

UPPER CLUTHA ENVIRONMENTAL SOCIETY

SUBMISSION ON A VARIATION TO THE PROPOSED DISTRICT PLAN

LANDSCAPE SCHEDULES

Definitions and Abbreviations

Schedules=VIF landscape schedules/landscape schedules

UCB RCL=Upper Clutha Basin Rural Character Landscape

PA=Priority Areas

BA=Balance Areas

RCL=Rural Character Landscape PDP=Proposed District Plan

VIF=Values Identification Framework landscape analysis

Agreement=May 2020 agreement between the Council and the Society

Decision 2.2=decision [2019] NZEnvC 205 Decision 2.2

Decision 2.5=decision [2020] NZEnvC 158 Decision 2.5

1. The variation seeks that the PDP reference Landscape Schedules 21.22 and 21.23 in a manner consistent with strategic objectives and policies in Chapter 3 that have been amended by recent Environment Court decisions.

1. Statutory Context

2. The variation addresses matters relating to s.6[b] and s.7[c] of the RMA and relevant chapters in the PDP as described in the S.32 report¹.

2. Background

3. The PDP has been in preparation for around 10 years and throughout this period the Society has been party to this process through Council and Environment Court hearings.
4. Through almost all of this period the Council has argued that the PDP, as publicly notified in 2015, provided adequate protection to rural landscape values through its objectives, policies and rules.
5. The Society (and other parties) put forward submissions and evidence at Court hearings arguing that the PDP provisions were manifestly inadequate because they would not protect existing rural landscape values.
6. In a series of decisions 2019-2023 the Court has found that the PDP provisions were inadequate because they would not protect rural landscape values from inappropriate levels of development.
7. In order to address this the Court found that the Chapter 3 strategic objectives and policies should be significantly amended. It found that VIF landscape schedules were required to be prepared and referenced by the amended strategic objectives and policies.
8. The Court described why it found the schedules to be necessary in decision 2.2² (underline added):

¹ There may also be concomitant amendments necessary to other parts of the PDP.

166. In principle, in the development of a district plan, there should be an iterative relationship between landscape assessment and landscape capacity assessment in calibrating the plan's response to ss6(b) and 7(c), RMA as follows:

(a) landscape assessments serve to elicit values sought to be protected, for s6(b) purposes, or maintained or enhanced for s7(c) purposes so as to help test the settings in the district plan for enablement of subdivision, use and development in ONF/Ls and RCLs;

(b) landscape capacity assessments serve to test the capacity of initially identified values to tolerate land use change or development, particularly as may be anticipated over the life of the district plan;

(c) both landscape assessment and landscape capacity assessment serve to ensure judgments on what the district plan seeks to protect, for s6(b) purposes, or maintain or enhance for s7(c) purposes, are properly informed.

9. After the court's findings the Council changed its position and now explicitly recognises the role the schedules will play in protecting landscape values.
10. The Society strongly supports the PDP Chapter 3 strategic objectives and policies³. Some submissions to this hearing appear to be seeking changes PDP objectives and policies. This is outside the scope of this hearing.
11. The Society believes that when the schedules are referenced to assess a resource consent application for development in the Rural Zone, decisions that protect existing landscape values will be likely to eventuate. In particular the Society supports the development capacity ratings in the schedules; these represent the key mechanism required by the court to ensure protection and maintenance of landscape values.
12. The Society notes that the schedules proposed in the variation have been carefully prepared for the Council by expert landscape architects in a disinterested manner.
13. On the other hand the vast majority of the submissions opposing the development capacity limits in the schedules are from landowners who will gain financially from more permissive development capacity provisions.
14. An example is the evidence of Mr. Smith for Second Star Ltd. He argues that an existing lodge and some short-stay accommodation dignifies a land use pattern within lakeside ONL that supports visitor's accommodation⁴. It is submitted that cumulative effects analysis, which is required under the RMA, would say the opposite, and that this evidence is a blatant attempt to justify Second Star's current lodge proposal⁵.

² Decision 2.2 para.166

³ These provisions are now uncontested

⁴ Smith evidence paragraph 26

⁵ Consent for this was declined by the Council but is now before the Environment Court.

15. A common argument used by submitters⁶ is that a “No” capacity rating cannot be applied as this would entirely preclude development. It is submitted that accepting this argument would be to discredit and undermine the landscape capacity approach required by the Court. Expert evidence before the commissioners shows that the VIF analysis of the PA’s has been carried out under carefully devised methodology which has been the subject of input from numerous landscape architects. It follows that the “No” capacity rating is valid.
16. Ms. Gilbert says in her evidence that the capacity ratings are for guidance that informs strategic direction and do not replace site specific assessment⁷. While this is true, it is submitted that the capacity ratings produced by VIF landscape scheduling are unlikely to change when site specific analysis takes place because the capacity ratings are based on the existing level of cumulative effects as well as landscape attributes. The existing cumulative effects are relatively easy to establish.
17. Unlike the Court, the Council and the Society, private landowners seldom give any weight to the “big picture”, especially the cumulative effects of development in rural landscapes. It is submitted that their submissions to the variation are self-serving; they exhibit naked short-term self-interest. This doesn’t mean that the Society is proposing that the interests of private landowners should be ignored.
18. In the Society’s submission the commissioners are mandated to consider the “big picture” in a manner that meets the needs of the community now and for future generations⁸.
19. At this hearing the commissioners are effectively deciding the fate of the rural landscapes for generations to come. These are rural landscapes not just of national importance, but also of world importance. This warrants a precautionary approach. If the commissioners cave in to the self-interest lobby and permit development above that recommended by its own landscape experts, the landscapes will inevitably suffer. The schedules represent an opportunity to draw a line in the sand for future generations in terms of appropriate levels of development in rural landscape.
20. Having found the schedules to be necessary, the Court is unlikely to take kindly to landscape schedules that contain weak and ineffective development capacity limits.
21. The Queenstown Lakes District’s vital tourist industry is bolstered by the protection of rural landscape values. It is self-evident that people don’t come to this district to see wall to wall development in

⁶ For instance the evidence of Ms. Smetham for Hawthenden Ltd. and Mr. Skelton for Northlake Investments Ltd.

⁷ Gilbert evidence paragraph 6.8(c)

⁸ S.5(2) of the RMA

rural areas. All parties to the PDP process accepted that the district's rural landscapes are a vital element of the tourist industry.

22. Landscape schedules that will in some cases permit little, if any, development in some rural areas will not stifle growth in the district. PDP Court expert evidence prepared for the Council⁹ showed that the district already has enough land zoned to provide for residential growth until at least 2046. The Court noted this in Decision 2.2 para. 60 (bracket added):

“He [Philip Osbourne] explained that the District has sufficient feasible Rural residential development capacity for expected dwelling growth within the District until at least 2046.”

23. Additionally, there is less sensitive rural land bordering the main urban centres that can be zoned for urban expansion in the future.

3. Queenstown Lakes District Priority Areas-ONLF and RCL

24. The variation contains VIF landscape schedules for 29 PA's, both ONLF and RCL, in the Queenstown Lakes District.
25. The Society has commissioned landscape architect Ms. Diane Lucas to assess and prepare expert evidence in relation to the PA schedules located in the UCB¹⁰, for both ONLF and RCL. Her expert evidence is before the commissioners and Ms. Lucas is here today to answer questions on this.
26. The Society's position is that it supports the schedules as prepared by the Council experts, but amended for the opinions expressed in Ms. Lucas's evidence where she differs from the Council's experts. (Amendments proposed at conferencing are addressed below.)
27. While Ms. Lucas's evidence only specifically addresses PA's in the UCB, it should be noted that many of her opinions are applicable across the District, especially in terms of methodology.
28. Significantly, in terms of landscape development capacity, Ms. Lucas commends the work carried out by the Council's landscape experts and does not support higher development capacity ratings in any of the PA's she has addressed¹¹.

4. Conferencing

29. In relation to conferencing Topic 7 “whether landscape capacity assessments should be deleted from the schedules”, the Court's decisions specifically require reference to landscape capacity assessments. The Court defines landscape capacity in decision 2.2

⁹ Philip Osbourne, 19 June 2017

¹⁰ The Society does not have the resources to address the entire Queenstown Lakes District.

¹¹ Lucas evidence paragraph 11

para.10 where it seeks that landscape values and character are not “destroyed” (underline added):

“Landscape capacity (or 'capacity'):

(i) when used in relation to an ONF or ONL, refers to the capacity that the natural feature or natural landscape in question has to accommodate change from land use or development, without those landscape values being destroyed or materially compromised;

(ii) when used in relation to an RCL, refers to the capacity of a landscape character area to accommodate change from land use or development, without that area's landscape character or visual amenity values being destroyed or materially compromised”

30.The Court has explicitly made landscape capacity a central element of its findings. It is submitted that it was outside the scope of conferencing to discuss its exclusion from the landscape schedules.

31.In relation to conferencing Topic 6 “whether the landscape schedules should sit outside of the district plan”, the status and purpose of the VIF landscape schedules and their relationship to the PDP had already been established by the Court in the findings in its decisions. It was outside the scope of conferencing to discuss this.

4.1 Specific amendments to the landscape schedules proposed

Extremely Limited or No Landscape Capacity Rating

32. The Extremely Limited or No Landscape Capacity rating is proposed to be amended to add the words:

“However, there may be exceptions where occasional, unique or discrete development protects identified landscape values”

33.Ms. Lucas (who was not in attendance when the above wording was formulated) is concerned that “occasional” implies that development options will be regularly revisited, which is not consistent with the purpose of the rating. She is also concerned that the term “unique” may open the door to all sorts of development. In the Society’s experience many applicants claim that their proposal is unique. If this wording is used applicants may claim that unique developments are permitted.

34.Ms. Lucas proposes that in all relevant landscape schedules the three words “ occasional unique or” should be deleted and the word “natural” added so that it reads:

“However, there may be exceptions where discrete development protects identified natural landscape values”

Schedule Structure and Content-Agreed Headings

35. Ms. Lucas disagrees with the use of the qualification “important” in any the headings and subheadings in paragraph 4(i) of the Monday JWS. She considers that “important” should be removed from all of the headings (eight of them). For instance “Important Landforms and Land Types” would become “Landforms and Land Types”.

Preamble-21.22 ONL and ONF

36. Ms. Lucas is concerned that the term “modest” implies a moderate level of development that is inconsistent with the purpose of the rating’s requirement for “limited” development. She proposes “modest” be replaced by “small”.

Preamble-Estimates an Unknown Future

37. The Society notes the disagreement as to the inclusion of “estimates an unknown future”¹² in the Preamble where the disinterested landscape architects see this as superfluous while landscape architects employed by parties with a vested interest prefer its inclusion. This situation, where pressure is applied through witnesses employed by landowners, often arises in conferencing and is why the Society is somewhat wary of the process.

38. Ms. Lucas considers that inclusion of the wording may potentially weaken the landscape schedules and so it should be excluded.

West Wanaka PA

39. Ms. Lucas supports the term “barely discernable” rather than “reasonably difficult to see” in relation to Rural Living for the West Wanaka PA due to the existing level of development in the area.

Cardrona Valley PA

40. Ms. Lucas does not support the inclusion of a separate Rural Industrial activity in the Cardrona Valley because this implies industrial activity is encouraged in the ONL of the Cardrona Valley

5. UCB RCL-Balance Area

41. While the UCB RCL BA¹³ does not form part of this hearing, the commissioners need to be aware of the planning status of this area in the wider planning context.

¹² Paragraph 17 of the Monday JWS

¹³ In its submission to the publicly notified variation the Society termed the balance RCL “Lower Priority Area” but on reflection this description is inaccurate.

42. The Court decided in its decisions that the “balance” of the UCB RCL, outside areas delineated as UCB RCL PA, did not require scheduling at this point in time.

43. The Society rejected the planning logic behind the exclusion of the UCB RCL BA for several reasons:

- The boundary between UCB RCL PA and UCB RCL BA is artificial. It is not based on landscape values but on development pressure where the development pressure analysis is questionable; a single multi-lot subdivision consented to in the UCB RCL BA would be likely to change the boundary.
- Labeling parts of the UCB RCL “Non-Priority Areas” was misleading given they often contain higher landscape values than those of the UCB RCL PA.
- Most, if not all, of the UCB RCL BA are certain to come under development pressure during the lifetime of the district plan.

44. For these reasons the Society appealed to the High Court.

45. The Society and the Council reached an agreement¹⁴ in relation this appeal in May 2020, whereby the Council committed to carrying out VIF landscape scheduling for the entire UCB RCL. The Society discontinued its High Court action on the basis of this agreement.

46. The Court recognised this in Decision 2.5¹⁵ (underline added):

“...[the] QLDC explains how it has undertaken to complete a landscape study of the entire RCL. In essence, it has given this undertaking to the Upper Clutha Environmental Society Inc... That is in the context of UCESl's withdrawal of a High Court appeal...”

47. To comply with the terms of the agreement the Council should have commenced work on the UCB RCL BA schedules before 1 July 2021. These schedules should have been prepared at the same time as the UCB RCL PA schedules and formed part of today’s variation.

48. The Society is disappointed that the UCB RCL BA schedules have not been included as part of today’s variation; this would have avoided the need for a second VIF landscape schedule PDP variation.

49. The Council’s failure to abide by the terms of the agreement calls into question the Council’s integrity in discussions with community groups.

50. The Society respectfully suggests that the commissioners, in their deliberation on today’s variation, should give weight to the fact that UCB RCL BA schedules are now in the process of being prepared and will soon be the subject of a future district plan variation.

¹⁴ Signed on behalf of the QLDC by Tony Avery, General Manager, Planning and Development

¹⁵ Decision 2.5 paragraph 14

6. Conclusion

51. The Society seeks a decision on the final text of the Upper Clutha landscape schedules consistent in all respects with the expert landscape evidence of Ms. Lucas.

Julian Haworth

President

UCES

13 October 2023