

**Before the Panel of Hearing Commissioners
For the Queenstown Lakes Proposed District Plan**

In the Matter of the Resource Management Act 1991

And

In the Matter of the Queenstown Lakes Proposed District Plan
(Stage 2 – Hearing Stream 14)

**Statement of Evidence of Jeffrey Andrew
Brown for Boxer Hill Trust (Submitter 2385)**

Dated: 13 June 2018

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INTRODUCTION

1. My name is Jeffrey Andrew Brown. I have the qualifications of Bachelor of Science with Honours and Master of Regional and Resource Planning, both from the University of Otago. I am a full member of the New Zealand Planning Institute. I am also a member of the New Zealand Resource Management Law Association. I was employed by the Queenstown Lakes District Council (QLDC) from 1992 – 1996, the latter half of that time as the District Planner. Since 1996 I have practiced as an independent resource management planning consultant, and I am currently a director of Brown & Company Planning Group Ltd, a consultancy with offices in Auckland and Queenstown. I have resided in Auckland since 2001.
2. **Attachment A** contains a more detailed description of my work and experience.
3. While this is not an Environment Court Hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Consolidated Practice Note 2014. I agree to comply with this code. This evidence is within my area of expertise, except where I state that I am relying on another person, and I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.
4. This evidence is on behalf of Boxer Hill Trust (**BHT**) (Submitter 2385). BHT owns the 19.6ha block at the northeast corner of Arrowtown-Lake Hayes Road and Hogans Gully Road. I have visited the property on many occasions and I am familiar with the wider surroundings.
5. In this evidence I address the Proposed District Plan – Stage 2 (PDP) zoning of the land and the relief sought in the BHT's submission.
6. I have reviewed the evidence of Mr Barr, Mr Langman, and Ms Gilbert for the Council, and of Mr Hadley and Mr Penny for BHT. I have also reviewed BHT's Stage 1 PDP submission in respect of its land (Submitter 452) and the accompanying expert reports. Of particular relevance is Ms Pfluger's landscape assessment.

7. Chapter 24 zones the land Wakatipu Basin Lifestyle Precinct (**WBLP or Precinct**). I support the WBLP zoning over the land for the reasons expressed in the submission and in Ms Gilbert's evidence¹.
8. My evidence addresses the updated set of provisions for Chapter 24 – Wakatipu Basin, at Appendix 3 of the Council's s42A material², and I focus on:
 - (a) The purpose statement;
 - (b) Objective 24.2.5;
 - (c) Policies 24.2.5.1 – 24.2.5.6;
 - (d) Subdivision rules and assessment matters; and
 - (e) Land use activity rules, development standards and assessment matters.

PART 24.1 – THE ZONE PURPOSE STATEMENT

9. The purpose statement contained in Mr Barr's Appendix 3 includes the following paragraph:

In the Precinct a limited opportunity for subdivision is provided with a minimum lot size of 6000m² in conjunction with an average minimum lot size of one hectare (10,000m²). Opportunities to dispense with the minimum lot size are provided for through a discretionary activity resource consent. Controls on the location, nature and visual effects of buildings are used to provide a flexible and design led response to the landscape character and visual amenity qualities of the Precinct.

10. I consider that the following changes are appropriate:

*In the Precinct ~~a limited opportunity for subdivision is provided~~ **for** with a **range of lot sizes to suit the locational attributes of the particular part of the Precinct, to reflect the variation in landscape values across the different Precinct areas in the Basin. In much of the Precinct, a***

¹ Evidence of Bridget Gilbert dated 28 May 2018, page 58, paragraph 26.8

² Specifically, Appendix 3 of Mr Barr's planning evidence, dated 30 May 2018.

minimum lot size of ~~6000m²~~ **4000m²** in conjunction with an average minimum lot size of one hectare (10,000m²) **is provided for**. Opportunities to dispense with the minimum lot size are provided for through a **restricted discretionary activity resource consent**. **In other areas, where land was within the legacy Rural Residential Zone, a minimum lot size of 4000m² applies**. Controls on the location, nature and visual effects of buildings are used to provide a flexible and design led response to the landscape character and visual amenity qualities of the Precinct.

11. The reasons for my proposed changes are as follows:
- (a) The words "... limited opportunity for subdivision ..." should be deleted because the primary purpose of the WBLP is rural residential living, and therefore the opportunity for subdivision for this purpose should be encouraged and enabled;
 - (b) Across the WBLP there is a spectrum of locational attributes, topographies, and degrees of potential visibility. I address this in other evidence also, for areas where there are different attributes³. For the BHT land, I generally agree with the average and minimum approach and agree with the 1ha average, however I consider that the minimum lot size should be reduced to 4000m² to provide more flexibility and innovation in subdivision design, and that subdivision below this minimum should be a restricted discretionary activity rather than fully discretionary, and using the matters of discretion already in Rule 27.7.6.1.
12. I address the minimum lot size and the status of subdivision where the minimum lot size is not achieved further in Part 5 of my evidence, below, in relation to subdivision.

OBJECTIVE 24.2.5

13. The version of the objective is recommended in the Section 42A Report is⁴:

³ In particular in relation to the operative rural lifestyle areas

⁴ As per Mr Barr's Appendix 3.

24.2.5 Objective - *The landscape character and visual amenity values of the Precinct are maintained and enhanced in conjunction with enabling rural residential living opportunities.*

14. I consider that this should be modified as follows:

24.2.5 Objective – ~~*The landscape character and visual amenity values of the Precinct are maintained and enhanced in conjunction with enabling rural residential living opportunities.*~~ **Enable rural residential living opportunities while managing effects of subdivision and development on the landscape character and visual amenity values of the Precinct.**

15. My reasoning for this modification is that, as I discussed above, the WBLP contains a spectrum of landscapes, ranging from:

- (a) at one end, sites and areas that already have an established rural residential character and visual amenity, because they have already been subdivided down and developed to a rural residential density, and where it is fair to say that new development should maintain (and, if possible, enhance) that existing established character and amenity; and
- (b) at the other end, sites and areas that are hitherto vacant, where the established character and visual amenity values are not based on rural residential development and where maintaining and enhancing that established character would be difficult because the change to rural residential development would change the existing character and visual amenity substantially.

16. Hence, the Section 42A recommended objective works for some but not all of the spectrum of landscapes within the WBLP. In the situation where subdivision is a restricted discretionary activity, and an application seeks to subdivide a bare paddock, a planning officer, reading the objective, could feel justified in recommending refusal because the change of the site from an existing open environment to a future rural residential environment would – despite findings in the relevant Landscape Character Unit as to absorptivity – not “maintain and enhance” that existing environment.

17. I can understand the objective's intent that it apply across the entire Precinct, but I consider that the Section 42A recommended wording would at some point lead inevitably to the problem I have outlined in the previous paragraph.
18. I consider that this potential problem is remedied by my suggested wording, which has two purposes:
- (a) it states up front what the Precinct is intended to enable – i.e. rural residential living; and
 - (b) it seeks to “manage” (i.e. avoid, remedy, or mitigate) effects on the landscape character and visual amenities of the Precinct, which is a more suitable test than “maintain and enhance” in the situation where a specific activity is being provided for and which will inevitably cause change.
19. My recommended wording also aligns the objective to the structure of Section 5 of the Act – i.e. appropriately enabling while appropriately regulating what is enabled.

POLICIES 24.2.5.1 – 24.2.5.6

20. The s42A recommended version of the WBLP policies 24.2.5.1 – 24.2.5.6, and my proposed modifications to them, are:

Policies

24.2.5.1 ~~*Provide for rural residential subdivision, use and development only where it protects, maintains or enhances the landscape character and visual amenity values as described within the Landscape Character Unit as defined in Schedule 24.8.*~~

Provide for rural residential activities and promote design-led and innovative patterns of subdivision, use and development.

24.2.5.2 ~~*Promote design-led and innovative patterns of subdivision and development that maintain and enhance the landscape character and visual amenity values of the Wakatipu Basin overall.*~~

Ensure that new subdivision, use and development avoids, remedies or mitigates adverse effects on, and wherever possible maintains and enhances, the landscape character and visual amenity values of the Precinct, taking into account the relevant values described in Schedule 24.8.

- 24.2.5.3 *Provide for non-residential activities, including restaurants, visitor accommodation, and commercial recreation activities while ensuring these are appropriately located and of a scale and intensity that ensures that the amenity, quality and character of the Precinct is retained.*
- 24.2.5.4 *Implement ~~minimum and average~~ lot size standards in conjunction with ~~building coverage and height~~ standards **development standards** so that the landscape character and visual amenity qualities of the Precinct are not compromised by cumulative adverse effects of development.*
- 24.2.5.5 *Maintain and enhance a distinct and visible edge between the Precinct and the Zone.*
- 24.2.5.6 *Retain vegetation where this contributes to landscape character and visual amenity values of the Precinct and is integral to the maintenance of the established character of the Precinct.*

21. The reasons for my recommended modifications are:
- (a) My modifications to Policies 24.2.5.1 and 24.2.5.2 combine the themes of the Section 42A versions and divide them into the enabling function (the new Policy 24.2.5.1) and the regulatory function (the new Policy 24.2.5.2);
 - (b) The deletion of “protect” from Policy 25.2.5.1 is necessary because it otherwise introduces a much more stringent test than even the Section 42A recommended Objective 25.2.5 provides for;

- (c) The deletion of “maintain and enhance” from Policy 24.2.5.1 is necessary for the same reasons as discussed in relation to the objective, above;
- (d) The new Policy 24.2.5.2 in my view gives better effect to the objective and the need for regulation in relation to the Precinct’s range of landscape characters and visual amenities;
- (e) The changes soften the significance of the LCU in the assessment by just “taking them into account” which is appropriate given that they represent a snapshot view of the landscape at the time of the WBLUS;
- (f) The modifications to Policy 24.2.5.4 are necessary, in my view, because:
 - (i) Given the spectrum of character and amenity within the WBLP, the “one size fits all” approach, with a minimum and average area, is not appropriate for all of the WBLP, in my view. Some areas are able to absorb smaller sites, some not, and in some areas an average may be appropriate. Accordingly, I have deleted the words “minimum and average” from the policy;
 - (ii) Building coverage and height are two of the relevant standards that assist in managing effects on landscape and visual amenity values. Setbacks from roads and other properties are also relevant standards. The policy should take into account all of the relevant standards, and the modification reflects this.

SUBDIVISION RULES AND ASSESSMENT MATTERS

22. The Section 42A Report recommended that the WBLP’s key subdivision rule (Rule 27.5.1) be revised so that subdivision to create a 1ha average lot size is provided for (as a restricted discretionary activity, with breach being non-complying) provided a minimum lot size of 6000m² is achieved (with breach being discretionary). I agree that this goes some way to enabling some additional flexibility and innovation, but the discretionary status would still be seen by many landowners as a bar not worth attempting to clear. In my view

imaginative design would be better encouraged and facilitated by a smaller minimum – 4000m² – and the breach status as restricted discretionary. This would:

- (a) enable design that can more easily integrate lots and development with the natural features, landscape character or amenity values of a site and wider surrounds; and
- (b) encourage (by not imposing an unnecessary procedural impediment of a fully discretionary process) design to avoid a uniform, “cookie-cutter” subdivision outcome and to achieve a best fit for the particular natural features, landscape character or amenity values of a particular site and area.

23. This would then better achieve both the s42A recommended Policy 24.2.5.2 and my Policy 24.2.5.1, which both refer to “design-led and innovative patterns of subdivision and development”. It would also better achieve the purpose statement which refers to a “flexible and design led response ...”.

24. I consider that the assessment matters for restricted discretionary activity subdivision, at Chapter 27, Clause 27.7.6.2 (Section 42A version) (except for clause (a) that I address below) , are generally adequate for allowing proper assessment of a subdivision making use of the restricted discretionary rule for breaching the minimum lot size. However, I consider that assessment matter (f), for subdivision design, should be amended so that it is the same wording in the land use provisions for the Precinct (Clause 24.7.3(e) as per Appendix 3 of the Section 42A Report), as follows:

*f. Whether clustering ~~or variation lot sizes~~ of future buildings **or varied allotment sizes in subdivision design** would offer a better solution for maintaining a sense of openness and spaciousness, or the integration of development with existing landform and vegetation **or lifestyle** patterns.*

25. In other areas, the 4000m² minimum with no average is appropriate in my view, for reasons I address in other evidence.

26. Also, in relation to the subdivision of balance allotments under Rule 27.4.2(g), I consider that this should be amended as follows:

*g. The further subdivision of an allotment that has previously been used to calculate the average lot size for subdivision in the Wakatipu Basin Lifestyle Precinct, **except in the instance that the further subdivision and any prior subdivision, together, complies with Rule 27.5.1.***

LAND USE ACTIVITY RULES, DEVELOPMENT STANDARDS AND ASSESSMENT MATTERS

27. For new WBLP areas including the BHT land, I generally agree with rules mechanisms for buildings⁵ recommended in the Section 42A Report. This addressed in my evidence for Lake Hayes Investments Limited (et al)
28. I note however that in the assessment matters, Clause 24.7.3(e) (which I have addressed above) refers to subdivision design, which is not an issue at the time of land use consent, and therefore this phrase should be deleted from the clause in my view.
29. The assessment matter in 24.7.2 and the equivalent in 27.7.6.2(a) for subdivision, as they relate to the WBLP, require that all proposals for restricted discretionary activities will also be assessed as to whether they are consistent with the relevant objectives and policies for the Zone or Precinct as well as those in Chapters 3-Strategic Direction; Chapter 4 - Urban Development, Chapter 6 - Landscapes and Chapter 28 - Natural Hazards. I consider this should be deleted because it opens up the discretion to practically any matter, rather than restricting it to the matters for which the rule is designed and is akin to the assessment required for a non-complying activity – they require applications to be ‘consistent’ with the policies (which is arguably a more stringent test than 104D which is ‘not contrary to’). The costs to the applicant and the Council of requiring such an assessment would be unreasonably high. The only reasonable exception is the provisions for natural hazards.

LANDSCAPE CHARACTER UNIT 8: SPEARGRASS FLAT

30. I consider that various changes to LCU 8 (Speargrass Flat) are necessary, as follows:
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⁵ I have a different view for areas that are in the operative rural living zones, and I discuss that in other evidence.

8 : Speargrass Flat

Landscape Character Unit	8: Speargrass Flat
Landform patterns	Relatively open pastoral flat framed by the south-facing slopes of the Wharehuanui Hills to the north, and the steep margins of the Slope Hill 'Foothills' to the south.
Vegetation patterns	Scattered exotic shelterbelts and patches of mixed scrubland in gullies. Isolated bush fragment to eastern end. Exotic pasture grasses dominate.
Hydrology	A series of watercourses and overland flow paths drain southwards across Speargrass Flat from the Wharehuanui Hills to Lake Hayes.
Proximity to ONL/ONF	Unit does not adjoin ONL or ONF; however, has open longer-range views to surrounding ONL mountain context.
Character Unit boundaries	North: ridgeline crest, Millbrook Structure Plan area and <u>Hills golf course</u> East: crest of hill slopes, Lake Hayes Rural Residential landuse pattern/cadastral boundaries, Speargrass Flat Road. South: ridgeline crest, Hawthorn Triangle hedging. West: vegetation patterns/stream.
Land use	Predominantly pastoral land use with sparingly scattered rural residential lots.
Settlement patterns	Dwellings tend to be well separated and framed by plantings, or set into localised landform patterns. Generally dwellings are located on the flat land adjacent the road although a very limited number of consented but unbuilt platforms located on elevated hill slopes to the south (that enjoy northern aspect). Overall very few consented but unbuilt platforms (3). Typical lot sizes: the majority of lots are over 50ha.
Proximity to key route	Located away from a key vehicular route. <u>Part of the area is adjacent to Speargrass Flat/Hogans Gully Road and Arrowtown Lake Hayes Road.</u>
Heritage features	Two heritage buildings/features identified in PDP.
Recreation features	Speargrass Flat Road is identified as a Council walkway/cycleway. Forms part of Queenstown Trail 'Countryside Ride'.
Infrastructure features	No reticulated sewer or stormwater. Reticulated water in places.
Visibility/prominence	The relatively open character of the unit makes it highly visible from the public road network and the elevated hills to the north and south, <u>although the escarpment confining the character unit to the north blocks some views from the north.</u>
Views	Key views relate to the open and spacious pastoral outlook from Speargrass Flat Road (including the walkway/cycleway route) across to the escarpment faces and hillslopes flanking the valley, backdropped by mountains.
Enclosure/openness	The landform features to the north and south providing a strong sense of containment to the relatively open valley landscape.

Landscape Character Unit	8: Speargrass Flat
Complexity	The hillslopes and escarpment faces to the north and south display a reasonably high degree of complexity as a consequence of the landform and vegetation patterns. The valley floor itself displays a relatively low level of complexity as a consequence of its open and flat nature.
Coherence	The relatively simple and legible bold valley landform pattern, in combination with the predominantly open pastoral character, contributes an impression of coherence. Gully vegetation patterning serves to reinforce the landscape legibility in places.
Naturalness	The area displays a reasonable degree of naturalness, as a consequence of the relatively limited level of built development evident in parts of the LCU.
Sense of Place	Generally, the area displays a predominantly working rural landscape character with scattered and for the most part, relatively subservient rural residential development evident in places. Whilst Hawthorn Triangle and Lake Hayes Rural Residential LCUs form part of the valley landscape, their quite different character as a consequence of relatively intensive rural residential development sets them apart from the Speargrass Flat LCU, with the latter effectively reading as 'breathing space' between the two. To the eastern end of the unit, there is the perception of the Lakes Hayes Rural Residential area sprawling <u>west</u> into Speargrass Flat.
Potential landscape issues and constraints associated with additional development	Absence of a robust edge to the Lake Hayes Rural Residential LCU makes Speargrass Flat vulnerable to 'development creep'. Open character, in combination with walkway / cycleway, makes it sensitive to landscape change.
Potential landscape opportunities and benefits associated with additional development	Larger-scaled lots suggest potential for subdivision. Subdivision around the edges of the Lake Hayes Rural Residential Unit suggest the potential to consolidate the existing rural residential 'node' and integrate a defensible edge. Riparian restoration potential. Easy topography.
Environmental characteristics and visual amenity values to be maintained and enhanced	Sense of openness and spaciousness as a 'foil' for the more intensively developed rural residential areas nearby. Views from Speargrass Flat Road to the largely undeveloped hillslopes and escarpment faces to the north and south. Integration of buildings with landform and/or planting.
Capability to absorb additional development	High , <u>especially</u> around Lake Hayes Rural Residential LCU 12 edges. Low : Elsewhere.

31. I consider that the modifications are necessary to:

- (a) ensure that the evaluation of the LCU accurately reflects the existing environment, including zonings and consents;
- (b) ensure that surrounding topographical features are accurately taken into account.
- (c) correct errors in the terminology of activities and operations;
- (d) ensure it provides for the landscape character as it is anticipated to and will likely change under the relevant (proposed) zoning. The LCU's purpose should be to set 'bottom lines', rather than provide a snapshot in time (2017) of the landscape of each unit when that snapshot does not account for and may disenable appropriate development that is otherwise anticipated by the unit's zoning. The mark ups are one way in which this might be achieved, but there may be others.

S32 AND PART 2 OF THE ACT

32. Under s32 I consider that, subject to the modifications I have proposed:

- (a) The WBLP objective 24.2.5 is the most appropriate way to achieve the higher order objectives of the PDP, in particular, the following objectives in Chapter 3 (Strategic Direction):

3.3.22 Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments.

3.3.23 Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas.

3.3.24 Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character.

- (i) I comment:
 - (A) the land is identified as being appropriate for rural living development;
 - (B) the land can absorb change;

- (C) development in areas which are identified for rural living development and that accords with the subdivision and development standards does not in my view then cumulatively affect rural character, at the scale of the wider Basin.
- (b) The WBLP provisions, subject to the modifications I have proposed, are the most appropriate, practicable and most effective and efficient way, in my view, for achieving the relevant WBLP objectives, as I addressed in part 3 above; and
- (c) The provisions will have benefits, from better enabling flexible and innovative subdivision design, and hence better potential environmental outcomes; while having no particular costs;
- (d) I do not consider there is any risk of acting (by adopting my proposed modifications) because there is no uncertainty or insufficient information about the subject matter of the modifications.
33. Various matters in Section 7 of the Act are relevant, including:
- (b) the efficient use and development of natural and physical resources;*
- (c) the maintenance and enhancement of amenity values;*
- (f) maintenance and enhancement of the quality of the environment;*
- (g) any finite characteristics of natural and physical resources;*
34. I comment:
- (a) The enabling of more flexibility and innovation in subdivision design may well create more efficient outcomes, for example through clustering of sites and reducing driveway lengths and infrastructure works;
- (b) The location of the WBLP and the provisions, including the subdivision and development standards, all contribute to the wider goal of maintaining and enhancing amenity values and the quality of the environment of the Wakatipu Basin;
- (c) Land which is suitable for rural residential development in the Basin is finite, therefore it is important to enable it to be developed and to

function efficiently, and I consider the provisions, with my modifications, achieve that.

35. Under Section 5, I consider that the WBLP achieves the sustainable management purpose of the Act by enabling people and communities of the District to provide for their collective well-being and safety in a manner that: sustains the potential of the natural and physical resources of the WBLP for future generations; will continue to safeguard the life-supporting capacity of air, water, soil, and ecosystems; and will avoid or mitigate potential adverse landscape effects.
36. The purpose of the Act is therefore achieved by the WBLP and the proposed modifications sought in this submission.

SUMMARY AND CONCLUSION

37. For the reasons set out above I consider that the WBLP over BHT's Hogans Gully land is appropriate and the modifications I have proposed to the zone purpose, the objective and methods will achieve the relevant higher order objectives of the PDP and the purpose of the Act.

J A Brown

June 2018

ANNEXURE A

Curriculum vitae – Jeffrey Brown

Professional Qualifications

1986: Bachelor of Science with Honours (Geography), University of Otago

1988: Master of Regional and Resource Planning, University of Otago

1996: Full Member of the New Zealand Planning Institute

Employment Profile

May 05 – present: Director, Brown & Company Planning Group Ltd – resource management planning consultancy based in Queenstown and Auckland. Consultants in resource management/statutory planning, strategic planning, environmental impact assessment, and public liaison and consultation. Involved in numerous resource consent, plan preparation, changes, variations and designations on behalf of property development companies, Councils and other authorities throughout New Zealand.

1998 – May 2005: Director, Baxter Brown Limited – planning and design consultancy (Auckland and Queenstown, New Zealand). Consultants in resource management statutory planning, landscape architecture, urban design, strategic planning, land development, environmental impact assessment, public liaison and consultation.

1996-1998: Director, JBA, Queenstown – resource management consultant.

1989 – 1996: Resource management planner in several local government roles, including Planner (1992 – 1994) and District Planner (1994 – 96), Queenstown-Lakes District Council. Held responsibility for all policy formulation and consent administration.

Other

- New Zealand Planning Institute – presenter at *The Art of Presenting Good Planning Evidence* workshops for young planners (2016 –)
- Judge, New Zealand Planning Institute Best Practice Awards (2017 –)