

Otago Regional Council
DIRECTIONS OF THE COMMISSIONER
Bendigo Station Limited
Minute 3

Introduction

- [1] Pursuant to section 34A(1) of the Resource Management Act 1991 (RMA), the Otago Regional Council (ORC) has delegated to Independent Commissioner Rob van Voorthuysen the function of hearing submissions and deciding on applications made by Bendigo Station Limited RM12.079.01 – 03.

Submitter Process Concerns

- [2] Aukaha (the sole submitter) withdrew their request to be heard on 4 May 2021 and suggested that the application could be heard 'on the papers'. The applicant agreed to Aukaha's suggestion on 4 May 2021. I then decided that the application would be considered 'on the papers' with no 'in person' hearing.
- [3] I advised that I would put any questions I had for the applicant's and Aukaha's witnesses in writing. As it turned out I had no such questions of clarification, having found the evidence to be very clear on its face.
- [4] On 17 May 2021, by way of email to ORC, Tim Vial, on behalf of Aukaha, raised concerns regarding the ensuing process, namely that the applicant had proposed significant amendments to the supplementary take by filing further evidence and ORC's Consultant Planner, through his 'Right of Reply,' had proposed further amendments that were not proposed by the applicant.
- [5] Mr Vial considered that Kāi Tahu's position had been prejudiced by a lack of opportunity to respond to these proposals, which did not form part of the original application and so were not contemplated when he prepared his evidence. Mr Vial was of the view that these alternative proposals should not form part of my consideration. If they were to be considered by me, then Mr Vial considered that Kāi Tahu should be provided with the opportunity to prepare rebuttal evidence.
- [6] I acknowledge Mr Vial's concerns.
- [7] However, the applicant's further evidence from Will Nicolson was submitted concurrently with the applicant's opening legal submissions on 12 May 2021. It is not unusual for supplementary evidence to be tabled at the commencement of a hearing by the applicant. If an 'in person' hearing had been held then that would have occurred.
- [8] Regarding Mr Horrell's 'Right of Reply Report', for an 'in person' hearing the Section 42A Report author is always asked to provide comments and any amended recommendations prior to the applicant's closing submissions. That is often provided in writing on the day. In this case Mr Horrell's written 'Right of Reply Report' was perhaps more fulsome than would normally be the case.
- [9] Following the receipt of Mr Horrell's 'Right of Reply Report' I asked (through the Hearing Secretary) if the applicant wished to provide any closing comments or submissions and these were provided by Mr Nicolson by way of email on 17 May 2021.
- [10] I then proceeded to commence my deliberations.
- [11] The only procedural anomaly given the 'on the papers' nature of the hearing was the lack of opportunity for Mr Vial to comment on Mr Nicolson's supplementary evidence that was provided on 12 May 2021. At an 'in person' hearing submitters have no opportunity to comment on the Section 42A Report author's comments and amended recommendations (in this case comprising Mr Horrell's 'Right of Reply Report') as these occur after the hearing of submitter evidence. Nor do submitters have an opportunity to comment on the applicant's closing submissions (in this case Mr Nicolson's email on 17 May 2021).

- [12] However, I do not consider that this procedural anomaly has unduly prejudiced Aukaha. I found Mr Vial's written evidence to be helpful and very clearly expressed and note that evidence documented a substantively revised suite of relief compared to the original Aukaha submission.
- [13] I have weighed all of the evidence before me equally and am confident my eventual Decision will reflect that fact.
- [14] However, should Mr Vial wish to provide evidence rebutting Mr Nicolson's 12 May 2021 supplementary evidence **only** then I request that he inform the Hearing Administrator accordingly as soon as possible (preferably today) and I direct that any rebuttal evidence be provided on or before Thursday 20 May 2021. I acknowledge that is a 'tight' timeframe, but note that for an 'in person' hearing Mr Vial would have had to respond verbally to Mr Nicolson's 12 May 2021 supplementary evidence on the day.
- [15] Should Mr Vial wish to table rebuttal evidence then I will give Mr Horrell and the applicant a reasonable opportunity to respond to it.



Rob van Voorthuysen
Commissioner
18 May 2021