

## **Upper Clutha Environmental Society**

### **Memorandum in Relation to Stage 2 of the PDP**

#### **Scope of Upper Clutha Environmental Society Submission 2016.2**

1. The Society has received a minute from the PDP Hearing Panel and a memorandum from the QLDC in relation to the scope of its submission 2016.2 to PDP Stage 2 Wakatipu Basin.
2. Both the minute and memorandum conclude that the Society's submission is not "on" PDP Stage 2 Wakatipu Basin and so is outside the scope of the hearing of this matter and will be struck out under section 41D of the Act. The Society disputes this.
3. The Society submits that its entire submission is "on" PDP Stage 2, in that it either:
  1. Relates directly to the Wakatipu Basin or
  2. Relates to the ODP and PDP in general or
  3. Is within the scope of the Stage 2 s.32 report or
  4. Raises legal questions with regard to the Stage 2

#### **Submission as it Relates to the Wakatipu Basin**

4. The following parts of the Society's submission relate to the Wakatipu Basin:

**"The specific provisions of the proposal that the Society's submission relates to are:  
Stage 2-Wakatipu Basin Variation**

- *Introduction of a new Wakatipu Basin Rural Amenity Zone, including a Lifestyle Precinct that will provide for subdivision of land in the precinct to an average lot size of 1 hectare with a minimum lot size of 0.6ha.*
- *For all other areas of the Wakatipu Basin Rural Amenity Zone, subdivision of land under 80 hectares will be a non-complying activity.*
- *The new zone is a variation to land notified in Stage 1 of the Proposed District Plan as Rural, Rural Lifestyle and Rural Residential within the Wakatipu Basin area.*

***The Society supports the inclusion in the PDP of all of the provisions proposed in the publicly notified Stage 2 Wakatipu Basin Variation described above and as detailed in the documents contained in the public notification, as follows:***

- 1. Chapter 24 Wakatipu Basin**
- 2. Map 13d Wakatipu Basin Rural Amenity Zone**
- 3. Section 32 Evaluation Report-Chapter 24 Wakatipu Basin**

*The reasons for this support are evident from the Society's submissions and evidence to the District Plan Review hearings for Stage 1 of the PDP where it expressed major concern that the cumulative effects of rural subdivision and/or development were not being adequately controlled in the rural landscapes of the Queenstown Lakes District (not just the Wakatipu Basin).*

*The gradual piecemeal, almost random, development of the rural landscapes in the Wakatipu Basin and Upper Clutha Basin is degrading these landscapes in a manner that is likely to have adverse effects on the future economic base of the Queenstown Lakes District. The cumulative degradation of the rural landscapes that has been permitted by Council under the ODP does not represent a "precautionary approach" to these landscapes as urged by Council's own expert economic evidence<sup>1</sup> to the PDP Stage 1 hearings.*

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<sup>1</sup> Phillip Osborne 6<sup>th</sup> April 2016 Paragraphs 3.8 and 8.7

**The Society seeks the following decision from the Queenstown Lakes District Council:**

*The Society supports the publicly notified PDP Stage 2 Wakatipu variation provisions, and supports their incorporation into the PDP.”*

5. It is nonsensical for District Plan commissioners and counsel for the QLDC to argue that the above parts of the Society’s submission are not “on” Stage 2 when these submissions simply support Stage 2 being included in the PDP in the Wakatipu Basin in exactly the form publicly notified, and supported by, the QLDC.

**Submission as it Relates to the Upper Clutha Basin**

6. The Stage 2 s.32 report addresses the issue at the heart of Stage 2, the cumulative effects of rural subdivision and development, and in the process specifically includes analysis and discussion relating to both the Wakatipu Basin and the Upper Clutha Basin. This is described in the Society’s submission as follows:

*“Council’s s.32 report for this variation describes the issue well, quoting from its own officers s.42A reports from the District Plan Review Stage 1 hearings<sup>2</sup> (underline added):*

*“Some rural areas, particularly those closer to Queenstown and Wanaka town centres and within parts of the Wakatipu Basin, have an established pattern of housing on smaller landholdings. The landscape character of these areas has been modified by vehicle accesses, earthworks and vegetation planting for amenity, screening and shelter, which have reduced the open character exhibited by larger scale farming activities..... a substantial amount of subdivision and development has been approved in these areas and the landscape values of these areas are vulnerable to degradation from further subdivision and development. It is realised that rural lifestyle living development has a finite capacity if the District’s distinctive rural landscape values are to be sustained”.*

*It can be seen that rural landscapes in the vicinity of **BOTH** Wanaka and Queenstown have been identified as being vulnerable to degradation from the cumulative effects of subdivision and development.*

*The Society has counted the rural building platforms granted consent in the Wakatipu Basin and the Upper Clutha Basin (bearing in mind further building platforms have been granted since these maps were compiled). More than 1000 rural building platforms (excluding Special Housing Areas) have been granted consent in the Wakatipu Basin-there is clearly a problem controlling cumulative effects in the Wakatipu Basin. But the Upper Clutha map shows that more than 450 rural building platforms have been granted consent in the Upper Clutha Basin. This is shown on Appendix A attached.*

*The Stage 2-Wakatipu Basin provisions in Chapter 24 arose from the Wakatipu Basin Land Use Planning Study (WBLUPS). Given the same cumulative effects issue is clearly extant in both basins the Society believes Council must, in order to satisfy the purposes of the Act, commission an Upper Clutha Basin Land Use Planning Study (UCBLUPS). Appendix B shows the approximate area this study should address.*

*Currently in the ODP the non-ONL rural landscape provisions are identical across the District. If stricter provisions are adopted only in the Wakatipu Basin it will rapidly be perceived that more development-friendly provisions exist in the Upper Clutha Basin. This will have the likely effect of pushing small-lot (2-5 hectares) development in rural areas into the Upper Clutha Basin from the Wakatipu Basin.*

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<sup>2</sup> S.32 report page 18

***The Society seeks the following decision from the Queenstown Lakes District Council:***

*The Society seeks that Council prepare and publicly notify a variation entitled PDP Stage 2 Upper Clutha in exactly the same manner as the PDP Stage 2 Wakatipu variation.*

*The Society seeks that the PDP Stage 2 Upper Clutha variation should be geographically limited to the boundaries shown in the attached Appendix B, or very similar.*

*The Society seeks that the provisions, as proposed to be contained in Chapter 24-Wakatipu Basin, also apply identically to the geographical area of the Upper Clutha Basin per the area shown in Appendix B or very similar.*

*In order to put the above into effect the Society seeks that an UCBLUPS be commissioned by Council, this to be undertaken for the area (or very similar) delineated in the attached Appendix B. The UCBLUPS should be undertaken in exactly the same manner and by exactly the same people as was the WBLUPS.*

*The Society seeks that all information emanating from the UCBLUPS be incorporated into the PDP by means of a new variation entitled PDP Stage 2 Upper Clutha, in the same manner as proposed for the PDP Stage 2 Wakatipu Basin variation. That is, into a renamed Chapter 24 Wakatipu Basin and Upper Clutha Basin and into a map or maps similar to Map 13d Wakatipu Basin Rural Amenity Zone contained in the PDP Stage 2 Wakatipu Basin variation; this map (or maps) to be entitled 13e-Upper Clutha Basin Rural Amenity Zone and to be based on the geographical area shown in Appendix B (or very similar)."*

7. It can be seen that the Section 32 report for Stage 2 identifies the issue of the cumulative effects of rural subdivision and development in both the Wakatipu Basin and Upper Clutha Basin (page 18-quoted above).
8. Also of note is the fact that the s.32 report states (page 20):

*"As background to the WB Study, the Council's Monitoring Report: Monitoring the Effectiveness and Efficiency of the Rural General Zone 2009 examined the effectiveness of the existing operative provisions and reflected on the amount of residential subdivision and development that had been consented in the Rural General Zone. The 'Rural Monitoring Report 2009' had a particular focus on subdivision and development in the WB, an area which has received a relatively high number of resource consent applications and approvals for subdivision and development. A key theme of the report was whether the existing provisions were effectively managing cumulative effects of residential subdivision and development."*

9. In fact the statement that the Monitoring Report "had a particular focus on subdivision and development in the Wakatipu Basin" is incorrect. The Monitoring Report focused on the Rural General Zone in the whole District, not just the Wakatipu Basin. It discusses subdivision and development in both the Wakatipu Basin and the Upper Clutha Basin including numerous details and statistics relating to rural subdivision and development around Wanaka. The s.32 report has in part relied on this background report.
10. Where the s.32 report expressly addresses the issue central to Stage 2 by relying on evidence and a report that relate to both the Wakatipu Basin and the Upper Clutha Basin, it follows that the Society's entire submission is within the scope of the publicly notified s.32 report and so is within the scope of Stage 2. The issues set out and relied upon in the s.32 report cannot at this stage be narrowed to exclude submissions on the Upper Clutha Basin.

## **Legal Issues**

### **Sustainable Management**

11. The Society's submission states among other things that:

*"the Proposed District Plan Stage 2 Wakatipu Basin variation does not represent sustainable management as described in Section 5 of Part 2 of the Resource Management Act because:*

*6. The PDP Stage 2 Variation is not consistent with sustainable management, nor is the purpose of the Act achieved, because the Variation's publicly notified provisions are applicable only to the Wakatipu Basin, where they must also be applicable to the Upper Clutha Basin (as approximately delineated in Appendix B). Applying measures that preserve rural landscapes in one part of the District from the adverse effects of cumulative subdivision and development while failing to apply the same measures to preserve rural landscapes in other parts of the District that plainly suffer from the same adverse effects of cumulative subdivision and development does not represent sustainable management."*

12. The Society remains of this opinion. In the Society's submission the Stage 2 s.32 report identifies, by means of PDP evidence and the Monitoring Report: Monitoring the Effectiveness and Efficiency of the Rural General Zone 2009, problems in both the Wakatipu Basin and the Upper Clutha Basin. It follows that Council erred in failing to include the Upper Clutha Basin in its Stage 2 public notification and that by failing to address the cumulative effects off rural subdivision and development in the Upper Clutha Basin Council is not administering its District Plan adequately under the Act and sustainable management is not satisfied.

### **Scope**

13. The legal definition of "on" is described in the memorandum:

**8.1 whether the submission addresses the change to the pre-existing status quo advanced by the proposed plan; and**

**8.2 whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.**

14. In the Society's submission the Society's Stage 2 submission is "on" in its entirety in terms of 8.1. The submission supports the proposed changes to PDP provisions in their entirety as they relate to pre-existing status, but also seeks public notification of the issue as it relates to the Upper Clutha Basin consistent with the issue as it is described and argued in the Stage 2 s.32 report-see above.
15. In terms of 8.2, in the Society's submission the Stage 2 s.32 report already addresses the core issue, the cumulative effects of rural subdivision and development in the Wakatipu Basin and Upper Clutha Basin.
16. The Society's submission seeks only that an UCBLUPS be undertaken similar to the WBLUPS so that Stage 2 is consistent with the s.32 report. If the conclusion was reached by Council from this Study that provisions similar to those proposed in the Wakatipu Basin were necessary, that the UCBLUPS and related maps would be subject to public notification.
17. Much of the Stage 2 Wakatipu Basin s.32 report can be relied on when Stage 2 Upper Clutha Basin is publicly notified though a further limited s.32 report would be needed to address (mostly geographical) issues specific to the Upper Clutha Basin.

There is no question of people's rights to public involvement being trampled as a result of the Society's submission because if the Society's submission is accepted then further public notification would be required.

18. It follows from the above that the Society believes that its entire submission is "on" Stage 2 Wakatipu Basin and so cannot be struck out under section 41D of the Act. The Society seeks that the whole of its submission be given weight to and it seeks to be heard at public hearings of the PDP Stage 2-Wakatipu Basin.

Julian Haworth  
Secretary/Treasurer  
Upper Clutha Environmental Society (Inc.)

16<sup>th</sup> April 2016