

**BEFORE HEARING COMMISSIONERS APPOINTED BY THE CENTRAL OTAGO
DISTRICT COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991 (**RMA** or
the Act)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on Proposed Plan Change 19
(**PC19**) to the Central Otago District Plan
(**CODP** or **the District Plan**)

AND

STAGE 2 HEARING

**LEGAL SUBMISSIONS FOR THE DOUG JONES FAMILY TRUST AND SEARELL
FAMILY TRUST NO. 2**

Dated: 19 May 2023

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INTRODUCTION

- 1 The Doug Jones Family Trust and the Searell Family Trust No 2 (the **Trust**) has submitted on Plan Change 19 to the Central Otago District Plan (**PC19**) seeking, amongst other matters, amendment to residential subdivision provisions and zoning maps relating to Bannockburn. The objective of the submission is to propose rezoning to enable an increase in the density of residential development within the existing residential zone at Bannockburn to support housing growth, and also to enable a limited commercial development along Bannockburn Road (**proposed rezoning**) as contemplated by the Cromwell Spatial Framework Plan (**Spatial Plan**).
- 2 The evidence filed by the Trust shows that there are significant positive consequences that will arise from the proposed rezoning and little, if any, negative consequences. Conversely, the opposite is true in relation to the zoning pattern proposed for Bannockburn under PC19. Accordingly the risks of accepting the proposed rezoning are much less and will provide greater potential benefits than the zoning proposed by PC19.
- 3 The amendments sought in the submission would give better effect to the National Policy Statement for Urban Development 2020 (**NPS-UD**), and in doing so, better give effect to Part 2 of the RMA, while respecting the existing urban character of the settlement, than would PC19 as notified.
- 4 The Trust provided legal submissions and the expert planning evidence of Craig Barr at the Stage 1 hearing of PC19, and relies on those submissions and evidence at this Stage 2 hearing also.
- 5 In particular, the Trust maintains that the Central Otago District Council (**CODC**) is a tier 3 local authority under the NPS-UD. However, even if that is not the case, the provisions of the NPS-UD which apply to all local authorities, whether or not they are tier 1, 2 or 3 local authorities, require the submission of the Trust to be accepted.

KEY ISSUES

- 6 The issues to be addressed arising from the Trust submission are as follows:
 - (a) What is the relationship between the NPS-UD and PC19?

- (b) Is the CODC a tier 3 local authority under the NPS-UD?
- (c) Should the NPS-UD apply to Bannockburn?
- (d) What are the potential positive consequences of the proposed rezoning compared to PC19?
- (e) What are the potential negative consequences of the proposed rezoning compared to PC19?
- (f) Does the proposed rezoning better give effect to the NPS-UD and PORPS?

WHAT IS THE RELATIONSHIP BETWEEN THE NPS-UD AND PC19?

Statutory Framework for Proposed Plan Change Decisions

7 The approach to be taken in making decisions on proposed plan changes was summarised in the recent Environment Court decision of *Middle Hill Ltd v Auckland Council*,¹ (following the decision of *Colonial Vineyard Ltd v Marlborough District Council*²), but incorporating the current requirement to give effect to the NPS-UD, as follows:

[29] In summary, therefore, the relevant statutory requirements for the plan change provisions include:

- (e) whether they are designed to accord with and assist the Council to carry out its functions for the purpose of giving effect to the RMA,³*
- (f) whether they accord with Part 2 of the RMA,⁴*
- (g) whether they give effect to the regional policy statement,⁵*
- (h) whether they give effect to a national policy statement,⁶*
- (i) whether they have regard to [relevant strategies prepared under another Act],⁷ and*
- (j) whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effects.⁸*

[30] Under s 32 of the Act we must also consider whether the provisions are the most appropriate way to achieve the purpose of the plan change and the objectives of the Auckland Unitary Plan by:

¹ [2022] NZEnvC 162 at [29]

² [2014] NZEnvC 55 at [17]

³ RMA, ss 31 and 74(1)(a)

⁴ RMA, s 74(1)(b)

⁵ RMA, s 75(3)(c)

⁶ RMA, s75(3)

⁷ RMA, s74(2)(b)

⁸ RMA, s76(3)

(a) identifying other reasonably practicable options for achieving the objectives;⁹ and

(b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:¹⁰

i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:

- economic growth that are anticipated to be provided or reduced;¹¹ and

- employment that are anticipated to be provided or reduced;¹² and

ii. if practicable, quantifying the benefits and costs;¹³ and

iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.¹⁴

- 8 In *Colonial Vineyard Ltd* the Court adopted an approach of identifying and evaluating the potential positive consequences and potential negative consequences of the two different options that were being assessed by the Court as a means to evaluate the risks of acting or not acting in respect of each option.¹⁵ We have adopted that approach in these submissions.

Hierarchy of planning documents

- 9 In *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*¹⁶ the Supreme Court confirmed that there is a three-tiered management system – national, regional and district – created by the RMA which established a “hierarchy of planning documents”¹⁷. Subordinate planning documents, such as a district plan, must give effect to National Policy Statements. This is expressly provided for by section 75(3)(a) RMA. The Supreme Court held that-

9.1 the requirement to “give effect to” is a strong directive,¹⁸

⁹ RMA, s 32(1)(b)(i)

¹⁰ RMA, s 32(1)(b)(ii)

¹¹ RMA, s 32(2)(a)(i)

¹² RMA, s 32(2)(a)(ii)

¹³ RMA, s 32(2)(b)

¹⁴ RMA, s32(2)(c)

¹⁵ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [68] – [71]

¹⁶ [2014] NZSC 38 at [ABOAP 376].

¹⁷ At [ABOAP 381], paragraph [10].

¹⁸ At [80]

- 9.2 the notion that decision makers are entitled to decline to implement a National Policy Statement if they consider appropriate does not fit readily into the hierarchical scheme of the RMA,¹⁹ and
- 9.3 the requirement to “give effect to” a National Policy Statement is intended to constrain decision makers.²⁰
- 10 This hierarchy is an important consideration when determining weighting of National Policy Statements and lower order planning instruments, particularly when the national instrument is the most recent in time. In *Bunnings Ltd v Queenstown Lakes District Council*²¹ the Environment Court discussed the relationship between the Operative District Plan and Proposed District Plan (which each contained “avoid” policies intended to exclude non-industrial activities from industrial zones) and the NPS-UDC 2016. This document has been superseded by the NPS-UD 2020 however the following comments of the Court remain highly relevant:

Accordingly we consider it is appropriate to put greater weight on the NPS-UDC and, if necessary, on part 2 of the RMA (especially section 7(b)). The NPS-UDC demands greater weight because it is a later document, is higher in the statutory hierarchy, and has better regard to section 7(b) RMA.²²

- 11 In the *Bunnings* case, the Environment Court held that the NPS-UDC required a different approach to deciding whether land may be rezoned for residential development than had been taken up until that time, when it said (our emphasis added):²³

[148] The NPS-UDC directs a radical change to the way in which local authorities have approached the issue of development capacity for industry in the past. That has traditionally come close to the “Soviet” model of setting aside X ha for the production of pig iron. The ODP, PDP and even the PORPS all come close to that when they direct that non-industrial activities are to be avoided on land zoned industrial.

[149] In contrast the NPS-UDC’s substantive policy PA3(b) requires us to have particular regard to providing choices for consumers. The proposal by Bunnings will do that...

[150] Importantly NPS-UDC policy PA3(b) requires us to promote the efficient use of urban land... We find that on the facts the proposal is a more efficient use of the site than waiting for an industrial activity to occur.

¹⁹ At [90]

²⁰ At [91]

²¹[2019] NZEnvC 59

²² At paragraph [113]

²³ Para 148 - 155

[151] The final “outcomes” policy, PA3(c), requires us to have regard to limiting - as much as possible — the adverse impacts of, in this case the Industrial zoning, on the competitive operation of land markets. The proposed activity is not prohibited, and so the undoubted adverse effect on competition in the land market should be limited by granting consent to this unusual application.

*[155] There are further, major, problems with the Council's approach to PA1 which become obvious when the NPS-UDC is read as a whole. **The spirit and intent of the substantive objectives is to open development doors, not to close them...***

- 12 More recently, the Environment Court in the above-mentioned *Middle Hill*²⁴ decision summarised the NPS-UD as follows:

*[33] The National Policy Statement on Urban Development 2020 (NPS-UD) is a document to which the plan change must give effect. The NPS-UD has the **broad objective of ensuring that New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of New Zealand's diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments...***

IS THE CODC A TIER 3 LOCAL AUTHORITY UNDER THE NPS-UD?

- 13 Our earlier submissions set out the legal basis for the application of many of the NPS-UD Objectives and Policies to the PC19 decision-making process. In summary (updated to include reference to the most recent Rationale report entitled “Cromwell Yield Assessment – September 2022”²⁵ (**Cromwell Assessment 2022**)):

- a) NPS-UD defines a tier 3 local authority as:

“a local authority that has all or part of an urban environment within its region or district, but is not a tier 1 or 2 local authority...”

- b) the term “urban environment” is defined in the NPS-UD as follows:

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

²⁴ [2022] NZEnvC 162

²⁵ Section 42A Report Stage 2 – Appendix 2

(b) is, or is intended to be, part of a housing and labour market of at least 10,000 people

- c) The statutory definition of "urban environment" does not include any reference to a time span, whether in isolation, or in relation to any particular planning document. On that definition alone, if an area of land is intended to be part of a housing and labour market of at least 10,000 people at some time in the future, it is an "urban environment" for the purposes of the NPS-UD
- d) Other NPS-UD defined terms relevant to the question of how far ahead to look in characterising land as part of an "urban environment" are:
- i. **short term** means within the next 3 years;
 - ii. **short-medium term** means within the next 10 years;
 - iii. **medium term** means between 3 and 10 years; and
 - iv. **long term** means between 10 and 30 years.

- e) Policy 2 of NPS-UD requires:

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*

- f) It follows that the NPS-UD is future looking and is intended to apply over a time span of at least 30 years. The words "intended to be" within the definition of "urban environments" should logically be informed by this time span. Accordingly, any area of land that is intended to be part of a housing and labour market of at least 10,000 people within at least the next 30 years is currently an "urban environment".

- g) The s42A report states (at para 28) that:

"PC19 is also based on Spatial Plans which have been prepared to respond to anticipated demand over a 30-year period, which in turn have been informed by growth projections prepared by Rationale."

and further that:

"CODC has also continued to monitor growth and update the growth projections."

- h) A footnote directs the reader to a document prepared by Rationale entitled "Growth Projections – 2022" dated April 2022 (**Growth Projections Report 2022**)²⁶
- i) The Spatial Plan for Cromwell records that population growth and projections for the Cromwell area were analysed by Rationale in 2018²⁷ and that the Cromwell Ward residential population is forecast to reach 10,900 by 2038.²⁸
- j) The more recent Growth Projections Report 2022 paints a different picture. It forecasts that the usually resident population in the Cromwell Ward will reach 10,941 by 2024.²⁹
- k) Section 3.1.1 of the Report provides an explanation for this rapid increase in population growth as follows:

"The growth in this area has been driven by a steady rise in job opportunities since 2013, which has accelerated the last three years. The average annual growth rate in jobs since 2013 has been 6.8%, almost 6 times that of the other wards... This strong growth has been primarily led by a thriving agriculture industry, which has seen an average annual growth rate of 21% the last three years and is well positioned as the dominating employment industry in the ward.

Migration into this ward has become more popular with young adults (25-34 years) in the last 3 years compared to 2013-2018.

...

Short term and long term indicators suggest the growth in this ward will continue to be higher than the rest of the district, although it will slow down in comparison to the growth shown since 2013."

- l) Section 3.2 of Growth Projections Report 2022 also forecasts that Cromwell will have a usually resident population of 10,000 by 2040, only 17 years from now. It's important to note that this data has now been superseded by the Cromwell Assessment 2022 which shows that for Cromwell, a population of 10,000 will be reached by 2027.³⁰

²⁶ Uploaded onto the CODC PC19 website – Section 42A Report Stage 1 – Footnote 8 – Rationale Growth Projections 2022

²⁷ Rationale 'Cromwell Housing and Business Capacity Draft Assessment' for Central Otago District Council, October 2018

²⁸ Spatial Plan at section 2.5 Future Assessed Yield

²⁹ Growth Projections 2022, page 13

³⁰ Cromwell Yield Assessment – September 2022, Figure 7, page 13, medium demand projection, assuming 2.5 persons per household/dwelling

m) It is clear from the Growth Projections Report 2022 and the more recent Cromwell Assessment 2022 that both the Cromwell Ward and Cromwell itself are intended to be part of a housing and labour market of at least 10,000 people, well within the medium term (10 year) horizon provided by the NPS-UD, and therefore is currently an urban environment as that term is defined in the NPS-UD. It follows that the Council is currently a tier 3 local authority.

SHOULD THE NPS-UD APPLY TO BANNOCKBURN?

14 The Spatial Plan identifies Bannockburn as a Centre/Node of the Cromwell urban area and includes the following comments³¹:

- *Over time the town can and will develop new nodes to support inter-related community facilities, visitor attractions and town services.*
- *There should be a network/hierarchy of 'places for people' planned as nodes that respond to the life and activity of the town and its outlying settlements.*

15 These comments are unsurprising given the short (5-6 minute) drive between the two urban areas. They share a geographic connection through common location within the Cromwell Basin and the Cromwell Ward. This is illustrated by Sheet 6 of the Graphic Attachment appended to Mr Milne's evidence which shows the relationship between Cromwell township and Bannockburn. Further, the Cromwell Assessment 2022 expressly includes Bannockburn in the yield assessment included in that document.

16 It follows that Bannockburn is an urban settlement that forms part of the urban environment within the Cromwell Ward. Cromwell and Bannockburn are interlinked and PC19 should make appropriate provision for urban development within both urban areas in accordance with the Council's obligations as a tier 3 authority under the NPS-UD.

³¹ At page 42 the Spatial Plan

WHAT ARE THE POTENTIAL POSITIVE CONSEQUENCES OF THE PROPOSED REZONING COMPARED TO PC19?

Increased development capacity for business

- 17 Bannockburn currently has only a limited commercial offering. The Cromwell Spatial Plan identifies a mixed use/commercial village or 'heart' for Bannockburn on the site, as identified in Mr Milne's evidence and Graphic Attachment. Further, the Growth Projections Report 2022 ³² identifies that peak day visitor population at Bannockburn is currently about double the usually resident population, and this ratio is predicted to continue. This level of visitor population supports the inclusion of the commercial precinct within the MDZ zone proposed by the Trust.
- 18 As mentioned in Mr Barr's evidence, the proposed rezoning will provide for services and convenience retail to meet the needs of the community. Mr Barr's evidence is that the benefits of providing for a commercial precinct to facilitate a modest node of mixed-use development that will foster the emergence of a village centre to Bannockburn outweigh any costs associated with the proposed commercial precinct.³³

Increased development capacity for housing

- 19 Ms White's s42A Report Stage 2 identifies a shortfall of housing capacity in Bannockburn of approximately 200 dwellings under the medium forecasted demand and 300 under the high forecasted demand scenario.³⁴ Against this context it seems incongruent that PC19 proposes to increase the minimum lot size within Bannockburn from 1,500m² to 2,000m².
- 20 By comparison, the proposed rezoning provides an excellent partial solution to the predicted housing shortfall at Bannockburn. Mr Ford's evidence is that the Kofiua Village area represents the best location for increased densities. He considers that the proposed rezoning would provide 46 lots compared to only 20 lots that are realistically available within the Kofiua Village area under the ODP framework. Yield under the PC19 zoning is likely to be lower than 20 lots due to the proposed increase in minimum lot size to 2,000m². Consequently,

³² Growth Projections Report 2022, Figure 13: Bannockburn – Medium Projection

³³ Craig Barr evidence at paras 6.48 and 6.49

³⁴ Ms White's s42A Report Stage 2 at para 83

the proposed zoning would likely provide 26 additional lots to that contemplated by the PC19 zoning.³⁵

More choice and improved affordability of housing

21 An outcome of previous subdivision standards at Bannockburn is the predominance of large residential lots. Under PC19 it will become more difficult to subdivide these lots into smaller sites and consequently there will be little (if any) smaller lots available to the market for those that have a need or preference for these lots.

22 In this regard, Mr Barr makes the important point that the proposed rezoning:³⁶

...will facilitate a variety of housing which can provide a greater range of housing options for persons to live in Bannockburn who are not in a position to afford, or who don't need or seek a large lot suburban lot. This may include retirees or young families. I consider these options would better give effect to NPS-UD than the notified version, while being of a small enough scale to not detract from the LLRZ achieving its objectives for Bannockburn.

23 Further the matter of residential supply and demand was discussed by Judge Jackson in the above-mentioned *Colonial Vineyard* decision. The evidence showed that there was an imbalance between supply and demand, with greater quantity demanded than supply, leading to a severe shortfall of residential land in Blenheim if more land is not zoned for that purpose. The Court reached the following conclusion with respect to the house price implications of this situation:

*[101] We find that one of the risks of not approving PC59 is that the quantity of houses supplied in Blenheim at average (or below) prices is likely to decrease relative to the quantity likely to be demanded. **That will have the consequence that house prices increase.***

24 Against the backdrop of predicted significant housing shortfall at Bannockburn it seems likely that one of the risks of not approving the proposed rezoning is house price increase at Bannockburn due to shortage of supply. Conversely, granting the proposed rezoning is likely to have a positive influence on affordability of housing at Bannockburn.

³⁵ Richard Ford Evidence at paras 94-95

³⁶ Craig Barr evidence at para 6.23

More efficient use of infrastructural capacity

- 25 Mr Ford's analysis shows that the methodology applied by Rationale to predict likely yield from the site does not account for topographical and other constraints. This means that the 80 lots predicted under PC19 zoning represents an over estimation of the anticipated yield for the site. The feasible yield from the site under PC19 zoning will be much less than this figure.³⁷
- 26 Mr Ford has assessed the yield from the proposed zoning and concludes that due to an overestimation of the subject site's development potential by Rationale, the number of lots that are realistically available from the site under the proposed rezoning is 80 lots (or less).
- 27 What this means in practice is that the servicing demand generated by the proposed zoning will be the same or similar as that anticipated by CODC under the PC19 zoning. Consequently, the servicing impediments highlighted in Ms Muir's report should not prevent the proposed rezoning on grounds of infrastructure capacity.
- 28 Further, Mr Ford's view is that the site presents "the lowest hanging fruit" for development in Bannockburn from an infrastructural perspective due to its location, unique site constraints, and proximity to existing services both within and external to the site.³⁸

Compact urban form that reduces need for urban expansion

- 29 The PC19 subdivision standards as notified are not an efficient use of the available land resource at Bannockburn. The Cromwell Assessment 2022 records that the large lot standards for Bannockburn yields 3.5 dwellings per hectare.³⁹ Given the predicted shortfall of 200-300 dwellings at Bannockburn, the amount of greenfields land required under PC19 to provide adequate housing supply is substantial. For example, 10 ha of farmland would be required to supply an additional 35 dwellings; approximately 30 ha would be required to supply an additional 105 dwellings.
- 30 Increasing the size of Bannockburn by this amount has important and potentially negative consequences for the future urban form of Bannockburn,

³⁷ Mr Ford's evidence at para 90, 99-101

³⁸ Supra at para 139

³⁹ Cromwell Assessment 2022, page 10, Table 5: Yields by Township and Zone

and consequently, an increase in greenhouse gas emissions and climate change implications, as well on the landscape character and amenity values of the surrounding rural landscape.

- 31 By comparison, the proposed rezoning achieves compact urban form within the existing zoned footprint of Bannockburn and reduces the need for urban expansion whilst meeting some of the housing shortfall at Bannockburn. Further, Mr Milne's evidence is that the site is well contained within the context of the existing built form and will not result in adverse effects on the landscape values of the nearby SALs or ONLs.⁴⁰

Establishment of an "urban village"

- 32 Mr Milne makes the important point that establishment of MRZ at Bannockburn will enhance the existing village centre located at Bannockburn Road by providing a higher density of residential development within the core of Bannockburn that would aid the establishment of an "urban village" contemplated by the Cromwell Spatial Plan.⁴¹ Overall, Mr Milne's view is that the MRZ and commercial precinct will notably enhance the amenity of Bannockburn township through the establishment of an "urban village" centre which will enhance the heritage values as well as the general amenity of the town centre.⁴²

WHAT ARE THE POTENTIAL NEGATIVE CONSEQUENCES OF THE PROPOSED REZONING COMPARED TO PC19?

Change to existing urban character of Bannockburn

- 33 A potential negative consequence of the proposed zoning is change to existing urban character of Bannockburn, because the proposed rezoning will enable higher densities of residential activity than provided for under the PC19 LLRZ. Mr Milne discusses this matter in his evidence and reaches the conclusion that the change in density is appropriate in terms of impacts on the existing urban character.⁴³

⁴⁰ Tony Milne evidence at para 82

⁴¹ Tony Milne evidence at para 96

⁴² Supra at para 17

⁴³ Supra at para 113

DOES THE PROPOSED REZONING BETTER GIVE EFFECT TO THE NPS-UD AND PORPS?

34 As mentioned, our firm view is that the CODC is tier 3 local authority. Even so, whether or not the CODC is a tier 3 local authority, PC19 and the CODP as a whole must give effect to the NPS-UD. There are certain provisions of the NPS-UD that only apply to tier 1 and tier 2 local authorities, other provisions that only apply to tier 1, tier 2 and tier 3 local authorities, and still other provisions that apply to all local authorities. All district plans must give effect to the NPS-UD, and in doing so, they give effect to the purpose and principles of the RMA.

Objectives 1 to 8, and Policies 1, 6, 8 and 9 of the NPS-UD

35 Objectives 1 to 8, and Policies 1, 6, 8 and 9 of the NPS-UD apply to all local authorities, and must be given effect to in all district plans. The rezoning sought by the Trust achieves these objectives and implements these policies better than PC19 as notified, in that it:

- a) will better provide a well-functioning urban environment at Bannockburn, enabling the people who live in Bannockburn, and the wider community of Cromwell, to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future⁴⁴
- b) will improve housing affordability by supporting competitive land and development markets⁴⁵
- c) will enable more people to live in, and more businesses and community services to be located in, areas of the Bannockburn / Cromwell urban environment, which is an area in or near a centre zone or other area with many employment opportunities, and where there is high demand for housing and for business land in the area, relative to other areas within the urban environment⁴⁶
- d) the urban environment of Bannockburn / Cromwell, including their amenity values, will develop and change over time in response to the diverse and changing needs of people, communities and future generations⁴⁷

⁴⁴ NPS-UD, Objective 1

⁴⁵ NPS-UD, Objective 2

⁴⁶ NPS-UD, Objective 3(a) and (c)

⁴⁷ NPS-UD, Objective 4

- e) the urban development which the rezoning enables would be integrated with infrastructure planning and funding decision, strategic over the medium term and long term, and respond to a proposal which supplies significant development capacity (in the context of Bannockburn)⁴⁸
- f) CODC will be using robust and recently updated information about its urban environments to inform its planning decisions⁴⁹
- g) by enabling a more compact urban form, near to employment opportunities, the rezoned urban environment supports reductions in greenhouse gas emissions and is resilient to the current and future effects of climate change⁵⁰
- h) the rezoning contributes to a well-functioning urban environment –
 - i. having and enabling a variety of homes that meet the needs, in terms of type, price, and location of different households⁵¹
 - ii. having and enabling a variety of sites that are suitable for different business sectors in terms of location and site size⁵²
 - iii. having good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport⁵³
 - iv. supporting, and limiting as much as possible adverse impacts on, the competitive operation of land and development markets⁵⁴
- i) the rezoning may involve significant changes to the rezoned area, but even if those changes detract from amenity values appreciated by people who seek to retain lower density in the area, they will improve amenity values appreciated by other people, communities and future generations, including by providing increased and varied housing densities and types,⁵⁵

⁴⁸ NPS-UD, Objective 6(a), (b), and (c)

⁴⁹ NPS-UD, Objective 7

⁵⁰ NPS-UD, Objective 8(a) and (b), Policy 1(e) and (f) and Policy 6(e)

⁵¹ NPS-UD, Policy 1(a)(i)

⁵² NPS-UD, Policy 1(b)

⁵³ NPS-UD, Policy 1(c)

⁵⁴ NPS-UD, Policy 1(d)

⁵⁵ NPS-UD, Policy 6(b)

- j) the rezoning will contribute to the CODC meeting the requirements of the NPS-UD to provide or realise development capacity⁵⁶
- k) the rezoning is responsive to a proposed plan change that will add significantly to development capacity and contribute to a well-functioning urban environment, even if out-of-sequence with planned land release.⁵⁷

Policies 2, 5, 10 and 11 of the NPS-UD

36 Policies 2, 5, 10 and 11 apply to tier 1, 2 and 3 local authorities. Those policies will be better implemented by the rezoning, than by PC19 as notified, in that the rezoning:

- a) will better help CODC to provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term and long term⁵⁸
- b) will enable heights and density of urban form commensurate with the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services, and also commensurate with the relative demand for housing and business use in the Bannockburn / Cromwell location⁵⁹
- c) will result from engagement with the development sector to identify significant opportunities for urban development⁶⁰
- d) does not set minimum car parking rate requirements⁶¹

37 In the recent case of *Re Otago Regional Council*,⁶² the Central Otago District Council acknowledged that it is a tier 3 local authority in terms of NPS-UD, and as such, that it has obligations under the NPS-UD to provide "sufficient development capacity to meet expected demand for housing and business land in the short, medium and long term", [that] development capacity [being] "sufficient" when, amongst the matters, it is plan-enabled and infrastructure-

⁵⁶ NPS-UD, Policy 6(d)

⁵⁷ NPS-UD, Policy 8

⁵⁸ NPS-UD, Policy 2

⁵⁹ NPS-UD, Policy 5

⁶⁰ NPS-UD, Policy 10(c)

⁶¹ NPS-UD, Policy 11(a)

⁶² [2021] EnvC 164, detailed in our previous legal submissions

ready.”⁶³ CODC and the other Tier 1, 2 and 3 local authorities involved in that case sought to change a proposed rule in a regional plan which would have prevented them being granted water takes for municipal supplies for durations of longer than 6 years.

38 The Court said (emphasis added):

*[357] The NPS-UD 2020 applies to all local authorities that have all or part of an urban environment within their district or region, and to local authority planning decisions. The NPS-UD 2020, therefore, applies to the Otago Regional Council **and the Territorial Authorities.***

*[358] While the NPS objectives and most policies are relevant, because the Territorial Authorities are concerned that PC7 inhibits them from fulfilling their statutory obligations, our focus is on pt 3: Implementation. **The Territorial Authorities highlight that local authorities must provide sufficient development capacity to meet expected demand for housing and business land in the short, medium and long term.** Development capacity is “sufficient” when, amongst the matters, it is plan-enabled and infrastructure-ready...*

Proposed Otago Regional Policy Statement

39 The rezoning also gives effect to the Proposed Otago Regional Policy Statement (**PORPS**) better than PC19 as notified, in that it provides for urban growth and development in a strategic and coordinated way which -

- a) is well designed, and integrates effectively with adjoining urban and rural environments⁶⁴
- b) helps to ensure that there is sufficient housing and business land development capacity available in Otago⁶⁵
- c) is coordinated with infrastructure development programmes, to provide infrastructure in an efficient and effective way⁶⁶
- d) is consistent with providing for rural production activities by minimising adverse effects on significant soils and activities which sustain food production, minimizing competing demands for natural resources, avoiding land with significant risk from natural hazards, ensuring the efficient use of land, and restricting urban growth and development to areas that avoid

⁶³ *Re Otago Regional Council* [2021] EnvC 164, at para 358

⁶⁴ PORPS Objective 4.5

⁶⁵ PORPS Policy 4.5.1(c)

⁶⁶ PORPS Policy 4.5.1(e)

reverse sensitivity effects unless those effects can be adequately managed.⁶⁷

CONCLUSION

- 40 The NPS-UD directs a “radical change” to the way in which local authorities must approach the issue of development capacity – the spirit and intent of substantive objectives is to open development doors rather than to close them.
- 41 The proposed rezoning will provide a number of important positive consequences for Bannockburn that are not attainable under the zoning pattern proposed by PC19. These include increased development capacity for business and housing, more choice and improved affordability of housing, more efficient use of existing infrastructure, a compact urban form that supports establishment of an “urban village” at Bannockburn. Further there are little, if any negative consequences arising from the proposed rezoning.
- 42 These outcomes are consistent with the outcomes that must be achieved by local authorities under the NPS-UD. The Trust maintains that CODC is a tier 3 local authority under the NPS-UD. However, even if that is not the case, the provisions of the NPS-UD which apply to all local authorities, whether or not they are tier 1, 2 or 3 local authorities, require the submission of the Trust to be accepted.

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⁶⁷ PORPS Policy 4.5.1(f), (g) and (h)