

Practice Note 1/2014

Centre Pivot & Linear Irrigators under the QLDC District Plan

16 July 2014

Executive Summary

In *Haldon Station v Mackenzie District Council* (2014 NZEnvC 136), the Environment Court declared that centre pivot and linear irrigators are not buildings under the Mackenzie District Plan's definition of 'buildings'. Rather, the court held that an irrigator was a vehicle. It reached this conclusion because an irrigator '*has wheels and carries something*'.

Queenstown Lakes District Council (QLDC) has historically adopted the position that irrigators meet the definition of a farm 'building' under the QLDC District Plan. The QLDC Plan definition of building has an exemption for vehicles.

QLDC has reviewed the Haldon decision and undertaken an analysis of the way in which the Council has dealt with pivot and linear irrigators in its regulatory capacity to date.

It has concluded that the principles of *Haldon* should apply equally in Queenstown Lakes District. The effect of this is that QLDC will no longer require land use resource consent for pivot or linear irrigators.

It is noted for completeness, that the take and discharge of water are matters over which the Regional Council exercise exclusive control.

The QLDC District Plan

The QLDC District Plan provides controls on potential impacts on the landscape and visual amenity values of this District through a comprehensive array of objectives, policies and assessment matters for development in the Rural General Zone.

Farm buildings are given a more enabling status (controlled activity on sites greater than 100ha, and restricted discretionary on smaller sites) with the District Plan in recognition that these buildings are important to the continued use of land for permitted rural activities. An application for a controlled activity cannot be declined. There is the opportunity to impose conditions to avoid, remedy or mitigate any landscape and visual amenity effects created by proposed farm buildings.

The relevant controlled activity rule for farm buildings in the Rural General Zone is Rule 5.3.3.2(i). Non-compliance with this rule triggers resource consent for a controlled activity. Council's control is restricted to the buildings location and external appearance. Only conditions relating to those matters of control can be imposed on any consent granted. This activity status is subject to irrigators meeting all other Site and Zone standards in the Plan including setbacks from boundaries and maximum number of farm buildings per land holding.

The relevant site standard for farm buildings is 5.3.5.1xi. There are various assessment matters relating that are relevant in assessing an application for consent. These assessment matters deal with avoiding, remedying or mitigating effects on various landscape matters including effects on openness of landscape, visibility, visual coherence and integrity, effects on natural and pastoral character, rural amenities, cumulative effect and positive effects.



The *Haldon* Decision

The *Haldon* decision was made by Environment Judge Jackson and Commissioner Mills, issued on 20 June 2014. The Environment Court made a declaration following an application by Mackenzie District Council:

Large pivot irrigators such as centre pivot and linear irrigation systems are not "buildings" within the definition on p3-2 of the Mackenzie District Plan for the purposes of the policies and rules of the Plan because they are "vehicles" under exception (e) in that definition.

The definition of 'building' in the Mackenzie District Plan is different to that in the Queenstown District Plan. What both definitions have in common is that they effectively exclude any "vehicle" from being captured by the definition of "building".

The Court relied largely upon the definition of "vehicle" in *The New Zealand Oxford Dictionary*:

1. Any conveyance for transporting people, goods, etc. esp. on land.

The Court's consideration of the issue is brief. At paragraph 29 it states:

A pivot irrigator conveys water from the riser at the end of the supply system to where it is to be sprayed on to the land. It also has wheels. Because it has wheels and carries something, it is a vehicle. Similarly if one looks at paragraph (e) of the Land Transport Act 1998 definition, it is quite obvious that pivot irrigators are vehicles: they are "contrivance(s) equipped with wheels" on which they move.

Because of the broad basis of this decision it could be applied to the wording of the Queenstown District Plan. The Plan defines "building" thus:

Shall have the same meaning as in the Building Act 1991, but does not include...

None of the exclusions specified in the District Plan are relevant. The definition in the Building Act 1991 expressly states that it does not include "vehicles and motor vehicles". Thus, if a spray irrigation system is a vehicle under the Mackenzie District Plan, it is logical that the same conclusion should apply to the Queenstown Lakes District Plan

Conclusion

Council recognises that in applying the principles of *Haldon*, the ability to impose conditions on applications for irrigators will no longer be available. All such applications must however be granted by the consent authority. The approach might potentially expand the permitted baseline for development within the Rural General Zone where the 'permitted' effects associated with irrigators might be used to justify other types of built development in the zone. It is at the discretion of Council as to whether the permitted baseline test is considered relevant and applied.

The *Haldon* decision will reduce the regulatory requirements for a common piece of agricultural equipment that can be expected within the rural environment. As structures within the Rural General zone, irrigators are consistent with the principles of the zone which is designed to enable productive use of the land resource and which is characterised by farming activities.