

BEFORE THE CENTRAL OTAGO DISTRICT COUNCIL

Under The Resource Management Act 1991

And

In the matter of an application by TKO Properties Limited for a residential development and subdivision at Rocky Point, Bendigo (RC230179)

Evidence of Elizabeth Williams

(Expert Evidence - Planning)

on behalf of the Director-General of Conservation *Tumuaki Ahurei*

Dated 11th November 2024

Department of Conservation Te Papa Atawhai

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Introduction

1. My full name is Elizabeth Moya Williams.
2. I have been asked by the Director-General of Conservation (“DG”) to provide expert planning evidence on the proposal by TKO Properties Limited for a residential development and subdivision at Rocky Point, Bendigo.

Qualifications and experience

3. I am employed by the Department of Conservation (DOC) in Dunedin as a Resource Management Planner. I have worked for DOC in this role since June 2022.
4. Prior to this I have over fifteen years of experience in resource management, including roles in both consenting and plan development. This includes four years as a planner at the Environment Agency (a national public body in England and Wales), a combined total of eleven years as a Resource Consents Officer at Christchurch City Council, Campbell River City Council (Canada) and Tasman District Council, and more recently two years as a Policy Planner at Dunedin City Council. I have experience in providing input on planning consents and Council plans from a national perspective, processing resource consents including notified/limited notified consents and Section 42A reporting, Section 42A reporting for a plan variation and involvement in plan appeals and Environment Court mediation.
5. I hold a Bachelor of Resource and Environmental Planning with Honours from Massey University.
6. I am a Full Member of the New Zealand Planning Institute.

Code of Conduct

7. Although this is a Council hearing, I confirm that I have read the code of conduct for expert witnesses as contained in clause 9 of the Environment Court's Practice Note 2023 ('the Code'). I have complied with the Code when preparing my written statement of evidence.

8. For the avoidance of doubt, in providing this evidence as an expert witness in accordance with the Code, I acknowledge that I have an overriding duty to impartially assist the Panel on matters within my area of expertise. The views expressed are my own expert views, and I do not speak on the DG's behalf.
9. The planning framework, data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow. This includes, where relevant:
 - a. why other alternative interpretations of the planning framework and / or data are not supported;
 - b. any qualification if my evidence may be incomplete or inaccurate without such qualification;
 - c. any knowledge gaps and the potential implication of the knowledge gap;
 - d. if my opinion is not firm or concluded because of insufficient information or data or for any other reason;
 - e. an assessment of the level of confidence and the likelihood of any outcomes specified in my conclusion.
10. Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

11. I have been asked to provide expert planning evidence in relation to the DG's submission on the proposal by TKO Properties Limited for a residential development and subdivision at Rocky Point, Bendigo.
12. My evidence is divided into the following parts:
 - a. Application Summary
 - b. Activity Status

- c. The DG's submission
- d. Statutory Planning Assessment
- e. Assessment of Effects
- f. Other Matters: Conservation Covenant
- g. Conditions of Consent

Material Considered

- 13. In preparing my evidence, I have read and relied on the evidence of Mr Richard Ewans (Technical Advisor Ecology) and Dr Matt Schmidt (Senior Heritage Advisor).
- 14. I have considered the evidence of the following experts on behalf of TKO Properties Limited:
 - a. Statement of Evidence of Jeffrey Brown (Planning),
 - b. Statement of Evidence of Shanon Garden (Land Management),
 - c. Statement of Evidence of Simon Beale (Ecology),
 - d. Statement of Evidence of Samantha King (Lizard Management),
 - e. Statement of Evidence of Andrew Wells (Biodiversity Offsetting),
 - f. Statement of Evidence of Patrick Baxter (Landscape management) and Supplementary Statement.
 - g. Statement of Evidence of James Cowan (Fire Risk Management) & Supplementary Statement,
 - h. Statement of Evidence of Chris Jennings (Archaeological & Heritage).
- 15. I have considered the reports provided on behalf of Central Otago District Council:
 - a. The Section 42A report by Adam Vincent dated 28 March 2024 and Supplementary s42A report dated 27 September 2024.
 - b. Mike Harding's peer review of Biodiversity Offsetting proposed.

16. I have read and considered the following documents:
 - a. The resource consent application (dated 15 June 2023) and amended application (dated 26 July 2024).
 - b. The Assessment of Environmental Effects and attached technical reports including the updated Archaeological Assessment, Updated Ecological Impact Assessment, Ecological Enhancement and Monitoring Plan, Further Site Survey and Ecological Mapping, Memorandum regarding Lizard Management, Rocky Point Proposed Review of DOC Covenant, Vegetation Succession and climax communities reporting, Fire Risk Assessment, Saline/Sodic soils identification and location.
17. I have undertaken a site visit on 14 October 2024.

Executive Summary

18. The Director-General lodged a submission on the proposed application on 12 October 2023, which opposed the application with concerns relating to indigenous biodiversity, heritage, lizard management and inconsistencies with higher order documents and the provisions of the Central Otago District Plan.
19. Council is required to address indigenous biodiversity and heritage as part of the s104 assessment in accordance with Part 2, Section 6(c) and (f) of the Act which requires the protection of significant indigenous vegetation and significant habitats of indigenous fauna, and that heritage values are managed. As described in the evidence provided by Mr Ewans and Dr Schmidt the site contains significant indigenous vegetation and significant heritage values. The proposed application will result in significant adverse effects on indigenous vegetation and historic heritage.
20. Mr Ewans addresses the gaps in information relating to the baseline data for the site on Threatened and At-Risk plants present at the site. Without this data, it is not possible to determine the full effects of the proposed

development or give adequate consideration of the effects management regime, including biodiversity offsetting and compensation.

21. Given the above uncertainty around the adequacy of the mitigation and offsetting proposed, it is my recommendation that the application be declined under s104(6) on the basis that there is not adequate information submitted with the application to make a determination on the application. I consider that without this information, the adverse effects on significant indigenous biodiversity and heritage should be avoided.
22. However, should the Commissioner consider that the information submitted is adequate, I set out in this evidence that the proposed development fails the s104D gateway test. Without adequate biodiversity offsetting or compensation or avoidance of effects, it is considered that the adverse effects on significant indigenous vegetation and heritage will be more than minor. Further, it is considered that the proposed activity will be contrary to the objectives and policies of the Central Otago District Plan in regard to avoiding adverse effects on significant indigenous vegetation and historic heritage values.
23. It is my view that the Conservation Covenant is a relevant consideration to this application. The land to which the application relates is part of land that was freeholded as part of the tenure review process. The Central Otago District Plan identifies the tenure review process as an alternative statutory means of protecting significant indigenous vegetation. Further, the proposal to remove the Conservation Covenant and replace it with a private covenant cannot be considered as part of this application as it involves the approval of a third party (Minister of Conservation) through a separate statutory process. This also brings into question the ability for the proposed mitigation and biodiversity offsetting within the Conservation Covenant area to be carried out as the objectives and conditions of the covenant may not be met.

Application Summary

24. TKO Properties Limited ('the applicant'), seeks resource consent to subdivide the site to create 30 new allotments, the majority of which are to be used for residential purposes and travellers' accommodation. Commercial and communal residential activities are also proposed for Lots 24 and 30. A balance lot is proposed to comprise a common land area which will remain undeveloped. The application also includes the construction of a new accessway, associated earthworks, infrastructure servicing, indigenous vegetation clearance and proposed new plantings.
25. The application, as described above, is the amended proposal submitted on 29 July and 4 September 2024 of which the S42A supplementary report details the changes from the original application¹. The amended proposal is further described in detail in Section 1.4 of the amended Brown and Company assessment of effects.
26. As noted in the S42A supplementary report, the Commissioner appointed to consider the application has concluded that the changes requested to date are in scope with the application as originally notified.

Activity Status

27. Mr Brown² has identified the various rules triggered in the Central Otago District Plan (CODP). This has been adopted by the S42A author. I agree with these assessments and identification of the applicable rules and their respective conclusions that, overall, the proposal is to be bundled for assessment as a **Non-complying Activity**³.

¹ S42A Supplementary Report, page 1, Background

² Section 2 of the Amended AEE by Brown & Company, pages 24-45

³ S42A Supplementary Report, page 2, Reasons for Application and AEE by Brown & Company page 45
Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

The DG's submission

28. The DG's submission opposed the application as notified and noted concerns in relation to:
- a. The adverse effects of the proposed activity and clearance of indigenous vegetation within a site that contains significant indigenous biodiversity values.
 - b. Adverse effects on lizards and lizard habitat including the At-Risk – declining Kawarau gecko.
 - c. Inadequate information provided within the application in regard to the identification of Threatened and At-Risk species present and affected by the proposed activity.
 - d. Adverse effects on heritage sites with the proposed removal of two heritage sites and part of another historic site. Some of which are located within the Conservation Covenant area.
 - e. That the application is contrary to the provisions of the Central Otago District Plan (CODP), and relevant higher order documents, and does not accord with section 6(c) or section 6(f) of the Resource Management Act in relation to the protection of significant indigenous vegetation and significant habitats of indigenous fauna or the protection of historic heritage from inappropriate subdivision, use and development.
29. These concerns raised within the submission are addressed in more detail within my evidence.

Statutory Planning Assessment

30. Section 104 (1) of the Resource Management Act (RMA) sets out the matters to which a consent authority must have regard, subject to Part 2 of the Act, when considering an application for resource consent. These are identified by Mr Brown and the S42A author. Rather than go through

each relevant planning instrument and provision individually, I have focussed on areas of disagreement with the S42A author and the applicant, noting where I have additional comments, or where I wish to highlight an important point. Where I agree with the S42A author's recommendations, I have not provided additional evidence on that point.

31. For a non-complying activity, the Council may grant or refuse consent under section 104B. Under Section 104D, Council must refuse a resource consent application unless it is satisfied that the proposal will either have minor effects on the environment, or the proposal is considered not to be contrary to the objectives and policies of the District Plan. If either of these gateway tests are met, it can exercise its discretion under Section 104B.
32. I note that the Panel may also decline consent on the grounds that it has inadequate information to determine the Application under Section 104(6). This is discussed further in my evidence in the Assessment of Effects section below.

Key Statutory Provisions and Higher Order Documents

33. In this section of my evidence, I identify the relevant statutory planning documents which support the DG's submission and my evidence, and the relevant policy guidance provided by them for making a decision on this application.

Section 6 of the Resource Management Act - Matters of National Importance

34. I agree with the matters set out in the S42A supplementary report that Section 6(c) and Section 6(f) are relevant in terms of recognising and providing for the protection of areas of significant indigenous vegetation and significant habitats for indigenous fauna and the protection of historic heritage from inappropriate subdivision, use and development as matters of national importance.
35. In my opinion, these sections are relevant to the assessment of the application given that all of the ecological evidence submitted on the

application agrees that the site would meet the significance criteria of the relevant statutory documents (NPS-IB and the Operative and Proposed Otago Regional Policy Statement) and is considered to contain very high ecological values⁴. The application site therefore contains significant indigenous vegetation and under the provisions of the RMA, section 6(c) *to recognise and provide for the protection* of these areas applies.

36. Further due to the presence of several archaeological sites associated with the past gold mining activities within the application site, that are important to Otago's historic heritage, section 6(f) is also relevant. This requires the protection of historic heritage from inappropriate subdivision, use and development. The proposed application will result in the modification or destruction of two sites G41/771 and G41/773. In his evidence, Dr Schmidt identifies the water races and reservoirs at the site as regionally significant historic features, related to the early 1860s alluvial gold rush to Rocky Point and Bendigo.

National Policy Statement for Indigenous Biodiversity (NPS-IB)

37. Plans are required to give effect to national policy statements. Plans existing at the time a national policy statement is gazetted have to be reviewed and updated as soon as practicable or in accordance with the time frames set out in the national policy statement to ensure that the plan continues to give effect to national direction (RMA, s55(2D)).
38. The exercise of aligning the CODP to the NPS-IB has not occurred yet. Regardless, decision makers are required to have regard to the provisions of a National Policy Statement in accordance with s104(1)(b)(iii).
39. The S42A Officers original report⁵ noted that Clause 3.8(6) of the NPS-IB may apply if Council becomes aware of a potentially significant natural area and that, in this case, the application should be suspended or declined to allow for a further assessment to be undertaken to determine

⁴ Terrestrial Ecology Impact Assessment, Section 8 and Mr Beale's & Mr Ewan's Statement of Evidence

⁵ S42A report original, para 7.41, page 41

Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

whether it would be a Significant Natural Area as defined in the NPS-IB. Since the date of the original S42A report, the Resource Management (Freshwater and Other Matters) Amendment Act 2024 has been enacted and section 78 suspends the provisions of the NPS-IB 2023 mapping requirements for a 3-year period. This suspension also applies to Clause 3.8(6) of the NPS-IB.

40. However, the amendment does not affect Council's existing obligations under the RMA, which as noted above, for significant indigenous biodiversity, includes the requirement to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. This means that the Council could still undertake a plan change to map this area and include it within the CODP Schedule *19.6.1 Areas of Significant Vegetation* under the existing provisions of the RMA.
41. It is also relevant to note that Section 78(3) of the Amendment Act confirms that other than delaying the implementation requirement to map SNAs for three years, Clause 4.1(1) which requires a local authority to give effect to the NPS-IB as soon as reasonably practicable continues to apply in relation to the other provisions of the NPS-IB.
42. On this basis, I consider it appropriate to identify the provisions in the NPS-IB that are of relevance to this proposal. In my opinion the following objectives, policies and clauses are relevant:

2.1 Objective (a): *to maintain indigenous biodiversity across Aotearoa New Zealand so there is at least no overall loss in indigenous biodiversity after the commencement date; and*

(b) to achieve this: ...

(iii) by protecting and restoring indigenous biodiversity as necessary to achieve overall maintenance of indigenous biodiversity

Policy 3: *A precautionary approach is adopted when considering adverse effects on indigenous biodiversity*

Clause 3.7: *Local Authorities must adopt a precautionary approach toward proposed activities where...(a)..the effects are uncertain, unknown or little understood; but (b) those effects could cause significant or irreversible damage to indigenous biodiversity.*

Policy 8: *The importance of maintaining indigenous biodiversity outside SNAs is recognised and provided for and*

Clause 3.16 Which requires that significant adverse effects outside of SNAs are managed by applying the effects management hierarchy. The effects management hierarchy is defined within the NPS-IB⁶ and the principles associated with Biodiversity offsetting and compensation are set out in Appendix 3 and 4 of the NPS-IB.

43. I consider that the proposal is not consistent with the policy direction of the NPS-IB in regard to the avoidance of significant effects, the application of the effects management hierarchy, and the appropriate application of biodiversity offsetting and compensation. I address these matters in detail below.

Partially Operative and Proposed Regional Otago Policy Statements

44. I agree with the identification of the relevant partially Operative and Proposed Regional Policy Statement provisions provided within the S42A original report and supplementary report.
45. It is relevant to note that the RMA does not distinguish between the weight that should be afforded to the objectives and policies of an operative plan as compared to those in a proposed plan, and the requirements of s104 of the RMA of having 'regard to' various matters allows for the exercise of discretion. Relevant factors to the exercise of discretion of what weight to apply to these plans includes the extent to which the proposed measure has been exposed to independent decision making and the extent to which a new measure may represent a

⁶ NPS-IB, Part I, Clause 1.6 Interpretation, effects management hierarchy
Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

significant policy shift where any new provisions accord with Part 2 of the RMA⁷.

46. On this basis, I note that the proposed Otago Regional Policy Statement 2021 (pORPS 2021) has been through a hearings process and decisions were made on the pORPS 2021 in March 2024. Further I note that at the time of the hearings on the non-freshwater parts of the pORPS, material was circulated by ORC and submitters to address the implications of the NPS-IB for the non-freshwater process. The Panel recommended amendments to the pORPS where they had scope through submissions to be consistent with the NPS-IB. I therefore consider that the pORPS aligns more closely with the national direction of the NPS-IB and therefore more weight should be applied to it when considering the matters for this application relating to indigenous biodiversity. In terms of the decision-making process, this has been exposed to independent decision making with Council making decisions on recommendations for the pORPS on 27 March 2024.
47. Of particular relevance to this application is ECO-O1 *Otago's indigenous biodiversity is healthy and thriving and any overall decline in condition, quantity and diversity is halted* and ECO-P6 *Maintaining indigenous biodiversity* which recommends applying the effects management hierarchy to manage significant effects on indigenous biodiversity. The Methods listed within the pORPS also specify the information required to demonstrate biodiversity offsetting and compensation. This matter will be discussed further in my evidence below.
48. I agree that the S42A Report has identified the relevant policies and objectives that relate to historic heritage under both the partially operative and proposed ORPS. Of note, both Policies 5.2.3 of the partially operative ORPS and Policy HCV-HH-P5 pORPS seek to avoid adverse effects on areas or places that have been identified as having

⁷ *Gutherie v Queenstown Lakes District Council (2021) NZENVC 79* and *Keystone Ridge Ltd v Auckland CC* and *Keystone Ridge Ltd v Auckland CC* 3 April 2001 (NZHC)

special or regionally significant historic heritage, and to avoid, remedy or mitigate adverse effects on other areas or places with historic heritage values or qualities.

Central Otago District Plan

49. I agree with the Council's S42A report and list of relevant objectives and policies from the operative plan where it relates to my evidence. In particular:
- a. Objective 4.3.8 is *To recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna and*
 - b. Policy 4.4.7 is *To protect areas of.. (a) significant indigenous vegetation.*
 - c. Policy 4.4.10 is *To ensure that the subdivision and use of land in the Rural Resource Area avoids, remedies or mitigates adverse effects on:..(f) the ecological values of significant indigenous vegetation..*
50. In relation to heritage:
- a. Objective 14.3.4 is *To recognise and provide appropriate protection for the values associated with the District's archaeological sites and*
 - b. Policy 14.4.6 is *To provide for the conservation of values associated with the District's archaeological sites by..(b) ensuring that works carried out within or near such sites recognise and provide for their values where appropriate,..(c) requiring an assessment of the values associated with any such sites as part of any subdivision or land use consent in circumstances where a significant adverse effect may result, and requiring protection where such values are considered to be significant.*

c. Policy 4.4.10 also seeks to ensure that subdivision and use of land avoids, remedies and mitigates adverse effects on *(g) the heritage and cultural values of the District.*

51. The S42A supplementary report notes that there are exemptions within the plan rules for the application site (including from indigenous vegetation clearance rule 4.7.6KA) because the site was land that has been freeholded under the Crown Pastoral Lease Act. In Section 2.3.4 of the District Plan, it is noted that there is approximately 40,000 hectares of land within the district that is administered by the Department of Conservation for conservation purposes. In particular, the Plan notes that *the majority of this land is elevated and is being protected through the tenure review process of pastoral leases.*
52. Although I have not been able to get a copy of the original Section 32 analysis for the Rural Resources Area to confirm the reasons for these exemptions in the rules further, the methods and reasons set out in the plan for the Rural Resources Area chapter (4.5.2.iv) provide guidance.
53. These state that with respect to areas of significant indigenous vegetation and habitats of indigenous fauna, the Council shall...*(b) encourage and advocate to central government that areas of significance be appropriately protected through the tenure review process and (d) that a plan change may be required to review the extent to which significant areas are protected by being included in the conservation estate or **made subject to restrictions to protect natural values.*** In the reasons for these methods⁸, it notes that *the tenure review process is considered the most practical, appropriate and cost-effective method of identifying and protecting areas of significant indigenous vegetation and habitats of indigenous fauna.*

⁸ Central Otago District Plan, Rural Resource Area, Section 4.5.2.iv Reasons
Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

54. It is my understanding that there has been no plan review undertaken to identify the extent to which significant areas are being protected as a result of the outcomes of the tenure review process.
55. This is relevant, as the plan contains these exemptions to the rules (i.e. for indigenous vegetation clearance) to properties freeholded under tenure review because it deems the tenure review process as an *alternative statutory means* to identify and address on a site-specific basis the values which are the subject of these rules⁹. It was anticipated that the tenure review process would greatly increase the amount of land held in the conservation estate and the Plan notes that approach might, to some extent, relieve Council of some of its responsibilities under sections 6 and 7 of the RMA¹⁰.
56. Schedule 19.6.3 of the Plan (the 'Concept Plan') sets out areas of land that were freeholded under tenure review and includes Bendigo to which this application site is within. The majority of the other sites listed in the schedule have conservation covenants on them as well (refer to table in Appendix 3)¹¹. This is relevant to my evidence as discussed further below when considering the Conservation Covenant that applies to this site and protection of significant indigenous biodiversity.
57. I am also not clear on the background of the Concept Plan that applies to the site as set out in Schedule 19.16. There is no detail provided within the current District Plan. The S42A author notes¹² that these provisions were included in the current plan from the previous Vincent County Scheme and was intended to provide for a certain type of development within a *Rocky Point Conservation Zone*. This is likely to have pre-dated the outcomes of the tenure review process and certainly the Concept Plan does not include the Conservation Covenant area within the development area. Further, it is relevant to note that the Vincent County

⁹ Central Otago District Plan, Rural Resource Area, Standards 4.7.6.L Outstanding natural landscape - reasons

¹⁰ Central Otago District Plan, Section 4.5.6 Rules.

¹¹ The areas that have conservation covenants include Mount Pisa, LocharBurn, Queesberry Ridges & Hills, Rochlands & Earnsclough Station,

¹² S42A Report, original, Section 1, para 1.2, page 1

Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

was disestablished in 1989 and the provisions in the Scheme are therefore likely to have pre-dated the Resource Management Act.

58. If in accordance with the concept plan, a development could occur through a controlled activity assessment. It is also relevant to note that there are also other permitted activities within the Rural Resource Area which would result in indigenous vegetation clearance due to the site being part of the tenure review. It is my opinion that these provisions no longer accord with Part 2 of the RMA, the NPS-IB and the objectives and policies of the CODP. As noted above, it is my understanding that this particular provision in the Plan and the indigenous biodiversity rules have not been revised through a Plan review since the plan was established in 1998.

Assessment of Effects

Permitted Baseline

59. Under Section 104(2) of the RMA, the Council may disregard an adverse effect of an activity on the environment if the plan permits an activity with that effect. The S42A author disagrees with Mr Brown's assessment of the permitted baseline given that there is no permitted subdivision, residential activities or travellers' accommodation activities within the Rural Resource Area (2). He also notes that any earthworks are directly associated with the proposed activity that would be unlikely to occur in absence of the proposed works, so their effects should not be considered as permitted activities.
60. In his statement of evidence, Mr Brown¹³ considers a number of permitted activities that could occur within the Rural Resource Area without the need for resource consent and notes that.. *Accordingly, under the District Plan there is no limit on indigenous vegetation clearance and earthworks that could occur on the site in association with permitted activities of farming, including grazing, horticulture and*

¹³ Statement of Evidence, Planning, J Brown, Section 4 page 15
Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

viticulture. He notes that this is a relevant consideration in relation to the potential ecological effects of permitted activities.

61. I note that the application of the permitted baseline is at the discretion of the decision-maker and may or may not be applied as part of the assessment. In my opinion, the baseline is not appropriate in this case as the application of the baseline would be inconsistent with Part 2 of the RMA and inconsistent with the objectives and policies of the Plan and NPS-IB. As noted above, the site is identified as containing significant indigenous vegetation, including Threatened and At-Risk species, and the directive under Part 2, Section 6(c) of the RMA is to recognise and provide for the protection of significant indigenous biodiversity. The District Plan also requires this under Objective 4.3.8 and Policy 4.4.7 of the District Plan.
62. It is also relevant to note that for the part of the development that lies within the covenant area, there are uncertainties as to whether a permitted activity could occur, given the objectives and conditions of the conservation covenant and direction of the Plan which considers the outcomes of the tenure review to be an alternative statutory mechanism to protect significant indigenous biodiversity. In terms of grazing, Mr Ewans¹⁴ points out that a certain amount of herbivory and disturbance is likely to benefit at least 'spring annuals' by reducing exotic grass competition and increasing available habitat. Certainly, this is reinforced by the Conservation Covenant which allows for controlled grazing (refer to Appendix 2, clause 1 of the covenant).

The Receiving Environment

63. The receiving environment is the environment upon which a proposed activity might have effects. The S42A author¹⁵ has set out what the existing and reasonably foreseeable future environment is made up of. I agree with the description for the existing environment. However, the S42A author notes that the reasonably foreseeable receiving

¹⁴ Mr Ewans Expert Evidence, page 17, para 80

¹⁵ S42A Report (original), Section 6.5, page 8

Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

environment comprises a mixture of residential and travellers' accommodation within the development zone as identified in Schedule 19.16 of the Plan (the Concept Plan). I disagree with this assessment, given that this is not an activity that is permitted by the District Plan and requires resource consent as a controlled activity. It is too speculative to determine what the environment might be by implementing future resource consent applications and as far as I am aware there are no unimplemented consents that have been granted for such a development at the site.

Ecological and Biodiversity Effects

Significant Indigenous Biodiversity

64. It is noted that Mr Beale, Mr Ewans and Mr Harding all agree that the proposal will result in significant effects on extant habitats of raoulia cushionfield within the proposed lots. In his evidence, Mr Ewans sets out the importance of indigenous vegetation within Central Otago drylands and that the *remaining undeveloped lowland areas in Central Otago are nationally important for indigenous biodiversity because of the remaining drylands botanical values*¹⁶. I agree with the S42A author's assessment that based on the ecological evidence, the effects of the development would result in the modification and removal of significant indigenous vegetation and fragmentation of the ecosystem through the construction of infrastructure and buildings on the proposed lots.
65. I note that the revised application proposes a mitigation package including avoidance, remediation and mitigation measures including:
- a. avoidance of development within saline/sodic soils;
 - b. avoidance of on-site quarrying of rock for road metal
 - c. translocation of Threatened and At-Risk plants;
 - d. alteration of the layout and reduced building platforms to avoid unnecessary removal of Kanuka;

¹⁶ Mr Ewan's evidence, para 65, page 13.
Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

- e. development design that minimises where practicable the development footprint. Management of land outside the curtilage areas through a Consent Notice to minimise effects on biodiversity values.
 - f. formal protection of the balance land and area within private titles surrounding the curtilage area (approx. 87% of the land including the area covered by the Conservation Covenant) as a Landscape and Vegetation Protection Area (LVP);
 - g. creation of schist rock habitats and additional specific measures under the lizard management;
 - h. stacking of woody vegetation to create additional habitat for invertebrates;
 - i. ongoing pest control and restrictions on the use of herbicides and pesticides as well as a proposed ban on cats;
 - j. and biodiversity offset measures to address the residual adverse effects of the 'unavoidable' loss and fragmentation of c.4ha of indigenous cushionfield and c1.5ha of indigenous kanuka shrubland.
66. As noted in Mr Ewans' evidence¹⁷, the proposal does not avoid the most ecologically important areas which support populations of Threatened and At-Risk plant species. The application of the effects management hierarchy,¹⁸ as set out in the NPS-IB and required under (ECO-P6) of the pORPS, requires that *adverse effects are avoided where practicable...* The activity is not locationally constrained and there is no fundamental need to place the subdivision infrastructure and lots where they are currently proposed. The applicant does not provide information on whether an alternative layout for the development could be achieved to avoid this area of the site (particularly as noted in Mr Ewans' evidence

¹⁷ Expert Evidence, Mr Ewans, para 79, page 17.

¹⁸ NPS-IB, Interpretation 1.6 and clause 3.16

Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

within the conservation covenant area and within 75 metres of the conservation covenant boundary).

67. The S42A officer¹⁹ notes that the bulk of the cushionfield habitat is located within the development zone as identified in the District Plan, Schedule 19.16. Whilst I accept that the Plan rules currently anticipate a certain level of development within this area through a controlled activity status, as noted above, this does not accord with Part 2 of the RMA, the higher order documents which also apply, or the Objectives and Policies of the Plan requiring the protection of areas of significance through the avoidance of significant adverse effects. It is also relevant to note that the controlled activity matters (4.7.2.iii) within the District Plan require the assessment of the effects of development on... *areas of significant indigenous vegetation* as a matter of control. This would require an assessment in regard to the effects of closer development on the significant indigenous vegetation on this site.
68. Based on the advice of Mr Ewans, I consider that the remediation proposed to relocate some of the Threatened and At-Risk plant species is risky and likely to result in low survival rates. Further, he notes that it would not be possible to relocate all of the actual current known Threatened and At Risk plants on the site and so their destruction would remain an unmitigated adverse effect²⁰.

Biodiversity Offsetting

69. As described in the application and Mr Beale's evidence²¹ biodiversity offsetting is proposed to address more than minor residual adverse effects that cannot be avoided, minimised, or remedied. The applicants are proposing to undertake offset plantings at four sites in Rocky Point beyond the development area and at three sites in the adjacent Bendigo Hills Estate. The offset plantings, as described in the Statements of Evidence of Mr Beale and Mr Wells will represent the forest and shrub species representing the pre-settlement climax communities at Rocky

¹⁹ S42A original report, page 20 para 6.35

²⁰ Mr Ewan's, page 17, para 85

²¹ Mr Brown Statement of Evidence, page 17, para 17

Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

Point. Mr Wells has included a table within his evidence to demonstrate how the proposed offsetting meets the principles for Biodiversity Offsetting in Appendix 3 of the NPS-IB.

70. Mr Ewans notes that best practice offsetting is 'like for like' and this is set out in the NPS-IB, Appendix 3. An example provided in the NPS-IB Principles where offsetting is not appropriate is where irreplaceable or vulnerable indigenous biodiversity is affected. Mr Ewans confirms that the principle of irreplaceability would not be met because the regionally important populations of Threatened and At Risk 'spring annuals' are irreplaceable²².
71. Although Mr Ewans agrees that the long-term trend at the development area and property could be towards woody vegetation (possibly in 50 to 100 years), he considers that this does not mean offsetting using woody vegetation is an appropriate mitigation for the loss of indigenous cushionfield.
72. I also note that the offset planting sites proposed are within a Conservation Covenant area (refer to Appendix 1). This new planting requires approval from the Minister of Conservation under a separate statutory process. Therefore, if consent was approved, a condition for the biodiversity offsetting is unlikely to be enforceable given that it relies on agreement from a third party.
73. Based on the ecological advice of Mr Harding and Mr Ewans, I consider that the proposed offsetting would not meet the NPS-IB principles. Under the effects management hierarchy biodiversity compensation is then considered. In the case of biodiversity compensation, Mr Ewans considers that the proposal would not meet the principles set out in Appendix 4, and in particular, Principle 2, given the irreplaceability or vulnerability of the indigenous biodiversity that is affected. In accordance with the effects management hierarchy, where biodiversity compensation is not appropriate it states that the activity itself should be avoided.

²² Mr Ewans Statement of Evidence, para 93, page 19
Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

Lizard Management Plan

74. I note that the DG's submission raised the potential adverse effects of the proposed activity on lizards as a concern. However, I note that the Statement of Evidence of Samantha King includes a draft Lizard Management Plan. Department of Conservation, Technical Advisor (Ecology), Juzah Zammit-Ross has reviewed this plan and considers that the management plan appropriately addresses how the effects of the development will be avoided, remedied, mitigated and compensated. Based on this advice, I consider that any adverse effects of the development on indigenous lizards at the site are sufficiently addressed by the measures proposed within the proposed Lizard Management Plan. I recommend that, if approved, conditions of consent are included to ensure that the management plan is given effect to and monitored as part of the development. I also support the S42A author's recommendation that a 'no cats' covenant in favour of the Council is required to help reduce the risk of predation on lizards.

Information gaps in the baseline studies for threatened and at-risk flora

75. I note for completeness, that s104(6) of the RMA provides the discretion to decline an application for a resource consent where there is inadequate information to make a determination. Mr Ewans' evidence outlines that there are gaps in information in the Ecological Impact Assessment (EIA) in terms of the indigenous flora (Threatened and At Risk plant species) recorded on the property and within the development areas²³. Mr Harding's peer review report and Ms Wardle's submission²⁴ also suggest that there is a high likelihood that indigenous species are more numerous and diverse than described in the EIA. Mr Beale notes in his evidence that since receipt of the peer review and submissions, he has undertaken further investigations to address these concerns.

²³ Mr Ewan's Expert Evidence, page 8 paras 39-47 and page 11-12 paras 51-59

²⁴ Review of Proposed Biodiversity Offsetting/Compensation dated 25 March 2024, Section 4, page 4-6 and Submission from Kate Wardle, dated 12/10/23

Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

However, based on the surveys undertaken to date, Mr Beale does not consider a further spring-summer season of sampling is warranted²⁵.

76. Mr Ewans considers that the EIA underestimates the amount of 'spring annuals' on the property and within the development area. Mr Ewans further notes that *in order to assess the adequacy of mitigation, good baseline data is required* and that in this instance, the mitigation package cannot be relied upon as the ecological values are significantly under reported. Mr Ewans recommends that a comprehensive survey of the areas impacted by the proposal is undertaken.
77. Based on the advice of Mr Ewans and Mr Harding, and the submission of Ms Wardle, around possible gaps in the baseline data collected for the site on Threatened and At-Risk flora, and the subsequent uncertainty around the ability to adequately provide mitigation and offsetting actions to address adverse effects based on this information, I consider that there are grounds for the application to be declined under s104(6). As noted above, this is in line with the NPS-IB which requires that a precautionary approach (Clause 3.7) is adopted where the effects on indigenous biodiversity (in this case Threatened and At Risk flora) are uncertain but those effects could cause significant or irreversible damage.
78. Alternatively, I suggest that the hearing could appropriately be adjourned while further baseline information is gathered as considered necessary by Mr Ewans, Mr Harding and Ms Wardle.

Heritage Effects

79. The application is supported by an archaeological assessment undertaken by Mr Jennings. This assessment identified four sites within the application site - being G41/771 (earth bank of a goldmining reservoir), G41/772 (part of a stone riveted water race), G41/773 (earth bank of a goldmining reservoir), and G41/774 (gold sluicing's and tailings). Of these four sites, G41/771 and G41/773 are likely to be

²⁵ Mr Beale's Statement of Evidence, page 25-26
Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

impacted by the subdivision roading and the building platform proposed within proposed Lot 3. It is relevant to note that G41/771 and G41/772 are also located within the Conservation Covenant area.

80. In his evidence, Mr Jennings²⁶ considers that the earth bank remnant for site G41/771 is in a poor condition and degrading. He recommends that the site is preserved “by record”. Based on that assessment, the S42A author considers that the proposed development is unlikely to have significant adverse effects, but further notes that in light of the submission from the Department of Conservation, he does not consider the measures proposed by Mr Jennings to be adequate to address the effects on archaeological values. Further, the S42A author states that the archaeological authority process to be the appropriate method of managing any residual effects²⁷.
81. In his statement of evidence, Dr Schmidt²⁸ sets out that the archaeological assessment does not provide an accurate recording of the sites identified and notes that there were further sites identified through a site visit. He clarifies that the archaeological features identified on the property are related to the gold mining activities that took place at the site in the 19th Century.
82. Dr Schmidt also notes that given the age of these sites and the fact that they are all related to a wider gold mining water control system, they are in good condition. In Dr Schmidt’s opinion, the archaeological heritage on the property is regionally significant. Dr Schmidt notes²⁹ examples of where over the years gold mining reservoirs and related water races in the Clutha Valley have been progressively destroyed predominantly through ploughing, dairy conversion and viticulture. This is important to note, as any remaining gold mining reservoirs contribute significantly to the history of the 19th century mining for the valley and Bendigo.
83. As noted above, Section 6(f) requires the protection of historic heritage (including archaeological sites) from inappropriate subdivision, use and

²⁶ Mr Jennings’s page 9, para 33-36

²⁷ S42A Original Report, page 31, para 6.86

²⁸ Expert Evidence of Dr Schmidt, page 9, paras 36

²⁹ Expert Evidence of Dr Schmidt, page 9-11, para 39-49

Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

development as matters of national importance. Similarly, under the Operative ORPS and pORPS the relevant objective and policy seeks to avoid adverse effects on areas or places that have been identified as having special or regional significance of historic heritage and to avoid, remedy or mitigate adverse effects on other areas or places with historic heritage values or qualities.

84. The CODP Policy 4.4.10(g) also requires that subdivision and land use avoids, remedies or mitigates adverse effects on the heritage values of the District. This requires the Council, as the decision maker, to manage adverse effects on the heritage values of the District as a result of subdivision and land use.
85. As explained in Dr Schmidt's evidence, these sites are considered to be significant regional heritage and he recommends that the sites, in particular G41/771 are avoided by the development. Dr Schmidt suggested that the reservoir sites could be made features of the development and could be planted with shallow-rooted vegetation. Mr Jennings, in contrast, considers that as these are in such a 'deteriorated' state, additional management would be required if retained³⁰. It is relevant to note that there is no other explanation as to why the archaeological site cannot be avoided through site design and layout.
86. Based on the evidence from Dr Schmidt, I consider that the proposal is inconsistent with Part 2 of the Act, and the objectives and policies of the ORPS (operative and proposed) and the CODP which seeks to recognise and provide appropriate protection for the values associated with the district's archaeological sites. On this basis, I consider that the proposed development should avoid the archaeological sites (including G41/771) or be declined.

³⁰Statement of Evidence of Mr Jennings, page 7, para 27
Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

Other Matters

Conservation Covenant

87. As noted in the S42A report, a further relevant consideration under section 104(1)(c) is that part of the site (Refer to Appendix 1), including part of the District Plan Development Zone, is covered by a Conservation Covenant in favour of the Minister of Conservation. As set out in the Covenant, Section C, (refer to a full copy in Appendix 2,) the Landowners and the Minister have agreed that the land be **managed** with the following **conservation objectives** in mind including:
- a. ***Protecting and enhancing the natural character of the land with particular regard to the natural functioning of ecosystems and to the native flora and fauna in their diverse communities and dynamic inter-relationships with their earth substrate and water courses and the atmosphere;***
 - b. ***Protecting the land as an area representative of a significant part of the ecological character of the Dunstan Ecological District...***
 - c. ***Maintaining the historic values of the land as referred to in the 'The rich fields of Bendigo' by Jill Hammel February 1993.***
88. Under the covenant conditions, the landowners are able to graze the land to an extent consistent, in the opinion of the Minister, with the objectives of the Covenant, and are required to maintain all fences and gates in a good stockproof condition to facilitate proper grazing control. There is also a requirement for the landowners, as far as practicable, to manage weeds and pests (rabbits and vermin) and to keep the land free from rubbish.
89. The landowners are required to obtain permission from the Minister for activities that might prevent the objectives being met, such as erecting fencing, any cultivation earthworks or other soil disturbance, or tree planting on the land near historic sites, as well as for any prospecting or mining for minerals on or under the land. These conditions apply to all sites listed within the First Schedule, including the original title listed as

Sec 2 SO24641 which includes part of the application site. An additional condition specific to this site as listed in Schedule 2 (3(3)) was also that the landowners would require the Minister's approval to remove woody vegetation on the land.

90. As noted above, the Conservation Covenant is a relevant consideration, particularly given that the District Plan saw conservation covenants as an alternative statutory mechanism to protect significant indigenous biodiversity in lieu of establishing plan rules for sites that were being freeholded. It is also relevant to note that heritage values of the site have also been identified in the Covenant with the objective of managing the maintenance of those historic values.
91. In Mr Garden's evidence,³¹ he proposes that the common area of the subdivision (including within the covenant area) is managed by a services entity which, among other management responsibilities, will address conservation arrangements for a native vegetation enhancement programme as well as ongoing pest and weed management. He suggests that this would be managed through private covenants and would replace the Conservation Covenant. I am unclear as to how this private covenant would be enforced and / or what would prevent it from being removed in the future.
92. Further, I would like to point out that the applicants have never sought clarification about the terms of the covenant and what they mean. However, the extent of the values still on site suggests that the land has been managed in accordance with the objectives of the Covenant. There has also been no formal application to remove or vary the covenant despite a letter having been sent to the applicants on 23 November 2023, advising them of this requirement if they wished to develop the land (refer to Appendix 4). I cannot advise on the acceptability of this arrangement as it needs to be a proposal made to the Minister of Conservation and is assessed under a separate statutory process.

³¹ Statement of Evidence of Shanon Garden dated 4 November 2024
Expert Evidence of Elizabeth Williams, Planner for Director-General on RC230179 Rocky Point proposed residential development and subdivision.

Conditions of Consent

93. Although the S42A author recommends that the application be declined, he recommends conditions of consent in the event that the Commissioner decides to approve consent. Based on the evidence provided by Mr Ewans and Dr Schmidt on the adequacy of information provided in the applicant's heritage and biodiversity assessments, I have not provided comments on these proposed conditions given the gaps in information that are required to inform any proposed conditions in relation to indigenous biodiversity offsetting, compensation and heritage.
94. I note my comments above in terms of the uncertainties around enforcing proposed conditions that rely on third party approval (Minister of Conservation) for the proposed development and offsetting planting sites within the Conservation Covenant area.

Section 104D Gateway Test

95. Overall, I consider that the development fails the s104D gateway test. Without adequate biodiversity offsetting or compensation, I consider that the adverse effects on significant indigenous vegetation will be more than minor. As discussed above, the proposal will have more than minor effects on the heritage values of the site. Further, I consider that the proposed activity will be contrary to the objectives and policies of the Central Otago District Plan in regard to avoiding adverse effects on the ecological values of significant indigenous vegetation and on the heritage values of the District.

Conclusion

96. There is no dispute that there are significant indigenous vegetation and heritage values present at the application site. Given the significant ecological and heritage values within the application site, I consider it is clear that Part 2, Section 6(c) and (f) of the Act (to recognise, protect and manage these values as matters of national importance) are relevant to the assessment of this application.

97. The proposed Otago Regional Policy Statement (RPS) includes objectives and policies which seek to protect significant habitats of indigenous fauna and apply the effects management hierarchy when assessing significant adverse effects on indigenous biodiversity. Where biodiversity offsetting or compensation is not appropriate, the activity should be avoided.
98. Both the proposed and operative RPS include objectives and policies that seek to avoid adverse effects on areas or places that have been identified as having special or regional significance of historic heritage and to avoid, remedy or mitigate adverse effects on other areas or places with historic heritage values or qualities. Based on the evidence of Dr Schimdt I consider that the proposed development is inconsistent with this objective and policy.
99. I also consider that the Development Zone set out in the Central Otago District Plan does not accord with Part 2 of the RMA, the relevant provisions of the NPS-IB or the ORPS given that the site contains significant indigenous biodiversity that requires protection by the higher order planning instruments.
100. Based on Mr Ewans' evidence, I consider that there are gaps in information on baseline data on Threatened and At-Risk indigenous vegetation located at the site and within the offsetting area. In my opinion, this affects the ability to determine whether the biodiversity offsetting is sufficient. On this basis I consider that the application could be declined pursuant to Section 104(6) or the hearing adjourned to address this uncertainty.
101. Overall, based the expert advice of Mr Ewans and Dr Schmidt, I conclude that the adverse effects of the current proposal are more than minor.
102. I consider that the Conservation Covenant is a relevant matter to consider given the objective of the Covenant is to manage the land through protection of the natural character and significant ecological values and maintaining heritage values. This is also important given that

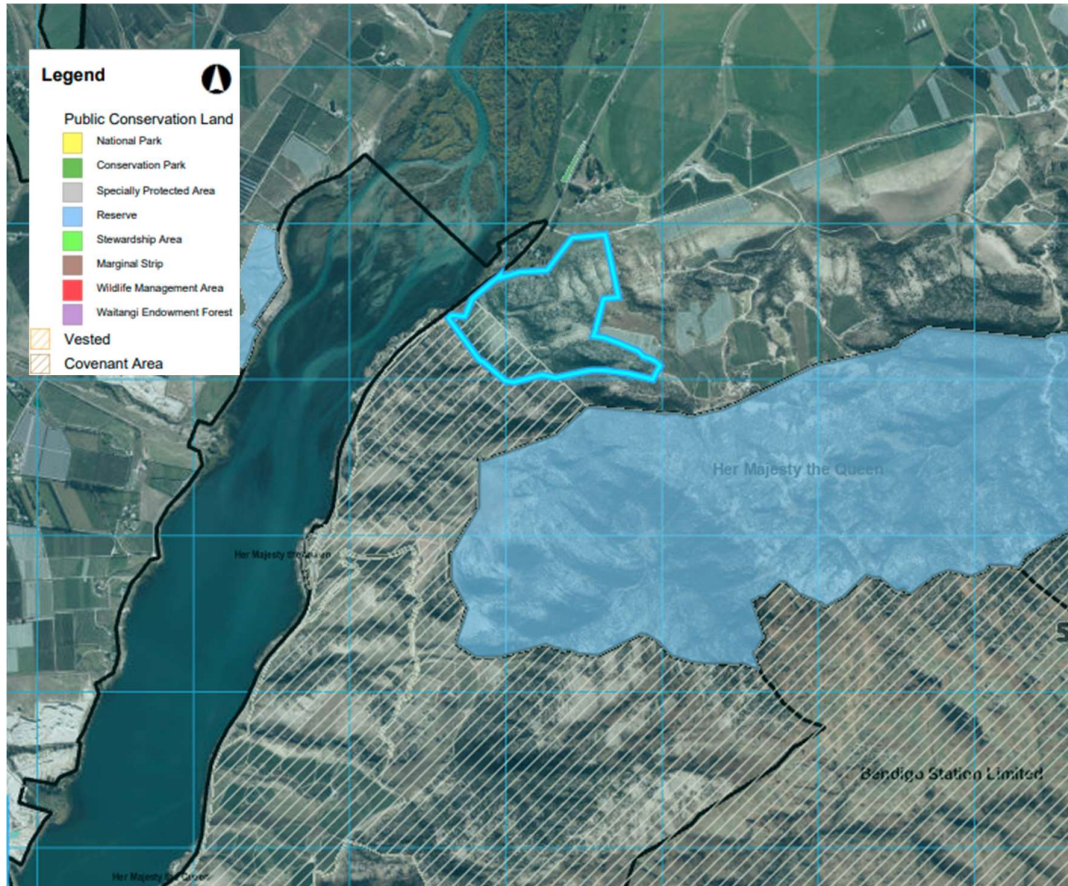
the Central Otago Plan identifies tenure review land as an alternative statutory mechanism to protect significant indigenous biodiversity.



Elizabeth Williams

DATED this 11 day of November 2024

Appendix 1: Map showing the extent of the Conservation Covenant Area



DOCgis Map showing the extent of the Conservation Covenant area (yellow hash overlay) within and surrounding the application site and within (note that the application site boundaries are different here as the title has not yet been updated on the DOC maps due to a recent boundary adjustment).

Appendix 2: Copy of the Conservation Covenant relevant to the site

CONSERVATION COVENANT
(Section 77 Reserves Act 1977)

1
CDL 589924-9 COVENANT (ALL THRU
CP1-81/82-POS-007.00/1A/08.1615)

DocID: 110711430

BETWEEN JOHN CHARLES PERRIAM of Lowburn Farmer and HEATHER LORNA PERRIAM his wife ("the Landholders")
AND MINISTER OF CONSERVATION ("the Minister")

WHEREAS

A Section 77 of the Reserves Act 1977 provides that:

- i The Minister may agree with any owner or lessee of land that all or part of the land should be managed so as to preserve the natural environment or landscape amenity or wildlife or freshwater life or marine life habitat or historical value of the land.
- ii The terms of such agreement may be recorded in a Conservation Covenant which is registered against the title to the land or the lease so as to bind the land or the lease and its owner or lessee to the performance of the terms of the agreement, in perpetuity or for such other period as the parties may agree.

B The Landholders are registered as proprietors of the land firstly described in the schedule ("the land") in the shares of 2/3 to the said John Charles Perriam and 1/3 to the said Heather Lorna Perriam.

C The Landholders and the Minister have agreed that the land be managed with the following conservation objectives:

- i Protecting and enhancing the natural character of the land with particular regard to the natural functioning of ecosystems and to the native flora and fauna in their diverse communities and dynamic inter-relationships with their earth substrate and water courses and the atmosphere.
- ii Protecting the land as an area representative of a significant part of the ecological character of the Dunstan Ecological District as referred to in the draft survey report for the Protected Natural Areas Programme for the Lindis Pisa and Dunstan Ecological Districts dated February 1987.
- iii Maintaining the landscape values of the land as referred to in the "Application for exchange of property rights" submitted to the Commissioner of Crown Lands.
- iv Maintaining the historic values of the land as referred to in "The rich fields of

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Bendigo* by Jill Hamel February 1993.

NOW THEREFORE THIS DEED WITNESSES that in accordance with Section 77 of the Reserves Act 1977 the Landholders and the Minister **MUTUALLY COVENANT** that the land shall be managed for the purposes and objectives listed in recital C above, and in particular on the following conditions:

1 THE Landholders may graze the land to an extent consistent, in the opinion of the Minister, with the objectives of this Deed and will maintain all fences and gates on the land and its boundary in a good stockproof condition in order to facilitate proper grazing control.

The Minister may at any time monitor native vegetation in order to determine what trends are occurring in the condition of native vegetation.

The Minister may also at any time monitor historic sites.

2 THE Landholders will, so far as is practicable:

- a Keep the land free from gorse broom sweetbriar and all other noxious plants and in particular shall comply with the provisions of and any notices given under the Noxious Plants Act 1978 and the Biosecurity Act 1993.
- b Keep the land free from rabbits and vermin and in particular comply with the provisions of and any notices given under the Agricultural Pests Destruction Act 1967 and the Biosecurity Act 1993.
- c Keep the land free from rubbish and other unsightly or offensive material.

HOWEVER the Landholders may request assistance from the Minister in meeting these obligations if they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Deed.

3 (1) SUBJECT to the succeeding provisions of this clause the Landholders will not carry out or allow to be carried out without the Minister's prior approval:

- a The erection of any fence building structure or other improvements near historic sites on the land whether for the Landholders' purposes or for other private or public purposes.
- b Any cultivation earthworks or other soil disturbance on the land near historic sites.
- c Any tree planting on the land near historic sites.
- d Any prospecting or mining for minerals coal or other deposit on or under the land.


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- (2) **IN** this covenant "historic site" has the same meaning as the words "historic place" in the Historic Places Act 1993.
- (3) **THE** Landholders at any time may remove some woody vegetation on the land secondly described in the schedule but only after receiving the Minister's prior approval.
- (4) **THE** Minister will have regard to the objectives of this Deed when considering any request for approval under this clause and will not unreasonably decline approval.
- 4 **THE** Minister may exercise his right to object to any mining licence application which conflicts with the objectives of this Deed.
- 5 **THE** Landholders will permit members of the public access through the land on the existing formed Thomsons Gorge Road and from Thomsons Gorge Road up to Mt Moka and the special lease area more or less along the alignment of the existing track on or about the legal road line.
- 6 **THE** Landholders grant to the Minister and any officer or duly authorised agent of the Minister a right of access onto the land with or without vehicles motor vehicles machinery and implements of any kind for the purposes of examining and recording the condition of the land or for carrying out restoration protection or maintenance work on the land consistent with the objectives set out in this Deed; **HOWEVER** in exercising this right the Minister and officers or agents of the Minister will consult with the Landholders in advance and have regard to all reasonable requests.
- 7 **THE** Landholders will meet all survey costs required to complete the registration of this Deed.
- 8 (1) **THE** Landholders will notify the appropriate Fire Authority (District Council or Minister as the case may be - see section 2 Forest and Rural Fires Act 1977) in the event of wildfire threatening the land.
- (2) **IF** the Minister is not the Fire Authority for the land under threat the Minister will render assistance to the Fire Authority in suppressing the fire if requested to do so or if a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977 is in place between the Minister and the Fire Authority.
- (3) **THIS** assistance will be at no cost to the Landholders unless the Landholders are

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responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

9 **WITH** regard to that part of the land thirdly described in the schedule known as the Rise and Shine Creek area:

- a The Landholders will at all times allow the public to have foot access across that part of the land for the purpose of gaining access to historic mining sites located on it.
- b The Lessees and employees of the Department of Conservation may at any time remove woody vegetation around any historic site located on it.
- c The Minister may at any time erect interpretation signs on that part of the land but shall first consult the Lessees regarding the wording and position of the signs.
- d The Landholders will not use that part of the land for forestry and will not construct tracks on it.



10 **IT** is acknowledged that the principal historic values outside the Rise and Shine Creek area comprise three stone buildings near Ardgour Road, stone yards near Shepherds Creek, the hotel foundations and environs and the bakery in the Town of Bendigo, the dam and dam keeper's hut at the head of Aurora Creek, various mining sites in Perrys Creek and the environs, and stone yards near Devils Creek.

11 **THE** Minister may:

- a Provide to the Landholders from time to time and at any time upon request by the Landholders such technical advice or assistance as may be necessary or desirable to assist in meeting the objectives set out in this Deed.
- b Change individual conditions of this covenant by mutual agreement with the Landholders should there be any change in circumstances in the future.
- c Prepare in consultation with the Landholders a joint plan for the management of the land designed to implement the objectives of this Deed to the mutual satisfaction of the parties.

12 **FOR** the avoidance of doubt:

- a The covenants contained in this Deed shall bind the Landholders and the Landholders' heirs executors successors and assigns in perpetuity.
- b The Landholders will not be personally liable in damages for any breach of

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covenant committed after they have parted with all interest in the land in respect of which such a breach occurs.

- c Where there is more than one owner of the leasehold or fee simple title to the land, the covenants contained in this Deed shall bind each owner jointly and severally.
- d Where the Landholders is a company the covenants contained in this Deed shall bind a receiver liquidator statutory manager or statutory receiver. Where the Landholders is a natural person this Deed shall bind the Official Assignee. In either case this Deed binds a mortgagee in possession.
- e The reference to any Act in this Deed extends to and includes any amendment to, or re-enactment of that Act.
- f Any notice required to be given in terms of this Deed shall be sufficiently given if made in writing and served as provided in Section 152 of the Property Law Act 1952 and shall be sufficiently given if actually received by the party to whom it is addressed or that party's solicitor.
- g Any notice required to be given by the Minister shall be sufficiently given if it is signed by the Conservator Department of Conservation Dunedin. Any notice required to be served upon the Minister shall be sufficiently served if delivered to the office for the time being of the Conservator Department of Conservation Dunedin.
- h Any dispute which arises between the Landholders and the Minister in any way relating to this Deed may be resolved by referring the dispute to an agreed third party for decision or by arbitration under the provisions of the Arbitration Act 1996. If the Arbitration Act 1996 is used and the parties fail to agree on the person to be appointed as arbitrator the appointment shall be made by the president for the time being of the Otago District Law Society.

DATED the 18th day of August ~~1999~~ 2000



LBO/PERHAM

SCHEDULE

FIRSTLY All those parcels of land situated in the Otago Land District containing A 4180.6398 hectares more or less being Sections 1, 2, 24, 29, 34, 36 and 38 SO 24641 and being all the land comprised and described in Certificate of Title Register No. (Otago Registry) and being B 3781.8363 hectares more or less being Sections 3/9 inclusive 11/16 inclusive 23, 27, 28, 37 and 39 SO 24641 and being all the land comprised and described in Certificate of Title Register No. (Otago Registry)

SECONDLY Section 2 SO 24641 containing 68.0339 hectares more or less

THIRDLY Sections 11 and 12 SO 24641 containing 490.3886 hectares

SIGNED by Ian Whitwell an officer of the Department of Conservation pursuant to a designation given to him by the Director-General of Conservation and dated the 30th day of June 1989 acting for and on behalf of the Minister pursuant to section 117 of the Reserves Act 1977 in the presence of:

I.R. Whitwell

[Signature]

Witness: *Jessie Ann Beard*

Occupation: *Solicitor*

Address: *Dunedin*

SIGNED by the said **JOHN CHARLES PERRIAM** and **HEATHER LORNA PERRIAM** in the presence of:

J.C. Perriam
H.L. Perriam

Witness: *B.A. MacGeorge* (B.A. MACGEORGE)

Occupation: *Solicitor*

Address: *Waimate*

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Appendix 3: Schedule 19.6.3 list of Land Freeholded under Tenure Review and associated conservation covenants.

Place	Conservation Covenant & Objective
Mount Pisa	Yes, Objective of the covenant: The land must be managed so as to preserve the Values.
Lochar Burn	Yes, Objective of the covenant: The Landholder and Minister have agreed that the land be managed with the conservation objective to protect the totara remains in situ on the land.
Queensberry Ridges	Yes, Objective of the covenant: The Landholder and Minister have agreed that the land be managed with the conservation objective of protecting the berm vegetation and creek environs within the described length of Schoolhouse Creek, which is the habitat of a new unnamed galaxid species.
Queensberry Hills	Yes, Objective of the covenant: The Landholder and Minister have agreed that the land be managed with the conservation objectives of protecting Galaxids in the Sheepskin Creek and protecting the kanuka on the land.
Rochlands	Yes, Objective of the covenant: The Landholder and the Minister have agreed that the land be managed with the following objectives: <ul style="list-style-type: none"> • Protecting and enhancing the natural character of the land with particular regard to maintaining the overall appearance of an extensive tussock landscape; • Maintaining the landscape amenity values of the land, • Maintaining the historic values of certain sites within the land referred to in 'High Mining on the Lammerlaws' by Jill Hamel dated Feb 1995 and • The grazing of exotic livestock (viz sheep and/or cattle) as an essential part of the landholder's day to day farming activities on the land.
Bendigo	Yes, refer to full covenant details in Appendix 2 .
Lake Mackay	Archived files – unable to locate online
Earnsclough Station	There is a covenant however unable to locate online.
Backstone Hill	Archived files – unable to locate online

Appendix 4 Letter to owners relating to the conditions of the Conservation Covenant.



23rd November 2023

[REDACTED]
TKO Properties Limited
[REDACTED]

Sent via email [REDACTED]

Tēnā koutou,

RE: Rocky Point subdivision application (RC230179) / the Conservation Covenant granted by John Charles Perriam and Heather Lorna Perriam to the Minister of Conservation on 18th August 2000 (the Covenant).

Further to my letter dated 27th October 2023, you will be aware that the Department of Conservation (DOC) team visited the covenanted land area (Lot 1 and 2 DP 561457) in order to assess the condition of that covenanted land on 3rd November 2023 (pursuant to condition 6 of the Covenant).

You will also be aware that DOC has filed a submission in relation to your applications for resource consent under the Resource Management Act 1991, pertaining to Lot 1 DP 561457.

I would like to bring to your attention the legal requirement for you to obtain the consent of the Minister of Conservation to manage the covenanted land in a way that does not uphold the purpose and objectives of the Covenant set out in clause C and / or any of the discrete conditions set out in the body of the Covenant.

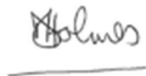
Please note that obtaining resource consents under the Resource Management Act 1991 in relation to the covenanted land does not obviate the need to obtain any necessary Ministerial consent under the Covenant. In addition, the submission filed by DOC in the resource management proceedings does not reflect or fetter any decision that the Minister might make

Wanaka Office
wanakavc@doc.govt.nz
www.doc.govt.nz

in relation to the Covenant. It is of course, a matter for you to decide whether to proceed with the applications under the Resource Management Act 1991 without having first secured any necessary Ministerial consent.

If you would like to discuss how to progress an application in relation to the Covenant or have any other queries in relation to this matter, please contact Jenna Sinclair (Senior Ranger-Community SSI) at [REDACTED]

Nāku noa, nā,

A handwritten signature in cursive script, appearing to read 'Holmes', with a horizontal line underneath it.

Nicola J Holmes
Pou Matarautaki, Operations Manager,
Central Otago District