

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

Decision No. [2023] NZEnvC 147

IN THE MATTER

of the Resource Management Act 1991

AND

an application for declaration under
s311 of the Act

BETWEEN

GERTRUDE'S SADDLERY LTD

(ENV-2022-CHC-63)

Applicant

AND

QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
(Sitting alone under s309 of the Act)

Last case event: 20 December 2022

Date of Decision: 6 July 2022

Date of Issue: 6 July 2022

DETERMINATION AS TO STANDING

REASONS

Background

[1] This proceeding concerns an application for declaration by Gertrude's Saddlery Limited ('GSL') as to the functions and duties carried out in respect of

GSL v QLDC – DETERMINATION AS TO STANDING



QLDCs notification of the landscape schedules variation to its Proposed District Plan (“PDP”). The application relates to:¹

the identification of [the applicant’s land at] 111 Atley Road ... within the Shotover River Shotover River ONF Priority Area, in contradiction to the boundary of the Shotover River ONF Priority Area as identified in Environment Court decisions 2.1 – 2.9 ... and the Joint Witness Statement dated 29 October ... referred to in [the Topic 2] Landscape Decisions.

[2] The application seeks the following declarations:²

- (a) The Council is bound by Environment Court Decisions in Topics 2.1 – 2.9 and Strategic Policy (SP) 3.3.36 of the PDP to notify, under Schedule 1 of the Act, the same Priority Area boundary of the Shotover River ONF as agreed in the Landscape Decisions and JWS.
- (b) The Council’s notification of the Gertrude Land within the Shotover ONF Priority Area is inconsistent with Environment Court Decisions 2.1 – 2.9, and in particular the identification of prescribed Priority Area boundaries for the Shotover River ONF in those decisions.
- (c) The Council’s notification of the Gertrude Land within the Shotover ONF Priority Area is inconsistent, or in contradiction with, SP 3.3.6 of the PDP, and therefore inconsistent with Council’s duty to observe the PDP under section 84 of the Act.

[3] Arthurs Point Outstanding Natural Landscape Society Inc (“APONLS”) seek directions that it be served with the application. GSL opposes that. Parties essentially dispute whether or not APONLS qualifies as a directly affected person for the purposes of s312, RMA. However, GSL will abide the court’s decision.

[4] Section 312 relevantly specifies that the applicant for a declaration “shall serve notice of the application in the prescribed form on every person directly

¹ Application for declarations dated 31 October 2022 at [3].

² Application for declarations dated 31 October 2022 at [4].

affected by the application.”

Submissions

APONLS

[5] APONLS explains that they are comprised of individuals who, for the most part, own land at Arthurs Point. Their main purpose is to pursue and protect the landscape values generally and in particular within the vicinity of the Wakatipu Basin.³ APONLS submit they are ‘directly affected’ for the purposes of s312 in that they are a submitter on the Landscape Schedules variation,⁴ as a further submitter on GSL’s request to rezone and reposition the ONL and UGB boundaries at Arthurs Point. They are involved in litigation regarding how the PDP deals with Arthurs Point. Their status as a s274 party was not challenged in previous proceedings involving the zoning and landscape status of the land.⁵ They submit they are directly affected by GSL’s application in that it seeks a declaration that would avoid the effect of the ONF Schedule on the subject land. They observe that there were some 208 submissions on the variation in total.⁶ APONLS submits that, given the stage of the proceeding, no party would be prejudiced by a determination that it has standing as a directly affected party.⁷

GSL

[6] GSL submits that any effect on individual submitters to the Schedules Variation (including APONLS) would only be indirect and hence not come within s312(2). That is in the sense that its application seeks declarations pertaining to the *process and jurisdiction* for QLDC’s notification of the Schedules Variation, not

³ APONLS memorandum dated 14 December 2022 at [8.6].

⁴ Its submission includes support for the proposed Schedule for the Shotover River/Kimi-ākau ONF.

⁵ APONLS memorandum dated 14 December 2022 at [8.7].

⁶ APONLS memorandum dated 14 December 2022 at [8.5].

⁷ APONLS memorandum dated 14 December 2022 at [11.3].

the *merits or effect* of the Schedules Variation itself.⁸ Specifically, it seeks clarification as to whether QLDC’s duties, functions and powers allowed it discretion to notify a different geographic boundary of the Shotover River/Kimi-ākau, than that which was identified in various Environment Court decisions, and an agreed JWS on the same matter.⁹ The declarations sought are on a confined question of law, not a matter of policy. As such, it is not a matter that directly affects any and all submitters on the same or related subject matter of the schedules variation.¹⁰ Rather, the only directly affected person, apart from itself as landowner, would be QLDC as decision-maker.¹¹

[7] In reply, GSL submits that APONLS’ status as a submitter in opposition to the upcoming (separate) rezoning process has nothing to do with how QLDC notified the priority area boundaries within the Schedules Variation.¹² It submits that previous rulings that APONLS was a s274 party are not relevant, bearing in mind the different threshold in s312 of “directly affected”.¹³ As for the fact that APONLS has been involved in litigation concerning GSL’s land, Arthurs Point landscapes more generally, including enforcement proceedings as to the QLDC’s notification process on Stage 1 of its PDP, GSL submits these are only tangentially related.¹⁴

[8] GSL observes that APONLS did not participate in the relevant Topic 2 Environment Court proceedings, nor did it have representation in the JWS process promulgated between QLDC and parties in determining the extent of the priority areas for notification. As such, GSL submits that APONLS had no relevant input into the matters with which the declaration application is concerned.¹⁵ It further

⁸ GSL memorandum dated 20 December 2022 at [4].

⁹ GSL memorandum dated 20 December 2022 at [3].

¹⁰ GSL memorandum dated 20 December 2022 at [9]-[10].

¹¹ GSL memorandum dated 20 December 2022 at [5].

¹² GSL memorandum dated 20 December 2022 at [8(b)].

¹³ GSL memorandum dated 20 December 2022 at [8(e)].

¹⁴ GSL memorandum dated 20 December 2022 at [19].

¹⁵ GSL memorandum dated 20 December 2022 at [18]-[19].

points out that the application of the Shotover River/Kimi-ākau ONF Priority Area provides no different rule/activity status over the Gertrude land. To the extent there is any general interest of the public, GSL submits that this can be adequately represented by QLDC.¹⁶

Evaluation

[9] I must commence my evaluation by acknowledging any inconvenience to the parties in my late delivery of this decision. It has been due to a reasonably heavy case load at this time that has prevented me from giving this matter earlier attention. However, I appreciate that this may have been a source of inconvenience and regret that.

[10] The meaning of ‘directly affected’ in s312 is somewhat imprecise. However, I find it to convey the legislature’s intention that applicants seeking declarations that can be perceived to impact in a personal or direct way on another person should serve that person. It is intended as a provision that directs the applicant to do the right thing, proactively, in those circumstances.

[11] GSL’s application seeks declarations going beyond their personal interests in their land at 111 Atley Road. Specifically, it extends to broader matters of public interest in that:

- (a) declaration (a) above would potentially raise public interest questions as to QLDC’s statutory obligations in response to Environment Court decisions on the PDP;
- (b) declaration (b) would raise issues of potential interest at least for parties to the proceedings noted (acknowledging APONLS was not such a party);
- (c) declaration (c) raises broader public interest questions concerning whether QLDC has acted contrary to specified PDP policies and its

¹⁶ GSL memorandum dated 20 December 2022 at [25].

s84 RMA duty. That is at least a matter of public interest to all constituents of QLDC.

[12] I do not agree that QLDC is an adequate sole representative of the public interest on those matters. The difficulty presented there is that, as respondent, QLDC would plainly have a self-interest in defending its position.

[13] I am not persuaded that GSL has failed to abide s312. Nor do I consider APONLS qualifies as being “directly affected” in the terms intended by that provision.

[14] However, in view of the declarations sought, I consider there is merit in giving opportunity to APONLS to seek to join the proceeding under s274. On a preliminary basis, I consider APONLS would appear to satisfy the threshold under s274(1)(d) as a person having an interest greater than that of the general public. That is qualified somewhat as GSL has raised some questions as to the accuracy or otherwise of APONLS’ claimed membership. If the court is to entertain APONLS joining under s274 at this stage, clarification on that will be needed. As such, a formal application to join the proceeding under s274 will be required and I will give opportunity for GSL and QLDC to oppose, should they so wish.

Outcome

[15] It is directed:

- (a) if GSL has not already done so, it must serve a copy of its application for declaration on APONLS through its legal counsel, by **Thursday 13 July 2023**; and
- (b) APONLS has leave to apply to join the proceeding under s274, by **Wednesday 19 July 2023**, any application to be supported by a memorandum as to:
 - (i) why they consider they qualify as a party under s274 (which may be by reference to the matters already before the court as I have

summarised); and

- (ii) confirmation of who their members are for the record.
- (c) if GSL or QLDC seek to oppose leave to APONLS joining the proceeding under s274, they must file a notice of opposition giving reasons by **Friday 21 July 2023**;
- (d) unless opposed, parties can anticipate that any APONLS notice to join under s274 would be granted, but parties will be notified of that in due course. If opposed, this matter will be formally determined on the papers; and
- (e) parties must confer and file a case management memorandum for the consideration and determination of the application by **Monday 31 July 2023** (the court's current expectation being that this will be on the papers).


J J M Hassan
Environment Judge

