

**BEFORE THE OTAGO REGIONAL COUNCIL
INDEPENDENT HEARINGS PANEL**

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

AND

IN THE MATTER of submissions on non-freshwater
matters of the Proposed Otago
Regional Policy Statement 2021 by
Waterfall Park Developments Limited
(Submitter 00023) and Boxer Hill
Trust (Submitter 00025)

EVIDENCE IN CHIEF OF JEFFREY ANDREW BROWN – PLANNING

ON BEHALF OF WATERFALL PARK DEVELOPMENTS LIMITED

AND BOXER HILL TRUST

CHAPTER 15: URBAN FORM AND DEVELOPMENT

23 November 2022

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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 qualifications and experience.

Code of Conduct

- 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.

Documents reviewed

- 1.4 The documents I have reviewed in preparing this evidence are as follows:
- (a) The Proposed Otago Regional Policy Statement notified 26 June 2021 (**PORPS21**);
 - (b) The section 42A report on Chapter 15 – Urban Form and Development, prepared by Kyle Balderston and dated 27 April 2022 (**s42A report**);
 - (c) The supplementary planning evidence on Chapter 15 – Urban Form and Development prepared by Liz White and dated 11 October 2022 (**Supplementary Evidence**);
 - (d) The second brief of supplementary evidence on Chapter 9 - Land and Freshwater (Highly Productive Land) prepared by Felicity Boyd and dated 21 October 2022 (**Supplementary HPL Boyd Evidence**);
 - (e) The second brief of supplementary evidence on Chapter 15 – Urban Form and Development (Highly Productive Land) prepared by Liz White and dated 21 October 2022 (**Supplementary HPL White Evidence**); and

- (f) The proposed amendments to the PORPS S42A and Supplementary Evidence Version dated 31 October 2022 (**PORPS S42A Version**).

Background

1.5 This evidence is on behalf of Waterfall Park Developments Limited (**WPDL**) (submitter 00023) and Boxer Hill Trust (**BHT**) (submitter 00025). WPDL owns land north of Lake Hayes in Queenstown, west of Lake Hayes - Arrowtown Road and south of Millbrook. Boxer Hill Trust owns land north of Lake Hayes in Queenstown, east of Lake Hayes-Arrowtown Road and west of McDonnell Road, Arrowtown.

1.6 WPDL and BHT's submissions included six points. This evidence addresses the points raised in relation to the Urban Form and Development (**UFD**) provisions only. The relief sought in the submissions on the notified UFD provisions was as follows:

UFD-P8(1) Delete limb (1) of Policy UFD-P8

UFD-P8(2) Amend limb (2) of Policy UFD-P8 to remove reference to limb (1)

This would result in the following amendments to UFD-P8 as notified:

UFD-P8 – Rural lifestyle and rural residential zones

The establishment, development or expansion of rural lifestyle and rural residential zones ~~only~~ occurs where:

~~(1) the land is adjacent to existing or planned urban areas and ready access to employment and services is available,~~

~~(2) despite the direction in (1), also avoids land identified for future urban development in a relevant plan or land reasonably likely to be required for its future urban development potential, where the rural lifestyle or rural residential development would foreclose or reduce efficient realisation of that urban development potential, is avoided.~~

...

[and subsequent renumbering]

1.7 The s42A report recommended rejecting the relief sought to delete the word “only” in the introductory clause to Policy UFD-P8 on the basis that the deletion would make the policy a directive to zone for the activity, rather than a set of

criteria to apply when zoning a particular locality is appropriate¹. The s42A report further noted that the term “adjacent” may not be limited to adjoining land, and the concentrating growth in and around urban areas is the most efficient way to minimise adverse impacts².

- 1.8 The Supplementary Evidence made no further substantive changes to Policy UFD-P8 but deleted references to the term “rural residential” development or areas, to align with the National Planning Standards.
- 1.9 The Supplementary HPL Boyd Evidence proposed, and the Supplementary HPL White Evidence concurred, amendments to those limbs of UFD-P8 that related to the management of highly productive land. These do not affect limbs (1) or (2).

Evidence structure

- 1.10 My evidence addresses the updated provisions for Chapter 15 – UFD as set out in the PORPS S42A Version. I discuss:
- UFD-P8 – Rural lifestyle and rural residential zones; and
 - UFD-O4 – Development in rural areas, as there are modifications in the s42A version that have implications for rural lifestyle / rural residential development;
 - UFD-P7 – Rural areas, as there are related issues arising from my discussion of UFD-P8 and UFD-O4.

2 UFD-P8 Rural lifestyle and rural residential zones

- 2.1 The PORPS s42A Version of this policy states:

UFD-P8 Rural lifestyle and rural residential zones

The establishment, development, or expansion of rural lifestyle and rural residential zones only occurs where:

- (1) ***the land is adjacent to existing or planned urban areas and ready access to employment and services is available,***
- (2) ***despite the direction in (1), it also avoids land identified for future urban development in a relevant plan or land reasonably likely to be required for its future urban development potential, where the rural***

¹ Paragraph 375

² Paragraph 381

lifestyle or rural residential development would foreclose or reduce efficient realisation of that urban development potential,

- (3) *minimises impacts on existing primary production and rural industry and other rural activities, rural production potential, amenity values and the potential for reverse sensitivity effects to arise in adjoining rural production zones,*
- (4) *avoids, as the first priority, highly productive land, ~~identified in accordance with LF-LSP169,~~*
- (5) *the suitability of the area to accommodate the proposed development is demonstrated, including*
 - (a) *capacity for servicing by existing or planned development infrastructure (including self-servicing requirements),*
 - (b) *particular regard is given to the individual and cumulative impacts of ~~domestic~~ water supply, wastewater disposal, and stormwater management including self-servicing, on the receiving or supplying environment and impacts on capacity of development infrastructure, if provided, to meet other planned urban area demand, and*
 - (c) *likely future demands or implications for publicly funded services including emergency services and additional infrastructure, and*
 - (d) *does not compromise the safe and efficient ongoing use of nationally significant infrastructure or regionally significant infrastructure, and*
- (6) *provides for the maintenance and wherever possible, enhancement, of important features and values identified by this RPS.*

2.2 I consider that the following changes (shown as blue underline for additions and ~~blue strikethrough~~ for deletions) are appropriate:

The establishment, development, or expansion of rural lifestyle and rural residential zones only occurs where:

- ~~(1) the land is adjacent to existing or planned urban areas and ready access to employment and services is available,~~
- (2) *despite the direction in (1), it also avoids land identified for future urban development in a relevant plan or land reasonably likely to be required for its future urban development potential, where the rural*

lifestyle or rural residential development would foreclose or reduce efficient realisation of that urban development potential is avoided.

...

- 2.3 I agree that retaining the word “only” in the introductory clause of the policy is necessary for the policy to not be directive, as discussed in the s42A report.
- 2.4 The reasons for my proposed changes to clauses (1) and (2) are as follows.
- 2.5 Requiring that rural lifestyle development occurs only where land is adjacent to urban areas and has ready access to employment and services, in addition to the additional restrictions placed upon this type of development in the other provisions of the PRPS (such as those relating to outstanding and highly valued natural features and landscapes, indigenous biodiversity, freshwater, or highly productive land) would unnecessarily and perhaps prohibitively limit the opportunities for new rural lifestyle developments.
- 2.6 The Queenstown Lakes District, for example, constantly faces challenges in land supply for all sectors of the housing market, including rural lifestyle, but has significant physical constraints to development, including the significant percentage of land area (97%) identified as outstanding natural features or outstanding natural landscapes. In this context, identification of new or extended areas of rural lifestyle zoning is difficult. Limb (1) of the policy would significantly further limit the identification of new or extended rural lifestyle areas, and would unnecessarily prevent rural lifestyle zoning where it may otherwise be the most appropriate zoning of the land in question when scrutinised under the s32 tests, whether or not the land is adjacent to existing or planned urban areas.
- 2.7 There are many existing rural lifestyle zones that are not adjacent to urban areas but are nevertheless within easy driving distance and can readily access urban areas and the range of employment and social and community amenities they provide. Examples are Dalefield and the Lake Hayes area in the Wakatipu Basin. I do not consider that immediate proximity to employment and other urban amenities is a necessary driver in the location of rural lifestyle development.
- 2.8 The s42A report recommends rejecting the relief on the basis that the Courts, when considering the application of Section 95D of the Act, has found the term “adjacent” as “lying near or close; adjoining; continuous; bordering; not necessarily touching”, however the ordinary meaning (as set out in the Oxford Dictionary) is “lying near or adjoining”, with “adjoining” in turn meaning “be next to and joined with”. The s42A interpretation does not address the concerns of the submitters about the required proximity of new rural lifestyle development to urban areas. One of the drivers of rural lifestyle development is distance from

urban areas and the desire to live within a rural setting and the rural amenities therein. If land is otherwise suitable for rural living development, taking into account all relevant considerations, there is no justification for that land to be disqualified from rural lifestyle development just because it is not adjacent to an urban area.

- 2.9 As they currently stand, limbs (1) and (2) have the potential to conflict with one another in spite of the attempt to remove it through the precursor “despite the direction in (1)” used at the beginning of limb (2). In my view it is impractical to juxtapose the two limbs in this way. Limb (2) requires rural lifestyle zoning to be avoided on land identified or reasonably likely to be required for future urban development. Such land includes the fringes of existing urban areas, meaning the direction in limb (1) to locate rural lifestyle “adjacent to”, or touching, existing urban areas is likely to conflict with the part of limb (2) to avoid land reasonably likely to be required for future urban development.
- 2.10 If land adjacent to an urban area is suitable for rural lifestyle zoning, it likely therefore has few constraints to change (such as landscape constraints, rural productivity constraints, ecological constraints etc), and on the face of it and depending on the individual characteristics of the land in question the far more efficient zoning, particularly in districts where there is pressure for land to accommodate population growth, would be urban or a future urban type zoning. Each case would need to be considered on its merits, under the s32 tests.
- 2.11 The policy as currently worded does not implement Objective UFD-O2, which requires “The development and change of Otago’s urban areas ... achieves consolidated, well designed and located, and sustainable development in and around existing urban areas as the primary focus for accommodating the region’s urban growth and change ...” as again, limiting rural lifestyle to areas adjacent to urban areas may prevent the use of this land for the consolidated urban form sought by this objective.
- 2.12 For all of these reasons I consider that it is inappropriate to impose a policy “universality” for rural lifestyle zoning to be adjacent to urban areas, and that it should be accepted that any case for new or extended areas of rural lifestyle zoning should be based on the opportunities and constraints inherent in a particular land area, whether or not it is adjacent to an urban area.

Section 32AA evaluation

- 2.13 The amendments I recommend remove unnecessary restrictions on the establishment, development and expansion of rural lifestyle activity and remove inconsistencies between limbs of Policy UFD-P8, and are therefore a more

effective and efficient way to achieve, in particular, objectives UFD-O2 and UFD-O4, and hence to achieve the purpose of the Act.

- 2.14 I consider that costs will arise from not including my recommended amendments in the policy, due to forcing the inappropriate and potentially inefficient use of land adjacent to urban areas for rural lifestyle purposes which may foreclose the more efficient use of the land for urban development, and also foreclosing legitimate opportunities for rural lifestyle development on land distant from urban boundaries.

3 UFD-O4 Development in rural areas

- 3.1 The PORPS s42A Version of this objective states:

Development in Otago's rural areas occurs in a way that:

- (1) ~~avoids impacts on significant values and features identified in this RPS,~~
- (2) ~~avoids as the first priority, highly productive land and soils identified as highly productive by LF-LS-P19 unless there is an operational need or functional need for the development to be located in rural areas,~~
- (3) ~~only provides for urban expansion, rural lifestyle and rural residential development and the establishment of sensitive activities that are sensitive to primary production and rural industry, in locations identified through strategic planning or zoned within district plans as suitable for such development, and~~
- (4) ~~outside of areas identified in (3), maintains and enhances provides for the ongoing use of rural areas for primary production, supported by rural industry in appropriate locations, and facilitates ensures that other activities that have an operational need or functional need to locate in rural areas, that will do not compromise the natural and physical resources that support the productive capacity, rural character, and long-term viability of the rural sector and rural communities, and~~
- (4A) provides for the use and development of land in rural areas by Kāi Tahu for papakāika, kāika, nohoaka, marae, and marae related activities.

- 3.2 I consider that the following changes (shown as [blue underline](#) for additions and [blue strikethrough](#) for deletions) are appropriate:

Development in Otago's rural areas occurs in a way that:

...

- (3) ***only provides for urban expansion, the establishment or expansion of rural lifestyle zones and ~~rural residential development~~ and the establishment of ~~sensitive activities~~ that are sensitive to primary production and rural industry, in locations identified through strategic planning or zoned within district plans as suitable for such development, ~~and~~***

...

3.3 The reasoning for my proposed changes is as follows:

- (a) “Rural lifestyle development” has two forms: its zoned form (i.e. zones specifically for the purpose of rural lifestyle development) or its more small scale, *ad hoc* form (i.e. small blocks used for rural lifestyle purposes, not in a dedicated rural lifestyle zone but within a wider rural area and enabled by subdivision rules allowing the creation of small rural lifestyle blocks in a rural zone). An example of the latter is the Rural Zone in the Queenstown-Lakes District’s Proposed District Plan, which provides for subdivision to create rural lifestyle lots, as a discretionary activity, subject to a comprehensive suite of objectives and policies for the assessment of any application on a case-by-case basis.
- (b) Under the s42A Version wording, limb (3) of the objective would capture both forms of “rural lifestyle development”, and would effectively prevent applications for resource consent for one-off small-scale rural lifestyle developments (such as one or two lots) unless a strategic planning document identified it for such, or it was within a wider area zoned for rural lifestyle activity through a district plan.
- (c) Inclusion of the reference to “rural lifestyle development” therefore implies that a council should assess all sites potentially suitable for rural lifestyle development. That would be an onerous and expensive exercise which is not justified.
- (d) My recommended change avoids that outcome by differentiating between rural lifestyle development in the larger scale, zoned form and the smaller scale form.
- (e) Under my recommended change:
- Councils would still use strategic planning and/or plan change processes before adopting rural lifestyle zones; and

- small scale rural lifestyle development would not be foreclosed because they would still be captured by limb (4) of the objective (as part of *other activities*), which would require consideration of the rural character and long-term viability of the rural sector and rural communities when considering whether rural lifestyle development is an appropriate use of the land in question.

Section 32AA evaluation

- 3.4 My recommended change avoids the outcome where opportunities for smaller scale forms of rural lifestyle development is foreclosed (and hence district plans would not be able to provide for these) unless individual sites are assessed in a strategic planning or plan change process, which is onerous and would be costly, for no benefit.
- 3.5 While strategic planning and/or plan change processes (public or private) are effective for determining rural lifestyle zones, the more effective and efficient planning method for enabling or not enabling small scale rural lifestyle development is through district plan provisions that take into account individual contexts of rural areas and apply zoning provisions accordingly.
- 3.6 My change is therefore a more effective way to achieve the purpose of the Act – i.e. appropriately enabling activities while appropriately regulating those activities in meeting the limbs of s5(2).

4 UFD-P7 - Rural areas

- 4.1 The PORPS s42A Version of this policy states:

UFD-P7 – Rural areas

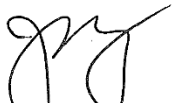
The management of *rural areas*:

...

- (5) directs ~~rural residential~~ and rural lifestyle development to areas zoned for that purpose in accordance with UFD-P8,**

...

- 4.2 Following my reasoning for the changes I recommend to Objective UFD-P4 above, I consider that limb (5) of the policy is unnecessary and it should be deleted. The policy as worded would preclude opportunities for the small-scale form of rural living in otherwise rural zones, or require that they be subject to plan changes, which is impractical and onerous. Rural lifestyle development, in both its forms, is adequately covered off in Objective UFD-O4 and Policy UFD-P8.



J A Brown

23 November 2022

Jeffrey Brown – CV

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

- Full member of the Resource Management Law Association
- 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 – present)