

7 December 2023

Central Otago District Council  
PO Box 122  
**Alexandra 9340**

Sent via email: resource.consent@codc.govt.nz

**Otago Regional Council (ORC) submission on application for subdivision of a property at 176 Queensberry Terrace, Luggate**

ORC is not a trade competitor for the purposes of this submission.

ORC would like to speak to its submission if there is the opportunity.

**Decision requested:**

ORC requests that the application as notified be declined.

**Application Details**

ORC's submission relates to the information and property details below given in the application, further information and the public notification by Central Otago District Council (CODC).

**Consent Number:** RC230217  
**Applicant** Sarah Taylor and James Dale  
**Location:** 176 Queensberry Terrace, Luggate

**Reasons:**

A section of the property ((proposed Lot) is identified as containing land mapped as Land Use Classification 3 (LUC 3) which is considered Highly Productive Land (HPL). No appropriately qualified evidence is provided to demonstrate an exception test under the National Policy Statement for Highly Productive Land (NPS HPL).

ORC therefore considers the proposed subdivision activity to be contrary to the NPS HPL, and regional and district planning framework and consent should be declined.

**National Policy Statement for Highly Productive Land**

Status of the land

1. The NPSHPL came into force on 12 September 2022.
2. There is currently no regional mapping of HPL in Otago under Clause 3.4 (1) of the NPSHPL. Until this mapping exercise is completed, Clause 3.5(7) (a)(i) and (ii) of the NPS HPL provide transitional provisions for applying this national direction. The application has not recognised the transitional provisions of the NPS HPL that are in effect in its discussion under section 11 of the application.
3. The site is zoned as Rural Resource Area under the CODC District Plan.

4. The application acknowledges the presence of HPL, as does the Manaaki Whenua Landcare Research<sup>1</sup> mapping, identifying the sites containing HPL - LUC 3.
5. The subject site therefore meets the test as containing HPL under Clause 3.5(7) (a)(i) and (ii).

### **Implementation of the NPS HPL**

6. Section 3.8 of the NPS HPL requires that territorial authorities must, unless specified exceptions are met, avoid the subdivision of highly productive land. Section 3.9 similarly requires avoidance of the inappropriate use or development of highly productive land that is not land-based primary production.
7. ORC considers the transitional provisions of the NPS HPL apply to this application, and those provisions require the subdivision of HPL to be avoided.

### Exemptions

8. ORC does not accept that the information and context given in section 5.2.1 of the application meets the exception provisions under s3.8 or 3.9 of the NPSHPL.
9. While the section 32 evaluation report for the NPS HPL<sup>2</sup> noted the NPS HPL was careful not to make protection of HPL absolute, with various exception and exemptions provisions provided for, for non-primary productive use of HPL, the report emphasises (page 7 and elsewhere through the report) that the test for such exemptions is intentionally strong to avoiding undermining the intent of the entire NPS HPL.
10. ORC could not identify any qualified, expert evidence provided to support the application in respect of these matters, rather it is provided as part of overall planning information in support of the application.
11. In respect to the HPL, and the level of evidence this application can be expected to provide, it is useful to consider the planning context of the proposal:
  - a) It is a non-complying activity under the District Plan
  - b) It is contrary to the relevant productive soil policies of the District Plan
  - c) It is contrary to the relevant policy framework of the ORC's Regional Policy Statements (being the partially operative and the proposed RPS).

Of importance, the application is subject to a national direction - the NPS HPL.

12. As a non-complying activity, there is a greater onus of responsibility on an applicant to demonstrate a proposal is a true exception, including passing at least one of the 'gateway test' of section 104B of the Resource Management Act 1991 (RMA). A regulatory assessment is provided further on in our submission.
13. Some degree of reliance and weight can be afforded to the section 32t report for the NPS HPL. It provides details on the intention of the policy framework which was developed and

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<sup>1</sup> [https://ourenvironment.scinfo.org.nz/maps-and-tools/app/Land%20Capability/Iri\\_luc\\_hpl](https://ourenvironment.scinfo.org.nz/maps-and-tools/app/Land%20Capability/Iri_luc_hpl)

<sup>2</sup> <https://environment.govt.nz/assets/publications/NPS-for-Highly-Productive-Land-Section-32-Evaluation-Report.pdf>

passed into law. The supporting report highlights that any consenting decisions made that results in a loss of HPL during while the transitional phase of the NPS HPL is in effect, will inform subsequent plans changes.

14. If a subsequent plan change is to be informed by consents granted under the NPS transitional provisions, then for reasons of due process and natural justice, our communities must have confidence that those consents were supported by evidence that was qualified, and commensurate to the technical matters under consideration.
15. In this case, due to the absence of a commensurate level of assessment and expert evidence addressing all relevant matters required to be under the NPS HPL, ORC considers the application does not meet the NPS HPL exception test of Clauses 3.8 and 3.9 as the application promotes.

### Regulatory Assessment

16. Under section 104 of the RMA, the applications must be considered by having regard to:
  - a) the partially operative Regional Policy Statement 2019 (poRPS 2019), and
  - b) the proposed Regional Policy Statement 2021 (pRPS 2021), and
  - c) Giving effect to the CODC District Plan
17. The pRPS 2021 has been notified, and a hearing for the non-freshwater components has now been completed. Therefore, some legal weight can be given to any relevant provisions of the pRPS 2021.
18. ORC considers the applications as notified to be inconsistent with the poRPS 2019 and the pRPS 2021. In particular;

### poRPS 2019

- a) **Chapter 3** sets out a planning framework to support Otago having high quality resources and ecosystems.
- b) **Objective 3.1** seeks that *'The values (including intrinsic values) of ecosystems and natural resources are recognised and maintained, or enhanced where degraded'*;
- c) **Objective 3.2** seeks that *'Otago's significant and highly-valued natural resources are identified and protected, or enhanced where degraded'*
- d) **Chapter 5** sets out a planning framework to ensure people can use and enjoy Otago's natural and built environment
- e) **Objective 5.3** seeks that sufficient land is managed and protection for economic production
- f) A suite of policies support Objectives 3.1, 3.2 and 5.3 with those of relevance being:
  - i. Policy 3.1.7      Soil Values
  - ii. Policy 3.2.18    Managing significant soil
  - iii. Policy 5.3.      Rural Activities
19. These policies align with the direction given in the NPS HPL as to the importance of recognising and protecting HPL from subdivision of land that may result in the loss of productive capacity and efficiency.

20. Overall, ORC considers the application to be contrary to the PORPS 2019 as it promotes subdivision and development that is inconsistent with the management of soils with significant values and would further increase the risk of a loss of productive capacity and efficiency.

### pRPS 2021

21. The following objectives and policies are of particular relevance:

- a. IM- 03 Environmentally sustainable impact
- b. IM-P1 Integrated approach
- c. LF-LS-011 Land and soil
- d. LF-LS-012 Use of Land
- e. LF-LS-P17 Soil Values
- f. LF-LS-P19 Highly productive land
- g. UFD-O4 – Development in rural areas
- h. UFD-P7 – Rural Areas

22. The policy framework of the proposed RPS 2021 builds on the direction of the RPS 2019 and more strongly reflects the NPS HPL.

23. ORC considers that application is inconsistent with the pRPS 2021 as it promotes subdivision and development that would see a reduction in the productive potential and capacity of the highly productive land.

### Central Otago District Plan

24. ORC considers the proposal to be contrary with the objectives and policies of the CODC district plan, in particular;

#### Chapter 4: Rural Resource Area

- **4.3.7 Objective** - Soil Resource To maintain the life-supporting capacity of the District's soil resource to ensure that the needs of present and future generations are met.
- **4.4.6 Policy** – Adverse Effects on the Soil Resource  
To ensure that the location, construction and/or operation of land use activities and subdivision make adequate provision for the protection of the soil resource by avoiding, remedying or mitigating the adverse effects of practices which may cause:
  - (a) Erosion, instability or loss of topsoil,
  - (b) Loss of nutrient or incidence of soil contamination,
  - (c) Loss of soils with special qualities,
  - (d) A reduction in vegetation cover and moisture holding capacity, and
  - (e) Soil compaction.
- **4.4.10 Policy** – Rural Subdivision and Development To ensure that the subdivision and use of land in the Rural Resource Area avoids, remedies or mitigates adverse effects on: ....

...

- (e) The loss of soils with special qualities,....

...

#### Chapter 16: Subdivision

- **16.3.5 Objective - Water and Soil Resources** To ensure that subdivision does not facilitate development that may compromise the life-supporting capacity of the District's water and soil resources.

25. As provided, the application does not demonstrate a proposal that maintains the life supporting capacity of the district soil resource, as it would result in subdivision on, and the loss of, highly productive soils.
26. ORC considers the objective reflects that subdivision should not compromise life supporting capacity of the districts soil resource, and as discussed above the proposal would do so through its loss. There are no policies to assess which support this objective. ORC has considered that Objective 16.3.5 does not relate to only mitigating the impacts of disposal of wastewater on a site without reticulation because that matter is addressed by Objective 16.3.11.

#### **Conclusion**

27. ORC considers that the proposal for subdivision is contrary to the NPSHPL, the Objectives and Policies of the ORC's partially operative Regional Policy Statement 2019, and proposed Regional Policy Statement 2021, and the objectives, policies and rules of the Central Otago District Plan. Therefore, the application should be declined.

If you have any questions, please contact Warren Hanley (warren.hanley@orc.govt.nz), Senior Resource Planner Liaison at ORC's Dunedin Office.

Yours sincerely



Anita Dawe  
**General Manager, Policy, and Science**

Cc: : matt@landpro.co.nz