

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2024-CHC-

**I TE KŌTI TAIAO
KI ŌTAUTAHI**

UNDER

the Resource Management Act 1991

IN THE MATTER

of an appeal under clause 14 of schedule 1 of the Act in relation to the Priority Area Landscape Schedules Variation to the Queenstown Lakes Proposed District Plan

BETWEEN

MEE HOLDINGS LIMITED

Appellant

AND

**QUEENSTOWN LAKES DISTRICT
COUNCIL**

Respondent

NOTICE OF APPEAL

Dated: 5 August 2024

To: The Registrar of the Environment Court at Christchurch

And to: The Respondent

[1] Mee Holdings Limited (**Appellant**) appeals against a decision of the Queenstown Lakes District Council (**QLDC**) on its Priority Area Landscape Schedules Variation (**Variation**) to the Proposed District Plan (**PDP**).

[2] The Appellant made a submission on the Variation.

[3] The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).

[4] The Appellant received notice of the decision on 21 June 2024.

[5] The decision was made by QLDC at its meeting held on 6 June 2024.

Points of appeal

[6] The decisions the Appellant is appealing include:

- (a) the rejection of the relief sought in the Appellant's submissions generally, and including:
 - (i) the decision to only accept in part the submission that the capacity rating scales be amended within the landscape schedules.
 - (ii) the decision to only accept in part the submission that the capacity ratings scales be amended to clarify how the schedules apply to, or are weighted, in particular consenting and plan making decisions.
 - (iii) the decision to only accept in part the submission that greater capacity exists for additional development potential within the schedule 21.22.1 Peninsula Hill.

- (iv) Decisions on the preamble text for the landscape schedules which were otherwise contrary to expert evidence or made without supporting evidence.

(decisions)

Reasons

[7] The reasons for the appeal are as follows:

Background to submission

- [8] The Appellant has interests in the land consisting of the majority of Peninsula Hill, legally described as Lot 1 DP 570393 (**Site**). The Site is Rural Zone and included in the Peninsula Hill Outstanding Natural Feature (**ONF**) Landscape Priority Area (**PA**) on the PDP planning maps.
- [9] The Appellant, through related entities, has developed a sustainable large scale tourism business on the Site. It similarly continues to oversee and develop residential zoned land on the lower flanks of the Site, which abuts the ONF boundary. There is a high degree of integration between the ONF and the adjacent urban zoning, including in terms of the likely need for future access, open space use, infrastructure provision, and offsetting.
- [10] Further capacity has been identified within the Site for consolidating, enhancing, expanding, and developing existing and proposed activities which are not currently reflected in the drafting of the Peninsula Hill landscape schedule values and capacity ratings.
- [11] To clarify, this background is not supporting justification for the appeal on the Variation. Rather, this is provided as background/contextual information. The Appeal focuses solely on the landscape issues within the Variation, jurisdiction, and first principles evidence as to landscape boundary and priority area identification, and the scheduling of values and related capacity.

Appeal topic 1 – preamble

Specific clauses in preamble appealed

[12] The Appellant considers that the preamble to the schedules is highly ambiguous, and inadequate to inform what weight the PA Schedules are to be given, and their purpose.

[13] Clause 2.2 of the preamble states:

2.2 The PA Schedules will be used where relevant for any plan development proposal.

[14] This clause appears to have been added without support from the joint witness conferencing process undertaken through hearings, and is sought to be deleted. The Appellant seeks more clarity that the schedules are not relevant to, and do not apply, for any plan development or private plan change process.

[15] Clause 1.2 of the preamble refers to schedules containing factual and evaluative content. The Appellant is concerned that introduction of evaluative content and language in the schedules should be removed as this effectively introduces a quasi-policy test, which is beyond the purpose of the schedules (to identify landscape values). The Appellant seeks that reference to evaluative content, and any such content itself within the schedules, be removed.

Preamble – capacity

[16] The preamble does not signal what context or weight would be given to those Schedules in an application for resource consent, including if faced with a principled landscape assessment conducted by an applicant. The Appellant seeks greater clarity to address this.

[17] The Appellant seeks the following amendments to clauses 4.1-4.5 (landscape capacity):

- (a) Landscape capacity identification at such a broad scale across a priority area, and for undefined types of activities / development, of unknown quantities, is so uncertain it leads to the question of

whether capacity ratings in this way add utility to plan administration. The Appellant seeks that capacity ratings be removed entirely, or otherwise amended to recognise their high-level and imprecise nature, with a re-calibrated scale.

- (b) Assessing capacity is imprecise and accepts that there is an unknown future of landscape where creative land uses may be conceived and applied for in a resource consent application. The current capacity scale sets the pretext that, as a starting point, the PAs have a low capacity and should be retained in a current state, even where those may have degraded values. The scales (particularly the lowest capacity rating) are too determinative, especially with the understanding that landscape capacity/sensitivity is imprecise and can change over time.
- (c) The capacity rating scale should be amended such that it provides for greater internal consistency with the PDP, and is much simpler to apply. For example, the 'extremely limited to no capacity' rating, refers to:

'capacity to accommodate development of this type without material compromise of its identified landscape values, and where either no, or an extremely limited amount of very sensitively located and designed development is likely to be appropriate'.

- (d) This wording is effectively akin to a prohibition or veto or avoidance on any future type of development, no matter its purpose, scale, or potential public good. It presupposes what type of development, it also includes evaluative text which is not reflected in objectives and policies.

[18] From clause 5 – meaning of activities – the Appellant seeks greater precision in the definitions listed in clause 5.1 such that these are only terms already used in the PDP, and to provide greater clarity in the type/quantum of defined activities against which capacity is to be identified. If capacity is to be retained within the schedules, the meaning of listed activities should be simplified and kept to a high level, given that many types of activities will have similar built form effects.

General issues in preamble

- [19] There is inherent uncertainty in terms of what the different planning regime would be, or weighting of landscape schedules, for future activities that are not listed within the schedules and capacity ratings, as compared to those which are (but which might have very similar effects on the ground).
- [20] The Appellant seeks simplification and streamlining of the schedules, and removal of much of the text which is effectively methodology. Rather it is suggested the resulting schedule could be a bullet point list of key values and attributes, with capacity removed.
- [21] Further examples of relief sought to address the issues set out above are included in the attached table.

Appeal topic 2 – capacity, values and attributes for Peninsula Hill ONF

- [22] The Peninsula Hill ONF Schedule limits the capacity of the Peninsula Hill ONF land, and the Site, to absorb development to a greater extent and degree than what can appropriately be absorbed without adverse effects on values. This has the potential to impact the Appellant's current activities and planned developments, and does not reflect the modified nature of this ONF within an urban context.

Capacity identification

- [23] For example:
- (a) The capacity ratings for commercial recreation activities are listed as very limited. There is identified capacity for activities that integrate with and complement/enhance existing recreation features and the environment, improve public access, and protect the area's ONF values. However, outside of activities that provide for this there is no identified capacity.
 - (b) For visitor accommodation, tourism-related activities, and urban expansion, there is no landscape capacity identified, which does not reflect the modified nature of this ONF within an urban context.

- (c) For earthworks, there is only limited landscape capacity associated with farm tracks, rather than recognising a range of suitable uses of the Site (existing and proposed) which might rely on earthworks (beyond farming) including infrastructure and access.
- (d) There is extremely limited or no recognition for future urban expansion, film industry, and tourism uses within the Site, despite its adjacency to existing urban development, and the potential for expansion and additions to these activities in appropriate locations.

[24] The Appellant considers the assessment of landscape capacity should be effects-based rather than activity-based.

[25] Some of the landscape capacity described in the Schedule lacks certainty, with large uncertainty remaining regarding what qualifies under a capacity rating and what does not.

Values and attributes identification

[26] Lastly, the Peninsula Hill Schedule does not sufficiently address or make allowance for the extent of human modification already present, planned, and/or consented on Peninsula Hill. The activity-based assessments above refer to the natural features of the ONF. For example:

- (a) at paragraph 41, the Schedule refers to Peninsula Hill as being of 'seemingly' undeveloped character set within an urban context, conveying a high perception of naturalness; and
- (b) at paragraph 51 (c), the Schedule refers to the 'high perception of naturalness' arising from the dominance of the more natural landscape across Peninsula Hill.

[27] These descriptions are examples which influence the capacity ratings in the Schedule and lead to an incorrect application of those capacity ratings without properly allowing for existing and planned human modifications of the ONF.

[28] Further relief to address the issues set out above is set out in the attached table.

Mapping

[29] If the schedules are in fact intended to be high level, and values, attributes, and capacity identification may change overtime, it follows that there should be express recognition that consequently the mapped areas/spatial extent of priority areas may change overtime as a result.

Further general reasons for Appeal

[30] The Decisions do not otherwise:

- (a) Provide the most appropriate way in which to achieve higher-order provisions and strategic policies and objectives of the PDP;
- (b) Give effect to the operative or proposed regional policy statements for Otago;
- (c) Give effect to national direction within the Act including section 6b;
- (d) Provide for the most efficient and effective planning regime in accordance with section 32 of the Act.

Relief sought

[31] The Appellant seeks the following relief:

- (a) that QLDC's decision is overturned and the Appellant's submissions accepted; or
- (b) that QLDC's decision is overturned and relief set out in this appeal, and in the attached table are accepted; or
- (c) alternative, consequential, or additional relief to address the issues and reasons set out in this appeal; and
- (d) costs.

[32] The following documents are **attached** to this notice:

- (a) the Appellant's submissions;
- (b) the QLDC's decision; and
- (c) a list of names and addresses of persons to be served with a copy of this notice.

Dated: 5 August 2024



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Signed for Mee Holdings Limited
by its solicitor and duly authorised agent
R E M Hill / B A G Russell

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Advice to recipients of copy of Notice of Appeal

How to become party to proceedings

You may be a party to the appeal if you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court, and serve copies on the other parties within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Provision	Relief sought (by underline / strikethrough)	Alternative relief	Scope
Preamble			
1.1-1.3	Greater clarity is required in these clauses to understand what relevance the Schedules have in specific consenting contexts, what weight those are to be given, and how those are to assist efficient and effective plan administration. Any references to evaluative language should be removed.	Alternative, consequential, or other relief to give effect to the issues in the Appeal	Para 3.2(i) of the submission opposes the landscape schedule 21.22.18 (Peninsula Hill in the entirety), and seeks general clarity in the circumstances in which the landscape schedules will be used – including weighting and context
2	Greater clarity is required in the application and weighting of the schedules. The Appellant further seeks amendments to ensure the schedules do not apply, and are not relevant for, private plan changes / plan review or change processes	Alternative, consequential, or other relief to give effect to the issues in the Appeal	
4.1-4.4 landscape capacity	The preamble context for landscape capacity needs to be amended (if not deleted) to provide greater clarity and recognition for the quantum and types of activities listed which have been assessed for capacity, and the methodology used to assess any resulting capacity.	In the alternative, delete references to landscape capacity and defined activities within the schedules	Para 3.2(ii) and (iii) oppose the rating scale applied and seek changes to align it with text already found in the PDP
4.5	Amend the capacity rating scale to reflect that one cannot ‘estimate’ how much of an unknown future activity could be accommodated when there are potentially activities, including scale, location, form and external appearance, which we have not yet imagined. The schedules acknowledge that only a certain list of general activities have been assessed which are directed in Chapter 3, and other activities will in future require their own	In the alternative, delete references to landscape capacity and defined activities within the schedules	

	<p>capacity assessment. The rating scale should therefore be headers only, rather than include any evaluative wording, and / or be refined to a five point scale that is less determinative, especially with the understanding that landscape capacity/sensitivity is imprecise and can change over time, such as (for example):</p> <p><u>1. Very High 2. High 3. Medium 4. Low 5. Very Low</u></p>		
5.1	<p>Ensure the listed and defined activities to which capacity relates are either paired back so they are 'high level' and grouped according to potential effects, or otherwise, are only as defined in the PDP already.</p>	<p>In the alternative, delete references to landscape capacity and defined activities within the schedules</p>	<p>Para 3.2(ii) and (iii) oppose the rating scale applied and seek changes to align it with text already found in the PDP.</p>
5.2	<p>The range of land use activities addressed in the capacity section of the PA Schedules include the activities prescribed by SP 3.3.38. It is acknowledged that this does not span the full array of land use activities that may be contemplated in the PAs over time. In the case of a future application for a land use activity that is not addressed in a PA Schedule, an assessment applying the principles set out in 3.3.43, 3.3.45 and 3.3.46 is required.</p>	<p>In the alternative, delete references to landscape capacity and defined activities within the schedules</p>	
General relief sought on preamble	<p>As set out in the Appeal, general relief is sought in terms of simplifying and streamlining the wording of the preamble and providing greater clarity generally in terms of when the schedules are to be considered, what weight those are to be given, and their purpose to aid in efficient plan administration.</p>	<p>Alternative, consequential, or other relief to give effect to the issues in the Appeal</p>	

21.21.1 – Peninsula Hill PA: Schedule of landscape values			
Landforms and Land types	Largely un modified roche moutonnée glacial landform of Peninsula Hill with a smoother and more coherent 'up ice' slope to the southwest/south, and a steeper rough 'plucked' slope extending from the northeast around to the northwest. Highest point: 834m. This form indicates the direction of travel of the glacier that formed the roche moutonnée clearly. <u>Linked to an interface with urban zoning and development on the lower northern and western slopes, and exhibiting historic and present day patterns of grazing, farming, lifestyle, tourism and recreation activities</u>	Alternative, consequential, or other relief to give effect to the issues in the Appeal	The submitter sought in alternative additional or consequential relief necessary or appropriate to address the matters raised in this submission and/or the relief requested in this submission, including modifications to the landscape schedule or any such other combination of plan provisions, objectives, policies, rules and standards provided that the intent of this submission.
Land-use patterns and features	Other human modification is limited to: <u>includes clusters of communication towers on the hilltop; tracks, trails, access roads and infrastructure related to tourism and rural living operations, various established dwellings and rural living, interface adjacency to urban zoning and development along Kelvin Heights peninsula – a dwelling on the north-eastern edge of the PA (on Peninsula Road); and a dwelling on the south-western edge (accessed via Preserve Drive).</u>	Alternative, consequential, or other relief to give effect to the issues in the Appeal	
Shared and recognised attributes and values	21. The descriptions and photographs of the area in tourism publications. 22. The popularity of the views within an urban context across the Frankton Arm to Peninsula Hill, (partially flanked and backdropped by the Remarkables) as an inspiration/subject for art and photography. 23. The identity of the area as an important gateway feature on the south side of Queenstown and an area providing for residential living and recreational opportunities. 24. The landmark qualities of the landform as a reference point in views from Queenstown.	Alternative, consequential, or other relief to give effect to the issues in the Appeal	Para 3.2(i) – (iii) provide more specific suggestions for change, which are interrelated with the value identification,

	25. The popularity of the recreational, <u>access, film and tourism, opportunities 'features' listed below.</u>		
Particularly important views	<p>Delete or otherwise simplify clauses 30-38 as views are highly subjective and visibility is not necessarily a landscape 'value' which is important for protection.</p> <p>Part 21.21.2 of the PDP seeks to consider visibility and whether any parts of a proposal will detract from public or private views of and within ONLs or ONFs, whether mitigation is provided and if that mitigation is in keeping with the protection of landscape values. Assessment of effects on ridges, hills and slopes, lighting, earthworks and landscaping are all considered. This part of the PDP gives regard to open space and open character and seeks to maintain open space and open character as viewed from public roads and public places and ensure development is not within a broadly visible expanse of open landscape as viewed from public roads or public places. These assessment matters are sufficient and directive and are not assisted further by listing and describing views.</p>	Alternative, consequential, or other relief to give effect to the issues in the Appeal	
Naturalness attributes and values	<p>The 'seemingly' un developed character of Peninsula Hill set within an urban context, <u>and adjacent to significant urban development which conveys a relatively high perception of naturalness.</u> While modifications related to its pastoral, tourism, and infrastructure use are visible, the very low number of buildings, the relatively modest scale of tracks and limited visibility of infrastructure on top limits their influence on the character of the landform as a natural landscape element.</p>	Alternative, consequential, or other relief to give effect to the issues in the Appeal	

Clauses 41-45	Delete references to remoteness or wilderness as the ONF (particularly the northern faces) are within an urban context and are neither remote nor wild, nor predominantly pastoral.	Alternative, consequential, or other relief to give effect to the issues in the Appeal	
Summary of landscape values	Modify the summary of the values to reflect the relief sought above. Given the 'high level' nature of the values intended, it is suggested that the summary alone may be sufficient to achieve the Court's direction in Topic 2 as to identification of values	Alternative, consequential, or other relief to give effect to the issues in the Appeal	
Landscape capacity	<p>Refine the list of activities such those are 'effects' based and high level only, or otherwise only reference defined activities within chapter 2 of the PDP.</p> <p>Amend the capacity list so there is some recognition of the type, quantity, design, location of the referenced activities</p> <p>Recalibrate the rating scales as set out in the appeal above</p> <p>Or in the alternative:</p> <p>Recognise that within the Site, there is higher capacity for future expansion, integration, co-location, and further development of tourism, filming, rural living, earthworks, tracks, trails, urban expansion, and infrastructures</p>	Alternative, consequential, or other relief to give effect to the issues in the Appeal – including deletion of capacity	Para 3.2(ii) and (iii)