

UPPER CLUTHA ENVIRONMENTAL SOCIETY (INC.)

**Notice of Appeal to the Environment Court
Queenstown Lakes District Council-Proposed District Plan**

**To: The Registrar
Environment Court
Po Box 2069
Christchurch**

The Upper Clutha Environmental Society (the Society) appeals against parts of a decision of the following plan:

Queenstown Lakes District Council Proposed District Plan Stage 1 (PDP Stage 1).

The Society made submissions and further submissions on the PDP Stage 1.

The Society is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

The Society received notice of the PDP Stage 1 decision on: May 7th 2018

The decision was made by the Queenstown Lakes District Council (the Council).

The parts of the decision the Society is appealing:

The Society is appealing the parts of the PDP Stage 1 decision that relate in any way to subdivision and/or development in the Rural Zone.

The Society is also appealing the parts of the PDP Stage 1 decision where it makes decisions and/or recommendations on the PDP Stage 2 where this in any way relates to Rural Zone subdivision and/or development.

The specific provisions the Society is appealing:

The Society is appealing the parts of the PDP Stage 1 that contain objectives, policies, assessment matters, rules and maps and any other provisions that relate in any way to subdivision and/or development in the Rural Zone.

The Society is also appealing the parts of the PDP Stage 1 decision where it makes decisions and/or recommendations on the PDP Stage 2 where this in any way relates to Rural Zone subdivision and/or development.

The reasons for the appeal are:

1. The decision errs in deciding that the PDP Stage 1 is efficient and effective in achieving the purposes of the Resource Management Act.

2. The decision errs in deciding that the PDP Stage 1 represents sustainable management as described in Section 5 of Part 2 of the Resource Management Act because:

- The PDP does not adequately recognise and provide for matters in Section 6 of the Resource Management Act and in particular s.6 (a) and (b). The PDP does not adequately

protect for future generations the Outstanding Natural Landscape (ONL) and Outstanding Natural Feature (ONF) landscapes of the district from inappropriate subdivision and/or development.

- The PDP does not adequately have particular regard to matters in s.7 of the Resource Management Act and in particular s.7 (b) (c), (f), and (g). The PDP does not adequately protect for future generations the Rural Character Landscapes (RCL) from random, sporadic and incremental subdivision and/or development that is in the process of cumulatively degrading existing bucolic and pastoral values.
- The PDP will not result in the efficient use and development of natural and physical resources nor will it maintain or enhance the quality of the environment nor will it maintain or enhance amenity values.

3. The decision errs in failing to recognise that Operative District Plan (ODP) provisions rolled-over into PDP Stage 1 in the manner shown in Appendices A-D (or very similar) better achieve the purpose of the Act than the provisions in the PDP Stage 1 decision. The decision errs in failing to recognise that the rural provisions in the ODP have been held to be complete, that there is no inconsistency in these rural provisions with higher order planning documents nor is there any uncertainty in their meaning.

4. The decision errs in failing to give sufficient weight to the Council decisions, public submissions, appeals and Environment Court decisions that wrote the rural objectives, policies, assessment matters, rules and other rural provisions in the ODP. The decision errs in failing to fully recognise that these essentially addressed the same rural issues under the same Act as those addressed in the PDP Stage 1 decision.

In particular the following Environment Court decisions that modified or wrote the ODP are given insufficient weight:

C180/1999, C74/2000, C186/2000, C75/2001, C100/2001, C129/2001, C92/2001, C162/2001, C73/2002, C89/2005.

5. The decision errs in failing to give sufficient weight and recognition to expert economic evidence¹ presented at the PDP District Plan Review hearings highlighting the critical importance of protecting landscape values to the economy of the Queenstown Lakes District and New Zealand. The decision errs in failing to include sufficient specific provisions in the ODP that expressly spell-out the critical role landscape values play in contributing to the social, cultural and economic wellbeing of the Queenstown Lakes District and the wider NZ economy.

6. The decision errs in failing to give sufficient weight and recognition to expert evidence presented at to the PDP Hearing Panel in relation to residential growth projections and zoned dwelling capacity².

7. The decision errs in failing to give sufficient weight to the expert evidence of the Society's witness, landscape architect Diane Lucas, in regard to the ODP and PDP rural objectives, policies, assessment matters and rules and their relative effectiveness and efficiency in controlling adverse effects on landscape values³.

¹ Osborne economic evidence 6th April 2016

² Osborne dwelling capacity evidence Upper Clutha 1st May 2017 and Osborne dwelling capacity evidence Queenstown and Wakatipu 19th June 2017. Banks dwelling capacity evidence 19th June 2017. Clarke growth projections evidence 19th June 2017.

³ Ms. Lucas's evidence on rural Objectives, Policies, Assessment Matters and rules is not mentioned at all in Report 4A Chapter 21 Rural Zone.

8. The decision errs in failing to recommend that the PDP s.32 Evaluation Report Landscape⁴, Rural Zone and Gibbston Character Zone be partially rewritten in order to discuss the issue of whether subdivision and/or development within ONL and ONF's should be non-complying⁵.
9. The decision errs in deciding that subdivision within ONL and ONF's should be discretionary rather than non-complying⁶. The decision errs in deciding that the Society's submissions and further submissions do not give scope for subdivision within ONL and ONF's to be non-complying. The decision errs in deciding that a change from discretionary to non-complying status for subdivision within ONL and ONF's represents a "highly significant change"⁷.
10. The decision errs in deciding that the Landscape Lines delineating ONL, ONF's and Rural Character Landscape in the maps in the PDP Stage 1 decision are credible. The decision errs in failing to recognise that the process behind identifying these Landscape Lines is flawed. The decision errs in deciding that there is "an adequate evidential foundation for identifying ONL and ONF lines"⁸. The decision errs in deciding that, as delineated, these Landscape Lines will be efficient and effective in categorising landscapes and in implementing the objectives, policies, assessment matters and rules attached to such categorisations. The decision errs in giving limited weight to the expert landscape evidence of Diane Lucas in relation to the ONL/ONF/RCL Landscape Lines⁹.
11. The decision errs in failing to recognise that the Society's submissions and evidence provide scope for the Court to decide the position of the Landscape Lines in the Dublin Bay/Mount Brown and Waterfall Hill/Waterfall Creek areas¹⁰.
12. The decision errs in failing to give adequate weight to the Glentarn decision¹¹ and the potential adverse effects on landscape values as a result of this decision.
13. The decision errs in explicitly favouring farming for the development of rural based commercial recreation and tourism activities per Objective 21.2.9.3 and in other places in the PDP. The decision errs in failing to give exactly the same consideration to any applicant proposing rural based commercial recreation and tourism activities.
14. The decision errs in deciding that different policies Managing Rural Landscapes should apply to the RCL landscapes of the Wakatipu Basin and the Upper Clutha Basin per PDP policies 6.3.27 and 6.3.28¹² and in other places in the Plan.
15. The decision errs in proposing that the PDP Stage 2-Wakatipu variation (where directive provisions relating to the control of the cumulative effects of subdivision and/or development in RCL landscape in the Wakatipu Basin are proposed) should proceed while no similar variation has been proposed by Council for the Upper Clutha Basin RCL landscape. The decision errs in failing to recognise that the RCL landscape in the Upper Clutha Basin requires similar protection from the cumulative effects of subdivision and development. The decision errs in deciding that applying the PDP Stage 2 variation provisions only to the Wakatipu Basin represents sustainable management.

⁴ Undated but approximately August 2015

⁵ The s.32 report is deficient in that it does not address this issue at all.

⁶ Stage 1 Decision Report [Z 4A](#) paragraphs 30-76

⁷ Stage 1 Decision Report [Z 4A](#) paragraph 56

⁸ Stage 1 Decision Report 16.1 paragraphs 39 and 40

⁹ Stage 1 Decision Report 16 Upper Clutha Mapping paragraph 10.

¹⁰ Stage 1 Decision Report 16.1 paragraph 50

¹¹ C10/2009 Glentarn Group Ltd. V. Queenstown Lakes District Council

¹² Stage 1 Decision Report 3 paragraphs 1340-1347

16. The decision errs in deciding that the wording of part 1.7.5 Building Outline of the PDP is appropriate. The decision errs in failing to recognise that such wording significantly weakens the PDP provisions compared with those in the ODP.

17. The decision errs in deciding in PDP part 21.14.2 that it is appropriate for buildings as large as 500m² to have permitted activity status.

The Society seeks the following relief:

1. That many of the objectives, policies, assessment matters and rules and other provisions that relate to subdivision and/or development in the Rural General Zone in the ODP (Rural Zone in the PDP) particularly those that relate to cumulative effects and over-domestication of rural landscapes, are rolled-over and included in PDP Stage 1. For clarity, a possible though non-definitive amended PDP Chapters 1, 3, 6 and 21 consistent with and reflecting most (but not necessarily all) of the amendments sought in this appeal is attached as Appendices A-D.
2. That other amendments different or additional to those shown in Appendices A-D arising from the Society's expert landscape and resource management evidence to be prepared for mediation and PDP Court hearings are incorporated into the PDP.
3. That amendments to the PDP Stage 1's text and maps consistent with the issues listed below are incorporated into the PDP where they are additional to those detailed in Appendices A-D and paragraphs 1 and 2 above.
4. That the PDP includes more overt and explicit Rural Zone objectives, policies, assessment matters and rules that reflect the critical role that landscape values and their protection play in maintaining and developing the Queenstown Lakes District and national economy, consistent with the economic and landscape evidence presented to Council's PDP Review Hearing Panel.
5. That the PDP reflects in its provisions that there is sufficient land zoned in the Queenstown Lakes District for residential purposes to satisfy population growth until at least 2048 without the need to grant consent for any additional residential capacity in the Rural Zone.
6. That rural subdivision and/or development within ONL and ONF landscapes becomes a non-complying activity in the PDP¹³. That Council initiates a variation that changes the activity status of subdivision and/or development within ONL/ONF from discretionary to non-complying, as recommended by the PDP Hearing Panel¹⁴. That Council partially rewrites its PDP s.32 Evaluation Report Landscape, Rural Zone and Gibbston Character Zone to address the issue of whether subdivision and/or development within ONL/ONF should be discretionary or non-complying.
7. That the Landscape Lines shown on the ODP maps are rolled-over in their exact current form. That the Landscape Lines additional to those contained on the ODP maps, shown on the PDP Stage 1 maps, are included in the PDP as dotted lines (with the exception of the two locations at Dublin Bay/Mount Brown, Waterfall Hill/Waterfall Creek described below) with the following attendant text shown on all maps where these dotted lines appear:

Boundary between two different landscape categories. The solid lines represent landscape categories determined by the Court and are not subject to change. The dotted lines have been determined under a broad-brush analysis as part of the District Plan process but have not yet been through a detailed analysis of specific physical circumstances of each site in the Environment Court to determine their exact location and so are not definitive. The dotted

¹³ Appendix D Rules 21.4.9 and 9a and Rules 21.4.10 and 10a

¹⁴ Stage 1 Decision Report 7 Paragraph 76

lines are purely indicative until their exact location has been determined through the Environment Court process.

8. That in the two areas where the Society will give landscape evidence in the Court (Dublin Bay/Mount Brown, Waterfall Hill/Waterfall Creek) the Court holds where the Landscape Lines should be situated, and that these lines then appear as solid lines in the PDP.

9. That PDP Stage 1 is amended in order to address issues arising from the Glentarn decision¹⁵, per Policy 6.3.8 in Appendix D.

10. That Objective 21.2.9.3 is deleted from the PDP along with all other provisions that favour farming as opposed to any other applicant in the development of rural based commercial recreation and/or visitor accommodation.

11. That the PDP policies Managing Rural Landscapes should apply equally to RCL landscapes of both the Wakatipu Basin and the Upper Clutha Basin per the amendment made to PDP policies 6.3.27 and 6.3.28 in Appendix C (renumbered 6.3.32 and 6.3.33 in Appendix C).

12. That an Upper Clutha Basin Land Use Planning Study is commissioned by Council as recommended by the PDP Hearing Panel¹⁶. Following completion of this UCBLUPS, that Council initiate a variation to incorporate any/all recommendations from this study into the PDP in the same way that provisions relating to the control of the cumulative effects of rural subdivision and/or development within RCL landscape contained in the PDP Stage 2-Wakatipu variation (publicly notified in November 2017) are proposed to be incorporated into the PDP.

13. That the text in Part 2.1.7 of the ODP that relates to the identification of the bulk of proposed buildings to be erected as part of rural resource consent applications is rolled-over and included in Chapter 1 per the amendment to part 1.7.5 in Appendix A.

14. That the standard in PDP Part 21.14.2 for the size of buildings having permitted activity status is reduced from 500m² to 350m² as shown in Appendix D.

The Society attaches the following documents to this notice in order to enable an adequate understanding of this appeal¹⁷:

- (a) Two copies of PDP Stage 1 Chapters 1, 3, 6, and 21.
- (b) Two copies of Appendices A-D. These form part of this appeal and consist of an amended version of the PDP Stage 1 (part or all) of Chapters 1, 3, 6, and 21. These indicate the outcome sought by the Society as a result of this appeal, but subject to the caveats described above.
- (c) Two copies of the Society's PDP submissions and further submissions
- (d) A list of submitter numbers and matching email addresses to be served with a copy of this notice of appeal¹⁸.

Signature of Appellant:

Date:

¹⁵ C10/2009 Glentarn Group Ltd. V. QLDC

¹⁶ Stage 1 Decision Report 16.13 Paragraph 37

¹⁷ All of the documents related to this appeal are publicly available on the QLDC website.

¹⁸ See waiver applied for in covering letter

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