

IN THE ENVIRONMENT COURT

ENV-2018-CHC-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal pursuant to clause 14(1) of the First Schedule of the Act

BETWEEN **FEDERATED FARMERS OF NEW ZEALAND**

Appellant

AND **QUEENSTOWN LAKES DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT
AGAINST DECISION ON THE PROPOSED DISTRICT PLAN**

Federated Farmers of New Zealand Inc

To: The Registrar
Environment Court
P O Box 2069
Christchurch 8013

Email: Christine.McKee@justice.govt.nz

1. Federated Farmers of New Zealand (**Federated Farmers**) appeals against decisions of the Queenstown Lakes District Council's Proposed District Plan.
2. Federated Farmers made a submission on that plan.
3. Federated Farmers is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Federated Farmers received notice of the decision on 7 May 2018.
5. The decision was made by the Queenstown Lakes District Council.
6. The decision (or part of the decision) that Federated Farmers is appealing is:
(see schedule below)
7. The reasons for the appeal are as follows:
(see schedule below)
8. Federated Farmers seeks the following relief:
(see schedule below)

SCHEDULE

PROVISIONS IN THE PLAN DECISION TO WHICH THE APPEAL RELATES

1. Chapter 2- Definitions

Building

The decision states the term 'building':

Shall have the same meaning as the Building Act 2004, with the following exemptions in addition to those set out in the Building Act 2004:

- a. fences and walls not exceeding 2m in height;*
- b. retaining walls that support no more than 2 vertical metres of earthworks;*
- c. structures less than 5m² in area and in addition less than 2m in height above ground level;*
- d. radio and television aerials (excluding dish antennae for receiving satellite television which are greater than 1.2m in diameter), less than 2m in height above ground level;*
- e. uncovered terraces or decks that are no greater than 1m above ground level;*
- f. the upgrading and extension to the Arrow Irrigation Race provided that this exception only applies to upgrading and extension works than involve underground piping of the Arrow Irrigation Race;*
- g. flagpoles not exceeding 7m in height;*
- h. building profile poles, required as part of the notification of Resource Consent applications;*
- i. public outdoor art installations sited on Council owned land;*
- j. pergolas less than 2.5 metres in height either attached or detached to a building;*

Notwithstanding the definition set out in the Building Act 2004, and the above exemptions a building shall include: a. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on a site for a residential accommodation unit for a period exceeding 2 months

Reason for appeal

The proposal is that 'building' shall have the same meaning as the Building Act 2004, with a number of exemptions in addition to those set out in the Building Act 2004.

Section 8 of the Building Act defines 'building' as, unless the context otherwise requires; (a) "...a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels)".

As written, this definition appears to include irrigation infrastructure. Council's proposed definition has a number of additional exemptions to those found in the Building Act 2004, and irrigation infrastructure is not included within these exemptions.

Inclusion, intentional or otherwise, of irrigation infrastructure in the definition of building has the potential to impose significant and unnecessary costs on rural land users.

Specifically excluding irrigation infrastructure is consistent with both the intent of the

Environment Court's decision in *Haldon Station v Mackenzie District Council* (2014 NZEnvC 136) and with Council's Practice Note 1/2014 on *Centre Pivot & Linear Irrigators under the QLDC District Plan*, within which Council concluded that the principles of Haldon should apply equally in Queenstown Lakes District in that an irrigator should be considered a vehicle, not a building, as it 'has wheels'.

Council in that practice note recognises that in applying the principles of Haldon, the ability to impose conditions on applications for irrigators will no longer be available. Federated Farmers is seeking the exemption is explicitly excluded from the proposed definition.

Relief Sought

Federated Farmers seeks the following relief:

(k) mobile irrigation infrastructure.

2. Policy 3.3.27

Prohibit the planting of identified exotic vegetation with the potential to spread and naturalise unless spread can be acceptably managed for the life of the planting. (relevant to S.O.3.2.4.2)

Reason for appeal

Federated Farmers agrees that it is important to manage exotic vegetation with the potential to spread and naturalise. However, where the risks are appropriately managed the adverse effects of exotic plants can be addressed.

This policy applies a prohibition to the planting of identified exotic vegetation unless a suitable management approach is applied. A prohibition in this case appears heavy-handed, and is unclear to the degree of certainty that can apply to the prohibition before it becomes acceptable.

Relief Sought:

That the policy reads as:

~~*Prohibit*~~ *Discourage* the planting of identified exotic vegetation with the potential to spread and naturalise unless spread can be acceptably managed for the life of the planting.

3. Policy 6.3.26

Avoid adverse effects on visual amenity from subdivision, use and development that:

- a. is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or*
- b. forms the foreground for an Outstanding Natural Landscape or Outstanding Natural Feature when viewed from public roads.*

Reason for appeal

It is not appropriate to apply similar controls on land use that are applied to areas that are attributed to landscape overlays. Applying the policy as written effectively incorporates those properties in the foreground despite not comprising the values that defines the overlay.

Applying a landscape overlay to land in the foreground of ONL's or ONF's that does not meet the landscape criteria will create an unnecessary imposition on property owners. In effect development or land use will have to comply with the performance standards associated with the landscape zone.

Relief Sought:

That Policy 6.3.26 reads as:

Avoid adverse effects on visual amenity from subdivision, use and development that is highly visible from public places and other places that are frequented by the public (except any trail as defined in this Plan).

4. Policy 6.3.12

6.3.12 Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site the subject of application.

Reason for appeal

Much of the District is within either an ONL or ONF, including many working farms.

This policy is simply too blunt in terms of addressing development. To state only exceptional applications would be approved for development is an unnecessarily high burden. Policy 6.3.14 "recognises" that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscape is not adversely affected. Despite a more enabling policy 6.3.12, when applying a balancing exercise against the full suite of objectives and policies, any subdivision or development on site will still need to be 'exceptional' irrespective of whether it is an appropriate farm related development or not.

Relief sought

That Policy 6.3.12 is re-worded to state:

Recognise that subdivision and development is inappropriate in ~~almost all~~ some locations within Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be ~~exceptional cases~~ where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site that is the subject of application.

5. In addition to the matters set out in paragraphs 1 to 4 above, Federated Farmers seeks the

following relief:

- (a) Similar and/or consequential amendments to the Proposed District Plan (such as to methods, explanatory text and to ensure a consistent approach where appropriate) that would satisfactorily address the matters raised in this appeal; and
- (b) Federated Farmers' submission and further submission relief in the event that its primary relief in this appeal is not granted; and
- (c) Such other relief as the Court considers appropriate.

I attach the following documents to this notice:

- (a) a copy of Federated Farmers submission *or* further submission (with a copy of the submission opposed or supported by Federated Farmers further submission):
- (b) a copy of the relevant decision (*or* part of the decision):
- (c) any other documents necessary for an adequate understanding of the appeal:
- (d) a list of names and addresses of persons to be served with a copy of this notice.



David Cooper
Senior Policy Advisor (Strategy & Rural)
for Federated Farmers of New Zealand

Date 28 May 2018

Address for service of appellant:

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

The copy of this notice served on you does not attach a copy of any other documents necessary for the adequate understanding of the appeal (of which there were none), or a list of names and addresses of persons to be served with a copy of this notice. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.