

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

Decision No. [2022] NZEnvC 13

IN THE MATTER

of the Resource Management Act 1991

AND

of an application for enforcement
order under s316 of the Act

BETWEEN

ARTHURS POINT
OUTSTANDING NATURAL
LANDSCAPE SOCIETY
INCORPORATED

(ENV-2019-CHC-102)

Applicant

AND

QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan

Hearing: In Chambers at Christchurch

Date of Decision: 10 February 2022

Date of Issue: 10 February 2022

DETERMINATION OF THE ENVIRONMENT COURT

Introduction

[1] On 11 September 2019, Environment Judge Jackson issued decision [2019] NZEnvC 150 granting Arthurs Point Outstanding Natural Landscape Society Incorporated's ('the society') application for enforcement orders under s314(f),



RMA.¹ The decision concerned Queenstown Lakes District Council's ('QLDC') preparation and notification of its summary of decisions requested for two submissions pursuant to clause 7 of Schedule 1 of the RMA.

[2] As relevant to this determination, the court found that QLDC's summary of the rezoning submissions by Gertrude's Saddlery Limited ('GSL')² and Larchmont Developments Limited ('Larchmont')³ were unfair and misleading. In order to rectify the matter, and properly comply with clause 7 of Schedule 1 of the RMA, under ss 314(1)(f) and 319 of the Act, the court ordered QLDC to re-notify a summary of both the GSL and Larchmont submissions, in the terms set out in the Decision. This would involve adding an explanation that the submissions implicitly sought to exclude the land from the outstanding natural landscape by drawing a brown dashed line indicating an ONL boundary around the Shotover Loop.

[3] The land in question that is the subject of the GSL and Larchmont submissions is identified in the original maps attached to those submissions, are reproduced in the court's decision as Appendices A and C respectively and for convenience are attached as Appendix 1 to this determination.

[4] On 17 January 2022, the parties filed a joint memorandum alerting the court to a clerical error contained in the decision. The error is incorrect legal descriptions in orders A(1)(b) and (2).

Correction sought

[5] Orders A(1)(b) and (2) read:

¹ Resource Management Act 1991.

² Submission 494 by Gertrude's Saddlery Limited, the owner of 111 Atley Road. The submission was initially lodged by Mr Michael Swan.

³ Submission 527 by Larchmont Developments Limited, the owner of 163 Atley Road.

A: Under Section 314(1)(f) and section 319 of the Resource Management Act 1991 the Environment Court orders:

- (1) that the Queenstown Lakes District Council complies with clause 7 of Schedule 1 RMA by re-notifying a summary of the decisions requested on the Queenstown Lakes District Council's proposed plan change by Gertrude's Saddlery Limited and Larchmont Developments Limited in terms similar to the following:
 - (a) ...
 - (b) the submission implicitly seeks to exclude the land from the outstanding natural landscape by drawing a brown dashed line indicating an outstanding natural landscape boundary around the land being **Pt Sec 1 SO 24074** Lots 1-2 DP 307630 and Lot 2 DP 393406;
- (2) that the drawing of the outstanding natural landscape boundary line around, the movement of the Urban Growth Boundary to include, and the rezoning to Low Density Residential of the Shotover Loop (111 and 163 Atley Road, Arthurs Point) being Pt Sec 1 SO 24074 **Lots 1-2 DP 307630** and **Lot 2 DP 393406** is suspended from the date of this decision.

[emphasis added]

[6] The parties explain:⁴

- (a) the reference to Pt Sec 1 SO 24074, in order (1)(b), is not relevant and should be removed as it is an access lot in the Operative Lower Density Residential Zone, it is not identified within the hatched and highlighted submission maps attached, and not the subject of the proceedings;

⁴ Joint memorandum of counsel seeking corrigendum dated 17 January 2022 at [10].

- (b) the reference to Lots 1–2 DP 307630, in order (2), is a historic reference that should be updated to Lot 1 DP 518803 (RT 814337). This is the lot referred to in the Swan submission, identified in Map C, in Appendix 1;
- (c) the reference to Lot 2 DP 393406, in order (2), is incorrect. QLDC has not identified anything close to this title, other than a parcel located in Canterbury. The correct reference should be Lot 2 DP 398656 (RT 393406), which is the additional property referred to in the Larchmont submission, identified within the hatched land in ‘Map A’, in Appendix 1.

The court’s power to correct errors

[7] Counsel rely on s278, RMA, which provides that Environment Judges have the same powers that the District Court has in the exercise of its jurisdiction, and related r 11.10, DCR⁵ which provides:

11.10 Correction of accidental slip or omission

- (1) A judgment or order may be corrected by the court or the Registrar who made it, if it—
 - (a) contains a clerical mistake or an error arising from an accidental slip or omission, whether or not made by an officer of the court; or
 - (b) is drawn up so that it does not express what was decided and intended.
- (2) The correction may be made by the court or the Registrar, as the case may be,—
 - (a) on its or his or her own initiative; or

⁵ District Court Rules 2014.

(b) on an interlocutory application.

[8] The error sought to be corrected in the orders made by the decision is plainly clerical and to remediate and give proper effect to the decision. In this case, the parties request the court to correct an error in a decision of a now retired judicial officer. While DCR r 11.10 is open to that reading, it is not entirely clear on its face.

[9] DCR rule 1.4 defines court as including “(a) ... the District Court” and “(b)... a District Court Judge”. Rule 11.10(1) can therefore be interpreted in two ways, either:

- (a) a judgment or order may be corrected by the court [District Court Judge] ... who made it; or
- (b) a judgment or order may be corrected by the court [District Court] ... who made it.

[10] Applying the second interpretation, purportedly provides the jurisdiction to make the correction sought, although there remains some uncertainty associated with the words “who made it”.

[11] The memorandum does not assist with authority. However, in the circumstances where this is plainly a clerical remedial correction to give full and proper effect to the decision, I am satisfied on balance that DCR r 11.10 (in conjunction with s278, RMA), gives me sufficient jurisdiction.

[12] If I am wrong about that, I am satisfied that I can treat the joint memorandum as an application to amend an enforcement order under s321, RMA and grant it accordingly. Whilst the memorandum is not in the prescribed form for an application, it is substantially sufficient given that it seeks a clerical remedial correction to give full and proper effect to the decision.

[13] Therefore, I make the corrections to the order sought.

Outcome

[14] Orders A(1)(b) and A(2) are amended as follows:

[Amendments shown in underline and ~~striketrough~~ text]

A: Under Section 314(1)(f) and section 319 of the Resource Management Act 1991 the Environment Court orders:

- (1) that the Queenstown Lakes District Council complies with clause 7 of Schedule 1 RMA by re-notifying a summary of the decisions requested on the Queenstown Lakes District Council's proposed plan change by Gertrude's Saddlery Limited and Larchmont Developments Limited in terms similar to the following:
 - (a) ...
 - (b) the submission implicitly seeks to exclude the land from the outstanding natural landscape by drawing a brown dashed line indicating an outstanding natural landscape boundary around the land being ~~Pt Sec 1 SO 24074~~ Lots 1-2 DP 307630 and Lot 2 DP 393406;
- (2) that the drawing of the outstanding natural landscape boundary line around, the movement of the Urban Growth Boundary to include, and the rezoning to Low Density Residential of the Shotover Loop (111 and 163 Atley Road, Arthurs Point) being Pt Sec 1 SO 24074 ~~Lots 1-2 DP 307630~~ Lot 1 DP 518803 (RT 814337) and ~~Lot 2 DP 393406~~ Lot 2 DP 398656 (RT 393406) is suspended from the date of this decision.

[15] Decision [2019] NZEnvC 150 otherwise remains unchanged.

J J M Hassan
Environment Judge



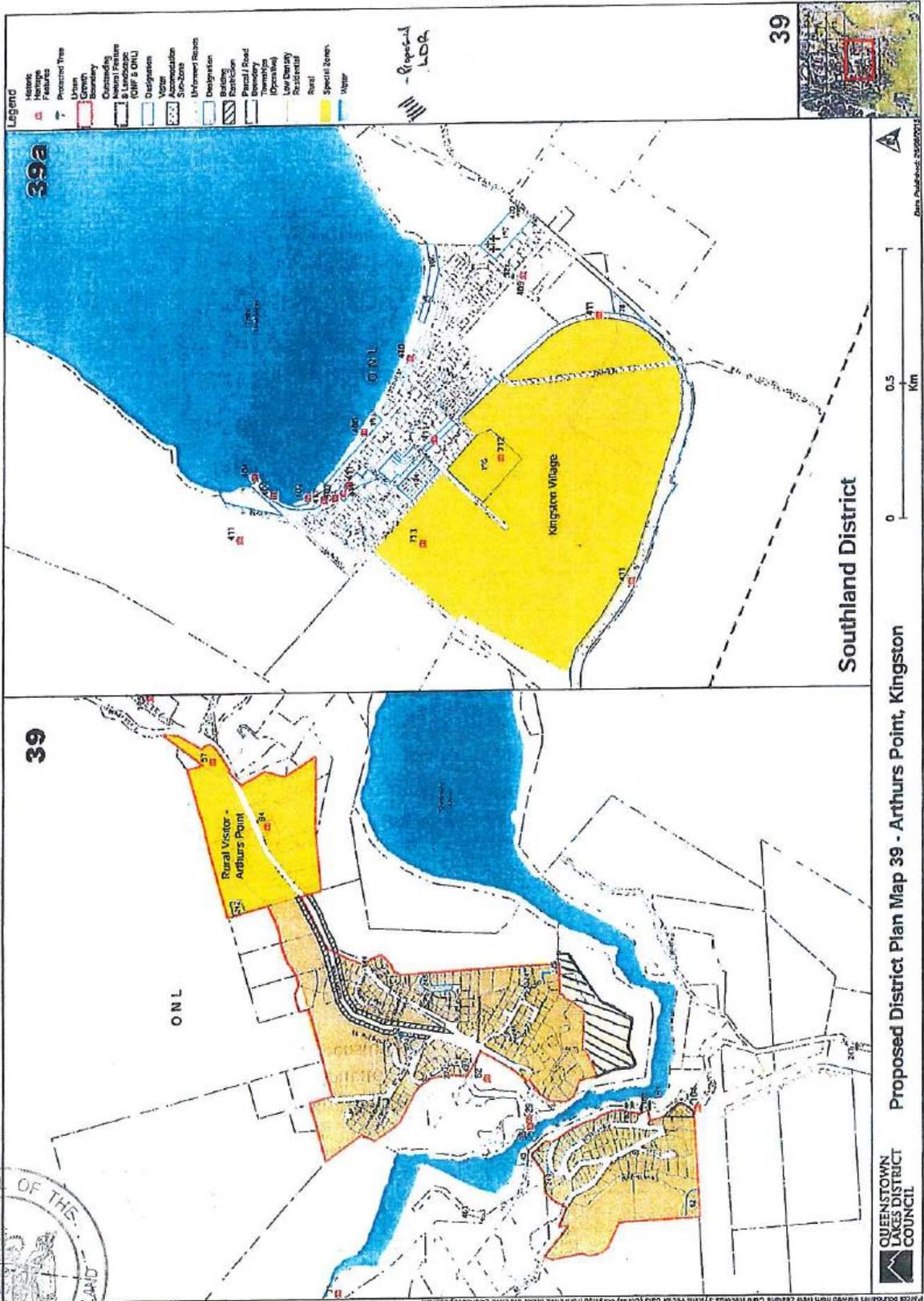
Appendix 1

Maps A and C from the Decision

"A"

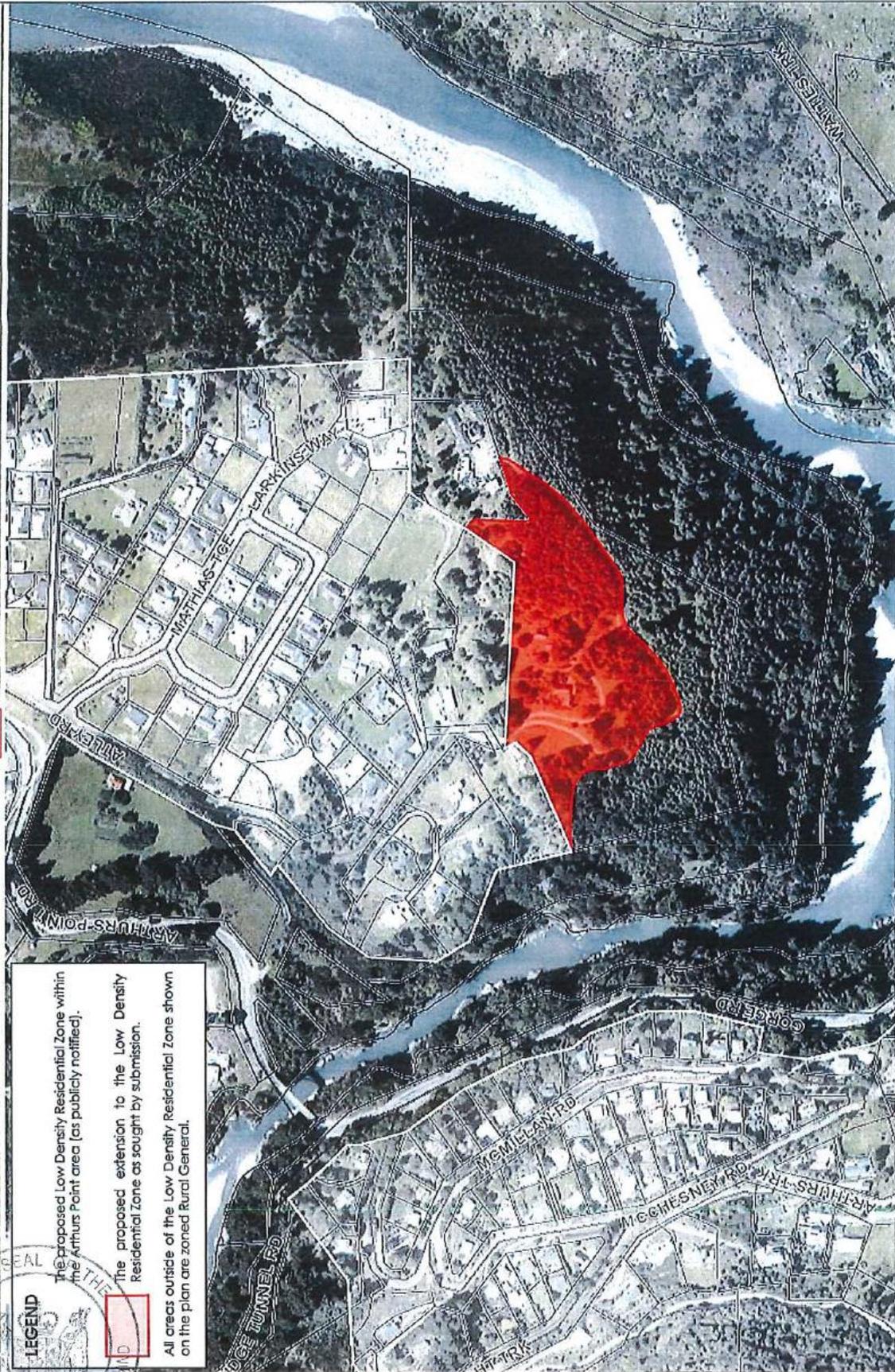
527

Wairarapa



"C"

494



LEGEND

The proposed Low Density Residential Zone within the Arthur's Point area (as publicly notified).

The proposed extension to the Low Density Residential Zone as sought by submission.

All areas outside of the Low Density Residential Zone shown on the plan are zoned Rural General.

vivart+espie
 Environmental & Planning
 100-102 Main Street, Queenstown
 PO Box 100, Queenstown 9300
 Phone: 03 533 7000
 Fax: 03 533 7001
 www.vivart-espie.co.nz

Proposed Low Density Residential Zone
 Arthur's Point, Queenstown

REP: 100-102/02 PT
 DATE: 02.10.2015
 SCALE: NOT TO SCALE

