

Fern Bradly

From: James Gardner-Hopkins <james@jgh.nz>
Sent: Wednesday, 20 September 2023 3:14 pm
To: District Plan
Cc: Brett Giddens
Subject: Re: Plan Change 19
Attachments: 16. Memorandum in response to s42A reply report.pdf; 17. Rowan Klevstul landowner's comment on s42a reply report.pdf

Hi Tarryn,

Please see the **attached**, in response to the invitation to provide comment by today's date.

This should be considered by the Panel in addition to the material filed on 1 September 2023.

Kind regards
James

JAMES GARDNER-HOPKINS

Consultant | Advisor | Project Manager

M: 021 277 1425 | T: 09 889 2776 | E: james@jgh.nz
www.jgh.nz

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Thank you.

From: District Plan <DistrictPlan@codc.govt.nz>
Sent: Wednesday, September 13, 2023 2:13 PM
To: District Plan <DistrictPlan@codc.govt.nz>
Subject: Plan Change 19

Afternoon

Section 42a reply report is available on the Lets Talk platform [Plan Change 19 - Residential Zoning | Let's Talk Central Otago \(codc.govt.nz\)](#)

Any comments can be made to districtplan@codc.govt.nz by Wednesday the 20th September
thanks

Tarryn Lines

Team Leader - Planning Support





+64 21 976 340



Tarryn.Lines@codc.govt.nz



1 Dunorling Street, Alexandra 9320



www.codc.govt.nz

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TO: CODC Hearings administrator, Tarryn Lines, districtplan@codc.govt.nz

**BEFORE HEARING COMMISSIONERS
IN CROMWELL**

UNDER THE	Resource Management Act 1991 (“ Act ”)
IN THE MATTER OF	of Plan Change 19 Residential Chapter Provisions
BETWEEN	JOHN AND ROWAN KLEVSTUL Submitter
BETWEEN	SUGARLOAF VINEYARDS LIMITED Submitter
AND	TOPP PROPERTY INVESTMENTS 2015 LIMITED Submitter
AND	CENTRAL OTAGO REGIONAL COUNCIL Planning authority

**MEMORANDUM COMMENTING ON THE S42A REPLY
IN REPLY TO THE RATIONALE RESPONSE**

Chair: Deputy Mayor Gillespie
Commissioners: Councillors McPherson and Cooney

1. On 13 September 2023, submitters received notice that Ms White had provided her s42A reply report, by email as follows:

Section 42a reply report is available on the Lets Talk platform Plan Change 19 - Residential Zoning | Let's Talk Central Otago (codc.govt.nz)

Any comments can be made to districtplan@codc.govt.nz by Wednesday the 20th September

2. The s42A reply is in fact dated 31 August 2023. Accordingly, it appears as if the report could not have taken into account the formal responses to the material uploaded to the Council's website (but not notified as to its availability and only discovered on 29 August 2023), which were filed on 1 September 2023 by:

- (a) the Klevstuls; and
 - (b) Sugarloaf and Topp Property.
- 3. This is regrettable, and, unfortunately, means that Ms White's reply is unreliable or incomplete, in the sense that it has not considered, in particular:
 - (a) The memorandum in response to the Rationale Report, that essentially records, as a matter of logic, that while the report may have been a "high-level" assessment, its limitations (accepted by Rationale) mean that it provides no basis to refuse a rezoning request on the basis that there is sufficient capacity in what has already been proposed for rezoning under PC19. That is the true and only reasonable conclusion on the evidence before the Panel. In other words, the Panel should focus instead on any site specific issues relating to any rezoning request or "upgrade" of zoning, as there is no risk of "over zoning" if any of such relief is accepted. If the Panel proceeds otherwise (ie that there is sufficient capacity provided under PC19 and no additional rezoning or "upgrade" in zoning is required), then it will have committed an error of law, and its decision will be vulnerable to being overturned on appeal. This is particularly the case in light of the directives of the NPS-UD, which has now been confirmed to apply.
 - (b) In respect of the relief sought by the Klevstuls, Mr Giddens' supplementary evidence, and Mr Rowan Klevstul's letter, of 1 September 2023.
 - (c) In particular, in respect of the relief sought by the Klevstuls, the clarification in those documents of what the Klevstuls were, in fact, seeking, together with the evidence in rebuttal of the so-called Boffa Miskell peer review. Without repeating all of that information filed on 1 September 2023, and, in light of where Ms White did get to (without all information), the position of the Klevstuls can be summarised as follows:
 - (i) the rezoning of their land is supported, rather than precluded by, the NPS-UD, the Rationale Report, and,

more generally, the RMA's requirements to provide for social and economic wellbeing and ensure the efficient use of resources;

- (ii) if the Panel accepts the rezoning of the Davies land, the rezoning of the Klevstuls' land is even more logical as it will then be directly connected to the village, and represents an even more logical extension to Bannockburn (particularly given the industrial machinery, urban construction materials and storage-type use also occurring between the Klevstuls' site and the village¹);

[It should be noted that the Klevstuls do not consider the rezoning of their land to be contingent on the Davies land being rezoned, however.]

- (iii) as accepted by the urban design reviewer, the Klevstuls' site is within an appropriate walking distance for rezoning, and while Boffa Miskell (without having visited the site) did not understand that it formed a defensible urban edge, that is explained in the evidence of Mr Espie which Boffa Miskell did not consider;
- (iv) the Klevstuls are prepared to accept the LLRZ (with the proposed comprehensive residential development rule now proposed by Ms White), without further modification (ie the cluster concept does not need to be embedded in the plan);
- (v) in respect of the need for the Future Growth Overlay, this is considered unnecessary as the subdivision provisions of the ODP, include the following matters of discretion which the Council needs to consider as part of assessing any resource consent to subdivide the land:

¹

This site is used as an industrial depot, and is in heavily intensified use. At least two major drilling companies use the site (South Drill and Speights Drilling) as well as multiple other individuals using it as a storage depot. The owner has a resource consent to authorise those activities, and so no rezoning is needed at this stage, although the owner would support an industrial zone being applied to the site in due course.

2. The provision of adequate network utility services (given the intended use of the subdivision) including the location, design and construction of these services.
3. The ability to lawfully dispose of wastewater and stormwater.

[This point was made by Mr Giddens in his supplementary evidence of 1 September 2023.]

(vi) in other words, the Council would have to be satisfied as to these servicing matters before any subdivision on the Klevstuls land could proceed (even if rezoned to LLRZ without the Future Growth Overlay).

(vii) accordingly, while the Klevstuls' do not consider the water and wastewater issues to be an impediment, the appropriate response from the Panel, if it remains concerned as to these matters, would be to adopt Ms White's alternative relief, being:

that the Bannockburn/Schoolhouse Road site is zoned LLRZ (without additional provisions applying), with a Future Growth Overlay applied to address the capacity constraints of concern to Ms Muir

(viii) this is a far more appropriate outcome than deferring this decision to a later master or spatial plan process for Bannockburn, as there can be no certainty that the Council will pursue one for Bannockburn, and the Klevstuls have provided more than enough evidence – at great cost to them – to enable the rezoning decision to be made now;

(ix) the alternative of waiting for a master or spatial plan process, if it were to proceed, would effectively be some 5+ years for eventual rezoning, and longer for consents to be sought;

(x) for the Klevstuls, if their refined relief is declined on the basis that they should wait for an uncertain and lengthy further master or spatial plan process, they will almost inevitably appeal to the Environment Court – at

considerable cost to themselves as well as to the Council (effectively the ratepayers), which would be an entirely unnecessary and inefficient outcome;

- (xi) the Panel is accordingly asked to “do the right thing”, and make its own determination, on all of the evidence before it, and rezone the Klevstuls’ site to LLRZ (if necessary with the Future Growth Overlay); this would not only respond to all of the statutory and evidential requirements, but would also respect the personal and financial effort made by the Klevstuls to engage constructively in this process; and
- (xii) such an outcome would also be consistent with the purpose of PC19 as stated by the Council itself:

PC19 has been driven by ... [the need] to respond to demand for residential land and housing affordability concerns in the district, and in order to plan for the anticipated growth over the next 30 years.

- (xiii) there is no doubt that the Klevstuls’ site will assist in meeting these outcomes.

4. Finally, it is noted that Ms White did not, other than somewhat cryptically in her table at [74] (the last row of her record of feedback from Mr Giddens) acknowledge or understand that the Klevstuls has drawn back from the hamlet or cluster concept (this was even prior to seeing the Boffa Miskell peer review). The Klevstuls had, though their planner Mr Giddens, clearly indicated that they were agreeing to the simplicity of the LLRZ with the Comprehensive Residential Development rule that was being settled by the planners. This means that, unfortunately, the vast majority of Ms White’s s42A reply was assessing an outcome that was no longer being pursued. The Panel is urged to focus on the refined relief, rather than being distracted (and potentially put off) by the hamlet or cluster concept.

DATED 20 September 2023



J D K Gardner-Hopkins
Project Manager for the Submitters