

BEFORE THE ENVIRONMENT COURT

ENV-2018-CHC-

IN THE MATTER of the Resource Management
Act 1991 (“Act”)

AND

IN THE MATTER of an appeal pursuant to
Clause 14(1) to Schedule 1 of
the Act

BETWEEN **WAKATIPU
INVESTMENTS
LIMITED**

Appellant

AND

**QUEENSTOWN LAKES
DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST
DECISION ON PROPOSED PLAN UNDER CL 14(1) SCHEDULE 1**

Dated 7 May 2019

MACALISTER TODD PHILLIPS

Barristers, Solicitors, Notaries

3rd Floor, 11-17 Church Street

Queenstown 9300

P O Box 653, DX ZP95001, Queenstown 9348

Telephone: (03) 441 0125 Fax: (03) 442 8116

Solicitor Acting: J E Macdonald

NOTICE OF APPEAL

To: The Registrar
Environment Court
Christchurch

1. Name and address of appellant:

Wakatipu Investments Limited
c/o Macalister Todd Phillips
Level 3, 11-17 Church Street
Queenstown 9300
Attn: Jayne Macdonald

2. The Appellant appeals the decision (“Decision”) of the Queenstown Lakes District Council (“Respondent”) on a variation to the Queenstown Lakes Proposed District Plan – namely the introduction of Chapter 24 and Wakatipu Basin Planning Maps (“the Variation”).
3. The Appellant is a person who made a submission on the Variation. The Appellant’s submission sought various changes to the objective and policy framework introduced by the Variation, together with amendments to the rules providing for the erection of residential buildings within approved residential building platforms (“RBP’s”) (“Submission”).
4. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
5. Notice of the Decision was received on or about 21 March 2019.
6. The Appellant appeals against those parts of the Decision relating to the rule framework for RBP’s.
7. The reasons for the appeal are as follows:

7.1 Residential Building Platforms (“RBP’s) – as a stand-alone land use activity

- 7.1.1 As notified, the Variation did not make provision for the identification of a RBP either as a stand-alone land use activity, or at the time of subdivision¹.
- 7.1.2 The Decision doubts that the identification of a RBP is a land-use activity², which in turn is a contributing factor to the rejection of submissions seeking the introduction of a land use rule for the identification of a RBP.
- 7.1.3 The decision errs in law by finding that a RBP is not a land use activity, and creates an internal inconsistency between Stages 1 and 2 decisions on the Proposed District Plan (“PDP”). For example in the decisions version of the Rural Zone³, Rule 21.4.10 provides for the identification of a building platform as a land use requiring discretionary activity consent, and similarly, the Gibbston Character Zone⁴ and the Rural Lifestyle Zone⁵.
- 7.1.4 With respect to the merits of a stand-alone rule, the decision records that there is an “overhang” of sites where residential homes may be built into the future and that it is undesirable to perpetuate that situation. There was no evidence before the Council to this effect, nor that such a situation is undesirable. The Decision fails to recognise and have regard to the fact that such sites were consented as appropriate locations for residential development, and indeed, this situation will endure with respect to future consented RBP’s⁶ albeit that the Decision would require consent for future building activity

¹ Compared to the Rural General Zone of the Operative District Plan (“ODP”). Although the subdivision rules introduced by the Variation list as a matter of discretion the location of building platforms – see at 27.7.6.1.a

² At [883]

³ Stage 1 PDP

⁴ Rule 23.4.9

⁵ Rule 22.4.2.4

⁶ Consented at the time of subdivision

within a RBP as a restricted discretionary activity, rather than controlled.

7.2 Rules governing building within an “approved” RBP

7.2.1 The Decision introduces a new controlled activity rule:

“24.4.6 The construction of buildings for residential activity that are located within a building platform approved by resource consent and registered on the applicable Computer Freehold Register before [insert plan Decision date].”

7.2.2 The Decision reasons⁷ that a building platform is created when it is registered on the relevant Record of Title (“RT”), and that if an earlier step in the process is adopted, such as the date the resource consent is granted, that would enable landowners to take the benefit of identification of a RBP without also accepting the conditions related to development of the platform.

7.2.3 The decision fails to recognise and have due regard to the fact that there are a number of consented RBP’s that have not yet been “created” as at the date of the Decision and that the concern expressed in the decision can be addressed by way of suitable amendments to the rule to ensure conditions imposed on consents for RBP’s are implemented in order to gain the benefit of the Rule.

7.2.3 The decision is irrational its treatment of RBP’s that have been consented v’s those that have been “created.” It can permissibly take a period of 8 years to “create” a RBP⁸. Further, the Council’s own expert evidence⁹ was to the effect that those more recently consented RPB’s have the benefit of a more comprehensive suite of development

⁷ At [896]

⁸ It approved as part of a subdivision, with the consent being given effect to by the issue of a s223 certificate (within 5 years of the grant) and thereafter the plan of subdivision depositing within three years of the s223 certificate

⁹ Referred to at [589]

controls, with the implication being that more recently consented RBP's are more acceptable than earlier ones.

7.3 Future RBP's

7.3.1 While the Variation, as notified did not require the identification of a RBP at the time of subdivision¹⁰, there appears to be no restriction to the identification of one and its approval as part of the subdivision consenting process¹¹. However, the rule framework provides little "relief" when consenting buildings within RBP's approved in the future.

7.3.2 The Decision rationalises that a higher degree of control is required at the point at which consent is sought to construct buildings within future approved RPB's because there is no specific discretion reserved with respect to buildings within a RBP¹². The Council has erred in its decision in this regard by ignoring the assessment matters that specifically address future buildings and their effects on landscape character, amenity etc¹³. It is sufficient that discretion is reserved with respect to platform location in order for there to be consideration of and controls imposed regarding the external appearance of buildings constructed within RBP's, otherwise those assessment matters that follow the rule are rendered superfluous.

7.3.3 The Council erred in deciding there was no scope to broaden the scope of enquiry when the RPB is created. It would have been within the ambit of a clause 16(2) amendment for the rule to be amended to include within the discretion "any buildings within those platforms"¹⁴. Again the assessment matters that follow specifically refer to how controls addressing such matters as building height, building colours and materials, building coverage, earthworks, retaining, fences, gates

¹⁰ Compared to the Rural General, Gibbston Character and Lifestyle Zones – see Rule 27.7.10

¹¹ Again, as noted above, discretion is reserved over the location of building platforms

¹² At [905] [906]

¹³ Rule 27.7.6.2.c

¹⁴ Adopting the wording of the matter of discretion in Rule 27.5.8 – see [905] of Decision

accessway, external lighting, domestic infrastructure (including water tanks) vegetation removal, and proposed plantings might be incorporated in the development¹⁵.

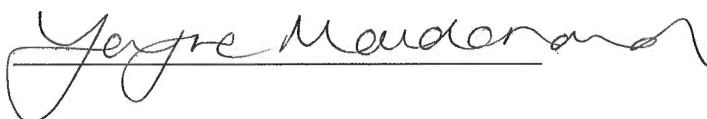
8. The Appellant seeks the following relief from the Court:

- 8.1 That a rule be included providing for the identification of a RBP as a stand-alone land use requiring consent as a Restricted Discretionary Activity.
- 8.2 Rule 24.4.6 be amended to include RBP's consented as at the date of the Decision, and subsequently registered on the applicable RT.
- 8.3 Residential buildings erected within an RBP, approved after the date of the Decision be provided for as a Controlled Activity.

9. Additional Relief

In addition to the specific relief set out above, the Appellant seeks the following relief:

- (a) such further or other relief as may be just or necessary to address matters raised in the Submission and this appeal; and
- (b) costs.



as Appellant by its solicitor and duly authorised agent JAYNE ELIZABETH
MACDONALD

Date: 7 May 2019

C/- Macalister Todd Phillips, Level 3, 11-17 Church Street, PO Box 653,
Queenstown 9348

¹⁵ Rule 27.9.3.3.c.vii

Telephone: 03 441 0127

Fax/email: 03 442 8116/jmacdonald@mactodd.co.nz

The following documents are attached to this notice:

- (a) a copy of the submission (with a copy of the submission opposed by the further submission);
- (b) a copy of the relevant part of the decision;
- (c) any other documents necessary for an adequate understanding of the appeal;
- (d) a list of names and addresses of persons to be served with a copy of this notice.

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or further submission on the matter of this appeal.

To become a party to the appeal, you must –

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the part of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court at Christchurch.

Environment Court
Christchurch Registry
282 Durham Street
Central City
Christchurch
Postal address:
PO Box 2069
DX: WX11113
Christchurch

Telephone and fax numbers:

Telephone: (03) 365 0905
Fax: (03) 365 1740

Names and addresses of persons to be served with a copy of the Notice of Appeal

Queenstown Lakes District Council

10 Gorge Road

Queenstown

E: dpappeals@qldc.govt.nz

Tom Hardley

C/- Todd and Walker

PO Box 124,

Queenstown

E: graeme@toddandwalker.com