

**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 33-lot  
subdivision at Rocky Point on Tarras-  
Cromwell Road (SH8)

**BETWEEN** **TKO PROPERTIES LIMITED**

Applicant

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**SUMMARY STATEMENT**

**OF**

**JEFFREY BROWN**

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Dated: 19 November 2024

**TODD & WALKER** law  
LAWYERS | NOTARY PUBLIC

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## Summary Statement of Jeffrey Brown

1. This statement summarises my evidence in chief (**EIC**) dated 4 November 2024.
2. My qualifications and experience are set out in paragraphs 1.1 – 1.2 and in Attachment 1 to my EIC.
3. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023. This evidence has been prepared in accordance with it and I agree to comply with it. This evidence is within my area of expertise, except where I state that I am relying on another person, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
4. The Site is subject to a bespoke, unique set of zoning provisions (the RuRA(2) at Rocky Point) that enable subdivision and development to a reasonably dense form in the rural area, for residential and travellers' accommodation.
5. The Proposal includes a stringent suite of design controls for built form and landscaping, and a range of measures for avoidance, minimisation and remediation of potential adverse effects on ecological values, as well as offset planting in seven locations within Rocky Point and within the adjoining Bendigo Hills property which is also owned by the applicant.
6. The zoning allows for permitted and controlled activities that could change the environmental conditions of the site considerably. The permitted activities include, for example, farming, viticulture and vegetation removal, and the controlled activities include subdivision and development of around 19 lots as a reasonable and feasible yield in accordance with the RuRA(2) provisions.
7. I consider that the permitted and controlled activities are relevant to the assessment of the Proposal, and that they could have adverse effects on the indigenous biodiversity values of the Site. The District Plan does not protect the ecological values of the site at present because credible, non-fanciful permitted activities could prevail. As I understand the legal situation, neither s6(c) of the Act, nor the NPS-IB or the RPSs would change this situation because they in themselves do not trigger any consents. No regional plan rules are triggered by this application. I do not consider the conservation covenant changes this situation, at least for the majority of the Site.
8. At a first principles level, therefore, in my view the correct starting point for assessing the effects on ecological values is that the ecological values are not otherwise

protected because of the effects that permitted and controlled activities could have on them.

9. For that and the other reasons that I set out in paragraphs 4.18 of my EIC, I prefer the reporting and evidence of Mr Beale, Dr Wells and Ms King – as informed by the suite of specialist investigations and reports by the other experts – over the views of Mr Harding and Mr Ewans. Further, and for the same reasons, I disagree with Ms Williams conclusions on ecological matters.

10. I rely on and agree with the evidence of Mr Beale, Dr Wells and Ms King that, overall, the Proposal will have net benefits for the indigenous biodiversity values, through the measures for effects avoidance, minimisation and remediation, and the offset planting. Their evidence is based on a large body of ecological investigations and reports, and the approach is consistent with clause 3.16 of the NPS-IB for indigenous biodiversity outside SNAs. I also concur with Dr Wells' summary statement where he states:

**[8] The proposed offset will lead to significantly greater gains in biodiversity values than can be obtained solely from the proposed minimisation and remediation measures. Furthermore, I consider that these gains in indigenous biodiversity represent important long-term benefits for the ecology of the area that would not occur in a scenario where Rocky Point remains under a farming regime.**

11. I do not agree with Ms Williams that there is relevance in the future hypothetical possibility of the Site being scheduled as an SNA in a further plan change process. Further, I do not agree that there is particular relevance in sections 2.3.4 and 4.5.2(iv) of the District Plan references to the tenure review process to the application.

12. I rely on and agree with Mr Baxter in relation to the landscape and rural character effects and consider that the Proposal is appropriate within the RuRA(2) Development Area and the ONL setting. Both Mr Baxter and Ms Lucas recognise the development anticipated by the Development Area – i.e. the area will change, visually. The default status for buildings that are visible from the lake or the state highway is discretionary (Rule 4.7.4(i)). This does not mean that any building visible from those locations automatically creates an adverse landscape effect on landscape values, as Ms Lucas infers. Rather, in my view the rule simply requires more scrutiny into the visual effects of buildings when viewed from the relevant locations. I consider Mr Baxter's response to this visibility – through the carefully crafted design and landscaping controls – is appropriate and that the effects are not significantly adverse, and are acceptable. I therefore prefer Mr Baxter's evidence overall.

13. Dr Jennings addresses the effects of the proposal on heritage values and considers that the two heritage items affected by the Proposal are of low heritage value and their

values should be protected by record. I support that approach over Mr Schmidt's approach which would be impractical and unnecessary given the minimal heritage benefit of preserving a low quality, degraded item.

14. Based on the unchallenged evidence of Mr Carr (traffic), Ms Rhynd and Mr Sternberg (infrastructure) and Mr Cowan (fire risk), and taking into account the proposed conditions of consent, I do not consider that actual and potential adverse effects relating to their disciplines present any issue for grant of consent with the conditions proposed. Similarly, reverse sensitivity effects and cultural effects are in my view not adverse and are minor.
15. Positive effects arise from the new carpark and walking trails proposed and from the addition of some housing stock and travellers' accommodation activity in a suitable location where development is anticipated. The various ecological actions will have a net benefit for indigenous biodiversity values for the Site and the wider surrounds.
16. I therefore consider that the adverse effects of the Proposal are able to be managed and are no more than minor, and, overall, the effects are positive.
17. I address the relevant objectives and policies of the District Plan, the operative and proposed regional policy statements, and the relevant national policy statements. I consider that, overall, the proposal is consistent with and achieves those provisions. In reaching this conclusion I am mindful of the relevant District Plan objectives and policies relating to ecological values.
18. The proposal achieves these provisions as large areas of indigenous vegetation, that otherwise would not be protected, will be protected in perpetuity. The adverse effects on existing indigenous vegetation will be appropriately managed through the effects management hierarchy, as has been discussed in detail by the ecologists.
19. The two gateway tests in s104 are passed, in my view.
20. The proposal achieves the purpose and principles in Part 2 of the Act, in my view. The proposal is consistent with ss6(c) and (h). On s6(c), the areas of significant indigenous vegetation and significant habitats of indigenous fauna will be protected to a better extent than the District Plan otherwise provides for.
21. I also consider that the Proposal achieves the conservation objectives set out in clause C of the Conservation Covenant to a greater extent than the status quo, in that the volunteered conditions of consent will ensure a comprehensive, ongoing, and enforceable positive obligation on ecological protection and offset planting management.

22. The outcomes promoted in the Proposal are enshrined in conditions of consent. The working draft suite of conditions has been circulated, to assist the Commissioners in their determination of the application.

**J A Brown**

**19 November 2024**