Before the Hearing Panel

Under the Resource Management Act 1991.

In the Matter of the Proposed Te Tai o Poutini Plan- Sites and Areas of Significance to Māori

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Statement of Evidence Mark Dixon

Director of Ridgeline 3 Investments Ltd

Hearing 1 May 2024

Two of Two Submissions

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Submission – Continued from Section 42 Application.

1. This submission is to be read in conjunction with earlier applications and submissions from Ridgeline 3 Investment Ltd [Ridgeline] as it relates to this hearing.

2. The Resource Management Act 1991 [RMA][1] assumes dominance over all land and associated land use, with the exception of Crown Land. The RMA provides for existing land use under Sections 9, 10, and 20A, this being conditional on commencement date, scale of operation and continuance of the activity. There is no legal mechanism linking existing legal privilege to land use within the RMA, with the exception of Section 413, which provides additional land use exemptions under the Act for existing mining privilege.

3. The position held by Ridgeline is that the current RMA does not apply to former Reserve 145[2] or any part thereof, and "land use" is held under legal privilege. Therefore, any of the proposed areas deemed significant to Māori (SASM), cannot be lawfully imposed, or implied over the land, under the current or proposed Combined District Plan. Additionally, there are no Heritage orders placed over any parts of former Reserve 145 to prevent the intensity, scale, or use of the land.

4. The assertion of legal privilege is provided by the below statute, and Crown proclamation:

   Certificate of title dated 1887 – Reserve 145[2]
   Hokitika Harbour Board Act 1876 and Schedule 2[3]
   Hokitika Harbour Board Act Endowment 1878[4]
   Hokitika Harbour Board Act 1905 and Schedule 1[5]
   New Zealand Gazette 1910 Proclamation[6]

5. The original certificate of title for Reserve 145 (14150 acres)[2] sets out all encumbrances including the exclusion of Māori pre-emptive right. This was later restored under treaty claim and recognised under the Ngāi Tahu Settlement Act 1998 and Vesting Act respectively. Both Reserve 145 and Section 1676, being private land having existing privileges remained unencumbered. It is significant to note, that at the time of vesting, the Arahura riverbed was restricted to the G.H Price survey 1882[7], having fixed boundaries. This remains problematic as insufficient consideration was given at the time, to the avulsion of the river over one hundred years, and the wider effect of perceived ownership

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[1] Resource Management Act, No. 69 (1991).
Resource Management Act 1991 No 69 (as at 02 April 2024), Public Act Contents – New Zealand Legislation
[2] Certificate of Title WS8/223 (1887) *Reserve 145*
[3] Hokitika Harbour Board Act, No. 96 (1876).
Hokitika Harbour Board 1876 No.96 (natlib.govt.nz)
[4] Hokitika Harbour Board Endowment Act, No. 33 (1878).
Hokitika Harbour Board Endowment Act 1878 (42 Victoriae 1878 No 33) (austlii.edu.au)
[5] Hokitika Harbour Board Act, No. 39 (1905).
Hokitika Harbour Act 1905 No 39 (as at 03 September 2007), Local Act – New Zealand Legislation
[6] "A Proclamation" (14 April 1910) 33 The New Zealand Gazette 1141 at 1141
1910 ISSUE 033, 14-Apr, pp 1141 (victoria.ac.nz)
[7] Price, G. H. (1882). *Reserve 145 Survey Plan* [Photograph]

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on the catchment today. As it stands large parts of the river catchment now flow over private land which have private mineral rights, including the taking of Pounamu[8] (Section 4 of the Ngāi Tahu (Pounamu Vesting) Act 1997[9]). The resultant treaty breach is a private matter for the Crown to resolve directly with the landowner, and without further complication or imposition created by the proposed Combined District Plan overlays.

6. Ridgelines current certificate of title expresses that existing mining privileges are to continue, with direct reference to the NZ Gazette 1910 Crown proclamation[6]. This proclamation from the Governor of New Zealand of the time, provides clear directive that "mining privileges" and "all existing rights" are to continue over all parts of Reserve 145 and are not subject to the Mining Act. This proclamation cannot be revoked and remains in perpetuity. As this proclamation came into effect prior to the existence of the RMA, existing legal privilege takes precedence over the principal Act, with existing rights and land use remaining unaffected by the current or proposed Combined District Plan.

7. The Hokitika Harbour Act 1905[5] describes, all land Reserve 145 being 14150 acres. Section 5(1) vests the land in the Hokitika Harbour Board as endowment[10] land. Section 5(2) of the Act allows the Board to sell the land and absolutely dispose of the land or any part thereof. Section 5(4) provides that every sale shall provide all legal rights and existing mining privileges at the date of sale. The conditions of the Act remain current and existing privilege run concurrently with the Crown proclamation.

8. The Hokitika Harbour Board Endowment Act 1878[4], Section 3 provides for the transfer of land (Reserve 145) from the board to private ownership under the Land Transfer Act 1870 and shall be sufficient to "Vest"[11] the land so sold, in the purchaser or purchasers thereof. This Act provides that vested rights and privileges continue to every successive owner, Ridgeline 3 Investments Ltd being the current owner.

9. Ridgeline submit that the Governors 1910 (68A) proclamation[6] on behalf of King Edward V11 cannot be defeated by the current RMA, as all "vested rights"[12] and privileges existed of at time of sale are codified in current New Zealand law. Ridgeline affirm that it is not subject to the Crown Mineral Act or RMA respectively, nor can matters related to privilege be undermined by the proposed Combined District Plan, SASM, SNA's or associated adverse overlays.

10. "Mining Privilege" as defined at the time of proclamation[6], means; *a license, right, or privilege related to mining lawfully granted or acquired under the Act, and includes the specific parcel of land in respect where of such license, right, title, or privilege is so*

[8] Ngāi Tahu (Pounamu Vesting) Bill, 212-1 (1996).
Ngai Tahu (Pounamu Vesting) Bill 1996 (212-1) (nzlii.org)
[9] Ngāi Tahu (Pounamu Vesting) Act, No. 81 (1997).
Ngai Tahu (Pounamu Vesting) Act 1997 No 81 (as at 24 May 2013), Public Act Contents – New Zealand Legislation
[10] The Mining Act, No. 120 (1908).
[11] Black, H. C. (1910). Vest. In *A Law Dictionary* (2nd ed., p. 1203). West Publishing Co.
[12] Black, H. C. (1981). Vested Rights. In *A Dictionary of Law* (p. 1218). West Publishing Company.

granted or acquired: it also includes a timber-cutting right, a water-right not related to mining, and also a business license, or a business, residence, or special site, but not an agricultural lease nor an occupation license[10]. This is not inconsistent with existing privilege provided under the current Crown Minerals Act[13] and further privileges afforded to mining under Section 413 of the RMA[1]. Both allow full unhindered use of the land for mining purposes.

11. To further support Ridgeline's claim, Section 107(1) of the Crown Mineral Act 1991[13], now amended Section 60 of the Crown Minerals Amendment Act 2013[14], Schedule 1 – Savings and transitional provisions (Part 2). Schedule I, Section 12(1) of the Crown Minerals Act 1991, recognises existing privileges to continue, having the same statutory rights as the holder would have had if the principal Act and the Resource Management Act 1991 had not been enacted. Schedule 1, Section 12(1)(f) of the Crown Minerals Act 1991, further provides right of compensation, make objections, and appeal as if the principal Act had not been enacted. This provides no doubt that the Crown Minerals Act takes precedence over the RMA and is hierarchical under New Zealand statute. With reference to Schedule I, 12(1)(b) and requirements to obtain" land use" consent under the RMA. Ridgeline's land is exempt from the principal Act (Mines Act), by virtue of the Kings proclamation and related statute.

12. To provide summary, Ridgeline commissioned an independent investigation to mineral ownership; this was conducted in 2009 by an accredited assessor for Land Information New Zealand[15]. The subsequent report found that all minerals are privately owned. These include statute minerals and all "Pounamu" as defined under the Ngāi Tahu (Pounamu Vesting) Act 1997[9].

13. The Ngāi Tahu (Pounamu Vesting) Act 1997[9] only asserts the vesting of the Crown's right to pounamu. This is further expressed in the Vesting Act explanatory notes[8], along with a letter held by Ridgeline by the then Member of Parliament for the West Coast, Mr Damien OConnor. The letter expresses that the Minister in Charge of Treaty Negotiation affirms that negotiations will have no effect on holders of mineral rights on land with a "Victorian Title", this being supported by Section 4 of the Act. The letter further states this situation will not change with the change of ownership of the Crown's pounamu and neither the Ministry of Commerce nor Ngāi Tahu would need to be involved.

14. "Victorian Title" is not a legal term and refers to an era in which the Crown grant was acquired. The Certificate of title for Reserve 145 was issued in 1887 under the reign of Queen Victoria (1837-1901).

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[13] Crown Minerals Act, No. 70 (1991).
Crown Minerals Act 1991 No 70 (as at 01 April 2024), Public Act 107 Existing privileges to continue [Repealed] – New Zealand Legislation

[14] Crown Minerals Amendment Act, No. 14 (2013).
Crown Minerals Amendment Act 2013 No 14 (as at 24 May 2013), Public Act 60 New Schedule 1 inserted – New Zealand Legislation

[15] Lanpac Limited. (2009) *Former Reserve 145 – Arahura River Valley Mineral Investigation*.

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15. The proposed SASM "Pounamu" overlay must be removed from Ridgeline's Land as it cannot infer to any person that Ridgeline does not have the rights to all defined pounamu, and have the legal right to extract, process and sell on site to any person regardless of ethnic origin. This includes areas where the Arahura river flows over Ridgeline's land, were there is wide held belief, that this land belongs to Mawhera Incorporation, and has been vested by (Section 27(6) of the Māori Purposes Act 1976)[16] by the Crown, as part of treaty settlement.

16. To affirm our position, legal privilege was served to Crown Minerals on the 12th of February 2010, with respect to a third party attempting to obtain a gold exploration licence over Ridgeline's Land (reference permit 52704). This licence was removed after being referred to senior counsel for the Ministry of Economic Development.

17. Legal privilege was also served on the West Coast Regional Council on the 15th of February 2012. Ridgeline holds the view that the Section RMA 42a report is incorrect in rejecting any legal right to claim of privilege. This information should have been known and considered prior to asserting any type of authority before the RMA commissioners. I believe there is now a clear obligation placed on Councils appointed person to verify and acknowledge our legal position in any subsequent addendum or final report.

18. As owners and custodians of the land, Ridgeline has always held the belief that sustainable management of resource is paramount, if we are going to ensure ongoing prosperity for our future generations. It is for this very reason that existing privilege to clear fell timber was not exercised in the harvesting of our forest. At the time Ridgeline proactively chose to seek the advice and approval of forestry specialists, and we continue to work with the relevant Government Department to ensure conservation principles and the forest management remain viable for the next generation.

19. By the interaction of statute, the Forests Act 1949[17] also provides further protection from interference from the Reserves Act 1977[18] Section 5(1), in that the existing covenant relating to the Tasman Accord Section 16(2)[19] no longer applies as there principles were transitioned by virtue of the Forest Amendments Act. Approval was granted for Ridgelines to harvest and process timber for a 50-year duration under a Sustainable Forest Management Plan being approved by the Minister at the time.

20. Additionally, the principals of the Conservation Act do not apply to Ridgelines land as it is privately owned and without direct interference from RMA policy statements and interpretation. In relation to our forestry activities the Minister of Conservation signed off on Ridgelines Sustainable Management Plan providing full acknowledgement and

[16] Māori Purposes Act, No 148 (1976).
Maori Purposes Act 1976 No 148 (as at 25 January 2005), Public Act – New Zealand Legislation
[17] Forests Act, No. 19 (1949).
Forests Act 1949 No 19 (as at 01 January 2024), Public Act Contents – New Zealand Legislation
[18] Reserves Act, No. 65 (1977).
Reserves Act 1977 No 66 (as at 23 December 2023), Public Act Contents – New Zealand Legislation
[19] Forests (West Coast Accord) Act, No. 45 (2000).
Forests (West Coast Accord) Act 2000 No 45 (as at 28 October 2021), Public Act – New Zealand Legislation

approval that Ridgeline was conducting a commercial business. The notion that the area is an "Outstanding Natural Landscape" (ONL) is a folly, as the area has been commercially harvested for timber since the1800s with every subsequent owner having a commercial interest in harvesting its natural resource. The very existence of such a claim is easily defeated both in statute and claim of existing privilege, it is not Crown conservation land nor subject to the Act[20].

21. Ridgeline hold a number of RMA resource consents, these being directly related to business activity namely subdivision consents, clearance of vegetation for the forming of roads and extraction of hard rock. Most of these activities could have been undertaken without resource consent under existing privilege. Ridgeline held the view at the time that approvals would be more marketable if official approval was granted. The concern now raised, having direct experience with local authorities' displaying total ignorance of "existing privilege" in favour of their interpretation that all "land use" is controlled by the RMA and District Plan. In consequence erroneous enforcement powers have been adopted under Section 332 and 335 of the Act. I condemn the consequential effect of compliance staff ignoring privilege, and statute of limitation regarding enforcement action when conducting investigations. I question both the experience and qualification of Councils staff to comprehend statute beyond the RMA, who have proven to consistently blur the lines between administrative compliance monitoring and compliance investigation for enforcement purpose[21] [22]. Existing privilege as it pertains to property rights is protected under the New Zealand Bill of Rights Act[23] Section 21. Any proposed plan rules and associated policies need to provide the necessary layers of public protection against what I describe as authoritarian overreach.

22. Ridgeline is not compelled by the RMA to allow compliance monitoring if the consent activity is permitted under legal privilege. Section 332(5) maintains the right of common law trespass in this regard. I submit that the proposed District Plan needs to acknowledge existing rights and make provision for the avoidance of public complaint and unwarranted enforcement.

23. Furthermore, any application made under Section 334 of the RMA must comply with the provisions of the Search and Surveillance Act 2012[24], by disclosing all existing privilege that would be in direct conflict with RMA, district plan, rule, or policy statement. Any omission would be in direct violation of the Bill of Rights[23]and Section 30 of the Evidence Act 2006[25].

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[20] *Glenharrow Holdings Ltd v The Attorney-General* [2002] CP242/00

[21] Waikato Regional Council v Wellington City Council [2002] AP18-SWO3

[22] Leslie William Fugle v the Queen [2017] NZSC 24

[23] New Zealand Bill of Rights Act, No. 109 (1990).
New Zealand Bill of Rights Act 1990 No 109 (as at 30 August 2022), Public Act Contents – New Zealand Legislation

[24] Search and Surveillance Act, No. 24 (2012).
Search and Surveillance Act 2012 No 24 (as at 01 March 2024), Public Act Contents – New Zealand Legislation

[25] Evidence Act 2006, No. 69 (2006).
Evidence Act 2006 No 69 (as at 28 November 2023), Public Act Contents – New Zealand Legislation

24. There is no confusion in stating that Ridgeline's mining privilege allows for the full land use for mining purposes, this being the more evasive of land use activities. We assert that this activity can be done legally and without consent on the proviso that any activity is fully contained within the property and done responsibly within the confines of our current Sustainable Forestry Plan. This privilege allows for extracting of all minerals along with the harvesting and processing of timber, once approval is provided from the Ministry for Primary Industries, Manatū Ahu Matua as having a registered mill. Additionally, all minerals lawfully extracted by Ridgeline can be sold without RMA or SASM approval and without threat of RMA enforcement.

25. Additionally, Ridgeline as of right can operate a commercial business with impunity under privilege on site, including sales of minerals and timber directly to public without RMA consent and SASM approval[10].

26. Ridgeline can take any amount of water for commercial purposes from within its privately own catchments without RMA consent monitoring or SASM approval[10].

27. That the proposed Combined District Plan and SASMs cannot impose Crown pre-emption over land provided with existing legal privilege. Any plan enacted cannot be in direct conflict in law and the New Zealand Bill of Rights Act, which binds the Crown and further provides for compensation.

28. Former Reserve 145 has "Vested Rights"[12] and are not subject to further claims or encumbrance of any kind from Iwi. Substantiated grievances have already been heard by the Waitangi Tribunal and settled by the Crown, as detailed in the Ngāi Tahu Claims Settlement Act 1998[26] and Vesting Acts[16] [9] respectively. The promise of Māori having full ownership of Pounamu over the full Arahura catchment has never been fulfilled by the Crown as promised, with private land Reserve 145, and 1676, having existing legal privilege being excluded from the settlement. In response the Waitaki Historical Reserve was created and vested as compensation with further promise from the Crown of unhindered access to the Reserve and source of Pounamu, Olderog Creek. This is not possible due to the changing flow of the river over land belonging to both former Reserve 145 and Section 1676. Though a legitimate claim against the Crown, it cannot be relitigated by means of the RMA proposed plan, SASM, or shown in overlays.

29. Ridgeline submit that all overlays related to Ridgeline's land should reflect the terms of the treaty settlement and allow private negotiation between the Crown, Iwi and landowner to navigate through historical issues without interference. This would be further complicated if the content of this submission were placed before a public forum, which would only serve to further complicate any potential resolutions and creating unnecessary cultural divide.

[26] Ngāi Tahu Claims Settlement Act, No. 97 (1998).
Ngāi Tahu Claims Settlement Act 1998 No 97 (as at 01 July 2022), Public Act Contents – New Zealand Legislation

Summary

30. The proposed Plan overlay asserting ownership of Pounamu over lands Lots 1 8 DP334405, Lots 2 DP462835, Lot 1 DP 563121. Miltown Road, Arawhataraki. Formally part of Reserve 145 must be removed from all parts of the land. The Proposed plan cannot infer to the public that Ridgeline is not the lawful owners of their minerals and have the sole right to remove Pounamu as they see fit.

31. The proposed Plan overlay asserting Outstanding Natural Landscape over lands Lots 1 8 DP334405, Lots 2 DP462835, Lot 1 DP 563121. Miltown Road, Arawhataraki. Formally part of Reserve 145 must be removed as legal privilege allows for the extensive use of the land, including visual modification of the landscape.

32. Remove all proposed plan SASM's namely 109,116,112,107,104 as for the reason set out in this submission.

33. That existing privilege be provided by definition within the proposed plan, and reflect the constitutional vested rights outlined in this submission.

34. If required a Section 310 RMA declaration should be considered, to ensure any ruling is hierarchal and remains protected in perpetuity from lower-level enforcement interpretation and action.

35. This submission is to remain "Confidential" further requesting a Section 42 RMA approval against general dissemination, I request that the commissioner direct any questions or responses directly to Ridgeline.

36. This ends my submission with additional supportive evidence attached.

Attached Appendix

A - Certificate of Title WS8/223 (1887) Reserve 145
B - Hokitika Harbour Board Endowment Act (42 Victoriae 1878 No 33) (Highlighted)
C - Hokitika Harbour Board Act - Second Schedule (Highlighted)
D - Hokitika Harbour Act 1905 (Highlighted)
E - Reserve 145 Proclamation
F - G.H. Price Survey 1882
G - Mining Act 1908 (Highlighted)
H - Black, H. C. (1910) Legal Definitions
I - Title 1000247
J - Mineral Investigation Lanpac Ltd 2009

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