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The CEO
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Taumaranui

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Teitei Drive Ohakune – Concerns from residents of Snowmass and Rocky Mountain Chalets as to Council actions and Resource Consent Applications (x2) by Council and ors

I act for several interested and affected parties concerning the proposed Teitei land development by The Ruapehu District Council (RDC) and Kianga-Ora (KO) and being on land currently registered in the name of Waimarino District Council (C.T. WN24D/752), a property created by subdivision in 1983.

At present there is a groundswell of concerns developing which has not subsided following the Council's recent Zoom meeting and drop-in sessions for people to ask questions regarding the proposed development. Anecdotally, those concerns have been elevated since the recent Zoom session on Thursday last week. What is evolving is an impression that as CEO, you are disinterested or disassociated from the reality of the problems with infrastructure, geotechnical issues, roading and safety issues, and the likely consequences for well-established subdivisions and properties within the vicinity of the proposed development. There is also a concern that RDC councillors have been purposefully tight-lipped about the development or are themselves left in the dark concerning the development and its implications on residents and owners of properties within Ohakune.

Many of the owners of Snowmass and Rocky Mountain Chalets are not residents. While geographically they live throughout New Zealand they are from respected trades and professions and are concerned about ensuring transparency but not the kind of bureaucratic transparency that has hampered the Tauranga City Council in past years.

Accordingly, I have been instructed to provide initial advice to my clients regarding the actions and/or inactions of RDC concerning its involvement in the application for two resource consents and the status of the activities as notified or non-notified consents (noting of course that Tonkin & Taylor has apparently been recently engaged to provide advice to RDC on this issue) and to consider the merits of the current applications. Of particular concern are the reasons set out by the applicants for the applications being activities with effects less than minor. On the face of the applications based upon information reviewed to date, they are clearly not. In that regard, I have also been instructed to consider whether any of the councillors or persons employed by an applicant are affected by a conflict of interest, it being apparent that at least, to date one person is conflicted by having land (held in Trust) which adjoins the development property.

My instructions also cover drafting/preparing affidavits of parties considered to be affected by this proposed development, including by way of infrastructure issues, and preparing for an injunction in the event that RDC does not take seriously the issues raised to date by my clients and to those matters set out in this correspondence.

The ultimate aim of this correspondence, as mentioned above, is proper transparency and respectful consideration of the many infrastructure issues/effects that may be created if this development proceeds. I understand that parliamentary questions have been posed to the Housing Minister for answers this week. It is intended that a copy of this correspondence will also be provided to members of parliament to assist with ensuring transparency.

OIA and LGOIMA requests have also been made. This is to assist with the collation of information from RDC and KO and other government agencies. Any information not supplied, unless for information that is properly outside the scope of the request, will be subject to appeal to the ombudsman and will likely result in an application being commenced for pre-litigation third-party discovery.

I now turn to setting out the various concerns and initial formal requests for information which are requested throughout this correspondence.



Council Policy

Public and Affordable Housing Asset and Tenancy Strategy and Asset Management Policy

My clients have referred me to the Council consultative document titled – Public and Affordable Housing Asset and Tenancy Strategy and separately to the Asset Management Policy 2020. The former was out for consultation in 2020 with a closing date of 16 October 2020. There were 21 submissions received. The strategy referred to a \$7.78m grant. The latter is contained in Council’s policy list.

Please confirm that these are the policy document and strategy which is the consultation with the community that is referred to in the recent meetings. Please also provide us with the reports that councillors received when making the decisions relating to Teitei Drive land since 2020 pursuant to your strategy and policy that has resulted in your Council’s proposed resource consent applications (x2).

10-year plan 2021 to 2031

I note that your council has adopted an annual plan for 2023/24 and has a 10-year plan for 2021 to 2031.

Please direct me to the parts of both plans (and costings) that relate to the development of Teitei Drive noting that each plan appears to have been approved after the “grant” and creation of the abovementioned policy and strategy.

In addition, The Local Government Act 2002 (LGA) requires Council to consult with affected and interested parties in making decisions. Before implementing changes, options analysis and the selection of the best practicable and preferred options must be done using a coherent and transparent process.

In the 2020 consultation for the 10-year plan the sole housing issue for Ohakune was the lack of employee housing. The Teitei development is a significant development that is not proposed to address the lack of employee housing rather it has three intentions – social housing, affordable housing and one other.

It is noted that from the RDC 2022 annual report, the Ohakune Flood Plain and Stormwater and Wastewater mapping is still incomplete and that no funds were expended on controlling vegetation in drains in that financial year. My clients have a photographic record of the effect this creates in terms of ecological risk and risk to neighbouring properties and infrastructure issues

Teitei Drain and lack of maintenance

I am advised that the main drain bisecting the property which is located in Stage 1 of the resource consents proposal is not identified as being a Public Drain in RDC document’s Network Plan and yet is immediately downstream of the Snowmass public drain. Does this accord with Council policy and given that some minor spraying has recently been undertaken, what is Council policy regarding the future maintenance of this drain?

Lack of significant engagement

RDC has a policy on significance and engagement where a community can expect to be consulted in advance on matters that affect them.

It is noted that the policy includes a “test” of significance. RDC’s policy (Schedule 1) states that a matter is of high significance if “the issue is deemed highly significant by the community or large parts of the community. The issue is controversial, if it will impact on the lives of people and may have political consequences and is likely to be reported on widely by the press.” I would suggest this makes the decision to divest ratepayer-owned land for the purposes of community and affordable housing highly significant to that community. Understandably, the fact that Parliamentary questions have now been asked and that I have been engaged to represent stakeholder groups illustrates the level of concern felt by local property owners about the impact that this development could have on owners in this fragile community.

Is there a “Control Management Group” consisting of two persons from each of Council and KO and one from Ngati Rangī formed and operating and if so there must be notes/minutes of the interactions and decisions – please provide a copy of these.

The Land

Please also confirm the basis (any trust) upon which RDC holds the land at Teitei Drive. The land was registered in the name of the Waimarino District Council and Councils that were formed following amalgamation (like RDC) had to take the land owned upon the trusts under which that original Council held the land at the time. There is a suggestion that it was held for recreational purposes. Accordingly, please provide a full explanation as to the history of the land ownership.

Has RDC entered into an agreement to sell the first stage land to anyone (including but not limited to Kainga Ora, Ngati Rangī or any partnership of entities)? If so, is there any requirement or option to sell or offer further land for sale?

Shovel Ready Project

Please advise the basis upon which RDC says that the development of Teitei Drive was “shovel ready” at the time of applying for the grant as it appears, certainly from my early investigations and that of my team, that ‘shovel ready’ is a gross over-statement and perhaps a substantial misrepresentation or potential misfeasance particularly when RDC is the applicant. This is concerning.

Please advise when RDC decided that it could not undertake a subdivision alone (i.e. it decided it did not have the expertise or required specialist assistance) and requested KO to become involved. Please provide a copy of the report to RDC or its Councilors as to this situation and a copy of the correspondence to the relevant government agency about this.

Misstatements made during the public Zoom meeting

I have been made aware of some of your comments during the Zoom conference on Thursday 3 August between 5.34 pm and 6.35 pm. It was concerning to my clients that you declined to correct misstatements relating to the resource consent applications which Council has received. This concern covers a statement from Mr Tait that the only application issue was related to the application for subdivision and that Mr Tait did not know the consultant planner appointed by Council to review the application (when this information was readily available, has already been disclosed to others and would have been known to Mr Tait and also where there are of course two resource consents (land and subdivision) applied for separately). It would have been impossible for Mr Tait as a senior employee of one of the Applicants to not know this information.

Alleged Partnership

The pamphlet prepared, distributed and also shown in the Zoom meeting indicates that the development of the site is a partnership between RDC, KO and Ngati Rangī. Please advise the basis of this partnership and contractual arrangements and financial commitments and liabilities and where any cost overruns will fall.

Potential for significant increases to rates

My clients have concerns that the ratepayers will have to pick up the costs of any intended development and that the ongoing maintenance of the infrastructure as designed will cost more than the new rating generated on the sale of the completed sections (noting that any discounted pricing will also affect property values). They are also skeptical, about the price that the stage one land has been sold for. Mr Tait on 27 July 2023 allegedly made a clear statement that the sale price and the development were “discounted” to assist/lower the ultimate sale price for the affordable homes and social housing when built but not available until 2025.

While you may suggest that this is commercially sensitive my clients as ratepayers need to be assured (in writing) that a robust process was involved, and that the sale is at a market value recommended (as required by legislation and your

own policy and strategy including the reinvestment scenario) by a registered valuer independently appointed by the Council. I seek that written assurance from RDC that this occurred as legally required.

There is also the perception of conflicts and possible bias when persons in a position to influence the resource consent applications and design of the subdivision are involved. I have already referred a potential conflict that exists. It is my understanding that Mr Tait may already be substantially conflicted because of his Trust's ownership of adjoining land.

If this is true, then RDC and KO must manage that conflict comprehensively to avoid future allegations and a potential for malfeasance.

Resource Consent applications (x2)

I note that there are two resource consent applications and that apparently the applications were accepted under section 88 of the Resource Management Act 1991 (RMA) on 25 July 2023. The time limits contained in the RMA, therefore, commenced from that date.

Please confirm that this was the date of acceptance by Council and advise who made the decision to accept and provide a copy of the letter of advice sent by Council to the Applicants. This is an urgent request.

I understand that Council has decided to seek "independent" advice from Grant Eccles of Tonkin +Taylor at Hamilton. Please provide details as to who made this decision and when that decision was made.

Please also provide a copy of the terms of reference given to Mr Eccles/Tonkin +Taylor. Mr Eccles is copied into this email to ensure that he is aware of my legal practice involvement and the concerns that my clients have as to the effects being not "less than minor" (see below).

I record that Tonkin & Taylor were contracted to assist the region and Ruapehu District Council with the 2021-2031 Asset Management Plan, including wastewater and land transport sections as well as advise and provide reports in relation to the Rangataua Wastewater reticulation wetland design/assessment and drain. Tonkin & Taylor also identified that one of the key risks was that Ohakune's main Centre businesses were built with culverted waterways which terminate into the Mangatetei Stream" and that this required "strengthening our infrastructure resilience in our townships with more built infrastructure in such towns as ... Ohakune..." It also identified that vegetation maintenance was an ongoing issue in open drains. There is apparently no planned investment for growth until the 2026/27 year and this investment is tagged at \$47,020 in the Tonkin & Taylor report.

Issues and Effects

The matter of vegetation maintenance has been a concern to Rocky Mountain Chalets due to the backflow flooding effect of non-maintenance of the stormwater outlet at the Snowmass/Winstone boundary and the recent very poorly constructed open drain across the Winstone south boundary as shown in the resource consent application.

The photos were taken on 1 August 2023 clearly show that the design of the very flat Council, the immediate upstream, stormwater pipe is compromised by the lack of adequate upkeep at the detention pond and open drain such that the water level at the outlet was one third to halfway up from the invert level. This is of concern and is clearly a breach of your legislative responsibilities.

Please confirm that there will be, as part of the Stage I application, an engineering design and completed works to ensure that Council's existing stormwater reticulation within the northern end of the Snowmass subdivision can function as it was planned. Clearly, this is an effect that is currently not mitigated and must be considered greater than "less than minor".

No Regional Council Involvement as yet

I record at the outset that there appears to have not yet been an application (as premised in the resource consent applications) lodged with the Regional Council. Given the geological formation of the land (as known to my clients and

detailed several times to Council) I consider it would be sensible to require such an application and have it heard at a joint hearing.

I am informed that earthworks, vegetation clearance, and the discharge of stormwater (including contaminants in runoff from hard stand areas including roads) to land (swale and detention pond) may not be a permitted activity under the Horizons Regional Plan – something I consider that colleagues of Mr Eccles at Tonkin & Taylor could confirm and which I note is predicted in the operative district plan. It is also noted that Ohakune lies on a flood plain with significant areas of Ohakune susceptible to flooding and that stormwater Master planning was required as a high priority for Ohakune and this needed to be in conjunction with Horizon's Regional Council. As noted above the flood plain mapping and stormwater and wastewater modelling is still a work in progress. My clients are aware that other subdivisions are on hold because of this delay. Will the same constraints apply to the current subdivision application?

The following additional effects that are more than “less than minor” are drawn to your attention. It is considered that these should assist Mr Eccles in forming an opinion that the applications as filed need to be notified for submission. The additional effects that my clients consider relevant include

- a. The size of some of the sections (contrary to policy and rules)
- b. The inability of some proposed sections to meet minimum rectangle requirement (15x10m)The failure of the cross section for roading to accurately depict the position and shape of the swale, noting that Isthmus drawings do not show services nor location of stormwater and wastewater house leads which greatly influence the shape of these swales. Our client's preliminary investigations reveal, for these narrow roads, the swale will not be a (nice) rounded u-shaped culvert as shown by Isthmus but rather a V-shape cut of some 1.5m deep with the sanitary sewer manholes located in the middle of the road carriageway some 2.5 metres deep.
- d. The effect on the closure of the existing Snowmass walkway to the Carrot Park while development occurs. I am advised this will affect a number of children and adults who currently use this access to get to school and shops etc with the alternative somewhat longer route via SH 49 Rangataua Road (approximately 20 minutes and has a narrow berm and a 70k/h speed limit).
- e. The effect of allowing the new swale system and its ongoing costs to ratepayers – likely to exceed total rate take and therefore not fiscally neutral.
- f. The effect of adding the stormwater and wastewater to the existing system (noted as above as at capacity other subdivisions delayed).
- g. The network plan for Ohakune not showing the S/M main drain extension through Teitei block noting it is currently a public drain servicing those above. The lack of any maintenance (confirmed by 1 August 2023 photos) has created pools of stagnant water etc. – an effect that cannot be ignored.
- h. The (adverse) effect on the council's existing stormwater system serving Snowmass Drive, adjacent property and Rocky Mountain Chalets by the poorly constructed and maintained open public drain through the Winstone's property shown in the Application.
- i. The real increase in traffic onto a State Highway from a single road servicing the intended staged subdivision and requirements for future-proofing that infrastructure – upgrading of intersection a likely requirement (refer NZTA)
- j. The total HEU for each site and stage given the propensity for double-story duplexes.
- k. Although consultation for Resource Consent applications is not required per se it does become a factor in the decision to notify – see also other developments now stalled precisely because of this in Hastings and South Auckland and Whangarei.
- l. The proposal for each house lot having two car spaces (anticipated according to the AEE) yet stated at a meeting would definitely include two car parks, however, no designs have been approved for houses, units or duplexes.
- m. The failure of the stage one proposal to maintain the existing three major trees and vegetation – can be easily designed around (and it is noted that the operative district plan considers tree planting as part of good quality urban design.
- n. Localised Play areas– due to reduced sizing and no guarantee that the policy of site coverage and yards being met in future building consent applications. There is no suggestion that the reserve area would be developed.
- o. There is no on-street parking shown and difficult to provide with deep swales on one side and a footpath on other.
- p. The issue of demand for housing in the area (and the current supply against demand).

- q. No surety that the shown ILs of SW Line 8 will provide adequate discharge of Snowmass (north) waters. Generally, the reticulation depths are an issue that does affect the applications and is not currently clarified in the analysis of effects (AEE).
- r. The issue and objective of the overall amenity of the vicinity which results in a policy translated into rules – degradation of the quality of the residential environment due to development which is not in character with the area or does not enhance the character of the area - (noting the population base and housing numbers in Ohakune) and the consequent effect of the clustering of these types of houses has not been assessed. It is noted no site plans of buildings has been submitted.
- s. The “rerouting” of the existing pedestrian accessway (a joint effort by the Snowmass developer and Council’s then CE David Hammond) to new local roads is considered an important adverse effect.
- t. Whether the design of the subdivision is optimal and whether the 2,888m2 reserve in Stage 1 needs to extend as far southwards as shown so as to potentially inhibit the residential potential for housing in future stages or whether as previously indicated the design could encompass the established trees.
- u. Whether the policies surrounding safety have been met?
- v. Whether the issue of infrastructure capacity the objective and policies set out in the operative district plan have been met or are less than minor?
- w. Whether the reverse sensitivity issues identified in the operative district plan have been met or mitigated so as to be less than minor.
- x. Whether the proposed size of sections allows for a single-story dwelling per 450sqm of net site area with maximum coverage of 35% or 150sqm complying with height to boundary excluding yards.
- y. The operative district plan lists but does not limit the general assessment criteria for subdivision and it is clear these assessment criteria cannot be met or considered to be less than minor.
- z. The effect of inappropriate subdivision design on established urban amenity and character has not been assessed – as stated above the existing character of the area is considered to be affected.

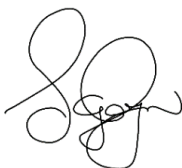
While I have set out the above in some detail, I acknowledge that I am still to receive reports from several experts and from the various OIA’s and LGOIM’s requests. Accordingly, this should not be considered a complete list of effects or concerns which my clients have presently. I anticipate that this will grow as more information comes to hand, which is often a by-product of a lack of appropriate and early public consultation and the time limits prescribed in the RMA properly observed. Those time limits have largely dictated this approach.

It is expected that RDC will acknowledge this correspondence and begin collating and providing the requested information with some urgency, particularly in light of the RMA timeframe limits. Please also provide the contact details of the person in RDC and the delegation that we will correspond with.

While it is the preference of my clients to avoid litigation, I am instructed that provided there is timely and appropriate consultation with evidence that my client’s concerns are being seriously considered then my clients will establish a stakeholder liaison group to manage the ongoing relationship with RDC and KO which will assist in ensuring open communication and avoiding unnecessary cost and delay that can occur with litigation.

Please provide copies of the information requested by Friday 18 August 2023 and the urgent request by the end of this week.

Yours Faithfully
BYTALUS LEGAL



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