

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

Decision No. [2024] NZEnvC 99

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14 of the First Schedule of the Act against decisions of the Queenstown Lakes District Council on Stage 2 of the Proposed Queenstown Lakes District Plan

BETWEEN TRUSTEES OF THE SPRUCE GROVE TRUST

(ENV-2019-CHC-34)

AND TRUSTEES OF THE BOUNDARY TRUST

(ENV-2019-CHC-35)

Appellants

AND QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

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

Hearing: In Chambers on the papers

Last case event: 9 February 2024

Date of Decision: 6 May 2024

Date of Issue: 6 May 2024



**RUSTEES OF THE SPRUCE GROVE TRUST & THE BOUNDARY TRUST V QLDC –
STAGE 2, TOPIC 31, SUBTOPIC 4, GROUP 3 - MILLBROOK**

FINAL DECISION OF THE ENVIRONMENT COURT**Topic 31, subtopic 4, group 3: Spruce Grove Trust &
The Boundary Trust – LCU 23: Millbrook**

- A: Directions are made for the Queenstown Lakes District Council to update the PDP in accordance with the amended provisions set out in Appendix A and Appendix B to this decision.
- B: On all points of appeal in Topic 31, the appeals are allowed to the extent specified and otherwise dismissed.

REASONS**Introduction**

[1] This is the final decision relating to appeals by the Trustees of Spruce Grove Trust ('SGT') and the Trustees of the Boundary Trust ('BT') (together 'the Trusts'). Those appeals are against Queenstown Lakes District Council's ('QLDC') decision to zone their land the Wakatipu Basin Rural Amenity zone ('WBRAZ') in the review of the Queenstown Lakes District Plan ('PDP'). Both blocks of land are near to Millbrook:

- (a) the SGT land is 1124 Malaghans Road, ('SGT Site');¹ and
- (b) the BT land is at 29 Butel Road,² and 459 Arrowtown-Lake Hayes Road ('Butel Road Site', 'Arrowtown-Lake Hayes Road Site', together the 'BT Sites').³

¹ Subject to the Spruce Grove Trust's appeal.

² Subject to both appeals.

³ Subject to the Boundary Trust's appeal.

[2] After a hearing of the appeals commenced on 17 October 2022, the parties reported that they had reached an agreement upon which the appeals could be determined ('Agreed Modified Relief').

[3] The Agreed Modified Relief proposed, as a modification to the WBRAZ, bespoke density and minimum and average lot size controls as would pertain to the SGT Site and the BT Sites as components of the LCU 23 respectively described as 'Malaghans Road South' and 'Arrowtown Lake Hayes East'. These would be as follows:

- (a) for LCU 23 Millbrook: Malaghans Road South (encompassing the SGT Site) a minimum lot size of 4,000 m² and minimum average lot size of 1.5 ha; and
- (b) for LCU 23 Millbrook: Arrowtown Lake Hayes East, encompassing the BT Sites, a minimum lot size of 6,000 m² and minimum average lot size of 1 ha.

[4] The Interim Decision⁴ found that the Agreed Modified Relief is appropriate, subject to the additional modifications to be made to Pol 24.2.1.1B.f.ii as directed by the court. The modifications involved the refinement of Pol 24.2.1.1B.f.ii to read:

confine development to locations where existing landform or vegetation features serve to limit visibility of additional dwellings when viewed from the Arrowtown Lake Hayes Road.

[5] QLDC responded on behalf of all parties to the court's directions that a full set of updated provisions, including planning maps, be filed for the court's final approval for inclusion in the PDP.

⁴ *Trustees of Spruce Grove Trust v Queenstown Lakes District Council* [2023] NZEnvC 279.

[6] Its 9 February 2024 memorandum included the updated provisions in Ch 24, Ch 27 and Sch 24.8. While the Interim Decision included a direction for amended plan maps to be prepared, the QLDC has advised that no mapping updates are required in this instance.

[7] QLDC also brought to the court's attention the fact that directions were not issued for the related Ch 27 provisions that are required to work in parallel with the provisions determined in the Interim Decision. These Ch 27 provisions were reserved as part of the Topic 25/30 hearing,⁵ with the intention that they would be confirmed through the Topic 31 appeals (in this case, those appeals relating to LCU 23 – Millbrook).

[8] The parties have conferred and agree to the drafting of the relevant Ch 27 provisions, which will complete the package of provisions that will apply to the appeal sites within LCU 23. Those Ch 27 provisions are rr 27.5.18A.h and 27.5.18A.i, and are set out as follows:

Subdivision Activities District Wide		Activity Status
27.5.18A	<p>Subdivision of any site within the Wakatipu Basin Rural Amenity Zone (outside the Lifestyle Precinct) where located within the following areas identified on the district plan web mapping application:</p> <p>...</p> <p><u>h. LCU 23 limited to the area identified as Malaghans Road South.</u></p> <p><u>i. LCU 23 limited to the area identified as Arrowtown Hayes East.</u></p>	D

[9] The inclusion of those provisions in the PDP gives effect to the findings in the Interim Decision. Under s278 Resource Management Act 1991 ('RMA'), an

⁵ *Barnhill Corporate Trustee Limited v Queenstown Lakes District Council* [2022] NZEnvC 58; *Barnhill Corporate Trustee Limited v Queenstown Lakes District Council* [2023] NZEnvC 41; and *Barnhill Corporate Trustee Limited v Queenstown Lakes District Council* [2023] NZEnvC 91.

Environment Judge has the same powers that the District Court has in the exercise of its civil jurisdiction. Rule 11.10 DCR⁶ specifies (relevantly) that a judgment may be corrected by the court if it contains a clerical mistake or an error arising from an accidental slip or omission. I am satisfied with the explanation provided by counsel and determine that the omission of the parallel amendments to rr 27.5.18A.h and 27.5.18A.i should be corrected under s278 RMA to reflect the court's Interim Decision.

Outcome

[10] Having reviewed the final set of provisions the court is satisfied it reflects the Interim Decision and accordingly it is appropriate that the requested direction to effect the changes sought to the PDP be made. Directions are made accordingly.

[11] Therefore:

- (a) the updated provisions set out in the Appendix A to this decision are approved and are to be included in the PDP;
- (b) a marked-up version of the changes made is attached as Appendix B;
- (c) on the points of appeal in this Topic 31, subtopic 4, group 3, the appeals are allowed to that extent and are otherwise declined;
- (d) QLDC is directed to update the PDP accordingly.

For the court



J J M Hassan
Environment Judge



⁶ District Court Rules 2014.

Appendix A – Final plan provisions (clean)

24. Wakatipu Basin

24.2.1.1B Ensure the following outcomes in the consideration of any proposal for subdivision or residential development:

....

- e. in the part of LCU 23 described in Schedule 24.8 as 'Millbrook Malaghans Road South':
 - i. ensure no development is visible from Malaghans Road;
 - ii. confine development to the lower, flatter land on the south side of the roche moutonnée;
 - iii. ensure any vehicle access from Malaghans Road is located to the west of the roche moutonnée and has a discrete rural lane character that can visually integrate into the landscape setting when viewed from Malaghans Road and Millbrook Resort Zone. Encourage any vehicle access from the Millbrook Resort Zone to be located to the west of the roche moutonnée;
 - iv. the maintenance and management of non-developed areas of the site is to occur in a manner that both reinforces the legibility and expressiveness of the roche moutonnée and is visually consistent with the wider landscape setting, including the adjacent Resort Zone.
- f. in the part of LCU 23 described in Schedule 24.8 as 'Millbrook Arrowtown Lake Hayes East':
 - i. avoid built development on the low-lying land adjacent to Butel Road and Arrowtown Lake Hayes Road;
 - ii. confine development to locations where existing landform or vegetation features serve to limit visibility of additional dwellings when viewed from the Arrowtown Lake Hayes Road.

24.5 Rules - Standards

The following standards apply to all activities.

	Table 24.2 - Standards	Non-compliance status
24.5.1.6	Any site located within a Landscape Character Unit or area identified on the District Plan web mapping application a maximum of one residential unit per net site area and average area: ... 24.5.1.6.9 LCU 23 limited to the area identified as Malaghans Road South: 4,000m ² minimum and 1.5ha average	NC

	Table 24.2 - Standards	Non-compliance status
	24.5.1.6.10 LCU 23 limited to the area identified as Arrowtown Lake Hayes Road East: 6,000m ² minimum and 1 ha average	

24.8 Schedule 24.8 Landscape Character Units

23: Millbrook

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

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

Landscape Character Unit	23: Millbrook
Sense of Place	<p>Generally, the unit reads as an intensively-developed attractive urban settlement set within a parkland landscape. The area also forms part of the swathe of golf courses that frame the western and southern edges of Arrowtown and effectively function as a greenbelt to the village.</p> <p>The far eastern triangle comprises a discrete flat area that contrasts with the more rolling golf course/parkland landscape to the west and south (LCU 22) and associates more closely with the adjacent urban area of Arrowtown.</p>
Potential landscape issues and constraints associated with additional development	<p>Existing density of development and the issue of absorbing additional development without compromising existing (urban) parkland feel.</p> <p>Ensuring existing development character does not sprawl westwards and southwards into the existing, 'more rural' areas.</p> <p>Private golf course and previous (recent) resource consent processes suggests limited further capability for development.</p> <p>Where development is proposed on the south side of the roche [moutonnée] adjacent to Malaghans Road, any built form is to be located below the 406.0 masl contour line to maintain the legibility of the landform.</p> <p>Where additional built development is proposed along the western side of Arrowtown Lake Hayes Road, maintain a minimum setback from roads of 65m unless an application ensures a more effective outcome through ensuring that built development is visually integrated with existing landform and/or vegetation features.</p>
Potential landscape opportunities and benefits associated with additional development	<p>Relatively visually discreet nature of the location (due to landform and vegetation patterns).</p> <p>Close proximity to Arrowtown.</p> <p>Urban infrastructure.</p> <p>Large-scaled lots suggest potential for subdivision.</p>
Environmental characteristics and visual amenity values to be maintained and enhanced	<p>Attractive urban parkland character.</p> <p>Landscape coherence.</p>
Capability to absorb additional development	<p>Moderate: majority of unit</p> <p>High: triangular area at far eastern end of the unit</p>

27 Subdivision and Development

27.5 Rules - Subdivision

	Subdivision Activities District Wide	Activity Status
27.5.18A	<p>Subdivision of any site within the Wakatipu Basin Rural Amenity Zone (outside the Lifestyle Precinct) where located within the following areas identified on the district plan web mapping application:</p> <p>...</p> <p>h. LCU 23 limited to the area identified as Malaghans Road South.</p> <p>i. LCU 23 limited to the area identified as Arrowtown Lake Hayes Road East.</p>	D

27.6 Rules - Standards for Minimum Lot Areas

27.6.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, an average net site area less than the minimum specified.

(Note: in the Large Lot Residential A zone, the minimum or average lot size shall be determined by total area, not net site area)

Zone		Minimum Lot Area
Rural	Rural Gibbston Character	No minimum
	Wakatipu Basin Rural Amenity Zone	80ha
	Within the following areas of the Wakatipu Basin Rural Amenity Zone identified on the district plan web mapping application the minimum net site area and the average area of all lots in the subdivision is not less than:	
	LCU 23 limited to the area identified as Malaghans Road South	4,000m ² minimum and 1.5ha average
	LCU 23 limited to the area identified as Arrowtown Lake Hayes Road East	6,000m ² minimum and 1ha average

Appendix B – Final plan provisions (marked-up)

24. Wakatipu Basin

24.2.1.1B Ensure the following outcomes in the consideration of any proposal for subdivision or residential development:

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- e. in the part of LCU 23 described in Schedule 24.8 as 'Millbrook Malaghans Road South':
 - i. ensure no development is visible from Malaghans Road;
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 - iv. the maintenance and management of non-developed areas of the site is to occur in a manner that both reinforces the legibility and expressiveness of the roche moutonnée and is visually consistent with the wider landscape setting, including the adjacent Resort Zone.
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	Table 24.2 - Standards	Non-compliance status
	24.5.1.6.10 LCU 23 limited to the area identified as <u>Arrowtown Lake Hayes Road East: 6,000m² minimum and 1 ha average</u>	

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Vegetation patterns	Extensive exotic amenity planting around buildings and throughout golf course, native riparian and pond edge plantings. Dense evergreen shelterbelt plantings along much of the Malaghans Road frontage. Appreciable stand of native bush in steep-sided gully around Waterfall Park. Generally, manicured lawn and parkland plantings dominate.
Hydrology	Numerous watercourses and amenity ponds.
Proximity to ONL/ONF	Unit includes an ONF (roche moutonnée). Mid to long-range views to surrounding ONL mountain context.
Character Unit boundaries	North: Malaghans Road. East: McDonnell Road, cadastral boundary, Arrowtown Lake Hayes Road. South: Millbrook Special zone boundary. West: Millbrook Special zone boundary.
Land use	Golf course, commercial and rural residential uses dominate. A small area of grazing land around the roche moutonnée.
Settlement patterns	Generally, the area is relatively intensively developed with substantial clusters of two-storey semi-detached and terraced housing units throughout the golf course area, accessed via a complex patterning of semi-rural lanes. Generally, development is set into either a comprehensive parkland setting (Millbrook) or a comprehensive bush setting (Waterfall Park Special Zone – undeveloped). Pockets of more spacious rural residential development in places along Arrowtown Lake Hayes Road. Additional and similarly-scaled development is anticipated throughout the western portion of the Millbrook Special Zone. This area will be flanked by a golf course and landscape protection areas on its ‘exposed’ western margins. Large lot single ownership.
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	<u>LCU 23 limited to the area identified as Arrowtown Lake Hayes Road East</u>	<u>6,000m² minimum and 1ha average</u>

