

TO: The Hearing Administrator, Lynley Scott, [DP.Hearings@qldc.govt.nz](mailto:DP.Hearings@qldc.govt.nz)

**BEFORE AN INDEPENDENT HEARING PANEL  
APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL**

**UNDER THE** Resource Management Act 1991 (“**Act**”)

**IN THE MATTER OF** a Variation to the proposed Queenstown Lakes District Plan (Te Pūtahi Ladies Mile) in accordance with Part 5 of Schedule 1 to the Resource Management Act 1991 (“**Variation**”)

**BETWEEN** **GLENPANEL DEVELOPMENT LIMITED (“GDL”)**  
Submitter

**AND** **QUEENSTOWN LAKES DISTRICT COUNCIL (“QLDC”)**  
Proponent of the Variation

**SECOND MEMORANDUM ON BEHALF OF GDL:  
PROCEDURAL ISSUES**

*Before a Hearing Panel:* David Allen (Chair), & Commissioners Gillian Crowcroft, Hoani Langsbury, Judith Makinson and Ian Munro

**Introduction**

1. The Hearing Panel’s “Directions 1” required, at [11.12]:

To enable the efficient start to the hearing on 27 November 2023 on procedure matters the Council and all submitters who wish to raise procedural issues must provide a summary of the issue and the general reasons for it in writing to the Hearing Administrator by 12pm (noon) 6 November 2023. Thereafter, leave of the Hearing Panel is required to raise procedural issues which, unless raised orally with the Chair during the hearing, must be sought in writing, with reasons, via the Hearing Administrator. All legal submissions and submitter representations or presentations in relation to procedural issues are to be provided to the Hearings Commissioner in accordance with Direction 11.9.

2. This memorandum records the procedural issues that GDL wishes to raise, being:
  - (a) procedural issues as to expert conferencing (attendance by Mr Harland at planning conferencing);

- (b) procedural issues arising from conferencing (further conferencing is requested); and
  - (c) expectations of witnesses in respect of other evidence (for any further conferencing, and further evidence).
3. To a significant extent many of the procedural issues arise from the requirements of expert opinion evidence and compliance with the Code of Conduct.
  4. The Evidence Act 2006 provides that a statement of opinion is not admissible in a proceeding, except, as relevant (emphasis added):

An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain **substantial help** from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

5. While the Environment Court, and this Panel, can receive anything in evidence that it wishes, the 2023 version of the Environment Court's practice note is particularly relevant here, given that this Panel is effectively sitting in the place of the Environment Court:

The provision in s 276(2) of the Act, that the Environment Court is not bound by the rules of law about evidence that apply to judicial proceedings, is an enabling provision for the Court and not an exemption for parties, counsel or witnesses.

6. Paragraph 9.2 of the Environment Court's Practice Note states:

**9.2. Duty to the Court**

- (a) An expert witness has an overriding duty to impartially assist the Court on matters within the expert's area of expertise. This duty to the Court overrides any duty to a party to the proceeding or other person engaging the expert.
  - (b) An expert witness is not and must not behave as an advocate for the party who engages them.
7. This is very similar to the code of conduct for experts in Schedule 4 of the High Court Rules, relevantly:
    - 1 An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.
    - 2 An expert witness is not an advocate for the party who engages the witness.

### **Mr Harland's evidence and participation at witness conferencing**

8. Mr Harland was held out by the Council as an expert witness "Urban Design", and he was only originally listed to attend the Urban Design conferencing in the schedule circulated on 25 October 2023. His evidence describes himself as the Project Director, and focuses largely on background matters, such as the chronology and process undertaken in developing the TPLM Masterplan and TPLM Variation.
9. On an update to the agenda for the Planners' Conferencing circulated by Counsel for the Council on 27 October 2023, Mr Harland was added to the attendees for the Planners' Conferencing, but this escaped the attention of Glenpanel's team – who were focused on the substantive update to the agenda. It appears to have been a surprise to others attending the Conferencing, and after the conclusion of the first day of conferencing, concerns were raised by Counsel for the Hutchinsons with Counsel for the Council that it was not appropriate for Mr Harland to attend the Planners' Conferencing. Mr Harland was duly withdrawn from the second day of the Planners' conferencing.
10. Glenpanel considers Mr Harland's attendance at the first day to have been procedurally flawed and unfair, as, for example, Glenpanel was not able to have its urban designers also attend the Planners' Conferencing to weigh in on the planning issues. It is noted that Mr Compton-Moen and Mr Weir, (Glenpanel's Urban Design experts) are full and intermediate members of NZPI, whereas Mr Harland is not a current member of NZPI.
11. In short, Glenpanel requests that Mr Harland opinions be removed from the first day of the Planners' conferencing as it was not appropriate for him to participate.
12. Care also needs to be taken as to the opinion evidence given by Mr Harland as to the merits of the TPLM Masterplan and TPLM Variation, given his extensive involvement in their development as "Project Manager" (rather than as an independent expert). While in different circumstances (a non-RMA process), the findings of the High Court in respect of a witness intending to give expert evidence in respect of a policy in which they had been closely involved in the development of is cautionary: <sup>1</sup>

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<sup>1</sup> *Maritime Union of New Zealand Inc v TLNZ Ltd* AK AC 51/07 7 September 2007.

Where, however, Ms Nolan intends to give opinion evidence about the quality of a policy in the development of which she has been significantly instrumental, I conclude that her evidence as currently drafted will not meet the conduct test under s26(1) of the Evidence Act and Schedule 4 to the High Court Rules ... . I am not satisfied that Ms Nolan is not an advocate for the defendants or that her intended opinion evidence is impartial. She does not qualify as an expert witness for the purposes of giving such opinion evidence.

13. To the extent that evidence might be considered inadmissible and a matter of procedure, rather than a matter of weight for substantive consideration, the issue is raised now. The extent to which it may need to be pursued may depend on whether any further conferencing occurs, and the nature of any rebuttal evidence given by Mr Harland.

### **Conferencing issues generally**

14. Conferencing appears to have resulted in clarity, if not a change in position, on several key matters. For example, the nature of the State Highway corridor as now (it seems) being preferred as an urban, rapid transit, corridor, with a 60km speed limit, traffic lights, and at grade crossings. This requires reconsideration of the urban design, if not landscape, implications or consequences, as the originally proposed setbacks would no longer seem to be appropriate.
15. Given the timing of the various conferencing sessions, not all expert disciplines have been able to consider the progress made in other conferencing sessions.
16. There also appears to be inconsistencies between some of the expert disciplines, and/or matters on which no agreement was reached, but which are key matters that agreement should have been able to be reached on (or a process identified for reaching agreement, including any required input from other disciplines). For example, the Urban Designers could not agree on:
- ... the nature and implementation timeframes of the planned Rapid Public Transit (RPT) and associated stops, and therefore appropriate walkable distances. BH referred to 'bus stops' whereas the AHFT experts referred to rapid transit stops in alignment with the Transport Strategy.
17. Resolving this, and other issues, might require input from the Traffic Engineers, as well as the Planning Experts.
18. Accordingly, it is requested that directions be given for further conferencing to occur, including cross-discipline conferencing, where appropriate. It is understood that the Planners Conferencing may be resulting in a number of

questions to be put to the specialist experts, which also points to the benefits of further conferencing.

19. This request is made in light of the fact that, without leave, any further submitter evidence is limited to only a 2-page summary and update to be presented at the hearing.

### **Approach to reliance of evidence of other experts**

20. It is apprehended that some witnesses are relying *only* on their “own team’s” specialist evidence. If this were to be the case, this would appear to compromise the impartiality and/ or objectivity and/ or reliability of the evidence of any such witness. This may be important to understand for any further conferencing, replies, and updates.

21. As Kós J stated in *Jarden v Lumley General Insurance (NZ) Ltd*,<sup>2</sup> at [39]:

... at the end of the day the hallmarks of an expert witness are two: the objective accuracy of their assessments, and their willingness to consider alternative perspectives.

22. Justice Fisher’s comments in *Wrightson v Fletcher Challenge Nominees*<sup>3</sup> are also helpful. His Honour stated in that case that an expert’s view “is supposed to be driven by professional skill and experience, not a perceived need to support a preconceived outcome” (at 21).

23. It is appropriate for experts to rely on the evidence of other experts, particularly more specialist witnesses. However, if they are only relying on experts of “their own team”, then that should be clearly stated (in accordance with the Code).<sup>4</sup> The Panel can then determine the impact of any such limitation in terms of weight to be given to that witnesses evidence. Directions are sought that any witness who has only relied on the evidence of their own team clearly state so, and the basis for their reliance, or rejection, or the evidence of the various other specialists, and why.

**6 November 2023**  
**James Gardner-Hopkins**  
**Project Manager**

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<sup>2</sup> *Jarden v Lumley General Insurance (NZ) Ltd* [2015] NZHC 1427

<sup>3</sup> *Wrightson v Fletcher Challenge Nominees* HC Auckland CP129/96, 21 August 1998.

<sup>4</sup> Obviously, this is different to a Planning Expert fairly considering the alternative perspectives, but still preferring the evidence of “their own team” if the reasons are clearly explained (and can therefore be tested).