

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2024] NZEnvC 78

IN THE MATTER

of the Resource Management Act 1991

AND

appeals under clause 14 of the First
Schedule to the Act

BETWEEN

BARNHILL CORPORATE
TRUSTEE LIMITED and all other
appellants concerning Topics 25 and
30 of Stage 2 of the proposed
Queenstown Lakes District Plan

(ENV-2019-CHC-086)

Appellant

AND

QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan

Hearing: In chambers, on the papers

Last case event: 12 October 2023

Date of Decision: 15 April 2024

Date of Issue: 15 April 2024

CORRECTION OF THE ENVIRONMENT COURT

A: Assessment Matters AM 24.7.8(a) and AM 27.9.3.3(a) are amended as set
out in this Correction.



REASONS

Introduction

[1] These proceedings concern the staged review of the Queenstown District Plan ('PDP'), and the appeal points allocated to Topics 25 and 30, Stage 2, pertaining to the so-termed 'Wakatipu Basin' provisions. This involves the Wakatipu Basin Rural Amenity Zone ('WBRAZ'), including provisions in Chs 24 and 27 of the PDP.

[2] In resolving these appeal points the court issued a number of interim decisions:¹

- (a) on 12 April 2022, the court issued its First Interim Decision in the staged review of the PDP concerning appeal points allocated to Topics 25 and 30, Stage 2, pertaining to the WBRAZ;
- (b) on 13 March 2023, the court issued its Second Interim Decision which included directions for Queenstown Lakes District Council ('QLDC') to file a reporting memorandum identifying any minor errors and omissions needing correction, and proposing further directions for all outstanding matters;
- (c) on 12 May 2023, the court issued its Final Decision directing QLDC to amend the PDP in accordance with the provisions determined in the decision.

[3] QLDC has since identified an issue that needs to be addressed in relation to two Assessment Matters ('AM'), being AM 24.7.8(a) and AM 27.9.3.3(a). These AMs were determined by the court's decisions above, but in a way that departs from a consent order issued on 27 July 2021 and the version of the provisions

¹ *Barnhill Corporate Trustee Limited v Queenstown Lakes District Council* [2022] NZEnvC 058 ('First Interim Decision'); *Barnhill Corporate Trustee Limited v Queenstown Lakes District Council* [2023] NZEnvC 041 ('Second Interim Decision'); *Barnhill Corporate Trustee Limited v Queenstown Lakes District Council* [2023] NZEnvC 091 ('Final Decision').

advanced by QLDC in its closing submissions following the 6-8 December 2021 hearing.

The consent order

[4] The consent order concerned 34 appeals² against a decision of QLDC regarding provisions of Chs 2 (Definitions), 24 (Wakatipu Basin) and 27 (Subdivision and Development) of the PDP.

[5] In that order AM 24.7.8(a) was amended as follows:

24.7.8 Setback from boundaries, ~~Queenstown Trail, roads and Escarpments, Ridgeline and River Cliff Features~~

Whether the proposal achieves:

- a. The maintenance of the identified landscape character and visual amenity values with including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units for the relevant landscape unit.

[6] The consent order amended AM 27.9.3.3(a) as follows:

² ENV-2019-CHC-072 Aircraft Owners & Pilots Association (NZ) Inc; ENV-2019-CHC-086 Barnhill; Corporate Trustee; ENV-2019-CHC-045 Banco Trustees Limited; ENV-2019-CHC-038 Boxer Hill Trust; ENV-2019-CHC-032 Broomfield & Woodlot Properties Limited; ENV-2019-CHC-040 Cassidy Trust; ENV-2019-CHC-066 The Crown Investment Trust; ENV-2019-CHC-085 Darby Planning Limited Partnership; ENV-2019-CHC-024 Donaldson R; ENV-2019-CHC-071 Fairfax A; ENV-2019-CHC-016 Hanan E & M; ENV-2019-CHC-018 Guthrie M; ENV-2019-CHC-047 Henry MP; ENV-2019-CHC-089 Lake Hayes Limited; ENV-2019-CHC-087 Lake Hayes Cellar Limited; ENV-2019-CHC-083 Lake Hayes Investments Limited; ENV-2019-CHC-075 MacColl D; ENV-2019-CHC-068 McFadgen L; ENV-2019-CHC-023 T McQuilkin and A P McQuilkin Family Trust; ENV-2019-CHC-082 Monk Roger; ENV-2019-CHC-088 Morven Ferry Limited; ENV-2019-CHC-042 Muspratt JC; ENV-2019-CHC-074 Slopehill Joint Venture; ENV-2019-CHC-060 TJ Investments PTE Limited; ENV-2019-CHC-027 Transpower New Zealand Limited; ENV-2019-CHC-037 Trojan Helmet Limited; ENV-2019-CHC-077 United Estates Ranch Limited; ENV-2019-CHC-020 Van Asch & others; ENV-2019-CHC-065 Wakatipu Equities Limited; ENV-2019-CHC-052 Wakatipu Investments Limited; ENV-2019-CHC-090 Waterfall Park Developments Limited; ENV-2019-CHC-084 Williamson S; ENV-2019-CHC-044 Wills G & Burden T; ENV-2019-CHC-064 Wood C.

27.9.3.3 Assessment Matters in relation to Rule 27.5.9 (Wakatipu Basin Rural Amenity zone and Wakatipu Basin Lifestyle Precinct Subdivision Activities)

General

- a. ~~The extent to which the proposal is consistent with objectives and policies relevant to the matters of discretion.~~
- b. ~~The extent to which the subdivision provides for low impact design that avoids or mitigates adverse effects on the environment.~~

Subdivision Design and Landscape

- c. ~~The extent to which the location of future buildings, ancillary elements and the landscape treatment complements the existing landscape character, visual amenity values and wider amenity values of the Wakatipu Basin Rural Amenity Zone or Wakatipu Basin Lifestyle Precinct, including consideration of:~~

The extent to which the location of future buildings, ancillary elements and landscaping responds to the identified elements set out in Schedule 24.8 – Landscape Character Units for the relevant landscape unit, and the following assessment matters:

- i. the retention of existing vegetation and landform patterns;
- ii. the alignment of lot boundaries in relation to landform and vegetation features and neighbouring development;
- iii. earth mounding, and framework planting to integrate buildings and vehicle access ways;
- iv. planting of appropriate species that are suited to the general area, including riparian restoration planting having regard to the matters set out in Schedule 24.8 – Landscape Character Units;
- v. ~~riparian restoration planting~~;
- vi. the retirement of steep slopes over 15° and restoration planting of steep slopes over 15° to promote slope stabilisation and indigenous vegetation enhancement;

- vii. ~~how the integration of controls for future development that address addressing such matters as~~ building height, building colours and materials, building coverage, earthworks, retaining, fencing, gates, vehicle accessways (including paving materials), external lighting, and domestic infrastructure (including water tanks); ~~vegetation removal, and proposed plantings might be incorporated in the development in a manner ensuring ongoing compliance;~~
- viii. the integration of existing and provision for new public walkways and cycleways/bridlepaths.;
- ~~ix setting back building platforms, and associated landscaping (including any mounding) from roads to maintain openness and where present, views to the surrounding mountain context.~~
- ix whether the use of varied allotment sizes maintains a sense of spaciousness, or successfully integrates development with existing landform, vegetation or settlement patterns.

QLDC's closing submissions

[7] Following the consent order being issued, a hearing was convened for the remaining unresolved issues and provisions allocated to Topics 25 and 30. The hearing was held from 6-8 December 2021. QLDC filed closing submissions on 11 February 2022. Attached to the submissions were proposed amendments to the provisions. QLDC proposed that AM 24.7.8(a) be amended as follows:

Whether the proposal achieves:

- a. The maintenance of the identified landscape character and visual amenity values with reference to the identified elements set out in Schedule 24.8 – Landscape Character Units ~~for the relevant landscape unit.~~

[8] It was proposed that AM 27.9.3.3(a) be amended as follows:

Assessment Matters in relation to Rule 27.5.9 (Wakatipu Basin Rural Amenity zone and Wakatipu Basin Lifestyle Precinct Subdivision Activities)

Subdivision Design and Landscape

- a. The extent to which the location of future buildings, ancillary elements and landscaping responds to the identified elements set out in Schedule 24.8 – Landscape Character Units ~~for the relevant landscape unit~~, and the following assessment matters:
 - i. the retention of existing vegetation and landform patterns;
 - ii. the alignment of lot boundaries in relation to landform and vegetation features and neighbouring development;
 - iii. earth mounding, and framework planting to integrate buildings and vehicle access;
 - iv. planting of appropriate species that are suited to the general area, including riparian restoration planting;
 - v. the retirement of steep slopes over 15° and restoration planting to promote slope stabilisation and indigenous vegetation enhancement;
 - vi. the integration of controls for future development that address building height, building colours and materials, building coverage, earthworks, retaining, fencing, gates, vehicle access (including paving materials), external lighting, and domestic infrastructure (including water tanks);
 - vii. the integration of existing and provision for new public walkways and cycleways/bridlepaths;
 - viii. whether the use of varied allotment sizes maintains a sense of spaciousness, or successfully integrates development with existing landform, vegetation or settlement patterns.

The court's decisions

[9] The First Interim Decision included the following order, and associated directions:

Part B sets out **provisional findings** on SO 3.2.5.8, a new policy 24.2.1.1X and associated mapping and policies 24.2.1.1, 24.2.1.1A, 24.2.1.1B and 24.2.1.1XX, and assessment matters 24.7.5, 24.7.7, **24.7.8**, 24.7.8B, 24.7.9 and 27.9.3.3

reserving capacity for supplementary submissions.

Emphasis added

[10] In terms of the AMs specifically, the First Interim Decision said the following:

(a) at [168], that assessment matter 24.7.8(a) is consequentially amended (due to amendments to Pol 24.2.1.1) to read:

- a. An appropriate scale and intensity of the activity in the context of the Basin’s amenity and character including of the surrounding area including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units.

(b) at [171], in relation to AM 27.9.3.3(a) that:

In this rule, the words “for the relevant landscape unit” are inappropriate and are to be deleted. The prefacing words of assessment matter 27.9.3.3(a) are to be amended to read:

- a. The maintenance of the Basin’s landscape character and visual amenity values including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units.

[11] The court’s wording for AM 24.7.8(a) first appeared in the First Interim Decision. This drafting was then carried through, without change, to the court’s Second Interim decision and the Final Decision.

[12] The sub-clauses in AM 9.7.3.3(a) are shown as deleted in Appendix A to the Final Decision.

QLDC’s proposal

[13] QLDC now seeks clarification as to the correct drafting intentions for both provisions. In doing so it proposes an amalgamation of the wording determined

in the consent order/the wording proposed by QLDC in its closing submissions dated 11 February 2022/the wording determined in the court's decisions.

AM 24.7.8

[14] QLDC's position is that the wording of the provision does not reflect the wording suggested in QLDC's closing submissions and instead appears to have adopted the wording from the preceding provision AM 24.7.7(a), which was suggested in QLDC's 11 February 2022 closing submissions as:

24.7.7 Non-residential activities

Whether the proposal achieves:

- a. An appropriate scale and intensity of the activity in the context of the amenity and character of the surrounding area including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units ~~for the relevant landscape character unit.~~

[15] QLDC seeks that the wording of the provision revert back to QLDC's closing version drafting, but with the same amendments as for AM 24.7.8B(a)(i), which would be consistent with the court's determinations.

[16] The amendments would see AM 24.7.8(a) read:

Setback from boundaries

Whether the proposal achieves:

- a. The maintenance of the Basin's landscape character and visual amenity values including the identified elements set out in Schedule 24.8 – Landscape Character Units.

AM 27.9.3.3(a)

[17] The amendment to AM 27.9.3.3(a) in the First Interim Decision removed the prefacing effect of that text, by removing the sub-clauses and finishing the clause with a full stop. QLDC submits that there was no determination by the court which expressly recommended that the sub-clauses should be removed. Instead, it says that there is a potential misalignment between the drafting and the court's findings, which refer to the "prefacing words".

[18] It also considers that there is an inconsistency between the drafting of AM 27.9.3.3(a) and other Ch 24 and 27 provisions (for example, AM 24.7.5(a), at [168], and rr 27.5.18C and 27.6.1, at [169] and [170]), with those other provisions retaining the prefacing text and their associated sub-clauses.

[19] QLDC seeks that the wording of AM 27.9.3.3(a) reverts back to that of the consent order and QLDC's closing version drafting of the provision, but with the court's recommended amendments. It considers that this would be consistent with the court's findings.

[20] The amendments would see AM 27.9.3.3 read:³

Subdivision Design and Landscape

- a. The maintenance of the Basin's landscape character and visual amenity values including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units, and the following assessment matters:
 - i. the retention of existing vegetation and landform patterns;
 - ii. the alignment of lot boundaries in relation to landform and vegetation features and neighbouring development;
 - iii. earth mounding, and framework planting to integrate buildings and vehicle access;

³ For completeness, QLDC noted that the matters captured in AM 27.9.3.3(a)(i), (iii), (iv), (v), and (vii) are the same as the matters set out in AM 24.7.5 (which applies to New Buildings and infringements to certain standards, and has been included in the final provisions for Ch 24).

- iv. planting of appropriate species that are suited to the general area, including riparian restoration planting;
- v. the retirement of steep slopes over 15° and restoration planting to promote slope stabilisation and indigenous vegetation enhancement;
- vi. the integration of controls for future development that address building height, building colours and materials, building coverage, earthworks, retaining, fencing, gates, vehicle access (including paving materials), external lighting, and domestic infrastructure (including water tanks);
- vii. the integration of existing and provision for new public walkways and cycleways/bridlepaths;
- viii. whether the use of varied allotment sizes maintains a sense of spaciousness, or successfully integrates development with existing landform, vegetation or settlement patterns.

Evaluation

[21] In accordance with s278 RMA⁴ and Rule 11.10 of the District Court Rules 2014 ('DCRs'), the court has the power to correct errors, accidental slips or omissions and any other aspect of a decision that does not accurately reflect what was decided or intended.

[22] Rule 11.10 provides:

- 11.10 Correction of accidental slip or omission
- (1) A judgment or order may be corrected by the court or the Registrar who made it, if it—
 - (a) contains a clerical mistake or an error arising from an accidental slip or omission, whether or not made by an officer of the court; or
 - (b) is drawn up so that it does not express what was decided and intended.
 - (2) The correction may be made by the court or the Registrar, as the case may be,—

⁴ Resource Management Act 1991.

- (a) on its or his or her own initiative; or
- (b) on an interlocutory application.

[23] In this instance, QLDC seeks the changes to AM 24.7.8(a) and AM 27.9.3.3(a) so that they align with the court's findings, and the previously issued consent order. It considers that the changes to AM 24.7.8(a) and AM 27.9.3.3(a) can appropriately be corrected under r 11.10 as:

- (a) the change to AM 24.7.8(a) in the First Interim Decision has not used QLDC's closing version provisions as the base document, and appears to have instead accidentally replicated the wording from the preceding AM 24.7.7(a); and
- (b) the change to AM 27.9.3.3(a) appears to have inadvertently removed the additional wording which gives the AM its prefacing effect (and as a consequence, various other subclauses).

[24] QLDC does not consider that further evidence is needed, as no evidence was called in relation to the technical drafting of the subject AMs at any stage through the Topic 25/30 hearing (the subject AMs having been previously resolved by the consent order).

[25] Counsel for Otago Regional Council is in agreement with this position. Counsel for the Anderson Lloyd parties has also confirmed in a memorandum dated 12 October 2023 that they support the course of action proposed by QLDC.

[26] On this basis the court is satisfied that:

- (a) there has been consultation between the parties and that the amendments sought will not result in any procedural unfairness;
- (b) there is consistency with the court's earlier decisions including on matters of drafting, policy direction and related consequential amendments;
- (c) consideration in AM 24.7.8 is not limited to "the identified elements

set out in Sch 24.8 – Landscape Character Units” as reflected in the court’s decision and policy and assessment matter drafting across the Wakatipu Basin provisions;

- (d) the assessment matters align with the objectives and policies as set out in in the court’s decision;
- (e) there is no risk in making this late change in terms of the integrity and application of the PDP policy; and
- (f) there are no express findings or other reasoning contained in the court’s decisions to explain the changes to these AMs, and therefore they should be amended as sought by QLDC to recognise that a slip/oversight occurred.

Outcome

[27] In accordance with r 11.10 of the DCRs and s278 RMA, AM 24.7.8(a) is amended to read:

Setback from boundaries

Whether the proposal achieves:

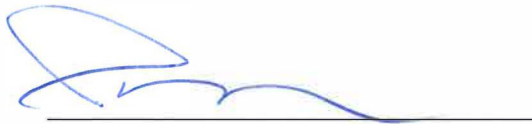
- a. The maintenance of the Basin’s landscape character and visual amenity values including the identified elements set out in Schedule 24.8 - Landscape Character Units.

[28] AM 27.9.3.3(a) is amended read:

Subdivision Design and Landscape

- a. The maintenance of the Basin’s landscape character and visual amenity values including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units, and the following assessment matters:
 - i. the retention of existing vegetation and landform patterns;
 - ii. the alignment of lot boundaries in relation to landform and vegetation features and neighbouring development;

- iii. earth mounding, and framework planting to integrate buildings and vehicle access;
- iv. planting of appropriate species that are suited to the general area, including riparian restoration planting;
- v. the retirement of steep slopes over 15° and restoration planting to promote slope stabilisation and indigenous vegetation enhancement;
- vi. the integration of controls for future development that address building height, building colours and materials, building coverage, earthworks, retaining, fencing, gates, vehicle access (including paving materials), external lighting, and domestic infrastructure (including water tanks);



J J M Hassan
Environment Judge

