BEFORE HEARING COMMISSIONERS
IN QUEENSTOWN | TĀHUNA ROHE

UNDER THE	Resource Management Act 1991 ("**Act**")
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 (**PA Schedules**)
AND IN THE MATTER OF	submissions on the PA Schedules
BETWEEN	**THE CARDRONA CATTLE COMPANY LIMITED** ("**CCCL**")
	THE MILSTEAD TRUST
	GIBBSTON VALLEY STATION LIMITED ("**GVS**")
	CARDRONA VILLAGE LIMITED ("**CVL**")
	Submitters
AND	**QUEENSTOWN LAKES DISTRICT COUNCIL**
	Planning authority

REPRESENTATIONS ON BEHALF OF CCCL AND MILSTEAD TRUST

Before a Hearing Panel: Jane Taylor (Chair),
Commissioner Peter Kensington and Councillor Quentin Smith

Introduction

1. I am project managing various matters for each of the above-named submitters, including their participation in these proceedings. They have varying degrees of interest and concerns in respect of the matters at issue. Some are common, and others are specific to the particular submitter.

2. I note that most submitters have provided expert and/or lay evidence as follows:

   (a) ***CCCL***: Mr Giddens (Planning), Mr Smith (Landscape), Mr Henderson (CCCL);

(b) ***Milstead Trust***: Mr Devlin (Planning), Ms Smetham (Landscape), Mr Tylden (Milstead Trust); and

(c) ***GVS***: Mr Giddens (Planning).

3. ***CVL*** has been content to let its submission speak for itself, with limited additional elaboration through these representations.

4. These representations are made jointly, but with specific parts applying more, or solely, for one or more of the identified submitter as indicated.

5. I also note that I am also project managing for the ***Hutchinson Family Trust***. While they are a submitter, they no longer wish to be heard but confirm their written submission still stands.

6. I understand that Mr Giddens and Mr Devlin may also be representing other submitters (who I am not contracted to), and so will leave it to them to identify those submitters and their interests as appropriate.

Consultation – the Community's Plan (all submitters)

7. The adequacy of the consultation process undertaken by Council in informing the Schedules has been well canvassed by others, such as Mr Cossens. I simply note that:

(a) The consultation process was woeful. It would not meet any recognised standard of survey design, participation, quantitative or qualitative analysis.

(b) This means that the starting point for the Schedules needs to be treated with some caution. While in theory, deficiencies in the original consultation process and development of the Schedules can be remedied through the process of formal submissions and the hearing of submissions, that is something of a herculean task.

(c) This is particularly the case where the District Plan is supposed to be the Community's plan, eg refer:

> The district plan is key to the Act's purpose of enabling "people and communities to provide for their social, economic, and cultural well being". It is arrived at through a participatory process, including through appeal to the Environment Court. The district plan has legislative status. People and communities can order their lives under it with some assurance. A local authority is

> required by s 84 of the Act to observe and enforce the observance of the policy statement or plan adopted by it. A district plan is a frame within which resource consent has to be assessed. [1]
>
> We expect the experts will explain how they ascertained the values of people and communities. [2]
>
> ... the District Plan, which represents the community's interpretation and application of those documents. The Coastal Policy Statement is general in nature, and its provisions are incorporated (perhaps subsumed) within the District Plan provisions.[3]
>
> The planning witnesses at the hearing accepted that a district plan reflects the relevant community's views, hopes and aspirations. [4]

(d) The District Plan and its Schedules are far from the domain of experts only, despite what Ms Gilbert might suggest:[5]

> ... the PA Schedule is a technical document that will primarily be referenced and interpreted by landscape experts (to assist decision makers)

Evidence (all submitters)

8. Community participants who give evidence on their own behalf as "lay witnesses" often feel that their evidence is downplayed in favour of the opinion evidence from so-called experts. However, as the Commissioners will be well aware, such witnesses can give powerful evidence as to primary facts. They are the ones that know their environment. If the task is to understand what the community values, then the evidence of the lay witnesses, as members of the community, should not be easily set aside.

9. To some extent, the community are the "experts" as to their own environment. With that in mind, the observations of the Environment Court in *Whitewater New Zealand Inc v New Zealand and Otago Fish and Game Councils* [2013] NZEnvC 131, at [66], are relevant:

> I consider kayakers and fishers (in this case) or developers, environmentalists, and farmers (in others) may give opinion evidence if they have some relevant expertise, even if they do have an interest in the outcome. The court will then assess that evidence according to the usual tests for probative value – including relevance, coherence, consistency, balance, and insight – while taking particular care to consider the nature of the interest the witness has in the outcome.

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1 *Discount Brands Ltd v Westfield (New Zealand) Ltd* [2005] 2 NZLR 597, at [10].
2 *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] NZEnvC 165.
3 Transwaste Canterbury Ltd v Canterbury Regional Council C29/2004.
4 Hugh Green Ltd v Auckland Council [2018] NZHC 2916.
5 Slope Hill JWS.

Scope – Mapping (CCCL and Milstead)

10. The Council appears to take the position that all matters of mapping are outside the scope of this process. This is principally on the basis that:

    (a) the Priority Area ("**PA**") mapping was "incorporated by reference" to a "[QLDC reference file]"; and

    (b) the notified variation was to introduce PA schedules only, not amend the mapping that had been incorporated by reference.

11. While the Court endorsed the "incorporation by reference" approach, it is questionable whether that was in fact appropriate, or lawful – particularly if its effects is to remove the PA mapping from scrutiny. The RMA is very restrictive in Clauses 30-35 of Schedule 1 as to what, and how, material is to be incorporated by reference.

12. But more fundamentally, it must be open, when considering the PA schedules, which seek to identify landscape attributes (physical, sensory and associative), values, and capacity, to identify areas of a PA which are not, in fact, ONL or ONF. This must necessarily and logically follow from the finer grained analysis being undertaken, compared to the coarser assessment and consideration when originally identifying the boundaries of the PA schedules.

13. Otherwise, any deficiencies in PA mapping, even obvious or minor ones, have to be left outstanding to be resolved through yet another process. That is neither efficient nor effective. When there is already evidence of "process fatigue" generally with the Council's PDP process, every effort should be made to ensure that all relevant substantive matters are considered through this process, not left to another.

14. Put another way, the Council appears to accept that a submission that says that the attributes, values, and capacity assessment of part of a PA are such that that part is not an ONL or ONF would be "on" the variation. If the Panel agreed, then this could be recorded in the relevant PA Schedule, but on the Council's analysis, the PA mapping could not be updated (whether that relief was specifically sought in a submission, or as consequential relief). This is a particularly important point for CCCL, and Milstead Trust, given:

(a) CCCL and its experts do not consider its land at Victoria Flats to be ONL, as a matter of fact; and

(b) Milstead Trust does not consider the lower slopes at Slope Hill to be ONF, as a matter of fact.

15. The legal submissions on behalf of Passion Developments Limited (Submitter #186 'Richard Kemp') are also adopted and supported in respect of these issues. It is noted in particular the submission that:

> ... the PA mapping has been notified through the Variation, as an amended version of the original Green Layer maps directed by the Court to be incorporated by reference in 2021, and therefore able to attract submissions on the same. And in respect of the ONFL boundaries, consequential changes to boundaries are a matter that is reasonably anticipated to be consequently amended by submissions as a result of the application of the Clearwater tests set out above

Inclusion of non-rural areas in the PA mapping and Schedules (CCCL, GVS)

16. A further scope issue is the whether the PA mapping, and Schedules, can apply to land that is not rural, and is not currently identified in the PDP as an ONL. This is an issue relevant to CCCL and GVS in particular. The key points are:

(a) The Variation was notified as being a change to Chapter 21 *Rural Zone*.

(b) The Variation therefore cannot contain material relating to and affecting the Gibbston Character Zone ("**GCZ**").

(c) More particularly, the Variation cannot describe the attributes, values, and capacity of the Victoria Flats GCZ (in the case of CCCL) or the Gibbston Valley Resort Zone or the GCZ in Gibbston (in the case of GVS) as part of an ONL PA Schedule, when the GCZ is not identified in the PDP as an ONL (and never has been).

17. The latest "work around" as proposed in the preamble does not address this scope issue, and will continue to confuse matters for consenting:

> The PA schedules do not apply to proposals requiring resource consent in any other zones, including Exception Zones (see 3.1B.5). They may inform

> landscape assessments for proposals involving any land within a PA but are not required to be considered.

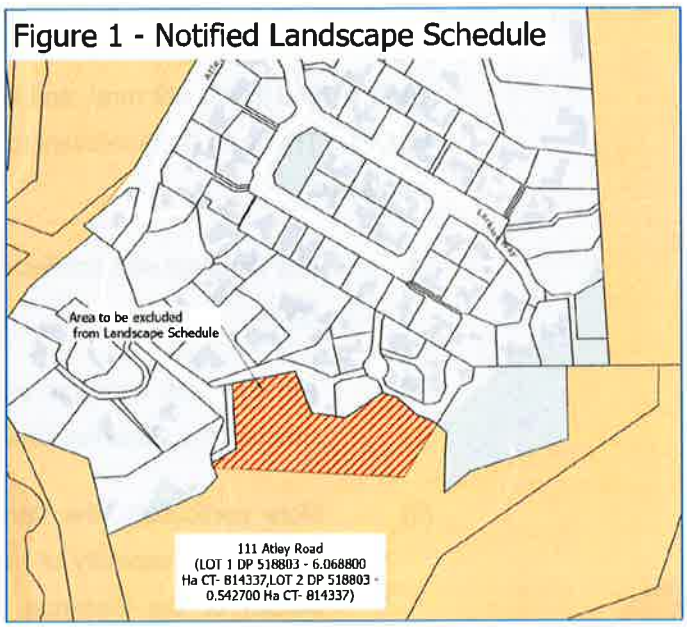
18. How is a landscape expert, or the council as consent authority, in practice, supposed to ignore the PA schedule, when considering an application for consent on CCCL's land at Victoria Flats, that might have some landscape effects? It is an unreal and unworkable proposition.

19. The only sensible result is for the GCZ land at Victoria Flats to be removed from the PA Mapping and Schedule, together with the GVRZ and GCZ land at Gibbston.

20. This is what the Council itself has sought to achieve, although at a lesser scale in one of its own submissions, which sought:

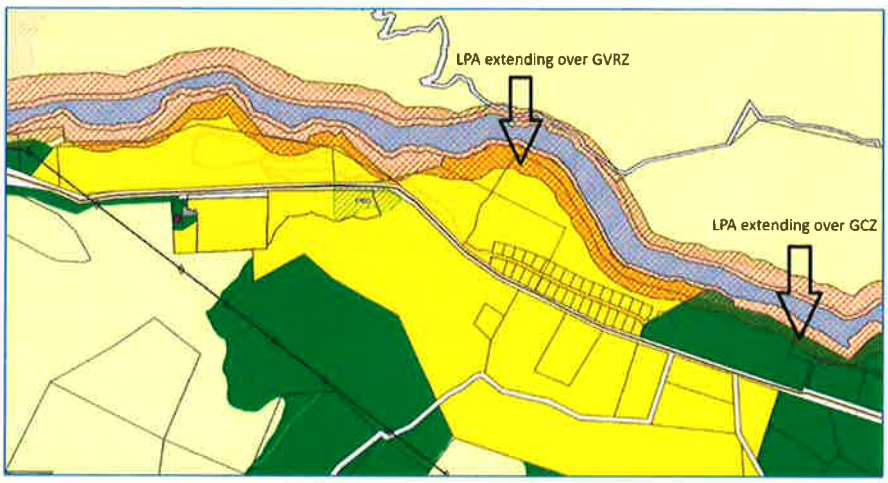
> The Priority Area as shown on 111 Atley Road (the property) requires amendment. The Priority Area as shown over the part of the property (refer Figure 1), should be removed. This part of the property is zoned Lower Density Suburban Residential and that is a settled zoning.

Figure 1 - Notified Landscape Schedule



21. The GCZ and GVRZ are settled zones, and the same logic should be applied. I also note that this Council submission contradicts the legal position it has since taken that there is no jurisdiction to change the PA mapping.

22. The extent of the changes sought are illustrated in the images below as follows, firstly for CCCL and secondly for GVS:



23. Even if the Panel finds that it is out of jurisdiction to remove CCCL and GVS land from the PA Maps, or otherwise make a determinative finding as to whether that land is in fact an ONL, the submitters request that the Panel still give at least a tentative view, with reasons, as to whether the relevant land is an ONL as a matter of fact. This would be of considerable assistance to the appeals process.

Cardrona Valley (CVL)

CVL adopts the position of CCCL and GVS in respect of the Settlement Zone at Cardrona, which is also not an ONL, but is included within the Cardrona Valley PA.

Slope Hill PA (Milstead)

24. As explained by Mr Tylden, the Milstead Trust wishes to continue to farm that part of the Slope Hill ONF on the Mlistead property, but in order to do so, will need to build a farmhouse on the ONF for him and his family to live in.

25. The PA Schedule gives no guidance or direction on this; and so the whole process of submitting, engaging experts, and participating fully, is effectively proving to be a waste of time in this regard. It is understood that this is because is because a farm house or farm dwelling falls outside the definition of "farm building" in Chapter 2 of the PDP, but a farmhouse or farm dwelling is also excluded from the definition of "rural living" in Chapter 3. They therefore have not been given a landscape capacity rating in the schedules.

26. Unless the Panel is able to give greater direction in the PA Schedule, Milstead Trust is no better off from its participation in this process from this perspective.

27. There is also the wider issue of development of the Ladies Mile corridor, currently being considered through the Streamlined Planning Process (SPP). For that development to occur, water tanks (or reservoirs) will need to be located on the Slope Hill ONF. These reservoirs are urban development, by definition, being:

> ... development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development, nor does the provision of regionally significant infrastructure within rural areas."

28. The necessary water tanks don't qualify as regionally significant infrastructure, as they don't provide for treatment of water, and so they are necessarily urban development by definition, which the PA provides that there is "extremely limited or no landscape capacity" for, this meaning that:

> .. there are extremely limited or no opportunities for development of this type. Typically this corresponds to a situation where development of this type is likely to materially compromise the identified landscape values. However, there may be exceptions where occasional, unique or discrete development protects identified landscape values.

29. So we have another example of a specific known issue arising, that is not addressed in the PA Schedule, and so provides no certainty of a consent pathway going forward. To the extent that water reservoirs might be a utility, the PA Schedule provides for them only if they are "buried or located such that they are screened from external view". Given the size of the necessary reservoirs, it will not be possible to bury them or screen them from external views.

Concluding comments

30. Regrettably, this entire exercise and the PA Schedules generally seem of limited assistance for understanding what future activities may be appropriate within an ONFL, and the likelihood of consent being granted for them or a plan change approved. This uncertainty exists for everyone – developers, the wider community, decision-makers.

31. The uncertainty arises because the Schedules are developed at a PA scale, and so cannot address individual plan changes or consent applications, as reflected in the latest text to the pre-amble:

> 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 changes or resource consent applications) (Refer SP 3.3.43 and SP3.3.45). . 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.

32. If anything, the process has demonstrated how hard the Council wishes to fight to protect the PAs from, more or less, any development. It is rare to find any acceptance of more than "limited capacity", and it appeared to be very hard work to walk the Council back from "no" capacity to a marginally less restrictive capacity of "extremely limited or no". In practice, this will make any consent exceedingly difficult – or at least time consuming, with likely notification and appeals – to obtain.

33. Furthermore, in conferencing, Ms Gilbert has also said in terms of the development pathway:[6]

> ... urban expansion is inappropriate in an ONL, as such development would mean that the area where the urban expansion is occurring would fail to qualify as ONL. In her opinion, were urban expansion considered to be appropriate in the PA (for example, to achieve urban growth capacity goals), it would be necessary to have the ONL overlay 'lifted' before the infill urban development

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6 Western Whakatipu JWS.

could proceed. It is her understanding that such a process would require a plan change that is beyond the scope of the Variation.

34. So there is no ability for any urban expansion in any ONL, and the only pathway is to pursue a plan change first. The obviously difficulty with this approach, which you can see from a mile away, is that this change would be resisted by the Council on the basis that the boundaries have recently been set by the Environment Court, as well as the fact that an ONL is an ONL, as a matter of fact, and can't be over-ridden by competing policy drivers (refer, eg *Man O War*[7]).

35. If the reality is that the Council will approach consent applications and plan changes where there is extremely limited or no landscape capacity in practice as if that still means "no" capacity, then it would be better for the Council to be up front and for everyone to know this now; rather than have to spend years trying to find out. Serious consideration could then be given to requiring the Council to acquire land on the basis that it is incapable of reasonable use under s85 of the RMA.

Project Manager
18 October 2023

7 *Man O' War Station Ltd v Auckland Council* [2017] NZCA 24.