

DIRECTIONS OF THE CENTRAL OTAGO DISTRICT COUNCIL HEARINGS PANEL

MINUTE 5

INTRODUCTION

Following the conclusion of hearing of submissions on Plan Change 19 to the Central Otago District Plan on Friday 26th May 2023 the Panel went into public exclusion to consider the submissions, evidence presented in support of submissions (including legal submissions), along with the recommendations and evidence presented by the s42A report writer, and responses to information received in response to Minute 4.

The meeting of the Hearings Panel was adjourned following deliberations and drafting of the recommendations for consideration of the Central Otago District Council.

The draft decision (recommendations of the Panel) was on the agenda for consideration at the general meeting of Central Otago District Council on Wednesday 24th April 2024.

In the week prior to draft decision being considered by Council, a new Environment Court Decision was released in relation to a matter that directly related to evidence received in support of two submissions, (Environment Court Decision No. [2024] NZEnvC 83, dated 18 April 2024).

The Panel brought this matter to the attention of the Council who decided to leave consideration of the decision on PC19 on the table and provide the Panel with the opportunity to consider the impact the Court decision might have on the recommendations in relation to zoning requests on land subject to the National Policy Statement for Highly Productive Land.

National Policy Statement for Highly Productive Land (NPS-HPL)

Environment Court Decision No. [2024] NZEnvC 83, dated 18 April 2024 considered the following legal issue:

“...can more detailed mapping undertaken since 17 October 2022 using the Land Use Capability (LUC) classification prevail over the identification of land as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory (NZLRI) and determine for the purposes of cl 3.5(7) of the NPS-HPL whether land is highly productive land (HPL)?”¹

¹ Environment Court Decision No. [2024] NZEnvC 83, para [2].

Judge Steven found that “...the definition of LUC 1, 2 or 3 land in cl 1.3 of the NPS-HPL applies to all references to LUC 1, 2 or 3 land in the NPS-HPL. It does not apply only to the transitional period meaning of HPL in cl 3.5(7). “More detailed mapping” after the commencement date might reveal that the land is or is not LUC 1, 2 or 3 land. However, the purpose of the NPS-HPL and in particular the transitional period, is that any new information concerning LUC classification is to be fed into the Schedule 1 mapping process to be undertaken by regional councils.”²

The Panel received legal and planning submissions on behalf of two submitters that considered it was possible to undertake site-specific assessments during the transitional period of the NPS-HPL that would change the classification of land.

The Panel invites the following parties to provide written comment in relation to the recent Environment Court case, should they choose to do so, to enable them to provide an updated recommendation to the Council:

- Ms Rebecca Wolt, legal counsel on behalf of Mr Stephen Davies (#147) and Lowburn Viticulture Limited (#123)
- Mr Jake Woodward on behalf of Mr Stephen Davies (#147) and Lowburn Viticulture Limited (#123)
- Ms Liz White, s42A report writer
- Ms Jayne Macdonald, legal counsel for Central Otago District Council

Timing

Comments are to be received by 4.00pm Friday 10th May 2024.

Circulation of Material

All written material requested by this minute including the reply from the reporting officer will be posted on the CODC’s engagement platform www.lets-talk.codc.govt.nz/plan-change-19.

All submitters will be notified when the additional material has been received and is available for viewing.

Neil Gillespie



Central Otago District Council Hearings Panel (Chair)

26 April 2024

² Environment Court Decision No. [2024] NZEnvC 83, para [5] (f).