

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

IN THE MATTER OF

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

AND

IN THE MATTER OF

Of the Central Otago Operative District Plan
(**CODP**) and Proposed Plan Change 19 to the
Central Otago District Plan (**PC19**)

AND

IN THE MATTER OF

Application to the Central Otago District
Council (**CODC**) by **D. J Jones Family Trust**
and N.R Searell Family Trust for subdivision
and land use resource consent for residential
subdivision and development at 88 Terrace
Street, Bannockburn (**RC230398**)

**MEMORANDUM OF COUNSEL FOR
D. J JONES FAMILY TRUST AND N.R SEARELL FAMILY TRUST IN RESPONSE TO
MINUTE 1**

Dated: 23 September 2024

Presented for filing by:
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MEMORANDUM OF COUNSEL IN RESPONSE TO MINUTE 1

TO: the Chair of the Hearings Panel

INTRODUCTION

- 1 This memorandum is filed on behalf of D. J Jones Family Trust and N.R Searell Family Trust (**Applicant or Trust**) in respect of the Trust's application to the Central Otago District Council (**CODC**) for subdivision and land use resource consent for residential subdivision and development at 88 Terrace Street, Bannockburn.
- 2 Minute 1 records that the Hearing Panel received a request on 23 September 2024 by submitter James Dicey (**submitter**) to delay the commencement of the Hearing for four weeks.
- 3 The Minute records the following reasons given by the submitter in support of the request for delay:
 - (a) That the Hearing Notification email went to the submitters' spam folder.
 - (b) That the evidence timetable does not allow sufficient time for the preparation of expert evidence.
 - (c) The four week delay would allow sufficient time to enable the proper preparation of evidence to enable a fair hearing.
- 4 The Panel has asked the Applicant to respond to the submitter's request as soon as possible.¹

APPLICANT'S RESPONSE TO REQUEST TO DELAY HEARING

- 5 The Applicant is opposed to the request to delay the hearing for the reasons discussed below.

Reasons given in support of the request are insufficient to justify any delay

- 6 The reasons given by the submitter in support of the request are insufficient to justify any delay to commencement of the hearing. In particular, there is little if any prejudice arising from the email going to the submitter's spam folder

¹ Minute 1 at [4]

because the submitter has obviously received notice of the hearing via separate means in order to file the request for delay.

- 7 Further, the application was publicly notified on 11 July 2024 and submissions closed 8 August 2024, so the submitter has had 10 weeks since public notification and 6 weeks since submissions closed to engage and brief expert evidence in preparation for the hearing.
- 8 In the circumstances, the requested delay to commencement of the hearing is unnecessary because the submitter has had ample opportunity to enable proper preparation of evidence for the hearing. With respect, any difficulty now faced by the submitter is of the submitter's own making.

Any delay in the hearing would cause undue prejudice to the applicant

- 9 Any delay in the hearing would cause undue prejudice to the Applicant. The Applicant will be represented by legal council and will call 4-6 expert witnesses at the hearing. These experts are capable and busy professional consultants. It would not be straightforward to arrange an alternative hearing date suitable to the Applicant's experts.
- 10 For example, Mr Milne, the Applicant's landscape architect, has been involved in in this proposal from the outset and is an essential witness for the Applicant. Mr Milne is travelling abroad between 11-29 November 2024 and will not be available until December. Arranging a hearing in December is typically problematic due to the limited number of working days² and because experts often have limited capacity during this month.
- 11 Consequently, there is a real risk (if not likelihood) that the hearing would be delayed until the New Year. A delay of this magnitude would not be consistent with the consent authority's duty to avoid unreasonable delay.³

² There are only 15 working days (as defined by the RMA) available in December 2024

³ See s21 RMA

Delay would not be appropriate and fair in the circumstances

- 12 Overall it would not be appropriate and fair in the circumstances to delay the commencement of the hearing by four weeks. The Applicant considers that the submitter's request should be declined.

Dated 23 September 2024

A handwritten signature in black ink, appearing to read 'Chris Fowler', written in a cursive style.

Chris Fowler
Counsel for D. J Jones Family Trust and N.R Searell Family Trust