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 **S Davies** (Submitter 147)

Dated: 19 May 2023

Counsel Acting | Rebecca Wolt
Email | rebecca@rebeccawolt.co.nz
Phone | 021 244 2950

MAY IT PLEASE THE PANEL

INTRODUCTION

1. These opening legal submissions are filed on behalf of Stephen Davies (Mr Davies) in relation to his submission on Proposed Plan Change 19 (**PC19**) to the Central Otago District Plan seeking the rezoning of land at Bannockburn.

2. Mr Davies owns approximately 16.8 ha of land located at 69 Hall Road, Bannockburn (**Site**).

3. The Site includes the Doctors Flat Vineyard, which Mr Davies owns and operates. The Vineyard was established in 2002 by Mr Davies and produces internationally acclaimed Pinot Noir.

4. The Site is split zoned Rural Resource Area (**RU**) and Residential Resource Area (**RRA(4)**) in the Operative Central Otago District Plan (**Operative Plan**). Approximately 2.39 ha of the Site is within the RRA(4) area, within the northern part of the Site, which is located immediately adjacent to the established Lynn Lane residential development. This includes the Vineyard. The remainder of the Site is zoned RU.

5. The Site has an extensive consenting history, commencing in 2002, when resource consent was obtained to establish the Vineyard within the RRA(4). Since then, and through developing the Vineyard, Mr Davies has established that much of the Site is unsuitable for grapes or other forms of production. He has progressively developed some of the unproductive parts, including the land to the north of Site (originally part of Mr Davies' landholding) which now comprises the Lynn Lane residential area. This developed part falls within the operative RRA(4) zone.

6. In 2017, Mr Davies obtained consent to develop, for residential purposes, land straddling the RRA(4)/RU boundary in the north-eastern part of the Site (RC160365). Four residential lots were consented (approved by the Environment Court), at a density and of a form broadly consistent with the adjacent RRA(4) development. Mr Davies is currently implementing this consent, with a survey plan approved by CODC in November 2022.

7. Mr Davies intends to continue operating the Vineyard and producing the acclaimed Doctors Flat Pinot Noir. He also seeks an economic us for the part of his land that has no productive value but is contiguous with established residential development.

Site's Operative and Proposed Zoning

8. As above, the Vineyard and part of the land that is consented for residential development under RC160365 (**Consented Area**) is zoned RRA(4) under the Operative District Plan. For the avoidance of doubt, this land is zoned for low density residential development.

9. The Cromwell Spatial Plan, on which PC19 is based, recognises this existing residential zoning.[1] PC19, as notified, does not, however, in that it does not identify a residential zoning for this land. This is despite the section 32 evaluation of PC19 explaining that intent the plan change is to:[2]

- *"**Replace the current Section 7 Residential Resource Area** of the Plan with a new Residential Zone Section, comprising:*
    - *a Large Lot Residential Zone chapter;*
    - *a Low Density residential Zone chapter;*
    - *a Medium Density Residential Zone chapter; and*
    - *a Residential Subdivision chapter; and*
- *Amend the planning maps to **rezone land in general accordance with what as been identified in the Vincent and Cromwell Spatial Plans** and to reflect the new zone names above"*

(emphasis added).

10. In accordance with this intent, all other RRA(4) zoned land in Bannockburn is addressed by notified PC19, which proposes the replace the operative RRA(4) zoning at Bannockburn with a comparable National Planning Standards zone, the Large Lot Residential Zone (**LLRZ**).

11. The omission of Mr Davies' RRA(4) zoned land from notified PC19 is not addressed in the section 32 evaluation. That is, the omission is not explained,

[1] Spatial Plan, page 44.
[2] Section 32 report, page 4, para 3.

and the costs and benefits are not assessed. The omission leaves this land in somewhat 'black hole', in that it is not zoned RU under the Operative Plan, nor under PC19 (as PC19 does not propose any RU zonings), but nor does PC19 propose a residential zoning (LLRZ) for the land.

12. All things considered, the failure of PC19 to address Mr Davies RRA(4) zoned is an anomaly and appears to be inadvertent.

Mr Davies' Submission

13. Mr Davies made a submission on PC19 which in broad terms seeks:

    (a) A zoning for the Vineyard that recognises and protects its productive use;

    (b) A zoning of the Consented Area that recognises and aligns with the consented residential activities;

    (c) A zoning of unproductive land that enables its economic use.

14. Mr Davies' submission was prepared without planning or legal assistance, and it is thus not clearly expressed. However, it is well established that lay submitters should be afforded latitude in this respect, and that when interpreting and determining the scope of a lay submission, the exercise should be approached on realistic and workable basis, and not from the perspective of legal nicety.

15. The specific relief sought by Mr Davies is:

    (a) A RU zoning for the Vineyard land. This would recognise and protect the productive capacity of this land and the established Vineyard;

    (b) A LLR zoning[3] for the Consented Area, which would recognise and align with the consented development, and accord with adjacent development, noting that part of the Consented Area is zoned RRA(4) in the Operative Plan in any case;

    (c) A LLR zoning for an approximate 2 ha area immediately south of and adjacent to the Consented Area. This would effectively transpose the

[3] Although expressed as an RRA(4) zoning in the submission, that equates and is materially no different to an LLR zoning, using the terminology and framework of PC19.

development capacity of the approximately 1.9ha productive Vineyard land under the Operative RRA(4) zoning with an unproductive RU zoned part of the Site some 250 meters to the east, immediately south of the Consented Area.

16. The relief would protect the establish Vineyard operation, while retaining but transferring the operative development capacity inherent in the Vineyard block to closeby unproductive land, and better recognise and align with existing and consented land uses.

17. No submitter/further submitter has opposed the relief.

EVIDENCE

18. The following evidence has been filed in support of Mr Davies' submission:

    (a) Mr Davies, outlining the history of the Site and its characteristics, the Vineyard operation and winemaking, and Site's consented history.

    (b) Matt Sole, Archeologist, addressing the heritage features of the Site, and how (if at all) these should be addressed by future development. The Building Restriction Line proposed by Mr Espie accounts for these features. (Mr Sole's report is appended to Mr Davies' evidence).

    (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 evidence is discussed in detail later in these submissions.

    (d) Ben Espie, landscape architect. Mr Espie undertakes a landscape character and visual amenity effects assessment, to ascertain whether the Site can accommodate Mr Davies' relief without giving rise to adverse landscape effects. He also assesses the relief against the District Pan and higher order policy framework. Mr Espie's evidence is that development enabled by the relief would be appropriate and in context with the wider area. Mr Espie recommends the application of a Building Line Restriction (**BLR**) in order to ensure the more sensitive parts of the Site are treated appropriately, and to recognise the consent conditions (under RC160365)

that apply development in the Consented Area. The BLR is a widely used tool within the Central Otago District and the Bannockburn area, and its application to Mr Davies' Site would not be out of step with the District Plan scheme and framework.

(e) Richard Ford, Licenced Cadastral Surveyor, addressing infrastructure and servicing matters. Mr Ford has had extensive involvement with the previous consents for the Site and is thus very familiar with the Site's characteristics, and its infrastructure requirements and constraints. Mr Ford's evidence that the Site can be serviced for infrastructure and access, particularly given the proposed transposition of capacity from Vineyard area, the development of which has already been accounted for in the Council's infrastructure planning due to the operative RRA(4) zoning of the Vineyard. Development of the Site in accordance with the relief may require extraordinary connections to the water and wastewater network, however, these would be required for development of the Vineyard area under the operative RRA(4) zoning and elsewhere in the zoned Bannockburn residential area in any case, and enable a higher level of scrutiny of these infrastructure matters at the time of subdivision.

(f) Jake Woodward Planner. Mr Woodward has undertaken a comprehensive assessment of the relief, and other reasonably practicable options, in accordance with section 32 and the other statutory requirements of the Act. Mr Woodward's conclusion is that the relief achieves the policy direction of PC19, the District Plan and other relevant statutory planning documents; provides much needed development capacity at Bannockburn without giving rise to adverse effects, and is overall the 'better' option.

SECTION 42A REPORT

19. Ms White has prepared a section 42A report on the zoning relief sought by Mr Davies and other submitters.

20. In her report, Ms White correctly identifies that the Cromwell Spatial Plan does not identify any areas for growth at Bannockburn, but that notified PC19 proposes an LLR zoning for a previously unzoned area, being the Domain Road

site, which Mr White explains is proposed to be rezoned 'following discussions with landowners'. There appears to be a high degree of opposition to this rezoning however.[4]

21. Ms White records that since PC19 was notified, CODC has undertaken a further yield assessment, to ascertain whether the notified PC19 zonings would provide sufficient capacity for forecast demand. The updated yield assessment indicates that at a Ward level, there is sufficient housing supply for forecast demand (a point disputed by Mr Woodward, as addressed further later in these submissions), while for Bannockburn, there is an undersupply of around 200 dwellings under medium growth projections and 300 dwellings under high growth projections.[5] This is a very significant shortfall, and indicates a lack of housing supply to meet demand at Bannockburn.[6]

22. A number of submitters seek residential rezonings for land to the south and west of Bannockburn. Ms White addresses these at paragraphs 98 – 116 of her report. In White's view, rezoning sites to the south of the township, which is where Mr Davies's Site is located, is logical from an urban form perspective, and zoning more land is likely necessary given the identified shortfall, but zoning all the land raised in these submissions is likely to be more than necessary to meet demand and the 'best' locations for growth need therefore be determined.[7]

23. As Ms White identifies[8], much of this southern land has a Land Use Capacity 3 classification in the New Zealand Land Resource Inventory, which, pursuant to the National Policy Statement on Highly Productive Land (**NPS-HPL**) could preclude its rezoning for urban purposes, unless the tests in clause 3.6(4) of the NPS-HPL are meet. Ms White's view is that they likely are.[9] Mr Woodward agrees. The LUC classification and the NPS-HPL is addressed in detail shortly.

24. Ms White then opines that given the undersupply of residential land and housing as compared with predicted growth, a key question for the Panel is whether

[4] Ms White's report, para 88.
[5] Ms White, para 83.
[6] As Ms White, identifies, at her para 88.
[7] Ms White, para 111.
[8] Her para 107.
[9] Her para 109.

additional growth should be provided for at Bannockburn.[10] Mr Woodward address this at length in his evidence, in the context of the Council's statutory obligations to provide adequate housing supply and variety, as well as its broader functions under section 31 and the Part 2 imperatives. In terms of the particular question posed by Ms White: the identified shortfall of housing supply at Bannockburn is a significant shortcoming of PC19/the District Plan; as provision of sufficient housing supply is a function of CODC under section 31 of the Act, it is incumbent on CODC to address it.

25. Despite the identified shortfall in housing supply, drawing from Ms Muir's report, Ms White identifies servicing constraints relating to both water supply and waste water, which she considers at this time preclude residential rezoning for any sites south of the township.[11] Recognising, however, unmet demand for housing supply, she recommends the application of a Future Growth Overlay (**FGO**) to these areas, to apply until such time as infrastructure constraints are resolved. Given the proposed zoning transfer, an FGO is unnecessary for Mr Davies' land. This is addressed further later in these submissions.

26. Ms White does not expressly address Mr Davies' submission, on the basis that she is unclear on the land to which it relates.[12] For the record, Mr Davies' submissions did contain plans identifying the land, however, these were in the body of an email rather than attached as an appendix, and seemingly have not made their way to Ms White.

27. Be that as it may, on the basis of another submission that addresses part of Mr Davies' land (submission 150, Landpro), Ms White recommends an LLR zoning for those parts of 69 Hall Road, this being Mr Davies's land, that are zoned RRA(4) in the Operative Plan.[13] This is due to the operative residential zoning of the land (which PC19 intends to carry over) and the shortfall in housing supply at Bannockburn.

[10] Her para 112.
[11] Ms White's report, para 112.
[12] Ms White's report, para 102.
[13] Ms White's report, paras 98, 114 – 115.

28. Mr Davies supports this recommendation, which partly addresses his relief and addresses the anomaly otherwise created by notified PC19 in so far as it omitted to address Mr Davies' RRA(4) zoned land.

29. The focus of these submissions and the evidence more generally is thus the zoning of the remainder of Mr Davie's Site, being the part zoned RU in the Operative District Plan (and notified PC19).

THE LAW

Statutory Framework

30. 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.

31. 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**).[14]

32. 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.

33. 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.

34. A district plan or change must be prepared in accordance with (relevantly):[15]

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

    (b) the provisions of Part 2; and

[14] Section 72 of the Act.
[15] Section 74 of the Act.

(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**).

35. In addition, a district plan or change must *give effect* to a regional policy statement (here, the Partially Operative Otago Regional Policy Statement 2019)[16] and *have regard to* a proposed regional policy statement (here, the Proposed Otago Regional Policy Statement 2021).

36. 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.**

37. The 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)).

38. 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

[16] Section 75(3)(c).

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.[17] I address PC19's purpose shortly.

39. 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).

40. 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 Submitter. Mr Woodward has undertaken this evaluation in a comprehensive manner in his evidence.

41. The Environment Court in *Colonial Vineyard Ltd v Marlborough District Council*[18] gave a comprehensive summary of these mandatory requirements for the preparing of a district plan or change. For completeness, this is set out in **Appendix B**.

Established Principles

42. 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.[19]

(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

---

[17] Section 32(6)(b).
[18] [2014] NZEnvC55.
[19] *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

correct or appropriate. The proceedings are more in the nature of an inquiry into the merits in accordance with the statutory framework;[20]

(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.[21]

(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.[22]

(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).[23]

(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.[24]

(g) 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".[25] This accords with the Act's enabling purpose.

(h) 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

---

[20] *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.
[21] *Eldamos* paragraph [129].
[22] *Rational Transport Society Inc v NZTA* [2012] NZRMA 298 (HC) at [45].
[23] Infinity Group v Queenstown Lakes DC C010/05.
[24] Independent Hearings Panel's decision on the Strategic Directions Chapter of Proposed Christchurch Replacement Plan (dated 26 February 2015) at paragraph [67].
[25] *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.[26]

(i) 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.[27]

PLAN CHANGE 19 OBJECTIVE

43. The objective or purpose of PC19 is set out in the section 32 evaluation prepared prior to the notification of the plan change: [28]

"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)

44. 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 considered what is the "most appropriate" zoning outcome under section 32, it is this objective that must be borne in mind.[29]

45. 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

[26] *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

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

[28] Section 32 Evaluatoin Report, para 4.

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

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

ZONING OPTIONS

46. 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.

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

    (a) **Option A**: Removing the RRA(4) Zone from the site altogether as per PC19 as notified. Presumably an RU zoning would then apply to the Site, although this is unclear, given PC19 does not propose any RU zonings;

    (b) **Option B**: Retaining the current residential zone boundaries of the Operative District Plan but renaming the RRA(4) Zone to the PC19 LLR Zone, including associated amendments to the zone provisions. This is Ms White's recommendation. It is effectively the operative zoning status quo, albeit that the zone name and some provisions are updated;

    (c) **Option C**: Mr Davies' relief, being the transfer of the development capacity contained in the operative RRA(4) residential zoning of the Vineyard area and Ms White's recommended Option B to an area of unproductive land to the east, and in addition, the application of the LLRZ to the Consented Area.

KEY ISSUES

48. Ms White supports the submission in part, being an LLR zoning for part of the Site, however, she has not considered the full relief as she did not understand it. She has nonetheless raised more general concerns regarding rezoning of land south of Bannockburn, as detailed earlier, which are of relevance to Mr Davies' submission.

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

50. Several matters require further attention, however, namely:

    (a) The NPS-HPL;

    (b) The NPS-UD, and related to this, section 31(1)(aa), the Rationale reporting and housing supply generally;

    (c) Infrastructure.

51. These are now addressed in turn.

NPS-HPL

52. 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

53. 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.[30] 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.[31]

54. 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."*

[30] NPS-HPL Obj 2.1.
[31] NPS-HPL, Pol 5.

55. 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,[32] 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 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."

56. It is necessary to ascertain whether the Submitter'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'

57. 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.[33]

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

---

[32] NPS-HPL, cl 1.3(1). Mapping must be undertaken within 3 years of the Commencement Date, per clause 3.5(1)

[33] 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)).

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

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

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

62. For completeness, it is noted that this assessment need only be undertaken for the part of the Site zoned RU in the Operative District Plan; the part zoned RRA(4) is not captured by the NPS-HPL, despite its LUC 3 classification in the New Zealand Land Resource Inventory and the use of part of it for productive purposes (the Vineyard), because it was not zoned 'general rural' or 'rural production' at the Commencement Date. Ms White takes the same view in her report.[34]

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

63. Under the NPS-HPL, LUC 1, 2 or 3 is defined as follows:[35]

"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)

64. As Dr Hill explains in his evidence, 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.

65. 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.

66. 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

[34] Ms White's report, para 114.
[35] NPS-HPL Clause 1.3(1).

1 – 8. NZLRI mapping was undertaken in the 1970s using the imperial system, and updated to the metric system in the 1980s.

67. 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.

68. 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 (paras 28 – 39).

69. The NZLRI classifies part of Mr Davies' land as LUC 3, with the remainder being LUC 7 (non-productive). Ms White discusses the LUC 3 classification in her report, as does Dr Hill, albeit Dr Hill does so in significantly more detail.

70. Ms White intimates that the NZLRI LUC 3 classification for part of the land means that the land[36] 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 submitter is an urban zone and thus equates to an 'urban activity' for the purposes of NPS-HPL Policy 5 and clause 3.6(4)).[37]

71. 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 Mr Davies land is not LUC 1, 2, or 3, but is, at best LUC class 4 and 7. As Dr Hill explains, land that is LUC class 4 or higher is, by definition, not highly productive land under the NPS-HPL.

---

[36] 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, most likely due to her conclusion on NPS-HPL cl 3.6(4) (which she considers is met) and other constraints, which she considers precludes the rezonings in any case..
[37] See Ms White's report, para 107.

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

MfE Guide to Implementation

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

74. 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.

75. At its outset, the Guide states that:[38]

    (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.

76. 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.

77. 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.

78. 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.

[38] Guide, page 2.

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

80. 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*:[39]

    (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*."[40]

    (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.[41]

    (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.[42]

---

[39] *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.
[40] *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [35].
[41] Ibid.
[42] *Brownlee v Christchurch City Council* [2001] NZRMA 539 at para [25].

(e) The interpretation should also avoid creating injustice, absurdity, anomaly or contradiction.[43]

81. 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.

82. 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.

83. 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,

[43] *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.

84. 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.

85. 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 landowner it would have stated as much. It does not.

Clause 3.6(4)

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

87. 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.

88. Ms White considers that these test are likely met on the bases that:[44]

(a) There is will be a significant shortfall of residential housing supply at Bannockburn over the life of the District Plan (a shortfall of 200 houses under medium growth projections and 300 houses under high growth projections). Clause 3.6(4))a) is thus met if demand is assessed on a township basis;

(b) Given all the land around Bannockburn is constrained by either topographical (north and east) or productive soils (south and west) constraints, there are no other reasonably practical and feasible options for expanding the Bannockburn township so as to provide for growth other than on highly productive land;

(c) The costs and benefits are likely to be similar for all land sought to be rezoned, albeit that this might be influenced by the extent of land based production that is currently occurring.

89. Mr Woodward generally agrees with Ms White but he also notes:

(a) There may be a shortfall of land in the District 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 of Bannockburn. Demand for lower density residential housing is not presently met by PC19.

[44] Ms White's report, para 109.

(c) The costs and benefits of rezoning Mr Davies' land have been assessed, and there are more benefits than costs. The land is not currently used for productive purposes and, on the evidence of Dr Hill and Mr Davies, is not suitable for such use.

90. 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 or Ward* basis.

91. 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.

92. 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.

93. Furthermore, when considering demand for housing, it is necessary to consider the nature of that demand. Demand for low density residential living (2000m^2 lots), as the LLRZ at Bannockburn provides, cannot be met by provision of medium density housing (200m^2 lots) in Cromwell township.

94. 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.

95. If considered on a township basis, NPS-HPL clause 3.6(4)(a) is met by Mr Davies' proposed rezoning. 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 PC19 as notified.

NPS-UD

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

97. 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.

98. 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.[45]

99. 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.

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

[45] Ms White's Part 1 Section 42A report, para 27.

101. 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)

102. 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*"[46].

103. 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 labour market, will exceed 10,000 persons over the life of the District Plan, whether on medium or low growth projections.[47]

104. 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 (prepared by Rationale) 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.

105. 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.

106. Ms White opines in her Part 1 section 42A report that PC19 aligns with the NPS-UD.[48] However, her assessment of the matter is cursory and she appears to

[46] https://www.merriam-webster.com › dictionary › intended
[47] Mr Woodward's evidence, para 6.10.
[48] Section Report, Part 1, para 28.

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.

107. 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 Mr Davies 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.

108. 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:[49]

(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) The MDR does not provide variety or choice in housing.

[49] Mr Woodward's evidence, para 6.17 - :6.26.

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

109. The consequences of the above are twofold:

(a) PC19 may not cater for the demand 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.

110. Mr Davies' relief goes someone to addressing these shortfalls in that:

(a) It provides more housing supply, in an area where there is significant demand (evidenced by the predicted shortfall);

(b) It provides more housing variety and choice.

Section 31(1)(aa)

111. 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.

112. As addressed above, as notified, PC19 may not provide sufficient capacity to meet the expected housing demands of the District.

113. This is particularly the case for Bannockburn where growth is forecast but where there is an identified shortfall of zoned residential land. As noted earlier, 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.

114. The solution is plain; more land must be zoned.

115. Mr Davies' land is a very suitable candidate for rezoning, because it:

(a) is contiguous to the established residential area;

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

(c) would present as a coherent extension of the Bannockburn township and would not give rise to any adverse landscape effects;

(d) can be serviced for infrastructure, with capacity already allocated in Council's infrastructure planning;

(e) Would recognise consented development and be a logical extension to that;

(f) Ms White recommends it, albeit her recommendation relates to land in a slightly different but closeby location;

(g) It would have the consequential benefit of recognising and providing for the established vineyard, a physical resource;

(h) No submitter opposes it.

Infrastructure

116. Ms White, relying on Ms Muir, identifies infrastructure capacity, water supply and waste water in particular, as a constraint to the rezonings sought for land south of Bannockburn, but noting again that she does not expressly address the relief sought by Mr Davies.

117. While there may be water and wastewater constraints to rezoning *new* residential land, that is, land not previously zoned for residential activities, Mr Davies' submission does not fall into that category.

118. Mr Davies's submission seeks the transfer of an *existing* residential zoning to closeby land. The size of the two areas is comparable: 1.9ha of existing RRA(4) zoning (which Ms White recommends is reinstated as LLRZ), compared with a 2ha area for the proposed LLRZ area (excluding the Consented Area). The theoretical yield both zones would be the same, as would anticipated demand on the network. There would be no increase.

119. Infrastructure and servicing of the Consented Area was considered the time subdivision consent was granted. The consent allows the establishment of four residential lots. This would also be the outcome under an LLR zoning for this area given the proposed BLR, which limits the location of buildgins (dwellings) and

thus achievable yield. Again, zoning this land would result in no additional demand on the infrastructure network over and above that anticipated and assessed under RC160365. In any case, RC160365 is in the process of being implemented, with infrastructure provision to be dealt with pursuant to that consent.

120. In summary, as Mr Ford explains,[50] the zoning relief sought by Mr Davies will not introduce additional load on the network capacity beyond that already accounted for in CODC's infrastructure planning. For the avoidance of doubt, this is because the land proposed to be rezoned is either already consented for such development (the Consented Area), or seeks an equivalent area and density of residential zoning to that already accounted for in the Council's infrastructure planning under the Operative Plan (the remainder of the relief area).

121. In addition to addressing network capacity constraints Mr Ford's, evidence assesses practically where and how network connections could be achieved. His evidence is that due to the Site's proximity to the Consented Area and operative RRA(4) zoned land, and taking account the Bannockburn's circumstances more generally, acceptable and compliant solutions are available, and all matters of detail can be dealt with appropriately at the time of subdivision.

122. Thus, while capacity constraints may apply to and preclude new zonings elsewhere, they are not an impediment to rezoning Mr Davies' Site.

123. A final comment on Ms White's report is necessary. Recognising the shortfall of residentially zoned land at Bannockburn, but also capacity constraints within the existing network, Mr White recommends the application of a Future Growth overlay (**FGO**) to some or all of the land south of Bannockburn that is sought be rezoned.[51]

124. Given there are no infrastructure constraints, an FGO for Mr Davies land is unnecessary. Capacity is available and the land can be rezoned now.

[50] Mr Ford's summary statement, para 2.4.
[51] Ms White's report, para 110.

CONCLUSION

125. The rezoning of Mr Davies' land has been comprehensively addressed in the evidence filed on his behalf. The evidence demonstrates that no adverse effects will arise from the rezoning but there will be positive effects, in that land that is unproductive will be given an economic use, which will benefit not only Mr Davies, but the community more generally in that it will assist with addressing an identified housing shortage that will, if not otherwise addressed, arise over the life of the District Plan, and will provide for variety in location and type of housing supply. In addition, it will recognise the established and highly acclaimed Doctors Flat Vineyard, an activity that is now part of the fabric and appeal of Bannockburn.

126. Infrastructure capacity issues, which could otherwise be a constraint to the rezoning, do not arise because the rezoning would not give rise to new or additional demand for infrastructure over and above what has already been accounted for in the Council's infrastructure planning through the operative RRA(4) zoning that applies to very nearby land (the Vineyard) which is purposed to be transposed to the rurally zoned relief area.

127. Ms White has not expressed a view on the relief, albeit she acknowledges the likely shortfall in housing based on updated growth projections, and for this reason recommends an LLR zoning for the part of the site zoned for residential purposes (RRA(4)) in the Operative District Plan.

128. While Ms White's recommendation is more appropriate than the notified PC19 proposal and addresses an anomaly in that, it is less appropriate than the relief Mr Davies' seeks, which not only achieves the intent of Mr White's recommendation and PC19, but does so while recognising the established and productive nature of the vineyard and enabling wholly unproductive land with an economic use.

129. In sum, Mr Davies' zoning relief achieves the intent and objective of PC19.

130. It promotes efficient and sustainable outcomes.

131. It gives effect to NPS-UD.

132. It is not precluded by the NPS-HPL.

133. It achieves CODC's functions under section 31(1)(aa) in particular.

134. It promotes the purpose of the Act, enabling social and economic wellbeing of the community while sustaining the potential of the vineyard and soil resource, without giving rise to adverse effects.

135. Overall, it is the most appropriate, and, while it is not required to be, it is indeed better of the options.

Dated this 19th day of May 2023

R Wolt
Counsel for S Davies

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.