

CENTRAL OTAGO DISTRICT COUNCIL

TKO PROPERTIES – RC230179

MINUTE 1 OF THE HEARING PANEL

Introduction

1. I have been appointed by Central Otago District Council as an independent Commissioner to chair the Council's Hearings Panel to hear submissions and make decisions with respect to the resource consent application by TKO Properties Ltd, at Lakefront Terrace, Bendigo.
2. The application was publicly notified and following submissions was initially set to go to a hearing. However, at the Applicant's request, the application was placed on hold on 4 April 2024 to enable the Applicant to fully review the matters raised in submissions and to be able to respond as appropriate.

New Information Lodged

3. On 29 July 2024, the applicant lodged an amended application, which was accompanied by further information and specialist reports.
4. The amended application, and the material lodged by the applicant, is attached to this Minute.

Assessment as to Scope

5. Before proceeding to setting a hearing date, the Panel must first be satisfied that the changes made to the application (which includes incorporating additional land into the application site) do not take it outside of the scope of the application as publicly notified.
6. We have in the first instance asked Ms Lines (Council's Hearing Administrator) to request that the Council's reporting officer (Mr Vincent) review the material and respond on the scope issue. Our questions, and Mr Vincent's responses, are included in Attachment 1 to this Minute. Attachment 1 also includes Mr Vincent's responses to the Panel's questions on the need to update Council reports and on expert witness conferencing.
7. In light of that advice, the Panel now directs that the Applicant provide to the Panel its own assessment as to whether the amended application is within scope of the application as lodged. That assessment should focus in particular on the effect of additional land now being included in the application, any additional effects including matters identified by Mr Vincent, and also whether it may affect any parties outside of those who have already lodged submissions on the application as notified. The Applicant may wish to provide legal advice on this matter.

Council's Reporting on the Amended Application

8. If the Panel can be satisfied as to scope, we will make arrangements for the hearing. Prior to that we will require an updated, or supplementary, section 42A report from Mr Vincent. That report, and any other updated Council reports, would be distributed to the Applicant and to submitters so that this may inform any evidence they wish to prepare and present at the hearing.
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Expert Witness Conferencing

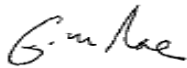
9. The Panel can see benefit in the ecologists engaging in expert witness conferencing, however we will not issue directions until the scope issue has been determined. We understand the Applicant has requested this, and Mr Vincent has provided some advice on the matters that can be conferenced on (Attachment 1).

Conclusion

10. We will await the Applicant's response on the scope matter before issuing further directions.
11. Please send your response by e-mail to Ms Lines as soon as it is ready to assist in its efficient distribution to the other parties.
12. If there are any questions arising from this Minute, please direct those in the first instance to Ms Lines.

DATED this 2nd day of August 2024

Signed by



GM Rae

Chair of Hearing Panel

APPENDIX 1: ADVICE FROM MR VINCENT

Panel's questions 29 July 2024:

1. Are the changes within scope of the application as notified?
2. Which of the Council's specialist reports will need to be updated as Supplementary reports (including the s42A Report)?
3. What is a realistic timeframe for a hearing date?
4. Please advise on whether there is potential benefit in witness conferencing between the Applicant's ecologist and Mr Harding (CODC adviser).

Response:

From my quick review, I think the changes proposed are within the scope of the application as notified. Most of the material provided appears to be intended to be read in isolation, instead of being read in conjunction with the application that was initially notified. The subdivision layout also now includes transferring a small area (Approximately 3,500m²) of Lot 2 DP 523873 into the subdivision, split between Lots 30, 101 and 200. In my opinion, updated comments/approvals from Bendigo Station Developments Ltd ought to be provided, given they would stand to lose land as part of the development if it is approved. However, the general layout of the proposal is similar. The addition of a fourth lot along Bendigo Loop Road is probably the biggest change to the subdivision layout in terms of potential to increase landscape effects (And the change I'm least certain would be within scope, given the ONL notation).

The other two new lots outside the development zone (20 and 21) are both in a visually isolated basin, so are not considered likely to materially change the visual effects, albeit this area was not previously assessed for ecological values. The proposal to remove the offsetting areas on the Bendigo Station Developments Ltd land and incorporate different areas into land owned by the applicant within the Rural Resource Area (2) is broadly similar to measures proposed in the application as notified, and could reasonably be considered a reaction to the concerns raised in the s42A report. I do think that the amended offset plantings may warrant consideration by Transpower, given the Roxburgh – Twizel A line runs through one of the new proposed planting areas, that wasn't part of the initial proposal. Service provision remains, essentially, the same, with the change to the reticulated wastewater provision not considered material, other than the new wastewater disposal area not previously being assessed for ecological values, in particular.

Council will need to update the s42A report and Mr Harding's ecological peer review. As part of the amendments to the s42A report, Council would also seek comment from its three waters team regarding proposed changes to water and wastewater provisions (Particularly wastewater). I haven't fully read through Mr Baxter's updated landscape assessment, but I think I will be happy to continue to base my assessment on his evidence provided he has addressed the points I raised in my s42A report. If he hasn't, I would have to consider Council commissioning its own landscape expertise

In terms of timeframes, I haven't heard back from Mr Harding yet, and I understand Commissioner Rae would like to hold witness conferencing prior to a hearing, but my

gut instinct says early October is preferable (Late September at a push and if calendars align for conferencing). Can update when I hear back from Mike.

Panel's follow up questions 1 August 2024:

Please clarify three aspects:

1. Does the transferring of a small area (approximately 3,500m²) of Lot 2 DP 523873 into the subdivision involve land that was not part of the application site as notified, i.e. does this expand the area and scope of the application site?
2. Does the updated information include an assessment by the applicant as to the changes being within the scope of the application as notified?
1. What would be the specific matters that should in the officer's opinion be put to the ecologists for expert witness conferencing ahead of the hearing?

Response:

No activities (Including subdivision) were proposed on Lot 2 DP 523873 in the application as notified. Therefore, it does increase the area of the application site compared to what was notified. I note that the proposed offsetting plantings on this lot (Now no longer part of the application) were proposed after notification in response to submissions.

The AEE and memorandum of counsel provided by the applicant do not appear to consider whether the amended application is in scope. The AEE appears to have been drafted to stand on its own, without reference to the original application being required.

Matters to be considered at ecological witness conferencing could include the appropriateness of the proposed offsetting and enrichment plantings (Including land area, orientation and climate suitability etc., range of species proposed, timelines and methods for monitoring and facilitating their establishment) and the likely effectiveness of the proposed plantings to offset the effects of the removal of existing vegetation (Taking into consideration the area of planting, planting method, density of plantings, weeding arrangements etc.). I can also see the relative weighting and assessment of EIANZ criteria in the assessment remaining a point of contention that may benefit from being discussed. This would need to be refined depending on the matters raised in Mr Harding's review. If Mr Harding agrees with the applicant's experts on some of these points, I wouldn't see much benefit in those points being the subject of conferencing. His review might also raise additional points that may be worth discussing in conferencing.
