

## **UPPER CLUTHA ENVIRONMENTAL SOCIETY**

### **SUBMISSIONS AND EVIDENCE ON PROPOSED DISTRICT PLAN**

#### **Chapter 3 Strategic Direction, Chapter 4 Urban Growth and Chapter 6 Landscape**

##### **Nature of Submissions and Evidence**

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

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.

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 almost 26 years. I have more than 16 years experience of the visitor industry in the Upper Clutha having owned and run my own accommodation business in Wanaka.

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.

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.

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.

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.

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 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.

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

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

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.

## SUMMARY OF SOCIETY'S POSITION

The Society will, as we are at the start of the hearing process, set out its overall position on the proposed District Plan. Almost all of this is in any event relevant to Chapters 3 and 6.

The Society's submissions largely concentrate on provisions in the District Plan that relate to subdivision and/or development in rural areas. The Society has read the parts of the Proposed District Plan relating to rural areas as publicly notified and all of the material supplied by Council online in connection with this.

Council is undertaking a *review* of the District Plan. Because this is a review, it follows that where the rural provisions of the District Plan are currently functioning well there is no reason to make major amendments to them. The Plan should be rolled-over. This is especially true given that the Operative District Plan was written under essentially the same Resource Management Act<sup>1</sup> we are dealing with today. Amendments to the Act made since the Operative District Plan was written have little influence, if any, on the District Plan review process.

The Operative District Plan's rural provisions were written after many days of Environment Court hearings (in the years 1998-2002) where many expert planners, landscape architects, lawyers and the Court itself were involved<sup>2</sup>. This resulted in groundbreaking, innovative and much-lauded rural provisions that balance rural development with adverse landscape effects.

It is the Society's position that the vast majority of the objectives, policies, assessment matters and rules for rural zones in the Operative District Plan are functioning well in practice and should remain unchanged. This view stems from the Society's experience gleaned from many council and court hearings in the last 20 years.

The Rural Monitoring Report counseled against a major rewrite of the rural section of the District Plan in 2009 where it said<sup>3</sup> (our underline):

*"...the fully discretionary/ no minimum lot size regime is considered to have been relatively effective at encouraging development to be clustered into areas most able to absorb development..."*

*"On the whole, however, from discussions with consultants and decision makers and through considering specific cases, it seems that the development that is being approved is located in those places where the landscape is best able to absorb it."*

*"It appears from the analysis in this report that the discretionary regime in the Rural General Zone has been, on balance, reasonably successful in managing the landscape effects of individual applications. There is much that 'works' about the current zoning and the Council should consider carefully before setting about any comprehensive overhaul."*

And The District Plan Rural General Zone Monitoring Report further said<sup>4</sup>:

***"Are Structures harmonising with the landscape?"***

*With regard to dwellings, the general opinion is that the provisions provide adequate ability to ensure that structures are appropriately located and*

<sup>1</sup> The District Plan must be written under the RMA as it stands. Changes in the pipeline that have not yet even been drafted let alone approved by parliament cannot be given weight.

<sup>2</sup> As an example, C75/2001 Paragraph 85 shows part of the process in which the Court rewrote all or part of Parts 4, 5 and 15.

<sup>3</sup> Pages 26, 29 and 58

<sup>4</sup> Page 58

*designed to ensure that they harmonise with the landscape. There is adequate clout to decline RBPs (and hence the right to build) on locations that are too prominent....”*

The above comments show that there is a clear groundswell from Council’s own experts that the existing rural areas district plan provisions are working well. Despite this conclusion the Society is certainly not opposed to amendments to the rural provisions per se. It supports a number of amendments which in many cases accord with changes proposed by Council in the Proposed District Plan, especially those that aim to simplify the Plan.

The Society believes the Proposed District Plan vastly and unnecessarily overcomplicates things by rewriting large sections of the rural section of the plan. It seems that, in terms of the objectives and policies and assessment matters relating to rural subdivision and development, the Proposed District Plan has been heavily influenced by stakeholders, especially the landowner lobby. This has resulted in a major rewrite of the objectives and policies and assessment matters which in some cases has resulted in the weakening of the District Plan’s provisions that protect landscape values. The reasons and logic for these major amendments is poorly justified on an evidential basis.

On the other hand in most non-rural parts of the Proposed District Plan, Council recommends limited amendments. Plan provisions relating to rural areas have been singled out for major amendments.

The Proposed District Plan Draft Review s.32 Evaluation Report-Landscape said in relation to the rural part of the Operative District Plan that “the existing process works”<sup>5</sup>. This statement has been removed from the publicly notified material attached to the Proposed District Plan, but it clearly shows that Council recognises that the Operative District Plan does work, particularly in the way it balances the protection of landscape values with the enabling of some residential development in rural areas.

Council explained why it prefers the major rewrite of rural area provisions in the March 2015 Proposed District Plan Draft Review s.32 Evaluation Report-Landscape in the section entitled “The Risk of Not Acting” where it says<sup>6</sup>:

*“There is the opportunity to rollover many of the existing provisions. This may also be improved by some minor amendments ...in response to resource management issue raised. Neither of these approaches reflects the current changing nature of the Resource Management Act “*

This entire statement has been removed from the publicly notified material attached to the Proposed District Plan, but here appears to lay the real motivation for the major changes proposed for rural provisions. Developer friendly amendments to the rural provisions appear to have been made based on economically focused changes to the Resource Management Act that have not yet been, and may never be enacted by parliament.

It is presumably for this reason that the Strategic Direction chapter begins with a goal, objectives and policies promoting the economy. The Queenstown Lakes District has been one of the fastest growing areas in NZ for many years without the need for such a goal.

The Operative District Plan already contains economy-friendly objectives and policies that promote commercial activities in the Town Centre and Business and Industrial Areas. Commercial activities taking place in rural areas are assessed in an effects-based manner, where positive economic gains are weighed against adverse effects. This is consistent with the Act. Promoting the economy at the expense of natural and physical

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5 Page 5

6 Page 58

resources (landscape values for instance) as proposed in the Proposed District Plan, is not consistent with the Act.

The Society seeks that the rural provisions of the Operative District Plan, meaning all of Parts 4, 5 and 15 and any other part or provision in the Operative District Plan that relate to or have any bearing whatsoever on the Rural General Zone<sup>7</sup>, be retained in their exact current form except for the following:

- A. Delete the Outstanding Natural Landscape (District Wide) landscape category and all objectives, policies assessment matters, rules and any other references to this in the Operative District Plan.
- B. Change the name of the Outstanding Natural Landscape (Wakatipu Basin) landscape category to Outstanding Natural Landscape. Retain in the Plan all of the objectives, policies, assessment matters and rules in the Operative District Plan that apply or in any way relate to Outstanding Natural Landscape (Wakatipu Basin) in the exact same form as in the Operative District Plan (with exception of F and G below) but apply these to the Outstanding Natural Landscape category. This category is to apply district-wide. Make any other changes necessary for the plan to be consistent with this<sup>8</sup> or contingent on this.
- C. Delete the Other Rural Landscape landscape category<sup>9</sup>. Delete the Visual Amenity Landscape landscape category. Replace these with a new Rural Landscape Category (RLC). Retain all of the objectives, policies, assessment matters, rules and any other references to the Visual Amenity Landscape landscape category in the exact same form as in the Operative District Plan (with the exception F, G, H and I below). Apply all of these Visual Amenity Landscape objectives and policies, assessment matters and rules to the new RLC landscape category.
- D. Delete the Part 3 Sustainable Management chapter in the Operative District Plan and replace it with the new “Part 1.1 Purpose”.
- E. Include Urban Growth Boundaries, per Part 6.3.1.7 of the Proposed District Plan, designed to minimise adverse effects of urban development on rural landscape integrity and values. The Society seeks that this policy is incorporated into or replaces the Operative District Plan Policy 4.2.5.7-Urban Edges.
- F. Amalgamate Other Factors and Positive Effects into one single assessment matter section that applies to all 3 proposed landscape categories<sup>10</sup>.
- G. Delete all text in parts 4, 5 and 15 of the Operative District Plan relating to “Explanation and Principal Reasons for Adoption” and “Implementation Methods” providing the deletion of such text has no bearing on the outcome sought in A-F above.
- H. Change the cumulative effects assessment matter to a test<sup>11</sup>. The Society seeks that the Operative District Plan assessment matter 5.4.2.2.3. (d) is changed such that 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:”.
- I. Add to the Operative District Plan RLC<sup>12</sup> assessment matters a clustering design and density assessment matter and a spatial development tool based on the existing 500m and 1.1km assessment matter<sup>13</sup> where it is stated that this pattern of development is the desired landscape outcome to control the

<sup>7</sup> Which except for very minor changes is the same as the proposed Rural Zone in the PDP

<sup>8</sup> For instance the 4.2.5.6 Urban Development policy would change

<sup>9</sup> The Society is unaware of any areas definitively categorised as ORL in the Upper Clutha.

<sup>10</sup> 21.7.3 in the PDP

<sup>11</sup> Per 21.7.2.7

<sup>12</sup> This being the renamed from Visual Amenity Landscape /Other Rural Landscape <sup>area</sup>

<sup>13</sup> 5.4.2.2.3.c(v) a and b

adverse and cumulative effects of subdivision and residential development within RLC<sup>14</sup>.

- J. Change policy 5.2.1.5 in the Operative District Plan to make more explicit the primacy of landscape outcomes in light of the Glentarn decision.
- K. Make any and all consequential amendments to the Plan consistent with A-J.
- L. The Society's position is not limited in scope by A-J in that other minor amendments may be useful such as:
  - Include additional activity definitions that will have a minor bearing on A-J such as the proposed definition for Rural Industrial Activities
  - Any other changes that are minor and/or inconsequential such as renaming, reordering and renumbering parts of the District Plan

The Society seeks these amendments because:

- The rural section of the Operative District Plan has, since it has been operative, been the subject of interpretation by a large number of Environment Court decisions. All of this case law will become largely irrelevant if the rural section is completely rewritten. The s.32 reports appear to give this matter little weight. Nor do they give sufficient weight to the fact that lawyers, councilors, expert witnesses and the public are familiar with the Operative District Plan.
- No compelling evidence has been evinced by Council to justify a major-rewrite of the provisions relating to rural areas in the Operative District Plan.
- The amendments sought by the Society will greatly simplify the rural parts of the Plan.
- The “amendment” approach sought will become operative faster and will be much cheaper and more efficient to implement than a major rewrite.
- The amendments sought will somewhat strengthen landscape protection both in Outstanding Natural Landscape and in areas previously categorised as Other Rural Landscape. **This is necessary because development pressure has increased significantly throughout the district since the Operative District Plan was written and is projected to further increase threatening the landscape character of the district, its economic lifeblood.**
- The logic for a separate Outstanding Natural Landscape-Wakatipu Basin landscape category, held by the Court to be necessary due to “pressure of development” in the Wakatipu Basin<sup>15</sup>, is no longer credible if indeed it ever was.
- Other Rural Landscape has no statutory basis under the act<sup>16</sup>.
- The Other Rural Landscape category appears to be serving little purpose; hardly any Other Rural Landscape has been identified in the District Plan.
- The Court emphasized the tripartite landscape division’s “crudeness” in C180/1999<sup>17</sup>.
- All non-Outstanding Natural Landscape, even flatter landscape, forms part of the foreground views of Outstanding Natural Landscape.
- Other Rural Landscape, with its weaker assessment matters, tends to blur urban/rural boundaries. It is a “de-facto rural living zone”<sup>18</sup>.
- The definition of Other Rural Landscape when first proposed in C180/1999 that stated “no significant resource management issues”<sup>19</sup> exist in relation to Other Rural Landscape lacks credibility.
- Other Rural Landscape is traversed by many important scenic roads from which views of Outstanding Natural Landscape are experienced
- The Court has held that rural amenities need to be protected in Other Rural Landscape<sup>20</sup> which is consistent with Visual Amenity Landscape

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<sup>14</sup> As suggested in the DP Monitoring Report Page 45

<sup>15</sup> C186/2000 Paragraph 3

<sup>16</sup> C75/2001 Paragraph 19

<sup>17</sup> C180/1999 Paragraph 94

<sup>18</sup> DP Monitoring Report page 43

<sup>19</sup> C180/1999 Paragraph 92

- Other Rural Landscape according to the Court is “difficult to define”<sup>21</sup> and “no one could agree where they were to be found”<sup>22</sup>

In seeking the District Plan outcomes above the Society relies upon Environment Court decisions (among others, and not limited by) C180/1999, C74/2000, C186/2000, C75/2001, C100/2001, C129/2001, C92/2001, C162/2001, C73/2002, C89/2005 (the “Operative District Plan decisions”) C140/2005, C47/2006, C119/2006, C131/2007 (the “Scenic Rural Roads decisions”) and C177/2002, C125/2004 (the “Farm Buildings decisions”) and the Society’s resource management experience gained over the last 20 years.

The commissioners will need copies of these decisions to hand as numerous references will be made to them during the District Plan review hearings.

The Society supports many of the proposed changes to the Proposed District Plan as follows:

- the proposal that seeks to collapse the five current landscape categories; Outstanding Natural Feature, Outstanding Natural Landscape (Wakatipu Basin), Outstanding Natural Landscape (District Wide), Visual Amenity Landscape and Other Rural Landscape, into three landscape categories; Outstanding Natural Feature, Outstanding Natural Landscape and Rural Landscape.
- The proposal to have a separate Landscape chapter<sup>23</sup>
- The simplification of the assessment matters through the new “Other Factors and Positive Effects” assessment matter
- The proposed Urban Growth Boundaries.
- The deletion of the Part 3 Sustainable Management chapter in the Operative District Plan and its replacement with Part 1.1 “Purpose” in the Proposed District Plan.
- The deletion of superfluous text in parts 4, 5 and 15 relating to “Explanation and Principal Reasons for Adoption” and “Implementation Methods”
- The making of the cumulative effects assessment matter a test.

The Proposed District Plan, while laudable in its aims to simplify the District Plan, ends up overcomplicating and weakening the process of assessment of subdivision and development in rural areas. The introduction of the Strategic Development Chapter is partly responsible for this.

It is submitted that the Proposed District Plan does not represent sustainable management as described in Section 5 of Part 2 of the Resource Management Act because:

- The Proposed District Plan 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 Proposed District Plan does not protect the landscape of the District from inappropriate subdivision and development. The level of development the Proposed District Plan permits in rural areas will have significant and adverse effects, particularly cumulative effects, due to its inappropriate location and density.
- The Proposed District Plan 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 Proposed District Plan will not result in the efficient use and development of

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20 C75/2001 Paragraph 53

21 C180/1999 Paragraph 138

22 C186/2000 Paragraph 8(2)

23 the creation of this chapter does not require objectives and policies and assessment matters to be changed from those in the Operative District Plan

natural and physical resources nor will it maintain or enhance the quality of the environment nor will it maintain or enhance amenity values.

### **Chapters 3 Strategic Direction and Chapter 6 Landscape**

#### **Plan Structure**

In the Operative District Plan the rural subdivision and development provisions are split between only two parts; Part 4 District Wide and Part 5 Rural Areas.

In the new structure in the Proposed District Plan provisions relating to rural subdivision and/or development are now split between three different parts: the new Part 3 Strategic Direction, Part 6 Landscape and Part 21 Rural.

This restructuring has two results: firstly, the process of evaluating applications for rural subdivision and development is made more complicated by the necessity to refer to 3 separate parts of the plan. Secondly, as part of this restructuring, the rural objectives and policies and assessment matters are majorly rewritten and weakened in terms of their ability to protect landscape values. It is only with detailed analysis of the proposed changes that this becomes apparent.

The Operative District Plan contains an objective and policy framework where objectives and policies are placed in the parts of the plan that they are relevant to. The Strategic Direction chapter adds an unnecessary additional layer to the plan while removing objectives and policies from their relevant parts. This is especially the case in relation to rural areas objectives and policies.

The reasons for taking this approach are explained in the S.32 Landscape Evaluation Report where it says<sup>24</sup>:

*The existing suite of objective and policies would benefit from clarification, consolidation and require linkage to the proposed strategic directions chapter.”*

And the s.32 Strategic Direction Report where it says<sup>25</sup>:

*“Without these [Strategic Direction] objectives, the Proposed District Plan would lack a clear direction and an integrated statement as to the planning and resource management aspirations for the District.....Retention of the status quo approach was considered. The status quo is represented by the ‘Sustainable Management’ chapter of the Operative District Plan. This chapter is dominated by unfocussed and very lengthy preamble and is unwieldy, and does not set a strong and direct policy framework.”*

The Society agrees with the comments above in relation to Part 3 Sustainable Management chapter of the Operative District Plan. The Society supports its deletion and its replacement by Part 1.1 of the Proposed District Plan.

However, and crucially, the comment that the “status quo is represented by the Sustainable Management chapter of the Operative District Plan” is both wrong and highly misleading. The objectives and policies in Part 4 District Wide and Part 5 Rural of the Operative District Plan represent the status quo. The statement represents a clear misunderstanding of how the Operative District Plan works and begs the question has the plan restructuring been carried out by persons who do not understand how the Operative District Plan works?

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<sup>24</sup> Page 15

<sup>25</sup> Page 18

In reality there is a “clear statement as to the planning and resource management aspirations for the District...” contained in Part 4 of the Operative District Plan. Nothing could be clearer than the first objective<sup>26</sup>:

*“Objective:*

*Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.”*

There are many other provision in Parts 4 and 5 of the Operative District Plan that spell out resource management aspirations for the District. The Proposed District Plan purports to clarify and strengthen these provisions but in fact it complicates and weakens them.

The March 2015 Draft Review Summary of issues stated<sup>27</sup>:

*“The proposed changes intend to make it clearer where subdivision and development in the rural areas may be appropriate.”*

The Society agrees that the Proposed District Plan succeeds in this objective where the landscape categories are reduced from 5 to 3. Consolidating the landscape categorisations into 3 types is, in practice, a fairly easy amendment to make to the Operative District Plan but will result in significant benefits in that the plan will be greatly simplified.

The Society also agrees with the idea of amalgamating Positive Effects and Other Matters into one single assessment matter section that applies to all 3 proposed landscape categories<sup>28</sup>.

The Society also supports the Proposed District Plan where it deletes all text in parts 4, 5 and 15 relating to “Explanation and Principal Reasons for Adoption” and “Implementation Methods”. These sections are unnecessary as the objectives and policies, rules and assessment matters are largely self-explanatory.

These measures alone will greatly simplify the rural provisions of the District Plan.

On the other hand the Society believes the major changes to the District Plan’s structure discussed above are unnecessary and counterproductive, especially in terms of the major changes to the rural objectives and policies, assessment matters and rules and the introduction of the Strategic Direction chapter.

## **Objectives, Policies and Assessment matters**

### **Objectives and Policies**

The S.32 Landscape Evaluation Report sums up the logic behind the proposed major District Plan changes here<sup>29</sup> (our underline):

*“Objective and Policies*

*The existing district wide landscape chapter has one stated objective:*

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<sup>26</sup> Operative District Plan Part 4.2.5

<sup>27</sup> Page 2

<sup>28</sup> Part 21.7.3 in the PDP

<sup>29</sup> Page 15

***“Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.”***

*A review of decisions on notified resource consent applications indicates the District Wide Landscape and Rural General Zone objectives and policies are often overlooked. A reason may be that decision makers, having worked through a long and complex set of prescribed assessment criteria which seek to identify whether the actual and potential effects on the environment will be minor, see little merit in trawling through policy derived from an objective which seeks the same. While the objective and policy is the foundation of the provisions, it is considered the related 43 (more or less) policies grouped into 17 themes primarily contained in the existing District Wide chapter do not offer appropriate specificity and value over and above the assessment criteria, many of which are structured and phrased as policies in themselves.*

*The existing suite of objective and policies would benefit from clarification, consolidation and require linkage to the proposed strategic directions chapter.”*

The logic of the S.32 report quote above would seem to be twofold.

Firstly, that the Operative District Plan Part 4 District Wide objectives and policies and Part 5 Rural objectives and policies should be heavily amended and truncated because commissioners can't be bothered to address them and so give them weight. The S.32 report describes this as “clarification” and “consolidation” where in reality many key elements of the objectives and policies are removed such that they become less effective in controlling adverse effects on landscape values.

Secondly, that the existing Part 4 and Part 5 objectives and policies, once amended and truncated, “require linkage to the Strategic Direction chapter” introduced into the Proposed District Plan.

The Society believes the Operative District Plan contains effective strategic objectives and policies in Part 4 District Wide Issues. The Part 5 Rural Areas objectives and policies dovetail in with these. The Part 5 objectives have been held by the Court to be consistent with the Part 4 objectives and policies<sup>30</sup>.

In my experience it is not true that “the District Wide Landscape and Rural General Zone objectives and policies are often overlooked” in decisions as claimed above. The Society has brought the Part 4 and Part 5 objectives and policies to the attention of commissioners and the Court on numerous occasions. In its experience resource management practitioners and legal representatives always bring these objectives and policies to the attention of commissioners or the Court. It is always difficult to know when reading decisions what has been taken into account by commissioners or the Court that may not be referred to in the final text where only key issues relevant to a particular application are discussed and highlighted. The fact that objectives and policies are not mentioned does not mean that they have been “overlooked” or ignored. On the contrary, they are likely to have formed part of the overall assessment.

The fact that commissioners sometimes may not be doing a thorough enough or competent job in failing to address the objectives and policies is not a good reason to rewrite and truncate valid objectives and policies that, as the quote says, are “the foundation of the provisions”.

The Part 4 and 5 objectives and policies are objective, rigorous, detailed and address specific issues in relation to adverse and positive effects. This is precisely what is needed in order to protect the landscape values that this district relies upon. If a landscape

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<sup>30</sup> C75/2001 Paragraph 23(4)

architect or planner needs to take an extra hour or so to write evidence evaluating a proposal because the objectives and policies are detailed and rigorous, and the commissioners have to spend time considering this, that is a small price to pay for landscape outcomes the public can have confidence in.

The objectives and policies are well structured. For instance there is very clear and logical policy linkage between Part 4 and Part 5 of the Operative District Plan in Part 5.2 where it states:

***Objective 1 - Character and Landscape Value***

***To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.***

***Policies:***

*1.1 Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.*

The Society seeks that the objectives and policies and assessment matters structure contained in the Operative District Plan is retained because under this structure objectives, policies and assessment matters are set out in the relevant parts of the plan, such as in the District Wide, Rural, Business and Industrial, Rural Living, Rural Areas parts. This is entirely logical.

In my opinion the Operative District Plan's structure, especially in relation to rural subdivision and development in Parts 4 and 5, works well in its current form. Strategic issues are covered in the Operative District Plan in Part 4 District Wide Issues. It is a strategic section in all but name<sup>31</sup>.

Part 4 was arrived at in decision C180/99<sup>32</sup> after the consideration of much expert evidence, especially from resource consent practitioners and landscape architects. The decision stated it would decide the "issues, objectives and policies" before later moving on in subsequent decisions to decide the "methods of implementation" (in Part 5 Rural Issues). The decision stated that it had arrived at "a suite of interlinked [Part 4] policies which are connected to each other..."<sup>33</sup> This careful logic is given little weight in the District Plan review.

The so-called "consolidation" and "clarification" of objectives and policies in Parts 4 and 5 of the Operative District Plan talked about in the quote above has resulted in the following changes (among others) in the Proposed District Plan to the objectives and policies contained in Parts 3 and 6:

- The crucial "minor" test and "reasonably difficult to see" test for subdivision and development in Outstanding Natural Landscape Wakatipu Basin and for Outstanding Natural Features have been removed
- Pro-farming policies dominate. 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
- Pro-economy objectives and policies are promoted, demoting the importance of landscape protection

<sup>31</sup> It could be renamed, for instance: "Part 4 Strategic and District Wide Matters"

<sup>32</sup> C180/99 paragraphs 15 and 16.

<sup>33</sup> C180/1999 Paragraph 126

- The “Structures” policy is deleted. Structures are no longer considered separately in terms of their possible effects on landscape values
- The stand-alone “Rural Amenity” policy is deleted and is only mentioned as an add-on to a pro-farming objective
- All policies relating to rural subdivision and development on “highly visible slopes” or “prominent slopes” are deleted
- “Visual Coherence” of the landscape, a key issue in four Operative District Plan policies, is demoted to a very minor side issue
- The words “openness” (in Outstanding Natural Landscape), “naturalness”, “natural”, “topography”, “degradation” are deleted where previously they were important elements in the objectives and policies<sup>34</sup>

I note that in the s42A Strategic Direction report the planner recommends removing the words “natural character” from Objective 3.2.5.1 “which is considered unduly narrow and not consistent with RMA terminology.” The words “natural character” appear in the Operative District Plan objectives and policies 9 times and the Court held when the plan was written that this language is appropriate. The planner ignores the Court.

The devil is always in the detail; while on a very superficial level reasonable objectives and policies have been included in the Proposed District Plan, the net effect of the changes listed above to the existing objectives and policies is to weaken them such that rural subdivision and development is more likely to gain consent in inappropriate locations in a manner that will degrade landscape values. This is compounded by the Plan’s looser rules on farm buildings, not part of this hearing.

The Society seeks that the existing Operative District Plan objectives and policies structure and wording is retained.

The Society has asked landscape architect Di Lucas to prepare evidence on the landscape effects of changes to the rural objectives and policies (discussed above) and assessment matters. The Society believes this evidence is best heard as one cohesive argument and this will be presented at the Chapter 21 Rural Zone hearings currently scheduled to be heard in May 2016.

It follows that the submission here will be complemented by further evidence on the objectives and policies contained in Chapters 3 and 6 Rural Zone hearings.

### **Strategic Direction Chapter**

The reasons for the much-changed Proposed District Plan structure and the rewriting of the rural objectives and policies are spelt out in the S.32 Landscape Evaluation Report<sup>35</sup> and in the “Broad options considered to address issues” report<sup>36</sup>:

The first reason given is that

*“the objectives and policies do not align with the Proposed Strategic Directions chapter.”*

This is faintly ridiculous. Objectives and policies that are serving the District well are largely rewritten, truncated or jettisoned because of the inclusion of a Strategic Direction chapter that serves little purpose. The Strategic Direction chapter appears to have been included in the plan as a Trojan horse that enables the dismemberment of the existing objectives and policies. The reality is that the objectives and policies in Parts 4 and 5 of the Operative District Plan are working well and effective.

<sup>34</sup> “Openness” is addressed only in RLC landscape

<sup>35</sup> Page 24 Management of the District’s Landscapes

<sup>36</sup> Page 24

In any event the S.32 Strategic Direction report states<sup>37</sup>:

*“A number of elements espoused in the Strategic Directions chapter build on existing approaches in the Operative District Plan, so there is often not a radical change in policy direction.”*

In essence this says the Operative District Plan already contains strategic direction provisions that work. I, therefore, question the need for the Strategic Direction chapter. To address this issue it is necessary to look at each of the goals, objectives and policies contained in the Strategic Direction chapter one by one:

### **3.2.1 Goal - Develop a prosperous, resilient and equitable economy.**

It is highly debatable whether this goal is needed in the Plan at all. Much of the attendant text is waffle. In terms of the economy, the definition of sustainable management included in Part 1.1 “Purpose of the Proposed District Plan” states that the economic well-being of people and the community must be provided for. That is all that is needed in the Plan.

The Operative District Plan sets a framework that enables economic development (for instance farming is a permitted activity, industrial zones, town centre commercial zones) while protecting natural and physical resources as the Act demands.

The economy of the Queenstown Lakes District has flourished over the period of the Operative District Plan without the need for such an economic goal. The goal is damaging in that it wrongly elevates the importance of economic matters in the Plan in a manner that is likely to threaten landscape protection.

Elevating the economic goal in such a prominent manner conflicts with statements made in the S.32 Landscape report such as<sup>38</sup>:

*‘The environment is revered nationally and internationally and is considered by residents as the area’s single biggest asset.’*

The goal should be deleted.

The vacuous pro-farming objective 3.2.1.4 should be deleted because it elevates farming to special status contrary to the effects-based Resource Management Act.

The Society supports 3.2.1.3.2 where it addresses climate change and suggests that this is moved to Part 4 of the Operative District Plan.

### **3.2.2 Goal - The strategic and integrated management of urban growth**

The Society supports this goal and seeks that it is incorporated into or replaces the Operative District Plan Policy 4.2.5.7-Urban Edges. This policy could be renumbered/repositioned in Part 4 to give it more prominence.

### **3.2.3 Goal - A quality built environment taking into account the character of individual communities**

This is a bit waffly, obvious and appears to serve little purpose. There are already more detailed policies in Parts 9, 10 and 11 of the Operative District Plan that cover this issue.

### **3.2.4 Goal - The protection of our natural environment and ecosystems**

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<sup>37</sup> Page 12

<sup>38</sup> Page 3

This should be deleted except for the objective and policy at 3.2.4.7. There are already more than adequate provisions addressing this goal in Part 4 of the Operative District Plan.

Part 3.2.4.7 relating to public access is supported and should be moved to Part 4.4.3 of the Operative District Plan

**3.2.5 Goal - Our distinctive landscapes are protected from inappropriate development.**

This should be deleted. There are already more than adequate (and better) provisions for this goal in Part 4 and Part 5 of the Operative District Plan, and the creation of a separate landscape chapter (that should contain the same objectives and policies and assessment matters as in the Operative District Plan) will already highlight this issue.

**3.2.6 Goal - Enable a safe and healthy community that is strong, diverse and inclusive for all people.**

Laudable and has some merit to spell this out. Could be included in Chapter 1-Introduction.

**3.2.7 Goal - Council will act in accordance with the principles of the Treaty of Waitangi and in partnership with Ngai Tahu.**

This should be deleted. There is already provision for this matter in Part 4.3.2 of the Operative District Plan.

The Strategic Direction chapter's replacing of the strong objectives and policies contained in the Operative District Plan Part 4.1 Natural Environment and Part 4.2 Landscape and Visual Amenity with weaker objectives and policies contained in Parts 3.2.4 and 3.2.5 is of particular concern to the Society. These changes threaten the protection of landscape values of national importance as required by the Act.

It can be seen from the above analysis that the Strategic Direction chapter serves little, if any, purpose.

**Most Efficient Course of Action**

The Council is proposing a major rewrite of the rural parts of the District Plan predicated on a number of false assumptions and reasons:

- Resource Management Act reforms that have never been enacted
- Supposed significant deficiencies in the objectives and policies and assessment matters
- Council Commissioners inability to address rigorous and detailed objectives and policies and assessment matters
- Pressure from self-interested stakeholders especially farmers

In my opinion none of these are valid reasons for making widespread changes to the rural parts of the District Plan. The Society believes that it is wrong to blame the existing provisions of the District Plan (bullet point two). The real culprit is that poor decisions on resource consent applications are at times made by (sometimes inexperienced) commissioners under pressure from well-resourced and self-interested developers (bullet points three and four).

I have made the point several times above that amendments to the District Plan that simplify it and strengthen landscape protection while retaining the Plan's existing structure is the most efficient course of action to take.

In the S.32 Landscape Evaluation Report section entitled "The management of the District's landscapes" three possible courses of action are considered for the District Plan Draft Review; "Status Quo", "Amend" and "Comprehensive Change".

In relation to using the "amend operative" option preferred by the Society the report says<sup>39</sup>:

- *The identified deficiencies and absence of a connection with the strategic directions chapter would be likely to remain.*
- *Minor changes to provisions which are considered less than effective and inefficient would be unlikely to resolve the inefficiencies highlighted in the Rural Monitoring report 2009.*
- *Retaining but improving the existing provisions may reduce some of the current ambiguity with the application of the existing rules.*

Dealing with these in turn:

In relation to the first point, as I have explained above, the Society does not accept that there are significant deficiencies in the rural parts of the Operative District Plan. It is working reasonably well. Council has produced no practical examples in the District Plan material citing actual resource consent applications to explain the deficiencies it claims.

In relation to the second point there is ample evidence that the rural section works well in the Operative District Plan. For instance the S.32 Strategic Direction report states<sup>40</sup>:

*"Fundamentally, however, the landscape provisions in the Operative District Plan are considered to function well."*

The third point favours amending the Operative District Plan while claiming it has ambiguities. The Society does not agree that ambiguities exist in the Operative District Plan but in any case the bullet-point says that improvements can be made to the Operative District Plan through amendment, rather than totally restructuring and rewriting it.

I believe that the benefits of the "amend operative" option are purposely downplayed in the s.32 report and the benefits of the comprehensive changes option are over-emphasized in order to justify the comprehensive changes approach.

The s.32 reports should have given much greater weight to the fact that the structure, content and interpretation of the rural parts of the Operative District Plan is understood by lawyers, expert witnesses, commissioners, the Council and the general public because it has been in use for 15 years. Where the process works a major rewrite is not needed. This is not an efficient course of action.

Were a major rewrite to be adopted a whole new District Plan learning experience will be necessary for lawyers, expert witnesses, commissioners, the Council and the general public. Crucially case law based on the Operative District Plan will either no longer have weight, or will have much less weight.

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<sup>39</sup> Pages 24 and 25

<sup>40</sup> Page 10

The s.32 report does not address the huge costs that are likely to eventuate if the comprehensive change approach is adopted and then the many unnecessary amendments this entails are appealed by individuals or public interest groups (such as UCES).

The most efficient course of action to take is to amend the Operative District Plan where necessary. In this submission the Society is supportive of many amendments proposed by Council in the Proposed District Plan. But in terms of the rural sections of the Operative District Plan it's simple really; if it ain't broke, don't fix it.

### **Section 42A Hearing Report-Strategic Direction and Urban Development**

I note that Council formerly agreed to rollover the existing District Plan format in May 2013 (Para. 6.4). The s.42A then states (Para. 6.9) that in April 2014 the District Plan review advanced with "a key priority being the development of a Strategic Development Chapter" after Council had "endorsed" the Strategic Development Chapter in July 2014 (Para. 6.10).

The Strategic Development Chapter significantly changes the format of the Operative District Plan which seems to conflict with Council's position in May 2013. There appears to have been no public consultation or public support for a Strategic Development Chapter; it was simply imposed.

Para. 6.15 states that there is a "general lack of opposition to the provisions contained in the Strategic chapters." While I am unsure whether this is true, the Society has asked for the Strategic Development Chapter to be deleted and where appropriate objectives and policies moved to other parts of the District Plan. Para. 12.2 indicates that submitters felt many of the policies were already located in other chapters and the report acknowledges this in Para. 12.5. This calls into question the Strategic Development Chapter's utility, if any.

Para. 7.17 "One of the key strategic tools to address these planning issues is the introduction of urban growth boundaries, as espoused in the Strategic Direction and Urban Development chapter as notified." In my mind this immediately points to the logic of moving the Urban Growth Boundaries objectives and policies to the urban Development chapter where they belong. This is reinforced by Para. 12.69 where it says "there is a degree of repetition between the Urban Development Chapter and policy in the Strategic Development Chapter."

Paras. 8.1 to 8.10 purport to justify, through a fog of consultant's jargon, the need for the existence of the Strategic Development Chapter. An example is "Without such a chapter, there is the risk that individual chapters that deal primarily with a specific singular issue or geography will lack overall cohesion or integration." I'm not quite sure what this means. Surely if the relevant objectives and policies (and goals if necessary) are positioned in relevant individual chapters then this will be more cohesive (and more user friendly) than moving them out into a separate chapter? The reality is that the Strategic Development Chapter is not a "meaningful tool for decision makers" (Para. 8.6).

The report makes numerous patronizing references to "first generation District Plans". For instance Para. 8.8 where it says these focused on negative externalities. The paragraph goes on to say "the Resource Management Act's philosophical underpinning has changed significantly amongst planning practitioners" and gives examples of changes to s.32 of the Act.

In reality the changes to s.32 are minor changes to the Act. The issues they call more attention to; the economy, employment and social impacts, are on the whole minor issues in this District. The fundamentals of the Act, Parts 5, 6 and 7, have not changed at all. The much-lauded and groundbreaking Operative District Plan has functioned as well as any plan could have been expected to function in terms of controlling landscape

effects when faced with massive pressure from well-resourced applicants. The s.32 changes are not a basis for a major rewrite of the rural section of the District Plan or for a Strategic Development Chapter.

Para. 12.6 gets to the nub of the matter. It says “An alternative option for the Strategic Direction chapter may have been to only provide high level objectives. Then, objectives and policies in the lower order chapters would have ‘fleshed out’ these high level objectives. However, whilst this is a potentially valid alternative plan making approach (and I have read the Independent Hearing Panel’s decision on the Christchurch Replacement District Plan that preferred this approach)...”

So Christchurch has rejected the Strategic Development Chapter except for “high-level objectives”. This would appear to be a better approach than the one being advocated in the s.42A report. The detailed nitty-gritty objectives and policies should be contained in the relevant chapters while a short and concise Strategic Development Chapter could spell out some key goals (and only goals, not objectives and policies) such as 3.2.6-see above.

## **Chapter 6-Landscapes**

### **Outstanding Natural Landscape Provisions**

The issue as to how to protect the Outstanding Natural Landscapes of the District, the landscapes of national importance referred to in the Act, is a fundamental issue.

The policy 4.2.5.3 in the Operative District Plan reads:

#### *“3. Outstanding Natural Landscapes (Wakatipu Basin)*

*(a) To avoid subdivision and development on the outstanding natural landscapes and features of the Wakatipu Basin unless the subdivision and/or development will not result in adverse effects which will be more than minor on:*

- (i) Landscape values and natural character; and*
- (ii) Visual amenity values - recognising and providing for:*
- (iii) The desirability of ensuring that buildings and structures and associated roading plans and boundary developments have a visual impact which will be no more than minor, which in the context of the landscapes of the Wakatipu basin means reasonably difficult to see;”*

This is a crucial policy where it contains the “reasonably difficult to see” test<sup>41</sup>. This test is removed from the policies in Parts 3 and 6 of the Proposed District Plan and the policy is further weakened by the removal of the words “which will result in adverse effects which will be more than minor” and “have a visual impact which will be no more than minor”.

Policies such as this are fundamental to the control of adverse effects on landscape values and integrity. If the “reasonably difficult to see” and “minor” tests are removed from the policy this considerably weakens the policy; the objectives and policies are the bedrock of the Plan. The Court has held that “reasonably difficult to see” is an “objective test”<sup>42</sup> and includes the “classic legal test for objectivity”<sup>43</sup>.

<sup>41</sup> In the revised plan the policy, should there only be one category of ONL, this would be amended to read “which in the context of the District’s Outstanding Natural Landscapes means reasonably difficult to see”

<sup>42</sup> C74/2000 Paragraph 16 refers to Policy 4.2.5 Objective 1 Policy 2

<sup>43</sup> C162/2001

While it is accepted that the reasonably difficult to see test appears in the Proposed District Plan assessment matters, I believe that it should appear in the Outstanding Natural Landscape policy as well.

The reason for this is that the Society has on numerous occasions attended hearings where developers have highlighted that, under operative Outstanding Natural Landscape (District Wide) policies and assessment matters developments do not have to be “reasonably difficult to see”. While the Court has held that other Operative District Plan policies do give some protection against visible development<sup>44</sup> it has been the experience of the Society that the lack of the reasonably difficult to see test in Outstanding Natural Landscape (District Wide) means the existing provisions simply aren’t effective in controlling the appropriateness of subdivision and development. The Society believes the Proposed District Plan provisions are not consistent with the Act’s purposes of avoiding inappropriate subdivision, use and development within Outstanding Natural Landscape.

Mr. Espie discussed the test in his “High Level Review” report contained in the District Plan Draft Review 2015 in relation to the reasonably difficult to see test<sup>45</sup>. He said:

*“I do not see that completely hiding new built form from view is necessarily an appropriate goal.”*

This is rubbish. The test does not aim to hide development completely from view.

The Society in these submissions and evidence seeks to make all of the provisions in the Operative District Plan relating to Outstanding Natural Landscape (Wakatipu Basin) applicable to all Outstanding Natural Landscape across the whole district.

In support of this the District Plan Rural General Zone Monitoring Report specifically broached the issue of raising the landscape protection afforded to Outstanding Natural Landscapes (District Wide) where it said<sup>46</sup>:

*‘If Council feels uncomfortable with the amount of development being approved in the ‘District-Wide’ areas of the ONL, then it may be worth raising the assessment matters to the level of ‘tests’ as is the case with the Wakatipu Basin.’*

I note that there are clear indications in the Proposed District Plan that Council is sympathetic to supporting this position in that it has adopted the following phraseology previously found in Outstanding Natural Landscape (Wakatipu Basin) objectives and policies as follows:

- “assessment matters are to be stringently applied”<sup>47</sup>
- “meaning successful applications will be exceptional cases”<sup>48</sup>
- “reasonably difficult to see”<sup>49</sup>
- “shall be satisfied”<sup>50</sup> (i.e. becomes a “test”)

All of these phrases are associated with Outstanding Natural Landscape (Wakatipu Basin) but not Outstanding Natural Landscape (District Wide).

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44 C129/2001 Paragraph 24

45 Paragraph 45

46 Page 40

47 Assessment matter 21.7.1.1

48 PDP Policy 6.3.1.3 and at PDP assessment matter 21.7.1.1

49 Assessment matter 21.7.1.4

50 Assessment matters 21.7.1.3, 21.7.1.4, 21.7.1.6

There other reasons supporting why the existing Outstanding Natural Landscape (Wakatipu Basin) provisions should apply to Outstanding Natural Landscape in the whole district:

- There is no basis or justification under the Act for there to be two types of Outstanding Natural Landscape. The Society argues that the practical experience of the Outstanding Natural Landscape (District Wide) provisions has been that they are not fit for purpose because they do not prevent inappropriate development
- As late as March 2015 Council was proposing that ALL development within Outstanding Natural Landscape and Outstanding Natural Features was to be non-complying.
- As a result of numerous tenure reviews implemented in the District since the Operative District Plan was written there is now a great deal more freehold land available for subdivision and development in the District in highly visible places the bulk of which is categorised as Outstanding Natural Landscape.”<sup>51</sup>
- Development pressure is now more intense and widespread across many Outstanding Natural Landscape areas in the district, not just the Wakatipu Basin<sup>52</sup>. Growth pressures are immense. The District’s population is forecast to almost double in the next 16 years. The entire rationale for Outstanding Natural Landscape (Wakatipu Basin) was based on growth threatening Outstanding Natural Landscape values

In deciding to implement the Outstanding Natural Landscape (Wakatipu Basin) provisions the Environment Court was concerned that<sup>53</sup>:

*“...the Wakatipu Basin needs to be treated as a special case and as a coherent whole. We find that there has been inappropriate urban sprawl in the basin...”*

Seventeen years since that statement the Society believes that there is now clear evidence of similar development pressure, and perhaps even more importantly forecast development pressure, both within the Upper Clutha Basin and within much of the Outstanding Natural Landscape that is outside the Outstanding Natural Landscape in the Wakatipu Basin. Council’s own figures show that Wanaka’s population is growing at five times the rate of the national average<sup>54</sup>.

Just a very quick review of the last fifteen years in the Upper Clutha would show residential development gaining resource consent, often several developments, within Outstanding Natural Landscape and on Outstanding Natural Features in the Cardrona Valley, the Motatapu Valley, Glendhu Bay, Parkins Bay, West Wanaka/Emerald Bay, Roy’s Peninsula, Lake Hawea shoreline, Timaru River, Dublin Bay/Mt. Brown, Mt. Barker, lower slopes of Mt. Maude, the Criffel Mountains, the Hawea Back Road, the shorelines beside Lake Hawea and Lake Wanaka, The Neck, and the area beside Mt. Aspiring Road before and after Waterfall Creek.

The tremendous development pressure now being felt and predicted across the District means the Operative District Plan’s provisions relating to Outstanding Natural Landscape (District Wide) are now outdated if indeed the lower level of protection accorded to these landscapes (compared with ONLWB) was ever valid.

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51 In decision C180/99 paragraph 24 WESI advocate Barry Lawrence submitted in relation to tenure review “that, therefore, in the near future freehold land available for subdivision [and development] in the District, in highly visible places, will dramatically increase.” Mr. Lawrence has proven to be correct.

52 As held in C186/2000 Paragraph 3

53 C180/1999 Paragraph 136

54 S.32 Strategic Direction Report p.7

It follows that a rigorous assessment of resource consent applications, where applications succeeding become the exception rather than the norm, is needed in Outstanding Natural Landscape/Outstanding Natural Features throughout the district.

The District's Outstanding Natural Landscapes, not just the Wakatipu Basin's Outstanding Natural Landscapes, need to be protected by provisions in the District Plan before they are degraded, rather than shutting the stable door after the horse has bolted.

As I noted in my own District Plan evidence in 1999<sup>55</sup> the Consulting Surveyors of New Zealand said at that time:

*“recognition and protection of significant natural features should not be left until such time that the process of land subdivision and development occurs. Such recognition and protection should be identified on planning maps or references in the District Plan.”*

The District's rapid growth since the last District Plan was written, far faster than was projected, and the projected almost doubling of the population of the District in the next 16 years makes this protection an urgent priority.

However, I would argue that Outstanding Natural Landscape should be protected regardless of development pressure. In particular the level of protection should not and cannot be a “numbers game” as the Court appeared to imply in justifying the category Outstanding Natural Landscape (Wakatipu Basin) where it said<sup>56</sup>:

*‘...in that they are more visible from more viewpoints by more people.’*

Such logic leaves precious Outstanding Natural Landscape in the remotest of places liable to inappropriate development.

While seeking the outcome that the Outstanding Natural Landscape (Wakatipu Basin) objectives and policies, rules and assessment matters now apply to the whole district, the Society is keenly aware that even with these provisions in place the District Plan still expressly contemplates some development within Outstanding Natural Landscape because the landscape in question can absorb change. This is apparent in the Operative District Plan Policy 4.2.5(2) and the Court has held in favour of this outcome<sup>57</sup>.

s.32 (2) of the Resource Management Act requires the following:

*An assessment under subsection s.32 (1) (b) (ii) must—*

*(a) identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*

*(i) economic growth that are anticipated to be provided or reduced; and*

*(ii) employment that are anticipated to be provided or reduced; and*

*(b) if practicable, quantify the benefits and costs referred to in paragraph (a).*

*The task of complying with these requirements is not insignificant. A systematic approach will need to be taken in preparing s32 reports to ensure that they are compliant and address environmental, economic, social and cultural effects, including opportunities for economic growth and employment.”*

The benefits referred to are defined in the Act as “benefits and costs include benefits and costs of any kind, whether monetary or non-monetary”<sup>58</sup>.

<sup>55</sup> C180/99 Para 38

<sup>56</sup> C180/1999 Paragraph 136

<sup>57</sup> C186/2000 Paragraph 20

<sup>58</sup> RMA Part 1 Interpretation and Application

It is common ground, and has been held by the Court, that the local economy depends to a large extent <sup>59</sup>on the quality of the scenery this District is renowned for<sup>60</sup> and the Operative District Plan specifically recognises this where it says<sup>61</sup> :

*“The District relies, in large part, for its social and economic well being on the quality of the landscape image and environment and has included provisions in the District Plan to avoid development which would detract from the general landscape image and values.”*

The s.32 reports do not adequately address the non-monetary value of protecting landscape values and the fact that the market does not protect landscape values is not discussed at all. Neither do the s.32 reports sufficiently address or attempt to quantify the long-term monetary damage to the local and national economy that is likely to result from the failure to adequately protect landscape values from development.

### **Development Pressure on Landscapes**

It is clear from Council’s own excellent analysis that development pressure is intense throughout the District<sup>62</sup>. This analysis states:

*“Now, in 2015, the LTCCP (2015 to 2025) identifies a resident population of 30,700. This highlights firstly, that growth has already surpassed 2004 ‘high growth’ predictions (of 30,000 people by 2012), and is close to achieving 2006 predictions (of 32,000 by 2026) – some 10 years earlier than predicted.”*

*“..Insight Economics predicted population growth of 3.4% per annum to 2031 (representing a possible increase in population to 55,000 by 2031) and concludes “...that the district will continue to experience high population growth and...demand for new dwellings will also be strong.”*

Growth has proven to far outstrip previous projections. The District’s population is projected to nearly double in 16 years-from 30,700 to 55,000 (+79%). The District had a population of just 9,000 in 1990.

Council has mapped existing development (developed and consented but not yet developed) in the Wakatipu Basin and in the Upper Clutha basin. The striking thing about the Rural Building Platforms 2014 Wakatipu Basin map and the Rural Building Platforms 2015 Upper Clutha map are not just the intense level of development in the two basins but also, crucially, the number of orange and red building platforms. That is building platforms that have resource consent but have not yet been developed or are only partially developed such that the adverse effects are not yet experienced.

This vividly illustrates that the adverse effects of rural subdivision and development that are experienced at any point in time never catch up with what has actually been consented.

### **Outstanding Natural Landscape-Subdivision and Development Activity Status**

The activity status of subdivision and development within Outstanding Natural Landscape was keenly debated at the last District Plan hearings and is an issue that has raised its head in this review.

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59 C186/2000 Paragraph 5

60 C180/99 Para 57

61 Part 4.2.1 Introduction

62 S32 Strategic Direction report pages 6 to 8

The March 2015 Proposed District Plan Draft Review; the Draft Summary of Issues and Proposed Changes report says<sup>63</sup> (our underline):

*“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.”*

Council’s District Plan Rural General Zone Monitoring Report discussed the possibility of “making subdivision and development non-complying”<sup>64</sup>. It also stated as an option<sup>65</sup>:

*“To make development non-complying in the ONL. The relatively high approval rate [of applications] .....in the ONL may however reflect weaknesses in the provisions of the District Plan.”*

And in its key conclusions recommends:

*“Consider whether there are parts of the ONL which justify a non-complying (or even prohibited) regime.”*

The public notification of the Proposed District Plan makes no mention of non-complying status in relation to residential subdivision and development. Non-complying status has been quietly removed without any discussion or mention whatsoever in the notified s.32 reports. All the information the community is given is a simple statement in the S.32 Landscape Evaluation Report<sup>66</sup>:

*“Subdivision and development in outstanding natural features and landscapes is retained as a discretionary activity.”*

The removal of the “higher bar” for landscape protection of Outstanding Natural Landscape and Outstanding Natural Features, a key issue in the District Plan, merits no discussion whatsoever. This is particularly odd given Council’s position in the Proposed District Plan Draft Review a few months earlier, arrived at after much consultation and many submissions, and the fact that the District Plan Rural General Zone Monitoring Report discussed non-complying status as a tool to control cumulative effects<sup>67</sup>. The public are given no idea why the activity status change was made. An average person-in-the-street would have no idea on reading the District Plan material notified that this was an issue at all. It is almost as if Council is trying to hide its change of position from the general public.

The Society believes the S.32 reports are critically deficient in this respect because, among other things, it is mandatory in for a S.32 report to:

*“(a) identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, ...”*

There are obvious environmental, economic, social and cultural effects associated with non-complying status for rural residential subdivision and development in terms of the control of the adverse effects of rural subdivision and development that have not been addressed in the S.32 reports.

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63 Page 2

64 Page 3

65 Page 54

66 Page 64

67 District Plan Monitoring Report pages 58 and 60 identifies cumulative effects as a key issue

The issue described above becomes even more crucial when proposed changes to the Resource Management Act, supposedly to address housing supply issues and currently under consideration by parliament<sup>68</sup>, are taken into account.

The draconian changes proposed to S.95A of the Act mean that where residential subdivision and/or development is a discretionary activity, such residential subdivision and/or development will only be able to be publicly notified under “special circumstances” regardless of adverse effects. This will seldom occur. This means that the checks and balances of public submission and the ability to appeal to the Environment Court will be removed completely from almost all residential subdivisions and developments, including those in Outstanding Natural Landscape.

The result will be that in this District, because we have a discretionary residential subdivision and development regime, visually intrusive residential developments promoted by well-resourced developers will inevitably at times be able to gain consent without any public input. This is a disaster in the making for this District’s (and NZ’s) landscapes.

In light of the proposed notification changes the Society has changed its position from that in its Primary Submissions and now seeks that all Rural Zone subdivision and development becomes a non-complying activity. (This is contingent on the new s.95A becoming law.)

The Society would expect Council to adopt the same position as the Society on this issue as the RMA changes in their current form appear untenable.

## **Section 42A Hearing Reports-Landscapes**

### **Section 42A-Planner's Report**

The s.42A planner's report does not address the non-complying/discretionary status issue (discussed above) at all. Instead it carries on as though the issue doesn't exist; Para. 6.4 is an example. The issue is swept under the carpet, which in itself says something about the planning process and the philosophy of the changes to the District Plan promoted by the planner(s).

In Para. 1.1 the report states that “The policy framework recognises that traditional pastoral farming and the retention of large landholdings is an important element of rural character, and that this attribute is a value of its own and is distinct from amenity values”. There is a focus on *farming as an activity* rather than *effects*. Many farming friendly policies follow in the Proposed District Plan.

I prefer the approach of the Operative District Plan where the Visual Amenity Landscape objectives and policies (and which the Society seeks to be adopted as Rural Lifestyle objectives and policies) are simpler, better framed and structured and focus on effects. The assessment matters (out of this hearing's scope) focus on the effects on pastoral character, with a dedicated assessment matter and 10 mentions of “pastoral” in total. The planner ignores the fact that effects on farming are well-catered for in the Operative District Plan under this approach. As I have said above, the activity-based approach taken in the Proposed District Plan is not consistent with the Act which is effects-based. (Di Lucas's Rural Chapter evidence will shed further light on this.)

The planner explains in several places (Para. 4.5 for instance) that the objectives and policies are “higher-order” than the assessment matters in Chapter 21. This begs the

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68 Resource Legislation Amendment Bill 2015

question do we really need another layer of higher-higher order objectives and policies in the Strategic Development Chapter?

The planner blames the use of the word “Arcadian” for the “relatively high number of residential building platforms approved in the Wakatipu and Wanaka Basins.” But the “ideal pastoral paradise” (oxford dictionaries) or “rustic, simple, peaceful, pastoral” (the freedictionary and others) that defines an Arcadian landscape would not contain the mass of development consented to, but rather it would contain the farmhouses/complexes at intervals and the odd house dotted in the landscape . A much more likely culprit is poor administration of the Proposed District Plan by Council through poor decision making by commissioners.

The planner explains the logic behind the introduction of a mass of farming-related objectives and policies in Para. 9.38 onwards. He explains that these are necessary in order to address the issue of “rural character”. In this he relies heavily on a single recent Council resource consent decision and on the evidence of Dr Read. No reference is made to higher-level Court decisions in the District. There are 16 references to “character” in the Operative District Plan objectives and policies. Farming is a permitted activity, which by definition enables existing and future farming and promotes farming as part of the “rural character”. I prefer the approach of the Operative District Plan; the evidence of Ms. Lucas at the Rural chapter hearing will be useful in this regard.

At Para. 9.74 the report says “The ODP policies also recognise openness in the ONL, however as identified throughout this evidence, openness is an element of character that is also prevalent throughout the rural areas and not just the Outstanding Natural Landscape.” This contradicts the Court’s decisions<sup>69</sup> on the concept of openness where it said:

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

The planner is being misleading with the statements above. There is no specific reference to “openness” relating to Outstanding Natural Landscape in the Proposed District Plan objectives and policies. The only specific reference relates to Rural Landscape Category. He also fails to mention that “openness” has been removed from the Proposed District Plan assessment matters for Outstanding Natural Landscape.

These mistakes are compounded in Para. 9.163 where the report explains (my underline):

*“I consider that recognising open landscape character where it is open at present is an important component of managing the Rural Landscape resource. This is reinforced by Dr. Read in Section 5 of her evidence and I rely on it in terms of supporting the policy approach of the PDP. Having regard to openness only within the ONL would be disregarding an important element of the Rural Landscape Resource. To reiterate, this is a fundamental reason for the removal of the policy framework of the ODP and replacing it with the PDP Rural Landscape classification and policy framework.”*

So a fundamental reason for removing the Operative District Plan objectives and policies has no basis in law. Not only has the Proposed District Plan got the issue of openness wrong, but the planner (and seemingly the landscape architect) are all at sea on this key issue.

In Para. 9.107 the report explains “The policies direct consideration of the finite capacity of rural areas to absorb development” (Policies 6.3.2.1 and 6.3.2.2). I note also that objective 3.2.5.4 also addresses this issue. I didn’t pick up on these objectives and

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69 C180/1999 Paragraph 154

policies in earlier readings of the Proposed District Plan and I believe they have merit. They should be included in the Operative District Plan objectives and policies 4.2.5.8 Avoiding Cumulative Degradation.

In Para. 9.106 it is disappointing that the planner sees no scope for “identified density parameters” because in reality a tool like this may be the only way to control cumulative effects in some vicinities.

In Para. 9.190 the report addresses the location requirements for some commercial recreational activities. I believe there may be merit in including the policy suggested, or similar, in Part 4.2 of the Operative District Plan while retaining the existing provisions relating to adverse effects.

### **3.2.5.1.1 Landscape Classification Lines**

The Society will address this issue here as there are key policies associated with Landscape Lines in Chapter 3 Strategic Direction and Landscape Lines is a key Chapter 6 Landscape issue. However, the Society is in the process of obtaining evidence on the Landscape Lines issue from landscape architect Di Lucas. She will address the Landscape Lines at the Chapter 21 Rural hearings (scheduled for May) and in relation to the District Plan maps (hearings not yet scheduled).

The Proposed District Plan proposes to include definitive Landscape Lines as described in policies 3.2.5.1.1 and 3.2.5.2.1:

*3.2.5.1.1 Identify the district’s Outstanding Natural Landscapes and Outstanding Natural Features on the District Plan maps, and protect them from the adverse effects of subdivision and development.*

*3.2.5.2.1 Identify the district’s Rural Landscape Classification on the district plan maps, and minimise the effects of subdivision, use and development on these landscapes.*

The original justification for the Landscape Lines was described in the March 2015 Draft S.32 Evaluation Report-Landscape as follows<sup>70</sup>:

*“The central government has indicated making changes to Part 2 of the RMA Section 6, matters of national importance, being ‘the protection of specified outstanding natural features and landscapes from inappropriate subdivision, use and development’. The addition of the word ‘specified’ is likely to require that landscapes are identified in order to qualify as being of national importance, and subject to the protection afforded to ‘outstanding natural landscapes and features’ under section 6 of the RMA.”*

This paragraph has been removed from the material notified to the general public for the Proposed District Plan. The “central government ...changes” mentioned have never been made; the Landscape Lines have been included in the Plan to take into account legislation that has never been enacted, but it appears that Council does not want the community to know this.

Ms. Steven says in her Lands Classification Wanaka Area report<sup>71</sup>:

*“Marion [Read] refers in her introduction to the proposed amendments to the RMA in 2013 which had included a requirement by district and regional councils to carry out identification of ONLs/ONFs. The reforms are now on hold*

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70 Page 5

71 Page 3

*pending the national election and it is unknown whether or in what form they may continue. However the council has decided to proceed with the process of identifying ONL/ONFs.”*

Ms. Steven is of the opinion that the reason for including the Landscape Lines was driven by changes to the Resource Management Act that have not occurred. Dr Read accepts that this legislation has not been enacted in Para. 3.3 of her s.42A Landscape report.

With the legislative need to include the Landscape Lines now gone the S.32 Landscape Evaluation Report finds other reasons for including them saying<sup>72</sup>:

*“It is inefficient to continue with the case-by-case classification of landscape categories”*

The S.32 Strategic Direction report states:

*“Fundamentally, however, the landscape provisions in the Operative District Plan are considered to function well. However, the District Plan review does propose to make some changes, and in particular provide a degree of greater definition and certainty by mapping landscape lines.”*

The Society agrees that the landscape provisions are functioning well and disputes the assertion that the current approach has been “inefficient”. It is accepted that some uncertainty is created by the case by case approach to landscape categorisation in the Operative District Plan but there is no other practical approach available. The imposition of dubious and contentious Landscape Lines as proposed in the Proposed District Plan is untenable and not good resource management practice.

I note that the landscape architect’s s.42A evidence says in Para. 6.5 “...there are a large number of submissions regarding the locations of the boundaries identified within the Proposed District Plan”. Presumably these are submissions disputing the location of the Landscape Lines-this was bound to happen.

The S.32 Landscape Evaluation Report says the proposed Landscape Lines:

*“Will allow more subdivision and development within the areas identified as suitable for Rural Lifestyle zoning.”*

It can be seen from this statement that if the Landscape Lines are wrong or dubious, potentially a great deal of subdivision and development, even of a density consistent with the Rural Lifestyle zone, will be allowed in landscapes where this is in fact inappropriate. This has the potential to be a major cost to the community in terms of adverse landscape effects.

Under the existing case by case approach the Environment Court has successfully identified Landscape Lines in a number of contentious parts of the Upper Clutha and we understand this is also true in other parts of the District. In my opinion by the time the District Plan comes up for further review in a further 10-15 years time almost all of the contentious Landscape Lines will have been identified under this process. I note that Dr Read says (Para. 3.3) that “many” Outstanding Natural Landscape and Outstanding Natural Feature boundaries have already been “tested” in the Court.

While we understand and have some sympathy with the arguments in favour of trying to identify all of the Landscape Lines now, the Society believes, on the basis of the Landscape Lines information attached to the Proposed District Plan, that this approach is inefficient because it is fundamentally flawed. Some of the Landscape Lines identified

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<sup>72</sup> Page 24

on maps in the proposed District Plan are likely to become the subject of appeals as the large number of submissions on the lines indicates.

I question the statement in Proposed District Plan Part 6.1 that says (my underline):

*“Landscapes have been categorised to provide certainty of their importance to the District”*

This will not be the case if the Landscape Lines in the plan are not credible. I have studied the Proposed District Plan Landscape Lines information supplied by Council (the Read/Steven landscape mapping and text) and this information does not give me confidence that credible Landscape Lines have been arrived at.

During the writing of the Operative District Plan the Court held that it was not practical to delineate Landscape Lines in the District Plan all in one go but that “from a practical viewpoint” Outstanding Natural Landscape boundaries were able to be delineated during appeals to the Court<sup>73</sup> on a case by case basis. Counsel for the QLDC supported this approach because it was concerned that complications in fixing Landscape Lines would delay the District Plan coming into force.

The benefits of allowing the Court to delineate these lines far outweigh the costs associated with delineating the lines in the Proposed District Plan because the lines proposed are contentious in many locations and subject to appeal.

Council retains the power to decide non-definitive Landscape Lines at Council hearings. Should a matter be appealed, a more rigorous examination of landscape evidence through cross-examination of at least 3 landscape architects takes place in the Court. The process involves a fine-grained analysis of landscape in a particular vicinity and so leads, in the experience of the Society, to the identification of objective Landscape Lines.

In the Society’s opinion there is really no substitute for this process. The broad-brush approach taken by the Proposed District Plan, where, in the case of the Upper Clutha, two landscape architects have attempted to come up with Landscape Lines over vast areas (and very often disagreed) is no substitute.

The S.32 Landscape Evaluation Report says<sup>74</sup>:

*“With the exception of a few areas where environment court rulings have determined the landscape classification.....”*

I would dispute this statement. Many of the contentious parts of the Upper Clutha have had Landscape Lines determined by the Environment Court. We assume the same is true of other parts of the District. Huge areas of landscape are obviously Outstanding Natural Landscape as Ms. Steven says in her Lands Classification Wanaka report and so don’t require determination<sup>75</sup>:

*“...the fundamental factors determining outstanding status are the aesthetic factors. This is consistent with the view that ONLs should be obvious to most people and should not require any specialist knowledge.”*

Vast areas of the district are accepted unchallenged as Outstanding Natural Landscape; see the landscape architect’s s42A report at Para. 5.8.

The Proposed District Plan Draft Review s.32 report says<sup>76</sup>:

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73 C186/2000 Paragraph 43

74 Page 14

75 Page 12

76 Top of Page 5

*“The existing process works, but is not efficient, it has and will continue to create uncertainties for the community and Council officers when providing advice on planning enquiries associated with this matter. Substantial components of resource consent decisions and Environment Court decisions have been dedicated to confirming the landscape classification of sites. The existing process does not constitute efficient resource management practice.”*

This statement has been removed from the publicly notified S.32 report presumably so that the general public won't see the conclusion that the existing Landscape Lines process “works”. The Society agrees that “the existing process works”.

In relation to the existing process the S.32 Landscape Evaluation Report says:

*“Furthermore, decisions on resource consent applications, both determined by the Council and the Environment Court that take a specific view on the landscape classification the proposal is located within, make that judgement for the purposes of a specific application. Unless directed by the Environment Court, a decision on a resource consent cannot amend the District Plan to include the decision made on the location of a landscape line.”*

This statement appears not to understand the case by case Landscape Lines process where it refers to “landscape classification...for a specific application.” Invariably the landscape evidence presented in the Court results in both the subject site and the wider vicinity around the subject site becoming categorised. Examples are the Crosshill Farm and Parkins Bay decisions. It follows that a resource consent application invariably results in a large area becoming landscape categorised.

Council's Proposed District Plan Fact Sheet 11 Rural Zone misconstrues or misunderstands the current process where it says:

*“while the landscape can be classified through resource consent applications, these cannot update the District Plan. This means that even where a previous resource consent application assessed and decided on a landscape classification, the landscape needs to be classified with every new application, even in the same area as previous proposals.”*

This is not true. If the Court has decided on a landscape categorisation line this *does* update the District Plan. A definitive Landscape Line is drawn on the District Plan maps as can be seen from the maps in the Operative District Plan. This Landscape Line cannot be challenged at subsequent Council hearings.

The review of the Proposed District Plan wrongly perceives the current process as inefficient.

Ms. Steven's “Peer Review Landscape Assessment” report has 12 maps of the Upper Clutha attached, starting with “Waterfall Creek” and ending with “Mt. Barker-Hillend”. These maps show considerable differences between Dr. Read's Outstanding Natural Landscape Landscape Line and Ms. Steven's Outstanding Natural Landscape Landscape Line. Differences between the Read/Steven lines are either significant or huge in the maps entitled “Maungawera Valley Dublin Bay”, “Albert Town Area”, “Hospital Creek”, the “Hawea River Area”, the “Clutha River Corridor” “Glenfoyle”, “Pisa Range-Luggate”. There are smaller but important differences in the lines on the other maps. The Landscape Lines included in the Proposed District Plan are simply an amalgam of 2 often disagreeing landscape architects whose approach may be subject to criticism (see below).

These differences are crucial. In the Upper Clutha alone dozens of landowners would be affected by the differences between the Mead and Steven Landscape Categorisation

Lines, and this is only in the Upper Clutha. (I assume similar problems will arise elsewhere in the District.)

A specific example of a contentious area is along the western shoreline of Lake Wanaka, the Ripponlea/Edgewater/Rippon Vineyard area. Dr. Read says that “the location of this boundary is highly problematic”. The Landscape Line is drawn in the Proposed District Plan to include Kanuka on the lakeshore as Outstanding Natural Landscape but not to include the Rippon Vineyard and Blennerhassett hills which are topographical features that form a tongue surrounded on 3 sides by Outstanding Natural Landscape that other landscape architects may regard as a continuation of the surrounding Outstanding Natural Landscape (see the map in Appendix A attached).

The Court has held, at least in terms of the Alpha Fan vicinity near Wanaka, that geomorphological factors represent the best way to categorise landscape where it held<sup>77</sup>:

*“the geomorphological characteristics, while ultimately also in flux, are relatively solid as a basis for the categorisation we have to make.”*

The Crosshill Farm decision<sup>78</sup> at Dublin Bay confirmed that even though where areas contained domestication in the form of a number of residences they could still be categorised as Outstanding Natural Landscape due to geomorphological and other factors. The Environment Court supported this view when discussing what constitutes naturalness in C80/1999<sup>79</sup> where it held;

*“The word “natural” does not necessarily equate with the word pristine...The word “natural” is a word indicating a product of nature and can include such things as pasture, exotic tree species (pine), wildlife...”*

The Court held that there is a “spectrum of naturalness”<sup>80</sup> and listed the following criteria assessing naturalness:

- *“The physical landform and relief*
- *The landscape being uncluttered by structures and/or obvious human influence*
- *The presence of water (lake, river, sea)*
- *The vegetation (especially native vegetation) and other ecological patterns*

*The absence or compromised presence of one or more of these criteria does not mean that the landscape is non-natural, just that it is less natural. There is a spectrum of naturalness from a pristine natural landscape to a cityscape.”*

It was the influence of the 3 out of 4 factors listed that enabled the Court to categorise the Dublin Bay/Mount Brown area outstanding natural landscape despite the presence of a significant number of residences. This is likely to be true of other areas in the District.

There is a consistent theme in the Read report that where development, especially residential development, has taken place that this changes landscape character and so changes the categorisation from Outstanding Natural Landscape to Rural Landscape Category. Mt. Iron (page 15) is an example. As explained above the Environment Court’s Crosshill Farm decision and the Court’s “spectrum of naturalness” ruling makes a nonsense of this approach. The approach is also flawed because it incentivizes landowners to develop and domesticate Outstanding Natural Landscape so that it is recategorised as RLC.

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<sup>77</sup> C73/2002 Paragraph 51

<sup>78</sup> C114/2007 UCES v. Crosshill Farm Ltd.

<sup>79</sup> C180/1999 Paragraph 88

<sup>80</sup> C180/1999 Paragraph 89

In the Major Rivers part of the report Dr. Read says<sup>81</sup>:

*“As with the Shotover and Kawarau this would provide the river and its margins with protection under the Plan and the Act but would not impinge overly on any private property.”*

This statement concerns me. Dr. Read appears to be mapping Landscape Lines based on their effects on private property rights. This throws into question all of her Landscape Line analysis.

I note that there is some criticism of Dr. Read’s Landscape Classification report by landscape architect Anne Steven in her report, including criticism of the methodology. For instance Ms. Steven points out<sup>82</sup> that Dr. Read has not mapped the Matukituki Valley.

Ms. Steven also says<sup>83</sup>:

*“Landscape characterisation also provides a useful spatial basis for determining the extent of ONL (i.e., where the landscape lines should be drawn). Marion has not included in her report an explicit landscape characterisation of the district with supporting mapping and descriptions, coupled by explicit assessment of naturalness to identify contending areas for outstanding status. This may be contained in her working material.”*

This appears to be a criticism of the methods used by Dr. Read.

Another deficiency is where Dr. Read does not seem to have considered the important landscape evidence of landscape architect Di Lucas in regard to the Peninsula Bay site and surrounds. This evidence clearly delineated the kanuka-clad ridge west of the Peninsula Bay site as Outstanding Natural Landscape.

Ms. Steven makes other criticisms of the basis for the Landscape Lines of Ms. Read, for instance on page 20 where she says:

*“The edges of the areas Marion outlined did not follow a strong landform boundary line...”*

This is a crucial error in method. Ms. Steven gets it right where she says<sup>84</sup>:

*“It is also preferable to use a permanent landform boundary for ONL rather than changes in vegetation and land use.”*

Ms. Steven lists (page 29) a whole series of areas where she does not concur with the Landscape Lines categorisations of Dr. Read.

The fact that, having read Ms. Steven’s report, Dr. Read comes up with a composite Landscape Line in the Proposed District Plan maps based on one or other of the Landscape Lines proposed does not alter the fact that there are major differences in opinion between these two landscape architects.

We note that Dr. Read says in her Post Review Amendment Report (reiterated in her Landscape evidence at Para. 3.3) in regard to her Landscape Lines report<sup>85</sup>:

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81 Paragraph 6.2

82 Page 6

83 Page 7

84 Page 19

85 Paragraph 4.2

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

This appears to say that even Dr. Read accepts that the Landscape Lines reports are deficient in that they are not from first principles and if done properly they could well be different. The Court said the necessary studies for an accurate Landscape Lines map “would take months, perhaps years”<sup>86</sup>.

I note the evidence of respected landscape architect Mr. Rackham from C180/99<sup>87</sup> where he says:

*“...if policies and rules are to be spatially defined (mapped) then a new and detailed landscape study would be required. This would be a major exercise and would be likely to result in a very detailed and complex set of landscape findings (given the complexity of the landscape). To be meaningful the scale at which landscape boundaries were defined would need to be very fine-grained.”*

This is not consistent with the approach taken by Ms. Read. Her report is not ‘fine-grained’ in its approach, but broad-brush.

The Society has considerable sympathy for Dr. Read and Ms. Steven. They have been put into an almost impossible position in being asked to define the Landscape Lines over vast areas of the District. However, Dr. Read’s approach in particular appears flawed and lacks sufficient in-depth analysis.

One potential solution would be that the Landscape Lines should be included in the Proposed District Plan as guidelines, and shown as a dotted line while those already delineated by the Court are shown as solid lines. This would be consistent with the approach taken in the Operative District Plan where, as can be seen in the map Appendix B Map 1 a number of dotted landscape lines are shown as guidelines and the key to the map explains that:

*“Boundary between two different landscape categories....these lines have not been through the Environment Court process to determine their exact location and are indicative as outlined in Environment Court decision C180/1999.”*

The Society does not have confidence in the Landscape Lines as they appear in the Proposed District Plan. The Society seeks that the Landscape Lines determined in the Proposed District Plan process are excluded altogether.

Failing this, the Society seeks that non-definitive Landscape Lines appear as dotted lines on the District Plan maps, while those established by the Court are shown as solid lines in a manner whereby the difference between the two lines is clear. The above text could be amended and included in the text of the Proposed District Plan as follows:

*“Boundary between two different landscape categories....these dotted lines have been determined under a broad-brush analysis as part of the District Plan process but have not yet been through the Environment Court process to determine their exact location and are not definitive. The dotted lines are purely indicative until their exact location has been determined through the Environment Court process.”*

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<sup>86</sup> C180/1999 paragraph 99

<sup>87</sup> C180/1999 Para 46

Such an approach would give more certainty to landowners and applicants while at the same time accepting that only a fine-grained analysis under Court conditions can accurately define Landscape Lines where they are contentious.

Finally, in relation to existing Landscape Lines in the Operative District Plan Dr. Marion Read states in her landscape classification report<sup>88</sup>:

*“Some solid lines and features have been confirmed in the Upper Clutha Basin. This has not succeeded in removing levels of contention.....it may be appropriate to reconsider the location of some of these lines in the light of current conditions and with regard to the consideration which was given to their location in the first instance”*

Reconsidering the existing lines in the Operative District Plan as suggested by Dr. Read is simply creating a rod for Council’s back. These lines have been delineated by the Court after extensive landscape evidence and should be retained.

### **Section 42A Report Landscapes-Landscape Architect**

In Para.4.5 the landscape architect quotes a report saying the report “identified that the cumulative effects of development pressure within the Wakatipu Basin were not being effectively managed. The report identified a lack of connection between the objectives and policies of the landscape categories identified within the Plan and the assessment matters. The report suggested that these could more explicitly outline the desired landscape outcome, particularly for the areas subject to the ‘Visual Amenity Landscapes category’ assessment criteria.”

While it is agreed that cumulative effects have not been managed well (and this goes for Wanaka too) in my experience it is not the Operative District Plan that is at fault. Careful reading of the policies in Parts 4 and 5 of the Operative District Plan shows that these explicitly spell out the landscape outcomes required by the Operative District Plan in a policy sense-these are policies not assessment matters. The assessment matters, written by several planners and landscape architects to dovetail in with these policies (and these have been held as effective by the Court) contain the detailed assessment needed to meet these policies. If administered properly by Council development pressure would have been managed. My experience is that poor decision making by commissioners faced by well resourced applicants is the reason the partial-failure of the Operative District Plan within Visual Amenity Landscape landscapes.

At Para. 5.6 the landscape architect repeats the old chestnut “in my opinion the landscape of the Upper Clutha are quite different [to those of the Wakatipu]”. This is a huge over-generalisation, and in most part is wrong. The Visual Amenity Landscapes around Mt. Barker, Mt. Brown, the Hawea Back Road, The Outlet area and the Maungawera Valley have much in common with the Visual Amenity Landscape in the Wakatipu. The vast areas of Outstanding Natural Landscape and Outstanding Natural Features are very similar in both basins. 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.

At Para. 5.6 the landscape architect attests to the Operative District Plan assessment matters to being “confusing, challenging and frustrating” and in Para. 6.11 she says the Operative District Plan is “clumsy”. The assessment matters are meant to be challenging (and to a certain extent frustrating), they are meant to put developers through hoops; to frustrate inappropriate development. The landscapes in this District are too valuable for

10-minute back of envelope jobs. In my lay opinion, and I will be interested in the Lucas evidence to come on this, they are not confusing, though I can see some merit in the landscape architect's point that "ecological" elements may be "beyond the expertise of most landscape architects". I have looked through evidence from several applications where this landscape architect has addressed the assessment matters in the Proposed District Plan and can see little difficulty in their application, nor any difficulty reaching a valid assessment of a resource consent application. This seems to contradict the "clumsy" assertion. The landscape architect needs to produce concrete evidence of the difficulties complained of from pre-2013 applications (that is before the District Plan review started.)

In the same paragraph the landscape architect says correctly "to assess cumulative effects it is necessary to define the resource and estimate its ability to absorb further change". But the Proposed District Plan doesn't do this in a definitive sense in the objectives and policies nor the assessment matters. In my experience the best and most useful tool in practice for assessing cumulative effects is contained in the Operative District Plan, the 500m and 1100m circles. These have been deleted from the assessment matters in the Proposed District Plan. (Though the prime reason for this AM was to fit development into the landscape.) The landscape architect says nothing about the deletion of these circles.

#### **Part 3.2.4.7 Public Access**

The Society supports the public access provisions in the Strategic Direction chapter:

*Objective Part 3.2.4.7 Facilitate public access to the natural environment*

*Policy 3.2.4.7.1 Opportunities to provide public access to the natural environment are sought at the time of plan change, subdivision or development.*

The Society seeks that this objective and policy is included in Part 4.4.3 of the Operative District Plan.

## Chapter 4 Urban Development

### Proposed District Plan Parts 3.2.5 Urban Growth Boundaries

#### Objectives 4.2.4, 4.2.5 and 4.2.6 Urban Growth Boundaries

The S.32 Strategic Direction report states<sup>89</sup>:

*“Urban Growth Boundaries will be utilised as a tool to contain urban development within defined limits, and support the efficiency of infrastructure, aiming to increase the viability of public transport and minimise reliance on fossil fuels, and avoid sprawl into rural or natural landscapes.”*

The Society agrees with this statement and supports the inclusion of Urban Growth Boundaries in the Proposed District Plan. In particular the Society believes the Urban Growth Boundaries will be a useful tool in controlling the adverse effects of subdivision and development in rural areas.

The Society seeks the following changes the Proposed District Plan to accommodate Urban Growth Boundaries.

The existing policy 4.2.5.6 in the Operative District Plan should be changed to include Proposed District Plan policy 3.2.5.3.1 and Proposed District Plan policy 6.3.1.7 to read:

#### 6. Urban Development

(a) Direct urban development to be within Urban Growth Boundaries (UGB) where these apply, or within the existing rural townships.

(b) When locating urban growth boundaries or extending urban settlements through plan changes, avoid impinging on Outstanding Natural Landscapes or Outstanding Natural Features and minimise disruption to the values derived from open rural landscapes

~~(ca)~~ To avoid new urban development in the outstanding natural landscapes of Wakatipu basin the district.

~~(b)~~ To discourage urban subdivision and development in the other outstanding natural landscapes (and features) and in the visual amenity Rural Landscapes of the district.

~~(de)~~ To avoid remedy and mitigate the adverse effects of urban subdivision and development where it does occur in the other outstanding natural landscapes of the district by:

- maintaining the open character of those outstanding natural landscapes which are open at the date this plan becomes operative;
- ensuring that the subdivision and development does not sprawl along roads.

~~(ed)~~ To avoid remedy and mitigate the adverse effects of urban subdivision and development in visual amenity landscapes by avoiding sprawling subdivision and development along roads.

Changes have also been made to this policy to reflect the Society’s position seeking a single Outstanding Natural Landscape landscape category that applies across the whole District.

# Appendix A

