

LUC-2016-245 and SUB-2016-45

LANDOWNER EVIDENCE – TOM RICHARDSON

The information provided below serves several purposes. Firstly, information expanding on the nature of the historic land transfer arrangements between the applicant and the submitter's is introduced. Secondly, expert evidence based on the landowner's experience is supplied in relation to a number of relevant matters. Lastly, several aspects of the Wouter's submission are addressed where these require correction.

Property Transaction Background

I not only sold the property to Mr Rietveld and Ms Wouters in May 2012, on behalf of RPR Properties Limited, but I also lived in this house for 6 years prior to that. So I am fully familiar with all of the relevant factors involved with living there, including the fact that the garden contained and continues to contain significant rhododendrons and azaleas, which used to grow right to the paddock fence lines and never on any occasion during my six years there, during which time Mrs Hayes was my tenant with her horses, was I aware that her horses or any other animals became poisoned as a result of eating the leaves whether on the bushes or as wind-blown and they were probably included in the grass clippings which I always put over the fence into the paddocks for six years and the house tenants before me did the same for a previous two plus years.

When I sold the property on behalf of RPR Properties to Mr Rietveld and Ms Wouters on the 14 May 2012, I included five extra clauses in the further terms of sale and I submit a copy of these clauses to you today (refer appendix page 5).

Please note that as at the sale date 14 May 2012 the now 31 Dalziel Road titled was still going through the 224c process and was not at that time a separate title. Please note in particular clause 15.8 (Covenant) which the vendor, not the purchaser acted upon, to protect the Rock Wall between this property and the balance land (Lot 2) being retained by RPR Properties Ltd.

Also please note clause 15.10 (no objection). This clause, signed both Mr Rietveld and Ms Wouters, made it crystal clear to all parties to the sale and purchase agreement, that RPR Properties had every intention of further developing their balance land (Lot 2) at some time in the near future. RPR Properties has always been completely up front and transparent about its further intention for developing its land, and this is borne out by a number of public disclosures from time to time both by RPR Properties Directors and by the DCC staff public announcements.

I believe that in light of subsequent events and in particular the very acerbic and bitter objections made by both Rietveld and Wouters to the last 34 section application, the 2GP hearing, and this current application, that this committee and the planners should pay some

real attention to the fact that both Rietveld and Wouters were fully aware, and agreed in writing under their personal signatures, that they were made aware by myself, not as a salesperson, but as a director of RPR Properties that further significant development of the balance property (Lot 2) would take place in the future and they purchased the property in full signed knowledge of this fact.

I, as a Director of RPR Properties INSISTED on this clause 15.10 being included in the sale and purchase agreement, and it is correct to say that had Mr Rietveld and Ms Wouters NOT agreed to this essential clause in writing, they would not have been able to purchase 31 Dalziel Road. I had been advised by a third party that it would be prudent, and essential for RPR, to not rely on any apparent implied agreement about not objecting to RPR'S future development plans and this was my motivation for including this clause and insisting on written recognition of RPR Properties potential ongoing development plans for Lot 2. I further showed Rietveld and Wouters a draft concept plan dated 9 February 2011 (15 months before the Rietveld sale) which was a concept plan that had been developed for the whole RPR Property, whereby the house block (Lot 1) was intended to be sub-divided off with only 0.57ha, and the total property was to be sub-divided into 22 titles. After advice from the DCC Planning staff, RPR Properties produced another concept plan, which showed the house block retaining 1ha. RPR Properties was advised that the chances of success for this plan were not good, and to apply for a simple sub-division with 2 titles, 2ha with the house and sheds (Lot 1) and the balance land (Lot 2). We then applied for, and eventually obtained consent for this concept, hence the Rietveld-Wouters title as it currently exists.

Please further note that the access road to the current 9-titles RPR Property subdivision, and about which Ms Wouters complains incessantly, was already shown as the designated access to the RPR Balance land in 9th February 2011. So both Rietveld and Wouters were made fully aware of RPR'S future possible plans when they purchased, AND they signed their agreement not to object to any application by the Vendor RPR Properties Limited.

Subsequent events, including this application that you as a committee are considering today, has shown the lack of integrity, of both Messrs Rietveld and Wouters in signing the sale and purchase agreement to buy 31 Dalziel Road on 14 May 2012 when it is clear by their multiple subsequent actions that they had no intention of honouring their signed word.

Comments in Relation to Submissions

Mr Rietveld makes much of the current DCC plan rules that minimum size blocks must be 15ha and that this has been so since 1998 and was confirmed by the environment court through variation 9A. Mr Rietveld maintains that the council is completely bound by this ruling variation 9A and the council has no discretion around this ruling and rules under the current operative district plan regarding minimum lot sizes (15ha) and fixed side yards of 40m.

May I say that this is cynical and hypocritical of Mr Rietveld considering that he now owns and lives on a rural zoned block of 2ha, i.e. less than 1/7th of the so called minimum rural size, and in fact the creation of this block (31 Dalziel Road) was the subdivision that actually began the subdivision of RPR Properties Limited land into sub 15ha blocks, and this has occurred since variation 9A was ruled by the environment court. On its own this is clear evidence that the DCC and your committee has the lawful right to make a decision to subdivide rural land to titles less than 15ha.

The claim regarding 40m minimum side yard is also cynical when you are aware that during the last 3 years Mr Rietveld obtained a consent and erected a large garage complex next to his house measuring 18x10m and situated only approximately 16 metres from Dalziel Road and 26m from RPR's property boundary on the southern side - both side yards being apparently unlawful according to Mr Rietveld. It may also be worth noting that Mr Rietveld obtained a land use (building) consent for this large garage without the DCC requiring any form of notification to the immediate neighbours, i.e. RPR Properties Limited, even when the application breached the supposedly not-allowable discretion of side yards rules. I don't think I need to further discuss Mr Rietveld's submission as I think you the committee know that variation 9A does not prevent you from making a decision about non complying section sizes or side yards.

Ms Wouters bought the 31 Dalziel Road property on the 14 May 2012, not on the 10th October 2012 (this later date was the possession date). The two proposed relocate sites are at a distance of approximately 160 metres from the Wouters house, and yet she has 3 neighbours closer than this distance when she purchased in 2012. Also strange that she would purchase a house only 16 metres from a busy collector road with approximately 900 vehicle movements per day if she was seeking peace and quiet in order to hear animal noise and be able to differentiate between night skies and car headlights.

I am now going to deal with Ms Wouter's submission with its various components, and for ease of reference, I am going to use Ms Wouters headings from her submission.

What we Were Promised

I did not promise Ms Wouters anything, and if she believes that I made false promises to them, she should have taken this evidence to the REAA authority which controls the integrity of Licensed Real Estate agents.

Please refer to the photograph which is a scheme plan for 9x 2ha sections and which was only drawn on the 4th September 2012 (refer appendix page 23) some 4 months after Ms Wouters signed a sale and purchase agreement for the proposed Lot 1 (31 Dalziel Road) and as this committee well knows this is not even vaguely what RPR Properties finished up with under Consent SUB2012-92 and LUC2012-504. This committee is also aware that no one, and particularly not an experienced developer such as myself, would be stupid enough to make any promises about a future subdivision size or shape especially given the problems faced by RPR Properties in subdividing RURAL land into non complying significantly smaller than 15ha blocks, and further, not making promises on a conceptual plan only. Ms Wouters seems to be continually confused about not only the actual current zoning of her own

property but also the fact that RPRs Property could not automatically be subdivided, as of right, into 2ha sections.

I also include the attached a plan dated 9th February 2011 (refer appendix page 24), which was in existence when Ms Wouters purchased the signed a sale and purchase agreement for 31 Dalziel Road. This plan shows a more comprehensive density of residential sites than Ms Wouters claims she might have otherwise anticipated.

District Plan

If as Ms Wouters claims, that she checked out the Dunedin District Plan, she would have been aware that the property that she was considering buying, i.e. 31 Dalziel Road was zoned rural, and it was the beginning sub-division for RPR's land, which itself was not compliant with the District Plan. This knowledge did not stop her purchasing the property, and signing a sale and purchase agreement containing a quite specific NO OBJECTION clause, as well as being clearly made aware by myself of the history around the creation of 31 Dalziel Road and the potential location of the new access road, and the fact that RPR Properties was going to apply for consent to subdivide the balance of their land into 20 plus sections.

What was Agreed

What was agreed to, is very clear, by way of the enclosed sale and purchase agreement between Wouters and Reitveld and the directors of RPR Properties. No amount of bluster from Ms Wouters changes the written facts as well as the fact that Ms Wouters does not and has not honoured her actual signed word by writing 3 very large submissions objecting to RPR's applications for consents, not to mention her strenuous opposition to the DCC 2GP zone change of RPR's land to Large Lot Residential 1. This is the real actual evidence of what was agreed to, not the innuendo and downright fabrications Ms Wouters claims.

Water Supply

Unfortunate innuendo again from Ms Wouters. The supply of water through 31 Dalziel Road is by way of a water easement in favour of what was Lot 2 when the Rietveld/Wouters property was subdivided off, and current Lots 2, 3,4,5,6,7,8,.9 and 10 are all formed from what was Lot 2. Also the water supply is owned and paid for by RPR Properties (refer copy of latest water account from DCC, appendix page 25). This supply incidentally, includes all the water used by the Rietveld/Wouters house and property including their tenant Mrs Hayes horses, and this has been the case for almost 4 years. So the water supply is not illegal, does not belong to Ms Wouters, and incidentally, is not used by 37 Dalziel Road who have their own water tank, supplied by their own roof.

The committee will be aware that RPR Properties has applied for and been granted a further right to supply reticulated water to Lots 2, 4, 5, 6, 7, 8, 9 and 10, and this is being installed as we speak, and Ms Wouters was fully conversant with the fact that this was to happen, and any suggestion of illegality by RPR or any of its clients at Westacott Heights by her, is not only misleading to the committee, but completely dishonest.

Water Runoff

Ms Wouters would do well to consult the topographical map of the land between her property and RPR's property, and discover that her house is at a medium level of 292m above sea level and the fall to the eastern boundary is close to 4 metres to RPR's property. Water does not run uphill, and it is a fact that water runs off the Rietveld/Wouters property onto RPR's property. This is further exacerbated by the fact that all of the water runoff from their house – new garage and old sheds - is simply run onto the ground over their property and into the neighbours (Ramsey's) and onto RPR's property.

Perhaps I could say that people who live in glass houses shouldn't throw stones, and I am being kind in comparison to my real feelings about some of Ms Wouters statements and claims.

Legal

LUC-2015-291 and SUB-2015-54 has not been granted, and it was for 34 new sections, not 2 new sections, replacing 2 existing sections.

Referring to LUC-2012-504 and SUB-2012-92, please refer to the enclosed reply from Dr Sue Bidrose to Mrs Ruske (refer appendix page 14) and a copy of the implied threat letter by Mrs Ruske, President of Keep Halfway Bush Semi Rural Society (refer appendix page 26) where there is an inference that the Society won't proceed down the path of High Court action to declare this consent illegal provided that the land is zoned Rural Residential in the 2GP process. Furthermore, also attached is a letter from Ms Wouters (refer appendix page 27) and a response from Mr John Sule of DCC (refer appendix page 28) seeking claiming the previous consents issued to RPR were illegal and should be overturned. Extraordinary is all I can say, and let's say that if but some miracle, Ms Wouters and Mrs Ruske were successful in achieving a High Court Ruling in their favour against the Council, and declaring LUC-2012-504 and SUB-2012-92 Illegal, presumably all the new homes would have to be removed, and the sections revert back to RPR Properties. Why stop there, presumably RPR and the DCC also acted illegally and incorrectly when they allowed the current undersized Rietveld/Wouters property to be subdivided off. RPR would welcome receiving this property back!!!

Mitigation

I have already covered the hypocrisy regarding the side yards and Mr Rietveld had already verbally agreed to a deer fence on their eastern boundary. At the time of that discussion (on site and verbatim) the comment by Ms Wouters was that she required that a professional fencer erected the fence, Mr Rietveld answered that comment himself, by saying of course it will be (referring to the deer fence). We (my wife was present) laughed and said well we, ourselves won't be erecting the deer fence so of course it will be erected professionally, as were all the fences: end of discussion.

The shade cloth suggestion was to mitigate any potential for either leaves or plants to grow through the deer fence for both sides benefit. If Rietveld/Wouters have changed their mind about this, that's okay with RPR Properties. Ms Wouters needs to remember that this area of fencing is a boundary shared fence, and any future owners would require the Rietveld/Wouters agreement to make any alterations. Also because this is a shared boundary fence, the Rietveld/Wouters property cannot just divest responsibility for their potential animal safety or possible fence deterioration onto everybody else. There is an existing sheep netting fence as a shared boundary now, and there is a Rietveld/Wouters responsibility existing now.

Development Contributions

Ms Wouters certainly has a devious demeanour with some of her inferences and statements and on this occasion has commented that RPR are trying to avoid Development Contributions.

Development Contributions are only paid on the creation of more titles, contributions have already been paid on Lots 8 and 9, so RPR is not trying to avoid, evade, escape, circumvent, elude dodge duck or cheat paying Development Contributions.

Fencing

This Hawker boundary argument has little to do with RPR and the Rietveld/Wouters boundary, however, the photos presented here (refer appendix pages 12 and 13) today illustrate very clearly that the Hogget's cannot crawl under the gaps at the bottom of the fence line between the Hawkers (33 Dalziel Road) and Ms Wouters fence, it didn't happen when they were real lambs and there is a lesser chance now they are Hogget's.

Further and more importantly, is that the truth was not told. There appears to be no soil disturbance, removal, or indeed differing ground levels at the boundary of 33 Dalziel Road and Ms Wouter's property.

Complaints from Rural Neighbours

Ms Wouters does not supply any evidence whatsoever of this happening from any of her neighbours, and in fact the opposite has occurred. Ms Wouters is continually complaining about her neighbours, and interfering in their legitimate daily lives.

Wild Bird Life

The question to ask here, is does Ms Wouters put honeyed water in the trees, put wild birds seed on a bird feeder. Does Ms Wouters engage in positive proactive activity to encourage any bird life at all on her property? You can buy wild bird seed at the supermarket and bread for a \$1 a loaf which is perfect for feeding the birds. I know all this because my wife does this all the time. If you don't invest in nature your rewards are limited and or diminish entirely. What motivation was given for the Tui's to return to their property, perhaps their neighbours offer better fare for them? Another reason for the loss of bird life on the

Rietveld/Wouters property may be the fact that at the same time that the Hawker house was being built (160 metres away,) they, Rietveld/Wouters, were cutting down approx. 10 large Cedar trees beside their house, and replacing them with a large 18x10 metre garage!!! Difficult to see as to why the Hawker house should be to blame for the loss of the Tui's.

Visual Impact

The predominant view to the east from the Wouters/Reitveld's home, is a view of many houses in Half Way Bush – presumably if Council's planner viewed the eastern view from the Rietveld/Wouters house he would be able to confirm this.

Other Matters

I do not intend to comment at length on the final parts of Ms Wouter's submission, i.e. the letter of demand from her to John Sule and Sue Bidrose, as I am certain that Ms Wouters does not have the power of a court, in making this demand to the DCC to curtail the legal rights of RPR to make any applications that it wishes to make.

The inclusion of significant parts of the consent decision regarding SUB-2015-54 is also irrelevant, as this application is vastly different in scope, and finally the inclusion of the Ruske letter of threat, to which we have added Dr Bidrose's reply, are also irrelevant to this application. I believe that the members of the committee are sufficiently robust in your knowledge and integrity to view these letters for what they are, and not to be deeply intimidated by them.

Tom Richardson
30 August 2016