

Summary of Evidence

Timothy Paul Allan on behalf of Koko Ridge Limited

6 December 2023 for hearing appearance on 7 and / or 8 December 2023

Introduction

1. My name is Tim Allan. I am a Director of Koko Ridge Limited (submitter 80) and I am authorised to give evidence on behalf of Koko Ridge, which is currently subdividing Sub-Area H2 into 37 large residential lots. I have also made a submission concerning wider issues with the Plan Change (Submitter 103).
2. While technically a lay witness I am qualified by my experience of carrying out high quality residential housing developments. I prepared the statement of evidence dated 20 October 2023 in which I confirmed that my statement complied with the Environment Court Code of Conduct for expert witnesses. No other witnesses (including QLDC) have directly rebutted or queried my evidence. It stands as submitted.
3. Since I prepared my evidence, I have reviewed the rebuttal evidence of Mr Brown dated 10 November 2023, other expert rebuttal evidence, minutes of expert conferencing and the response to questions prepared by Mr Brown and Mr Giddens both dated 24 November 2023 and Ms Moginie (undated).

Update on Subdivision of Sub-Area H2

4. Sub-Area H2 is being subdivided into 37 lots by way of two resource consents. Over half of the 26 titled lots have new owners. In respect of the final stage, as of this week, all civil construction has achieved Practical Completion and the s224(c) application has been lodged. Titles for the last 11 lots are anticipated before a decision on this Plan Change is due in May 2024. The Panel must take into account that this resource consent forms part of the existing environment as it is being given effect to.

Changes to notified provisions that are supported

5. I thank Mr Brown for acknowledging the deficiencies in the Council's legal advice and adopting our proposed 'grandfathering clauses' to protect the interests of the 37 lot owners (current and future), and for agreeing to correct the maximum number of residential units to 108 for Sub-Area H2.
6. I thank Mr Brown for agreeing to reduce the minimum lots size to 300m² as a practical solution to facilitate the further subdivision of the 37 lots held under an ever increasing group of owners. In addition, it will also facilitate the provision of diversity in housing options. Even if Sub-Area H2 achieved a fully developed yield of 108 homes the average lot size will be over 750m².
7. Needless to say, I am disappointed it took up to 4 attempts over 2 years including the presentation of formal evidence and the engagement of a planner and lawyer to correct these and other basic faults in the proposed Plan Change. I only raise this point as context for my request to review (if approved) the final version of the Plan Change provisions to ensure all the proposed changes summarised above and any further changes that impact Sub-Area H2 are not 'lost'¹ in the final version.
8. I agree with Mr Brown (and the rebuttal evidence of Mr Shields) that Sub-Area H2 is in reasonable proximity to the future bus stops that are to be established on State Highway 6 (SH6) west of the Stalker Road intersection, with Sub-Area H2 being required to provide a link to the active travel path to this future bus stop. I support the amendments to the Plan Change to reflect this change of position. Furthermore, I pleased to see that my proposed bus priority lane on Stalker Road / SH6 presented to the Council in 2019 is now included in the QLDC 'Minor Improvements Programme' and NZUP programme.
9. For completeness, I also support the reduction in the Building Restriction Area (BRA) to 25m on Sub-Area H2 and the enabling of residential flats.

Corona Trust (Submitter 99)

10. The planners in conferencing agreed that the scope of this issue was limited to the shared boundary of Lots 27 - 30 of RM211276 with the Corona Trust land. I note this is not the entire shared boundary².
11. The Corona Trust land is located to the south of the Koko Ridge land and comprises part of the same terrace which includes Sub-Area H2, a 9m escarpment and part of a lower terrace.

¹ Legal counsel for the Council advised me that matters getting 'lost' is a regrettably common occurrence.

² Mr Brown in his rebuttal has asked me to comment on wider boundary issues which I am happy to do later if time permits.

12. Landscape, Urban Designers and Planners have submitted evidence and expressed opinions, often without first visiting the location or researching the underlying context which is summarised in my evidence and comprehensively set out in the evidence of Mr Devlin and Mr Compton-Moen.
13. The Corona Trust raised concerns in respect of privacy and shading. This matter is highly contrived as its ownership of the escarpment and part of the upper terrace means that the concerns raised could be entirely relieved by the Trust implementing screening planting on the escarpment edge of the top terrace. This point was also made by Mr Lowe in his s42A evidence³. Nevertheless, the private covenant contemplates that the relevant landowner would undertake such planting, accordingly the issue has already been solved by way of that covenant.
14. The primary urban design tool for addressing shading and overlooking in an urban setting is the use of recession planes which are set out in Height in Relation to Boundary (HIRB) planning provisions. No expert witnesses has raised any concern with the HIRB in respect of this particular boundary. I consider the proposed LDR precinct HIRB⁴ is appropriate.
15. While most of the expert discussion has centred on landscape values, National Policy Statement-Urban Development Policy 6 (NPS-UD6), (refer Appendix 1), applies as both the Corona Trust land and Koko Ridge land is already zoned urban and within the Queenstown Urban Growth Boundary. NPS-UD6 requires when making planning decisions that changes in urban form from RMA planning documents cannot be considered as an adverse effect.
16. I note that Mr Brown prefaces his responses to Mr Giddens' questions with the plea that the parties should reach agreement to address these concerns between the parties. I consider that covenant E15907860.3 is exactly that, a binding and enforceable solution which is already effective having been registered before this Plan Change was proposed. The covenant is an enduring and enforceable agreement between the parties that among other matters places design controls on building height (5.5m), claddings types and roof colours (recessive), planting of the top terrace edge and fencing. Such private design control covenants are common across the Wakatipu basin and as Mr Devlin notes it is unusual for the Council to codify private covenants in District Plan rules.
17. I consider the submission by the Corona Trust is an attempt to unilaterally and inequitably expand this private covenant through this Plan Change process.
18. Furthermore, I do not agree with Mr Brown's or Mr Lowe's response to Mr Giddens' questions that a minimum lot width requirement of 20 – 25m should be imposed as this would have the unintended consequence of effectively precluding further subdivision of Lots 27 – 30, counter to the objective of rezoning to LDR Precinct and to provide for a variety of housing options. As any visual effect is less than minor (as explained by Mr Compton-Moen) there is no environmental effect that needs to be cured by this provision – it appears to have been included to simply appease Corona Trust.
19. While the Corona Trust is entitled to make a submission on this Plan Change, the position it has taken is extremely hypocritical as the Corona Trust will soon be in front of the Environment Court arguing the exact opposite position⁵ as it seeks to remove the existing 75m BRA from its property so that its land can be further subdivided for residential housing.
20. Notwithstanding the NPS-UD6 directive to disregard changes to urban areas from planning documents as adverse effects, I note that the evidential conclusions of Mr Compton-Moen and Ms Moginie remain far apart and that no common ground was found during joint witness conferencing. I have reviewed Ms Moginie's evidence and found numerous significant errors, and I have listed those in Appendix 2.
21. Due to the breadth and significance of Ms Moginie's errors I consider the Panel cannot rely on Ms Moginie's evidence or give any weight to her broad assertion that there is an environmental effect that must be avoided, mitigated or remedied. I doubt this evidence would meet the Environment Court standards required of Ms Moginie. Furthermore, Ms Moginie has had opportunities to remedy these defects in her evidence and therefore the continuation and failure to update her opinion which was based on these errors is deliberate and wilful.

³ Paragraph 54 of Mr Lowe's evidence.

⁴ Rule 49.5.5 – 2.5m then varying recession plane of either 35, 45 or 55 degrees depending on the boundary

⁵ No doubt supported by different expert witnesses

22. The evidence of Mr Giddens cannot be given any weight as it incorporates the significant errors of Ms Moginie's evidence. Mr Giddens and Ms Moginie and others have purposely chosen to ignore the requirement to analyse the existing environment and a clearly documented receiving environment when forming their opinions as set out in their answers to expert questions.
23. In contrast, I know that Mr Compton-Moen's evidence is founded on accurate high quality survey data and informed by separate site visits and was independently peer-reviewed and accepted by Mr Matthew Jones of Isthmus Group Ltd, who also visited the site.
24. For the reasons outlined in his evidence Mr Compton-Moen finds that the visual impact is Low (less than minor) and that a change in the current 4m setback to the standard LDR Precinct setback of 2m would be imperceptible when viewed from the house sites on the Corona Trust land.
25. Ms Moginie's cross-section (corrected version in Annexure A of Appendix 2) is essentially consistent with that of Mr Compton-Moen's in that there is no discernible visual effect of adopting the standard LDR Precinct 2m setback as the HIRB rule becomes operative. Further, the viewpoint will be obscured by the construction of further dwellings on the Corona Trust land.
26. Considering this minor change more deeply and factoring in the Height in Relation to Boundary rules which become the binding constraint between 2-4m of the cadastral boundary, I expect a home positioned closer to the boundary when reviewed from the Corona Trust land would present more recessively coloured roofline and less building facade and thus result in comparatively less visual effect. Refer to the representative example in Appendix 3.

Conclusion

27. To conclude, NPS-UD policy 6(b)(iii) requires that the effects of planned urban form is excluded from consideration as an adverse effect. Nevertheless, if the visual assessment evidence is to be considered I prefer the high quality and accurate evidence of Mr Compton-Moen over the erroneous evidence of Ms Moginie. Based on Mr Compton-Moen's assessment of the significance of the visual effects and Mr Devlin's planning assessment, there is no need to amend the standard LDR Precinct setback of 2m for lots 27 – 30, prescribe a minimum lot width or codify within the Plan Change the private covenant.
28. I reiterate my request that the Panel provides an opportunity for submitters to check for any errors and omissions in the 'final draft' plan provisions because there is no right of appeal available by which to correct errors.
29. I am happy to take questions.

Tim Allan

National Policy Statement on Urban Development – Policy 6

6(b) is of particular relevance

Policy 6: When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:

- (a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement
- (b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:
 - (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and
 - (ii) are not, of themselves, an adverse effect
- (c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)
- (d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity
- (e) the likely current and future effects of climate change.

Review of Ms Wendy Moginie's evidence dated 20 October 2023 and responses to questions (undated)

1. During my review of Ms Moginie's evidence and responses to questions the following substantial and material errors were found in information relied on in the preparation of that evidence.
2. Specifically, Ms Moginie:
 - a. did not recognise both sites are within an urban zone and within the Queenstown Urban Growth Boundary⁶;
 - b. did not recognise that this location is subject to the directives of NPS-UD policy 6⁷;
 - c. did not recognise that both sites are currently zoned Large Lot Residential-A and that residential dwellings can be built up to 8m high with a 4m setback from the shared boundary⁸;
 - d. did not recognise that a private covenant restricts the building height on Sub-Area H2 to 5.5m, anticipates Corona Trust will establish a screening planting on the top of escarpment, and provides other design controls and is enforceable by the Corona Trust;
 - e. completed a landscape and visual effects assessment as if it were a Rural Zone building platform application adjacent to a hypothetical outstanding natural landscape;
 - f. did not recognise that the cadastral boundary is not located at the top of the escarpment⁹;
 - g. incorrectly assumed there was a 10m setback requirement in the Koko Ridge subdivision consent¹⁰;
 - h. did not recognise the receiving environment as including approved and partially implemented RM211276 and the 26 existing residential lots arising from RM190533;
 - i. did not recognise that the Koko Ridge platforms on Lots 27-30 of RM211276 only required further consenting assessment due to being located in the 75m Building Restriction Area (BRA), which was a control in relation to amenity from the State highway, not adjoining properties¹¹;
 - j. included inadmissible photos (figures 1&2) of sight poles that Ms Moginie could not possibly have observed given the dates that she notes she attended the site and includes photoshopped photo montages as editing treatments which have not been disclosed;
 - k. stated that 15 residential units could be located on the terrace edge overlooking the Corona Trust land, yet is unable to explain how she has reached that assessment.
 - l. absurdly states that bringing a residence 152m away, just 2m closer would have the same visual effect as adding another story to that residence¹². The correct answer is that there is no discernible effect as stated in the evidence of Mr Compton-Moen;
 - m. incorrectly states that the Low Density Residential Precinct provisions "reflects the attributes of medium density development"¹³; and
 - n. incorrectly refers to the urban classified LLR-A zone as an important open rural buffer¹⁴.

⁶ Ms Moginie has subsequently acknowledge this in her response to Qu. 9 but then continues to deny the impact by continuing to state that Sub-Area H2 is a rural area.

⁷ Ms Moginie declined to respond to Qu. 5 that brought this to her attention.

⁸ subject to height in relation to boundary controls

⁹ Ms Moginie denies this in her response to Qu. 1 but the error is stated in paragraphs 9 & 23 of her evidence.

¹⁰ This 10m setback was on the stamped drawing as it was the mitigation demanded by the Corona Trust in April 2022. The line demonstrates that an effective 10m setback was already achieved across much of the shared boundary. If Ms Moginie had any confusion she only has her own client to blame.

¹¹ There is a comprehensive background of the 75m Building Restriction Area in the AEE for RM211276 that clearly identifies this setback being to create an amenity from State Highway 6 only. I note the Panel is seeking background on this setback in a wider context and they may like to review section 3.3 of the AEE for RM211276.

¹² Response to question 14

¹³ Paragraph 65 of Ms Moginie's evidence

¹⁴ Paragraph 79 of Ms Moginie's evidence

Reconciliation of experts cross-sections.

3. Now that Ms Moginie has located her cross-section on a plan view I have been able to reconcile these cross-sections with those of Mr Compton-Moen. The equivalent cross-section in Mr Compton-Moen evidence is titled Lot 28 section A -A1.
4. To assist the Hearing Panel, I have annotated clarifications and corrected the building heights of Cross-sections A & B so that they reflect the limits of current existing and proposed constraints (refer to Annexure 1) and make the following observations:
 - a. there appears to be an additional consented building platform. Even if this is incorrect the Corona Trust is permitted to undertake this development as of right. It is a Restricted Discretionary activity under the current Large Lot Residential-A zone;
 - b. At over 60m, the distance between the viewer and the potential lot 28 dwelling is substantial;
 - c. the proposed LDR Precinct rules do not override the private covenant that limits the building height to 5.5m on all of Sub-Area H2. It is also noted this private covenant does not apply to building heights on the Corona land so the buildings can be 8m high on the Corona land;
 - d. the reduction in setback from the boundary from 4m to 2m results in the HIRB rule becoming the binding control with 4m of the boundary;
 - e. there is no provision for landscaping or fencing which is unrealistic. For this reason I prefer DCM cross-section A- A1 which is comparable and is more accurate; and
 - f. cross-sections C - F are mis-representations of the stated positions and have been set aside (for example there was no agreed positions 'as per the joint witness statement').

Findings

5. I find the change in visual effect between the current receiving environment and the proposed LDR Precinct is indiscernible when viewed from the viewpoint shown in Ms Moginie cross-sections (corrected version). Furthermore, the visual effect, if any, will be obscured when the consented building platform is built-out on the Corona Trust land.
6. In summary, there are no new effects to be remedied, mitigated or avoided. Ms Moginies cross-section, once corrected, is essentially consistent with that of Mr Compton-Moen in that there is no discernible visual effect of adopting the standard LDR Precinct 2m setback as the HIRB rule becomes operative as well. Further, the viewpoint will be obscured by the construction of future dwellings on the Corona Trust land.