

Before Queenstown Lakes District Council Independent Hearings Panel

In the Matter of the Resource Management Act 1991 (**RMA**)

And

In the Matter of an application for the Te Pūtahi Ladies Mile Variation by Queenstown Lakes District Council to amend the Proposed District Plan in accordance with section 80B and Part 5 of Schedule 1 of the Resource Management Act 1991

**Legal Submission on behalf of Ladies Mile Property Syndicate Limited Partnership
(Primary Submission 77 and Further Submission 139)**

Dated 7 December 2023

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Introduction

1. These submissions are presented on behalf of the Ladies Mile Property Syndicate Limited Partnership (**Syndicate**) in respect of the proposed Te Pūtahi Ladies Mile Plan Variation (**TPLM Variation**) to the Queenstown Lakes District Council's (**Council**) Proposed District Plan (**PDP**).
2. The Syndicate owns 4.5 ha of land within that area subject to the TPLM Variation. The location of the Syndicate land is identified in Appendix A to the legal submissions for Council.
3. The Syndicate land will be subject to the provisions of the High Density Residential Precinct (**HDRP**) of the Te Pūtahi Ladies Mile Special Zone (Chapter 49), along with various other provisions by virtue of the Structure Plan maps and particular District – wide Chapters.¹
4. Expert evidence on behalf of the Syndicate has been lodged by:
 - a. Hamish Anderson (Property development advisory).
 - b. John Parlane (Transport).
 - c. Cameron Wallace (Urban Design).
 - d. Tamba Carleton (Economics).
 - e. Hannah Hoogeveen (Planning).
5. The witnesses for the Syndicate (other than Mr Anderson) have taken part in expert conferencing and are signatories to Joint Witness Statements (**JWS**) relevant to their area of expertise.
6. The Syndicate supports the master planned development to be enabled by the TPLM Variation subject to amendments to proposed provisions. As identified in the evidence of Ms Hoogeveen,² the Syndicate has actively

¹ EIC, Hoogeveen, at [2.4].

² At [2.3].

engaged with other stakeholders during the master planning process for Te Pūtahi Ladies Mile, providing feedback where appropriate and actively collaborating with neighbouring property owners where possible.

Process and the law

7. I have little to say with respect to the planning process and relevant law.
8. I take no issue with the legal framework and jurisdictional issues summary set out in Appendix B to the opening legal submissions on behalf of Council.³
9. I would simply add:
 - a. That when assessing whether proposed provisions are the most appropriate way (most suitable) to achieve the objectives of the TPLM Variation, having regard to efficiency and effectiveness, that analysis must adopt a real-world lens. It is difficult to see how you might validly determine given provisions are efficient or effective if clear-eyed consideration shows the desired outcome they promote is unlikely to be (or will never be) achieved.
 - b. Use of “avoid” terminology must be carefully deployed, given the settled (relatively draconian) interpretation of the meaning of that term.
 - c. Somewhat linked to the above point, I say where possible you should favour the use of enabling terminology given the ultimate aim of the planning exercise is to encourage and facilitate the creation of a well-functioning urban environment - which outcome relies primarily on private developers and landowners being incentivised to do so. Poorly calibrated provisions, no matter how well intentioned, can generate unintended or counter-productive results.

³ Opening Legal Submissions of behalf of Queenstown Lakes District Council, dated 24 November 2023.

Syndicate Position

10. I do not propose to summarise the submission and further submission lodged by the Syndicate. In any event matters have moved on since they were lodged, with areas of disagreement between Council and the Syndicate narrowing.
11. The Syndicate witnesses have considered the s42A Report and have refined their opinions in some respects through involvement in the JWS process and after reading the Council witnesses' rebuttal, summary evidence presented to the Panel and the revised position advanced by Mr Brown.
12. There has always been agreement by the Syndicate with the rezoning generally and with respect to a range of core considerations. I agree with the summary of key matters agreed between experts set out at paragraphs [68] – [72] of the Council's opening legal submissions.
13. The evidence of Ms Hoogeveen⁴ identifies three areas where the Syndicate diverges from the position advanced by Council. These are:
 - a. Density provisions.
 - b. Activity status of residential visitor accommodation.
 - c. Subdivision.
14. As already noted, the differences between the Syndicate and Council witnesses have since compressed further. My submissions below refer to the latest updated Plan provisions available at the time of writing.⁵
15. Fundamental to the position taken by the Syndicate is the following key points:
 - a. Expert evidence from Mr Anderson and Ms Carleton, supported by comparative evidence prepared by Mr Wallace, identifying issues associated with delivering high density development in this

⁴ Dated 20 October 2023.

⁵ Density in the HDR precinct – suggested changes to Rule 49.5.16, Updated 4 December 2023; Chapter 27 Subdivision and Development, updated 4 December 2023.

location. Of note, these witnesses consider there is considerable risk of no development occurring at all if the minimum density requirements are set too high. Ms Carleton's view is that the minimum density as originally advanced for the HDRP is too high for the current market, a position effectively agreed to through the economic JWS.

- b. Expert evidence from Mr Parlane that:
 - i. Transport policy makes a bigger difference to mode share than urban form.
 - ii. Density does influence mode share, but density has diminishing returns.
 - iii. The impact of increasing density to 40 dwellings per hectare will have a greater impact on alternative modes than further increasing density from 40 up to 60 dwellings per hectare.
 - iv. A density of 40 dwellings per hectare is sufficient to support public transport.
- c. Expert evidence from Ms Carleton that feasibility of higher density development depends on being attractive to both owner-occupiers and investors - Residential Visitor Accommodation (**RVA**) is attractive to investors and is an important factor.

Density

- 16. The 4 December updates to Rule 49.5.16 provided to the Panel by Mr Brown follow further engagement between Mr Brown and Ms Hooegeven. With respect to this update, the Syndicate:
 - a. Agrees with proposed Rule 49.4.6A.
 - b. Says the minimum density in proposed Rule 49.5.16.2(a) should be 40 residential units per hectare across the gross developable area

of the site to align with proposed Rule 49.4.6A. The upper limit of the range can remain at 72 residential units.

- c. No longer pursues its relief that density be calculated on a net area basis.
 - d. Agrees Rule 49.5.16.2 should be amended by adding “at least” before “55 residential units per hectare”. Absent this amendment an application needs to hit the nominated density target ‘on the number’ which in a real-world analysis is unlikely. In the context of desired outcomes for the HDRP, exceeding the identified average density is desirable and would not engage the concerns identified in the restricted discretion triggered by non-compliance with the rule (which concerns essentially relate to ‘under development’).
 - e. Is of the view that the “Information requirements for applications under Rule 49.5.16.2(b)” and the requirement under Rule 49.5.16A appear to duplicate each other. One of these should be deleted. It would appear more appropriate for the requested supporting information to be subject to an information requirement under Rule 49.5.16.2(b) than purportedly worded as an activity requiring consent. That is particularly so because I say the obligation in question, being a demonstration that achievement of the ultimate desired average residential density is not foreclosed, should be worded in a manner which makes clear that what is required is demonstration of at least one viable methodology, as opposed to a firm commitment to a singular solution. One reading of proposed Rule 49.5.16A is that it has the flavour of a consenting exercise.
17. The Syndicate accepts there is a reasoned basis for imposing a minimum density in the context of desired transport modal shift outcomes. Mr Parlane’s evidence is clear that a density of 40 dwellings per hectare is sufficient to achieve these outcomes. That position is accepted by Mr Shields. Thus there is an imperative identified for that minimum.
18. Going beyond a density of 40 dwellings, there is agreement that in a transport

modal shift context diminishing returns are engaged. Therefore there is not the same transport related imperative applying at higher densities which might attract more emphasis or weighting in a section 32 evaluation. The analysis of efficiency and effectiveness beyond a density of 40 dwellings must take account of other factors. Those factors include the accepted expert opinion that higher density ranges are unlikely to be achieved in the current market in this location in the short or medium term – and Ms Carleton is firmly of the view that they will not likely ever be achieved in this location by market developers.

19. For the reasons above the Syndicate says beyond a density minimum of 40 dwellings per hectare for the HDRP, a range should be enabled. That will enable delivery of higher densities if the market supports such outcomes, without attempting to force higher densities which do not have market support, which have limited contribution to transport modal shift, and which raise the spectre of unintended or undesirable consequences (in particular the creation of areas which are essentially undevelopable).

Activity status of residential visitor accommodation

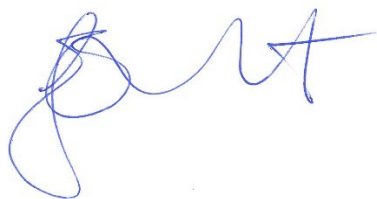
20. Ms Hoogeveen's view based on Ms Carleton's advice is that Council's suggested complying activity Rule 49.5.XX Residential Visitor Accommodation in the HDR Precinct is inappropriate. Even a cursory look at the proposed provisions reveals significant complexity, potential equity issues (how is it determined whose unit comes within the proposed maximum 25% allowed to be available for RVA) and enforceability complications. In addition the proposition is that the permitted opportunity is limited to buildings of at least four storeys, with a non-compliance status of noncomplying. This proposed rule is significantly more restrictive than the RVA rule in the rest of the District where the non-compliance status is restricted discretionary.
21. The Syndicate says the RVA rule proposed is neither efficient nor effective. It purports to benefit a high-density product which the economists agree is unlikely to be achieved (certainly in the short to medium term). It also imposes a more restrictive position for dwellings in this location in

comparison to dwellings elsewhere thereby eroding the contribution that investor demand can make to successful realisation of the outcomes sought overall.

22. Ms Hooegeveen is of the opinion that the provisions relating to RVA in the HDRP should be consistent with other residential zones in the District. Thus, while more generous provisions could potentially apply for RVA for apartment - type developments in the HDRP to provide further support for a typology which Mr Anderson and Ms Carleton say will be (at best) challenging to achieve, it remains efficient and effective for the same RVA rules that apply to all of the other residential zones in the PDP to apply to less dense developments in the HDRP.

Subdivision

23. Ms Hooegeveen's evidence addressed subdivision and staging of development.⁶ The issue being pursued was relatively confined, being amendments such that the policy and method(s) are more appropriately aligned.
24. The concern identified by Ms Hooegeveen has now been addressed through recent proposed amendments to the provisions. The Syndicate agrees with the wording now proposed for Rule 27.3.24.6⁷ and Rule 49.5.33.⁸



Jeremy Brabant

Counsel for Ladies Mile Property Syndicate Limited Partnership

Dated: 7 December 2023

⁶ At [6.1] – [6.3].

⁷ Chapter 27, updated provisions 4 December 2023, prepared by Mr Brown.

⁸ Chapter 49, updated provisions 27 November 2023, prepared by Mr Brown.