

**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 **Hogan Gully Farming Limited (456)**, **Dalefield Trustee Limited (350)**, **Otago Foundation Trust Board (408)**, **Ayrburn Farm Estate Limited (430)**, **Trojan Helmet Limited (FS1157)**, **F S Mee Developments Limited (525)**.

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**STATEMENT OF EVIDENCE OF JEFFREY ANDREW BROWN  
ON BEHALF OF VARIOUS SUBMITTERS  
TOPIC 4: CHAPTER 27 SUBDIVISION AND DEVELOPMENT**

**15 July 2016**

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## 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 **Attachment A** contains a more detailed description of my work and experience.

1.3 I have complied 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 to the Proposed District Plan (**PDP**):

- Hogan Gully Farming Limited (456),
- Ayrburn Farm Estate Limited (430),
- Dalefield Trustee Limited (350),
- Trojan Helmet Limited (FS1157),
- Otago Foundation Trust Board (408),
- F S Mee Developments Limited (525).

1.5 In this evidence I address the subdivision provisions (Chapter 27) of the Proposed District Plan (**PDP**). I have read the Section 42A report prepared by Nigel Bryce for the Council, and I have reviewed the section 32 report, the evidence of Mr Falconer and Mr Glasnor, and the Boffa Miskell reports. I comment on this material through my evidence.

1.6 My evidence is structured as follows:

Section 2            Background – I briefly recap the subdivision provisions of the Operative District Plan (**ODP**);

Section 3            I briefly recap the PDP provisions for subdivision, as notified;

- Section 4 I address Mr Bryce’s recommended restricted discretionary regime;
- Section 5 I describe what I consider to be a suitable controlled activity regime;
- Section 6 I conclude with a discussion of section 32 and Part 2 of the Act.

## 2 The operative subdivision provisions

### *General comments, and the objectives and policies*

- 2.1 Most<sup>1</sup> of the provisions of Chapter 15 of the ODP were promulgated in 1995 and became operative in 2003, in the first operative tranche of plan provisions. There are general and location-specific objectives and policies. The general provisions relate to services for subdivided lots in anticipation of their likely land use activities, integration of roading with existing network operations, safe and efficient vehicular access and provision of pedestrian, cycle and amenity linkages, and avoiding or mitigating any adverse visual and physical effects of roading on the environment. Objective 5 is concerned with amenity protection and seeks the maintenance or enhancement of the amenities of the built environment through the subdivision and development process. Policies include the requirement to ensure that lot sizes and dimensions are sufficient for the efficient and pleasant functioning of the anticipated landuse, the encouragement of innovative subdivision design, minimising the effects of subdivision and the encouragement and protection of significant trees or areas of vegetation.
- 2.2 The Chapter 15 objectives and policies support Chapter 4 (District Wide-Issues) particularly Section 4.9 (Urban Growth) which has provisions for existing urban areas and communities and for residential growth. The provisions encourage new urban development to be in a form, character and scale that provides for higher density living environment and are imaginative in terms of urban design.
- 2.3 Before I discuss the rules I will briefly comment on “urban design” and how it relates to the ODP. The *Urban Design Protocol* was published by the Ministry for the Environment in 2005<sup>2</sup>. It identifies the essential design qualities that together create quality urban design (namely: context, character, choice, connections, creativity, custodianship and collaboration). The executive summary states that the Protocol is a voluntary commitment by central and local

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<sup>1</sup> All of Chapter 15 – Subdivision except the financial contribution provisions which were not made operative until 2009

<sup>2</sup> *New Zealand Urban Design Protocol*, March 2015, Publication ME579, Ministry for the Environment

government, property developers and investors, design professionals, educational institutes and other groups to undertake specific urban design initiatives.

- 2.4 The Queenstown Lakes District Council became a signatory to the Protocol and formed the Urban Design Panel to assist in the assessment of development proposals, and in 2009 published an "Urban Design Strategy" for the District. This strategy describes how urban design can contribute towards creating urban environments that entice people to want to live, work, play, visit and invest in them. Better urban design provisions were introduced to the assessment matters for the High Density Residential Zone through Plan Change 10 (in 2010), however no changes were made to the subdivision chapter and only minor amendments to other chapters.
- 2.5 Since around the mid-2000s there has been something of a paradigm shift in urban design thinking and practice in New Zealand, heralded by the Urban Design Protocol. Survey and engineering-led subdivision has given way to more creative and innovative subdivision, informed by urban designers. Urban design as a discipline has progressed significantly with this shift, and with increased buy-in by developers, and there has been greater focus by processing planners in promoting urban design principles.

### ***Rules***

- 2.6 Under Rule 15.2.3.2(b) of the ODP, subdivision (in the urban zones and the rural living zones) that complies with all of the Site and Zone Standards is a controlled activity. The ODP then sets out 13 further rules for specific elements of subdivision, as follows:
- Lot sizes, averages and dimensions;
  - Subdivision design;
  - Property access (which broadly encompasses roading);
  - Esplanade provision;
  - Natural and other hazards;
  - Water supply;
  - Stormwater disposal;
  - Sewage treatment and disposal;
  - Trade waste disposal;
  - Energy supply and telecommunications;
  - Protection of vegetation and landscape;
  - Easements; and
  - Affordable residential lots

- 2.7 For most<sup>3</sup> of these elements there is a controlled activity rule (with a list of matters over which control is reserved); site/zone standards (that are general or location-specific); and assessment matters that direct the consideration of whether or not to grant consent or impose conditions in respect to that element. Some of the elements (such as water, stormwater and wastewater<sup>4</sup>) contain assessment matters that refer directly to the Council's Subdivision Code of Practice. Other New Zealand standards are also referenced.
- 2.8 Any subdivision needs a separate consent for some or all of these specific elements; the consents would be bundled with the consent under Rule 15.2.3.2(b). If a site standard is breached then restricted discretionary activity consent would be required for that element, rendering the whole bundle a restricted discretionary activity. However in that case the consent focus (in terms of whether consent should be granted) is on the element which breaches the site standard. If a zone standard is breached then non-complying consent would be required for the bundle.
- 2.9 In my experience the ODP regime has functioned well in terms of process and, generally, outcomes (which I comment on later). The detail in the site and zone standards and in the assessment matters is sufficiently fine-grained and provides appropriate focus for applicants, the Council and other parties; they form an effective checklist. They also provide certainty: if the standards are achieved then consent will be forthcoming, but the Council has the ability to modify elements of the proposal, if necessary, by way of conditions. Typically, however, in my experience, any areas of possible or actual disagreement have been able to be resolved before or during the consent process (through pre-lodgement and post-lodgement meetings with staff and other parties, and by presentation to the Urban Design Panel). The end result has been, in my experience, acceptable suites of conditions.
- 2.10 If there is resistance between the Council and an applicant, the Council can ask for additional information on the matter or commission reports, and it can notify and/or put the matter before independent commissioners. Conditions can be imposed to achieve outcomes required by the Council. If an applicant does not agree with the conditions, they can object or appeal.
- 2.11 The section 32 evaluation for the PDP Chapter 27 criticises the ODP regime. There appears to be two lines of criticism<sup>5</sup>:
- (a) The ODP framework is "*complicated and unwieldy*"; results in "*significant complexities in terms of confirming the class of activity an application falls into*"; "*a reader needs to trawl*

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<sup>3</sup> The exception to the general pattern of the rules for each element is the affordable residential lots rule which is a zone standard that applies in only one geography.

<sup>4</sup> Rules 15.2.11.4(iii), 15.2.12.3(iii), and 15.2.13.2(iii) respectively

<sup>5</sup> QLDC's *Section 32 Evaluation Report: Subdivision and Development*, part 5, Issue 1, page 8-9

*through nearly every page of the chapter to determine the status and framework for a particular activity”; and “the subdivision provisions should be accessible and efficient”.*

- (b) The ODP *falls short of encouraging good subdivision design*, particularly in the context of creating good neighbourhoods for residents and taking opportunities to integrate with existing neighbourhoods and facilities.

2.12 I consider that these criticisms are either unfounded or have very limited validity, and that the PDP’s overall method to remedy the perceived faults is not the most appropriate method. I address these points in section 3 below.

### **3 The Proposed District Plan**

3.1 The PDP as notified applies new objectives and policies for subdivision and a fully discretionary activity framework for most subdivisions in the urban and rural living zones. My key observations of the PDP’s objectives and policies are:

- They are more detailed than their ODP counterparts, which is necessary because the guidance for assessment lies solely within the objectives and policies – there are no assessment matters; and
- They have a much greater “urban design” flavour, which is understandable in light of the urban design paradigm shift that I discussed above.

3.2 Mr Falconer comments favourably on the PDP’s objectives and policies for subdivision, in relation to their focus on urban design. I agree with him; certainly the PDP objectives and policies are far more engaged with urban design than their operative counterparts. Coupled with the PDP’s higher order objectives and policies in Chapters 3 (Strategic Direction)<sup>6</sup> and 4 (Urban Development)<sup>7</sup>, the Plan very strongly promotes quality urban design.

3.3 The discretionary status applies to all subdivision<sup>8</sup> and there are some development standards, including<sup>9</sup>:

- minimum lot sizes;
- shape factors;

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<sup>6</sup> Goal 3.3.2, Goal 3.2.3, Goal 3.2.6, and related objectives and policies

<sup>7</sup> Objectives 4.2 – 4.6 and related policies

<sup>8</sup> Rule 27.4.1

<sup>9</sup> PDP Rules 27.5.1 – 27.5.4

- infill subdivision;
- subdivision on small sites in the Low Density Residential Zone (LDRZ) and
- servicing and infrastructure (water).

3.4 Various parties oppose the discretionary status<sup>10</sup>; their submissions seek that subdivision in certain zones is a controlled activity. Other parties seek that the ODP subdivision provisions are reinstated<sup>11</sup>. The PDP also applies restricted discretionary status to subdivision undertaken in accordance with a structure plan or spatial layout plan. This is opposed by some parties<sup>12</sup>.

3.5 I support the submissions that oppose the fully discretionary status. My reasons are:

(a) I do not agree with the section 32's two criticisms of the ODP framework, as follows:

- (i) In relation to the *unwieldy* nature of the rules, and making rules *accessible and efficient*, I consider that the ODP provisions clearly set out what is required of a subdivider and are workable and easily understood. Most if not all subdividers would use an expert in one way or another for the subdivision process (a surveyor and / or a planner and in many instances a lawyer). These practitioners are familiar with RMA language and provisions<sup>13</sup>.
- (ii) In relation to the ODP *falling short of encouraging good subdivision design*, the PDP rightly introduces objectives and policies promoting urban design principles, to better reflect the new paradigm, but the section 32 gives no valid reason why these provisions need to be given effect to by a discretionary regime. One reason offered is that the provisions need to cater for a wide range of locational and other circumstances, but there is no explanation of why a discretionary framework is necessary to deal with this spatial variation.
- (iii) The option of a controlled activity framework serving the new urban design objectives and policies has not been evaluated.

(b) The discretionary status is too uncertain for applicants and other parties. Where subdivision is necessary to achieve the very purpose of the urban and rural living zones, an activity status with more certainty is, in my view, necessary. Subdivision certainty is essential to efficient and effective use of resources in the District, and this is facilitated

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<sup>10</sup> Including among others Dalefield Trustee Limited (350), Otago Foundation Trust Board (408), and Ayrburn Farm Estate Limited (430), and FS1157 in support of Submitter 166

<sup>11</sup> Including F S Mee Developments (525)

<sup>12</sup> Including Hogan Gully Farming (456)

<sup>13</sup> I have addressed this Panel on this matter in evidence for previous chapters

by clear understanding of the outcomes which can be achieved in any particular zone or area. If subdivision is a fully discretionary activity, then a case by case assessment is required for every subdivision and there is no certainty as to what might be acceptable. This could result in undesirable and inconsistent planning outcomes due to the extent of discretion retained by Council and the fact that different subdivision consent applications will be processed by different Council planners who may have different subjective opinions about how to interpret and apply the relevant objectives and policies.

- (c) The level of uncertainty created by the fully discretionary subdivision regime will have adverse consequences. It will not be possible to know the potential subdivision outcome of any particular development proposal without first applying for, and obtaining, a consent. This will create difficulties for investment, and potentially act as a disincentive, because developers will not know what could possibly be developed on a site because it is difficult to ascertain what the plan anticipates for a property which they might be considering purchasing or developing. That could hinder economic growth.
- (d) Because of that uncertainty, the discretionary status is almost certain to create additional transaction costs for all parties.

3.6 I agree with Mr Bryce that the discretionary status is not appropriate but I do not support his alternative – the restricted discretionary framework – and I address this in section 4 below.

## 4 Mr Bryce's recommended restricted discretionary provisions

4.1 In brief summary, Mr Bryce recommends that the activity status for subdivision in the urban zones and rural living zones is restricted discretionary, and not fully discretionary (as notified) or controlled (as various submitters are seeking).

4.2 Mr Bryce's proposed rules<sup>14</sup> are as follows. Rule 27.5.5 requires restricted discretionary consent for all subdivision in listed urban zones. The rule contains a list of the matters over which discretion is restricted. The list is:

- ***Lot sizes, averages and dimensions, including whether the lot is of sufficient size and dimensions to effectively fulfil the intended purpose of the land use;***
- ***The extent to which the subdivision design achieves the subdivision and urban design principles and outcomes set out in QLDC Subdivision Design Guidelines;***
- ***Property access and roading;***
- ***Esplanade provision;***

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<sup>14</sup> S42A report, Appendix 1, page 27-18



- *Natural hazards;*
- *Fire fighting water supply;*
- *Water supply;*
- *Stormwater disposal;*
- *Sewage treatment and disposal;*
- *Energy supply and telecommunications;*
- *Open space and recreation; and*
- *Easements*

4.3 Rule 27.5.6 requires restricted discretionary consent for all subdivision activities in the District's Rural Residential and Rural Lifestyle Zones. The discretion is restricted to:

- *In the Rural Lifestyle Zone the location of building platforms;*
- *Lot sizes, averages and dimensions, including whether the lot is of sufficient size and dimensions to effectively fulfil the intended purpose of the land use;*
- *Subdivision design including:*
  - *the extent to which the design maintains and enhances rural living character, landscape values and visual amenity;*
  - *the extent to which the location of building platforms could adversely affect adjoining non residential land uses;*
  - *orientation of lots to optimise solar gain for buildings and developments;*
  - *the effects of potential development within the subdivision on views from surrounding properties;*
  - *In the case of the Makarora Rural Lifestyle Zone, the concentration or clustering of built form to areas with high potential to absorb development, while retaining areas which are more sensitive in their natural state;*
  - *In the Rural Residential Zone at the north end of Lake Hayes, whether and to what extent there is an opportunity to protect and restore wetland areas in order to assist in reducing the volume of nutrients entering Mill Creek and Lake Hayes;*
- *Property access and roading;*
- *Esplanade provision;*
- *Natural hazards;*
- *Fire fighting water supply;*
- *Water supply;*
- *Stormwater disposal;*
- *Sewage treatment and disposal;*
- *Energy supply and telecommunications;*
- *Open space and recreation; and*
- *Easements.*

4.4 The provisions also include some development standards:

- Minimum lot areas (applying generally) (Rule 27.6.1);
- Some bespoke standards for specific locations (eg. Ferry Hill, Kirimoko);

- A zone standard requiring a residential building platform in some zones (including the Rural Lifestyle Zone);
- A zone standard requiring a minimum shape dimension within a proposed lot (so that the lot is “fit for purpose”) (Rule 27.7.12.2);
- Zone standards associated with infill development, small sites within the Low Density Residential Zone, and for servicing and infrastructure (water only);

4.5 There are no assessment matters to accompany the matters of discretion; rather, the guidance is in part within the development standards but is mainly within the objectives and policies. The breadth of the matters over which discretion is restricted is wide, and I do not consider that Mr Bryce’s restricted discretionary regime is very different from the fully discretionary notified framework. Both would require a wide ranging assessment under the objectives and policies.

4.6 Mr Bryce relies on the Boffa Miskell case studies<sup>15</sup> to justify the restricted discretionary regime. I summarise these studies in the following table.

Location of subdivision	Boffa Miskell’s ratings (8 rating categories)	Boffa Miskell’s comments
<b>Lakes Hayes Estate</b> Commenced 2001/2002	1 x “Successful” 2 x “Acceptable” 4 x “Less Successful” 1 x “Not Successful”	The subdivision’s out of town location without appropriate local services for its residents is a major urban design concern. The width of the roads and low scale of buildings detract from its overall quality.
<b>Fernhill, Queenstown</b> Commenced 1970s	2 x “Successful” 5 x “Acceptable” 1 x “Less Successful”	The design of this subdivision in response to its sloping terrain has resulted in a reasonably consistent outcome. The quality of the buildings and landscape could further be enhanced.
<b>Goldfields, Queenstown</b> Commenced 1980s	4 x “Successful” 3 x “Acceptable” 1 x “Less Successful”	Design of the subdivision in response to its sloping terrain has resulted in good enclosure of spaces and creation of active edges.
<b>Arthur’s Point, Queenstown</b> Commenced 2002	3 x “Successful” 3 x “Acceptable” 2 x “Less Successful”	The quality of the public and private areas and walkability of this subdivision is successful. There is evidence of covenants which assist in

<sup>15</sup> Appendix to evidence of Garth Falconer

		the overall quality, although some boundary treatments could be improved.
<b>Atley Downs, Queenstown</b> Commenced 2002	5 x "Successful" 2 x "Acceptable" 1 x "Less Successful"	The quality of the public and private areas of the subdivision is successful. There is evidence that building control covenants may have been in place to assist the overall quality.
<b>Mt Iron Estate, Wanaka</b> Commenced 2002	2 x "Acceptable" 3 x "Less Successful" 3 x "Not successful"	Pleasant enough, does not make the most of its location adjacent to Mt Iron, falls short in a number of key design criteria. Given location as an urban extension does not make best use of location.
<b>Meadowstone, Wanaka</b> Commenced 2001/2002	6 x "Successful" 2 x "Acceptable"	High quality public and private landscaping and building design. It has good internal connections and a building scale which could have been enhanced by narrower roads/road reserves.

4.7 I comment on the case studies as follows:

- (a) All of these subdivisions were promulgated (and with implementation well underway) during the "old" paradigm of subdivision design – i.e. they largely predate the Urban Design Protocol and the Council's urban design guidelines, and initiatives such as consideration by the urban design panel;
- (b) Despite this, most of the subdivisions achieved a majority "Successful / Acceptable" urban design rating, although none received a "Very Successful" rating for any of the criteria and two were rated mostly within the "Less Successful / Not Successful" class.

4.8 One of the "Less successful / Not Successful" rated subdivisions is Lake Hayes Estate, near Frankton. It received one "Successful", two "Acceptable", four "Less Successful and one "Not Successful" ratings. The reasons for the "Less Successful" and 1 "Not Successful" ratings, and my response to those reasons, are set out in the following table:

Boffa Miskell reason for poor rating	My response
<p><b>Integration:</b> “Less successful”, because the “<i>out of town rural location hinders reference to and integration with a local built context</i>”</p>	<p>The location of the zone is not a function of, or a consequence of, the Chapter 15 subdivision provisions.</p> <p>Lake Hayes Estate occupies land that has the following attributes: a large flat, easily developable area; relatively limited views of it from main roads, and thereby avoiding adverse effects of large scale urban development on wider landscape values; relatively accessible by vehicles. Land with these attributes is finite in the District, and the need for space for urban development as well as maintaining landscape values dictates that land areas such as Lake Hayes Estate need to be utilised for urbanisation. I support urbanisation of “out of town” locations if this can absorb growth pressure; many “close to town” locations could not be developed without further adverse effects on landscape values (eg extending Fernhill or Queenstown Hill zonings to higher elevations).</p> <p>Also, as the development has approached build out, a commercial heart (including, now, a dairy, a restaurant, and a preschool) has slowly emerged, along with some higher density development, and connectivity by bus transport. These have all been in the last five years or so (i.e. since the Boffa Miskell report was prepared).</p>
<p><b>Scale:</b> “Less Successful” because the width of roads combined with the low dwelling heights results in an uncomfortable scale of development. Buildings in certain locations should have taller buildings to reflect their scale, importance and function.</p>	<p>The roads were of sufficient width to meet the Subdivision Code of Practice current at that time.</p> <p>The dwelling heights are a consequence of the permitted limits and landowner choice.</p> <p>There is no evidence that the scale of the development is uncomfortable to residents. Lake Hayes Estate has been a commercial success because it has catered for buyers looking for space with capacity for a large family home and outdoor area.</p>
<p><b>Appearance:</b> “Less Successful” because the dominance of fences and garages reduces active edges to the public areas, which results in less passive surveillance of the public realm.</p>	<p>The layout of development within an individual residential lot is essentially a function of the land use rules of the zone and not necessarily of the rules for the underlying subdivision. However, if</p>

	this is an issue of concern it can be addressed through controlled activity rules.
<b>Enclosure:</b> “Not Successful” because given the wide roads, large public spaces and relatively low scale dwellings it is difficult to create a strong sense of enclosure.	There is no evidence that a perceived lack of enclosure has created a poor living environment for residents. My comments above about “scale” also apply here.
<b>Character:</b> “Less Successful” because this type of subdivision could be found anywhere and does not create a distinctive character in relation to its context.	This, as for all of these matters, is very subjective. Factors including market need for family homes in a medium density suburban environment, affordability, and location of land that can provide for these in this District, given the landscape context, are all relevant.

- 4.9 To some extent I agree that the Lake Hayes Estate development could have been better, particularly in the area of higher density in some areas and the location of open spaces, but it nevertheless functions well and serves a distinct purpose, in my view. I do not see that any perceived “defects” can be blamed on the controlled activity status for subdivision and the Council’s inability to refuse the consents.
- 4.10 Widening that point, I do not see how more focussed urban design assessments cannot sit within a controlled activity rules framework. The consents of the Boffa Miskell case study examples all predated the urban design paradigm shift, and it is likely that if more focussed urban design assessments (including the Subdivision Design Guidelines and the Urban Design Panel) were in play when the subdivisions were being designed and consented, then the outcomes could well have been different, but by no means outside the workability of a controlled activity framework.
- 4.11 Mr Bryce<sup>16</sup>, in reliance on Mr Glasnor, uses the example of road widths. I consider that, provided the control is appropriately reserved – by way of reference to the Code of Practice or other suitable standard – the controlled status still gives the Council the power to impose valid conditions to remedy any perceived defects in a particular proposal, as has been the case for the ODP for the last 15 years. I reiterate my point from paragraph 2.9 above that the process should be (and in my experience usually is) collaborative and if there are breakdowns the Council can still impose conditions and the RMA includes processes for applicants to challenge such conditions.
- 4.12 I therefore disagree with Mr Bryce that the perceived defects of the two lowly-rated subdivisions are a consequence of the inability of the Council to refuse consent. There is no nexus between the defects and the alleged cause. I comment further:

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<sup>16</sup> S42A report, para 10.24 – 10.25

- (a) Although the subdivisions reviewed pre-dated the urban design paradigm shift, most of the reviews yielded a “Successful / Acceptable” rating. Mr Bryce nevertheless states that *“the existing provisions are ineffective in delivering good subdivision design responses”*<sup>17</sup> and he thereby significantly conflates the two poor ratings to be the general rating for the seven case studies;
- (b) There has been no evaluation of newer examples (such as Jacks Point) undertaken post the urban design paradigm shift;
- (d) There has been no evaluation of the option of a controlled activity framework coupled with strong urban design provisions.

4.13 A controlled activity framework coupled with strong urban design provisions is the subject of my section 5, below.

## 5 A controlled activity framework

5.1 I consider that a controlled activity framework can give effect to the PDP’s objectives and policies for subdivision. The modifications to Rules 27.5.5 and 27.5.6 would be as follows (in ~~strikeout~~ / **addition**)<sup>18</sup>:

	Subdivision Activities – District Wide	Activity status
27.5.5	<p><b>All subdivision activities contained within urban areas identified within the District’s Urban Growth Boundaries and including the following zones:</b></p> <ol style="list-style-type: none"> <li>1. Low Density Residential Zones;</li> <li>2. Medium Density Residential Zones;</li> <li>3. High Density Residential Zones;</li> <li>4. Town Centre Zones;</li> <li>5. Arrowtown Residential Historic Management Zone;</li> <li>6. Large Lot Residential Zones;</li> <li>7. Local Shopping Centres;</li> <li>8. Business Mixed Use Zones;</li> <li>9. Queenstown Airport Mixed Use Zone.</li> </ol> <p><del>Discretion</del> <b>Control</b> is restricted to all of the following:</p> <p>(a) <b><u>In Zones for which no minimum lot area standard applies under Rule 27.6.1,</u></b> <del>Lot sizes, averages and dimensions, including whether</del></p>	RD <b>C</b>

<sup>17</sup> S42A report, paragraph 10.23

<sup>18</sup> and I have changed the bullet points for this list to letter annotations which are easier to cross-reference

	<p>the lot is of sufficient size and dimensions to effectively fulfil the intended purpose of the land use;</p> <ul style="list-style-type: none"> <li>(b) The extent to which the subdivision design achieves the subdivision and urban design principles and outcomes set out in QLDC Subdivision Design Guidelines;</li> <li>(c) Property access and roading;</li> <li>(d) Esplanade provision;</li> <li>(e) Natural hazards;</li> <li>(f) Fire fighting water supply;</li> <li>(g) Water supply;</li> <li>(h) Stormwater disposal;</li> <li>(i) Sewage treatment and disposal;</li> <li>(j) Energy supply and telecommunications;</li> <li>(k) Open space and recreation; and</li> <li>(l) Easements.</li> </ul>	
27.5.6	<p><b>All subdivision activities in the District's Rural Residential and Rural Lifestyle Zones</b></p> <p>Discretion is restricted to all of the following:</p> <ul style="list-style-type: none"> <li>(a) In the Rural Lifestyle Zone the location of building platforms;</li> <li><del>(b) Lot sizes, averages and dimensions, including whether the lot is of sufficient size and dimensions to effectively fulfil the intended purpose of the land use;</del></li> <li>(b) Subdivision design including: <ul style="list-style-type: none"> <li>(i) the extent to which the design maintains and enhances rural living character, landscape values and visual amenity;</li> <li>(ii) the extent to which the location of building platforms could adversely affect adjoining non residential land uses;</li> <li>(iii) orientation of lots to optimise solar gain for buildings and developments;</li> <li><del>(iv) the effects of potential development within the subdivision on views from surrounding properties;</del></li> <li>(iv) In the case of the Makarora Rural Lifestyle Zone, the concentration or clustering of built form to areas with high potential to absorb development, while retaining areas which are more sensitive in their natural state;</li> <li>(v) In the Rural Residential Zone at the north end of Lake Hayes, whether and to what extent there is an opportunity to protect and restore wetland areas in order to assist in reducing the volume of nutrients entering Mill Creek and Lake Hayes;</li> </ul> </li> <li>(d) Property access and roading;</li> <li>(e) Esplanade provision;</li> <li>(f) Natural hazards;</li> <li>(g) Fire fighting water supply;</li> <li>(h) Water supply;</li> <li>(i) Stormwater disposal;</li> <li>(j) Sewage treatment and disposal;</li> <li>(k) Energy supply and telecommunications;</li> <li>(l) Open space and recreation; and</li> </ul>	RD <u>C</u>

	(m) Easements.	
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- 5.2 The addition to clause (a) in Rule 27.5.5 is necessary to avoid the significant uncertainty which arises if the Council has discretionary control over lot sizes in zones for which a lot size minimum standard is provided. Rule 27.6.1 provides these standards and it also identifies some zones for which no minima applies. For those zones, assessing whether the lot is of sufficient size and dimensions to effectively fulfil the intended purpose of the land use is necessary. However, for the zones where a minimum (or minimum average) is specified, and in light of Rule 27.7.12.2 which specifies minimum shape factors within lots to ensure the lots are fit for purpose, I do not consider that any further assessment around lot areas and dimensions is necessary. I go further and say that the uncertainty that creates is undesirable and unjustified.
- 5.3 Use of site or zone standards for some elements of subdivision (as is the case under the ODP) can be appropriate. However, controlled activity status can achieve the same objective, if the scope of control is sufficient.
- 5.4 I have modified Rule 27.5.6, for the rural living zones, by deleting clause (b) (in relation to lot sizes and dimensions, for the same reasons as for the equivalent clause in Rule 27.5.5) and I have deleted the clause "*the effects of potential development within the subdivision on views from surrounding properties*". This is because the zones have a specific purpose – rural living – and all owners in the zone are or should be aware that their neighbour will have a right to subdivide provided the minimum / average lot sizes and other standards are met. The clause if included would likely lead to a written approval being required, or limited notification, providing scope for a neighbour to intervene in how an adjoining neighbour could develop. I do not agree with that, in this context. Clauses (a) and (i) should provide enough scope for the Council to intervene if necessary, to maintain the character of the area.
- 5.5 The overall plan drafting format of using objectives and policies for the assessment of applications is unusual (to me); I'm more familiar (and comfortable) with the format of:
- Objectives and policies – setting direction;
  - Activity status rules;
  - Development standard rules;
  - Matters of control / discretion;
  - Assessment matters – the detail of the assessment.
- 5.6 However, I'm not opposed to the objectives and policies taking on the role that assessment matters would otherwise play, as long they provide the necessary guidance and are appropriately focussed and directive for the users.



### ***Controlled v. restricted discretionary or discretionary status***

- 5.7 District plans should be very clear about what activities a zone enables and what it does not, based on the effects of activities in the context of the objectives and policies of the zone and the wider environment. For certainty, if activities are clearly appropriate in a zone then permitted and controlled status should be able to be applied (i.e. less intervention) and if clearly inappropriate then non-complying or prohibited status should apply (i.e. high degree of intervention). The discretionary or restricted discretionary status should apply if there is sufficient uncertainty about whether an activity is appropriate or not in that zone.
- 5.8 For subdivision in zones which are clearly destined for a specific purpose, such as the urban and rural living zones, I support the certainty of the controlled activity framework over the comparative uncertainty of the restricted discretionary or discretionary framework. The controlled framework provides sufficient market certainty while still providing the Council with sufficient powers of intervention to “fine tune” a proposal (especially in relation to urban design). The Council’s powers of intervention do not need to extend to refusal of consent where it is already deemed that the zone is appropriate for the activities it is intended to embrace.

## **6 Section 32 and Part 2 of the Act, and conclusion**

- 6.1 The following table evaluates the costs, benefits, efficiency and effectiveness of subdivision as a controlled activity for the urban and rural living zones.

<b>Costs</b>	<b>Benefits</b>	<b>Effectiveness &amp; Efficiency</b>
<p>(a) Potential training of applicants and industry practitioners and others as to the matters of control for subdivision, how they will be assessed by the Council and the extent of information required to be submitted with an application (although this “cost” exists for any option).</p> <p>(b) The Council cannot decline an application but can use the matters of control to ensure good outcomes.</p>	<p>(a) The retention of the controlled activity rule coupled with a strong objectives and policies promoting quality urban design will strengthen the ODP regime.</p> <p>(b) Certainty and security to the applicant that subdivision consent will be granted in a zone that anticipates such development, providing that the development controls and the matters of control</p>	<p>(a) Provides a more effective and certain framework for all parties.</p> <p>(b) The rule is effective as it provides a list of the targeted requirements and there is no ambiguity as to the matters that will be assessed.</p> <p>(c) Provides economic efficiency as development rights are known and understood in anticipated zones.</p>

Costs	Benefits	Effectiveness & Efficiency
	<p>have been properly addressed.</p> <p>(c) The controlled activity status enables assessment under the contemporary tools that the Council has promoted, including the Subdivision Design Guidelines. These will give increased rigor to the controlled subdivision process and ensure that subdivisions create opportunities for quality neighbourhoods that contribute to people's and the community's wellbeing.</p> <p>(d) The controlled status provides for more streamlined processing, in that the matters of control are clearly spelt out.</p> <p>(e) Reference to additional resources such as the Subdivision Design Guidelines provide direction to all parties.</p>	<p>(d) Subdivision Design Guidelines are an efficient and effective method for plan users to understand what is required of them.</p> <p>(e) The removal of assessment of lot sizes, where standards for lot sizes apply, is more efficient and removes ambiguity over what should be assessed in relation to that subdivision element.</p> <p>(f) Including an appropriate reference to the Council's Code of Practice enables the Council to ensure compliance with the standards.</p>

6.2 From my evaluation, a controlled activity framework which properly reflects urban design principles can deliver quality environmental outcomes and by way of efficient processing. Certainty for users is a significant benefit when compared with a discretionary or restricted discretionary framework. The improved emphasis on urban design principles is a significant improvement over the ODP.

### **Section 7**

6.3 The following section 7 matters are most relevant:

- (b) the efficient use and development of natural and physical resources:**
- (c) the maintenance and enhancement of amenity values:**
- (f) the maintenance and enhancement of the quality of the environment:**
- (g) any finite characteristics of natural and physical resources:**

6.4 I consider that, in the context of the District's rapid population growth, the urban and rural living areas within the District need to be efficiently used and developed, as necessary, while still maintaining and enhancing their amenity values and the quality of the environment. Efficiencies are achieved by providing certainty to owners and other parties, through clear and definitive provisions and by reducing transaction costs. I consider that the controlled activity framework for subdivision in the zones strikes the right balance between efficient use of resources on the one hand and the maintenance and enhancement of amenity values and environmental quality on the other.

***Section 5***

6.5 The discretionary or restricted discretionary status for subdivision in zones which have a clear purpose (for use and development) will in my view have the potential to frustrate or dis-enable appropriate development proposals that are important to the District's growth and identity and to individual landowners. The controlled activity status will enable use and development and lessen such frustration and, coupled with the development controls and the wide range of detailed objectives and policies to guide the assessment of any proposal, particularly in relation to urban design principles, will achieve sections 5(2)(a) – (c) of the Act.

6.6 Accordingly I consider that the PDP Chapter 27, with my modifications, achieves the purpose and principles of the Act.

**J A Brown**  
**15 July 2016**

**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 Auckland and Queenstown. Consultants in resource management/statutory planning, strategic planning, environmental impact assessment, and public liaison and consultation. Involved in numerous resource consent, reviews, plan changes/variations and designations on behalf of property development companies, Councils and other authorities throughout New Zealand.

Projects include: residential and rural-residential subdivision; high density, mixed-use urban/village developments; golf course resort developments; commercial property planning; lodges, vineyards and wineries; airport planning; water-based transport planning; industrial, office and commercial developments, special housing area developments.

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, Jeffrey Brown Associates, Queenstown. Resource management consultancy in Queenstown.

1989 – 1996: Resource management planner in several local government roles, including Planner (1992 – 1994) and District Planner (1994 – 96), Queenstown-Lakes District Council. Responsible for this authority's duties under the Resource Management Act, including policy formulation (the first generation RMA District Plan, notified 1995), other plan changes, designations and consents.