

# Queenstown Lakes District Council

## Variation to the Proposed District Plan: Priority Area Landscape Schedules

### Hearing Panel Directions 1: General hearing process and management directions

#### 1. INTRODUCTION

1.1 The purpose of these directions is to:

- a) Introduce the Independent Hearing Panel (IHP, or the Hearing Panel);
- b) Explain how the hearings process will be managed to ensure clarity and certainty for all parties during the Hearing; and
- c) Ensure a fair and efficient hearings process.

Other directions may be issued by the Hearing Panel, both in the lead-up to the Hearing, and during the Hearing, as required.

#### 2. HEARING PANEL

2.1 The Hearing Panel appointed by the Queenstown Lakes District Council (the Council) is required to make recommendations as to whether or not to accept or reject the submissions received on the Landscape Schedules Variation and any proposed amendments to its provisions. The Council is then required to decide whether to accept or reject the Hearing Panel's recommendations.

2.2 Jane Taylor has been appointed as a Commissioner, and Chair, of the IHP. The other members appointed to the Hearing Panel are Commissioner Peter Kensington, and Commissioner Quentin Smith.

2.3 A short biography of each Hearing Panel member can be found on the Council's website for the Priority Area Landscape Schedules: [www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/hearings](http://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/hearings)

#### 3. BACKGROUND

3.1 The Priority Area Landscape Schedules Variation is the outcome of an Environment Court decision<sup>1</sup> The decision followed appeals on Stage 1 of the District Plan relating to the management of landscapes in the Rural Zone.

3.2 The Environment Court decided that requiring protecting of the landscape values of Outstanding Natural Landscapes (ONLs)/Features (ONFs) and the maintenance or enhancement of visual amenity values of Rural Character Landscapes (RCLs), without specifying what those values were, did not provide enough certainty to ensure that the policy direction of the Proposed District Plan

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<sup>1</sup> [2019] NZEnvC 205 Topic 2.2 19 Dec – Opt

(PDP) was achieved. The Court therefore directed that the landscape values of ONL/Fs and the landscape character and visual amenity values of RCLs, should be identified and included in schedules of the PDP.

- 3.3 In August 2015, the Council notified the first stage of the PDP as part of the review of the Operative District Plan (ODP). Stage 1 included (amongst other chapters) Chapter 3: Strategic Direction, Chapter 6 Landscapes and Rural Character, and Chapter 21: Rural Zone.
- 3.4 The Court issued a number of interim decisions on Topic 2 (Landscapes and Rural Character) that directed the Council to identify the attributes, values and capacity of identified 'Priority Area' (PA) landscapes within the District's ONFs, ONLs and RCLs.
- 3.5 Interim decisions set out that while mapping of ONFs, ONLs and RCLs assist in identifying their geographic extent, a schedule that describes their landscape values and landscape capacity would assist in consent application processes by making clear what is being protected or managed at the landscape scale.
- 3.6 Policies have been added to PDP Chapter 3: Strategic Directions, referred to as a 'Values Identification Framework' (VIF) that identifies the PA landscapes and a high-level methodology to identify landscape values and landscape capacity within each PA landscape. Chapter 3: Strategic Directions also directs Council to notify a proposed plan change to implement these policies (via Policy 3.3.32 of the PDP).
- 3.7 The Priority Area Landscapes Variation introduces proposed landscape schedules 21.22 and 21.23 to Chapter 21: Rural Zone of the PDP. Landscape Schedule 21.22 sets out landscape values, attributes, and capacity for Priority Area ONLs and ONFs whereas Landscape schedule 21.23 sets out landscape character, visual amenity values and capacity for Priority Area RCLs.
- 3.8 The Priority Area Landscapes Variation was publicly notified for submissions on 30 June 2022. In total, 208 submissions were received on the Variation, with over 2,500 individual submission points.

#### **4. HEARING DATE AND TIMEFRAMES**

- 4.1 The hearing will commence at 11:00am on **16 October 2023** at the Mercure Hotel, Sainsbury Road, Fernhill in Queenstown. Each day thereafter will start at 9am unless the Hearing Panel advises otherwise.
- 4.2 The hearing will commence at 11:00am on **6 November 2023** at the Wānaka Community Hub 34 McDougal Street. Each day thereafter will start at 9am unless the Hearing Panel advises otherwise. Any changes to this date will be communicated in advance by the Hearing Panel.
- 4.3 In general, the Hearing Panel expects to hear the PA landscape schedules located in the Queenstown area while sitting in Queenstown, and those relating to the Upper Clutha in Wanaka. However, the Panel is prepared to be flexible where this would result in a more efficient hearing process.

- 4.4 Timeframes and deadlines stated in this document are intended to balance competing considerations arising from:
- a) ensuring that submitters who wish to be heard have a fair hearing; and
  - b) conducting an efficient hearing process.
- 4.5 Failure to meet stated or directed timeframes and deadlines without good reason may result in late material not being considered by the Hearing Panel or exclusion from expert conferencing, or hearing sessions (as applicable).

## **5. HEARING ADMINISTRATOR AND WEBSITE**

- 5.1 All correspondence, notices, evidence, and documents for the IHP must be communicated via the Hearing Administrator Lynley Scott (Email: DP.Hearings@qldc.govt.nz, Phone: +64 3 443 0121).
- 5.2 No person should communicate directly with the Hearing Panel or any member of the Panel except during a hearing session.
- 5.3 Every communication to the Hearing Panel must clearly state in its heading or opening paragraph:
- (a) the name of the submitter who or on whose behalf the communication is from;
  - (b) the submission number (if known); and
  - (c) the relevant Hearing Topic name.
- 5.4 The Hearing Administrator will assist the Hearing Panel by arranging days and times for all submitters who wish to be heard to be present at the hearing. The Hearing Panel has directed the Hearing Administrator to contact all submitters who wish to be heard to arrange hearing slots. While the Hearing Panel and the Hearing Administrator will endeavour to accommodate all requests, submitters should be aware that it will not always be possible to accommodate preferred days and times. Note that (below) the Hearing Panel has imposed general speaking limits, and those seeking more time will need to seek leave of the Panel.
- 5.5 The Hearing Administrator will be present throughout the hearing and is able to assist parties with administrative queries.
- 5.6 All relevant information for the hearing will be posted as received by the Hearing Administrator on, can be found on the website: [www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/hearings](http://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/hearings).

## **6. SECTION 42A REPORT**

- 6.1 The Council will prepare a s42A report, including any supporting expert reports/evidence by the Council's expert advisors, and provide it to the Hearing Administrator by 12noon on **11 August 2023**.
- 6.2 The s42A report and its supporting reports/evidence must comply with the Environment Court Code of Conduct (see [Practice-Note-2023-.pdf \(environmentcourt.govt.nz\)](#)) and the authors/technical

experts must provide their qualifications and experience in their reports/evidence by way of attachments.

## **7. SUBMITTER EVIDENCE**

7.1 The purpose of pre-circulation of evidence is to ensure all parties, and the Hearing Panel, understand the issues that are to be presented prior to the hearing session commencing. It will also enable a much more efficient hearings process.

### **Expert Witnesses**

7.2 Any submitter may file expert evidence to support their case. Such evidence must be provided to the Hearing Administrator by 12noon on **8 September 2023**.

7.3 All expert evidence, and conduct by the experts throughout this process, must comply with the Environment Court Code of Conduct (see [Practice-Note-2023-.pdf \(environmentcourt.govt.nz\)](#)).

7.4 All expert evidence must, as relevant:

- a) identify the key matters in dispute and focus on those;
- b) identify the key reasons for the difference of opinion with other experts (including any issues regarding methodologies, etc);
- c) for expert planning witnesses in particular, provide clear and concise District Plan provisions for the Hearing Panel that would address the expert's concerns (in strike through / underscore), with succinct reasoning why, including an appropriate s32AA analysis and discussion for any changes considered necessary;
- d) if issues are accepted and agreed among experts merely state so, or reference any joint witness statement, rather than rewording them; and

7.5 The Hearing Panel strongly encourages experts to consult with each other to ensure clarity of issues and concise statements of evidence focused on the key issues that cannot be resolved.

### **Expert witness conferencing**

7.6 The Hearing Panel may, at any time prior to or during the hearings, direct that a conference of experts be held. Expert conferencing will normally only be directed where one or more specific issues which are the subject of expert evidence require separate conferencing.

7.7 Following receipt of submitter evidence, counsel representing the Queenstown Lakes District Council shall confer with the parties and, if considered appropriate, by 12noon on **15 September 2023** provide the Hearing Panel and parties with a proposed conferencing timetable which should include a draft agenda outlining topics, attendees, days and times for conferencing, with planning conferencing to be last. If there is any issue, counsel for the Council may raise that for the Hearing Panel and seek directions.

- 7.8 If, following receipt of the proposed conferencing timetable, expert conferencing is then directed by the Hearing Panel, it is expected that all relevant expert witnesses will attend expert conferencing, which will take place the week beginning **2<sup>nd</sup> October 2023** and be in person, unless special circumstances apply and approval is sought from the Hearing Panel by 12noon **on 22<sup>nd</sup> September 2023** and granted by the Hearing Panel.
- 7.9 Participation in expert conferencing (including communication related to any conference) is limited to the experts. Submitters (who are not experts) and lawyers are not entitled to participate in this process. The Hearing Panel will require that the contact details of experts be provided so that its facilitators can make direct contact with experts to organise expert conferencing. Failure by a submitter or their lawyer to supply contact details for experts is likely to result in those experts not receiving communication about expert conferencing.
- 7.10 The Hearing Panel will decide whether a person has appropriate qualifications, independence, expertise and experience to be qualified to attend as an expert at an expert conference.
- 7.11 The Hearing Panel will have the same expectations of expert witnesses as set out in the Environment Court's Practice Note, including in particular:
- (a) an expert witness has an overriding duty to assist the Hearing Panel impartially on matters within the expert's area of expertise;
  - (b) an expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.
- 7.12 In addition, every person at an expert conference who is participating in his or her role as an expert witness must agree to comply with the Code of Conduct for such witnesses and not act as an advocate for the party who engages the witness. The expert witness must exercise independent and professional judgement and must not act on the instructions or directions of any person.
- 7.13 An expert conference may be facilitated by a person appointed by the Hearing Panel, or if appropriate, the expert conference may be self-managed. The facilitator or appointed member of the conference must prepare a report on the conference and provide it in writing or electronically to the Hearing Panel and the persons who attended the conference via the Hearing Administrator no more than five (5) working days after the conference.
- 7.14 The report on the expert conference will take the form of a joint statement signed by the experts and will include the following matters:
- (a) the matters and issues that are agreed between the experts (including key facts and assumptions and identification of any methodology or standards used by the experts in arriving at their opinions and reasons for differences in methodology and standards (if any));
  - (b) the issues upon which the experts cannot agree and the reasons for their disagreement;

- (c) identification of published standards or papers relied upon in coming to their opinions, including identification of all material regarded by the experts as primary data;
  - (d) confirmation that in producing the statement the experts have complied with the Code of Conduct for Expert Witnesses.
- 7.15 Expert conferencing will not be open to non-experts observers, but may be attended by the section 42A officer, especially if the experts are preparing track changes to the plan.

#### **Rebuttal evidence**

- 7.16 The s42A report authors, and any expert advisors on behalf of the council, may provide rebuttal evidence to the Hearing Administrator by 12noon on **29 September 2023**. This evidence must respond only to evidence filed and must not introduce new evidence.
- 7.17 To avoid doubt, no further rebuttal evidence in response to any rebuttal by the s42A report authors or experts is permitted. Submitters and experts may raise any remaining issues during their presentation to the Hearing Panel but new material, not previously circulated in accordance with these directions, will not be accepted. The Hearing Panel does not want time wasted responding to new issues, or material, not previously circulated. It is also a matter of fairness for all submitters and parties involved.

#### **Lay Witnesses**

- 7.18 Any submitter who intends to present written lay evidence (and any associated relevant material) at the hearing (as opposed to simply speaking to their submission at the hearing, which is addressed below) is to provide a copy of it to the Hearing Administrator by 12noon on **10 October 2023**.
- 7.19 Written lay evidence should identify and address the key issues of concern, identify and address any relevant matters identified in the s42A report and in s32AA of the RMA (which can be found at [Resource Management Act 1991 No 69 \(as at 13 April 2023\), Public Act Contents – New Zealand Legislation](#)) and, where appropriate, provide specific District Plan drafting (i.e., proposed or alternative rules, assessment matters and so on) for the Hearing Panel to address their concerns.

#### **Late or supplementary evidence**

- 7.20 Late or supplementary evidence will only be accepted at a hearing session:
- a) where circumstances make it necessary for such evidence to be provided; and
  - b) with the leave of the Hearing Panel.

### **8. TE REO MĀORI AND SIGN LANGUAGE**

- 8.1 Any submitter, counsel or witness may speak in Te Reo Māori or utilise NZ Sign Language at the hearing. To enable time to engage the assistance of an interpreter, notice of any party wishing to speak in Te Reo Māori or utilise NZ Sign Language must be provided to the Hearing Administrator by 12 noon **1 September 2023**.

## 9. PREPARING FOR THE HEARING

- 9.1 The Hearing Panel must ensure that the process of hearing and considering submissions, leading to the issue of their recommendations report, is fair and efficient. This necessitates the assistance of all submitters to ensure a fair, focused and efficient hearing process. The Hearing Panel expects all submitters preparing and presenting during the hearing to be mindful of these matters.
- 9.2 The order (subject to the efficient running of the hearing) of the hearing will be:
- a) any procedural matters;
  - b) the Council (any legal submissions and the 42A report author(s) and any expert witnesses);
  - c) submitters in support and opposition of the plan change; and
  - d) the Council's right of reply.
- 9.3 Attendance via video cannot be accommodated within the venue and the hearing will not be live-streamed. Attendance is only available in person at the venues specified for Queenstown and Wānaka.
- 9.4 To ensure the hearing runs fairly and efficiently, and all submitters have a reasonable understanding of when their submission will be heard, presentations by submitters will be subject to time restrictions. A daily agenda of presentations will be prepared by the Hearing Administrator and placed on the Website. Unless otherwise directed by the Hearing Panel, the hearing will be managed in accordance with the daily agenda.
- 9.5 The Hearing Panel has allocated a default time of fifteen (15) minutes for each submitter in the absence of any specific request for additional time (see below). Requests for additional time will not be unreasonably refused. The ultimate decision as to how much time is allotted to each submitter will be made by the Hearing Panel.
- 9.6 If not addressed immediately during the first discussion/correspondence with the Hearing Administrator, submitters with experts and lawyers, or who consider they need additional time, may within 5 working days of first being contacted by the Hearing Administrator request in writing a longer period of time but are encouraged to ensure any additional time requested is reasonable and well considered. Any request for a longer time period shall include clear reasons why the additional time is required. The Hearing Administrator will arrange times with submitters in conjunction with the Hearing Panel, but the Hearing Panel's expectation is that all submitters will ensure the timely delivery of their submissions (and any associated expert evidence) during the hearing. The allocated time includes questions, so it is important that submitters leave time to answer questions from the Hearing Panel.
- 9.7 All legal submissions, representations (including PowerPoint slides) are to be provided electronically (unless requested otherwise in writing with reasons to the Hearing Panel by **11 October 2023** and accepted by the Hearing Panel) to the hearing Administrator by 12noon of the day prior to the submitter presenting at the hearing.

9.8 Unless leave is sought in writing prior to the Hearing Administrator by 12noon **11 October 2023** and granted by the Hearing Panel:

- a) representations and presentations (including PowerPoint slides) shall not be longer than 10 pages, 1.5 line spacing and 11-size font (excluding appendices which must be directly relevant); and
- b) legal submissions shall not be longer than 20 pages, 1.5 line spacing and 11-size font (excluding appendices and referred cases or other authorities, which must be directly relevant).

## **10. PRESENTING AT THE HEARING**

10.1 The Panel will have read all submissions, evidence and pre-circulated documents. Lay submitters will not be permitted to present and read their original submission. It is of greatest assistance to the Hearing Panel if submitters and witnesses succinctly focus on their key issues and proposed District Plan provision changes, with reasons why.

10.2 At the hearing, each expert witness is to provide the Hearing Panel with, and talk to, a succinct (no more than 2 pages 1.5 line spacing and 11-size font), summary of the key points of their evidence. This summary must include the latest position on the matters remaining in dispute (including any answers through the question process).

10.3 Submitters and witnesses will be kept to their time limits to ensure the fair, timely and efficient management of the hearing. It is a common courtesy to following submitters to ensure that all submitters have a reasonable and fair opportunity to present to the Hearing Panel.

10.1 Proceedings will be digitally recorded. The recordings will be available as audio files on the Council website within two working days of being recorded.

10.2 All submissions and evidence lodged in advance of the Hearing will be available on the Council website within two days of receipt.

10.3 Other submissions and evidence presented, and material tabled, will also be available on the Council's website within two working days of the Hearing.

10.4 Unless requested in writing to the Hearing Administrator in advance of the hearing commencing, and approved by the Hearing Panel, no submitter or person attending the hearing shall take a private recording of it.

## **11. RIGHT OF REPLY**

11.1 The Council's right of reply will be in writing and provided to the Hearing Administrator within the time set by the Hearing Panel at the end of the 'in-person' hearing.

11.2 Following the written reply, the Hearing Panel will confirm that it has all the information it requires, before formally closing the hearing.



## **12. SITE VISIT(S)**

- 12.1 The Hearing Panel may undertake a site visit(s) before the hearing commences. This is not part of the hearing but would be to provide the Hearing Panel with context to aid its understanding of the issues.
- 12.2 Any submitter may inform the Hearing Administrator by 12noon on **27 September 2023** of places of interest (ideally shown on a map) along with reasons why they wish the Hearing Panel to visit the site for the Panel's consideration. The Panel will generally not seek to enter private residences or buildings but may agree to visit private sites (including the sites that are the subject of the Plan Change).
- 12.3 The Hearing Panel may also undertake site visits either during or after the hearing where necessary to aid their understanding of the issues and the evidence presented.
- 12.4 The Hearing Administrator will work with the Hearing Panel to organise the site visit(s) and liaise with submitters who own sites that may be visited. All health and safety requirements will be met during the site visit process.

## **13. AMENDMENTS**

- 13.1 Any submitter may seek, in writing to the Hearing Administrator, variations to these directions from the Hearing Panel. Any such notice must provide the reasons for seeking the variation and clearly state what change is sought.
- 13.2 The Hearing Panel may amend any of the directions by issuing further Directions to the submitters. All Directions will be posted to the Website by the Hearing Administrator.

Jane Taylor, Peter Kensington and Quentin Smith

Commissioners

4 August 2023

## Appendix 1: Process steps and dates up to the hearing

Clause(s) in Direction	Step	Date
6.1	Section 42A Report and attached expert reports on behalf of QLDC to be electronically filed with the Hearing Administrator	12noon 11 August 2023
8.1	Notice to the Hearing Administrator from any party wishing to speak in Te Reo Māori or utilise NZ Sign Language	12noon 1 September 2023
7.2	Date for electronic filing any expert evidence with the Hearing Administrator	12noon 8 September 2023
7.7	Counsel for the council to provide an expert witness conferencing timetable	12noon 15 September 2023
12.2	Submitters to inform the Hearing Administrator of any requests for places to visit for the site visit(s).	12noon 27 September 2023
7.16	Rebuttal evidence on behalf of QLDC	12noon 29 September 2023
7.8	Facilitated expert witness conferencing if required	Week of 2nd October 2023
7.18	Date for electronic filing of any lay witness evidence (as explained in cl 9.1) with the Hearing Administrator	12noon 10 October 2023
9.8	Date for electronic filing of legal submission or legal submissions longer than 20 pages to be provided electronically to the Hearing Administrator	12noon 11 October 2023
9.7	Any request to provide representations and presentations (including PowerPoint slides) longer than 10 pages	Case by case basis as required
4.1	Hearing Commences	16 October 2023