

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 **DAVID BROOMFIELD
& WOODLOT
PROPERTIES
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

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NOTICE OF APPEAL

To: The Registrar
Environment Court
Christchurch

1. Name and address of appellant:

David Broomfield & Woodlot Properties 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), and supported the extent of the notified Wakatipu Basin Lifestyle Precinct (“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, and reduction of or refusal to extend the Wakatipu Basin Lifestyle Precinct over parts of the Appellant's land.
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 an 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.

¹ Compared to the Rural General Zone of the Operative District Plan ("ODP"). Although the subdivision rules applicable to the Wakatipu Basin Zone lists 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

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, or that such a situation is undesirable. Furthermore, the Decision fails to recognise and have regard to the fact that such sites were consented as appropriate locations for residential development, and indeed, the situation will endure with respect to future consented RBP’s⁶, albeit that the Decision would require consent for future building activity 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

⁶ Consented at the time of subdivision

⁷ At [896]

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 RBP's have the benefit of a more comprehensive suite of development controls, with the implication 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

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]

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

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

7.4 Reduction in the extent of the Wakatipu Basin Lifestyle Precinct – Little Stream

- 7.4.1 The Appellant owns the following parcels of land within the Fitzpatrick Basin Landscape Unit:

Lot 2, DP 474658, Lots 24 and 26 DP 493649, and Lot 2 DP 475338.

- 7.4.2 The Appellant supported the Fitzpatrick Basin Landscape Character Unit and the Precinct zoning notified over the extent of that unit, including the extent to which it applied to the Appellant's properties located at the western end of Littles Road.

- 7.4.3 The Appellant supported and relied upon the Council's evidence presented to the hearings commissioners, and as a consequence did not consider it necessary nor expedient to call landscape evidence.

- 7.4.4 During the course of the hearing on the Variation¹⁶ the Council's expert changed her evidence with respect to the inclusion of the Appellant's land in the precinct. This raises a matter of significant

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

¹⁵ Rule 27.9.3.3.c.vii

¹⁶ Reply evidence Ms Gilbert

procedural fairness in that Appellant was not informed of the change in opinion, nor within the constraints of the process was it able to call evidence to rebut the Council's changed position.

- 7.4.5 The Decision fails to have regard to the extent of development within the precinct as notified, particularly the vicinity of Moorhill Road, where the land has been developed as part of the Little Stream subdivision. It is not clear whether this was known or even considered in Ms Gilbert's reply evidence.

7.5 Wakatipu Basin Lifestyle Precinct – Tucker Beach Road

- 7.5.1 The Appellant owns the following parcels of land within the Tucker Beach Landscape Unit:

Lot 1 DP 473899, Lot 1 DP 323310, Lot 2 DP 473899

- 7.5.2 The Appellant supported the Tucker Beach Landscape Character Unit, and the Precinct zoning notified over the extent of that unit, including as it extended to the Appellant's properties at Tucker Beach described above. It also sought to extend the Wakatipu Basin Landscape Precinct Boundary so that it was consistent with the enlarged Rural Residential zone requested as part of submission #500 on Stage 1 of the PDP (which by reason of being included within the Wakatipu Basin Variation was deferred until the Stage 2 hearing).

- 7.5.3 The Council erred in its decision to reject the submission based on the 400m contour line. The contour line is arbitrary, does not have regard to the extent of development within the adjacent Quail Rise zone, nor the consented development above the 400m contour.

- 7.5.3 Rezoning the land Lifestyle Precinct as sought will provide an appropriate transition between the more densely developed Quail Rise Zone and Rural Amenity/Rural Zoned land.

7.5.4 As discussed in the decision, Lifestyle Precinct zoning does not mean development is “a given”. A case still needs to be made. Concerns about development creep can be adequately addressed through the consenting process.

7.6 Subdivision Rules 27.5.18A/B and 27.5.19

7.6.1 The rules are ambiguous. On the one hand, Rule 27.5.18A refers to subdivision not complying with the minimum net site area as a Discretionary Activity, whereas Rules 27.5.18B and 27.5.19 would appear to classify such a breach as Non-Complying. The rules appear to contain an error referring to 4000m² as the net site area.

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.

8.4 The anomalies in Rule 27.5.18A/B and Rule 27.5.19 be corrected.


8.5 The Lifestyle Precinct over the extent of the Little Stream development be reinstated as per the notified planning maps.

8.6 The Lifestyle Precinct at Tucker Beach Road be extended to the boundary sought in Submission 500.

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.



DAVID BROOMFIELD AND WOODLOT PROPERTIES LIMITED as
Appellant by their solicitor and duly authorised agent JAYNE ELIZABETH
MACDONALD

Date: 7 May 2019

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The following documents are attached to this notice:

- (a) a copy of the 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 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form).

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

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

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