

**BEFORE 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

Hearing of Submissions and Further
Submissions on Proposed Plan Change 19
(**PC19**) to the Central Otago District Plan
(**CODP** or **the District Plan**)

AND

STAGE 2 HEARING

**SUMMARY OF LEGAL SUBMISSIONS FOR THE DOUG JONES FAMILY TRUST
AND SEARELL FAMILY TRUST NO. 2**

Dated: 19 May 2023

Presented for filing by:
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INTRODUCTION

- 1 My name is Chris Fowler. I appear as legal counsel for the Doug Jones Family Trust and the Searell Family Trust (collectively and for simplicity referred to as **Trust** or **Submitter**).
- 2 The Trust has submitted on Plan Change 19 to the Central Otago District Plan (**PC19**) seeking, amongst other matters, amendment to residential subdivision provisions and zoning maps relating to Bannockburn.
- 3 The objective of the Trust's submission is to propose rezoning to enable an increase in the density of residential development within the existing residential zone at Bannockburn to support housing growth, and also to enable a limited commercial development along Bannockburn Road (**proposed rezoning**).

THE SITE AND PROPOSED REZONING

- 4 The site contains 26 ha and is already zoned RRA(4) under the ODP (1,500 m² minimum and 2,000 m² average lot size). Refer **Sheet 5** of the Graphic Attachment filed with Tony Milne's evidence (**GA**).
- 5 The site is proposed to be zoned Large Lot Residential Zone (**LLRZ**) under PC19 (2,000 m² minimum lot size with not average lot size). Refer PC19 Planning Map at **Sheet 11** of the GA.
- 6 As shown in the Proposed Zoning Plan at **Sheet 12** of GA, the proposed rezoning comprises:
 - (a) A commercial precinct to provide for local convenience retail and community facilities located adjacent to Bannockburn Road (pink with blue angled lines);
 - (b) An area of Medium Density Residential Zone (**MDZ**) located adjacent to Bannockburn Road (pink area);
 - (c) An area of Low Density Residential Zone with proposed amended subdivision standards of 1000m² minimum and 1500m² average located outside the building line restriction on the balance of the Site (yellow area), and

- (d) On that part of the site within the building line restriction, no changes are proposed by the Trust (i.e. the PC19 2,000 m² minimum lot size within the LLRZ applies).
- 7 An Indicative Outline Development Plan based on the proposed rezoning is shown in the GA at **Sheet 13**. This shows, among other matters, an indicative roading pattern, Recreation Reserve abutting the MDZ (lighter green), and a Heritage and Recreation Area Link (darker green)

FRAMEWORK FOR EVALUATION OF THE AVAILABLE OUTCOMES

- 8 There are two available outcomes falling for consideration at today's hearing, namely:
- (a) the outcome proposed by PC19 (i.e. LLZR zoning with 2,000 m² minimum lot size); or
 - (b) the outcome proposed by the Trust (as detailed above).
- 9 The RMA requires that these outcomes be compared to determine which is the most appropriate way to achieve the purpose of the plan change, taking into account the relevant statutory requirements, including the obligation to give effect to the National Policy Statement on Urban Development 2020 (**NPS-UD**) and the Proposed Otago Regional Policy Statement (**PORPS**). These documents are both more recent and sit higher in the statutory hierarchy than the Central Otago District Plan.

Is the CODC a tier 3 local authority under the NPS-UD?

- 10 It is clear from the Growth Projections Report 2022 and the more recent Cromwell Assessment 2022 that both the Cromwell Ward (and Cromwell itself) is intended to be part of a housing and labour market of at least 10,000 people, well within the medium term (10 year) horizon provided by the NPS-UD, and therefore the Cromwell Ward is currently an urban environment as that term is defined in the NPS-UD. It follows that the Council is currently a tier 3 local authority under the NPS-UD.

Should the NPS-UD apply to Bannockburn?

- 11 Bannockburn is shown as a Centre/Node of the Cromwell urban area in the Cromwell Spatial Framework Plan (**Spatial Plan**). The two settlements share a

geographic connection through common location within the Cromwell Basin and the Cromwell Ward. This is illustrated by **Sheet 6** of the Graphic Attachment appended to Mr Milne's evidence which shows the relationship between Cromwell township and Bannockburn. Further, the Cromwell Assessment 2022 expressly includes Bannockburn in the yield assessment discussed in that document.

- 12 It follows that Bannockburn is an urban settlement that forms part of the urban environment within the Cromwell Ward. PC19 should make appropriate provision for urban development within Bannockburn in accordance with the Council's obligations as a tier 3 authority under the NPS-UD.
- 13 Even if the Hearings Panel disagrees with this view, the provisions of the NPS-UD which apply to all local authorities, whether or not they are tier 1, 2 or 3 local authorities, support the proposed rezoning.

WHICH OUTCOME BEST ACHIEVES THE OBJECTIVES OF THE NPS-UD?

- 14 The NPS-UDC (and by implication the NPS-UD) directs a "radical change" to the way in which local authorities must approach the issue of development capacity – the spirit and intent of substantive objectives is "to open development doors rather than to close them".¹
- 15 The NPS-UD has been recently summarised by the Environment Court as having the broad objective of providing for:²

"...well-functioning urban environments that meet the changing needs of New Zealand's diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments."

- 16 The proposed rezoning will provide a number of important positive consequences for Bannockburn that are not attainable under the zoning pattern proposed by PC19. These include:
 - (a) increased development capacity for business and housing;
 - (b) more choice and improved affordability of housing;
 - (c) more efficient use of existing infrastructure;
 - (d) a compact urban form that reduces need for urban expansion; and

¹ *Bunnings Ltd v Queenstown Lakes District Council* [2019] NZEnvC 59, at [148] – [155]

² *Middle Hill Ltd v Auckland Council* [2022] NZEnvC 162 at [33]

(e) establishment of an "urban village" at Bannockburn.

- 17 These positive consequences are consistent with the outcomes that must be achieved by local authorities under the NPS-UD. Further there are little, if any, negative consequences arising from the proposed rezoning. Overall, the outcomes from the proposed rezoning will better achieve the directives within the NPS-UD than the outcomes from the PC19 rezoning by a significant margin.

Dated: 24 May 2023



Chris Fowler
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