

**Before a Panel Appointed by the  
Clutha District Council**

**In the Matter of** the Resource Management Act 1991 (**RMA**)

**And**

**In the Matter of** RM2893 being a resource consent application to subdivide two titles within the Coastal Resource Area of the Clutha District Plan into 18 residential lots, a lot to vest as road and a balance lot containing the existing farm dwelling and sheds; and land use consent to establish residential activity on the resulting residential lots.

**Evidence of Emma Rayner Peters  
on behalf of Toko Developments Limited**

**Dated 31<sup>st</sup> January 2024**

**Background:**

1. My name is Emma Rayner Peters. I hold a BA and LLB both from the University of Otago and a First Class Honours degree and MA with Distinction, both from the University of Canterbury. I have worked as a solicitor in the areas of commercial and environmental law. I have been the principal of Sweep Consultancy Limited since 2003 providing resource management advice predominantly in the Dunedin City, Clutha, Waitaki, Queenstown Lakes and Central Otago districts. I have produced evidence for hearings at councils and the Environment Court.
2. This evidence has been prepared based upon my investigations and knowledge of the site including numerous site visits, submissions, s42A *Resource Management Act 1991 (RMA)* report and the reports and evidence of experts engaged by the applicant. The scope of this statement will cover the following:
  - Process issue;
  - Summary of the application and amendments made to the proposal since limited notification occurred;
  - The crux of the issue;
  - Comment on issues raised in the s42a report; and
  - Comment on issues raised in submissions received.
3. I acknowledge we are not before the Environment Court. However, I have read the Code of Conduct for Expert Witnesses within the Environment Court Consolidated Practice Note 2014 and I agree to comply with that Code. This statement is within my area of expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in this evidence.

**Process**

4. The applicant opposes the waiver of compliance with a time limit pursuant to s37A of the RMA with respect to the late submission filed by Heather and Graeme Wallace. The fact that Mr and Mrs Wallace failed to check their post office box on a regular basis is not an acceptable reason for waiving the requirement to comply with the submission closing period.

5. No agenda was provided by Clutha District Council (**Council**) and copy of the application and responses to further information requests were not appended either to an agenda or to the s42A report. It is noted that a list of information supporting the application is provided at paragraph [25] of the s42A report.

***Summary of Application & Amendments made since Limited Notification:***

6. The applicant has applied for resource consent to subdivide a title<sup>1</sup> its owns at Coombe Hay Lane, Toko Mouth as well as part of an adjacent title<sup>2</sup> owned by Toko Farms Limited into 18 residential lots<sup>3</sup>, a lot to vest as road<sup>4</sup> and a balance lot<sup>5</sup> containing the existing farm dwelling and sheds. Land use consent to establish residential activity on resulting rural residential lots in also sought.
7. The resulting residential units on Lots 1 – 18 will be self-serviced with respect to 3 waters.
8. The applicant has proffered various mitigation measures in the assessment of environmental effects, responses to further information requests and expert reports and evidence.
9. In response to the s42A report, the applicant has adjusted the location of the identified building platform on Lot 13<sup>6</sup> to allow for the setback from the escarpment required by the geotech report.

***The Crux of the Matter***

10. The processing planner states in the s42A report at paragraphs [9] to [11] that:  
*“[9] The primary reason for recommending the application be declined is in relation to the proposed stormwater treatment system. The activity seeks to utilise a method whereby stormwater detention tanks will be installed on each of the residential lots 1 – 18 and the release of stormwater moderated to achieve desired runoff into the stormwater network. The Council’s engineering officer does not support this technique and prefers an alternative system is deployed.  
[10] The other key outstanding matter is roading, the proposal is for a gravel surface to the proposed road which will be vested to the Council. The Council’s*

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1 Land legally described as Lot 9 Deposited Plan 516455 contained in record of title 805077.

2 Land legally described as Lot 3 Deposited Plan 512557 contained in record of title 789620.

3 Lots 1 – 18 ranging in size from 1,600m<sup>2</sup> to 1.1ha.

4 Lot 20.

5 Lot 19.

6 See Appendix 1 for copy of the amended subdivision scheme plan showing the adjusted identified building platform for Lot 13.

*engineering officer supports sealing of the road. I consider this matter can be addressed through conditions of consent requiring the road to be sealed. [11]...I recommend that subject to appropriate conditions of consent, the adverse effects on the environment of the activity will be minor and consent be granted. If the stormwater design aspect can be overcome and/or agreement on the design reached between the Applicant and the Council's engineering officer, I would otherwise recommend the activity be granted consent."*

11. At paragraph [174] the reporting planner states: *"Based on the above assessment and my recommended conditions of consent applied in conjunction with the Application's mitigation strategy, I consider that that the proposed activity will have minor adverse effects on the environment, the exception being the matter relating to stormwater. In relying on the advice of Mr Mullions I consider that the subdivision is not appropriate in its current form and greater certainty of the adequacy of the stormwater system is required, or an alternative design."*
12. Therefore, the questions to be answered are:
  - Does Coombe Hay Lane right of way and its extension to Coast Road require sealing from the perspective of safety and efficiency of the transportation network? And
  - Has the applicant provided sufficient expert information that the proposed stormwater management solution will work in the context of the environment of the proposed subdivision?
  - Are the draft consent conditions included in Appendix 2 of the s42A report appropriate?

***Comment on Issues Raised in the S42A Report:***

*Resource Consents Required*

13. I concur with paragraph [44] of the s42A report in which the reporting planner sets out the resource consents and applicable activity statuses required for this application except that I consider that resource consent as a discretionary activity is not required for RRA.3(l)(a)2 because the part of the site on which the new residential activity is to occur is zoned *Coastal Resource Area* and not *Rural Resource Area*.

14. The reporting planner refers to COA.1 (other applicable rules) when introducing the requirement for resource consent for Rule RRA.3(l)(a)2. However, COA.1 states (emphasis added): *“Any activity undertaken within the Coastal Resource Area shall take place in accordance with the Rules of both Section 3 General Section and the Section 4.1 Rural Resource Area of this Plan unless this section provides otherwise.”*
15. The *Coastal Resource Area* section 'provides otherwise' via COA.4 which governs the erection of buildings and structures in the *Coastal Resource Area*. The relevant part of COA.4 states (again emphasis added): *“(b) Except as otherwise provided for in (a) above and Rule COA.3, any activity that has the effect of erecting a building or structure shall be a restricted discretionary activity. Council shall restrict the exercise of its discretion to the following aspects: • the ability of the site to dispose of wastes adequately; • the effects of sea level rise or coastal erosion; • the effect of the building and any associated signage on the natural character of the Coast particularly in terms of visual impact; • the effect of the proposal on the intensity of development in the area; • the effect of the building or structure on indigenous flora and fauna; • the effect on cultural values; • height, yard and open space requirements.”*

#### *Setbacks from Escarpment and Boundaries*

16. The applicant confirms that the building setbacks from the escarpment as stated in the geotech report<sup>7</sup> will apply, that is setbacks of:
  - 20m from the crest of the slopes on Lot 13
  - 15 m from the crest of the slope for the remainder of the subdivision with the setbacks on Lots 10 and 11 taken from the crest of the V shaped water runoff channel.
17. The required geotechnical building setback from the escarpment has resulted in an alteration to the location of the building platform on Lot 13. The amended subdivision scheme plan is appended to this evidence at Appendix 1.
18. In paragraph [94] of the s42A report, the planner recommends various building setbacks from boundaries for each residential lot being setbacks of:
  - 20m from road boundaries;

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<sup>7</sup> See page 7, paragraph 7 of the Geotech Report.

- 10m from right of way boundaries; and
  - 5m from side and rear boundaries.
19. These road and right of way setbacks recommended by the reporting planner are not appropriate for a subdivision extending Toko Mouth settlement and are not required to mitigate landscape and amenity effects as assessed by Mr Moore. Furthermore, the recommended setbacks make various lots unviable for building of a dwelling.
20. Instead the applicant proffers the following setbacks:
- 5m from road boundaries (noting that 3m will be in planting); and
  - 1m from rights of way.

The applicant accepts a setback of 5m from side and rear boundaries.

21. I note that in Large Lot Residential 1 zones, which have a minimum site size of 2,000m<sup>2</sup><sup>8</sup> and can be self serviced for 3 waters, the Dunedin City Council requires setbacks of 4.5m from road boundaries, 4m from side and rear boundaries and 1m from rights of way<sup>9</sup>.

*Sealing of Coombe Hay Lane ROW and Its Extension to Coast Road*

22. At paragraph 122 of the s42A report, the planner states: *“I support Mr Mullions’ [the Council’s land development engineering officer] advice that the road should be sealed...sealing the road is a more appropriate and preferred roading surface, particularly where the road will be vested in Council.”*

23. However, in his evidence, on behalf of the applicant, Mr Grant Fisher of Modal Consulting Limited states at paragraphs 20 – 23 that:

*“20. The primary area where I disagree with the Section 42A report is in regard to the surfacing of the proposed new road and upgraded existing road. This matter was in fact canvassed in some detail with Council’s roading engineer James Allison, at a site meeting on 2 December 2022, prior to production of my Transport Assessment Report.*

*21. At that site meeting, it was agreed between Council’s roading engineer and I that unsealed roads would be acceptable to serve the development. The only*

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<sup>8</sup> See 2GP Rules 15.5.2.1.g (land use) and 15.7.4.1.f (subdivision).

<sup>9</sup> See 2GP Rule 15.6.13.1.a.vi.1, 2 and 3 respectively.

*exception to this was the steep section of the proposed new road that would rise up from Coast Road, where the Council's engineer requested investigation and assessment of the need to seal this for future maintenance purposes. The request for this assessment is reflected in my Transport Assessment Report (refer paragraphs 16 – 18 of that report).*

*22. I also note that clause 1.8.3.2 of NZS 4404:2010 states that "Alternative designs provide flexibility to meet the circumstances and requirements peculiar to the site, or as a means of encouraging innovative design, or to meet the principle of life-cycle costing." Roads to, and within, Toko Mouth are substantially unsealed, including Coast Road, Toko Mouth Domain Road, and Riverview Road. The nearest roads to Toko Mouth that are substantially sealed are approximately 11km to the north, and 16km to the south, which is relatively unique for a small township/settlement in the southern region (Otago/Southland). Most small towns would typically have a sealed main road acting as a connector to wider regional areas.*

*23. For these reasons, it is my view that provision of unsealed (metalled) road formation is appropriate in the context of this development, except where dictated by steep gradients (i.e. where the road exceeds 8%). This is reflected in the recommended conditions of consent in my Transport Assessment Report, and again was agreed to by Council's roading engineer on site."*

24. A request for Mr Bevan Mullions to attend the onsite meeting on 2 December 2022 was sent to Clutha District Council but Mr Mullions was unavailable. I note that the Council Officer Report from Mr Mullions appended to the S42A report at Appendix 1 does not state if Mr Mullions had conducted a site visit prior to providing his report.
25. In accordance with the agreement reached at the site visit and for the reasons stated in Mr Fisher's evidence, the applicant does not agree to sealing of the road to vest in Council except any sections where the gradient of the road exceeds 8%.
26. Mr Fisher also states at paragraph 25 of his evidence that: *"...In my view a minimum formed width of 5.5m is compliant with both the ARRB and NZS 4404:2010 guidelines and should therefore be the minimum road formation width adopted [in the conditions of consent]."*

### *Stormwater Management*

27. At paragraph [128] of the s42A report the planner sets out their understanding of proposed stormwater management.
28. A point of clarification is required with respect to collection of roof water for various purposes. Roof water will first go to tank(s) to supply a minimum of 45,000L static firefighting reserve in compliance with New Zealand Standard SNZ/PAS 4509:2008. Overflow from the static firefighting reserve will then go to potable water supply, normally a minimum of 25,000L, with any overflow from the potable water supply tank(s) going to the stormwater management tank.
29. At paragraph [134] of the s42A report the reporting planner set outs the reasons provided by Wai360 Limited in a further information request response justifying the proposed stormwater management by tank versus a communal stormwater detention system.
30. At paragraph [133] of the s42A report the reporting planner states: *“Mr Mullions accepts that the design of works in terms of the treatment of each individual system and its managed release into the stormwater network to achieve predevelopment stormwater flows.”*
31. The reporting planner continues at paragraph [135] to state: *“Relying on Mr Mullions advice, the stormwater design in its current form is not considered to be appropriate, and an alternative option such as a conventional retention/soakage basin is preferred.”* With the reporting planner concluding at paragraph [137]: *“For the above reasons, the adverse effects on the environment from stormwater are not appropriate and are considered to be more than minor.”*
32. I note that stormwater detention via individually owned, within lot tank(s) is an accepted engineering solution in many district councils around New Zealand<sup>10</sup>.
33. Council's land development engineering officer is concerned about maintenance, life cycle and robustness of stormwater detention tanks. In their Council Officer's Report, they state: *“The ongoing maintenance and asset replacement of the Wai360 proposal must also be determined in a manner that is legally enforceable by Council.”*
34. I disagree with the reporting planner that the stormwater management system to

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<sup>10</sup> For example, Dunedin City Council, for example, resource consent condition for multi-unit development in South Dunedin; Hamilton City Council see, for example, Rule 25.13.4.7 of their district plan.



be used for the development as a whole and for individual lots cannot be governed by way of consent condition.

35. The applicant proffers the following:
- That as a condition of subdivision consent, details of stormwater management for the road will be provided to Council for approval prior to commencement of earthworks for formation of the road.
  - That as a condition of subdivision consent, a consent notice is placed on the titles for Lots 1 – 18 requiring proof from lot owner of maintenance and proof of any required fixing or replacement of the stormwater tank(s) or fittings, be provided to Council on a regular basis (e.g. annual, biannual, 5 yearly).
  - That as a condition of land use consent, lot owners seeking building consent are required to provide a drainage plan for approval by the resource consent manager showing how the stormwater from impervious surfaces will be managed in accordance with the Wai360 Limited report.
36. I disagree with the reporting planner's assessment at paragraph [137] that: *"...the adverse effects on the environment from stormwater are not appropriate and are considered to be more than minor."*
37. The applicant has provided expert information demonstrating that the proposed stormwater management system is both feasible and appropriate to the environment in which the subdivision is located – taking into account all of that expert information provided on behalf of the applicant coupled with the proffered conditions of consent detailed in paragraph 35 above, I assess any adverse effects on the environment arising from stormwater associated with the proposed development in the range less than minor to no more than minor.

#### *Financial Contributions*

38. The applicant respectfully requests that, if consent is granted, no financial contribution is levied in this instance. This is because the applicant will be vesting land in Council as road reserve and undertaking upgrades of parts of the right of way to Coombe Hay Lane which is not owned by the applicant.
39. The applicant informs that the financial viability of undertaking the roading works relies on obtaining consent to the proposal as it now stands.

### **Comment on Issues Raised by Submitters:**

#### *Te Rūnanga o Ōtākou*

40. At paragraph [132] of the s42A report, the reporting planner sets out the concerns of Te Rūnanga o Ōtākou regarding stormwater particularly with respect to calculations of projections.
41. At paragraph [133] of the s42A report the reporting planner states: *“Mr Mullions accepts that the design of works in terms of the treatment of each individual system and its managed release into the stormwater network to achieve predevelopment stormwater flows.”*
42. To date, Te Rūnanga o Ōtākou has not provided expert information/evidence as to why the calculations in the Wai360 Limited Stormwater Management Report are not acceptable.
43. With respect to the concern of Te Rūnanga o Ōtākou regarding wastewater set out at paragraph [140] of the s42A report, the reporting planner states at paragraphs [141] – [143] of the s42A report that: *“[141] Mr Mullions does not identify any issues with waste water...[142] I consider future residential activity and associated on site wastewater systems on lots 1 – 18 can be undertaken as a permitted activity [pursuant to the Otago Regional Council, Water for Otago Plan]. The site is not located in any of the groundwater aquifer areas identified in limb (b) and the lots are set back 50m from any bore or the coast. The RPW rule framework is also addressed in section 2 of the Wai360 on site wastewater feasibility assessment. [143] I consider that each lot can dispose of wastewater appropriately and the adverse effects on the environment will be minor.”*
44. With respect to the concern of Te Rūnanga o Ōtākou about locating the subdivision in the coastal environment, I note that Mr Moore, Registered Landscape Architect, has assessed the proposal and concluded that: *“Overall, it is my assessment that effects on the values of the Toko Mouth landscape will be adverse in nature but low in degree.”*<sup>11</sup>

#### **Lapse Date**

45. The applicant seeks a lapse date of 7 years from date of grant of consent.

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11 See Evidence of Mr Moore, paragraph 22.

## **Conclusion**

46. To answer the questions set out under the heading above entitled '*Crux of the Matter*':

- Does Coombe Hay Lane right of way and its extension to Coast Road require sealing from the perspective of safety and efficiency of the transportation network?

No except where the gradient exceeds 8%.

- Has the applicant provided sufficient expert information that the proposed stormwater management solution will work in the context of the environment of the proposed subdivision?

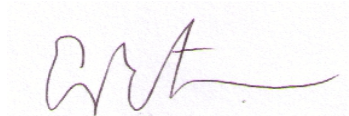
Yes. Additional conditions of consent are proffered by the applicant to overcome the

- Are the draft consent conditions included in Appendix 2 of the s42A report appropriate?

Yes with amendment as detailed in the expert evidence provided on behalf of the applicant.

47. In short the proposal successfully avoids, remedies or mitigates any adverse effects and consent can be granted.

Dated this 31<sup>st</sup> day of January 2024

A handwritten signature in blue ink, appearing to read 'ERP', is written over a light blue rectangular background.

Emma Rayner Peters (BA (First Class Honours), MA (Distinction), LLB)

Appendix 1: Amended Subdivision Scheme Plan.

