

MEMORANDUM

TO	Central Otago District Council Hearings Panel
CC	
FROM	Liz White (Reporting Officer)
DATE	7 May 2024
SUBJECT	Response to Minute 5 of the PC19 Hearings Panel

Introduction

This memorandum responds to Minute 5 of the PC19 Hearings Panel, which invited identified parties – including myself as the s42A report writer - to provide written comment in relation to the recent Environment Court case relating to the interpretations of the National Policy Statement for Highly Productive Land (NPS-HPL).

Environment Court Decision No. [2024] NZEnvC 83

In the s42A Reply Report, I had concluded, with respect to the rezonings sought by Lowburn Viticulture Ltd (#123) and Stephen Davies (#147), that the NPS-HPL did not apply, because Dr Hill had undertaken an assessment, based on the Land Use Capability (LUC) classification and determined that these sites do not contain any land which meets the classification of LUC Class 1, 2, or 3¹.

My understanding of the recent Court Decision is that the type of more detailed mapping undertaken by Dr Hill does not prevail over the current New Zealand Land Resource Inventory (NZLRI) identification of land as LUC Class 1, 2, or 3, and therefore cannot be used to determine, for the purposes of cl 3.5(7) of the NPS-HPL, that the land is not highly productive. I therefore accept that:

- the Davies land sought to be zoned LLRZ is highly productive land under the NPS-HPL; and
- approximately a third of the Lowburn Viticulture Ltd property, along the road frontage, is highly productive land under the NPS-HPL.

Requirements of the NPS-HPL

As relevant to PC19, the NPS-HPL directs (Clause 3.6(4)) that the Council only allow urban rezoning of highly productive land if:

- the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and*
- there are no other reasonably practicable and feasible options for providing the required development capacity; and*
- the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly*

¹ Section 42A Report: Plan Change 19 – Residential Chapter Provisions Reply Report, paras 111.a and 173.

productive land for land-based primary production, taking into account both tangible and intangible values.

Stephen Davies Property

As set out in the Reply Report², I consider that the rezoning of this site is not precluded, because the tests set out in Clause 3.6(4) of the NPS-HPL are likely met, if the requirement for development capacity is considered on a township basis. This is because PC19 is anticipated to provide sufficient development capacity to meet demand for housing across the district as a whole, but at a more localised level, there is an identified shortfall to meet demand anticipated within Bannockburn.

For completeness, with respect to clauses (b) and (c), I consider that:

- There are no other reasonably practicable and feasible options for providing the required development capacity which do not similarly involve highly productive land (i.e. options to the south or west) or which are not feasible due to topographical constraints (i.e. options to the north and east); or servicing constraints³.
- Mr Woodward has evaluated why the benefits of the rezoning outweigh the costs associated with the loss of highly productive land for land-based primary production⁴, and I agree with his assessment, particularly given that the rezoning proposed will result in an area which is currently being used for a productive purpose being retained for this purpose.

Lowburn Viticulture

The Stage 2 s42 report set out that in absence of evidence demonstrating that the rezoning would meet clause 3.6(4) of the NPS-HPL, the rezoning of at least part of the site was precluded⁵. In his evidence, Mr Woodward addresses why he considers this rezoning would satisfy these tests⁶. As with Bannockburn, this is reliant on the requirement for development capacity being considered on a more localised level, and noting that the Rationale yield assessment did not include a specific assessment of development capacity/demand for Lowburn; therefore the requirement for more demand is based on Mr Van Der Velden's evidence that there remain only a few undeveloped lots within the last stage of Lowburn and that uptake of residential allotments in Lowburn supports a finding that there is greater demand⁷.

With respect to clause (b) and (c) I continue to consider due to the topographical and other constraints in this area, there does not appear to be any other reasonably practicable and feasible options for providing additional development capacity (in terms of expansion) which are outside an area of highly productive land; and that for the reasons set out in the submission (in addition to Mr Woodward's evidence⁸), the benefits of these rezonings would likely outweigh costs associated with the loss of highly productive land for land-based primary production.

² Section 42A Report: Plan Change 19 – Residential Chapter Provisions Reply Report, para 111.a.

³ Section 42A Report – Report on Submissions and Further Submissions PART 2 (Zoning Requests), paras 109-110.

⁴ Stage 2 Evidence of Jake Woodward (#147 – Stephen Davies), para 6.37.

⁵ Section 42A Report – Report on Submissions and Further Submissions PART 2 (Zoning Requests), paras 219-227.

⁶ Stage 2 Evidence of Jake Woodward (#123 – Lowburn Viticulture Ltd), paras 6.30 – 6.34.

⁷ Stage 2 Evidence of Jake Woodward (#123 – Lowburn Viticulture Ltd), paras 6.31.

⁸ Stage 2 Evidence of Jake Woodward (#123 – Lowburn Viticulture Ltd), paras 5.51 and 6.33.

Summary

In absence of the ability to undertake a site-specific assessment of whether land currently identified as LUC Class 1, 2, or 3 in the NZLRI is highly productive, there is a pathway provided under the NPS-HPL for the rezoning of both the Lowburn Viticulture Ltd (#123) and Stephen Davies (#147) sites. However, this is reliant on considering the sufficiency of development capacity to meet expected demand for housing in the district on a more localised (township) level; and in relation to the Lowburn Viticulture Ltd site, is reliant on the evidence of Mr Van Der Velden with respect to capacity and demand within Lowburn.



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