

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL
INDEPENDENT HEARINGS PANEL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER the Queenstown Lakes Proposed District Plan
(Stage 3 – Hearing Stream 17)

Statement of evidence of JEFFREY ANDREW BROWN on behalf of:

Marama Hill Limited (Submitter 3280) and Nicholas Cashmore (Submitter 3203)

29 May 2020

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ATTACHMENTS

A. Curriculum Vitae

1. Introduction

- 1.1 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.
- 1.2 A more detailed description of my work and experience is contained in [Attachment A](#).
- 1.3 I confirm that I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court Practice Note dated 1 December 2014. I agree to comply with this Code. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.4 I have been engaged by Marama Hills Limited (**MHL**) and Nicholas Cashmore to prepare evidence in respect of MHL and Mr Cashmore's submissions on the inclusion of references consistency with a Residential Design Guidelines (**RDG**) in a policy and as a matter of discretion for restricted discretionary rules in Chapter 7 (Lower Density Suburban Residential Zone).
- 1.5 My firm prepared MHL's submission and assisted with the preparation of Mr Cashmore's submissions on Stage 3 (Submission 3280 and Submission 3203). This evidence relates to those submissions. I have read the evidence of Mr Devlin and Mr Compton-Moen for the Council.
- 1.6 My evidence is structured to respond to the recommendations of the section 42A report (**s42A**) in relation to the submission, in the order addressed in that report and under the same headings, and I discuss some additional matters not specifically addressed in the s42A.

2. Rejection of Residential Design Guidelines

- 2.1 MHL and Mr Cashmore seek the deletion of the variation to the Chapter 7 provisions. The primary reason for seeking this relief is that the variation would have the effect of enabling the Council to decline a resource consent where it was not consistent with the RDG.

2.2 At Topic 9 of the s42A, the report rejects the submissions on the basis that they do not provide any assessment of why the section 32 evaluation (**s32**) is incomplete or incorrect, and accepts the findings of the s32.

2.3 The section 32 evaluation (**s32**) identifies the resource management issue to be addressed as:

Issue 1 – The effects of growth and increased density on urban design outcomes and amenity values, and the effects it has on the social, economic and cultural wellbeing of the community.

2.4 The s32 further identifies the specific resource management issue with the Decisions Version of the provisions to be that “*Development within the residential zones, particularly the medium and high density zones, is expected to achieve high quality urban design outcomes, however in the absence of guidance regarding the design elements that require consideration to achieve high quality outcomes, there is currently uncertainty for plan users, and risk of inconsistent plan interpretation and administration.*”¹

2.5 To support this issue, the s32 refers to the recommendation of the Independent Hearing Panel (**IHP**) in Stage 1 on the Residential Zones (Chapters 7, 8 and 9)². In particular, it quotes the report findings on the necessity for design guidance, and the urban design evidence of Mr Falconer for the Council on this matter.

2.6 The references to the IHP report used in the s32 do not support the resource management issue (being an absence of design guidance in the provisions) as identified. Rather than supporting the inclusion of a design guide through the provisions of the residential chapters, Mr Falconer’s opinion was that a design guide was “*a support reference that could help give developers practical ideas rather than a form part of a paint-by-numbers ‘rule book’ detailing a ‘Queenstown style’ to be complied with.*”³ His view was that the residential zone provisions in the Plan “*had sufficient design requirement and guidance that, with skilled expert input as is typically provided by both applicants and the Council, developments would achieve an adequate design quality.*”⁴

2.7 The IHP concluded that outcome-focused objectives and policies remained the superior resource management instrument to ensure high quality design outcomes, and was comfortable recommending a version (of the residential zones) without design guidelines⁵. The inclusion of a design guideline into the Plan as a section 104(b) matter (see Section 4 below) was therefore

¹ Paragraph 2.11(a)
² Report 9A
³ Report 9A, paragraph 143
⁴ Ibid
⁵ Report 9A, paragraph 144-145

not anticipated by either the Council’s urban design evidence (through Mr Falconer) or the IHP in Stage 1.

2.8 The reliance on the IHP report by the s32 is potentially misleading when the recommendation is viewed in its totality. In my view, the s32 has not established either that there is a resource management issue with the existing provisions, or that the variation is the most appropriate way to achieve the objectives of the proposal.

3. De facto standards

3.1 As set out in the submissions, the variation would have the effect of enabling the Council to decline a resource consent application where the Council considered that the proposal was not consistent with the RDG. This is of particular concern given the RDG includes design elements that are not included as standards in the zone in question. The wording of the varied provisions to include “Consistency with the design outcomes in the Residential Zone Design Guide 2019” as a matter of discretion has the effect of widening the Council’s discretion beyond those determined through the Stage 1 process.

3.2 A comparison of the standards in Chapter 7 and the design elements in the RDG is set out in Table 1 below.

Table 1: Comparison of Chapter 7 standards and RDG design elements

RDG Design Element	Chapter 7 Standard
01 Building Diversity and Adaptability	
02 Entrances and Detailing	
03 Building Dominance and Sunlight Access	<ul style="list-style-type: none"> • Building Height/ Recession Plane (7.5.1, 7.5.2, 7.5.3 and 7.5.7) • Building Separation (7.5.9) • Density (7.5.11) • Building Length (7.5.10) • Setbacks (7.5.8 and 7.5.14)
04 Connections to Open Space	
05 Outdoor Living Space	
06 Accessibility	
07 Waste and Service Areas	<ul style="list-style-type: none"> • Waste/Recycling Storage Space (7.5.12)
08 Private and Safe Environments	
09 Site Coverage and Low Impact Design	<ul style="list-style-type: none"> • Building Coverage (7.5.5) • Landscaped permeable surface coverage (7.5.6)
10 Building Materials and Sustainability	<ul style="list-style-type: none"> • Glare (7.5.13) • Acoustic Insulation (7.5.4 and 7.5.15)

- 3.3 The table illustrates that over half of the design elements covered in the RDG are not included, or covered in some form, as standards in Chapter 7. The matter of discretion states: “*Consistency with the Residential Zone Design Guide 2019*”. The additional design elements would enable Council discretion over:
- (a) Entrances and detailing – visibility of front door from street, location of windows, end walls, number and location of vehicle crossings;
 - (b) Connections to open space – access to open spaces, fencing styles and gates, views from living areas, landscaping;
 - (c) Outdoor living space – accessibility from indoor living spaces, sunlight access, glazing, maintenance requirements;
 - (d) Accessibility – hardstand areas (size and location), laneways, landscape treatment, parking requirements;
 - (e) Private and safe environments – fencing style, ground levels, glazing treatments; and
 - (f) Landscape materials and planting – surfacing, letterboxes, fencing, and plant species.
- 3.4 Through Stage 1 of the PDP the Council did not consider it necessary to include these as standards (as discussed in Section 2 above, the Council’s urban design evidence and the IHP recommendation were that the design standards in the PDP were sufficient to achieve good urban design). Also, the RDG design elements have regard to matters regulated by Chapter 29 of the PDP, primarily the location and number of vehicle crossings and car parking requirements which are covered by Chapter 29.
- 3.5 The s42A report has not specifically addressed this effect of the variation in relation to the RDG and the standards in Chapter 7. However, in relation to a submission on the Business Mixed Use Zone Design Guidelines (which sought amendments to “encourage” consistency rather than “requiring” or “ensuring” consistency) the s42A notes that rules are not amenable to the use of the word “encourage” as a rule will either be complied with or not⁶. This interpretation supports MHL and Mr Cashmore’s concerns that the design guidelines create de facto standards by listing the RDG as a matter of discretion, and goes beyond the notified policy of “*Encourage buildings and development to be consistent with the design outcomes sought by the Residential Zone Design Guide 2019.*”

⁶ Section 42A report, paragraph 7.2

3.6 Listing the RDG as a matter of discretion goes beyond the wording of the new policy, which only seeks to “encourage” consistency with the RDG. It is my view therefore that the inclusion of the notified variation wording to the rules in Chapter 7 goes beyond what the notified policy seeks to achieve.

3.7 The relevant existing objectives and policies for the zone, from the Stage 1 Decisions Version, state:

7.2.1 Objective – *Development within the zone provides for a mix of compatible suburban densities and a high amenity low density residential living environment for residents as well as users of public spaces within the zone.*

7.2.1.2 *Encourage an intensity of development that maximises the efficient use of the land in a way that is compatible with the scale and character of existing suburban residential development, and maintains suburban residential amenity values including predominantly detached building forms, and predominantly one to two storey building heights.*

7.2.1.3 *Ensure that the height, bulk and location of development maintains the suburban-intensity character of the zone, and maintains the amenity values enjoyed by users of neighbouring properties, in particular, privacy and access to sunlight.*

7.2.3 Objective – *Encourage higher density development where it responds sensitively to the context and character of the locality and is designed to maintain local amenity values.*

7.2.3.1 *Encourage densities higher than 1:450 square metres per residential unit where this is designed to fit well with the immediate context, with particular significance attached to the way the development:*

- a. *manages dominance effects on neighbours through measures such as deeper setbacks, sensitive building orientation and design, use of building articulation and landscaping;*
- b. *achieves a reasonable level of privacy between neighbours through measures such as deeper boundary setbacks, offsetting habitable room windows that face each other, or the use of screening devices or landscaping;*
- c. *provides activation of streets through the placement of doors, windows and openings that face the street.*

7.2.3.2 *Limit building height on sites smaller than 900 square metres that are proposed to be developed for two or more principal units (i.e. excluding residential flats) so as to mitigate a reduction in spaciousness around and between buildings that otherwise forms part of suburban residential amenity values.*

7.2.3.3 *Encourage landscaped areas to be well-designed and integrated into the development layout and design, providing high amenity spaces for recreation and enjoyment, having particular regard to the visual amenity of streets and street frontages.*

7.2.8 Objective – *Visitor accommodation, residential visitor accommodation and homestays are enabled at locations, and at a scale, intensity and frequency, that maintain the residential character and amenity values of the zone.*

7.2.8.1 Provide for visitor accommodation and residential visitor accommodation in the Visitor Accommodation Sub-Zones that are appropriate for the low density residential environment, ensuring that adverse effects on residential amenity values are avoided, remedied or mitigated.

3.8 These provisions are not subject to appeal and can therefore be treated as operative. In conjunction with the remaining suite of objectives and policies in Chapter 7, these provisions were considered by the IHP to be the most appropriate to manage the use and development of resources and the resulting environmental effects⁷. They can therefore be assumed to achieve the higher order objectives and policies (which I discuss in Section 7 below) and hence the purpose of the Act, without needing the addition of the notified policy, in my view. The existing objectives and policies are all implemented by the activity rules and standards for development in the zone.

4. Reference to section 104(1)(c) in the RDG

4.1 The MHL and Cashmore submissions noted that the variation to the text of Chapter 7 was inconsistent with the wording of the RDG which identified itself as a matter to be considered under section 104(c).

4.2 The s42A acknowledges that the reference to s104(1)(c) is not supported by the varied text (being incorporated as a matter of discretion) and that reference to s104(1)(c) is unnecessary as the guidelines would be considered under section 104(1)(b)(vi), being a relevant provision of a plan or proposed plan. The s42A recommends a change to the RDG to remove the reference to s104(1)(c).

4.3 The s32 does not particularly address which clause of section 104(1) the consideration of the RDG is intended to fall under. However, in the analysis of options under section 32(1)(b)(i) in relation to the preferred approach the s32 notes that “*The guidelines are not part of the District Plan, although have status under Section 104 of the Resource Management Act. They would be considered as part of the assessment of resource consent applications, as a matter of discretion, and are incorporated by reference into the Residential Zones of the District Plan 2015 as so.*”⁸ This suggests that the s32 does not anticipate the RDG being considered as a relevant provision of the PDP through the approach taken.

⁷ Section 42A report, paragraph 202
⁸ Section 32 evaluation, page 29

- 4.4 In another instance, the s32 notes that the notified approach is consistent with the approach taken by other Councils, and points out the Auckland Council Design Manual (among others)⁹. However, the Auckland Design Manual is not a matter to be considered under section 104(1)(b)(vi) and in fact sits outside the Partially Operative Auckland Unitary Plan as non-statutory design guidance.
- 4.5 As I noted above in Section 2, the s32 places a strong emphasis on the IHP report as a basis for the need for a variation. However Mr Falconer's evidence in Stage 1, which noted design guidelines as a "*nice to have, not a must have*"¹⁰, would support the preparation of design guidelines as a non-regulatory method rather than the variation as notified. Likewise, the IHP preferred a "*pragmatic non-regulatory approach*"¹¹ due to the subjectivity of the matter. Indeed, the s32 actually quotes this as support of the resource management issue as identified¹², despite this comment not supporting the method proposed by the variation.
- 4.6 In my view, the s32 did not contemplate that the variation as notified would have the effect of being a matter to consider under section 104(1)(b)(vi). Therefore the amendment proposed in the s42A to remove the reference to s104(1)(c) in the RDG and the consideration of the RDG as a matter under s104(1)(b) instead goes beyond what was anticipated in the s32.
- 4.7 I therefore consider that the variation should be rejected, with the RDG to remain as a non-regulatory method of design guidance that sits outside of the PDP.

5. Amendments to text of the RDG

- 5.1 The MHL and Cashmore submissions noted that the text of the RDG listed a number of Chapter 7 policies that had no relevance to design matters being referred to. The s42A report has recommended that this point be accepted, with an amended list of relevant policies to replace those to be deleted. I support this amendment to the extent that any references in the RDG to Chapter 7 policies should be accurate, including where the RDG is non-regulatory in function.
- 5.2 The MHL and Cashmore submissions noted that the text of the RDG regarding its applicability to permitted activities was beyond the scope of the RDG as notified (as permitted activities would have no statutory requirement to consult the guide). The s42A accepts this point and recommends the deletion of this statement from the RDG, noting that non-statutory guidance for permitted activities could be provided separately to encourage good design for those buildings that do not trigger the need for resource consent. I support this amendment to the extent that this is correct interpretation of the applicability of the RDG.

⁹ Section 32 evaluation, page 32

¹⁰ Report 9A, paragraph 143

¹¹ Report 9A, paragraph 145

¹² Section 32 evaluation, paragraph 2.11(c)

- 5.3 The submissions sought the removal of the text in the RDG that required the preparation of a Design Statement to support a resource consent application. The s42A rejects this relief, noting that the RDG do not specifically state that a Design Statement needs to be *included* with an application (emphasis from s42A), and that the provision of such a statement may address other concerns raised by MHL and Mr Cashmore.
- 5.4 I do not agree with Mr Devlin: the text of the RDG as notified clearly implies discretion about whether or not a Design Statement is required as part of an application. The preparation of a Design Statement is listed as Step 3 of the section “How to use this Guide” and clearly states “*Prepare a Design Statement to support your Resource Consent which outlines how key design elements have been incorporated in your proposal.*” In my view, this wording does not imply any discretion depending on the size or complexity of the resource consent application.
- 5.5 While Mr Devlin notes that the preparation of a Design Statement will enable applicants to show they have considered all Design Elements including where such elements are not able to be addressed.¹³ This appears to be contradictory to his earlier conclusion that the entirety of the design elements would not be required to be worked through for smaller-scale applications¹⁴.
- 5.6 The RDG as notified does not give any certainty to plan users about which instances a Design Statement will be required, and the s42A appears to suggest that such a statement should be used to address all design elements, including to address why not all elements are relevant to the proposal. In my view this is clearly an additional transactional cost on applicants and the Council (both time and economic) that is not currently required by the PDP.

6. Numbering Issues

- 6.1 The numbering of the activity rules in Chapter 7 appears to have been amended since the notification of Stage 3 in September 2019, with the result that the variation now appears to amend rules different to those anticipated in the s32.
- 6.2 Also, the “Consolidated Decisions Version” and the “Annotated Appeals Version” of Chapter 7 on the Council’s website employ a different number sequence between the two versions.
- 6.3 This evidence has been prepared on the basis that the rules to be amended are those rules in Chapter 7 with an activity status of Restricted Discretionary.

¹³ Section 42A, paragraph 15.5

¹⁴ Section 42A, paragraph 15.3

7. Higher order objectives and policies

7.1 The relevant higher order provisions, in Chapters 3 and 4, are:

S.O. 3.2.3 *A quality built environment taking into account the character of individual communities.*

S.O. 3.2.3.2 *Built form integrates well with its surrounding urban environment¹⁵.*

Policy 4.2.2.4 *Encourage urban development that enhances connections to public recreation facilities, reserves, open space and active transport networks.*

Policy 4.2.2.5 *Require larger scale development to be comprehensively designed with an integrated and sustainable approach to infrastructure, buildings, street, trail and open space design.*

Policy 4.2.2.6 *Promote energy and water efficiency opportunities, waste reduction and sustainable building and subdivision design.*

Policy 4.2.2.7 *Explore and encourage innovative approaches to design to assist provision of quality affordable housing.*

Policy 4.2.2.8 *In applying plan provisions, have regard to the extent to which the minimum site size, density, height, building coverage and other quality controls have a disproportionate adverse effect on housing affordability.*

7.2 The Chapter 7 provisions were developed to give effect to these higher order Chapter 3 and 4 provisions relating to urban design and residential amenity. The s32 has not identified that the existing provisions of Chapter 7 are deficient in giving effect to the higher order provisions and, (as I noted in Section 3 above) the IHP also considered the Chapter 7 provisions to be the most appropriate to achieve the purpose of the Act. Therefore, in my view the addition of the notified policy (and its associated method) is not necessary to achieve the higher order provisions of the Plan.

8. Part 2 of the Act

Section 7

8.1 The following matters must be given particular regard under section 7 of the Act:

- (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;**

8.2 I consider that the primary relief sought by MHL and Mr Cashmore, being the deletion to the notified variation to Chapter 7, better meets these imperatives for the following reasons:

¹⁵ New S.O. as agreed in the draft consent order for Topic 3

- (a) It is more efficient to identify the minimum standards for development as rules within the chapter itself as has already occurred through Stage 1 of the PDP review without enabling additional discretion and imposing de facto standards through reference to a separate document, with the additional time and information costs that it will impose;
- (b) In my view, the s32 evaluation has not demonstrated that the standard in Chapter 7 as decided through Stage 1 of the review adversely affect amenity values or the quality of the environment. The residentially-zoned land in the District is a limited resource and development of these areas should be enabled as efficiently as possible.

8.3 I do not consider that the proposed variation meets the section 7 matters in relation to efficiency, finite resources and the quality of the environment.

Section 5

8.4 The deletion of the variation better achieves the sustainable management purpose of the Act by enabling appropriate activities and development, and accordingly social and economic well-being, in a manner that sustains the potential of the natural and physical resources for future generations. The deletion of the variation will ensure that development is not unnecessarily hindered, while not creating any actual or potential adverse effects on the environment that have not already been considered appropriate through the development of the residential zone provisions through Stage 1.

8.5 Taking into account the consequences of the variation as notified, I consider that the most appropriate way to achieve the purpose of the Act is to delete the variation.

9. Summary and conclusion

9.1 In my view, the s32 has not demonstrated that there is a resource management issue that requires attention or that the variation as proposed is the most appropriate method for achieving the higher order objectives of the PDP and the purpose of the Act.

9.2 In conclusion, I consider that the deletion of the variation is the most appropriate option.



J A Brown
29 May 2020

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 –)