

Before Queenstown Lakes District Council

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Under                      The Resource Management Act 1991  
And                         The Queenstown Lakes District Proposed District Plan Topic 12  
Upper Clutha mapping

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**LEGAL SUBMISSIONS FOR**

Sunnyheights Limited (Submitter #0531)

Dated 08<sup>th</sup> June 2017

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**Submitter's Solicitor:**

Maree Baker-Galloway | Rosie Hill  
Anderson Lloyd  
Level 2, 13 Camp Street, Queenstown 9300  
PO Box 201, Queenstown 9348  
DX Box ZP95010 Queenstown  
p + 64 3 450 0700 | f + 64 3 450 0799  
maree.baker-galloway@al.nz | rosie.hill@al.nz

**anderson  
lloyd.**

## **MAY IT PLEASE THE PANEL**

- 1 These legal submissions are presented on behalf Sunnyheights Limited (Submitter 0531) ("**Submitter**") in respect of the Upper Clutha Mapping Hearing Stream 12 of the Queenstown Lakes Proposed District Plan ("**PDP**").
- 2 Sunnyheights Limited is the owner of land located at Dublin Bay, Wanaka, and legally described as Lots 1-3 DP 26282, and Lot 3 DP 27742 ("**Site**").

### **Overview**

- 3 These submissions set out the following matters:
  - (a) An overview of the parts of the Submission being pursued within this Hearing;
  - (b) Consideration of the areas of remaining disagreement between the Submitter and Council experts;
  - (c) A review of the approaches to landscape classification rezoning and a comparison of the landscape evidence approach to rezoning submitted for this Hearing;
  - (d) An assessment of Council's rebuttal evidence.

### **Overview of relief being pursued**

- 4 As summarised in the evidence in chief of Mr White, at paras 6-10, the scope of what is being actively pursued by the Submitter within this Hearing is much more confined than the original Submission.
- 5 The issue being pursued in this Hearing is very narrow; relating to the Outstanding Natural Landscape ("**ONL**") and Rural Landscape Classification ("**RLC**") boundaries as they relate to the Site and its surrounds.
- 6 To clarify, those remaining parts of the Submission not addressed within evidence presented by the Submitter and in these submissions are not being formally withdrawn, however they are not being formally pursued in this Hearing.

### **Remaining areas of landscape classification disagreement**

- 7 The matter of the landscape classification boundaries is also now largely confined as a result of the two landscape experts' opinions regarding a revised boundary classification from the notified position in the PDP. This revised position between the two experts is summarised in the evidence in chief of Mr Espie, as follows:

*[7]...An area of terrace and escarpment landform in the south-east corner of the relevant landholding remains in contention. Ms Mellsop identifies this area as being part of a Clutha and Hawea River confluence landscape that she categorises as an outstanding natural landscape (ONL). I disagree and consider that this area is more appropriately categorised as part of the broad surrounding landscape which, while pleasant and of a rural character, is not particularly natural or outstanding.*

*[19] In relation to decision 114/2007, the Environment Court's consideration of landscape lines did not extend further south than the point indicated on Appendix 1. To the south and east of this point is an area of stepped terrace land that lies between the eastern end of Dublin Bay Road and the Albert Town Campground. Ms Mellsop opines that the southern part of this terrace land is part of the "legible Clutha/Hawea confluence fluvial landscape", which she categorises as an ONL. I consider that this area is outside the ONL and is part of the rolling and terraced pastoral landscape that takes in much of Crosshill Farm and that continues to the north and east taking in the floor of the Upper Clutha Basin.*

*[21]... This (Hawea) river corridor is simply part of the surrounding landscape, which (as Ms Steven points out) is, while rural and pleasant, not particularly natural or outstanding. Dr Read's response report also agrees with this point. I do not agree with Ms Mellsop's evidence that the relevant area of terrace landform (defined above) should be categorised as part of a "confluence landscape" area of ONL that protrudes from the Clutha River corridor to the north, as is shown on Ms Mellsop's Figure 8.*

- 8 It follows from Mr Espie's concise summaries above, that the focus of disagreement between landscape experts in relation to the Submitter's land is confined to just the south east corner of the Site, being the lower terrace area immediately in the vicinity of the Clutha / Hawea River confluence and west of SH6. This area of disagreement will be referred to in the following submissions as the "**Terrace Confluence**".
- 9 Mr Espie's appendices clearly show the difference between the respective landscape experts' opinions of the landscape classification over the Terrace Confluence.

## Landscape approaches in defining landscape boundaries

- 10 Ms Mellsop's evidence provides her summary of the methodology employed in assessing landscape boundary changes sought in submissions at para 4.6. This paragraph concludes that:

*[4.6] In assessing the landscape boundary changes sought in submissions, I have used a similar methodology but have referred to the landscape-related objectives and policies of the PDP rather than the ODP. In the case of rezoning submissions, the landscape character and visual amenity effects have primarily been assessed using the Guidelines for Landscape and Visual Assessment and with reference to the PDP landscape-related objectives and policies. I have also considered whether the proposed rezoning protects or enhances the key landscape characteristics and values identified in paragraph 4.3 above.*

- 11 In reference to her previous para 4.3, the most pertinent of landscape characteristics and values requiring protection in the Upper Clutha, appears to be:

*(d) the natural character of the Upper Clutha's lakes and rivers and their margins, particularly those that are ONFs or within ONLs;*

*(e) the legibility, openness, and pastoral or indigenous vegetated character of the Upper Clutha Basin outwash plains, moraines, river terraces, outwash fans and fluvial escarpments;*

- 12 Ms Mellsop's analysis of the landscape boundaries over the Site at para 8.55-8.61 do not appear to make reference to the landscape related objectives and policies of the PDP (contrary to para 4.6 cited above), and appear to rely predominantly on the formative processes of fluvial action of the rivers (see paras 8.57, 8.59, and the conclusion at 8.61 that:

*'The lower terraces of the Crosshill Farms property and on either side of SH6 are part of the legible Clutha / Hawea confluence fluvial landscape and have been included in this ONL.'*

- 13 This analysis does not appear to refer back to other particular characteristics and values to be protected in the Upper Clutha, including openness, pastoral and indigenous vegetated character (of fluvial escarpments) and natural character of margins (as per Mellsop para 4.3).

- 14 Conversely, the evidence of Mr Espie sets out the characteristics and important qualities of both the Lake Wanaka landscape and the relevant parts of the

Clutha River ONF at paras 17 and 18 respectively. These values are then used to inform the analysis of how far, if at all, the protrusion of the River ONF should extend into the adjacent landscape. In distinguishing between the Clutha River ONF and the adjacent Terrace Confluence, Mr Espie's resulting boundary is one which more closely follows the escarpment of the river corridor itself, thereby distinguishing its features from adjacent modified and pastoral landscape.

15 Mr Espie's concluding points at para 23 pertain not only to fluvial formation of the landscape, but also rely on; the distinctness or legibility of the Terrace Confluence from other RLC land to the north, the distinct bounds of the River Feature itself, and human modification of the Terrace Confluence.

16 I submit that the approach from Mr Espie in clearly setting out the respective characteristics and values associated with each part of a landscape or feature is most helpful. This is particularly evidenced in more recent case law, where determinations of 'appropriateness' are made with respect to the values of the object to be protected.

17 Any future decision as to what is 'inappropriate' in accordance with landscape objectives and policies the DPR (where reference is made to that qualifier) will depend on the effects of the activity proposed and the specific characteristics and values of the particular ONF or ONL.

18 That position is supported by the Environment Court in *Calveley v Kaipara District Council* where the Court agreed with the submission of Counsel for the section 274 parties that;

*"The starting point for the assessment of landscape effects must involve developing an understanding of the characteristics and values of this ONL"*<sup>1</sup>

19 In that case, the Plan under consideration was the Kaipara District Plan; in particular the Court agreed that the Plan's policies for landscape recognition and protection were:

*"well-aligned with King Salmon in that it indicates that judgements as to what constitutes "inappropriate subdivision, use and development" should be made with reference to what is "sought to be protected" ... the associated explanation also guides us to refer to the applicable worksheet to determine an ONL's characteristics and values".*<sup>2</sup>

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<sup>1</sup> *Calveley v Kaipara District Council* [2014] NZEnvC 182, at [120].

<sup>2</sup> *Ibid* at [130] with reference to *Environmental Defence Society Inc v New Zealand King Salmon Company* [2014] NZSC 38.

- 20 I submit Mr Espie's approach is also consistent with the Court of Appeal's recent decision in *Man O War Station Limited v Auckland Council* which did not overturn the Environment Court and High Court's application of *WESI* factors in its landscape classification assessment, and confirmed that:

*However, the issue of whether land has attributes sufficient to make it an outstanding landscape within the ambit of s 6(b) of the Act requires an essentially factual assessment based upon the inherent quality of the landscape itself.<sup>3</sup>*

### **Council's Planning Evidence and Rebuttal**

- 21 By way of clarification, it is submitted that Mr Barr's section 42a report (group 3 Rural) refers to and relies on Ms Mellsop's ONL / ONF findings in the vicinity of the Crosshill Site, including at para 14.4 where he states:

*Ms Mellsop recommends a modified landscape line because the western wall of the Dublin Bay meltwater channel and the outwash terraces in the eastern part of the Crosshill Farms site are sufficiently rare, distinctive or unusually legible to be classified as outstanding natural features or landscapes. I refer to Ms Mellsop's evidence and rely on her opinion on this matter.*

- 22 However this appears to be a misstatement of Ms Mellsop's findings in this area with reference to her paras 8.56-8.57 (evidence in chief) which, to the contrary, state:

**8.56** ... *I agree with this determination and consider that the ONL and ONF boundaries of Lake Wanaka and the Clutha River are appropriately located in the notified PDP.*

**8.57** *However, I do not consider that the western wall of the Dublin Bay meltwater channel and the outwash terraces in the eastern part of the Crosshill Farms site are sufficiently rare, distinctive or unusually legible to be classified as ONF or ONL.*

- 23 Ms Mellsop's rebuttal evidence at para 4.20 states:

*In his paragraphs 23 and 24, Mr Espie states his opinion that the alluvial terraces on either side of the Albert Town – Lake Hāwea Road (SH6) should not be classified as part of an ONL. He disagrees with my classification of the Clutha River corridor and Clutha/Hāwea confluence as an ONL and instead considers that the Clutha River ONF extends some way up the Hāwea River, as shown in his Appendix 4. In my*

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<sup>3</sup> *Man o War Station Limited v Auckland Council* [2017] NZCA 24, [2017] NZRMA 121, at [61].

*opinion, this evidence is somewhat contradictory as Mr Espie has included the lower Hāwea River in an ONL while maintaining that the river is not an ONF and the confluence area is not an ONL.*

24 It is submitted that there is no contradiction here. Mr Espie clearly explains that the protrusion of the Clutha River ONF into the Hawea River corridor is justified on the basis that the distinct river corridor itself is:

- *genuinely part of the feature of the river itself;*
- *distinct from the surrounding landscape (which is a pleasant, rural, farming landscape but not one that is particularly natural or outstanding);*
- *distinct from the surrounding landscape (all landscapes are) but is also particularly natural in terms of vegetation, featuring dense and intact native remnant vegetation cover;*
- *largely in DOC ownership and therefore has not been modified by many decades of farming use in the way that the surrounding landscape has;*
- *dramatic in terms of its aesthetics; a curving sinuous section of river running through an incised, naturally vegetated gorge.<sup>4</sup>*

25 Conversely, Ms Mellsop's justification for categorising the Clutha River ONF as part of a broader landscape confluence ONL is confusing. In her evidence in chief at para 8.48 (in relation to submission 400) she states:

*As the PDP objectives, policies and rules are identical for ONL and ONF, I do not consider it is necessary to define a boundary between the ONFs of the Clutha and Hawea Rivers and the wider ONL.*

26 In her rebuttal evidence, she then states, at para 4.18:

*In his paragraph 6.6, Mr Espie states that the Clutha River corridor ONL is not sufficiently large to be a landscape in its own right. He refers to an Environment Court decision that provided guidance on how large an area of land must be before it can be considered a landscape rather than a unit of a wider landscape. This guidance was couched in tentative terms and was introduced to the parties by the Court "in case it is useful in future." In my understanding, the characteristics of a separate landscape set out in the decision were not intended to be applied as a rule but as an aid to comprehensive assessment by landscape experts. I note that the Clutha River corridor and*

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<sup>4</sup> Evidence in Chief, Ben Espie, at para 22

*Clutha/Hāwea confluence landscape defined in my evidence (which includes the rivers contained within the landscape) is over 1,600 hectares in size and well above the minimum 600 hectares suggested in the Environment Court guidance.*

27 Ms Mellsop's categorisation however does not assess the remaining indicative measurements of a landscape, as provided in the WESI decision, which included a minimum distance of 1.5km sides.<sup>5</sup> Mr Espie further refers to this in his summary statement at para [9].

28 Ms Mellsop also ignores the assessment from Dr Read in respect of whether the Clutha River is ONF or ONL as follows:

*The Oxford Compact Dictionary defines a feature as 'a distinctive or characteristic part of a thing'. I consider that the [Clutha] river corridor is a distinctive part of the glacial and fluvial landscape of the Upper Clutha Basin and continue to consider it correctly identified as an Outstanding Natural Feature.<sup>6</sup>*

[Footnote: Oxford Compact Dictionary. (1996). Oxford University Press: Oxford. P337.]

29 The conflation is also inconsistent with Dr Read's evidence in respect of Hearing Stream 01B on the Landscapes Chapter 6:

*ONFs are distinguished from ONLs under the ODP. The more stringent rules which apply to the ONL(WB) apply to features no matter where they are located within the District. A landscape feature is a distinctive or characteristic part of the broader landscape, something which has high value but which is not a landscape in its own right.<sup>7</sup>*

30 Although the ODP approach of distinguishing between rules for ONF and ONL no longer remains in the PDP, it is clear that there is common understanding that a feature is different from a landscape, having its own defining characteristics requiring protection. Ms Mellsop's classification does not appear to be based upon these first principles, but rather a pragmatic approach following the PDP structure of objectives and policies.

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<sup>5</sup> *Wakatipu Environmental Society v Queenstown lakes District Council* [2003] NZRMA 289 at [20].

<sup>6</sup> Common Bundle 69 - At 3.4.1

<sup>7</sup> Common Bundle 38 – At 5.2



## **Conclusion**

- 31 Mr Espie's fine-grained analysis of the Site and its surrounds is preferred over the approach from Ms Mellsop which relies mostly on the Terrace Confluence as deriving its characteristics from the fluvial formation of the Clutha and Hawea Rivers.
- 32 I submit that Mr Espie's careful and detailed assessment of the characteristics and values of both the Wanaka Landscape and the Clutha and Hawea River confluence ONF are most helpful in that this will assist future planning determinations as to the values sought to be protected when considering appropriateness of use.

**Dated this 08<sup>th</sup> day of June 2017**

A handwritten signature in black ink, appearing to read 'Rosie Hill', is written over a light grey rectangular background.

Rosie Hill

Counsel for Sunnyheights Limited