BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource management Act ('Act')

AND

IN THE MATTER of submissions on Chapter 27 the QLDC Proposed District Plan 2015

STATEMENT OF EVIDENCE OF BEN FARRELL

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

Byron Ballan – 530

Crosshill Farms Limited – 531

Bill and Jan Walker Family Trust – 1267

Robert and Elvena Heywood - 523/ 1273

Roger and Carol Wilkinson – 1292

Slopehill Joint Venture - 537/ 1295

Wakatipu Equities - 515/1298

20 July 2016

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INTRODUCTION

1. My name is Ben Farrell. I am an Independent Planning Consultant employed by John Edmonds & Associates Limited, a firm of independent planners and project managers based in Queenstown.

2. My qualifications and experience are provided in my evidence in chief (EiC) dated 29 February 2016. I confirm the matters raised in 1-9 of my EiC relating to the code of conduct for expert witnesses also apply to this evidence.

3. In preparing this evidence I have reviewed the following documents in addition to those listed in paragraph 7 of my EiC and paragraph 2 of my supplementary evidence dated 21 April (in relation to proposed chapters 22 Rural and 23 Rural Living):

    a. Section 42A Report prepared by Mr Bryce dated 29 June, inclusive of the attached s32 analysis;

    b. Evidence in support of QLDC prepared by Mr Glasner and Mr Falconer dated 29 June; and Mr Wallace dated 18 July; and

    c. Evidence in support of submitters prepared by Messrs J. Brown, C. Ferguson, D. Wells, and C. Vivian dated 15 July 2016, and Mr Reid dated 14 July 2016.

4. My evidence refers to and relies on the above evidence, particularly the planning evidence of Mr Brown and Mr Ferguson.

SCOPE AND SUMMARY OF EVIDENCE

5. This planning evidence is written at the request of respective submitters[1] in relation to two of the issues addressed in the s.42A Report:

    a. ISSUE 1 Controlled Activity Status for Subdivision Activity; and

    b. ISSUE 5 Minimum lot sizes for subdivision under Rule 27.5.1.

6. In the evidence below I set out reasons why:

    a. The controlled activity status ('CA') for managing subdivision across the district is more appropriate as the default compared to a discretionary or restricted discretionary ('RDA') regime[2]; and

    b. If the minimum density in the rural lifestyle zone in the Wakatipu Basin is reduced from 2ha to 1ha, provide for:

        i. 1ha minimum lots as a controlled activity; and

        ii. An average of 1ha as a restricted discretionary activity.

EVIDENCE

<u>Controlled Activity Status for Subdivision Activity</u>

7. This issue is heavily canvassed in the evidence before you. For brevity I adopt the background commentary raised in the s.42A Report and the evidence of Mr Brown and Mr Ferguson. In summary:

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1 Named on the front page of this evidence

2 This evidence is limited to zones where a minimum lot size is prescribed by zone standards, specifically the residential and rural living zones. This evidence does not address zones where there is no prescribed lot size.

a. The fully discretionary activity status for subdivisions is not supported by various submitters, experts and QLDC staff. I generally concur with and adopt the arguments against the fully discretionary regime.

b. The residual issue is whether or not the primary method for managing subdivision in the district plan is via the CA or RDA activity classification.

c. As expressed in the s.42A Report various submitters are seeking a CA subdivision regime but based on Mr Glasner's evidence, Mr Falconer's evidence and other reasons provided in the s.42A QLDC staff are recommending a RDA regime. Mr Brown, Mr Ferguson and Mr Wells have provided evidence in support of and prefer the CA regime. Mr Vivian has provided evidence that generally supports the RDA regime provided Council does not have control over lot size where minimum lot size is prescribed by zone standards.

8. In my opinion, it would be more appropriate for the district plan to continue to encourage good subdivision design through the provision of clear transparent controlled activity standards and enforcement of consent conditions, rather requiring it through the discretionary activity regime. My reasons are set out below.

a. The evidence for a default RDA regime rather than a default CA regime points to QLDC having a preference for being able to decline subdivision applications[3]. This preference does not appear to be founded on solid evidence.

b. There is no solid evidence to amend the operative regime from CA to RDA. For example:

i. Mr Brown and Mr Ferguson, who both have considerable experience in subdivision and development under the operative district plan, consider the operative CA regime functions well[4] and that there are no shortcomings under the operative provisions that warrant a philosophical shift in the default status of all subdivisions away from being a controlled activity[5]. I agree with that evidence.

ii. The s.42A Report[6] identifies that, in the rural living zones, Council's Monitoring Report (dated January 2010) did not identify any specific weaknesses in the ODP subdivision provisions. On this point alone, there appears to be no evidential basis for not applying the CA regime to subdivisions within the rural living zones.

iii. The Council infrastructure experts consider the CA status generally works in terms of infrastructure requirements, but they prefer the RDA status because it allows council to decline applications. As identified in the evidence of Mr Ferguson[7] there is no evidence supporting the evidence of Mr Glasner and Mr Wallace that the CA results in substandard outcomes.

iv. As discussed in the evidence of Mr Brown[8] and Mr Ferguson[9], the case studies used to identify 'substandard' design outcomes predate the urban design protocol (and the related

[3] Paragraph 89 of s.42A Report; Paragraph 2.1(b) in evidence of Mr Glasner & Wallace
[4] Paragraphs 2.9 in evidence of Mr Brown; and 59, 80-84 in evidence of Mr Ferguson
[5] Par 59 in evidence of Mr Ferguson
[6] Paragraph 10.22
[7] Paragraphs 59 and 84
[8] Paragraphs 4.6-4.9
[9] Paragraphs 59, 80-84 of Mr Ferguson's evidence

knowledge paradigm we now operate in) and none of the perceived 'defects' can be blamed on the controlled activity status for subdivision and the Council's inability to refuse consent.

v. For the reasons provided in Table 1 (on pages 6-7 of my evidence) below the s.32AA evaluation prepared the s.42A Report is deficient and should not be relied on.

c. In my opinion the discretionary regime imposes a 'stick' approach to the management of subdivision. It seeks to 'require' good design and runs counter to "encouraging good design", which is one of the key issues identified in the original s.32 evaluation ("*ISSUE 2 provisions to encourage good neighbourhood design and amenity*[10]"). Additionally, there are no directive objectives or policies in the proposed strategic direction chapters or in Chapter 27 that signal a need to be able to decline subdivision applications, except where development standards cannot be met or where matters of national importance[11] and significance[12] need to be protected..

d. In my opinion a discretionary regime is an idle approach to planning. In this regard it avoids the development of enabling provisions to facilitate development (such as CA activity terms and standards) in favour of a discretionary approach that requires a case-by-case consenting approach. While a case-by-case approach may be appropriate in various situations (as discussed in paragraphs of my EiC), it is not the most appropriate default method for managing subdivision on land that can absorb increased residential or rural living use and development.

e. I concur with Mr Brown and Mr Ferguson that amending the default activity status from discretionary to RDA as set out in Appendix 1 of the s.42A Report (Rules 27.5.5 and 27.5.6) will not reduce the costs or effectiveness of a fully discretionary regime to any discernible extent. In this regard, I do not agree with the s32AA evaluation set out in Appendix 4 of the s.42A Report:

i. As identified by Mr Brown and Mr Ferguson[13], the s.42A Report has not, in my opinion, evaluated the efficiency and effectiveness of the controlled activity status as an alternative to a RDA regime.

ii. The RDA regime creates an uncertain regulatory regime (evidenced in the s.42A report[14] and evidence of Mr Brown[15] and Mr Ferguson[16]). In my opinion, this uncertainty will increase the overall cost of administering and implementing the district plan by deferring/shifting the costs to case-by-case consents processes. In my opinion these costs can be avoided or significantly reduced by tackling them now as part of the plan preparation process.

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[10] The quality and 'liveability' of neighbourhoods contained within the District's urban areas is dependent on the subdivision process. The Operative District Plan subdivision chapter is considered to fall 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. There is insufficient emphasis on the critical design elements of subdivision and development such as roading and allotment layout, open spaces, inter-subdivision and external connections and vegetation management.

[11] Being those values protected under s.6 of the RMA

[12] Being those resources protected under a NPS (freshwater, renewable energy generation, and the national grid)

[13] Paragraph 50(b) in the evidence of Mr Ferguson

[14] Paragraph 10.50 in the s.42A Report

[15] Paragraph 5.2 and 5.8

[16] Paragraphs 19 and 50(b)

iii. In my experience the CA regime should be able to be used to address the substandard outcomes that QLDC seems to be concerned with. Mr Brown[17] and Mr Ferguson[18] identify how this can be achieved through the CA regime and I concur with their findings. For example: Council's current approach to approving a subdivision consent subject to conditions that require conformance to Council's engineering Code of Practice, together with the common practice of applicants and council staff working together to resolve potential areas of disagreement.

iv. In addition to the solutions (or alternatives) discussed in the evidence of Mr Brown and Mr Ferguson, if examples of sub-standard practice are identified, then I consider the following methods could be used or alternative to the RDA regime:

- Examining internal procedures or the subject decision to determine why QLDC did not apply its powers of control to determine if the 'substandard outcome' could have been avoided; and/or

- Introduce new standards to trigger a RDA consent requirement.

f. The Quality Planning website describes situations where the controlled activity and discretionary activity classifications for subdivisions may be appropriate. These are listed in Appendix BF9 attached to this document. While they are basic, in my opinion, they signal that the use of the RDA as the default position for subdivision is not good planning practice.

9. Notwithstanding any of the above, I agree that the discretionary regime is appropriate within a place of significant natural, cultural and historic heritage value. This is because of the potential significance of adverse effects resulting from development in these more susceptible environments.

[17] Paragraphs 5.1-5.6
[18] Paragraphs 57-104

Table 1 Comments on s32AA evaluation

s.42A Assessment of Costs	**Comment**
It is considered that the proposed rule leads to reduced costs for those proposing to subdivide / developers, as a result of the change proposed to the activity status governing subdivision activities in the District's urban areas, given that matters of discretion are specifically targeted (and therefore environmental effects assessments can be appropriately narrowed to respond to potential effects regarding the matters identified under Rule 27.5.5).	The matters of discretion will not narrow the discretionary elements of the application process to an extent that will result in costs savings to any party. On the contrary, the wide scope of discretion coupled with the new requirements under s.88 and the 4th Schedule of the RMA (for example to address all relevant planning provisions in every resource consent application) will increase costs further.
The proposed change may bring about a potential financial cost associated with designing and applying for subdivision applications that may be declined.	Agreed. Mr Reid has identified costs and uncertainties from a property valuer's perspective.
There are potential environmental costs associated with Council narrowing its discretion for consideration of subdivision boundary adjustments that fall within this rule, as a result of the proposed change.	n/a
s.42A Assessment of Benefits	**Comment**
The proposed activity status change provides greater certainty for those proposing to subdivide /developers, which in turn may have economic benefits through resource consent applications being more targeted to respond specifically to the matters of discretion listed under Rule 27.5.5.	As discussed in the evidence of Mr Brown, Mr Ferguson[19] and Mr Reid, the RDA does not provide certainty to those proposing to subdivide/developers. On the contrary the degree of certainty will undoubtedly be reduced compared to the operative regime.
The proposed change in activity status of the rule from discretionary to restricted discretionary still encourages good quality subdivision design through the ability to decline resource consent applications and through the Subdivision Guidelines being specifically incorporated as a matter of discretion. This will ensure the retention of opportunities for good quality neighbourhoods to be created for future residents, which, in turn, will bring about social benefits for the District's communities.	As stated in the evidence of Mr Brown and Mr Ferguson this benefit can be achieved by the controlled activity status. Alternatively, other methods exist which have not been identified which can address any identified shortfalls (e.g. reviewing internal procedures and introducing new controlled activity terms and standards).
The proposed new restricted discretionary activity rule seeks to retain a streamlined and more efficient assessment process than that of the ODP subdivision chapter.	These benefits can be achieved by the controlled activity status. While it is more efficient from a simplified rule framework, it shifts a burden of effort (and cost) to the case-by-case consenting process. In my opinion this is an idle planning approach and less efficient overall.
The removal of the need for the applicant and Council to undertake a notification assessment for Restricted Discretionary Activity subdivision applications (under Rule 27.11.1) may reduce both costs and time taken to process a subdivision aspects will be effective in encouraging good quality subdivision design and neighbourhood-wide considerations associated with subdivision resource consent.	Agreed. The controlled activity status offers the same benefits.
Assessment of Efficiency and effectiveness	**Comment**

[19] Paragraphs 5.2, 5.8 in the evidence of Mr Brown; 19, 50(b) in the evidence of Mr Ferguson

The ability to decline a resource consent application based on subdivision design or servicing	This statement is only true if evidence is produced to explain why subdivision consents may need to be declined, as opposed to simply being staff preference. No such evidence has been produced.
The proposed Restricted Discretionary Activity rule will be subject to the non-notification provisions, which will provide efficiency and certainty for those proposing to subdivide / developers	Agreed. The same benefit applies to the controlled activity status.
Rule 27.5.5 will be effective in providing an adequate level of detail to assist the assessment process (while ensuring that assessments are specifically targeted with respect to the matters at issue).	The same benefit applies to the controlled activity status. Other non-statutory methods exist to inform applicants about the adequate level of detail to assist the assessment process (for example Council's Code of Practice which can be incorporated into consent conditions).
The change to a Restricted Discretionary Activity status will still provide for efficiencies in plan administration and usability by being targeted in the use of matters of discretion.	The controlled activity status is more efficient because it is more targeted than the RDA and Council cannot decline applications.
The proposed provision is considered more effective and efficient than the notified Rule 27.4.1 (Discretionary Activity), given that it provides for many of the positive outcomes of the notified rule, while also providing greater guidance for plan users.	Agreed. However, I am unclear what the actual positive outcomes of the notified rule (and the RDA rule) are. At least they do not appear to be validated in evidence.

Minimum lot sizes for subdivision within the rural lifestyle zone (rule 27.5.1 of the notified version, rule 27.6.1 of the s.42A Report version)

Appropriateness of the 1 hectare minimum allotment size

10. Rule 27.5.1/27.6.1 sets the following minimum average lot area for subdivision in the rural lifestyle zone to comply with:

> *One hectare providing the average lot size is not less than 2 hectares.*
>
> *For the purpose of calculating any average, any allotment greater than 4 hectares, including the balance, is deemed to be 4 hectares.*

11. Submitters[20] are seeking the rule be amended so that the minimum lot size is "one hectare" or "an average lot size of not less than 1 hectare. This evidence does not address density[21]. This evidence only addresses, if the density of the rural lifestyle zone in the Wakatipu Basin is increased from 1 per 2 ha to 1 per 1ha, whether the subdivision rule which implements that density should require a minimum 1ha or a minimum average 1ha.

12. Mr Bryce has not specifically assessed the issue in the s.42A Report.

13. I consider it is not appropriate to discourage (via the non-complying activity status) subdivision that may result in allotments that average 1ha:

    a. In my opinion the objectives and policies in the strategic direction chapters, Chapter 22, and Chapter 27 in relation to rural living in the rural lifestyle zone will be most appropriately implemented if they provide flexibility around minimum allotment sizes. The objectives and policies do not direct that the minimum allotment size for rural lifestyle subdivision need to be applied as strict bottom lines.

    b. In my experience it is not uncommon for good subdivision design and environmental outcomes to be achieved by breaching controlled activity subdivision standards. However, the non-complying activity status reduces flexibility and can inhibit good subdivision design. For example it provides a disincentive to applicants and Council staff to consider alternative subdivision arrangements, which may result in better outcomes.

14. I do not support an approach that permits (via the controlled activity status) allotments less than 1ha. This is primarily because of the potential effects on landscape and amenity values. In this regard I agree to some extent with the rationale in paragraph 8.7 of the s.42A Report prepared by Mr Barr dated 29 June 2016 in so far as it relates to the risks with permitting allotments less than 1ha (to clarify I do not agree with the findings in the report advising against the provision of a 1ha average density in the rural lifestyle zone).

15. In my opinion it is more appropriate to provide for an average allotment size of 1ha as a RDA with discretion restricted to subdivision design[22] because it provides flexibility for the minimum allotment size to be breached while ensuring the rural living qualities and characteristics intended for the rural lifestyle zone can be achieved.

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[20] Named on the front cover page of this evidence

[21] Which has already been addressed in the rural chapter hearings, now deferred

[22] Inclusive of the relevant matters listed in the 3rd bullet point of **Rule 27.5.6** as recommended on pages 27-19 & 27-20 of the s.42A Report.

CONCLUSION

16. Having regard to the matters raised in the reports and evidence identified and discussed above, I consider chapter 27 should be amended to:

    a. Manage subdivision across the district using the controlled activity status as the default status;

    b. If the minimum density in the rural lifestyle zone in the Wakatipu Basin is reduced from 2ha to 1ha, provide for:

        i. 1ha minimum lots as a controlled activity; and

        ii. An average of 1ha as a restricted discretionary activity.

Signed 20 July April 2016

Appendix BF9 - Extract from the QP Guidance Note on Subdivision

Controlled activity subdivision

The controlled activity category gives certainty of an approval but allows control to be exercised in respect of matters nominated in the district plan. Any assessment of effects on the environment is confined to nominated matters only and conditions may be imposed on a range of specified matters. Unlike controlled activity land use applications, a controlled activity subdivision application can be declined in certain circumstances set out in s106. The district plan may also allow for non-notification of controlled subdivision applications.

For most subdivisions, a robust district plan will make it clear that the type of development which will follow subdivision is anticipated by the plan. If the district plan has clearly indicated standards such as minimum site size and shape, access and suitability of building platforms, then the controlled activity category may well be the most appropriate category within which subdivisions should be placed. This would avoid administration and compliance costs such as lot size or density concerns being the subject of a separate assessment on each and every subdivision.

The district plan can reserve control over the ability to impose conditions on such matters as future building location (and even building design, but only in certain sensitive environments), earthworks, landscape treatment, provision of access and utility services, and any financial contributions payable. A controlled activity status would not, however, allow a council to reduce or enlarge the scale of a proposed subdivision or the number of lots therein. For all controlled activities, the council will need to be certain of the infrastructure capacity for that area, and have a well-developed zoning and rules framework.

The controlled activity category may be appropriate for:

- *Land uses which are already established, or will be established (for instance through a condition of land use consent), and the subdivision will not create any further development possibilities which will result in more than minor adverse effects. Minimum site size and shape controls may not be necessary if there is legal access and all necessary infrastructure is provided for.*
- *Subdivision that allows for an appropriate pattern and density of development that maintains the character and environmental quality of an area and where environmental standards can be readily set and met.*
- *Subdivision within commercial and industrial zones where there are no infrastructure capacity issues.*
- *Residential infill sites where the district plan zoning clearly envisages such development and the subdivision is in accordance with the density provisions of the zone. In such cases, minimum site size, shape and access width controls may in some cases not be considered necessary.*
- *Subdivisions in accordance with an established structure plan.*
- *Creation of lots for minor utilities, roading or reserve purposes.*
- *Boundary adjustments.*

Restricted discretionary activity subdivision

The restricted discretionary activity allows discretion to be exercised over the matters specified in the District Plan. The restricted discretionary category gives applicants less certainty because consents can be refused. However, from a council's perspective it provides the option of refusal if an important standard is not met, and the imposition of conditions is not enough to mitigate any adverse effects. The district plan may also allow for non-notification of restricted discretionary subdivision applications.

The restricted discretionary category may be appropriate for:

- *Instances where the performance standards in the plan allow some flexibility beyond the controlled activity standards over such matters as site size or shape.*
- *Developments within moderately sensitive landscape areas where the plan specifies discretionary criteria as to location of allotment boundaries in relation to existing features or topography, building platforms, access roads, etc.*
- *Developments which do not comply with detailed provisions of structure plans, and where public input has already been provided through plan reviews or plan changes establishing the zoning applicable.*
- *Subdivision of sites affecting places or objects of cultural significance or containing heritage buildings or protected trees.*
- *Subdivisions within areas prone to a moderate natural hazard risk.*
- *Rural subdivisions within close proximity to established intensive production activities.*