

Before the Hearings Panel  
Appointed by the Queenstown Lakes District Council

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Under the Resource Management Act 1991

In the matter of: the Te Putahi Ladies Mile Plan Variation to the  
Proposed Queenstown Lakes District Plan

and **Corona Trust**  
(Submitter #99)

Planning Evidence of Brett James Giddens

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20 October 2023



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## **INTRODUCTION**

- 1 My full name is Brett James Giddens.
- 2 I am the Managing Director of Town Planning Group (NZ) Limited, a resource management and planning consultancy established in 2006 that provides planning and resource development advice to private clients, local authorities and government agencies New Zealand-wide.
- 3 I hold a Bachelor of Science in Geology from the University of Canterbury, a Master of Applied Science in Environmental Management from Lincoln University, and have partially completed a Master of Resource & Environmental Planning from Massey University. I am an Associate of the New Zealand Planning Institute, a member of the New Zealand Resource Management Law Association, and a member of the Urban Design Forum of New Zealand.
- 4 I have over 20 years' experience as a practicing planner in New Zealand, with a focus on statutory planning, environmental assessment, policy development and analysis, and consenting. I am regularly engaged as an expert planning witness before Council hearings and the Courts. I have been involved in numerous district and regional plan change processes throughout New Zealand.
- 5 I have a working knowledge of the Queenstown Lakes Proposed District Plan (**PDP**) and have worked extensively in the district through my planning career. I have been involved in the plan formulation processes relating to the former Operative District Plan as well Stages 1, 2 and 3 of the PDP (and its variations).

## **CODE OF CONDUCT**

- 6 Although this is not an Environment Court hearing, I note that in preparing my evidence I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **SCOPE OF EVIDENCE**

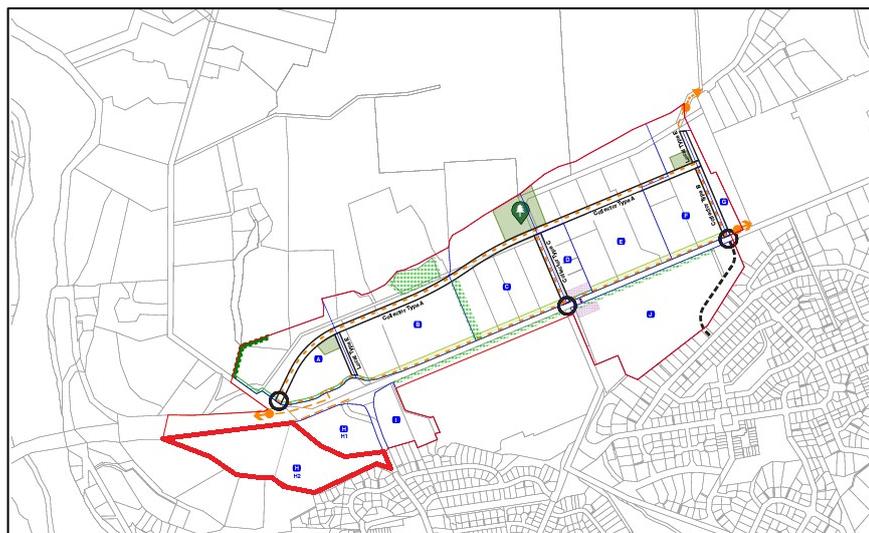
- 7 I have been asked by the Corona Trust (**Corona or Submitter**) to provide planning evidence with respect to the variation to the PDP relating to the Te Pūtahi Ladies Mile Plan Variation to the Queenstown Lakes Proposed District Plan (**PDP**) to rezone areas of Rural, Rural Lifestyle, and Large Lot Residential land located in Te

Pūtahi/Ladies Mile Corridor between Kimi-ākau/Shotover River and Te Whaka-ata a Haki-te-kura/Lake Hayes (**Variation**).

- 8 The submitter's issues are specific to the Lower Density Residential Precinct (Sub Area H2) that sits on the terrace above its property at 53 Maxs Way. To this end, it is stated at [7 (b)] of the submission:

The Submitter opposes the proposed intensification of the land shown as Sub-Area H2 in the LDR precinct of the Zone. In this regard, the Variation has a number of significant shortcomings and a range of significant adverse effects have been overlooked. Inappropriate development and use of this land that affects the Site is of primary concern to the Submitter.

- 9 With the exception of the discrete issues relating to this Precinct, the submitter supports the general intent of intensifying development along Ladies Mile Highway (**SH6**) with the consolidation of the higher density development on the northern side of the highway. The submission is focussed on the primary issue and I have similarly focussed my evidence in this regard.



**Figure 1:** Area in bold red identifies approximate area of proposed Sub-Area H2.

- 10 I have read the landscape evidence of Ms Wendy Moginie on behalf of the Submitter and rely on her findings.
- 11 I have read the evidence provided by the Council in support of the Variation.
- 12 The issues at hand are thoroughly outlined in the submission of the Corona Trust; contained in **Annexure A**. The issues are what I described as very confined and relate almost solely to the effects that will arise from situating development and activity in very close proximity to the terrace edge above the Submitter's property at 53 Maxs Way.

- 13 The Council has not opted to seek any landscape advice into the issues raised by the submitter. I have reviewed the brief of evidence of both Ms Gilbert and Mr Skelton and cannot find any reference to the Corona Trust submission or any assessment that correlates with its land.
- 14 Ms Moginie has evaluated the issues from a landscape perspective and I rely on her evidence in this regard.
- 15 I have been to the site a number of times and I am familiar with its relationship to the upper terrace. I have also viewed height poles from this terrace at the Submitter's property and consider I have a good understanding of the likely extent of effect that will arise from the implementation of the rules as notified.

### **EXECUTIVE SUMMARY**

- 16 The Lower Density Residential Precinct (Sub Area H2) enables the establishment of up to 60 residential units, guided by a rule framework that primarily provides for a lower density residential form of development in terms of bulk, location and density of development across the Precinct.
- 17 The submitter's property at 53 Maxs Way is an immediate and sensitive receiver to development on the upper terrace, particularly along the terrace edge. In this regard, a number of changes were requested in the submission.
- 18 My primary concern is the adequacy of the rule framework to manage the adverse effects on the surrounding environment in a manner that is directed through the objective and policy framework of the proposed zone.
- 19 The Council's expert urban design evidence supports changes to address the significance of this adverse effect, however those recommendations have not been adopted by Mr Brown in the Council's section 42A report. The Council has also not obtained landscape advice into the effects of the rules.
- 20 The key matters in dispute are:
- 20.1 What is the appropriate building setback from the edge of the terrace within Sub Area A2?
- 20.2 What is the appropriate building height within the Sub Area A2?
- 21 In my opinion, proposed Policy 49.2.7.8 cannot be given effect to through the notified rules for the Low Density Residential Precinct and represents a disjoint in the framework.
- 22 There is no dispute regarding the notified density of urban development enabled in Sub Area H2. I do consider however that the change in Rule 49.5.1 from 450m<sup>2</sup> density to 300m<sup>2</sup> could exacerbate the adverse effects realised on 53 Maxs Way if that change is adopted.

- 23 In accepting expert landscape advice on the effects of the Council’s proposal from landscape architect Ms Wendy Moginie that the Proposal will result in a **high to very high degree of adverse effect**, I have suggested alternative relief to that set out in the submission, namely:
- 23.1 a 20 metre building setback in Sub Area H2 from the southern boundary the zone, adjoining 53 Maxs Way; and
- 23.2 a building height restriction of 5.5m in Sub Area H2.
- 24 This differs from the relief suggested by urban designer Mr Michael Lowe, who recommended a 4 metre setback from the zone<sup>1</sup> and a 5.5m height restriction 17 metres from the southern boundary<sup>2</sup>.
- 25 I prefer and rely on the expert landscape advice from Ms Moginie in this regard, and also note that I have observed height poles on the land generally reflecting the height of buildings proposed, which I considered to represent a significant change.
- 26 Making these changes would in my opinion enable the outcomes directed in the objectives and policies for the Zone.
- 27 I have marked up a copy of the provisions from the section 42A report to reflect my suggested changes below (in **yellow**):

49.5 Rules – Standards

Table 1	Standards for activities located in the Low Density Residential Precinct	Non-compliance status
49.5.1	Residential Density  Maximum residential density of one residential unit per <del>450m<sup>2</sup></del> <del>300m<sup>2</sup></del> <b>450m<sup>2</sup></b>	NC
49.5.2	Building Height  <b>49.5.2.1 5.5m in Sub Area H2</b> <b>49.5.2.2 A maximum of 8m in the remainder of the zone</b>	NC
49.5.6	Minimum Building Setbacks  49.5.6.1 Minimum setback from road boundary: 4.5m 49.5.6.2 Setback from waterbodies: 7m 49.5.6.3 All other boundaries: 2m 49.5.6.4 In Sub-Area H1: Minimum setback from boundary with Sub- Area H2: 6m <u>49.5.6.5 In Sub-Area H2: Minimum setback from southern boundary: <del>4m</del> <b>20m</b></u>  Except that: a. eaves may be located up to 600mm into any boundary setback along eastern, western and southern boundaries and up to 1m into	D

<sup>1</sup> Paragraph [68] of Urban Design Evidence of Mr Lowe.

<sup>2</sup> Paragraph [53] of Urban Design Evidence of Mr Lowe.

	<p>any boundary setback along northern boundaries.</p> <p>b. accessory buildings for residential activities may be located within the boundary setback distances (other than from road boundaries), where they do not exceed 7.5m in length, there are no windows or openings (other than for carports) along any walls within 1.5m of an internal boundary, and they comply with rules for Building Height and Recession Plane.</p>	
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28 My understanding of the key reasons for the differences of opinions include:

- 28.1 Mr Brown for the Council not taking into account his expert urban design evidence that recommended changes to the rules of the Precinct to address the concerns raised in the submission;
- 28.2 The Council not seeking expert landscape evidence into the issues outlined in the submission, and conversely Corona obtaining expert landscape advice that has thoroughly evaluated the effects of development along the terrace edge of Sub Area H2; and
- 28.3 Mr Brown and Kianga Ora (further submitter) mistakenly considering that the relief sought would reduce the density of development enabled in the Precinct.

29 In making the changes I suggest, the Variation will represent the most appropriate means of giving effect to the higher order planning documents and ultimately the RMA.

**EFFECTS OF THE RULES**

30 As referred to above, I refer to and rely on the expert landscape assessment from Ms Moginie, who has evaluated the effects of development on the upper terrace.

31 Ms Moginie has concluded that development will result in a **high to very high degree** of adverse effects on open space and visual amenity values as viewed from residences located within the Corona Site.

32 Her primary concerns relate to the height of built form and set back from the terrace edge. I share her concerns.

**OBJECTIVE AND POLICY FRAMEWORK**

33 The Zone Purpose at 49.1 sets out the relationship of the Ladies Mile Zone to integrate with nearby zones, and is inclusive of communities in nearby zones.

**49.1 Zone Purpose**

Te Pūtahi Ladies Mile Zone implements the Spatial Plan and Te Pūtahi Ladies Mile Masterplan by providing a planning framework designed to

achieve an integrated urban environment. The purpose of the Zone is to ensure efficient use of land for the provision of housing and supporting community and commercial facilities, within an integrated, well-functioning, and self-sustaining urban community that integrates with nearby zones, that is inclusive of communities in nearby zones.<sup>3</sup>

34 Within the zone are a number of “precincts”. Of relevance to the Corona relief is the Low Density Residential Precinct. This precinct is provided specific direction through Objective 49.2.7 and Policies 49.2.7.1 to 49.2.7.1. Policy 49.2.7.8 is specific to the Low Density Residential Precinct and what I consider the most relevant policy.

35 The key objective and policies are reproduced below:

**Objective 49.2.7** – An attractive built environment that positively responds to streets and open spaces, provides a high level of residential and neighbourhood amenity, achieves high quality urban design and ecological outcomes and incorporates indigenous biodiversity in design.<sup>4</sup>

**Policy 49.2.7.4** – Ensure that the location and direction of lights does not cause significant glare to other sites, roads, and public places and promote lighting design that mitigates adverse effects on views of the night sky.

**Policy 49.2.7.5** – Ensure that outdoor storage areas and any carparking areas are appropriately located and or screened to limit adverse visual effects and to be consistent with the amenity values of the Zone or those of any adjacent zone.<sup>5</sup>

**Policy 49.2.7.8** – In the Low Density Residential Precinct, ensure that the height, bulk and location of development maintains a low density suburban character and maintains the amenity values enjoyed by users of neighbouring properties, in particular, privacy and access to sunlight.

36 Further submitter Kianga Ora opposed the relief sought by the Submitter highlighting Policy 6 of the NPS-UD. This policy is also referenced by Mr Brown in his section 42A report.

37 While I agree with its relevance when rezoning land urban, I disagree that it should be applied carte blanche to enable any form of urban development, which seems to be the approach applied by Kianga Ora in their advocacy for the highest intensity urban form at Ladies Mile.

38 I also consider that limb (c) is important in the context of Policy 6 (reproduced in full below), which links back to Policy 1 and the benefits of urban development being consistent with well-functioning urban environments.

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

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<sup>3</sup> As amended in section 42A report.

<sup>4</sup> Objective as amended in section 42A report.

<sup>5</sup> Policy as amended in Section 42A report, notably including relief sought by Corona Trust.

- (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.

- 39 There remains a significant disjoint between the policies and the rules of the zone. This issue was highlighted in the submission and has not been responded to in evidence from the Council.
- 40 Policy 49.2.7.8 directs that development in the Low Density Residential Precinct maintains a low density suburban character and maintains the amenity values enjoyed by users of neighbouring properties, in particular, privacy and access to sunlight. The “height, bulk and location of development” are highlighted in the policy as the means to help achieve these outcomes.
- 41 Mr Brown and I agree that the Corona property is a neighbouring property; this policy is of direct relevance.
- 42 In consideration of the evidence of Ms Moginie and the urban design evidence of Mr Lowe, it is evident that development cannot occur under the current rule framework without:
- 42.1 significantly adversely affecting privacy at 53 Maxs Way, as well as dominance, views and outlook; and
  - 42.2 significant adverse amenity effects on occupants of 53 Maxs Way.
- 43 I agree with Mr Brown at his [12.38] that the covenant over the land provides strong protection, even in circumstances of changing planning context. I consider however that it is good planning to have this issue addressed in the rules themselves.
- 44 Accordingly, I do not consider that the current rule framework will enable maintain a low density suburban character and maintain the amenity values enjoyed by users of the neighbouring properties.
- 45 In my opinion, this policy cannot be given effect to through the notified rules for the Low Density Residential Precinct, and represents a disjoint in the framework that needs to be addressed.
- 46 I understand that no party has submitted on the appropriateness (or otherwise) of the outcomes directed in the policy, nor has the Council sought to amend it in any way.

## SECTION 32AA

- 47 Section 32AA of the RMA sets out the requirements for further evaluations. Notably at sub-section (1), a further evaluation:
- (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the **changes**); and
  - (b) must be undertaken in accordance with section 32(1) to (4); and
  - (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and
  - (d) must—
    - (i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or
    - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
- 48 Taking into account section 32AA(1), I have undertaken a brief further evaluation in consideration of the relatively confined changes sought to the Lower Density Residential Precinct. I note here for completeness, that the relief sought does not make any fundamental changes to the zone and structure of the Variation and therefore the assessment undertaken by the Council has been relied on.
- 49 The objectives of the proposal are not sought to be changed by the Submitter and I do not consider any changes are necessary in light of the issues raised and relief sought. In this regard, the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act.<sup>6</sup>
- 50 In terms of my examination of the provisions and evaluation as to whether they are the most appropriate way to achieve the objectives, I note here that I am recommending changes to the provisions so further evaluation is necessary.
- 51 As I have set out above, I consider that there is currently a significant disjoint between what the policy is directing for outcomes in the Precinct versus what effects the rules are actually enabling. I consider that the policies are appropriately geared towards relevant outcomes and the planning problem lies in the rules. To this end, I have not recommended any changes to the policies.
- 52 In terms of section 32(2), the costs and benefits of the amended proposal are confined. Notably:
- 52.1 There is no change to the recommended densities in the Precinct and therefore no costs in terms of lost opportunities for urban intensification;

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<sup>6</sup> Section 32 (1) (a).

- 52.2 The changes proposed relate to building setbacks and heights from a prominent terrace edge that would otherwise result in significant effects on the adjoining property;
- 52.3 The benefits in these changes assist with integrating the zoning with its surrounding zones and environment, an outcome which is specifically sought in the Zone purpose and through the objectives and policies of the Zone.;
- 52.4 There will be no adverse cultural or economic effects arising from the amended proposal, and therefore no costs. There will be environmental benefits through the management of the effects of urban development.
- 52.5 It is not expected that there will be any gain or loss in terms of economic growth or employment opportunities arising from the amended proposal. The changes are insignificant in this context.
- 52.6 Taking into account the landscape evidence of Ms Moginie, I consider that there no information gaps. The risk of not acting is significant in terms of landscape and amenity effects on the adjoining property, and likely the wider environment. Acting by amending the precinct rules as I have suggested represents a very small but important change to the Variation.
- 53 The proposed provisions (rules) are clear and will be straightforward to administer. They are efficient and effective in providing
- 54 The proposed provisions (rules) are clear and will be straightforward to administer. They are efficient and effective in providing the means to implement Policy 49.2.7.8 that ultimately gives effect to Objective 49.2.7.
- 55 In my opinion, the amending proposal represents the most appropriate means of achieving the objectives of the Proposal.
- 56 Implementing the suggested changes will not undermine or alter the Variation and its main objective to provide an urban development outcome for this location. It will, however, enable the provisions to align well with the promoted objectives, achieve the National Policy Statement, and ultimately connect through its purpose.

### **STATEMENT OF EXPECTATIONS**

- 57 As per the Panel's minute 1, I have considered the Minister's Statement of Expectations for the proposed Te Pūtahi Ladies Mile Plan Variation, reproduced below:
- (a) contributes to providing sufficient opportunities for the development of housing and business land to ensure a well-functioning urban environment including maximising opportunities to enable housing, particularly of the typologies identified as a shortfall in Queenstown's Housing Development Capacity

Assessment 2021 (housing suitable for older households, smaller households, and lower and lower-middle income households);

- (b) ensures that future development will be undertaken in a manner which recognises the limitations of the existing transport network in this location;
  - (c) ensures appropriate and feasible infrastructure is provided for in Te Pūtahi Ladies Mile Zone, including stormwater management that allows for future climate change impacts, and access to everyday needs through transport options that support emissions reduction (such as public and/or active transport);
  - (d) ensures future development will be undertaken in a manner that recognises and protects sensitive receiving environments including in particular Slope Hill, Waiwhakaata / Lake Hayes and the Shotover River.
- 58 The relief I have recommended for the Lower Density Residential Precinct will not have any measurable (negative) impact on the expectations outlined above.
- 59 Notably, the submission of the Corona Trust generally supported the Variation and the urban intensification along Ladies Mile. The submission also did not take issue with the density of development enables in the Precinct, rather its focus was ensuring that the effects of development are appropriately managed. The notified provisions in my opinion were inadequate to achieve this.
- 60 With my changes, it would ensure that future development in the Precinct will be undertaken in a manner that recognises and protects sensitive receiving environments.
- 61 Conversely, failing to adopt the changes would put the Variation at odds with the Statement of Expectations.

Dated: 20 October 2023



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Brett James Giddens