

**BEFORE THE CENTRAL OTAGO DISTRICT COUNCIL**

**IN THE MATTER OF** Plan Change 19 to the Operative Central Otago District  
Plan

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**STATEMENT OF EVIDENCE OF CRAIG ALAN BARR ON BEHALF OF**

**JONES FAMILY TRUST AND SEARELL FAMILY TRUST (#82)**

**CAIRINE MACLEOD (#135)**

**SHANON GARDEN (#139)**

**PISA VILLAGE DEVELOPMENT LIMITED & PISA MOORINGS VINEYARD**

**LIMITED (#146)**

**ROWAN AND JOHN KLEVSTUL (#163)**

**PLANNING**

**11 APRIL 2023**

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## 1. INTRODUCTION

- 1.1 My name is Craig Alan Barr. I am a planning consultant and have been asked to prepare planning evidence on the Central Otago District Council's (**Council/CODC**) Plan Change 19 (**PC19**) to the operative Central Otago District Plan (**District Plan/ODP**).
- 1.2 I hold the qualifications of Master of Planning and a Bachelor of Science from the University of Otago. I have been employed in planning and development roles since 2006, for both local authorities as well as in private practice. I am based in the Central Otago area and am very familiar with local and regional planning in the Central Otago, Queenstown Lakes, Clutha districts and the Otago region.
- 1.3 I have been involved in district plan and regional policy statement development for over ten years, including the Queenstown Lakes Proposed District Plan process for the Queenstown Lakes District Council (QLDC). I was the lead planner and reporting officer for QLDC in relation to the landscape and rural zones, the Wakatipu Basin variation and also appeared in the Environment Court on these matters. I was closely involved in the latter stages of the preparation of the Partially Operative Otago Regional Policy Statement 2019 (**PORPS19**) throughout 2017-2020, having represented the QLDC in Environment Court mediation and in an Environment Court hearing in relation to the mining topic related provisions. I have also been involved in hearings on the proposed Otago Regional Policy Statement 2021 (**pORPS21**), and also recently involved in plan changes in Christchurch and the West Coast.
- 1.4 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2023 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise.

## 2. SCOPE OF EVIDENCE

- 2.1 The purpose of my evidence is in relation to, and structured to evaluate the following matters which relate to PC 19:
- (a) The Requirements of section 32AA of the RMA (section 3);

- (b) Whether CODC, with respect to PC19, is a Tier 3 local authority under the NPSUD, and the most appropriate way for PC19 to give effect to the NPS-UD (section 4);
- (c) PC 19 framework and scheduled activities (section 5); and
- (d) PC 19 text (section six).

2.2 My evidence responds to those parts of the Council's section 42A report that discuss the National Policy Statement Urban Development 2020 (**NPS-UD**) and residential density provisions applicable to the Large Lot Residential Zone (**LLR**) proposed by PC19. My evidence explains why I consider that CODC should be considered a Tier 3 authority under the NPS-UD and the implications of this with respect to the residential provisions and zoning maps of PC19. I also note that these matters will be addressed in further detail at the zoning hearing by the submitters on whose behalf this evidence has been prepared.

## **CONTEXT**

2.3 This statement of evidence is prepared on behalf of the following persons that have each lodged a submission on PC19 seeking among other matters amendment to the residential density provisions and zoning maps of PC19 (**Submitters**):

- (a) Jones Family Trust and Searell Family Trust (#82) have made a submission on PC19 seeking that their land in Bannockburn is rezoned from LLRZ to provide for higher residential densities (i.e Low Density Residential and Medium Density Residential), that the wider Bannockburn residential subdivision provisions provide for a residential density of 1,000m<sup>2</sup> minimum and 1,500m<sup>2</sup> average, and to provide for a commercially zoned area/village centre within Bannockburn. The Trust's have also made a submission seeking that the Building Line Restriction at Bannockburn is amended as currently shown on the Plan Maps.
- (b) Cairine Macleod (#135) seeks that 5.4ha of her land zoned LLRZ at Hall Road in Bannockburn, and the wider LLRZ at Bannockburn has a residential density of 1,200m<sup>2</sup> with an average of 1500m<sup>2</sup>, and 3.5ha of her land is zoned from Rural Zone to LLRZ.
- (c) Shanon Garden (#139) seeks that land located at Dunstan Road Alexandra is zoned from LLRZ to Low Density Residential, and an area of adjoining Rural Zoned land is rezoned to LLRZ.

- (d) Pisa Village Development Limited & Pisa Moorings Vineyard Limited (#146) seek that land zoned LLRZ, Low Density Residential and Rural Zone is rezoned to a mix of Low Density Residential, Medium Density Residential comprising in the order of 292 residential lots with an area for commercial activities.
- (e) Rowan Klevstul (#163) seeks that land located to the south of Bannockburn township at Schoolhouse Road is rezoned from Rural to residential, including provision for a hamlet (clustered) style of residential development which can focus development to certain parts of a site while still maintaining an average residential density consistent with the LLRZ objectives. The specific relief will be further discussed in the subsequent zoning hearings relating to this submission. However, the submission also sought changes that would allow hamlet (clustered) style of development to occur as a district-wide option, and this is broadly addressed at this stage.

2.4 In preparing this evidence I have read and considered the following documents:

- (a) The PC 19 documentation including the notified text, the Operative District Plan (**ODP**) text which is identified to amended and the Council's section 32 evaluation;
- (b) The Cromwell Spatial Plan and the Vincent Spatial Plan;
- (c) The Design Guidelines prepared by Boffa Miskell which are available as part of the PC19 documentation;
- (d) The Resource Management Act 1991 (**RMA**);
- (e) The PORPS19 and the pORPS21.
- (f) Relevant national policy statements including the NPS-UD and the National Policy Statement Highly Productive 2022 (**NPS-HPL**);
- (g) The Council's section 42A report prepared by Ms White (**s 42A report**);
- (h) Submissions and further submissions from those persons who have had an influence and/or garnered attention in the s 42A report and/or supplementary evidence.

2.5 As a precursor to my evidence, I have identified and discussed the s42A report's commentary on the NPS-UD and overall PC 19 framework because these matters are raised in the s42A report<sup>1</sup> along with an evaluation of some

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<sup>1</sup> S42A report at sections 4 (Plan Change Overview), 9 Relevance of NPS-UD and NPS-HPL, and density in the LLRZ (LLRZ-S1).

submissions on the NPS-UD, and at a finer grain, the density of residential in locations such as Bannockburn.<sup>2</sup>

- 2.6 I note that the s42A report has not addressed all submissions and I acknowledge that this is not a requirement under the RMA. In addition however, the Council's published summary of decisions requested has broadly categorised multiple submission points/decisions requested into one statement. The combined effect is that it is unclear if a submission point on matters such as density has been assessed in the provisions s42A report or will be addressed in the rezoning s42A report.
- 2.7 Furthermore, the Council has not published a table of whether a submission point has been allocated to the hearing on provisions or the hearing on rezoning/mapping. This has made it uncertain and difficult for submitters to understand whether a submission matter has been addressed in the provisions s42A report, or if it is intended to be addressed in the rezoning s42A report and hearing.
- 2.8 This is particularly the case for the submitters I am giving evidence for who have sought rezonings to specific sites and amendments to the density of existing settlements generally. For instance, the s42A report refers to the Cairine MacLeod submission<sup>3</sup>, but omits to mention the submission of the Jones Family Trust and Searell Family Trust who made a similar submission in relation to residential density at Bannockburn.
- 2.9 For the avoidance of doubt, I will briefly evaluate the NPS-UD, housing capacity and spatial and zoning matters in this evidence for the hearing on provisions of PC19 but note that these matters will be discussed more fully in the rezoning hearing as it relates to the locations where the rezonings are sought.

### **3. SECTION 32AA REQUIREMENTS FOR UNDERTAKING AND PUBLISHING FURTHER EVALUATIONS**

- 3.1 In accordance with section 32AA(1)(a), a further evaluation is required in respect of any amendments made to the existing proposal since the s32 evaluation was completed.

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<sup>2</sup> Ibid at [186].

<sup>3</sup> S42A report at [168].

3.2 Section 32AA of the RMA provides that:

- (1) *A further evaluation required under this Act—*
  - (a) *is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
  - (b) *must be undertaken in accordance with section 32(1) to (4); and*
  - (c) *must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and*
  - (d) *must—*
    - (i) *be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or*
    - (ii) *be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.*
- (2) *To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).*
- (3) *In this section, proposal means a proposed statement, national planning standard, plan, or change for which a further evaluation must be undertaken under this Act.*

3.3 Section 32AA(1)(a)-(c) states:

- a) *is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
- (b) *must be undertaken in accordance with section 32(1) to (4); and*
- (c) *must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and*

3.4 In accordance with S32(1)(b), further evaluations undertaken as part of this evidence must examine the proposal through the tests in S32(1) to (4) (i.e. an examination of reasonably practicable options and the costs and benefits), but is limited to the additional changes made by the amendments and at a level of detail which corresponds to the scale and significance of the changes. My following evaluation has considered the requirements of S32AA of the RMA.

#### **4. IS CODC A TIER 3 LOCAL AUTHORITY UNDER THE NPS-UD?**

##### **Section 42A Report**

4.1 The Submitters have requested amendments to the LLRZ residential density provisions of PC19 on the basis that, among other matters, PC19 as notified is not the most appropriate way to give effect to the NPS-UD. The extent to which CODC is required to give effect to the NPS-UD is informed by whether the council qualifies as a Tier 3 local authority under the NPS-UD.

4.2 The s42A report evaluates some submissions on the NPS-UD and states that irrespective of the District qualifying or not as a Tier 3 local authority in terms of the NPS-UD, those submissions have not identified how PC 19 does not give effect to the NPS-UD. I consider that a more nuanced approach is warranted to evaluate PC19 against the NPS-UD and higher-level planning documents such as the PRPS. The matter at issue is not so much whether PC19 may have failed to give effect to the NPS-UD (as indicated by the s42A report as the assertion made in submissions), but rather, what is the most appropriate way for the PC 19 objectives to give effect to the NPS-UD and NPS-HPL and meet the purpose of the RMA.

4.3 I consider that the Council's section 32 evaluation for PC 19 has overlooked the importance of the NPS-UD to the review of the residential zones and housing in the District. I understand that the Council does not consider the NPS-UD applicable in the context of the District because it does not qualify as a tier 3 local authority. As justification for this position, the S42A report refers to email communication between Council officers and a Government official as confirmation that the Central Otago District is not a tier 3 local authority<sup>4</sup>. Having considered the email<sup>5</sup> it is clear to me that the advice provided by the official was on the basis of whether car parking requirements needed to be removed in

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<sup>4</sup> S42A report at [8].

<sup>5</sup> S42A report Appendix 2 <https://lets-talk.codc.govt.nz/78611/widgets/400680/documents/254897>

accordance with NPS-UD Policy 11 and Clause 3.38, if the District qualified as a tier 3 local authority. The email is clearly not confirmation that the District is not a Tier 3 local authority. The email from the Government Official states (my emphasis):

*This definition of a tier 3 territorial authority requires that an urban environment (as also defined) is located within the district. You mentioned that there is no urban environment within the District; **if this is the case** than the Central Otago District Council (CODC) would not be a tier 3 territorial authority.*

4.4 I consider that the S42A report has misinterpreted the communication from Government officers in relation to whether the District qualifies as a tier 3 local authority in terms of the NPS-UD.

4.5 The Council has information on its website<sup>6</sup> which identifies that the Cromwell urban area including Bannockburn and Pisa Moorings is considered to qualify as an urban environment in terms of the NPS-UD. I also note that the S42A report discusses whether Cromwell would qualify as an urban environment in terms of the NPS-UD is not likely to occur within the life of the PC19 provisions, noting that growth projections adopted by the Council are that Cromwell will not reach a resident population until 2040:

*It is also important to note that while Cromwell is expected to reach the threshold of an 'urban environment' over the life of the Spatial Plan, this is not currently the case, nor is it expected to occur over the life of these District Plan provisions. I consider that "intended to be" should be interpreted in this context<sup>7</sup>.*

4.6 I note that the ODP residential resource areas and zone frameworks have been operative since at least 2008, which means that at least 15 years have elapsed since the District's residential framework was reviewed.<sup>8</sup> On the basis of the time elapsed since the last review, it is more likely than not that the PC19 framework and associated zoning (subject to any future plan changes) could be in place for at least the next 15-20 years which is to 2038-2043. Therefore, I consider that

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<sup>8</sup> ODP Section 2.8.3 'The resources and significant resource management issues of the District' refers to the most up to date information at that time being the 1996 census.



PC19, being a comprehensive review of the residential zone and housing capacity framework for the District, needs to be considered on the basis it will be in effect until at least 2040. I also note that PC19 has not elected to remove or update outdated text in section 2 The Significant Resource Management Issues of the District which refers to populations and the characteristics of the towns and settlements based on 1996 Census data<sup>9</sup>, which identifies a population of 4,617 for Alexandra, and 2,613 for Cromwell. I consider that section 2 of the District Plan should be amended to reflect the outcome of the residential review.

- 4.7 For these reasons I consider that the District should be treated as a tier 3 local authority under the NPS-UD, in particular as the NPS-UD definition of urban environment is contemplative of population increases in areas meaning that, over time, an area can qualify as an urban environment due to population changes:

*urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:*

- (a) is, or is intended to be, predominantly urban in character; and  
(b) is, or is intended to be, part of a housing and labour market of at least 10,000 people*

#### **NPSUD OBJECTIVES AND POLICES OF PARTICULAR RELEVANCE TO PC19**

- 4.8 Provision 1.5(1) of the NPSUD “strongly encourages” Tier 3 local authorities to do the things that tier 1 and tier 2 local authorities are obliged to do under Parts 2 and 3 of the NPS-UD, adopting whatever modifications to the National Policy Statement are necessary or helpful to enable them to do so.

- 4.9 On this basis, from a wider strategic and zone framework perspective, I consider that the following objectives and policies of the NPS-UD are of high relevance to PC19:

***Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.***

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<sup>9</sup> Operative District Plan. Section 2.8.1 Built Environment – Towns and Settlements.

**Policy 1:** *Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

- (a) *have or enable a variety of homes that:*
  - (i) *meet the needs, in terms of type, price, and location, of different households; and*
  - (ii) *enable Māori to express their cultural traditions and norms; and*
- (b) *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) *have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- (d) *support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- (e) *support reductions in greenhouse gas emissions; and*
- (f) *are resilient to the likely current and future effects of climate change.*

**Policy 2:** *Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.*

**Policy 5:** *Regional policy statements and district plans applying to tier 2 and 3 urban environments enable heights and density of urban form commensurate with the greater of: the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or relative demand for housing and business use in that location.*

**Policy 8:** *Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and*

*contribute to well-functioning urban environments,  
even if the development capacity is:*

- (a) unanticipated by RMA planning documents; or*
- (b) out-of-sequence with planned land release.*

- 4.10 Policy 8 in particular requires that local authorities are responsive to plan changes that would add significantly to development capacity, even where the development is unanticipated by RMA planning documents, or out of sequence with planned land release.
- 4.11 With the exception of the District Plan and this review of residential zoning which has resulted in the promulgation of PC19, the Council currently does not have any RMA planning documents which could otherwise identify any other rezonings not initiated or identified by the Council as an unanticipated development. The Cromwell and Vincent Spatial Plans are not RMA planning documents, but are non-statutory documents prepared and published by the Council. I consider a Future Development Strategy, such as that identified and described in the NPS-UD would qualify as a RMA planning document which may identify the location of existing and future zonings. The Cromwell and Vincent Spatial Plans have not been prepared as an RMA planning documents and would not qualify as future development strategies in terms of the NPS-UD<sup>10</sup>.

#### **DO THE PC19 RESIDENTIAL DENSITY PROVISIONS GIVE EFFECT TO THE NPSUD?**

- 4.12 In my view PC19 would better give effect to the above-mentioned objectives and policies and would be the most appropriate way to give effect to the NPS-UD and meet the purpose of the RMA by providing for a more flexible range of residential densities and for local convenience retail activities within residential areas. This includes by providing a more efficient use of urban land already identified as part of PC 19 as appropriate for urban development<sup>11</sup>, and for additional greenfield rezoning areas. These matters will be further explained in my evidence for the submitters on rezoning, and residential density.

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<sup>10</sup> Refer to NPS-UD Subpart 4 – Future Development Strategy.

<sup>11</sup> For instance, the existing and undeveloped parts of Bannockburn zoned LLR and identified in PC19 as requiring a minimum allotment size for residential activity of 2000m<sup>2</sup>.

- 4.13 As noted above, while the higher order planning instruments are relevant to the PC19 provisions and the overarching approach to those provisions, I consider that the more relevant stage of PC19 to closely evaluate the PC19 framework in a spatial planning and residential density context with regard to the Cromwell and Vincent Spatial Plans and the NPS-UD is the rezoning/mapping hearing. In particular, in terms of spatial planning aspects and evaluating the most appropriate zone or density provision (including the efficiency, effectiveness and costs and benefits) for PC19 to achieve the objectives of the higher order planning instruments and to meet the purpose of the RMA overall.

## **5. PC 19 Framework and scheduled activities**

- 5.1 The submission of Pisa Village Development Limited and Pisa Moorings Vineyard Limited (**PVDL & PMVL**) requested that Scheduled Activity 127 located at the southern part of Lot 112 DP 546309 (identified in Figure 1 below) as identified in the ODP is continued into the PC19 framework.
- 5.2 The southern part of Lot 112 DP 546309 subject to Scheduled Activity #127 is zoned under PC 19 as part Low Density Residential and part Rural Zone, and zoned in the ODP as part Residential Resource Area (RRA(13)) and Rural.
- 5.3 The Council's section 32 evaluation is silent on whether Scheduled Activities would be retained or removed for the PC 19 zones, as is the s42A report. For the reasons identified above, I consider it is unclear whether an evaluation and recommendation by the s42A report on this submission has been either omitted, dismissed as not important, or intended to be addressed in the rezoning/mapping hearing.
- 5.4 I consider this matter relates to both the provisions and rezoning/mapping tranches because the matter of whether Scheduled Activities are included in the residential zones is a district wide PC19 framework/provisions matter as well as a location specific zoning/mapping matter.



Figure 1. PC 19 zoning identifying the location of Scheduled Activity #127.

- 5.5 District Plan Section 19.3.6 'Other Scheduled Activities' identifies this as 'Commercial facilities and Shop as defined in Section 18'. Community facilities and Shop as defined in ODP Section 18 is a permitted activity on the site identified as Scheduled Activity 127 subject to compliance with Rule 7.3.6(iii) Bulk and Location of Buildings and Rule 12.7 District Wide Rules and Performance Standards and provided that no vehicular access is achieved direct to Pisa Moorings Road'.
- 5.6 For context the ODP<sup>12</sup> provides a permitted activity pathway for Scheduled Activities (Rule 7.3.1(ii)), and a controlled activity resource consent where any extension, upgrade or expansion that changes the character or increases the intensity or scale of the effects of a use (Rule 7.3.2(v)).
- 5.7 The PC 19 provisions did not identify this part of section 19 of the ODP to be amended, noting that other parts of section 19 were identified to be struck out<sup>13</sup> and on this basis the submission by PVDL & PMVL inferred that the Council did not seek this scheduled activity is struck out, however for the avoidance of doubt it was submitted that Schedule Activity 127 is retained on the basis it is sought to be removed as part of PC 19.

<sup>12</sup> Operative District Plan Section 7: Rural Resource Area.

<sup>13</sup> <https://lets-talk.codc.govt.nz/78611/widgets/378880/documents/237613>

5.8 For these reasons I support the retention of Scheduled Activity 127 and the inclusion of the following Rules into the District Plan:

(a) Permitted Activity Rule:

(i) Any scheduled activity identified in Clauses 19.3.1 and 19.3.4 (subject to compliance with standards specified in Clause 19.3.4) of Schedule 19.3 and identified as a scheduled activity on the planning maps.

(ii) Scheduled activity No. 127 in Schedule 19.3.6 is a permitted activity, subject to compliance with LRZ Rules LRZ-2 (Height), LRZ-3 (Height in relation to boundary), and Rule 12.7 District Wide Rules and Performance Standards and provided that no vehicular access is achieved direct to Pisa Moorings Road.

(b) Controlled Activity Rule

(i) where any extension, upgrade or expansion that changes the character or increases the intensity or scale of the effects of an activity which has Scheduled Activity Status is Schedule 19.3, or where compliance with Rule (a(ii)) is not achieved,

Control is reserved to:

1. Access, and any loading and manoeuvring areas.

2. The size, design and location of any signs.

3. Methods to avoid, remedy or mitigate effects on existing activities including the provisions of screening, landscaping and noise control.

4. The design and colour of buildings.

5.9 In terms of the location of the rules, while the LLR, LRZ and MRZ zones are obvious locations, for efficiency they could be located in one location as part of Schedule 19 of the District Plan.

5.10 The proposed rules are similar to the ODP regime. Retaining the ODP rule framework for Scheduled Activities is considered an effective and efficient use

of the land and provides certainty in terms of future land use activities. The section 32 evaluation makes no reference to the costs and benefits of removing the existing Scheduled Activity framework. An alternative method is to rezone the site to a commercial precinct, this matter can be explored in the hearing on rezonings/mapping scheduled for May 2023.

**6. PC 19 Text**

6.1 PVDL & PMVL made submissions on the PC19 text. I generally agree with the majority of the amendments recommended in the s42A report, noting that the S42A report has agreed in part with the submission and with other suggestions made in submissions which equally address the matters raised in the PVDL & PMVL submission.

6.2 While I retain support for the PVDL & PMVL submission generally, the following identifies some specific aspects where I consider the text can be further amended particularly having considered the s42A report.

**MRZ Design Guidelines, Comprehensive Residential Development and Related Policies**

6.3 PVDL & PMVL's submission suggested that the design guidelines should be incorporated by reference into the District Plan. I support this and consider it is important to ensure appropriate outcomes that would achieve Objective MRZ-O2. In particular because the anticipated residential density of 200m<sup>2</sup> and 11 metre building height (Rule MRZ-S2) will result in relatively high densities and built form with the MRZ. In this context, while the adverse effects of sub optimal outcomes are able to be more readily absorbed on larger sites, such as the LRZ which has site sizes in the order of 450m<sup>2</sup>, in the MRZ the effects of sub optimal development will be more readily noticeable and enduring.

6.4 While I appreciate the efficiency associated with being able to update the guidelines without the requirement for a RMA Schedule 1 process (i.e a plan change or variation), I consider that the ability for the Council to amend the Design Guidelines without engaging a formal consultation process, and then those guidelines are used as a basis to implement the related policies in resource consent applications is inappropriate and likely to create an inefficient and ineffective plan administration process. The guidelines colour and influence

how the Council acting in its role as a consent authority perceive an application for resource consent and the ability to change the guidelines on an ad hoc and informal basis would effectively have the same effect as amending the policies and matters of discretion without the proper plan change or variation processes and opportunities for submissions and the efficacy of those documents being tested in a transparent manner.

6.5 The Medium Density Residential Design Guide, containing the Medium Density Guide and Comprehensive Residential Guide are identified in the section 32 evaluation and whether the guide should be incorporated by reference is discussed in the Section 32 report<sup>14</sup>

6.6 The s32 evaluation opted to not incorporate the design guide by reference because:

*This option is not considered the most appropriate approach as it limits the flexibility of design options and affects the ability of Council to update these design guides, if improvements are required. As such it would be effective at achieving the outcomes sought, but less efficient. Retaining design guides outside the Plan, and ensuring these guides align with the matters of discretion and policy direction, will still allow for design guides to be used to assist with any resource consent process, without formalising their status within the Plan itself.*

6.7 The s42A report maintains this position generally, but also recommends that if the design guidelines are referenced then they are done so in a broad manner so that the design guides can be updated.

6.8 The s42A report also considers that there is no need to incorporate by reference and refer to the Design Guidelines in policies and other provisions (i.e matters of discretion) because the authors of the Design Guidelines contributed to the drafting of Policies MRZ-P1 and MRZ-P2<sup>15</sup>.

6.9 This statement relates directly to my concern that in the future the Council could amend the Design Guidelines without any consultation, but there is an expectation from the Council that Policies MRZ-P1 and MRZ-P2 would still be implemented through the Design Guidelines.

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<sup>14</sup> PC 19 Section 32 evaluation paragraph 92 at [29].

<sup>15</sup> S 42A report at [94].



- 6.10 If the Design Guidelines are not incorporated by reference into the District Plan, they will not be directly linked to the rule framework and will not be directly related to Policies MRZ-P1 and MRZ-P2. The consequence of this is that they will be relegated to be considered an an other matter section under section 104(c) of the RMA. The lack of specific reference to the design guide in the plan provisions clouds when they would actually be applied and whether any reliance can be placed on them as part of the notification assessment under section 95 of the RMA.
- 6.11 For these reasons I support the Design Guidelines being incorporated by reference. In section 32AA terms, the inefficiencies and costs are born predominantly by the Council if it chooses to amend the Design Guidelines. Whereas the efficiencies through more certain outcomes by knowing that the Design Guidelines apply, and more effective outcomes through ensuring they will be applied and able to be directly assessed against Policies MRZ-P1 and MRZ-P2.
- 6.12 For these reasons I recommend the following amendments (underline text to show my amendments):

<b>MRZ-P1</b>	<b>Built Form</b>
Ensure that development within the Medium Density Residential Zone:	
1. <u>Considers the relevant design elements of the Central Otago Medium Density Residential Zone Design Guide 2022;</u>	
...	

<b>MRZ-P2</b>	<b>Comprehensive Development</b>
Provide for comprehensively designed, medium density residential development on larger sites, at higher densities, where it:	
1. <u>Considers the relevant design elements of the Central Otago Medium Density Residential Zone Design Guide 2022;</u>	
...	

<b>MRZ-P1 &amp; P2</b>	<b>Built Form</b>
Ensure that development within the Medium Density Residential Zone:	
1. <u>Considers the relevant design elements of the Central Otago Medium Density Residential Zone Design Guide 2022;</u>	
2. ...	

<u>MRZ-SX</u>	<u>Medium Density Residential Zone Design Guide 2022</u>	<u>Activity status when compliance is not achieved:</u>
<u>Medium Density Residential Zone</u>	<p><u>For all restricted discretionary, discretionary and non-complying activities under the MRZ rules, applications for resource consent shall include a statement confirming that the relevant design elements from the Central Otago Medium Density Residential Zone Design Guide 2022 have been considered.</u></p> <p><u>Rule MRZ-SX does not apply to rule [the unreferenced rule attenuating state highway noise].</u></p>	<u>NC</u>

### Excavation

- 6.13 Rules LLRZ-R10, LRZ-R10 and MRZ-R11 refer to excavation only and not the wider activity generally associated with land uses, generally to facilitate land use and development being earthworks which includes fill.
- 6.14 Placement of fill where it can alter ground levels and affect amenity and privacy associated with creating new contours, and the placement of fill if not appropriately managed can cause adverse effects in terms of dust, overburden spilling onto the road or adjoining sites, changes in amenity and outlook due to unlimited fill being placed on neighbouring properties (i.e. benching to create a level outdoor yard area on a sloping site, and sediment runoff.
- 6.15 The PVDL & PMVL submission sought that fill be included in addition to extraction, that provision is made for erosion and sediment management, and clarification is required on the reference to area or volume.
- 6.16 The s42A report considers that widening the ambit of the rule from excavation only to reference earthworks generally and the consideration application of erosion and sediment control measures is better considered when the earthworks provisions as a whole are reviewed, and these rules shifted into such a chapter.

- 6.17 I consider this is not an appropriate response and falls short in section 32 terms. The s42A report is effectively rolling over a status quo ineffective rule framework, which creates the risk of any excavation related effects being inappropriately compared to an unlimited permitted baseline for the deposition of fill.
- 6.18 I also consider that while the Otago Regional Council Regional Plan Water, Rule 14.5.1.1 requires a resource consent when certain earthworks activities are undertaken, including where an area of 2,500m<sup>2</sup> is exceeded and the earthworks are within 10m of a waterbody. Management measures should be undertaken on smaller scale earthworks activities to ensure that erosion and sediment runoff is appropriately managed, including to protect reticulated stormwater network from sediment build up.
- 6.19 I recommend the following amendments are more appropriate than the notified rules and the recommendations of the S42A report.

Rule Ref	<b><u>Extraction Earthworks</u></b>	
LLRZ LRZ MRZ	<p><b>Activity Status: PER</b> <b>Where:</b></p> <ol style="list-style-type: none"> <li>1. Any extraction <u>or fill</u> of material shall not exceed 1m in depth within 2m of any site boundary; and</li> <li>2. The maximum volume <del>of</del> <u>area</u> of land excavated within any site in any 12-month period does not exceed <del>2300m<sup>23</sup></del> <u>per site.</u></li> <li>3. <u>Erosion and sediment control measures must be implemented and maintained during earthworks to minimise the amount of sediment exiting the site, entering water bodies, and stormwater networks.</u></li> </ol> <p><u>Note:</u> <u>Compliance with this standard is generally deemed to be compliance with Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland region. Auckland</u></p>	<p><b>Activity status when compliance is not achieved with R10.1 – R10.2: RDIS</b> <b>Matters of discretion are restricted to:</b></p> <ol style="list-style-type: none"> <li>1. The location, volume and area of earthworks.</li> <li>2. The effect on amenity values or safety of neighbouring properties.</li> <li>3. The effect on water bodies and their margins.</li> <li>4. The impact on visual amenity <del>and landscape character.</del></li> <li>5. Any effects on the road network arising from the excavation.</li> <li>6. Any effects on archaeological, heritage or cultural values.</li> <li>7. <del>Any mitigation measures proposed.</del></li> </ol>

- 6.20 The s42A report has recommend that instead of enabling a larger area of excavation, the rule is exempted where a building consent has been issued. I do not consider this to assist and potentially undermines the rule completely. The recommended amendments mean that if a building consent is obtained for any earthworks then the rule does not apply. While this is understood in terms of where the building would occupy an excavated area, the rule does not take into account other earthworks able to be undertaken and creates the potential for uncertainty as to the relationship between a building consent and the associated earthworks. In addition, I consider that it is unlikely that a building consent process would scrutinise the extent of earthworks over the entire site. This scenario may be appropriate on flat sites but not on sloping sites.
- 6.21 If situations where a building consent has been granted and where the building occupies the area which is intended to be exempt from the earthworks rule, then the rule should be made clearer, the current recommendations are not sufficiently clear.
- 6.22 I consider that in s32AA terms, my recommended amendments will be more effective at managing the potential adverse effects of earthworks, and the requirement to manage potential erosion and sediment effects are efficient in that the changes do not add additional rules and separate resource consent requirements which duplicate the Otago Regional Council residential earthworks rule.
- 6.23 For these reasons I prefer my recommended amendments above.

### **LLRZ Subdivision and Residential Density**

- 6.24 While evidence will be filed for each submitter in relation to the zoning hearing, the following recommended amendments to the LLRZ subdivision rules identifies the relative 'mechanical' elements required to the PC19 framework as an example to provide for a more flexible range of densities at Bannockburn<sup>16</sup>,

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<sup>16</sup> As sought by the Jones Family Trust & Searall Family Trust and Cairine MacLeod.

including the potential for an average approach to be taken which would facilitate hamlet/clustering style of housing within the LLRZ<sup>17</sup>.

- 6.25 A higher density of residential activity at Bannockburn would reflect the pattern of development which has occurred to date in Bannockburn and provide for a more efficient use of land for housing, including where reticulated water and wastewater are connected to Council's network, while still retaining a spacious settlement pattern which provides sufficient room for privacy, amenity plantings and separation between buildings.

<b>SUB-S1</b>	<b><u>Density</u> <u>Minimum Allotment Size</u></b>	<b>Activity Status where compliance not achieved</b>
<b>Large Lot Residential Zone</b> <u>(Precinct A – Bannockburn)</u>	<u>The minimum size of any allotment for residential activity shall be 1,200m<sup>2</sup> and an average of 1,500m<sup>2</sup>.</u>	<b>NC</b>
<b>Large Lot Residential Zone</b> <u>(Precinct B – Schoolhouse Road)</u>	<u>The average allotment size of any allotment for residential activity shall be 1,000m<sup>2</sup>.</u>	<b>NC</b>



**Craig Barr**  
**11 April 2023**

<sup>17</sup> As sought by Rowan and John Klevstul.