

QUEENSTOWN LAKES DISTRICT COUNCIL PROPOSED DISTRICT PLAN - STAGE 1
Amended Summary of Decisions Requested for two submissions seeking relief associated
with land at Arthurs Point

MINUTE OF COMMISSIONERS
26 October 2022

1. The Queenstown Lakes District Council (Council) has appointed a Hearing Panel, which comprises Independent Commissioners Jane Taylor and Ian Munro (the Commission) , to hear all submissions and make recommendations on the Plan Change, after it has heard the submissions, as to whether to accept or reject the submissions received and any amendments to the provisions of the Plan Change.
2. The Council is then required to decide whether to accept or reject the Hearing Panel recommendations.
3. On Monday 17th October the Commission received a memorandum of Counsel on behalf of Gertrude's Saddlery Limited and Larchmont Developments Limited (the Submitters) dated 13 October 2022 (the Submitters Memorandum), in which the Submitters advanced a proposal concerning conferencing of landscape experts.
4. The Submitters Memorandum was served on further submitters on Friday 14th October 2022.
5. In a Minute of Commissioners dated 19 October 2022 (the Minute), the Commission directed that any response to the Submitters Memorandum was to be received by 5pm, 20 October 2022.

Responses to the Submitters Memorandum and Minute of Commissioners dated 19 October 2022

6. On 19 October 2022, a memorandum was received from counsel for the Arthurs Point Outstanding Natural Landscape Society (the APONLS Memorandum).
7. The APONLS Memorandum raised a number of issues with respect to the procedural directions concerning evidence exchange and hearing dates notified on 5th October 2022, together with concerns in relation to the directions sought in the Submitters Memorandum dated 14 October 2022.
8. On 20th October 2022, emails and memoranda from further submitters were received in response to both the Submitters Memorandum and the Minute. While some further submitters addressed the issue of conferencing of landscape experts, the vast majority took the opportunity to express concerns with respect to the process and timeframes leading up to and including the hearing dates.
9. On 21st October 2022 the Commission received a memorandum from the Council addressing the issues and concerns raised by both the Submitters and further Submitters (the Council Memorandum).

Hearing Timetabling Matters

10. We have considered the matters raised with respect to the evidence exchange and hearing dates proposed in the Notice of Hearing, which was served on 5 October 2022. Prior to the

issue of the formal Notice of Hearing, all parties were circulated (by email) preliminary advice of the proposed 22 to 24 November 2022 hearing dates by Council's Hearing Administrator on 30 August 2022. We record that the APONLS Memorandum and related e-mail correspondence from further submitters was received some seven weeks after this date.

11. First, we note that the dates set out for the filing of the s42A report, submitters' expert evidence, Council's rebuttal evidence and filing of legal submissions comply with all relevant statutory timeframes and, indeed, are reasonably generous in this respect. That requests from further submitters to vacate the hearing date and extend the timeframes should now be advanced on the basis of perceived prejudice seven weeks after the dates were first advised by the Council is, in our opinion, very unhelpful and, at first glance, unacceptable.
12. It is, however, plain from the content of the various e-mails received that a number of further submitters do not appear to adequately comprehend the process with respect to this plan change hearing, in particular, that the "applicant" is not the Submitters but the Council via its notified Proposed District Plan (PDP). The Submitters that have sought a change to the PDP have a similar standing to the further submitters opposed to the relief sought by the Submitters, and in relation to the Council's PDP proposal generally. The Resource Management Act 1991 (RMA) does not contain any mechanism that otherwise distinguishes submitters and further submitters in terms of evidence exchange and timetabling, and it is, in our experience, highly unusual for there to be any additional accommodation (for example, for the remainder of the PDP process in Queenstown, timetables for evidence exchange have grouped submitters and further submitters together and have not separated out dates for further submitters that support, or oppose, a primary submission).
13. The Submitters' preliminary advice (as set out in the Submitters Memorandum), which was intended to assist conferencing of landscape experts, has apparently added to further (lay) submitters' confusion in this respect. However, we note that there was nothing preventing the Submitters from providing evidence limited to the original relief sought and then presenting the current relief sought (as per the Submitters' Memorandum) at the public hearing – which, provided it was within the scope of the original submission, would have been within their rights. In that respect, we find the early notice of the Submitters' revised position fundamentally helpful to all participants in this process.
14. We are cognisant of Council's position that the hearing should be fair, accommodating and inclusive for all submitters. Although we do not accept the arguments set out in the APONLS Memorandum and emails subsequently received from further submitters that the timetable presented was unreasonable or unfair, for the reasons set out below we are minded to extend the timeframes for the hearing.
15. First, although the Council Memorandum set out a defence of the process and current timetable, it is also apparent that Council is fundamentally open-minded to, or at least not opposed to, an extension of the timetable along the lines sought by the further submitters. As Council is, in this instance, the Plan Change (or PDP) proponent, understanding its view on any potential change in timetabling is very important to us.
16. Secondly, we have considered the unusual circumstances of this matter. The hearing concerns a re-notification of submissions originally received on the PDP arising as a result of Court action. Fundamentally, at its core is a very localised disagreement between the Submitters and further submitters in relation to the zoning of several parcels of land located at Arthurs Point. Although highly unusual, we find that in this instance an evidence exchange timetable that provided "breathing room" between the receipt of the Submitters' expert evidence and

that of further submitters, while not required by the RMA, would nonetheless present administrative advantages. The current timetable does not provide for such a separation.

17. Thirdly, we are cognisant of the current timing of the hearing close to the Christmas period and the associated RMA statutory (working day) closure. The Commission sees no way a meaningful deliberation and a recommendation could be achieved before the Christmas break, with much of that work likely to occur in February 2023. We are therefore confident that an extension of the hearing dates could be accommodated in a manner that would not substantially delay or impede the timeframe in which a decision on the matter was likely to be arrived at.
18. Fourthly, and although at most a supporting matter, accommodating the hearing as originally scheduled did require substantial preparatory effort within a very short timeframe on the part of the Commission. We acknowledge that a varied timetable would relieve that pressure significantly.
19. In our amended directions, we have provided an additional three (3) weeks between the respective filing dates of the Submitters' and the further submitters' expert evidence (all submitters expert evidence was previously due the same day).
20. For overall completeness, we have considered and are satisfied that the amended timetabling directions will not cause undue delay or prejudice to any party, largely due to the proximity of the prior hearing dates to the Christmas break.

Conferencing of Landscape Experts

21. With respect to the proposed conferencing of landscape experts, we find that this is not essential. Although an agreed Joint Witness Statement might be helpful to us, by the same token it might not depending on what is or is not agreed, and also noting our experience that unlike the equivalent process before the Environment Court, it is not unheard of for some experts to not, or only partly, participate (we lack the powers of the Court to compel attendance).
22. Council has expressed its view that the hearing should be conducted without unnecessary formality and in a manner that allows all submitters to fully participate in the process without the need to engage professional assistance, and we agree. We are concerned that the issues of concern to the further submitters presented by the Submitters' revised relief could just as much arise in the event that any material changes in position or opinion were arrived at as a result of expert conferencing, with the same requests for additional time and hearing delay then repeated. Accordingly, the Commission finds that any potential assistance that expert conferencing might give rise to may be substantially outweighed by ongoing dispute by the further submitters as to what issues and arguments will be presented at the hearing and by whom.
23. Given the risk identified by Council that expert conferencing may be perceived to disadvantage further lay submitters who are unable to participate in this aspect of the process, and having had regard to the concerns raised in the APONLS Memorandum and by further submitters in a similar vein, we decline to make the directions for conferencing of landscape experts sought in the Submitters Memorandum. It follows that we decline to direct any conferencing for any other experts.

Amended Timetabling Directions

24. The hearing dates of 22 to 24 November 2022 are vacated. The Notice of Hearing is hereby amended as follows:

Amended Hearing Dates:

Date	Time	Hearing Venue
Wednesday, 1 February 2023	9.30am-4.00pm	Crowne Plaza Hotel, Beach Street, Queenstown
Thursday, 2 February 2023	9.30am-4.00pm	Crowne Plaza Hotel, Beach Street, Queenstown
Friday, 3 February 2023	9.30am-4.00pm	Crowne Plaza Hotel, Beach Street, Queenstown

The following dates for the circulation of evidence will apply:

- **Tuesday 18 October 2022**
Council's Recommending S42A Report will be issued [completed].
- **12:00pm Tuesday 15 November 2022**
Submitters – any expert evidence by the Submitters (Gertrude's Saddlery Limited and Larchmont Developments Limited) is to be provided to QLDC no later than 12:00pm.
- **12:00pm Tuesday 6 December 2022**
Further Submitters – any expert evidence by Further Submitters is to be provided to QLDC no later than 12:00pm
- **12:00pm Tuesday 20 December 2022**
Council's Rebuttal will be issued no later than 12:00pm.

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- **12.00pm Thursday 26 January 2023**
Submitters and Further Submitters – who are not calling upon expert evidence but wish to table information are directed to provide this to QLDC no later than 12.00pm.
- **12.00pm Thursday 26 January 2023**
Legal Counsel – legal submissions are to be provided to QLDC no later than 12.00pm.

25. As noted above, we decline to make any amended directions to accommodate conferencing of landscape experts as sought by Counsel for the Submitters.

26. Please note that the Commission will not enter into any further correspondence with respect to the amended timetabling directions set out above, which includes any further requests for conferencing of expert witnesses.

27. Should any party have any queries in relation to these directions or require any clarification in relation to the process for this hearing, please contact the Hearings Administrator at dp.hearings@qldc.govt.nz.

A handwritten signature in black ink, appearing to read 'Jane Taylor', with a stylized flourish at the end.

Jane Taylor

For the Commission

26 October 2022