



District Plan Monitoring Report

Monitoring the Effectiveness and Efficiency of the Rural General Zone



April 2009



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1 Acronyms and terms used in this report

ONL or ONLs	Outstanding Natural Landscapes
ONL(WB)	Outstanding Natural Landscape (Wakatipu basin)
ONL(DW)	Outstanding Natural Landscape (District wide)
VAL or VALs	Visual Amenity Landscapes
ONF or ONFs	Outstanding Natural Features
ORL or ORLs	Other Rural Landscapes
RBP or RBPs	Residential Building Platform. In the data, “RBPs” includes one consent (RM041142) where a ‘right to build’ was granted through conditions rather than through RBPs.
Development	For the purpose of this report, the “development” refers to both development and/or subdivision
Zone-wide	Does not include the Ski Area Subzone, the Gibbston Character Zone.

Please note that in the respective graphs shown involving consents, where ‘year’ is shown, this refers to the year the application was made (often a decision is issued in a later year).

2 Consultation undertaken for this report

As well as extensive interrogation of data, a number of practitioners who regularly use the Partially Operative District Plan were interviewed in the research undertaken for this report. This included planners and landscape architects from both the public and private sectors, resource consent hearing commissioners (both independent and elected officials) and Council’s lawyers. It is acknowledged that this is in some respects a narrow range of people and that if policy changes are contemplated in the future the views of the likes of environmental societies will be important to ascertain.

3 Executive Summary

The focus of this monitoring report is on whether landscape values and rural character are being appropriately managed in the Rural General zone of the District Plan. This monitoring report considers the three types of monitoring required by the RMA (the Act); these being:

- District Plan Effectiveness – of the objectives, policies and methods
- District Plan Efficiency – of objectives, policies and methods
- District Plan Appropriateness - of the objectives, policies and methods at fulfilling the purpose of the Act

What is the District Plan trying to achieve in the Rural General Zone?

Development is managed differently throughout the Rural General Zone depending on the landscape classification a site falls into.

In the Outstanding Natural Landscapes (ONL) and Outstanding Natural Features (ONF) there is a strong presumption toward protecting existing landscape values, although it is acknowledged that there will be some locations in the ONL/ ONF where development is appropriate. In the Visual Amenity Landscapes (VAL) it is acknowledged that development will be appropriate in many locations provided the character is maintained and cumulative effects are well-managed. There is considerably less emphasis on landscape matters in the Other Rural Landscape (ORL), with the emphasis being more about rural amenity and well-designed solutions.

What is the current “state” of the Rural General Zone?

It is worth noting that the development that one sees in the rural area today has been approved under various planning regimes that have existed over the years. Those previous regimes not only allowed certain development whilst they were in place but those historic approvals continue to influence current decision-making; resulting in approvals that may not have been appropriate had so much development not already occurred or been consented in the vicinity.

In summary, there are currently 1225 dwellings¹ in the Rural General zone, a very large number of which are in the Wakatipu basin; between Arrowtown and Frankton. The rate of change in recent years has been significant with the number of dwellings rising from 699 in 1996 to 1119 in 2006². This represents an increase of 60%. By comparison the amount of dwellings in the other parts of the District increased by 49% over that period.³ Add to this the fact that there are at least 485 Rural Building Platforms (RBPs) in the Rural General Zone yet to be built on and it is evident that there is considerable existing and potential development in the Rural General Zone. Notably, since 2001, most development that has been approved is in the VAL (Visual Amenity Landscape) with much less in the various outstanding landscapes.

The satisfaction rates with the way the District Plan is dealing with rural character, ecology, and landscape values have been relatively high amongst residents, and visitors are very satisfied with the scenic beauty of the district, citing it as a key reason for visiting.

Are the District Plan provisions effectively achieving what they set out to?

The following key outcomes were considered in determining whether the Plan is effective:

1. Is development being located in areas where it can be absorbed? And, are views from public places being maintained or enhanced and, in particular, is development reasonably difficult to see in the ONL(WB) and ONF's?
2. Is development (including the associated structures) harmonising with the topography and ecological systems?

¹ Based on the number of RAPID numbers

² Based on census data. This may include some areas not zoned rural general and not include some others that are.

³ From 8088 to 12,039 dwellings according to Census information.

3. Is sprawl of existing urban areas and along roads being avoided? And, is development of an “urban” character being avoided in the ONL and discouraged in the VAL.
4. Are the positive benefits of development outweighing the adverse effects of over-domestication?
5. Is development proving to be inappropriate in almost all locations in the ONL and in many locations in the VAL?
6. Is existing openness and naturalness being maintained in the ONL's?
7. Is the Arcadian and pastoral character of the VAL being maintained?
8. Are lots being prevented from being developed without RBPs?
9. Are cumulative effects being adequately addressed?

The analysis showed that, with one major qualification, the current discretionary regime seems by in large to be working as envisaged; in that inappropriate developments are being declined and there is a general level of comfort with the provisions amongst practitioners. That said, areas where the provisions may not be effective are in avoiding cumulative effects on the landscape and preventing urban style expansion in some areas. In addition, a number of relatively minor amendments to the rules are suggested for consideration, aimed at improving effectiveness without changing the actual activity status.

Considerable work could also be undertaken in order to increase certainty and better manage cumulative effects if the Council are prepared to invest resources into this. Notably, the option of making subdivision and development non-complying (or even prohibited) in some parts of the zone is not discounted but if the Council were to consider it further, the complexity of such a Plan Change would need to be seriously weighed up against the extent of any benefit that would be gained. Such analysis could however provide some greater certainty as to the likely number of future consents that may be granted in the Rural General Zone.

Are the provisions efficient?

The efficiency of the provisions was determined by considering the number of resource consents triggered by the rules, the cost of processing resource consents in the Rural General zone, the time that it takes to reach decisions, the number of appeals received on decisions, and the level of consistency between the Council and Environment Court. The analysis concluded that:

- The number of applications lodged is relatively low
- The cost of administering the provisions is high
- The time taken to reach decisions is variable
- The number of appeals received on decisions is relatively high compared with other resource consent decisions made by the Council but has declined in recent years
- The level of consistency between the Council and Environment Court is considered relatively good, particularly given the discretionary nature of the Plan, although, notably on the whole the Court has taken a more permissive/ enabling approach; granting more RBPs than the Council in many instances.

Whilst it is difficult to conclude definitively whether the provisions are efficient or not (as acceptable time and cost depends on one's perspective), a number of suggestions are offered in order to improve efficiencies.

Other matters unrelated to landscape values

Whilst the focus of much of this report is on how well the Plan is dealing with landscape values, various other issues relating to the Rural General Zone have emerged through research and in discussions with practitioners. These are listed at the end of the report and some discussion is included in regard to the most pertinent of these; being whether the Rural General provisions adequately support the Council's strategy for a consolidated urban settlement pattern.

4 Introduction

The focus of this monitoring report is on whether landscape values and rural character are being appropriately managed in the Rural General zone of the District Plan. However, it also includes a section on matters other than landscape issues that may not be appropriately addressed in the District Plan.

It is important to note that whilst the Rural General Zone is the most extensive in terms of the land area it covers in the District, there are other zones that cover parts of the rural area including the Rural Living Zones, the Rural Visitor Zone, and several Special Zones. This report is limited to the consideration of the Rural General Zone.

a Background

The Community Outcome that is relevant to this monitoring report is “Quality landscapes and natural environment and enhanced public access”. The Council has raised concern as to whether the Community Outcome relating to quality landscapes is being achieved and, as such, is undertaking District Plan monitoring in relation to this specific issue. A basic report on the effectiveness and efficiency of the Rural General provisions was undertaken in late 2005 and this report expands on those findings.

b What is District Plan monitoring?

The RMA requires that three aspects of the District Plan are assessed and used to inform the process of reviewing the District Plan. These three aspects are:

District Plan Effectiveness – of the objectives, policies and methods

District Plan Efficiency – of objectives, policies and methods

District Plan Appropriateness - of the objectives, policies and methods at fulfilling the purpose of the Act

District Plan Effectiveness monitoring requires the Council to compare what is actually occurring under the District Plan provisions with the intentions of the Plan (as expressed through its objectives). In order to do this, we first need to identify what the plan is trying to achieve for the Rural General zone, and to then track how well we are achieving these objectives. Once we understand how well the objectives are being met, we need to consider to what extent this can be attributed to the District Plan policies and rules and to what extent ‘outside’ influences may be affecting the ability of the Plan to achieve its objectives. For example, market demand for specific types of rural property.

Plan Efficiency monitoring refers to comparing the costs of administering the Rural General provisions incurred by applicants, the Council and other parties compared to the outcomes or benefits achieved. It is noted here that determining what level of costs are acceptable is generally a subjective judgement and, as such, it is difficult to reach definitive conclusions.

Evaluating District Plan Appropriateness is the final aspect of District Plan monitoring. This relates to assessing how appropriate the Plan’s objectives and policies are at achieving the purpose of the Act and the function of the Council.

c The planning history of the Rural General Zone

As is clear from the brief history outlined above, the development that one sees in the rural area today has been affected by the various planning regimes that have existed over the years. Those previous regimes not only allowed certain development whilst they were in place but those historic approvals continue to influence current decision-making; resulting in approvals that may not have been appropriate had so much development not already occurred or been consented in the vicinity. A summary of the more recent planning regimes of relevance follows:

The Transitional District Plan (Pre 1995)

In the Transitional District Plan, the majority of the rural area was zoned "Rural". Within the Rural zone, subdivision (in accordance with a minimum lot size) was allowed as a conditional activity and a further rule provided for the subdivision of land in order to enable a retiring farmer to establish a home on the property. In regard to the establishment of dwellings in the zone, a dwelling was allowed to be established provided it was a necessary adjunct to an economic farming unit. There was an underlying assumption (rightly or wrongly) that if a lot had been created in accordance with the subdivision rules, then a house could be established on it.

Notified Proposed District Plan (1995 – 1998)

In the Proposed District Plan notified in the 1995 (hereafter referred to as the PDP 95) the area that we now know as the Rural General zone was zoned as a mixture of Rural Uplands and Rural Downlands, which, as the names suggest, were largely based on topography. There were also defined "Areas of Landscape Importance". There were also small areas of Rural Residential and other living and tourist-related zones within the rural area.

Throughout the rural zone, all subdivision was a discretionary activity (requiring an assessment of landscape effects) and the minimum lot size was 20 ha, which, if breached, triggered a non-complying resource consent. In Areas of Landscape Importance buildings other than accessory buildings, buildings in the ski areas, buildings on particular scheduled sites (for which it was considered that an existing development right should be retained) were non-complying. In the rest of the Rural Zone, residential dwellings on less than 20ha or where there was more than 1 dwelling on a single title were non-complying, with the exception of particular scheduled sites.

Proposed District Plan following decisions on submissions (1998 – 2001)

As a result of decisions on submissions released in 1998, the Rural Uplands and Rural Downlands zones were replaced with a single Rural General zone. That zone provided for subdivision of lots greater than 20 hectares as a controlled activity, lots between 4 and 20 hectares as a discretionary activity, and lots of less than 4 hectares as a non-complying activity. Residential building could then occur at these densities as a controlled activity. Notably, whilst applications for lots between 4 and 20 hectares were notified (due to the fact that the Plan was transitional and subject to appeals seeking to strengthen the rules) they were invariably approved. As a result of this relatively permissive regime, a Council that was relatively sympathetic to applications to development, and a widespread feeling that the provisions may well only get tougher, a considerable amount of rural development was approved in the 3 years that this regime was in place. Notably, the release of the various landscape decisions during this time meant that the 'new regime' was having increasing weight as the objectives and policies were inserted, followed some years later, by the rules.

The current Planning regime (2001 – present)

As a result of decisions from the Environment Court (issued from late 1999 onwards) the provisions were changed considerably. The Rural General zone remained but there was no longer a minimum lot size, and all subdivision and all residential buildings not within an approved building platform were discretionary (although a few exceptions were non-complying). Whilst no specific rural zones were created, landscape categories were introduced (i.e. Outstanding Natural Landscapes (ONL's), Visual Amenity Landscapes (VAL's), Outstanding Natural Features (ONF's), and Other Rural Landscapes (ORL's)). Furthermore, in terms of processing applications, a decision from the High Court sent a clear message to the Council that it would be difficult to see how any such applications could be processed non-notified. Council takes heed of this to this day and notifies almost all discretionary applications in the Rural General zone.

The Council has also processed a number of plan changes and resolved other, more specific references affecting the Rural General zone, since 2001. These changes are aimed at ensuring that planting is not established along roadsides for the express purpose of 'hiding development'; managing the effects of structures (such as grand entrance statements) on roadsides; enabling farm buildings in genuine cases and in particular landscapes; and ensuring that trails that are

offered by a landowner do not reduce the landowner's chances of a later development approval in the vicinity.

How do the current Rural General Zone provisions work?

The current regime is somewhat unique in the New Zealand planning scene in terms of its structure and wide reliance on discretionary activities (whilst not presuming that they will usually be appropriate).

Essentially all residential development is a discretionary activity. Whilst the activity status is the same across the 4 landscape categories that exist in the Rural General zone, there are different policies and assessment matters for each of the categories. These have the effect of making it much harder to obtain consent in/ on Outstanding Natural Landscapes/ Features (ONL/ ONF) than in the Visual Amenity Landscape (VAL) or the ORL (other rural landscape), which is the least restrictive of them all. The desired outcome for each of the landscape categories is further explained in the following section of this report.

The provisions (and the resource consent process itself) encourage applicants to apply for a residential building platform (hereafter referred to as an "RBP") rather than to simply apply for a dwelling at the outset. The effects of that RBP are then assessed on the presumption that a house will be built on it in the future and all foreseeable effects of the activity and the built form are assessed at that stage. The assessment has a significant landscape focus guided by the detailed policies and assessment matters. Notably, the assessment matters for the ONL(WB⁴)/ ONF are tests which must be passed/met in order for the approval to be obtained whereas they are simply criteria to be considered in the other landscape categories.

As almost all dwellings are established on an approved residential building platform (hereafter referred to as an "RBP"), the existence of a RBP has been used as the key indicator of development. In doing this, it needs to be acknowledged that an estimated 10% more dwellings have been approved without a building platform, which are not shown in the figures in this report. It is also noted that, whilst data collection for the Plan effectiveness monitoring commenced in October 2001 (on the basis that this was the date that the discretionary, no minimum lot size rules were made operative) it needs to be acknowledged that the regime was having some influence on decisions prior to this date.

⁴ Wakatipu Basin

5 What is the Rural General Zone Trying to Achieve?

Before considering whether the District Plan is effective, we need to be very clear as to what the District Plan provisions are intended to achieve. It is all too easy to ‘assume’ that we are trying to protect the rural area from any development when, in fact, that may not be what the District Plan is striving to achieve, at all.

The community’s desired outcome for the rural environment is articulated through both the community outcomes (contained in the Council Community Plan) and the objectives and policies of the District Plan. The relevant Community Outcome states this succinctly as:

“Quality landscapes and natural environment and enhanced public access”.

More importantly, the District Plan expresses the desire for a similar outcome through objectives and an extensive number of policies.

The relevant objectives are succinct (perhaps too much so) and are listed below:

4.2.5 – 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.

5.2 - 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.

5.2 - Objective 3 - Rural Amenity:

Avoiding, remedying or mitigating adverse effects of activities on rural amenity.

15.1.3 - Objective 4 - Natural Features, Landscape and Nature Conservation Values:

The recognition and protection of outstanding natural features, landscapes and nature conservation values.

To the contrary, the policies are more extensive. It is considered they provide a more useful basis on which to assess the effectiveness of the rules than to simply ask whether the rules achieve the above objectives. As such, the following desired outcomes have been formulated combining both the objectives and policies in order to provide a useful summary of what the District Plan is trying to achieve in the Rural General zone.

The relevant zone/ landscape category (Refer Chapter 1 for acronyms)	Desired Outcomes (derived from the objectives and policies)	Related provisions
ONL (District Wide)	Protect ONLs and ONFs	Part 4, objective 1.
	In or on outstanding natural landscapes and features development is inappropriate in almost all locations within the zone, particularly within the Wakatipu basin or in the Inner Upper Clutha area.	Part 1 - 1.5.3 Status of Activities (iii) – discretionary activities
	Maintain openness where an open character exists (also relates to (WB)).	Objective 4.2.5, policy 2(a)
	Avoid development ⁵ where little or no capacity to absorb change and allow limited dev. where there is higher potential to absorb change	Objective 4.2.5, policy 2(a)
	Protect naturalness and amenity enhance amenity values of views from public roads (relates also to (WB)).	Objective 4.2.5, policy 2(a)
	Discourage urban development	4.2.5 (policy 6(b))
	Avoid, remedy, or mitigate adverse effects of urban dev. by maintaining open character and ensuring it does not sprawl along roads.	4.2.5 (policy 6(c))
ONL (Wakatipu Basin)	In or on outstanding natural landscapes and features development is inappropriate in almost all locations within the zone, particularly within the Wakatipu basin or in the Inner Upper Clutha area.	Part 1 - 1.5.3 - Status of Activities (iii) – discretionary activities
	Avoid development unless it avoids adverse effects which will be “more than minor” on landscape, natural character and visual amenity – and, in so doing - ensure that it will be “reasonably difficult to see”, avoids further cumulative degradation, protect naturalness, enhance views from public roads, and recognise the importance of this area to protecting and enhancing naturalness.	4.2.5 Policy 3(b)(c)
	Remedy or mitigate past inappropriate development	4.2.5 Policy 3(c)
	Avoid new urban development	4.2.5 (policy 6(a))
VAL	In visual amenity landscapes development is inappropriate in many locations	1.5.3 - Status of Activities (iii) – discretionary activities
	Avoid, remedy or mitigate adverse effects of dev on areas which are highly visible from ‘public places’ and visible from roads	4.2.5 (policy 4)(a)
	Mitigate or enhance natural character through planting/ landscaping	4.2.5 (policy 4)(b)
	Discourage linear planting to achieve the above 2.	4.2.5 (policy 4)(c)
	Discourage urban development	4.2.5 (policy 6(b))
	Avoid, remedy, or mitigate adverse effects of urban development by avoiding sprawl along roads.	4.2.5 (policy 6)(d).
ONF	Avoid development in the vicinity of distinctive landforms unless it will not result in adverse effects that are more than minor... (as per 4.2.5 (policy 3(a)(b)) above	4.2.5 (policy 5)
	Discourage urban development	4.2.5 (policy 6(b))
	In addition to 4.2.5 (policy 9)(a), screen structures through vegetation where possible to maintain naturalness	4.2.5 (policy 9)(b)
ORL	Development may be inappropriate because the amenities of neighbours will be significantly affected.	Section 1.5.3 Status of Activities (iii) – discretionary activities
	Refer to district wide outcomes above and the zone-wide outcomes below as there are no other specific outcomes are identified	

⁵ For the purpose of this report, the “development” refers to subdivision and development

Zone-wide ⁶	Clearly identified edges to existing urban areas, and any new areas through design solutions and avoiding sprawl along roads	4.2.5 (policy 7)
	Avoid cumulative degradation through: Ensuring that density does not increase to a point where the benefits of further planting and building are outweighed by the adverse effects of over-domestication; encouraging comprehensive and sympathetic development.	4.2.5 (policy 8)
	In VAL and ONL (i.e. not other landscapes), preserve visual coherence through encouraging structures in harmony with the landscape, avoiding skylines, ridges, and prominent slopes/ hilltops, and encouraging the use of complementary colours and natural construction materials.	4.2.5 (policy 9)(a)
	In all rural landscapes, in regard to structures, preserve visual coherence through limiting signage size and provide greater building setbacks to maintain and enhance amenity values associated with views from public roads.	4.2.5 (policy 9)(c)
	The character and landscape value of the rural area is protected by promoting sustainable management of natural and physical resources and controlling adverse effects from inappropriate activities, by: <ul style="list-style-type: none"> • Allowing activities which utilise the soil resource in a sustainable manner. • Ensuring land with productive potential is not compromised by inappropriately located developments and buildings • Ensuring activities not based on the rural resources occur only where the character of the rural area will not be adversely impacted • Providing for a range of buildings allied to rural productive activity and worker accommodation. • Ensuring all structures are located in areas with the potential to absorb change. 	5.2 – Objective 1 and policies 1.1 -1.9.
	Adverse effects of activities on rural amenity are avoided, remedied or mitigated by: <ul style="list-style-type: none"> • Recognising that permitted activities in rural areas may result in nuisance effects on rural residents; • Ensuring a wide range of rural activities can be undertaken without reducing rural amenity values. • Avoiding, remedying or mitigating adverse effects of activities located in rural areas. • To encourage intensive and factory farming away from residential and urban areas • Ensuring residential dwellings are setback from property boundaries 	5.2 – Objective 3 and policies 3.1 -3.6
District-wide	Avoid, remedy, or mitigate adverse effects on landscape and visual amenity values by avoiding, remedying or mitigating development in areas vulnerable to degradation, encouraging it where there is an ability to absorb it, and ensuring it harmonises with topography and ecological systems.	Objective 4.2.5 and policy (1)
	The recognition and protection of outstanding natural features, landscapes and nature conservation values by taking opportunities to protect these values through the subdivision process(particularly in relation to lakes and rivers); ensuring works avoids or mitigates adverse effects; and avoiding potential adverse effects resulting	15.1.3 - Objective 4 and policies

⁶ “Zone-wide” does not include the Ski Area Subzone, the Gibbston Character Zone,

It is therefore evident that in the ONL and ONF there is a strong presumption toward protecting existing landscape values, whilst acknowledging that there will be some locations in the ONL/ ONF where development is appropriate. In the VAL there is an acknowledgement that development will be appropriate in many locations provided the character is maintained and cumulative effects well-managed. There is considerably less emphasis on landscape matters in the ORL, with the emphasis being more about rural amenity and well-designed solutions. It is also noted that whilst other matters such as transport, rural activities, productive soils, and the like are also provided for, the policies are far less detailed. However, this does not necessarily mean these matters carry less weight than landscape matters, as a recent Environment Court decision brought to light⁷.

So the task now is to better understand what development has occurred in the Rural General zone; whether these desired outcomes are being achieved; and to what extent this is attributable to the District Plan and/ or other forces.

⁷ Glentam vs. Queenstown Lakes District Council (C10/2009)

6 What is the “State” of the Rural Environment?

The “rural environment” refers only to the Rural General zone. For the avoidance of doubt, this report does not consider the ski area subzone, the Gibbston character zone, the rural lifestyle zone, the Rural Residential zone or the various special zones which are located in the rural area.

In determining what the state of the rural environment is, it is necessary to consider:

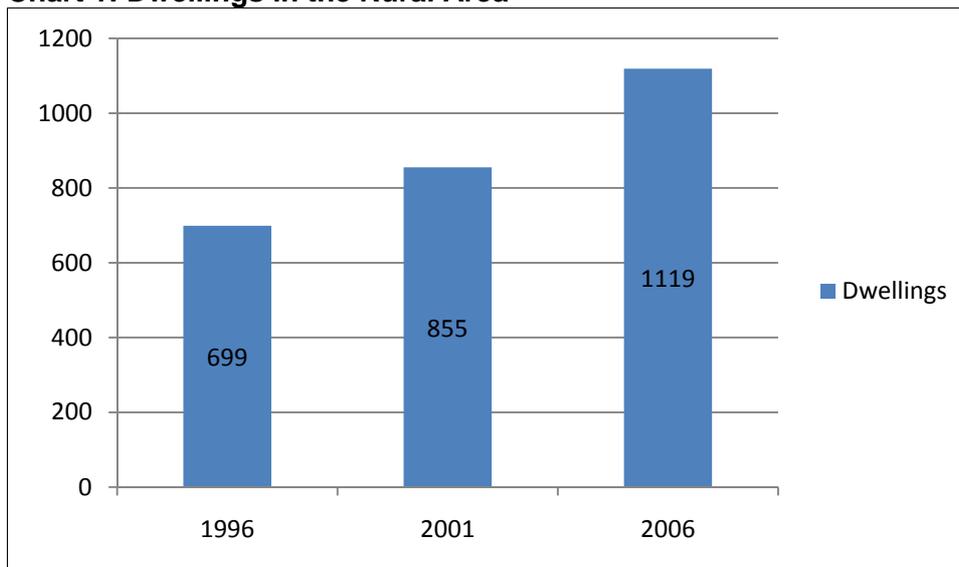
- What you see “on the ground “as you travel through the Rural General zone; including the historic development which occurred under previous, often more lenient, District Plan regimes; and
- What is approved but not yet developed and, therefore, what will be developed over time as a result of existing approvals.

It is noted that data on developments approved since the inception of the current District Plan provisions⁸ is also discussed in detail in this report under “District Plan Effectiveness”.

a How many dwellings exist in the Rural General zone and how many more have development approval?

The following graph gives an indication of how the rural environment has changed over time.

Chart 1: Dwellings in the Rural Area



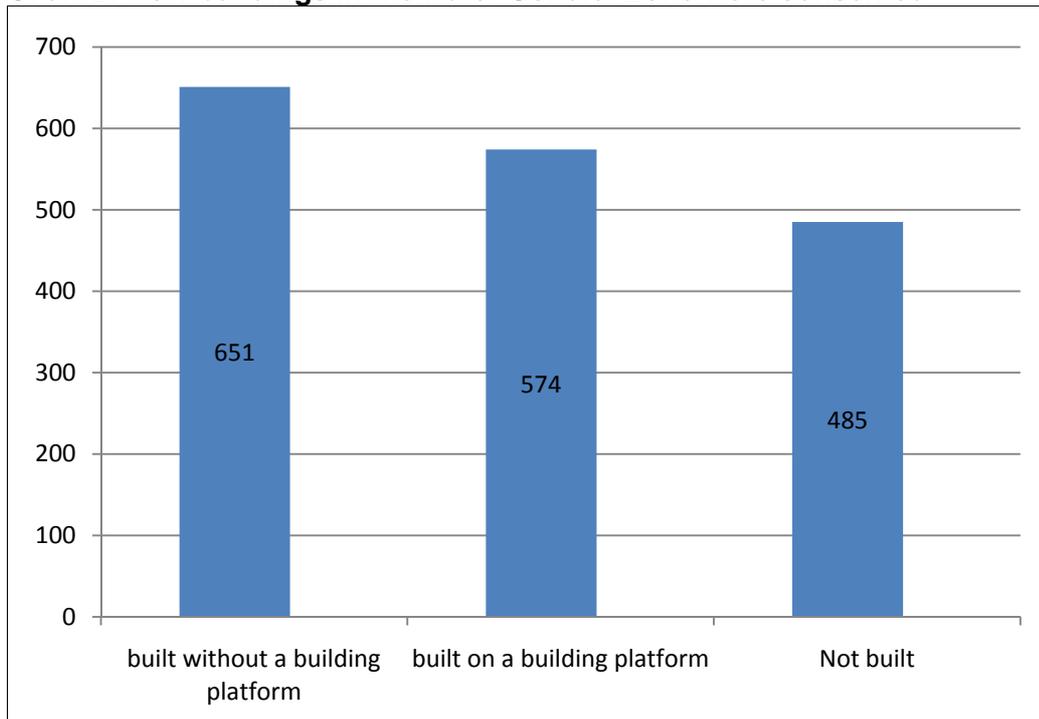
Source: Census 1996, 2001, 2006

Note: The above figures from the census are for the Census Meshblocks that more or less equate with the Rural General Zone. The figures would include some areas that are zoned otherwise such as rural residential and other small areas or Rural General zoning may not have been included. For a list of the meshblocks used, refer to Appendix 4.

What is apparent from the above graph is how there has been a significant and steady growth in the number of dwellings in the Rural General Zone area. Much of this is thought to have been consented under previous planning regimes although the following graph (which more accurately accounts for the Rural General Zone boundaries) gives some indication of the amount consented under the current regime:

⁸ For the purpose of this report that is taken to mean since October 2001.

Chart 2: How buildings in the Rural General Zone were consented



Source: Council GIS

For the purposes of the above graph:

The 'built without a building platform' is the RAPID numbers (which are allocated to nearly all rural sites) without a building platform associated with the same site.

The 'built on a building platform' is considered to indicate those consents that have been, to varying degrees, influenced by the current regime. From when the plan was notified in 1995 some building platforms were identified and the proportions increased until October 2001 where it became unusual for applications not to incorporate building platforms.

The 'not built' indicates building platforms that have never been built on. Importantly, it is believed that this is likely to be a significant undercount as the data is derived from the Council's GIS system and an exercise in reviewing the data found that there are known to be some platforms that have not been mapped and situations where multiple building platforms have been mapped as one platform. Increasing the accuracy of this mapping and data is recommended in this report as an important action for Council to pursue.

Certainly, the above graph does indicate that there is a considerable amount of development that has been consented and can be expected to occur over coming years in the Rural General Zone.

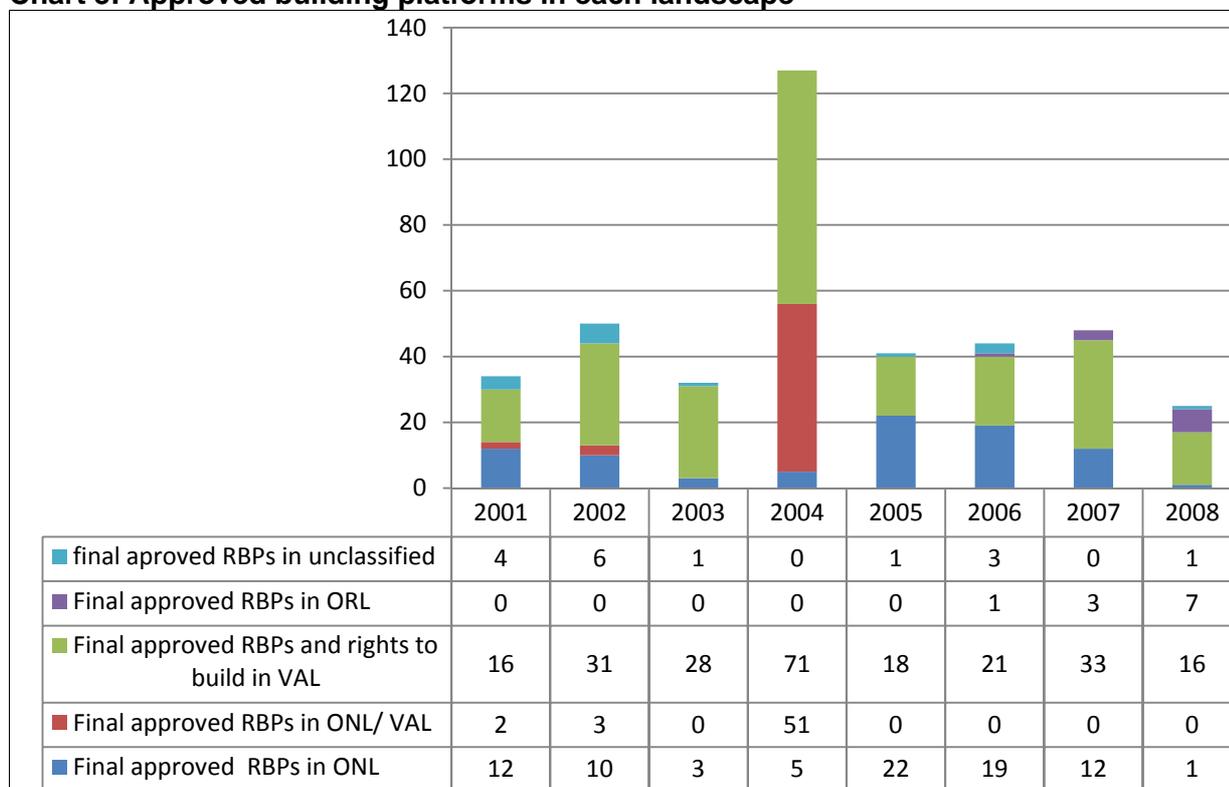
In summary:

- In 1996, there were around 700 dwellings in the Rural General Zone.
- By 2009, this had increased to 1225 dwellings, which is a 75% increase in 13 years.
- In addition to the 1225 existing dwellings there at least 485 approved RBPs yet to be built on.
- The majority of development and approvals has occurred in the Wakatipu basin; between Arrowtown and Frankton.

b Where are the existing and approved future dwellings located?

The following graph shows the number of approved RBPs since 2001 and shows which landscape category these have occurred in. It is evident that the majority of RBPs have been approved in the VAL, followed by the VAL/ ONL, and then in the ONL, with very few in the ORL and none on an ONF. More detailed analysis of this data is included in this report under “District Plan Effectiveness”.

Chart 3: Approved building platforms in each landscape



Notably, Council data indicates that very few of the RBPs approved since 2001 have actually been built on over the past 7 years. This may indicate that the incentive for obtaining resource consent approval has not been driven by any real demand or need (but rather an interest in increasing the value or appeal of a property or securing development rights). Alternatively, it may be due to the fact that many decisions prevent construction until the planting is established. Most likely, the cause for the delay in actual development is a combination of both.

Attached as Appendix 2 is a series of maps of the Rural General zone, showing the current state of the rural environment, including what you see as you drive through the area and those developments that are approved but not yet built. The existing houses are split into those which have been built on approved RBPs (i.e. shown as blue) and those which are not (shown in black), which usually indicates that the resource consent pre-dated the requirement to build on an approved platform). This distinction is useful in that it indicates which dwellings pre-dated the current provisions and, hence, were not subject to the same extent of landscape assessment as is now the case. Building platforms that are not built on are also shown in red.

These maps provide some interesting information, in relation to:

- Where in the District development and applications for development have predominantly occurred
- The state of the ‘receiving environment’ (which comprises the existing and approved future dwellings)
- The cumulative effect of approved development

Again, it is important to note that there are known to be errors in these maps and that there are certainly more building platforms that have been consented than is shown. The maps should therefore be taken as indicative information on the distribution of dwellings.

Where in the District development and applications for development have predominantly occurred

The maps show obvious areas of concentrated development and areas where little or no development has occurred. The areas that are free of development generally align with the ONF and ONL landscapes and/ or with the vast areas of high country that is held as DOC estate and pastoral lease land.

The receiving environment

The extent of development that has already been approved in certain areas (such as in and around the Speargrass Flat triangle) has inevitably influenced the Council's and Court's decisions in recent years. The decisions made today, even under the comparatively strict discretionary regime, must be made in the context of what has already been approved, even if it is not yet developed. The Hawthorne application (RM RM000450) and eventual approval of a large number of RBPs in the ORL is an example where the threshold that the landscape is able to absorb (whilst still maintaining its character) was determined to have already been breached and, hence, the ability to decline further developments was severely compromised. The maps, once finalised will provide an important tool in helping to gauge where such thresholds may be close to being reached or have already been reached.

The cumulative effects

Cumulative Effects are those effects that in themselves may seem insignificant, but when combined with other effects from the same or other proposals may be more significant. In the Environment Court case *Gargiulo v Christchurch City Council* (C137/00) cumulative effects were described as being when:

'...any one incremental change is insignificant in itself, but at some point in time or space the accumulation of insignificant effects becomes significant'

The RMA recognises and draws attention to the need to consider cumulative effect. The definition of effect includes:

"... (d) any cumulative effect which arises over time or in combination with other effects"

Managing development and subdivision in the rural environment in the Queenstown Lakes District is an example of where cumulative effects may become apparent.

From a landscape perspective, a number of developments may be consented that, in themselves, are reasonably difficult to see or have minor effects on the landscape, but combined they begin to have significant effects. This possibility was certainly contemplated when the Rural General Zone of the District Plan was written as there are a number of references to cumulative effects in the provisions. Discussion later in this report does however address the apparent difficulties in managing cumulative effects in practice. The following section has some discussion on how the appearance of the rural environment has changed in part due to the accumulation of multiple consents.

Cumulative effects may also be apparent in non-landscape matters. As discussed in this report, the effects of consented dwellings, from which residents travel to and from by private motor vehicle, may have insignificant effects in terms of the effects on roading infrastructure and carbon emissions when taken in isolation, but when many hundreds of dwellings are consented the effects appear more significant.

c How has the rural environment changed over time?

The maps included as Appendix 2 and the various graphs above provide some idea of how the rural environment has changed in recent decades. However, perhaps the best way to understand the visual effects of this is through considering photographs of those areas most under pressure and through some photographs of specific sites showing how they have changed as a result of development.

The following photograph provides a snapshot of how the view toward Lake Hayes from Coronet peak looked in 1983.

Picture 1: Wakatipu basin taken from Coronet Peak, 1983



Picture 2: Wakatipu basin taken from Coronet Peak, 1 May 2009



These photos give an indication of the extent to which the landscape of this part of the Wakatipu Basin has changed over a period of more than 25 years. However, it must be acknowledged that this period is much wider than the period for which the rules of the current District Plan apply and that the photo includes zonings other than Rural General.

Appendix 3 contains a series of photos taken in 2001 that were again taken with the same or similar camera and lens in April 2009. These give an indication of how the landscape has changed in recent years. The time period corresponds with the period for which the current rules are considered to have taken effect. However, whilst the record of landscape change is of interest, the landscapes may also have changed due to:

- permitted activities such as planting of vegetation or farm fencing
- the growth of pre-existing vegetation
- consents that were granted but not implemented at the time the photos were taken

However, much of the vegetation is likely to be associated with the domestication of the landscape that accompanies the lifestyle-block developments that have been consented. Importantly, in addition to such amenity planting, much of the planting may be associated with the mitigation of individual consented developments.

It is also notable that there may be (and in many views certainly are) consents that are already in place but have not been implemented at the time of the 2009 photos, that will be expected to have effects on the landscape in the future. Future consents can also be expected to have impacts.

When looking at expansive views such as the panoramas from Coronet Peak and the Crown Range, perhaps the most noticeable change in the landscape over time is the degree of planting that has occurred and the extent that already planted trees have grown over this time. Much of the planting is associated with the residential development.

The panoramic views in Appendix 3 provide some indication of cumulative effect. Even if individual applications have been largely invisible from more immediate views when being assessed, together they have and will continue to change these more distant, iconic public views. There is however debate about how important these views are and whether such change has negative effects.

Environment Court cases such as *Highground Land Company Ltd v Queenstown Lakes District Council* (C178/2002) and *Northcoat v Queenstown Lakes District Council* (C0107/2004) gave consideration to the views from Coronet Peak and the Crown Range respectively. Interestingly, the latter included considerable discussion on cumulative effects. Although these cases concluded differently as to the appropriateness of the development, it is evident that the Court does believe the panoramic views from these places are of significance, particularly if the proposed development lies within the foreground of that panorama.

It should also be noted that the panoramas do, on some occasions, include areas that are subject to other zoning provisions such as the Rural Living and Special zones.

However, another observation of the photographs is that many houses and associated development such as driveways have actually become less visible with the growth of vegetation. Arguably, this may support the presumption that visual effects of development can be well mitigated by planting, albeit with changes to the nature of the landscape.

As well as looking at change in the landscape at a macro scale, it is useful to consider specific developments and how the landscape is changing incrementally as individual developments further domesticate the rural area. Photographs, concept plans and further commentary relating to individual developments are included in this report under "District Plan Effectiveness" and as part

of Appendix 3 but the following comments can usefully be made in the context of the state of the environment and how it has changed in recent years:

- The number of accessways has increased with development and some of those approved prior to the current provisions are obtrusive and damaging to the landscape values. However, after considering case studies, it is the view of the author that those approved as part of development under the current provisions appear to be generally well-positioned, shared by a number of dwellings, and designed to be as unobtrusive as possible. However, they can still have cumulative effects on the landscape.
- The amount of vegetation being planted as part of those developments approved under the current provisions is extensive and is likely to change the landscape considerably over the long term.
- There are areas of the VAL (such as Mooney Road, Slopehill Rd, and Malaghans Rd) with a significant number of highly visible dwellings which were approved prior to the current provisions. There are also dwellings which were approved under the current provisions which remain visible due to the immaturity of the vegetation. This point is further discussed in this report under District Plan effectiveness.
- There are visible dwellings on prominent slopes within the ONL (such as on Coronet Peak Road) that were approved prior to the current provisions.

d How do the community and visitors feel about the state of the rural environment?

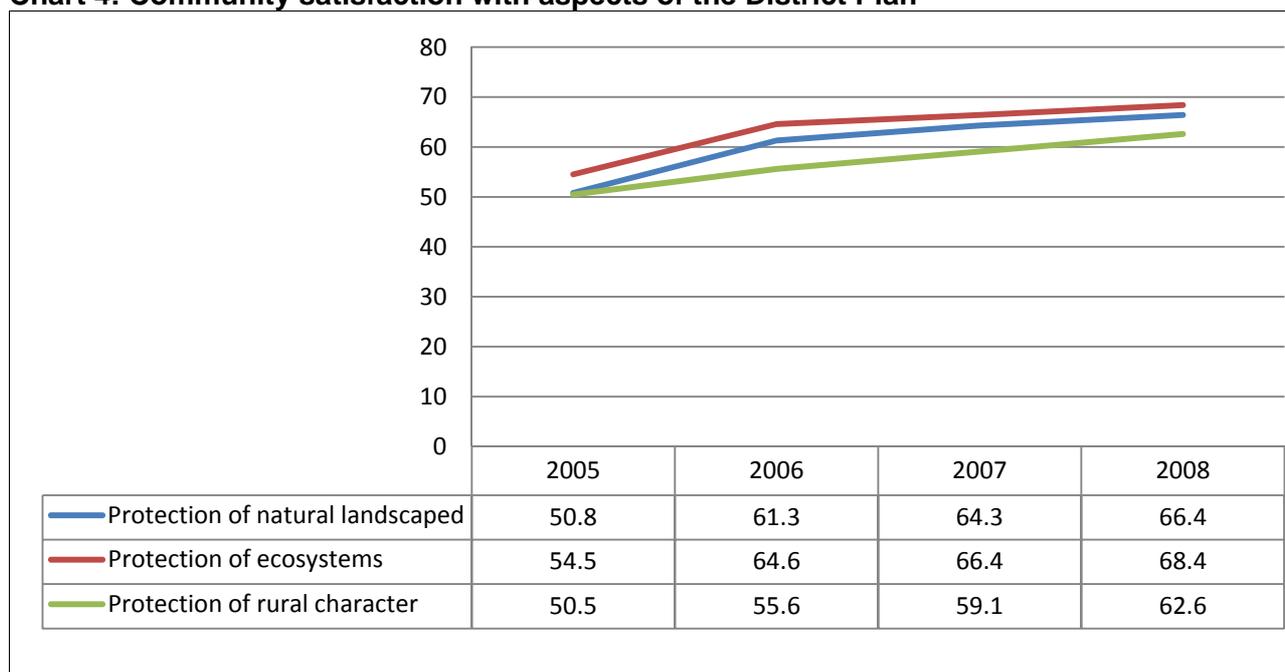
Some investigation has been undertaken in recent years to understand how residents and visitors feel about the rural environment/ landscape values and the results of this research is outlined below.

Permanent Residents

Public consultation conducted as part of the 2020 community plans (in 2002) and, latterly, as part of developing the Growth Management Strategy (adopted in 2007) also sought public opinion over the role of the rural area, future growth patterns and whether and to what extent the rural area should be developed. These exercises provided very 'high level' direction that the community does not want the rural area degraded through development.

In addition, the Council's Residents and Ratepayers' Survey includes some basic questions regarding satisfaction with how the District Plan manages landscapes, ecosystems, and rural character. The graph below indicates a positive trend with satisfaction levels increasing over the last 3 years. Of the remaining responses recorded in August 2008, around 25% were dissatisfied, 8% very dissatisfied, and around 4% very satisfied. Whilst the level of satisfaction is increasing it is interesting to note that there is a lower level of satisfaction with the protection of rural character than with the other aspects

Chart 4: Community satisfaction with aspects of the District Plan



Source: 2008 Residents' and ratepayers satisfaction and opinion survey - overall results (January 2009)

Whilst this information is useful, it is suggested that they be treated with some caution in that:

- It is also difficult to know whether participants are responding on the basis of what they can see has been developed rather than what has been approved but not yet developed; and
- The questions are perhaps somewhat simplistic in that they don't provide any indication as to why some people are dissatisfied (e.g. is the District Plan too restrictive, not restrictive enough, etc).

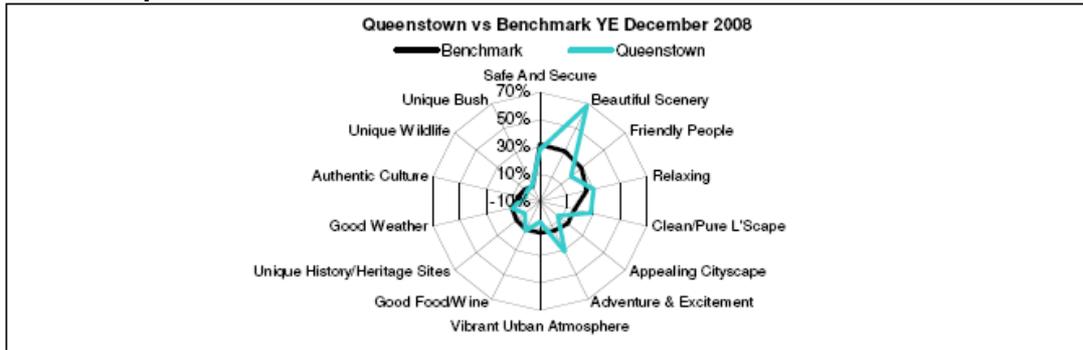
If the Council were to consider reviewing the provisions relating to the Rural General zone, then it suggested it would be appropriate to further gauge public perception in regard to the current state of the Rural General zone and what role it should play into the future. This would require some assessment as to what people consider to be an acceptable level of landscape change. Professional landscape advice may be used to compliment such analysis.

Visitors

The following information has been obtained from the Regional Visitor Monitor (Results to 31 December 2008) - Report for Destination Queenstown (February 2009).

When visitors are asked to identify their three most important expectations, beautiful scenery is commonly the most important expectation (and its importance is growing). It is noted that adventure and excitement, relaxing, and a clean pure landscape also outstrip the benchmark (taken from all regions) but not to anything like the extent that beautiful scenery does.

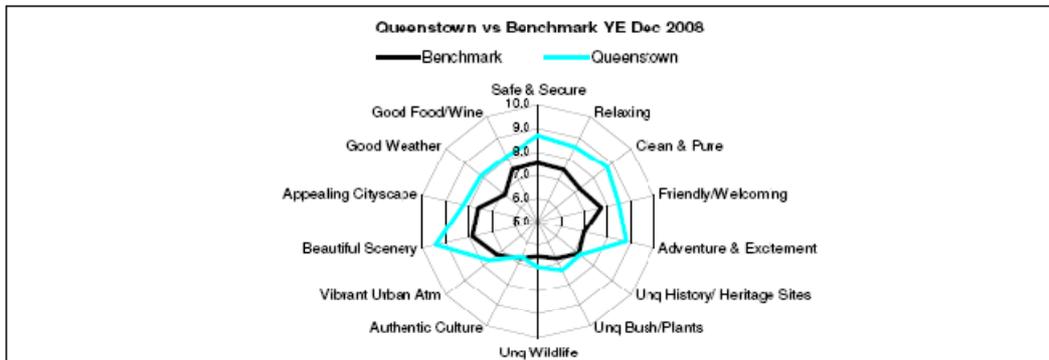
Chart 5: Expectations of a visit to the Queenstown Lakes District



Source: *Regional Visitor Monitor (Results to 31 December 2008) - Report for Destination Queenstown (Feb 2009)*

Visitor ratings of the key attributes of the region are almost universally above the benchmark, with beautiful scenery scoring the highest of all attributes.

Chart 6: Experiences of a Visitor to Queenstown



Source: *Regional Visitor Monitor (Results to 31 December 2008) - Report for Destination Queenstown (Feb 2009)*

Consistent with previous years, the highlights recounted by visitors to the region during October – December 2008 focused on outdoor adventure activities, the beautiful scenery, and fun with friends, family, and strangers.

It is clear from the above information that the protection of the landscape is paramount (and increasingly important) to providing a quality visitor experience. Visitors’ extremely high expectations in this regard are currently being well met. This would suggest that the District’s landscape resources have by no means been spoilt but it does underlie the importance in protecting them.

7 Monitoring District Plan Effectiveness

In order to undertake an analysis of the effectiveness of the Rural General Zone, the key consent data is firstly outlined and discussed in general terms.

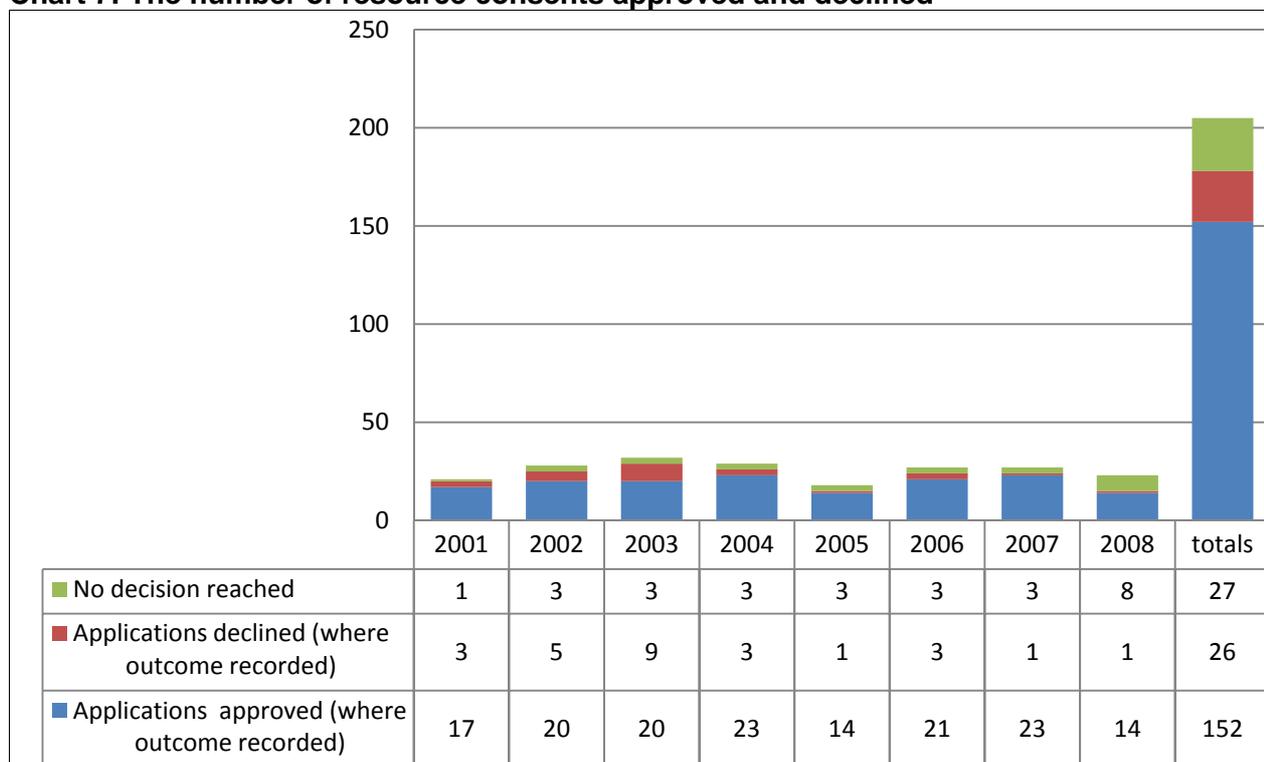
Then, in order to structure the discussion, a number of key issues have been selected for monitoring. The issues cover the key points raised in the objectives and policies and, in some instances, derive from discussions with District Plan users.

a How many resource consents for RBPs⁹ have been applied for since the inception of the discretionary regime (October 2001) and how many have been approved and declined?

The following graph shows that the number of resource consents applied for has been relatively steady, ranging from a low of 18 applications in 2005 and a high of 33 in 2003, with an average of 26 lodged per year. Whilst it is perhaps too early to draw any firm conclusions in terms of recent trends, there has been a decline in applications in the last 3 years (from 28 to 27 and then to 22). It will be interesting to see if this trend continues but as an early indication, as at 23rd March this year just one application had been lodged compared to an average of 6 having been lodged by the same time in the previous 3 years. This may of course reflect market conditions, the number of approved but undeveloped sites or it may reflect a reducing availability of sites for which development is considered likely to be approved under the current regime.

There has also been a noticeable increase in the proportion of applications that have been approved in the 2003 – 2008 period as opposed to the 2001- 2002 period. That said, the 100% approval rate for 2008 consents need to be considered in light of the fact that 8 of the 22 applications have not yet had a decision issued on them and it is likely that it is the more controversial ones that remain outstanding.

Chart 7: The number of resource consents approved and declined



The slight reduction in the sheer number of applications in recent years and the increase in the proportion of resource consents that have been approved over this time seems to align with the general comments made by consultants. Anecdotally, private consultants suggested that they are getting considerably less enquiries relating to rural subdivision than in 2002 and that, of those, they are turning away around 1/3 (as being unrealistic propositions), and that those that do progress are almost always significantly modified prior to lodging consent (often involving a reduction in scale). It was noted in discussions with consultants that the amount of work going into applications had increased significantly over the years resulting in a higher quality of application which, in turn, has a greater chance of approval. This feeling that the quality of applications is

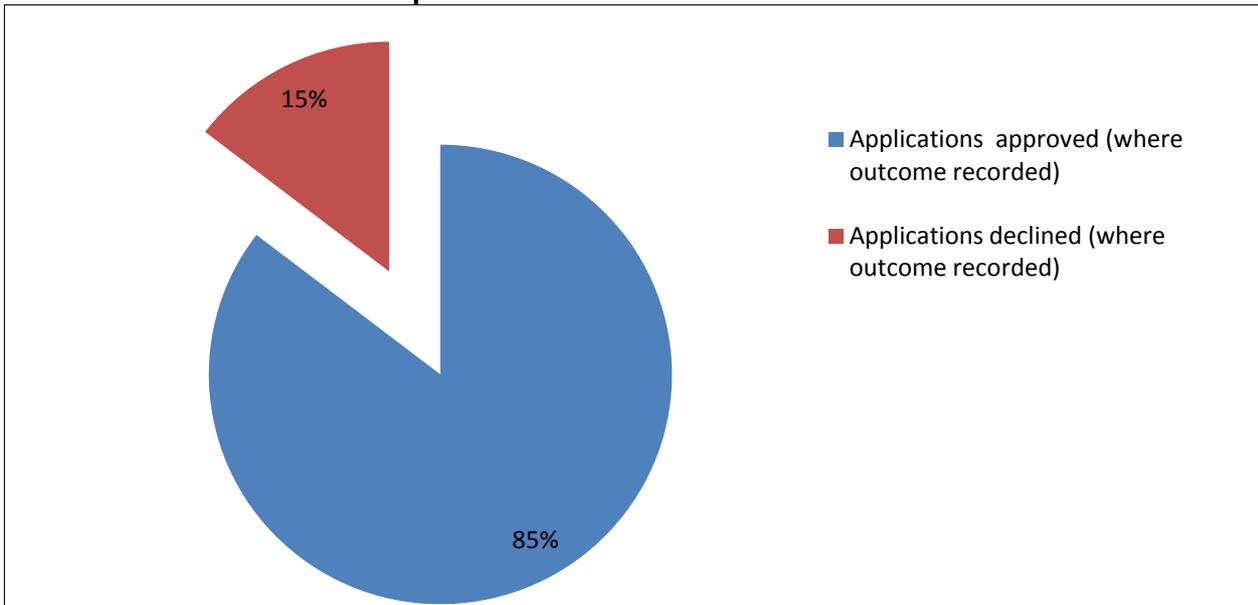
⁹ Henceforth, “RBPs” shall be taken to include the Resource Consent (RM041142) where a ‘right to build’ was granted through conditions rather than through RBPs

improving is shared by Council's legal counsel and commissioners, one of whom commented that they no longer get the applications that are 'doomed to failure'.

It should also be noted that, the range of commissioners and Environment Court judges making decisions in the district is extensive and, given the highly subjective nature of the discretionary regime it can not be dismissed that the increasing rate of approval may be, in part, due to changes in interpretations of the Plan provisions.

The following graph shows that of all those resource consents for which a decision has been issued, the clear majority of applications (85%) have been approved, with the remainder having been declined.

Chart 8: The outcome of completed resource consents



Note that the 'applications approved' includes those applications that were approved in part.

Whilst this gives the overall picture, it is perhaps more useful to consider what proportion of applications have been approved or declined in the various landscape categories. This assessment reveals that whilst 100% of resource consents since October 2001 have been approved in the ORL and 91% in the VAL, the approval rate dips to 81% in the ONL and 75% for those sites which span both the ONL and VAL categories.

Again, these figures need to be considered in light of the view expressed by some that the quality of applications seems to be improving and that they are generally more realistic (in terms of the scale of development that is likely to be appropriate) as a common understanding of what is 'appropriate', what is 'able to be absorbed' and so on emerges. It also needs to be acknowledged that in many instances, the decision is influenced by the degree of consented development that has been approved (but not yet given effect to) under previous planning regimes. For example, the decision to grant a considerable amount of development at Hillend Station near Wanaka was no doubt influenced by the fact that there was already a consent to develop a considerable number of dwellings, some of which were in sensitive landscapes.

In order to get a better sense of the volume of development being sought, and to get a complete picture of whether the District Plan is giving the Council adequate strength to prevent inappropriate development, one also needs to consider how many actual RBPs have been declined (as applications are often for multiple RBPs). This also helps to illustrate the large number of consents that are approved in part.

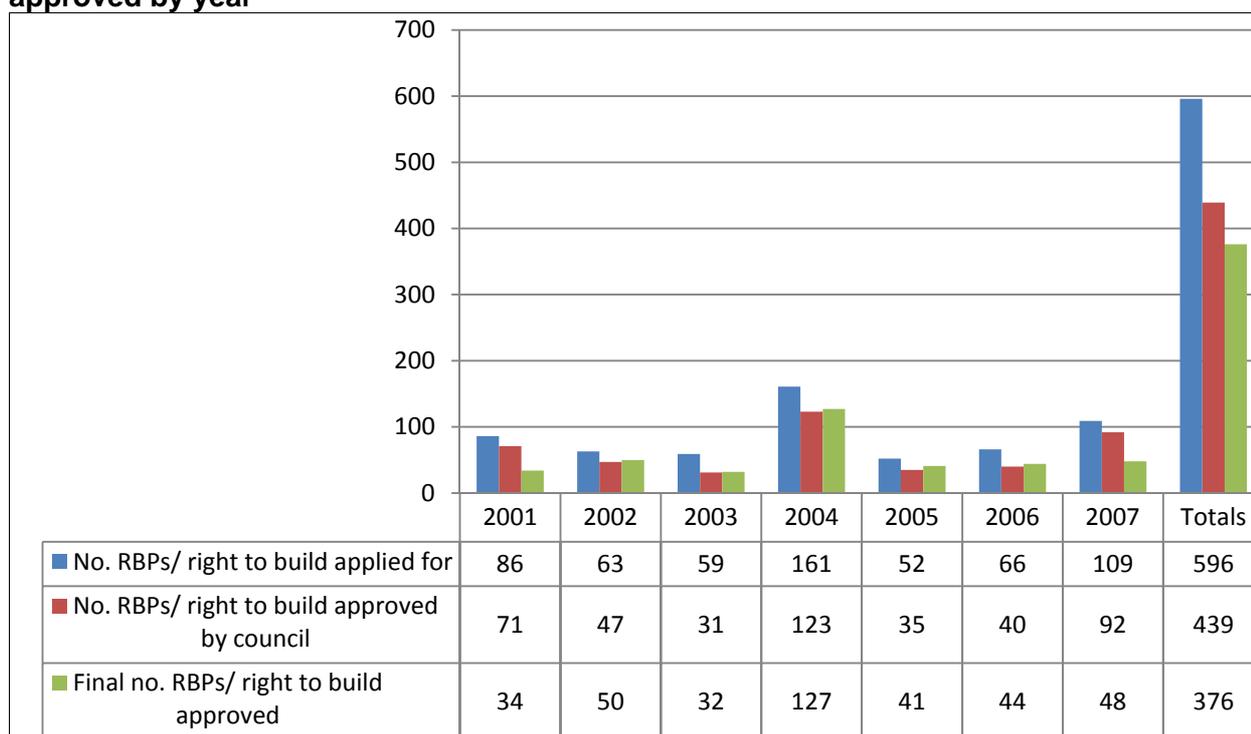
b How many RBPs have been applied for and approved since October 2001?

The following graph indicates, at least in an aggregate sense, that the District Plan provisions do enable the Council to decline RBPs where they are deemed to be inappropriate. It also suggests that, for the most part, (with the exception of 2001 and 2007) the total number of RBPs approved by the Council in each year has been relatively unchanged by Environment Court decisions.

As shown in the graph below, the number of RBPs applied for (and, indeed, approved), declined steadily from 2001 – 2003 but then peaked in 2004. This noticeable peak in 2004 is attributable to two particular large scale consents; one being a 46 lot extension of an existing urban area in Wanaka (Allenby Farms) and the other being the application relating to Hillend Station which sought 56 RBPs (Infinity Investments) which is, again, in Wanaka.

Since 2004, whilst the number of resource consent applications has reduced, the sheer number of RBPs sought has increased. Rather than depicting a widespread trend toward larger scale, more comprehensive developments per se, this trend is due to a handful of specific large scale proposals, including a 46 lot subdivision adjacent to existing rural living land at Aubrey Rd in Wanaka in 2008 (yet to be decided on), a 20 lot development in a disused quarry at the foot of the Remarkables in 2007 (granted), a 13 lot development on Ladies Mile in Queenstown in 2006 (yet to be decided on), and a 26 lot development along the Glenorchy- Paradise Rd in 2005 (granted). Notably, with the exception of 2003, there have been 1 or 2 such large scale proposals every year since the discretionary regime commenced.

Chart 9: The number of building platforms or a 'right to build' applied for and finally approved by year



It is also useful to consider the number of Council decisions that have been upheld by the Environment Court over the years. It is noted that 48 appeals have actually been lodged with the Court but that 5 of these were withdrawn and 9 have not yet been heard. The below figures do include those appeals that were resolved by consent order and so do not necessarily always reflect the outcome of a Environment Court hearing but may, in fact, be the outcome of a compromise between parties. For the avoidance of doubt, the following figures relate to the Council's decision being upheld (i.e. the appeal itself being dismissed).

Of the total of 34 resource consents that were appealed and for which an Environment Court decision has been released, 65% of the Council's decisions have been upheld. To put this in context, the Council's legal counsel consider that from their experience this is a good level of success in the Environment Court and shows a reasonable level of consistency between the Council's and court's decision-making¹⁰.

It is also interesting to note that in 11 of the 12 cases that the Court did overturn, the Court granted more RBPs than the Council had.

This information is shown in detail in the below table:

Year	Council decisions upheld by the Environment Court	Decisions dismissed - where Env Ct granted more than Council	Decisions dismissed - where Env Ct granted less than Council	% upheld	Total no where court decision reached
2001	6	2	1	67%	9
2002	3	1	0	75%	4
2003	3	2	0	60%	5
2004	8	2	0	80%	10
2005	1	2	0	33%	3
2006	1	1	0	50%	2
2007	0	1	0	0%	1
2008	0	0	0		0
Totals	22	11	1		34

In considering the detailed information shown in the table, it needs to be noted that almost all (i.e. 9) of the appeals resulting from 2006-2008 consents have not been determined and, as such, not too much can be read into the fact that the proportion being dismissed seems to be less in those years than in previous years.

c The key issues for monitoring

The following is a list of key issues that have been identified and are discussed in further detail below:

1. Is development being located in areas where it can be absorbed?
2. Is development (including the associated structures) harmonising with the topography and ecological systems?
3. Are views from public places being maintained or enhanced and, in particular, is development reasonably difficult to see in the ONL(WB) and ONF's?
4. Is sprawl of existing urban areas and along roads being avoided? And, is development of an "urban" character being avoided in the ONL and discouraged in the VAL.
5. Are the positive benefits of development outweighing the adverse effects of over-domestication?
6. Is development proving to be inappropriate in almost all locations in the ONL and in many locations in the VAL?
7. Is existing openness and naturalness being maintained in the ONL's?
8. Is the Arcadian and pastoral character of the VAL being maintained?
9. Are lots being prevented from being developed without RBPs?
10. Are cumulative effects being adequately addressed?

It is clear from this list of key issues that they include subjective terms which are not easily measureable. This can make monitoring difficult and necessitates value judgements or sometime anecdotal observations. It is noted that where problems are identified in the following discussion they may sometimes be a failure of the District Plan itself while on other occasions they may be

¹⁰ the authors were unable to find useful nationwide comparative data on the success rates of appeals

able to address through changes to administration of the Plan, the provision of greater non-statutory guidance, and the like.

d Is development being located where it can be absorbed?

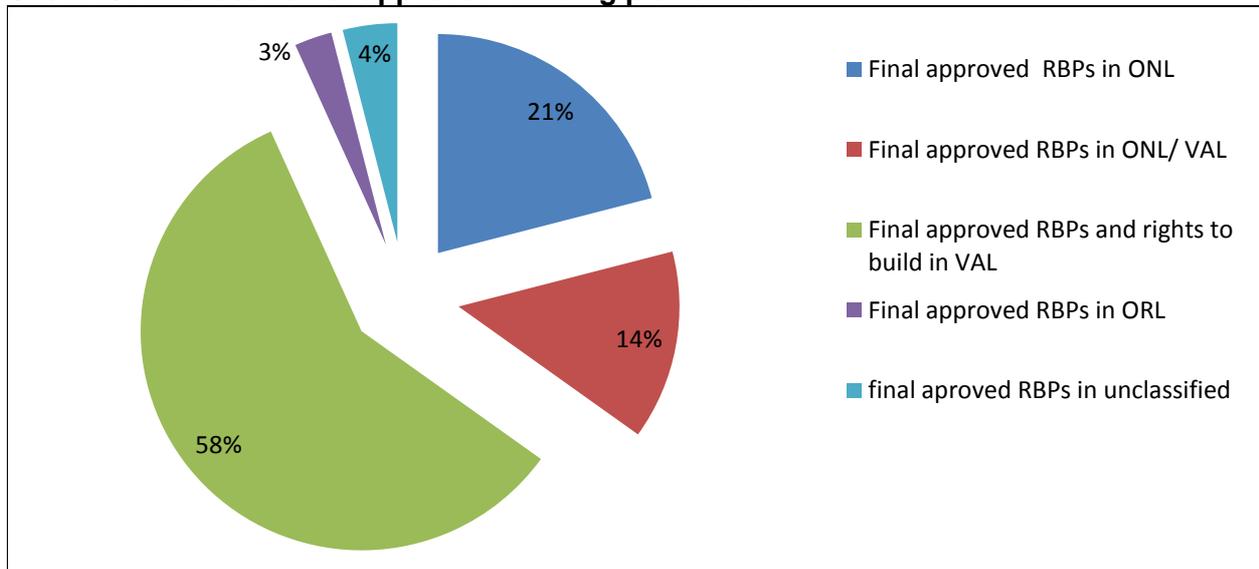
District Plan Methods aimed at addressing this issue

Part 4.2.5 Policies 1(a) and (b) are aimed at encouraging development in areas with the greatest potential to absorb it and are supported by various assessment matters. Specifically in the case of the ONL (DW¹¹), policies 2(b) and (c) aim to avoid development in areas with little capacity for change and to allow limited development elsewhere. Specifically in the case of the VAL, Policy 4(a) discourages development in places that are highly visible from public places or visible from public roads (or, alternatively requires the effects to be managed or remedied). The concept of absorption capacity is not directly referred to in the policies for the ONL(WB) or ONF's but the statement in the explanation of "discretionary status" that development will be inappropriate in almost all locations (in Section 1 of the Plan) and in policies 3(a)(iii) and 5(a)(iii) that development should be "reasonably difficult to see" suggest that these landscapes generally have a low capacity to absorb development. Notably, there is no policy relating to absorption capacity in the ORL.

Where are the approved building platforms located?

It is evident that of the 401 RBPs approved in the last 8 years, the vast majority are located in the VAL, with very few in the ONL and none having been approved on an ONF. If we are to assume that ORL (which is relatively small in land area) and VAL have the greatest absorption capacity and ONL and ONF the least, then the following graph seems to suggest that, generally, development is occurring in those areas with the greatest capacity to absorb it.

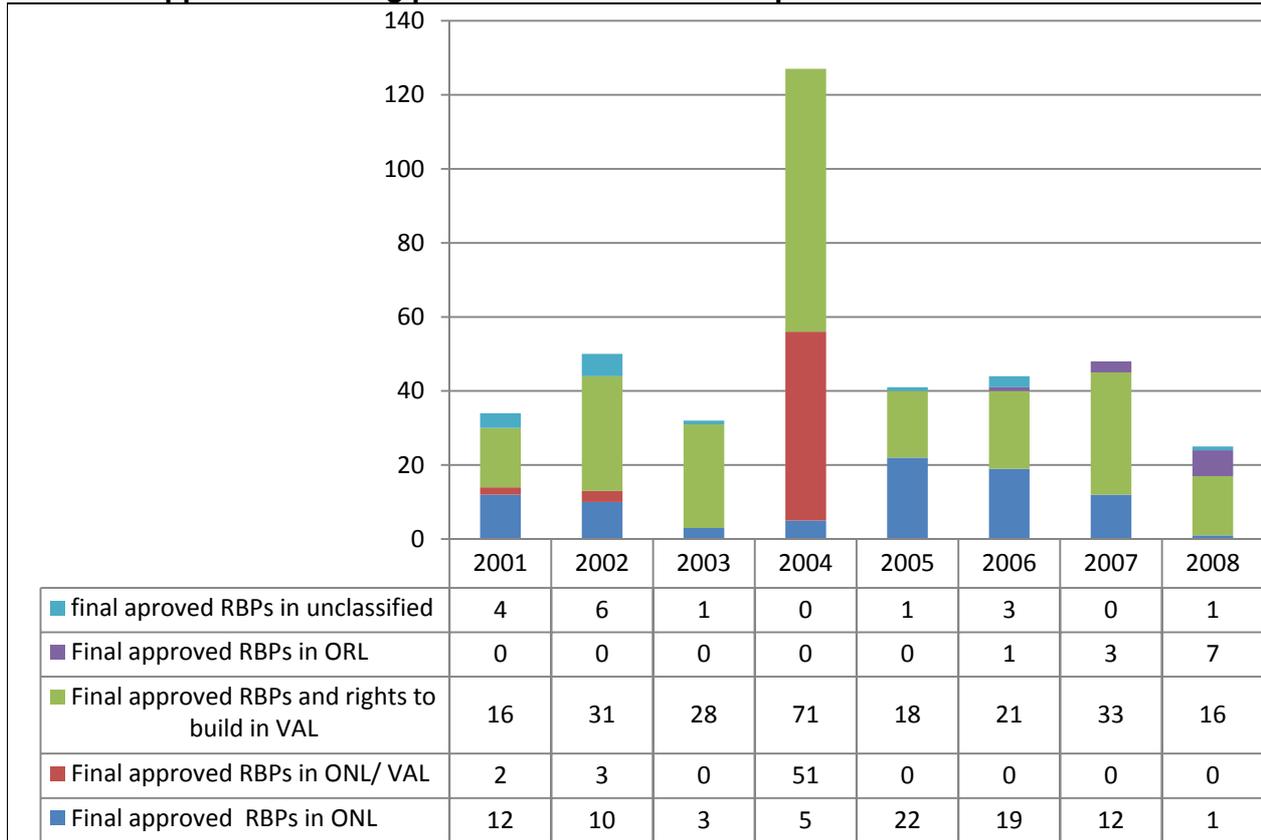
Chart 10: The location of approved building platforms



Note: This information only includes those resource consents, for which a final decision has been reached and, as such, the data is incomplete for the 2006 – 2008 period.

¹¹ District Wide

Chart 11: Approved building platforms in each landscape



There were a considerable number of RBPs approved in the ONL/ VAL category (which is attributed to those applications where the RBPs are located on both landscape categories) in 2004. However this is solely attributable to the 51 RBPs approved as part of the Infinity Investment's 2004 resource consent for Hillend; of which around ½ were located in the ONL.

Whereas approved RBPs in the ONL have, on average, made up just 21% of approved RBPs in all other years, a relatively high number of RBPs were approved in the ONL in 2006 and 2007 (making up 33% and 25% of all approved RBPs in these years, respectively). These approvals comprised a number of small scale developments (mainly involving 1 – 2 RBPs each) located mostly in the Glenorchy area followed by Cardrona, Skippers, and Hawea and, notably, none were in ONL (Wakatipu Basin). This data seems to support and/ or reflect the existing distinction that the District Plan makes between the ONL(WB) and ONL (DW) whereby the tests of appropriateness of development in Wakatipu Basin are likely to make it more difficult for applications to be consented. An alternative explanation that aligns with comments made by practitioners and decision-makers is that the ONL category covers an array of landscapes; some of which are possibly more valuable and pristine than others. For example, it has been suggested by some that the Cardrona Valley may have a higher ability to absorb development than other ONL areas (or alternatively, that it is more compromised). This is one example where a finer grain landscape analysis and more geographically specific guidance on development potential could be useful.

Notably, no RBPs have been approved on ONF's at all during the monitoring period. Whilst there have been some development approvals on ONF's (such as those on Roys Peninsula) these were lodged and heard by Council prior to October 2001 (from when the data collection period began for this study) and hence are not recorded here even though the rules were given considerable weight in those cases.

Also of note is the fact that there is less approved development in the ORL than one would expect (just 11 RBPs between 2001 and 2008). The small number/ percentage in the ORL is most likely

due to the fact that it covers a very small area of the overall Rural General zone and that considerable development was approved in the ORL as a result of applications lodged and heard by Council before October 2001 (and so, is not included in the figures in this report). It may also be influenced by the fact there is considerable development capacity in the Rural Residential and Rural Lifestyle zones and this may provide a simpler, more cost effective option for developers/purchasers.

What is the ‘form’ of the development being approved?

The attached RBP maps (in Appendix 2) provides further detail in regard to where RBPs have been approved and illustrates clearly those areas which are considered to have an ability to absorb development and those that are not. As can be seen from the RBP maps, 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 (rather than spread out over the landscape as would be likely to occur under a minimum or even average lot size regime).

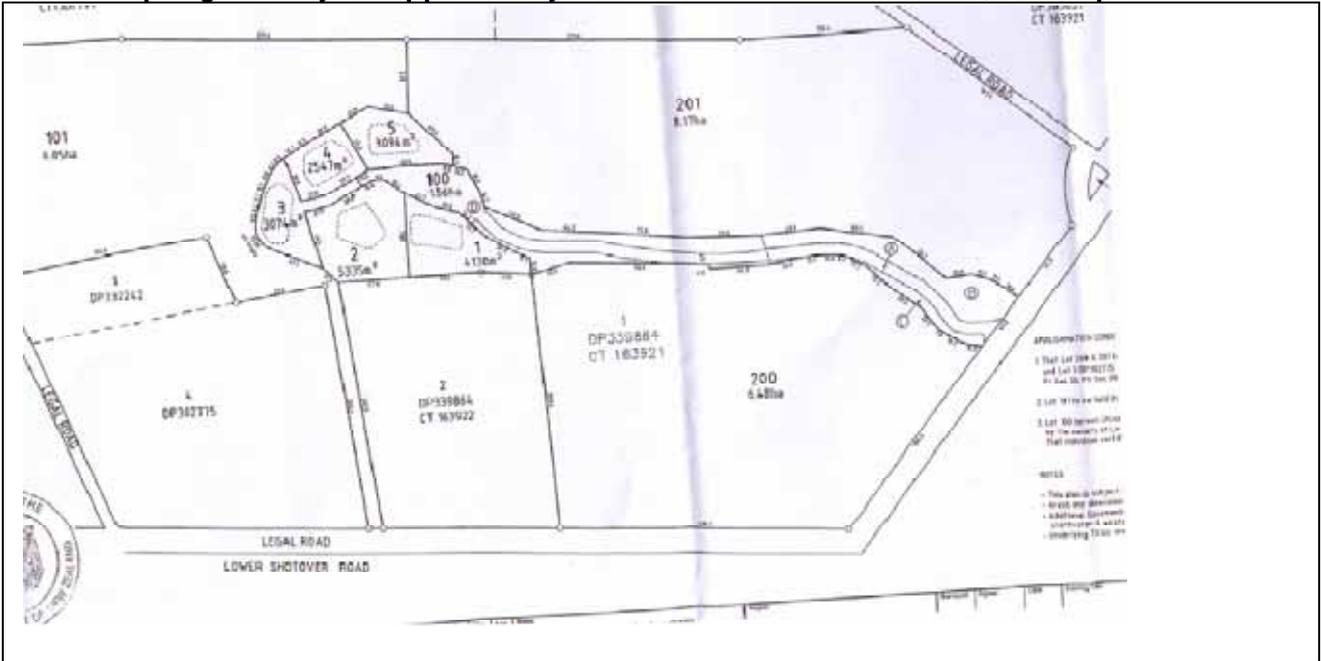
By enabling a landscape-led subdivision design unencumbered by minimum lot size regulations, clustered development surrounded by areas of rural land is becoming the favoured pattern of development in the Rural General zone. It appears from the data that at least 1/3 of all approved resource consents (for new RBPs or lots) include a condition requiring a covenant to be registered on the title or a consent notice preventing any further subdivision of the site. Provided such covenants are in perpetuity, this is considered to be an effective way of ensuring a degree of separation between domestication and maintaining or enhancing the existing character (be it Arcadian, pastoral, open, or natural) and is therefore considered to be consistent with the intent of the District Plan. The future of those covenants and consent notices and the future of those other properties that have not had such controls placed on them may be one issue for further consideration.

The following example shows the initial proposal (for 7 lots) which was declined by the Council and then the amended layout (comprising 5 lots) approved by the Court. In both cases, the balance land was covenanted against further subdivision but, notably, the Environment Court decision removed the two lots that were visible and approved the remainder.

Plan 1: Springbank layout applied for and declined by the Council – VAL, Wakatipu Basin



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



Below is a similar example whereby a 10 lot subdivision was declined and, instead, a more landscape sensitive, 5 lot subdivision was approved. Again the balance land was covenanted against further subdivision.

Plan 3: Cochrane and Sundance Properties (RM020327) – VAL, Wanaka.



As this development has been largely given effect to we are able to consider how this actually looks “on the ground” from the adjacent public road.

Picture 3: Cochrane and Sundance Properties (RM020327) – VAL, Wanaka



Picture 4: Cochrane and Sundance Properties (RM020327) – VAL, Wanaka.



The decision concluded that despite the fact that one or two of the houses would be visible and there would be added domestication, the design itself coupled with covenants regarding landscaping and retaining the balance lot in pasture would mean that pastoral and rural character would be retained.

It is clear that whilst the rules are not necessarily preventing development in the ONL's or on ONF's, there are numerous examples (on Roys Peninsula and on Morven Ferry Hill, for example) where applications which fail to meet the various tests (such as being "reasonably difficult to see") are being declined.

Of those RBPs that are being approved in the ONL and on sites which span both the ONL and VAL, they are generally being located in areas that have been considered to be able to absorb the development and where the development is reasonably difficult to see. However, there are examples where the Council's commissioners have reached different conclusions from the Court as to whether the criteria relating to absorption capacity and visibility are sufficiently satisfied (such as RM060223, lodged by Cardrona Alpine Developments Ltd). This may suggest that more

guidance may be necessary on how these terms should be interpreted although it is also acknowledged that differing interpretations are perhaps unsurprising given the subjective nature of landscape terms and the discretionary regime.

There is also a recent example RM070578 (lodged by Glentarn Group Ltd) in which the Court, again, disagreed with the Council's conclusion that the development could not be absorbed and went further to stress that the landscape-related policies do not necessarily take precedence over the other policies of the Plan and that, as such, there may be times when activities are appropriate even if they have landscape effects in the ONL. Council may wish to further consider the effect this interpretation will have on the effectiveness of the provisions into the future and whether it considers such outcomes to be appropriate and, if not, whether a change to the provisions is necessary in order to elevate the landscape matters above others. Also, whether there should be an emphasis on making development hidden as opposed to being sympathetic could be reconsidered and made clearer.

As a counter-argument to the view that landscape values should be paramount in the Rural General zone, there is certainly a concern amongst some practitioners that there has been too much emphasis on landscape effects in the past 8 years, at the expense of giving full consideration to other matters. The *Glentarn vs. Queenstown Lakes District Council* decision (C10/2009) may prompt some change in the application of the provisions and this will need to be monitored carefully in coming months.

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.

e Is development (including associated accesses, structures, and planting) harmonising with the topography and ecological systems? And, is the mitigation itself consistent with the natural patterns of the landscape?

District Plan Methods aimed at addressing this issue

Objective 4.2.5, policy 9 (zone wide) and policy 1(c) are aimed at ensuring/ encouraging subdivision, development and structures harmonise with the landscape (ONL-DW), policy 3(a)(iii) and 5(a)(iii) are aimed at ensuring the visual impact will be no more than minor (ONL-WB and ONF), policy 4(c) discourages linear planting along roads (VAL), and policy 9(c) is aimed at providing greater road setbacks (zone wide). The rules enable a dwelling to be erected on a RBP as a controlled activity, control structures within close proximity of roads, and control some types of planting (such as forestry, and wilding species). The assessment matters provide further guidance on these matters and specifically guide the decision-maker to consider the effects on the landscape resulting from accesses, mitigation measures, and planting when considering an application.

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 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 and, typically, conditions will be imposed at the time of approving a RBP which control the height (generally not more than 5.5 metres) and external appearance of the building.

There is an emerging practice by some commissioners to require actual building plans to be submitted at this stage rather than rely on design conditions. This imposes a significant additional cost but, undoubtedly enables a more accurate assessment of effects and may well be justified in more sensitive landscapes and may increase the chance of approval. It would seem however that a common policy on whether this is necessary should be reached between commissioners and Council and a consistent approach established.

What is not effectively captured in regard to the built form is the density of dwellings/buildings within an approved building platform in that there are no density restrictions within a platform meaning that one could feasibly erect a number of modest residential units within a 1000m² platform as a controlled activity. Regardless of any effects on the landscape, it raises issues as to whether it is appropriate to enable this level of density in rural areas.

The issue has arisen as to whether utilities should be put in place as part of a condition for approval for subdivision or a RBP. Traditionally, this has been the accepted practice although in a recent decision the Council accepted an argument that this responsibility could be left to the buyer who needed to be aware of the situation.

On the one hand, given there are a large number of building platforms that have been approved (and given it would seem many will not be built upon for some time), it may be inefficient and have unnecessary effects on the landscape to put in such services in advance. However, Council officers have expressed Concern that purchasers expectations are inevitably that their section is serviced and also that this approach could encourage speculative subdivision.

There seems to be an emerging trend for people wishing to be self-sufficient in terms of energy generation for example, which if involving renewable energy would seem a positive trend on the one hand but also means that the effects on the landscape (of powerlines, for example) can not be considered as part of the application. It is thought that if they are sought via a later application, then it would be more difficult to decline the provision of the utilities given the existing RBP approval.

Again, it would be useful for Council and commissioners to apply a consistent policy on this matter.

The discretionary rule aimed at managing structures within 10 m of a road (introduced as part of the scenic rural roads Variation) appears to be effective, with no evidence of obtrusive gateways or other such structures located within this area as having been developed since these rules became operative.

The provisions enabling farm buildings to be created seem to be proving generally effective. However, the fact that there are no matters of discretion listed in the Plan (for a restricted discretionary activity) and that farm buildings approved prior to the farm building rules existing can presumably form part of the permitted baseline suggests that there are risks the rule may be applied in a manner not envisaged by the Council. Some amendment may be appropriate to address these matters.

Is roading/ access harmonising with the landscape?

There is considered to be adequate control and guidance through the policies and assessment matters to ensure that accessways are amalgamated where possible and located and designed in order to avoid or minimise effects on the landscape. That said, a tension which does arise is the fact the accessways that are appropriate from a landscape perspective often conflict with Council's engineering standards for accessways. This may require further investigation with resultant changes being possible to the Plan or the Council's engineering standards.

Is planting harmonising with the landscape?

Planting can (and has) significantly changed the character of the Rural General zone. Whilst this undoubtedly has some positive effects (such as enhancing naturalness, especially where it had previously been degraded), it can be argued that it can also have potentially negative effects if poorly executed (such as reducing openness or pastoral character). Whilst such planting can certainly be considered (and declined where inappropriate) at the time of development, it needs to be acknowledged that most planting can occur as of right if done independently of an application for development provided it does not involve wilding species or adversely affect views from public roads.

As discussed earlier, the increase in vegetation has perhaps been the most significant landscape change in the Rural General zone over the years, especially in areas such as the Wakatipu basin. Whether or not people consider this a negative effect would be worthy of further consideration and it also needs to be acknowledged that it would be difficult to reasonably control planting via a District Plan in a rural environment that is designed to enable rural activities. However these effects may be able to be controlled more indirectly as reducing the number of dwellings that are consented would likely reduce the amount of associated planting.

Whilst amenity planting in the VAL would appear to be consistent with the assessment matters 3(a) relating to effects on natural and pastoral character there is no doubt that the extent of planting which is being approved (but which is not yet apparent) will significantly change the pastoral character of the VAL.

The “Just one Life” development (RM000536) is considered to be a successful example of planting which harmonises with the landscape. This is discussed in the following section of this report in regard to the visibility of development, in the context of mitigating the visibility of development through planting.

The Hawkesbury development below illustrates a significant change in character, in conjunction with the development of 2 building platforms (yet to be built).

Picture 5: Hawkesbury (RM010800) – VAL: Wanaka. The site – prior to the development of the vineyard – 2000



Picture 6: Hawkesbury (RM010800) VAL: Wanaka. Actual outcome as at February 2009



Again, while opinions as to whether such landscape effects are positive or negative will vary, this example does highlight the fact that the District Plan is silent on whether vineyards are considered to enhance the character of the VAL.

Mitigation and whether this harmonises with the landscape

The District Plan requires that the mitigation itself should not detract from the existing natural landscape (Assessment matters 5.4.2.2(1(b)(iv), (2)(a)(iii), 3(b)(iii), and 4(iv)) and this philosophy applies across all landscape categories.

Typical forms of mitigation (aimed at reducing visibility) are planting and earthworks/ mounding. Both have their share of problems with the effectiveness of using vegetation as mitigation and the appropriateness of using mounding, especially in flat landscapes, both being increasingly questioned by practitioners.

The issue with regard to vegetation is not so much whether it harmonises with the landscape (although the cumulative effect of planting is discussed throughout this report) but, rather whether it is a reliable form of mitigation. This is discussed in the following section of this report in regard to the visibility of development.

The other common form of mitigation is mounding, aimed at reducing the visibility of the development from public places and public roads.

The photo below shows a successful example of using mounding to mitigate the effects of development.

Picture 7: Springbank (RM050238) – Lower Shotover Rd (March 2009)



Whilst care was taken in the conditions of this decision to ensure that the mound would appear as a natural part of the adjacent landform, this is not always the case. The following example (of mounding in the ORL) shows how mounding can appear as a completely unnatural part of the landscape and can, itself, have an adverse effect. Notably, discussions with consultants indicated that they are moving away from applications that rely on mounding, citing that it is extremely difficult to get them to work and to appear as a natural part of the landscape.

Below is an example in the VAL (property on Domain Road, April 2009) of a mound established to hide a dwelling and, for comparison, a photo of the site immediately next door, in its undeveloped form. It is believed that the now developed site would have looked similar to that on the right prior

to being developed, which provides an indication of the change that mounding and planting has on the character.

Pictures 8 and 9:



The discussion and examples above would suggest that perhaps mitigation vegetation is more appropriate but this, certainly, has not been without its problems (as outlined below).

It is therefore concluded that the most reliable and appropriate means of mitigating the visibility of a development is to locate it within a landscape which, without modification, can absorb it and meet the test/ criteria in the plan without considerable further mitigation. This may be an amendment that Council consider appropriate.

That said, provided extreme care is taken with regard to the conditions to ensure that:

1. the mitigation harmonises with the natural landscape patterns,
2. that it can realistically and effectively achieved, and
3. development is prevented from commencing until the mitigation is in place

Then the provisions can be effective in protecting landscape effects. Whether this eventuates may rely to a large extent on the quality of decisions and implementation (and enforcement) of conditions.

f Visibility – Whether the policies seeking to avoid or minimise visibility and retain and enhance public views are being achieved?

District Plan Methods aimed at addressing this issue

The policies are aimed at enhancing the amenity values of views (ONL-WB, ONF, and ONL-DW), and managing the effects of development that is visible/ highly visible from roads/ places (VAL). The Assessment matters are consistent with these policies and go into considerable detail.

Discussion

Rightly or wrongly, the policies enable the use of mitigation in order to achieve this end result. The use of mounds has been discussed above, concluding that whilst they may successfully reduce visibility, if they are executed badly or applied to a landscape which is naturally flat, then they, themselves, are likely to have adverse effects on the landscape values. The other common mitigation technique is vegetation and this is further discussed in this section.

One such example which has been fully given effect to, is ‘Just One Life’ (RM000536) on Roy’s Peninsula; an ONF in Wanaka. Whilst it was lodged and heard by Council prior to the discretionary regime becoming fully operative, the discretionary regime was influential in the Environment Court hearings. As such, even though it is not captured in the monitoring data, it is certainly relevant in the context of its ability to be absorbed into the landscape.

The first photo is a simulation that, along with other evidence, satisfied the Environment Court that it would be absorbed into the landscape and the second shows how it looked in around Autumn 2007, with the benefit of some 3 – 5¹² years of plant growth.

Picture 10: Just one life (RM000536) - Simulation provided to the Court. Source: Boffa Miskell. Photo taken circa Winter 2001



Picture 11: Just one life (RM000536) (Circa Autumn 2007) - Source: Boffa Miskell



Examples of successful planting such as the Just One Life consent discussed above show that, under all the right conditions, vegetation can achieve a successful result. However, the problem lies in the fact that successful mitigation and the timeframe within which that is achieved is contingent on growth rates, which is itself contingent on the species and maturity of the plants selected, the local conditions (including the degree of irrigation, shelter provided), and the

¹² The main amount of plantings around the house were undertaken in Spring 2001/Autumn 2002 with the last of the amenity plantings (grasses, shrubs) directly adjacent to the house completed in Autumn 2004).

commitment of the landowner. Notably, the Council's planners¹³ have reported a noticeable change in commitment once the developer sells and passes the individual lots onto landowners. Then once established, the planting is susceptible to disease, fire, and over-zealous pruning in order to maximise views and sunlight.

Below is an example in the VAL and one which illustrates issues relating to visibility and the reliance on planting in order to reduce visibility. The decision approving this dwelling determined that the dwelling would not be obtrusive or even obvious from public places once the mitigation planting was established. This first photo shows one of the most prominent public views of the dwelling. The second photo is of the planting that has been undertaken in accordance with the conditions of consent. As can be seen, the planting is still relatively immature and it is considered that it provides ineffective screening at this stage and provides an example whereby it would have been more appropriate if the condition had prevented the dwelling from being established until effective screening was achieved (i.e. the trees had grown).

Picture 12: Fletcher and Fowler (RM040306) – Visibility from Malaghans Rd – VAL, Wakatipu Basin. March 2009



Picture 13: Fletcher and Fowler (RM040306) – A close up of the mitigation planting. March 2009



To the contrary, the Hawkesbury development (shown in previous photographs under the title “Is planting harmonising with the landscape”) is an example where the house could not be constructed until the vineyard and cluster planting was established.

Whilst we are not suggesting that the Fletcher and Fowler dwelling is necessarily inappropriate, the above examples and discussion bring into to question whether developments should be approved if they are only deemed appropriate due to conditions relating to planting. It has been

¹³ The term ‘council planners’ is used generically and often also includes comments made by Council’s Landscape Architects

common place to impose conditions deferring development for a certain period or until the planting has been undertaken but, in acknowledgement of problems arising, the conditions imposed by some commissioners have become increasingly effects-based, stating that development can only commence once the screening has been achieved. Certainly there would again seem to be a need for consistency in Council decisions on this matter.

That said, it the authors' view that both mounding and vegetation should be used sparingly in order to achieve an acceptable level of visibility and that, as stated earlier, it may be worth considering whether only existing topography and mounding should be used to mitigate a development's visual effects.

It is considered that views from public roads and places are generally being maintained. The provisions relating to planting and structures within close proximity to roads seem to be working and, whilst the building setbacks have become somewhat superfluous as a result of the discretionary regime, approved buildings are being well set back from roads. To give an idea of the degree to which dwellings are being setback, of those case studies looked at as part of the monitoring, the closest dwelling to the road was in the VAL and was setback some 75 m from the road.

When assessing whether development is proving to be "reasonably difficult to see" in the ONL and ONF's, the sheer subjectivity of the wording is immediately apparent. This, in itself, raises issues with regard to the effectiveness of this policy. Whilst the degree of visibility that is deemed to be appropriate is highly subjective, the below photo of the Just One Life dwelling (RM000536) provides an example of a development that the Environment Court considered to be "reasonably difficult to see" (from the lake, in this instance). It is not known whether this is the sort of outcome that the Council and community imagined would be allowed in such landscapes when the provisions were drafted. Notably, in making such judgements the extent to which the public place or road is frequented by the public is considered relevant in determining the effect.

Picture 14: Just one life (RM000536) (Circa Autumn 2007) - Source: Boffa Miskell



Again, it is not specified as to what degree of visibility is appropriate in the VAL however it has become generally accepted that it should be reasonably difficult to see in order to be approved.

To get an idea, we can consider that Fletcher and Fowler application (RM040306) was deemed to not be obtrusive, and the Cochrane application (RM020327) would be visible but despite this, the pastoral/ rural character would be maintained. Again, the question is whether the Council and community concur with these conclusions and whether these outcomes are what was imagined

would be allowed in the VAL of the Rural General zone and whether they feel this level of visual effects is appropriate.

Various practitioners and decision makers have raised concern over whether there is sufficient ability to consider the visual effects of lighting at night. Whilst there are assessment matters relating to this matter, clearly from the comments made, it is too subjective and is cause for unnecessary debate which could potentially be avoided if there were more direction as what effects are appropriate.

**g Whether sprawl of existing urban areas and along roads is being avoided?
And, whether development of an urban character is being avoided in the ONL
and discouraged in the VAL?**

District Plan Methods aimed at addressing this issue

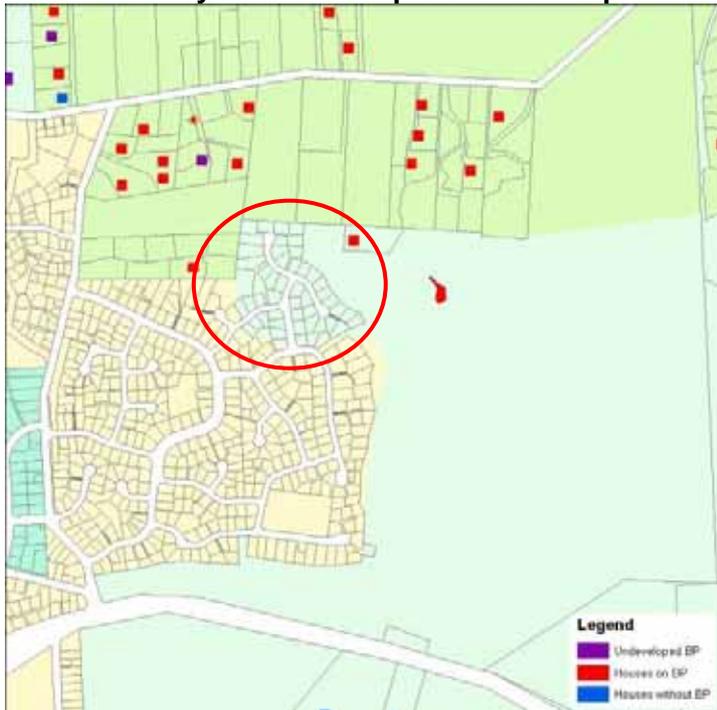
Objective 4.5.2, policy 6 aims to avoid new urban development in ONL(WB), discourage it in ONL(DW) and on ONF's and to avoid, remedy, or mitigate the effects where it does occur in ONL(DW) and VAL. Objective 4.5.2, policy 7 aims to identify the edges of urban areas (be they existing, extensions to existing areas or new urban areas and the assessment matters go onto suggest that design solutions (such as open space covenants) may be used to achieve this policy.

Discussion

The RBP map does not indicate that development is sprawling along roads, which suggests that the assessment matters relating to the form and density of development in the VAL and those relating to the visibility of development from roads are effective.

On the other hand, various resource consents seeking extensions to the urban areas (adjacent to Mt Iron (shown in the map below), Lakes Hayes Estate, Millbrook, and, with the pending approval of residential development at the Hills, Arrowtown) suggest that the policies relating to avoiding urban sprawl and clearly defining urban edges may not be sufficiently strong.

Plan 4: Allenby Farms example of urban expansion at Mt Iron, Wanaka (RM041142)



Whilst there are not many examples of development of an urban nature having been applied for, the one that was applied for was approved. This was located in the VAL adjacent to the existing Low Density zone in Wanaka and comprised 46 lots of a low density residential character. This indicates that, at least in that instance, the policy seems to have been ineffective at discouraging it from being approved.

A complicating factor is that although there are the policies relating to clear urban edges in the Rural General Zone referred to above, there is also a District Wide policy which encourages the orderly extension of urban areas¹⁴. The issue of urban areas being extended via resource consents is also apparent in the Rural Living Zones. A more detailed discussion on the causes of this and the issues it gives rise to is expected as part of the forthcoming monitoring report on the Rural Lifestyle zones. It is understood Council are considering undertaking work at present to manage the extension of urban areas in a more strategic manner.

h Whether the positive benefits of development are outweighing any adverse effects on landscape?

District Plan Methods aimed at addressing this issue

In order to achieve the over-arching objectives and policy 8(a), in relation to avoiding cumulative effects, the assessment matters suggest various positive benefits that might derive from development. In the ONL these include whether it will maintain or enhance ecosystems and features; retain or re-establish native vegetation; protect open space; or provide an opportunity to remedy or mitigate existing adverse effects (e.g. through removing inappropriate structures) (5.4.2.2.(1)(f) and 2(d)). In the VAL such positive trade-offs are not expressly referred to and in the ORL the only reference is to the provision of public recreational areas (5.4.2.2 (4) (x)).

Regardless, environmental benefits are commonly volunteered as part of applications in both the VAL and ONL (and in accordance with the RMA, positive effects can be given weight to).

¹⁴ Refer 4.9.3 Objective 3, Policy 3.1 and also note the explanation of consolidation in the 'explanation and principle reasons for adoption'.

Discussion

Ecological restoration

Data suggests that around a quarter of all approved resource consents (for new RBPs or lots) include a condition relating to ecological restoration.

Whilst on the face of it this would appear to be a relatively effective way of achieving certain environmental benefits, the varying degree of success with the replanting, regeneration and establishment of ponds and wetlands means that this requires further consideration. At the “Just One Life” property (RM000536), the ongoing monitoring by the landowner provides an insight into the hugely divergent success rates in achieving successful ecological restoration and the ongoing commitment that is required to make it effective in terms of planting, re-planting, irrigation, and pest and weed control. For example, even with all the care in the world certain conditions in certain parts of a property (e.g. a lack of shelter) will slow growth (and hence, the effectiveness of ecological restoration) considerably. If this environmental benefit is truly a contributing factor to deciding to grant an application then it is considered critical that conditions specify the exact species, spacing, and maturity of the planting; that review conditions are imposed; and that enforcement action is taken if trees are removed or die.

Open space

Council's records show that around a third of all approved resource consents (for new RBPs or lots) include a condition preventing any further subdivision of the site. This is considered to be an effective way of ensuring (into the future) a degree of separation between domestication and maintaining or enhancing the existing character (be it Arcadian, pastoral, open, or natural).

Remedying “past mistakes”

Whilst the use of this has not be widespread, examples such as Infinity's Hillend Station (RM 040671) resulted in the removal of inappropriately located building platforms (approved prior to the current provisions) in favour of a larger scale but more appropriately located development, which also included the provision of various environmental benefits and public amenities. It is therefore considered to be an effective assessment matter which, although not particularly necessary, probably does serve a useful purpose of highlighting it to applicants and practitioners as a potential positive effect where it may otherwise be over-looked.

i Whether development is proving to be inappropriate in almost all locations in the ONL and in many locations in the VAL?

District Plan Methods aimed at addressing this issue

The explanation of discretionary activities in Part 1 of the District Plan states that applications are discretionary in ONLs and ONFs because development is inappropriate in almost all locations within the zone; in VAL because development is inappropriate in many locations; and in ORL because development may affect neighbours' amenities.

Is development proving inappropriate in almost all locations of the ONL's and ONF's?

There have been a relatively small number of applications for RBPs in the ONL over the past 8 years (just 20% of all applications) and 40% of all RBPs applied for in the ONL have been declined. It is also the collective view of practitioners and decision-makers that the message is sufficiently well-understood there is not a presumption in favour of approving applications in the ONL and on ONFs and that there are limited sites where approval is likely to be given. It is therefore considered that development is proving to be inappropriate in almost all locations.

That said, it has been proposed particularly by decision-makers (including an Environment Court judge) that there would certainly be a case to make development non-complying in some parts of the ONL/ ONF's. The consent data suggests that most approvals in the ONL are occurring in Glenorchy and the Cardrona valley. One the one hand it may provide a clearer message to readers of the Plan if some areas were non-complying, but on the other hand there may be little

need for a change if there are few consents being granted anyway. The inconsistent level of approvals in different parts of the ONL suggests that it may be more efficient for some acknowledgement and guidance in the provisions of what areas can absorb more development than others (based on a detailed landscape analysis).

Alternatively this variance be due to the fact that the assessment matters relating to visibility and visual coherence are 'tests' which must be met in the ONL(WB) and on ONFs whereas they are simply criteria for consideration in the other ONL's and, hence, the 'bar' of what is appropriate is in fact lower in the ONL (DW). 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.

As stated earlier, one matter which needs to be carefully monitored and considered by the Council into the future the *Glentarn vs. Queenstown Lakes District Council* decision C10/2009) whereby policies relating to rural activities were given considerably more weight than had previously been the case and affected the interpretation of the landscape policies. If similar interpretations prevail in decisions in the future, the effectiveness of the landscape provisions in areas where there is more productive rural activity may be compromised. The Council needs to consider whether it supports such outcomes and if it feels that such development is inappropriate, it may need to consider making the plan more explicit in its presumption against development (and the primacy of landscape outcomes) in such areas.

The *Glentarn* case also raised doubt as to whether the Plan is structured to emphasise the presumption against approval in the correct manner. Note the following excerpt:

[60] Mr Henderson notes that discretionary activity status has been afforded by the Plan in ONL's because:

in or on outstanding natural landscapes and features the relevant activities are inappropriate in almost all locations within the zone, particularly within the Wakatipu Basin or in the inner Upper Clutha area; (part 1.5.3(iii)) of the Plan.

However this explanation of the status of activities is an introductory comment and must give way to the actual provisions of the Plan and the Act concerning the particular activity in question.

Certainly, as again highlighted by this case and discussions with practitioners, it would seem worthwhile to repeat the information on the presumption of activity status from Section 1 in the Rural General Zone of the Plan.

Is development proving inappropriate in many locations of the VAL?

A total of 234 building platforms have been approved in the VAL in the past 8 years, with 37 having been declined, noting that the final decisions on a further possible 7 RBPs have yet to be made. Whilst it is very difficult to conclude whether these figures alone are an indication that the provisions are working or not, clearly many applications are approved in part, with some of the RBPs sought not being allowed. Just 13 of the RBPs that have been declined are the result of applications having been declined in their entirety with the other 24 declined RBPs being the result of having approved many consents only in part (e.g. the applicant applied for 3 RBPs and was granted 1). These figures seem to suggest that there have not been many sites which have been deemed to be completely inappropriate for development. Rather, many sites have proven to have some ability to absorb development although there are locations within these sites where development is inappropriate.

It is difficult to conclude that the VAL is not functioning as envisaged as there is evidence that many areas are not proving appropriate for development (as can be seen in the RBP maps in Appendix 2) and also in the level of attention that is being paid to locating development in appropriate locations in individual applications.

It is noted that there have been few applications that have been declined in their entirety, indicating that many if not most sites have proven capable of absorbing at least some development.

Note however that this conclusion is different from the concerns of settlement pattern and cumulative landscape effects raised elsewhere in this report.

j Whether existing openness and naturalness is being maintained in the ONL's?

District Plan Methods aimed at addressing this issue

The policies aim to maintain openness where an open character exists and to protect naturalness in the outstanding landscapes. The assessment matters relating to “the effects on the openness” and “nature conservation values” are consistent with the policies although it is noted that even in the ONL-WB these are criteria rather than ‘tests’ which must be met.

Discussion

Some Council planners consider that there is a lack of common understanding of what is meant by openness/ open character (amongst other terms) and potentially a tension in the assessment matters between trying to achieve open character and natural character. This is touched on in C163/2001 and in the Commissioners decision on RM080876 for Matukituki Trust (both Roys Peninsula sites). E.g. Roys Peninsula has been grazed for decades with most of the original indigenous vegetation removed. This gives it an open character. Any major indigenous revegetation proposal will reduce the open character, but will enhance the natural character. The assessment matters could be better worded to encourage/prioritise natural character over open character, or vice versa.

k Whether the arcadian and pastoral character of the VAL is being maintained?

District Plan Methods aimed at addressing this issue

Whilst there is no policy directly relating to Arcadian and pastoral character, assessment matter 5.4.2.2(3)(a) lists detailed matters which shall be considered.

Discussion

It would be beyond the expertise of the authors of this report to assess whether these characteristics are being maintained. On the one hand, there has been a significant amount of development that has been consented in the VAL over recent years, yet on the other hand the photo comparisons in Appendix 3 (arguably) suggest that the landscape effects of development over the last 8 years may not have been especially significant. It is suggested that if the Council felt that these matters are worthy of further consideration, professional landscape architect expertise would assist in such an analysis.

However, whilst the bigger picture analysis is more difficult to assess, it is considered that in individual applications there is evidence that the provisions are having an influence on outcomes that are consistent with arcadian and pastoral character. This can be seen through the relatively widespread use of open space/ no further subdivision covenants, and the extensive amount of amenity planting that is occurring around these clusters.

It is worth noting however, that the Landscape Architects responsible for administering the Plan have commented that whereas Arcadian character is applicable in the Wakatipu Basin it is much less so in the Wanaka and Hawea areas and, hence, the appropriateness of the term in relation to those areas is questionable. The cumulative effects of amenity planting is also considered later in this report in terms of the effect that it is having on the pastoral character and the legibility of the landscape (i.e. the glacial forms which so readily reflect the landscapes’ geomorphology, etc).

Notably, whilst there is extensive reference to the terms ‘pastoral’ and ‘Arcadian’ character in the assessment matters they are not used at all in the sparse VAL policies. This inconsistency

between the two parts of the plan has been raised as an issue by practitioners and one which would be worth further investigation.

Again, as outlined later in the report, there is considered to be a case for providing more of a spatial vision for how development may proceed to enable a settlement that is consistent with characteristics sought.

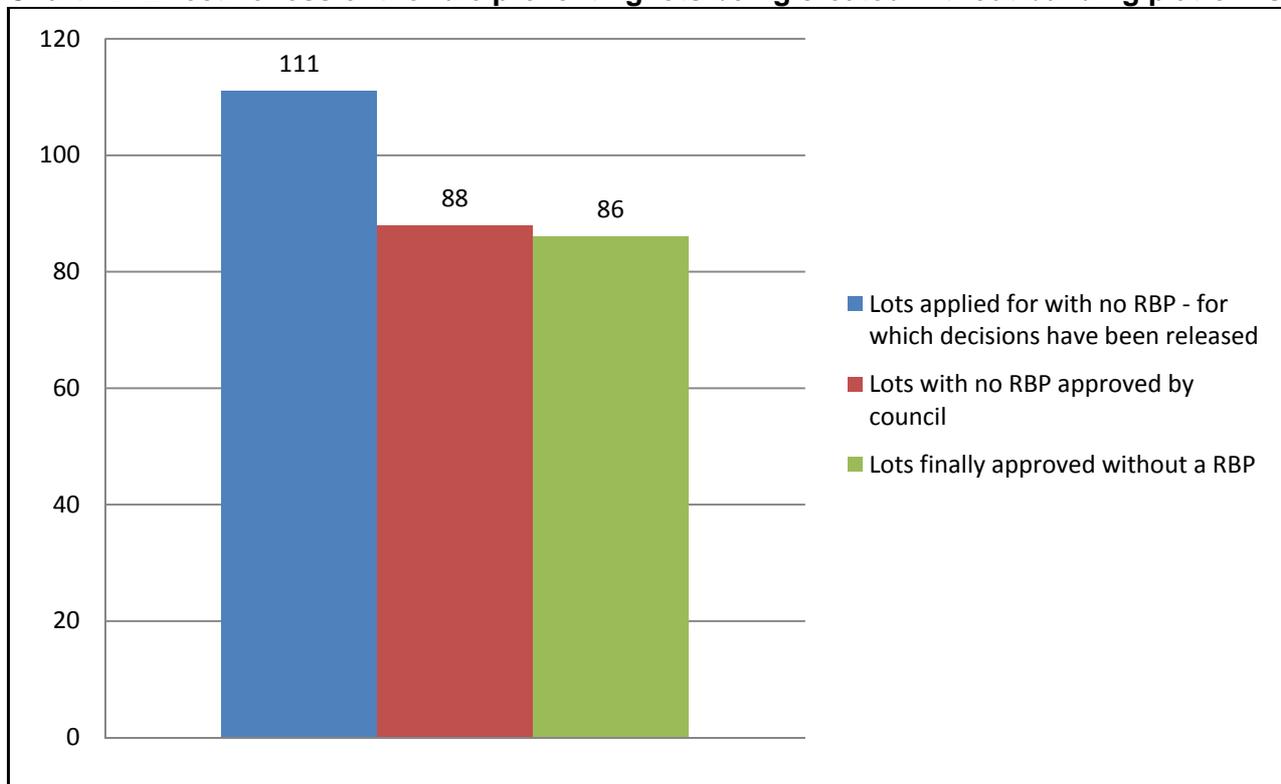
I How effective is the rule aimed at preventing lots from being created without a designated RBP?

District Plan Methods aimed at addressing this issue

Zone standard 15.2.6.3(iii)(b) makes it non-complying to create a lot without a RBP in the Rural General zone. It is understood the intention of this rule is to avoid the situation whereby lots are approved which may be unable to absorb a dwelling without affecting the landscape values yet a perceived 'development right' or expectation is created as a result of allowing the lot.

Discussion

Chart 12: Effectiveness of the rule preventing lots being created without building platforms



Despite the rule making it non-complying to create a lot without a RBP, there are clearly a large number being approved. Council planners explained that as there are no objectives, policies, or assessment matters which explicitly support or explain this rule, this is making it difficult to justify declining such applications on this basis. The above statistics seem to support the planner's concerns suggesting that the rule is ineffective at preventing subdivision without RBPs and indicates that it would be desirable for Council to consider strengthening it by providing objectives and/or policies to support it.

m Whether development in the ORL is achieving the objectives and policies?

District Plan Methods aimed at addressing this issue

Development in the ORL is guided by the zone-wide objectives and policies. These generally relate to encouraging development to occur where the landscape is capable of absorbing it;

ensuring its effects are minimised, avoided or remedied; ensuring it harmonises with the landscape; avoiding adverse effects; setting back buildings from roads and limiting signage; enabling rural activities to continue; and ensuring rural character is maintained. The assessment matters are also relatively minimal but are consistent with the direction set in the policy.

Discussion

The Council planners consider that the objectives and policies relating to the ORL are the clearest of all the categories and that the provisions are effectively achieving what is intended for this landscape category; which as they see it is a de facto rural living zone¹⁵. That said, it is considered that the ORL provisions achieve a superior outcome to that which would be achieved under the existing rural residential and rural lifestyle zones due to fact that there is more control over the form of development and associated landscaping. Presumably the ability to decline an application through the discretionary regime is influential in achieving a higher quality outcome.

Although there may be benefits as to the landscape outcomes of the ORL over the rural living zones (particularly when viewed from public places) it is understood that the Discretionary regime gives rise to considerably higher costs (see the efficiency discussions later in this report). The appropriateness of the ORL regime may be considered in this light if any review were undertaken.

In the below example, the applicant applied for 5 building platforms and was granted 4 with the decision stating that the reduction in platforms would reduce domestication. It goes on to say that this development will maintain a reasonable level of rural character. With the benefit of seeing the final outcome (as shown in the below photographs), it is questionable the difference in domestication that would have resulted from the extra house within this fully enclosed site would be noticeable (this is the only public view) and whether any degree of rural character has, indeed, been maintained.

Picture 15: Cloverdale (RM010343) – Entrance off Lower Shotover Rd



Picture 16: A house within Cloverdale (RM010343)



¹⁵ Rural Living Zones are a term used to denote the Rural Lifestyle and Rural Residential Zones of the District Plan.

Whilst no building has yet occurred in the below example, it is illustrative of a common form of development that is being approved in the ORL area known as the Speargrass flat triangle which includes extensive amenity planting, native vegetation, ponds, and mounding. Landscape Architects advise and caution that whilst the mounds in this example are “naturalistic looking, they don’t relate in any way to the flat terrace landform of the triangle”

Picture 17:



n Cumulative effects - Are cumulative effects being adequately addressed?

Methods in the Plan aimed at achieving this:

Part 4.2.5 Policies 3(iv), 5(iv), and 8 are all aimed at avoiding cumulative effects. In addition, Policy 3(c) aims to remedy or mitigate the effects of past development in the ONL(WB). The discretionary rule coupled with Assessment matters 5.4.2.2(1)(e), (2)(c), and (3)(d) are aimed at avoiding cumulative effects of development in the ONL, ONF, and VAL. It is noted that there are no specific assessment matters relating to cumulative effects in the ORL.

Discussion

Consultants spoken to made the comment that, given the extent of development approved already, most applications are now ‘borderline’ cases and, hence, cumulative effects are an increasingly important consideration.

From the RBP maps in Appendix 2 it is evident that there are large swaths of land that remain open and free of domestication. These are particularly in the ONL/ONF but are also evident in parts of the VAL. Whether this will remain into the future is a question that needs to be debated.

Discussions with consultants and decision makers suggest that even with the assessment matters to help consideration of cumulative effects, it is an extremely difficult issue and one which the District Plan does not deal with well. There are numerous examples (such as that by Cochrane and Sundance properties (RM020327), where the Council decision to approve consent also stated that the area is close to the threshold, beyond which no further change could occur without changing the character. Whilst such efforts to identify pending thresholds for cumulative effect are in theory, useful, it is questionable whether this is effective at influencing further decisions. The Council may wish to look at recording such comments in a systematic way (as recommended changes to the Plan would also be ideally recorded).

Whereas a minimum/ average lot size provision (or similar) would identify in a crude manner the acceptable level of development beyond which cumulative effects would start to change the character of an area, as there is no such provision in the Plan an assessment of cumulative effects needs to occur as part of each resource consent decision.

It is clear that cumulative landscape effects are proving difficult to manage through such case-by-case assessments. Although they are often discussed it is more common to find decisions that discuss the fact that thresholds for cumulative effects are approaching rather than decisions that actually turn on this matter.

The difficulty in managing cumulative effects is not an uncommon matter faced by RMA practitioners. Some have suggested that the RMA (with its emphasis on mitigating effects, amongst other matters,) does not provide for the adequate management of cumulative effects. In response to such criticisms, the Ministry for the Environment commissioned a report that suggested that problems were not so much with the legislation but more with the way it had been implemented¹⁶. The author of that paper (Philip Milne) supported the view expressed in an earlier paper by the Hon Peter Salmon¹⁷ that, while there were clear challenges in dealing with cumulative effects, the framework of the RMA is as good as one could expect to deal with them. To quote the Hon Peter Salmon:

'it is a case of identifying the resource, determining its capacity and then limiting its use...'

Interestingly, Philip Milne advocated the use of non-complying activities as a means of controlling cumulative effects, which are proposed to be withdrawn as a category by the Resource Management (Streamlining and Simplifying) Amendment Bill 2009. However, it would seem that principles suggested for managing cumulative effects may well be applicable within a discretionary regime such as that of the Rural General Zone.

The resource would seem to be reasonably clearly stated, being the landscape. Terms such as 'arcadian' and 'over domestication' as found in the assessment matters are used to give some indication of what the desired and undesired level of development is in the different landscape categories although, notably, there is a lack of description of the ideal landscape outcomes in the ORL. Whilst landscape analysis is a necessarily subjective discipline, as discussed elsewhere in this report, terms such as these have proved difficult to interpret consistently. A lack of any indication in the Plan of the level of development that will be appropriate (in spatial or quantified terms) may be making it difficult for practitioners to arrive at consistent conclusions as to whether the capacity of the landscape had been reached in terms of cumulative effects.

Generally, it would seem difficult to determine the capacity of a landscape in absolute terms, bringing into question whether the methodology outlined by Salmon and supported by Milne is more applicable to scientifically measurable resources such as water takes. However, it would also seem that the Plan could provide more direction as to the desired the level of domestication and potentially the appropriate spatial distribution of development in the various landscape categories.

An understanding of the history of the creation of the Rural General zone provisions coupled with the reading of the assessment matters does lead one to understand that potential cumulative effects were well considered and that there was an attempt to manage these (including through the 'circles criteria' method discussed below). However, it is suggested that cumulative effects may be better managed if there were objectives specific to the landscape categories describing the type of landscape that should result from development and subdivision. For example, if what is intended in the VAL is (or should become), by in large, clusters of development separated by distances of, say, 1.1 km with pastoral land in between (indicative of the traditional pattern of

¹⁶ Milne, P (2007) When is Enough, Enough? Dealing with Cumulative Effects under the Resource Management Act

¹⁷ Revisiting the Purpose and Approach to Resource Management Beyond the RMA conference. 30-31 May 2007

settlement of the valley floor)¹⁸, then this could be stated. It would seem this would provide a much stronger indication of where development can be appropriately absorbed and discourage individual consents incrementally adversely affecting the landscape.

What may be of even more benefit, albeit at greater cost to Council, would be to undertake a District-wide landscape analysis to identify where more development can be appropriately absorbed. Such a study may be of value on its own accord, although consideration may be given as to whether it could and should be incorporated into the Plan were it carried out by Council.

The circles criteria apply to the VAL and are designed to make the applicant and consent authority give consideration to the wider context, including existing development and other potential development sites. It is therefore considered that the method is one means in which the cumulative effects were designed to be assessed.

The Council's planners and solicitors, and the consultants and decision-makers spoken to were unanimous in their view that the 'circles criteria' (Refer Assessment matter 5.4.2.2(3)(c) – Form and density of development) are ineffective and that it has become somewhat superfluous and are seldom used. Whereas the assessment matter was initially used in all assessments, those involved in processing those early consents recall that at no time did a decision "turn" on that matter. Furthermore, some practitioners appear to be unclear as to the intention of the circles criteria.

It would seem unfortunate that the circles criteria have proven an ineffective tool. If the objectives and policies more explicitly outlined the desired landscape outcome for the VAL, it may reignite an interest in using this method in order to better consider how the development falls within the wider landscape context and the overall vision sought. For some time, and as part of the process of collecting information for this project, the digitisation of building platforms and dwellings has been carried out. Making this widely available and improving the accuracy of the information may assist in the consideration of cumulative effects and the amount of work required to be done to provide a wider context of an application.

Lastly, while this discussion has centred on cumulative landscape effects, it is considered that there are other, cumulative effects unrelated to landscape values which may result from development within the Rural General Zone and which it is felt may not be adequately considered in the processing of resource consents.

¹⁸ Similar evidence is understood to have been presented to the Environment Court in landscape evidence during the landscape hearings (1999- 2001). The exact details of the evidence and whether the evidence remains relevant would be worth investigating as part of any further landscape assessment of the Rural General Zone.

8 Monitoring District Plan Efficiency

Whether the Rural General provisions (in relation to the landscape) are efficient has been determined by weighing up the following costs and benefits.

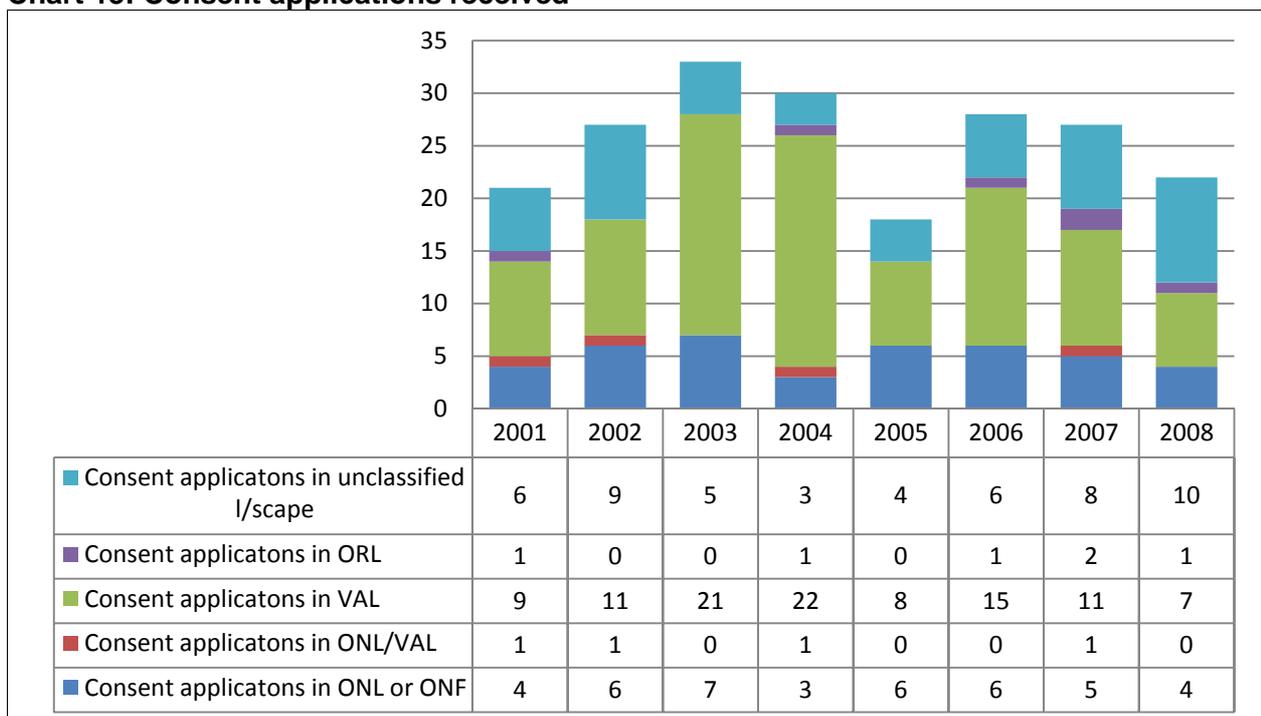
Costs	Benefits
Financial costs of administering the provisions/ processing resource consents	Thorough assessment of effects on the landscape
Time involved in resource consent processing	Public involvement in almost all resource consents for new residential development
Uncertainty to landowners, Council, and the community as to what the outcome of an application will be and what will be developed, where.	Retaining the current rules avoids the need for a Plan Change.
	The economic benefits derived from a successful and growing tourism industry and the wellbeing of the resident community. The importance of tourism as one of the district's main industries and the importance of 'beautiful scenery' to that tourism product makes it essential that landscape values are protected.

The financial costs of administering the provisions/ processing resource consents has been evaluated based on an assessment of:

- Number of resource consents triggered by the rules
- The average cost of processing resource consents triggered by the rules
- The number of resource consent decisions appealed to the Environment Court by applicants or submitters and the additional costs that this incurs

a How many resource consents are triggered by the Rural General rules for RBPs, dwellings, and subdivision?

Chart 13: Consent applications received

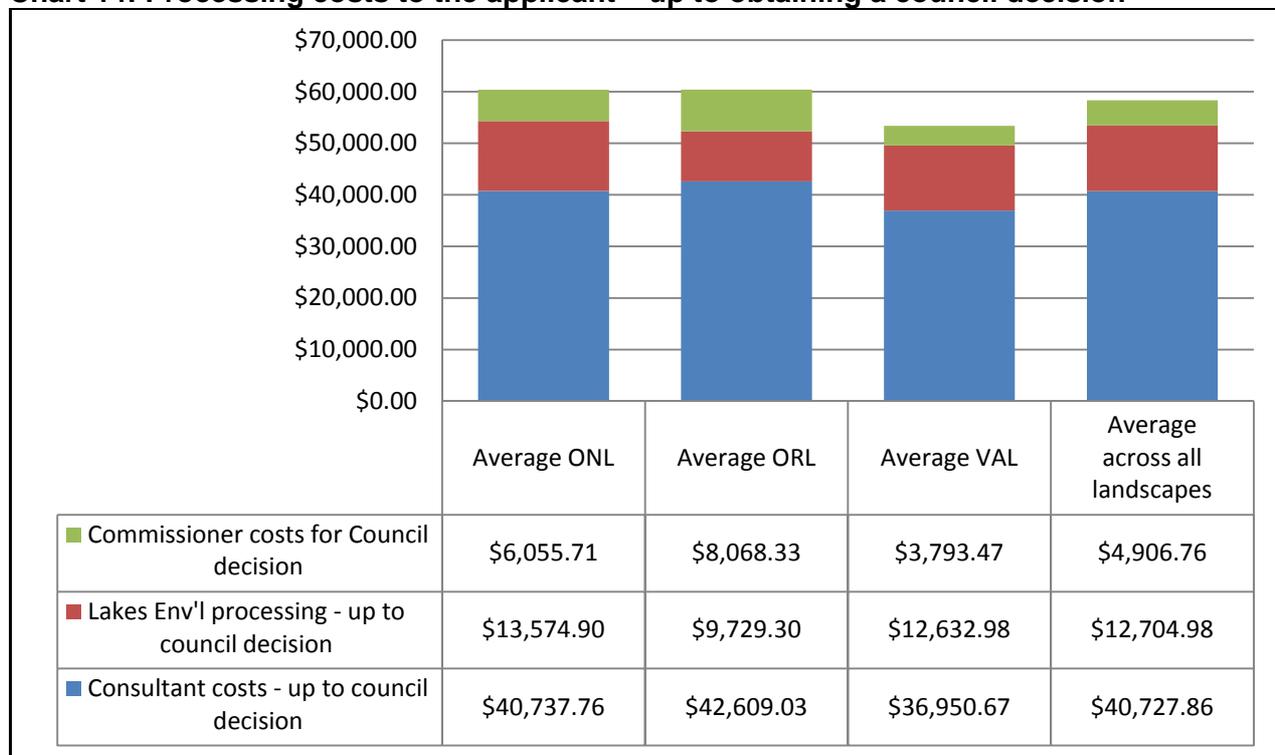


A total of 206 resource consents for development (be it for RBPs or lots without RBPs) have been triggered by the rules since 2001, which is an average of around 26 per year. In the scheme of the total number of resource consents applied for in a given year (which is ordinarily in excess of 1000 per year), this is a very small number. That said, the processing of each resource consent uses considerable resource and incurs considerable cost to various parties. Whilst it is too early to tell conclusively from the data, it, together with anecdotal comments, suggests that the number of applications are dropping off. If this is the case the total cost per annum of administering the provisions will also decline.

b Cost of resource consents triggered by rules under this section

Considerable costs are incurred by various parties and at various stages. Through cost data obtained from consultant planning firms, Lakes Environmental (Council’s planning agent) and MacTodd (Council’s solicitor), the following general costings and comments have been compiled. It needs to be noted that the sample sizes were relatively small (especially for the consultant figures) which may have skewed the data a little.

Chart 14: Processing costs to the applicant – up to obtaining a council decision

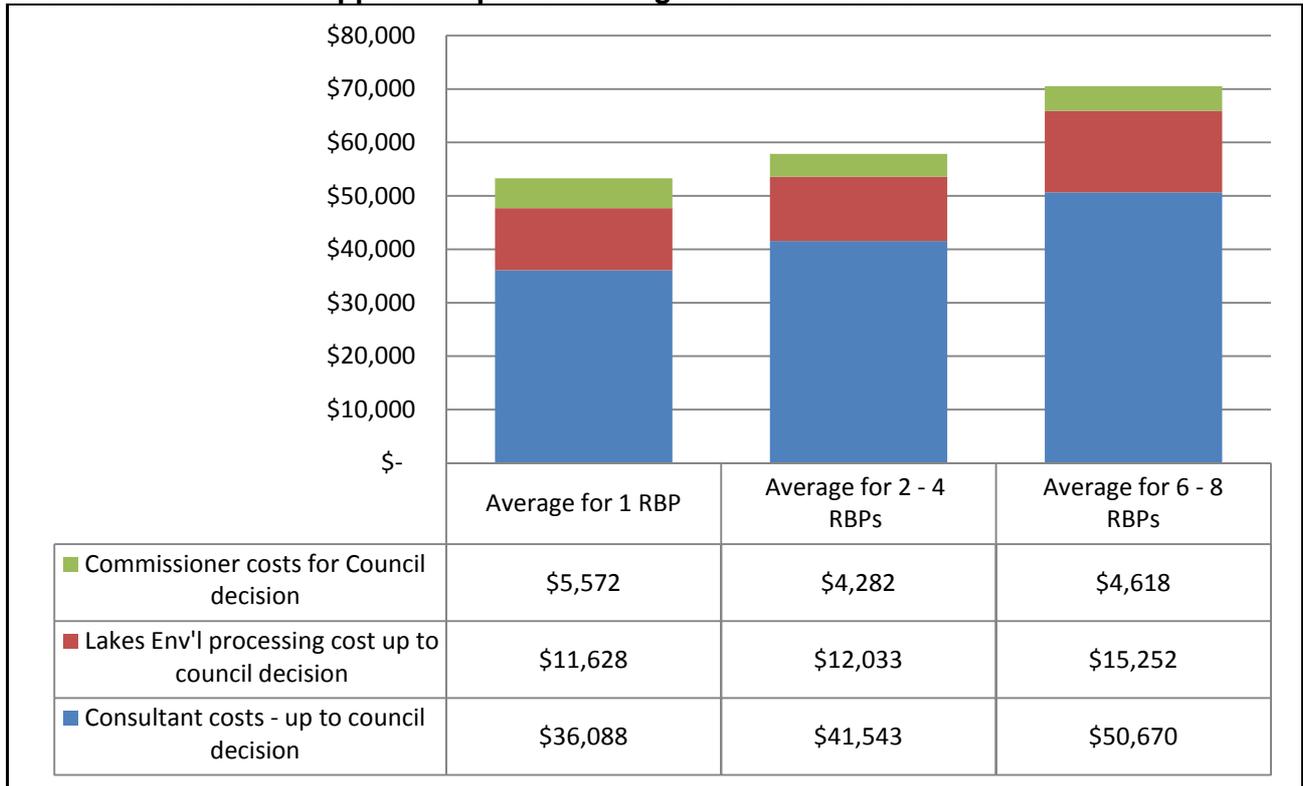


Notably, the Council does not incur any direct costs during this stage in the process. As shown in the above graph, the average cost to an applicant of preparing and having a resource consent processed is in the order of \$58,000. This includes all processing costs billed by the Council, all the planning consultant’s time up to this point and all engineering, geotechnical, and landscape input involved in the preparation of the application (noting that this additional expertise would average around \$21,000).

Whereas one might expect an application in the ONL to be considerably more onerous and costly than in the ORL or VAL, this does not seem to be the case. It is noted however, that the higher costs in the ORL may be due to the fact that these tended to be larger scale applications which may counteract the supposedly more simple ORL planning regime.

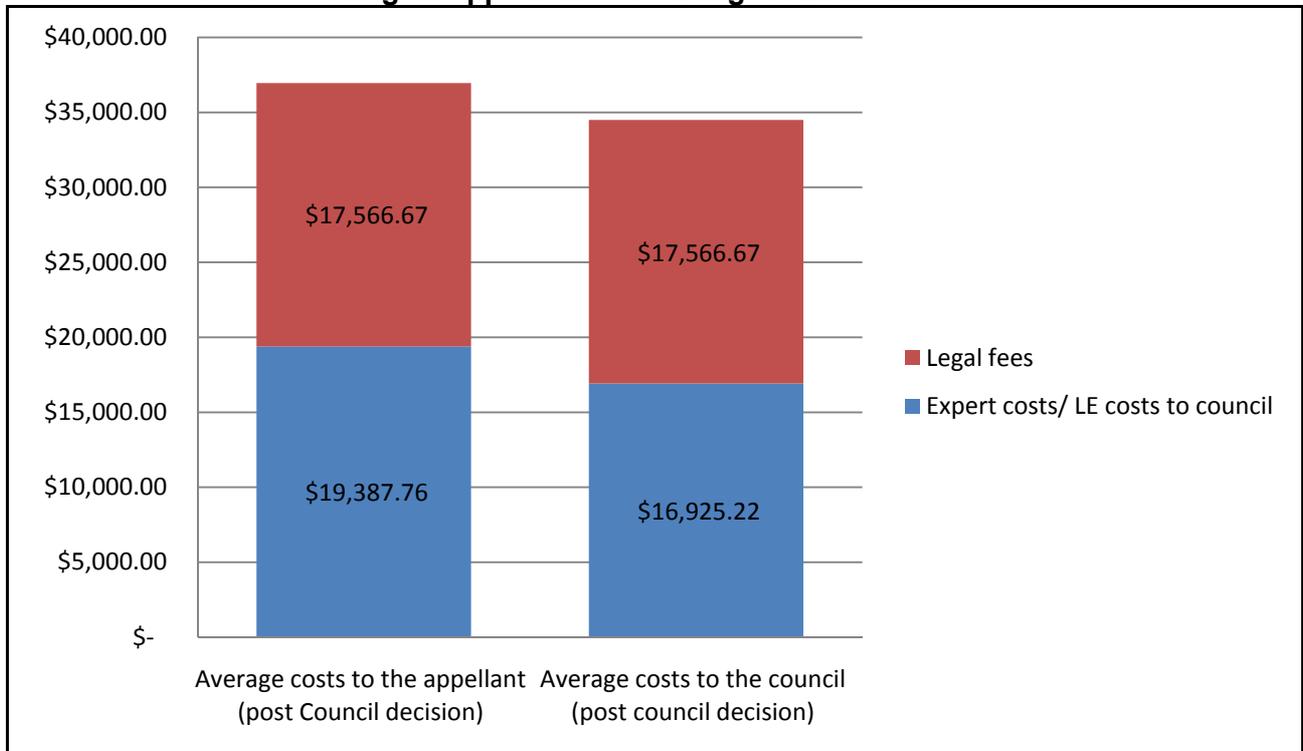
The influence that scale, *per se*, has on the cost of preparing and processing applications is illustrated in the graph below.

Chart 15: Costs to the applicant up to obtaining a council decision



This seems to suggest that there is a strong correlation between the size of the development and the cost of preparing and processing the application.

Chart 16: Costs of resolving an appeal and obtaining an Environment Court decision



The average cost to the appellant of resolving an appeal is in the order of \$37,000. Those resource consents that are appealed are therefore costing the applicant, on average, \$95,000 to reach a final decision. It is noted that this does not include the involvement of non- planning

experts at the hearings, which will obviously add to this cost quite considerably. In terms of direct costs to the Council the average cost of resolving an appeal is \$34,000.

It also needs to be noted that the above figures do not include the costs associated with the Court, which are borne by the taxpayer. Whilst options are currently being considered to reduce the cost incurred by court hearings, past experience has indicated that Court time comes at a hefty cost. Whilst no specific costing for the Rural General cases has been done, the National Manager of the Environment Court, Mr Harry Johnson, can advise that it costs in the order of \$8,000 - \$10,000 per week to have the court sit in Queenstown (excluding the salaries of the commissioners and judges and the cost of the transcript service, which is an estimated \$1,000 per day).

Conclusions

In conclusion, based on an average of 26 resource consents being applied for per year, and assuming 7 of these will be appealed and 5 of those appeals will incur some cost to resolve (i.e. will not be easily resolved or withdrawn), the annual collective annual cost of administering the provisions can be summarised as follows:

Who and what	Assumptions	Cost per annum
Applicant costs for applications/decisions not appealed	21 consents @ \$58,000 each	\$1.22 million
Applicant costs for applications/decisions appealed	5 consents @ \$95,000 (i.e. \$58,000 up to Council decision & \$37,000 in Court proceedings)	\$475,000
Council costs in defending decisions	5 consents @ \$34,000	\$170,000
Total cost per annum		\$1.86 million

The cost, particularly when taken collectively, is substantial. In discussions with consultants and decision-makers, the following comments were made:

- It was felt that the provisions and in particular, the VAL assessment matters could be streamlined to reduce repetition without reducing the effectiveness and may well serve to reduce the time taken in preparing and processing the application
- As is discussed further in the next section, the increasing degree of consistency between the Environment Court and Council decisions may serve to reduce the number of decisions appealed, thus reducing the overall costs.
- Whether it is appropriate that individual applicants bear the cost of undertaking a detailed landscape assessment to determine, amongst other matters, what landscape category a site falls into. The alternative would for the Council to undertake this district-wide and to prepare a Plan Change based on that assessment which would provide greater direction in terms of what is allowed and where (through rules, subzones, or guidance regarding cumulative thresholds, for example). The public costs of preparing, processing and defending such changes may also be considerable.

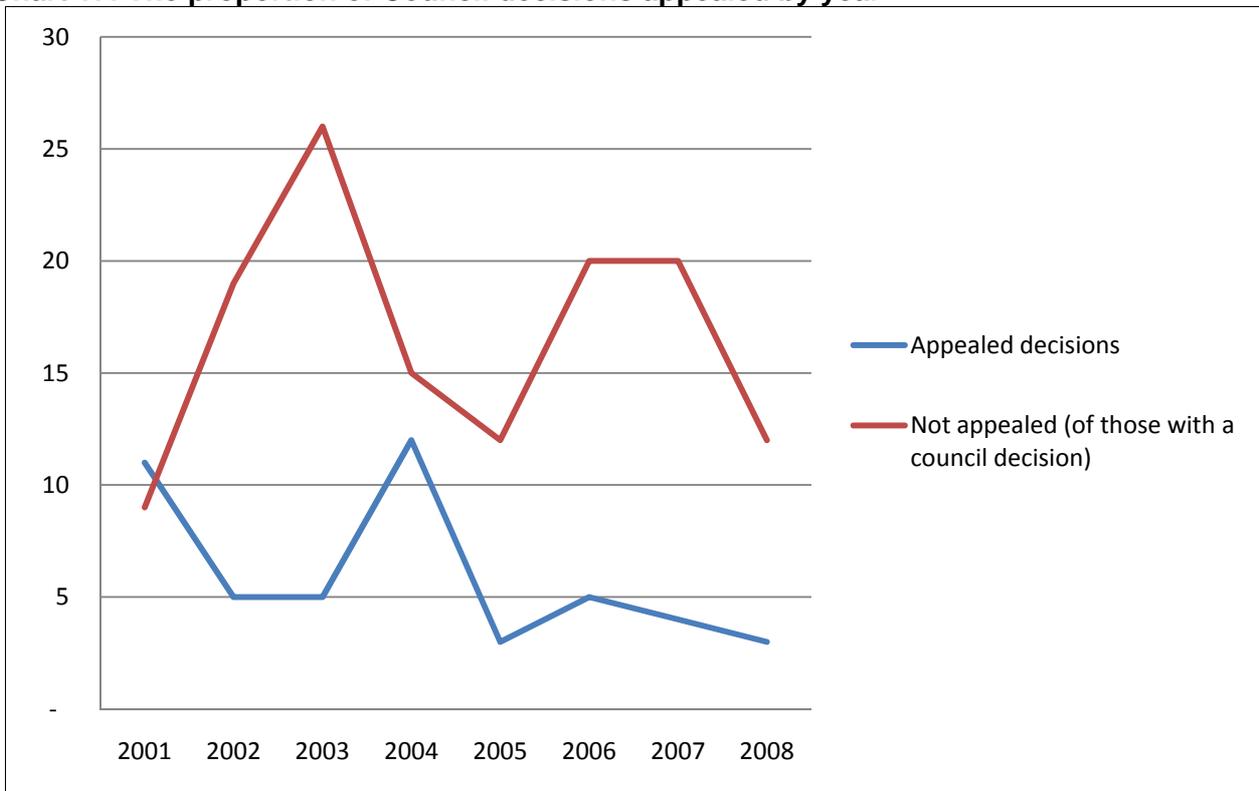
c Certainty and consistency of decision-making

Certainty and consistency of decision-making both influence the cost and efficiency of the resource consent process. If an applicant or submitter has more confidence in the consistency between the Council's decision and the decision that the Environment Court might make, then he/she will be more likely to accept the Council's decision rather than challenge it to the Environment Court. The number of appeals being lodged with the Environment Court and the consistency between the Council and Court's decisions are two useful indicators of this.

The below graph shows a clear trend toward less decisions being appealed. This is thought to indicate a trend of growing confidence in the Council's decisions (although the relative activeness of groups such as some environmental lobby groups has considered to have changed over the

years having at least some influence). It is worth noting that over the entire period the majority of appellants have been the applicants themselves rather than neighbours or environmental groups.

Chart 17: The proportion of Council decisions appealed by year



Of those that have been appealed, the Environment Court has not always concurred with the Council's view. As is evident by the following figures, of the 26 resource consents recorded as having been appealed and for which a decision has been released, on average 65% of the Council's decisions have been upheld. It needs to be acknowledged though that these figures include those 'decisions' which were, in fact, negotiated compromises approved by consent order rather than decisions of the Court, as such. In most of those cases, some compromise (allowing more RBPs but not the degree that the applicant had originally sought) would be usual in order to reach consent. As such, these figures under-state the level of consistency between the Council and the Court.

It is noted that to get a better idea of consistency it would be necessary to separate out those that went to hearing and those resolved by consent and to make the comparisons based just on those that were heard by the Court.

So, how does this compare with national benchmarks? Whilst national benchmarks are not readily available or perhaps applicable, the Council's legal counsel consider that this level of consistency is relatively good, based on experience within the district and elsewhere. It also needs to be recognised that this inconsistency is likely to be partly due to the fact that often the application before the Environment Court differs significantly from that which was presented to the Council (in that it may be of a lesser scale, offer more environmental benefits, or be better positioned). That said, it is acknowledged that this practice of modifying the plans significantly if the initial proposal is declined by the Council is considered to have diminished in recent years with more effort now going into putting ones "best foot forward" for the Council hearing rather than leaving it until the Environment Court.

That said, there are cases where the Court has considered the exact same proposal and has come to considerably different conclusions than the Council. This is cause for concern as it

highlights the extent of discretion and subjectivity in the interpretation of the provisions. Similarly there have been concerns voiced by judges regarding the significantly divergent views of the landscape architects. As mentioned previously, there may be a place for further definitions of some of the key terms used in the provisions; such as openness, natural character, etc. However, the subjectivity of landscape analysis and its use in the Court is an issue throughout the country. It is understood that the NZ Institute of Landscape Architects are working with the Court to develop definitions for some commonly-used landscape terms. Depending on the outcome of this work, it may affect the amount of work that needs to be done at a District level.

The following is a summary of the outcomes of applications for RBPs that have been appealed to the Court:

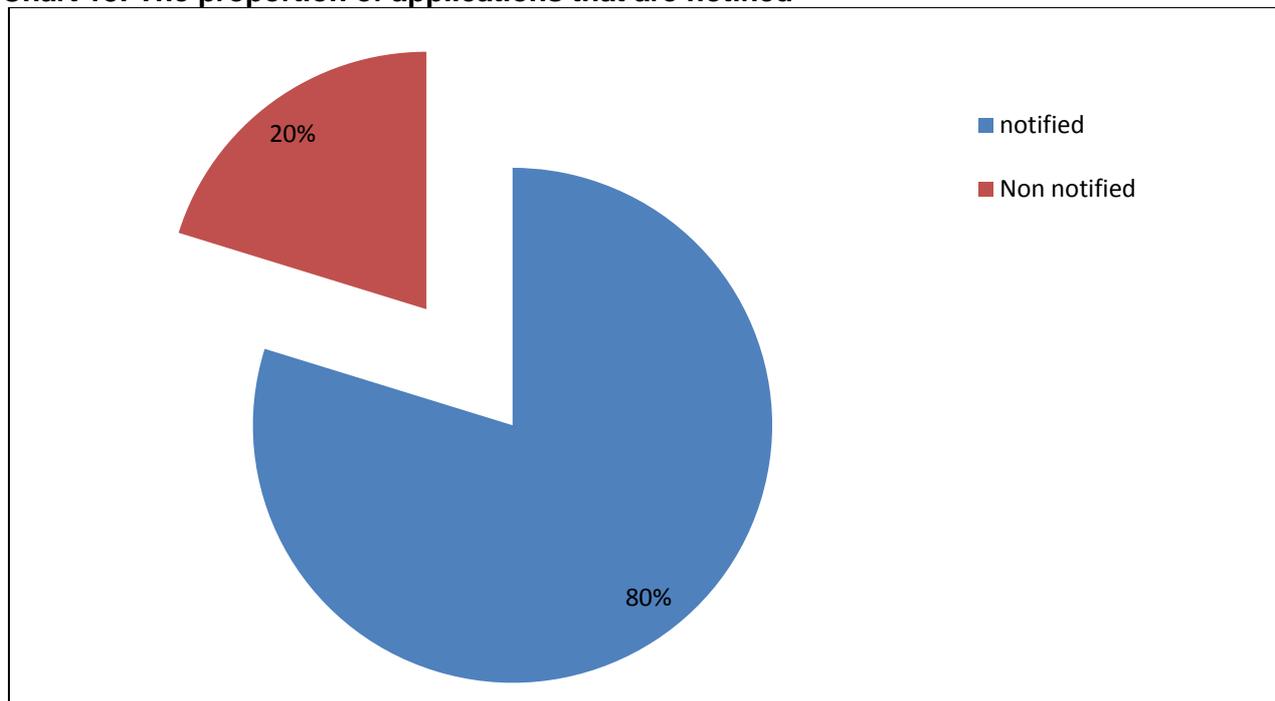
Year	Council decisions upheld by the Environment Court	Decisions dismissed - where Env Court granted more than Council	Decisions dismissed - where Env Court granted less than Council	% upheld	Total no where court decision reached
2001	6	2	1	67%	9
2002	3	1	0	75%	4
2003	3	2	0	60%	5
2004	8	2	0	80%	10
2005	1	2	0	33%	3
2006	1	1	0	50%	2
2007	0	1	0	0%	1
2008	0	0	0		0
Totals	22	11	1		34

In addition to the above figures it is useful to also consider Chart 9 on page 22 of this report entitled "The number of RBPs or rights to build applied for and finally approved" which shows that over the 7 years from 2001 – 2007 the difference in the number of RBPs approved by Council and by the Environment Court is just 61.

In conclusion it is felt there is a high proportion of consents being appealed compared to other applications in the district, but that there is a reasonable level of consistency between Council and Court decisions.

d Public involvement in almost all resource consents for new residential development

Chart 18: The proportion of applications that are notified



The above graph shows that the Council has notified the majority (80%) of consent applications for development in the Rural General zone over the last 8 years. Whilst 80% may not seem particularly high given the direction of the High Court that it would be difficult to envisage times when notification would not be appropriate, further analysis of the resource consents processed on a non-notified basis reveals that the majority involve farm buildings (prior to the farm building rule being effective), RBPs around existing dwellings, boundary adjustments, and Variations, with few bonafide RBP or subdivision proposals having been processed on a non-notified basis.

Comments from Council and private practitioners alike have questioned whether it is necessary to notify so many of the consents, particularly in the ORL. This suggestion seems to have some validity, especially when one considers the following explanation from Part 1.5.3(iii) of the Plan as to why development in the ORL is discretionary:

*“Discretionary activities require a resource consent, and may be subject to standards specified in the Plan. Activities have been afforded such status...:
(v) because in other rural landscapes the relevant activities may be inappropriate because the amenities of neighbours will be significantly affected.”*

Given the above, if neighbours are considered to be unaffected or have given their consent, notification would seem unnecessary.

It is understood that Council has been precautionary in its notification policy following the direction from the High Court soon after the current regime was established. However, given that no applications in the ORL have been declined during this monitoring period it would seem questionable as to whether most of these need to be notified.

e How long is it taking from lodging a resource consent to receiving a decision from the Council?

It needs to be stressed that the following time periods and comments do not relate to working days and take no account of times when the processing 'clock' is stopped due to holidays or information requests.

Briefly, 46% of all applications are determined by the council within 6 months with a further 28% within 12 months. 14% have taken more than a year and 12% more than 2 years. Although these time periods may seem lengthy, it is difficult to identify causes as it can relate to the complexity of issues, the resources available, and efficiency of Council and the quality and completeness of applications received.

f Conclusions

So, given the costs and benefits, are the provisions deemed to be an efficient way of achieving the objectives?

What is an acceptable and justified level of cost and time will depend on one's perspective. While costs, time delays and the number of appeals would seem high, this needs to be balanced against the view that the discretionary regime appears to be offering a high level of protection to the landscape values of the Rural General zone. Also, it should be borne in mind that applicants could be expected to receive a considerable increase in the value of their property by acquiring a right to subdivide and build a dwelling(s).

It also could be argued that, rightly or wrongly, the high cost of preparing and processing applications may work as an economic instrument discouraging those applications with a high chance of being declined from even being applied for, and thereby helping to improve efficiencies and the protection of landscape values. It is difficult or impossible to speculate as to whether more applications for development or subdivision may have occurred if the costs of an application were lower.

There are certainly changes to the present regime which the Council could further investigate in order to improve efficiencies and these are listed below under the section relating to possible changes and actions.

In addition it is worth mentioning some amendments that may increase certainty in the highest landscape value areas and therefore increase efficiency:

- To make development non-complying in the ONL. The relatively high approval rate fact in the ONL (i.e. % of all application) seems to suggest that there is a reasonable level of understanding amongst applicants/ private consultants as to what landscape characteristics are necessary for a development to be deemed to be appropriate. This suggests that applicants are not naively applying for consent in inappropriate places just because it is a discretionary activity. It may however reflect weaknesses in the provisions of the District Plan. As there are clearly places in the ONL where development is appropriate it is highly questionable whether non-complying would be appropriate across the whole area. It would also be a moot point as to the extent to which changing the discretionary status would affect the number of applications approved. Certainly, a review of the objectives and policies would be important to ensure they are sufficiently robust to prevent what is considered inappropriate development and subdivision. As stated in this report, if several decisions cast doubt on the strength of the non-complying regime, this may need to be revisited in the future.
- To make subdivision and development a prohibited activity in discrete areas (such as iconic slopes and ridgelines). Prohibited activity status is rarely used due to its inflexibility and until

recently¹⁹ a lack of clarity as to when it would be appropriate. That said, in areas where it can be justified that no development should occur, it would certainly be a highly efficient method (in that no resource consent applications can be made). The Council would need to consider carefully whether such areas exist and whether it is willing to bear the cost of a Plan Change in order to introduce the prohibited status, noting that considerable landscape assessment would be required and it would be likely to attract extensive submissions.

9 Evaluating District Plan Appropriateness – Whether the Objectives and Policies are Appropriate

It is essentially a community and Council decision as to whether the current regime and level of development being consented is appropriate. If they consider that it is not, changes may well be needed to the objectives and policies. For example, the case is made later in this report that the settlement pattern emerging may not achieving sustainable management of resources. If this is a matter of concern to the Council, there may be a need for a more fundamental review of the objectives and policies.

The fact that the objectives are brief does lead one to question what exactly the type of outcomes were that were anticipated for the Rural general Zone. However, assuming the outcomes are similar to the vision sought, the authors do not consider that any of the objectives and policies are in themselves inappropriate. They appear to be facilitating the application of the provisions in a way that was envisaged. Nevertheless, if the current discretionary model is continued it is felt that there could be improvements to address a number of anomalies and to provide more direction on the type of outcomes sought.

There are some particular comments that can be made in regard to improving the objectives and in regard to those policies which relate specifically to the various landscape categories.

The objectives are zone-wide and, therefore, are particularly generic, repeating the words of the Act (i.e. to avoid, remedy, or mitigate) in a way that provides little direction on what these terms are likely to mean in the context of the various landscape categories. Given the degree to which the policies and other methods distinguish between the various landscape categories it would seem appropriate to have objectives which relate specifically to each.

It is noted that objectives such as Objective 2 relating to the life supporting capacity of the soils seem to have been somewhat over-looked in the quest for ensuring that landscape values are protected. In contrast to more traditional approaches to rural planning, there is little emphasis on attempting to sustain the productive use of land (with the interpretation being that 'so long as you can hide it you can build it'). It is questionable whether the lack of emphasis on Objective 2 is appropriate as it can be argued that the ongoing use of the rural area for agricultural activities is consistent with and, in fact, imperative to the achieving the landscape-related objectives (as the pastoral use of land has been a major determinant of the present landscape).

That said, the recent Environment Court decision *Glentarn Group vs. Queenstown Lakes District Council* (C10/2009) provides direction that such objectives have weight that are not necessarily overshadowed by landscape objectives and policies (but rather need to be understood in conjunction). This could mean that the administration of the provisions may need to change somewhat from that that has prevailed over recent years. It is considered that if widely applied (and the provisions remain unchanged), the interpretation taken by the Court in C10/2009 is likely to provide for more development in some parts of the District.

There needs to be some supporting policy relating to why subdivision without building platforms is non-complying.

¹⁹ Following the decision of *Coromandel Watchdog Of Hauraki Incorporated v Chief Executive Of The Ministry Of Economic Development And Anor* CA285/05

The policies for the ONL's and ONF's are considered to be appropriate. In fact, the comment was made by private consultants that, in reality, the 'bar' (for approval) has perhaps become even higher than anticipated in the policies, in that in order to minimise a client's risk, applications tend to be invisible in the ONL/ ONF and reasonably difficult to see in the VAL.

The policies for the VAL are particularly sparse and, as such, do not really reflect or support the assessment matters. It is therefore considered that it may be appropriate to add more detail (perhaps translating some of the assessment matters into policies). Notably, there is no mention of pastoral or Arcadian landscape values in the objectives or the policies for the VAL whereas these concepts are pivotal in the assessment matters. Some spatial indication or other description may be appropriate to describe the settlement pattern sought in the VAL (as discussed in the section on cumulative effects).

There are no objectives and policies in Part 5 that relate to services and access, meaning that it is more difficult to address such matters through conditions when a RBP is applied for as part of a landuse consent (i.e. unconnected to any subdivision of the land). Whilst more investigation is required on this issue, it seems that the council may wish to consider whether some additional objectives and policies need to be added, similar to those in Part 15 (subdivision) of the Plan.

Whilst more of an administrative matter, it may be more appropriate to include the Part 4 landscape objectives and policies in Part 5 in order to clarify that they do not relate to urban or rural living zones. That said, doing this would necessitate cross referencing or duplication of them in the subdivision section of the Plan.

The appropriateness of policies which encourage the positive benefits to be weighed against the negative effects is an interesting one and raises the question whether development rights should be able to be 'bought' with environmental compensation such as the removal of wilding pines, ecological restoration, and the provisions of public walkways. This is something that may require further investigation and consultation before any conclusions are reached.

Changes in tenure have enabled the development and subdivision of increasing areas in the District in areas with often very high landscape values. Whilst this process is a separate one from Resource Management Act processes, it is important that the Council and community are comfortable that development and subdivision will be appropriately managed by the District Plan when the constraints of crown ownership are removed. This also may be a matter worthy of further analysis.

There are numerous activities/ landuses which may emerge in coming years which the Plan's objectives and policies are relatively silent on or probably don't adequately address and which it is suggested need to be further considered by the Council. These include:

- Vineyards (as discussed previously)
- Windfarms
- Golf courses
- The use of shade cloth in conjunction with horticultural practices

10 Other Issues Identified within the Rural General Zone

A number of issues with the Rural General zone have emerged from the research and discussions with practitioners, which are unrelated to the protection of landscape values. The most significant of these relates to whether development in the Rural General zone is contributing toward a sustainable settlement pattern.

a Are the Rural General Zoning Provisions providing for a Sustainable Settlement Pattern?

It is clear from the analysis of the Rural General Zone that there is a strong emphasis on managing landscape effects. Section 4 of the Plan does deal with other strategic growth issues however the importance of managing the rural environment in accordance with landscape outcomes appears a dominant theme²⁰. However, there are some important questions as to whether the Rural General Zone is enabling a sustainable settlement pattern.

As outlined in this report, there has been a significant increase in the number of dwellings in the rural area over the last 10 or so years (as is shown in the number of dwellings that have been built in the Rural General zone in Chart 1 on page 11 of this report). There is also a large number of building platforms that have not been built on (refer to Chart 2 on page 12 of this report) and the Council's record is considered to undercount the true number²¹. While the decision to approve a significant proportion of the building platforms would have been made under or, at least, heavily influenced by previous planning provisions, it remains evident that the Rural General Zone is continuing to allow new dwellings to locate within it in reasonably significant numbers. The extent to which this trend will continue in the future will require further analysis.

It should also be borne in mind that the Rural Lifestyle, Rural Residential, and special zones (such as Bendemeer) supply land that enable countryside living. There is understood to be a similarly large number of unutilised building platforms in the rural lifestyle zone and a considerable amount of development that has and continues to occur in both the rural living zones. Council officers intend to produce a monitoring report in 2009 that will analyse these Rural Living Zones in further detail.

According to Council data²², as of July 2008 there were 11,057 dwellings in the urban areas of the District and 1,010 dwellings in the Rural Living zones. With 1,225 dwellings in the Rural General Zone and at least another 485 building platforms that can be expected to be built on, it can be argued this reflects a somewhat dispersed settlement pattern.

Multiple, predominantly 'rural lifestyle'-type dwellings scattered throughout the Rural General Zone generally some distance from amenities and places of work is likely to be having effects on the amount of fossil fuel usage in the district, bringing into question whether the current zoning is adequately taking account of such issues and thereby achieving sustainable management of natural and physical resources. Similarly, it is suggested there is a need to consider the cumulative effect of multiple dwellings on the efficiency of the roading network and the Council's ambitions of developing a sustainable and viable public transport system. For example, the speed limit through most of the Wakatipu Basin is now 80 km, a clear indication of increasing domestication and a clear indication of a reduction in the efficiency of the road network. In some places safety and amenity may be compromised by increased traffic relating to a dispersed settlement pattern, while the suitability of dwellings locating in remote areas or areas serviced by unsealed roads may be worthy of further consideration.

²⁰ It is notable however that the recent *Glentarn v QLDC* decision did emphasise the importance of other non-landscape policies in the District Plan

²¹ A recommendation of this report is that the Council continue to work to improve this data

²² The Dwelling Capacity Model July 2008

It is suggested that there is little evidence of a shortage of supply of sites for rural dwellings in the District. Further, it is questioned whether the outcomes are consistent with the Council's Growth Management Strategy (2006) which seeks to concentrate growth in the existing urban areas. Therefore, as much as this report has analysed whether the Rural General Zone is protecting the landscape values of the District, it is suggested that there is also a need to evaluate the appropriateness of the pattern of development that is occurring in the Rural General zone, from the perspective of achieving a sustainable settlement pattern.

b Other Emerging Issues with the Rural General Zone that are Unrelated to the Protection of the Landscape

Other matters raised which are worthy of further consideration by the Council included:

1. Whether the provisions provide sufficiently strong support to the Council's Transport Strategy
2. Whether the provisions adequately encourage (or, indeed, actively discourage) the use of self sufficient, alternative energy generation.
3. Whether the earthworks provisions require amendment in order to reduce costs and, at times, unnecessary Resource Consents. For example, a consent is required once a certain area of earth is exposed regardless of its depth; meaning that most ploughing activities would in theory require resource consent, and it is unclear as to whether earthworks associated with a controlled dwelling require an earthworks consent.
4. Whether self sustaining power generation (such as solar panels and wind turbines) are adequately provided for within the provisions
5. Whether the definition of commercial activities needs to be improved. It is currently uncertain, leading to a debate as to the extent that Council can control these locating in the Rural General Zone
6. Whether the Plan needs to explicitly recognise that there is a conflict between gravel extraction and residential and recreational activities and address this in a manner that reduces or avoids the conflict whilst recognising the importance of such extraction to the local economy and, in some instances, for flood control.
7. Whether the Plan needs to be more explicit regarding controls over aircraft and helicopter sites.

11 Concluding comments

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.

Despite this, as one might expect, there are a number of issues that ought to be considered which are summarised in Appendix 1 of this report. Many of these may require in changes to the Plan.

Moreover, there are some concerns raised as to the number of dwellings that have been consented under the regime and the cumulative effect this may be having on the landscape. Perhaps more notably, whether the amount of development consented is providing for a sustainable settlement pattern is a matter of serious consideration.

If these issues are of concern to Council, there are a number of options that it may consider. A stronger policy direction (and associated assessment matters) regarding sustainable settlement patterns may assist this matter to be considered within the context of the discretionary regime. The discretionary regime could be modified to provide more direction on the types of locations where development will be appropriate and, perhaps more usefully, by providing more spatial direction as to where development maybe appropriate and inappropriate. Also, the use of more restrictive consent activity statuses could be used in all or parts of the Rural General Zone.

Not all changes need be changes to the Plan. A number of recommendations in this report relate to further work that can be done to assist good practice and decision making and ways that the administration of the provisions may be made more efficient

Lastly, it is important to bear in mind that the emphasis of this report has been on the results of development and subdivision over the last 7 ½ years. Trends in development inevitably change as do community values and it is quite possible that people will become aware of ways in which development can be consented that may not have been foreseen. Whilst this report has discussed what has happened to date, it is more difficult to assess the scale and type of development the planning regime that exists in the Rural General Zone will enable in the future.

Appendix 1 - Suggested Possible Actions and Changes to the Provisions

a Possible changes to the District Plan itself in order to improve the effectiveness and the efficiency of the Rural General provisions in relation to protecting landscape values.

General

- Further consider ways of improving how the District Plan currently manages cumulative effects. Possible options would include undertaking a full, finer-grain landscape assessment in order to develop thresholds to better guide the assessment of cumulative effects. Further consideration would need to be given as to whether this needs to be referenced in the Plan.
- Consider moving the definition of discretionary activities (or duplicate this) in the objectives and policies in either Part 4 or Part 5, thus giving it increased statutory importance.
- Add definitions of open character, naturalness, natural, Arcadian, and pastoral character. For the purposes of future monitoring, take a baseline of photos of key views be taken throughout the District for future comparison.

Objectives and policies

- Consider replacing the unhelpful general objectives relating to landscape values with some more objectives relating to the specific landscape categories.
- Further consider the impact of the Glentarn decision (C10/2009) including whether this outcome is appropriate across the district. If it is not, then further consider what amendments would be required to the District Plan in order to ensure that primacy is given to the policies the Council considers more important in the Rural General Zone.
- Consider adding objectives, policy and assessment matters into Part 15, which support the rule which makes subdivision without a RBP a non complying activity.
- Consider adding a number of policies relating to the VAL in order to provide more support for the assessment matters (which may include re-wording some of the VAL assessment matters into detailed policies). Notably, there is no mention of pastoral or Arcadian landscape values in the objectives or the policies for the VAL whereas these concepts are pivotal in the assessment matters
- Consider whether some additional objectives and policies need to be added to Part 5 relating to services and access, similar to those in Part 15 (subdivision) of the Plan.
- Consider moving the Part 4 landscape objectives and policies into Part 5 in order to clarify that they do not relate to urban or rural living zones. That said, doing this would necessitate cross referencing or duplication of them in Part 15 (subdivision) of the Plan.
- Consider adding some policy direction in Part 5 in regard to the planting of wilding species.
- Consider whether further policy direction is required in relation to:
 - Vineyards (as discussed previously)
 - Windfarms
 - Golf courses
 - The use of shade cloth in conjunction with horticultural practices

Rules

- Consider whether there are parts of the ONL which justify a non-complying (or even prohibited) regime. Whilst this is an option (and one which has had some support from various commissioners) it would be a costly one and is not well supported by the consent data which suggests that applications are not being received in the 'no go' areas that would be the logical candidates for such a non-complying regime. That said, the fact people seem to understand that such areas are essentially protected from development may mean that there would be little opposition to such a change.
- Consider adding matters of discretion in the Plan in relation to farm buildings and amending the rule to ensure that farm buildings approved prior to the farm building rules existing (i.e. when farm buildings were a discretionary, rather than controlled, activity) cannot form part of the permitted baseline for a dwelling.

- Consider the removal of various site and zone standards relating to the bulk and location of dwellings which are on an approved RBP and for which conditions otherwise impose restrictions on these matters (e.g. height).
- Consider inserting a provision limiting density to 1 dwelling per building platform.

Assessment Matters

- Simplify the provisions by reducing the number of assessment matters, particularly for VAL in order to reduce duplication and avoid matters actually being overlooked due to the sheer number of them.
- Consider whether the assessment matters relating to visibility should encourage mitigation (through mounding and vegetation) to the degree that they currently do.

b Possible changes to the administration of the Plan and General Practice in order to improve the effectiveness and the efficiency of the Rural General provisions in relation to protecting landscape values.

Whereas, no doubt, some issues result from the provisions themselves, others may be more about practice, administrative, or interpretive problems, which can be rectified through changes in practice than any change to the District Plan itself.

The following suggestions should be considered by the council as potentially low-cost ways of improving effectiveness and efficiency.

- As pointed out in this report, it is considered that the Council can continue to make a number of improvements to its data collection that will assist with analysis. In particular, having an accurate and widely available map (including to non-Council practitioners) showing consented building platforms and those that have been built on would be a valuable resource and it is considered this should be pursued by council.
- It is also considered that, regardless of whether the Council wishes to propose changes to the District Plan, there may be value in undertaking landscape analyses to consider which areas may be approaching their limits in terms of cumulative effects. This may also identify landscape classifications where this information is currently unrecorded.
- Reducing the length of time that it takes to draft and release council decisions
- The Council's engineering standards need to align well with the objectives of the Plan to protect landscape values.
- Consider whether a change in Council policy is necessary in regard to the notification of consents in the Rural General zone and, in particular, in the ORL. This has been raised by consultants, planners, and the commissioners alike and could help to improve the efficiency of the provisions, considerably.
- Develop or improve standard agreed templates specifying the level of detail that planners need go to in their planner's reports and in that commissioners need go to in their decisions.
- Develop standard landscape conditions, aimed at ensuring that where screening is an essential part of the approval, then construction shall not proceed until the screening is fully established.
- Providing consistent advice on the information that needs to be submitted, such as whether a full house design will need to be submitted as part of an application for a building platform
- Reaching agreement (amongst commissioners and Council) on whether services need to be put in place as a condition of a building platform.
- Create a system where any recommendations of changes needed to the Plan in decisions are systematically recorded
- Consider creating a system to note where comments have been made in decisions on approaching thresholds for cumulative effects

Appendix 2 - The Residential Building Platform (RBP) Maps (2009)

The following are maps of areas of known information on residential building platforms. The areas shown are predominantly rural general (in light green) although there are other zonings that are shown (please refer to the District plan for a legend showing what the zonings are).

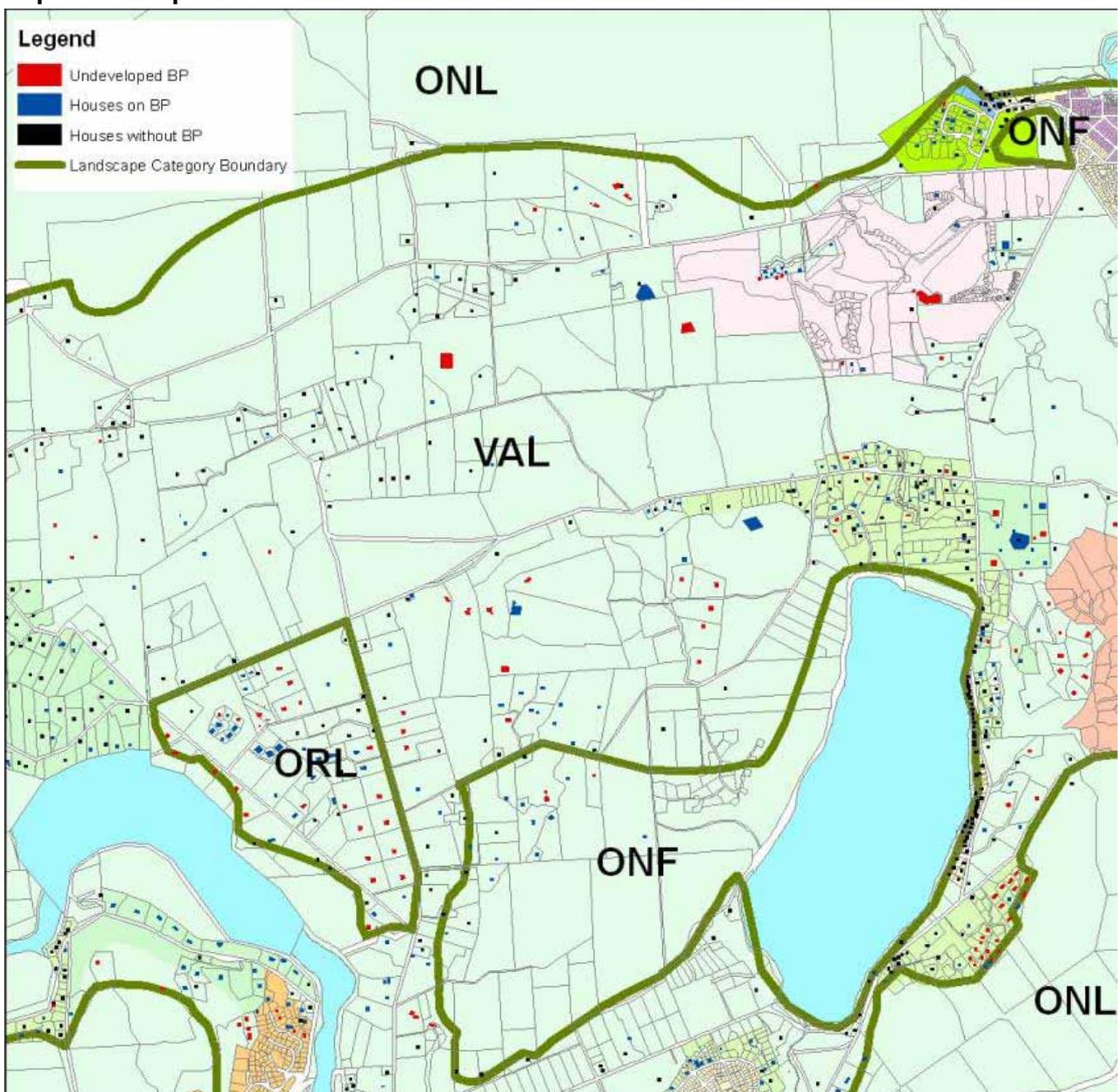
As stated in the report, it is considered that a number of improvements could be made, as it is known that some building platforms are missing and that on some occasions multiple building platforms have been amalgamated into one platform.

It is intended that the data should become available on the Council's GIS system, although it is considered that Council should prioritise improving the reliability of the data. The maps should therefore be read as indicative only.

Landscape boundaries (when shown) may be only indicative only, depending on whether they have been considered in Council decisions or by the Court.

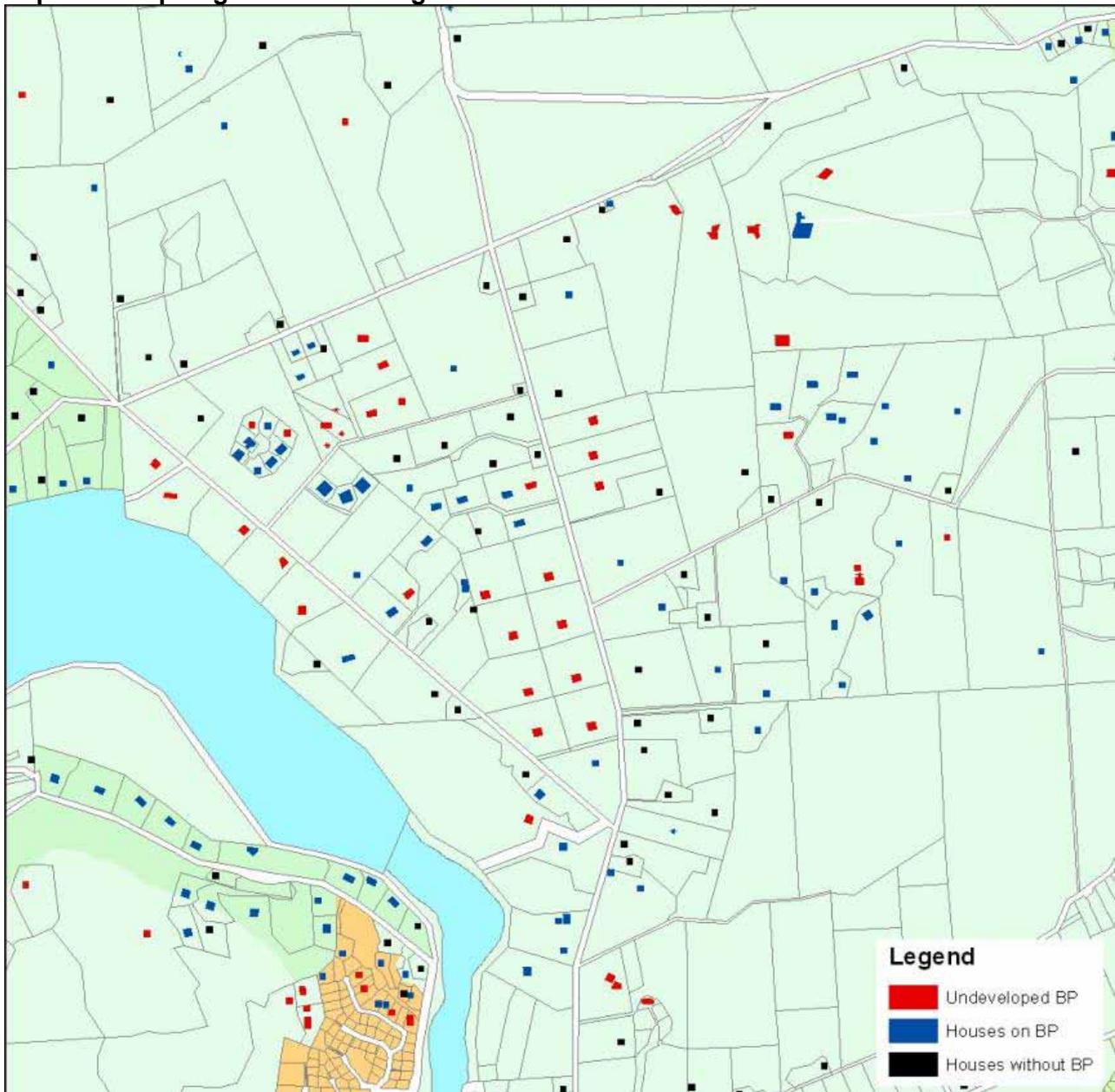
Brief commentary follows each of the maps.

Map 1: Wakatipu Basin



The above map shows part of the Wakatipu Basin. The difference between the number of consents in the VAL and ONL is evident (this is also likely to correspond with steeper topography). It is suggested that the ONF boundary shown may not in fact be accurate given the building platforms that are shown to the west.

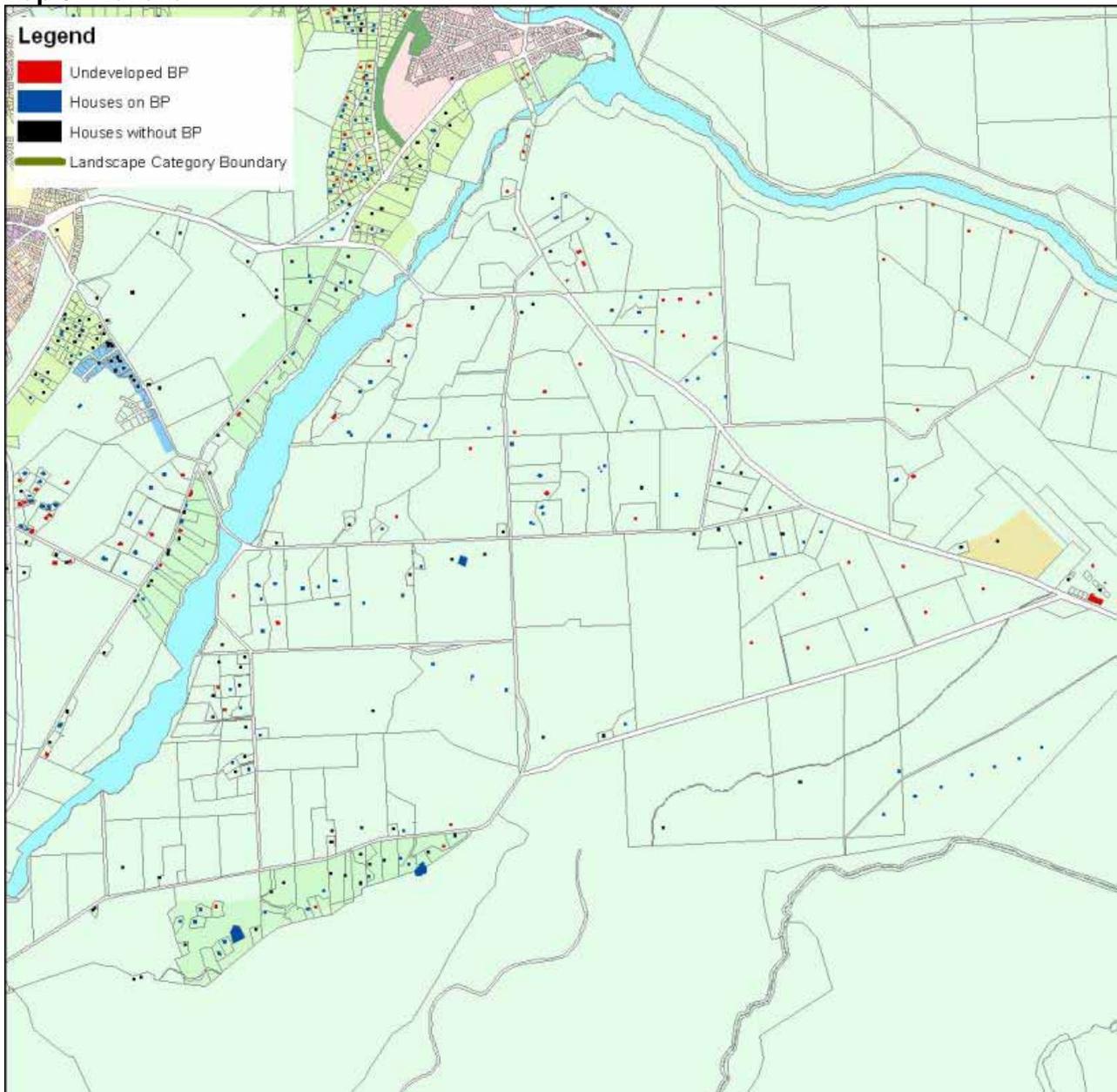
Map 2: The Speargrass Flat 'Triangle'



Although the landscape boundaries are not shown in this map, the area can be seen to correspond more or less with the area shown as ORL in the previous map.

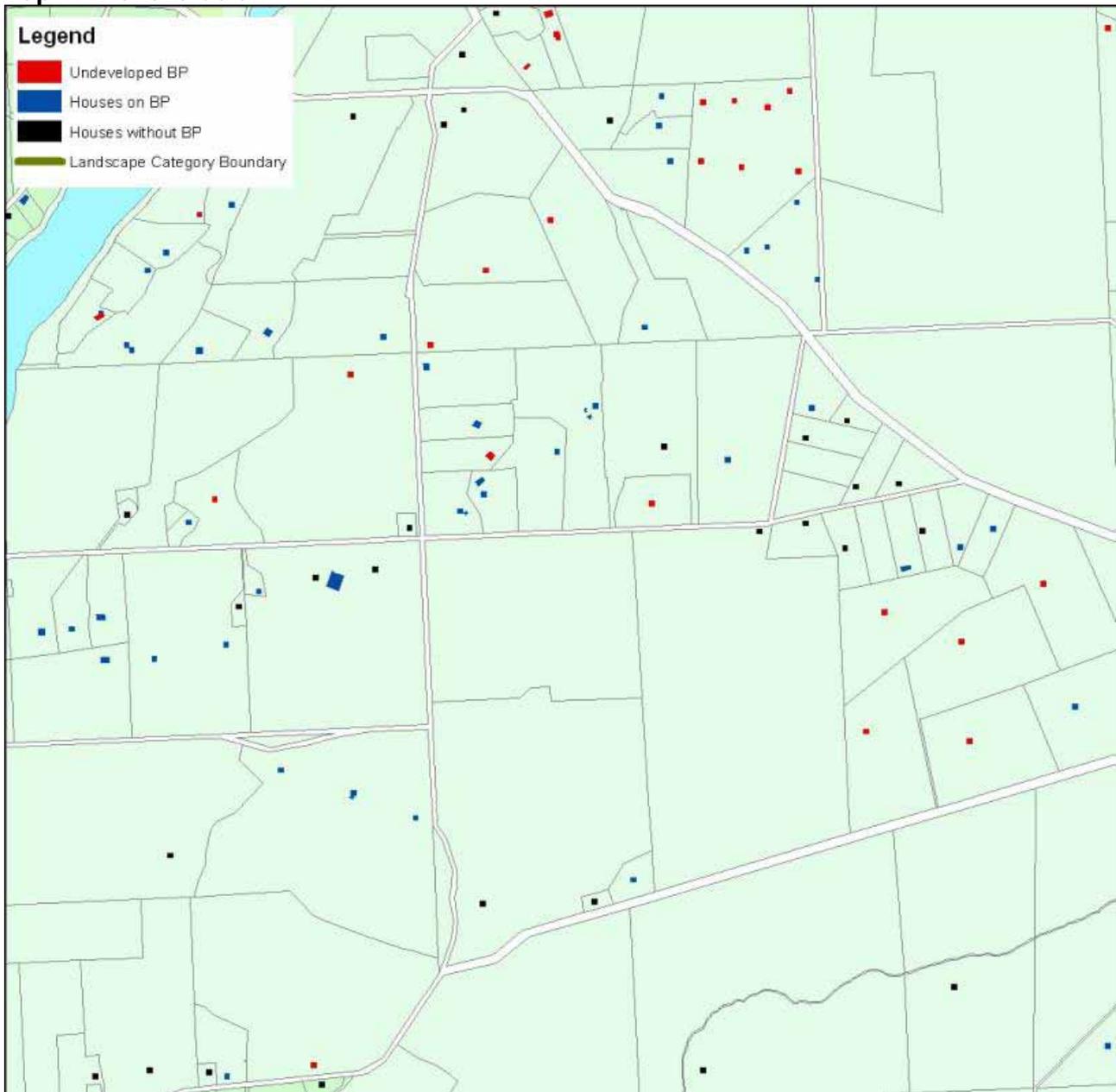
It is known that there should be more RBPs shown in this map, such as in the Hawthorn property. Nevertheless, it can be seen how development has concentrated in the area since the current planning regime was introduced.

Map 3: Wanaka



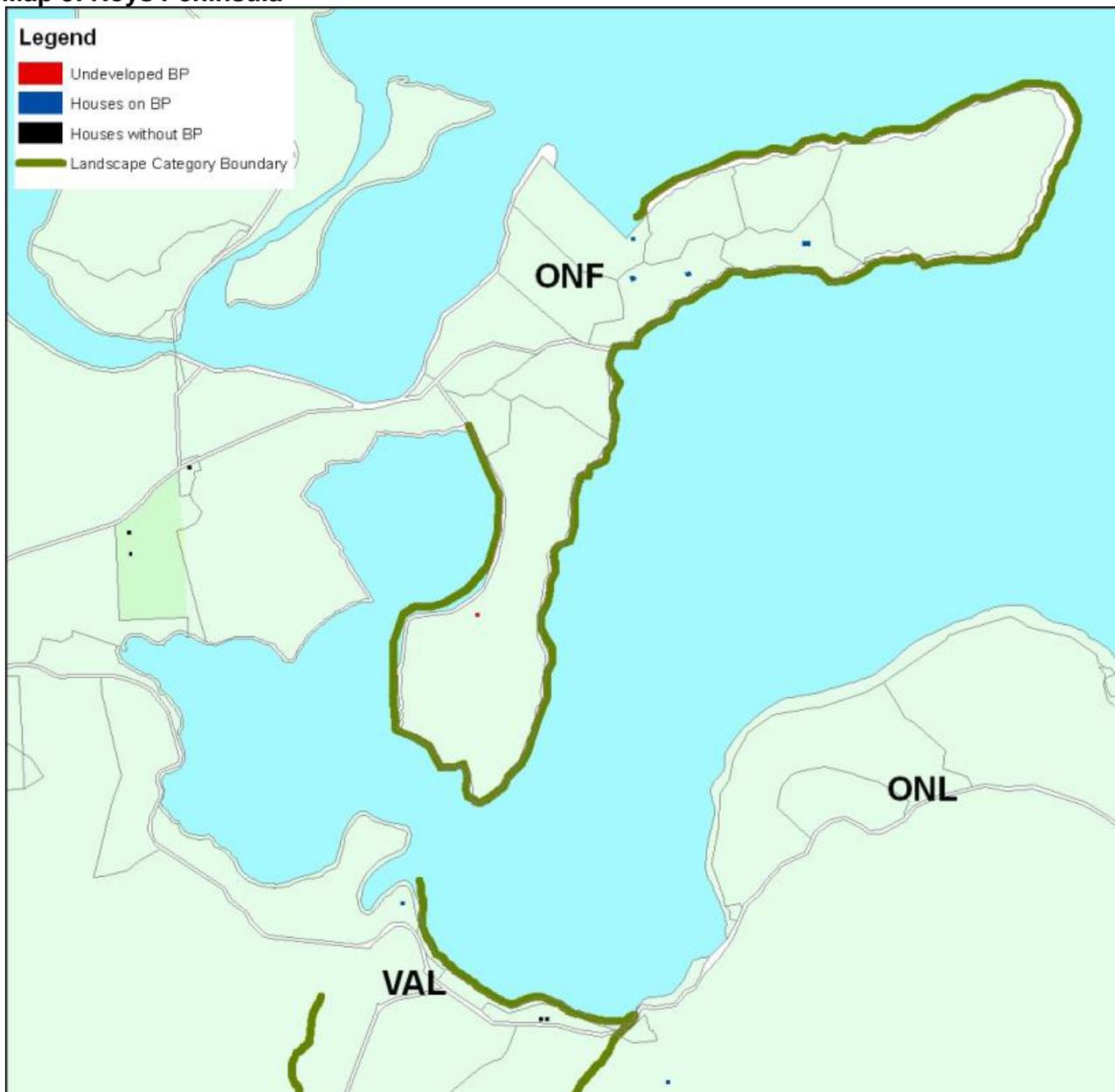
Above is an overview of the data collected on rural building platforms in the area to the south west of Wanaka. In many respects the area (predominantly VAL) seems to have accommodated quite a dispersed settlement pattern. There are however areas where there has been little or no development consented. A closer view of part of this map follows:

Map 4: Wanaka detail



Lastly, it is considered worthwhile to note an area of high landscape importance:

Map 5: Roys Peninsula



A number of building platforms are to be considered by the Court as part of an application in the area marked VAL to the south. As discussed in this report, the platforms that have been approved on the ONF are understood to have been consented prior to the current regime taking full effect in October 2001.

Appendix 3 - A series of comparative photos taken in 2001 and April 2009

Introduction

The following photographs are comparisons of photos taken in 2001. They were taken as part of work for consent applications and supplied to Council by Paddy Baxter, of Baxter Design Group. Photos were taken in approximately the same place in April 2009. The camera used in 2009 was Canon EOS 400d with the lens at 40mm. Whilst the period for change is equivalent to the time that the current planning provisions for the Rural General Zone took effect, it is acknowledged that much of the change may be in part be relation to consents granted prior to that time. It should also be noted that many of the photos (particularly those of panoramas) cover more zonings than the Rural General Zone. It is acknowledged that the photos are centred around the Wakatipu Basin and that analysis of other parts of the District would be useful. It is suggested that a baseline of photos of key views be taken throughout the District for future comparison.

Little's Road



2001



2009

Little's Road



2001



2009

Little's Road



2001



2009

Little's Road



2001



2009

Arrowtown – Lake Hayes Road



2001



2009

Arrowtown – Lake Hayes Road



2001



2009

Coronet Peak Panorama



2001



2009

Crown Range Panorama



2001



2009

Crown Range Panorama



2001



2009

Dalefield



2001



2009

Domain Road



2001



2009

Fitzpatrick Road



2001



2009

Lower Shotover Road



2001



2009

Malaghans Road



2001



2009

McDonnell Road



2001



2009

Moke Lake Road



2001



2009

Slope Hill Road



2001



2009

Speargrass Flat Road



2001



2009

Speargrass Flat Road



2001



2009

Appendix 4 - General Notes on the consent information used in this report

1. The data captures only those applications where the decision was made after October 2001. As such, many notable applications such as Hawthorne Estates (RM000450) and Just one Life (RM000536) are not included in the dataset even though the provisions did end up influencing decision-making, especially at the Environment Court hearing.
2. In all graphs/ data contained in this report, the year relates to the year that the application was lodged, which is not necessarily the year the decision was released.
3. In some cases, the 2008 data has been omitted from the discussion/ analysis as it was misleading due to the high number of resource consents that have not yet been completed.
4. As set out in this report, there are known to be issues with the reliability of the mapping information. This is likely to have also led to an undercount of the total number of building platforms consented prior to 2001.
5. The graph in Chart 1 showing the total number of dwellings as derived from census information is only approximately consistent with the boundaries of the Rural General Zone. For information purposes, the following are the Census meshblocks that were included in the data set:

MB 3027400
MB 3027500
MB 3027600
MB 3027700
MB 3027802
MB 3027900
MB 3028002
MB 3028013
MB 3028200
MB 3036900
MB 3038103
MB 3038104
MB 3038105
MB 3038106
MB 3038219
MB 3038220
MB 3038308
MB 3038309
MB 3038400
MB 3038500
MB 3038600
MB 3038701
MB 3038702
MB 3038800
MB 3038901
MB 3038903
MB 3039000
MB 3039100
MB 3039200

MB 3039300
MB 3039403
MB 3039404
MB 3039502
MB 3039517
MB 3039601
MB 3039602
MB 3039703
MB 3039705
MB 3039708
MB 3039709
MB 3039710
MB 3039711
MB 3039712
MB 3039804
MB 3039805
MB 3039806
MB 3039807
MB 3039808
MB 3039900
MB 3040200
MB 3040401
MB 3040500
MB 3040604
MB 3173600
MB 3173700
MB 3173800
MB 3174000
MB 3174200

MB 3174300

MB 3175600
