

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)

**Memorandum of Counsel on behalf of
the Director-General of Conservation *Tumuaki Ahurei*
Dated: 3rd June 2025**

Department of Conservation | *Te Papa Atawhai*

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MAY IT PLEASE THE PANEL:

1. Counsel thanks the Panel for opportunity to respond to the amended application.
2. The experts from the Department of Conservation (“DOC”) have considered the additional evidence filed, explaining the rationale for the removal of Lot 7.
3. The Director-General’s position remains opposed to the application in general and opposed to any development on the conservation covenanted area, in particular.
4. Richard Ewans, Ecologist, and Elizabeth Williams, Planner, have prepared brief comments to assist the Panel (see Appendices 1 and 2 respectively).
5. The Director-General invites the Panel to take these comments into account because the Director-General has not been able to present evidence to the Panel on the amended application. In particular:
 - a. The ecological evidence at the hearing did not address the effects of removing Lot 7.
 - b. The applicant’s recent ecological evidence on this matter has not been subject to questioning by the Panel or any testing at all.
 - c. At the joint expert conferencing, the applicant expressly confirmed that the “subdivision layout is the same as in the application” (JWS para [5]) and the conferencing proceeded on that basis.
 - d. Accordingly, the JWS does not address this matter, and the ecologists have not been able to caucus on the ecological effects of removing Lot 7 (or on removing or re-siting any other lots) or provide evidence to the Panel in respect of this proposal.
 - e. Further, the six month-delay between the hearing and the decision means that the oral evidence and legal submissions are now very stale.
 - f. As a consequence of that delay, the receiving environment has changed in an important way that is relevant to this application, as Elizabeth Williams explains in her comments (at Appendix 2).

UPDATE SINCE THE HEARING IN NOVEMBER 2024:

Ecological effects

6. To assist the Panel, Richard Ewans has prepared written comments addressing the ecological effects of the amended proposal (see Appendix 1).
7. Mr Ewans notes that the Wildlands post-hearing survey discovered considerably more values on the site, including a Threatened – Nationally Critical plant species that is present throughout the site. In his Memorandum, he considers the amended proposal to remove Lot 7, include some cushionfield maintenance, minor additions to native enrichment planting, and minor amendments to the planting design. Mr Ewans' conclusion is that 'the application still leads to a substantial loss of Threatened and At-risk species (far more than originally accounted for by the applicant at the hearing) and fails to avoid a net loss of indigenous biodiversity.'¹

Changes to the receiving environment that hosts the proposed compensation sites and diminishment of the proposed compensation for Rocky Point

8. Since the hearing, there have been changes to the receiving environment that further strengthens the Director-General's position.
9. Principally, another non-notified resource consent application has been granted that increases the housing density on the adjoining site, Lakefront Terrace.² Lakefront Terrace hosts some of the proposed compensation sites for Rocky Point. Elizabeth Williams has prepared written comments explaining the consequences of these changes to the current application (see Appendix 2).

¹ Richard Ewans, Memo dated 30th May 2025 at [4] (Appendix 1), see also Conclusion at [21]-[23].

² Resource consent application decision RC210148V2 Lakefront Terrace, Bendigo, 14th May 2025.

10. Of relevance to this application, the amended consent conditions for Lakefront Terrace include condition 20:

20. Prior to Section 224(c) certification, the consent holder must provide evidence to the Chief Executive that compensation planting has been undertaken within the site **consistent with either of the following circumstances:**

a) In the event that RC230179 on the adjoining site at Rocky Point is granted and given effect to, the plantings required by the conditions of that consent have been undertaken and an additional 0.57ha of plantings established over exotic-dominant vegetation adjacent to the westernmost planting site referred to in that consent as “Hemlock Gully”; **or**

b) A total of 1ha of plantings established over exotic-dominant vegetation in the westernmost planting site referred to as “Hemlock Gully” (*emphasis added*).

11. As Elizabeth Williams explains, firstly, condition 20 creates ‘double-dipping’. That is: *in the event the current resource consent applications for the Rocky Point subdivision are granted*, the area on Rocky Point that had been set aside as compensation for the loss of Threatened and At-risk species in relation to Rocky Point will *also* be used to compensate for the Lakeview Terrace development destruction of Threatened and At-risk species. The practical effect is to further reduce the compensation being offered in respect of the current application.

12. Secondly, the greater intensification of development in Lakefront Terrace *on land set aside for compensation for Rocky Point* raises significant challenges for compliance and enforcement of the proposed Rocky Point compensation package. The plan for the new lots on Lakefront Terrace ‘shows accessways, driveways and a building platform/curtilage area within the proposed compensation and offset planting areas’ for Rocky Point. Further, there are no legal mechanisms enabling access over those Lakefront Terrace sites, to ensure ongoing compensation for Rocky Point.

13. For all these reasons, the proposed compensation package for Rocky Point – and the possibility of ensuring that compensation - has been considerably diminished by changes to Lakefront Terrace.

New case law: *Friends of Conical Hill*³

14. The applicant seeks to rely upon a decision of the Environment Court released after the conclusion of the oral hearing in this matter.

15. The decision does not assist the applicant.

16. Firstly, it is not analogous on the facts. There the applicants proposed to remove lizards to a compensation site that was 43 times the area of the impacted habitat (and protected in perpetuity by a QEII covenant, exclusionary stock fencing and weed control). The lizards would readily populate the new site and re-populate the original site when construction was completed. There was no debate that the mitigation was a form of compensation, and the Court accepted that:

the population of lizards will be the same or enhanced ... and that the intent of the District Plan, which is a no net loss objective, is met.⁴

17. Secondly, the Court made it clear that in considering compensation proposals, principles 2 to 6 of the Compensation Guidelines in NPSIB Schedule 4 *were necessary considerations* in any application:

[215] Principles 2 – 6 go to the heart of designing a biodiversity compensation proposal that meets the objective of the NPS-IB which is to maintain indigenous biodiversity within Aotearoa New Zealand so that there is no overall loss. On that basis we consider that **compliance with these principles is necessary in any proposal**, be it under [NPSIB] cls 3.10 or 3.16.

[216] That said, we do not think that “meeting the requirements”, “applying the principles” or even “complying with” Appendix 4 can or should be reduced to a “tick box” or simple yes/no exercise. The inter-relationship of complex ecological terms within the principles, some of which are defined and others which are not, means even determining “compliance” will require the careful application of judgement based on a thorough analysis of the expert evidence available to a decision maker.

³ *Friends of Conical Hill v Hurunui District Council* [2024] NZEnvC 324.

⁴ *Ibid*, [155]

[217] In our view, the NPS-IB requires the decision maker to carefully consider each principle, evaluate the evidence before it and reach a judgement on whether the proposal overall constitutes a compensation proposal that will assist in maintaining indigenous biodiversity so that there is no overall loss in Aotearoa New Zealand in accordance with the NPS-IB objective (*emphasis added*).

18. Critically, the Court in *Friends of Conical Hill* accepted expert evidence that the lizards were neither ‘vulnerable or irreplaceable’ and so the compensation proposal did not fall foul of the Compensation Guidelines in NPSIB Schedule 4.⁵

19. In the present matter, principles 2 – 6 have been comprehensively considered in the written and oral evidence given by Mike Harding and Richard Ewans. Both experts regard the impacted indigenous biodiversity, which includes Threatened and At-risk species and rare ecosystems, as vulnerable and irreplaceable.

Mr Vincent’s opinion as referred to in Minute 11

20. DOC has not seen any recent evidence from Mr Vincent where he says that he would support the application if one lot was removed. From a *landscape perspective*, Mr Vincent previously said removal of one of lots 27-30 would result in less cumulative effects and “I would be more able to support the proposal”⁶ but that did not take into account his analysis based on ecological effects and the planning framework. His overall recommendation was to decline consent.

21. Nevertheless, if it is the case that Mr Vincent would support the proposal if (any) one lot were removed, it is the Director-General’s submission that there is no planning justification or ecological rationale for that opinion.

⁵ Ibid, [237]

⁶ Section 42A Report Writer’s Supplementary Statement, 19th November 2024, [33]. Note he also said “the removal of **some** lots outside the development zone ... may be adequate to reduce the starting level of ecological effects” [30] however he does not identify which lots (other giving Lot 24 as an example) or how many, and he does not justify this suggestion by reference to the Council’s ecological evidence.

Summary of Director-General's legal submissions

22. The removal of Lot 7 has not altered the position that this application:

- a. is a non-complying activity that does not pass through the s 104D gateway;
- b. is contrary to the objectives and policies of all planning instruments;
- c. would destroy historic heritage;
- d. would destroy Threatened and At-risk species and rare eco-systems;
- e. would create adverse landscape effects;
- f. is completely contrary to the conservation covenant on the site – that is a relevant consideration under s 104(1)(c) – and which does not envisage intensive housing development.⁷

23. Further:

- a. the exercise of discretion should not be employed to justify the destruction of threatened and at-risk species by applying the permitted baseline – that would be wrong in law;
- b. the ecological effects cannot legally constitute offsetting: the applicant's original argument that an "idealised or climax state" constitutes offsetting is not supportable ecologically or in law;
- c. while the applicant now appears to accept it is offering a form of compensation not offsetting, the proposed compensation is inadequate, and unlikely to succeed;
- d. the application could not and does not 'create net biodiversity gains' and the applicant *appears* to accept this in paragraph 25 of the legal submissions that state:

While no net loss, or preferably net gain, is the goal of the NPSIB, the biodiversity compensation offered in this instance accepts net loss in a way that offsetting does not tolerate.

⁷ See Counsel for the Director-General's Legal Submissions dated 18th November 2024 at [142] – [168] and Supplementary Legal Submissions dated 29th November 2024 at [3] to [20]. Note also that Counsel takes issue with the wording in paragraph [3] of the applicant's Right of Reply dated 22nd April 2025, and the implication that Mr Gordon is acting as a pseudo amicus-curiae on the matter of the conservation covenant. Mr Gordon is instructed as a lawyer for the applicant to advocate for the applicant's case.

If this paragraph is not in error, the applicant appears to accept that effects on Threatened and At-risk species and rare ecosystems are unmitigated; and

- e. as the applicant has accepted, it is still the case that of the 29 lots now proposed for private use, only 6 are fully within the RuRA(2) Development area in Schedule 19.16 *and* outside the area protected by the conservation covenant, and none of those 6 comply with all of the applicable standards for development in the RuRA(2) zone (Legal Subs 138-142).



Ceri Warnock
Counsel for the Director-General
3rd June 2025

Appendix 1

Memo – Comment on additional ecological values found at Rocky Point, Bendigo post-hearing 18-19 November 2024 and amended effects management proposed by TKO Holdings

Richard Ewans – Senior Technical Advisor, Flora and Ecosystems Team, Department of Conservation

30 May 2025

Context

1. The Panel agreed with DOC's evidence that the application contained insufficient information with respect to site survey data on all types of significant indigenous vegetation (see Minute 5 of the Hearing Panel Para 15(c)). The Panel provided the applicant with the opportunity to rectify this.
2. In relation to ecological matters, after the hearing on 18-19 November 2024, DOC has received or participated in:
 - Wildlands Consultants Ltd: 16 December 2024 - Concise summary of Threatened/At Risk plant survey at Rocky Point and Bendigo Hills Estate, December 2024.
 - Wildlands Consultants Ltd: 10 February 2025 – Supplementary information on Threatened/At Risk plant survey at Rocky Point, December 2024.
 - Ecological caucusing on 21 March 2025, Pursuant to Minute 8 issued by the Commissioners on 27 February 2025.
 - Wildlands Consultants Ltd: May 2025. Response to ecological queries raised in Minute 10 of the Hearing Panel, Rocky Point.
3. In the Memorandum of Counsel for the Applicant dated 25 February 2025 (Para 4), the applicant was explicit that a revised site plan was not being proposed. That position was re-confirmed at expert conferencing. Subsequently, one lot – Lot 7 - has been removed.
4. I have considered the amended proposal. My opinion is that without substantial revision, and just minor adjustment of the effects management package including the removal of Lot 7, the application still leads to a substantial loss of Threatened and At Risk species (far more than originally accounted for by the application at the hearing) and fails to avoid a net loss of indigenous biodiversity.

Ecological values

5. All parties agree that the site and development areas are ecologically significant. The applicant has now completed an ecological survey to an adequate standard.
6. This survey confirmed DOCs evidence that the ecological values are very high, particularly on Lots 1-21, and collectively throughout the site. These values include:

- Two Threatened and 8 At Risk plant species, and 1 locally uncommon plant species **in the impact zone of the development**. This includes a population of the Threatened - Nationally Critical plant species *Ceratocephala pungens*, which has the highest threat ranking available (i.e., the same ranking as kākāpō and black robin) and which is present throughout the site.
 - Collectively regionally important populations of Threatened and At Risk 'spring annual' plant species **in the impact zone of the development**, that contribute to nationally important populations in the wider landscape.
 - The site and development zone within it are ecologically significant i.e., meet the RMA Section 6(c) threshold for significant indigenous vegetation and protection is therefore a matter of national importance. This has always been agreed between the parties.
7. The post-hearing Wildlands ecological survey date of 11-12 December 2024 is considered late for the rarest 'spring annual' species *Ceratocephala pungens* which has the highest threat ranking available (Threatened - Nationally Critical), so it is highly likely the lots support larger populations than reported.
 8. I note that there is still no map of the values shown against the development proposal, nor a comprehensive summary of indigenous biodiversity values compiled from all reports/surveys filed by the applicant. The Wildlands report (16/12/24) specifically proposed to provide a map (p3) showing the species locations but that has not been forthcoming. This makes it difficult to reconcile DOC records and applicant records and show the values collectively. Such a map would have been helpful for the Panel, illustrating the values over the site. However, it is clear indigenous biodiversity values are very high.
 9. My comments below are derived from my previous site visits and evidence, re-considering the evidence and information filed by the applicant for the purposes of the hearing, consideration of all additional information filed post-hearing, and discussions at expert conferencing,

Ecological caucusing

10. The applicant has now proposed removing 1 lot (Lot 7). Note that this was not discussed at ecological conferencing on 21 March 2025, as changes to lot and site layout were explicitly rejected as a point of discussion by the applicant, despite this subject being the only realistic opportunity to make changes to the application that would address DOCs concerns about the level of ecological effects (see page 4 below).

Changes to development proposal

11. The proposal post-hearing has changed as follows:
 - One Lot (Lot 7) has been removed (post-caucusing).
 - Some cushionfield maintenance and some minor additions to native enrichment plantings have been added.

- The compensation planting design has been changed somewhat but continues to rely mostly on common native species.
12. The applicant's ecologist now agrees with DOCs hearing evidence (p9, Wildlands report 10/2/25) that the native plantings are not offsetting (except for replacing lost kanuka) and the applicant is therefore purporting to offer compensatory measures. However, the proposal contradicts multiple principles in the NPS-IB Compensation Guidelines, as outlined in my evidence and that of council's ecologist at the hearing. Of particular importance are the principles of irreplaceability and vulnerability, and additionality and scale.
 13. The effects management package does not provide additionality and does not provide appropriate scale because the adverse effects (including loss of Threatened and At Risk species) are not outweighed by positive effects (planting common species). The regionally significant populations of Threatened and At Risk plants are irreplaceable, especially when considered collectively, and vulnerable to development of the kind proposed by the applicant.
 14. Effects management still relies primarily on compensation in the form of native woody plantings of common native species, whereas what would be lost is high value populations of Threatened and At Risk species from a drylands ecosystems. The effects management still relies on the premise that woody species (kanuka) would expand and destroy all the current values present, which is an overly simplistic view which DOC contests as unrealistic, and inappropriate for consideration given the timeframes involved. These points were addressed in the hearing evidence.
 15. The removal of 1 Lot does little to reduce the overall level of effect. There are still 24 Lots and the wastewater area, supporting Threatened and/or At Risk plant species, **within the impact zone of the development**. It is noted that while Lot 7 has an important population of the 'spring annual' *Myosotis brevis*, the adjacent Lot 6 supports the best population of the rarest 'spring annual' *Ceratocephala pungens* (that was found in the 11-12 December 2024 summer survey) and has not been removed from the development. The broader point is that the values of the wider development area, especially Lots 1-21, are regionally important **collectively**, without fragmentation, loss and disruption.
 16. I have considered the revised planting proposals. Minor additions of native enrichment plantings add little to overall indigenous biodiversity effects management.
 17. Cushionfield maintenance is an averted loss argument based on regeneration of kanuka. While it is clear that kanuka is establishing in those cushionfields based on the photos provided in the Wildlands report (10/2/25), there is no further information on the species diversity or rare plant species values present that would be maintained. I have not inspected the proposed cushionfield maintenance sites B, C or D; however other north facing cushionfields above these specific areas were observed to be highly modified by weeds during my site visit on 14/10/24.
 18. Changes to the planting design in the compensation plantings (patch planting rather than gird planting) means it is likely less native trees would be planted. The idea that this would facilitate establishment of spring annuals is unsupported by ecological evidence and is

highly speculative. In my opinion, it is far more likely weeds would colonise the bare ground in between planting patches on the deeper soils targeted by native planting at the compensation sites. Indeed, the applicant has already stated there are few indigenous biodiversity values on those sites (arguing that there would be no 'leakage'). If there are no rare plants there now, and these areas are dominated by pasture grass and herbaceous weeds like hemlock, there is virtually no prospect of rare plants such as 'spring annuals' colonising.

19. Fourteen of the Lots and the substantive part of the effects management package (remedial and compensation native plantings) lie within the conservation covenant, for which consent is required from the Minister of Conservation. I am aware that the Director-General argued that partial removal of dryland ecosystem and loss of regionally important populations of Threatened and At Risk plants is not consistent with the covenant objectives which are (among others):

- 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

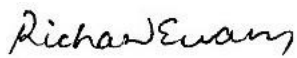
- ii. Protecting the land as an area representative of a significant part of the ecological character of the Dunstan Ecological District...

20. In the conclusion to my hearing evidence, I noted that there are some proposed lots outside the conservation covenant that could possibly be supported for development as they were more modified ecologically. However, this possibility was not discussed at ecological conferencing because the applicant did not agree to the experts considering alternative site layouts or limiting the intensity of the development. These lots mostly lie outside the 'development zone' identified in the District Plan. From an ecological perspective, Lots 22-30 are the only realistic lots that could be developed where - in conjunction with an effects management package - no net loss of significant indigenous biodiversity may be possible. This possibility would require a significantly revised proposal, however.

Conclusion

21. There has been no substantive change in the application post-hearing in regard to outcomes for indigenous biodiversity.
22. The critical change to the applicant's proposal is that there is now confirmation of **demonstrably significantly higher indigenous biodiversity values** that what was presented at the hearing by the applicant.
23. The proposal still leads to an unacceptable level of indigenous biodiversity loss, including of multiple Threatened and At Risk species. The compensation proposals do not make up for this loss because:
 - they replace rare species (including Threatened – Nationally Critical species) with common species,

- in some cases (e.g., patch planting to facilitate spring annual colonisation) are so speculative as to be not fit for consideration as part of the mitigation package,
- they do not meet several important NPS-IB principles for compensation, including that the indigenous biodiversity affected is irreplaceable and vulnerable, and
- are mostly on conservation covenant on an adjacent property, for which no Ministerial permission has been gained or sought.



Richard Ewans
30th May 2025

APPENDIX 2

Comments on recent changes to the receiving environment and proposed offset/compensation sites at Rocky Point and Bendigo Hills

Elizabeth Williams, Senior RM Planner on behalf of the Director-General of Conservation
Tumuaki Ahurei

3rd June 2025

Introduction

1. The Hearings Panel, in Point 3 of Minute 11 invites the submitters to confirm their final positions on the application as amended.
2. I have reviewed the Applicant's response to Minute 10 and details relating to the rationale for the deletion of Lot 7.
3. My evidence presented at the hearing sets out my qualifications and experience as an expert in planning. I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023.

Comments on recent changes to the receiving environment and proposed offset/compensation planting areas

Changes to the receiving environment

4. It is noted that the adjoining site to the south of the application site called "Bendigo Hills Estate-Lakefront Terrace" subdivision has recently had a variation of conditions approved under non notified decision RC 210148V2. RC 210148 was granted on 13 December 2021 and consented the establishment of a six-lot subdivision, with one additional shared access allotment, with residential building platforms on each of the six lots. Since the grant of this consent, two variations have been approved. The most recent, approved on 14 May 2025, permits an additional four lots for residential purposes, resulting in a total of ten residential lots overall.
5. The decision for this variation identifies that the proposal will result in the permanent removal of indigenous vegetation across the four additional lots including kanuka shrubland, cushionfield, and spring annuals. The decision report states that: *"To mitigate the effects on spring annuals and "small cryptic indigenous plants (which cannot be replanted)" additional planting in the form of clustered plantings of diverse woody shrubland communities over 1ha of exotic-dominant vegetation, are proposed to account*

for the loss of ecological values associated with the loss of mosaic kanuka shrubland/cushionfield vegetation and habitat.”¹.

Conditions of consent granted for Lakefront Terrace (RC 210148V2) and offset/compensation planting areas on both Lakefront Terrace and Rocky Point

6. The compensation planting for Lakefront Terrace is required through a new condition (Condition 20) which states:

Compensation Planting

20. Prior to Section 224(c) certification, the consent holder must provide evidence to the Chief Executive that compensation planting has been undertaken within the site consistent with either of the following circumstances:

- a) In the event that RC230179 on the adjoining site at Rocky Point is granted and given effect to, the plantings required by the conditions of that consent have been undertaken and an additional 0.57ha of plantings established over exotic- dominant vegetation adjacent to the westernmost planting site referred to in that consent as “Hemlock Gully”;
or
- b) A total of 1ha of plantings established over exotic-dominant vegetation in the westernmost planting site referred to as “Hemlock Gully”...

7. It is noted that Hemlock Gully has been identified in both Rocky Point and Lakefront Terrace ecological assessments as appropriate for offset/compensation planting of shrublands.
8. There are a couple of points to make with regard to Condition 20 and those conditions proposed for the offset/compensation planting for the Rocky Point subdivision.
9. Firstly, if Rocky Point subdivision is approved, the compensation planting required for the Lakefront Terrace is proposed over both Lakefront Terrace and Rocky Point sites (see Condition 20 (a)). The Wildlands Report assessment for variation 2 of the Lakefront Terrace subdivision states that², if Rocky Point is approved, the 0.43ha of “excess planting sites” proposed for Rocky Point would be utilised as part of the compensation for Lakefront Terrace. This therefore changes and in effect, reduces what has been proposed as part of the Rocky Point compensation package as one can only assume that this will be within the 0.58 ha Rocky Point shrubland identified in Andrew Wells’ evidence (see table below and Attachment 1 Proposed Offset Sites for Rocky Point).
10. I am also not clear if both compensation shrubland plantings for Rocky Point and Lakefront Terraces is achievable within the total area set aside within Hemlock Gully (if Rocky Point subdivision is approved). The Rocky Point application states that Hemlock Gully has an area of 1.77 ha available, and the offset area proposed for Rocky Point is 1.52ha³ leaving an area of 0.25 hectares remaining for Lakefront Terrace compensation

plantings, not 0.57 hectares as required in Condition 20. If this is correct, the effect is to further reduce indigenous biodiversity in the area.

Andrew Wells' Statement of Evidence for Rocky Point application, dated 4 November 2024, table at para [54]

Offset	Impact area (hectares)	Offset area (hectares)	Offset sites and areas (hectares)
Shrubland offset	1.74	2.10	Rocky Point - 0.58 Hemlock Gully - 1.52 (of 1.77 available)
Cushionfield offset	3.95	4.30	Pylon Flat - 1.53 Panorama rise - 1.26 Areas A-E - 1.51 (of 1.69 available)

11. Further, the Planting and Protection Areas plan SK158 (refer to plan in Attachment 2 below) submitted in respect of both applications, shows that the proposed compensation and offset planting areas are split over Lots 2, 4, 5, 8 and 9 of the approved Lakefront Terrace subdivision. This includes the proposed shrubland plantings within Hemlock Gully and cushionfield proposed within Pylon Flat and Panorama Rise (and areas A-E) (refer to Attachments 1(a), (b) below). Plan SK158 shows accessways, driveways and a building platform/curtilage area within the proposed compensation and offset planting areas for Rocky Point and Lakefront Terrace.
12. It is also not clear how the offset/compensation planting areas will be managed and protected from the residential activities occurring within the five properties of the Lakefront Terrace subdivision as the planting areas are not 'separated off' from individual titles. Mr Brown's statement of evidence (para 2.9 (d) page 9) notes that conditions will provide access to Rocky Point onto the three (now five) Bendigo Hills offsetting areas (i.e. provide access over Lots 2, 4, 5, 8 & 9). However, this does not seem to have transpired over to the subdivision and land use consent decision RC210148V2. As far as I understand, there is no legal mechanism to enable this to occur within the individual properties i.e. the planting areas are within individual private titles not common areas and there are no conditions providing legal access for Rocky Point "Management Entity" to access the offset planting areas within these properties for the purposes of maintaining the areas and weed/pest control management. There are also no conditions on RC210148V2 which exclude stock or require pest management within these properties that contain the offset planting areas.

Third party approval

13. My comments have not changed in regard to the proposed offset/compensation planting sites which are located within the adjoining site at 'Bendigo Hills Estate – Lake Terraces'. This new planting requires approval from the Minister of Conservation under a separate statutory process due to the site being subject to the Conservation Covenant. Therefore, if consent was approved, the conditions relating to the biodiversity offsetting/compensation and the long-term management of these areas is unlikely to be

enforceable given that it relies on agreement from a third party (in addition to approval from individual owners of titles created as part of an approved subdivision on this site).

A handwritten signature in blue ink, appearing to read 'Elizabeth Williams', is positioned above the printed name.

Elizabeth Williams

Senior Resource Management Planner

DATED: 3 June 2025

Attachment 1(a): Proposed Offset Sites for Rocky Point (Appendix 1 of Andrew Wells' Statement of Evidence dated 4 November 2024)



Attachment 1(b): Proposed Offset sites on Rocky Point



Legend

- Property boundary
- Rocky Point Protection Zone
- Proposed compensation and offset planting areas (6,214)
- Proposed Curbinfield Maintenance Areas (14,414)
- Enrichment Planting Locations
- Total Area of proposed protected land at Rocky Point
- 56,314 (87.4% of Bendigo Hills Site)
- Total Area of proposed protected land (combined)
- 125,014 (63.0% of both Bendigo Hills and Rocky Point)

Scale
1:10,000

North Arrow