BEFORE THE CENTRAL OTAGO DISTRICT COUNCIL

Under	the Resource Management Act 1991
In the Matter	of the hearing of submissions on the Central Otago District Plan – Proposed Plan Change 19

Legal Submissions on behalf of **Lowburn Viticulture Limited** (Submitter 123)

Dated: 22 May 2023

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MAY IT PLEASE THE PANEL

INTRODUCTION

1. These opening legal submissions are filed on behalf of Lowburn Viticulture Limited (**LVL**) in relation to LVL's submission on Proposed Plan Change 19 (**PC19**) to the Central Otago District Plan seeking the rezoning of land at Lowburn.

2. LVL owns approximately 5.6 ha of land located on Lowburn Valley Road, Lowburn, to the north west of and immediately contiguous with the existing Lowburn residential area (**Site**).

3. The Site is zoned Rural Resource Area (**RU**) under the Operative Central Otago District Plan (**Operative Plan**). No changes to this zoning are proposed by PC19 as notified, however, the contiguous residential area is proposed to be zoned Large Lot Residential Zone (Precinct 2) (**LLRZ(P2)**). The LLRZ (P2) anticipates residential living on 3000m^2 lots.

4. LVL has extensive involvement at Lowburn, developing 48 residential sections over the past 20 years. The most recent stage of this development, Turner Terrace, adjoins the Site. There is no clear demarcation, landscape or otherwise, between this this existing residential development and the Site. The Site presents as part of the residential catchment, albeit that it is differently zoned.

5. The Site is wholly unproductive, with poor soils and no access to water. It presently has no economic use.

LVL's Submission

6. LVL has made a submission on PC19 which, inter alia, seeks a LLRZ(P2) zoning for the Site.

7. LVL's relief would essentially extend the LLRZ(P2) zone under notified PC19 further northwest so as to encompass the Site and enable residential development consistent with that which has occurred/is occurring on the adjacent land.

8. A LLRZ(P2) zoning for the Site would theoretically enable the creation of 18 lots, although the actual yield realised would be less, taking account of the Site's topography and access provision.

9. The relief would realign the LLRZ(P2)/RU boundary with a topographical feature (a gully), providing an obvious and logical landscape basis for the delineation of residential and rural zoned areas, which is presently arbitrarily defined by property boundaries.

10. It would also facilitate the provision of additional housing to cater for growth over the life of the District Plan – the objective of PC19 – and provide an economic and efficient use for wholly unproduced land.

11. LVL's submission contained an evaluation pursuant to section 32 of the Resource Management Act (**Act or RMA**) and was supported by a landscape assessment and infrastructure assessment, which were attached to and formed part of the submission. These assessments should be read in conjunction with evidence filed in advance of this hearing.

EVIDENCE

12. The following evidence has been filed in support of LVL's submission:

    (a) Mr Van Der Velden, LVL director, outlining the history of the Site and its characteristics, existing uses, involvement and experience with developing the Lowburn residential area, and infrastructure matters.

    (b) Andy Carr, traffic engineer, addressing traffic and transportation matters, including whether the residential development that would be enabled by an LLRZ (P2) zoning could be accommodated within the roading network; whether any roading upgrades would be required, and whether suitable access can be gained to the Site. Mr Carr's assessment is that all these matters can be adequately addressed, and no transport and transportation issues arise from the rezoning.

    (c) Dr Reece Hill, Soil Scientist. Dr Hill assesses the productive capacity of the land, for the purposes of and in accordance with the National Policy Statement on Highly Productive Land. Dr Hill's assessment is that the Site

does not contain any LUC 1, 2, or 3 land and the NPS-HPL does thus not apply. Dr Hill's evidence is discussed in detail later in these submissions.

(d) Jake Woodward Planner. Mr Woodward has undertaken a comprehensive assessment of the relief and other reasonably practicable options, in accordance with section 32 of the Act and the other statutory requirements. Mr Woodward's conclusion is that the relief achieves the policy direction of PC19; accords with the scheme of District Plan and the relevant higher order statutory planning documents; provides development capacity at Lowburn on a Site that is logically part of the residential area without giving rise to adverse effects, and is overall the 'better' option.

SECTION 42A REPORT

13. Ms White has prepared a section 42A report on the zoning relief sought by LVL and other submitters.

14. In her report, Ms White correctly identifies that neither the Cromwell Spatial Plan (which underpins PC19) nor notified PC19 identify any areas for growth at Lowburn, and that the yield assessment undertaken for the CODC to ascertain whether PC19 provides a sufficient amount of zoned land to provide for future growth does not specifically assess Lowburn.[1]

15. She records, however, that the Spatial Plan promotes housing growth balanced with the current section sizes and retaining the landscape character of the Lowburn Valley and surrounding slopes, which in her view LVL's zoning relief is generally consistent with.[2]

16. She also considers that LVL's zoning relief would provide a logical expansion to the current urban boundary and that the rezoning would be consistent with the current amenity and character of the Lowburn township, accepting LVL's landscape assessment on these matters.[3]

[1] Ms Whites' s42A Report, Part 2, para 221 and 225.
[2] Ms Whites' s42A Report, Part 1, para 225.
[3] Ms White's s42A report, part 2, para 222.

17. Notwithstanding, Ms White then records her understanding that approximately one third of LVL's Site - along the Lowburn Valley road frontage - is highly productive land for the purposes of the National Policy Statement on Highly Productive Land (**NPS-HPL**), which precludes its rezoning for urban purposes unless the tests in clause 3.6(4) of the NPS-HPL are met.[4]

18. Ms White's view is that the first test – whether the rezoning is required to provide sufficient development capacity to meet expected demand for housing in the district – is not met, as Council's reporting on this (provided by Rationale) indicates notified PC19 provides sufficient housing supply if supply if considered across the Cromwell ward as a whole.[5]

19. She considers however that the second and third tests – whether there are any other reasonable practicable and feasible options for providing additional development capacity (in terms of expanding Lowburn) and whether the benefits would outweigh the costs, are likely met by LVL's relief.

20. The NPS-HPL and provision of housing supply are addressed in detail later in these submissions.

21. On infrastructure, Ms White defers to Ms Muir, whose report indicates that potable water is available for the Site, but that wastewater servicing is not available until 2029, once specific network upgrades are undertaken. On this basis, Mr White recommends (subject to any restrictions imposed by the NPS-HPL) the application of a Future Growth Overlay (**FGO**) or a bespoke rule limiting any further development until the specific waste water infrastructure upgrade identified by Ms Muir is undertaken. This is also addressed further later in these submissions.

[4] Ibid, paras 220 and 221
[5] Ibid, para 221

THE LAW

Statutory Framework

22. When considering and deliberating on submissions on PC19, and the section 42A reports and evidence, the Panel must do so within the framework of the Act, as detailed below.

23. The purpose of the preparation, implementation, and administration of district plans (and changes) is to assist councils to carry out their functions in order to achieve the purpose of the Resource Management Act (**RMA** or **Act**).[6]

24. The purpose of the Act, under section 5, is to promote the sustainable management of natural and physical resources. Under section 6, identified matters of national importance must be recognised and provided for and, under section 7, particular regard is to be had to the 'other matters' listed there which relevantly include kaitiakitanga, efficiency, amenity values and finite characteristics of natural and physical resources. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.

25. Section 5 is to be read as an integrated whole. The word 'while' in section 5(2) means 'at same time as'. The wellbeing of people and communities is to be enabled at the same time as the matters in section 5(2) are achieved.

26. A district plan or change must be prepared in accordance with (relevantly):[7]

    (a) the Council's functions under section 31; and

    (b) the provisions of Part 2; and

    (c) the Council's obligation to prepare and have regard to an evaluation report prepared in accordance with section 32; and

    (d) Any national policy statement and national planning standard (here the National Policy Statement on Urban Development (**NPS-UD**), and the National Policy Statement on Highly Productive Land (**NPS-HPL**).

[6] Section 72 of the Act.
[7] Section 74 of the Act.

27. In addition, a district plan or change must give effect to a regional policy statement (here, the Partially Operative Otago Regional Policy Statement 2019)[8] and have regard to a proposed regional policy statement (here, the Proposed Otago Regional Policy Statement 2021).

28. The judicial meaning of '*give effect to', 'have regard / particular regard* to', '*take into account', 'not be inconsistent with*' and '*give effect to*' is, for convenience, set out in **Appendix A.**

29. A council's functions under section 31, with which a district plan or change must accord with, include (relevantly):

    (a) the establishment, implementation, and review of objectives, policies and methods to achieve *integrated management of the effects* of the use, development or protection of land and associated natural and physical resources of the district (section 31(1)(a));

    (b) the establishment, implementation, and review of objectives, policies and methods to ensure that there is *sufficient development capacity in respect of housing* and business land *to meet the expected demands of the district* (section 31(1)(aa));

    (c) the *control of any actual or potential effects* of the use, development, or protection of land (section 31(1)(b)).

30. Section 32 sets out the framework within which a decision maker (the Panel) must consider the submissions, evidence and reports before it in relation to a proposed plan or change, in conjunction with the matters specified in section 74. Under section 32, an evaluation of a proposed plan or change is required that examines whether proposed objectives are the *most appropriate* way to achieve the purpose of the Act, and whether the provisions (here, zonings) are the *most appropriate* way of achieving the objectives. The reference to 'objectives' in section 32 in this case means the *purpose* of PC19.[9] I address PC19's purpose shortly.

[8] Section 75(3)(c).
[9] Section 32(6)(b).

31. Section 32 also requires the identification and an assessment of *other reasonably practicable options* to achieve the objectives, an assessing of the *efficiency and effectiveness* of the options through identifying the *benefits and costs* of the options, including opportunities for economic growth and employment that will be provided (or reduced).

32. Section 32AA requires a further evaluation to be undertaken for any changes made or proposed to a proposed plan since the first section 32 evaluation was completed. In this case, a section 32AA evaluation is required in respect of the relief sought by the LVL. Mr Woodward has undertaken this evaluation in a comprehensive manner in his evidence.

33. The Environment Court in *Colonial Vineyard Ltd v Marlborough District Council*[10] gave a comprehensive summary of these mandatory requirements for the preparation of a district plan or change. For completeness, this is set out in **Appendix B**.

Established Principles

34. The following established principles are of assistance with applying the statutory framework:

    (a) The Panel should not start with any particular presumption as to the appropriate zone, rule, policy or objective.[11]

    (b) No onus lies with a submitter to establish that the notified proposal should be amended, nor is there a presumption that a notified proposal is correct or appropriate. The proceedings are more in the nature of an inquiry into the merits in accordance with the statutory framework.[12]

[10] [2014] NZEnvC55.
[11] *Eldamos Investments Limited v Gisborne District Council* W47/05, affirmed by the High Court in *Gisborne District Council v Eldamos Investments Ltd*, CIV-2005-548-1241, Harrison J, High Court, Gisborne, 26/10/2005. See also *Sloan and Ors v Christchurch City Council* C3/2008; *Briggs v Christchurch City Council* C45/08, and *Land Equity Group v Napier City Council* W25/08
[12] *Hibbit v Auckland City Council* 39/96, [1996] NZRMA 529 at 533, cited with approval in *Kennedy v Auckland City Council*, A110/08, and *Paihia and District Citizens Association Inc v Far North District Council* A036/07.

(c) The Panel's task is to seek to obtain the optimum planning solution within the scope of the matters before it based on an evaluation of the totality of the evidence given at the hearing.[13]

(d) Section 32 requires a value judgment as to what, on balance, is the 'most appropriate' when measured against the relevant objectives. 'Appropriate' means 'suitable'; there is no need to place any gloss upon that word by incorporating that is to be superior.[14]

(e) There is no presumption in favour of any particular zoning of a site. What is required is the most appropriate zoning of land between the status quo and that proposed by a change (or anything in between).[15]

(f) 'Most appropriate' in section 32 allows ample room for the Panel to take an entirely different view from that of any reporting officer, on the basis of the evidence and other information it has received.[16]

(g) Section 32 does not require an enquiry as to 'need' in terms of whether the activity is present or if there is a sufficiency of that form of activity.[17]

(h) Section 32 is there primarily to ensure that any restrictions on the freedom to develop are justified rather than the converse. To put it more succinctly, it is the 'noes' in the plan change that must be justified, not the 'ayes'.[18] This accords with the Act's enabling purpose.

(i) Where the purpose of the Act and the other relevant planning documents can be met by a less restrictive regime, then that regime should be adopted. Such an approach reflects the requirement to examine the efficiency of the provision at issue. It also promotes the Act by enabling

[13] *Eldamos* paragraph [129].
[14] *Rational Transport Society Inc v NZTA* [2012] NZRMA 298 (HC) at [45].
[15] Infinity Group v Queenstown Lakes DC C010/05.
[16] Independent Hearings Panel's decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) at paragraph [67].
[17] Gus Properties Ltd v Marlborough District Council W075/94 at 16.
[18] *Hodge v CCC* C1A/96, at page 22, where the Court cited with approval the planning witness' evidence on this point.

people to provide for their well-being while addressing the effects of their activities.[19]

(j) The provisions in all plans do not always fit neatly together and regard should be had to the policies and objectives of a plan through the filter of Part 2 of the Act where necessary.[20]

PLAN CHANGE 19 OBJECTIVE

35. The objective or purpose of PC19 is set out in the section 32 evaluation prepared prior to the notification of the plan change: [21]

"PC19 has been driven by, and is intended to implement the direction set out in, the Vincent and Cromwell Spatial Plans, in relation to the District's residential areas. These plans have been prepared by the Council ***to respond to demand for residential land and housing affordability concerns in the District, and in order to plan for the anticipated growth over the next 30 years****. Given the immediate need to address these issues, Council has decided to progress this plan change ahead of the full Plan Review."*

(emphasis added)

36. The primary objective or purpose of PC19 is to respond to demand for residential land and provide for anticipated growth over the life of the District Plan and beyond. This objective must be borne in mind when applying the statutory framework and working through the tests therein. That is, when considering what is the 'most appropriate' zoning outcome under section 32, it is this objective that must be borne in mind.[22]

37. A secondary objective or purpose of PC19 is to align the District Plan's residential zones with the National Planning Standards. That is more of an administrative than substantive change however, as the overall approach to the zoning of land

[19] *Royal Forest and Bird Protection Society of New Zealand Incorporated v Whakatane District Council* [2017] NZEnvC 51 at [59], where the Court found that notwithstanding subsequent amendments, the approach applied *in Wakatipu Environment Society Inc v Queenstown Lakes District Council* C153/04 at [56] was still applicable

[20] *Briggs v Christchurch City Council* C045/08, see also *Eldamos*, at [30]. The principle is not inconsistent with *King Salmon*.

[21] Section 32 Evaluation Report, para 4.

[22] See section 32(6)(b).

and enablement of landuse within the zones remains broadly consistent with the Operative Plan approach.

ZONING OPTIONS

38. For the purposes of applying section 32 presently, the Panel's evaluation is essentially concerned with which of the zoning options before it is the 'most appropriate' for achieving the objective/purpose of PC19, the higher order statutory planning documents and the purpose of the Act.

39. The zoning options for the Panel's consideration in this regard are:

    (a) **Option A**: Retain the operative RU zoning of the Site;

    (b) **Option B**: Apply a LLR (P2) zoning to the Site (LVL's relief).

KEY ISSUES

40. As outlined earlier, Ms White recognises the logic to the submission, observing that rezoning LVL's Site LLRZ(P2) would be consistent with the current amenity and character of the Lowburn township.

41. She considers however that the NPS-PHL precludes LVL's rezoning relief, but that in the absence of that constraint, an FGO or LLRZ (P2) zoning with a bespoke rule that ensures development is aligned with planned waste water infrastructure upgrades would be appropriate .

42. Since Ms White prepared her report, a comprehensive suite of evidence has been filed. This evidence directly responds to Ms White's concerns.

43. Several matters require further discussion, namely:

    (a) The NPS-HPL;

    (b) The NPS-UD, and related to this, section 31(1)(aa), the Rationale reporting and housing supply generally, and whether additional supply at Lowburn is required;

    (c) Infrastructure.

44. These are now addressed in turn.

NPS-HPL

45. The National Policy Statement on Highly Productive Land (**NPS-HPL**) came into force on 17 October 2022 (**Commencement Date**), with immediate effect. While this was after the notification of and submission period for PC19, the NPS-HPL must now be considered in this process, and PC19 must 'give effect' to it pursuant to section 75(3)(a) of the Act

46. The purpose of the NPS-HPL is to protect 'highly productive land' for use in land-based primary production, both now and for future generations.[23] It does this by (amongst other things, but relevantly here) directing the avoidance of urban rezoning of highly productive land, except as provided for in the NPS-HPL.[24]

47. On the latter, clause 3.6(4) of the NPS-HPL provides that territorial authorities that are not Tier 1 or 2 authorities under the NPS-UD (i.e. CODC) "*may allow urban rezoning of highly productive land only if:*_

    (a) *the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and*

    (b) *there are no other reasonably practicable and feasible options for providing the required development capacity; and*

    (c) *the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values."*

48. For the purposes of applying clause 3.6(4), and the NPS-HPL more generally, 'highly productive land' is land that as mapped as such by a regional council,[25] or, where, as here, no mapping has been undertaken and until such time as it is, the transitional definition (**Transitional Definition**) of 'highly productive land' set out in clause 3.5(7) applies, which states:

    "3.5(7) Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent

[23] NPS-HPL Obj 2.1.
[24] NPS-HPL, Pol 5.
[25] NPS-HPL, cl 1.3(1). Mapping must be undertaken within 3 years of the Commencement Date, per clause 3.5(1)

authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:

(a) *is*

(i) zoned general rural or rural production; and

(ii) LUC 1, 2, or 3 land; but

(b) *is not:*

(c) *identified for future urban development; or*

subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle."

49. It is necessary to ascertain whether LVL's land falls within the ambit of the Transitional Definition in order to determine whether the NPS-HPL applies to the Panel's present inquiry.

Clause 3.5(7)(a)(i) - 'Zoned General Rural or Rural Production'

50. To ascertain, for the purpose of clause 3.5(7)(a)(i), whether land is zoned 'general rural' or 'rural production' reference must be had to Standard 8 of the National Planning Standards (the Zone Framework Standard) which contains a description of these zones.[26]

51. Ms White and Mr Woodward agree that the Operative District Plan's Rural Resource Area is equivalent to a 'general rural' or 'rural production' zone per Standard 8 of the National Planning Standards.

52. The Submitter's land was zoned Rural Resource Area at the Commencement Date of the NPS-HPL (i.e., when it came into force).

53. The first limb of the Transitional Definition is therefore met.

54. It is then necessary to consider clause 3.5(7)(a)(ii), and whether the land zoned Rural Resource Area at the Commencement Date is 'LCU 1, 2 or 3 land'.

Clause 3.5(7)(a)(ii) - LUC 1, 2, or 3 Land

[26] Standard of the National Planning Standards contains the standardised zones that all district plans must include. However, where, as here, a territorial authority is yet to implement Standard 8, then, for the purposes of interpreting and applying the NPS-HPL, reference should be had to the nearest equivalent zone in the District Plan (NPS HPL cl 1.3(3)).

55. Under the NPS-HPL, LUC 1, 2 or 3 is defined as follows:[27]

> *"LUC 1, 2, or 3 land means land identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory* ***or by any more detailed mapping that uses the Land Use Capability classification****"*
>
> (emphasis added)

56. As Dr Hill explains in his evidence,[28] the Land Use Capability Classification (**LUC**) is a system in use in New Zealand since the 1950s that classifies all of New Zealand's rural land into one of eight classes, based on its physical characteristics and attributes. Class 1 land is the most versatile and can be used for a wide range of land uses. Class 8 land is the least versatile and has many physical limitations.

57. LUC maps are maps created to represent the potential uses of a unit of land and its ability to sustain agricultural production based on an assessment of various indicators.

58. The New Zealand Land Resource Inventory (**NZLRI**) is a multi-factor national land resource database designed for soil conservation, erosion planning and farm management. It comprises mapping units each classified using LUC classification 1 – 8. NZLRI mapping was undertaken in the 1970s using the imperial system, and updated to the metric system in the 1980s.

59. NZLRI mapping is undertaken at a regional scale (1:50,000) and LUC unit boundaries it maps do not always align with topography and other geographic features, primarily because the NZLRI LUC mapping is based on hard copy maps showing 20 metre topography.

60. More recent technology enables a much closer examination of land and may identify different LUC boundaries to those mapped in the NZLRI due to the different (finer) scale of the mapping (between 1:5,000 and 1:15,000). These matters are discussed more fully in Dr Hill's evidence.

61. The NZLRI classifies part of LVL's Site as LUC 3, with the remainder being LUC 7 (non-productive). Ms White alludes to the LUC 3 classification in her report, when she notes that land along with road frontage is highly productive land

[27] NPS-HPL Clause 1.3(1).
[28] Dr Hill's evidence, paras 26 – 38.

under the NPs-HPL.[29] Dr Hill also discusses this classification, albeit in significantly more detail than Ms White.

62. Ms White intimates that the NZLRI LUC 3 classification for part of the land means that the land[30] cannot be rezoned for urban activities unless the tests in clause 3.6(4) are met, (noting here that Ms White and Mr Woodward agree that the LLR zoning sought by the LVL is an urban zone and thus equates to an 'urban activity' for the purposes of NPS-HPL Policy 5 and clause 3.6(4)).[31]

63. However, Ms White did not have the benefit of Dr Hill's evidence at the time she prepared her section 42A report where she expressed this view. As indicated by the emphasised text in clause 1.3(1) above, LUC 1, 2, or 3 land is land mapped as such in the NZLRI, *or by any more detailed mapping that uses the Land Use Capability classification.* Dr Hill has undertaken the more detailed mapping contemplated by this clause. He has produced a comprehensive report (per his evidence dated 16 May 2023). As summarised earlier, Dr Hill's assessment, using the Land Use Capability classification, is that LVL's land is not LUC class 1, 2, or 3.

64. More particularly, Dr Hill's evidence is that:

(a) Part of the NZLRI mapped LUC 3 land contains slopes greater than 15 degrees. Slopes that are greater than 15 degrees are not, by definition, LUC 3 land;

(b) The remainder of the NZLRI mapped LUC 3 land has been extensively modified through earthworks (excavation and filling). The soils in this area comprise a mix of eroded LUC 7 soils (from the steeper slopes) and shallow/very shallow Anthropic soils, not Waenga soils that would be expected in the LUC 3 map unit.

65. Dr Hill's evidence is that the Site does not contain LUC 3 land, but is, at best LUC class 4 and 7.

[29] Section 42A report, Part 2,para 220.
[30] Presumably Ms White's view relates only to the part that is LUC 3, as she does not express a view on the part that is LUC 7.
[31] Ms White's report, para 107.

66. Dr Hill's evidence is the only expert evidence on this issue and the Panel should give it full weight.

MfE Guide to Implementation

67. For completeness, brief discussion of the NPS-HPL Guide to Implementation March 2023 (**Guide**) is required.

68. The Guide was published by MfE for the stated purpose of assisting stakeholders, including local authorities and landowners, to understand and implement the NPS-HPL.

69. At its outset, the Guide states that:[32]

    (a) The Guide has no official status and does not alter the law;

    (b) It does not constitute legal advice, advising users to take specific legal advice from qualified professionals;

    (c) MfE will not accept any responsibility of liability for any error, inadequacy, deficiency, flaw or omission in the Guide.

70. Having set out these disclaimers, the Guide then works through various clauses of the NPS-HPL, and the authors of the Guide set out their interpretation of the purpose and intent of these.

71. Mapping to determine LUC status is discussed in a number of places in the Guide. The commentary is inconsistent however, in so far the authors of the Guide on the one hand express a view that site specific mapping undertaken by landowners is 'not anticipated', while, on the other, that councils have full discretion as to whether they accept such mapping. This inconsistent commentary relates to consistently expressed clauses of the NPS-HPL, and the Guide is thus somewhat muddled in its commentary on these clauses.

72. In any case, as the Guide itself is at pains to emphasise, it has no regulatory effect and does not constitute legal advice. It is not an authoritative or binding document. It is a 'guide' but nothing more.

[32] Guide, page 2.

73. The commentary in the guide does not bear on the weight the Panel should afford Dr Hill's evidence.

74. In furtherance of this point, it may assist to consider the established principles of statutory interpretation. Unlike the Guide, these principles, enunciated by the Courts, are authoritative, binding, and of relevance presently. They were recently summarised by the Environment Court in *Saville v Queenstown Lakes District Council*:[33]

    (a) The well-established test is to ask what the plain and ordinary meaning of the words used in the statutory planning document (here the NPS-HPL) are, and what an ordinary, reasonable member of the public examining the document plan would take from the words.

    (b) A contextual and purposive approach is required. The Court of Appeal has held that "*while it is appropriate to seek the plain meaning of a rule from the words themselves, it is not appropriate to undertake that exercise in a vacuum*."[34]

    (c) This purposive approach is particularly important where there is ambiguity or uncertainty in the wording of the provisions. Interpreting a provision by rigid adherence to the wording itself would not be consistent with the requirements of the Interpretation Act 1999.[35]

    (d) Relevant factors to consider when undertaking a contextual interpretation include the purpose of the provision, the context and scheme of the planning document, its history, the purpose and scheme of the RMA and any other permissible guides to meaning including common law principles of statutory interpretation.[36]

[33] *Saville v Queenstown Lakes District Council* [2019] NZEnvC 90 at [16]. While Saville concerned District Plan interpretation, the principles summarised are principles of general application, and the Supreme Court in King Salmon (*Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38 and [142]) was supportive of the approach outlined in relation to plans more generally.
[34] *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [35].
[35] Ibid.
[36] *Brownlee v Christchurch City Council* [2001] NZRMA 539 at para [25].

(e) The interpretation should also avoid creating injustice, absurdity, anomaly or contradiction.[37]

75. Applying these principles to clause 1.3(1) and the definition of 'LUC 1, 2 and 3 land' contained therein, the words of the definition are plain, straightforward and clearly expressed. There is no ambiguity in the phrasing. An ordinary reader would interpret them as anticipating and permitting more detailed soil mapping, so long as the Land Use Capability classification system is used.

76. The rationale for the ability for a landowner to undertake more detailed soil mapping is clear when the purpose and scheme of the NPS-HPL is considered:

(a) The purpose of the NPS-HPL is to protect highly productive land for use in land based production (Objective 2.1). Highly productive land is recognised as a resource with finite characteristics and long term value for land based production (Policy 2).

(b) The NPS-HPL has immediate and far reaching effect. It precludes or significantly limits the use of highly productive land for any non-rural or productive use. It stymies development.

(c) It applies to all NZLRI LUC 1, 2 and 3 land. However, as Dr Hill explains, the NZLRI is based on coarse grained mapping (1:50,000) using relatively unsophisticated technology (hard copy maps at 20m contours). It does not necessarily reflect what is on the ground.

(d) More detailed and technologically advanced mapping undertaken by regional councils will in time supplant the NZLRI mapping, but not likely for at least another 4—5 years (or more), because, while regional councils must undertake this mapping by no later than October 2025, a First Schedule RMA process will then follow, involving a plan change, notification, submissions, and most likely appeals.

77. In this context it is easy to understand why the NPS-HPL allows more detailed mapping to be undertaken that improves on the coarse scaled NZLRI mapping,

[37] *Waimairi County Council v Hogan* [1978] 2 NZLR 587, 590 (CA). This principle has been adopted in many cases under the RMA, including for example Brownlee above.

before regionals council undertake their mapping and this makes its way into (operative) regional plans.

78. The definition in NPS-HPL clause 1.3(1) thus provides a pathway for individual landowners to investigate whether the NZLRI mapping classification is appropriate for their land. But, they must do so using a consistent and established methodology that is recognised by the NPS-HPL: the LUC classification system. If, through this mapping, the land is determined to be not highly productive (or here, non-productive) then it need not be protected under the NPS-HPL.

79. Taking a 'plain and ordinary meaning approach' in this context: LUC 1, 2, or 3 land is land that is mapped as such per the NZLRI, or through other more detailed mapping that uses the Land Use Capability classification . That detailed mapping has been undertaken here by highly qualified soil scientist, Dr Hill. Using the LUC classification, Dr Hill maps the land as LUC 4 class at best. LUC 4 land is not highly productive land as defined in the NPS-HPL and the NPS-HPL does not apply. This is not a novel or controversial proposition, but one which the NPS-HPL contemplates, and which is supported by evidence. If the NPS-HPL intended to preclude site specific soil assessments by landowners it would have stated as much. It does not.

Clause 3.6(4)

80. In the event that the Panel does not accept Dr Hill's evidence and finds that LVL's land does meet the Transitional Definition contained in clause 3.5(7), the NPS-HPL does not then preclude the zoning sought by LVL, provided the tests in clause 3.6(4) are met.

81. As above, clause 3.6(4) enables a territorial authority to allow rezoning of highly productive land (i.e., LUC 1, 2 or 3 land) where:

    (a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and

    (b) there are no other reasonably practicable and feasible options for providing the required development capacity; and

(c) the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

82. Ms White considers that, in the case of LVL's zoning relief, the latter two tests are met, but the first is not. This is on the basis that:[38]

(a) Housing supply provided through notified PC19 has been assessed (by Rationale) as more than sufficient to meet demand when considered on a ward-wide basis (addressing clause 3.6(4)(a));

(b) Notwithstanding the conclusion on 3.6(4)(a), there does not appear to be any other reasonable practicable and feasible option for providing for additional development capacity at Lowburn outside of highly productive land (addressing clause 3.6(4)(b));

(c) The benefits of the rezonings would likely outweigh the costs associated with the loss of highly productive land for the reasons set out in the submission (i.e. provides for additional residential zoned land in an efficient manner, with no adverse effects, where the use of the Site for productive purposes is practically constrained) (addressing clause 3.6(4)(c)).

83. Mr Woodward generally agrees with Ms White on the latter two tests, but on the first, he records:

(a) There may be a shortfall of residentially zoned land in the Cromwell ward under PC19, given the deficiencies in the Rationale reporting and PC19's focus on providing for capacity in the Cromwell Medium Residential Zone, where such capacity may not be realised;

(b) Not everyone wishes to live on a 200m^2 medium density residential section in the Cromwell township. There are different drivers and demands for living in the lower density environment, such as provided at

[38] Ms White's report, para 221.

Lowburn. Demand for lower density residential housing is not presently met by PC19.

84. In furtherance of the discussion on clause 3.6(4)(a), the issue raised by Ms White is whether it must be demonstrated that rezoning the Submitter's land is necessary to meet expected demand for housing in *the district*, as opposed to demand on a *township* basis.

85. With reference to the established principles of interpretation (above) it would lead to an absurd outcome if clause 3.6(4)(a) was applied on a literal basis, so that LUC 1, 2 or 3 land could only be rezoned for urban proposes if necessary to meet housing needs of the district on a district wide basis, and if there was no other available land in the district.

86. To suggest, for example (and by way of a theoretical analogy) that housing does not need to be provided in Cromwell because there is a surplus in Alexandra would fail to take account of the demand and/or desire to live in a particular location (Cromwell) and the needs of the community and its residents to do so in order to have ready access to employment, schooling, and other amenities (in Cromwell). Providing for housing elsewhere in the district to where demand arises would inevitably give rise to other effects, such as increased transport costs, related congestion and emissions for example, as residents would need to travel to employment, schooling, and for access to amenities for example. This would be inefficient and would not accord with the sustainable management principle that underpins the Act. It would also largely negate the purpose of and need for spatial planning.

87. Furthermore, when considering demand for housing, it is necessary to consider the nature of that demand. Demand is not concerned solely with the number of houses available. The type and nature of houses is also relevant. Demand is multifaceted. Demand for low density residential living (2000-3000m^2 lots), as the LLRZ at Lowburn provides, cannot be met by provision of medium density housing (200m^2 lots) in Cromwell township.

88. The reference to 'district' in clauses 3.6(4) can be understood on the basis that the clause is addressing the circumstances in which *territorial authorities* may allow urban rezoning of highly productive land, where territorial authorities have

jurisdiction over and functions regarding individual *districts*. While a territorial authority's jurisdiction encompasses a district, townships and settlements are an inherent part of a district. It is appropriate to consider the reference to 'district' in clause 3.6(4)(a) on this basis.

89. It is further noted that Ms White's assessment that zoning additional residential land at Lowburn is not necessary as there is sufficient capacity at a *ward* level does not in fact engage with the language of NPS-HPL clause 3.6(4)(a), which references '*district*' not '*ward*' capacity. If it is appropriate to consider capacity at a ward level (the approach Ms White takes), then must be also appropriate to also consider capacity at a township level. Any other approach would be to apply clause 3.6(4)(a) selectively and inconsistently. It is noted that Ms White takes a township approach when assessing capacity at Bannockburn. That is appropriate and there is no need to take a different approach for Lowburn, for all the reasons just outlined.

90. If considered on a township basis, NPS-HPL clause 3.6(4)(a) is met by LVL's proposed rezoning. Mr Van der Velden explains that there is unmet demand at Lowburn, while PC19 as notified does not provide for any growth. However, even if a considered on a wider (ward or district wide) basis the subclause is met, given, as Mr Woodward outlines in his evidence, the deficiencies of the Rationale reporting that underpins PC19, and the likely shortfall of zoned land under notified PC19.

NPS-UD

91. Ms White addresses the relevance of the NPS-UD to PC19 in her Stage 1 section 42A report (Residential Chapter Provisions).

92. Ms White does not express a view as to whether the NPS-UD applies to circumstances of the Central Otago District, or whether CODC is a 'Tier 3' authority.

93. Instead, she defers to correspondence between CODC and the Ministry of Housing and Urban development (**MHUD**) as to whether the CODC was required to remove the carparking requirement pursuant to clause 3.38 of the NPS-UD.[39]

94. The correspondence does not provide any basis for CODC concluding that it is not a Tier 3 authority. It simply recites a conversation had between a CODC and MHUD staff member, where the CODC staff member advised that there is no 'urban environment' within the Central Otago District, and the MHUD staff member responded that if that is so, then CODC is not a Tier 3 authority. The MHUD staff member did not express an opinion on whether CODC *is* a Tier 3 authority, or state that it is *not*, which is a matter of legal and planning interpretation in any case.

95. Mr Woodward has comprehensively addressed the relevance and significance of the NPS-UD in his evidence.

96. As Mr Woodward identifies, under the NPS-UD, a Tier 3 authority is a local authority that has all or part of an 'urban environment' in its district (NPS-UD clause 1.4), where an 'urban environment' is one 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.

    (emphasis added)

97. As Mr Woodward identifies, the dictionary definition of 'intended to be', that is, the plain and ordinary meaning of these words is "*expected to be such in the future*"[40].

98. After analysing the various Rationale reports, Mr Woodward concludes that CODC is a Tier 3 authority because the reporting indicates that Cromwell, including the outlining townships which rely on Cromwell as a place for employment, schooling and amenities and in Mr Woodward's view are collectively one housing and

[39] Ms White's Part 1 Section 42A report, para 27.
[40] https://www.merriam-webster.com › dictionary › intended

labour market, will exceed 10,000 persons over the life of the District Plan, whether on medium or low growth projections.[41]

99. The logic of Mr Woodward's opinion is clear. On the plain and ordinary meaning of the NPS-UD, CODC is a Tier 3 authority if it has, or is expected to have a housing and labour market of 10,000 people. On the basis of CODC's own reporting it is expected to meet this threshold over the life of the District Plan. It would be remiss of the CODC to take a position that it is not a Tier 3 authority in these circumstances. Plainly it is.

100. As a Tier 3 authority under the NPS-UD, CODC has obligations to provide for *growth and variety* in housing. It must also ensure that its decisions on submissions on PC19 give effect to the NPS-UD.

101. Ms White opines in her Part 1 section 42A report that PC19 aligns with the NPS-UD.[42] However, her assessment of the matter is cursory and she appears to suggest that Tier 3 authorities are only encouraged to consider the directives of the NPS-UD, but not obliged to implement them. That is not the case however; there are there are numerous provisions that relate directly to Tier 3 authorities, including Objectives, 1 – 8, and Polices 1, 2, 5, 6, 8, 9, 10 and 11.

102. Mr Woodward has undertaken a comprehensive assessment of the relevant provisions of the NPS-UD and whether the zoning options before the Panel achieve the directives contained therein. He concludes that the relief promoted by LVL better achieves these directives, particularly in so far as it ensures there is sufficient housing supply (NPS-UD Policy 2) and provides housing variety and choice (NPS-UD Policy 1). Ms White does not assess these policies.

103. As Mr Woodward identifies, a deficiency of PC19 is that in the Cromwell Ward the primary method of providing for future predicted growth is the Medium Density Residential (**MDR**) zone in Cromwell, which PC19 proposes to expand and allow a small degree of intensification within. As Mr Woodward identifies, the 'problems' with this method include that:[43]

[41] Mr Woodward's evidence, para 6.10, 6.11.
[42] Section Report, Part 1, para 28.
[43] Mr Woodward's evidence, para 6.17 - :6.22.

(a) It assumes brownfields land that is zoned MDR will be redeveloped to maximum densities, but this requires the removal of existing housing stock which is expensive and seldom undertaken by developers;

(b) The density increase in the MDR is small (250m^2 to 200m^2 lots under the Operative Plan scenario);

(c) The anticipated yields within the MDR zone do not account for constraints such as setback, yard and building coverage requirements for example, as well as other planning and infrastructure constraints;

(d) The anticipated yields do not factor in commercial feasibility of development and redevelopment, to ascertain feasible (rather than theoretical) yields;

(e) It assumes all demand can be met by the provision of medium density housing in Cromwell. But, the MDR does not provide variety or choice in housing.

(f) Growth projections, which the PC19/MDR is anticipated to cater for, are significantly understated and much lower than Statistics New Zealand population projections.

104. The consequences of the above are twofold:

(a) PC19 may not cater for the demand (in terms of number of houses) predicted. That is, there may be a shortfall in housing supply over the life of the District Plan; and

(b) With reference to the particular requirements of the NPS-UD (Policy 1), it fails to enable a variety of housing in terms of type, price and location.

105. LVL's relief goes some way to addressing these shortfalls in that:

(a) It provides more housing supply, in an area where there is demand;

(b) It provides more housing variety and choice.

106. The directives of the NPS-UD also inform the interpretation of NPS-HPL clause 3.6(4)(a) discussed above, in that they support the notion that when considering,

for the purposes of that clause, whether the zoning is required to meet demand, the *nature* of the demand is relevant and must be considered. The interpretation of clause 3.6(4)(a) advanced in these submissions aligns with the NPS-UD directives which require the provision of *variety* in housing supply in terms of housing type and location, and enables the two NPSs to be reconciled.

Section 31(1)(aa)

107. Regardless of the NPS-UD, under section 31(1)(aa) it is function of CODC to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.

108. As addressed above, as notified, PC19 may not provide sufficient capacity to meet the expected housing demands of the District, nor the varied nature of that demand. This is particularly the case for Lowburn which has not been assessed in the reporting that underpins PC19, despite it being a desirable location and a growth area.

109. It is incumbent on CODC to address this identified issue, in order to ensure it is performing the functions required of it under section 31 of the RMA.

110. The solution is plain; more land must be zoned, particularly in areas where there is demand and presently no provision for growth.

111. LVL's land is a very suitable candidate for rezoning, because it:

(a) is contiguous to the established Lowburn residential area;

(b) would present as a logical and coherent extension of the township;

(c) does not contain highly productive soils and is otherwise unproductive;

(d) would not give rise to any adverse landscape effects, but would provide a robust landscape and landform based boundary to the urban area;

(e) can be serviced for infrastructure over the life of the Plan, with infrastructure upgrades planned in the near future;

(f) No submitter opposes it.

Infrastructure

112. As noted earlier, Ms White, relying on Ms Muir, identifies infrastructure capacity, waste water in particular, as a constraint to zoning additional land at Lowburn.

113. Ms Muir's infrastructure report records that the Lowburn reticulated wastewater main was not designed to carry the level of development that has occurred and that it requires reconfiguration to enable it to operate effectively and to provide additional capacity. She records that funding is allocated and the necessary work will occur between 2026 and 2028; that is, in as soon as (just over) two years' time. This will provide increased capacity to accommodate growth.

114. Ms White recommends a bespoke rule or FGO is applied to ensure future development aligns with this planned upgrade.

115. LVL's position is that this is both unnecessary and unsatisfactory.

116. As Mr Van der Velden explains,[44] when undertaking the final stage of the existing residential development at Lowburn (Turner Terrace), LVL was required to and in 2018 did pay a development contribution of $73,000. The contribution was required for the purpose of upgrading the Lowburn wastewater pump station to accommodate growth at Lowburn.

117. From correspondence between Mr Van der Velden and CODC staff, and on the basis of Ms Muir's report, it appears that, some five years on, this contribution has not yet been applied for the purpose that it was taken. It further appears that CODC's failure to apply the development contribution and undertake the upgrade works is the primary reason why LVL's submission is not supported. Issues of fairness arise.

118. In any case, Ms Muir's evidence is that the works required to upgrade the wastewater infrastructure to cater for growth are planned and funding is allocated. As Mr Woodward details,[45] it is highly likely that the timing of the planned upgrade will coincide with development under a LLRZ(P2) zoning (if confirmed), once planning and obtaining resource consent for an LLRZ(P2)

[44] Mr Van der Velden's evidence, para 23 – 26.
[45] Mr Woodward's evidence, para 5.35 – 5.43

subdivision and then planning and obtaining the required engineering approvals is accounted for.

119. Deferring the LLR(P2) zoning, via a bespoke rule or an overlay, is unnecessary in these circumstances and would be inefficient as it would add unnecessary cost and delay to development that is otherwise acknowledged as appropriate.

120. Furthermore, the subdivision rules that would apply to any LLRZ(P2) development enable wastewater matters to be assessed at that time (under rule SUB-R4), and, given subdivision is proposed to be a restricted discretionary activity, consent can be declined if they are not adequately addressed.

121. Moreover, as Mr Van der Velden identifies,[46] development contributions will inevitably be required for any LLRZ(P2) development and can be applied to undertake or facilitate any necessary wastewater upgrades if these have not otherwise occurred.

122. In all these circumstances, an FGO or bespoke rule is unnecessary and cannot be justified under section 32, noting here that the notified LLRZ(P2) rule framework contains methods through which infrastructure issues can suitably[47] be addressed, and that as the least restrictive regime, it should be preferred.[48]

123. Without derogating from the above in any way, of the two methods suggested by Ms White, a bespoke rule is preferable, as an FGO would necessitate a further plan change before the Site could be developed, which would add undue and significant cost and delay. However, as notified Rule SUB-R4 enables these matters to be comprehensively assessed at the time of subdivision, a bespoke rule is unnecessary.

CONCLUSION

124. The rezoning of LVL's land has been comprehensively addressed in the evidence filed on its behalf. The evidence demonstrates that no adverse effects will arise from the rezoning but there will be a number of positive effects, in that land that

[46] Mr Van der Velden's evidence, para 25.
[47] *Rationale Transport* (HC).
[48] *Royal Forest and Bird Protection Society of New Zealand Incorporated v Whakatane District Council* [2017] NZEnvC 51.

is unproductive will be given an economic use, which will benefit not only LVL, but the community more generally in that it will assist with addressing an identified housing shortage that will otherwise arise over the life of the District Plan. It will present as a logical and coherent extension of the existing residential area and will provide for variety in location and type of housing supply. .

125. While there are existing wastewater infrastructure constraints, these will be resolved by an upgrade that is planned, funded and imminent – occurring within the next two - four years. Development of the Site under a LLR (P2) zoning would likely align with the planned upgrade, such that the timing of the upgrade does not provide a proper basis to decline the rezoning, or to apply a deferred zoning or similar. The costs of a deferred zoning are not warranted in the circumstances and cannot be justified under section 32.

126. In any case, the notified PC19 rule framework enables (and directs) the wastewater issue to be assessed at the time subdivision consent is sought, and, if an acceptable solution is not available at that time, consent can be declined. This provides an impetus for the landowner to align development of the Site with the planned upgrade.

127. LVL's rezoning relief is not precluded by the NPS-HPL, as the Site does not contain highly productive land, as defined. Even if it did, the tests in NPS-HPL clause 3.6(4) are met such that the rezoning can proceed.

128. LVL's relief achieves the intent and objective of PC19; it provides additional housing capacity, and provides choice and meets demand for low density living. It gives effect to NPS-UD. It achieves CODC's functions under section 31(1)(aa).

129. It promotes the purpose of the Act, enabling social and economic wellbeing of the community while promoting the efficient and sustainable use of the Site, where it is not suited or suitable for productive or other rural uses, and without giving rise to adverse effects.

130. Overall, LVL's rezoning relief is the most appropriate, and, while it is not required to be, it is indeed the better of the options.

Dated this 22nd day of May 2023

R Wolt

Counsel for Lowburn Viticulture Limited

APPENDIX A

- "**Have regard to**" means to give genuine attention and thought to the matter, see: *NZ Fishing Industry Assn Inc v Ministry of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at pp 17, 24, 30 and also the Environment Court decision in Marlborough Ridge Ltd v Marlborough District Council (1997) 3 ELRNZ 483 and Unison Networks Ltd v Hastings District Council [2011] NZRMA 394, at [70] (albeit a resource consent decision, as to s104).

- "**Must take into account**" means the decision maker must address the matter and record it has have done so in its decision; but the weight to be given it is a matter for its judgment in light of the evidence, see: *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [42].

- "**Have particular regard to**" means to give genuine attention and thought to the matter, on a footing that the legislation has specified it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion, see: *Marlborough District v Southern Ocean Seafoods Ltd* [1995] NZRMA, which concerned a resource consent, however in its decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) the Independent Hearings Panel accepted as valid the application of the principle to district plan formulation (at paragraph [43]).

- "**Give effect to**" means to implement according to the applicable policy statement's intentions, see: *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, at [80], and at [152]-[154]. This is a strong directive creating a firm obligation on those subject to it.

- "**Must not be inconsistent with**" - This is usefully tested by asking:
    - Are the provisions of the Proposed Plan compatible with the provisions of these higher order documents?
    - Do the provisions alter the essential nature or character of what the higher order documents allow or provide for?

See Re *Canterbury Cricket Association* [2013] NZEnvC 184, [51]–[52] for the first of the above questions, and *Norwest Community Action Group Inc v Transpower New Zealand*

EnvC A113/01 for the second, as applied by the Independent Hearings Panel in its decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) at paragraph [42].

APPENDIX B

THE COLONIAL VINEYARD TEST

General Requirements

- A district plan should be designed in accordance with, and assist the territorial authority to carry out its functions so as to achieve, the purpose of the Act.
- When preparing its district plan the territorial authority must give effect to a national policy statement, New Zealand coastal policy statement or regional policy statement.
- When preparing its district plan the territorial authority shall have regard to any proposed regional policy statement.
- In relation to regional plans:

    a. the district plan must not be inconsistent with an operative regional plan for any matter specified in s 30(1) or a water conservation order; and

    b. shall have regard to any proposed regional plan on any matter of regional significance etc.

- When preparing its district plan the territorial authority:

    a. shall have regard to any management plans and strategies under any other Acts, and to any relevant entry on the New Zealand Heritage List and to various fisheries regulations (to the extent that they have a bearing on resource management issues in the region), and to consistency with plans and proposed plans of adjacent authorities;

    b. must take into account any relevant planning document recognised by an iwi authority; and

    c. must not have regard to trade competition.61

- The district plan must be prepared in accordance with any regulation.
- A district plan must also state its objectives, policies and the rules (if any) and may state other matters.
- A territorial authority has obligations to prepare an evaluation report in accordance with section 32 and have particular regard to that report.
- A territorial also has obligations to prepare a further evaluation report under section 32AA where changes are made to the proposal since the section 32 report was completed.

Objectives

- The objectives in a district plan are to be evaluated by the extent to which they are the most appropriate way to achieve the purpose of the RMA.

Provisions

- The policies are to implement the objectives, and the rules (if any) are to implement the policies.
- Each provision is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan, by:

a. identifying other reasonably practicable options for achieving the objectives;

b. assessing the efficiency and effectiveness of the provisions in achieving the objectives, including:

- 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 opportunities for economic growth and employment that are anticipated to be provided or reduced;72 and
- quantifying these benefits and costs where practicable; and
- assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

Rules

- In making a rule the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.

Other Statutes

- The territorial authority may be required to comply with other statutes.