

**Before the Panel of Hearing Commissioners
For the Queenstown Lakes Proposed District Plan**

In the Matter of

of the Resource Management
Act 1991

And

In the Matter of

of the Queenstown Lakes
Proposed District Plan – Stage 2

And

In the Matter of

of Hearing Stream 14 – Wakatipu
Basin

**Legal Submissions for
BSTGT Limited (Submitter 2487 and
Further Submitter 2719)**

Dated: 24 July 2018

Level 1, 2 Memorial Street
PO Box 701
Queenstown
Solicitor Acting: Rebecca Wolt
Email: Rebecca.Wolt@laneneave.co.nz
Phone: 03 450 1365

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Introduction

1. These legal submissions pertain to a submission by BSTGT Limited (the **Trust**, Submitter 2487 and Further Submitter 2719).
2. BSTGT is the trustee company for Barley Station (Glencoe) Trust and Barley Station Trust, which own approximately 340 hectares of land at Glencoe Road on Crown Terrace.
3. The Trust's land is located within the Wakatipu Basin Rural Amenity Zone (**WBRAZ** or **Amenity Zone**) in the notified Proposed Plan.
4. The Trust has lodged a detailed submission in respect of this zoning, seeking various amendments to it. While the Trust maintains the position expressed in its submission for the reasons stated therein, these legal submissions will only address the issue of the clearance of vegetation within the WBRAZ.

The Law

5. The Panel will have heard extensively as to the legal framework within which its decisions on the Proposed Plan must be made. I do not propose to set this out here, but do saliently note that:
 - (a) The Proposed Plan should achieve integrated management of the effects of the use, development and protection of land and associated natural and physical resources of the District.¹
 - (b) The Panel should not start with any particular presumption as to the appropriate zone, rule, policy or objective, and there is no presumption in favour of the notified provisions.²
 - (c) The Panel's task is to seek to obtain the optimum planning solution within the scope of the matters before it based on an evaluation of the totality of the evidence given at the hearing, without imposing a burden of proof on any party.³

¹ Section 31(1)(a).

² *Eldamos*.

³ *Ibid*.

- (d) Where the purpose of the Act and the relevant objectives (if any) can be met by a less restrictive regime, then that regime should be adopted. This promotes the Act's purpose by enabling people to provide for their wellbeing while addressing the effects of their activities.⁴
- (e) Planning documents are intentional documents and mean what they say.⁵
- (f) Language is important, and wording (and differences in wording) does matter.
- (g) There is a need to be precise and careful with words, to create certainty of meaning.

The Trust

- 6. As noted, the Trust owns approximately 350 ha of land on Crown Terrace. The land is farmed, and is presently stocked with approximately 1500 ewes (for meat, wool and lambs). The stock numbers will more than double during lambing (November).
- 7. The Trust purchased the farm around 8 years ago. At the time of purchase, the land was not well maintained, with a large amount of pasture lost to self seeded vegetation.
- 8. The self seeded vegetation predominantly includes the weed species of sweet briar (likened to blackberry, but harsher), hawthorn and matagouri, none of which are make for good stock feed, and which can in fact deter stock from grazing. The vegetation is dense and thick, such that grass cannot grow beneath it, and stock gets lost within it.
- 9. These weed species, along with wilding and other exotic vegetation, have previously been allowed to spread on the farm, without adequate control. This includes wilding pines and willows. The willows clog the waterways, while the wildings self seed on the steeper slopes.

⁴ *Royal Forest and Bird v Whakatane District Council* [2017] NZEnvC 51.

⁵ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38.

10. Since the Trust purchased the land, it has progressively sought to improve it, including by undertaking the clearance of weedy scrub and the extensive clearance of wildings, in an effort to restore the land to its former state of tussock and grass and best enable it for farming purposes.
11. Accordingly, the clearance of vegetation is a necessary and important part of farming and land maintenance within this area.

The Proposed WBRAZ Provisions

12. 'Farming' is a permitted activity in notified Chapter 24 of the Proposed Plan⁶. However, the definition of 'farming' is framed narrowly and it:

*"Means the use of land and buildings for the primary purpose of the production of vegetative matters and/or commercial livestock. Excludes residential activity, home occupations, factory farming and forestry activity. Means the use of lakes and rivers for access for farming activities."*⁷

13. This definition does not, on the face of it, include the clearance of vegetation which is separately defined as follows:

"Means the removal, trimming, felling, or modification of any vegetation and includes cutting, crushing, cultivation, soil disturbance including direct drilling, spraying with herbicide or burning.

Clearance of vegetation includes, the deliberate application of water or oversowing where it would change the ecological conditions such the resident indigenous plant(s) are killed by competitive exclusion. Includes dryland cushion field species."

[emphasis added]

14. The clearance of vegetation is (somewhat) provided for in the Wakatipu Basin Lifestyle Precinct (**WBLP**) by Rule 24.4.29, which provides that the clearance, works within the root protection zone or significant trimming of exotic vegetation that is of a height greater than 4m is a restricted discretionary activity.⁸
15. There is however, no comparable rule for the WBRAZ. In fact, there are no rules that address the clearance of vegetation in the WBRAZ. Accordingly, by virtue of rule 24.4.1 (a "catch-all" rule) the clearance of any vegetation (including that voluntarily planted by a landowner for amenity purposes) is a non-complying activity.

⁶ Rule 24.4.2.

⁷ Stage 1 decisions version.

⁸ Table 24.2

16. This is wholly disenabling of legitimate farming related activities, inefficient, serves no resource management purpose and, it is submitted, is unreasonable.
17. This issue is raised in the Trust's submission. Mr Barr address the Trusts submission at paragraph 10.11 of his section 42A report where he states:
- "BSGT Limited also request that new rules be added that provide for clearance of native and exotic vegetation and the grazing of stock as permitted activities with no standards. Grazing of stock is already permitted pursuant to Rule 24.4.2, and the rules for clearance, including clearance of indigenous vegetation through grazing, are included in Chapter 33 Indigenous Vegetation and Biodiversity. I recommend that this submission point is rejected."*⁹
18. Mr Barr's recommendation only addresses the Trust's submission in respect of a rule permitting the grazing of stock. He does not address the submission seeking that the clearance of vegetation be permitted.¹⁰
19. Mr Barr makes reference to Chapter 33 of the Proposed Plan,¹¹ however this Chapter only addresses the clearance of indigenous vegetation and the planting of exotic vegetation.¹² It does not address the *clearance of exotic vegetation* (e.g. sweet briar, hawthorn and wildings etc).
20. Accordingly, as previously stated, because it is not provided for elsewhere in the Proposed Plan, including in Chapter 24, the clearance of exotic vegetation (including weed and pest species, and wildings etc) falls to be non-complying activity.
21. Counsel understands from informal correspondence with Council staff that it is not the Council's intention to regulate the clearance of exotic vegetation in this way, and that it has been inadvertently been captured by Rule 24.4.1. This seems to be the only reasonable explanation for the proposed regulation, as there are no higher order strategic policies within the Proposed Plan, or the Operative and Proposed Regional Policy Statements that mandate a regime seeking to retain all existing vegetation within the WBRAZ. Nor is there a section 32 evaluation of the costs of the proposed regulation, or whether it appropriately implements the objectives

⁹ S42A Report, Wakatipu Basin, para 10.11.

¹⁰ See the Trusts Submission (2487), para 31 – 34, and the relief sought at para 56(viii).

¹¹ Stage 1 decisions version.

¹² See for example, Rule 33.4, Table 1, which address 'any activity involving the clearance of indigenous vegetation, earthworks within SNAs and the planting of exotic plant Species'. Chapter 24 address the planting of wilding species, but not their clearance.

and polices contained elsewhere in the Proposed Plan including those targeting the enablement of existing farming activities¹³ and the protection of the District's landscapes from the spread of wilding exotic trees¹⁴.

22. It is submitted that if the regulation of any and all vegetation clearance within the WBRAZ is inadvertent (which is the only reasonable explanation), the Proposed Plan ought to be amended to make as much clear, noting again that planning documents are to be construed as intentional documents that mean what they say, and they ought to be precise and careful with words, to ensure certainty of meaning.¹⁵
23. It is submitted the issue could be readily addressed by the inclusion of a rule which states that, except as otherwise provided for in Chapter 33, the clearance of vegetation within the WBRAZ is a permitted activity. It is submitted that the clearance of matagouri in the WBRAZ should be exempted from the application of Chapter 33 however (unless within an identified SNA), as matagouri can be considered a pest species for farmers, and precludes the use of the land for grazing stock.
24. It is submitted that irrespective of whether the Council intended to regulate the clearance of vegetation within the WBRAZ, a rule to the effect just stated (or similar) is appropriate for inclusion in the WBRAZ so as to ensure adequate provision is made for the continuance of legitimate farming related activities, including land maintenance and management, in an efficient and effective manner, and so as to appropriately implement the higher order provisions of the Proposed Plan and higher order planning documents,¹⁶ and to ensure the enabling purpose of the Act is achieved.

R Wolt

Counsel for BSTGT Limited

¹³ See for example strategic policy 3.3.20 'Enable continuation of existing farming activities...'

¹⁴ For example, in Chapter 24, Wilding Exotic Trees, and Strategic objective 3.2.4.2, 'The spread of wilding exotic vegetation is avoided.'

¹⁵ *King Salmon*.

¹⁶ Albeit that their provisions are presently unsettled.

