UPPER CLUTHA ENVIRONMENTAL SOCIETY (INC.)

SUBMISSION ON PROPOSED DISTRICT PLAN-SUBMITTER NUMBER 145/1034

CHAPTER 21 RURAL AREA

Nature of Submissions and Evidence

1. These submissions and evidence are written by Julian Haworth, secretary/treasurer of the Upper Clutha Environmental Society.

2. I am giving these submissions and evidence on behalf of Upper Clutha Environment Society. I express both the opinions of the wider Society and my own opinions on resource management issues where appropriate. My evidence involves matters of fact.

3. I am aware that Council ordinarily requires witnesses who express opinions to be qualified as experts. While I acknowledge that I have no formal qualifications, I have lived in the Upper Clutha for 26 years. I have 16 years experience of the visitor industry in the Upper Clutha having owned and run my own accommodation business in Wanaka.

4. I have a degree in Business Studies and successfully completed the exams of the Chartered Institute of Management Accountants in the UK in 1979. I worked professionally as an accountant for 10 years.

5. I have fifteen years practical knowledge of the implementation of the QLDC's Operative District Plan. I have been involved in preparing and presenting submissions and evidence on a number of variations and plan changes and on more than 100 subdivision and/or land use resource consent applications in the Queenstown Lakes District.

6. I have given evidence at a number of Environment Court hearings over the last twenty years and I am familiar with the Court's decisions following from these hearings, including decisions that wrote and/or modified the District Plan.

7. Though I have no formal planning or landscape qualifications I believe that I have sufficient expert knowledge on resource management, planning and landscape issues to be able to express an opinion that will be useful and can be given weight to on matters pertaining to the District Plan review.

8. My belief is based on a combination of extensive local and background knowledge, knowledge of the local landscape, familiarity with the Operative District Plan (especially the rural sections) and its relationship with the Resource Management Act, and active involvement in resource management processes. My expertise has been acknowledged in the Environment Court.

9. I have read the Code of Conduct contained in the Court's practice note and I have complied with this in preparing this evidence.

10. I have not omitted to consider material facts known to me that would alter or detract from my opinions expressed in this evidence.

11. I have read most of the evidence put forward by Council in support of the Proposed District Plan and some of the submissions put forward by other submitters.

Assessment Matters

12. The Court decided in the Operative District Plan decisions[1] that it was necessary to include district rules in the form of assessment matters "in order to enable the Council to implement the Plan's policies"[2]. The assessment matters are intrinsically linked to these policies.

13. The assessment matters are designed to offer detailed guidance to the Council when it is considering whether to grant or refuse resource consent applications for rural subdivision and/or development.

14. A three step "Landscape Assessment Criteria-Process" is used to evaluate the landscape in the vicinity of a resource consent application and then categorise the landscape. In my experience this process has worked well.

15. The S.32 Landscape Evaluation Report states that the existing assessment matters are "long and complex"[3] and [4] "that it is recognised that the assessment matters are overly complex, repetitive and would benefit from improvement." I disagree with these conclusions.

16. I have seen little evidence at the many Council hearings and Court hearings I have attended that applicants or witnesses found the existing rural assessment matters difficult to use or unworkable. Where in some cases they appear on the surface repetitive, in fact detailed reading shows that subtly different issues are addressed. The s.32 report gives no detail as to how the assessment matters are "repetitive".

17. For the purposes of this hearing I have re-read the expert evidence of Dr. Read in relation to ten resource consent applications[5]. I have been unable to locate anywhere in these briefs of evidence Dr. Read making any criticism at all of the assessment matters. Nothing is said along the lines of "this matter has already dealt with in an earlier assessment matter" or "I don't see the relevance of this assessment matter". Indeed in each case it appears that the assessment matters have enabled Dr. Read to undertake a rigorous review of the resource consent application and reach a reasoned opinion.

18. The S.32 Landscape Evaluation Report says[6]

> *"The structure of the existing assessment criteria has been retained. The assessment criteria have been refined to assist with investigation and whether the proposal is acceptable in terms of landscape character, visual amenity, the design and density of the proposal."*

19. This is misleading. In fact the assessment matters have not been "refined" but have been largely rewritten in a way that in my opinion, contrary to the claim above, will result in a less rigorous assessment of the effects of rural subdivision and development and is likely to lead to inappropriate development in terms of landscape character. There are some changes to the assessment matters relating to cumulative effects that have some merit that could and should be incorporated into the Operative District Plan assessment matters. These are discussed below.

1 C75/2001 and others

2 ODP 5.4.1.1 (i)

3 Page 15

4 Page 24

5 Manning, Mead, Corbridge Downs, Damper Bay, Sharpridge, Murray, Hewetson, Clevermaker, McCarthy, Emerald Bluffs (part).

6 Page 63

20. At the time of writing the assessment matters in the Proposed District Plan compared with the assessment matters in the Operative District Plan show the following changes (among others):

- The "minor" test is removed from the assessment matters for ONL and ONF where this test occurred 5 times in ONLWB/ ONF in the Visibility of Development, Visual Coherence, Nature Conservation Values and Cumulative Effects sections
- "Visual Coherence" has been totally removed. Was in ONLWB/ONF three times.
- "Openness" has been removed entirely from ONLWB/ONF and ONLDW where it appeared as a separate assessment matter in both. It now appears only in RLC
- "Open Landscape" is removed. Was in ONLWB/ONF and ONLDW
- "Open Character" is removed. Was in ONLWB/ONF
- "Open Space Values" is removed. Was in ONLWB/ONF and ONLDW
- "Open Space" is removed. Was in ONLWB/ONF and ONLDW
- "Naturalness" is removed. Was in ONLWB/ONF (twice) and Visual Amenity Landscape
- "Natural Elements" is removed. Was in ONLWB/ONF, ONLDW and VAL
- "Natural Topography" has one mention in RLC. Had 3 mentions in VAL
- "Natural Patterns" appears once in RLC. Was in ONLWB/ONF, twice in ONL DW
- "Natural Form" is removed. Was in ONLWB/ONF
- "Natural Values" is removed. Was in ONLWB/ONF twice and ONLDW
- "Natural Character" is removed. Was in ONLWB/ONF twice and ONLDW three times
- "Broadly Visible" is removed. Was in ONLWB/ONF and ONLDW
- "Prominent Slopes" is removed. Was in ONLWB/ONF and VAL.
- "Topography" is removed; was in ONLWB/ONF and ONLDW. Now appears only in RLC.
- "Geomorphological" is removed from ONLWB/ONF. Appears only in RLC now.
- "Wider Values" is removed. Was in ONLWB/ONF
- "Arcadian" is removed. Was in VAL as a crucial element with 8 mentions.
- "Pastoral" is removed. Was in VAL as a crucial element with 10 mentions.
- "Domestication" is removed. Was a key concept in ONLWB/ONF, ONLDW and VAL and had 6 mentions.
- "500m Radius" and "1.1KM Radius" criteria have been removed. Were in VAL.

21. These are wide-ranging, even drastic, changes.

22. The Proposed District Plan Draft Review Summary of Issues and Proposed Changes says[7]:

> *"The broad structure of the existing assessment criteria used to evaluate the merits of a subdivision proposal has been retained, but refined to promote more effective and efficient decision making."*

23. In my opinion the assessment matters have not been refined; they have been emasculated. The assessment matters have been rewritten to exclude key elements such that their effectiveness is weakened. The heart has been ripped out of them.

24. The most incomprehensible examples of this are, firstly, the removal of the "minor" test currently applied to Outstanding Natural Landscape (Wakatipu Basin)/Outstanding Natural Features from the Visibility of Development, Visual Coherence, Nature Conservation Values (twice) and Cumulative Effects sections, and secondly (in the latest Council draft) the removal from <u>all</u> Outstanding Natural Landscape/Outstanding Natural Features of the following criteria[8]:

7 Page 2

8 Previously in 21.7.1.1 now deleted in latest draft. Found in Operative District Plan 5.4.4.2.1

"[the assessment matters] ...are to be stringently applied to the effect that successful applications for resource consent will be exceptional cases.

25. The removal of this test and criteria means that the existing ONLWB and ONF provisions are *weakened* at a time when growth pressure is becoming more intense. This makes no sense. It conflicts with Council's own landscape and economic evidence for this hearing as discussed below.

26. Also removed from the Proposed District Plan is the following statement[9]:

"..because in or on outstanding natural landscapes and features the relevant activities are inappropriate in almost all locations within the zone, particularly within the Wakatipu basin or in the Inner Upper Clutha area."

27. This is replaced in the Proposed District Plan with:

"..because in or on Outstanding Natural Features and Landscapes the applicable activities are inappropriate in almost all locations within the Wakatipu Basin and inappropriate within many locations throughout the district wide Outstanding Natural Landscapes."

28. This proposed "many locations" criteria reduces the status of all Outstanding Natural Landscape and Outstanding Natural Features outside the Wakatipu Basin to that of Visual Amenity Landscape in the Operative District Plan, where the "many locations" criteria is applied to Visual Amenity Landscape. It is a clumsy and badly thought out change that, at a stroke, devalues all of the landscape of national importance outside the Wakatipu Basin. The change appears to have been made, as with the "stringent" criteria change above, at the behest of a handful of developers. The change is not supported by Council's own landscape and economic evidence, discussed below.

29. It appears to me that the situation feared by the Court is present in the Proposed District Plan where the Court said[10]:

"It does not follow that the rules for discretionary activities should be so weak that the environment cannot be protected where its sustainable management requires that."

30. The defective and haphazard manner in which the assessment matters have been rewritten is further illustrated by the removal of the criteria of "openness' (and open space, open landscape and open character) from Outstanding Natural Landscape and its inclusion only in the Rural Landscape Category. The Court said in relation to this[11]:

"We consider the protection of open character of landscapes should be limited to areas of Outstanding Natural Landscape and features."

31. The removal of almost all of the criteria pertaining to natural/naturalness throughout Outstanding Natural Landscape and Visual Amenity Landscape beggars belief.

32. In the Operative District Plan there are 43 mentions of "natural" in the Outstanding Natural Landscape and Visual Amenity Landscape assessment matters. The Proposed District Plan contains three references to "natural" in Rural Landscape Category[12,] but two of these are in relation to roads, boundaries, planting, lighting

9 ODP 1.5.3.(iii)(iii)

10 C75/2001 Paragraph 12

11 C180/1999 Paragraph 154

12 21.7.2.4.(e) and (f), 21.7.1.3 (e)

earthworks and landscaping, not structures. RLC contains one reference to unnatural in relation only to boundaries, planting and fence lines, but not structures. (This is a criteria carried forward from the Operative District Plan).

33. The focus on avoiding over-domestication of the landscape, a crucial element in the Operative District Plan, is removed entirely.

34. The removal of natural and domestication provisions is inconsistent with and contrary to findings by the Court[13] in relation to Visual Amenity Landscape/Other Rural Landscape:

> *"…residences are, according to the policies of both parts 4 and 5 are entitled to have rural amenities which include naturalness (if not openness) and exclude over-domestication and urbanization"*

35. The following parts of two VAL assessment matters are deleted[14] (my underline):

> *"In considering whether the adverse effects (<u>including potential effects of the eventual construction and use of buildings</u> and associated spaces) on the natural and pastoral character"*
>
> *"any building platforms proposed pursuant to rule 15.2.3.3 will give rise to <u>any structures being located where they will break the line and form of any skylines, ridges, hills or prominent slopes</u>"*

36. These are both key elements of the existing assessment matters.

37. The radius criteria are removed. In my experience these have been very useful in getting a full picture of an application at resource consent hearings. I question the logic for their removal. (This issue is discussed in more detail in "Cumulative Effects" and in relation to the s.42A report below.)

38. The Society supports the inclusion of the Rural Landscape Category clustering assessment matter at 21.7.2.5(b) as an addition to assessment matters in the Operative District Plan. This is discussed in more detail in the "Clustering" section later in this evidence.

39. The Proposed District Plan assessment matters are in error in proposing a clustering tool for Outstanding Natural Landscape in 21.7.1.5(b). Clustering was never contemplated as a development option in Outstanding Natural Landscape in the Operative District Plan.

40. It was proposed as an option in Visual Amenity Landscape because[15]:

> *"there is limited scope for development within Visual Amenity Landscape...and ...such a technique might be the only way to increase residential density in the Wakatipu Basin without completely destroying the openness and naturalness for which its landscapes are valued."*

41. Clustering was encouraged by the Court in order to mitigate adverse effects within Visual Amenity Landscape only (as illustrated in my Appendix C). There was an acceptance by the Court that some development was certain to take place in Visual Amenity Landscape. On the other hand rare small-scale or single residence development was contemplated within Outstanding Natural Landscape. Clustering's inherent acceptance of development is not consistent with this.

13 C75/2001 Paragraph 40

14 5.4.2.2.3(a) and 5.4.2.2.3 (b) (v)

15 C75/2001 Paragraphs 60 and 63

42. The inclusion of the clustering assessment matter in Outstanding Natural Landscape represents a fundamental failure to understand and give weight to the Court's decisions that wrote the Operative District Plan.

43. I note assessment matter 21.7.3.1 appears to propose that building design may take preference over locating a residential building platform in the landscape. In my experience of many resource consent applications the first step in minimizing adverse effects is to carefully locate development in the rural landscape by means of a residential building platform, and then, should the platform(s) gain consent[16], further control adverse effects through making the residence on the platform(s) a controlled activity such that adverse effects can be further mitigated. The assessment matter appear to be saying that clever building design may be able to make even inappropriate locations suitable for development. I do not support this approach, nor do I think it will protect landscape values compared with existing provisions.

44. The terms "arcadian" and "pastoral" are entirely deleted from the assessment matters, terms described as pivotal in the District Plan Rural General Zone Monitoring Report[17].

45. I have difficulty with the fact that "pastoral" has been removed from the Rural Landscape Category given that much of this landscape is pastoral in nature.

46. The planner and landscape architect appear to blame the use of the word "Arcadian" for the "relatively high number of residential building platforms approved in the Wakatipu and Wanaka Basins." [18] However, the "ideal pastoral paradise", "ideally rustic" (oxford dictionaries) or "rustic, simple, peaceful, pastoral" (the freedictionary and others) that defines an Arcadian landscape would not contain the mass of development that has been consented to by Council. Rather it would contain farmhouses/complexes at intervals and the odd house or tight cluster of houses dotted in the landscape. The retention of landscape with these characteristics is a goal well worth pursuing. The use of the word "Arcadian" cannot be blamed.

47. Retention of the specific word "Arcadian" may not be necessary where a phrase or words that convey exactly the same meaning could be included in the District Plan instead.

48. I reject the assertion in the S.32 Landscape Evaluation Report that only the Wakatipu Basin has Arcadian/rustic/simple/peaceful/pastoral values and that these are not present in the Upper Clutha where it states[19]:

> *"In particular, the Visual Amenity Landscape criteria have a focus on maintaining and enhancing 'arcadian' and 'pastoral in the poetic sense' landscape values. While these attributes may be present in some areas of the Wakatipu Basin, they do not represent the landscape character of the other areas…"*

49. The implication is that different assessment matters should apply to the two basins. I addressed this at the Chapter 6-Landscapes hearing where I said:

> *"It is only the relatively flat area behind Hawea and towards the airport, a small percentage of the Upper Clutha, where it could be said the landscape of the basins significantly differ (the Big Sky areas), and even these areas have interesting river terraces and are bisected by 2 rivers that have Outstanding Natural Landscape status."*

16 Public notification should take place in almost all cases

17 Page 56

18 Paragraph 6.6 s.42A-Landscapes Report

19 Page 14

50. In my opinion objectives, policies and assessment matters should apply identically across the District.

51. I simply don't buy the argument that words such as "natural" or "pastoral" should be deleted. This seems to me to represent a fundamental failure to understand the characteristics of the landscapes. While there is nothing wrong with the use of the word "quality" that is used many times in the Proposed District Plan-it appears in s.7(f) of the Act-terms such as "natural" and "pastoral" are more specific in terms of what is being assessed. The Operative District Plan assessment matters are better suited to their purpose.

52. Assessment of naturalness is crucial-the Act states as its purpose in s.5 (my underline):

> *(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*
> *(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
> *(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;*

53. Changing the assessment matters in the manner proposed is not consistent with this purpose. The changes to the assessment matters detailed above are likely to give rise to decisions where development occurs in inappropriate locations, and of a scale and density that is inappropriate. The assessment matters rewrite makes them less, rather than more, "effective and efficient".

54. As with the rural objectives and policies, I believe the Proposed District Plan assessment matters are weaker in terms of protecting landscape values than those in the Operative District Plan, and can see no compelling evidence put forward by Council for the changes proposed. The existing assessment matters should be rolled-over. If "best practice" requires them to be partially rewritten[20], this can surely be done without the removal of any of the elements described above.

55. I have difficulties with the evidence used to arrive at the rewritten assessment matters in the Proposed District Plan, especially the landscape evidence. The process whereby these changes have been made is of considerable concern to the Society. Details of this process are shown in the October 2014 Read Landscapes "Raw Analysis of District Plan Provisions Report". It is unclear who wrote this report, but it is assumed Dr. Marion Read. While the report states that it is "raw", it appears that this report has been used as a basis for changing the objectives and policies assessment matters and rules in the District Plan. In my opinion it is a clumsy and flawed analysis.

56. Simplistic comments are used such as "what does it mean?", "visual coherence is technical jargon", "terribly waffly and hard to understand" "never really understood the bit about the wider landscape" and so on. In other places the report just says "delete" while no reason is given. This approach hardly inspires confidence that the writer has tried to understand the purposes of the objectives, policies and assessment matters in the Operative District Plan, but rather conveys the impression of someone bent on change.

57. The objectives, policies, assessment matters and rules in the Operative District Plan were arrived at by the Court after considerable input from a number of expert

20 Dr. Read landscape evidence paragraph 6.4

landscape architects and resource management practitioners under cross examination. Several lawyers were involved who made sure the Plan wording was consistent with the Act.

58. A particularly concerning comment is where the October 2014 Read Landscapes Report recommends[21] jettisoning a key section of the assessment matters on the basis that:

> *"The process is highly problematic. If the RM amendments proceed this will become largely redundant"*

59. Dr. Read here recommends removing the process of applying the assessment matters set out in part 5.4.2.1 of the Operative District Plan on the basis of changes that might, but have not been made to the Act. This is untenable.

60. The Resource Management Act amendments referred to are not law. I have difficulty following the logic where the report suggests deleting fundamental parts of the assessment matters in the Operative District Plan on the basis of changes that have not been made to the Resource Management Act.

61. There were many issues discussed by the Court in relation to the assessment matters that have not been addressed in the review of the District Plan. For instance the Court held that the market was unlikely to protect landscapes values where it said[22]:

> *"Retention of existing "open space" qualities, especially those enjoyed passively by the public rather than landowners, are not so simply protected by the market and hence the possible need for management under the RMA"*

And

> *"….WESI's evidence persuades us that some landscape policies are efficient and effective because market transactions fail to protect these landscapes sufficiently."*

62. I note since writing the above that Council has sensibly commissioned economic evidence for this hearing (which I discuss in detail below). In my opinion if this crucial evidence had been seen by the officers who have recommended the Proposed District Plan provisions they would have recommended provisions that better protected landscape values.

63. I note that the District Plan Rural General Zone Monitoring Report stated[23] (my underline):

> *"In discussions with consultants and decision-makers, the following comments were made:*
>
> *It was felt that the provisions and in particular, the VAL assessment matters could be streamlined to reduce repetition <u>without reducing their effectiveness</u> and may well serve to reduce the time taken in preparing and processing the application"*
>
> *"Simplify the provisions by reducing the number of assessment matters, particularly for VAL in order to reduce duplication and avoid matters actually being overlooked due to the sheer number of them.*

21 Page 2 Raw Analysis of District Plan Provisions

22 C180/1999 Paragraph 95 and Paragraph 190(c)

23 Pages 41, 50 and 60

And[24]:

> *Consider adding a number of policies relating to the VAL in order to provide more support for the assessment matters"*

64. As stated above I disagree with most of these conclusions. The conclusions reached are, of course, highly reliant on which "consultants" and "decision makers" were asked for their opinion. Presumably they didn't ask the many planners and landscape architects that were involved in writing the Operative District Plan assessment matters.

65. The report suggests adding additional Visual Amenity Landscape policies to those existing; there may be merit in this.

66. The Rural Monitoring Report recommended simplifying the Visual Amenity Landscape assessment matters *without reducing their effectiveness* on the basis that they are repetitive. No specific examples of redundant assessment matters are cited. Chopping out effective assessment matters, as has been done in the Proposed District Plan, reduces effectiveness.

21.7.2.7 Cumulative Effects

67. The Society agrees with Council that this is a crucial issue. One only has to look at the residential building platform maps of the Wakatipu Basin and Upper Clutha Basin to realise this.

68. The District Plan Rural General Zone Monitoring Report stated (our underline)[25]:

> *"The analysis showed that, with one major qualification, the current discretionary regime seems by in large to be working as envisaged in that inappropriate developments are being declined and there is a general level of comfort with the provisions amongst practitioners. That said areas where the provisions may not be effective are in avoiding cumulative effects on the landscape and preventing urban style expansion in some areas."*

69. I note that the report finds that practitioners are comfortable with the existing discretionary regime and that under the existing Operative District Plan provisions inappropriate developments are being declined. This analysis supports the need for only minor amendments to the rural provisions of the Operative District Plan.

70. It has also been the Society's experience that in relation to the issue of cumulative effects the Operative District Plan is not always "effective". The large number of building platforms granted consent in Visual Amenity Landscape east of Wanaka and south of the Clutha River is testimony to this[26]. Attached is a map (Appendix D) showing this area. Within the 3880 ha marked area I have counted 195 building platforms and the extensive Wanaka Airport complex is also within this area. It follows that development density within this area is already below 20 ha per residential building platform, a density that in my opinion degrades landscape values[27].

71. *93 of the platforms shown have not yet been developed*. Each of these yet-to-be-developed building platforms potentially will contain not just a single dwelling but also may include, outbuildings, garages, fences, water-tanks, linear boundary

24 Including adding definitions of "arcadian" and "pastoral" rather than deleting these terms

25 Page 3

26 Rural Building Platforms 2015 map of Upper Clutha

27 The Wakatipu Basin maps show higher densities than this is some locations

planting, swimming-pools, tennis-courts, BBQ areas, greenhouses, long access roads/driveways, parking areas, sleep-outs, caravans, boats, the presence of people, wood-smoke, children's toys, washing-lines, lighting at night and at dusk and so on.

72. It occurred to me when preparing the above development density evidence that it took two Society committee members just over an hour to assess the density of development in a nearly 4000 ha area. With Council's resources I believe that it could prepare similar density map evidence for both major basins in the non-ONL landscape in perhaps two weeks. Different levels of density of development already in place could be identified in specific areas. This information could be included in the District Plan and an assessment matter(s) linked to the density maps where areas identified as say "domestication high, domestication medium, domestication low" could be used as a guide to both Council and landowners as to the level of cumulative effects already in place. If Council is serious about controlling cumulative effects I believe the process described above should be included in the District Plan.

73. It also occurred to me that Council could, relatively easily, map consented development in Outstanding Natural Landscape and on Outstanding Natural Features. Cumulative effects are an issue in these landscapes as well.

74. Some of the blame for the failure to control cumulative effects must fall on poor decision making by commissioners (admittedly under pressure from well-resourced developers and where there are seldom community members with the time to submit or attend hearings) rather than blaming the District Plan provisions. In my opinion there are enough provisions in the Operative District Plan to reject much development in Visual Amenity Landscape, let alone Outstanding Natural Landscape.

75. The Corbridge Downs decision is in my opinion a good example of how the process has been failing. Corbridge Downs made an application for subdivision and development in March 2013. The Society submitted not opposing much of the development proposed because it was clustered and reasonably well hidden in Visual Amenity Landscape. The Society did not oppose 22 residences or other development (an artificial lake and ancillary development) on the 322 hectare site[28]; the Society was willing to accept development at a density of one residence per 14.6 ha because it was clustered. The Society opposed 13 residences that were outside the "cluster". As can be seen in Appendix A these were either proposed to be strung along a ridge near the Clutha River (which is Outstanding Natural Landscape) or scattered on the site. In its decision Council commissioners put cumulative effects in the too hard basket, appeared to give little weight to objectives, policies and assessment matters, or indeed to any of the rural provisions in the Operative District Plan, and granted consent for the entire 35 residence development. Worse still, although the decision included some relatively small areas to be protected under QEII covenant, the commissioners did not insist on a covenant in perpetuity protecting the balance of the site from further subdivision and development.

76. Another example of a poor decision made by commissioners is in relation to a resource consent application RM110133-Edward Hewetson. The Upper Clutha Environmental Society engaged landscape architect Anne Steven to assess the application in 2011. She concluded in her evidence to the Council hearing:

> *"I conclude from my assessment of the proposal that due to its adverse effects, it would not preserve the remaining natural character of Lake Wanaka and its margin; it would not protect the naturalness and openness of the outstanding natural landscape; and it is my view that it is inappropriate development in the location proposed. The environmental results anticipated for the Rural General Zone would not be achieved"*

28 Appendix A

77. Council's planner also recommended that the application be declined. Despite this the commissioners granted consent for the proposed large residence, the result being that a 9 ha site within Outstanding Natural Landscape was permitted to be developed with a large and visible residence and two residential cottages, a density and style of development inconsistent with Outstanding Natural Landscape.

78. Interestingly in this case the council planner very unusually went against the landscape evidence of Dr. Marion Read which leaned towards granting consent. In my experience Dr. Read seldom leans towards applications being declined, something the commissioners might want to take into account when weighing her evidence to the District Plan hearings.

79. Decisions of the nature described above should not be allowed to continue given the intense growth pressure projected for the District. While the Operative District Plan contains much that is excellent to assess rural resource consent applications, the Society agrees with Council that a tightening of the cumulative effects provisions such that they are more effective is needed.

80. The District Plan Rural General Zone Monitoring Report explains how the existing provisions relating to cumulative effects are not always effective here[29]:

> *"Although they are often discussed, it is more common to find decisions that discuss the fact that thresholds for cumulative effects are approaching rather than decisions that actually turn on this matter."*

And:

> *"Further consider ways of improving how the District Plan currently manages cumulative effects. Possible options would include undertaking a full, finer-grain landscape assessment in order to develop thresholds to better guide the assessment of cumulative effects."*

81. I have suggested a finer-grained domestication-level analysis above that would be useful in assessing cumulative effects thresholds.

82. Given Council's concerns over cumulative effects I am very surprised to see that the 500m and 1.1km radius criteria assessment matters are proposed to be deleted from the plan. In my experience these assessment matters have been useful in allowing Council to be fully informed on rural resource consent applications. They aid Council in taking into account the big picture in the vicinity of an application as was anticipated by the Court[30]:

> *"The rationale behind these tests was to ensure Council could always consider cumulative effects."*

83. The radius criteria have been useful as a method of promoting development in parts of the landscape that can most easily absorb development and have also been useful in quantifying the cumulative effects of development in the vicinity of a subject site. The Environment Court has held[31] (my underline):

> *"There is no conflict between the radius criterion and the purpose of the Act, since the rule is designed both to meet the needs of present and future generations to enjoy the rural landscape of the basin and <u>to avoid, remedy or mitigate cumulative adverse effects of domestication of the landscape</u> …".*

29 Pages 45 and 60

30 C75/2001 Paragraph 51

31 High Court decision AP33/01-paragraph 32

84. I enclose a map showing how the 500m radius assessment matter was used by landscape architect Anne Steven in the Corbridge Downs resource consent application (Appendix E). This shows how alternative development options outside the subject site had to be explored because of the radius criteria.

85. The Society believes that these radius assessment matters may have been removed from the Plan after submissions by landowners for the very reason that they are effective in assessing and controlling the cumulative effects of development. They should remain in the Plan. The High Court has held that the radius criteria are a valid tool and that they are not a major imposition on developers where it said[32]:

"[landowners]...considered the radius criterion to be an extra imposition, the reality was that under that criterion an applicant need only identify the most obvious alternatives up to a distance of 500 metres away, leaving it to other persons to make submissions on the "outer annulus" from 500 to 1,100 metres."

86. The planner seems to think that the radius criteria have been used as a kind of Trojan Horse to assess cumulative effects[33]:

"I consider that they are inappropriately used as a surrogate to determine whether cumulative adverse effects are at issue"

87. In fact the Court, as can be seen in the two quotes from decisions above, always contemplated their use for this purpose.

88. I note the use of the words "shall be satisfied" in relation to the cumulative effects assessment matter 21.7.2.7. The Society supports this wording as a genuine strengthening of the cumulative effects provisions where this becomes a test rather than a guideline. Because of this the Society seeks that in the Operative District Plan in the assessment matter 5.4.2.2.3.(d) the words "the following matters shall be taken into account" are replaced by the words "the Council shall be satisfied that the following matters have been complied with:".

89. I note that Part 6.2 of the Proposed District Plan it states:

"It is realised that rural lifestyle development has a finite capacity if the District's distinctive rural landscape values are to be sustained."

90. And in the Proposed District Plan policies it states:

"Policy 6.3.2.1 Acknowledge that subdivision and development in the rural zones, specifically residential development, has a finite capacity if the District's landscape quality, character and amenity values are to be sustained."

91. The Society supports this statement and policy in that they help to address and quantify the issue of cumulative effects and seeks that they are included as amendments to Part 5 of the Operative District Plan. The 6.2 statement can be included in Part 5. 5.1 Resource Management Issues, i) The Management of the Effects of Rural Activities on the Environment.

92. It would be my preference to include the Policy 6.3.2.1 in Part 5.2 Objective 1 but also in a similar form as an assessment matter in both the Outstanding Natural Landscape at 5.4.4.2.2.1.(e) and Rural Landscape Category (formerly Visual Amenity Landscape) at 5.4.2.2.3.(d).

32 High Court decision AP33/01-paragraph 16

33 S.42A report paragraph 19.4

93. The Environment Court has made the point that all development, even cumulative development, does not necessarily result in the balance of adverse effects being negative, where it held in relation to cumulative effects[34] (my underline):

> *"Just to show how careful one must be not to be inflexible about these issues we raise the question whether it is possible that a degree of subdivision into lifestyle blocks might significantly increase the overall naturalness of a landscape….Logically there is a limit: the law of diminishing returns where too much subdivision leads to over-domestication of the landscape"*

94. In relation to the final sentence it appears to me that, in simple terms, Council has two options for the rural provisions of the Proposed District Plan at this point in time.

    1. Accept the evidence of planners such as Jeffery Brown (given at the Chapter 3, 4 and 6 hearing on behalf of landowner clients) that says that rural subdivision and development should have the same status as farming so that rural landowners can develop land largely unfettered by provisions in the District Plan. Almost open-slather development.
    2. Accept the evidence of disinterested community groups such as this Society that says that the two main basins have already become over-developed in many places and tough rules are needed to prevent further degradation of the landscapes such that, especially in Rural Landscape Category landscape, some areas retain existing landscape character by remaining largely undeveloped while other areas retain what landscape character is left by not being further-developed.

95. In my opinion Option 1 does not represent sustainable management. The limit where the law of diminishing returns applies has been reached in many Rural Landscape Category landscapes. Again I point to the residential building platform maps of the two main basins (remembering that much of this development has not yet been built) as evidence that Option 2 should be adopted.

96. Witnesses (effectively lobbyists) such as Mr. Brown seldom look at the Big Picture. Part of the Big Picture can be seen in the evidence of Mr. Paetz, where he said at the Chapter 3, 4 and 6 hearing that "the zoning in the Proposed District Plan (PDP) provided sufficient room for a further 50-55,000 people"[35].

97. It follows from this that not a single extra residential is *needed* in the Rural Zone at this point in time.

Rural Zone and Farming Activities

Parts 21.4.3, 21.5.18 (Table4) and related provisions

Farm Buildings as a Permitted Activity

98. The Society opposes farm buildings becoming a permitted activity per Rules 21.4.3 and 21.5.18. It seeks that all of the provisions relating to farm buildings contained in the Operative District Plan are retained.

99. In seeking this the Society relies on Environment Court decisions C177/2002, C125/2004 (The "farm buildings" decisions) as well as any other Court decisions that relate in any way to the provisions in the Operative District Plan for farm buildings.

34 C180/1999 Paragraph 91
35 Memo from the Hearing Panel

100. The Proposed District Plan Draft Review explained that[36]:

> *"It is proposed to make the construction and alteration of many farm buildings a permitted activity.....The existing requirements are considered too onerous"*

101. I can see no evidential reason for changing the existing farm building provisions in the Operative District Plan. The existing provisions are consistent with the effects-based approach of the Resource Management Act. The proposed changes to the District Plan where farm buildings are proposed to be a permitted activity that must comply with certain standards are more activity-based. The effects of farm buildings "are so variable [in the sensitive landscapes of the Queenstown Lakes District Council] that it is not possible to prescribe standards that control them in advance"[37]. I believe the existing farm building provisions will control adverse effects on landscape values better than those proposed.

102. The Operative District Plan provisions are not "onerous" at all. A farm with a size of over 100 ha (relatively small for this district) can have 2 farm buildings as of right as a controlled activity. Smaller units can apply as a discretionary activity. The proposed increase in density to one farm building per 25 ha (as of right) will result in significant and adverse landscape effects. Such a density is out of character with the large farming lots found in the District. I note Dr. Read agrees here where she says in her evidence[38]:

> *"Submission 145 [Upper Clutha Environmental Society] says there is no justification for increasing the possible density of farm buildings from one per 50ha as in the ODP to one per 25ha in the PDP. I agree with this position and consider that increasing the allowable density increases the risk of adverse effects on the landscape from a proliferation of built form."*

103. I note that Standard for Farm Buildings 21.5.18.2 has now been changed in the working draft[39] to a density of less than one farm building per 50 hectares. The Society's position remains that the existing provisions should be rolled-over.

104. The S.32 Landscape Evaluation Report states in relation to the farm building provisions contained in the Operative District Plan[40]:

> *"the rule is effective in that it provides for farm buildings while protecting the landscape resource and visual amenity."*

105. The District Plan Rural General Zone Monitoring Report agrees stating[41]:

> *"The provisions enabling farm buildings to be created seem to be proving generally effective."*

106. The S.32 Landscape Evaluation Report explains how the current Operative District Plan provisions work in a sensible manner[42]:

> *"The established approach is that a controlled activity resource consent is generally considered to provide an acceptable balance between an applicant being certain consent would be granted, and the Council being able to ensure developments are undertaken in accordance with the specified matters of control."*

36 Summary of Issues and Proposed Changes page 1

37 C75/2001 Paragraph 43

38 Paragraph 5.18

39 From Council's counsel dated 14th June 2016

40 Pages 9 and 18

41 Page 30

42 Page 19

107. Most of the "specified matters of control" relate to minimizing adverse effects on landscape values. The three quotes above illustrate that the existing provisions relating to farm buildings, which were comparatively recently included in the Operative District Plan by means of Environment Court decisions, are working well.

108. The existing rules were written by the Court after hearing considerable evidence including from Council. The District Plan Rural General Zone Monitoring Report explains that the existing rules in the District Plan are written in a manner "enabling farm buildings in genuine cases and particular landscapes"[43]. Council's own report makes it plain that the existing provisions are not "onerous". I can remember no situation where consent for a farm building was refused.

109. The proposed weakening of the landscape provisions relating to farm buildings is likely to result in significant and adverse effects. The Court has recognised this where it held[44]:

> *"Farming residences, barns, tracks and fences might have significantly more impact than a residential or commercial development…"*

110. Similarly the S.32 Landscape Evaluation Report recognises this where it says[45]:

> *"While farm buildings are anticipated in the rural areas, large buildings used for intensive farming and associated infrastructure can also have the potential for adverse effects on landscape values."*

111. While it is accepted that farm buildings do not form part of the permitted baseline in reality "trading" of consents for farm buildings in favour of residential buildings can occur. Farm buildings that gain consent, or are able to gain consent, are sometimes traded in this way as a backdoor way of gaining consent for residential buildings. Pressure is put on commissioners to grant consent for a development by the applicant stating that it will covenant against any other buildings (including farm buildings) if the residential subdivision and development is granted. The Society has come across several examples of this at hearings over the last few years[46]. This situation is likely to proliferate if the much more liberal Proposed District Plan provisions are adopted.

112. The S.32 Landscape Evaluation Report discusses the costs involved to farmers because of the existing farm building controlled activity rules. It says[47]:

> *"It is considered however, the administration of the rules has resulted in inefficiencies…. It is reasonable for an applicant to expect to pay in the order of $650.00 - $1500.00 inclusive of GST for a simple, controlled activity resource consent application for a farm building. In the context of the costs of a relatively small farm building such as a hay, silage or implement shed, a kitset variety, without services could be in the order of $8,000 - $15,000 inclusive of GST plus construction costs. The ratio to costs of obtaining resource consent relative to the cost of the building could be in the order of 15%."*

113. The Proposed District Plan posits this as one of the reasons for changing the activity status of farm buildings to a permitted activity rather than a controlled activity.

43 Page 5

44 C74/2000 Paragraph 9 (3)

45 Page 16

46 Sharpridge, Corbridge Downs, Matukituki Trust

47 Page 18

114. These costs need to be looked at carefully. Under the above scenario the average cost for a rural farm building consent is $1075 incl. GST. Farms are businesses-this is a tax allowable cost. A farmer would be able to offset the 15% GST and 28% Corporation Tax from this cost reducing it to an out-of-pocket cost of about $673 (GST allowable $262, Corporation Tax allowable expense gain $140).

115. This $673 represents a one-off capital investment planning cost that is incurred by farmers say every 5-10 years; $67-$134 per annum. Not exactly onerous.

116. The District Plan Monitoring Report, prepared for Council in 2009, says that the average cost to gain consent for a single residential building platform in the rural area is $53,288. If this is appealed to the Environment Court (which is extremely unlikely to happen with farm buildings as they are controlled activities) this cost rises to around $90,000. None of these private residential costs are usually tax allowable.

117. It follows that the average out-of-pocket cost to gain consent for a farm building is just 1.3% of that of a private residence ($673/$53288) or 0.7% of a private residence that goes to court ($673/$90,000).

118. On the basis of the above figures the current controlled activity regime seems like a very good deal for farmers; the balance between controlling adverse effects on landscape values and costs to farmers is very fair in the Operative District Plan. The existing provisions should be rolled-over.

119. The farm building rule changes proposed are symptomatic of the needlessly pro-farmer bias shown in the Proposed District Plan.

Rural

21.1 Zone Purpose

120. The Proposed District Plan describes the purpose of the Rural Zone in Part 21.1 as:

> *"The purpose of the Rural Zone is to enable farming activities…."*

121. This is a misleading and simplistic statement and shows bias towards the farming community at the expense of the rest of the community. The statement marks a very different approach to that taken in the Operative District Plan. It is a retrograde step back into the pre Resource Management Act past. It is not consistent with sustainable management.

122. The zone description is consistent with the highly farming-focused nature of the Proposed District Plan. The writers of the Proposed District Plan appear to be under the illusion that by strongly favouring farming this will protect landscape values. This is not borne out by the proliferation of development that has occurred on what were previously farms in the Wakatipu and Upper Clutha Basins, this despite farming having been a permitted activity for many years.

123. It bears repeating my evidence at the earlier Chapter 6 Landscape hearings where I said:

> *"There are nineteen mentions of farming in the objectives and policies compared to one in the Operative District Plan. A number of objectives and policies promote farming in such an unbalanced way that the likely outcome will be adverse effects on landscape values."*

124. The Proposed District Plan is a statutory document that is written to satisfy outcomes desired by the whole community. It should not contain provisions favouring one privileged sector.

125. The Operative District Plan recognises farming as a permitted activity, but also recognises that many other activities crucial to the social, economic and cultural wellbeing of the community take place in rural areas.

126. The Society believes that the Zone Purpose statement is not consistent with the Act which contemplates almost any kind of activity in rural areas depending on an assessment of effects. It is also disturbing because it wrongly elevates farming above many other activities in rural areas, for instance activities related to tourism. It gives farming special treatment and devalues landscape values.

127. In reality farming as an economic activity is a distant second to the major industry of the district, tourism. Agriculture, Farming and Fishing represents only 2.5% of employment in the district. Tourism spend is over $2 billion in the district and adds $650m dollars to the district's economy; farming adds $50m in comparison[48]. It is widely accepted that tourism relies in large part on protecting landscape values for its success.

128. I note that Mr. Espie does not support the description of the Rural Zone where he says[49]:

> *"In terms of area, the vast majority of the District's Rural Zone is high altitude, mountainous country that is managed by farming in a particularly extensive (rather than intensive) way. I question whether the zone purpose and first Objective should not reflect this situation more closely. Enabling and supporting farming activity is obviously vital but enabling and supporting any activities that manage the land cover of this vast area is of equal merit."*

129. Under objectives and policies the Proposed District Plan begins by proposing the following wording:

21.2.1 Objectives and Policies

> *21.1.2.1 Objective - Enable farming, permitted and established activities while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.*
>
> *Policies*
> *21.2.1.1 Enable farming activities while protecting, maintaining and enhancing the values of indigenous biodiversity, ecosystem services, recreational values, the landscape and surface of lakes and rivers and their margins.*
> *21.2.1.2 Provide for Farm Buildings associated with larger landholdings where the location, scale and colour of the buildings will not adversely affect landscape values*

130. The rural objectives and policies are heavily farming focused from the start. This continues through other parts of the rural objectives and policies. The plan appears to be farming-activity driven. This does not represent efficient resource management. The Court has held that[50]:

> *"We do not consider that we should move from the "effects-based" approach at the policy stage"*

48 Philip Osborne Economic evidence Paragraphs 4.1, 4.3, 4.5 and 5.4.

49 Paragraph 25 Espie High level Review of District Plan Changes

50 C74/2000 Paragraph 19

131. So the Court prefers the "effects-based approach" at policy level as adopted in the Operative District Plan. This approach is not adopted in the Proposed District Plan, as illustrated in the policies above. I agree with the Court; the effects-based approach better reflects the Act at policy level.

132. Policy 21.2.10.3 is perhaps the best illustration of how the Proposed District Plan has been captured by the farming lobby where it states:

> *"21.2.10.3 Recognise that the establishment of complementary activities such as commercial recreation or visitor accommodation located within farms may enable landscape values to be sustained in the longer term. Such positive effects should be taken into account in the assessment of any resource consent applications."*

133. This policy encourages farmers to apply to establish commercial recreation and visitor accommodation businesses on farms on the basis that this may protect landscape values. With such strong policy backing applications are likely to sail through resource consent hearings. The reality is that existing landscape values are more likely to be degraded by such activities, though not necessarily.

134. The effects based approach of the Operative District Plan is more efficient where applications for commercial activities and visitor accommodation activities are decided on their balance of effects rather than on some tenuous link with farming.

135. On the other hand, the Operative District Plan does fully recognise the importance of farming by making it a permitted activity. The Court has recognised that the Operative District Plan is written such that "the rural general zone is primarily for rural activities."[51]

136. The Operative District Plan describes a more balanced Rural General Zone purpose as follows:

> *5.3 Rural General and Ski Area Sub-Zone-Rules*
> *5.3.1 Zone Purposes*
> *5.3.1.1 Rural General Zone*
>
> *The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:*
> *- protects and enhances nature conservation and landscape values;*
> *- sustains the life supporting capacity of the soil and vegetation;*
> *- maintains acceptable living and working conditions and amenity for residents of and visitors to the Zone; and*
> *- ensures a wide range of outdoor recreational opportunities remain viable within the Zone.*
> *The zone is characterised by farming activities and a diversification to activities such as horticulture and viticulture. The zone includes the majority of rural lands including alpine areas and national parks.*

137. The obvious example of how sympathetic to farming the Operative District Plan is can be seen throughout the District where visually intrusive pivot irrigators have proliferated as permitted activities none of which (to the Society's knowledge) have been publicly notified or declined consent. As the S.32 Landscape Evaluation Report says[52]:

> *"the use of pivot and linear irrigators and the consistent lush pasture must be accepted as an anticipated change within the ambit of permitted farming activities"*

51 C162/2001 Paragraph 53

52 Page 16

138. The Operative District Plan has been very accepting of the landscape changes caused by farming activities such as pivot irrigators. While the Society accepts this position, the result is that the permitted baseline is set so high where there are pivot irrigators in place that *any* further development in these rural areas becomes inappropriate.

139. The Glentarn decision near Glenorchy[53] explains that the provisions of the Operative District Plan can only be interpreted as being very supportive of farming. In fact, the District Plan Rural General Zone Monitoring Report suggests that the Operative District Plan should be strengthened to give primacy to landscape outcomes where it says[54] (my underline):

> *"…one matter which needs to be carefully monitored and considered by the Council into the future [is] the Glentarn vs. Queenstown Lakes District Council decision C10/2009 whereby policies relating to rural activities were given considerably more weight than had previously been the case and affected the interpretation of the landscape policies.... it may need to consider making the plan more explicit in its presumption against development (and the primacy of landscape outcomes) in such areas."*

140. The Glentarn decision points to the need to *tighten* rules preventing new residences on small rural lots which under the provisions of the Operative District Plan can gain consent because they are supposedly farming-related. In the Glentarn decision the Court granted land use consent for a residence on a fifty-five hectare subject site within Outstanding Natural Landscape because it was farming-related, in the process overturning Council's decision. While it is accepted that the District Plan should encourage genuine farming activity the Glentarn decision gave undue weight to small-scale farming being used to justify residential activity within outstanding natural landscape.

141. The decision set a precedent under the Operative District Plan rural provisions for any landowner in the Queenstown Lakes District to argue that any proposed new residence on about 50 hectares with a barn and some stock present (at least until consent is granted) will be a farmhouse. Under the decision residences claiming some farming connection effectively become controlled activities on rural 50 ha lots even within Outstanding Natural Landscape. There was no stipulation as to how long the farming activity had to continue after the decision.

142. Because of this the Society seeks that the provisions contained in the Operative District Plan, far from being loosened as is proposed, should be amended to tighten and clarify rules associated with farming activity on small lots such that "the primacy of landscape outcomes" are realised as suggested by the District Plan Rural General Zone Monitoring Report.

143. The Society seeks the following changes to the Operative District Plan. Policy 5.2.1.5 currently reads:

> *1.5 Provide for a range of buildings allied to rural productive activity and worker accommodation*

144. The Society seeks this policy is amended, reflecting the need to tighten landscape provisions due to the Glentarn decision, to read:

> *1.5 Provide for a range of buildings allied to and necessary for the exercise of rural productive activity and worker accommodation. Any residential building proposed*

53 C10/2009 Glentarn Group Ltd. V. QLDC

54 Page 40

on the grounds that it is allied to and necessary for rural productive activity shall be subject to the same landscape assessment as any other proposed residential building and no weight shall be given in this assessment to associated rural productive activity.

145. Such a rule change will help prevent so-called farm residences gaining consent on very small lots, while not preventing genuine large-lot farm residences gaining consent.

Parts 21.4.6, 21.4.7, 21.4.8 and related provisions

Construction and Alteration of Residential Buildings Located Within an Approved Residential Building Platform or Outside a Residential Building Platform

146. I note that rule changes are proposed such that a resource consent as a controlled activity per the Operative District Plan is no longer needed to construct or alter residential buildings on an approved residential building platform or approved residential buildings outside a residential building platform. The residence and/or its alteration is proposed to become a permitted activity in the Proposed District Plan providing it complies with a set of standards.

147. The Society opposes this change to the Plan on the grounds that the control of the external appearance and landscaping of buildings in rural areas on or outside building platforms is an important tool in mitigating adverse landscape effects.

148. In the hearings that led to the Operative District Plan the Court preferred that buildings to be constructed on residential building platforms should be a *discretionary* activity (because, importantly, external appearance and landscaping could not be addressed under that Act at the subdivision stage) where it said[55]:

"…if a person applies for land use consent to erect a dwelling on land which does not contain a residential building platform then the question of external appearance is a broad discretionary activity to which the assessment matters apply and on which other persons may make submissions. It seems to us that that scrutiny can be avoided if the residential building platform route is followed because then no public notification is required [for the external appearance of the dwelling]…In our view the issue should be addressed by making building on a residential building platform a discretionary activity…."

149. In the end the Court did not hold to this view and Operative District Plan provisions made the construction of any new building within an approved residential building platform or the addition to or alteration of an existing building within an approved residential building platform controlled activities[56]. The activities controlled include external appearance, associated earthworks, access and landscaping, provision of water supply, sewage treatment and disposal, electricity and telecommunication services

150. A rural dwelling to be constructed outside a residential building platform is assessed in the Operative District Plan as a discretionary activity. The external appearance, associated earthworks, access and landscaping, provision of water supply, sewage treatment and disposal, electricity and telecommunication services are almost invariably decided as part of the original resource consent application in this case. Later alterations to such buildings are a controlled activity.

55 C75/2001 Paragraphs 78 and 79

56 ODP 5.3.3.2.(i)

151. Residential buildings on residential building platforms often eventuate many years after the original subdivision and development consent was granted and the conditions associated with the subdivision and development consent and reasons why these conditions were imposed can often be lost in the mists of time.

152. If no resource consent hearing takes place for the construction or alteration of residential buildings on building platforms as is proposed, the process becomes less rigorous and less focused. Permitted activity status tends to engender an 'anything goes" attitude in people proposing to build or alter buildings on a residential building platform or alter and enlarge buildings outside a residential building platform; less scrutiny is given to developments; greater adverse effects will inevitably often result. As the S.32 Landscape Evaluation Report states[57]:

"It is acknowledged that the Council would not have as much control over landscaping.....and control on the external appearance of buildings..."

153. Council would not have as much control over adverse effects. The draft Summary of Issues and Proposed Changes states:

"Removing the need for resource consent will reduce the time and cost associated with an additional application without reducing environmental standards."

154. I disagree that environmental standards will not be reduced. The more rigorous scrutiny that takes place in a resource consent hearing is much more likely to result in the original conditions of subdivision being adhered to and better control over adverse effects and so higher environmental standards.

155. As mentioned above the Environment Court originally expressed the opinion that locating buildings on an approved building platform should be a discretionary activity rather than a conditional activity. Permitted activity status was never contemplated[58]. It follows that permitted activity status is not a credible or efficient course of action.

156. The Society seeks that the status quo, controlled activity status, is retained in the District Plan in the exact same form as in the Operative District Plan in order to give certainty that adverse effects on landscape values are adequately controlled.

21.7.2.5 Clustering

157. I note that the Proposed District Plan advocates[59] the introduction of two assessment matters that assess the merit of clustering development on sites in Outstanding Natural Landscape and RLC landscapes as a tool to control adverse landscape effects.

158. The use of in-perpetuity covenants as a tool to be used in conjunction with clustering is discussed in the District Plan Rural General Zone Monitoring Report where it says[60]:

"Provided such covenants are in perpetuity, this is considered to be an effective way of ensuring a degree of separation between domestication and maintaining or enhancing the existing character…"

57 Pages 19 and 77

58 C75/2001 Paragraph 86[c]

59 Part 21.7.1.5 (b) and 21.7.2.5 (b)

60 Page 26

159. The Society supports this conclusion. The Society seeks that the District Plan should contain specific reference to "in perpetuity" covenants rather than simply "covenants" as currently used (see below).

160. The Society opposes the use of clustering as a tool in Outstanding Natural Landscape and so opposes assessment matter 21.7.1.5(b) for the reasons explained earlier in this evidence.

161. The assessment matters in the Operative District Plan already strongly encourage the containment of development in the landscape without actually mentioning clustering[61] (my underline):

> *(v) the ability to contain development within discrete landscape units as defined by topographical features such as ridges, terraces or basins, or other visually significant natural elements, so as to check the spread of development that might otherwise occur either adjacent to or within the <u>vicinity</u> as a consequence of granting consent;*

162. "Vicinity" is defined as being within 1.1km. This definition has been deleted from the Proposed District Plan, a change which reduces the specificity and so the utility of the assessment matters.

163. In the decisions that wrote the Operative District Plan the Court held[62]:

> *"The concept of clustering was not sought in any reference….however we do not preclude such an application by any party….Alternatively the Council might consider this a topic on which a plan change might become desirable after the revised plan becomes operative."*

164. So the Court encouraged Council to put a clustering tool into the Operative District Plan via a plan change. Council failed to do so; it sat on its hands while the Visual Amenity Landscape of the Wakatipu Basin and Upper Clutha Basin became "poppy-seed" developed, and then blamed this on the provisions in the Operative District Plan. It then used this situation to justify a total rewrite of the objectives and policies and assessment matters where in fact the real problem stems from Council failing to adequately administer and implement the Operative District Plan.

165. It occurs to me, on the same theme, that if the Proposed District Plan rural objectives, policies and assessment matters are supposedly so unworkable why has Council never sought to change them by means of a plan change in the last fifteen years? It would seem the provisions were working reasonably well.

166. The reality is that by simply inserting a clustering tool, and adopting those changes proposed by Council that are supported by the Society, the District Plan will become far more effective in controlling the adverse effects of development, especially cumulative effects. A culture must be developed among commissioners where cumulative effects are given greater weight.

167. The Society supports the proposed Rural Landscape Category clustering assessment matter and seeks that this assessment matter, 21.7.2.5(b), is incorporated into the assessment matters in the Operative District Plan in part 5.4.2.2.3(c) or (d) with the addition of the sentence underlined below (the wording here has been changed from the Society's original submission):

> *"(b) there is merit in clustering the proposed building(s) or building platform(s) within areas that are least sensitive to change; <u>Where clustered development is</u>*

61 5.4.2.2.3.(d) (v)

62 C75/2001 Paragraphs 60-63

assessed as appropriate and given consent this shall be conditional on the balance of the subject site being covenanted against further subdivision and development in perpetuity."

168. The Society seeks the inclusion in part 5.4.2.2.3. [c] of the Operative District Plan a spatial development tool assessment matter based on the existing 500m and 1.1km assessment matter[63] where the desired spatial patterns of development, meaning the distances between nodes of development, are quantified in order to control and mitigate adverse and cumulative effects of subdivision and residential development within Rural Landscape Category. This type of tool to control cumulative effects was suggested in the District Plan Monitoring Report[64] where it says:

"However, it would also seem that the Plan could provide more direction as to the desired the level of domestication and potentially the appropriate spatial distribution of development in the various landscape categories."

169. An example of the type of landscape sensitive subdivision and development such a clustering and spatial tool would enable is discussed in the District Plan Rural General Zone Monitoring Report[65] using the Springbank Environment Court decision as an example of clustering with a covenant preventing further subdivision and development of the subject site in perpetuity.

170. The Society supports the kind of outcome the Court approved in Springbank (my Appendix C) and urges the commissioners to study the discussion in the District Plan Rural General Monitoring Report.

Economic Evidence

171. I have read the economic evidence of Philip Osborne dated 6th April 2016 and will comment on this here.

172. Key statistics and conclusions reached in the evidence are:

- Tourism contributes $650 million and 5,500 jobs to the district's economy
- Farming contributes $50 million and 500 jobs to the district's economy
- The value of the natural landscape is of "such vital economic importance to the district's community"[66] that it is prudent to adopt a precautionary approach to the management of development in the rural zone
- The development of inappropriate activities in the rural zone has "the potential to irreparably damage the value of the natural landscape and the associated $2 billion per annum it generates in tourism spend"[67]
- The District has seen the highest level of tourist growth nationally over the last 12 years[68]

173. In terms of the value of the landscape to the district the evidence describes this as "crucial", "vital", "critical", "fundamental" and "pivotal". Clearly he was reaching for his thesaurus at this stage.

174. In my opinion paragraph 3.8 goes to the nub of the issue:

63 5.4.2.2.3.c(v) a and b

64 DP Monitoring Report Page 45

65 Page 27

66 Paragraph 8.7

67 Paragraph 8.6

68 Paragraph 6.1

"It is also important to note that, from an economic viewpoint, I consider that it is appropriate to take a precautionary approach to the management of this resource as both its intrinsic value and profile are extremely difficult to retroactively repair if damage does occur."

175. If damage occurs to the landscapes it is impossible to turn back time; to put the genii back in the box. The District Plan provisions must protect landscape values now rather than hope that inappropriate development will somehow blend into the landscape over time.

176. The evidence discusses[69] both the implications of first cut is the deepest and cumulative development and is most concerned with cumulative effects. While in the main I concur with this, I also believe that single consented developments, such as the 42 residences granted consent above Parkins and Glendhu Bays, or the residence granted consent on top of Roy's Peninsula[70], can have a significant adverse effect.

177. In terms of rural activities the evidence makes the following claims[71]:

"Primary activities in my opinion have significant value beyond that in the way that they protect or maintain the natural environment and landscapes that in turn sustain the District's economy....

As a productive activity within the rural zone, agriculture establishes direct economic value for the rural land market. As such this value acts to limit the likely proliferation of inappropriate activities and their impacts upon the natural environment."

178. While I agree that farming is an important economic contributor to the district (though one thirteenth the value of tourism) and is also important in terms of landscape character I believe the evidence greatly overstates the role of farming as a protector of landscapes. Farming has had favourable treatment as a permitted activity over many years in the District Plan. Despite this most of the farms in the Wakatipu Basin and many of the farms in the Upper Clutha Basin have either been sold wholesale to developers or have been partially sold and/or developed. *Farming as a mechanism for protecting landscape values in these areas has been a spectacular failure.* This process can only continue with projected growth levels. Quite simply in this district the profits from selling or developing farmland are far greater than those from primary activities. The profits to be made from rural subdivision and development have been seen to usually eclipse any altruistic motive to preserve landscape values through farming.

179. It follows from this that *the only practical and realistic way to protect landscape values is through the provision of effective objectives, policies, assessment matters and rules in the District Plan.*

180. An example of the type of development pressure currently being felt is the fact that the median price for a residence in Queenstown in February 2016 is $782,000[72]. As the economic evidence implies, when residences are priced at this level this feeds through to massive development pressure on rural land.

69 Paragraph 3.9

70 Parkins Bay Preserve Ltd and Matukituki Trust

71 Paragraphs 5.3 and 5.5

72 ODT 12th April 2016

Landscape Evidence

181. I have read the landscape evidence of Dr. Marion Read dated 6th April 2016 and will comment on this here.

182. First of all, there are a couple of glaring emissions in the evidence. There is no mention at all of the removal of the *minor tests* or the *radius criteria* from the assessment matters. These two important issues are discussed above. The problem I have here is that the public (and the commissioners) are only being given half of the story-they are being told how good the new assessment matters are, but not how or why the assessment matters have had crucial changes made to them, especially where very effective elements have been removed. I regard this as a serious defect in the evidence. There may be other crucial emissions from the evidence that I have missed-the problem here of course is that there is no tracking document between the two plans, something the Court is likely to request.

183. At paragraph 2.1(e) and (f) the evidence states that the assessment matters are now more "straight forward". The question I raise here, and it dovetails with the point above, is that, the assessment matters were never meant to be "straight forward". They were designed to be complex and rigorous. It appears to me that the rewriting of the assessment makes gaining consent for rural subdivision and development more "straight forward".

184. Part 4 of the evidence provides further detail as to how the Landscape Lines in the Proposed District Plan maps were arrived at. I gave detailed evidence on the Landscape Lines at the Chapter 6 hearing and I stand by this evidence and the criticism of the Landscape Lines process contained therein[73].

185. As an example Dr. Read said in her Post Review Amendment Report (reiterated in her Landscape Chapter 6 evidence at Para. 3.3) in regard to her Landscape Lines report[74]:

> *"It is not a landscape assessment from first principles, and the results might have been different had this been the brief."*

186. I remain of the opinion that the Landscape Lines are contentious and dubious. In my opinion the more fine-grained and rigorous process in the Court results in Landscape Lines that the community can have far more confidence in.

187. In Part 5.7 the evidence discusses "Building Size and Building Height". The evidence says that

> *"a number [of submitters] (368,444,452,497,501,610) challenge the limit of 500m2..."*

188. The Society's position is that the all of the rules relating in any way to rural subdivision and development in the Operative District Plan should be rolled-over. Its submitter numbers (145/1034) should have been included here. It is possible that Dr. Read is not aware of the Society's position.

189. I agree with the evidence where it says in relation to the proposed rule relating to rural residences[75]:

73 Pages 24-31
74 Paragraph 4.2
75 Paragraph 5.12

"the intention under the PDP to allow for buildings of up to 500m2 in area and 8m in height as a permitted activity is a very significant liberalisation..."

190. How on earth did the Proposed District Plan end up making a 4000m3 box-shaped residence a permitted activity? This is a good example of how the rewrite of the District Plan has been poorly thought through and in my opinion casts doubt on the rigorousness of the entire process.

191. The evidence has merit where it states[76]:

The assessment matters for ONFs and ONLs...are the same. The distinction between those for the Wakatipu Basin (ONL (WB)) and the ONL (District Wide) that was in the ODP, has not been carried over into the PDP. This will provide more consistency in the management of the ONLs and ONFs of the District. I consider that this is appropriate as the approach of the ONL (WB) has proved to be very effective. It has always been my understanding that the differential regime was simply a response to development pressure. As the development pressure throughout the entire District increases it is logical that the level of protection of the ONLs across the District, which are a significant scenic resource for the District (in addition to those in the Wakatipu Basin), should increase also.

192. However, the paragraph above is not correct where it says that the assessment matters are now the same for Outstanding Natural Landscape/Outstanding Natural Features in the Wakatipu Basin and those outside the Wakatipu Basin. As explained above the "inappropriate in almost all locations" criteria in the latest draft now applies only to the Wakatipu Basin; all other Outstanding Natural Landscape/Outstanding Natural Features in the district are devalued to "inappropriate within many locations", where in the Operative District Plan all Outstanding Natural Landscape/Outstanding Natural Features are treated equally with the former criteria. I can see no reason for this change, indeed it conflicts with Council's landscape and economic evidence.

193. The problem is that Proposed District Plan appears to be adopting some kind of messy hybrid model of Outstanding Natural Landscape/Outstanding Natural Features assessment matters from the two sets of assessment matters in the Operative District Plan. This hybrid ends up significantly weakening landscape protection for ONLWB, ONF's and ONLDW. The very firm conclusion reached in the economic evidence to this hearing[77] is that "a precautionary approach" should be taken to the treatment of the landscapes of the district. This leads to the obvious course of action that protection of the landscapes should be increased in the Proposed District Plan.

194. The evidence says in the quote above *"the approach of the ONL (WB) has proved to be very effective."* This means an easy solution is at hand to the "hybrid" mess the Operative District Plan has in my opinion got itself into; simply roll-over the ONLWB/ONF assessment matters (and objectives and policies). The Operative District Plan objectives, policies, assessment matters and rules relating to Outstanding Natural Landscapes (District Wide)/Outstanding Natural Features do not preclude development within Outstanding Natural Landscape but, as Council's evidence says, are effective.

195. The evidence explains[78] that the Proposed District Plan proposes to introduce a new Design and Density assessment matter for Outstanding Natural

76 Paragraph 6.2

77 Philip Osborne Economic Evidence paragraph 8.7

78 Paragraph 6.12

Landscape/Outstanding Natural Features where none existed in the Operative District Plan (only for Visual Amenity Landscape). I have difficulty with this because it implies that there is an acceptable density for development within Outstanding Natural Landscape. In fact development can only gain consent in exceptional cases and cumulative effects analysis will come into play to assess this. I believe that this is another example of the Proposed District Plan failing to understand how the Court carefully put together assessment matters in the Operative District Plan to protect the characteristics of Outstanding Natural Landscape and Outstanding Natural Features.

196. The evidence explains[79] that when assessing cumulative effects it is spelt out in the Outstanding Natural Landscape/Outstanding Natural Feature assessment matter 21.7.1.6 that permitted activities must be taken into account whether implemented or not. I support this and believe that the Operative District Plan Outstanding Natural Landscapes (District Wide)/Outstanding Natural Features assessment matters should be modified to include this.

197. The evidence explains[80] that:

> *"Applying the VAL principle to all RCL areas may seem to be increasing the stringency of the assessment required.... [however] the area to which these proposed assessment matters will apply is virtually contiguous with the VAL of the District as it is currently understood."*

198. I agree with the views here-these sentiments concur with my detailed Chapter 6 evidence in relation to Other Rural Landscape.

199. The evidence states in relation to the Rural Landscape Category cumulative effects assessment matter[81]:

> *"There is, however, a leaning towards the maintenance of openness, in the sense of a lack of buildings, within the Rural Landscape. This is because the maintenance of open space is considered critical to the maintenance of the rural landscape."*

200. This contrasts with Outstanding Natural Landscape/Outstanding Natural Features where provisions relating to openness have been removed from the assessment matters. I have explained earlier in this evidence how this approach conflicts with the Court's decisions on openness. If this matter is appealed it is likely that the Rural Landscape Category openness provisions will be struck out.

201. The evidence explains[82] that "the Proposed District Plan includes several new areas of Rural Lifestyle zoning." The Society has lodged a further submission stating[83]:

> *"The Society seeks that all other submissions requesting rezoning to RL zoning be similarly disallowed because the density concept involved is inherently wasteful and results in adverse landscape effects. The Rural Residential Zone provides for 5 times the quantity of residential subdivision and development in the same area of land."*

202. The Society opposes any further Rural Lifestyle zoning but supports additional Rural Residential zoning where adverse effects on landscape values are minimised. This is because Rural Lifestyle zones sprawl across the landscape at a fifth of the

79 Paragraphs 6.13 and 6.15

80 Paragraphs 6.18 and 6.19

81 Paragraph 6.33

82 Paragraph 10.4

83 Submitter No. 820-Jeremy Bell Investments Limited

density of Rural Residential zones, chewing up large areas of landscape in a manner that is obviously domesticated rather than rural with concomitant adverse effects.

203. An option might be to permit Rural Residential zones with average lot sizes of 4000m2 where lot sizes can vary between 2000m2 and 6000m2 to permit different lifestyle options, if this is within the scope of submissions made.

Section 42A Report

204. In 1.1 j the report states:

> *"The rules and standards for activities have been grouped into respective themes. This is considered a significant improvement on the ODP structure that identified activities through the type of resource consent that would be required."*

205. This statement has merit. In my opinion the Operative District Plan could be amended to include tables of the same type to increase clarity as to activity status.

206. In paragraph 8.16 the report says:

> *"I also wish to emphasise that if farming remains a viable activity in the Rural Zone there is less likely to be pressure to convert Rural Zoned land to other land uses or activities, such as residential subdivision or development."*

207. I have addressed this issue above in response to the economic evidence.

208. In the same paragraph the report accepts that "farming has been singled out as a permitted land use." The problem is the manner in which it has been "singled out" with a large number of objectives, policies, assessment matters and rules that expressly favour farming but not any other activities. In my opinion this is not consistent with an effects-based approach in terms of managing the district's landscape values. It shows bias towards farming rather than sound resource management planning. This is illustrated in paragraph 8.18 which says:

> *..."however, elevating tourism or other commercial activities to the same status as farming is not supported"*

209. Here we have the nub of the matter. Tourism, which generates 13 times the income that farming does for the district, and relies to a large part on the landscape found in the rural zone, is refused special status. The planner is being inconsistent here. Neither activity, farming nor tourism, should have special status but rather each should be assessed on effects. This position is supported by the statement in paragraph 8.20 where it says:

> *"I acknowledge that in certain circumstances non-farming activities could have environmental, social and cultural benefits, and could be a better use of the land resource than farming."*

210. The status of farming as a permitted activity per the Operative District Plan means that only when farms contemplate activities not allied to normal day to day farming activities do resource consent considerations come into play. *This is how it should be.* For the same reasons I reject the arguments put forward in the report in paragraphs 11.21 to 11.23. In my opinion the Rural Zone should contemplate a wide range of activities on a case by case basis without singling out farming.

211. I note the report accepts the Society's submission that farm buildings should be at a density of 50 hectares rather than 25 hectares. The Society's position on this issue is discussed in detail above.

212. I disagree with the conclusion reached in paragraph 11.24 that subdivision and development in Outstanding Natural Landscape and Outstanding Natural Features should be discretionary rather than non-complying (which was Council's earlier position) and stand by the Society's evidence both in this evidence and at the Chapter 6 landscape hearings.

213. The report states in paragraph 11.15 that it has reached this conclusion because:

> *"the Feedback received was generally negative, with consultation responses suggesting that the existing regime under a 'discretionary' activity status resource consent was more appropriate and preferred"*

214. I have twice asked the planner via email to send the Society copies of submissions in the December 2014-August2015 period "that in any way relate to the issue of subdivision and development in ONL and ONF's having non-complying or discretionary status". That is, for the "Feedback" he refers to above that caused Council to change its position. To date I have received nothing. This has the potential to become an interesting legal issue.

215. I support the report in paragraph 13.19 where it says that the establishment of businesses on or near the trail network should be assessed on a case by case basis.

216. I support the important conclusion reached in paragraph 13.49 that states:

> *"As set out in Mr Osborne's evidence, it is important to the economic, social and cultural wellbeing of the district that a range of activities are provided for in the Rural Zone and I consider it equally important that the resources that make the Rural Zone a desirable place to locate are appropriately managed."*

217. In my opinion the Operative District Plan achieves this objective.

218. However, on the other hand, it can be seen from the many submissions and complex discussions on them in the report that, in trying to define activities in the Rural Zone, the Proposed District Plan opens a can of worms. The definition of commercial recreation and other activities as permitted activities providing they comply with standards is likely to result in significant and adverse effects on landscape values. I believe the case by case effects-based approach of the Operative District Plan is preferable.

219. In paragraph 19.1 The report makes the following statement:

> *"The landscape assessment matters are largely carried over from the ODP"*

220. In my opinion, as can be seen from the detailed analysis in my evidence, this is a myth. It is not true. While some elements have been carried over many important elements have either been removed from the assessment matters of modified in a way that makes them less effective. The report makes no mention of the removal of the crucial "minor" test discussed earlier in this evidence, for instance. The Court's decisions that wrote the Operative District Plan appear to be ignored.

221. Paragraph 19.4 states:

"Another key change is the removal of the visual amenity landscape 'circles' assessment criteria of the ODP56 because they are not considered effective. The main reason for their removal is because they did not suit the design-led focus and absence of a minimum allotment size, and they are often interpreted inconsistently. I consider that they are inappropriately used as a surrogate to determine whether cumulative adverse effects are at issue."

222. I refer to my detailed evidence on this matter above-I believe the statement is wrong in almost respects. The only part that has merit is that "they are often interpreted inconsistently". This is not the fault of the criteria but the fault of commissioners and applicants. The "circles" criteria (actually radius criteria) have no connection at all with minimum lot sizes per the quote above-worryingly the report appears not to understand this.

223. In paragraph 19.13 the reports says:

"The statement concerning the application of assessment matters (ODP Provisions 1.5.3.iii and 5.4.2.1), that they "are to be stringently applied to the effect that successful applications will be exceptional cases" (ONF and ONL), and that "the applicable activities are inappropriate in almost all locations within the zone", has been carried over into PDP provisions 21.7.1 and 21.7.1.1 (ONF/ONL), and 21.7.2 and 21.7.2.1 (RL)."

224. As I discuss earlier in this evidence, this is wrong. While in the above quote the planner appears to be supporting, rightly in my opinion, the retention of these provisions in the District Plan, he later details crucial changes in the provisions in paragraphs 19.21 and 19.22 where he refers to revised provisions in his Attachment A as follows (my underline):

19.21.Upon consideration of these submissions and taking into consideration the views of Dr Read in paragraphs 6.4 – 6.6 of her evidence, I consider that these be refined be phrased to ensure the assessment matters are not a 'test' and to remove the word 'exceptional' because this has a direct connotation with section 104D of the RMA for non-complying activities and the activity status contemplated for subdivision, use and development that is generally applied to these activities is a discretionary activity status68.

19.22. The recommended modifications also better align with the Council's reply to the S42a recommendations (Attachment A). In this regard these submissions are considered to be accepted in part and I recommend these modifications

225. In fact Dr. Read says in her evidence paragraph 6.3:

"The ONF and ONL assessment matters in 21.7.1, are prefaced with a statement that 'the applicable activities will be inappropriate in almost all locations within the zone'. This statement is taken from S1.5.3iii (iii) of the ODP, in its explanation of discretionary activities. In the ODP it also applies to all ONLs and ONFs, although particular emphasis is given to the Wakatipu and Upper Clutha Basins. Consequently this explanation is not new and continues to be one which I consider is necessary for the appropriate management of the District's ONLs and ONFs"

226. And Dr. Read says in paragraph 6.6:

"In the ODP the principle only applied to ONL (WB) and ONFs district-wide. Consequently the wider application of the assessment matters is a key

change in the PDP that increases the protection provided to ONLs outside of the Wakatipu Basin. As noted previously, I consider that this is a necessary step to ensure the appropriate management of the ONLs of the District."

227. It can be seen that in fact Dr. Read *supports* both the "locations" and "stringent" statements being retained in the form they are in the Proposed District Plan before the planner's suggested rewrites.

228. The s42A report glosses over these crucial changes with a blasé statement in paragraph 19.22 that:

"The recommended modifications also better align with the Council's reply to the S42a recommendations"

229. This is no sort of justification for these changes. It appears to me that these changes have been made as a knee-jerk reaction to submissions from a handful of developers. It represents very poor resource management practice and is indicative of the approach taken throughout the District Plan process.

230. The "stringent" test should be retained. This is Outstanding Natural Landscape we are talking about; landscape of national significance, it should meet tests.

231. What the planner appears not to understand is that in the Operative District Plan there were completely different objectives, policies, assessment matters and rules for Outstanding Natural Landscape(Wakatipu Basin)/Outstanding Natural Features and Outstanding Natural Landscapes (District Wide). The "locations" test, however, applied to both of these. Commissioners can, therefore, in the Operative District Plan apply the different assessment matters while taking into account the all-encompassing "locations" statement. The planner seems to be trying to replace, or even reinstate, the old separate regime by changing the wording of the "locations" statement.

232. The change to only one category Outstanding Natural Landscape should mean that the "locations" statement is carried over unchanged because this statement always did apply to all Outstanding Natural Landscape and Outstanding Natural Features. By not doing this the planner creates illogical and unworkable provisions. He has bolted-on a new "locations" criteria to the assessment matters at the last minute with no evidential justification.

233. As an example, hearings commissioners will be applying the Proposed District Plan's identical objectives, policies, assessment matters and rules for resource consent applications within Outstanding Natural Landscape/Outstanding Natural Features throughout the district, but will then somehow have to take into account, with no other guidance, the fact that outside the Wakatipu Basin such developments are appropriate in more places.

234. The correct way to proceed is to retain the "locations" statement unchanged per the Operative District Plan and assess all resource consent applications by means of cumulative effects analysis.

235. The revised assessment matters draft in Appendix A makes the following changes for Rural Landscape Category:

These assessment matters shall be considered with regard to the following principles because in the Rural Landscapes the applicable activities are ~~inappropriate~~ unsuitable in many locations:
~~21.7.2.1 The assessment matters shall be stringently applied to the effect that successful applications are, on balance, consistent with the criteria.~~

236. In my opinion the changes to the Visual Amenity Landscape "locations" and "stringent" test are unjustified. The wording should be retained without the changes detailed above.

Other Matters

Non-complying versus Discretionary Status-Residential Development within Outstanding Natural Landscape/Outstanding Natural Features

237. Rule 21.4.5 states that "The use of land or buildings for residential activity except as provided for in any other rule" is a discretionary activity in the PDP. That is, residential subdivision and development is a discretionary activity throughout the Rural Zone.

238. This is contrary to the Draft Proposed District Plan where residential subdivision and development within Outstanding Natural Landscape and Outstanding Natural Features was proposed to be non-complying. This Draft Proposed District Plan was released in December 2014. The rural Proposed District Plan public consultation process started in March 2010[84] with the release by Council of the "District Plan and Rural Areas" discussion document. It follows that after nearly four years of consultation Council was of the opinion that development should be non-complying within Outstanding Natural Landscape and Outstanding Natural Features.

239. The Society's Proposed District Plan submission on the non-complying matter requests:

> *"The Society seeks that the S.32 Landscape Evaluation Report be rewritten containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus the option of it being discretionary, as required by S.32 of the Act and especially S.32(2).*
>
> *The S.32 Landscape Evaluation Report, once rewritten, should then be publicly notified. The Society seeks that the 40 working day submission period should apply to the rural part of the Proposed District Plan from the date of renotification of the rewritten S.32 Landscape Evaluation Report."*

240. This outcome has been sought by the Society so that it, and the public at large, is able to consider the change of position by Council on the discretionary/non-complying issue with reference to facts and cost benefit analysis in the s.32 report. Effectively the Society has reserved its position on this matter until a new s.32 report is issued.

241. Planner Craig Barr was cross-examined at the Chapter 6 hearing on this matter. In response to a question from the commissioners he gave no explanation as to why the non-complying status issue had not been discussed at all in the s.32 report, but did explain that the decision to abandon non-complying status in favour of discretionary status was made for two reasons (not exact quotes, but close):

1. There was overwhelming support in submissions for discretionary status.
2. Submissions said that it would be difficult to undertake farming on a day to day basis if non-complying status was in place.

242. With regard to the first point the Society's submission on the Draft Proposed District Plan proposals stated:

84 The Society made a submission on this document

"The Society believes that the evidence from the Upper Clutha and it appears also from the Wakatipu Basin and surrounds (Glenorchy especially) is that non-complying status for development in Outstanding Natural Landscape/Outstanding Natural Feature is warranted."

And:

"The Society supports the proposed non-complying status for development in Outstanding Natural Landscape…."

243. In regard to the second point, as discussed above, Council had been taking public submissions on this issue for nearly four years when it decided that non-complying status was appropriate in its Draft Proposed District Plan of December 2014.

244. It was apparent from Mr. Barr's testimony that the main reason for changing the status was due to submissions from the farmer lobby claiming non-complying status would affect farming operations. These submissions appear to have no basis in fact in that day to day farming would not be affected in any meaningful way by non-complying status. For instance, farm buildings are covered by other rules where they are a controlled activity and so cannot be refused consent. Farming is a permitted activity.

245. Having now learned the reasons for the change of activity status, the Society is of the opinion that its original submission to the Draft Proposed District Plan was correct and that subdivision and development within Outstanding Natural Landscape and on Outstanding Natural Features should be non-complying. The Society seeks this outcome in the Proposed District Plan.

246. However, this may be something of a moot point. If the Society's submissions requesting that the Operative District Plan Outstanding Natural Landscape (Wakatipu Basin) provisions apply to all Outstanding Natural Landscape/Outstanding Natural Features in the District are accepted, this would convey activity status close to non-complying status. In the Operative District Plan hearings lawyer Warwick Goldsmith described this status as[85]:

"…the (virtually) non-complying threshold found in the ONLWB assessment matters."

247. Under this outcome it is unlikely the Society would continue to pursue non-complying status within Outstanding Natural Landscape/Outstanding Natural Features.

248. The above position is arrived at based firstly, on the cross-examination of Mr. Barr where a limited number of critical facts and information previously left out of the s.32 report became available at the Chapter 6 hearing, and secondly, on Council's own reasoning[86]:

"It is proposed to make subdivision and development a non-complying activity within outstanding natural landscapes and features. This change is proposed to protect the District's landscapes and encourage residential subdivision and development in less sensitive locations. This change does not mean that subdivision will be prohibited in these areas, but a higher bar will be set in these locations in terms of considering applications for approval."

85 C75/2001 Paragraph 57

86 Summary of Issues and Proposed Changes-Draft PDP December 2014-page 2

249. The Society remains of the opinion that the s.32 is critically deficient and seeks that this be rewritten and publicly notified again so that the community has adequate information to submit on this matter.

250. The Society also seeks, per its further submission, that all rural subdivision and development should have non-complying status should the proposed s.95A of the Act become law as explained in its Chapter 6 evidence.

Rural Zone Activities

251. A central tenet of the Resource Management Act is that it is effects-based; the Act makes numerous references to effects throughout. Despite this the Society is aware that:

> *"Plans can adopt an effects-based approach (with little or no identification of particular activities), an activity-based approach, or a combination of both*[87]*."*

252. The list of activities in part 21.4 moves the rural section of the Proposed District Plan marginally towards a more activity-based plan.

253. However, both the Operative District Plan and the Proposed District Plan categorise farming as a permitted activity and subdivision and development as a discretionary activity in the Rural Zone. The Proposed District Plan largely retains the effects-based approach found in the Operative District Plan in that it applies objectives, policies and assessment matters to subdivision and development in rural areas.

254. It follows from this that, as the Society is almost exclusively concerned with rural subdivision and development, the question of whether the District Plan is effects-based or activity-based appears largely irrelevant, with the exception of the farm buildings and residential building platform issues discussed above.

255. The Society's position that all subdivision and development within Outstanding Natural Landscape and Outstanding Natural Features should be non-complying puts it at odds with the activity status in parts 21.4.5, 21.4.9 and 21.4.10 where they relate to Outstanding Natural Landscape and Outstanding Natural Features.

256. For the sake of clarity the following other rural activities listed in part 21.4 are opposed by the Society as follows:

21.4.3 Farm Buildings

257. The Society's position on this issue has been discussed above.

21.4.6, 21.4.7, 21.4.8 Construction and Alteration of Residential Buildings Located Within an Approved Residential Building Platform or Outside a Residential Building Platform

258. The Society's position on these issues has been discussed above.

21.4.12 Residential Flat

259. Residential flats should be a controlled activity per the Operative District Plan[88] rather than a permitted activity.

87 Qualityplanning.org.nz

88 5.3.3.2.(vii)

21.5.15 Buildings

260. The status of buildings should be as a discretionary activity per the Operative District Plan[89] rather than restricted discretionary as described in 21.5.15. Buildings should be assessed under the rural objectives, policies and assessment matters on a case by case basis.

Part 15 Policies and Assessment Matters

261. In Part 15 of the Operative District Plan there are objectives, policies, assessment matters and rules pertaining to subdivision, development and financial contributions. The Society has sought in its submissions that the Operative District Plan provisions are rolled-over.

262. The Society assumes that this issue will be addressed at the Chapter 27-Subdivision and Development hearings and so this issue is not addressed here.

89 5.3.3.3 (i)

Submission on Publicly Notified Proposal for Policy Statement or Plan

To: Queenstown Lakes District Council

Name of Submitter: Upper Clutha Environmental Society (Inc.)

This is a submission on the following proposed plan:

Queenstown Lakes District Council Proposed District Plan.

The specific provisions of the proposal that the Society's submission relates to are:

Rural subdivision and/or development within Outstanding Natural Landscape and Outstanding Natural Features.

The Society's submission is:

The publicly notified S.32 reports prepared by Council make no reference to the issue of making residential subdivision and development non-complying within Outstanding Natural Landscapes or on Outstanding Natural Features. The words "non-complying" do not appear in the S.32 reports in conjunction with residential subdivision and development.

Residential subdivision and development within Outstanding Natural Landscapes and on Outstanding Natural Features is proposed to be a discretionary activity in the Proposed District Plan. The Council's March 2015 Draft District Plan Review proposed, after considerable public consultation, to make residential subdivision and development non-complying within Outstanding Natural Landscapes and on Outstanding Natural Features. The Draft Summary of Issues and Proposed Changes report in March 2015 said[1]:

> *"It is proposed to make subdivision and development a non-complying activity within outstanding natural landscapes and features. This change is proposed to protect the District's landscapes and encourage residential subdivision and development in less sensitive locations. This change does not mean that subdivision will be prohibited in these areas, but a higher bar will be set in these locations in terms of considering applications for approval."*

[1] Page 2

This Draft District Plan Review position was reflected in the rule 13.4.2.9 contained in the Rural Zone report and on page 37 of the Draft Review's S.32 Landscape Report where it stated:

> *"Subdivision and development in outstanding natural features and outstanding natural landscapes is a non-complying activity."*

Council's 2009 Rural Monitoring Report makes numerous references to the option of making residential subdivision and development within Outstanding Natural Landscapes and on Outstanding Natural Features non-complying.

The activity status of residential development within Outstanding Natural Landscapes and Outstanding Natural Features is a fundamental issue that goes to the heart of the administration of the District Plan. The Society is of the opinion that the failure of the Proposed District Plan's S.32 Reports to discuss this issue, or indeed mention it in any way, leaves the S.32 reports critically deficient. This is particularly so given Council's position in the recent Draft Review. It is almost as if Council is trying to hide its change of position on this issue from the general public.

A "person-in-the-street" reading the publicly notified Proposed District Plan S.32 reports would have no idea that non-complying versus discretionary status was an issue at all, or that non-complying status had ever been contemplated.

The general public would have no idea that non-complying status could potentially "protect the District's landscapes and encourage residential subdivision and development in less sensitive locations" as Council had said only a few months before.

The Society seeks the following decision from the Queenstown Lakes District Council:

The Society seeks that the S.32 Landscape Evaluation Report be rewritten containing discussion of the costs and benefits associated with the option of residential subdivision and development becoming non-complying versus the option of it being discretionary, as required by S.32 of the Act and especially S.32(2).

The S.32 Landscape Evaluation Report, once rewritten, should then be publicly notified.

The Society seeks that the 40 working day submission period should apply to the rural part of the Proposed District Plan from the date of renotification of the rewritten S.32 Landscape Evaluation Report.

The Society wishes to be heard in support of its submission.

(The Society will consider presenting a joint case with other parties at a hearing.)

Signature:

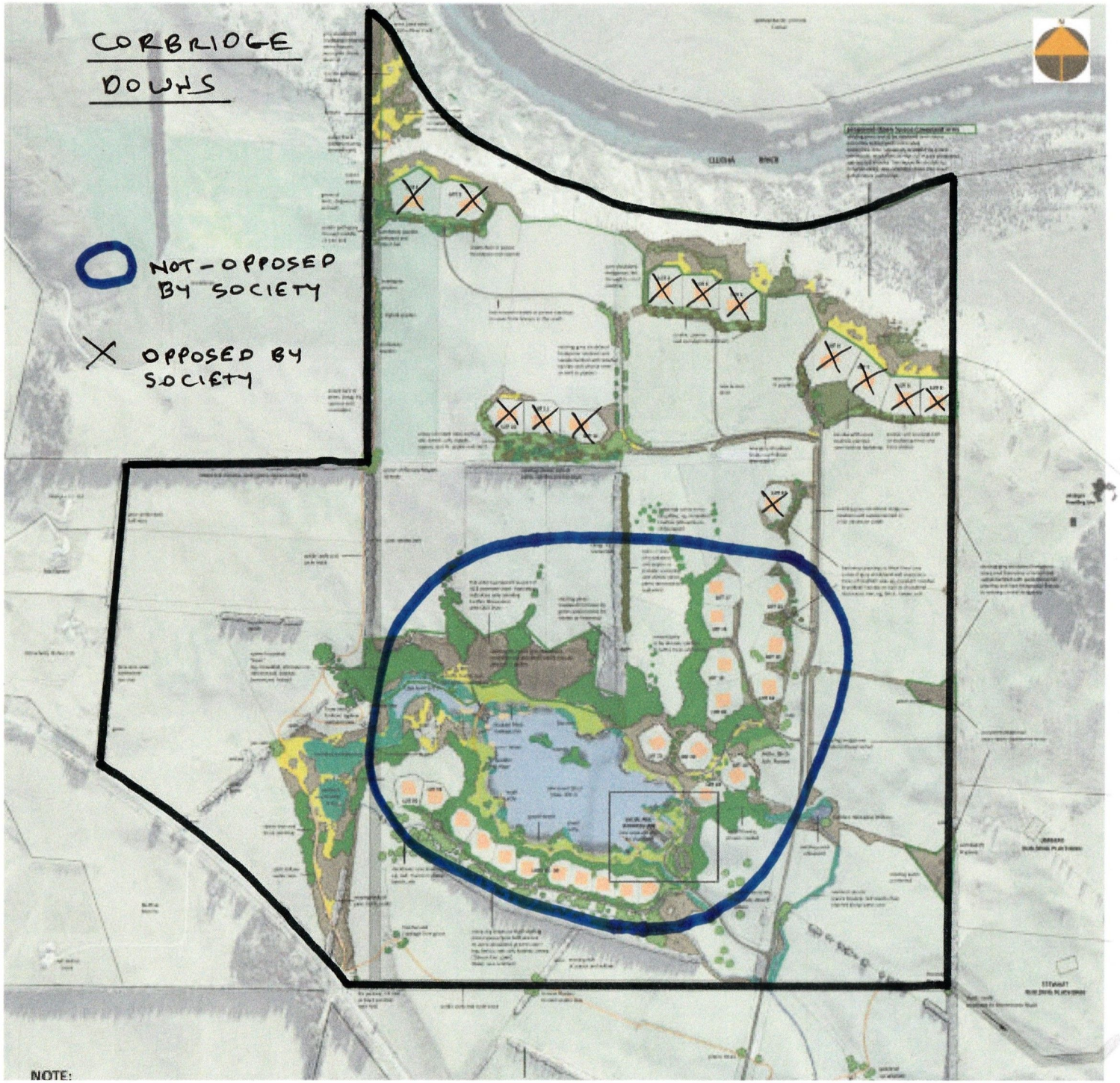
Date:

Address for service of Submitter: 245 Hawea Back Road, Wanaka 9382

Telephone: 0211368238 or 034431813

Email: uces@xtra.co.nz

Contact person: Julian Haworth


CORBRIDGE
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NOT-OPPOSED BY SOCIETY
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NOTE:

APPENDIX A

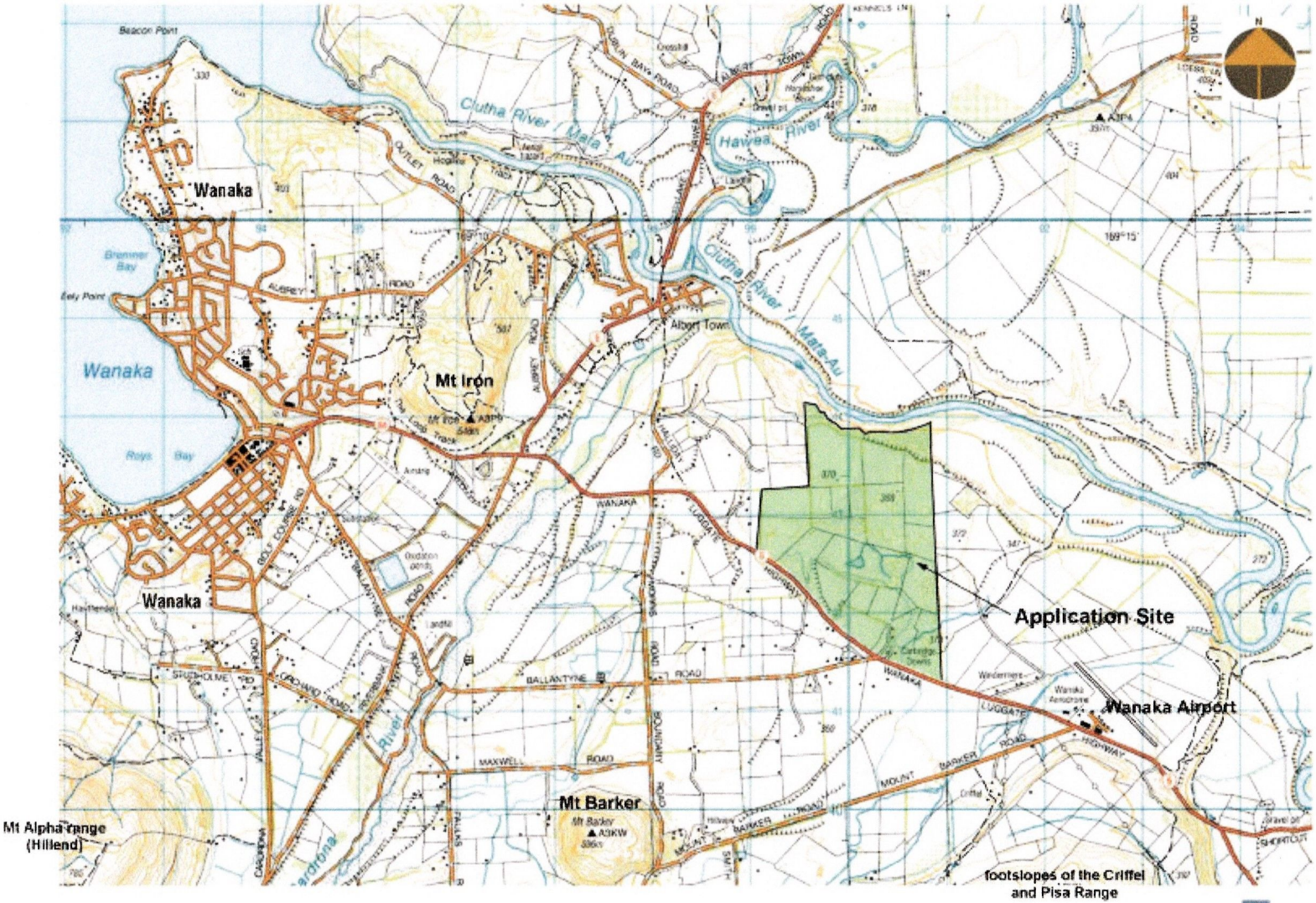
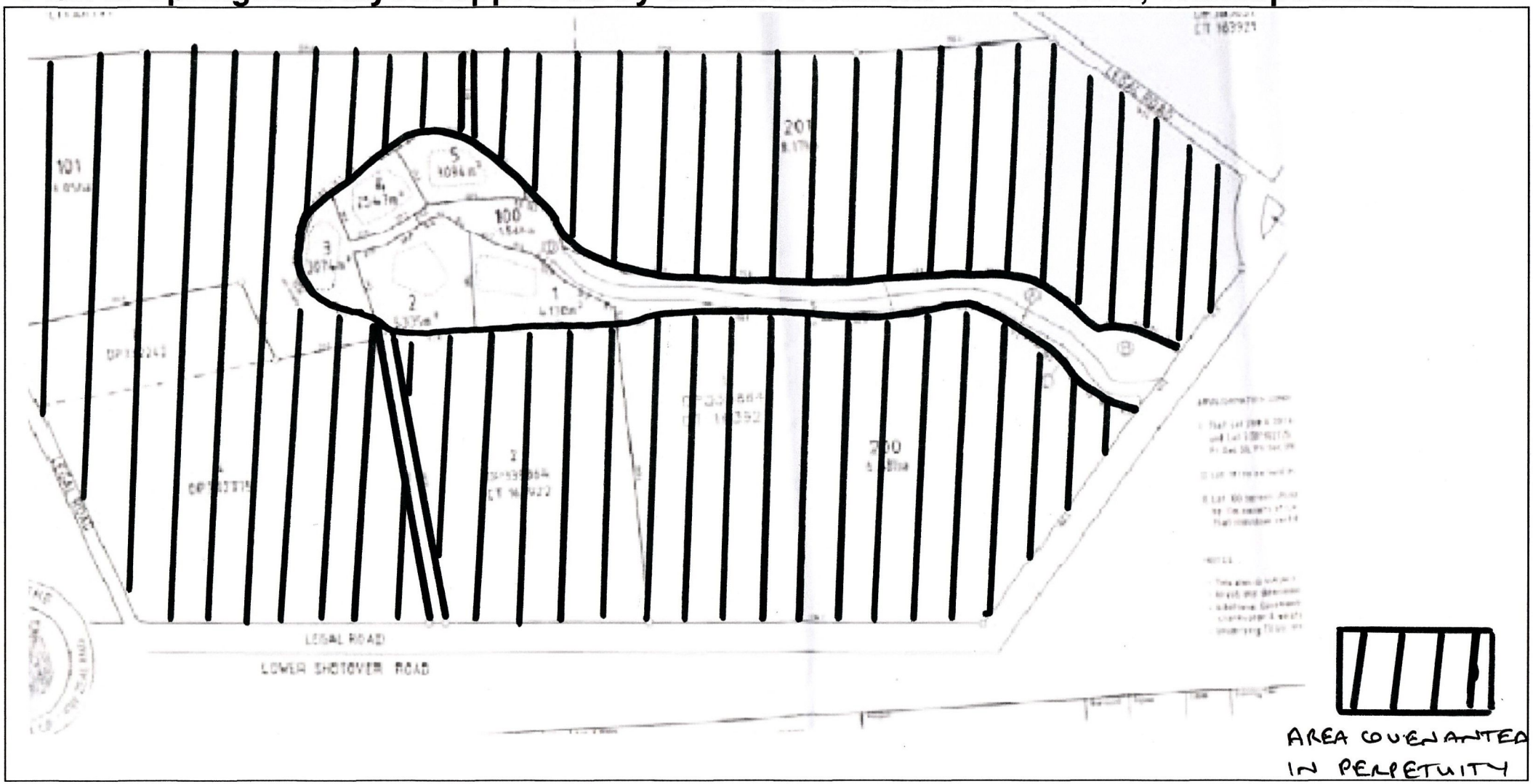


Fig. 1 Application Site Location
Corbridge Downs

March 2012

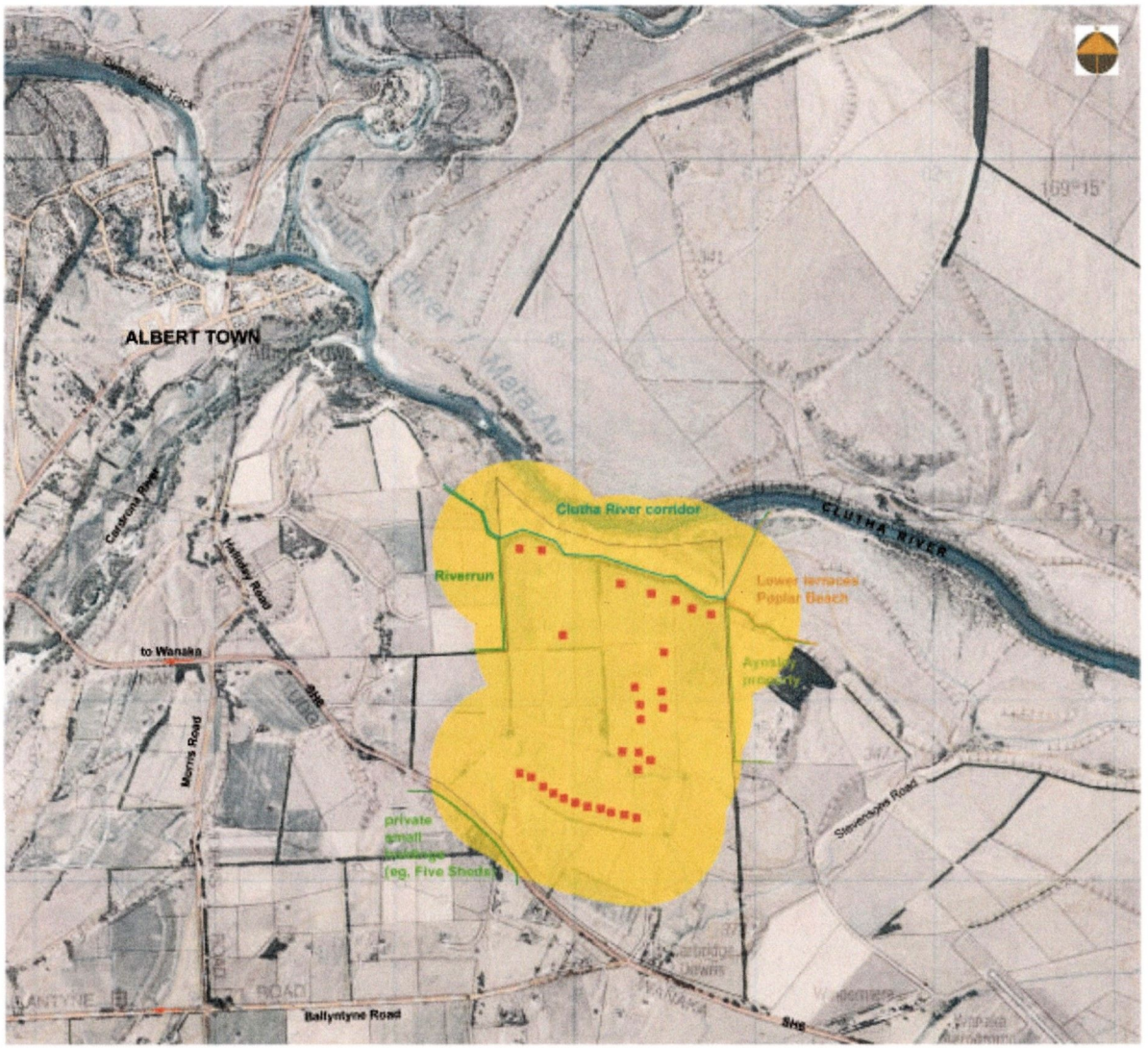
APPENDIX B

Plan 2: Springbank layout approved by the Environment Court – VAL, Wakatipu Basin



APPENDIX C

APPENDIX D



Base: Maptoaster Airphotos 10m: each blue square is 1kmx1km

LEGEND

- proposed building platforms
- area within 500m radius of centre of building platforms

Fig. 16 Application Site Location Corbridge Downs

March 2012

APPENDIX E