

**QLDC Council  
30 June 2016**

**Report for Agenda Item: 13**

**Department: Planning & Development**

**Update on Resource Consent Appeals**

**Purpose**

The purpose of this report is to update the Council on recent decisions made on five resource consent appeals that were resolved under direction from the Chief Executive Officer.

**Executive Summary**

- 1 This paper concerns the resolution of the following resource consent appeals:
  - a. RM130521 – Cross Roads Properties Ltd – Mitre 10 Mega signage – an Environment Consent Order was signed on 24 June 2014.
  - b. RM140061 – Lakes Marina Projects Ltd – Frankton Marina – an Environment Court Consent Order was signed on 3 June 2015.
  - c. RM140712 – Little Stream Ltd – Six lot subdivision consent – an Environment Court Consent Order was signed on 21 May 2015.
  - d. RM140623 – RD Petroleum Ltd – Arrowtown Petrol Station – an Environment Court Consent Order was signed on 26 February 2015;
  - e. RM150093 – Pounamu holdings 2014 Ltd - Glenorchy campground redevelopment – Resolved by a decision of the Environment Court on 23 October 2015.
- 2 The first four of these appeals were mediated and a resolution found that was consistent in each case with the Commissioners' decisions. The Consent Order for the Mitre 10 Mega appeal was agreed by the Chief Executive. The Frankton Marina, Little Stream and RD Petroleum Consent Orders were signed under direction from the Chief Executive Officer, acting in a sub-delegation of the Chief Executive's power. The fifth appeal was resolved by a decision of the Environment Court.
- 3 There is now some doubt as to whether the delegations were properly interpreted or applied. The purpose of this report is to therefore seek Council's retrospective approval of these outcomes. It should be noted that in each instance the appeals have been settled and given effect to.

**Recommendation**

That Council:

1. **Note** the contents of this report and;
2. **Authorise** the resolution of the following resource consents appeals by way of mediation or, in the case of the Pounamu Holdings, by an Environment Court hearing:
  - a. RM130521 – Cross Roads Properties Ltd – Mitre 10 Mega signage – an Environment Consent Order was signed on 24 June 2014.
  - b. RM140061 – Lakes Marina Projects Ltd – Frankton Marina – an Environment Court Consent Order was signed on 3 June 2015.
  - c. RM140712 – Little Stream Ltd – Six lot subdivision consent – an Environment Court Consent Order was signed on 21 May 2015.
  - d. RM140623 – RD Petroleum Ltd – Arrowtown Petrol Station – an Environment Court Consent Order was signed on 26 February 2015;
  - e. RM150093 – Pounamu holdings 2014 Ltd - Glenorchy campground redevelopment – Resolved by a decision of the Environment Court on 23 October 2015.

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2/06/2016

Reviewed and Authorised by:



Mike Theelen  
Chief Executive  
2/06/2016

## **Background**

- 4 This paper is being presented to update the Council on the results of four mediated settlements and one Environment Court decision. These matters were addressed under the direction of the Chief Executive Officer.

### **RM130521 – Cross Roads Properties Ltd – Mitre 10 Mega signage – Consent Order signed**

#### *Description of Application and appeal*

- 5 Resource consent was sought for a large retail store (Mitre 10 Mega) in an industrial zone off Glenda Drive, on the Frankton Flats. Of particular note is that this was the second attempt at consenting a Mitre 10 Mega, the first attempt was a direct referral that was granted by the Environment Court, and then that decision was overturned by the High Court. It was under appeal to the Court of Appeal when a new consent was lodged for essentially the same proposal.

The development was tied up with the rezoning of the Frankton Flats through Plan Change 19 and the litigation associated with that plan change process.

- 6 Under the District Plan, corporate colours are counted as signs. In their decision, the Commissioners significantly reduced the amount of orange corporate colours sought by the applicant.
- 7 An appeal was received from the applicant to the one condition which restricted the amount of orange consented by the Commissioners on the new building. There were no s.274 parties.

Decision of Commissioners

- 8 Granted subject to conditions by Commissioners Jane Taylor and David Clarke.

Resolution of Appeal

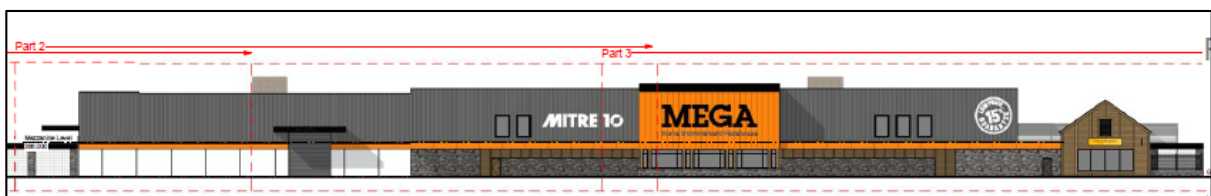
- 9 A Consent Order was signed by the Environment Court on 25 June 2014. In terms of signage, the decision of Commissioners on RM130521 is shown below to reflect the changes they imposed via condition 19 which significantly reduced the amount of orange:



- 10 The decision of the Environment Court (arising from the earlier direct referral application) when it considered the matter for the earlier application for the Mitre 10 Mega is below. The Court had previously approved a significantly larger amount of orange than the Commissioners' decision above.



- 11 A consent order was signed with the revised plans attached as shown below. This is what has now been constructed:



Rationale for resolving appeal by Consent Order

- 12 The Environment Court had already approved a scheme with much more orange than what was approved by the Council's Commissioners, and the revised scheme for the Consent Order (**Attachment A**) was considered to be a good compromise in enabling the applicant to have some corporate colour but still

resulting in a bespoke Mitre 10 Mega design that reflects Queenstown's special qualities.

13 The extra orange above what the Commissioners approved will not be readily visible from the State Highway, or in views of the Remarkables, once the intervening industrial land is developed.

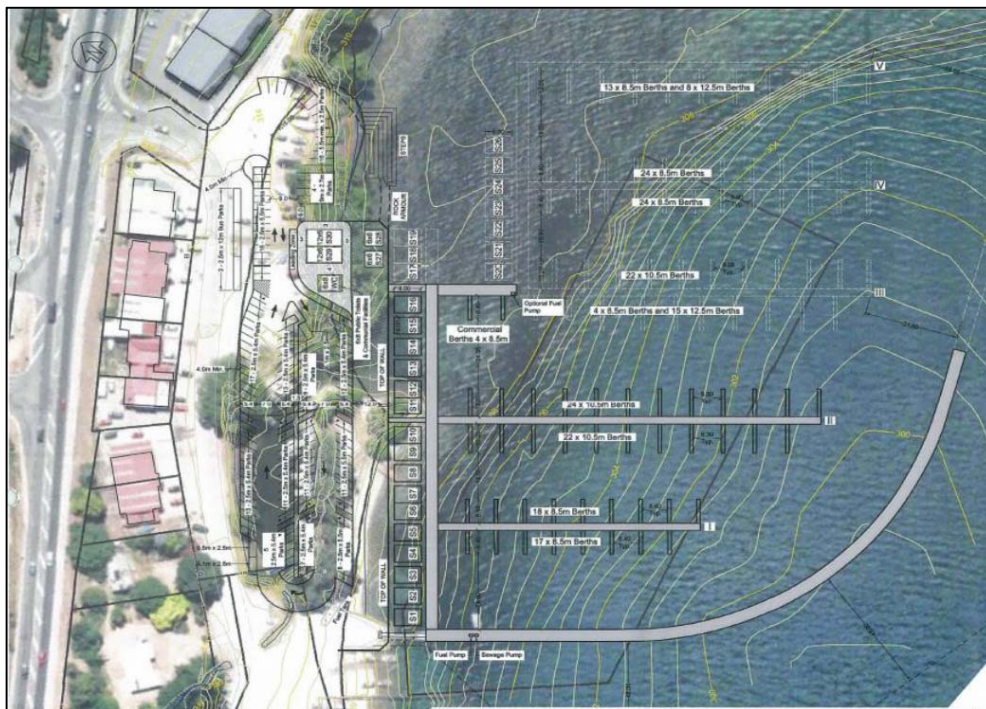
14 The amount of orange sought in the appeal was considered to be similar to other big box retailers in Queenstown such as The Warehouse at Remarkables Park. The Consent Order is appended as **Attachment A**.

## **RM140061 – Lakes Marina Projects Ltd – Frankton Marina – Consent Order signed**

### Description of Application and appeal

15 This was a joint hearing with the Otago Regional Council for a 195 berth marina with associated breakwater, commercial buildings, car parking and public open space. The site is located off Sugar Lane, where the existing Frankton inlet and boat ramp are found.

16 The Council in its corporate capacity had actively promoted the development of the Marina through a working party and is ultimately the landowner of the reserve.



### Decision of Commissioners

17 Commissioners granted consent for the majority of the development, but through the processing of the consent, the scale of development was reduced in some areas to ensure views out to the lake through the commercial pods remained.

18 Commissioners for QLDC were David Whitney and Denis Nugent, and for ORC, Martin Ward.

*Nature of Appeal*

19 The decision was appealed by neighbouring property owners Ian & Margaret Tulloch. DM Warrington and Marina Baches Management Ltd joined the appeal as s.274 parties.

*Resolution of Appeal*

20 The Tullochs own one of the 'Mantra Marina Apartments' directly adjoining the site. The amended consent conditions included in the consent order required:

- a. Consultation with the Tullochs on the Construction Site Management Plan, before it is submitted to Council for certification.
- b. Changes to the car parking arrangements, such that a barrier arm was installed, commercial rates for car parking would be charged, and additional restrictions placed on the term of parking near the Mantra Marina apartments, so it was for longer term parking only.

*Rationale for resolving appeal by Consent Order*

21 Relatively minor changes to the consent conditions were able to resolve the concerns of the Tullochs. Neither Council officers nor the applicant were concerned with the changes to the conditions which primarily related to the car parking arrangements. The Consent Order (**Attachment B**) was consistent with the decision of Council's commissioners and satisfied the concerns of the appellants.

**RM140712 – Little Stream Ltd – 6 lot subdivision consent – Consent Order signed.**

*Description of Application and Appeal*

22 Resource consent was sought to subdivide Lot 1 DP475338 into six allotments to contain one existing Residential Building Platform and five new ones. Consent was also sought to cancel Conditions of Consent Notice 9728145.15 to enable the development. The site is located in the Rural General zone.

*Decision of Commissioners*

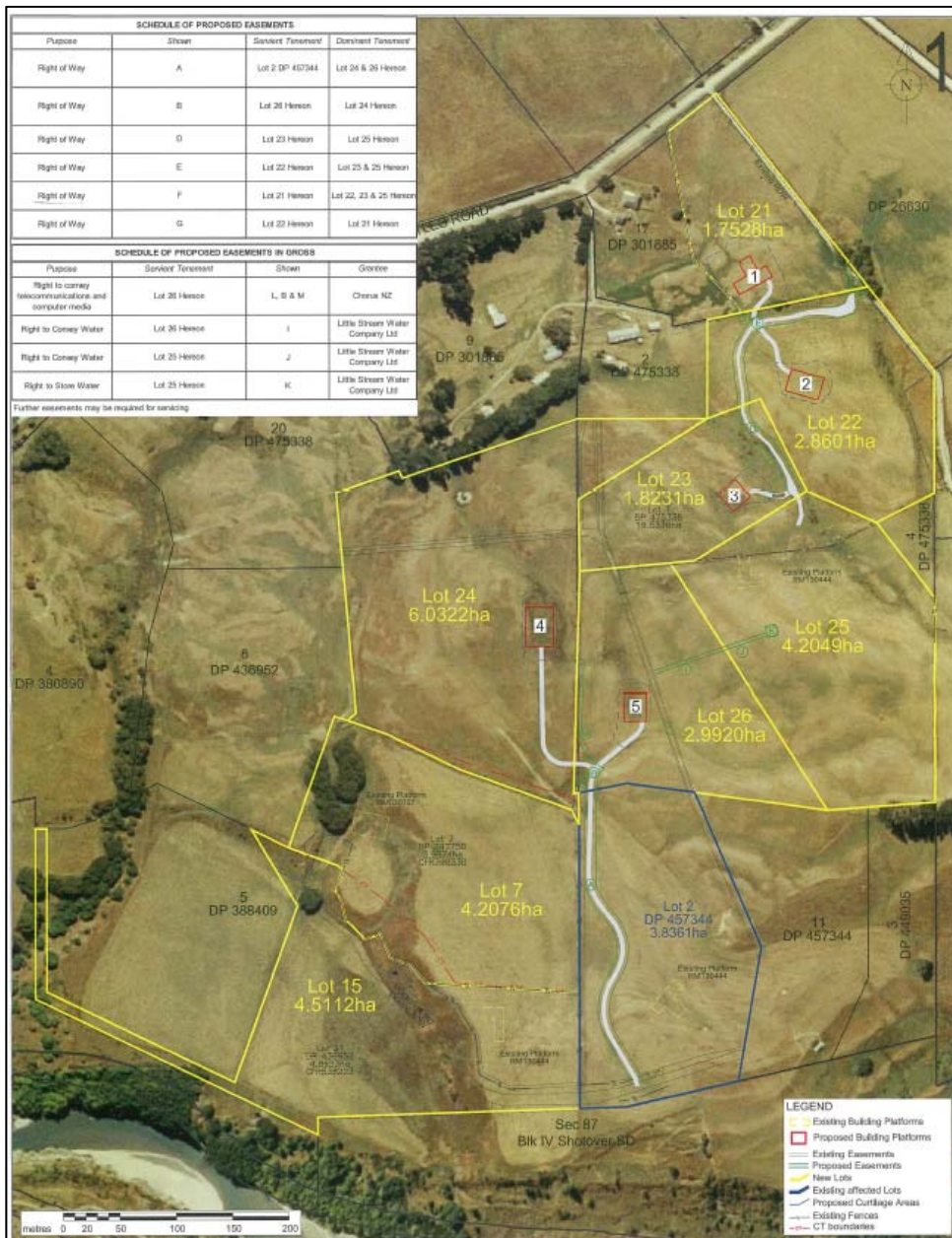
23 Commissioners Bob Nixon and David Clarke declined the application in full, however the discussion in the decision made it clear that the Commissioners considered three of the five building platforms were acceptable and not the others. The Commissioners felt they could not do a 'partial grant' so declined the application.

Nature of Appeal

24 The appeal sought the consent be granted as a whole, but through mediation the applicant amended their position to seek approval just for platforms 1-3 that the Commissioners had indicated were acceptable.

Resolution of Appeal

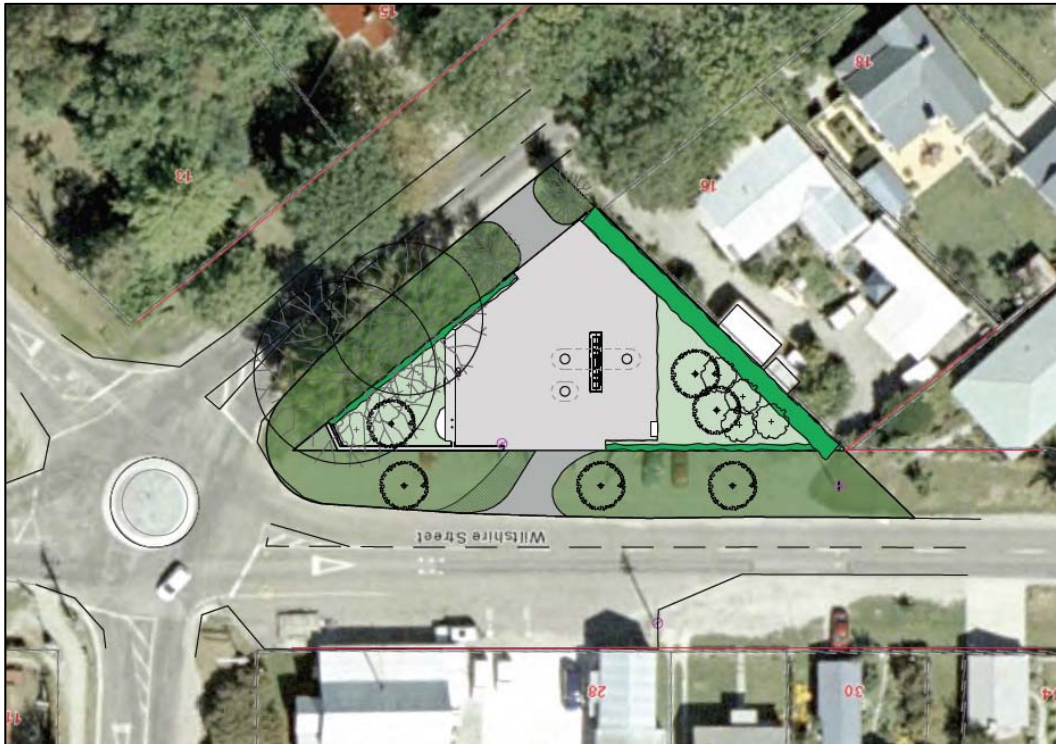
25 As the Commissioners made it clear in their decision that they did not have concerns with platforms 1-3, Council officers mediated a revised plan of subdivision and a set of conditions to enable the creation lots 1-3 shown in the image below with associated platforms. The Consent Order (**Attachment C**) was therefore consistent with the intention as stated in the decision of Council's commissioners.



**RM140623 – RD Petroleum Ltd – Arrowtown Petrol Station – Consent Order signed.**

*Description of Application and Appeal*

26 Resource consent was sought to establish a 24 hour self-service fuel facility, including the storage of 60,000 litres of Class 3 Flammable liquids on a triangular block of land at 25 Wiltshire St Arrowtown, which has frontage also to Berkshire Street.



*Decision of Commissioners*

27 Consent was granted subject to conditions by Commissioner John Milligan.

*Nature of Appeal*

28 One appeal was received from 11 residents. The appeal raised 15 grounds and sought that the decision be set aside.

*Resolution of Appeal*

29 The appeal was resolved by the applicant and appellants agreeing to a number of changes, the most significant of which was the closure of the facility between 11pm and 5am daily, which was of particular concern to the neighbouring properties. Locked gates were to be installed. Consequential changes to other conditions were necessary. The appellants and applicants reached agreement between themselves and the relatively minor changes were satisfactory to Council officers as the resolution allowed the development to proceed and remained consistent with the decision of its Commissioner, with fewer environmental effects. A Consent Order was issued by the Court (**Attachment D**).

**RM150093 – Pounamu holdings 2014 Ltd - Glenorchy campground redevelopment – Resolved by a decision of the Environment Court.**

Description of Application

30 Resource consent was sought for redevelopment of the existing Glenorchy Campground, including new visitor accommodation, a function centre, breach of road boundary setbacks, building height, height recession plane, earthworks, LPG storage and a boundary adjustment subdivision. A variation to consent notices was also required. The development included many aspects of sustainable design such as substantial photo voltaic arrays and many other ‘eco-design’ elements. Notification was volunteered by the applicant rather than being required by Council.



Decision of Commissioners

31 Granted subject to conditions. The Commissioners were Bob Nixon and Jane Taylor.

Nature of Appeal

32 One appeal was received from Niki Gladding. The key issue raised in the appeal was that the proposal was contrary to the objectives and policies of the Operative District Plan. The reduction in the required setbacks from Oban Street, and the landscaping of the local purpose reserve strip next to Oban Street were other key matters raised in the appeal.



### Resolution of Appeal

33 The appellant and applicant reached an agreement on the morning of the Court hearing and a decision was issued by the Court shortly after (**Attachment E**). The appeal was resolved by the applicant agreeing to remove proposed landscaping from the local purpose reserve strip (which Council had previously approved separate to the resource consent process), and by increasing the setback from Oban Street. Council officers were not concerned with the changes, as the resolution allowed the development to proceed and remained consistent with the decision of its Commissioners.

### **Delegations**

34 The Lakes Marina, RD Petroleum and Little Stream appeals were resolved generally by the Council's Resource Consent Manager attending mediation and agreeing to resolve the appeals within parameters set by the Council's Chief Executive as the authorised delegate. This could be seen as the exercise of authority by the Resource Consent Manager, rather than the Chief Executive. If so, that could constitute an unlawful sub-delegation of a power.

35 Accordingly, this report seeks the Council's retrospective authorisation of those resolutions. The issue does not arise in respect of the Mitre 10 Mega or Glenorchy Campground resolutions. This is because the Mitre 10 Mega matter was resolved directly by the Chief Executive, and the Glenorchy Campground by a decision of the Environment Court.

36 The process for entering, establishing and settling the scope of appeals has also been further clarified. It is noted that the Environment Court have in recent years sought to expedite mediation process by delegation settlement power to individuals participating in mediation. This report does not address that, though this will be a matter for Council to consider in the future.

### **Options**

37 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

38 Option 1: Authorise the terms on which the Cross Roads Properties, Lakes Marina, RD Petroleum and Little Stream resource consent appeals were resolved.

#### *Advantages:*

39 By granting the retrospective authorisation of the resource consent appeals Council will confirm the decisions made through mediation with the community.

40 Provides confidence that the Consent Orders recorded were achieved under appropriate Council approval albeit retrospective.

*Disadvantages:*

41 None.

42 Option 2: Not grant retrospective authorisation.

*Advantages:*

43 None.

*Disadvantages:*

44 Irrespective of the basis of the decisions made by staff, the Consent Orders needed by the parties approved by the Council have statutory effect. These decisions have been relied upon and implemented. It should also be noted that these are generally in accord with the decision made by Commissioners acting on Council's behalf. If Council chose not to validate the decisions made it is unlikely that this would lead to the Courts rescinding the Consent Orders made.

45 This report recommends **Option 1** for addressing the matter because it confirms the decisions made through mediation with the community and provides certainty that the Consent Orders recorded were achieved under appropriate Council approval, albeit retrospective.

***Significance and Engagement***

46 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy as discussed below:

- a. Importance to the Queenstown Lakes District – these five resource consents are significant to the district. The majority are important projects within the district and impact on the economy and people of the district in a positive way.
- b. Community Interest – these five resource consents were of high interest to certain members of the community (submitters) and the appellants. The decisions granted in the end mitigated the adverse effects of the proposals and remained consistent with the decisions made by the Commissioners.
- c. Inconsistency with existing policy and strategy – the extent of inconsistency with Council policies and the corresponding impact on the district is low in each of the resource consents.
- d. Impact on the Council's capability and capacity – none.

47 None of the resource consents relate to any of Council's Strategic Assets.

***Risk***

48 This matter relates to the strategic risk SR1: Current and future development needs of the community (including environmental protection), as documented in the Council's risk register. The risk is classed as high. This matter relates to this

risk because the decisions on these appeals were made to meet the current and future needs of the community by the services they provide/will provide.

49 There remains a residual risk that one or other party may seek to judicially review Council based on the application of the delegations. Approval of the action of staff by Council minimises this risk, in addition to any practical application by the Courts that the outcome achieved were by consent order, and therefore agreed amongst parties.

50 The recommended option considered above mitigates the risk by: Treating the risk – putting measures in place which directly impact the risk by bringing this paper to Council.

### **Council Policies, Strategies and Bylaws**

The following Council policies, strategies and bylaws were considered:

- QLDC's Operative District Plan
- QLDC's Proposed District Plan

51 The recommended option is consistent with the principles set out in the named policy/policies.

52 This matter is not included in the 10-Year Plan/Annual Plan. Dealing with resource consent appeals is covered under existing budgets.

### **Local Government Act 2002 Purpose Provisions**

53 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by recommending the decisions have been made an 4 of the 5 have been built.
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies, and corrects decisions made potentially outside the Council's delegations register; and  
Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

### **Consultation: Community Views and Preferences**

54 The persons who are affected by or interested in this matter are the applicants and appellants for each resource consent appeal.

55 The Council has mediated with the affected parties in each instance or the Environment Court has made the decision.

### **Attachments (in Attachments Booklet)**

- A RM130521 – Cross Roads Consent Order 25 June 2014
- B RM140061 – Frankton Marina Consent Order 3 June 2015
- C RM140712 – Littles Stream Consent Order 21 May 2015
- D RM140623 – RD Petroleum Consent Order 26 March 2015
- E RM150093 – Glenorchy Campground Environment Court decision 23 October 2015