

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: 18th July 2025**

Department of Conservation | *Te Papa Atawhai*

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MAY IT PLEASE THE PANEL:

1. This Memorandum is in response to Minute 14 of the Hearing Panel issued on 17th July 2025.
2. The Director-General requests that the hearing now be closed and that the Panel makes its decision without further delay, on the basis of the information currently before it.

PREAMBLE:

3. Section 39(1) of the Resource Management Act ('RMA') requires the Panel to establish a procedure for the conduct of a hearing that is:

appropriate and fair in the circumstances.

4. Section 21 of the RMA places a duty on the Panel to avoid unreasonable delay:

Every person who exercises or carries out functions, powers, or duties, or is required to do anything, under this Act for which no time limits are prescribed shall do so as promptly as is reasonable in the circumstances.

5. Section 41B of the RMA states a mandatory requirement for an applicant to file evidence that it will be relying on at least 10 working days before the hearing. The reason for this requirement is to enable all submitters to be able to respond to that evidence and for the Panel to ask questions about that evidence – i.e. for the evidence to be properly tested at hearing.
6. The substantive oral hearing in this matter took place **eight months** ago. The evidence and submissions presented at that hearing is now very stale.
7. Since then, there have been numerous additional steps. Each step has provided further opportunities for the applicant to shore up its application in an attempt to address matters that warrant the application being declined. None of this additional information (that includes ecological opinion, planning evaluation, changes to the proposal, proposed conditions and additional legal submissions) has been tested through the oral hearing process.

8. In accordance with Minute 14, the Panel is now seeking further information from the applicant to address fundamental flaws in its case.
9. In counsel's submission, the conduct of the hearing has strayed from being 'appropriate and fair' and the delay in this matter has become unreasonable. Specific details supporting this submission are contained below.

REASONING:

10. The applicant has already had two written rights of reply. The second right of reply was allowed only because its first was so broad and unorthodox it prompted extra steps being taken, including requests for additional information, and resulted in further delay.
11. It is of significance that the applicant did *not* alert the Panel to the changes to the compensation sites (that undermine its compensation argument in the current application) even though it had the opportunity to do so. The Panel is entitled to take this critical omission into account in assessing the veracity of the applicant's case.
12. In their final right of reply, counsel for the applicant has stated, "[i]f this application is approved, RM210148 can be varied to realign the driveways so that they do not extend into compensation planting areas."
13. In response, the Panel has requested that the applicant "provide a suitable condition and/or appropriate changes to the above-mentioned Plan, for our consideration, that would address the concerns conveyed by Department of Conservation".
14. There are five problems with this approach.
15. First, counsel's statement understates the incompatibility problem. It cannot be resolved simply through the imposition of a condition and/or change to the P&P Plan for Rocky Point. Given the Plan shows the Hemlock Gully Protection Area as being bisected by the access for three allotments and one allotment being partly within it, *substantial design changes* for the subdivision would need to be developed and assessed by the applicant and *approved by the Council* in order for the consent to be varied. Fundamentally, variation of the Lakefront conditions is outside the applicant's control.

16. Second, it would be unlawful for the Panel to treat the Lakefront consent as being varied when deciding this application. The Lakefront consent stands as it is constituted, and it envisages the applicant developing areas within the Hemlock Valley Planting and Protection area, shown in the Infracon Planting and Protection Plan ('P&P Plan' – see Appendix 1 Attachment 2), provided by the applicant with its final reply.
17. Third, legally the Panel is required to treat those parts of the Hemlock Valley area shown in the P&P Plan (and as provided for in the Lakefront consent) as being subject to development and accordingly, removed from the amount of compensation proposed.
18. Fourth, the value of the compensation proposal in the current application has been ecologically assessed on the basis of the *entire* Hemlock Gully area being available for planting and protection. However, this is clearly not the case and calls the compensation assessment before the Panel into question.
19. Fifth, it is not within the scope of the process for *this* consent application to vary the Lakefront consent.
20. In any event, these matters do not address the fundamental and insurmountable barriers the application faces with respect to the Conservation Covenant on the site, as confirmed by the independent Legal Advice provided to the Panel on 24th June 2025.
21. In all the circumstances, the procedure adopted for this hearing has strayed from being 'appropriate and fair' particularly to other parties and submitters that have participated diligently throughout this process.
22. The Director-General requests that the hearing now be closed and that the Panel makes its decision without further delay, on the basis of the information currently before it.



Ceri Warnock

Counsel for the Director-General

18th July 2025

APPENDIX 1

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



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