

BEFORE THE HEARINGS PANEL

FOR THE PROPOSED QUEENSTOWN LAKES DISTRICT PLAN

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

SUMMARY STATEMENT OF

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ON BEHALF OF

John May and Longview Environmental
Trust
Submitters

1 INTRODUCTION

- 1 My full name is Ralf Friedrich Wilhelm Krüger. The usual preliminaries are set out in my brief of evidence of 09 September 2023. In this statement, I will use the same abbreviations as there without further explanation.
- 2 I had been made aware that expert witness conferencing was requested by Queenstown Lakes District Council. I was unable to appear in person.

2 JURISDICTION

- 3 Firstly, I wish to address QLDC's opening submissions presented to the Commission on 13 October 2023. While I have no expertise to discuss aspects of law, I must raise an aspect of logic, important for the jurisdiction of the Commission. The core of this also forms a substantive part of my evidence.
- 4 Legal Counsel for QLDC narrows down the scope of valid submissions - and with it the frame for the Commission's decision-making - to the pure wording of the schedules. He reasons that the Court has determined and given directions as to the geographical boundaries of the PA and the strategic framework, setting out how the schedules are to be prepared. The latter directions are set out in Part 2, Chapter 3 "Strategic Direction" of the plan.
- 5 He refers to the section 32 report:

"The scope of this proposal is therefore limited to the content of the schedules, including the way the schedules describe the landscape attributes, landscape values (ONFLs) or landscape character and visual amenity values (RCLs), and the related landscape capacity of each of the 29 Priority Area landscapes."
- 6 And:

"It does not change any aspect of the identification or mapping of the Priority Areas themselves, nor does it seek to introduce new Priority Areas or delete identified Priority Areas. Identification and mapping of the Priority Areas has already occurred and is already set out in Chapter 3 of the PDP and the web mapping application."
- 7 Counsel addressed the Commission as follows:

"If the Panel was to recommend changes to the Priority Area mapping, it would not only be endorsing departures from the Environment Court determinations, but it would be permitting change without there being appropriate opportunities for participation by those that are potentially affected."
- 8 I do not dispute the Court's directions as to the PA boundaries and the strategic framework. In my evidence, I do not seek any changes to these aspects of the variation's basis. But I regard the approach QLDC has taken in implementing the directions as flawed.
- 9 Strategic direction 3.3.37 clearly sets out that:

"For the Priority Areas listed in SP 3.3.36, according to SP 3.3.38, describe in Schedule 21.22 at an appropriate landscape scale:

 - a. the landscape attributes (physical, sensory and associative); the related landscape capacity.*
 - b. the landscape values; and*
 - c. the related landscape capacity ..."*

- 10 To prepare the schedules for the PA, the Court has approved the qualifying addition “*at an appropriate landscape scale*”. Had the Court foreseen the preparation of the LS at a PA-scale, it would have said so – it has not. It has directed that the LS are to be prepared at an appropriate landscape scale. Exactly as for the precise written content of the landscape schedules (the “words”), the scale has been left to the discretion of QLDC and subsequently to the contracted team of experts.¹ Everything in this variation flows from 3.3.37 – words and scale for the LS.
- 11 I therefore remain of the opinion that the underlying scale of the LS must be one of the major discussion points for this hearing and form part of the decision to be made by the Commission.

3 LOSING SIGHT OF THE TARGET?

- 12 Since submitting my evidence, I have read numerous submissions, all other documents produced by other experts, the JWS and its related papers, as well as some of the documentation relating to the Queenstown hearing.
- 13 I note that the number of minutiae is tremendous, that self-centred requests relating to individual pieces of land and interests are plentiful and that there are indeed numerous submissions out of scope. The work done by the QLDC team has been significant. Possibly resulting from this pressure and potentially driven by the necessity to be accurate and fair, it seems to me that sight of the overall goal of the LS has been lost to a degree.
- 14 We need to remind ourselves what the Court intends to achieve with the introduction of the LS into the DP:
- Overall: improvements in the implementation of s6(b) RMA – “*The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development*”
 - To afford the identified PA (being those areas that are perceived to be subject to higher development pressure) the necessary attention and protection.
 - Instantaneous information on landscape-related content in resource management application processes for experts and lay-people.
 - “Simplification” or streamlining of landscape assessment processes.
 - More uniform outcomes in expert opinions.

4 SCALE

- 15 As outlined in detail in my evidence, I am of the view that an unfortunate scale for the preparation of the LS has been chosen. I remain of my opinion – despite having perused the documentation made available by the QLDC team pre-hearing - that the Court has not prescribed the PA-scale for the LS but has left it open which scale was preferred by the landscape experts.

¹ It is notable – and I have elaborated on that aspect in my evidence – that the terminology in the documents has changed after the initially notified variation. Originally – and correctly as I believe – the schedules were called “schedules” or “landscape schedules”. Since, the term “PA-schedules has been introduced. This term perpetuates.

- 16 Regardless of the direction to prepare the LS “*at an appropriate landscape scale*”, the team has chosen to use the PA-scale. In my professional opinion, this scale is neither that of a landscape (the PAs are not landscapes), nor is it appropriate (in terms of providing information, useful for the purposes).

5 CAPACITY

- 17 I have made detailed commentary on my opinion of the insufficiencies of the landscape capacity ratings. I generally regard the process of quantifying the potential ability of a landscape to absorb development of any kind as flawed. Therefore, ratings such as the ones used in the schedules are of little assistance to the plan user. Combined with the described vagueness emanating from the terminology, I regard the resulting capacity ratings as not effective and of no actual value within the framework of landscape assessment. They do not provide guidance to the plan user and could even be mis-leading.

- 18 Te Tangi a te Manu advises:

“Using matrices to measure the significance of effect as a function of ‘sensitivity’ and ‘magnitude’, as used in some overseas guidelines, is not recommended for the following reasons ...”

- 19 In my professional opinion, the only way to properly assess whether or not a landscape can absorb further change is by way of considering a proposed development - by assessing the specific development proposal on specific sites, assessing and rating the effects on landscape attributes and values and then determining whether or not this proposal constitutes appropriate change. All this happens on the site-scale and without the need to consult “high level” assumptions.

- 20 It is my professional opinion that landscape capacity ratings should be excluded from the landscape schedules altogether because they fail to comply with best practice in landscape assessment. While this opinion constitutes a complete rejection of the landscape capacity rating scheme, I acknowledge that the Court has directed that a capacity rating evaluation and scale must be included in the LS. If such a landscape capacity rating system must be included in the LS, it requires numerous changes for it to perform to some sensible degree.

- 21 Detail about my suggestions has been set out in my evidence. Here, I wish to add the following aspects.

Landscape Capacity Rating “No Capacity”

- 22 The capacity rating “*no capacity*” has been criticised by numerous experts. I have supported it in my evidence. In par235, I stated:

“If the rating scale is supposed to remain, it is my opinion that the newly added category “very limited to no landscape capacity” should be removed and that the rating scale be reinstated as a 4-point-scale as originally proposed in the notified version of the variation. I have provided sufficient arguments for that step in my evidence above.”

- 23 Since, I have reviewed this position. Amongst similar opinions of other colleagues, I found this comment in par17 of Mr Skelton's evidence particularly plausible:

"The word 'no' is too determinative, especially with the understanding that landscape capacity/sensitivity is imprecise and can change over time."

- 24 Combining this – as Mr Skelton has done - with the wording in s5.49 of TTatM², I have changed my opinion.
- 25 In the course of the discussions since evidence has been exchanged, it has been suggested that the capacity rating *"very limited to no landscape capacity"* be replaced with *"extremely limited landscape capacity"*.
- 26 When I changed my mind, as set out above, I did this under the condition to accept the proposed capacity rating *"very limited to no landscape capacity"*. I also suggest that this may need further qualification. There are landscapes that definitely cannot (neither now, nor in the future) absorb certain activities – such as quarrying on Roys Peninsula. In such a case, a *"no capacity"* rating would be perfectly appropriate. If this aspect has already been addressed in the Queenstown hearing or prior, I am interested to be directed to this outcome of the discussions.
- 27 In any event – if a landscape capacity rating scale was to be maintained in the LS, I now support the capacity rating *"very limited to no landscape capacity"*. In my opinion, the latest proposal of *"extremely limited landscape capacity"* does not reflect the fact that activities exist that some landscapes can never absorb.

Terminology

- 28 I have criticised the *"soft"* and *"spongy"* terminology when quantitatively defining potential development. Terms such as *"a careful or measured amount"*, *"a modest amount"* or *"a very modest amount"* are useless in conveying directions on what is appropriate and what not.
- 29 In my evidence, I have suggested that a more appropriate approach would be to use *"solid, limiting figures"*. I have noted that – for example - on the subject of earthworks, quantitative rules already exist in the District Plan. Ms Evans – in par6.23 of her rebuttal evidence notes that

"... there are number of standards in the subdivision and Rural Zone chapters that address bulk form of development. This includes controls over the size of building platforms, maximum height of buildings, maximum ground floor area of buildings, and boundary and road setbacks. I note that these rules already control some of the matters Mr Kruger considers could be part of a quantitative system."

- 30 Ms Gilbert – in par7.39 of her rebuttal evidence – states that she does *"... not support [my] suggestion for the development of a quantitative system, ..."* She continues to say:

"In drawing on the preambles, the PA schedules are intended to provide landscape related guidance for applications, not become an effective replacement for the other rules, standards and assessment matters included in the relevant zone provisions."

² *"Generic attributes such as sensitivity and capacity are necessarily imprecise because they estimate a future. They can be useful and necessary in policy-based assessments, or in comparing alternative routes/localities, but they become redundant once the actual effects of a specific proposal can be assessed directly."*

- 31 With respect, this is evasive. If the Commission was inclined to accept that the capacity rating scale and the associated terminology should be reviewed, it is my opinion that a system can easily be developed, drawing on and referring to the existing site standards/ rules.
- 32 Once again – what is the utility of the landscape schedules, if the definitions are imprecise to the extent of being useless?
- 33 This topic is another core of the variation and requires thorough discussion. Mr Farrell’s evidence will add to this.

Evidence of Ben Farrell

- 34 I have read the brief of evidence by Ben Farrell, planner. Mr Farrell raises similar concerns about the capacity ratings as I have.
- 35 He says at par 16:

“With all due respect to Ms Evans and Ms Gilbert (and QLDC), the framework is going to be of less assistance than it could have been, because:

(a) No proposals (resource consent applications) will be at PA scale, so the Landscape Capacity Ratings (set at a PA scale) offer no meaningful assistance to consequential consenting processes. The direction (guidance) that is provided in the Landscape Capacity Ratings is ambiguous and idle. In other words, the utility of the Landscape Capacity Ratings is questionable unless they can be relied on. If they cannot be relied on, then they do not achieve the intent of SO3.3.37(c) and SO3.3.38(c).

(b) By providing guidance on ratings, as opposed to actual ratings, the framework does not achieve its primary purpose of implementing SO3.3.37(c) and SO3.3.38(c).

(c) Moreover, the failure of the Landscape Capacity Ratings to provide meaningful assistance will create unreasonable and unnecessarily high financial costs and uncertainties on parties wanting to understand or debate what Landscape Capacity actually means for a property – this applies to numerous people including existing landowners/ratepayers (as land users/developers and as neighbors); future landowners (people wanting to purchase property); consenting authorities and decision-makers; and interested parties.”

- 36 I endorse Mr Farrell’s criticism of the capacity ratings. He succinctly unveils the discrepancies created by the variance in scale of LS and site-specific landscape assessments. He questions the utility and helpfulness of the “framework”. I agree.
- 37 If ever the capacity ratings are to be relied on, they require substantive and precise definitions to function.

6 CAN THE LANDSCAPE SCHEDULES ACHIEVE THE TARGET?

- 38 I think not.
- 39 In the almost 25 years since the old District Plan has been made operative, the knowledge, expertise and accumulated experience about and with the district’s landscapes is significant. The values of these

landscapes and features are well known to experts and the wider New Zealand and international. The fact that those values and attributes require stringent protection is pervasive.

40 The existing framework in the DP, the described, accumulated resources and the now well-established Te Tangi a te Manu (Aotearoa New Zealand Landscape Assessment Guidelines) are - in my opinion – an extraordinary basis for highly professional outcomes when assessing applications for resource consent or plan change in the Queenstown Lakes District.

41 What value do the landscape schedules add? The schedules are “high level”, as is emphasised at length and repeatedly. Examples for the disclaimers are omnipresent.

42 From the preamble:

“The landscape attributes and values identified, relate to the PA as a whole and are not intended to describe the relevant attributes and values of specific sites within the PA.”

43 And:

“Given the PA scale of the landscape assessment underpinning the schedules, a finer grain location-specific assessment of landscape attributes and values will typically be required for plan development or plan implementation purposes (including plan change or resource consent applications) ... The PA Schedules represent a point in time and are not intended to provide a complete record. Other location specific landscape values may be identified through these finer grained assessment processes.”

44 From Ms Gilbert’s evidence in chief (quoting from the PA Methodology Report):

“The PA Methodology Report explains at [5.24] (refer s32 Appendix c1), that the authors did not consider it necessary to undertake landscape character unit delineation to inform an understanding of landscape values (and in turn, landscape capacity). However, this is not to say that localised variances in values and landscape capacity do not occur across a PA. The PA Schedules have been drafted to acknowledge this variance in two ways:

(a) By acknowledging more localised nuances in the main body of the Schedule of Values and Landscape Capacity comments (where appropriate).

(b) By signalling ‘upfront’ in the Preamble to Schedule 21.22 and 21.23 that: the landscape attributes, values and capacity relate to the PA as a whole and should not be taken as prescribing the attributes, values and capacity of specific sites; and a finer grained site-specific assessment of a plan change, or resource consent process may identify different attributes, values and capacity to that identified in the PA Schedule.”

45 From the s42a report:

“Ms Gilbert goes on to explain that it is important that the capacity is evaluated at a high level rather than site specific level, as it is intended as guidance only. The recommended amendments to the preambles set this out, as well as specifying that site specific landscape assessments will be required for individual proposals, and that this may identify a different capacity rating.”

46 I have discussed these aspects in my evidence and have given a typical example of what might happen when applying the schedules in practice. I remain of the view that the LS in their current form do not contribute positively to the landscape assessment process. At best, they provide some “high level” information about the area, a site is embedded within. That scenario (scenario A) arises, when the assessed values and attributes, their ratings, the capacity rating and the outcomes of the site-specific assessment are congruent – or at least substantially so. At worst, the LS create confusion and uncertainty. This scenario (scenario B) can arise, when the content of the LS for the PA are contrary or

partially contrary to the findings of the site-specific landscape assessment. Mr Farrell - when answering questions of the Commission – pointed out that there is a high risk for the “high level” schedules to be applied in the initial phases of an application – “*to be taken as read*”, as he phrased it. I share this concern and have discussed it in my evidence. The LS will be used by landowners, real estate agents, legal advisers and council staff to provide information on the potential of a specific site within the relevant PA. This is precisely what they should not and cannot be used for – but I fear they will.

- 47 Scenario A provides a neutral outcome, where the LS have indeed provided some initial guidance, to be confirmed by the detailed assessment. Scenario B will – almost inevitably – lead to intense debate between landowners, experts, council staff and the legal teams. The discrepancy between LS and detailed assessment outcomes will (and possibly can) not be brushed aside easily. Consequentially, countless hours of work, significant extra cost and potentially debate on all levels of the consenting process will be the result.
- 48 In any event, the outcomes of the site-specific landscape assessment and the resulting evaluation of the site’s capacity to absorb change will prevail. The landscape schedules’ contribution to the process will have been neutral to disturbing – certainly not positive.

7 WHERE TO?

- 49 Having read and analysed the large pool of further recent information, my original conclusions remain intact. I repeat these here:
- 50 It is my professional opinion that the changes and amendments to the LS system recommended in my brief of evidence may assist in improving the useability of these. However, I remain anxious that the expectations loaded upon this proposed variation to the PDP may not lead to the desired successful instrument.
- 51 Should the commission be inclined to follow my recommendations and those of some other submitters, the LS may gain in clout and value. To what degree, remains to be seen and is in parts subject to the skills of the LS team tasked with further work.
- 52 Ultimately, should the commission not favour the refinement of the LS or should the refinements fail to achieve what is desired, it is my opinion that the LS should be “downgraded” to a high level orientation document. This document should – in my opinion and coarsely spoken - reside outside the strategic framework and become part of an appendix in the plan.

Vienna, 29 October 2023
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