

**BEFORE AN INDEPENDENT HEARING PANEL
APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL**

UNDER Resource Management Act 1991

IN THE MATTER of a Variation to the proposed Queenstown Lakes District Plan (Te Pūtahi Ladies Mile) in accordance with Part 5 of Schedule 1 to the Resource Management Act 1991

LEGAL SUBMISSION ON BEHALF OF KOKO RIDGE LIMITED
Dated: 5 December 2023

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1. Introduction

- 1.1. These legal submissions are made on behalf of Koko Ridge Limited. Koko Ridge Limited is an owner of (and has equitable interests in) the land formerly legally described as Lot 1 DP 431492 held in Record of Title 522182 and Lot 2 DP 325561 held in Record of Title 103217¹ (Koko Ridge Land). The Koko Ridge Land was the subject of submissions #80 and #103 on the Te Putahi Ladies Mile Plan Variation (TPLM Variation) to the proposed District Plan (PDP).
- 1.2. The Koko Ridge Land is described as Sub-Area H2 in the Low-Density Residential Precinct pursuant to the provisions for the Te Putahi Ladies Mile Plan Variation (TPLM Variation).
- 1.3. The existing zoning of the Koko Ridge Land under the PDP is Large Lot Residential A, and resource consents RM190553 and RM211276 provide for this area of land to be developed into 37 allotments².

2. Background

- 2.1. As acknowledged by QLDC, a greater volume and diversity of housing stock is required³, and the submissions of Koko Ridge requested changes to the TPLM variation in order that it could deliver housing that would meet that objective.
- 2.2. As of today, the Koko Ridge Land comprises 27 lots plus road reserves vested in the Council. Some lots have been sold, but Koko Ridge retains an equitable interest in those sections. As explained by Mr Devlin⁴, it is not the most efficient outcome for land in Sub-Area H2 to remain in such large lot sizes.
- 2.3. The Council has adjusted its recommendations for the provisions that are to apply to Sub-Area H2 including the adoption of the "grandfathering" clauses proposed by Koko Ridge.
- 2.4. The remaining differences between QLDC and Koko Ridge are that Koko Ridge considers it would be a procedural error of law to:
 - a) impose a minimum lot width of 20m – 25m as proposed by QLDC expert Mr Lowe⁵ (this is discussed further in the section on jurisdictional issues below);
 - b) impose an undefined setback along the entirety of the Southern boundary;
 - c) grant the relief sought by Corona Trust (CT);

¹ The Koko Ridge Land has had its legal description change in the course of TPLM Plan Change due to the exercise of subdivision and land use resource consents.

² Evidence of Blair Devlin at paras 12(a) and 18

³ paras 68-69 (including evidence referenced), QLDC Legal submissions dated 24 November 2023

⁴ Paras 35-39, Evidence of Blair Devlin

⁵ Para 169, QLDC Legal submissions dated 24 November 2023, and para 127 of Rebuttal Evidence of Michael Lowe dated 10 November 2023.

3. Legal Framework

3.1. The QLDC's legal submissions⁶ refer in broad terms to the legal framework relevant to consideration of this Plan Change – no issue is taken with what the Panel has been advised with respect to the applicable legal framework.

3.2. However, the following topics within that legal framework are of particular relevance to submission made by Koko Ridge:

3.2.1. Existing/receiving environment;

3.2.2. NPS-UD

3.2.1. Existing/Receiving Environment

3.2.1.1. In order to accurately assess the appropriateness of the Plan Change, it is submitted that the Panel needs to take into account the existing (or receiving) environment. Statements provided by Tim Allan (experienced developer), Blair Devlin (planning), and Dave Compton-Moen (visual effects assessment) have considered the TPLM Variation with respect to the context of the site having been developed under various resource consents, including the current subdivision consent. In contrast, the evidence for CT has not taken into account the existing environment and has excluded consideration of the subdivision consent being implemented in the course of this hearing. Therefore, the evidence of Koko Ridge on this matter must be preferred.

3.2.2. NPS – Urban Development (NPS-UD)

3.2.2.1. QLDC and Koko Ridge consider the NPS – UD is a relevant consideration as it relates to decisions on this plan change. It is mandatory for the Panel to consider the appropriateness of plan provisions in light of their intended effect, particularly when giving effect to the NPS-US Policy 6(b)(iii).

3.2.2.2. The QLDC has not provided a detailed analysis of the impact of policy 6(b)(iii). That policy precludes the consideration of a change in amenity values from being considered as an adverse effect. As such, it is submitted that the Panel can not impose provisions aimed at avoiding, remedying or mitigating any change in effects, as that is precluded by the NPS-UD.

3.2.2.3. That has particular relevance with respect to the effects assessment presented by experts engaged by Corona Trust, and the position taken by Mr Brown with respect to extending an additional undefined setback rule across the entirety of the Southern boundary of Sub-Area H2.⁷

⁶ Paras 165-172, QLDC legal submissions dated 24 November 2023

⁷ Para 123, Rebuttal Evidence of Jeffrey Brown

4. Submissions on Points of Difference Between QLDC and Koko Ridge

4.1. This section of the submissions addresses the three issues where the QLDC and Koko Ridge are in disagreement with QLDC which are (in brief terms) the proposal to:

- a) impose a minimum lot width of 20m – 25m as proposed by QLDC expert Mr Lowe⁸;
- b) impose an undefined setback along the entirety of the Southern boundary as proposed by Mr Brown⁹;
- c) grant the relief sought by Corona Trust (CT)

5. Jurisdictional Issue – Minimum Lot Width

5.1. Koko Ridge considers that there are no jurisdictional issues arising with respect to the relief it has sought.

5.2. However, jurisdictional issues arise with the QLDC proposal (via Mr Lowe¹⁰) to specify a minimum lot width for the Koko Ridge Land, and also to impose an undefined setback along the full extent of the Southern boundary (via Mr Brown¹¹).

5.3. A minimum lot width was not proposed with the notified provisions of the TPLM Variation. This was not relief expressly sought by any submitter – it has been introduced by QLDC at a very late stage in the process, being presented after the expert conferencing has occurred. Similarly Mr Brown proposes an unspecified additional setback rule to apply along the entirety of the Southern Boundary which has not been notified as part of the plan provisions and for which Koko Ridge has been unable to comment on in its submission and evidence.

5.4. Koko Ridge was unable to provide evidence on the proposal to include a minimum lot width. As such, the Panel has no jurisdiction to impose such a restriction, as to do so would be contrary to the requirement to give submitters fair and adequate notice of what is proposed pursuant to the second limb of the test in Palmerston North City Council v Motor Machinists Limited¹².

5.5. Koko Ridge's evidence is that any visual effect of the development of its land is less than minor once mitigation (already secured by way of covenant) is implemented.

5.6. Given that context, Mr Lowe does not explain why the lot width restriction provision is necessary in addition to the 5.5m building height rule he proposed. There is no reliable evidence of any more than minor adverse environmental effect or any other resource management purpose for which a lot width restriction provision is required.

⁸ Para 169, QLDC Legal submissions dated 24 November 2023, and para 127 of Rebuttal Evidence of Michael Lowe dated 10 November 2023.

⁹ Para 123 and 124, Rebuttal Evidence Jeffrey Brown

¹⁰ Para 36, Rebuttal Evidence of Michael Lowe

¹¹ Para 120 Rebuttal Evidence Jeffrey Brown

¹² Palmerston North City Council v Motor Machinists Limited [2013] NZHC 1290 at [19]

- 5.7. The provisions proposed by Mr Lowe¹³ and by Mr Brown¹⁴ appear to be included for the purpose of addressing amenity effects described by CT, but the change in amenity is precluded from being considered adverse effects by the NPS-UD¹⁵.
- 5.8. Introducing provisions to create an undefined set back along the entirety of the Southern boundary and a minimum lot width of 20m – 25m would be directed at managing the amenity effects of change. However, such amenity effects are precluded from consideration by Policy 6(b)(iii) of the NPS-UD. It is submitted therefore, that it would be a procedural error of law for the Panel to introduce such provisions as to do so would be contrary to the NPS-UD policy 6(b)(iii).
- 5.9. Further Koko Ridge has not had an opportunity to submit on that matter and has in terms of process been rendered "speechless" on those proposed provisions. As set out in the evidence summary of Mr Devlin, the maximum number of allotments that can be formed along the shared boundary with CT is 8, which is significantly less than the erroneous number asserted by CT. Mr Allan explains in the annexure to his summary of evidence that the CT assessment is in error.

6. Relief Sought by Corona Trust

- 6.1. The remaining issue is that Koko Ridge does not accept that the relief sought by the Corona Trust (CT) should be granted. QLDC has failed to consider that there will be less than minor effects on CT land when building height is restricted to 5.5m and other mitigation is implemented (these elements are already secured by way of Covenant Instrument EI5907860.3¹⁶).
- 6.2. As is set out in further detail in the following paragraphs, Koko Ridge states:
- a) Any visual effects are less than minor (see evidence of Dave Compton-Moen), and therefore the relief sought by CT should not be granted;
 - b) In any event, the planned urban built form may involve changes to an area and those changes are deemed to be not (of themselves), an adverse effect under the NPS-UD;
 - c) CT say that there are relevant effects that need to be cured by granting the CT relief sought, but Koko Ridge states that this assertion of environmental effects is based on inaccurate and incomplete opinion evidence;

¹³ Minimum lot width

¹⁴ additional unspecified setback along the entire Southern Boundary

¹⁵ Policy 6(b)(iii), NPS – UD dated July 2020

¹⁶ Clauses 3.1 and 3.3 (building and height) and clause 4 (vegetation controls)

6.3. It is submitted that it would be an error of law to grant the relief sought by CT, the visual effects which have been assessed as less than minor¹⁷ therefore any restrictions imposed would be out of proportion to the scale of the environmental effect. And in any event NPS-UD6 states that these changes are not to be evaluated as adverse amenity effects on the environment.

7. Analysis of Evidence

- 7.1. The evidence of the QLDC and Koko Ridge experts are now broadly aligned.
- 7.2. The main difference between QLDC and Koko Ridge is the treatment of the CT submissions and evidence. QLDC has proposed that there is some accommodation of CT's requested relief or that otherwise the issues should be resolved between CT and Koko Ridge¹⁸.
- 7.3. I have asked the Koko Ridge submitters and experts to limit their comments on Mr Giddens evidence as it does not report accurate or relevant information in respect to the existence or significant of environmental effects. It has also excluded consideration of the existing/receiving environment.
- 7.4. Koko Ridge considers that the CT has not proved that a more than minor environmental effect will be caused if the LDR Precinct provisions are given effect to. Therefore, the CT relief requested should be declined. CT has submitted evidence that asserts that the provisions for the TPLM Variation should provide for a height limit and that there should be a setback imposed. However, the analysis provided in support of that relief by Brett Giddens and Wendy Moginie is neither accurate nor complete.
- 7.5. The essential difference between the evidence of Koko Ridge and CT is that Koko Ridge has previously had an accurate and reliable visual effects assessment performed by Mr Dave Compton-Moen. This visual assessment is attached to his brief of evidence¹⁹ and concluded that when the mitigation proposed was implemented any visual effects were less than minor. This point is further explained by Mr Devlin, who has concluded that the development of lots adjacent to the CT land cannot occur to the density claimed by Ms Moginie.
- 7.6. Mr Giddens in his planning statement of evidence adopts in entirety the "planning" information of Ms Moginie, who is not qualified as a planner. Tim Allan describes the errors that Ms Moginie has made in a schedule annexed to his summary of his evidence.

¹⁷ Annexure Evidence of Dave Compton-Moen

¹⁸ Para 170, QLDC Legal submissions dated 24 November 2023, and

¹⁹ Annexure 1, Evidence of Dave Compton-Moen

- 7.7. In relying on Ms Moginie's information, Mr Giddens has assumed the same errors that Ms Moginie made. This is particularly disappointing as Mr Giddens could have provided the correct context for Ms Moginie to make her landscape assessment.
- 7.8. The NPS – UD is in fact a relevant consideration, which expressly states for "planning decisions" which is defined to include both plan changes and resource consents, that changes to planned urban built form that may detract from the amenity values appreciated by some people are not of themselves an adverse effect²⁰. Mr Giddens also takes a position in respect of NPS-UD 6 that appears to state that the exclusion of consideration of amenity effects only applies at an aggregate level. He then appears to assert that the NPS-UD is not relevant when looking at effects at a localised level. Mr Giddens is therefore advancing evidence in a manner that is inconsistent with the NPS-UD. That evidence is therefore, not available to the Panel to consider as it is not relevant to the Panel's determination.
- 7.9. In responding to questions about his statements, Mr Giddens chose to deny there is an existing environment (sometimes referred to as a receiving environment) or evaluate the existence and implementation of RM211276 as part of his assessment of what is considered to be the existing environment. He has not explained why he has omitted this existing environment analysis from his assessment.
- 7.10. It is submitted that Mr Giddens is adopting only those elements of the planning framework that serve his client and that such limited analysis must be treated with a high degree of circumspection.
- 7.11. The Panel must therefore attribute very low weight to the conclusions presented in support of the submissions made on behalf of CT.

8. Errors and Omissions Review

- 8.1. Public confidence in the plan provisions will be increased by the opportunity for submitters to review the provisions for errors and omissions.
- 8.2. Koko Ridge considers that it would be useful for the panel to issue a draft decision for review to the submitters, for the purpose of notifying any errors or omissions prior to the plan change becoming operative.
- 8.3. Koko Ridge proposes that any such notification is made within 10 working days from the issue of a draft decision.

9. Conclusion

²⁰Policy 6(b)(iii)

9.1. It is requested that the Panel put the highest degree of weight on the fact that there is a strong alignment between the updated provisions recommended by the Council and those sought by way of relief requested by Koko Ridge.

9.2. The lot density now proposed for the Koko Ridge Land, together with the grandfathering provisions adopted by QLDC are considered appropriate by the expert planners. They are expected to deliver on the objectives of the QLDC's spatial plan and are a sensible response to the high demand for a variety of housing options in the Queenstown-Lakes area.

9.3. Koko Ridge requests the Panel excludes the QLDC's recently proposed lot width restriction and the relief proposed to be granted to the CT. However, in all other respects Koko Ridge submits that the Panel grants the TPLM Variation as it relates to Sub Area H2 – Low Density Residential Precinct.

Dated 5 December 2023

K L Rusher