

Battle over Basin rules comes to an end

The Environment Court has issued its final decision on rules governing land use and subdivision in the Wakatipu Basin. The decision marks the (near) end of almost 8 years of litigation on the destiny of how the rules affect residents and landowners, while leaving some site-specific provisions on hold pending determination of site-specific appeals.

Background

Councils are required to review provisions in district plans every ten years. Queenstown Lakes District Council (QLDC) chose to undertake this as a 'rolling' review, commencing in 2015 with a number of district-wide and site-specific chapters. This incremental and staged approach has resulted in a (still-unfinished!) lengthy and costly process for landowners, residents, business owners and others taking part in shaping the direction and rules for our District. Particularly for the Basin, many have been involved in questions of rezoning for the past 8 years, including two rounds of submissions and multiple staged hearings. A number of 'site specific' appeals remain live, with final hearings and determinations still to come.

The review initially zoned the Basin in 2015 as a combination of Rural, Rural Lifestyle, and Rural Residential, being zones that apply across the entire District. However, during hearings on the Proposed District Plan (PDP) in 2016, the QLDC-appointed Independent Hearing Panel made a preliminary finding that this approach was unlikely to achieve the strategic direction of the PDP, and failed to recognise the unique qualities of the Basin landscape as distinct from other

zones in the District. In response, QLDC commissioned the 2017 '[Wakatipu Basin Land Use Planning Study](#)' to determine whether the Basin could absorb further development and, if so, where that development should be located.

QLDC subsequently notified a 'Variation' to the already notified PDP, to introduce a new zoning framework, being the Wakatipu Basin Rural Amenity Zone (WBRAZ) which includes the Lifestyle Precinct sub-zone (Precinct). After a further period of Council hearings and decisions, some 36 landowners appealed the new regime to the Environment Court, with those appeals being split into questions on the text of the PDP, and questions on of the specific categorisation of different land parcels.

Environment Court decision

The confirmation of the WBRAZ finalises a paradigm shift for planning rules in the Basin as compared to the preceding regimes which have been in place since 1995 under the Operative District Plan. The new regime introduces the concept of the Basin as an 'amenity zone' complemented by stricter landscape and amenity assessment matters and a non-complying subdivision regime for lots or dwelling density less than 80ha in a number of areas. Some pockets of land within the Basin are sub-zoned as 'Precinct', which provides greater opportunities for further lifestyle and rural residential development. The Basin is divided into different Landscape Character Units (LCUs) which identify specific landscape character and visual amenity values, and include capacity rankings for any further subdivision and development. Landowners can check the categorisation (and corresponding regulatory framework) of their property [here](#).

The Court's most recent decision approves the final set of Basin 'rules' for use, subdivision and development. The full provisions are soon to be updated on Council's website, however a summary of the regime is as follows:

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- The Purpose of the WBRAZ is "to maintain or enhance the character and amenity of the Wakatipu Basin, while providing for rural living and other activities".
- Subdivision and lifestyle development are governed by a tiered framework, based on each LCU's 'capacity to absorb additional development' aka 'landscape capacity' rating in [Schedule 24.8](#), as follows:
 - The 80ha (lot size and dwelling density) Non-complying regime generally applies to parts of the WBRAZ with a Very Low, Low or Moderate-Low capacity rating. However, on (unbuilt) lots less than 80ha with building platforms, residential units are a Controlled activity. On lots without building platforms, one residential unit is provided for as a restricted discretionary activity;
 - Different policies and minimum lot size regimes apply, along with a Discretionary status, to areas with a Moderate, Moderate-High or High capacity rating. Currently this applies to the following areas, but other areas subject to appeal may be added to these tiers:
 - LCU 6 limited to the area identified as Hunter Road West – lot size/density 6,000m² minimum and 5ha average;
 - LCU 12 limited to the area identified as Hogans Gully Road South - 6,000m² minimum and 2ha average;
 - LCU 15 Hogans Gully (entire LCU excluding Hogans Gully Resort Zone) - 4ha minimum and 6ha average;
 - LCU 22 The Hills (entire LCU) - 3ha minimum and 4ha average;
 - Remaining site-specific rules, including minimum lot sizes will be determined as the Environment Court continues to hear the final rezoning appeals in coming years;
 - Subdivision to 6000m² minimum/1ha average lot size is anticipated in the Precinct sub zone (as a restricted discretionary activity), and down to 4,000m² minimum/0.8ha average lot size (as a fully discretionary activity).
- Setbacks apply from roads, internal boundaries, escarpments, ridgelines, and river cliff features. This may affect the realistic development yield of many properties, depending on the purpose of the specific setback.
- The touchstone and consenting pathway for all consents is whether or not a proposal is consistent with maintenance of the "landscape character and visual amenity values" that are specifically identified in each LCU description in [Schedule 24.8](#).

Implications

The amended Basin framework is a much more complicated planning regime than the Operative Plan, and what was originally notified in 2015. It will enable further subdivision and development in the Precinct and in other parts of the WBRAZ with a rating of Moderate, Moderate-High and High. For landowners in areas with a Very Low, Low or Moderate-Low landscape capacity rating, subdivision that does not comply with the 80ha minimum lot size will be treated as a Non-complying activity (the most onerous of consenting pathways).

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Any unbuilt on site no matter what size (one record of title) created by resource consent prior to 21 March 2019 in the WBRAZ, effectively has an opportunity to develop one residential unit, as a Restricted Discretionary or Discretionary activity, or if there is a building platform, as a Controlled activity.

Short term letting of residential buildings (e.g Airbnb) can be undertaken without resource consent for up to 120 nights per year (subject to [registering this use](#) with Council and paying increased rates).

What's next?

While it is good to have some finality from the Court's decision, central government's introduction of the new [National Policy Statement for Highly Productive Land \(NPS\)](#), has a further set of implications and complexities for land development. The Environment Court is currently determining the question of whether and how the NPS applies to the WBRAZ, however individual subdivision applications continue to be processed by QLDC on a case by case basis. Our article [here](#) provides some further context on what the NPS seeks to direct at a national level.

QLDC recently notified yet another Variation to withdraw part of the Ladies Mile area from the Basin, instead proposing to rezone it to a combination of residential zones through a separate process. More information is available [here](#).

Finally, if the Government pushes forward in its planned reforms and replacement of the RMA, this again could have future implications on zoning and planning for the Basin. Read our article on future reforms [here](#).

Want to know more?

Implications of the Court's new rules will have consequences for your property in the Basin, whether that be an interest in future subdivision and development, or an interest in protecting your current amenity and outlook. If you have any questions about the [Wakatipu Basin framework](#), please contact our

specialist [environment, planning and natural resources team](#) in Queenstown.