

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of Hearing Stream 10
– Definitions, Natural
Hazards and Whole of
Plan

**REPLY OF CRAIG ALAN BARR
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL**

WHOLE OF PLAN

27 MARCH 2017

 **Simpson Grierson**
Barristers & Solicitors

S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

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1. INTRODUCTION

1.1 My name is Craig Alan Barr. I prepared the section 42A report for the 'Whole of Plan' portion of Hearing Stream 10, dated 15 February 2017. My qualifications and experience are listed in that s42A report.

1.2 I have reviewed the evidence filed by other expert witnesses on behalf of submitters, attended the hearing on 14 March and again on 17 March. I did not attend the hearing on 15-16 March 2017. However, I have been provided with information from submitters and counsel that was tabled at the hearing, including reports and audio recordings of what has taken place at the hearing each day.

1.3 This reply evidence covers the following issues:

- (a) avoiding conflicts between water based activities;
- (b) default status of activities in the PDP;
- (c) Upper Clutha Environmental Society's submission;
- (d) appropriately qualified or experienced expert reports; and
- (e) updates / variations to reflect Council resolutions to separate the District Plan into two volumes.

2. AVOIDING CONFLICTS BETWEEN WATER BASED ACTIVITIES

2.1 Federated Farmers' submission (600) supports my s42A evidence¹ that I am reluctant to recommend the introduction of provisions to the PDP that directly control the provision of water for irrigation, snow making and drinking because these are a function of the Otago Regional Council.

2.2 I note the support of Federated Farmers in Mr David Cooper's Summary of Evidence, of this recommendation. I continue to recommend that issues relating to conflicts between water based activities and surrounding uses remain a regional council function. In this regard the submission of Federated Farmers and my recommendations in the s42A report remain consistent.

1 Refer to Part 12.5 Section 42A Report and recommendation to the submission of Real Journeys Ltd (621).

3. DEFAULT STATUS OF ACTIVITIES IN THE PDP

- 3.1 Arcadian Triangle (836) considers that the 'default' activity status of non-complying, for non-specified activities, is not appropriate.
- 3.2 At paragraph 11.3 of my s42A evidence I state that the framework of the Operative District Plan (ODP)² is generally structured on the presumption that activities not otherwise specified are permitted, and that I consider this makes the ODP Rural General Zone in particular, cumbersome and complicated. When questioned by the Panel I reiterated that this was because of uncertainty associated with determining permitted activity status where the rules are silent on an activity, but irrespective of the permitted activity status, all activities are subject to scale and nature of activities³ rules, and are likely to require a resource consent due to non-compliance with these rules.
- 3.3 Reasons for this specific to the Rural Zone include that the Rural Zone covers the majority of the District's land area (in the PDP the ONF/L cover 96.7% of the District⁴), has varying economic values and I consider that a wide variety of land uses could be sought to establish in the Rural Zone. Therefore I consider that as much certainty should be provided as possible. In contrast, the submitter considers that it is the structure of the ODP that is potentially cumbersome and causes issues, rather than the permitted default activity status.
- 3.4 Arcadian Triangle also considers that non-complying activity status should not be afforded to activities that are not known, because there has not been any section 32 evaluation that justifies that a non-complying activity status is appropriate for unknown activities.
- 3.5 The Section 32 evaluation for the Rural, Landscape and Gibbston Character Zones⁵ discussed the activity status for land uses not otherwise identified, and the evaluation of the costs, benefits,

2 The ODP zones reviewed as part of Stage 1 of the PDP including the Rural General, Gibbston Character, Rural Residential and Rural Lifestyle, Low Density Residential and High Density Residential Sub Zones A, B C.

3 Rule 5.3.5.1.iii Rural General Zone. ODP. Scale and Nature of Activities.

4 Refer to <http://www.qldc.govt.nz/assets/Uploads/Planning/District-Plan/Hearings-Page/Memorandums/001-QLDC-T01A+-T01B-Memorandum-responding-to-request-for-further-information-18.03.16.pdf>

5 Rural, Landscape and Gibbston Character Zones Section 32 Evaluation. At 21.

efficiency and effectiveness of the 'default rule'⁶ was included as part of the evaluation of the costs, benefits, effectiveness and efficiency for the following issues:

- (a) Issue 1: The management of the District's landscapes;
- (b) Issue 2: The management of farming activities;
- (c) Issue 3: Effective and efficient resource management; and
- (d) Issue 4: Commercial activities.

3.6 The section 32 evaluation states with regard to this matter:

This framework is logical and provides clarity and assists with understanding whether or not an activity requires a resource consent or not. In addition, it is difficult to anticipate every potential activity that may seek to locate in the rural zones and requiring a resource consent for these activities that are not contemplated as a non-complying status directs attention to the objectives and policies of the District Plan to determine whether they are appropriate and meet the purpose of the RMA.

Assessment of these applications against the relevant policies of the Strategic Directions, District wide and urban growth policies allow a holistic view to be taken of whether an activity is appropriate.

3.7 Although I acknowledge this analysis, I generally consider that it would be difficult and unreasonable to prepare a section 32 evaluation for unknown activities. More generally, I remain of the view that the non-complying activity status is appropriate for activities that are not specified because these activities are not contemplated by the respective zone's rule framework. In addition, it is important that these activities are subject to section 104D of the RMA to ensure these activities are suitably interrogated through the resource consent process.

6 In the case of the Rural Zone it is Rule 21.4.1.

3.8 I do not agree with the submitter that the discretionary activity status is more appropriate for unspecified activities because it would be more 'even handed' compared to the non-complying activity status. I consider that the non-complying activity status is appropriate and activities that are not identified and therefore contemplated by the rule framework outright should be subject to section 104D of the RMA, that enables a filtering⁷ process, before being able to proceed to an assessment under section 104 of the RMA.

3.9 I also consider that the alternative of affording a permitted status to non-specified activities, and leaving the identification and assessment to 'scale and nature' standards that are likely to hold a restricted discretionary activity status, similar to that used in the Rural General Zone of the ODP,⁸ would generally be inappropriate within the Rural Zones and Residential Zones of the PDP. I identify these zones in particular because of the large land areas they cover and that because of this factor alone, there is a possibility that activities that are not contemplated by the policy framework could be sought to establish.

3.10 Within these zones, I consider that an activity status of restricted discretionary owing to non-compliance with a 'catch-all, scale and nature rule' for activities that are not contemplated could create a disconnect between the outcomes sought by the objectives of the Strategic Directions chapters,⁹ and the activity status of an activity that is not readily contemplated by the respective zoning framework.

3.11 Overall, I remain of the view that the activity status of non-complying for unspecified activities is appropriate.

4. UPPER CLUTHA ENVIRONMENTAL SOCIETY

4.1 The Upper Clutha Environmental Society (**UCES**) (145) identified concerns at the hearing on 17 March 2017 that potential amendments to the RMA for applications for resource consent for residential activity that hold a discretionary activity status, including those in the

⁷ Refer to section 104D Particular restrictions for non-complying activities.

⁸ Refer to Footnote 3.

⁹ Chapter 3 Strategic Directions, Chapter 4 Urban Development, Chapter 5 Tangata Whenua and Chapter 6 Landscapes.

Rural Zone, would be required by the Council to be processed on a non-notified basis.

4.2 I acknowledge the concerns of the UCES, and note that I would not recommend changes to the PDP text that require discretionary activity status resource consent applications for residential activity and buildings in the Rural Zone to be processed on a non-notified basis. However, until the amendments to the RMA are confirmed and the Council must give effect to them, they have no statutory weight and I do not recommend any changes to the PDP text on this basis.

4.3 I have also had the opportunity to further consider the changes recommended to the PDP text by the UCES and I maintain my view that the Council's respective reply versions, presented at the respective hearings, are more appropriate.

5. APPROPRIATELY QUALIFIED OR EXPERIENCED EXPERT REPORTS

5.1 My s42A evidence for the Whole Plan topic recommends amending Chapter 33 (Protected Trees) to remove the reference to a person being suitably 'experienced' when considering technical information for applications because it could be troublesome and add uncertainty to the administration of the provisions. The Panel questioned whether providing a basis, such as a certain number of years' experience in that particular subject matter, had merit.

5.2 I accept that this could assist toward reference to a person's experience being more meaningful. However, arriving at a figure requiring a certain number of years' experience could be criticised for being arbitrary. In addition, it could be ineffective because while a person having a certain number of years in a profession is better than none, it does not always mean proficiency nor expertise in the particular subject matter at issue.

5.3 On this basis I continue to recommend the reference to 'experienced' is removed as recommended in my s42A evidence, and do not recommend adding a certain number of years' experience.

6. UPDATES / VARIATIONS TO REFLECT COUNCIL RESOLUTIONS TO SEPARATE THE DISTRICT PLAN INTO TWO VOLUMES

6.1 I note the comments of the Panel regarding the removal of provisions from the PDP that relate to land that has been resolved to be located in Volume B (ODP). Updating of the Volume A and B text as a consequence of the resolution to separate the district plan into geographic areas is ongoing and being undertaken as resources allow.

6.2 I also note that three areas located in the Upper Clutha relating to recent plan changes to the ODP (Plan Changes 45, 46 and 51) have been withdrawn from Volume A (PDP).¹⁰

7. CONCLUSION

7.1 Overall, I consider that the assessment and recommendations in the s42A are appropriate and I do not recommend any additional changes to the PDP text or the overall position on the 'Whole of Plan' submissions.



Craig Alan Barr
27 March 2017

¹⁰ By resolution of the Council's Planning and Strategy Committee 16 March 2017. <http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Committees/Planning-and-Strategy-Committee/16-March-2017/Item-1.-Withdrawal-of-land-from-the-Proposed-District-Plan-that-is-subject-to-recent-plan-changes-to-the-Operative-District-Plan/1-Withdrawal-of-land-from-the-Proposed-District-Plan-that-is-subject-to-recent-plan-changes-to-the-Operative-District-Plan.pdf>