

Before the Hearings Panel

For the Proposed Queenstown Lakes District Plan

Under the

Resource Management Act 1991

In the matter

of a variation to Chapter 21 Rural Zone of the Proposed Queenstown Lakes District Plan, to introduce Priority Area Landscape Schedules 21.22 and 21.23

**FURTHER MEMORANDUM ON BEHALF OF QUEENSTOWN LAKES DISTRICT
COUNCIL CONFIRMING EXPERT WITNESS CONFERENCING ARRANGEMENTS AND
TOPICS**

20 September 2023



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Background

1. This memorandum is filed on behalf of Queenstown Lakes District Council (**Council**) in response to the minutes issued by the Hearing Panel dated 4 August 2023 (**4 August Minute**) and 15 September 2023 (**15 September Minute**).
2. The 15 September Minute directed that submitters provide Council with information regarding their experts' availability in order to assist Council with its preparation of a proposed agenda. The Council has now received most of the requested information from submitters which has greatly assisted in preparing the draft agenda set out in this memorandum.
3. The 15 September Minute directed the Council, after receiving information from submitters, file a further reporting memorandum by 5pm, 20 September 2023, confirming arrangements for expert witness conferencing and outlining any areas of disagreement with submitters. This memorandum satisfies that direction.

Commissioner and venue

4. Witness conferencing will be held in person at the Crowne Plaza Queenstown, 93 Beach Street, Queenstown, during the week of 2 October 2023.
5. Commissioner Ken Fletcher will be facilitating expert witness conferencing. The Council will provide a scribe to attend conferencing and assist the experts in recording areas of agreement and disagreement.

Attendees

6. Submitters were directed to provide the Council with their expert's availability to attend conferencing by 5pm, 18 September 2023. Council received responses from, or on behalf of, 37 submitters.
7. Certain parties advised that their expert either cannot attend that week, or that there are constraints in terms of their ability to attend. Those experts are:

- 7.1 Ralf Krüger (landscape expert)¹, Chris Ferguson (planning expert)² and Scott Freeman (planning expert)³, who are unavailable for conferencing during the week beginning 2 October 2023.
- 7.2 Ian Greaves (planning expert)⁴, who is only available for conferencing on 6 October 2023 and would prefer to attend via video.
- 7.3 Duncan White (planning expert)⁵, who is only available 2 – 3 October, 5 October afternoon, and 6 October 2023.
- 7.4 Morgan Shephard (planning expert)⁶, who is only available 3 October and potentially 4 October 2023 morning.
- 7.5 Ben Farrell (planning expert)⁷, who is only available 2 and 3 October, and potentially 4 October 2023.
- 7.6 Scott Edgar (planning expert)⁸, who is only available 3 and 4 October 2023.
- 7.7 Brett Giddens (planning expert)⁹, who is available via video on 3 October, and available in person on 4 October 2023.
- 7.8 Rachael Pull (planning expert)¹⁰, who is available 3 October afternoon, and 4 – 6 October 2023, and would prefer to attend via video.
8. Council has not heard from the following submitters, that have filed expert evidence:
- 8.1 Second Star Limited (#48) in relation to the availability of John Edmonds (planning expert);

- 1 Longview Environmental Trust and Jon May (submitter #74).
- 2 Coneburn Preserve Holdings Limited and Henley Downs Farm Holdings Limited (#183 & 220), Glencoe Station Limited and Glencoe Land Development Company Limited (#177), Soho Ski Area Limited and Blackmans Creek Holdings No. 1 LP (#178 & 221), and Glendhu Bay Trustees Limited (#176 & 222).
- 3 Treespace No.1 Limited Partnership (#96).
- 4 Bike Wanaka (#73).
- 5 Glen Dene (#47), Richard Burdon (#49), and Sunnyheights Ltd (#42).
- 6 Mt Cardrona Station Limited, Jeremy Burdon, Jo Batchelor & Andrea Donaldson (#182), and Gertrude's Saddlery Limited (#200).
- 7 Queenstown Adventure Park (#189), Nzski (#165), and Realnz (#166).
- 8 Silverlight Studios Limited (#175).
- 9 Cardrona Cattle Company (#94), #Gibbston Valley Station Ltd (#93), and Arthurs Point ONL Society Incorporated (#122).
- 10 Te Rūnanga o Ngāi Tahu (#188).

- 8.2 Otago Province of Federated Farmers of New Zealand (#98/#240) in relation to the availability of Emily McDonald (planning expert) and Eleanor Linscott (planning expert); and
 - 8.3 Queenstown Park Limited (#171) in relation to the availability of Stephen Brown (landscape expert).
9. Council has factored the submitters' experts availability into account when updating the proposed agenda, as set out in **Appendix A**.

Areas of disagreement in relation to the agenda

10. Other than the matters addressed below, submitters have not raised issues with the preliminary agenda and topics set out in Council's 14 September 2023 memorandum, or sought for other topics to be included.

Request by Dr Cossens for conferencing on market research issues

11. By email on 17 September 2023, Dr John Cossens¹¹ responded to the Council's 14 September 2023 memorandum requesting that two new topics are added to the agenda, being:
- 11.1 Landscape schedule methodology and community consultation; and
 - 11.2 Cumulative effect measurement methodology.
12. Dr Cossens has proposed that he attend conferencing on those topics as an expert in market and consumer research.
13. Council opposes the request by Dr Cossens, for the following reasons:
- 13.1 The purpose of expert witness conferencing is to achieve greater efficiencies for the hearing process, by providing a forum for expert witnesses to confer and identify issues on which they agree, or disagree.

11 Grant Thomas (#43).

- 13.2 Any expert conference is confidential to the experts who attend, with those persons required to have specialised knowledge or skills in the matter being conferenced, and act independently.
- 13.3 An expert conference is an evidential process, and not in the nature of alternative dispute resolution (ie. mediation). Any experts participating in expert conferencing are to comply with the Code of Conduct for Expert Witnesses as set out in the Environment Court Practice Note 2023.
- 13.4 Dr Cossens has not filed any expert evidence in relation to the Variation. Instead, Dr Cossens has made a submission raising a number of issues, including in relation to: the landscape assessment methodology, community consultation (and the law), the Treaty of Waitangi and the section 32 analysis.
- 13.5 The expert evidence filed to date has been prepared by either planning or landscape experts. As a result, Council has proposed expert conferencing in respect of those areas of expertise. No other party, including Council, has filed market research evidence.
- 13.6 In terms of Dr Cossens proposed topics, Council's view is that any conferencing on the "landscape assessment methodology" or "cumulative effects" would appropriately involve landscape experts, with the potential for planning expert input.
- 13.7 To the extent that community consultation is a concern for Dr Cossens and other submitters, this is considered a procedural issue (rather than a merits / evidential issue), which can be raised with the Hearing Panel at the hearing.

Upper Clutha Environmental Society views on the purpose and value of expert conferencing

14. Mr Haworth¹² has sent an email to the Hearing Panel that raises a concern with the utility of conferencing, given the extensive landscape conferencing through the PDP appeal process regarding the Values Identification Framework. Mr Haworth

12 Upper Clutha Environmental Society (#67).

considers that the Commissioners should proceed to consider the evidence filed, without prior expert conferencing.¹³

15. Council acknowledges that there was extensive landscape and planning conferencing through the Topic 2 appeal process, but notes that this conferencing was for primary purpose of developing the relevant Chapter 3 and 6 objectives and policies, and determining the areas to which the Priority Area landscape schedules would apply. The earlier Topic 2-related conferencing did not consider the content (text) of the Priority Area schedules themselves, that being a matter for a later Council-initiated process (ie. this Variation).
16. This Variation has been notified for the purpose of populating the content of the schedules, with any expert witness conferencing to discuss that issue, and seek to resolve areas of disagreement between experts. In terms of Mr Haworth's other concerns, Council notes that any experts will be attending conferencing as independent experts rather than advocates, and that there is no scope for the removal of the Chapter 3 objectives and policies.

Requests to conference on mapping

17. Nikki Smetham (landscape expert)¹⁴ has indicated an interest in conferencing on the Outstanding Natural Landscape (**ONL**) boundaries in relation to landscape schedule 21.22.19 Mt Alpha ONL PA. Richard Kemp (planning expert)¹⁵ has also indicated an interest in conferencing to determine the scope for consequential changes to zoning and ONL / Urban Growth boundaries in general, and in relation to the Western Whakatipu Basin ONL PA.
18. As set out in Ms Evan's section 42A report, her view is that substantive requests for amendments to mapping are out of scope.¹⁶ While there remains some potential

13 Diane Lucas is the landscape expert for the Upper Clutha Environmental Society. Should conferencing occur the Society has advised that Ms Lucas is available and intends to attend conferencing for a maximum of two days.

14 Hawthenden Trust (#3).

15 Passion Development Limited (#186)

16 Refer to paragraphs [7.2] – [7.6] and section 11.

for errors to be corrected¹⁷, Ms Evans' position is that other mapping amendments are beyond the scope of the Variation, and therefore there is no benefit in including this matter in expert conferencing.

19. This appears to have been accepted by Ms Smetham, who notes in her evidence, at paragraph 7(a), that: "While I understand the ONL boundaries are out of scope for this hearing I do not resile from my submission statement where I disagree with the ONL boundary because it does not capture the Mt Alpha Fan entirely but a short, truncated segment of the fan".
20. To the extent that the matter of scope for boundary alterations is a legal issue, submissions can be made by all submitters during the hearing.

Directions sought

21. Council respectfully seeks directions confirming that:
 - 21.1 Expert witness conferencing for the landscape and planning experts be directed;
 - 21.2 The draft agenda and topics as set out in Appendix A of this memorandum be confirmed by the Hearing Panel; and
 - 21.3 If any of the parties¹⁸ who have not advised Council of their expert's availability wish for their expert to be involved in conferencing, they are to seek leave from the Hearing Panel by 5pm on 23 September 2023.

DATED this 20th day of September 2023



M G Wakefield / K Viskovic
Counsel for Queenstown Lakes District Council

¹⁷ Using clause 16 of Schedule 1 of the RMA.

¹⁸ Identified in paragraph 8.

Appendix A – Proposed agenda and topics

Draft agenda and topics			
Date	Theme	Topics	Attendees
Monday, 2 October (10:00am – 5:00pm)	Landscape conferencing	<ol style="list-style-type: none"> 1. Structure and content of landscape schedules including: <ol style="list-style-type: none"> a. The level of information provided in the schedules; and b. Whether it is appropriate for attributes and values to be discussed together 2. The appropriate landscape capacity rating scale to be used to inform the schedules 	<ol style="list-style-type: none"> 1. Bridget Gilbert (landscape) 2. Jeremy Head (landscape) 3. Nikki Smetham (landscape) 4. James Bentley (landscape) 5. Ben Espie (landscape) 6. Steve Skelton (landscape) 7. Paul Smith (landscape) 8. Diane Lucas (landscape)
Tuesday, 3 October (9:00am – 5:00pm)	Planning and landscape joint conferencing	<ol style="list-style-type: none"> 3. Planning implications of there being “no landscape capacity” for identified activities 4. Landscape schedule preambles – role and drafting 5. Appropriateness of definitions used in the landscape schedules 6. Whether the landscape schedules should sit outside of the district plan 7. The request to delete landscape capacity assessments from the schedules 	<ol style="list-style-type: none"> 1. Bridget Gilbert (landscape) 2. Jeremy Head (landscape) 3. Ruth Evans (planning) 4. Blair Devlin (planning) 5. Cary Vivian (planning) 6. Morgan Shephard (planning) 7. Ben Farrell (planning) 8. Richard Kemp (planning) 9. Scott Edgar (planning) 10. Rachael Pull (planning) – available only in afternoon 11. Duncan White (planning) 12. Nikki Smetham (landscape) 13. James Bentley (landscape) 14. Ben Espie (landscape) 15. Steve Skelton (landscape) 16. Paul Smith (landscape) 17. Diane Lucas (landscape)

			Note that Brett Giddens and Rachael Pull have requested to attend by video link, but Council is not in a position to confirm that this facility will be available.
Wednesday, 4 October (9:00am – 5:00pm)	Planning conferencing	8. Application of PA schedules to non-rural zones 9. Approach to exception zones 10. [Placeholder for other planning topics]	1. Ruth Evans (planning) 2. Blair Devlin (planning) 3. Cary Vivian (planning) 4. Morgan Shephard (planning) – potentially available in morning 5. Ben Farrell (planning) – potentially available 6. Brett Giddens (planning) 7. Richard Kemp (planning) 8. Scott Edgar (planning) 9. Rachael Pull (planning)
Thursday, 5 October (9:00am – 5:00pm)	Landscape conferencing	Refer to table below.	
Friday, 6 October (9:00am – 2:00pm)	Landscape conferencing	Refer to table below.	
Landscape expert conferencing across 4 – 6 October			
Date / time:		Schedules:	Experts:
4 October (without a Facilitator)			

9.30am – 11.00am	21.22.14 Northern Remarkables ONL PA 21.22.9 Kawarau River ONF PA	Stephen Brown (landscape) Jeremy Head (landscape) Bridget Gilbert (landscape)
11.30am- 1.00 pm	21.22.1 Peninsula Hill ONF PA 21.22.16 Eastern Whakatipu Basin ONL PA	James Bentley (landscape) Bridget Gilbert (landscape)
11.30am – 1.00pm	21.22.17 Victoria Flats ONL PA	Paul Smith (landscape) Jeremy Head (landscape)
2.00pm - 3.00pm	21.22.6 Slope Hill ONF PA	Nikki Smetham (landscape) Bridget Gilbert (landscape)
2.00pm - 3.00pm	21.22.4 Morven Hill ONF PA	Jeremy Head (landscape) Steve Skelton (landscape)
3.30pm – 5.00pm	21.22.3 Shotover River ONFL PA 21.22.11 Mount Iron ONF PA 21.22.20 Roys Bay ONL PA	Ben Espie (landscape) Jeremy Head (landscape) Bridget Gilbert (landscape) Diane Lucas (landscape) Steve Skelton (landscape)
5 October		
9.00am – noon	21.22.24 Lake McKay Station and Environs ONL PA 21.23.1 Cardrona River Mount Barker Rd RCL PA 21.23.3 West of Hawea River RCL PA 21.23.4 Church Road Shortcut Road RCL PA 21.23.5 Maungawera Valley RCL PA 21.22.10 Mount Barker ONF PA	Diane Lucas (landscape) Jeremy Head (landscape) Bridget Gilbert (landscape)
1.00pm – 3.00pm	21.22.21 West Wanaka ONL PA	Diane Lucas (landscape) Paul Smith (landscape) James Bentley (landscape) Bridget Gilbert (landscape)
3.30pm – 5.00pm	21.22.12 Western Whakatipu Basin ONL PA 21.22.15 Central Whakatipu Basin ONL PA	Steve Skelton (landscape) Bridget Gilbert (landscape)

6 October		
9.00am – 10.00am	21.22.22 Dublin Bay ONL PA 21.22.23 Hawea South North Grandview ONL PA 21.23.2 Halliday Rd / Corbridge RCL PA	Diane Lucas (landscape) Ben Espie (landscape) Nikki Smetham (landscape) Jeremy Head (landscape) Bridget Gilbert (landscape)
10.00am - noon	21.22.18 Cardrona Valley ONL PA	Diane Lucas (landscape) Ben Espie (landscape) James Bentley (landscape) Jeremy Head (landscape)
1.00pm - 3.00pm	21.22.19 Mount Alpha ONL PA	Diane Lucas (landscape) Nikki Smetham (landscape) Paul Smith (landscape) Jeremy Head (landscape)