

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under Clause 14 of the First
Schedule of the Act
BETWEEN NGĀI TAHU PROPERTY LIMITED & NGĀI
TAHU JUSTICE LIMITED
(ENV-2018-CHC-085)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

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

In Chambers at Christchurch

Date of Consent Order: 29 August 2019

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 to the extent that the Queenstown Lakes District Council is directed to amend Chapter 12 of the Proposed Queenstown Lakes District Plan, as set out in Appendix A (shown in black underline and strikethrough text), attached to and forming part of this Consent Order;
- (2) the appeal is otherwise dismissed.

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



REASONS

Introduction

[1] This proceeding concerns an appeal by Ngāi Tahu Property Limited and Ngāi Tahu Justice Holdings Limited against part of a decision of the Queenstown Lakes District Council on Chapter 12 of the proposed Queenstown Lakes District Plan – Stage 1. In particular, the appeal concerns Topic 8 (Queenstown and Wanaka Town Centres) Subtopic 3 (Pedestrian Links).

[2] The court has now read and considered the consent memorandum of the parties dated 16 July 2019, which proposes to resolve this appeal.

Other relevant matters

[3] Skyline Enterprises Limited and Trojan Holdings Limited have given notice of an intention to become a party under s274 of the Resource Management Act (“the RMA”) and have signed the memorandum setting out the relief sought.

[4] Other consent orders which have been filed in relation to the proposed district plan are being held in abeyance. The Council has advised¹ and the court is satisfied that these orders are able to be made at this time since the orders made will not impact on other proposed plan appeals before the court.

Orders

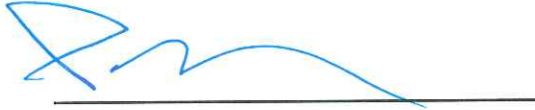
[5] The court makes this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and



¹ Memorandum of counsel for the Queenstown Lakes District Council, dated 16 August 2019, at [2].

- (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





APPENDIX A

Amendments agreed in mediation on Ngāi Tahu ENV-2018-CHC-085 appeal (subtopic 3)	Black underline and strikethrough text
Amendments agreed in mediation on Well Smart appeal ENV-2018-CHC-128 (subtopic 5)	Red underline and strikethrough text
Amendments agreed in mediation on the appeals contained in Subtopic 2	Green underline and strikethrough text

Policy 12.2.2.5

12.2.2.5 In respect of buildings that exceed the non-complying height standards:

- (i) ~~Allow~~ Prevent buildings other than those on jetties and wharves to exceeding the maximum height standards except that it may be appropriate to allow additional height in situations wherein the following instances:
- a. where the proposed design is an example of design excellence; and
 - b. where there is an adverse effect on the public environment from the increase in height, the proposed development provides an urban design outcome that has a net benefit to the public environment; and
 - c. where relevant, where building height and bulk have been reduced elsewhere on the site in order to: reduce the impact of the proposed building on a listed heritage item.
 - f. reduce the impact of the proposed building on a listed heritage item; or
 - ii. provide an urban design outcome that has a net benefit to the public environment.

For the purpose of this policy, urban design outcomes that are beneficial to the public environment include, as appropriate:



- a. provision of sunlight to any public space of prominence or space where people regularly congregate;
- b. provision of a new or retention of an existing uncovered pedestrian link or lane;
- c. where applicable, the restoration and opening up of Horne Creek as part of the public open space network;
- d. provision of high quality, safe public open space;
- e. retention of a view shaft to an identified landscape feature;
- f. minimising wind tunnel effects of buildings in order to maintain pleasant pedestrian environments.
- g. the creation of landmark buildings on key block corners and key view terminations.

(ii) Recognise that the efficient utilisation of land that would otherwise be underdeveloped or developed to a lesser design quality may enable excellent design outcomes.



Rule 12.5.7

<p>12.5.7</p>	<p>Provision of Pedestrian Links and Lanes</p> <p>12.5.7.1 All new buildings and building redevelopments located on sites which are identified for pedestrian links or lanes in Figure 1 (at the end of this chapter) shall provide a ground level pedestrian link or lane in the general location shown.</p> <p>12.5.7.2 Where a pedestrian link or lane required by Rule 12.5.7.1 is open to the public during retailing hours the Council will consider off-setting any such area against development levies and car parking requirements.</p> <p>12.5.7.3 Where an existing lane or link identified in Figure 1 is:</p> <ol style="list-style-type: none"> a. uncovered then, as part of any new building or redevelopment of the site, it shall: <ol style="list-style-type: none"> i. remain uncovered; and ii. shall be a minimum of 4.0m wide; and iii. <u>include an unobstructed accessible route at least 2.0m wide, with the remainder incorporating open space, outdoor dining or the display of goods; and</u> b. where an existing link is covered then it may 	<p>RD</p> <p>Where the required link is not proposed as part of development, discretion is restricted to:</p> <ol style="list-style-type: none"> a. the adverse effects on the pedestrian environment, connectivity, legibility, and Town Centre character from not providing the link.
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	<p>remain covered and shall be at least 1.8 m wide, with an average minimum width of 2.5m.</p> <p>12.5.7.4 In all cases, lanes and links shall be open to the public during all retailing hours.</p> <p>Location of Pedestrian Links within the Queenstown Town Centre</p> <ol style="list-style-type: none">1. Shotover St / Beach St, Lot 2 DP 11098, Lot 3 DP 11098;2. Trustbank Arcade (Shotover St/Beach St), Lot 1 DP Tn of Queenstown, Pt Sec 23 Bk VI Tn of Queenstown;3. Plaza Arcade, Shotover St/Beach Lot 1 DP 17661;4. Cow Lane/Beach Street, Sec 30 Blk I Tn of Queenstown;5. Cow Lane / Beach Street, Lot 1 DP 25042;6. Cow Lane / Ballarat Street, Lot 2 DP 19416;7. Ballarat St/Searle Lane, Sec 22 & Pt Sec 23 BLK II Tn Queenstown,8. Ballarat Street/Searle Lane and part of Searle Lane land parcel;9. Searle Lane/Church St, Lot 1 DP 27486;10. Church St/Earl St, Lot 100 DP 303504;11. Camp/ Stanley St, post office precinct, Lot 1 DP 416867 and	
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	<p>Lot 2 DP 416867;</p> <p>12. Camp/ Athol St, Lot 1 DP 20875-;</p> <p>13. Camp/Athol St, Section 18 Block V Tn of Queenstown.</p> <p>Advice Notes:</p> <p>a. where an uncovered pedestrian link or lane (i.e. open to the sky) is provided in accordance with this rule, additional building height may be appropriate pursuant to Policies 12.2.2.4 and 12.2.2.5;</p> <p>b. where an alternative link is proposed as part of the application which is not on the development site but achieves the same or a better outcome then this is likely to be considered appropriate.</p>	
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Rule 12.5.8

<p>12.5.8</p>	<p>Discretionary Building Height in Precinct 1, Precinct 1(A), Precinct 2, Precinct 4 and Precinct 5</p> <p>For the purpose of this rule, refer to the Height Precinct Map (Figure 2 at the end of this Chapter).</p> <p>12.5.8.1 Within Precinct 1 and Precinct 1 (A) the maximum height</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>b. the effect of any additional height on the urban form of the Town Centre and the character of the height precinct within which it is located. The</p>
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	<p>shall be 12m: and</p> <p>12.5.8.2 Within Precinct 1 (A) no part of any building shall protrude through a recession line inclined towards the site at an angle of 45 degrees commencing from a line 10m above the street boundary.</p> <p>12.5.8.3 Within Precinct 2, no part of any building shall protrude through a recession line inclined towards the site at an angle of 30 degrees commencing from a line 6.5m above any street boundary.</p> <p>12.5.8.4 Within Precinct 4, no part of any building shall protrude through a recession line inclined towards the site at an angle of 45 degrees commencing from a line 10m above the street boundary. <u>This rule does not apply to the Ballarat Street and Stanley Street boundaries of Lot 1 DP 416867, Lot 2 DP416867 or Lot 3 DP 416867 where the covered and uncovered portions of Pedestrian Link 11 identified on Figure 1 are retained in accordance with Rule 12.5.7.</u></p> <p>12.5.8.5 Within Precinct 5, the street front parapet shall be between 7.5 and 8.5m in height and no part of any building shall protrude through a recession line inclined towards the site at an angle of 45 degrees commencing from a line 7.5m above any street boundary.</p>	<p>Council will consider:</p> <ul style="list-style-type: none"> i. the extent to which the proposed building design responds sensitively to difference in height, scale and mass between the proposal and existing buildings on adjacent sites and with buildings in the wider height precinct, in terms of use of materials, façade articulation and roof forms; and ii. the effect on human scale and character as a result of proposed articulation of the façade, the roofline, and the roofscape; and iii. the amenity of surrounding streets, lanes, footpaths and other public spaces, including the effect on sunlight access to public spaces and footpaths; the provision of public space and pedestrian links; and iv. the opportunity to establish landmark buildings on key sites, such as block corners and key view terminations; and <p>c. The protection or enhancement of public views of Lake Wakatipu or of any of the following</p>
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		<p>peaks:</p> <ol style="list-style-type: none">i. Bowen Peak;ii. Walter Peak;iii. Cecil Peak;iv. Bobs Peak;v. Queenstown Hill;vi. The Remarkables Range (limited to views of Single and Double Cone); andvii. effects on any adjacent Residential Zone; andviii. the historic heritage value of any adjacent heritage item/ precinct and whether it acknowledges and respects the scale and form of this heritage item/ precinct.
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