

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

Decision No. [2024] NZEnvC 92

IN THE MATTER of the Resource Management Act 1991

AND an appeal under s120 of the Act

BETWEEN GIBBSTON VINES LIMITED

(ENV-2018-CHC-8)

Appellant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Deputy Environment Commissioner G Paine
Special Advisor W R Howie

Hearing: In Chambers at Christchurch

Last case event: 22 December 2023

Date of Decision: 29 April 2024

Date of Issue: 29 April 2024

FINAL DECISION OF THE ENVIRONMENT COURT

A: The appeal is allowed insofar as the consent under appeal is granted subject to the amendments to the plans as attached in Appendix 1 and the conditions as set out in Appendix 2.

B: Costs are reserved until the determination of the High Court appeal.



REASONS

Introduction

[1] This is the final decision relating to an appeal by Gibbston Vines Limited ('GVL') against a decision by Queenstown Lakes District Council ('QLDC') refusing resource consent for a seven-lot residential subdivision and associated development of land ('the Proposal') at 2404 Gibbston Highway ('the Site').

Procedural background

[2] The court has issued three interim decisions on the appeal to date.¹ The decisions declined consent to proposed Lots 2-7 of the Proposal but considered granting consent to a two-lot subdivision of the Site subject to the finalisation of conditions in response to the concerns set out in the third interim decision.²

[3] GVL provided a modified set of conditions on 11 February 2022 in response to the second interim decision ('Modified Proposal'),³ and further amendments to the scheme plan and conditions on 22 December 2023 in response to the directions in the third interim decision.⁴

Response to technical deficiencies/uncertainties

[4] In the third interim decision, directions were made for GVL to address:

- (a) some drafting aspects of proposed Condition 1;
- (b) clarification as to the intention in proposed Condition 3's reference to "necessary easements" to be as shown in the Memorandum of

¹ [2019] NZEnvC 115, [2021] NZEnvC 23, [2023] NZEnvC 265.

² [2023] NZEnvC 265 at [92].

³ Memorandum of counsel on behalf of Gibbston Vines Ltd in respect of Lot 1 dated 11 February 2022.

⁴ Joint memorandum of counsel on behalf of Gibbston Vines Ltd and Queenstown Lakes District Council dated 22 December 2023.

Easements attached to the Survey Plan;

- (c) arrangements for access according to proposed Condition 4.a; and
- (d) the need for an updated final and complete version of the consent for the court's final approval as being in accordance with our findings.

[5] The parties provided satisfactory responses to these matters and also proposed the following minor amendments to proposed conditions:

- (a) in Condition 1, amendment of the date of the Plan from "04.02.22" to "10.02.22" to correctly align with the Plan Revision E date;
- (b) in Condition 4(b), addition of the words "and once water and wastewater services are established on the lots these must be retained and maintained in perpetuity by the registered proprietors" to capture in the consent notice condition that it is an ongoing requirement; and
- (c) in Condition 4(c), deletion of an unnecessary word "solely" (in that the only exception for residential activity on Lot 1 is residential activity ancillary to commercial activity).

Evaluation

[6] The parties' joint memorandum dated 22 December 2023 appended the final scheme plans and conditions. Having reviewed them the court is satisfied that they fully reflect the matters identified in the third interim decision. The amended Modified Proposal with the final scheme plans and conditions now satisfies all necessary requirements for consent.

Outcome and directions

[7] Consent is therefore granted to the two-lot subdivision consent subject to a set of subdivision plans and conditions as set out in Appendices 1 and 2.

[8] Costs are reserved, pending determination or other resolution of the High Court appeal.

For the court



J J M Hassan
Environment Judge



Appendix 1 – Final and complete set of plans



PROPOSED MEMORANDUM OF EASEMENTS			
PURPOSE	SHOWN	SERVIENT TENEMENT	DOMINANT TENEMENT
Right to convey water	B	Lot 2 hereon	Lot 1 hereon

Client Review 04.03.2020


Clark Fortune McDonald & Associates
 Licensed Cadastral Surveyors - Land Development - Planning Consultants
 309 Lower Shotover Road, P.O. Box 533 Queenstown
 Tel: (03)441-6044, Fax: (03)442-1066, Email: admin@cfma.co.nz
 Shop 2, Ottago House, 475 Moray Place, P.O. Box 5960
 Tel: (03)470-1582, Fax: (03)470-1583, Email: admin@cfma.co.nz

Rev	Date	Revision Details	B
A	30.03.20	Boundaries changed	NT
B	24.03.21	Boundaries changed	ED
C	30.02.22	Building Platform Changed	NT
D	30.02.22	Building Platform Removed	NT
E	30.02.22	Consent notice area removed	NT

Client
 GIBBSTON VINES LTD
Notes: This document is the property of the Client. Any person using this document for any purpose other than that intended by the Client, without the written consent of the Surveyor, is liable for any consequences. The Surveyor is not responsible for any errors or omissions in this document. The Surveyor is not responsible for any damage to property or injury to persons caused by the use of this document. Copyright in this document is reserved.

Surveyed	Signed	Date	Job No.	Drawing No.
By Others	Signed	Date	11069	001
Drawn	Signed	Date	Scale	1:1000 @ A1
NT	NT	04.03.20	Scale	1:2000 @ A3
Designed	Signed	Date	Datum & Level	Key
				Mt. Nic 2000 & MSL

LOTS 1 & 2 BEING A PROPOSED SUBDIVISION OF SECTION 5, BLOCK III KAWARAU SD

Appendix 2 – Final and complete set of conditions

General

- 1 That the subdivision must be undertaken/carried out in accordance with the plans:
 - Lots 1 and 2 being a proposed subdivision of Section 5, Block III Kawarau SD, Job: 11069, Drawing No. 001, Rev. E and dated 10.02.22;

stamped as approved on XXXXX

- 2 This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.

To be completed before Council approval of the Survey Plan

- 3 Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:
 - (a) All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved.

Ongoing Conditions/Consent Notices

- 4 The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notice pursuant to s221 of the Act:
 - (a) Lot 1 shall not gain access direct to or from Gibbston Highway (SH6).
 - (b) Lots 1 and 2 have not been provided with services and infrastructure. Any required servicing and infrastructure for Lots 1 and 2 is the responsibility of the future Lot owner(s), and once water and wastewater services are established on the lots these must be retained and maintained in perpetuity by the registered proprietors.
 - (c) Lot 1 is not to be used for residential purposes, except for residential activity which is ancillary to commercial activities undertaken on Lot 1.

