

UPPER CLUTHA ENVIRONMENTAL SOCIETY (INC.)

SUBMISSION ON PROPOSED DISTRICT PLAN-SUBMITTER NUMBER 145/1034

CHAPTER 21 RURAL AREA

Legal Matters

There has been some question as to whether **Ms. Lucas's evidence on Chapters 3 and 6** will be given weight at this hearing. In my submission the evidence is relevant to these hearings (see my paragraph 12 below) and so is admissible-legal advice taken by the Society has referenced the Evidence Act, Section 7.

There is an issue regarding the change from **non-complying to discretionary** in Outstanding Natural Landscape and Outstanding Natural Features. I have twice asked the planner via email to send the Society copies of submissions in the December 2014-August 2015 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 referred to at the CH6 hearing that caused Council to change its position, a position it held after nearly 4 years of District Plan consultation. To date I have received nothing.

Further to this issue when lodging its CH21 evidence the Society asked for a decision on its submission which said "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)." This decision has yet to be received.

The "Places" Criteria has been amended in the Proposed District Plan from the following¹:

"..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."

To, with the change being made recently:

"..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."

There is a legal issue here is that the Court has held² that:

"All that is necessary is for the reasons for classifying activities to be categorised as discretionary to be complemented by the addition of other reasons for the status-being where activities are not suitable in most locations in a zone or part of a zone but may be suitable in a few locations. This covers the situation, for example, where someone seeks to build and use a house in an Outstanding Natural Landscape."

¹ ODP 1.5.3.(iii)(iii)

² C75/2001 Paragraph 44

This means that it is critical for a discretionary regime that the wording contained in Part 1.5.3 of the Operative District Plan is rolled-over.

The proposed “many locations” criteria reduces the status of all Outstanding Natural Landscape and Outstanding Natural Features (inconsistent here) outside the Wakatipu Basin to that of Visual Amenity Landscape in the Operative District Plan-the “many locations” criteria applied to Visual Amenity Landscape. It is a clumsy, unworkable and badly thought out change that, at a stroke, devalues all of the Outstanding Natural Landscape and Outstanding Natural Features landscape outside the Wakatipu Basin. The change is not supported by Council’s own landscape and economic evidence.

Most worrying here is the manner in which these changes have been made so late in the day at the behest of what appears to be a small group of developers.

Submission/Evidence Main Points

Big Picture

The commissioners can accept the evidence of planners such as Jeffery Brown that says that rural subdivision and development should have the same status as farming so that rural landowners can develop rural land largely unfettered by provisions in the District Plan. **Almost open-slather development.**

Or you can 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.** The choice becomes a no-brainer when you see the economic evidence which urges a **precautionary approach.** This is further bolstered by the evidence of Mr. Paetz, where he said at the Chapter 3, 4 and 6 hearing that the zoning in the Proposed District Plan provided sufficient room for a further 50-55,000 people-there is no need for ANY residential development in the Rural Zone.

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. **Landscape protection has been weakened across all landscape types.** The removal of the “minor” test and the “radius criteria” are examples. The Lucas evidence says there are serious deficiencies in the assessment matters.

The landscape evidence says *“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 Proposed 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 (Wakatipu Basin)/Outstanding Natural Features do not preclude development within Outstanding Natural Landscape.

In terms of the **Landscape Lines** the Lucas landscape evidence points to both the Waterfall Creek and Dublin Bay areas Landscape Lines as either contentious or wrong. The Landscape Lines should be left out or dotted per my earlier evidence to Ch6. Do the commissioners really think that this area should be made easier to develop? (see Waterfall Hill lakeside appendix).

In terms of **Other Rural Landscape** I agree with Dr. Read’s evidence that effectively Other Rural Landscape has been shown not to exist. This is consistent with my Ch6

evidence. But, as the Lucas evidence says, all of the Rural Landscape Category landscape is in foreground views of Outstanding Natural Landscape-objectives, policies, assessment matters and rules for Visual Amenity Landscape should apply across all non-Outstanding Natural Landscape/Outstanding Natural Feature landscape.

“Stringent” and “Most Places” Requirement

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

The removal of this “stringent” 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 economic evidence-under a precautionary approach assessment matters in Outstanding Natural Landscape Outstanding Natural Feature would be applied stringently.** The s42A report justifies the removal of the “stringent” requirement “because it has a direct connotation with s.104D of the Act.” It says that the “stringent” and “places” provisions need to be removed/changed to “ensure that they are not a “test”. **What the planner fails to understand here is that the Court included the “stringent”, “places” and “minor” tests in the Operative District Plan in order that a discretionary regime could be implemented.** It required a “virtually non-complying threshold” (Warwick Goldsmith). This is discussed in paragraphs 41-46 of C75/2001 and in other places in the Operative District Plan decisions. The Court said that without the “places” criteria in place **“all residential activity in the RGZ could not be discretionary”**. Without these provisions relating to Outstanding Natural Landscape and Outstanding Natural Features the Court was unhappy with the discretionary regime and preferred a non-complying regime. The planner’s argument that the assessment matters should not be a “test” makes no sense where the Court has already held that this should be the case. The planner relies on the evidence of Dr. Read for support for these “stringent” and “places” changes where in fact there is no such support. I believe that the changed “places” criteria is unworkable (paras 233-234).

I have difficulty with the fact that **“pastoral”** has been removed from the Rural Landscape Category given that much of the landscape in question is pastoral in nature.

Assessment of **naturalness** is crucial per s.5. Ms. Lucas addresses this in her evidence and points out that Dr. Read has consistently addressed naturalness in her evidence to resource consent applications.

Council has commissioned **economic evidence** for this hearing-this is compelling and crucial evidence. **In terms of the value of the landscape to the district the evidence describes this as “crucial”, “vital”, “critical”, “fundamental” and “pivotal”.**

If this evidence had been seen earlier by the planners who have written the Proposed District Plan **it is entirely feasible, given the precautionary approach strongly recommended in the economic evidence, that they would have recommended Proposed District Plan provisions that better protected landscape values.**

- 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”³ 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”⁴**

³ Paragraph 8.7

⁴ Paragraph 8.6

- The District has seen the highest level of tourist growth nationally over the last 12 years

The Society agrees with Council that **cumulative effects** is a crucial issue. My evidence details cumulative effects in a 3880 ha area with 195 building platforms east of Wanaka. 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. **This approach is supported by the Rural General Zone Monitoring Report. If Council is serious about controlling cumulative effects I believe the process described above should be included in the District Plan.** Some of the blame for the failure to control cumulative effects must fall on poor decision making by commissioners rather than blaming the District Plan provisions. There are enough provisions in the Operative District Plan to reject much development in Visual Amenity Landscape and Outstanding Natural Landscape, **yet decisions seldom turn on cumulative effects.**

Given Council's cumulative effects concerns it is surprising 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. The Court said: "The rationale behind these tests was to ensure Council could always consider cumulative effects." **The s42A report is wrong in all respects in its analysis of the radius criteria.**

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 provision for **in-perpetuity covenants**-these are also supported by council reports. **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 cumulatively "poppy-seed" developed, and then blamed this on the provisions in the Operative District Plan. The real problem here is Council failing to adequately administer and implement the Operative District Plan. My Appendix C-Springbank shows the type of outcome that could be expected from clustering. The inclusion of the clustering assessment matter in Outstanding Natural Landscape and Outstanding Natural Features represents a fundamental failure to understand and give weight to the Court's decisions that wrote the Operative District Plan. **The District Plan is not supposed to be enabling/encouraging big nodes of development in Outstanding Natural Landscape and Outstanding Natural Features, which is what clustering entails.**

The Society opposes **farm buildings** becoming a permitted activity. The planner says the existing provisions are too onerous. The Court says that 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". The draft s32 report said the existing rules are effective in that they provide for farm buildings while protecting the landscape resource and visual amenity. **Trading** of farm building consents is an issue. The costs for farm building consent to farmers is about \$67-134 per annum-hardly onerous and a tiny fraction of costs to get a residential consent.

In terms of the **Rural Zone Purpose and Policies** the writers of the Proposed District Plan appear to be under the illusion that by strongly favouring farming this will protect landscape values. The s.42A 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.”

The economic evidence puts forward similar opinions. 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. 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 that send a clear message that consent for development will be difficult to obtain. Significantly reducing development options on farmland will mean that farm values will revert to “normal” such that farming will be seen as a viable option.** The only other options to protect landscapes open to Council are the purchase of strategic parcels of land or subsidizing farms to remain as farms, both of which are expensive and impractical.

The s.42A report says “**elevating tourism or other commercial activities to the same status as farming is not supported**”. 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. This despite the s.42A report saying: “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.” 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. Activities such as farming and tourism should not have special status in the objectives, policies, assessment matters but rather each development should be assessed on their effects on a case by case basis.

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. This position is backed by the Rural General Zone Monitoring Report.

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 providing it complies with a set of standards. 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. The S.32 report acknowledges that Council will lose some control over adverse effects.

Lucas Landscape Evidence

Ms. Lucas says “The high value and high quality of the District’s landscapes are acknowledged but the fact that it is their **natural values, their naturalness**, that provide almost all of this value and quality has received inadequate articulation in the Proposed District Plan” There is a theme through the evidence that the objectives, policies, assessment matters and rules do not protect crucial natural values. She calls this a “policy void”, a “mismatch with Part 2 matters”.

Ms. Lucas says “Whilst more explicitly addressed under the ODP, the PDP is deficient in addressing the **sustainable management** of the natural landscapes of QLD.”

Ms. Lucas says “**Landscape Coherence** considerations, regarding the site and wider landscape scales, are essential considerations in assessing change. She illustrates the Operative District Plan cumulative effects provisions in action in relation to the Bald Developments Environment Court decision, with emphasis on visual coherence and naturalness.

Ms. Lucas’s forthright **conclusions** on the rural objectives, policies, assessment matters and rules is “**The structure and language, the comprehensiveness of the ODP assessment matters provides a level playing field for practitioners to assist decision makers. A common set of questions to ensure the full raft of landscape matters are addressed by all participants. It helpfully demonstrates to all the breadth of landscape consideration. Collapsing such matters into some generic language such as landscape quality is not adequate in my opinion. In my opinion the 21.2.1 Objective, policies and the assessment matters are deficient in terms of addressing the landscape resource of the very extensive Rural Zone**” And “**There is a complete lack of guidance to potential applicants to gain an understanding of the attributes of the ONL or ONF that a proposal needs to be assessed against.**”

Ms. Lucas criticises the assessment matters where they appear to **concentrate on fitting development into the landscape** and says “The ONL mapped for QLD are very extensive and include development nodes and areas where naturalness has already been significantly compromised but that the landscape context and scale are such that the outstandingness prevails. **However this is at risk of being significantly diluted if developments need only fit into that compromised state.**”

In other parts Ms. Lucas criticises the lack of emphasis on **geomorphological** landscape values. In Environment Court decision C73/2002 paragraph 51 geomorphological characteristics were held to be a “relatively solid basis for the [landscape] categorisation we have to make.” and superior to pastoral elements.

Ms. Lucas says “**The Zone Purpose** (21.1) is to enable farming. However, for much of the Rural Zone, farming is not appropriate.” There are numerous other criticisms of the farm-focussed provisions.

I note Ms. Lucas, like Dr. Read, recognises **openness** as important in the Rural Landscape Category lands. My own evidence, both Ch6 and CH21, points out that Operative District Plan decisions held that the need to preserve openness only applies in Outstanding Natural Landscape and Outstanding Natural Features. The landscape evidence would appear to have merit on this issue.

In terms of **building standards** Ms. Lucas criticises the **4000m3 block buildings** also criticised by Dr. Read. Ms. Lucas also says “Building 21.5.17 allows for **tall buildings** in the Rural Zone. Buildings are permitted to be 8m tall. With floors typically of 2.7m, a small excavation allows for 3-storey buildings to 500m² as a permitted activity. If the ground slopes, then a building can step up the slope potentially resulting in even greater landscape effects. **The permitted regime I consider to be excessive for these vulnerable landscapes.**”

Ms. Lucas says “As has been recognised in the NZCPS in Policy 15, **effects generated on ONL from beyond need to be addressed**, not merely effects generated from within ONL.” And “The PDP appears to “**dumb down**” non-ONL rural landscapes to formulaic could-be-anywhere ruralness.” These statements appear to support the rolling-over of Visual Amenity Landscape assessment matters.

Ms. Lucas disputes the statements made in both Council’s s.42A report and landscape evidence that the objectives, policies, assessment matters and rules in the Proposed District Plan represent “**best practice**”, calling the approach “bizarre”.

Ms. Lucas says “some of the **ONL – RLC delineation** in the Upper Clutha I assess as not being adequate.” She describes and disputes two Landscape Line locations at Waterfall Hill and Dublin Bay. By doing this the Proposed District Plan Landscape Lines are shown to be contentious and dubiously mapped.

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