

**BEFORE THE QUEENSTOWN LAKES  
DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991 (the "Act")

**AND**

**IN THE MATTER** of the Queenstown Lakes District Proposed District Plan

**AND**

**IN THE MATTER** of Chapter 27 Subdivision and Development

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**SUMMARY in respect of LEGAL SUBMISSIONS for:**

G W Stalker Family Trust Mike Henry Mark Tylden Wayne French Dave Finlin Sam  
Strain – 535/534

Ashford Trust – 1256

Bill & Jan walker Family Trust - 532/1259/ 1267

Byron Ballan – 530

Crosshill Farms Limited – 531

Robert and Elvena Heywood - 523/ 1273

Roger and Carol Wilkinson – 1292

Slopehill Joint Venture - 537/ 1295

Wakatipu Equities - 515/1298

Ayrburn Farm Estate Limited - 430

F S Mee Developments Limited - 525

**[Dated 1 August 2016]**

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**ANDERSON LLOYD  
LAWYERS  
QUEENSTOWN**

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1. Introduction
  - Minimise repetition
  - Primary issues of concern potentially now resolved
  - Remaining issue of principle
  - Possibly 'hot-tub' Mr Brown / Mr Farrell.
2. Philosophical comment
3. If it ain't broke, don't fix it
4. Garth Falcon's Summary (22 July 2016) Paragraph 8 – Paragraph 5.
5. Nigel Bryce's Summary (22 July 2016) Paragraph 5 – Statistics:
  - Consent numbers rather than lot numbers.
  - Individual RDA triggers v global RD trigger.
  - Certainty for landowners.
6. Nigel Bryce's example RM150804 *Orchard Road Holdings Limited* (refer attached A1-A5)
7. Reference Council's Legal Submissions – Paragraph 6.4
8. Comment on Council's Code of Practice
9. Comment on Guidance through Policies rather than Assessment Matters:
  - No side by side comparison
  - Radical new direction
  - cf: Auckland Unitary Plan approach
  - Potential legal uncertainty:
    - Policy 27.2.1.1
    - Rules 27.7.2 and 27.7.3
10. Comment on District Plan 'structure' re Subdivision Design Guidelines
11. Comment on CA regime v fully discretionary regime
12. Comment on difference between Nigel Bryce's recommended RDA regime and fully discretionary regime:
  - Chapter 27: 27.1 – Paragraph 5
  - Chapter 27: 27.3.1
13. Example of concern about RDA Regime which includes discretion over lot size:
  - (a) Policy 4.2.3.7:

*"The edges of Urban Growth Boundaries are managed to provide a sensitive transition to rural areas."*

14. Removal of reference to discretionary control over lot size, in zones which prescribe minimum lot size, as now recommended in the Council's Legal Submissions, removes most of this area of concern. However it leaves an even stronger question about the justification of RDA over a CA Regime.
15. Rural Lifestyle Zone – minimum or minimum average lot size – refer Legal Submissions dated 22 July 2016 - Plan A.
16. Amendment to recommended subdivision Rule:

*"In all Rural Lifestyle Zones (except the Makarora Rural Lifestyle Zone) the total residential lots to be created by subdivision (including balance of the site within the zone) shall not have an average less than 1ha. For the purpose of this rule:*

*(a) the area of non-residential lots such as access lots or amenity lots (such as walkway lots) shall be included in order to calculate the average but those lots shall be deemed not to be separate lots;*

*(b) when calculating any average, any allotment greater than 1ha, including the balance, is deemed to be 1ha."*




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Warwick Goldsmith  
Counsel for the Submitters



**DECISIONS OF THE QUEENSTOWN LAKES DISTRICT COUNCIL**

**NOTIFICATION UNDER s95 AND DETERMINATION UNDER s104**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	Orchard Road Holdings Limited
<b>RM reference:</b>	RM150804
<b>Application:</b>	Application under Section 88 of the Resource Management Act 1991 (RMA) for subdivision to consent to create 40 residential allotments, 2 local purpose reserves, 2 balance allotments and 1 lot to be dedicated as road.  Land use consent is also sought to undertake earthworks in association with the development.
<b>Location:</b>	Alpha Series, Meadowstone Drive, Wanaka
<b>Legal Description:</b>	Lot 3 Deposited Plan 449599 held in Computer Freehold Register 570191
<b>Zoning:</b>	Low Density Residential
<b>Activity Status:</b>	Restricted Discretionary
<b>Decision Date</b>	5 April 2016

**SUMMARY OF DECISIONS**

1. Pursuant to sections 95A-95F of the RMA the application will be processed on a **non-notified** basis given the findings of Section 6.0 of this report. This decision is made by Quinn McIntyre, Team Leader Resource Consents, on 5 April 2016 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 104 of the RMA, consent is **GRANTED SUBJECT TO CONDITIONS** outlined in **Appendix 1** of this decision imposed pursuant to Section 108 and Section 220 of the RMA. The consent only applies if the conditions outlined are met. To reach the decision to grant consent the application was considered (including the full and complete records available in Council's electronic file and responses to any queries) by Quinn McIntyre, Team Leader Resource Consents as delegate for the Council.



## 1. PROPOSAL AND SITE DESCRIPTION

Consent is sought to undertake a subdivision to create 40 residential allotments, 2 local purpose reserves, 2 balance allotments and 1 lot to be dedicated as road. Land use consent is also sought to undertake earthworks in association with the development in order to trench to provide the required servicing, minor finishing works to berms and batters as well as earthworks to enable the construction of road pavement.

The applicant has provided a detailed description of the proposal, the site and locality and the relevant site history in Sections 2 and 3 of the report entitled 'Assessment of Effects on the Environment Meadowstone Alpha Series Stage 1 Subdivision', prepared by Alison Devlin of Orchard Road Holdings, and submitted as part of the application (hereon referred to as the applicant's AEE and attached as Appendix 2). This description is considered accurate and is adopted in part for the purpose of this report, with the following additional information:

The subject site is located directly adjacent to the headwaters of the Bullock Creek, which flows through the Wanaka town centre and out into Lake Wanaka to the north-east.

## 2. ACTIVITY STATUS

### 2.1 THE DISTRICT PLAN

The subject site is zoned Low Density Residential and the proposed activity requires resource consent for the following reasons:

#### Subdivision

- A controlled activity resource consent pursuant to Rule 15.2.3.2 which states except where specified as a Discretionary or Non-complying Activity, any subdivision or development in any zone which complies with all of the Site and Zone Standards shall be a Controlled Activity. Council's control is with respect to:
  - Lot sizes, averages and dimensions
  - Subdivision design
  - Property access
  - Esplanade Provision
  - Natural and other hazards
  - Water supply, storm water, sewage treatment and disposal, energy supply and telecommunications
  - Open space and recreation
  - Easements

#### Land Use

- A restricted discretionary activity pursuant to Rule 22.3.2.3(a) as the proposal breaches site standard 22.3.3(i) in regard to the maximum volume of earthworks for the zone, which is 300m<sup>3</sup> in a 12 month period. It is proposed to undertake 14,000 m<sup>3</sup> of earthworks. Council's discretion is restricted to this matter.

Overall, the application is considered to be a restricted discretionary activity.

### 2.2 NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH

Based on the applicant's review of Council records, the piece of land to which this application relates is not a HAIL site, and therefore the NES does not apply.



- (i) The following are methods or matters included in the District Plan, in order to enable the Council to implement the Plan's policies and fulfil its functions and duties under the Act.
- (ii) In addition to the applicable provisions of the Act, the Council shall also apply the relevant *Assessment Matters* set out in the following rules.
- (iii) In the case of Controlled and Discretionary Subdivision Activities, where the exercise of the Council's control or discretion is restricted to specified matter(s), the assessment matters taken into account shall only be those relevant to that/those matter(s).
- (iv) In the case of *Controlled Subdivision Activities*, the assessment matters shall only apply in respect to conditions that may be imposed on a consent.
- (v) In the case of *Controlled Subdivision Activities*, the application would only be declined pursuant to section 106 of the Act (Natural Hazards).
- (vi) Where a subdivision is a *Discretionary Subdivision Activity* because it does not comply with one or more of the relevant Site Subdivision standards, but is also specified as a *Controlled Subdivision Activity* in respect of other matter(s), the Council shall also apply the relevant assessment matters for the Controlled Subdivision Activity when considering the imposition of conditions on any consent to the Discretionary Subdivision Activity.

## 15.2.3 Subdivision Activities

### 15.2.3.1 Permitted Subdivision Activities

There shall be no Permitted Subdivision Activities.

### 15.2.3.2 Controlled Subdivision Activities

Except where specified as a Discretionary or Non-Complying Activity in Rules 15.2.3.3 and 15.2.3.4 any subdivision or development in any zone which complies with all of the Site and Zone Standards shall be a **Controlled Activity**.

The matters in respect of which the Council has reserved control are listed with each **Controlled Activity**.

- (i) Boundary adjustment in the Rural General Zone, provided that:
- (a) Each of the lots must have a separate certificate of title; and
- (b) Any approved residential building platform must be retained in its approved location; and
- (c) No new residential building platforms shall be identified and approved as part of a boundary adjustment; and
- (d) There must be no change in the number of residential building platforms or residential buildings per lot; and
- (e) There must be no change in the number of non-residential buildings per lot; and
- (f) The adjusted boundaries must not create non-compliance with any Part 5 Rural General Zone site and zone standards; and
- (g) No additional saleable lots shall be created; and
- (h) If one of the lots contains no building or residential building platform then no smaller lot shall be created without a building or residential building platform on it;
- in respect of:

- The location of the proposed boundaries, including their relationship to approved residential building platforms, existing buildings, and vegetation patterns and existing or proposed accesses;
- Boundary treatment;
- Easements for access and services.



- (ii) All financial contributions shall be GST inclusive.
- (iii) Where the financial contribution is or includes a payment of money, the Council may specify in the condition:
  - (a) The amount to be paid by the consent holder or the method by which the amount of the payment shall be determined;
  - (b) How payment is to be made, including whether payment is to be made by instalments;
  - (c) When payment shall be made;
  - (d) Whether the amount of the payment is to bear interest and if so, the rate of interest;
  - (e) If the amount of the payment is to be adjusted to take account of inflation and if so, how the amount is to be adjusted;
  - (f) Whether there are any penalties to be imposed for default in payment and if so, the amount of the penalty or formula by which the penalty is to be calculated.
- (iv) Whether financial contribution is or includes land, the value of the land shall be determined by the Council. In granting a consent the Council shall in its decision give reasons for its assessment of the value of the land.
- (v) Whether financial contribution is or includes land, the Council may specify:
  - (a) The location and area of the land;
  - (b) When and how the land is to be transferred to or vested in the Council.
- (vi) The Council may require a bond to be given for the performance of any condition requiring that a financial contribution be made. The value of the bond will be a maximum of 200% of the cost of the financial

contribution, depending on the length of time the bond is to be in place and according to the nature of the proposal for which the bond is required to secure.

## 15.2.6 Lot Sizes, Averages and Dimensions

### 15.2.6.1 Controlled Subdivision Activities - Lot Sizes and Dimensions

Except where specified as Discretionary or Non-Complying Subdivision Activities in Rules 15.2.3.3 and 15.2.3.4, any subdivision of land in any zone, which complies with all of the Site and Zone Subdivision Standards, is a **Controlled Subdivision Activity**, with the Council reserving control in respect of the following:

- i Lot sizes and dimensions for subdivisions of land in the Town Centre, Corner Shopping Centre, Remarkables Park, Resort and Visitor Zones.
- ii Sizes and dimensions of lots for access, utilities, reserves and roads.
- iii There will be no minimum lot sizes or areas for hydro development activities and subdivision.

### 15.2.6.2 Site Subdivision Standards - Lot Sizes and Dimensions

Except where specified as a Non-Complying Subdivision Activity in Rule 15.2.3.4, any subdivision of land which complies with all of the Zone Subdivision Standards, but does not comply with any one or more of the following Site Subdivision Standards shall be a **Discretionary Subdivision Activity**, with the exercise of the Council's discretion limited to the matter(s) subject to that standard.

- i Lot Sizes



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Any of the lots that exceed 900m<sup>2</sup> could potentially provide for residential units at a density of 1 per 450m<sup>2</sup> net area (Site Standard 7.5.5.3.iii *Site Density*). However, this level of infill is anticipated in the Low Density Residential Zone and provides opportunities for lot owners in the future.

It is proposed to use the north-eastern corner of the site as an open stormwater channel and constructed wetland area. Given that reticulated stormwater disposal is not available for the proposed development, it is considered that this design is appropriate and will provide a green buffer between the existing residential development to the north of the subject site and the proposed development.

Residential development to this density is anticipated in the Low Density Residential and therefore it is considered that some changes to the views experienced by the existing residential development adjacent to the subject site are therefore also considered to be anticipated. Effects on views on Lake Wanaka and Mount Aspiring from the existing residential development to the south will be minimised by the natural slope of the site to the north and the earthworks approved by Resource Consent RM150483.

The applicant intends to undertake simple tree planting within the streetscape. The trees are in keeping with some of the tree planting within Meadowstone Drive. The proposed streetscape trees and lighting will provide an element of consistency with the existing development of Meadowstone. It is considered that the level of consistency will ensure that any adverse effects in terms of the streetscape would be no more than minor.

The use of rear sites can reduce connection to the streetscape for the rear lots. Whilst the proposed layout does include some rear sites the applicant has provided a layout the responds to the topographical constraints present at this site.

### Property Access

Assessment Matter 15.2.8.3 directs Council to have regard to the safe and efficient functioning of the road network, the effect of any new intersections, the provision of Council's Code of Practice, the account taken of safe, pleasant and efficient pedestrian movements, provision of space for cyclists, amenity values on the street and opportunities for tree planting to enhance the character and amenity of the neighbourhood, pedestrian access to facilities, street lighting, names, and the provision for future roads to serve surrounding land.

Ms Overton has assessed the proposal with regard to property access and roading. Ms Overton's assessment is considered comprehensive and adopted for the purpose of this report (attached as Appendix 4).

The main road connection to the proposed development is a new road that is proposed to connect Meadowstone Drive with West Meadows Drive. Road 3 is proposed to encircle the proposed open space area and have one connection into Road 2.

Footpaths are to be provided along the roads within the development. In addition, a pedestrian link has been provided from Road 2 to the open space along the northern boundary of the site. Ms Overton has recommended a condition requiring the extension of the footpath along Road 2. This is considered sufficient in order to ensure pedestrian access is adequate.

An agreement in principle has been undertaken by the applicant and Council Parks and Reserves for the vesting of the reserves, open spaces and walking tracks. Council's Parks and Reserves Planning Manager Mr Stephen Quin is satisfied that the proposed reserves can be appropriately maintained and managed by Council and has recommended conditions in relation to the formation and maintenance period for the proposed reserves. Subject to the recommended condition any adverse effects in terms of the vesting of the walking track would be less than minor.

Ms Overton has recommended a condition requiring that at the time of subdivision, lots 13-15, 18, 25, 27 and 34 are provided with vehicle crossings that meet Council standards. All other lots shall be required to have access installed at the time a dwelling is constructed on the site. Subject to the recommended conditions it is considered that any adverse effects in terms of access to the allotments would be less than minor.