Upper Clutha Environmental Society

Proposed District Plan-Rezoning and Upper Clutha Mapping

Submission

Public Notification

1. The Society has already brought to the attention of both the DPR Hearing Panel and Council[1] the changes made to s.95A of the Resource Management Act in the Resource Legislation Amendment Bill (RLAB) that will mean that almost all subdivision in the Rural Zone in the Queenstown Lakes District cannot be publicly notified. Since the Society's earlier submissions the RLAB has now become law.

2. The Society's memorandum on the implications of s.95A is addressed in legal submissions to today's hearing in paragraphs 5.31 onwards. The Society has taken legal advice on this matter.

3. The Society notes that the Society's reading of the amended Act, that is, that almost all Rural Zone subdivision cannot now be publicly notified, is not challenged in the legal advice.

4. The Society has a further submission in to the PDP that states:

   "*In light of the proposed changes to the RMA, and in particular the new s.95A the Society has changed its position from its Primary Submissions and now requests that all Rural Zone subdivision and development become a non-complying activity. (This is contingent on the new s.95A becoming law.)"*

5. The legal advice states that:

   "The effect of Clause 13, Schedule 2 of the Resource Legislation Amendment Act 2017 (RLA Act) is that Stage 1 of the PDP, as it was notified prior to the commencement of the RLA Act, must be determined as if the amendments made by the RLA Act had not been enacted. The consequence of this clause in the RLA Act, is that the amendments made to the RMA by the RLA Act, cannot be used to justify any recommendations on Stage 1 of the PDP"

6. The Society acknowledges that the DPR Hearing Panel cannot make decisions based on the amendments. However, the Society's core submission, "that all Rural Zone subdivision and development become a non-complying activity", remains a valid submission for the Society to make under the law at that time.

7. The legal advice further states (my underline):

   "However, that is not to say that the implications of the RLA Act are not somewhat more complicated, in that the amendments still apply to the Council generally. <u>Therefore the RLA Amendments (such as the changes to notification) will apply to the PDP when it takes legal effect,</u> including the clause referred to by the UCES relating to subdivision."

8. The Society would add to this that the RLAB amendments apply to the ODP now-discretionary rural subdivisions cannot now be publicly notified.

9. The legal advice has made the DPR Hearing Panel aware of the implications stemming from the amendments in regard to public notification. While the DPR Hearing Panel cannot make recommendations based on the amendments, it can

[1] UCES memorandum of 27th April 2017

make recommendations based on submissions. The DPR Hearing Panel can choose to recommend that all Rural Zone subdivision should be non-complying.

10. To ignore the legal advice expressed above and the submission of the Society is to be operating in a vacuum. Not only that, it is arguable that the amendment to s.95A is ultra vires in that it is inconsistent with the main purpose of the Act where it deprives the community of input into subdivision and development on or in the foreground of landscapes of national importance in the Queenstown Lakes District. The recent Willowridge Developments Ltd. application near Luggate is a good example.

11. The outcome sought by the Society is that the DPR Hearing Panel recommends that all Rural Zone subdivision and development becomes non-complying.

12. The Society is awaiting a response from Council to its s.95A memorandum. The Society hopes that Council will recommend a plan change to the ODP that makes all Rural Zone subdivision non-complying. Failure to do this will result in a lack of transparency in decision making and the withdrawal of appeal rights to the Environment Court where Council errs in its decisions. As stated above, arguably the withdrawal of public notification rights from the vast majority of the community for the vast majority of rural subdivisions is contrary to the purposes of the Act.

13. In paragraph 5.34 the legal advice discusses the issues of "special circumstances" and "limited notification". There is an intimation that the Society has misunderstood these issues and that this weakens the Society's argument on public notification. This is not the case.

14. The Society acknowledges that case law in special circumstances is relatively settled but notes the legal advice does not say that these can be used as a reason to publicly notify rural subdivision. In my submission special circumstances are just that, and so could never be used to publicly notify a run-of-the-mill discretionary Rural Zone subdivision application.

15. Similarly limited notification (which could perhaps better be described as "almost non-existent notification") is irrelevant to the Society and the wider public because this only involves notification to the immediate neighbours of a subdivision. It is a highly-flawed method of public consultation at best because neighbours are likely not to object to adjacent subdivisions, either because they themselves may be planning a similar subdivision in the future, or because of subtle intimidation by neighbours urging them not to oppose an application and a wish not to get offside with these neighbours. The recent Ballantyne Barker and Stayne Jones subdivisions east of Wanaka are examples of this.

16. What is somewhat surprising about the legal advice is its failure to acknowledge the implications of the draconian reduction in public input resulting from the RLAB and a failure to offer any solution. We would have thought that there was a clear duty on the part of Council's solicitors to advise fully the implications and effects of the section (s.95A) to the Council in order that they become fully aware of its effects. It is possible that counsel for the Council does not understand the way the discretionary subdivision regime works in the ODP and had not itself grasped the significance and effect that it will have in the long-term of excluding the public and the ease with which subdivision in rural areas will be able to proceed. It should not be left up to a small community group like UCES to highlight this issue and provide solutions.

Dwelling Capacity

17. Council has presented planning (Barr) and Dwelling Capacity Model (Osborne) evidence for this hearing. The Osborne evidence specifically states in relation to the whole district[2]:

    "For the District it is expected that the market could provide as many as 23,800 dwellings (when considering the Special Purpose Zones) with current conditions providing 5,400 of these to the Upper Clutha market….. Given the timeframes involved and the level of development potential provided within the PDP, there is more than sufficient capacity for the market to meet expected future demand."

18. Projected residential dwelling demand to 2048 in the Wakatipu Ward is for an additional 9,630 dwellings; the Dwelling Capacity Model shows realizable dwelling capacity as 18,382. (The evidence states that the Wakatipu Ward figures have not been refined at this point in time and so may change up or down when future PDP evidence is given.)

19. Projected residential dwelling demand to 2048 in the Upper Clutha is for an additional 4,922 dwellings; the Dwelling Capacity Model shows realizable dwelling capacity as 5,416.

20. The Dwelling Capacity Model evidence is highly conservative in its assessment of realizable dwelling capacity. For instance it states[3] (my bracket and underline):

    "…..there are a variety of differing motivations that will change this [feasible dwelling capacity] in terms of what the market actually produces. A relevant issue, with regard to this, for the District is the significant gains realised in the market through simply holding land and selling at a later date without any further development…….. For this reason, the resulting 'feasible' development potential for the District is considered at 50% of the final model outputs at this stage."

21. Despite this conservative approach the DCM shows (recognising that with refinement the Wakatipu Ward figures may change) that existing residential zoned capacity is able to meet projected growth demands without the need for any further rezoning. The evidence concludes that residential growth can be accommodated past 2048. Even when the 20% buffer required by the National Policy Statement is applied zoning is sufficient till 2043[4].

22. This also means there is no need for further Special Housing Areas in the District.

23. It is not clear from the Osborne evidence whether the Dwelling Capacity Model includes any future consented residences and residential building platforms in the Rural Zone in its projections. It does say that the Rural General/Rural Zone has been included in the analysis in paragraph 4.3. However, earlier versions of the Dwelling Capacity Model, such as in 2015, have excluded all consented Rural General/Rural Zone building platforms and development. Some clarity on this would be helpful.

24. In any event it appears from the figures available that were all future residential development in the Rural General/Rural Zone to be prevented existing residential dwelling capacity in the other zones would still easily meet demand until 2048.

[2] Philip Osborne evidence 1 May 2017 paragraphs 2.6 and 2.7
[3] Philip Osborne evidence 1 May 2017 paragraphs 6.10 and 6.11
[4] Philip Osborne evidence 1 May 2017 paragraph 7.7

Wakatipu Basin Land Use Planning Study

25. The March 2017 Wakatipu Basin Land Use Planning Study (WBLUPS) commissioned by Council has advocated an 80 ha minimum lot size for much of the Rural Zone in the Wakatipu Basin in what it proposes as a new zone, the Wakatipu Basin Rural Amenity Zone (WBRAZ). It says[5]:

"Creation of a primary Wakatipu Basin Rural Amenity Zone (WBRAZ) with a specified minimum lot size subdivision regime of 80ha being applied in association with all buildings (whether dwellings or farm buildings) requiring consent as a restricted discretionary activity (RDA)."

"Establishing a minimum lot size of 80ha for that zone. All subdivisions in this zone should require consent as a discretionary activity including boundary adjustments except where the minimum lot size is not met then a non-complying activity should be required. These provisions are formulated in order to maintain the identified character and amenity associated with the zone and effectively limits further subdivision in the zone to a minimum"

26. The Study has also advocated that areas of the proposed Wakatipu Basin Rural Amenity Zone be overlaid as Wakatipu Basin Lifestyle Precinct (WBLP). The Wakatipu Basin Lifestyle Precinct areas will permit considerably more development in the parts of the Rural Zone that are currently zoned Rural Lifestyle or Rural Zone. The report says[6]:

"A Wakatipu Basin Lifestyle Precinct (WBLP) replacing the PDP Rural Residential and Rural Lifestyle zones, and containing provisions that 'trump' the underlying WBRAZ provisions as and where specified, and including specific objectives, policies, rules and assessment criteria. Minimum lot size: 4,000m² with buildings requiring consent as a restricted discretionary activity."

"The assessment criteria need to be reviewed when formulating a comprehensive set of planning provisions for WBLP and reflecting the changes to the extent of the zoned area."

27. The Society supports both the 80 ha minimum lot size and Wakatipu Basin Lifestyle Precinct outcomes. (The Society has urged, through earlier submissions and evidence to the DPR Hearing Panel, that no further Rural Lifestyle Zone areas should be consented.)

28. The Society has requested via memorandum[7] that Council carry out a similar Land Use Planning Study in the Upper Clutha. It is confident that if such a study were undertaken, then Upper Clutha Basin Rural Amenity Zone and Upper Clutha Lifestyle Precinct provisions would be recommended for the Upper Clutha Basin (see memorandum).

29. If the recommendations from the WBLUPS are adopted in both the Wakatipu Basin and the Upper Clutha Basin (the Rural General Zone/Rural Zone objectives, policies, assessment matters and rules in the two basins are identical in the ODP and PDP) the position of the Landscape Lines will become much less controversial and less relevant as subdivision and development in much of the Rural Zone will become almost as difficult as development in outstanding natural landscape/outstanding natural features.

[5] Paragraphs 1.26 and 8.9
[6] Paragraphs 1.26 and 8.38
[7] UCES memorandum dated 30th April 2017

30. Growth pressure, especially in terms of residential buildings, is intense. For instance evidence on the Dwelling Capacity Model from Philip Osborne states[8]:

    The Upper Clutha area too is expected to see substantial growth with nearly 3,000 new dwellings required by 2028 and 5,000 by 2048."

31. This growth is likely to result in many residential buildings spilling over into the Rural Zone generating significant adverse effects. Tough planning laws are needed that direct residential development to urban zones or to areas of the rural landscape that can absorb development, such as the Lifestyle Precincts proposed in the WBLUPS, while at the same time preventing most development in rest of the Rural Zone.

32. The Society has already emphasized the cumulative effects of existing piecemeal and somewhat random residential development in the Rural Zone at these District Plan hearings. For instance there are already 200 consented residences and the Wanaka airport complex in a 3800 ha area east of Wanaka. Other examples of areas experiencing cumulative adverse residential effects are found beside the Hawea River and at Dublin Bay.

[8] Philip Osborne evidence 1 May 2017 paragraph 2.4