

BEFORE THE HEARING COMMISSIONER APPOINTED BY TAUPŌ DISTRICT COUNCIL

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

AND

IN THE MATTER An application for land use consent [RM240388], subdivision consent [RM240389] and variation to subdivision consent RM200118B for: 83 residential lots, 4 reserves, 5 road and over 6 stages; land use consent for earthworks and for additional building coverage, plot ratio and building setbacks; variation to Stage 9 of the previous subdivision stage

BETWEEN **SEVEN OAKS KINLOCH LIMITED**

(Applicant)

AND **TAUPŌ DISTRICT COUNCIL**

(Consent Authority)

CLOSING LEGAL SUBMISSIONS ON BEHALF OF SEVEN OAKS KINLOCH LIMITED

Dated: 20 October 2025

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MAY IT PLEASE THE COMMISSIONER:

INTRODUCTION

1. These closing submissions are made on behalf of Seven Oaks Kinloch Limited (**Seven Oaks** or **Applicant**). They focus on the key legal and planning issues arising during the hearing on 27 August 2025 and should be read alongside the opening legal submissions made on behalf of the Applicant.

S104D(1)(b) – WEIGHTING OF OBJECTIVES AND POLICIES IN THE RELEVANT PLAN WHERE THE RELEVANT PLAN IS DATED

2. At the hearing, the Commissioner queried whether there was any case law as to whether there is a weighting exercise to be applied to the relevant objectives and policies pursuant to section 104D(1)(b)(i) where the relevant plan is “dated”. Counsel for the Applicant has not found any caselaw on this specific point. Accordingly, counsel has applied a principled approach to provide a response.
3. Section 104D reads as follows:
 - (1) Despite any decision made [[for the purpose of notification]] [[in relation to adverse effects]], a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
 - (a) the adverse effects of the activity on the environment (other than any effect to which [[section 104(3)(a)(ii)]] applies) will be minor; or
 - (b) the application is for an activity that will not be contrary to the objectives and policies of—
 - (i) the **relevant plan**, if there is a plan but no proposed plan in respect of the activity;...
4. While the Courts have considered the order in which an assessment may be undertaken with respect to a non-complying activity – i.e., whether the matters in s104D must be considered before turning to section 104(1) – this does not assist in responding to the question that was posed. The focus of the key cases has been the assessment of effects; not the evaluation of proposal against the objectives and policies of the relevant plan.

5. Section 104D(1)(b)(i) refers to a “relevant plan”. The term “plan” is defined in the RMA as follows:

plan means a regional plan or a district plan

6. The term “district plan” is defined in the RMA as:

district plan—

- (a) means an **operative plan** approved by a territorial authority under Schedule 1; and
- (b) includes all operative changes to the plan (whether arising from a review or otherwise).

7. Considering the definitions referred to above, despite the Taupō District Plan insofar as it relates to Kinloch being well over ten years old¹, for the purposes of an assessment under section 104D(1)(b), counsel is not aware of any legal principle that would suggest that whether a proposal is contrary to the relevant objectives and policies may be subject to a “weighting exercise” on the basis of the age of the plan provisions. In any event, the point is effectively moot because Ms Hunt and Ms Wood have both concluded that the Proposal is consistent with the objectives and policies in the Taupō District Plan.² Moreover, both Ms Hunt and Ms Wood have concluded that the effects of the Proposal will be no more than minor.

8. It follows that a weighting of the objectives and policies will add nothing to the assessment that the Proposal passes the s104D gateway test. There is no doubt that the Proposal passes the test in section 104D and must be assessed under section 104.

¹ Implementation of parts of the Kinloch Community Structure Plan (**KCSP**) were made operative in 2007.

² The test is whether a proposal is “contrary” to the relevant objectives and policies. There is no requirement that a proposal be supported by or consistent with the relevant objectives and policies for the purposes of passing the s104D test to then be considered pursuant to section 104.

NPS-UD AND FUTURE DEVELOPMENT STRATEGY (WEIGHTING UNDER S104)

9. Ms Hunt and Ms Wood assessed the Proposal against the NPS-UD and concluded that the Proposal was consistent with its objectives and policies. Ms Drury inferred that it wasn't but did not provide any analysis to support her opinion. There is no irreconcilable tension between the objectives and policies of the Taupō District Plan and the NPS-UD. However, it is submitted that the NPS-UD carries more weight as a higher order policy document which is yet to be given effect to in the context of the KCSP area.

10. The TDC is a Tier 3 local authority. The NPS-UD states:

1.5 Implementation by tier 3 local authorities Tier 3 local authorities are strongly encouraged to do the things that tier 1 or 2 local authorities are obliged to do under Parts 2 and 3 of this National Policy Statement, adopting whatever modifications to the National Policy Statement are necessary or helpful to enable them to do so.

11. In that regard, the Taupō District Council's (TDC) "Future Development Strategy"³, prepared for the purposes of implementing the NPS-UD, states, *inter alia*, in respect of TDC's Implementation Plan and Kinloch:

What will we do?

Review the Residential Chapters of the District Plan to ensure that they enable different typologies and allow for intensification. Public transport routes are to be taken into account when considering intensification provisions...

Review and revoke the following structure plans: • Kinloch Community Structure Plan...

When will we do it?

We are reviewing our Residential Chapters now. We will undertake future reviews when required...

Ongoing over the next three years

Type of land supply it will support

Residential

Residential, commercial, industrial

What else do we need to think about?

³ <https://storymaps.arcgis.com/stories/e10799700d0e485daf5d898613bce79f>

We are required to review our FDS every three years. When reviewing the FDS we will undertake an assessment to determine how well the Residential Chapters of our District Plan are enabling different typologies and intensification. If the review determines that we need to adjust the District Plan, we will initiate a review of the Residential Chapters.

Some of our structure plans have been given effect to. These structure plans will be gradually reviewed and revoked over the next three years if appropriate.

12. It is clear the FDS acknowledges that the KCSP is outdated and needs review for the purposes of giving effect to the NPS-UD. The FDS is not a statutory document for the purposes of section 104(1)(a). However, as submitted verbally at the hearing, the FDS is a matter for consideration under section 104(1)(c). While it may not be determinative, in my submission it ought to be given weight in the Commissioner's overall assessment under section 104, particularly in the context of assessing the Proposal against the objectives and policies of the NPS-UD.

EXISTING ENVIRONMENT

13. As submitted in opening, the concept of the existing environment is well established.⁴ It consists of lawfully established activities, activities permitted by the relevant plan, and consented activities likely to be given effect to.
14. The effects of the Proposal on the existing environment have been assessed by the witnesses for the Applicant (and the TDC) as less than minor, or minor at worst. In my submission, the Commissioner cannot consider a potential future development that falls outside the concept of the existing environment, including in consideration of potential cumulative effect. I address this further below.

⁴ *Queenstown-Lakes District Council v Hawthorn Estate Limited* (2006) 12 ELRNZ 299. Counsel notes an error in the citation in opening legal submissions at footnotes 18 and 19. This should read "*Queenstown-Lakes*" not "*Hawthorne-Lakes*".

Potential for future intensification (“granny flats”)

15. Speculation about future activities – granny flats – that might be permitted by legislation yet to come into effect do **not** form part of the existing environment. Even if permitted under a future NES, whether such development can connect to services is unknown. There is no scope for the Commissioner to consider the potential for future demand on infrastructure resulting from construction of granny flats at an indeterminate time in the future. Such “future” activities do not form part of the environment, and the Commissioner is precluded from taking theoretical future activities into account in considering the actual and potential effects of the Proposal on the environment.

Golf Course land use consent dated 2002⁵

16. With respect, this is irrelevant to determining this application. The Applicant and TDC witnesses have confirmed that there is more than sufficient infrastructure capacity for the Proposal with the Golf Course consented development included. There is no need or scope to consider the potential for additional subdivision applications in reliance on the land use consent (**LUC**) for what is effectively a “master plan”. In that regard, the case law is clear that a resource consent for a “plan” and not activities is not lawful.⁶ However, counsel acknowledges that the LUC granted consent for some specific activities (golf course, clubhouse, maintenance facilities etc.). It also purported to grant consent for 226 “house sites” albeit that it is not a subdivision consent. It is apparent that the expectation was that subdivision applications would follow to create titles for the “house sites” authorised by the LUC.

⁵ Issued on 12 December 2002, reference RM020327.

⁶ *Queenstown Airport Corporation Limited & Ors v QLDC* [2014] NZEnvC197; *Re Auckland Council* [2016] NZEnvC 056; *Re Auckland Council* [2016] NZEnvC. Noting that such consent remains valid unless overturned by a court of competent jurisdiction.

17. For completeness, it is submitted that the 226 “house sites” do not form part of the existing environment. Only those that have been granted subdivision resource consent and which have been given effect to may be considered part of the existing environment. It is submitted that this includes the two subdivision consents authorising 52 lots and 54 lots respectively, the Lodge and its 10 associated accommodation units. Whether any other related consents are likely to be given effect to is speculative and there is no evidence before the Commissioner on that point.
18. In summary, it is entirely speculative to suggest that ~100+ houses would be built without a subdivision. These additional ~100+ houses are not part of the existing environment.⁷ In any event, the likelihood of the LUC being fully implemented via future subdivision is moot because there is sufficient infrastructure capacity.⁸

EFFECTS

19. The submitters in attendance at the hearing raised concerns about the level of effects which may be generated by the Proposal and the “cumulative” effects. As stated in opening legal submissions, these concerns are unfounded and it is submitted reflect a “not in my backyard” position, rather than an objective consideration of actual and potential effects on the environment.

⁷ On 12 December 2002 Land Use consent RM020327 was granted to construct and operate an international standard golf course (including a driving range and three fairways), a clubhouse, maintenance facilities, a lodge facility and 226 house sites now known as The Kinloch Club. RM200018A extended the lapse period for Subdivision Consent RM200018 for a further two years until 26 Feb 2027 for 12 rural residential lots. There is no evidence as to whether this will be implemented or given effect to.

⁸ In *Marr v Bay of Plenty RC* [2010] NZEnvC 347, following *Queenstown Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA), it was further clarified that the future state of the environment is relevant, but only as it might be modified by the operation of permitted activities and those conducted under lawful consents, provided it appears that they will be implemented. Future applications not yet granted are not part of the definition of “environment”. Section 104(1) precludes the Court from taking theoretical future activities into account in considering the actual and potential effects of the relevant activities on the environment.

Road noise

20. While road noise is a relevant effect for consideration in an application for resource consent, there is no evidence that the additional traffic which may be generated by the Proposal will lead to a breach of the TDP's noise limits. Ms Makinson confirmed at the hearing that the traffic from the Proposal is well within the capacity of the roads identified by the submitters as being an issue. Moreover, there are limited number of lots adjacent to the roads referred to by the Te Kowhai Ridge residents, none of which have produced evidence of an adverse noise effect that can be linked directly to the Proposal. Again, it is speculative at best.

Visual Amenity – view from the North of the subject site

21. Mr Graham's evidence is that the anticipated effects on those who may view the Proposal from the north are "very low" (which translates as less than minor in the context of section 104D). This is confirmed by his additional visual analysis dated 12 September 2025.
22. Mr Graham has carried out a comprehensive assessment of LVA effects on the Lochridge Development (views from the north), noting that the closest dwelling lies approximately 1km to the north of the Proposal site with the majority being ~1.5km distant.⁹ His assessment also considers effects from a closer distance.¹⁰
23. Mr Graham states that:

Overall, the level of the adverse effects on visual and amenity values arising from the proposed application from this *View Location* are considered to be **very low**. This is because from this location, while observers obtain a marginally closer overview of the proposed application than more distant elevated view locations with similar ratings, the location of the application site within surrounding development and the orientation of the view along the length of the overall Seven Oaks Development make the increased density difficult to discern. Given that a shift to residential use in this area is

⁹ Supplementary statement of evidence of Michael Graham, 11 September 2025, paragraph 2.

¹⁰ Supplementary statement of evidence of Michael Graham, 11 September 2025, paragraph 10.

anticipated by the *Taupō District Plan*, and the presence of the existing consented subdivisions, including the *Lochridge Development*, it is considered that the visual effects of the proposed development, are within acceptable levels.

24. This is consistent with Mr Graham's evidence that was presented at the hearing.

25. Ms Wick (Boffa Miskell) provided a peer review of Mr Graham's assessment in a report dated 8 October 2025. Her review was framed in the following way:

This review addresses the following matters:

- a) A review of the landscape and visual assessment submitted with the application ("*the assessment*"), including the supplementary assessment prepared from viewpoints to the north of the site, including identifying any gaps and providing comments on the methodology;
- b) The findings of the Assessment of Effects conclusions; and
- c) Any key landscape recommendations, including amendments to the draft conditions.

26. Ms Wick concludes, *inter alia*, that:

The Landscape and Visual assessment appropriately addresses the relevant statutory provisions and provides a thorough and comprehensive evaluation of effects on both the immediate site and the wider environment.

...

The conclusions of the assessment are consistent with the analysis undertaken, and I am satisfied that the landscape and visual effects of the proposal are less than minor. The assessment and application also include a series of draft conditions which, if implemented, would provide additional certainty regarding landscape effects and further support integration of the development into the surrounding environment. It would be good to update these conditions to ensure they reference the latest landscape planting plans and recommendations around lighting.

27. The submitter parties who responded on 15 October 2025 disagree with Ms Wick's review (and have sought to make further comment on matters outside the scope of a response to the LVA peer review – which the Commissioner ought to disregard). With respect, those submitters misunderstand the role of a peer reviewer. Ms Wick is an expert in her field and has adhered to the methodological approach for an LVA. Ms Wick's role as a peer reviewer did not require a site visit or that she undertake a separate assessment. Rather, it focussed on the methodology followed by Mr Graham in his assessment, which is entirely appropriate.

28. The opinions of the submitters reflect their personal, subjective view of the LVA effects. However, these must be considered objectively in an assessment of the effects of the Proposal on visual amenity. The assessment requires consideration of a broadly informed perspective of community perceptions and associations¹¹. Mr Graham's assessments and his evidence reflects that approach, which is supported by Ms Wicks.
29. Caution should be applied to the statements made by submitters in response. Indeed, some of the opinions expressed by submitters do not stand up to scrutiny. For example, the assertion that the proposed development will "interrupt the lake view from lots within Lochridge Estate".¹² It will not. Complaints from submitters about the location of the viewpoints do not undermine the validity of Mr Graham's assessment. Moreover, there were no submissions in opposition from any owner or the developer of Lochridge Estate.¹³
30. Mr Campbell's response is an unbalanced opinion piece, founded on his personal views and should therefore be treated with considerable caution. With respect, he is not a qualified landscape architect and is not in a position to question Mr Graham's methodology, which is based on best practice. The photographs attached to Mr Campbell's response to the LVA peer review have no scale or other reference to understand their purpose. They should be disregarded. With respect, "the vibe" is not a relevant matter for the Commissioner to consider.
31. The response from the KCA also goes beyond responding to the peer review by Ms Wick and seeks to re-litigate matters that were addressed at the hearing. Those statements should also be disregarded. To the extent that the KCA does consider the peer review, it is unfortunate that the KCA has criticised Ms Wick in the manner it has, given the scope of

¹¹ In that regard, the submitters' personal views cannot be said to be representative of the Kinloch community.

¹² TKR response to LVA peer review, 15 October 2025.

¹³ There were twenty eight submissions received, which is a fraction of the population of Kinloch and therefore should not be considered as representative of a broader "community" view.

her engagement to review Mr Graham's assessment. In my submission, little weight should be given to the comments in this response.

32. Similarly, the TKR response appears to misunderstand the purpose of a peer review. Simply disagreeing with Ms Wick's conclusions is unhelpful. If any of the submitters were sufficiently concerned about landscape and visual amenity effects of the Proposal and/or Mr Graham's assessment and evidence, it was open to them to engage a suitable expert to assist them. They did not.
33. In my submission, the only reliable and cogent evidence on landscape and visual amenity effects is that of Mr Graham, which is supported by the peer review of Ms Wick. That evidence concludes that the landscape and visual amenity effects of the Proposal will be very low/less than minor.

Reserves – relevance of behaviour of members of the public

34. The behaviour of members of the public in relation to the reserves that are adjacent to the Proposal are not an effect that is generated by the Proposal. It is simply not a relevant consideration for the Commissioner.
35. Furthermore, there is no evidence that a setback of 10m from reserves is any better than the proposed 7.5m in relation to some lots. Dr Mueller's evidence confirmed that 7.5m is appropriate from an ecological perspective.

Boat ramp

36. There is no evidence that the Proposal will cause adverse effects on boat ramp users. The concerns expressed by the submitters that an increased population, permanent or otherwise, is an adverse effect are unfounded and irrelevant.

DEVELOPMENT CONTRIBUTIONS (DCs)

37. The Commissioner queried what the DCs payable by the Applicant would be used for, if consent is granted. With respect, that is not a relevant matter for determining the Application. There is sufficient infrastructure capacity for the Proposal, and it will not, either on its own or cumulatively, generate effects that will trigger the need for infrastructure upgrades (in terms of DCs)¹⁴. The Proposal will not “break” the transport or three waters network.
38. Nevertheless, for completeness counsel notes the following in relation to the current (applicable) DC policy¹⁵:
- (a) Part 1 of the DC policy includes a list of the catchments within which DCs apply. This includes Kinloch.¹⁶
 - (b) Table 1 on page 11 set out the DC charges for those catchments.
 - (c) Paragraph 17 refers to 5 wider catchments that TDC has delineated and include:
 - (i) Taupō - Kinloch Transport Corridor.
 - (ii) District-Wide.
 - (d) The Taupō - Kinloch Transport Corridor – Schedule 1, forecasted future assets – includes the second bridge crossing.
 - (e) Part 3 of the DC Policy maps the local catchments and includes:
 - (i) Kinloch water DC
 - (ii) Kinloch wastewater DC.
 - (iii) Kinloch reserve DC.

¹⁴ Counsel notes that to accommodate the additional wastewater from the Proposal, emergency storage volume at the existing pump station (not the pump station itself) will be upgraded by Seven Oaks Kinloch Limited, at its cost, because it is an effect of the additional lots on that piece of infrastructure.

¹⁵ <https://www.taupodc.govt.nz/repository/libraries/id:25026fn3317q9slqygym/hierarchy/Rules-regulations-and-licences/Policies/TDC%20Development%20Contributions%20Policy.pdf#:~:text=The%20objective%20is%20to%3A%20E2%80%A2%20enable%20Council%20to,preamble%20to%20Te%20Tu re%20Whenua%20M%C4%81ori%20Act%201993>

¹⁶ Taupō District Council Development Contributions Policy 2024, page 10, paragraph [16].

- (iv) Taupō-Kinloch Transport Corridor.
 - (f) The district-wide catchment may potentially contribute to the calculation of transportation DCs for the 11 listed catchments.¹⁷
39. On its face, the Applicant will be charged DCs for, *inter alia*, the Taupō-Kinloch Transport Corridor and it is noted that the control gate bridge (second crossing) is a listed capex project¹⁸. Improvements to Whangamata Road are also included (*per* the “District-Wide” catchment)¹⁹. While not relevant to the determination of this Application, it is not clear how/why reserve contributions may be charged for development in Kinloch, noting that there are no reserve projects for Kinloch listed in Schedule 1 of the DC Policy.
40. To conclude, the Proposal will not generate effects on the transport network which will necessitate infrastructure upgrades. However, the Applicant will be required to pay DCs towards planned future infrastructure upgrades, including the second bridge crossing and improvements to Whangamata Road.

SUBMITTER PRESENTATIONS

41. Contrary to its written statement tabled at the hearing, Mr McPhail stated that “Kinloch won’t get bigger”. This supports the submission in opening that there are no precedent effects of the Proposal. As Mr Rielly pointed out, the scope for development of Kinloch is constrained by its geographic and topographic features. In any event, as submitted in opening, the Proposal passes both gateways of s104D. Its overall consistency with the relevant objectives and policies mean that it cannot

¹⁷ Counsel has not analysed this in detail.

¹⁸ Taupō District Council Development Contributions Policy 2024, page 38.

¹⁹ Taupō District Council Development Contributions Policy 2024, page 38.

be considered to undermine the integrity of the District Plan and there was no evidence presented of other similar applications.

42. At the hearing, Mr McPhail stated that visual amenity is not really the key issue. Rather, it is the number of residents and impacts on facilities. With respect, there is no evidence of a causal link between this Proposal and adverse effects on facilities. As noted above, the Applicant will contribute to the provision of additional infrastructure *via* DCs. Counsel further notes that in response to questions from the Commissioner, Mr Campbell said that he has had “a lot” of discussions with TDC regarding the marina and that TDC are “very engaged”. Relevantly, this marina is privately owned. As such, neither TDC nor Seven Oaks is responsible for this facility.

CONCLUSION

43. Speculation about the future environment beyond the existing environment is irrelevant to the assessment of the effects of the Proposal, including potential cumulative effects. The effects of the Proposal will be minor at worst.
44. Mr Graham has provided a supplementary statement of evidence which specifically addresses the view of the Proposal site from the north and includes photomontages. His evidence is that the effects are *very low*. It follows that the landscape and visual amenity effects of the Proposal are less than minor. This is supported by the peer review of Ms Wick and the planning response from Ms Wood.
45. The Proposal passes both “gateways” of section 104D. Pursuant to section 104, the Proposal is consistent with the relevant objectives and policies of the district plan; and is consistent with the higher order policy documents, including the NPS-UD. If the Commissioner considers it appropriate or necessary to have recourse to Part 2 of the RMA (bearing

in mind the age of the KCSP), the evidence demonstrates that the Proposal achieves the purpose of the Act.

46. Consent should be granted, subject to the proposed conditions attached to the s42A author's response dated 15 October 2025. The proposed amendments have been reviewed by Ms Hunt and are agreed to by the Applicant.



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Counsel for Seven Oaks Kinloch Limited

20 October 2025