

CENTRAL OTAGO DISTRICT COUNCIL

TKO PROPERTIES – RC230179

MINUTE 5 OF THE HEARING PANEL

Introduction

1. The hearing of the TKO Properties Limited application stands adjourned.
2. This Minute addresses:
 - (a) Our determination of the status of statements of evidence from Ms Wardle and Ms Lucas; and
 - (b) The Applicant's written right of reply.

Status of Evidence

3. The Panel has determined that the statements from Ms Wardle, and from Ms Lucas, have not been prepared in accordance with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 ('the Code of Conduct'), and will accordingly be treated as lay statements.
 4. Firstly, Ms Wardle is a submitter in opposition to the application. Therefore, whilst her credentials as a botanist and drylands ecologist are not in doubt, it is not possible for us to consider that her statement can be impartial. We note that Ms Wardle tabled her statement as a 'submission' and did not make a case for it to be treated as expert evidence in any event. However counsel for submitter Department of Conservation asked us to treat Ms Wardle's statement as expert evidence, albeit with a lower weighting than might normally have been afforded to it.
 5. Secondly, in opening legal submissions from the Applicant, we were advised that Ms Lucas whilst purporting to give expert evidence in accordance with the Code of Conduct made no reference to or disclosure of the fact that she is the sister of Lillian Lucas and Helen Pledger (submitters in opposition to the proposal) and is also the owner of land at Tarras-Cromwell Road, opposite the site. Counsel noted the requirement in clause 9.2(c) of the Code of Conduct for experts to declare any interest they may have in the outcome of the proceedings.
 6. On questioning by the Panel Ms Lucas confirmed that she owns a 4 hectare property directly opposite the site, and further advised that she had discussed the application with her sisters who had submitted on the application. Ms Lucas in the ensuing discussion with the Panel did not consider there was a conflict, however the Panel is clear that her evidence cannot be considered as impartial. The Panel has no question as to Ms Lucas' credentials as an expert landscape witness. However we consider the circumstances in this case to be such that her evidence cannot be treated as expert evidence.
 7. The Panel will nevertheless consider the matters raised in these statements in our overall deliberations, and further note that at the hearing we posed several questions to the Applicant's representatives prompted by points made in those statements.
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Applicant's Right of Reply

8. At the conclusion of the hearing we invited the Applicant to make any verbal comments in response to matters raised by submitters and the Council officers, to be followed by a written reply. The Panel alerted counsel to some key matters we wished to be further addressed in the written reply, including the key aspects of the NPS-IB, and the relevant statutory documents including the Regional Policy Statements.
 9. We look forward to receiving that reply within 3 weeks, **i.e. Monday 16 December**.
 10. Mr O'Sullivan also tabled a plan showing what we understood him to say was an alternative plan for developing the site for non-residential activities, including for a vineyard, in the event that consent was not granted for the application before the Panel.
 11. Mr Brown had earlier produced a plan of what we also understand him to have said was for a controlled activity development of that part of the site within the Rocky Point Recreation Zone (the 'development area') into residential allotments.
 12. We understand these plans relate to the 'permitted baseline' discussion, which the Applicant indicated it would address further in the written right of reply.
 13. The Panel requests that, as part of the written reply, the Applicant also provides a statement of evidence from Mr Brown (which can be supported by a statement by Mr O'Sullivan as appropriate) to explain the plans referred to above, including an assessment of how the developments shown on those plans comply with the provisions of the District Plan.
 14. We note also that counsel for Department of Conservation provided, with the legal submissions in Appendix E, an assessment of each proposed allotment in terms of whether they are within the Development Area, within the Conservation Covenant, and against the relevant considerations of the RuRA(2) Zone. We invite the Applicant to also respond to that assessment.
 15. In addition to the matters we traversed verbally with the Applicant, we invite a response to the following points made by counsel for Department of Conservation, as follows:
 - (a) Some of the offsetting / compensation areas, and building sites, are situated on land with Conservation Covenant. This is a s104(1)(c) matter, and significant weight should be applied to this. The applicant will likely need to obtain the consent of the Minister of Conservation for planting and development in the covenant area and imposing conditions that require the consent of third parties may be ultra vires in the absence of that consent;
 - (b) The Applicant has not provided an assessment of any possible "alternative locations or methods" for undertaking an activity where the activity would result in any significant adverse effect on the environment. No alternatives have been presented that would avoid effects on s 6 matters; and
 - (c) The application contains insufficient information with respect to site survey data on all types of significant indigenous vegetation, and archaeological items, and from the submitter's evidence the extent and duration of work required in obtaining such data would not appear to be onerous.
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16. We are also interested in the Applicant's response to Mr Vincent's recommendation, delivered in his closing address, that the development be scaled down somewhat including the deletion of one of the 4 building allotments at the base of the hill on Bendigo Loop Road.

Further Information

17. The Panel will review the Applicant's right of reply and additional statements of evidence and will then determine:

(a) whether it is appropriate to seek comment from the submitters on the new evidence; and

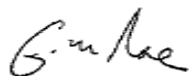
(b) whether we then have sufficient information to make our decision, including the need for any expert witness conferencing.

18. Any further directions will then be issued, prior to the Christmas break.

19. If there are any questions arising from this Minute, please direct those in the first instance to Ms Lines.

DATED this 25th day of November 2024

Signed by

A handwritten signature in black ink, appearing to read "GM Rae".

GM Rae
Chair of Hearing Panel