

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

Decision No. [2022] NZEnvC 40

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14 of the First Schedule of the Act

BETWEEN UPPER CLUTHA
ENVIRONMENTAL SOCIETY
INCORPORATED

(ENV-2018-CHC-56)

and all other appellants concerning
Topic 2 of Stage 1 of the Proposed
Queenstown Lakes District Plan (listed
on the attached Schedule)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner K A Edmonds
Environment Commissioner J T Baines

Hearing: In Chambers at Christchurch

Last case event: 23 February 2022

Date of Decision: 23 March 2022

Date of Issue: 23 March 2022

DECISION OF THE ENVIRONMENT COURT
Topic 2: Rural Landscapes, Policy 6.3.3.3 s293 directions
Decision 2.13



A: Directions are made for Queenstown Lakes District Council to amend the PDP by incorporating Pol 6.3.3.3 as set out in Annexure 1 and to file a reporting memorandum as to that once completed.

REASONS

Introduction

[1] Proposed amendments are sought to extend the application of Pol 6.3.3.3 so that it applies to land within ONFs in addition to ONLs. This will trigger the need to engage with the policy for any resource consent applications sought by ‘working farms’ for farming activities located within an ONF. Decision 2.2 traversed the relevant background to the proposed amendment to Pol 6.3.3.3¹ with Decision 2.7 concluding s293 was an appropriate mechanism.² The s293 directions were later made in Decision 2.11.³

[2] Having notified the s293 proposal, Queenstown Lakes District Council (‘QLDC’) filed a memorandum of counsel and accompanying report, both dated 18 January 2022. The report describes the three submissions received and provides a recommendation based on that response.⁴ A further QLDC memorandum of counsel was received dated 23 February 2022.

Submissions to QLDC on the Proposal and QLDC’s response

[3] The court’s s293 directions allowed for the making of submissions on the Proposal direct to QLDC. QLDC’s Manager Planning Policy, Ms Alyson Hutton, reports that QLDC received three submissions⁵ in support of the proposed

¹ *Upper Clutha Environmental Society Incorporated v QLDC* [2019] NZEnvC 205 at [411]-[420].

² *Upper Clutha Environmental Society Incorporated v QLDC* [2021] NZEnvC 60 at [177].

³ *Upper Clutha Environmental Society Incorporated v QLDC* [2021] NZEnvC 154.

⁴ No supporting affidavit evidence was filed in support of these responses.

⁵ Responses were received from K and V Woodfield, J Gardner Hopkins – on behalf of an unspecified client (later identified as Milstead Trust), and Sunnyheights Ltd.

amendments, recording that K and V Woodfield (‘the Woodfields’) and Milstead Trust support the proposal in principle, while Sunnyheights Ltd supports the proposal in part.⁶ The concerns raised by submission relevant to this s293 process are:⁷

- (a) the drafting of the policy may exclude smaller-scale or marginally productive farms and should therefore be amended to expressly recognise all farming activities irrespective of size, scale, visibility and/or productivity;⁸
- (b) the term ‘working farms’, being an undefined term within the PDP, should be removed to eliminate any ambiguity and inconsistency within the PDP and the PDP defined term ‘farming activity’ should be used instead.⁹

[4] QLDC generally supported the comments filed by the Woodfields and Milstead Trust, and opposed aspects of the comments filed by Sunnyheights Ltd. Ms Hutton outlined her response to these issues and recommended:¹⁰

- (a) amending ‘working farms’ to ‘farming activities’ to provide for standardisation of terms used within the rural chapters (and Chapters 3 and 6) of the District Plan; and
- (b) removing the term ‘viable’ within the proposed amendment, which is subjective and, in her opinion, impractical and does not assist in assessing future resource consent applications.

⁶ Summary report of A Hutton on behalf of Queenstown Lakes District Council in relation to the s293 process for proposed amendment to Pol 6.3.3.3 to apply to ONF in addition to ONL (‘QLDC Report’), dated 18 January 2022 at [3.1].

⁷ Sunnyheights Ltd’s submission recorded its opposition to the inclusion of cl (b) as it refers to the enablement of farming activities that protect the values of the ONF/L. The application of Pol 6.3.3.3(b) to ONLs was confirmed through Decision 2.2, so there is no scope to change that through this s293 process.

⁸ QLDC report at [3.3].

⁹ QLDC report at [3.4].

¹⁰ QLDC report at [4].

[5] Ms Hutton reported her opinion that these changes would be of minor effect and fall within the test in cl 16 of Sch 1 of the RMA. She recommended that the changes be made through this s293 process so that the policy would read:¹¹

For ~~working farms~~ farming activities within Outstanding Natural Features and Outstanding Natural Landscapes:

- (a) Recognise that ~~viable~~ farming ~~involves~~ activities ~~that~~ may modify the landscape; and
- (b) Enable those activities in a way that is consistent with protecting the values of Outstanding Natural Features and Outstanding Natural Landscapes

[6] Due to the difference in opinion of the submitters as to the content of the policy, directions were made for the three parties to file any comments (including affidavit evidence) in response, and any s274 notices. QLDC was directed to file a supplementary report in response.¹²

Joinder of s274 parties

[7] In response to the court's directions, two s274 notices were filed on behalf of the following persons as having an interest in the proceeding that is greater than the general public as the owners of land located within an ONF:

- (a) the Woodfields;¹³ and
- (b) Milstead Trust.¹⁴

[8] Both support the proposed update to the wording of Pol 6.3.3.3 as set out in QLDC's memorandum dated 18 January 2022, with the Woodfields also seeking

¹¹ QLDC report at [4.6].

¹² Email of the Registry to the parties (24 January 2022).

¹³ Section 274 notice of K and V Woodfield dated 10 February 2022. The owners of 216 Stevenson Road, RD 2, Wanaka.

¹⁴ Section 274 notice of Milstead Trust dated 11 February 2022. The owners of 429 Frankton Ladies Mile Highway, Lake Hayes.

that defined terms be capitalised.

[9] The s274 notices are not opposed. It is well established that where the relief pursued in an appeal could have direct consequences for an individual (whether an advantage or disadvantage in a financial, property, or other significant sense) that sets that person apart from the general public.¹⁵ Therefore, I am satisfied that the Woodfields and Milstead Trust each have an interest in this proceeding that is greater than that of the general public so as to qualify them to join the proceeding.

[10] The Woodfields and Milstead Trust are formally recorded as parties to this proceeding.

[11] Of those who made submissions to QLDC only Sunnyheights Ltd opted to not join the proceeding. However, by email it indicated agreement with the proposed amendment to Pol 6.3.3.3 and drew attention to a minor typographical error which QLDC records as having since been addressed.¹⁶

Capitalisation of defined terms

[12] The outstanding matter of disagreement between QLDC and the Woodfields pertains to the capitalisation of defined terms. Given the minor nature of this single outstanding issue, QLDC did not consider a supplementary summary report was necessary and instead addressed the matter in its 23 February 2022 memorandum.

[13] Counsel for QLDC, Ms Scott, explains that, despite capitalisation of defined terms being an often-adopted approach in District Plans, the PDP does not take this approach. The fact that defined terms are not capitalised throughout

¹⁵ *Swap Stockfoods Ltd v Bay of Plenty Regional Council* [2020] NZEnvC 117, referring to *Mt Christina Limited v Queenstown Lakes District Council* [2018] NZEnvC 190.

¹⁶ QLDC memorandum dated 23 February 2022 at [9].

the PDP stems from the Independent Hearing Panel's recommendation in Report 14, issued in relation to Stage 1 of the Council-level hearings on the PDP. The panel accepted evidence that capitalisation can be problematic in some instances and for consistency across the PDP either all defined terms should be capitalised, or none should be. Consequently, unless they are proper nouns all defined terms in the PDP are not capitalised.¹⁷ QLDC states therefore it is not necessary to refer to 'farming activities', being a defined term, in Pol 6.3.3.3.¹⁸

[14] We are satisfied with QLDC's explanation.

Outcome

[15] Having considered the proposed amendment, the associated submissions, the evidence of Ms Hutton and QLDC's memoranda, the court is satisfied it is appropriate to make the requested direction to effect the changes sought to the PDP. Directions are made accordingly.

Directions

[16] Under ss 279(1)(b), 290(2) and 293 RMA, QLDC is directed to:

- (a) amend the PDP by incorporating Pol 6.3.3.3 as set out in Annexure 1; and
- (b) file a reporting memorandum as to that once completed.

For the court



J J M Hassan
Environment Judge



¹⁷ QLDC memorandum dated 23 February 2022 at [12]-[14].

¹⁸ QLDC memorandum dated 23 February 2022 at [15].

Annexure 1

**Agreed plan provision for incorporation into Chapter 6 of the Proposed
District Plan**

**Updated version of
Policy 6.3.3.3**

6.3.3.3 For ~~working farms~~ farming activities within Outstanding Natural Features and Outstanding Natural Landscapes:

- a. Recognise that ~~viable farming involves~~ activities ~~that~~ may modify the landscape; and
- b. Enable those activities in a way that is consistent with protecting the values of Outstanding Natural Features and Outstanding Natural Landscapes.

