultural purposes.

### Council Officers

40. **Mr Jones** addressed engineering matters. He noted the change to the proposed internal roading, in that it was now proposed as an internal access, jointly owned by the lot owners. He recommended that some changes were needed to his previously circulated proposed conditions.
41. **Ms MacPherson** addressed landscape matters. She reiterated her assessment that the site forms an important and integral part of the highly valued open rural character of the Wakatipu Basin and that the proposal will result in adverse effects on visual amenity, rural character and cumulative effects. She advised the Commission that in her opinion the most relevant planning document for consideration was the ODP and the Arrowtown Guidelines. In her opinion the proposal was contrary to these documents. The WBLUPS did not change her assessment.
42. **Ms Stagg** addressed planning matters. She acknowledged that the WBLUPS is a relevant document to consider but recommended that we do not place too much weight on the study, given that the PDP is not yet settled. She accepted that with the applicant's amendments to the proposal, the application should be considered as a discretionary activity. She updated her assessment and advised that she had considered the application against the proposed objectives and policies of the Wakatipu Basin Lifestyle Precinct and that in her view the proposal is partly consistent with these provisions.
43. Further, she advised that outstanding matters associated with the Detailed Site Investigation had now been resolved and that with recommended conditions imposed on any consent granted adverse effects associated with contaminated soils can be mitigated. She advised the Commission that there were some outstanding matters associated with the wording of the conditions which were volunteered by the applicant. Ms Stagg confirmed that in her view she did not consider the proposal an urban development but rather a rural residential development and that subdivision 'sprawl' along roads was a relevant consideration. Relying on Ms MacPherson's landscape assessment she remained of the opinion that adverse effects on the landscape were more than minor and that the proposal was inconsistent with the ODP and PDP.

## Applicant's Right of Reply

44. **Mr Todd** gave an oral right of reply addressing a number of issues. This was followed by a written reply. He submitted that planning in this area was in a state of flux and that the WBLUPS is a very relevant consideration and cannot be down played. In response to issues raised by submitters, relying on Mr Skelton, he maintained that the wide expansive views out to the Wakatipu Basin enjoyed from Cotter Avenue properties will still be maintained and that the proposal will be seen in the context of the existing and consented developments.
45. Mr Todd submitted that things have moved on from what was set on in the ODP and that the PDP is what we should be assessing the proposal against. He stated that a precedent would not be set as the site was contained by the proposed landscape unit.
46. Mr Todd addressed the matters raised by Dame Elizabeth, Murray and David Hanan. In terms of the wider issues raised by the Hanans, his opinion was that the subdivision is not of the scale or nature that might affect a decision to refuse consent.
47. Mr Todd addressed the revised road boundary planting and fencing plan, the revised final suite of recommended conditions and that the applicants are volunteering a condition to prevent further subdivision. Finally, he submitted that a decision to grant consent can and should be reached and that the applicant's landscape evidence should be preferred.
48. In his written right of reply, Mr Todd reiterated his criticism that Ms MacPherson had effectively ignored the findings of the WBLUPS and her assessment should be discredited. Furthermore, although Ms Stagg had acknowledged the study in her comments made at the hearing, her s.42a report should be given no weight. He submitted that Ms MacPherson failed at the hearing to address the evidence of Mr Skelton in relation to visibility in that there will be little or no views of the greater Wakatipu Basin and the wider vista beyond from McDonnell Road, and that views of the site are only available from directly in front of the site. Mr Todd noted that Ms Stagg stated at the hearing that she now considers the proposal to be consistent with the objectives and policies under Stage 2 of the PDP. In regard to the submitters who reside on the escarpment, Mr Todd submitted that visual effects have been overstated and that when considered in context, effects will be minimal as the wider Outstanding Natural Landscape and Features will continue to dominate their views.
49. Mr Todd responded in more detail to the matters raised by the Dame Elizabeth, Murray and David Hanan. He set out that in regard to effects on the Hanans themselves, the scale and density would be similar to the density of development established on the Hanan site. In response to matters raised by Mr Dave Hanan, Mr Todd reiterated that the PDP Hearings Panel Recommendations should not and cannot be ignored and that subdivision is not a prohibited activity. Finally, Mr Todd stated that limited weight should be given to the photographs presented by the Hanans which showed flooding occurring on the site, as no detail was given as to when the photographs were taken and what caused the flooding.

50. The hearing was closed on Monday 11 March 2019.

## THE DISTRICT PLAN AND RESOURCE CONSENTS REQUIRED

51. For the purposes of determining activity status, the ODP is the relevant document. At the time of lodgement, there were no rules within the PDP that are relevant to the application and which have immediate legal effect.
52. With the amendments made to the application, there was agreement between the planners that the subdivision and land use activity must be assessed as a **discretionary activity**. We agree with this.
53. The following consents are required under the ODP:

### *Subdivision*

- (i) A **discretionary activity** resource consent pursuant to Rule 15.2.3.3(vi) for the proposed subdivision and identification of residential building platforms.
- (ii) A **controlled activity** resource consent pursuant to Rule 15.2.21.1 for the proposed earthworks associated with the subdivision.

### *Land Use*

- (i) A **restricted discretionary activity** resource consent pursuant to Rule 5.3.3.3(xi) as the proposal breaches site standard 5.3.5.1(vi) in regard to the minimum setback from internal boundaries, which is required to be 15m. It is proposed that a number of residential buildings are located closer than 15m from the new internal boundaries.
- (ii) A discretionary activity resource consent pursuant to Rule 5.3.3.3(i)(b) for the identification of building platforms.

54. Overall we have considered the activity as a **discretionary activity**.

## RELEVANT STATUTORY MATTERS

### *The RMA 1991*

55. As a **discretionary** activity, the application must be considered, subject to Part 2, in terms of sections 104 and 104B of the RMA. Under section 104B we may grant or refuse consent. Further, section 106 provides that a consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to, or is likely to accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made.
56. Finally, sections 108 and 220 empower the Commission to impose conditions on land use and subdivision consents if granted.

*National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ("NES")*

57. A DSI report was tabled at the hearing as part of Mr Geddes evidence and this report confirmed that the results of the DSI indicate that soil contamination does not exceed the applicable standard in NESCS Regulation 7 and that all results were found to be at or below background concentrations for soil within this area as determined using nationally available data. Ms Stagg was satisfied that no consent is required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES). We are now satisfied that the site is not a HAIL site and that no consent is required under the NES.

*Operative and Proposed District Plans*

58. The planners agreed that the relevant provisions of the ODP that require consideration are Part 4 (District Wide), Part 5 (Rural General), Part 14 (Transportation) and Part 15 (Subdivision, Development and Financial Contributions). In addition, both planners briefly covered Chapter 22 (Earthworks).
59. Ms Stagg in her s.42A report advised us that the Council notified its decisions on Stage 1 of the PDP on 5 May 2018, with an appeals version released in July. She also advised that Council notified Stage 2 of the PDP on 23 November 2017 and that under these provisions the site is proposed to be rezoned Wakatipu Basin Rural Amenity zone. Further we were informed that on 15 February 2019, the Independent Hearings Panel released its decisions and recommendations on the Wakatipu Basin. This report recommends that the subject site be rezoned Wakatipu Basin Lifestyle Precinct. We understand that these recommendations were considered by full Council on 7 March 2019, publicly notified 21 March 2019 and are now subject to an appeal period. The planners agreed that the most relevant chapters of the PDP are Chapter 3 (Strategic Direction), Chapter 6 (Landscape and Rural Character), Chapter 24 (Wakatipu Basin) and Chapter 27 (Subdivision and Development).

*Operative Regional Policy Statement*

60. Ms Stagg directed us to Part 5: Land of the Operative Regional Policy Statement.

*Proposed Regional Policy Statement*

61. The Proposed Regional Policy Statement was notified on 23 May 2015 and decisions were released on 1 October 2016. Consent orders have now been signed off by the Environment Court addressing appeals and we have assessed this proposal against the consent order version of the proposed RPS where that is relevant. We understand two appeals are not yet resolved.
62. The relevant objectives and policies are found in Chapters 1 and 5. These generally align with the Operative Regional Policy Statement.

## **PERMITTED BASELINE AND RECEIVING ENVIRONMENT**

63. Under section 104(2) of the Act, we have the discretion to take into account the permitted baseline when considering the effects on the environment of the proposed development.
64. Permitted activities in the Rural General zone (ODP) are not listed in the plan itself. The permitted activity status arises if the activity is not listed under another activity status. The permitted activities are limited to:
- Farming activities;
  - Viticulture activities;
  - Horticultural activities;
  - Earthworks 1000m<sup>3</sup> within one consecutive 12 month period complying with the relevant site standards;
  - The planting of vegetation.
65. In terms of the permitted baseline, we note that planting, such as further roadside boundary planting, is permitted. We agree with Ms Stagg that given all forms of residential development and subdivision require consent there is no relevant permitted baseline for us to take into consideration when addressing effects associated with buildings.
66. The receiving environment is set out in the AEE and in the evidence and includes the new Arrowtown Lifestyle Retirement Village, the Arrowfields development, the approved rural residential building platforms adjacent to the road south of the Arrowfields development and the Hills Golf course.

## **PRINCIPAL AREAS IN CONTENTION**

67. Having read and heard the evidence and submissions presented, before turning to the assessment of effects, it is first necessary to make findings on four matters over which the parties disagreed. These matters are central to the assessment of the effects as they relate to the context within which we should consider the effects of the development. These matters are:
- a) Relevance of the Wakatipu Basin Land Use Planning Study
  - b) Weight to be given to PDP Stage 2 decisions
  - c) Is it a rural or urban development?
  - d) Landscape and visual amenity effects.

68. We note for completeness that access and transportation, servicing including stormwater, wastewater, water, power and telephone, earthworks, natural hazards and hazards from contaminated soils were not in contention between the parties. We agree with this, and find that subject to conditions, any adverse effects associated with these particular matters can be adequately mitigated.

### **Relevance of the Wakatipu Basin Land Use Planning Study**

69. This study and its implications took a central role in the hearing. The WBLUPS is a report that the Council commissioned as part of the review of the District Plan. It is a comprehensive study of the landscapes of the Wakatipu Basin, identifying landscape units (geographic areas) that could 'absorb' development. By absorb, the report refers to the ability of the character area to accommodate landscape and visual change. The subject site is within the South Arrowtown Landscape Character Unit. The summary of the report states this Landscape Character Unit has a high absorption capability and that the recommended planning strategy is: South Arrowtown Precinct: (PDP Medium to Low Density Residential zone; 1:250m<sup>2</sup> and/or 1:450m<sup>2</sup>).
70. As we understand it, the Study has been used by the panel considering submissions on the PDP to help them decide on the appropriate zonings of areas. How the study has been used and its influence on the PDP recommendations report is addressed below. Here we consider the relevance of the study as a stand alone document.
71. In short, the applicant's view was that we should place considerable weight on the findings of the study in terms of Section 104 (1) (c). In the applicant's view the study clearly indicates that the landscape of the area has the ability to absorb the level of development proposed. If anything the study suggests that the area would be appropriate for urban style development. In the applicants' view, Council's landscape and planning assessments had not taken this into account at all, and as a result, their assessments were flawed. They further considered that as the development is more of a rural-residential development, rather than an urban-style development (as suggested by the study as being appropriate for the area); the submitters should therefore see the development as a step back from what might otherwise occur.
72. The submitters view was that the study had not yet been fully tested through the statutory process, again a matter we address below. They considered that a key tenant of the study's recommendation as to the proposed zoning strategy for the South Arrowtown Landscape Character Unit was flawed, namely that the retirement village development to the south and urban style development to the east of McDonnell Road meant that the Landscape Unit had already passed over into an "near urban state". They disputed this analysis, considering that the retirement village as a discrete development.
73. They further considered that while the Arrowtown South Landscape Character Unit may be relatively hidden (not visible) from many public places in the Basin, and therefore be able to absorb development from the point of view of the Basin as a whole, the application site is very visible to them.

74. We have reviewed the WBLUPS and find that it is a comprehensive document. We agree with the applicant that it is a relevant study for us to take into account and that its recommendations as to the absorptive capacity of the area are reasonable. Having said that, we also are aware that Councils routinely undertake studies (landscape or otherwise) of areas or resources that suggest a certain direction that development should take. These studies do not always end up being implemented.
75. In this context we conclude that the WBLUPS is an important document and agree with the applicant that the Council's assessment are deficient in not referring to the study. However we would not go so far as to say that this fatally undermines their analysis. It is reasonable to say that the study signals that the area will see a level of change, as already evidence by development in progress. However we do not consider that we can place a great weight on the recommendations of the report that urban style development is 'inevitable'.

### ***Weight to be given to Stage 2 PDP***

76. Following on from the above matter is the weight to be given to Stage 2 of the PDP. On the 18 February 2019, the Independent Hearing Panel recommendation report on Stage 2 of the PDP was released. This report recommends that the Arrowtown South Landscape Character Unit be zoned Wakatipu Basin Lifestyle Precinct. This zoning provides for an average lot size of 1ha. In their decision report, the Commissioners noted that, based on the WBLUPS recommendations, some form of Future Urban zone may have been more appropriate. However no submission sought this level of development, and so they were restricted to applying the lifestyle precinct zone. An implication of their recommendation is that the proposed zoning of the site may well change from Wakatipu Basin Rural Amenity zone as notified in the PDP to Wakatipu Basin Lifestyle Precinct, depending upon appeals. This has some ramifications in terms of what objectives and policies should be referred to.
77. Mr Geddes evidence was that the ODP remained the dominant document due to the PDP still being formulated (with Stage 1 subject to appeals, while Stage 2 is at the decisions version stage). However he then went on to say that the ODP is 15 years old, while the PDP as notified is diametrically opposed to the WBLUPS. In other words, neither the ODP nor the PDP as notified provide a useful framework within which to consider the application.
78. We take it that in the applicant's view, the Panel's recommendation report is an important step forward in the development of the PDP and that we should now place some weight on the provisions of the decisions version of the PDP, perhaps even more weight than the ODP. In other words, the ODP Rural General zoning of the site is out of date, the Wakatipu Basin Rural Amenity zoning as proposed by the notified PDP is likely to superseded, while the Lifestyle Precinct zoning is not dissimilar to that which is now proposed by the application.
79. The submitter's view was that until the PDP is settled, we should not place much weight on its proposals. The recommendation report had not yet been formally adopted by the Council as a decisions version, and if it is adopted, any decisions will be subject to appeal. There is still plenty of water to flow under the bridge. We should base our consideration of effects and objectives and policies on the ODP.



80. Ms Stagg in her comments at the hearing indicated that some weight should be given to the Stage 2 PDP, given the recommendations report has been released.
81. Our finding is that it is reasonable and appropriate that we do take into account the PDP recommendation report, and that we give its provisions reasonable weight. The ODP is still a relevant document, but clearly it is out of date and the planning environment has moved on considerably from when it was formulated. Having agreed that the PDP is at least equal to, if not more dominant than the ODP, we do not agree with assertions from the applicant that the Panel's recommendations mean that a more intensive development of the site than that proposed via the Lifestyle Precinct zoning is appropriate. This is taking matters a step too far.

### ***Rural or Urban Development?***

82. Submitters contended that the development is a form of urban development, despite what the applicant may term it. They pointed to the Arrowtown Urban Boundary and the fact that this boundary is not moving. If not full urban, then the development was certainly a major step towards it. The site would be connected to the municipal water and wastewater supply. The effect of the housing, garages, driveways and the like would be to present a semi-urban view, even if screened by trees and vegetation. Over time, urban creep would be likely.
83. The applicant's view was that they were clearly on the rural side of the urban-rural continuum and that if anything, the development would help to reinforce the urban boundary. It would provide a soft or feathered edge to the settlement. The applicant's Counsel noted that the Arrowtown urban area had over time moved up to the edge of the ridgeline to the east of the site, and then descended down the slope to the flat land on the eastern side of McDonnell Road. Keeping the land rural would not stop this creep. The subdivision would.
84. Ms Stagg informed us that if we relied upon the District Plan definitions of urban, then this development would not be classed as urban and would therefore not offend the strong policies to contain urban development within the boundary. We accept this advice cautiously. The presence of urban type servicing indicates to us that the development will have an urban dimension to it. In our view the development is on the cusp of what might be termed an urban environment.

### ***Landscape Effects***

85. It was common ground between the parties that landscape and visual amenity effects were the principal issues of contention in terms of effects assessment. In summary, Mr Geddes, based on Mr Skelton's landscape evidence, was of the view that adverse effects would be less than minor. In contrast, Ms Stagg, based on Ms MacPherson's landscape evidence, concluded that adverse effects will be more than minor.

86. Ms MacPherson's landscape evidence considered that the development will have a moderate adverse effect on pastoral character and reduce open views across the rural landscape. She considers that the western side of McDonnell Road is characterised by rural and rural living development with very few domestic activities currently visible, while the eastern side of the road is urban. She was of the opinion that the Arrowtown Urban Growth Boundary correctly separates the rural and urban landscapes. She considers that the urban side of the road has not compromised the pastoral character of the western side of the road and that the proposal will have more than minor adverse effects on the existing pastoral character.
87. Mr Skelton's landscape evidence acknowledged that the development would reduce the pastoral character of the site and see the reduction of its open character. However that change needed to be seen in the context of the area. He also acknowledged that the development would be visible from the elevated areas to the east. However, he concluded that that the development would be viewed in the context of a peri-urban area; that the proposed design controls will ensure that the development was not visually prominent and that the development would not detract from views of the wider landscape. In his opinion the proposal will extend the domestic character of Arrowtown, however the design will ensure that rural character is retained and will not appear as urban sprawl.
88. In addressing these differences of opinion, we consider that both landscape experts are essentially saying the same thing: the development will alter the pastoral character of the site and reduce the extent of rural views through and over the property. There is also a cumulative effect on rural amenity. Where they differ is the starting point from which the nature and scale of these effects should be considered. Ms MacPhersons starting point appears to be the environment as it is today, while Mr Skelton takes more of future orientated look.
89. Setting aside the issue of context, which we deal with below, our finding is that the development will result in a noticeable and substantial change to the environment of the site. Pastoral character will be reduced and rural amenity modified.

### **Assessment of Actual and Potential Effects on the Environment**

90. The experts agreed that the site is zoned Rural General and classified as Visual Amenity Landscape under the Operative District Plan. Under the Proposed District Plan, as notified, the site is zoned Wakatipu Basin Rural Amenity zone. This zone was described to us as being similar to the Rural General zone of the ODP, but with perhaps less of an emphasis on maintaining pastoral landscapes. By the time of the hearing, the recommendation from the panel hearing submissions to the proposed district plan was that the site have a rural-residential zoning.
91. In considering actual and potential landscape effects, we are guided by the expert assessments which grouped effects under the following headings:
  - a) Effects on natural and pastoral character;
  - b) Visibility of development;

- c) Form and density of development;
  - d) Cumulative effects of development on the landscape; and
  - e) Rural amenities.
92. As noted in the matters of contention, the landscape architects had differing opinions as to the impact the proposal would have on the pastoral character of the site. There was not a lot of debate on the impact on the natural character of the site. We have determined that although the site is visually contained from many locations in the Basin, the scale and nature of the development will compromise the pastoral character of the site and surrounding area particularly when viewed from elevated eastern locations.
  93. The effect the development would have on views was a concern for a number of submitters. Mr Skelton's opinion was that although the proposal was not visible when viewed from both north and south of McDonnell Road due to the topography, existing vegetation and substation, he did consider that it would be visible when viewed from McDonnell Road, when adjacent to the site. From the walking tracks to the east linking McDonnell Road and Cotter Avenue, Mr Skelton considered that there will be occasional views obtained through gaps in built form and domestic planting from the lower portion of the walkways and that visibility of the development would increase towards the upper portions of the walkway.
  94. From properties located on Cotter Avenue and Advance Terrace, Mr Skelton considered that some of these properties will have direct views of the site and that the development will be highly visible from areas west of Cotter Avenue.
  95. Ms MacPherson concluded that the proposal would not be highly visible but considered that the proposed planting would be very prominent and reduce open pastoral views and that future buildings and vegetation will adversely affect views of pastoral landscapes.
  96. We find that the proposal will be highly visible from some parts of the walking tracks located to the east, and from McDonnell Road when adjacent to the site. We also find that the proposal will be visible from parts of Cotter Avenue and Advance Terrace. We agree with the landscape architects that the development will not be visible when viewed from McDonnell Road when travelling from the south and north along this road.
  97. In considering the appropriateness of the form and density of proposed development, although some of the development will be screened by existing natural topography, other parts of the development will be highly visible from public places.
  98. The landscape architects had opposing views on the visual absorption capacity of the site. Mr Skelton's view was based largely on the findings of the WBLUPS that the proposal concentrates development within a portion of McDonnell Road that has a high potential to absorb development. In contrast, Ms MacPherson opinion was based on the framework of the ODP and considers that the landscape cannot absorb the level of development proposed. As previously found, we accept that the WBLUPS signals that the area will see a level of change, however we do not consider at this stage of the PDP process that we can place great weight on all of the recommendations of the study. We accept that the site has some ability to absorb development but not at the level proposed.

99. Having said that, we acknowledge that the proposed residential building platforms will not be located where they break the line and form of any skylines, ridge, hills or prominent slopes. Utilising the existing access and the location of the new extended access will not adversely affect the line of the landscape. Nor do we consider that the earthworks will have more than minor adverse effects.
100. Some of the new boundaries and planting have the potential to create arbitrary lines and patterns, specifically when viewed from eastern elevated areas. Further, although we find some of the new boundaries towards the middle and back of the site follow natural lines in the landscape, the proposed lot boundaries to the front of the site are not as successful.
101. In conclusion, we find that there will be more than minor adverse effects on pastoral character; visual and rural amenity as experienced along McDonnell Road, as well as from public viewing areas to the east, arising from the form and density of development as well as cumulative effects. Furthermore these adverse effects have not been adequately avoided, remedied or mitigated by way of planting or placement of building platforms. Design controls are of assistance, but will not address fundamental changes to the landscape arising from the lots and proposed buildings.
102. Finally we find that the proposed planting in the vicinity of the small stream located in the north eastern corner and near the eastern boundary of the site will be beneficial to improving water quality.

## **OBJECTIVES AND POLICIES**

103. While there was some minor debate as to the objectives and policies relating to transportation, subdivision and earthworks, the main issue for us to address are the objectives and policies relating to landscape and rural amenity.
104. The assessment of the application against objectives and policies relating to rural amenity and landscape is complicated by the progress of the district plan review.

### ***Regional Policy Statement and Plans***

105. The evidence of the planning experts did not rely on the Regional Policy Statements (operative or proposed) and as such we do not need to review these documents further.

### ***Operative District Plan***

106. Under this plan, the site is zoned Rural General. The associated objectives and policies provide a strong direction that the open, pastoral character of the Basin be retained. For example Objective 1 of the Rural General zone is for the character and landscape values of the rural areas to be protected.

107. Mr Geddes' opinion was that the development was consistent with the relevant objectives and policies. This was because of the unique circumstances of the site and the state of flux in the surrounding environment. The pastoral character of the surrounding area is rapidly changing, while the site's landform and existing shelter belt planting limit the role of the site in providing an open rural character as viewed from McDonnell Road. The rural amenity of the area had to be seen within the context of the factors identified in the WBLUPS.
108. Ms Stagg's assessment was that the proposal is contrary to the objectives and policies of the ODP. This was on the basis that the development would reduce the pastoral character of the area, lead to a loss of rural amenity and would place development in a visible position, either when viewed from McDonnell Road or the walkways and public areas on the Arrowtown ridge to the east.
109. Given the recent progression of the PDP we do not see the need to examine the objectives and policies of the ODP in great detail. Our finding is that the development has a significant degree of inconsistency with the ODP. In our view, the development will adversely change the rural character and amenity of the area, as experienced from McDonnell Road or from other public places. However that finding needs to be placed within the context of the emerging direction of the PDP.

### ***Proposed District Plan***

110. Mr Gedde's assessment was, broadly, that the PDP as notified sought similar outcomes to the ODP. The notified PDP zoned the area Wakatipu Basin Rural Amenity zone, a zoning not dissimilar in intent to the Rural General zone. The purpose of the Rural Amenity zone is to maintain and enhance the character and amenity of the Wakatipu Basin. As detailed in his assessment, the site, its context and the development proposed meant that the objectives and policies of the notified PDP could be met.
111. Ms Stagg's assessment was that the proposal is contrary to the objectives and policies of both Stage 1 and Stage 2 of the PDP as adverse effects on the landscape and visual amenity have not been avoided, remedied or mitigated, the proposal does not protect and enhance the rural values of the area, and the proposal would enable rural living but adversely affect rural character.
112. If the site is to retain the Rural Amenity zone of the notified PDP then we would conclude that the development had some policy hurdles to overcome. As it transpires, the Wakatipu Basin Lifestyle Precinct zone needs to also be considered, as this is the zoning now recommended by the Independent Hearings Panel.
113. The purpose of the Lifestyle Precinct is to identify areas within the broader Rural Amenity zone that have the potential to absorb rural living and other development, while still achieving the overall purpose of the Rural Amenity zone.

114. The proposed Objective of the Lifestyle Precinct is as follows: Rural living opportunities in the Precinct are enabled, provided landscape character and visual amenity values are maintained or enhanced.
115. Policies refer to providing for rural living, subdivision, development and use of land where it maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8 - Landscape Character Units. 24.2.5.2. These values are not to be compromised by cumulative adverse effects of development.
116. Design-led and innovative patterns of subdivision and development that maintain or enhance the landscape character and visual amenity values of the Wakatipu Basin overall are to be promoted.
117. Turning to Schedule 24.8, the South Arrowtown Landscape Unit is described. In our view, the two key passages as to landscape character and visual amenity values are as follows:

*The unit displays a low level of naturalness as a consequence of the level of existing and anticipated built development together with the golf course patterning. The relatively wild and unkempt character of the escarpment counters this to a limited degree.*

*Generally, the unit reads as part of the swathe of golf courses and rural residential development that frame the western and southern edges of Arrowtown and effectively function as a 'greenbelt' to the village. However, this 'greenbelt' effect, together with the legibility of the escarpment as a robust defensible edge to Arrowtown has been significantly compromised by the Arrowtown Lifestyle Retirement Village SHA which confers a distinctly urban character in a prominent and sizeable part of the unit.*

118. Our reading of these passages is that there is a degree of ambivalence to the assessment of the landscape character of the area. There is reference to a greenbelt, but at the same time it is noted that this greenbelt role is being eroded. This ambivalence does not help with assessment. Having considered the matter, we are of the view that, given that the PDP is not yet settled, we cannot make a finding that the 'greenbelt' role of the Arrowtown South area has been eroded to the point implied by the applicant.
119. Having said that, we agree that the site is one that is suitable for a rural-residential development. The WBLUPS points in this direction, as does the PDP's revised zoning. However, the Lifestyle Precinct zoning is one that is designed to maintain rural character and amenity. In short we do not consider that the current proposal meets the intent of the recommended Lifestyle Precinct zone. The development is a step too far in terms of density and layout. Application of the 1ha average lot size would lead to a discernible decrease in intensity, and with it a landscape character that more clearly sits on the non-urban side of the density continuum.

## PART 2 ASSESSMENT

120. Mr Todd was of the view that it was appropriate for us to undertake a Part 2 assessment. This was on the basis that the ODP is now well passed its review date, while the PDP was not yet settled.
121. In his view, Part 2 of the RMA did not present any barriers to granting consent. No matters of national importance are transgressed by the development. Section 7 of the RMA is relevant, as it relates to amenity values. The evidence of the applicant is that effects on pastoral character and rural amenity were not significant, given the changing context of the site and its surrounds. Ms Stagg's opinion was that there would be amenity effects that were not mitigated.
122. In considering the matter we do not consider that a separate Part 2 assessment would overturn our finding that the development will generate adverse landscape effects and is contrary to the objectives and policies of the ODP and PDP.

## DECISION

123. In exercising our delegation under sections 34 and 34A of the Act, and having regard to the matters discussed above under sections 104 and Part 2 of the Act, we have determined that consent to the discretionary activity application for subdivision of Section 1 Survey Office Plan 23541 held in Computer Freehold Register OT14A/295 into 13 allotments and the identification of 12 residential building platforms be **refused** for the reasons given.

### *Reasons for the Decision*

124. The proposal has more than minor effects on landscape, visual amenity values and rural amenity that are not sufficiently mitigated by planting, placement of building platforms and controls over the design of buildings.
125. The proposal is contrary to the relevant objectives and policies of the Operative and Proposed District Plans. In particular, the development is out-of-step with of the emerging direction under the PDP for a 'lifestyle precinct' of 1ha lots.



**David Mead**

**For the Hearings Commissioners (David Mead and Jane Sinclair)**

1 April 2019