

**QUEENSTOWN LAKES DISTRICT COUNCIL PROPOSED DISTRICT PLAN: PRIORITY AREA LANDSCAPE  
SCHEDULES**

**MINUTE OF COMMISSIONERS**

**11 October 2023**

1. The Queenstown Lakes District Council (Council) has appointed a Hearing Panel, which comprises Commissioners Jane Taylor, Peter Kensington and Quentin Smith (the Commission), to hear all submissions and, after it has heard the submissions, to make recommendations on the Variation to the Proposed District Plan: Priority Area Landscape Schedules as to whether to accept or reject the submissions received and any amendments to the provisions of the Schedules.
2. The Council is then required to decide whether to accept or reject the Hearing Panel's recommendations.

Memorandum on behalf of Dr John Cossens (2) dated 12 September 2023

3. A second Memorandum on behalf Dr John Cossens dated 12 September 2023 has been received by the Hearing Panel (the Memorandum).
4. At paragraph 1, the Memorandum seeks that the Hearing Panel:
  - “(a) Consider the matter of whether the landscape schedule methodology, in particular the community consultation, was fair, reliable, robust and representative.*
  - “(b) Initiate an expert peer review of the consultative method and landscape methodology employed by [Council]; and*
  - “(c) Allow for submissions to be received on the methodology employed by [Council]”*
5. At paragraph 30 Dr Cossens outlines the relief sought through the Memorandum as follows:
  - a. To find there is a case to be heard in regard the consultative and landscape schedules methodology employed by the QLDC.*
  - b. To call for submissions on the matter of the landscape and consultation method employed by the QLDC, and*
  - c. Once having had the evidence and submissions, determine whether the landscape and consultative methodology was fair, reasonable and provided sufficient information for respondents to make an informed submission on landscape values.*
  - d. If the Commission finds the consultative process was not fair, then it is submitted the Commission would have no choice in calling for the consultative process to be redone in a more reliable, fair and representative manner.*
6. Dr Cossens summarised his concern as relating to whether the proposed variation to the plan with respect to the landscape variation schedules is based on reliable information and accurately portrays the views of the community and/or those most likely to be affected by the proposed variation.<sup>1</sup> After setting out the reasons for his view that the Council's consultation process was deficient, Dr Cossens submitted that:<sup>2</sup>

*“In summary, it is respectfully submitted that it is a logical and fair approach for the Commission to first consider the matter of ‘methodology’ before it hears submissions on the landscape*

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<sup>1</sup> Paragraph 8 of the Memorandum.

<sup>2</sup> Paragraph 29 of the Memorandum.

*schedules and that submitters, their experts and counsel should be able to make submissions on the matter. It would seem ill founded to hear the substantive submissions on landscape schedule matters when the Commission may find the landscape methodology unfair, biased, and has not allowed the community at the heart of these hearings to have been misled and that ultimately, impinges on their rights to natural justice and to be fairly heard. In a nutshell, has the community being given a fair go?"*

7. Although it was not drawn to our attention in the Memorandum, we note that this same issue was substantially the subject of an application to the Environment Court by Dr Cossens for a Declaration and Enforcement action against the Council in 2022, which was subsequently decided by the Environment Court on 11 October 2022.<sup>3</sup> The Court struck out the relief sought in paragraphs 48.a, c, d and e of the Declaration and Enforcement Application, and declined the remaining relief.<sup>4</sup> Hassan J stated:<sup>5</sup>

*[23] Effective community consultation is plainly integral to sound practice particularly for the proper identification of landscape values. Mr. Ferguson's opinions as an experienced planner give force to that proposition. Effective consultation is an important underpinning for the sound identification of landscape values. That is in the sense that it can help inform appreciation of predominant community values. It can also assist fact checking. For example, NZILA's recently published guidelines, Te Tangi a te Manu, comments that a landscape assessor should remain aware of the range of options and perceptions of landscape matters in the community and draw on available sources of information.*

*[24] However, the RMA does not require such consultation to be undertaken (except to the narrow extent that cl 3(1) Sch 1 prescribes that consultation with certain named parties to be undertaken). Nor is this prescribed in any direction in any of the court's Topic 2 decisions (including in the prescribed values identification framework policies).*

...

*[26] What QLDC has elected to do in regard to consultation and other input into its Proposed Variation falls within the legitimate scope of its planning authority discretion. In terms of s310, nothing undertaken or not undertaken constitutes any identifiable misuse of any RMA function or power or breach of duty or denial of any identifiable RMA right. Nor do the circumstances call for any declaration as to how QLDC has interpreted its planning authority functions, powers or duties.*

*[27] Insofar as Dr Cossens or Darby Planning have concerns about such matters, their proper recourse is to make a submission under Sch 1 RMA and, if not satisfied with the outcome, to appeal.*

*[28] It follows that I find these aspects of the Declaration and Enforcement Application misconceived and disclosing no reasonable or relevant case. Therefore, I strike out the declaration and enforcement relief sought in paragraphs 48.a, c, d, and e of the Declaration and Enforcement Application.*

8. We have considered the matters raised in the Memorandum and set out our findings as follows. In doing so, we have necessarily focused on the process that is required under the RMA with respect to the plan changes and subsequent variation(s). We have also considered our powers as a delegated hearing panel under the RMA with respect to the relief sought by Dr Cossens.

#### Discussion

9. Schedule 1 of the RMA sets out the plan making process, which includes the process required for proposed variation to district plans. In doing so, Schedule 1 creates statutory rights for various persons

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<sup>3</sup> *JJ Cossens v Queenstown Lakes District Council* [2022] NZEnvC 206, 11 October 2022, Hassan J.

<sup>4</sup> *Ibid* at [31].

<sup>5</sup> *Ibid* at [23] to [28].

to participate in the process. The manner by which a local authority must conduct its hearings is prescribed by ss 39 to 42A RMA.<sup>6</sup>

10. Clause 3 of Schedule 1 sets out a hierarchy with respect to consultation and provides (our emphasis underlined):

**3 Consultation**

(1) *During the preparation of a proposed policy statement or plan, the local authority concerned shall consult –*

*(a) the Minister for the Environment; and*

*(b) those other Ministers of the Crown who may be affected by the policy statement or plan; and*

*(c) local authorities who may be so affected; and*

*(d) the tangata whenua of the area who may be affected, through iwi authorities; and*

*(e) any customary marine title group in the area.*

(2) *A local authority may consult anyone else during the preparation of a proposed policy statement or plan*

...

(4) *In consulting persons for the purposes of subclause (2), a local authority must undertake consultation in accordance with section 82 of the Local Government Act 2002.*

11. Relevantly, Clause 3 of Schedule 1 RMA does not require a local authority to carry out pre consultation with the public as part of developing a plan change or variation. However, if a local authority chooses to consult anyone else, including the public, this must be undertaken in accordance with s 82 of the Local Government Act 2002 (the LGA), which sets out principles of consultation.

12. The Court in *Cossens* made it very clear that under the Schedule 1 process, the Council was not obliged to consult the public in preparing a plan change or variation. Further, what the Council ultimately elected to do with regard to consultation and other input into the proposed variation falls within the legitimate scope of its planning authority discretion. In terms of s 310, nothing undertaken or not undertaken constitutes any identifiable misuse of any RMA function or power or breach of duty or denial of any identifiable RMA right. As a delegated hearing panel, much like the court, we have no powers under the RMA or the LGA<sup>7</sup> to review the Council's processes with respect to its consultation with the public, or to grant the relief sought at paragraph 30. a, c or d of the Memorandum with respect to consultation.

13. Even if we were wrong with respect to our powers, it is plain that any alleged defect with respect to public consultation has been remedied by the Schedule 1 process following public notification of the proposed variation.<sup>8</sup>

14. With respect to the other apparent area of concern, being the landscape schedules methodology, Dr Cossens, together with all members of the public, have had full participatory rights under Schedule 1 to make submissions on the landscape methodology employed, and have appeal rights to the Environment Court once Council's decision is received. We note that many of the submitters (as further elaborated in their expert landscape evidence) have made submissions with respect to the landscape methodology. Accordingly, there would seem to be no utility whatsoever in granting the relief sought at paragraph 30. b of the Memorandum and we see no reason to do so. Under the notification process, the public has had

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<sup>6</sup> *Paraparaumu Airport Coalition Inc v Kapiti Coast District Council EnvC W077/08.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

the opportunity to make submissions with respect to the landscape methodology and, indeed, in many instances has done so. Were we to grant the relief sought at 30. b, we consider it would seriously disadvantage other submitters who have legitimately participated in the process to date and have a reasonable expectation that the hearing panel will consider their submissions and subsequently make recommendations to the Council.

15. It goes without saying that part of the Hearing Panel's function under the RMA is to consider all points raised in submissions and to hear all of the evidence prior to making our recommendations, which includes those submissions concerned with landscape methodology (as opposed to public consultation on the landscape methodology). The hearing will commence on 16<sup>th</sup> October 2023 in accordance with the directions set out in our first Minute. If we consider it necessary after considering the submissions and evidence, we do have the powers to seek a peer review of the landscape methodology.

Decision

16. For the reasons given above, we decline the relief sought by Dr Cossens with respect to public consultation on the landscape methodology. We do, however, note that the hearing will consider submissions and expert evidence from all parties on the landscape methodology, as notified, as part of this statutory process.
17. Should any party have any queries in relation to this Minute or require any clarification in relation to the process for this hearing, please contact the Hearings Administrator at [dp.hearings@qldc.govt.nz](mailto:dp.hearings@qldc.govt.nz).



Jane Taylor

For the Commission

11 October 2023