

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

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14 of the First
Schedule of the Act

BETWEEN CARDRONA ALPINE RESORT
LIMITED

(ENV-2019-CHC-117)

... (continued on separate page)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Environment Judge J J M Hassan – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 29 November 2021

CONSENT ORDER

A: Under s279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(1) the appeal is allowed, and Queenstown Lakes District Council directed to:

(a) amend the provisions of Chs 21 (Rural Zone), 27 (Subdivision and Development), and 33 (Indigenous Vegetation Biodiversity)



as set out in Appendix 1, attached to and forming part of this order;

(b) make any consequential amendments to the numbering of provisions and relevant planning maps resulting from (a) above.

(2) the appeals otherwise remain extant.

B: Under s285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns seven appeals by Cardrona Alpine Resort Limited,¹ Soho Ski Area and Blackmans Creek No. 1 LP,² Treble Cone Investments Limited,³ Royal Forest and Bird Protection Society of New Zealand Incorporated,⁴ Anderson Branch Creek Limited,⁵ Mt Cardrona Station Limited,⁶ and Queenstown Park Limited.⁷ The appeals were filed against parts of a decision of the Queenstown Lakes District Council regarding provisions in Chs 21 (Rural Zone), 27 (Subdivision and Development), and 33 (Indigenous Vegetation Biodiversity) of the proposed Queenstown Lakes District Plan – Stage 1, allocated as Topic 19 ‘Ski Area Subzone’.

Background

[2] Following court-facilitated mediations, the parties filed a joint memorandum dated 9 June 2020 seeking the determination of appeal points

¹ ENV-2018-CHC-117.

² ENV-2018-CHC-104.

³ ENV-2018-CHC-107.

⁴ ENV-2018-CHC-133.

⁵ ENV-2018-CHC-120.

⁶ ENV-2018-CHC-083.

⁷ ENV-2018-CHC-127.

allocated to Topic 19, sub-topics 1 and 3 by consent order.

[3] Responding to the identification of parties that had not signed the memoranda, the court issued a Minute dated 21 August 2020 providing those s274 parties the opportunity to express their views on the relief sought by consent order. No response has been received.

[4] That Minute also sought clarification of the changes to be made to r 33.4.5 and any reference to that rule in other provisions. Queenstown Lakes District Council filed a memorandum of counsel dated 21 August 2020, confirming the cross-reference to r 33.4.5 should be deleted as a direct consequence of that rule being proposed for deletion.

[5] A further memorandum dated 16 December 2020 was later filed proposing to determine the outstanding appeal points allocated to Topic 19, sub-topic 2.

[6] As this topic is closely related to Topic 2 'Landscape and Rural Character' the court placed the consent documentation on hold pending the issue of all relevant Topic 2 decisions. Following those decisions being released, the court issued a Minute dated 18 October 2021 identifying a list of Topic 19 provisions it considers suitable to be progressed by consent order, with the remaining provisions to be resolved at a later date.

[7] A further consent memorandum dated 5 November 2021 was then filed addressing the identified provisions in the court's Minute. I have read and considered the consent memorandum which sets out the agreement reached by the parties to partially resolve the appeal points on the provisions the court has agreed to determine.

Appeal points resolved without amendment to plan provisions

[8] The following appeal points were resolved through court-facilitated mediation by way of an agreement either to withdraw or not pursue the relevant

relief:⁸

- (a) the following appeal points allocated to sub-topic 1 are dismissed:

Appeal point allocated reference	Appealed provision
ENV-2018-CHC-117-017	Renaming of Ski Area Sub Zones
ENV-2018-CHC-117-002	Zone Purpose 21.1
ENV-2018-CHC-117-004	Zone Purpose 21.1
ENV-2018-CHC-117-005	Zone Purpose 21.1
ENV-2018-CHC-117-006	Zone Purpose 21.1
ENV-2018-CHC-117-011	Zone Purpose 21.1
ENV-2018-CHC-083-007	Objective 21.2.6
ENV-2018-CHC-083-014	New Rule 27.5.X
ENV-2018-CHC-083-015	27.10 List of non-notified subdivision

- (b) the following appeal points allocated to sub-topic 2 are dismissed:

Appeal point allocated reference	Appealed provision
ENV-2018-CHC-083-001	Rezoning of land above the Mt Cardrona Special Zone on Maps 10 and 24
ENV-2018-CHC-104-001	Zoning of the Ski Area Sub Zone
ENV-2018-CHC-117-001	Zoning of the Ski Area Sub Zone

- (c) the following appeal point allocated to sub-topic 3 is dismissed:

Appeal point allocated reference	Appealed provision
ENV-2018-CHC-117-015	Rule 21.20

⁸ As recorded in the consent memorandum dated 9 June 2020 at [12] and consent memorandum dated 16 December 2020 at [7] and [9].

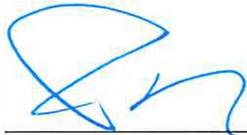
Other relevant matters

[9] All relevant s274 parties have signed the 5 November 2021 memorandum setting out the relief sought by this order.

Outcome

[10] The court makes this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the RMA including, in particular, pt 2.



J J M Hassan
Environment Judge



List of appellants

ENV-2018-CHC-117	Cardrona Alpine Resort Limited
ENV-2018-CHC-104	Soho Ski Area and Blackmans Creek No. 1 LP
ENV-2018-CHC-107	Treble Cone Investments Limited
ENV-2018-CHC-133	Royal Forest and Bird Protection Society of New Zealand Incorporated
ENV-2018-CHC-083	Mt Cardrona Station Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-120	Anderson Branch Creek Limited

Appendix 1

(amendments shown in underline and ~~striethrough~~ text, numbering to be confirmed when updating the PDP provisions)

CHAPTER 21 – RURAL

21.4 Rules – Activities

All activities, including any listed permitted activities shall be subject to the rules and standards contained in Tables 1 to 15.

...
Table X – Standards for activities in the Ski Area Sub-Zone (additional to those in Table 2)

...

21.5 Rules- General Standards

	Table 2 - Standards Applying Generally in the Zone. The following standards apply to any of the activities described in Tables 1, 9, 10, 12 and 14 in addition to the specific standards in Tables 3-8, 11, 13 and 15 unless otherwise stated.	Non-compliance Status
21.5.7	<p>Lighting and Glare</p> <p>21.2.1.1 All fixed exterior lighting must be directed away from adjoining sites and roads; and</p> <p>21.2.1.2 No activity on any site will result in greater than a 3.0 lux spill (horizontal and vertical) of light onto any other site measured at any point inside the boundary of the other site, provided that this rule shall not apply where it can be demonstrated that the design of adjacent buildings adequately mitigates such effects.</p> <p>21.2.1.3 There must be no upward light spill.</p> <p><u>Except this rule shall not apply within the Ski Area Sub-Zones.</u></p>	NC

21.12 Rules- Ski Area and Sub-Zone

	Table 9 - Activities in the Ski Area Sub-Zone Additional to those activities listed in Table 1.	Activity Status
21.12.X	Night lighting other than for night skiing	P
	...	
21.12.4	Night lighting for the purposes of night skiing Control is reserved to: a. hours of operation; b. duration and intensity; c. impact on surrounding properties.	C

21.X Standards for activities within the Ski Area Sub-Zone

	Table X – Standards for activities within the Ski Area Sub-Zone	Non-Compliance Status
	These Standards apply to activities listed in Table 9.	
	...	
<u>21.1X.1</u>	<u>Night lighting other than for night skiing</u> <u>All fixed exterior lighting other than for night skiing as identified in Rule 21.12.4:</u> <u>21.12.X.1 Must be directed away from adjoining sites and roads.</u> <u>21.12.X.2 Must not result in greater than 3.0 lux spill (horizontal and vertical) of light onto any other site measured at any point inside the boundary of the other site, provided that this rule shall not apply where it can be demonstrated that the design of adjacent buildings adequately mitigates such effects.</u> <u>21.12.X.3 There must be no upward light spill.</u>	<u>RD</u> <u>Discretion is restricted to:</u> <u>a. hours of operation;</u> <u>b. duration and intensity;</u> <u>c. impact on surrounding properties;</u> <u>d. effect on views of the night sky.</u>

CHAPTER 27 - SUBDIVISION

	Unit Title or Leasehold Subdivision	Activity Status
27.5.5	Where land use consent is approved for a multi-unit commercial, or residential development, or including visitor accommodation development, or Ski Area Sub-Zone Accommodation or retail activity ancillary to Ski Area Activities within the Ski Area Sub-Zone, and a unit title or	C

	Unit Title or Leasehold Subdivision	Activity Status
	<p>leasehold (including cross lease) subdivision is subsequently undertaken in accordance with the approved land use consent, provided:</p> <ul style="list-style-type: none"> a. all buildings must be in accordance with an approved land use resource consent; b. all areas to be set aside for the exclusive use of each building or unit must be shown on the survey plan, in addition to any areas to be used for common access or parking or other such purpose; c. all service connections and on-site infrastructure must be located within the boundary of the site they serve or have access provided by an appropriate legal mechanism. <p>Control is reserved to:</p> <ul style="list-style-type: none"> d. the effect of the site design, size, shape, gradient and location, including existing buildings, manoeuvring areas and outdoor living spaces; e. the effects of and on infrastructure provision. <p>This rule does not apply a subdivision of land creating a separate fee simple title.</p> <p>The intent is that it applies to subdivision of a lot containing an approved land use consent, in order to create titles in accordance with that consent.</p>	

CHAPTER 33 - INDIGENOUS VEGETATION AND BIODIVERSITY

33.4 Rules – Clearance of Indigenous Vegetation

Table 1	Any activity involving: the clearance of indigenous vegetation within the District; earthworks and exotic vegetation clearance within SNAs identified in schedule 33.9; and the planting of exotic plant species in SNAs identified in schedule 33.9 and Alpine Environments, shall be subject to the following rules:	Activity Status
...		

Table 1	Any activity involving: the clearance of indigenous vegetation within the District; earthworks and exotic vegetation clearance within SNAs identified in schedule 33.9; and the planting of exotic plant species in SNAs identified in schedule 33.9 and Alpine Environments, shall be subject to the following rules:	Activity Status
33.4.5	<p>Indigenous vegetation clearance within the Ski Area Sub-Zones on land administered under the Conservation Act 1987 where the relevant approval has been obtained from the Department of Conservation, providing that:</p> <p>a. the indigenous vegetation clearance does not exceed the approval by the Department of Conservation;</p> <p>prior to the clearance of indigenous vegetation, the Council is provided with the relevant application and approval from the Department of Conservation.</p>	P
...		
33.4.A	<p><u>Clearance of indigenous vegetation associated with Ski Area Activities within a Ski Area Sub-Zone, located within the Alpine Environment above 1070 masl.</u></p>	RD

Table 4	Activities within Alpine Environments – land above 1070 metres above sea level:	Non-Compliance Status
33.5.7	<p>The following rules apply to any land that is higher than 1070 meters above sea level:</p> <p>33.5.7.1 indigenous vegetation must not be cleared;</p> <p>33.5.7.2 exotic species must not be planted.</p> <p>Except where indigenous vegetation clearance is permitted by Rule 33.4.5, or authorised by consent obtained under Rule 33.4.A.</p>	D

33.8 Matters of discretion

For all restricted discretionary activities discretion shall be restricted to the following matters. These matters may also be applicable to any discretionary or non-complying activity:

1. The effects that the vegetation clearance will have on:
 - a. indigenous biodiversity values;
 - b. soil conservation, water quality and the hydrological function of the catchment;

- c. landscape, natural features and natural character;
 - d. the amenity values of any adjacent open space including trails and walkways;
 - e. ecological corridors and linkages; and
 - f. cultural values associated with indigenous biodiversity.
2. The extent to which the vegetation removal is necessary taking into account the need for, or purpose of, the proposed activity;
 3. The minimisation of effects through the adoption of alternative locations for the activity on the site for the proposed activity;
 4. Proposals for remediation and mitigation of adverse effects, including through revegetation, restoration of other areas of vegetation and ongoing maintenance;
 5. Proposals for biodiversity offsets for residual adverse effects as provided for by Policy 33.2.1.6;
 6. The risk of the increase in weed and pest species, and proposed management of pests;
 7. Benefits resulting from the proposed activity including the extent to which the activity may protect, maintain or enhance indigenous biodiversity values; and
 8. Effects on kaitiakitanga and the values of indigenous vegetation, taonga species and habitats, and biodiversity to tangata whenua.

In addition to the above matters of discretion, for all restricted discretionary activities for clearance of indigenous vegetation associated with Ski Area Activities within a Ski Area Sub Zone, discretion shall also be restricted to the following matter:

9. The content of any Ecological Management Plan submitted with the application.

33.X Information Requirements for Ecological Management Plans

An Ecological Management Plan (EMP) (noting this may not relate to the whole of the Ski Area Sub-Zone), shall include the following information:

- a. A description of the nature and scale of the indigenous vegetation clearance proposed;
- b. A description of the ecological values of any areas proposed to be disturbed (and the location of any sensitive areas), including any associated with trail development, terrain modification, buildings and passenger lift systems;
- c. The expected timeframes and the duration of any works within the Ski Area Sub-Zone resulting in disturbance of indigenous vegetation and ecologically sensitive areas;
- d. A Construction Methodology Statement outlining:
 - i. erosion and sediment controls.
 - ii. details of how ecologically sensitive areas will be avoided and kept free from disturbance during and after construction activities.
 - iii. details of how hydrological regimes of any wetlands including seepages, and rushland bog environments will be maintained.
 - iv. details of mitigation and restoration including pest and weed management, methods to manage planting or any relocation and temporary storage of relocated plants to encourage a high level of survival.

- e. Any other management plan or strategy requirements relevant to indigenous vegetation and habitats prepared under any other legislation that applies to the land, and the extent to which the EMP is consistent with those management plans;
- f. An on-going monitoring regime to report on the ecological effects of construction works and the performance of restoration works;
- g. A process for reviewing and updating the EMP on the basis of further information, greater knowledge of the environment and outcomes from monitoring.

