

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

IN THE MATTER of the Resource Management Act 1991
AND appeals under clause 14 of the First
Schedule of the Act

BETWEEN BARNHILL CORPORATE TRUSTEE
LIMITED AND OTHERS

(ENV-2019-CHC-86)

D MacCOLL

(ENV-2019-CHC-75)

... (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: 6 August 2021

CONSENT ORDER

A: Under s279(1)(b) of the Resource Management Act 1991, the Environment

QLDC PDP – BCT & ORS v QLDC – Topic 30 Water Quality



Court, by consent, orders that:

- (1) the appeals are allowed, and Queenstown Lakes District Council is directed to:
 - (a) amend the provisions of Chapters 24 (Wakatipu Basin) and 27 (Subdivision and Development) as set out in Appendices A and B, attached to and forming part of this order;
 - (b) make any consequential amendments to the numbering of provisions or to the relevant planning maps resulting from the above amendments.
- (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] These proceedings concern several appeals by Barnhill Corporate Trustee Limited and others against parts of a decision of the Queenstown Lakes District Council regarding provisions of Chapters 24 (Wakatipu Basin) and 27 (Subdivision and Development) of the Proposed Queenstown Lakes District Plan ("PDP"). The appeals were allocated to Stage 2 of the PDP review. This order addresses the parts of the appeals allocated to subtopic 4 of Topic 30 – Wakatipu Basin addressing policy 24.2.4.2¹ as well as the relevant aspects of certain appeals that were allocated to Topic 31 – Wakatipu Basin rezoning.²

¹ ENV-2019-CHC-86 Barnhill Corporate Trustee Ltd; ENV-2019-CHC-75 D MacColl; ENV-2019-CHC-88 Morven Ferry Limited and ENV-2019-CHC-84 S Williamson.

² ENV-2019-CHC-38 Boxer Hill Trust; ENV-2019-CHC-24 R & M Donaldson; ENV-2019-CHC-37 Trojan Helmet Limited; ENV-2019-CHC-90 Waterfall Park Developments Limited.

[2] I have read and considered the consent memorandum of the parties dated 15 June 2021 which proposes to finally determine a number of the relevant appeal points allocated to subtopic 4 of Topic 30 and the relevant aspects of the Topic 31 appeals that engage with or directly raised issue with Policy 24.2.4.2.

Other relevant matters

[3] A number of parties gave notice of an intention to become a party under s274 RMA³ to the relevant appeals. Several of whom expressly withdrew their interest in Topic 30.

[4] The memorandum records that the s274 parties to the Topic 31 appeals have been consulted as part of preparing the joint memorandum but are not recorded as signatories to the memorandum, given their interest remains allocated to Topic 31.

[5] The memorandum follows the consent memorandum dated 17 December 2020⁴ and the earlier Topic 30 consent order.⁵ I am satisfied all relevant parties have signed the memorandum setting out the relief sought and adequate opportunity has been provided to the parties to engage with the process.

Appeal points resolved without amendment to plan provisions

[6] The following appeal points were resolved by way of an agreement to withdraw the relevant relief because the appellants do not have an interest in the resolution of Policy 24.2.4.2 as they do not own land within the Lake Hayes Catchment. The memorandum records all other parties to those appeals consent

³ Resource Management Act 1991.

⁴ This memorandum sought resolution of various other appeal points allocated to Topic 30 and detailed the s274 parties who had either withdrawn from the topic, confirmed their interest sat with Topic 31 or failed to engage with the process at all.

⁵ Issued 27 July 2021.

to the dismissal and have no issue as to costs.

[7] The court therefore records the following appeal points are dismissed:

Appeal point allocated reference	Appealed provision
ENV-2019-CHC-068-015 ⁶	Policy 24.2.4.2
ENV-2019-CHC-074-019 ⁷	Policy 24.2.4.2
ENV-2019-CHC-065-019 ⁸	Policy 24.2.4.2

Orders

[8] 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 relevant parties to the proceeding have executed the memorandum requesting this order;
- (b) the parties advise 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 Act including, in particular, Pt 2.


 J J M Hassan
 Environment Judge



⁶ Appealed by L McFadgen.
⁷ Appealed by Slopehill Joint Venture.
⁸ Appealed by Wakatipu Equities Limited.

List of Appellants

ENV-2019-CHC-88	Morven Ferry Limited
ENV-2019-CHC-84	S Williamson
ENV-2019-CHC-38	Boxer Hill Trust
ENV-2019-CHC-24	R & M Donaldson
ENV-2019-CHC-37	Trojan Helmet Limited
ENV-2019-CHC-90	Waterfall Park Developments Limited

APPENDIX A

(amendments shown by way of underline and ~~strikethrough red~~ text)

Policies

24.2.4.2 Restrict ~~the scale, intensity and location of~~ subdivision, development and use of land in the Lake Hayes catchment, unless it can contribute ~~occur~~ ~~consistently with improvement~~ to water quality improvement in the catchment commensurate with the nature, scale and location of the proposal.

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Advice notes

24.3.3.2 On-site wastewater treatment is subject to the Otago Regional Plan: Water. In particular, Rule 12.A.1.4 of the Otago Regional Plan: Water requires that within the Lakes Hayes Catchment all on-site wastewater treatment systems are operated in accordance with a resource consent obtained from the Otago Regional Council. The Lake Hayes Catchment is identified in Schedule 24.9.

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Matters of control / discretion

24.4.6	<p>The construction of buildings for residential <u>activity, including residential flats,</u> that are located within a building platform approved by a resource consent, and registered on the applicable <u>record of title</u> Computer Freehold Register before 21 March 2019.</p> <p>Control is reserved over:</p> <ul style="list-style-type: none"> a. <u>Effects on landscape character associated with the bulk and external appearance of buildings</u> Landscape character; b. Visual amenity values; c. Access; d. Infrastructure; e. Landform modification, <u>exterior lighting,</u> landscaping and planting (existing and proposed); f. <u>Where the site is located within the Lake Hayes Catchment as identified in Schedule 24.9, the contribution of, and</u> 	C
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	<u>methods adopted by, the proposal to improving water quality within the Lake Hayes Catchment.</u>	
24.4.7	<p>The construction of buildings for residential activity that are not provided for by in-Rule 24.4.5 or 24.4.6 and are not contrary to or Rule 24.4.8.</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. <u>Effects on landscape character associated with the bulk and external appearance of buildings</u> Landscape character; b. Visual amenity values; c. Access; d. Infrastructure; e. Landform modification, <u>exterior lighting,</u> landscaping and planting (existing and proposed); f. Natural hazards. g. <u>Where the site is located within the Lake Hayes Catchment as identified in Schedule 24.9, the contribution of, and methods adopted by, the proposal to improving water quality within the Lake Hayes Catchment.</u> 	RD

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24.4.18	<p>The construction and alteration of buildings for non-residential activities, not otherwise provided for in Table 24.1.</p> <p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. Landscape character; b. Visual amenity; c. Access; d. Natural hazards; e. Infrastructure; f. Landform modification, landscaping and planting (existing and proposed). g. <u>Where the site is located within the Lake Hayes Catchment as identified in Schedule 24.9, the contribution of, and methods adopted by, the proposal to improving water quality within the Lake Hayes Catchment.</u> 	RD
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<p>24.5.12</p>	<p>Setback of buildings from waterbodies</p> <p>The minimum setback of any building from the bed of a wetland, river or lake shall be 30m.</p> <p><u>This rule does not apply to:</u></p> <p>a. <u>waterbodies that have been built as part of a subdivision or development for the primary purpose of treating and disposing of stormwater, or</u></p> <p>b. <u>the construction of buildings for residential activity pursuant to Rule 24.4.6.</u></p>	<p>RD</p> <p>Discretion is restricted to the following:</p> <p>a. Biodiversity values;</p> <p>b. Natural Hazards;</p> <p>c. Visual and recreational amenity values;</p> <p>d. Landscape and natural character;</p> <p>e. Open space.</p> <p>f. <u>Where the site is located within the Lake Hayes Catchment as identified in Schedule 24.9, the contribution of, and methods adopted by, the proposal to improving water quality within the Lake Hayes Catchment.</u></p>
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Assessment matters

<p>Assessment Matters-Controlled Activities <u>Rule 24.4.6</u></p>	
<p><u>24.7.4A</u></p>	<p><u>Lake Hayes Catchment</u></p> <p>a. <u>The extent to which the proposal minimises erosion or sediment during construction, having regard to the provisions of Chapter 25 Earthworks, in particular Policies 25.2.1.1 and 25.2.1.7 and Assessment Matters 25.8.2 and 25.8.6.</u></p> <p>b. <u>The extent to which the proposal avoids or mitigates any potential adverse effects on surface waterbodies and ecological values through the adoption of measures to reduce stormwater runoff adverse effects from the site, including the implementation of low impact design techniques.</u></p> <p>c. <u>Where a waterbody is located on the site, the effectiveness of riparian planting to filter sediment and reduce sediment concentrations in stormwater runoff.</u></p>

	<p>d. <u>The extent to which erosion and sediment management and/or on-site stormwater management systems are commensurate with the nature, scale and location of the activity.</u></p> <p>e. <u>The extent to which the proposal contributes to water quality improvement, including by:</u></p> <ul style="list-style-type: none"> i. <u>stabilising the margins of waterways, riparian planting and ongoing management;</u> ii. <u>Reducing inputs of phosphorus and nitrogen into the catchment;</u> iii. <u>Implementing a nutrient management plan;</u> iv. <u>Restoring, maintaining, and constructing new, wetlands for stormwater management;</u> v. <u>Offering any voluntary contribution (including financial) to water quality improvement works off-site in the catchment.</u> <p>f. <u>Practicable constraints limited to situations where no further improvements to stormwater runoff management can be achieved.</u></p> <p>g. <u>Whether new development can be connected to reticulated services, or if connections are not available, whether onsite systems provide for the safe disposal of stormwater and wastewater without adversely affecting natural water systems and ecological values.</u></p>
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Assessment Matters-Restricted Discretionary Activities	
<u>24.7.15</u>	<p><u>Lake Hayes Catchment</u></p> <p>a. <u>The extent to which the proposal minimises erosion or sediment during construction, having regard to the provisions of Chapter 25 Earthworks, in particular Policies 25.2.1.1 and 25.2.1.7 and Assessment Matters 25.8.2 and 25.8.6.</u></p> <p>b. <u>The extent to which the proposal avoids or mitigates any potential adverse effects on surface waterbodies and ecological values through the adoption of measures to reduce stormwater runoff adverse effects from the site, including the implementation of low impact design techniques.</u></p> <p>c. <u>Where a waterbody is located on the site, the effectiveness of riparian planting to filter sediment and reduce sediment concentrations in stormwater runoff.</u></p>

	<p>d. <u>The extent to which erosion and sediment management and/or on-site stormwater management systems are commensurate with the nature, scale and location of the activity.</u></p> <p>e. <u>The extent to which the proposal contributes to water quality improvement, including by:</u></p> <ul style="list-style-type: none"> i. <u>stabilising the margins of waterways, riparian planting and ongoing management;</u> ii. <u>Reducing inputs of phosphorus and nitrogen into the catchment;</u> iii. <u>Implementing a nutrient management plan;</u> iv. <u>Restoring, maintaining, and constructing new, wetlands for stormwater management;</u> v. <u>Offering any voluntary contribution (including financial) to water quality improvement works off-site in the catchment.</u> <p>f. <u>Practicable constraints limited to situations where no further improvements to stormwater runoff management can be achieved.</u></p> <p>g. <u>Whether new development can be connected to reticulated services, or if connections are not available, whether onsite systems provide for the safe disposal of stormwater and wastewater without adversely affecting natural water systems and ecological values.</u></p>
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Schedule 24.9 Lake Hayes Catchment

[Agreement reached to add Lake Hayes Catchment Map, being Map B6 in the Otago Regional Plan: Water]

APPENDIX B

(amendments shown in red text, and in underline and ~~striketrough~~ text)

CHAPTER 27 – SUBDIVISION AND DEVELOPMENT

	Subdivision Activities - District Wide	Activity Status
27.5.9	<p>Discretion is restricted to:</p> <ul style="list-style-type: none"> a. Location of building platforms and <u>vehicle accessways</u> b. Subdivision design and lot layout including the location of boundaries, lot sizes <u>shape</u> and dimensions (<u>but excluding lot area</u>); c. Location, scale and extent of landform modification, and retaining structures; d. Property access and roading; e. Esplanade provision; f. Natural and other hazards; g. Firefighting water supply and access; h. Water supply; i. Network utility services, energy supply and telecommunications; j. Open space and recreation provision; k. <u>Opportunities for nature conservation values Ecological, and natural landscape features enhancement;</u> l. Historic Heritage features; m. Easements; n. Vegetation, removal, and proposed planting; o. Fencing and gates; p. Wastewater and stormwater management; q. Connectivity of existing and proposed pedestrian networks, bridle paths, cycle networks; r. Adverse cumulative impacts on ecosystem services and nature conservation values. <u>r. Where the site is located within the Lake Hayes Catchment as identified in Schedule 24.9, the contribution of, and</u> 	RD

	Subdivision Activities - District Wide	Activity Status
	<p><u>methods adopted by, the proposal to improving water quality within the Lake Hayes Catchment.</u></p> <p><u>Advice Note:</u></p> <p><u>Refer to the Wakatipu Basin Rural Amenity Zone location specific rules in 27.7.X.</u></p>	

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27.9 Assessment Matters for Resource Consents

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27.9.3 Restricted Discretionary Activity Subdivision Activities

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27.9.3.3 Assessment Matters in relation to Rule 27.5.9 (Wakatipu Basin Rural Amenity zone and Wakatipu Basin Lifestyle Precinct Subdivision Activities)

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Lake Hayes Catchment

In addition to the matters above, where the site is located within the Lake Hayes Catchment identified in Schedule 24.9, the following are applicable.

- gg. The extent to which the proposal minimises erosion or sediment during construction, having regard to the provisions of Chapter 25 Earthworks, in particular Policies 25.2.1.1 and 25.2.1.7 and Assessment Matters 25.8.2 and 25.8.6.
- hh. The extent to which the proposal avoids or mitigates any potential adverse effects on surface waterbodies and ecological values through the adoption of measures to reduce stormwater runoff adverse effects from the site, including the implementation of low impact design techniques.
- ii. Where a waterbody is located on the site, the effectiveness of riparian planting to filter sediment and reduce sediment concentrations in stormwater runoff.
- jj. The extent to which erosion and sediment management and/or on-site stormwater management systems are commensurate with the nature, scale and location of the activity.
- kk. The extent to which the proposal contributes to water quality improvement, including by:

- i. stabilising the margins of waterways, riparian planting and ongoing management;
 - ii. Reducing inputs of phosphorus and nitrogen into the catchment;
 - iii. Implementing a nutrient management plan;
 - iv. Restoring, maintaining, and constructing new, wetlands for stormwater management;
 - v. Offering any voluntary contribution (including financial) to water quality improvement works off-site in the catchment.
- II. Practicable constraints limited to situations where no further improvements to stormwater runoff management can be achieved.
- mm. Whether new development can be connected to reticulated services, or if connections are not available, whether onsite systems provide for the safe disposal of stormwater and wastewater without adversely affecting natural water systems and ecological values.

