

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

Decision No. [2021] NZEnvC 110

IN THE MATTER of the Resource Management Act 1991
AND an appeal under s120 of the Act
BETWEEN GIBBSTON VINES LIMITED
(ENV-2018-CHC-8)
Appellant
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J J M Hassan
Hearing: On the papers in Chambers sitting alone
Appearances: A H Balme for Queenstown Lakes District Council
M Baker-Galloway and R Giles for Gibbston Vines Limited
Last case event: 15 June 2021
Date of Decision: 29 July 2021
Date of Issue: 29 July 2021

**DECISION OF THE ENVIRONMENT COURT
ON APPLICATION TO STAY PROCEEDINGS**

A: The application to stay this proceeding, pending the outcome of the High Court appeal on *Gibbston Vines Limited v Queenstown Lakes District Council* [2021] NZEnvC 23 is granted.

B: Costs are reserved.



REASONS

Introduction

[1] Our second interim decision declined consent to Lots 2-7 of Gibbston Vines Limited's subdivision consent application.¹ It left for further determination whether or not consent would be granted to allow for a two-lot subdivision such that Lot 1 would be subdivided from the balance lot, as follows:²

Those findings are not necessarily an impediment to the development of Lot 1 as proposed, including its identified commercial building platform. There may be an issue as to how consenting that, in advance of any new application for residential subdivision and development of the balance land, could affect landscape treatment. However, we will allow opportunity for GVL to inform the court whether, and on what basis, it would seek to have any such interim subdivision or development considered at this stage. If GVL does not seek that concession, a final decision would issue declining the appeal in toto.

We direct within 15 working days of issuance of this decision GVL is to file and serve a memorandum advising for the purposes of the court's final decision whether or not it wishes to pursue consent for Lot 1 (and, if so, attaching an amended landscape plan and related conditions).

[2] On 29 March 2021, Gibbston Vines Limited ('GVL') filed a memorandum and associated documentation in response to those directions. The memorandum advised that GVL "wishes to pursue consent for a two lot subdivision and the establishment of a building platform on Lot 1, for the purposes of commercial activity". The attached related documentation included an amended 'Scheme Plan' of subdivision. Importantly, this illustrated a reconfiguration and expansion of Lot 1 with a corresponding reduction in size of the balance allotment.



Gibbston Vines Limited v Queenstown Lakes District Council [2021] NZEnvC 23.
Gibbston Vines Limited, at [83], [84].

[3] GVL has appealed to the High Court against the decline of Lots 2-7 in that decision. Queenstown Lakes District Council ('QLDC') has applied to stay our proceedings pending the determination of the appeal.

The court's powers

[4] The court has the power to stay proceedings through a combination of s278 RMA³ and r 18.10 of the District Court Rules 2014 ('DCR'). The over-arching principle is that the discretion should be exercised in the interests of justice overall.⁴ The court must weigh in the balance the successful litigant's rights to the fruits of a judgment and 'the need to preserve the position in case the appeal is successful'.⁵ Relevant factors for consideration include:⁶

- (a) whether the appeal may be rendered nugatory;
- (b) the bona fides of the applicant as to prosecution of the appeal;
- (c) whether the successful party will be injuriously affected by the stay;
- (d) the effect on third parties;
- (e) the novelty and importance of the questions involved;
- (f) the public interest in the proceeding;
- (g) the overall balance of convenience; and
- (h) the apparent strength of the appeal.

[5] In terms of those matters, the bona fides of GVL is not disputed and neither the novelty and importance of the questions involved nor the apparent strength of the appeal arise for consideration.



³ Resource Management Act 1991.

⁴ *Selwyn Quarries Limited v Canterbury Regional Council* [2018] NZEnvC 194 at [11].

⁵ *Duncan v Osborne Buildings Limited* (1992) 6 PRNZ 85 (CA) at 87.

⁶ *Bergman v Bergman* [2014] NZHC 1567 at [32].

Submissions

QLDC

[6] For QLDC, Ms Balme submits that the amended Proposal is very different to that considered by the court on appeal.⁷ She elaborates that, without any further information, the court would not be properly able to identify and assess the effects of the amended Proposal or satisfy itself that it has properly had regard to the Proposed District Plan.⁸ Ms Balme submits there is a potential for conflict with the High Court proceedings. For instance, in the event of a reference back from the High Court, the Environment Court would be left with having to reconsider the residential development aspects within a more confined balance lot.⁹ Counsel submits that any injurious affection to GVL will be relatively short lived. Hence, QLDC submits the overall balance of convenience favours the granting of a stay until a determination has been made on the High Court appeal.¹⁰

Gibbston Vines Limited

[7] For GVL, Ms Baker-Galloway and Ms Giles submit that this court has determined that Lot 1 is appropriate for its intended non-residential use.¹¹ Further, the final proposal for Lot 1 is straightforward and in accordance with the court's finding that the non-residential development could be accommodated. Its identification of a building platform for non-residential use, and the details in respect of this have been directly considered by the court and the parties. Separately, counsel explain that GVL has also lodged a resource consent application for a commercial winery building and the application has been with QLDC for many months.¹²

⁷ QLDC application for stay dated 2 June 2021 at [13].

⁸ QLDC application for stay dated 2 June 2021 at [14]-[15].

⁹ QLDC application for stay dated 2 June 2021 at [11].

¹⁰ QLDC application for stay dated 2 June 2021 at [16]-[17].

¹¹ *Gibbston Vines Limited v Queenstown Lakes District Council* [2021] NZEnvC 23 at [82].

¹² GVL submission on application for stay dated 15 June 2021 at [14].



[8] Counsel submit that GVL was the “successful” party in respect to Lot 1 and would be injuriously affected by a stay.¹³ In particular, it would suffer further cost and delay and an the inability to progress the development and management of its land.¹⁴ Given the court’s indication that Lot 1 would be appropriate for subdivision and development, counsel submit that it would be unjust to cause GVL to not be able to progress its plans. In particular, counsel submit that QLDC has not put forward any compelling reasons why a stay is required and why GVL should suffer the prejudice of further delay.¹⁵

[9] Counsel say that Lot 1 is separate and can be severed from Lots 2-7. As such, counsel submit that the High Court’s determination of the appeal would not assist the court in the determination of the Lot 1 proposal. Rather, issues of uncertainty would be properly resolved by through the making of the final decision on Lot 1 and, hence, declining the stay.

[10] Counsel submit there is no public interest consideration that justifies granting the stay. Therefore, in light of the injurious affecting GVL decline of the stay is in the overall interest of justice.¹⁶

Consideration

[11] A significant difficulty is presented by GVL’s election to resize and reconfigure Lot 1. That amounts to a change to the Proposal following determinations on which the court is presently *functus officio* pending any High Court reference back.

[12] I do not determine at this point whether or not the court has jurisdiction to entertain a reconfiguration of Lot 1 in any grant of subdivision consent. It would be premature and inappropriate to do so before the outcome of the High



¹³

GVL submission on application for stay dated 15 June 2021 at [13].

¹⁴

GVL submission on application for stay dated 15 June 2021 at [16].

¹⁵

GVL submission on application for stay dated 15 June 2021 at [17]-[18].

¹⁶

McKeown v Manukau City Council A84/92 (PT) at 5.

Court appeal is known. That is because the issue of whether there is scope to entertain a resizing and re-configuration of Lot 1 may be influenced materially by the High Court appeal. Were the appeal unsuccessful, the court would remain *functus officio* on all aspects other than what the second interim decision reserved. The issue of jurisdiction would be determined in that context. On the other hand, were the High Court to refer anything back concerning the court's findings in declining Lots 2-7, that could reignite capacity to consider those aspects of the Proposal. Jurisdiction would be determined in that different legal context.

[13] Proceeding to a final decision on GVL's revised Lot 1 could potentially render the High Court appeal nugatory. Importantly, the revised Lot 1 was filed in response to the court's direction for the purposes of our "final decision". If we are satisfied with what GVL has filed in response to that direction, our final decision would effectively bring into being a subdivision consent for a two-lot subdivision being Lot 1 and the balance lot according to GVL's revised Scheme Plan. That is essentially a consequence of a final determination to grant consent under s290, RMA. That subdivision would be in substitution for any previous configuration including that the subject of the High Court appeal.

[14] There are related issues of potential prejudice to third parties, including the s274 parties and QLDC. There are associated issues of public interest prejudice in that a premature determination concerning Lot 1 would give rise to the above-noted procedural uncertainties, including as to whether it is within jurisdiction to entertain any application for amendment to the Proposal the subject of the second interim decision.

[15] GVL's prejudice, whilst acknowledged, would be temporary. It largely arises from GVL's election to modify its Proposal.

[16] Therefore, the interests of justice and overall balance of convenience strongly favour granting the stay.



Outcome

[17] The application for stay is granted. Costs are reserved on the basis that a timetable can be set in due course on application, following issuance of a further minute once the outcome of the High Court appeal is known.



J J M Hassan
Environment Judge

