

ORIGINAL

Decision No. C 164/2004

IN THE MATTER of the Resource Management Act 1991 (**the Act**)

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN WAKATIPU ENVIRONMENTAL SOCIETY INCORPORATED

(ENV C 138/04)

Appellant

AND QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

AND M and J CORBETT

Applicants

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith (presiding)  
Environment Commissioner D H Menzies  
Deputy Environment Commissioner R Grigg

Hearing at Queenstown on 26 October 2004

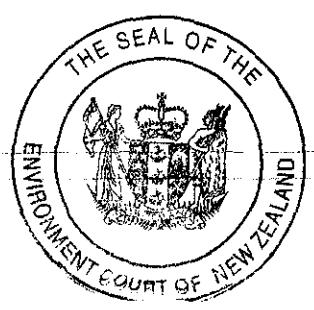
Appearances

Ms K V Swaine for Wakatipu Environmental Society Incorporated (**WESI**)

Mr G M Todd for Queenstown Lakes District Council

Mr J R Castiglione for M & J Corbett

**ORAL DECISION**



### *Introduction*

[1] This is an appeal relating to a consent issued by the respondent, Queenstown Lakes District Council, for the establishment of a house at 57 Jeffrey Road, Crown Terrace. The parties have attempted to resolve this matter by agreement but were not able to do so.

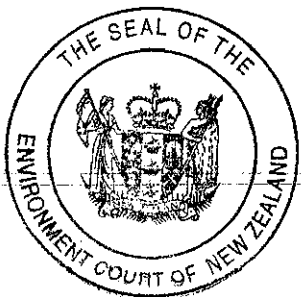
[2] The matter came before the Court on Tuesday 26 October and was subject to a decision on procedural matters which I won't repeat for the purposes of this decision. The Court then proceeded on to consider the substantive case, and has heard submissions from counsel for the applicant and the District Council, and from Ms K Swaine appearing for the appellant. As was clear in the earlier procedural decision, there has been a failure by all parties to file evidence, and the Court proceeded on the basis of submissions only.

[3] An unsigned consent memorandum was produced by the applicant and it has not been signed by any parties. We have concluded that WESI is not bound by that consent memorandum, and we have to consider the matter as a de novo hearing under the provisions of the Act itself. To that extent, there being no particular evidence, the Court has had to rely on the documents filed for the appeal and on the submissions. As the remaining issue largely turns on one of submissions in any event, the Court has not felt constrained in its consideration of the merits of the case.

[4] The parties have reached an agreement upon landscape, and that is clear both from Ms Swaine and from correspondence indicating that both the landscape architect for WESI and for the applicant have met and reached an agreement. We annex to this decision a copy of the amended landscape plan, **A**, and the planting and establishment plan, **B**.

### *Issues*

[5] WESI has continuing concerns relating to two issues: (a) the building design, and (b) jurisdictional matters.



***Building design***

[6] In their notice of appeal, WESI raised some four issues relating to building design:

- ...
- (d) *The Respondent erred when it required the applicant to amend the proposal by demonstrating a proposed building of 5.5 metres in height, and then granted consent for a building 5.7 metres in height.*
  - (e) *The Respondent erred when it required the applicant to amend the proposal for a two-storey building by demonstrating a proposed single-storey building, and then granted consent for a two-storey building.*
  - (f) *The Respondent erred when it required the applicant to amend the proposal by demonstrating a proposed building that does not break the line of the ridge, and then granted consent for a building that breaks the ridgeline.*
  - (g) *The Respondent erred when it granted consent for a building with a larger amended footprint of 730 square metres than the original application which proposed a footprint of 690 square metres.*

[7] We have considered the submissions of WESI and conclude that the concerns that WESI now has, seeking an amended design of the building, goes well beyond those issues. In fact the proposed redrafted building plan seems to address matters of style and architectural detail rather than matters of the height, number of storeys or the footprint. In particular, we have concluded:

- (a) that the building is now reduced in height from 7 metres to 5.5 metres
- (b) that in relation to the second storey, the building is to be constructed as per plans with the mezzanine floors as shown on those plans
- (c) that the issue of the sky line from Morven Ferry Road is addressed by virtue of the height of the building. The reason we have reached this conclusion is that the view from Morven Ferry Road is around 5 k away, and that the house is around 200 metres above Morven Ferry Road and the valley floor. Taking into account the angle of view, we are unable to see



how it could be possible for the building to be on the sky line from that view, having regard to the steep contour of the land behind the house, as shown on the landscape plan.

[8] In relation to landscaping issues, we note that amended landscaping plans have been provided. We have examined those, and the Court is fortunate to have a landscape architect as one of the commissioners. We are satisfied that the 11 spruce trees that are around 5 metres in height currently, can be planted now to break the line of the building. We are satisfied that plans A and B, which are annexed to this decision, will adequately mitigate any visual effects of the activity. We also note that two well-experienced landscape architects for WESI and the Corbetts have reached an agreement on these issues.

#### *Jurisdictional matters*

[9] WESI raised particular concern that the application as now before this Court had essentially changed in nature from that advertised, and that they were faced with addressing a moving target. Can we say before we deal with the substantive issues that one of the prime purposes of negotiation is to allow the parties to seek to ameliorate concerns by changing a proposal to one with impacts of lesser effect. It is almost inevitable that applications before this Court have undergone some refinement by the time they are heard. This is to be expected and encouraged by the Court to obtain the best possible outcome in environmental terms.

[10] Thus, in this case there have been several significant reductions in effect. The first is the reduction of the building height from 7 metres to 5.5 metres. We agree with Mr Castiglione and Mr Todd that that is a substantive improvement over the application as originally proposed. Secondly, we accept that the mitigation by way of the landscape plan, A, and the other plan, B, provide for a much more enforceable and anticipated outcome in mitigation terms. Both of these are significant improvements over the original application.

[11] On the other hand, we accept that there is now an extension to the building of some 20 square metres. That will increase the horizontal view of the building by less



than 20 per cent, according to our calculations. That will have an impact on views from Crown Range Road and from Morven Ferry Road, between one and five kilometres away. We accept the proposition set out in *Haslam v Selwyn District Council*<sup>1</sup>, which stated:

*I hold that the basis for the test that I should apply in this case is whether the amendment made after the period for lodging submissions had commenced, is such that any person who did not lodge a submission would have done so if the application information available for examination had incorporated the amendment.*

[12] We have considered whether the additional visual impact of the extension to this building is such that it would fundamentally change the approach of such a reasonable person. We are satisfied that no interested person would have made a submission based only on the extension of the building. When we take into account that they would have also been aware of the reduction in height of the building and in the planting mitigation improvements, we are satisfied that the overall impact of the extension is de minimus. Accordingly we have concluded that the proposal now before this Court is clearly within the jurisdiction of this Court on appeal.

#### ***Overall assessment***

[13] We are satisfied that this proposal provides for the social and economic well being of the Corbetts, by providing for the construction of their home. The impacts have been adequately addressed through the proposed conditions of consent with the additions that we have discussed and will impose. The increase in scale by the building extension are insignificant compared to the reduction in height and the landscape plan. We also take into account in our overall assessment that there was an earlier consent granted to the Corbetts which lapsed, and that there is an existing physical resource, i.e. the concrete pad, already in place. We conclude that consent should be confirmed, subject to the following additional conditions imposed in addition to those already contained in the resource consent of the Queenstown Lakes District Council.



---

<sup>1</sup> (1993) 2 NZRMA 628

[14] Firstly, condition 6 will be imposed, which is that:

*Landscaping shall be implemented and maintained in accordance with the Landscaping Plan attached and marked A and the Planting and Establishment Plan attached and marked B.*

[15] Secondly, that there should be new conditions 8 and 9 as follows.

*8: Any external lighting should be hooded and/or directed downwards to minimise light spill and to ensure that external lighting is directed downwards towards the ground, and that no light bulb is directly visible from outside the property.*

*9: The dwelling may not be occupied until it has been completed externally (including external materials, completion of painting, etcetera). If the dwelling is constructed in stages then this condition shall apply to any stage constructed so that that stage may not be occupied until it is externally complete.*

New condition 10:

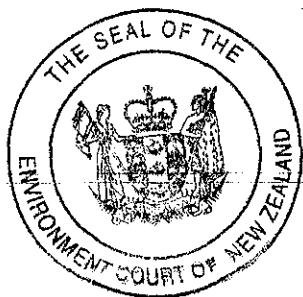
*That the building shall not be greater than 5.5 metres above ground level.*

Condition 11:

*That the building shall occupy the existing concrete slab plus an additional 20 square metres as shown on the plans.*

***Final comment***

[16] WESI have sought to pursue some issues which we have concluded are well beyond the appeal that it has filed. This has included, for example, issues of inundation and slippage, and issues of external lighting. At the hearing itself, WESI also sought that the consent as a whole be declined on the basis of jurisdictional grounds, which we have found to be without foundation.



**Costs**

[17] We would normally be minded to consider an award of costs against WESI as a result of this course of action. However, we take into account that the applicant had not circulated their evidence in preparation for hearing; neither had the Queenstown Lakes District Council or WESI, probably largely as a result of not receiving the earlier evidence. We have considered this matter and come to a clear view that the solution in this case is not to award any party for their conduct in breaching directions of this Court. Accordingly we have concluded that there should be no costs to any party.

Delivered orally at Queenstown on 26 October 2004.

  
\_\_\_\_\_  
**J A Smith**  
**Environment Judge**



Issued: - 3 NOV 2004





"B"

PLANTING AND ESTABLISHMENT PLAN for  
M and J Corbett House Area, Crown Terrace, Wakatipu Basin  
RM030492

October 2004



Anne  
Steven  
LANDSCAPE  
ARCHITECT

tel. 03 443 4404  
fax. 03 443 4458  
mob. 021 2939 207  
em. a.steven@xtra.co.nz  
80 Ardmore Street  
PO Box 576 WANAKA

**PLANTING AND ESTABLISHMENT PLAN for  
M and J Corbett House, Crown Terrace, Wakatipu Basin  
RM030492**

October 2004

**Introduction**

---

This is a plan for the planting and establishment of a belt of trees to the east and northeast of the proposed Corbett dwelling, in accordance with Fig. 4 Planting Plan, Proposed Corbett House, Dwg. No. 093.01A, October 2004.

Tree species are Spruce, Deodar Cedar, "Veronese" Poplar, eucalyptus species, Ash species, Chinese Elm and Oak species.

**Planning of Planting Project**

---

Given the planting is desired to be implemented at the earliest opportunity, container stock will be utilised, if available. Pending availability of stock, planting will be in November/December 2004 and from March onward in 2005. Poplars and possibly other deciduous tree species would be bare root stock planted in August 2005.

The claret ashes have already been planted.

The spruce specimens will be planted in October/November.

Site preparation will be undertaken in the month prior to actual planting dates.

The planting will be irrigated for a minimum of 5 years.

A full programme of post-planting care will be implemented.

Planting and establishment shall be undertaken in accordance with the specification described in the following sections.

**Site Preparation**

---

**1. Fencing**

Planting areas shall be fully deer and rabbit fenced prior to planting. Rabbits and hares are to be eliminated prior to any planting work (by night shooting and/or poison). Presence of possums is to be monitored and if found to be present, bait stations are to be installed in the vicinity of new plantings.

There are to be no gaps or run holes under the fences at planting time.

**2. Control of Existing Vegetation**

Planting areas shall be mown or heavily grazed to within 3-4 weeks of the first proposed planting date.

3 weeks prior, all the tree spots (actual planting sites for individual trees) are to be identified by stakes to confirm full set out. Landscape architect shall inspect set out and confirm it is correct prior to planting. Stakes for trees to be planted at a later date are to be left in place and the species to be planted written on in weatherproof writing.



2 weeks prior to planting date, 1m diameter minimum tree spots shall be sprayed with Roundup in accordance with manufacturer's instructions. Larger areas will be required for the spruce trees – area is to be 300mm wider all round than the root ball. Spraying shall only be undertaken in calm dry conditions with no likelihood of rain within 24 hours. A re-spray shall be applied after 10 days if live growth is still apparent and the sites left for a further 10 days. A complete vegetation kill is to be achieved prior to planting.

**3. Irrigation**

Mains and laterals for irrigation system delivering water by drippers to individual trees shall be installed prior to planting. System is to be fully functional prior to any planting being undertaken. Reticulation to individual trees will be done at time of planting, as planting progresses. Water volume delivered is to be measured prior to planting to ensure it is sufficient and to guide watering programming.

System shall have an automatic timer delivering water to the trees in the period 4am-7am. System shall be set up to provide a good deep watering infrequently rather than shallow frequent watering, to promote deeper rooting. Exact programme of watering is to be adjusted according to prevailing weather conditions.

## Planting

**1. Plant Stock**

All stock except poplars shall be medium grade container stock supplied by a recognised tree grower. If container stock is unavailable, deciduous trees shall be bare root stock planted in the 2005 winter. Exact size of plant will depend on what is available. With good care, faster growth rates are achieved from smaller stock and they soon catch up to large grade stock, which takes longer to re-establish and start growing. Poplars will be bare root stock planted in the 2005 winter. All stock shall be top grade healthy nursery stock with normal well-balanced form and well-developed root systems. Root collar diameters shall be of good size proportionate to the height of the plant. Container stock shall be well established (but not over-grown) in their containers, with root balls proportionate to foliage. All stock shall have been hardened off over a period of at least 6 months.

Species shall be those specified on Fig. 4, Planting Plan Dwg. No. 093.01A October 2004 prepared by Anne Steven Landscape Architect.

The Corbett's already have 11 or so 4-5m high spruce trees to be planted as instant screening. These will be removed once 90% of the permanent planting has reached a height of at least 5m.

**2. Planting**

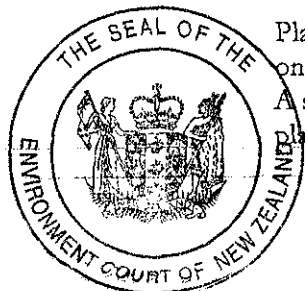
Care of Plant Stock – plants shall be protected from damage and drying out at all times and shall be in top condition at time of planting. Container stock shall not have their root balls left in the sun. Particular care shall be taken with bare root stock to ensure roots do not dry out.

Planting is to be undertaken when all planting spots have total vegetation kill. Planting shall not be undertaken in excessively windy or hot conditions.

Set out only as many trees as can be planted in one day.

Root balls and root systems shall be thoroughly moist prior to planting.

Planting holes shall be square and 200-300mm wider all round than the root balls or root systems on bare root plants. The bottoms of the holes shall be broken up to a further depth of 150-200mm. A slight crown of friable soil shall be created in the bottom of holes for bare root stock. If the planting holes are dry, fill hole with water prior to planting and allow to fully drain away.



Trees are to be placed in the hole so that the root collar is level with or up to 3cm below surrounding ground level. Poplars may be buried deeper. Spread roots of bare root trees outwards over crown. Backfill soil back around roots or root ball, firming by hand in layers of no more than 150mm at a time so that no air pockets remain. Place tree stakes in hole during backfilling. Leave a depression on the surface around the plant and fork it over to facilitate water penetration. Where planting on a slope, dig the planting pit into the slope so that it forms a small shelf.

If soil quality is poor (pale in colour, noticeably silty, sandy, with high clay content, or high shattered rock content) mix in well rotted compost or peat at a rate of 1 part compost to 2-3 parts soil.

Apply slow release general fertiliser to each tree at the recommended rate. Any special fertiliser requirements for each species are to be confirmed with the nursery supplier.

Thoroughly water each tree immediately after planting. The spruces in particular will need a slow deep watering after planting.

Staking – stake all deciduous trees with one 1.8m H4 tree stake placed on the windward side. Use two stakes for the spruces. Tree ties are to be a soft pliable material. Stakes are to be hammered firmly into the ground.

Mulching – spread 100mm thick layer of mulch (bark chip, post peelings, compost, pine needles) over ground around each tree, minimum 1m diam.

Irrigation – set out 2-4 drippers to each tree depending on size. If there is delay in doing this in dry conditions, water trees in interim by hand.

Wind Shelter – stack straw bales in a wedge on the windward side to provide initial wind shelter. Alternatively construct a V of wind-break cloth attached to three 50x50mm H4 stakes. Height of shelter will depend on height of tree planted and should be higher than the tree.

Landscape architect shall inspect each lot of planting on completion to confirm planting, staking, mulching and watering is as specified.

### Establishment (planting plus 5 years)

The establishment period shall be for a minimum of 5 years after planting (to 2010).

**Pest Control** – trees will be checked for rabbit damage initially every 2 days for two weeks after planting thereafter at least once a fortnight. Fencing is to be checked regularly for holes which are to be mended immediately. If there is sign of rabbits within the planting areas, control measures are to be undertaken as soon as practicable. Rabbit repellent can be applied in the interim to provide immediate protection (not to be applied in rain or if rain is imminent).

Damage by possums is also to be monitored and bait stations used if necessary.

**Stock Browsing** - planting areas are to remain stock proof (including deer) until trees are big enough to withstand browsing. Fences may be removed at that stage. It is envisaged the planted areas will be grazed in the long term, providing shade and shelter to stock and to control grass growth (although shade and competition will limit it naturally once trees have canopy closure).

**Weed Control** – weed growth around trees especially grass is to be controlled by spraying Roundup or hand weeding – the latter preferable especially around the eucalypts which are sensitive to herbicides. At no time shall there be more than 20% weed cover in the 1m diameter area around each tree. A 100mm deep mulch cover is to be maintained by topping up the mulch every 6 months minimum. This will keep weeds at bay, make it easier to hand weed and assist in moisture retention.



**Watering** – the irrigation system shall be maintained in full working order for at least 5 years. Dripper delivery shall be checked regularly to ensure they are working, and soil conditions are to be checked regularly (suggest every 2-3 days in dry conditions) to ensure it is moist around trees.

Watering times shall be adjusted according to prevailing weather conditions. Watering shall be occasional and deep rather than often and shallow.

**Stakes** – tree stakes are to be checked regularly to ensure they remain firm with secure ties, and to ensure there is no chafing or tightening of ties about the trunk. Stakes are to be removed once tree is firmly established on its own (leave in place for at least 18 months).

**Replacements** – any trees that die or fail to thrive or are damaged in any way are to be replaced as soon as practicable. Replacement trees shall be planted and cared for in the manner described in this specification.

Generally, planting is to be checked every 1-2 days for the first 2-3 weeks after planting and thereafter at least once a fortnight depending on weather conditions (more frequent checks in dry windy conditions).

