

**BEFORE THE COMMISSIONERS APPOINTED BY THE CENTRAL OTAGO
DISTRICT COUNCIL**

UNDER the Resource Management Act 1991

IN THE MATTER of RC230179 an application for a 30-lot
subdivision at Rocky Point on Tarras-
Cromwell Road (SH8)

BY **TKO PROPERTIES LIMITED**

Applicant

STATEMENT OF EVIDENCE OF SHANON GARDEN

Dated: 4 November 2024

Statement of evidence of Shanon Garden

Introduction

- [1] My name is Shanon John Garden.
- [2] I am a Director of Navigate Property Limited, an independent project management and land development consultancy. I hold Bachelor of Laws and Commerce from the University of Otago and a Post Graduate Diploma in Finance from the University of Auckland.
- [3] I provide development management services for a range of clients across a range of Districts. I also undertake my own land development projects.
- [4] I have provided services to TKO Property Ltd (TKO) over the past six years, working on developments around Alexandra, Lowburn, Luggate and the wider CODC and QLDC Districts.
- [5] I am engaged by TKO to coordinate the consenting phase of TKO's Rocky Point project.
- [6] My expertise, relevant to this Hearing, is the coordination and delivery of land developments, including consenting and delivery of subdivision works.

Scope of evidence

- [7] My evidence addresses the various formal land management structures that will be established to enable the Rocky Point development. These include:
- (a) The incorporation of a services entity, proposed to be named Rocky Point Services Ltd (RPSL), to manage shared services and deliver on certain collective obligations of the incoming lot owners, post-development.
 - (b) The establishment of a Services Agreement between RPSL and each lot owner that formalises the rights and obligations of RSL and each individual lot owner

- (c) The incorporation of that Services Agreement into a covenant registered on each newly created lot title, ensuring the ongoing effect of the Services Agreement across successive landowners.
- (d) The proposed land management frameworks that will be prepared to guide the ongoing management activities of RPSL, including conservation and ecological management (The Rocky Point Ecological Enhancement and Monitoring Plan, prepared by Beale Consulting) and wildfire risk management (The Wildfire Risk Management Plan). Drafts of both documents have been included in the consent application by TKO).

[8] My evidence also responds to matters raised by Council's Planner, Mr Vincent, in his s42A report and the subsequent Addendum to that report.

Background

[9] It is typical that some shared services management process be established by the developer of rural subdivisions, where those services are not otherwise provided by the local Council. This often incorporates shared accessways and private water schemes.

[10] TKO has, in the past, successfully utilised a limited company structure to deliver this management service. This same structure is now proposed for Rocky Point.

[11] The five key facets of the TKO subdivision proposal will be managed by RPSL:

- (a) The ownership and operation of shared water infrastructure (domestic and firefighting);
- (b) The ownership and operation of shared wastewater infrastructure;
- (c) Ongoing oversight of the Design Control covenants;
- (d) Managing the ~47ha (Lot 200) Common Area; and
- (e) Delivering a Fire Risk Management Plan on behalf of all owners and residents.

These are each addressed in more detail below.

Structure

- [12] The developer will establish a management entity to own and manage shared services on behalf of lot owners. At this time, it is proposed that this entity be named Rocky Point Services Ltd (RPSL).
- [13] RPSL will be a limited company. It will be incorporated by the developer following consent being issued. It will be made operational prior to the transfer of newly titled lots to incoming owners.
- [14] Incoming lot owners will receive their shareholding upon their acquisition of a lot from the developer.
- [15] A tailored constitution will be registered (a template of which has been provided with the TKO consent application). Notable components of this constitution are:
- (a) Ownership of shares will pass with ownership of a lot;
 - (b) A limitation of business activities to provision of management services to owners and residents;
 - (c) Provision for the collection of fees from owners;
 - (d) RPSL shall not operate for profit. Although it will be appropriate to source and retain capital reserves;
 - (e) Simplified governance process geared towards rotational participation among lot owners; and
 - (f) Recognition of the voluntary nature of those who take on governance responsibilities, with explicit management of the risks inherent in corporate governance.
- [16] A standard Services Agreement will be put in place between RPSL and each lot owner. This will also be established by the developer at the time titles are created. The Services Agreement will be incorporated into a covenant and registered on each title. This registration ensures that lot owners cannot contract-out of participation and that the contracted rights

and obligations pass to new owners wherever property is on sold. A template of this Services Agreement was included with the TKO application.

Specific Functions of RPSL

[17] *Owning and operating shared water infrastructure: (domestic and fire fighting)*

- (a) RPSL will receive from TKO and hold the existing water right from the Chinaman's Terrace water scheme. Across its two neighbouring properties, Rocky Point and Bendigo Hills, TKO holds a 500,000ltr/day water right. This is significantly more than currently envisaged demand (as set out in the CKL evidence on water supply infrastructure). It is proposed that Rocky Point will take 300,000ltrs/day of that allocation, with the remaining 200,000ltrs being applied to the neighbouring Bendigo Hills development. RPSL representatives (being Rocky Point lot owners) will have the opportunity to participate in the governance of the Chinaman's Terrace Scheme.
- (b) RPSL will assume ownership and ongoing management of all shared water supply infrastructure from the take-off point on the Chinaman's Terrace scheme through to the water tobies (meter and restrictor) at each of the private lot boundaries within Rocky Point.

[18] Water supply

- (a) RPSL will own and maintain the domestic water supply infrastructure, up to the off-take point at each private lot boundary (or Toby).
- (b) RPSL will also own and manage the fire suppression sprinkler infrastructure proposed to be installed around private lots in the Common Area. See CKL water supply evidence for further detail.
- (c) Where shared infrastructure is in private land (either private lots or in the Common Area owned as undivided shares in common by

all private lot owners), easements will be established ensuring suitable rights of access and operation in favour of RPSL.

- (d) Some of this infrastructure will be placed in the vested road. In which case it is accepted practise for RPSL to seek a License To Occupy from Council to maintain that infrastructure.
- (e) RPSL will maintain an Operations and Maintenance Manual describing the operation of the scheme, will ensure the necessary registration and administration of the scheme with Taumata Arowai, and will attend to ongoing compliance matters on behalf of lot owners.

[19] *Owning and operating shared wastewater infrastructure*

- (a) Mirroring the arrangements for water supply, RPSL will own and manage shared wastewater disposal infrastructure. However, unlike the water supply, which is provided for the benefit of all lots, this service will be managed for the benefit of a subset of lots. Refer CKL Evidence for detail of which lots are proposed to be served by common wastewater treatment and disposal infrastructure.

[20] *Oversight of approved design control covenants*

- (a) The building design controls offered by TKO to ensure that built form is appropriately managed within its receiving environment will be managed as covenants between individual lot owners and also including RPSL. In this way, while individual lot owners may seek to enforce the covenants directly between each other, RPSL as a party, will also be involved to provide oversight and ensure effective and consistent adherence to the covenant requirements.

[21] *Managing the Common Area*

- (a) Approximately 47ha of the total Rocky Point land area is proposed to be held collectively by all lot owners, as undivided shares in common (the Common Area). Referred to in the subdivision scheme as Lot 200. This represents 73% of the total 64.3ha land

area. See Coterra Scheme Plan and Baxter Design Group Landscape Plans.

- (b) RPSL will manage this Common Area on behalf of owners, under the framework of the Ecological Enhancement and Monitoring Plan.
- (c) Following fulfilment of the developer's obligations to establish plantings, RPSL will assume responsibility for the ongoing maintenance of those new plantings as well as weed and pest control across the whole of the Common Area. RPSL may also elect to offer weed and pest control services to private lot owners, lowering costs and ensuring a consistent treatment of all native areas.
- (d) The use of the Common Area by lot owners will be appropriately restricted to activities that are sympathetic to the natural environment and to shared use. Correspondingly, a range of activities will be prohibited, such as use by private vehicles, use of firearms (unless specifically approved by RPSL for pest control), certain noise generating activities, and any activity that might introduce an ignition source or fire risk. RPSL will oversee that common use and will have a discretion to manage activities carried out.
- (e) It is envisioned that there will be a range of walking tracks across the Common Area. Being private land, this will predominantly be for the use and enjoyment of owners. However two specific trails adjacent to the vested road have been identified as potentially suitable for public use. These will be short walking trails: one enabling limited public access to an identified viewing point over Lake Dunstan and the Bendigo flats, the other being a link between two sections of the vested road, passing a lot that has been identified as suitable for a future hospitality use. It must be recognised that the underlying land will remain private land. These tracks will be basic single-track within rocky and undulating terrain. There will need to be clear guidance provided to the public on use. RPSL is not in a position to guarantee the safety of all users –

there will need to be a suitable level of personal responsibility established. Nor is RPSL in a position to provide for any level of mobility access. Care will need to be taken to ensure this designated public access does not create unintended negative consequences. It poses an increased risk of fire from cigarettes or from people using small stoves or burners among the dry vegetation. This right of public access will need to be clearly confined to designated tracks. So whilst desirable to enable such access, it must be acknowledged that it comes at some cost and risk to the private lot owners. It should be noted that there are in excess of 2000ha of public land within close proximity that are arguably better suited to public recreation.

[22] *Delivering a Fire Risk Management Plan on behalf of all owners and residents.*

- (a) It is acknowledged that the dry climate and arid environment at Rocky Point does create a level of fire risk. This has been assessed and is proposed to be managed in a number of ways.
- (b) Fire suppression infrastructure will be required. The design and function of this is dealt with in the reporting of CKL and Wildfire NZ.
- (c) RPSL will manage fire suppression infrastructure in the Common Area.
- (d) RPSL will also maintain a fire risk management planning process.
- (e) RPSL is not in a position to underwrite fire risk for owners and residents. So its role will be limited to promoting awareness and preparedness.
- (f) The consequences of any fire can be significant and so RPSL will need to carefully manage its own risk. This will require clear definition of the scope of its responsibilities to owners and residents, as well as maintaining suitable insurance for common assets as well as public liability and indemnity insurance.

Addressing matters raised by Council's Planner in the s42A Report and Addendum

[23] At page 8 of the Supplementary Report of the Planning Officer Mr Vincent notes that the

“Part of the anticipated character of the landscape protection area was to act as a natural extension of the neighbouring DOC reserve, and provide a level of public access, with tracks, information signage and small shelters being identified as anticipated activities in Schedule 19.16.”

- (a) We note that the RuRA2 Landscape Protection Area being referred to spans Rocky Point and a portion of the Bendigo Hills property to the south. It is through that Bendigo Hills property to the south that public walking access has been established to access the DoC Scenic Reserve. This public walking easement links the State Highway to the main walking track within the DoC Scenic reserve. None of the Rocky Point title which is the subject of this application neighbours with or connects to other DoC or public land.
- (b) So while it is accepted that the Landscape Protection Area was established to incorporate public access, it is not a given that this portion of the RuRA2 Landscape Protection Area include public access.
- (c) Nonetheless, the developer is proposing to enable a limited amount of public walking access within Rocky Point.

[24] Further commenting on the nature of public access, Mr Vincent notes:

“It is not immediately clear from the application what standard the tracks would be built to and who will be responsible for operative and maintaining the tracks (For example, responsibility could fall to the landowners, the management entity running the other private infrastructure, DOC, or Council). Before I can be fully satisfied that the tracks will provide adequate public recreation access over the long term, I would prefer to have an indication of how the tracks

will be formed and who the applicant anticipates would be responsible for the tracks.”

- (a) Having established that the core public access objective of the RuRA2 zoned area is located elsewhere, it is appropriate to consider the scale and type of public access that is necessary to enable at Rocky Point, and the obligation this imposes upon private landowners. Also as Mr Vincent notes, it must be confirmed who will administer these tracks.
- (b) RPSL will manage the Common Area within which these tracks will pass. RPSL will manage private tracks elsewhere for owners. So it is logical that RPSL assume the management of the two proposed public access tracks. But RPSL’s resources, and ability to manage public infrastructure, are limited. It would therefore be necessary that any public access tracks be both short in length and basic in their construction.

[25] Mr Vincent states at Page 9:

“The applicant proposes that the balance land be subject to a private covenant to the effect that the land be maintained in perpetuity for conservation purposes. I consider a covenant, such as one in favour of the QEII National Trust, to be reasonable to help ensure the remainder of the landscape protection area is protected from further development.”

- (a) It is not clear from this statement what a QEII structure adds beyond the land management arrangement proposed, nor why this is thought necessary.
- (b) I consider that the proposed structure does already provide a high level of assurance of ongoing protection of the Common Area in an enhanced natural state.
- (c) As already pointed out, the Common Area will be held as undivided shares in common by all 30 landowners. So all 30 owners would need to agree to any sale or dealing with the land. Once this common ownership is established, it is unlikely that all

30 will ever reach an agreement to forego or curtail their enjoyment of this natural area.

- (d) The covenant which formalises the role of RPSL and provides protections over the Common Area will be registered on all thirty land titles. Again, all beneficiaries of those covenants would need to agree to any change. A high bar to achieve.
- (e) In my experience, this common ownership and covenanting of protections for the benefit of all does provide a high and appropriate level of protection without requiring additional structures, administration and cost.
- (f) Consent notices on the titles will also serve as a protection. It is the author's understanding that those consent notices would need to be removed from all thirty private lots to change the purpose of the Common Area?
- (g) Before taking the step in the consent process of mandating that the Common Area be subject to a QEII covenant, it is recommended that further evaluation is needed to understand what the deficiencies are in the proposed land management mechanisms under a private covenant structure, and what QEII will do to address these, or what alternatives there are, such as making Council itself (or even DoC) a party to the Covenant.

[26] Mr Vincent concludes at p11 of his supplementary report that:

“Overall [...] I consider that the proposal will have more than minor ecological and biodiversity effects, particularly due to the loss of indigenous vegetation [...] I consider that these effects will only be partially managed by the measures proposed by the applicant [...] with remediation measures [...] only able to go some way towards reducing these effects.”

- (a) RPSL, through its Services Agreement with its 30 shareholder lot owners will levy fees and undertake ongoing weed and pest management across the ~47ha Common Area (73% of the total Rocky Point area).

- (b) RPSL will inherit and manage a native vegetation enhancement programme put in place by the developer over within the Common Area along with proposed offset plantings in the neighbouring property.
- (c) It is also reasonable to assume that RPSL's management of the Common Area will spill over into, and have some benefit on, the native areas within private lots (It is proposed that there be no fence or physical boundary separating these areas).
- (d) Considering the counterfactual of no residential development, with either a continued pastoral farming or other forms of intensified agriculture or viticulture, it is hard to see how there will not be manifest improvement in the natural area across Rocky Point as a result of RPSL's active management.
- (e) Mr Vincent does not appear to consider this in coming to his conclusion on the level of ecological effects.

Relationship between RPSL and the DoC Covenant

- [27] The DoC – landowner private covenant (COV 5009824.9), further described in the Land Status Report of Coterra, (the DoC Covenant) extends across ~4000ha of the former Bendigo Station, currently encompassing 45 separate titles.
- [28] Unless varied, it will carry down onto each new title created at Rocky Point, including the Common Area.
- [29] The area described Secondly in the Schedule to the Covenant is a 68ha area that straddles Rocky Point and Bendigo Hills between the State Highway and the DoC Scenic reserve behind. It covers approximately 15ha of the southern end of Rocky Point. Within this area a further obligation exists to not clear woody vegetation without obtaining the permission from the Minister of Conservation. This area extends across the proposed lots 1-7, 10-13 and 19-21.
- [30] The landowner and subdivision obligations proposed as part of the Rocky Point development will ensure the objectives of the DoC covenant

are met, with active management by RPSL and supported by owner landowner funding.

- [31] The result will be something of a duplication of conservation-focussed obligations.
- [32] Acting on behalf of TKO the author has made a preliminary approach to DoC proposing some rationalisation and consolidation of those conservation obligations. DoC representatives have not responded to this offer. But the opportunity still exists.
- [33] To summarise, the land management and conservation arrangements that will be delivered by RPSL on behalf of owners includes:
- (a) Enhancing vegetation through the permanent cessation of farming and other land uses that could result in the clearance or further degradation of natural ecosystems;
 - (b) Permanent protection of ~91% of the total site area in native vegetation;
 - (c) Enhancement of diversity and promotion of regeneration of historically present species;
 - (d) Ongoing Lizard management;
 - (e) Financial resources to be provided by owners, via RPSL, ensuring no cost to DoC or the public; and
 - (f) Other partnership opportunities such as site surveys, studies, trials etc.
- [34] This set of arrangements, proactively overseen by owners acting through RPSL, are likely to deliver better long term conservation outcomes at Rocky Point than the DoC Covenant. This can be evaluated by considering the level of DoC recent involvement across the balance of the 45 titles subject to that covenant. DoC input on this ongoing management across the extent of its covenant area would be welcomed.

- [35] An argument against this proposed self-management will undoubtedly be that the owners, managing by themselves, can't be trusted to follow the rules or to commit to conservation-focussed outcomes.
- [36] People who choose to live at Rocky Point will do so because of an affinity for the surrounding natural environment. They will enjoy the Common Area for their recreation. They will take pride in it and value it. It is the author's belief that those owners will actively seek to protect and enhance this asset that they own together. Making the owner group collectively responsible, and establishing formal responsibilities linked to land titles is an appropriate mechanism to ensure the ongoing conservation of the natural environment at Rocky Point.
- [37] DoC has a role to play alongside owners. The exact nature of that involvement should be the subject of ongoing discussion and can be put in place over the course of the development.

Bendigo Hills – the neighbouring property

- [38] It is noted that this land management structure is also proposed to be replicated across the neighbouring Bendigo Hills property also owned by TKO.

Volunteered Consent Conditions

- [39] These volunteered conditions are included in the Planner's Evidence prepared by Brown & Co. In summary we recommend that conditions of consent provide:
- (a) That a services entity be established for management of shared services
 - (b) That this entity assume responsibility for, at a minimum,
 - (i) Management of shared access;
 - (ii) Management of the Rocky Point Water Supply, including holding the water right to access water from Chinaman's Terrace Water Scheme;

- (iii) Management of common wastewater treatment infrastructure;
- (iv) Delivery of the Ecological Enhancement and Monitoring Plan;
- (v) Delivery of the Fire Risk Management Plan; and
- (vi) Ensuring consistent adherence to applicable Design Controls.

S Garden
4 November 2024