

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

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of submissions to the Stage 1 Proposed Queenstown Lakes District Council Plan by **Lake Hayes Investments Limited (Submitter 2291); Stoneridge Estate Limited (2314); D Duncan (2319); R Dayman (2315); Crosby Developments (2526); Crosby Developments (2527); L McFadgen (2296); Slopehill Joint Venture (2475); R & M Donaldson (2229); United States Ranch Limited (2126); M McGuinness (2292); Robertson (2321), Trojan Helmet Limited (2387), Hogans Gully Farm Limited (2313), Burden & Wills (2320), Boxer Hills Trust (2387), P Chittock (2787)**

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**Statement of evidence of JEFFREY ANDREW BROWN on behalf of:**

**Lake Hayes Investments Limited (Submitter 2291); Stoneridge Estate Limited (2314); D Duncan (2319); R Dayman (2315); Crosby Developments (2526); Crosby Developments (2527); L McFadgen (2296); Slopehill Joint Venture (2475); R & M Donaldson (2229); United Estates Ranch Limited (2126); M McGuinness (2292); Robertson (2321), Trojan Helmet Limited (2387), Hogans Gully Farm Limited (2313), Burden & Wills (2320), Boxer Hills Trust (2387) P Chittock (2787)**

**TOPIC 14: WAKATIPU BASIN LAND USE VARIATION**

**13 June 2018**

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## 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 **Attachment A** contains a more detailed description of my work and experience.
- 1.3 I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Consolidated Practice Note 2014. 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.
- 1.4 This evidence is on behalf of the following submitters: Lake Hayes Investments Limited (Submitter 2291); Stoneridge Estate Limited (2314); D Duncan (2319); R Dayman (2315); Crosby Developments (2526); Crosby Developments (2527); L McFadgen (2296); Slopehill Joint Venture (2475); R & M Donaldson (2229); United States Ranch Limited (2126); M McGuinness (2292); D Robertson (2321), Trojan Helmet Limited (2387), Hogans Gully Farm Limited (2313), Burden & Wills (2320), and Boxer Hills Trust (2387).
- 1.5 In this evidence I address the Proposed District Plan . Stage 2 (**PDP**) zoning of the land and the relief sought by the various submitters. All of the submitters own land in the Wakatipu Basin. I have visited the Basin on many occasions and I am extremely familiar with it. The submitters have similar interests in the Wakatipu Basin Rural Amenity Zone (**WBRAZ**) and/or the Wakatipu Basin Lifestyle Precinct (**WBLP**) and also more localised interests, which in this evidence I address either in groups or individually.
- 1.6 I have reviewed the evidence of Mr Barr, Mr Langman, Ms Gilbert, and Ms Mellsop for the Council, and of Mr Espie for the submitters.
- 1.7 My evidence addresses the updated set of provisions for Chapter 24 . Wakatipu Basin, at Appendix C of the Council's s42A material, and on behalf of all submitters I discuss:
- The purpose statement;

- Objective 24.2.5;
- Policies 24.2.5.1 . 24.2.5.6;
- Subdivision rules and assessment matters;
- Land use activity rules, development standards and assessment matters.

1.8 I then address individual issues, as follows:

- The zoning of the Rural Residential and Rural Lifestyle land on the eastern slopes of Lake Hayes (Submitters 2291, 2314, 2319, 2315, 2526, 2296, 2787))
- The Donaldson land adjacent to Millbrook (submitter 2229);
- The allotment size at the north end of Lake Hayes (Submitter 2126);
- The proposed 80ha minimum lot size + non-complying status versus the no minimum lots size + discretionary status for subdivision in the WBRAZ (Submitters 2527, 2475, 2321, 2387, 2313).

1.9 Please note that much of Parts 2 . 7 of this evidence is the same as my evidence for Boxer Hills Trust (Submitter 2385).

## 2 Part 24.1 – the Zone purpose statement

2.1 The purpose statement, contained in Mr Barrø Appendix 3, includes the following paragraph:

**In the Precinct a limited opportunity for subdivision is provided with a minimum lot size of 6000m<sup>2</sup> in conjunction with an average minimum lot size of one hectare (10,000m<sup>2</sup>). 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.**

2.2 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 minimum lot size of 6000m<sup>2</sup> 4000m<sup>2</sup> in conjunction with an average minimum lot size of one hectare (10,000m<sup>2</sup>) 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, the minimum lot size of 4000m<sup>2</sup> 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.

2.3 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;
- (c) 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 attributes<sup>1</sup>. 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 4000m<sup>2</sup> 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.

2.4 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.

### 3 Objective 24.2.5

3.1 The version of the objective recommended in the s42A Report<sup>2</sup> is:

**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.**

3.2 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.~~ Rural residential living opportunities are enabled while effects of subdivision and development on the landscape character and visual amenity values of the Precinct are managed.**

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

- 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

<sup>1</sup> In particular in relation to the operative rural lifestyle areas

<sup>2</sup> As per Mr Barr's Appendix 3

maintain (and, if possible, enhance) that existing established character and amenity;  
and

- 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.

3.4 Hence, the s42A 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.

3.5 I can understand the objective's intent that it applies across the entire Precinct, but I consider that the s42A recommended wording would at some point lead inevitably to the problem I have outlined in the previous paragraph.

3.6 I consider that this potential problem is remedied by my suggested wording, which has two purposes:

- it states up front what the Precinct is intended to enable . i.e. rural residential living;  
and
- 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.

3.7 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.

#### **4 Policies 24.2.5.1 – 24.2.5.6**

4.1 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	<p><del>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.</del></p> <p><u>Provide for rural residential activities and promote design-led and innovative patterns of subdivision, use and development.</u></p>
	24.2.5.2	<p><del>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.</del></p> <p><u>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.</u></p>
	24.2.5.3	<p>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.</p>
	24.2.5.4	<p>Implement <del>minimum and average</del> lot size standards in conjunction with <del>building coverage and height standards</del> <u>development standards</u> so that the landscape character and visual amenity qualities of the Precinct are not compromised by cumulative adverse effects of development.</p>
	24.2.5.5	<p>Maintain and enhance a distinct and visible edge between the Precinct and the Zone.</p>
	<del>24.2.5.6</del>	<p><del>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.</del></p>

4.2 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 s42A 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 s42A objective 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 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. This reflects also in some areas the legacy zonings of Rural Residential and Rural Lifestyle and the different patterns which have evolved under these. 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.
- (g) The deletion of Policy 24.2.5.6 is necessary, in my view, because I consider that the issue of new landscaping and/or the retention or otherwise of existing vegetation is one of the factors that is addressed in subdivision design and in measures to manage effects on the environment, which are encapsulated in my Policies 24.2.5.1 and 24.2.5.2 above.

## **5 Subdivision rules and assessment matters**

- 5.1 I address the WBRAZ subdivision provisions in Part 11 below.
- 5.2 The s42A Report recommends that the WBLP's key subdivision rule (Rule 27.5.1) be revised so that subdivision to a 1ha average lot size is provided for (as a restricted discretionary activity, with breach being non-complying) and provided a minimum lot size of 6000m<sup>2</sup> is achieved (with breach being discretionary). Secondly, 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 . 4000m<sup>2</sup> . and the breach status as restricted discretionary. This would:

- 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
- 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;

5.3 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'* .

5.4 I consider that the assessment matters for restricted discretionary activity subdivision, at Chapter 27, Clause 27.7.6.2 (except for clause (a) which 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 WBLP (Clause 24.7.3(e)), as per Appendix 3 of the s42A 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.**

5.5 In other areas, the 4000m<sup>2</sup> minimum with no average is appropriate, in my view, for reasons I address in 8 below.

5.6 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**

## 6 Land use activity rules, development standards and assessment matters

6.1 For new WBLP areas (where there is no operative rural living zone) I agree with the s42A provisions (activity status, development controls, assessment matters) except as follows:

- (a) Rule 24.4.XA (identification of a building platform as a restricted discretionary activity) except that for areas that are in the operative Rural Residential Zone this should be a controlled activity (I address this further below), because there are still undeveloped sites in the RR Zone that do not have a building platform because none is required in that Zone;
- (b) Rule 24.5.XA which I address in Part 11 below in relation to a discretionary subdivision regime;
- (c) Rule 24.5.XB should be changed so that the minimum net area is 4000m<sup>2</sup> and the breach status is restricted discretionary activity, with the matters of discretion being those set out in Rule 27.7.6.1 in relation to subdivision design, and that where the site was in the RR Zone the 1ha average would not apply;
- (d) Rule 24.5.4 should only apply to formed legal roads and not to unformed paper roads, and should be reduced to 20m where the WBLP is replacing a legacy Rural Residential or Rural Lifestyle Zone where there is an expectation of being able to build closer to the road;
- (e) Rule 24.4.29 (clearance, works in the dripline and significant trimming) should be deleted for the following reasons:
  - It is appropriate that older established exotic vegetation may be removed where this is dangerous or where these detract from amenity values, such as previous shelter belt planting on roads, and requiring a consenting process is inefficient.
  - Specific conditions of consent / consent notices are a more appropriate method to ensure positive outcomes and ensure that elements of a proposal are complied with.
  - If particular trees are worthy of protection (for amenity purposes) then these should be protected by the Council in specific schedule if necessary . rather than a blanket approach which will increase transactions costs.
- (f) Rule 24.6 in relation to non-notification should be modified as follows:

## 24.6 Non-notification of applications

Any application for resource consent for restricted discretionary activities shall not require the written consent of other persons and shall not be notified or limited-notified, with the exception of the following:

- ~~(a) Rule 24.5.1 Building coverage.~~
- (b) Rule 24.5.2 Setback from internal boundaries.
- ~~(c) Rule 24.5.3 Height of buildings.~~
- (d) Rule 24.5.4 Setback from roads.
- ~~(e) Rule 24.5.5 Setback from identified landscape features.~~
- (f) Rule 24.4.14 Retail Sales of farm and garden produce where the access is onto a State Highway.

I consider that the matters of building coverage, height, and setback from landscape features are matters of building design and landscaping, and potential views from public places, that are matters between the Council and the applicant and should not involve other parties. Further, the matters of discretion and assessment matters for these items do not relate to amenity of neighbours, unlike some other activities (such as buildings housing animals, home occupations, and non-residential activities).

6.3 For areas that have an operative rural living zone and where the WBLP is intended to replace it, or where the WBRAZ is intended to replace it, I also agree with the s42A rules for buildings except in the case of sites that do not have a residential building platform (RBP), which would generally apply to sites in the operative Rural Residential Zone because the operative subdivision rules do not require an RBP and construction of a dwelling is a controlled activity provided the various setbacks, height and other standards are met. The permitted activity status for buildings within approved platforms also accords with the decision version of Chapter 22 and provides for an efficient development and subdivision regime, in my view.

6.4 In this case I consider that in the areas with an operative rural living zone the status of a new RBP, on vacant properties that do not otherwise have a registered RBP, should be a controlled activity, with control reserved over the location of the RBP within the property and the effect of a building on the amenity values of the neighbourhood. The rule would read:

	Table 24.2 – Activities in the Wakatipu Basin Lifestyle Precinct	Activity Status
ō		
<b>24.4.Y</b>	<p>The identification of a building platform not less than 70m<sup>2</sup> and not greater than 1000m<sup>2</sup> for the purposes of a residential unit, subject to the standards in Table 24.3. Control is reserved over:</p> <p>(a) Location of the building platform and accessways;</p> <p>(b) Earthworks including for the formation of the building platform and access and services;</p> <p>(c) Location, scale and extent of landform modification and retaining structures;</p>	C

	<p><u>(d) Location and scale of infrastructure (e.g. water tanks);</u></p> <p><u>(e) Any necessary conditions in relation to the scale of buildings or the external colours or materials, or site landscaping;</u></p> <p><u>(f) The provision of infrastructure to the building platform and any easements required.</u></p>	
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- 6.5 I note however that in the assessment matters, Clause 24.7.3(e) (which I 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.
- 6.6 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.

## 7 s32 and Part 2 of the Act

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

- (a) The WBLP objective 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 comment:

- the land is identified as being appropriate for rural living development;
  - the land can absorb change;
  - 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 objective, 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.

7.2 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;**

7.3 I comment:

- 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;
- 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;
- Land which is suitable for rural residential development in the Basin is finite, therefore it is important to enable them to be developed and to function efficiently, and I consider the provisions, with my modifications, achieve that.

7.4 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.

- 7.5 The purpose of the Act is therefore achieved by the WBLP and the proposed modifications sought in this submission.

## **8 The zoning of the Rural Residential and Rural Lifestyle land on the eastern slopes of Lake Hayes (Submitters 2291, 2314, 2319, 2315, 2526, 2296, 2787)**

- 8.1 The Chapter 24 provisions as notified and as supported in the s42A reporting propose to change the zoning of the operative rural living zones on the eastern slopes of Lake Hayes to the WBRAZ.

- 8.2 I disagree with that change for the following reasons:

- (a) This is a long-established rural living area, with many small rural properties with residences and related buildings and activities, and many still vacant properties created for rural lifestyle purposes, and it has a distinctly rural residential character that is the result of the zoning;
- (b) The developed character of the area is also influenced by the urban development west of the Lake Hayes-Arrowtown Road, fronting Lake Hayes, the Rural General development above the rural living zones and the Bendemeer Special Zone on the higher land to the north;
- (c) I consider that when determining an amended zoning, the existing environment created under the zone that is being changed should be an important factor. To apply zoning with a minimum 80ha lot subdivision minimum to this Rural Residentially zoned area is illogical and inappropriate;
- (d) Most of the area is connected to reticulated services, reflecting the reasonably high intensity of urban and rural residential / lifestyle development in the area;
- (e) Given the existing character the area has potential to absorb additional rural residential development at a scale and form that is compatible with the existing zonings and development;
- (f) The Council's Landscape Category Unit analysis (Unit 13 . Lake Hayes Slopes) appears to conclude that the existing development has adverse landscape effects and accordingly

that the capability to absorb additional development is ~~low~~. It has not adequately taken into account the above matters, and its conclusions are flawed;

- (g) The WBRAZ is inefficient because it does not match or resemble the existing zonings which apply to the land or the existing development that has evolved over the land and will hinder expected legitimate development of properties which are not yet developed;
- (h) The area is also one of a finite number of areas in the Basin where rural living has been, historically, deemed appropriate, and can be absorbed without inappropriate effects on landscape and visual amenity values.

8.3 In addition, landowners have made significant capital investment in their properties. The change of zoning to the WBRAZ has the potential to undermine that investment particularly those who have not exercised the entitlements afforded by the existing zonings, including subdivision or where a building platform does not yet exist.

8.4 I consider that the WBLP should be applied to where the operative Rural Residential Zone and Rural Lifestyle Zones exist, and that within these areas a subdivision minimum lot size akin to the operative subdivision minimum lots size should be applied . i.e. 4000m<sup>2</sup> minimum lot size in the areas . marked on the plan provided in Mr Espie's evidence. I also consider that this density is appropriate for the block of properties further north, between Arrowtown-Lake Hayes Road and Waterfall Park Zone<sup>3</sup>, which already contains a number of small rural residential properties.

8.5 The WBRAZ in this location is contrary to higher order objectives and policies of the PDP, including, for example, in Chapter 3 . Strategic Direction<sup>4</sup>.

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

**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.**

8.6 In my view the legacy zonings of these areas have created the environment and the character is already altered to the point where the area of the zones is no longer rural, and maintaining the zoning through the WBLP is appropriate.

<sup>3</sup> Under the Wills & Burden submission (2320)

<sup>4</sup> These provisions are from the Council's right of reply version of Chapter 3, dated 7 April 2016

## 9 The Donaldson land (submitter 2229);

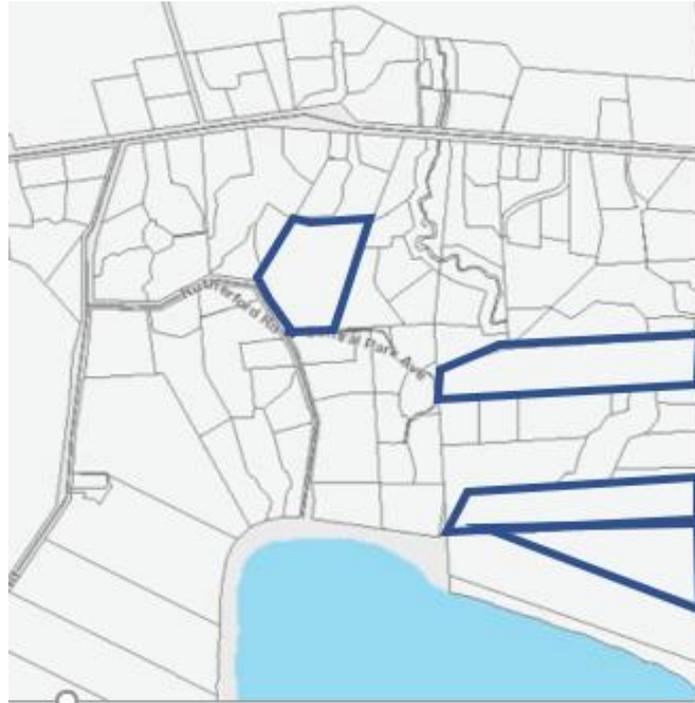
- 9.1 This circa 22ha block of land is within the WBLP as notified. The submission and further submissions sought some site-specific development controls that reflect an agreement between the owners and Millbrook. I understand that these are now encapsulated in a covenant(s).
- 9.2 I consider that the existing WBLP provisions, subject to my modifications as set out in this evidence, are appropriate for the land and that the covenant is an additional tool for managing the subdivision of the land.
- 9.3 However, the owners are happy to volunteer them also in a site-specific rule, which would be as follows:

	Zone and Location Specific Rules	Activity Status
<b>27.7.X</b>	<p><b><u>Lot 3 DP20693 (south of Ishii Lane, Millbrook):</u></b></p> <p><u>Minimum lot area 2500m<sup>2</sup> provided that:</u></p> <ul style="list-style-type: none"> <li>- <u>no more than 15 lots in total are created;</u></li> <li>- <u>no more than 5 lots shall be located west of the existing water race on the property;</u></li> <li>- <u>any building platform shall be no less than 15m from the external boundary of Lot 3 DP20693;</u></li> <li>- <u>the 15m open space margin adjoining the periphery of Lot 3 DP20693 shall be landscaped where necessary to further soften the appearance of buildings when viewed from the Golf Activity Areas of the Millbrook Resort Zone Structure Plan.</u></li> </ul>	<b><u>NC</u></b>

## 10 The allotment size at the north end of Lake Hayes (Submitter 2126)

- 10.1 This analysis relates to the proposed WBLP area at the northern end of Lake Hayes bounded by Rutherford, Speargrass, and Arrowtown-Lake Hayes Roads. This area was initially subdivided into 4ha blocks in around 1972. Since that time, it has been zoned in various rural residential type zonings and most lots have been progressively subdivided and developed. The land is zoned Rural Residential . North of Lake Hayes+(**RRNLH**) in the operative plan. This allows subdivision to an average of 8000m<sup>2</sup> minimum lot size (Site standard 15.2.6.2(iv)(a)) and a minimum of 4000m<sup>2</sup> (Zone standard 15.2.6.3(i)(a)).
- 10.2 Only four 4ha blocks<sup>5</sup> remain un-subdivided in the RRNLH land, and of those, three already contain one dwelling and one contains 3 dwellings. These properties are shown outlined below.

<sup>5</sup> Lot 9 DP 12678, Lot 1 DP 15096, Lot 2 DP 15096, and Lot 3 DP 24898



10.3 Of the lots that have been subdivided:

- 3 of the 14 subdivisions have met the 8,000m<sup>2</sup> minimum average lot size;
- The other 11 resulted in average lot sizes ranging from 2,645m<sup>2</sup> to 7,811m<sup>2</sup> and averaging 5,753m<sup>2</sup>;
- Taking into the consideration the 3 subdivisions that did meet the 8000m<sup>2</sup> minimum average, the average lot size across the area is 6,692m<sup>2</sup>;
- The smallest residential lot is 2,231m<sup>2</sup>;

10.4 The density of the area is greater than other areas that have been proposed as WBLP which, while recognised to an extent in the Wakatipu Basin Land Use Planning Study 2017, has not been reflected in the provisions which require the 1ha average lots size (breach = non-complying) and 6000m<sup>2</sup> minimum lots size (breach = discretionary under the s42A recommended rules).

10.5 I consider that the WBLP where it replaces the RRNLH should be as follows:

- (a) The minimum lot size should be 4000m<sup>2</sup>. This reflects that a large number of sites are under 6000m<sup>2</sup> and the average lot size of all subdivisions that have occurred in the zone is well under 1 hectare (and indeed well under the operative minimum average of 8000m<sup>2</sup>);

- (b) That if there is to be an average minimum lot size rule then this should be 6,000m<sup>2</sup>, which is consistent with the established pattern;
- (c) That the calculation of the average minimum lot size should exclude lots that are created for esplanade or other forms of reserve or access lots, such that the calculation is based on the whole site and then that area is divided by the total number of rural residential lots created. This approach avoids the current situation whereby a subdivision which is required to provide an esplanade reserve (which is the case for three of the four remaining 4ha blocks) is disadvantaged relative to sites which do not need to provide an esplanade reserve;
- (d) That residential density Rule 24.5XB in the s42A Appendix C includes the areas where density can be greater than 1ha / 6000m<sup>2</sup>.

10.6 The reasons for these amendments are:

- (a) This is a long established rural living area with a subdivision pattern that has contributed to the present rural residential character;
- (b) Most of the area is connected to reticulated Council services;
- (c) The Council's Landscape Category analysis (Unit 12) notes the enclosed and screened nature of the area, together with its established rural residential character; suggests the potential to integrate additional development with minimal impact on the wider Basin landscape; and has been given a high capacity to absorb additional development;
- (d) The subdivision minimum and average lot size provisions for the WBLP should recognise the provision of esplanade reserves through subdivision;
- (e) To ensure that rights of properties that do not already have a building on them are not unduly restricted (as I addressed in para 6.1(a) above);

## **11 The proposed 80ha minimum lot size + non-complying status versus the no minimum lots size + discretionary status for subdivision in the WBRAZ (Submitters 2527, 2475, 2321)**

11.1 I was involved in the Environment Court case C180/99<sup>6</sup> in which the operative regime for rural subdivision and development originated. I continue to support a discretionary regime accompanied by the distinction between the section 6 and section 7 landscapes and no

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<sup>6</sup> WESI v QLDC, C180/99

minimum lot size, because I consider that in the nearly 20 years of its operation the regime has been successful and there are no problems that have been identified that justify the change to the non-complying / 80ha regime. In my experience the outstanding natural landscapes (**ONL**) and features (**ONF**) are still protected and have not been adversely affected by development, the visual amenity landscapes (**VAL**), while subject to some change over the years, are still rural in character and display visual amenity; and the other rural landscapes have, as anticipated by C180/99, absorbed development because that is where development can happen in a way that the wider rural values of the Basin are comparatively unaffected. In my view, the Wakatipu Basin still, even in the face of significant growth and pressure for more rural living opportunities, demonstrates its broadly natural, open space and rural character values.

- 11.2 There are some exceptions to this, of course. The development adjacent to the state highway at Ladies Mile, for example, springs to mind as a development that to a large number of viewers has substantially changed peoples appreciation of rural character and amenity in a highly visible location<sup>7</sup>.
- 11.3 The rural living areas, at Lake Hayes and Dalefield, existed prior to or were being formulated at the same time as C180/99, and there were previous rules regimes (including rights to create 8000m<sup>2</sup> lots, and rights to subdivide % scheduled +4ha blocks that were created under previous subdivision rules) that created many rural living lots throughout the Basin. When Dalefield was in its heyday of construction in the 1990s, the view looking down from Coronet Peak was stark, with many bare sites with new buildings or construction, and little vegetation other than shelter rows. Ten . 20 years on, most sites are developed and vegetation is well established, and the vista is markedly different . the buildings have merged into the landscape and the effects on character are not at all adverse; rather, they contribute to the unique quality and character of the Basin as a whole.
- 11.4 In the lifetime of the C180/99 discretionary provisions, I do not consider they have contributed significantly to negative effects on the landscape values of the Basin. In all but a few instances, the development that has relied on the discretionary regime has been appropriate in my view.
- 11.5 Accordingly, I do not support the WBRAZ's 80ha minimum lot size / non-complying regime and I consider that it should be replaced by a fully discretionary regime, as per the Rural Zone of Stage 1 of the PDP, comprising suitable objectives, policies and assessment matters that promote appropriate subdivision and development and the sustainable management of the natural and physical resources of the Basin. Even taking into account the ONL / ONF areas, the Basin has the potential to absorb some additional development at a scale and form that is

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<sup>7</sup> I acknowledge that this development was not consented under the operative District Plan regime, but instead as a special housing area, so is not a reflection of the operative regime per se

compatible with the existing character of the landscape and in a way that would not contribute to any perceived adverse actual or cumulative effect on landscape values and rural character. Across the Basin and in many individual properties there is a variety of locational attributes, topographies, and degrees of potential visibility. This variety justifies a regulatory approach to subdivision and development that does not impose a blanket 'one size fits all' control.

11.6 The Council's section 32 evaluation supporting the WBRAZ did not in my view:

- (a) adequately take into account the detailed landscape character unit analyses which identified many differences in the landscapes of the Basin and which, collectively, could not support the broad-brush, single rule regime applying across all of the WBRAZ outside the WBLP areas. For example, the areas with an absorption capacity of 'Moderate' have the same rules as those in the 'Low' and 'Very Low' categories. A discretionary regime, used in conjunction with the LCUs, would be a far better framework for the varied qualities of the Basin;
- (b) adequately justify the subdivision minimum lot size of 80ha or the non-complying status of proposals that breach this minimum;
- (c) adequately assess all potential options for achieving the Strategic Direction of the PDP in the Wakatipu Basin. In particular, the s32 did not evaluate alternative methods for avoiding cumulative adverse effects on the character and amenity values of the area, including a more stringent discretionary activity regime, or whether there could be a discretionary regime in some areas and a non-complying regime in other areas, based on their respective landscape characters and values;
- (d) address the impact of the lack of economic viability of productive farming activities on the ongoing maintenance of landscape values, and the outcomes for rural land that would need to be 'farmed' purely for the purpose of maintaining landscape values.

11.7 The 80ha / non-complying regime disincentivises subdivision as a method to protect and enhance landscape values and nature conservation values, for example by enabling, through a discretionary framework, some development in a location where the landscape can absorb some change, in return for positive environmental enhancements, such as ecological restoration and enhancement works, in gullies, wetlands and slopes, to assist in restoration of lost habitat in the valley, and recreational enhancement through creating and linking public trails

11.8 The s42A Appendix 3 contains some new policies for Chapter 6 of the PDP:

**Managing Activities in the Wakatipu Basin Rural Amenity Zone**

- 3.3.34 Avoid urban development and subdivision to urban densities in the rural zones. (3.2.2.1, 3.2.5.1, 3.2.5.2, 3.3.13-15, 3.3.23, 3.3.30, 3.3.32). [Identical to PDP Policy 6.3.4]
- 3.3.35 Enable continuation of the contribution low-intensity pastoral farming on large landholdings makes to the District's landscape character. (3.2.1.7, 3.2.5.1, 3.2.5.2, 3.3.20). [Identical to PDP Policy 6.3.7]
- 3.3.36 Avoid indigenous vegetation clearance where it would significantly degrade the visual character and qualities of the District's distinctive landscapes. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.30, 3.3.32). [Identical to PDP Policy 6.3.8]
- 3.3.37 Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land. (3.2.1.7, 3.2.4.1, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.20, 3.3.30, 3.3.32). [Identical to PDP Policy 6.3.9]
- 3.3.38 Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes adjacent to Outstanding Natural Features does not have more than minor adverse effects on the *landscape quality, character and visual amenity of the relevant Outstanding Natural Feature(s)*. (3.2.5.1, 3.3.30). [Identical to PDP Policy 6.3.10]
- 6.3.39 Encourage any landscaping to be ecologically viable and consistent with the established character of the area. (3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.30, 3.3.32). [Identical to PDP Policy 6.3.11]
- 6.3.40 Require that proposals for subdivision or development for rural living in the Rural Zone take into account existing and consented subdivision or development in assessing the potential for adverse cumulative effects. (3.2.1.8, 3.2.5.2, 3.3.23, 3.3.32). [Identical to PDP Policy 6.3.21]
- 6.3.41 have particular regard to the potential adverse effects on landscape character and visual amenity values where further subdivision and development would constitute sprawl along roads. (3.2.1.1, 3.2.1.7, 3.2.5.2, 3.3.21, 3.3.24-25, 3.3.32). [Identical to PDP Policy 6.3.22]
- 6.3.42 Ensure incremental changes from subdivision and development do not degrade landscape quality or character, or important views as a result of activities associated with mitigation of the visual effects of proposed development such as screen planting, mounding and earthworks. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.21, 3.3.24, 3.3.32). [Identical to PDP Policy 6.3.23]
- 6.3.43 Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid significant adverse effects on the character of the landscape, while acknowledging that location constraints and/or the nature of the infrastructure may mean that this is not possible in all cases. (3.2.1.9, 3.2.5.2, 3.3.25, 3.3.32). [Identical to PDP Policy 6.3.24]
- 6.3.44 In cases where it is demonstrated that regionally significant infrastructure cannot avoid significant adverse effects on the character of the landscape, such adverse effects shall be minimised. (3.2.1.9, 3.2.5.2, 3.3.25, 3.3.32). [Identical to PDP Policy 6.3.25]
- 6.3.45 Avoid adverse effects on visual amenity from subdivision, use and development that:
- a. is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or
  - b. forms the foreground for an Outstanding Natural Landscape or Outstanding Natural Feature when viewed from public roads. (3.2.1.1, 3.2.1.8, 3.2.5.1, 3.2.5.2, 3.3.20-21, 3.3.24-25, 3.3.30, 3.3.32). [Identical to PDP Policy 6.3.26]

**6.3.46** Avoid planting and screening, particularly along roads and boundaries that would degrade openness where such openness is an important part of its landscape quality or character. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.20-21, 3.3.24-25, 3.3.32). [Identical to PDP Policy 6.3.27]

**6.3.47** Encourage development to utilise shared accesses and infrastructure, and to locate within the parts of the site where it will minimise disruption to natural landforms and to rural character. (3.2.1.1, 3.2.1.8, 3.3.21, 3.3.24, 3.3.32). [Identical to PDP Policy 6.3.29]

11.9 On these I comment:

- (a) On Policy 3.3.37, the 80ha / non-complying regime will actively discourage, not encourage, subdivision and development proposals to promote indigenous protection and regeneration because in most if not all cases any change in intensity will breach the 80ha limit and will be non-complying, and the yield that could be expected from a subdivision, and the risk of not obtaining the consent, would conspire against anyone looking to try. The rules do not match the intent of the policy and would not give effect to the policy;
- (b) Also on Policy 3.3.37, there is no incentive in the rules to protect waterways and their margins;
- (c) Policies 6.3.31 and 6.3.32 seem to anticipate more subdivision and development but there are so few properties that would be able to subdivide under the rules, for those properties that can they are unlikely to bother the policy because in 80ha there is opportunity to not sprawl development along roads.
- (d) Overall I consider a suitable discretionary regime with no minimum lot size and some very tight guidance by way of assessment matters around what is expected before consent to a subdivision is granted is a far more appropriate regime than the blunt and clumsy WBRAZ regime.

11.10 The discretionary regime in my view can achieve the higher order provisions of the Plan, including, in particular:

**3.2.5** The retention of the District's distinctive landscapes. (addresses Issues 2 and 4)

**3.2.5.1** The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.

**3.2.5.2** The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values.

- 11.11 On Objective 3.2.5.2 above, I consider that this can be better achieved by the discretionary regime than the non-complying regime.
- 11.12 The WBRAZ's non complying 80ha regime does not achieve the purpose of the Act in that:
- (a) it will not enable social and economic well-being;
  - (b) it will not necessarily sustain the potential of the natural and physical resources for future generations and safeguarding the life-supporting capacity of air, water, soil, and ecosystems . for example, it would not enable but would more likely disable development proposals with positive conservation / ecological outcomes;
  - (c) it will not necessarily avoid, remedy or mitigate potential adverse landscape and amenity effects any more so than a stringent discretionary regime.
- 11.13 The purpose of the Act is better achieved by a zoning regime that strikes a better balance between the enabling and regulatory imperatives of section 5 than what the WBRAZ regime proposes.
- 11.14 Under Section 7, the modifications sought in this submission are directly relevant to achieving the following matters to which particular regard must be given:
- (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;**
- 11.15 On efficiency, the WBRAZ regime is inefficient because it will significantly impede further appropriate development. There is no evidence that in the WBRAZ there is greater market efficiency by favouring landscape values at the expense of all other potential uses, especially where land is not adjacent to an outstanding natural landscape or feature.
- 11.16 Further, outside of land which has section 6 attributes, it is inefficient for rural land to be effectively set aside purely for landscape preservation when productive farming activities are uneconomic and where any adverse effects of other activities can be properly avoided, remedied or mitigated and where the quality of the environment and amenity values can be maintained or enhanced.

## **12 Summary and conclusion**

12.1 For the reasons set out above I consider that:

- (a) The Chapter 24 Zone Purpose Statement, objective and policies for the WBLP should be amended to better reflect the purpose and variation of landscape and character within the WBLP;
- (b) The subdivision and land use provisions as they relate to the WBLP should be modified to enable more flexibility in subdivision design and to reflect the spatial differences across the WBLP;
- (c) The provisions should be amended to preserve the rights for dwellings and subdivision in areas that are proposed to lose their rural living zone provisions, including the land at the eastern slopes above Lake Hayes and the north end of Lake Hayes;
- (d) The non-complying / 80ha minimum lot size regime for subdivision and density should be replaced with a fully discretionary regime akin to that established in the operative plan and continued over into Stage 1 of the PDP.
- (e) These modifications will better achieve the higher order provisions of the PDP and the purpose of the Act.

**Attachment 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 . )