

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

Decision No. [2021] NZEnvC 138

IN THE MATTER of the Resource Management Act 1991

AND appeals pursuant to clause 14 of the
First Schedule of the Act

BETWEEN UPPER CLUTHA
ENVIRONMENTAL SOCIETY
INCORPORATED

(ENV-2018-CHC-056)

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: 7 September 2021

Date of Decision: 10 September 2021

Date of Issue: 10 September 2021



DECISION OF THE ENVIRONMENT COURT

Topic 2: Rural Landscapes Residual Chapter 3 draft issues – SO 3.2.5.4 and SO 3.2.5.7 & Clutha River/Mata Au ONF s293 process Decision 2.10

- A: QLDC is directed to make the requested refinements to the drafting of SO 3.2.5.4 and SO 3.2.5.7, subject to our minor further refinement to SO 3.2.5.4.b.
- B: Our directions in A and B(i) and [53](c) and (e) of decision [2021] NZEnvC 124 (Decision 2.9) are amended to allow for QLDC to comply within ten working days of the date of this decision.

REASONS

[1] This decision concerns Topic 2 in the staged hearing of appeal points in the review of the Queenstown District Plan (‘PDP’). It determines the final drafting of two objectives in Ch 3, SO 3.2.5.4 and SO 3.2.5.7. Following the issuance of Decision 2.9 on Topic 2,¹ counsel for Queenstown Lakes District Council (‘QLDC’) helpfully drew to the court’s attention the need to confirm the final wording of those objectives. In particular, we have yet to determine QLDC’s earlier request that we tidy up aspects of their drafting.² Our determination will allow for QLDC to finalise Ch 3 in accordance with our related directions in Decision 2.9.³

[2] The refinements sought are as follows (as shown tracked from the present drafting):

¹ [2021] NZEnvC 124.

² QLDC memorandum of counsel dated 16 June 2021.

³ Order A and [53](a) and (e).

3.2.5.4 In each Exception Zone located within or part within Outstanding Natural Features and Outstanding Natural Landscapes, any application for subdivision, use and development is provided for:

- a. to the extent anticipated by that Exception Zone; and
- b. on the basis that any additional subdivision, use and development not provided for by that Exception Zone protects landscape values.

3.2.5.7 In Rural Character Landscapes of the Upper Clutha Basin:

- a. Priority Areas of Rural Character Landscapes are identified; and
- b. associated landscape character and visual amenity values and related landscape capacity are identified.

[3] Those refinements are not sought by appellants. Nor are they opposed. Rather, they are in the nature of alterations “of minor effect” that can be made through s290 and cl 16, Sch 1, RMA.⁴ Counsel explains:

- (a) the change sought to SO 3.2.5.4 is to recognise that only part of the Jacks Point Zone is within an ONF/L,⁵ being Peninsula Hill. The balance of the Jacks Point Zone is outside of the ONF and ONL. The change seeks to ensure SO 3.2.5.4 reads consistently with SO 3.2.5.1 (applying to ONF/L) and 3.2.5.7 (for RCLs);
- (b) the addition to SO 3.2.5.7 of “and related landscape capacity” is to ensure this SO properly aligns with the direction to identify related landscape capacity in SP 3.3.33 and 3.3.35.

⁴ We refer to our discussion of our jurisdiction to make minor technical alterations of this nature in Decision 2.9 [2021] NZEnvC 124, at [2].

⁵ Outstanding Natural Feature (‘ONF’) or Outstanding Natural Landscape (‘ONL’).

Discussion

[4] There is plainly merit in making this drafting tidy up and, given the lack of opposition, we can be brief in our reasoning. We find the drafting refinements that QLDC recommends to SO 3.2.5.7 are of minor effect and appropriate. Subject to a minor further refinement to SO 3.2.5.4, we find QLDC's recommendations for that objective are also of minor effect and appropriate. That refinement is as follows (tracking showing our changes from QLDC's recommended drafting):

- 3.2.5.4 In each Exception Zone located within or part within Outstanding Natural Features and Outstanding Natural Landscapes, any application for subdivision, use and development is provided for:
- a. to the extent anticipated by that Exception Zone; and
 - b. on the basis that any additional subdivision, use and development not provided for by that Exception Zone protects the landscape values of the relevant Outstanding Natural Feature or Outstanding Natural Landscape.

[5] Our further refinement to SO 3.2.5.4.b is to ensure greater clarity in the direction given by that objective, given its purpose.

[6] By memorandum of 25 August 2021, counsel for QLDC reported on difficulties associated with COVID-19 lockdown restrictions in regard to the notification of the Clutha River/Mata Au ONF Corridor s293 process. That memorandum requested that the directions in B(i) and [53](c) of Decision 2.9 be amended. In effect that was to allow QLDC until ten working days after Queenstown's Alert Level drops to Level 2 (i.e. the current level) to comply. We anticipate that QLDC may be under similar difficulties in complying with the directions in A and [53](e) of Decision 2.9. To achieve effective alignment, we amend all the noted directions on the same basis, namely that QLDC is to comply within ten working days of the date of this decision.

Conclusion

[7] Therefore:

- (a) subject to our noted further refinement to SO 3.2.5.4.b., we find the requested changes to SO 3.2.5.4 and SO 3.2.5.7 appropriate and direct that they be made accordingly;
- (b) the directions in A, B(i) and [53](c) and (e) of Decision 2.9 are amended to the effect that QLDC is to comply within ten working days of the date of this decision (reserving leave for further extension on application, if required).

For the court



J J M Hassan
Environment Judge



SCHEDULE

ENV-2018-CHC-053	Federated Farmers of NZ
ENV-2018-CHC-055	Hawthenden Farm Limited
ENV-2018-CHC-082	Kawarau Jet Services Holdings Limited
ENV-2018-CHC-083	Mt Cardrona Station Limited
ENV-2018-CHC-091	Burdon
ENV-2018-CHC-092	Trojan Helmet Limited
ENV-2018-CHC-093	Queenstown Airport Corporation Limited
ENV-2018-CHC-094	The Middleton Family Trust & others
ENV-2018-CHC-095	Seven Albert Town Property Owners
ENV-2018-CHC-099	Bill and Jan Walker Family Trust & others
ENV-2018-CHC-103	Mt Christina Limited
ENV-2018-CHC-104	Soho Ski Area / Blackmans Creek
ENV-2018-CHC-106	Te Anau Developments
ENV-2018-CHC-107	Treble Cone Investments
ENV-2018-CHC-108	Aurora Energy Ltd
ENV-2018-CHC-114	Transpower NZ Ltd
ENV-2018-CHC-115	Willowridge Developments Ltd
ENV-2018-CHC-119	Halfway Bay Lands Limited
ENV-2018-CHC-124	Waterfall Park Developments Limited
ENV-2018-CHC-126	Remarkables Park Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-129	Slopehill Properties Limited
ENV-2018-CHC-130	SYZ Investments Limited
ENV-2018-CHC-131	Real Journeys Limited
ENV-2018-CHC-134	Ngai Tahu Tourism Limited
ENV-2018-CHC-136	Burgess
ENV-2018-CHC-137	Coneburn Preserve Holdings Limited & Others
ENV-2018-CHC-138	Real Journeys (trading as Go Orange Limited)
ENV-2018-CHC-141	Glendhu Bay Trustees Limited
ENV-2018-CHC-142	Queenstown Wharves GP Limited
ENV-2018-CHC-144	James Wilson Cooper
ENV-2018-CHC-145	Glen Dene Limited
ENV-2018-CHC-146	Real Journeys Limited (trading as Canyon Food and Brew Company Limited)
ENV-2018-CHC-148	Allenby Farms Limited
ENV-2018-CHC-150	Darby Planning Limited
ENV-2018-CHC-151	NZ Tungsten Mining
ENV-2018-CHC-160	Lake McKay Station Limited