

IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY

ENV-2024-CHC-

I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE

UNDER	the Resource Management Act 1991 (the RMA)
IN THE MATTER	of an appeal pursuant to Schedule 1, clause 14 of the RMA
BETWEEN	THE MILSTEAD TRUST Appellant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL Respondent

NOTICE OF APPEAL ON BEHALF OF THE MILSTEAD TRUST

DATED 5 AUGUST 2024

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TO: The Registrar
Environment Court
CHRISTCHURCH

1. The Milstead Trust (**Appellant**) appeals against parts of the decision of the Queenstown Lakes District Council (**QLDC** or **Council**) in respect of the Priority Area Landscape Schedules Variation to the Proposed Queenstown Lakes District Plan (**PDP**), more particularly the inclusion of Schedules 21.22 (Outstanding Natural Features and Landscapes) and 21.23 (Rural Character Landscapes) into Chapter 21 (Rural Zone) of the PDP and Priority Area maps that are incorporated by reference into the PDP (**Variation**).
2. The Appellant made a submission on the Variation (**Submission**).
3. The Appellant is not a trade competitor for the purposes of section 308D of the RMA.
4. The Decision was received on 21 June 2024.
5. The Decision was made by QLDC. This followed the recommendations made by a Hearing Panel appointed by QLDC to hear and make recommendations on submissions.
6. The Appellant appeals all parts of the Decision that:
 - (a) relate to, or affect, the property it has an interest in, at 429 Frankton-Ladies Mile Highway, RD1, Queenstown, and known as the Flint's Park site, including all aspects of Slope Hill ONF Schedule 21.22.6;
 - (b) fail to address the matters or issues raised in its Submission; and
 - (c) fail to address the relief sought and/ or outcomes sought in its Submission.

(Provisions)

GENERAL REASONS FOR APPEAL

General reasons

7. General reasons for the appeal are that the Provisions:
- (a) do not promote the sustainable management of resources in accordance with section 5 of the RMA in that they:
 - (i) do not manage the use, development, and protection of natural and physical resources which enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety, as required by section 5 of the RMA;
 - (ii) do not sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, as required by section 5 of the RMA;
 - (b) protect features (if not landscapes) that are not in fact sufficiently outstanding, or sufficiently natural, to qualify as outstanding natural features (**ONFs**) (or outstanding natural landscapes (**ONLs**));
 - (c) need to return, in identifying and providing for values and attributes of ONFs and ONLs, to common sense and a sensible and obvious threshold, such as recognised by the Environment court in *Wakatipu Environmental Society Incorporated and Ors v Queenstown-Lakes District Council* [2000] NZRMA 59 at [99]:

... ascertaining an area of outstanding natural landscape should not (normally) require experts. Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis
 - (d) to the extent that any features (if not landscapes) are sufficiently outstanding, or sufficiently natural, to qualify as ONFs (or ONLs), go beyond what is necessary to protect such ONFs (or ONLs) from

inappropriate subdivision, use, and development under section 6(b) of the RMA;

- (e) do not promote the efficient use and development of natural and physical resources as required by section 7(b) of the RMA;
- (f) do not recognise and provide for, or otherwise acknowledge, and/or prioritise, the property rights of landowners;
- (g) render the land incapable of reasonable use under section 85(2) of the RMA, and place an unfair and unreasonable burden on landowners subject to the provisions;
- (h) do not represent the most appropriate way to achieve the purpose of the RMA, as required by section 32 of the RMA, and in a context where the s32 assessment was fundamentally flawed and inadequate; and
- (i) were developed in a fundamentally flawed way, that did not involve a fair or sufficient consultation with the public in developing the Variation, that has proved incapable of resolution through the subsequent submission and hearing process, and most likely will also be incapable of resolution through this appeal process.

Specific reasons

8. Without limiting the generality of paragraph 2.1, the more specific reasons for appealing include:

Mapping – general principles

- (a) It is an anathema to a process identifying values and attributes of supposed ONF and ONL priority areas, to exclude from consideration whether those areas are in fact an ONF (or ONL). This must necessarily and logically follow from the finer grained analysis being undertaken, compared to the coarser assessment and

consideration when originally identifying the boundaries of the PA schedules.

- (b) At the very least, if the Environment Court on appeal were to find – on the basis of evidence to be brought before it – that some land was not in fact ONF (or ONL) then it would be open (if not necessary) for the Court to then correct that mapping, by way of a s293 process.

Particular mapping – Slope Hill

- (c) While there is a debate as to whether Slope Hill as a whole is anything more than an aesthetically pleasing, or pleasant-looking, hill, there is particular doubt as to whether the “toe of the slope” is an ONF.
- (d) The ONF is defined on the mapping tool that is available from the New Zealand Geopreservation Inventory, and subject to the specialist Best Practice guide: Outstanding Natural Features – GSNZ Miscellaneous Publication: Geoscience Society of New Zealand, June 2019, Geoscience Society of New Zealand Miscellaneous Publication No. 154, ISSN 2230-4495, as follows:



- (e) The independent New Zealand Geopreservation Inventory does not include the lower slopes of Slope Hill as part of the geological feature, and therefore they cannot be an ONF, as a matter of fact. The Appellant was denied consideration of these matters due to the approach that the Council's Panel took to its jurisdiction before it.

Farm dwellings

- (f) In respect of the Slope Hill ONF (if not other ONFs/ ONLs), the provisions need to specifically recognise the needs for the owner / farmer and their workers, in terms of accommodation, so that any ONF (or ONL) can continue to be farmed, in the long term – particularly when it is the farming activity that has “revealed” the ONF (or ONL), and if that activity ceases, then the ONF needs to be specifically recognised as appropriate or otherwise supported at a policy level.
- (g) Simply put, the only way to protect ONFs (and ONLs) in the long term, if they are such, is to allow their reasonable use. Or, if the Council wants them as a scenic or other reserve, then it should acquire them as one to protect for that purpose.
- (h) The Decision appears to recognise this, to some extent, stating at [172]:

Mr Devlin raised concern with what he termed a potential gap, in that the PA schedules do not list capacity for farmhouses. In Ms Evans's view, farm dwellings were not included in the list of activities in strategic policy 3.3.38 as they were not known to be creating particular development pressure at the time the list of PAs was developed. She further noted that there is no change to the consenting pathway for farmhouses (or any other non-listed activity) and that landscape capacity for this type of activity will continue to be assessed on a case-by-case basis, which she considered to be an appropriate pathway.

While we acknowledge Ms Evans's evidence in this respect,¹¹³ we consider the exclusion of farm dwellings (which are often difficult to practically distinguish from residential development in the rural zones generally) from both the definition of Rural Living and/or the landscape capacity analysis to be problematic. We are mindful that at the hearing, Mr Haworth considered rural living, which he described as “the real problem”, to be the main contributor to

inappropriate development pressure in ONFs, ONLs and RCLs. His views were indirectly supported by several submitters concerned that no provision had been made in the schedules for farm dwellings associated with family succession. It seems plain to us that this will continue to be an area of ongoing tension (and development pressure) that should be addressed comprehensively in the PDP and in the schedules. Accordingly, we suggest that the exclusion of residential development for farming or other rural production activities from the definition of Rural Living in Chapter 3, and potentially from the PA schedule of listed activities, be subject to review at the first available opportunity under the Chapter 3 monitoring provisions.

- (i) The definition of Rural living now states (emphasis added):

‘Rural Living’ means residential-type development in the Wakatipu Basin Rural Amenity Zone, a Rural Character Landscape or on an Outstanding Natural Feature or in an Outstanding Natural Landscape, including of the nature anticipated in a Rural Residential or Rural Lifestyle Zone but **excluding residential development for farming or other rural production activities**;

- (j) This effectively leaves farm dwellings specifically excluded from the PA schedules. However, this is totally unsatisfactory as, in practice, any application for a farm dwelling would be assessed against the provisions for a farm building as a proxy. The current capacity rating for farm buildings is:

Farm buildings – very limited landscape capacity for modestly scaled buildings that reinforce existing rural character.

- (k) Rather than leaving farm dwellings in a lacuna, they should be specifically provided for, with “some” landscape capacity identified for their development and use.

Capacity ratings

- (l) To the extent that capacity ratings will remain, the capacity for various development on Slope Hill should be recognised as having “some capacity”. After all, the Council has itself approved three major water reservoirs for the site well up on Slope Hill. These are each 15m dia x 6m high. A farm dwelling (even with a separate building for farm workers’ accommodation), will have significantly less effects in comparison.

RELIEF SOUGHT

9. The Appellant seeks:
- (a) the amendments sought to the Provisions (or their any equivalent, updated, reordered or replacement provisions) as sought in its Submission (or any necessarily equivalent);
 - (b) any other amendments to the Provisions to address the matters or issues raised in its Submission and in this Appeal;
 - (c) without limiting the above, any other amendments to:
 - (i) amend the boundaries of any ONFs (and ONLs) to include only features (and landscapes) that are both truly “outstanding” and are sufficiently “natural” to such an obvious extent that an objectively reasonable member of the community would consider them so;
 - (ii) in the case of the Slope Hill ONF, if the entire ONF is not removed, to remove the ONF notation from the “toe of the slope” so that the ONF aligns with the area identified by the New Zealand Geopreservation Inventory;
 - (iii) in the case of any Slope Hill ONF that remains, allow farm dwellings (and farm workers’ accommodation) on the ONF, as anticipated, if not necessary activities, in order to preserve the ONF into the future.
 - (iv) in event for features and landscapes that remain (appropriately) categorised as ONFs (or ONLs), amendments to ensure that private property rights prevail unless the Council acquires the land for scenic or other reserve purposes;

- (d) any alternative or other amendments to address the matters raised in this appeal, and to achieve the intent of this appeal (including as raised in the general and specific reasons given in this appeal);
- (e) any similar, alternative, consequential and/or other relief as necessary to address the issues raised in this appeal; and
- (f) that the Variation be withdrawn or rejected in its entirety, or, at least all appeals suspended, pending the outcome of this Government's signalled changes to national direction, including a replacement to the RMA.

Attachments

10. The Appellant attaches the following documents to this notice:
- (a) A copy of The Milstead Trust's Submission (**Attachment A**);
 - (b) A copy of the relevant decision (**Attachment B**); and
 - (c) A list of names and addresses of persons to be served with a copy of this notice (**Attachment C**).

Signature: **THE MILSTEAD TRUST** by its duly authorised agent



Lara Burkhardt
Counsel for the Appellant

Date: 5 August 2024

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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 and the decision appealed. 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.

Attachment A

Submission

Attachment B

Decision of the respondent

Attachment C

Names and addresses of persons to be served with copy of appeal

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