

**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 12 – Upper Clutha  
Mapping Annotations and Rezoning  
Requests

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**STATEMENT OF EVIDENCE OF MICHAEL JOSEPH BERESFORD (SUBMITTER 149)**

**Dated 4 April 2017**

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## STATEMENT OF EVIDENCE OF MICHAEL JOSEPH BERESFORD

### Introduction

- 1 My name is Michael Joseph Beresford and I am a director of a commercial real estate company in Christchurch. My family are from Little River near Akaroa and my Whakapapa is Ngai Tahu and Nga Puhī. I was the chairperson for the financial arm of the Runanga and the Maori Business Network in Christchurch. I have set out later in this evidence my involvement in the beneficiary claim process in regard to the land.

### Original Submission to Notified Proposal

- 2 In my original submission (**No 149**), I sought to have the land (Section 2 Blk XIV SECT 5 Lower Wanaka SD (CT OT18C/473)) rezoned from Rural Zoned land to Residential – Low Density. The area of land I originally sought to have rezoned was the entire 50.6 hectares. The plan depicting the land to be rezoned was attached to the original submission as Appendix B. For convenience in the rest of this evidence I refer to the whole site as Sticky Forest.
- 3 Sticky Forest is (now) adjoined to the west and south by existing residential development. It is currently covered in pine trees and in lodging the submission I considered that it would be more efficiently utilised for residential development as it is no longer well suited for use as rural activities.
- 4 I am aware that my original relief is opposed by Council officers reporting to the Panel. Largely driven by landscape considerations, officers consider that residential development would not be appropriate as the land is an important component of the natural setting of urban Wanaka.
- 5 However, in giving this evidence, I intend to provide what I consider to be the relevant history of the land, and to emphasise the significance of the Crown's original objective in providing redress to descendants of its current beneficiaries (including myself). Redress was to be in the form of land that would provide 'economic benefit and sustenance' to our 'landless' descendants.
- 6 The notified version of the plan left the land outside of the Urban Fence, with a Rural zoning and an ONL overlay, the effect of which would be to frustrate our ability to gain *any* economic benefit from the land, and I am strongly opposed to that 'treatment' remaining. That was not the treatment given to the land when it was selected by the

Crown for the purposes of the Ngai Tahu Claims Settlement. My submission is motivated by a desire to ensure that the ultimate zoning of the Sticky Forest land is capable of meeting the Crown's original settlement objective.

- 7 Since lodging the original submission, and following a detailed landscape, engineering and transport analysis, the development area now sought has been reduced to 20ha, much less than the original 50.6ha.
- 8 As matters stand, forestry may be an economically viable use of the land that is capable of meeting the Crown's objective in providing redress. An ONL classification will make it extremely difficult to recommence productive forestry on the land, least of all establish any other productive rural activity.
- 9 There are two possible scenarios as an outcome of this submission process. If I am unsuccessful in obtaining my preferred outcome, being Low Density Residential (Urban) zoning for the land, I request that the land be left with a Rural zoning without an ONL overlay. In that event, realistically, forestry or other intensive horticultural will be the only feasible rural land uses, although these would not be permitted with an ONL classification and nor could we realistically expect to obtain consent for that type of development in an ONL area.

#### **Amended Relief**

- 10 As the preferred outcome, and by way of amended relief, I now seek that:
  - 10.1 A much reduced area of land (20 hectares or so) is rezoned for low residential density/large lot development (i.e. within the Urban Fence); and
  - 10.2 That in return for these development rights, the balance of the land remain Rural with an ONL classification, with provision made for retention of the trees and ongoing public access to the land for its recreational activities.

#### **Structure of evidence**

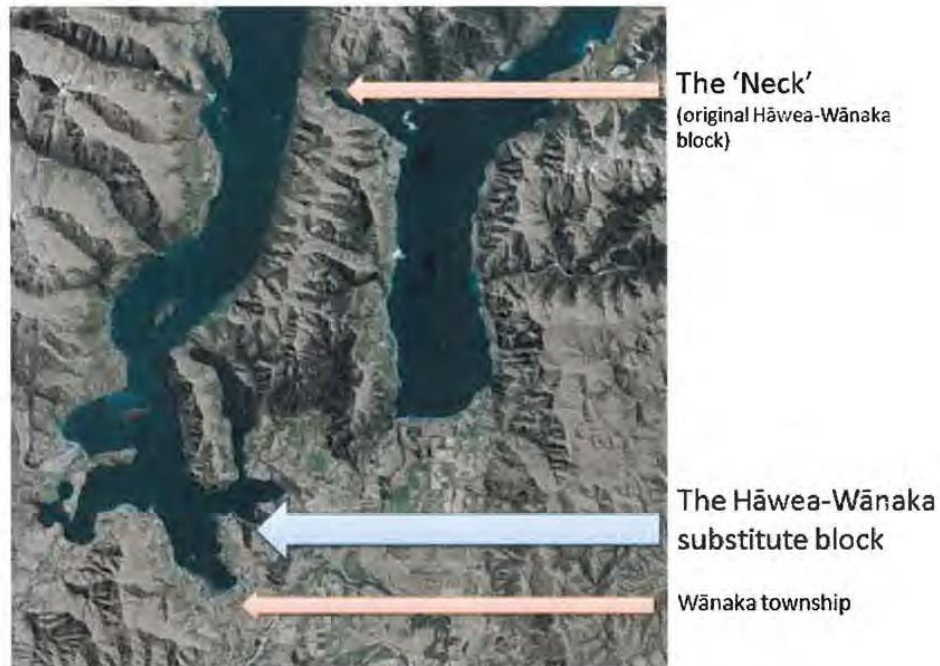
- 11 Detailed evidence is being provided on engineering, landscape, planning and recreation values. My evidence sets out:
  - Background to Sticky Forest;
  - Current status of the land;

- Access issues;
- The role of the Beneficiaries Working Group;
- Current forestry activities;
- Recreational use;
- The purpose of the submission;
- Consultation with Queenstown Lakes District Council; and
- A general conclusion in terms of the outcome now sought.

### **Relevant Background – Sticky Forest**

- 12 The Sticky Forest land is currently held by the Crown on trust for descendants of the 57 original intended owners (**the Beneficial Owners**) who were to have had land transferred to them in settlement of a claim under the South Island Landless Natives Act 1906 (**SILNA**). There are currently about 1,019 fifth and sixth generation beneficiaries, although with the passage of time, those numbers are likely to swell.
- 13 According to documents sourced through the Office of Treaty Settlements (**OTS**), my understanding is that SILNA was intended to provide for 4000 Maori in the South Island left with insufficient land for their support and maintenance following Crown purchases in the mid 19<sup>th</sup> century that had left them landless.
- 14 Following the 1909 repeal of SILNA (by the Native Land Act), there remained four blocks of land for which ownership had not been finalised. The Hawea-Wanaka block was one of those land blocks.
- 15 It was not until the Ngai Tahu Settlement Deed was finalised in 1996 (**the Deed**) that the first steps in providing for that redress commenced in earnest. I am aware that the Deed contains a formal acknowledgement by the Crown of its Treaty breach resulting from its failure to implement the transfer of these blocks to their owners (see Section 15).
- 16 By the time the Deed was signed, the Crown was no longer in a position to include the Hawea-Wanaka land in the settlement redress, as the land had by that time been alienated by the Crown under a pastoral lease to a third party.

- 17 The original Hawea-Wanaka block is referred to as "The Neck" in various background documents, and is located between Lakes Wanaka and Hawea and is shown in the aerial photo below. Although that land was of historic significance to Ngai Tahu, this is not so in relation to the substituted Sticky Forest.



- 18 The signing of that Deed triggered a process by which the descendants of the 57 original owners were able to be identified (adopting the Te Ture Whenua Maori Act 1993 successor identification provisions). For the Wanaka land, this process did not finish until November 2010, and even to this date, although their identity is known, they have not all been located.
- 19 The Ngai Tahu Claims Settlement Act 1998 (**NTCSA**) also established the process for the transfer of the Sticky Forest land in substitute for the original land on the basis that it was of similar land area and value and was situated in close proximity. It is referred to in that legislation as 'Substitute' land, a status that has significance to us in terms of that legislation, as the beneficiaries cannot seek a further block of land in lieu of the Sticky Forest land as redress, an option available to others who were left land of limited economic value.
- 20 This settlement set out in the Deed and NTCSA followed a recommendation by the Waitangi Tribunal that a 'value-for-value' exchange in land occur in reparation of what it found to be a breach by the Crown of its Treaty principle to act in good faith in failing to implement the 1906 reparation process. This was aside from the questions raised by the

Waitangi Tribunal about sufficiency of some blocks to fulfil their intended purpose of providing owners with a degree of economic benefit and sustenance.

- 21 The actual report of the Waitangi Tribunal (Wai 27) had this to say about the Crown's breaches:

We consider lastly the 1658-acre block allocated but never granted to landless Ngai Tahu. The land allocated between Lakes Wanaka and Hawea to 57 individuals, most of whom lived hundreds of miles away, was steep and rocky and of no conceivable use to them. The Tribunal has already found that the South Island Landless Natives Grants Act 1906 and its implementation were but a cruel hoax, and they cannot be reconciled with the honour of the Crown. This finding was made on the basis that all of the land set aside for these purposes was in fact granted. That substantial areas of land were allocated to Ngai Tahu individuals but never subsequently granted we find further magnifies the breach of the Treaty principle requiring the Crown to act in good faith.

As a result of Ngai Tahu's petition in 1979, the Crown accepted that the tribe had a valid claim with respect to this land. Positive steps were taken by the Department of Lands and Survey to compensate Ngai Tahu with land for the loss of both the landless natives block and the fishing reserve. As stated above, we support these moves and recommend that negotiations be recommenced immediately on a value-for-value exchange in land. We point out that as the 1658-acre block was actually allocated to 57 named Ngai Tahu it is important that any compensatory land awarded in respect of this area, as distinct from the fishery reserve, be vested in the descendants of the original allocatees. This should be borne in mind by both Crown officials and Ngai Tahu negotiating the reparation.

### **Current status**

- 22 Sticky Forest had its reserve status<sup>1</sup> removed under the NTCSA, and is held on trust for the beneficiaries by the Crown for the Minister for Treaty of Waitangi Negotiations and the Minister of Maori Affairs.
- 23 The OTS administers the land, and is responsible for the payment of all costs associated with the land, including rates (which total about \$40,000 per annum), insurance and forestry maintenance costs. It has engaged a private company (PF Olsen) to manage the forest.
- 24 Currently the land is insured (against loss/damage) under an insurance policy held by the Crown for the value of \$232,000, which essentially covers the costs associated with loss of the 29 year old plants, and includes replanting.
- 25 Once the land is transferred to the beneficiaries, we will all be liable for the ongoing payment of those costs, together with other costs, such as pest control, for instance.

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<sup>1</sup> Reserve status was Local Purpose (for plantation purposes), since the Council's predecessor first acquired the land in 1953.

Some costs could be mitigated depending upon the land ownership structure that is ultimately decided upon.

### **Sticky Forest Landlocked**

- 26 I am aware that Sticky Forest is currently landlocked. On the basis of research undertaken for the OTS, it is my understanding that the land was originally owned by the County of Lake, being a predecessor of the Queenstown Lakes District Council (held as a reserve for plantation purposes).
- 27 It was initially held in the same certificate of title alongside the 52 hectares or so of land that extends out to Aubrey Road (that is more commonly known as the Kirimoko Block, and referred to as the 'Wanaka Plantation' in the NTCSA). This Kirimoko Block has subsequently been rezoned and is now in the process of being redeveloped for residential activity.
- 28 In 2000 the Sticky Forest and Wanaka Plantation land was surveyed and all the land was transferred by the Crown to Ngai Tahu Property Group Limited. For the purpose of the NTCSA, the entire block was treated as a 'commercial property' selected by Ngai Tahu under the Deferred Selection Process in that legislation. Our entitlement arising under the SILNA lay only in respect of the Sticky Forest Block.
- 29 When subdivision of the Kirimoko Block occurred, it was exempt from the usual subdivision process under the RMA pursuant to s45 NTCSA. When the Kirimoko Block was subdivided, for reasons I am not aware of, no provision was made for road access to Sticky Forest, leaving it landlocked.
- 30 This is a significant issue that will have to be overcome regardless of whether my submission is accepted, hopefully without having to seek the High Court's assistance. The land cannot feasibly be used for forestry or any other activity without some form of permanent legal road access.
- 31 For the purpose of this hearing process, the instructions to the traffic engineers have been to (only) consider potential options for road access if the land is to be developed for low density residential. Obviously, if the land is to remain rural and is to be actively managed as a production forest, other access options may have to be considered.

## **Working Group Establishment**

- 32 Following the completion of beneficiary identification, a Working Group comprised of elected beneficiaries was established by the Maori Land Court (**MLC**) following a meeting of the owners in February 2014.
- 33 This occurred only a matter of days after I first learnt that I was one of the beneficiaries. I attended this first meeting, and was subsequently appointed along with six others as a member of this Working Group. From February 2014, the Working Group has met on a regular basis.
- 34 The established Terms of Reference for the Working Group is:
- 34.1 To create a more up-to-date list of beneficiaries; and
  - 34.2 To look at potential options around use of the block to assist in the decision-making process as to the best status for the land to be held.
- 35 Our key role is to provide the owners with information to support two key decisions:
- 35.1 What category land should be held as;
  - 35.2 What entity would receive ownership.
- 36 To assist in this regard, the Working Group has focused on two objectives:
- 36.1 Investigation of the best use of the land based on personal, traditional and economic factors;
  - 36.2 Creation of a more comprehensive beneficiary list.
- 37 In terms of the landholding options, those available to the owners include:
- 37.1 The land is vested in the owners as tenants in common with an undivided share;
  - 37.2 The land is vested in a Maori incorporation established under Part XIII of the Te Ture Whenua Maori Act 1993;
  - 37.3 The land is vested in an Ahu Whenua Trust constituted under s215 of Te Ture Whenua Maori Act 1993; or
  - 37.4 The land is vested in any other manner that the owners decide upon.



38 The Deed states that the owners need to choose whether the block will be Maori freehold land or general land according to the definitions provided in s129 of Te Ture Whenua Maori Act 1993, as follows:

Maori freehold land the beneficial ownership of which has been determined in a Maori Land Court by freehold order;

General land is land other than Maori freehold land and general land owned by Maori, which has been alienated from the Crown for a substituting estate in fee simple.

39 There are important differences between these types of land, for example Maori freehold land is subject to Te Ture Whenua Maori Act 1993. In short, this has implications in terms of future use and alienation of the land, all of which will have to be considered by the beneficiaries before the two key decisions are made in relation to this land.

40 For instance, if the land is held under Maori freehold land status under the Te Ture Whenua Maori Act 1993, it will be exempt from rates, although development opportunities would be limited, aside from any zoning considerations.

41 In terms of future options for the land, these have been identified by the Working Group:

41.1 Option 1. Forest Development

41.2 Option 2. Owner Residential Development

41.3 Option 3. Joint Venture Residential Development

41.4 Option 4. Sell Property

41.5 Option 5. Take Ownership and Review

| Option | Description                           | Best Land Category   | Best Entity Structure       | Owner Investment Required   | Timing for Owner Returns          | Projected Levels of Return                     | Comments   |
|--------|---------------------------------------|----------------------|-----------------------------|---|-----------------------------------|--|--|
| 1      | Forest Development                    | Maori Freehold Land* | Trust - Maori Incorporation | Yes yearly Approx \$40,000pa in maintenance costs plus rates and insurances | Estimated 2032-2042               | N/A Valuation Being obtained by OTS            | Relatively low annual holding cost, return undetermined and delayed. Owner contributions required.   |
| 2      | Owner Residential Development         | General Land         | Trust – Company             | Yes Significant cost of Approx \$20-25m Plus rates and insurance            | Estimated 5-10 Years              | High Returns Estimated 5-6 times share value   | Strong return but large financial investment required from owners and the Wanaka residential market currently has large number of sections with large neighbouring areas also being rezoned residential. |
| 3      | Joint Venture Residential Development | General Land         | Trust –                     | No development costs, rates and insurances                                  | Estimated 5-10 Years              | Medium Return Estimated 2-3 times share value. | Good returns, minimal investment required, market comments as above  |
| 4      | Sell Property                         | General Land         | Trust -                     | Nil   | Within 6 months of court decision | Good Return 1-2 times share value              |  |
| 5      | Take Ownership and Review             | Maori Freehold Land  | Trust -                     | Rates and insurances, pest control  | N/A                               | N/A  |  |

\* Land held as Maori Freehold Land would be exempt from rates

42 It will ultimately be for the 1,019 owners to establish a management structure for the land in accordance with whichever of the four options above receives the most votes, when that ultimately comes to be decided.

43 Significant work has been carried out in relation to looking at the options around the potential use of the land. The Working Group has been gathering information about the current value, milling options, sales options, value of sole partnership arrangements to increase the value of the land and eventual return for owners/beneficiaries. This work has to an extent been hamstrung by a lack of funds for due diligence around forestry and registered valuations.

44 In addition the functioning of the Working Group has been hampered due to a lack of funding at the MLC level. This is further complicated by the fact that the MLC is going through a restructure, and we have been subject to delays in the finalisation of the date for a hearing for the purpose of determining land ownership matters.

45 The MLC was to have finalised the list of beneficiaries with a view to holding a hearing in February 2017, although that was delayed by the restructure. We are now waiting for the OTS to communicate a new date for that hearing. However, it is possible that this will occur and title will pass to the beneficiaries (in some form) by the end of 2017, if not

early 2018, as the OTS wants this block "off the books" so they can progress other outstanding SILNA issues.

- 46 Critical to the making of these decisions, the owners will need to decide what they want to do with the land, so that the two decisions align with and facilitate the owners' wishes.

### **Current Forestry Management**

- 47 Most of the forest was planted prior to 1990 and will automatically be subject to the Emissions Trading Scheme (**ETS**). Some, possibly up to 16 hectares, was planted post 1989, and it will be for the owners to decide if they want to opt into the ETS for these trees.
- 48 I am advised that there will be advantages and disadvantages in choosing to participate in the ETS. However, considering that the pre-1990 forests are already part of the ETS, there will be significant financial penalties that fall on the beneficiaries in the event that the land is deforested and converted to a use other than forestry, being costs that beneficiaries would hope to recover from some development opportunity.
- 49 There is some doubt over the extent to which the forest has been actively managed. I am aware that some of the witnesses who have been through the forest observed that there has been very little apparent thinning carried out for a number of years.
- 50 The only information that I have seen about that is contained in the information prepared by PF Olsen dated 10 August 2009 and submitted to the OTS. This is a report on the waste thinning operation undertaken in April 2009. I am not sure whether any other thinning has been conducted since then. I also understand that the 2009 thinning operation was focussed upon that part of the land identified as containing bike tracks as marked on the Lake Wanaka Cycling Inc "cycling map".

### **Recreational use of Sticky Forest**

- 51 As far as I am aware, none of the Beneficiaries are based in Wanaka. Until becoming aware of my own shareholding interest in this land, I was not very familiar with the Wanaka biking scene and have only since learned of the extent to which Sticky Forest is used (and valued) for recreational activities.
- 52 It is fair to say that most of the work undertaken by the Working Group has been done in ignorance of the significance of that activity. A continuation of some recreation use

had not been factored into a consideration of the various land use options being considered.

53 However, if the Beneficiaries decide to retain the land (essentially the "do nothing" option), that is matter we will have to look at closely. There will potentially be public liability issues if the land continues to be (passively) made available for this recreational activity.

54 On that basis, if the Beneficiaries decide to hold on to the land, the possibility that it will be locked off from public use cannot be ruled out. Similarly, if the decision is made to carry on actively managing the land as a productive forest then public access is likely to be restricted.

55 I have subsequently been in touch with consultants regarding the forestry in terms of harvesting, the period for which the site would have to be closed down (to provide for re-establishment of the trees) for an estimated period of 3½ years, and the impact on the recreation activities (bike trail) which would be destroyed. This matter is discussed further by Mr Chrystal.

56 Having said that as part of our recent detailed assessment of the land consideration has been given to some of the land being retained for recreation activity, either solely or in conjunction with the forestry.

57 Once the Beneficiaries obtain title to the land, we will all be responsible for the ongoing costs and maintenance of the forest. As a 'bottom line' we will expect to be able to use the land to gain some form of economic benefit, this being the objective of the settlement and Crown's originally intended 1906 reparation.

### **Reasons for the Submission**

58 While the Working Group was investigating the land, it was brought to my attention that the Queenstown Lakes District Plan was going through the review process, and that there was an opportunity to make a submission seeking to rezone the land.

59 Accordingly, I took the initiative in my own personal capacity. Whilst I do not have a mandate from the Working Group to do that, it is for the simple reason that the Working Group was only established by the OTS to investigate land ownership options with the beneficiaries, and not to pursue rezoning or other matters.

60 However, I have kept the Working Group fully informed of all of this entire process, as to a certain extent, the ultimate decision to be made by the Beneficiaries will influence or be influenced by the outcome of this process in terms of what they each want from the land in terms of timing, return, and owner contributions.

### **My consultation with Queenstown Lakes District Council**

61 I have been proactive in communications with Queenstown Lakes District Council (**QLDC**) members. The first contact was to meet with the Chief Executive Officer, Property Manager, and Reserves Manager (soon after my submission was lodged) to establish whether there might be interest from the local Wanaka community, and to introduce them to an early iteration of the development proposal.

62 That involved a plan for development of around half of the land, and represented a significant reduction in the residential zoning as compared to my original submission, with the remaining half subject to the ONL and being offered to the Council as a recreational reserve. This would provide for a continuation of the current recreational use, although it would put it onto a more formal footing.

63 The purpose of the meeting was to introduce the concept. It was apparent that the officers who attended the meeting were not fully apprised of the situation regarding the land status.

64 Since that meeting, I have met once again with the CEO, Mike Theelan (approximately 9 months ago). I also attended the public meeting held in Wanaka initiated by Bike Wanaka, and have organised and attended a further meeting with Richard Pope (Reserves Manager), Jim Boulton (Mayor), and Michael Theelan (CEO), where we presented them with the latest iteration of the plan that we are now promoting through the evidence at this hearing.

### **Conclusion**

65 I am aware of the value of Sticky Forest to both the wider community and the biking community as an open space and recreation asset. I also think that the community now understands that the land is in fact private land and was set aside to provide economic benefit and sustenance to the beneficiaries.

- 66 I have spent considerable time and money looking at the options and it was important to look at all options for the future use of the land in order to achieve the best outcome for the beneficiaries.
- 67 The outcome now sought, in my opinion, represents both a fair option for the beneficiaries but also puts on the table a very generous outcome for the community. In effect over half of the land (i.e. some 30ha) would be retained as open space/recreation and generally protect the majority of the bike tracks.
- 68 I have also discussed with the Council and other groups the options for management or ownership of the balance land, again giving the community a major stake in the property and resource.
- 69 I think it is essential for the beneficiaries to be given a full range of options for the land, and some sort of development proposal as part of those options was critical. Otherwise I do not believe the outcome sought through the Crown's original objective to provide for the future wellbeing of the beneficiaries is achieved.

**Michael Beresford**

4 April 2017