

QLDC Landscape Variation Hearing

Good morning. My name is Gerrard Eckhoff. I have been a farmer for most of my life. I have also served for nine years on the Otago Regional Council and for six years as a Member of Parliament. I served on the select committee which heard the 2002 local Government Bill and, on the Commerce and Agriculture Select Committees

I wish to acknowledge the courtesy and helpfulness of QLDC staff in the lead-up to this hearing.

What I am offering today is a view, based on a lifetime of working with land, observing public decision-making, and thinking about the relationship between citizens and authority. Too often during my nearly 80 years, I have argued against decisions that have since come back to undermine what I call social harmony.

*I am certainly not here to argue technical points of law. I am here to speak about something more fundamental: **first principles**, about fairness and reciprocity, and the legitimate rights of citizens and ratepayers when public authority is used in a way that materially affects private property. First principles define us as a nation and as individuals. First principles underpin our laws, our rules and our society. Such principles have been fought for and defended over the generations.*

That is why I am speaking here today. I am possibly more experienced than most in these matters as my neighbours' and our properties were targeted under the Protected Natural Area scheme in the mid 1980s -prior to the introduction of the RMA. I have brought with me my assessment of the PNA scheme written for the Kellogg Rural leadership course I was selected to attend. The PNA and SNAs schemes were the fore runner to this and so many other hearings on landscape.

My submission is straightforward. This variation should not proceed unless Council can clearly demonstrate three things: first, that there is a genuine and substantial public need; second, that the process is independent, fair, and **seen to be fair**; and third, that landowners whose reasonable use rights are materially diminished, are properly compensated.

In simple terms, if the public wants the benefit of private land being restricted or preserved for public purposes, then the public should be prepared to pay for that benefit. The unrelenting cost cannot be imposed on the landowner because Council has the authority

The principle at stake

Property rights are not a minor technical matter. Nor are they disposable at the whim of officialdom. They sit at the heart of a stable and civil society. When a person owns land, they reasonably expect to be able to use, manage, and care for that land, subject

of course, **to known** and lawful limits at the time of purchase. But where public authority significantly constrains those rights for a claimed public benefit, the burden should not fall unfairly on the individual landowner.

That same principle is relevant here. When authority takes, diminishes, or materially restricts land rights, it should recognise the cost imposed on those affected. We should have learned from our history that rights in land are not incidental. **They are deeply connected to security, confidence, and trust in public institutions. I note the RMA is soon to be consigned to historical obscurity.**

Each one of us has a duty to assist and protect our neighbour, however distant, against the misuse of even well-intentioned authority and power. I have held this view for many years. In the mid-1980s, when the Ngai Tahu settlement was being publicly discussed, I travelled to Dunedin to hear the Minister of Justice speak about compensation for land taken by the Crown. I spoke in favour of the principle of settlement because, to me. It was a matter of fairness and first principles.

Fairness and independence of process

I also wish to formally register my concern about the independence, or more correctly, the perceived independence, of this hearing process. I do not impugn the integrity of any member of the panel. However, where Council writes the policy, seeks the variation, appoints the panel, and then presents its case through its own staff, there is at least a reasonable concern about whether the process is sufficiently independent and whether it is seen by affected landowners to be fair. Would the appointment of say a local Fed Farmers president being appointed to this panel, be seen as being independent; commissioners?

This is especially important where those directly affected must bear costs on both sides of the process. They pay rates that help fund Council activity, and then they pay again for professional advice, submissions, and legal defence to protect their property interests. That may be lawful, but the question for this panel is whether it is fair and whether it reflects the reciprocity citizens should be able to expect from public bodies. In my experience, people will often accept an outcome they disagree with if they believe the process has been fair

The impact on landowners

The practical effect of this variation is not abstract. For affected families, it may constrain what they can do with land they own, care for, pay rates on, and have planned around for many years. If Council creates a designation or landscape classification that materially reduces the reasonable use or value of that land, then it is certainly not enough to say - well - ownership remains - on paper. A restricted use opportunity which is similar in use of neighbouring property - is substantial. Ownership of land is not an

incidental list of rights. Possession, use, disposition of land are not random rights but lie at the very heart of ownership of all property

If the public wants a public benefit from private land, then the public should be prepared to meet the cost. Council has done this in other situations. Mt Iron was purchased at an agreed sum? That approach recognises the basic first principle - that where a public benefit is sought, there should be a fair and open negotiation with the landowner.

The **right to quiet enjoyment** of land is not just a phrase. It reflects the expectation that people who own land can make reasonable use of it without ongoing uncertainty, repeated designations, or the steady erosion of practical rights. For farming families, uncertainty itself can be damaging. It affects their planning, confidence, value, succession, and the ability to make decisions for the future.

That is why I refer to the concept of **injurious affection**. Where public action has a material adverse effect on the value or practical use of private land, that effect should be recognised. It is not sufficient to say that because the land remains in private ownership, nothing has been taken. If the practical use of the land is substantially reduced, then something very real has been lost.

Public good must be proved, not assumed

The onus should be on Council to prove that this variation is genuinely needed in the public interest and not just because they can. Desire is not the same as need. Preference is not the same as public good. Landscape values can be important, but they are also very subjective and require careful justification when they are used to restrict private land-use rights.

If it is correct that only 13 people provided feedback during the online and drop-in consultation period, that raises a serious question about the level of demonstrated public support. I ask the panel to consider carefully whether the evidence before it establishes a genuine public need, or whether this is a case where the costs are being imposed on a few landowners for a benefit that has not been clearly established. How many people have come to Wanaka to live or holiday - to gaze at the land identified under this proposed variation?

I also ask the panel to think carefully about the use of language. Terms such as outstanding, natural, intrinsic, inherent, and landscape value can be sound objectives, but they often involve judgement, taste, and preference. The intrinsic value of a square is that it has four equal sides. A triangle has three sides. Those are inherent characteristics. But whether a landscape is outstanding, natural, or whether one view should be preserved at the expense of another person's property, requires subjective judgement. It requires caution, evidence, and fairness.

Those values may matter, but when they are used to restrict private land-use rights, they need to be tested carefully and justified clearly.

I do not dismiss landscape values. Nor do I dismiss the role of Council in planning for the district. My concern is that these powers must be used with the utmost restraint, and a clear understanding of the burden being placed on directly affected families .

Compensation and reciprocity

Where a private landowner is materially affected by a public decision, compensation should be the primary part of the discussion - from the outset. It should be fair, full, and arrived at through open negotiation. That is not an unreasonable burden on Council; it is a basic safeguard against the misuse of public power.

New Zealand has learned, often at great cost, that the taking or diminishing of land rights without proper process and recognition causes long-lasting grievance. The principle matters whether we are talking about historic settlements, farming families, or any citizen whose property rights are materially affected by a public authority. I submit that no land in Maori ownership today would ever be taken for any reason so why can all other land be open for appropriation and a public use, without open free and fair negotiation?

I offer constructive ways to achieve public benefits while respecting private rights. The QEII Trust is one shining example of an approach based on agreement, stewardship, and mutual respect. It shows that environmental or landscape outcomes do not need to be achieved through compulsion alone. They can be achieved through partnership with landowners. The purchase **of development rights** by council or govt to a property, is also a very viable option. That is the type of approach I believe Council should prefer. If land is to be protected for a wider public purpose, then Council should engage openly with the owners, establish the public benefit, and negotiate fairly. That approach ensures long term environmental outcomes.

I submit that before private property rights are materially restricted, the evidential threshold should be very high. The Council should be able to demonstrate not only that the landscape values are significant, but that there is a genuine public need for the restriction, that alternative approaches have been properly considered, that affected landowners have been meaningfully consulted, and that the economic consequences have been fully understood. Where those consequences are significant, questions of compensation should form a vital part of the discussion from the outset.

Questions for the panel

I ask the panel to consider a few practical questions. What evidence demonstrates that this variation is needed, rather than merely desired? What direct consultation occurred with those whose land-use rights are most affected? What alternatives were

considered, including agreement-based mechanisms? What assessment has been made of the economic and practical impact on affected landowners? And if Council considers this a genuine public benefit, why has compensation not formed part of the solution already?

These questions are not intended to obstruct the planning process. They are intended to ensure that public power is exercised carefully, proportionately, and fairly. A council should not rely only on what it has the legal power to do. It should also ask what is just, reasonable, and respectful of the people most directly affected. First principles.

For me, the central question is this: when private land is being used to deliver a public benefit, who should carry the cost? The answer is simple. If the benefit is truly public, then the cost should also be public. It should not be shifted quietly onto a small number of farming families through planning controls that materially reduce their legitimate expectation of practical use rights. Unfortunately, this hearing is all about the transfer of use rights away from the legal owner -to council for their purpose. It is regrettable that we have no constitution to protect; we the people

Conclusion

I ask the panel to recommend that this variation **not proceed** unless Council can clearly demonstrate a genuine public need, an independent and fair process, and a proper mechanism for compensating landowners whose reasonable use rights are materially diminished.

If the public wants the benefit, then the public should bear the cost. It should not fall unfairly on individual farming families. That, to me, is the first principle for consideration as it is at the heart of this matter.

Questions

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