

QLDC Proposed District Plan

Jeff Brown – summary statement to primary evidence

15 March 2016

Introduction

1. This is a summary statement to my primary evidence dated 29 January 2016. I address the various topics in the following order:
 - Chapter 4 – Urban Development;
 - General discussion on Chapters 3, 4 and 5;
 - Discussion on RMA versus non-RMA language;
 - Chapter 3 – Strategic Direction;
 - Chapter 6 – Landscapes.

Chapter 4 – Urban Development

2. Policy 4.2.2.1 seeks that outside the urban growth boundaries (**UGBs**), urban development is “*avoided*”. I see two problems with this: there is currently a disconnect between the policy and its implementation, because the Wakatipu Basin UGBs do not reflect what is already “on the ground” (Millbrook, Waterfall Park, the Low Density Residential zone at Lake Hayes), and it forecloses legitimate opportunities for urban development outside the UGB. These problems can be remedied by locating UGBs so that they include those areas containing urban development, and by modifying the policy, and policy 4.2.2.5 to provide for proposals that can demonstrate that urban development is the most appropriate outcome for a particular area.
3. The policy modifications are set out in paragraph 5.4 of my primary evidence. I consider that they are necessary for achieving Chapter 3 and Chapter 4 objectives, including Objectives 3.2.2.1 (in relation to urban growth), 3.2.6.1 (in relation to affordable housing) and 3.2.6.2 (in relation to mix of housing opportunities); and Objectives 4.2.1 and 4.2.2 (in relation to coordinating development with infrastructure and services and protecting the environment, rural amenity and outstanding natural landscapes and features; and managing growth of major centres within distinct and defensible urban edges).

General discussion on Chapters 3, 4 and 5

4. In Part 2 of my primary evidence I set out my view about the inevitability of growth and that it should be accepted and its effects managed appropriately so that current and future generations can continue to enjoy the values that attract growth. I consider that the PDP as notified is too far

in the “regulate” direction of the “regulate” → “enable” continuum and that this may frustrate appropriate development, particularly in the rural areas where farming is given primacy. I consider that golf courses, ski fields, rural living and other activities that are part of the social, cultural and economic fabric of the District should be accorded the same consideration as farming when contemplating how the District Plan deals with economic growth, population growth, and the impacts of these on the District’s rural resources and landscapes.

RMA v non-RMA language

5. In my view RMA language should be the “default” language of the PDP and any non-RMA language should be used sparingly. This is because RMA language is understood by a wide range of professionals as well as members of the public. Introducing new terms will lead to uncertainty as to meaning and scope and will open the door to litigation about what the terms mean, which is unnecessary when there is already wide understanding about the meaning of many RMA terms (and this understanding is in large part due to litigation).

Chapter 3 – Strategic Direction

Objectives 3.2.1.1 and 3.2.1.2 – Frankton

6. I consider that Frankton is equally an “economic hub” of the District and that Objectives 3.2.1.1 and 3.2.1.2 should be combined so that the three main centres – Queenstown, Wanaka and Frankton – are treated in the same way at this strategic level of the PDP. I also consider that a policy that seeks to integrate the various components of Frankton is not necessary as each of the Frankton areas have their own established provisions and their complementary functions are (or will be) physically integrated.

Objective 3.2.1.4, and Objective 3.2.5.5 and related policies

7. I address these in paragraphs 4.6 – 4.8 and 4.25 – 4.28. These provisions relate to my point about the over-emphasis of farming activities. In Objective 3.2.1.4 I consider that the words “... *strong productive value of farming* ...” should be changed to “... *traditional rural activities including farming* ...” which more fairly represents the Queenstown-Lakes situation. In Objective 3.2.5.5 and policies 3.2.5.5.1 and 3.2.5.5.2 I consider that, in addition to “*farming*” and “*agricultural land use*”, the words “*and other activities that rely on rural resources*” should be included in the provisions, as many activities that contribute to the District’s wellbeing require rural resources.

Objective 3.2.1.6

8. I address this in paragraphs 4.9 – 4.12. I support Mr Paetz’ new objective to recognise and provide for the significant socio-economic benefits of tourism activities, and I consider that a new policy providing for recreation and commercial recreation activities in the rural areas and lakes

and rivers can be added to support this objective and in recognition of the many forms of recreation that utilise these resources.

Objective 3.2.5.1

9. I address this in paragraph 4.13. I consider that "*natural character*" should be reinstated and that "*inappropriate*" should be added to this objective, to align with section 6(b) of the Act and because there is no evidential basis to justify such a strong objective; and it would not give effect to the operative Regional Policy Statement.

Objective 3.2.5.2 and policies

10. I address this in paragraphs 4.14 – 4.19. The provisions relate to the Rural Landscapes. I propose changes to Objective 3.2.5.2 and Policies 3.2.5.2.1 and 3.2.5.2.2 and I consider that my wording is more efficient in that it uses known RMA terms and focuses the assessment for any proposal, and uses the words (in the policy) "*avoid, remedy or mitigate*". The words provide for the many different circumstances of development in which the effects can be remedied or mitigated, while providing that if adverse effects cannot be adequately avoided then a proposal can be refused.

Chapter 6 – Landscapes

6.2 – Values

11. In paragraph 6.3 I propose a replacement paragraph in the "Values" section, dealing with the Wakatipu Basin. I consider that my paragraph better reflects the reality of the Wakatipu Basin.

Objective 6.3.1 and policies

12. I address these in paragraphs 6.4 – 6.15. I consider that changes to the objective and Policy 6.3.1.4 are necessary to avoid the non-outstanding landscapes being subject to the "*inappropriate*" test from section 6(b) of the Act. My further changes to Policy 6.3.1.4 remove reference to the assessment matters (I consider that a policy which refers to assessment matters in the manner of the notified provision is poor drafting as it effectively elevates the status of the assessment matters to that of a policy) and more clearly guides plan users about the location and design of development.
13. I propose changes to Policy 6.3.1.3 better reflect the operative plan, which is based on the case law, and which differentiates between the ONLs and ONFs of the Wakatipu Basin and the ONLs and ONFs in the rest of the District. The words "*exceptional cases*" should be deleted because this expands the operative ONL-Wakatipu Basin test to all ONLs and ONFs, which is contrary to the established case law and is not justified by the s32.

14. My proposed change to Policy 6.3.1.6 is intended to reflect that opportunities for rural living development are not just in the areas zoned for that purpose but should be enabled in other rural areas, where appropriate.

Objective 6.3.2 and policies

15. I address these in paragraphs 6.16 – 6.27. In Objective 6.3.2 I consider that the words "... *remedy or mitigate* ..." should be inserted after "avoid" to ensure that the objective does not take such a preventative stance and to allow in each case an assessment of the cumulative impact on landscape character and amenity.

Policy 6.3.2.2

16. My preferred wording is set out in paragraph 6.19 of my primary evidence. I consider that this wording is a better fit with Objective 3.2.5.3 (relating to areas with the potential to absorb change) and it better directs applicants and the Council in their respective assessments. I consider that the term "degrade" in the notified policy is too absolute and I prefer the RMA language of adverse effects [being] avoided, remedied or mitigated.

Policies 6.3.2.3 and 6.3.2.4

17. My preferred wording (at paragraph 6.23) broadens the intent of the policies, from being only about proposals seeking support from existing rural living development and infill proposals, to all proposals. In particular, there should be no distinction between "infill" or "outfill" (i.e. expansion) development; the assessment should be the same.

Policy 6.3.2.5

18. My preferred wording (at paragraph 6.26) of Policy 6.3.2.5 removes the reference to "*openness*" (because, as identified by the Environment Court, "*openness*" is a factor for outstanding landscapes but not other landscapes) and removes "*degrade*" as it is too absolute, and replaces with RMA language. On further reflection, I consider that the wording in my primary evidence: "... *do not significantly adversely affect landscape character or visual amenity values*" opens the door too far to adverse effects, and that better wording is:

6.3.2.5 ***Ensure that any adverse effects arising from incremental changes from activities associated with mitigation of the visual effects of proposed development, such as screening planting, mounding and earthworks, are themselves avoided or mitigated.***

Objective 6.3.4 and Policy 6.3.4.1

19. On reflection on Objective 6.3.4, it is not qualified by "*inappropriate*", which goes beyond the intent of Objective 3.2.5.1. It should be reconsidered, which is likely to have implications for the wording of the policies.

20. In Policy 6.3.4.1 I consider that the RMA language “*adversely affect*” is better than “*degrade*”.

Objective 6.3.5 and policies

21. These are the key provisions for the Rural Landscapes, and I address them in paragraphs 6.33 – 6.36. I summarise my preferred wording as follows:

- The objective is turned into an enabling provision with a focus on the appropriateness of subdivision and development, with the policies then directing the user as to what is appropriate;
- Policy 6.3.5.1 recognises the values of the RL areas, including for rural production, outdoor recreation, and rural living;
- Policy 6.3.5.2 recognises the variability of the RL areas and their variability to absorb change;
- Policy 6.3.5.3 enables subdivision and development and uses RMA language (avoid, remedy, mitigate) rather than the absolute terms “*degrade*” and “*diminish*”. I consider that the word “*appropriately*” should be added also, so that the provision reads “... avoids, or appropriately remedies or mitigates ...” because, otherwise, any proposal that remedies or mitigates a little will meet the policy, and this is too lightweight. Adding “*or appropriately*” allows discretion as to whether the remedying or mitigating goes far enough;
- Policy 6.3.5.4 qualifies the “*Avoid*” with: “or appropriately mitigate [*adverse effects*]” because total avoidance of adverse effects may be impossible but a particular change may be appropriate with specific mitigation, and this opportunity should not be foreclosed by the policy;
- Policy 6.3.5.5 replaces “*degrade openness*” with “*obstruct significant views or significantly adversely affect visual amenities*” which invites specific assessment of impacts of the development both from the public and private perspectives;
- Policy 6.3.5.7 removes the expectation that new development would locate in the least visible part of the site and seeks to minimise disruption to the landform. Effects on rural character and visual amenity values are dealt with under Policy 6.3.5.3.

Rules 6.4.1.2 and 6.4.1.3

22. I do not agree with Mr Barr’s modifications to these rules, as they would mean that any proposal within the areas of Rule 6.4.1.3(a) - (e) would be subject to the objectives and policies of the landscape categories under Chapter 6 – which include provisions for the individual landscape categories – but would not be subject to the assessment matters which are the PDP’s method

for implementing those objectives and policies. This does not make sense; there needs to be a clear link from the objectives and policies to the methods that implement them. I consider that amending Rule 6.4.1.3 by re-instating “*categories*” makes it clear that it is the whole categorisation which does not apply, rather than just the assessment matters.

Part 2 of the Act

23. I consider that with the modifications I have suggested the PDP will strike the right balance between accepting the inevitability of growth and how the District's values should be managed accordingly. The modifications are more enabling of activities in the rural areas but with a very strong focus on proper assessment to ensure that any adverse effects on the District's landscape and other important values are managed, and that the outcomes are, ultimately, appropriate.

J A Brown

15 March 2016

