

17/09/2018

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Attention: Oli Monthule-McIntosh.

By email: Oli Monthule-McIntosh <oli.mcintosh@codc.govt.nz>

Dear Oli

COQTNT RC 180144

1. We refer to your letter dated 6 August 2018.
2. We do not understand why your letter refers to the *Darby* case which deals with an issue unrelated to the present application. The leading decision on this area is *Southpark* (we enclose a copy for your reference) which contains a very scholarly discussion of the difference between the “bundle” approach and the proper approach to a multi-property corridor proposal that has elements which are permitted and elements which require a resource consent. *Southpark* dealt with a comparable situation to here, which was an electricity transmission line that was in part permitted (across private land) and in part a discretionary activity (through the road corridor). We commend for your consideration paragraphs 20 to 23 of the Environment Court’s decision. You will note that this decision was found to be persuasive in Commissioner Dennis Nugent’s decision on the Clutha Gold Trail application. We do not understand your point that “the facts were very different”. That is not true, a cycle trail might be different to an electricity line, but the issue is exactly the same and Commissioner Nugent as the CODC’s appointed decision maker, held it to be persuasive. You should too.
3. There is one limited aspect in which the permitted activities could be relevant to the council’s consideration. That aspect is whether the permitted activities (i.e. the parts of the trail that do not require consent) will have effects on the environment that accumulate upon the proposed effects of the resource consent application such as to make the resource consent application unacceptable. These have been referred to as “additive effects” in cases such as *Kuku Mara Partnership v Marlborough District Council* (2005) ELRNZ 466 and *Outstanding Landscape Protection Soc v Hastings DC* [2008] NZRMA 8. That is quite a different concept to the “bundling” approach that you favour. There is no legal authority for bundling permitted activities in with an evaluation of effects under section 104(1)(a). Indeed section 104(2) points to such effects being discounted from the evaluation process. The “bundling” cases address the evaluation of resource consents that involve multiple and different activity status, not the effects of permitted activities.
4. We are instructed that the application will proceed on the basis that it was filed. We cannot apply for a resource consent for activities that are permitted, the Act does not

allow for it¹. However in the meantime our client's landscape architect has prepared a supplementary report addressing the cumulative or "additive" effects issue we described above, and he has recommended a range of mitigation measures in relation to the permitted sections of trail. That report is filed with this letter and represents our client's answer to that aspect of your section 92 request.

5. As *Southpark* explains, the consent authority has no power to control permitted activities through a resource consent application, but the mitigation measures can be offered by an applicant and accepted by a consent authority on an *Augier* basis. That is what COQTNT proposes here.
6. Please now proceed to complete the processing of this application.

Yours faithfully

GALLAWAY COOK ALLAN



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¹ See section 87.