

**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**)

**LEGAL SUBMISSIONS FOR
D. J JONES FAMILY TRUST AND N.R SEARELL FAMILY TRUST**

Dated: 25 February 2025

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INTRODUCTION

1. The D. J Jones Family Trust and N. R Searell Family Trust (**Trust** or **Applicant**) has applied to the Central Otago District Council (**CODC** or **Council**) for a subdivision and land use resource consent for a residential subdivision (**Application**) at the terminus of Terrace Street, Bannockburn (**Site**).
2. The Site is zoned Residential Resource Area (4) (**RRA4**) in the Central Otago District Plan (**ODP**) and is partially within a building line restriction overlay (**BLR**). The Application seeks approval for 20 residential lots and associated dwellings (lots 1-20), associated roads (lots 100 and 101), a recreation reserve (lot 30) and three balance lots (lots 40, 50 and 51) (**Proposal**).
3. The Site is complex due to its varied topography, visual prominence from locations to the north and east, heritage values associated with previous mining activities, existing informal use for recreational activities and relationship with the existing Bannockburn settlement. These features make the Site highly valued by the local community and have in turn generated considerable submissions in opposition to the Proposal.
4. The evidence filed by the Applicant is listed in **Appendix A**. This evidence shows that the Proposal has been carefully developed to respond to these important features and to feedback provided by CODC and submitters on an earlier proposal prepared by the Applicant. The revised proposal includes a reduced lot configuration of 20 residential lots, designated building platforms, building height restrictions, mitigation planting and design guidelines to minimise potential adverse effects on visual amenity and natural character of the surrounding landscape.
5. There are several topographical and heritage constraints that result in areas of the Site that are not well suited for development. The Proposal provides for a creative response to these constraints and the opportunity for the protection of the topographical and heritage features, as well as provision for public access and recreation through walking trails and a recreation reserve with views over surrounding terrain. Further, the Proposal maintains a predominance of open space over built form that is consistent with the existing urban density and character of Bannockburn. The Applicant's evidence is that the Proposal will read

as a development that is well-connected with the surrounding urban area including Terrace Street.

6. Overall, from an urban form, historic heritage, recreation, landscape, and amenity perspective the Proposal will result in an appropriate outcome for the Site that is consistent with development anticipated by the relevant planning instruments.

KEY ISSUES

7. The issues to be addressed arising from the Trust's Application are as follows:
 - (a) What is the correct activity status of the Proposal under the ODP?
 - (b) Are the landscape and amenity effects of development within the BLR acceptable?
 - (c) Are the potential adverse effects of the Proposal on heritage values acceptable?
 - (d) Are the other potential adverse effects of the Proposal acceptable?
 - (e) What are the positive effects of the Proposal?
 - (f) Is the Proposal consistent with provisions of the relevant planning instruments?
 - (g) Are there any other matters relevant to the Proposal?
 - (h) Are the proposed conditions of consent appropriate?
8. Before addressing the above issues these submission discuss various contextual matters relevant to assessment of the Proposal.

PREVIOUS APPLICATION (RC 190154) AND REDESIGN IN RESPONSE TO FEEDBACK

9. In 2019 the Applicant filed an application for a subdivision on the Site comprising 38 lots for residential activity (RC 190154). The application was a non-complying activity because the minimum lot size of 1500 m² and average lot size of 2000m²

was not achieved.¹ It was publicly notified and attracted over 100 submissions. The application was placed on hold and subsequently withdrawn.

10. In response to the feedback provided via the submission process and from the Council's landscape expert, several key changes have been made by the Applicant to the subdivision proposal:
 - (a) Reduction in lot numbers from 38 to 20 lots;
 - (b) Reduction in density by increasing lot sizes to meet minimum and average lot size requirements of the RRA4 zone;
 - (c) Reconfiguration of the internal roading network to reduce traffic movements past existing dwellings on Terrace Street;
 - (d) Reduction in landscapes and visual amenity effects by:
 - (i) Removal of lots from prominent landforms visible from Bannockburn Inlet and to the north and east of the Site;
 - (ii) Reducing the number of dwellings within the BLR from 24 to 12 dwellings, and
 - (iii) Additional mitigation measures applicable to remaining lots within the BRL to control building height, location, coverage, and colours and materials and improvements to the landscape planting plan.
11. These key changes are incorporated in the Proposal for consent now before the Panel for determination.

SUMMARY OF THE PROPOSAL

12. The Site is 17.6ha in area and is accessed from the eastern extent of Terrace Street and is characterised as a large undeveloped residential zone allotment located at the edge of the existing Bannockburn township. The Site is bounded by Shepherd's Creek to the east, Revell's Gully to the north, undeveloped residential land to the west and existing residential land generally to the south. The Site is currently bare, vacant land.

¹ Refer to the Application for consent dated 22 December 2023, Section 4, for further details of the earlier application including the subdivision plan from RC 190154.

13. The Site is zoned Residential Resource Area (4) (**RR4**) in the CODP and is partially within a building line restriction overlay (**BLR**) identified on the CODP maps.
14. Subdivision and land use consent is sought to establish 20 lots for residential activity, roads, a recreational reserve and balance lots 40, 50 and 51. The Proposal includes the following features²:
 - (a) Identification of building platforms of 500 m² on lots 4, 5, 13, 14, 15-20 within the BLR;
 - (b) For all lots 1-20, a maximum building coverage of 300 m² and if any dwellings are two storeys, the maximum footprint for the ground floor will be 200 m²;
 - (c) For all lots 1-20, controls over building height, exterior building cladding and building colour;
 - (d) Controls for fences over height (1.2 m) and materials for fencing of lot boundaries;
 - (e) Landscape planting, and other measures to mitigate visual effects of proposed buildings;
 - (f) Creation of a recreation reserve within lot 30 providing public amenity, connection to proposed public track and a lookout area over land surrounding the Site together with interpretation panels describing mining history of the Site;
 - (g) Creation of proposed indicative tracks providing public access through lots 40 and 51;
 - (h) Retention of historic features and integration of them into the design of the subdivision;
 - (i) Creation of large balance lot 50 containing relatively flat RR4 zoned land adjacent to Bannockburn Road that is suitable for future development and further tracks that would provide public access through lot 50 towards the Bannockburn Inlet.

² These features are described in more detail within the AEE filed with the Application at Section 3.2.

BUILDING LINE RESTRICTION - VINCENT COUNTY DISTRICT SCHEME AND OPERATIVE DISTRICT PLAN

Vincent County Council District Scheme

15. The processor to the ODP was the Vincent County Council District Scheme (**Vincent District Scheme** or **VDS**). The first Vincent District Scheme was approved on 1 August 1977. The BLR was inserted into the VDS by Scheme Change 4 during late 1980 or early 1981.

16. The BLR was retained following a full review of the Vincent District Scheme, which was deemed operative on 18 December 1987. The VDS contained a planning map of Bannockburn showing the location of the BLR and the following provisions relating to the BRL:

17. Residential Bannockburn Zone: Subdivision rule 4.5.2.3(iii) which provided that:³

In order to maintain the landscape character in views from the north and east, no building may be erected on that part of the zone which is shown in Planning Map 10 as "Restricted Building Area".

18. The above rule was supported by objective 4.4.3(a)(iii) regarding the Residential Bannockburn Zone which states:

To maintain the landscape character as viewed from adjacent highways and vantage points. To this end, the location of buildings will be confined within the shallow bowl in which most of the existing buildings are situated, and no buildings will be permitted on the skyline or slopes facing outward to the north and east.

19. The above-mentioned VDS provisions and planning map showing the BLR are attached at **Appendix B**.

20. Under the Town and Country Planning Act 1977 the Council could grant specified departures from provisions in the District Scheme.⁴ The VDS provided that the Council could grant its consent to a dispensation or waiver if satisfied that (relevantly):⁵

The dispensation or waiver will not detract from the amenities of the neighbourhood and will have little town and country planning

³ Vincent County Council District Scheme 1987.

⁴ Town and Country Planning Act 1977 at section 74.

⁵ Vincent County Council District Scheme 1987 at 7(c)(ii).

significance beyond the immediate vicinity of the land in respect of which the dispensation or waiver is sought.

Operative District Plan

21. The Central Otago District Plan was made operative on 1 April 2008. The Plan shows a Building Line Restriction over land at Bannockburn (attached at **Appendix C**)⁶.
22. The ODP also includes rules 12.7.7(i) and (ii) relevant to the BLR at Bannockburn as follows:

12.7.7 Building Line Restrictions

- i. No building shall be erected within any building line restriction shown on the planning maps between the building line and the feature to which it relates.*
- ii. Breach of Standard.*

Any activity which does not comply with this rule shall be a discretionary restricted activity.

Council shall restrict the exercise of its discretion to the following matters:

- 1. The effect on the natural character of water bodies and their margins.*
- 2. The effect on amenity values of the neighbourhood in particular the character of the streetscape.*
- 3. The effect on the safe and efficient operation of the roading network.*
- 4. The effect on infrastructure.*
- 5. The effect on the safety of neighbours.*
- 6. The effects of noise from the operation of the roading network and compliance with AS/NZS 2107:2000.*

Reason

Building line restrictions are a useful technique to protect amenity values and the safe and efficient operation of certain roads. They are also useful to avoid the effects of natural hazards on the built environment. The area subject to restriction is shown as 'BLR' on the planning maps.

⁶ The snip at Appendix C is taken from the Central Otago District Plan E-Plan.

23. There are no objectives or policies within Chapter 12 that refer to or provide support for the Rule 12.7.7. This matter is discussed further below.

Comparison between Vincent District Scheme and ODP BRL provisions

24. The VDS provisions regarding BLR at Bannockburn are materially different from those in the ODP. In particular,
- (a) The area encompassed in the ODP BLR map has been extended to include land next to the Bannockburn Inlet;
 - (b) The activity status of resource consent applications that trigger the BLR has changed from the equivalent of discretionary (VCS) to restricted discretionary (ODP);
 - (c) The matters for consideration in the VCS focus on "*landscape character as viewed from adjacent highways and vantage points*" whereas the relevant ODP criteria relate to effects on the natural character of water bodies and their margins and on amenity values of the neighbourhood; and
 - (d) The VCS contains a specific objective relevant to the BLR rule however as mentioned there are no objectives or policies within Chapter 12 that refer to or provide support for the Rule 12.7.7.
25. The key point is that compared to the VCS 1987, the ODP provisions regarding BLR are less stringent and the scope of effects able to be considered by Council is changed by including reference to waterway margins and removing reference to landscape character. Further, residential development within the BRL is contemplated by RDA status whereas the status of conditional use in the VCS signals that such development is not anticipated within the BRL area. This is a significant shift in planning policy, which is reflected in the absence of any specific objectives or policies in the ODP supporting the BLR rule.

PLAN CHANGE 19

26. Plan Change 19 to the ODP (**PC19**) was publicly notified for submission on 9 July 2022. The CODC prepared Plan Change 19 to the Central Otago District Plan to:⁷

⁷ CODP public notice calling for submissions on PC19 dated 9 July 2022.

- *Amend revise planning Maps by rezoning any land currently zone 'Residential Resource Area' to new Large Lot, Medium Density and Low-Density Residential Zones.*
- *Delete Chapter 7 of the Central Otago District Council Operative District Plan in full and replace with a new 'Residential Zones' chapter.*
- *Insert new definitions from the national planning standards to apply to the new residential chapter provisions.*
- *Make consequential changes necessary to other parts of operative Central Otago District Plan.*

Is Plan Change 19 relevant to activity status of the Proposal?

27. When the Trust filed the Application on 22 December 2023, PC19 had been publicly notified. None of the PC19 rules had legal effect at this time⁸ and therefore the activity status of the Application is determined by the rules in the ODP.⁹

Does Plan Change 19 alter the minimum lot size for Bannockburn?

28. Decisions on PC19 were publicly notified by CODC on 8 June 2024.¹⁰ PC19 as notified altered the minimum lot size provisions for Bannockburn by replacing the minimum and average lot size requirements for the RRA4 Zone with Rule SUB-S1.6 containing a minimum lot size requirement of 2,000 m² in the new Large Lot Residential Zone (**LLRZ**) applicable to Bannockburn.
29. It is noteworthy that decisions on PC19 amended the minimum lot size at Rule SUB-S1.6 from 2,000 m² (as notified by PC19) to 1,500 m².¹¹ This rule now has legal effect pursuant to s86B(1) RMA.
30. The Environment Court received 15 appeals on PC19 decisions regarding a range of issues. Relevantly, no appeals sought to reverse the CODC decision to change the minimum lot size for subdivision in LLRZ from 2,000 m² to 1,500 m².
31. Four appeals were lodged seeking to further reduce the minimum lot size in the LLRZ to 1,000 m². The Bannockburn Responsible Development Incorporated Society (**Society** or **BRDIS**) filed a s274 Notice on each of these appeals opposing

⁸ See RMA section 86B(1).

⁹ Refer RMA s88A(2).

¹⁰ CODC public notice of notification of PC19 decisions dated 28 June 2024.

¹¹ PC19 decisions at Rule SUB-S1.6.

further reduction in the minimum lot size for the LLRZ. The Notice records that the Society (emphasis added):¹²

*“...wishes to join the proceedings and **to strongly support the Plan Change 19 decisions of the Central Otago District Council in terms of both Large Lot residential Zone lot size in Bannockburn** and in deferring any decisions on the need to expand the residential zone in the township...”*

32. In summary to this point, the ODP RR(4) Rule 7.3.3(i) has been replaced by LLRZ Rule SUB-S1.6 as provided by decisions on PC19. Rule SUB-S1.6 now has legal effect pursuant to s86B however this rule cannot be deemed operative under s86F because it is subject to appeal. Even so, none of the PC19 appeals seek to increase the minimum lot size above 1,500 m² and consequently an increase in lot size is not open to debate before the Environment Court. Further, according to its s274 Notice, the Society supports a lot size minima of 1,500 m² at Bannockburn, albeit it opposes any reduction below this figure.

WHAT IS THE ACTIVITY STATUS OF THE PROPOSAL UNDER THE ODP?

ODP Rule 7.3.3(i)(c) - Subdivision in the RRA(4) Area

33. Under ODP Rule 7.3.3(i)(c), subdivision in the RRA(4) Area is restricted discretionary activity provided that the minimum allotment size of 1,500 m² and average size of 2,000 m² is met. The Application assessed the proposal as satisfying this rule.¹³ The Notification Report prepared by CODC also concluded that the proposal will meet this standard.¹⁴
34. Various submissions have contested interpretation of Rule 7.3.3(i)(c), asserting that the Application has not achieved the minimum average allotment size required for the RRA(4) Zone of 2000 m². They argue that the balance Lot 40 was used to achieve the average minimum of 2000 m² and consider that it is not appropriate to do so.
35. The Officer's Report states that Rule 7.3.3(i)(c) does not differentiate between residential and non-residential lots and there is no exclusion provision or lot size cap to be applied to the averaging calculation.¹⁵

¹² Bannockburn Responsible Development Incorporated Society s274 Notice conclusion at page 4.

¹³ The Application at [5.1.1] and [5.1.2].

¹⁴ CODC Notification Report dated 22 May 2024 at page 4.

¹⁵ Officer Report dated 20 September 2024 at [44] and [45].

36. Mr Barr's evidence concurs with the Officer Report interpretation and elaborates on this point as follows:

I agree with the Officer's Report. I consider that the average minimum site area of 2000m² has been met and make the following comments, noting that the ODP Rule 7.3.3(i) states 'Minimum Allotment Area - 1500m² provided that the average allotment size is no less than 2000m²'. And that the ODP definition of 'allotment' adopts that in RMA section 218 which essentially means any parcel of land:

- (a) As identified in the Application's AEE in Section 5.1.1, the average minimum of 2000m² has been met while excluding the proposed roads;*
- (b) All land used to calculate the average allotment size is zoned Residential in both the ODP and Plan Change 19 zoning, and excludes land will not result in a certificate of title (i.e. roads). In the absence of a definition in the ODP of what constitutes an 'average allotment size'. I consider this approach is reasonable and correct;*
- (c) There are no rules which prevent the area within the BLR from being included in the average or minimum allotment area calculations. There are no exclusions to include land because of its slope. The key aspect is that the land is zoned RRA(4) and all allotments are part of the subdivision;*
- (d) It is reasonable to exclude Lot 50 (7.82ha) because part of this lot will be likely used for future residential subdivision activity for houses. Lot 50 has not been used in the calculation of average minimum site area;*
- (e) It is reasonable and correct in terms of the interpretation of the ODP rules to include Lot 40 (4.44ha) because it is highly unlikely it will be used for further subdivision for residential activity or have residential allotments on it;*
- (f) Notwithstanding the above, the subdivision achieves an average allotment size of 2166m² excluding Lots 40 and 51, broken down as follows;*
- (g) Land included in the average allotment size calculation:*
 - (i) Lot 30 (reserve) 0.4ha;*
 - (ii) Lot 51 (balance not intended for further residential activity) 0.53ha;*
 - (iii) Lots 1-20 Residential lots (total area 3.9ha).*

Therefore, an average lot size of 2000m² is met excluding Lot 40. The Application is, therefore, consistent with the requests of submitters that Lot 40 should be excluded from the calculation to determine an average lot size of 2000m².

37. The average lot size of the Proposal is 2,166 m², which is well above the minimum average of 2,000 m² required by Rule 7.3.3(i)(c) of the ODP. It is noteworthy that both CODC and the Applicant's planning experts have reached the same view on this point. Mr Murray, the planning expert for BRDI, does not challenge their conclusions,

Rule 12.7.7 - Building line restriction

38. Rule 12.7.7(i) regarding building line restrictions states that no buildings shall be erected within any building line restriction shown on the planning maps between the building line and the feature to which it relates. The Proposal does not comply with this requirement; 11 lots are located either entirely within or such that future buildings will likely be located within the BLR. As such the Proposal is a restricted discretionary activity under Rule 12.7.7(ii).

Rule 7.4.4(ii) - Subdivision of land subject to hazards

39. The Officer Report contends that the Proposal requires discretionary consent under Rule 7.4.1(ii) which provides that (emphasis added):

ii. Subdivision of Land Subject to Hazards

*Any subdivision that involves land that is subject to or potentially subject to the effects of any hazard as identified on the planning maps **or land that is or is likely to be subject to material damage** by erosion, falling debris, subsidence, slippage or inundation from any source is a discretionary activity.*

Any application under this rule will generally not be notified but is to be accompanied by written comment obtained from a qualified professional that addresses the risk associated with the hazard within the proposed development and any remedial measures necessary to avoid, remedy or mitigate the hazard.

40. The Applicant disagrees with this assessment and instead considers that the Proposal is compliant with Rule 7.4.1(ii) for the follow reasons:
- (a) The land is not identified as being subject to any hazard on planning maps and therefore the first limb of the rule does not apply;

- (b) The second limb of the rule is relates to “land that is or is likely to be subject to material damage”. Compliance or otherwise with this limb must be determined by a site-specific qualitative hazard assessment;
 - (c) An expert geotechnical assessment has been undertaken by Mr Richard Justice on behalf of the Applicant which demonstrates that land within the proposed development is not likely to be subject to material damage from slope hazard or other geohazard;
 - (d) The slope hazard conditions of consent will ensure that development of the site occurs in a manner consistent with Mr justice’s recommendations; and
 - (e) The Council has jurisdiction to impose these conditions pursuant to the matters for discretion under subdivision rule 7.3.3(i)(c).
41. In particular, Mr Justice’s evidence includes a detailed geotechnical assessment of the Site (referred to as the ENGEO report).¹⁶ Mr Justice’s key findings are summarised in the evidence of Mr Barr as follows:¹⁷
- (a) Lot 18 - It is not clear that there is significant risk from the geohazard identified, and it is our opinion this hazard will be able to be mitigated through a combination of good engineering practises for hill slope development (Appendix 6) and specific engineering mitigation design.*
 - (b) Lots 15, 16, 17 and 19 - unlikely to accelerate, worsen or result in material damage to the land, provided good engineering practice for hill slope development (AGS, 2007) is applied (Appendix 6).*
 - (c) All other Lots - If geotechnical recommendations outlined in following sections are adopted, these lots are not expected to be subject to significant risk from geohazards identified in this report in accordance with the provisions of Section 106 of the Resource Management Act 1991.*
42. Further, Mr Justice responds to comments by Mr James in his submission in opposition regarding stability issues relating to building on Lots 15-19 as follows:¹⁸

With this assumption, I agree that there are areas of Lots 15 to 19 that approach or exceed 1V:1.5H, particularly in their lower parts, closest to

¹⁶ Evidence of Richard Justice at Appendix A.

¹⁷ See Mr Barr’s evidence at [72].

¹⁸ Evidence of Richard Justice at [36]-[38].

Shepherds Creek. However, I expect that any houses on these lots will be constructed at the higher elevations, adjacent to the ROW. In these areas, slope gradients are typically lower and less than 25° (approximately 1V:2.15H).

I do not agree with Mr James as I do not consider that these grades are 'extreme'. There are many examples in New Zealand of houses being constructed on these grades. However, to do so does rely on good engineering practices to be followed, as outlined at Paragraph 31(a) and (b) of my statement of evidence.

In addition, I do not consider the geology to be particularly challenging as I expect that these lots are underlain by a shallow depth of colluvial soil over Schist rock, which extends to depth. This is a very common situation in the wider Otago region.

43. In my view Mr Justice's evidence demonstrates that any risk related to the second limb of Rule 7.3.4(ii) is appropriately managed such that land within site of the proposed subdivision is not likely to be subject to material damage by erosion, falling debris, subsidence, slippage or inundation.
44. The draft conditions of consent attached to these submissions (discussed below) include recent changes to condition 7(l) proposed by Mr Justice (shown in blue as tracked changes) to provide greater specificity regarding management of slope stability.
45. The Hearings Panel does not need to rely on non-compliance with rule 7.4.1(ii) for jurisdiction to impose the above conditions of consent because the Proposal already requires consent under ODP Rule 7.3.3(i)(c) whereby council's discretion to grant consent includes any matters provided for in section 220 of the Act.¹⁹
46. Section 220(1)(d) RMA provides that the conditions on which a subdivision consent may be granted may include (emphasis added):

*a condition that provision be made to the satisfaction of the territorial authority for the protection of the land or any part thereof, or of any land not forming part of the subdivision, **against natural hazards from any source** (being, in the case of land not forming part of the subdivision, natural hazards arising or likely to arise as a result of the subdividing of the land the subject of the subdivision consent).*

¹⁹ Rule 7.3.3(i)(c), matter for discretion 14.

Overall activity status of Proposal

47. In summary to this point, the Applicant assesses that the Proposal as a restricted discretionary activity under the ODP. When the Trust filed the Application on 22 December 2023, PC19 had been publicly notified. None of the PC19 rules had legal effect at this time and therefore the activity status of the Application is determined by the rules in the ODP.²⁰
48. Notwithstanding the above, any plan or proposed plan which exists when the application is considered must be had regard when Council decides the application.²¹ This means that although the activity classification is frozen to the class it was at the time the application was lodged, the provisions of PC19 must nevertheless be considered as they are at the time the final decision is made on the application. The relevance and weight to be given to PC19 when assessing the Application is discussed in more detail below.

ARE THE LANDSCAPE AND AMENITY EFFECTS OF PROPOSED RESIDENTIAL DEVELOPMENT ACCEPTABLE?

49. A detailed and thorough landscape and visual effects assessment completed by Mr Milne is included in the Application.²² Mr Milne has also filed evidence accompanied by a Graphic Attachment and more recently he has filed supplementary evidence containing visual simulations of the Proposal as viewed from View Points 3- 8 identified in his Graphic Attachment.
50. In brief summary Mr Milnes' evidence is that:
- (a) Within the context of the existing development along Terrace Street, and the recommended design controls and guidelines, the nature and scale of the Proposal will align with and not degrade the overall landscape values and character of the receiving environment;
 - (b) the effects of the Proposal on the existing visual amenity will extend beyond the Site but are relatively contained. Mr Milne considers that the effects on visual amenity overall are low-moderate and considers this

²⁰ Section 88A RMA provides that where the activity status of a resource consent application is altered after the application is first lodged as a result of a proposed plan being notified, then the application continues to be processed, considered, and decided as an application for the type of activity that it was for at the time the application was first lodged.

²¹ Section 88A(2) RMA.

²² Landscape Assessment Report at Appendix B of the Application.

degree of effects to be appropriate in the context of the surrounding environment; and

- (c) Mr Milne concludes that layout, strict design controls and comprehensive mitigation measures ensure that the impact on Bannockburn's visual amenity are low to very low. The subdivision is considered appropriate for the Site and will have no more than minor adverse effects on the landscape character and values of Bannockburn.

- 51. Ms Yvonne Pfluger, an experienced landscape architect, was engaged by CODC to peer review the Application. Ms Pfluger's conclusion is that:²³

The RMM landscape and visual assessment report is comprehensive and has addressed the key concerns raised in relation to the previous application (RC190154, review by BML in 2021). All relevant viewpoints were assessed in this current assessment report and I generally agree with the findings regarding the level of effect.

- 52. Anne Steven, the landscape expert for BRDI disagrees with the assessments by Mr Milne and Ms Pfluger. Ms Steven does not support the Proposal because in her view the adverse effects on landscape and amenity values are unacceptable.
- 53. There are several reasons why the conclusion reached by Ms Steven differs from that reached by Mr Milne and Ms Pfluger which are discussed in the following sections.

Planning context informing assessment of development within the BLR

- 54. There are significant differences between the landscape experts regarding the planning provisions applicable to assessment of development within the BLR. The planning provisions are important because they provided the context within which the landscape and amenity assessment should be undertaken.

Relevance of VDS provisions regarding BLR

- 55. Ms Steven relies on the provisions of the VDS regarding the BLR and frequently refers to the "purpose of the BLR"²⁴ and "the intent and function of the BLR".²⁵

²³ Peer review of landscape and visual effects assessment prepared for the Central Otago District Council dated 3 April 2024 at [8.1].

²⁴ See for example, Anne Steven evidence at [58] – [68].

²⁵ See for example, Anne Steven evidence at [152] – [160].

In contrast, Mr Milne and Ms Pfluger focus their assessment on the ODP and PC19.

56. The Applicant considers that the VDS provides some useful historical context about the BLR but is otherwise irrelevant to assessment of the Proposal. The meaning of the BLR provisions is clear from the words used in the ODP and there is no need to resort to the VDS (which is almost 40 years old) as extrinsic material to aid interpretation of the ODP or to otherwise discern the underlying purpose of the BLR. Further, as discussed above, the VDP and ODP provisions relating to the BLR are markedly different which makes reliance on the VDP provisions for this purpose problematic and unhelpful.

Relevance of rural zone objectives and policies

57. Ms Steven relies on ODP policy 7.2.8 (Management of change)²⁶ to enable her assessment to resort to provisions of Section 4 relating to management of the Rural Resource Area zone. Policy 7.2.8 seeks that “any **major change at the interface** between various resource areas be considered within the wider context of the plan as whole” (emphasis added).
58. In contrast, Mr Milne and Ms Pfluger confine and focus their assessment on the following sections of the ODP:
- Section 7 – Residential Resource Area
 - Section 12- District Wide Rules and Performance Standards
 - Section 16 – Subdivision
59. The Applicant considers the approach adopted by Mr Milne and Ms Pfluger to be correct. The term “major” is defined in the Concise Oxford Dictionary as “important, large, serious, significant”. Reliance on policy 7.2.8 is misconceived because the Proposal cannot be construed as “major change at the interface between the RR4 and Rural Resource Area”. The underlying zone and subdivision standards contemplate residential development at the density proposed. The Proposal is not a plan change, or a large scale non-complying intensive subdivision which might qualify as a “major change”. Further, the proposed built development is not located at the “interface” between zones but rather set back

²⁶ Anne Steven evidence at [74], [148] and [157].

from the adjoining rural zone. For these reasons, the level of change does not reach the threshold of being “major” in the sense of being serious or significant.

60. Further it is highly unusual for objectives and policies of the rural zone to control residential development within a residential zone and consequently the case for doing so would need to be compelling, which is not the case here.

Scale of effects and overall assessment

61. Landscape and amenity effects assessment is informed by case law. The seven-point scale recommended by the NZ Institute of Landscape Architects is discussed in *Auckland Council v Auckland Council and others*²⁷ where the Court states (emphasis added):

*Assessing the degree of adverse effects, the expert witnesses used a seven-point scale of effects on natural character, landscape and visual amenity as recommended in a best practice note issued by the NZ Institute of Landscape Architects. The scale relates to the degree of change which a proposal causes to the existing environment. **In those terms, the experts used the term significant as amounting to high or very high at the top end of that scale.***

62. The seven-point scale is shown in Ms Pfluger’s peer review²⁸ and is reproduced below.

LESS THAN MINOR			MINOR		MORE THAN MINOR		SIGNIFICANT
VERY LOW	LOW	LOW-MOD	MODERATE	MOD-HIGH	HIGH	VERY HIGH	

63. Ms Steven assessment of visual effects ranges from Low (VP7) to High (VP5 and VP6).²⁹ The remaining viewpoints are assessed as Moderate (VP3 and VP8) and Moderate-High (VP4). It is difficult to reconcile these specific findings with Ms Steven’s overall assessment that the magnitude of visual effect from these viewpoints is more likely to be Moderate to High range.³⁰ A more accurate overall assessment based on Ms Steven’s findings would appear to be Moderate-High.

²⁷ *Auckland Council v Auckland Council and others* (Interim Decision) [2020] NZEnvC 070 (“Orewa Seawall”) at [88].

²⁸ Peer review of landscape and visual effects assessment prepared for the Central Otago District Council dated 3 April 2024 at [6.1].

²⁹ Anne Steven Supplementary Evidence at [17](a)-(f).

³⁰ *Supra* at [18].

If this is the case then overall, using Ms Stevens' assessment, the visual effect cannot be assessed as Significant under the above seven-point scale.

64. Further, even if visual effects from one of more viewpoints are considered to be High after taking into account the proposed mitigation, the Applicant considers that that the Proposal is acceptable because the visual effects overall, when considered from the various viewpoints identified in Mr Milne's evidence, are acceptable. This approach is consistent with Te Tangi a te Manu Aotearoa New Zealand Landscape Assessment Guidelines (**TTatM**), which refers to reaching an "overall professional opinion" on the landscape effects generated by a proposal. TTatM explains that the individual effects should be weighed together in the context of the landscape values and statutory provisions.³¹
65. This approach is also consistent with approach applied in the Final Decision of the Board of Inquiry into New Zealand King Salmon Requests for Plan Changes and Applications for Resource Consents (**King Salmon BOI**), where the Board considered that:³² (emphasis added)

[772] Again, all of the landscape architects, apart from [Witness A] were of the view that overall the affect on visual amenity would be low. Most of the views would be from the sea. The main boating activities are the Cook Strait Ferries, fishing and recreational boating. At some locations, particularly in close proximity to the site, the adverse visual effects would be high.

*[776] We acknowledge that the proposed farm would have high adverse visual effects on the view from the Pinder household. **However, we find that overall the adverse effects on visual amenity would be low.***

66. When this approach is correctly applied the Applicant considers that the visual effect overall should not be assessed as Significant.

Considerations informing assessment of landscape and visual qualities

67. The Court in *Eyres Eco-Park Limited v Rodney District Council*³³ discussed the necessary considerations when assessing what effect a proposal would have on the landscape and visual qualities of the site and locality: (underlining in original):

³¹ Te Tangi a te Manu Aotearoa New Zealand Landscape Assessment Guidelines, page 245.

³² Board of Inquiry – New Zealand King Salmon (Final Report and Decision) at [772] and [776].

³³ *Eyres Eco-Park Ltd v Rodney District Council*, ENC Auckland A147/2004, 3 December 2004 at [71].

- The **character and quality of the landscape(s)** concerned, including a consideration of whether section 6(b) RMA is triggered, whereby as a matter of national importance we must recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development,
- Whether section 6(a) RMA is triggered, whereby as a matter of national importance we must recognise and provide for the preservation of the natural character of the coastal environment...
- The **physical works** required to give effect to the subdivision and future buildings,
- **Mitigation measures** proposed and their likely effectiveness,
- **Degree of effect** and **temporal factors** (short, medium and long term).

Character and quality of the landscape

68. The landscape within the BLR is not identified in the ODP as an outstanding natural landscape or feature (pursuant to s6(b) RMA) or a significant amenity landscape under s7(c) RMA. Instead it forms part of the RR4 zone that is subject to a BLR wherein buildings are managed through a restricted discretionary consent rule. These statutory and planning provisions provide important context for the landscape assessment required in this case. The landscape within the BLR is a pleasant scenic landscape that requires careful management through the BLR consenting process. This is the approach adopted by the Applicant.
69. Mr Milne considers that the Proposal is acceptable because natural character values of the affected landform are moderate and such values will be maintained by avoiding buildings that breach the skyline and locating built development away from the more prominent eastward faces of the Site.

Natural character of water margins

70. Ms Steven considers that the Proposal engages s6(a) RMA and identifies preserving the natural character of the Bannockburn Inlet as a key issue on the basis that the Proposal is within the margin of the Bannockburn Inlet.³⁴ Ms Steven also considers that Shepherds Creek and its margin have not been recognised by the Applicant.³⁵

³⁴ Anne Steven evidence at page 35 at (b) in the table.

³⁵ Supra at (g)(iii).

71. Ms Steven states that it is good practice when defining margins of water bodies to define the outer edge of the margin as the nearest obvious crest, where it is close or reasonably close to the water body concerned.³⁶ In this case, Ms Steven considers this would be the ridgeline/skyline of the hills surrounding the Inlet and forming the sides of Shepherds Creek.³⁷ On this basis Ms Steven assesses the degree of adverse effect on the natural character of the Bannockburn Inlet and its margin as Moderate taking into account the low stature of the mitigation planting.³⁸
72. The Applicant does not agree with Ms Steven's view that the Bannockburn Inlet margin is the ridgeline/skyline of the hills surrounding the Inlet and therefore inclusive of lots 15-20.
73. The Te Tangi a te Manu landscape guide (**TTatM**) (Part 9.2) discusses margins of waterbodies and states that (emphasis added):

*"margins are likely to be areas beyond the wave action of a lake or extending away from the banks of a river for, depending on topography and other factors, **at least 20–50 metres and sometimes more**". Furthermore "margins should be determined with reference to the attributes and context of the lakes and rivers themselves"... and ... "the extent is likely to be influenced by the size of the feature". Finally, "...margins are also likely to be influenced by topography (for instance, the sides of a gorge) and land use (for instance, the boundary between cultivation and natural riparian vegetation)".*

74. The eastern facing slopes of the Site provide a physical and visual backdrop to the Inlet as part of the overall landscape setting, however this should not be misconstrued as being within the margin of the Inlet itself. Mr Milne's evidence is that the distance between the edge of the Inlet at the closest viewpoint to the east of the Site (Viewpoint 6), and the boundary of the closest lot (lot 15) is approximately 270m. The closest corner of the proposed building platform measures 291m from the Inlet edge.³⁹ It is apparent that buildings will be located well away from the shoreline and beyond what might reasonably be considered the margin of the Inlet.

³⁶ Anne Steven evidence at footnote 4.

³⁷ Anne Steven evidence at para 129.

³⁸ Anne Steven evidence at para 134.

³⁹ Tony Milne evidence at para 76.

75. In relation to the margins of Shepherds Creek, Ms Steven states (emphasis added):⁴⁰

*The proposed residential development within the BLR area would spill over the crest of the side slope and would reduce the natural character of the valley. **This would be in a cumulative way as there are two or three houses further to the southwest which have moved on to the crest (but are located outside the BLR area).** The degree of adverse effect would be Low-Moderate in my view.*

76. The houses “further to the southwest” of the Site can be seen in the aerial image at page 3 of Ms Steven’s Graphic Attachment which clearly shows existing houses in the same or similar proximity Shepards Creek as proposed by the present application. Further, in passing, it is noted that this image also shows a large number of existing houses located outside the yellow dotted line representing the BLR from the VDS shown in Ms Stevens’ image.

Mitigation measures designed to reduce landscape and amenity effects

77. Both Mr Milne and Ms Pfluger consider that the proposed suite of mitigation measures proposed by Mr Milne will successfully reduce landscape and amenity effects to an acceptable level. Ms Steven raises some reservations about the effectiveness of proposed mitigation measures. The Applicant has responded by strengthening the consent conditions to provide greater confidence that these measures will be successful.

Fleeting views and transient nature of viewers

78. In *Duxton Hotel Wellington v Wellington City Council* the Court considered the transient nature of hotel guests as a sufficient mitigating factor in preventing a change becoming a major adverse change. The Court took into account the fact that by altering position relative to the window view, the view varies and is not a constant.⁴¹
79. It is acknowledged that the Proposal will be visible to some degree from various public viewpoints generally to the east of the Site including from local roads, the Inlet, and walking and cycling tracks. However in most of these locations the view will be fleeting or transitional as the viewer moves through the landscape.

⁴⁰ Supra at para 135.

⁴¹ *Duxton Hotel Wellington v Wellington City Council* (2005) W21/05 at [263].

80. Further, the Site sits within a large and complex scenic landscape containing many different elements in the foreground, background and to either side of the Site. Against this context, the visible elements of the proposed development from most, if not all, public viewpoints will be perceived by the viewer as modest change to the existing wide and complex landscape.

ARE THE POTENTIAL ADVERSE EFFECTS ON HERITAGE VALUES ACCEPTABLE?

81. The Heritage evidence of Mr Sole considers that the overall effect of the proposed subdivision on heritage features is assessed as being slight to moderate impact.⁴² There are two key reasons for this finding:
- (a) First, most of the heritage values of the landform known as Water Race Hill are confined within four largely peripheral non-residential lots (Lots 30, 40 50 and 51). The subdivision therefore retains more intact heritage features and heritage landscapes for better preservation, legibility, appreciation, and consistency of management into the future.⁴³
 - (b) Secondly, there are relatively limited heritage values within the area of the Site to be developed for housing. The primary heritage items within this area are the two water races identified in Mr Sole's evidence. The lower water race will be adaptively repurposed into a footpath within the remnant water race structure. The eastern extent of the upper twin water race to be retained within the proposed recreation reserve on lot 30.
82. BRDI's planning witness, Mr Werner Murray, has filed evidence that contests Mr Soles findings on heritage effects. This evidence should be considered with care for various reasons as discussed below.
83. First, somewhat surprisingly Mr Murray fails to establish that heritage values are a matter for specific consideration under the ODP provisions relating to subdivision within the RR4 zone or dwellings within the BLR.
84. Instead Mr Murray seeks to rely on the VDP provisions regarding the BLR. As discussed earlier, these are not relevant to this Proposal and even if they were nowhere in the VDP provisions is there support for Mr Murray's proposition that the BLR is intended to manage effects of dwellings on heritage values or "old

⁴² Evidence of Mr Sole at [29.4(j)].

⁴³ Evidence of Mr Sole at [55].

mine workings".⁴⁴ Mr Murray's reference to inclusion of the BLR in PC19⁴⁵ somewhat misses the point because PC19 does not import an objective or policy framework to support the BLR. Nor were submissions made by members of the community to do so.

85. Further, in support of his claim regarding the importance of the BLR in the ODP, Mr Murray refers to the Urban Growth Boundary (**UGB**) and the Outstanding Natural Landscape (**ONL**) provisions within the Queenstown Lakes District Plan and contends that these are "similar restrictions" to the BLR.⁴⁶ This is a difficult proposition to sustain even by analogy as the values UGB and ONL rules seek to manage a completely different and also because non-compliance with such rules typically requires a non-complying consent.
86. The approach adopted by Mr Murray serves to demonstrate the absence of any specific heritage provisions in the ODP related to the management of new buildings within land affected by the BRL.
87. Secondly, Mr Murray is not a heritage expert, yet he contends that the extent of historic heritage loss has been downplayed, or not sufficient avoided.⁴⁷ There is very little if any evidence to justify or support this claim. Mr Murray's evidence overlooks the key point emerging from Mr Sole's comprehensive assessment that the Proposal has been deliberately designed so that most of the heritage values are confined to the within peripheral non-residential lots which will not be materially altered by the Proposal.

ARE THE OTHER POTENTIAL ADVERSE EFFECTS OF THE PROPOSAL ACCEPTABLE?

Transportation effects

88. The transport evidence of Mr Bartlett considers that, with appropriate consent conditions, the Proposal will not have any adverse transport effects on the safety or efficiency of the onsite roads and the adjacent transport network, including the local pedestrian and cycling environment.⁴⁸

⁴⁴ Evidence of Werner Murray at [46] and [47].

⁴⁵ Evidence of Werner Murray at [32]-[33].

⁴⁶ Supra at [35] and [40].

⁴⁷ Supra at [63].

⁴⁸ Evidence of Mr Bartlett at [24].

Geotechnical assessment

89. The Geotechnical evidence of Mr Justice considers that the Site is suitable for development subject to specific recommendations as discussed above. As mentioned, Mr Justice considers that the geology of the Site is not particularly challenging and reflects a very common situation in the wider Otago region.⁴⁹

Contaminated land assessment

90. The contamination evidence of Mr Ward concludes that no exceedances of the NESCS Recreational, Residential or Commercial / Industrial guideline criteria were identified on-site. Mr Ward considers that it is highly unlikely there is a risk to human health and the concentrations identified in the samples taken are suitable for the proposed end use. As such, Mr Ward consider the NES does not apply to the Site.⁵⁰

Infrastructure and servicing

91. The evidence of Mr Ford concludes that neither surveying or land development engineering matters, nor those specific issues concerning these matters raised by BRDI present an impediment to the proposed application for resource consent.⁵¹

WHAT ARE THE POSITIVE EFFECTS OF THE PROPOSAL?

Housing supply

92. The proposed subdivision provides an excellent partial solution to the predicted housing shortfall at Bannockburn particularly as there is very little greenfield land available or development within Bannockburn. As part of the hearing process for PC19, a Section 42A Report was prepared by Liz White for Stage 2 of the PC19 hearings. Ms White's s42A Report identifies a shortfall of housing capacity in Bannockburn of approximately 200 dwellings under the medium forecasted demand and 300 under the high forecasted demand scenario (refer extract at **Appendix D**).⁵²

⁴⁹ Evidence of Mr Justice at [38].

⁵⁰ Evidence of Mr Ward at [29]-[31].

⁵¹ Evidence of Mr Ford at [158].

⁵² PC19 s42A Report – Report on Submissions and Further Submissions PART 2 (Zoning Requests) – prepared by Liz White at paragraph 83

93. Against the backdrop of predicted significant housing shortfall at Bannockburn it seems likely that one of the risks of not approving the Application is house price increase at Bannockburn due to shortage of supply. Conversely, granting the Application is likely to have a positive influence on affordability of housing at Bannockburn.
94. It follows that the Proposal also achieves the efficient use and development of natural and physical resources which is a matter of particular regard at s7(b) RMA.

Recreational reserve and proposed walking tracks

95. The Applicant supports the creation of the proposed indicative tracks shown on the Master Plan over lots 40, 50 and 51 in principle. The issues arising regarding these tracks, and proposed solutions are discussed below.

Tracks over lot 50

96. Lot 50 is zoned RRA4 and is a much simpler proposition to subdivide because the Applicant has no intention of subdividing land within the BLR on lot 50 and the land is relatively flat and well suited to residential development.
97. A master plan for subdivision and development of lot 50 has not been prepared because the Applicant's focus is development of land extending from Terrace Street. Details such as roading network, lot layout and walkway location within lot 50 connecting Bannockburn Road to the western edge of lot 50 have yet to be resolved and consequently it would be premature to formalise walkways over lot 50 as part of this Application.

Proposed Tracks over lot 40 and 51

98. There are two issues arising for the Applicants regarding the proposed walkways over these lots. Firstly, the Applicant is concerned that fixing the point a ROW easement would enter into lot 50 as part of this Application could prejudice future development of lot 50 itself because, as mentioned, the master plan for lot 50 has yet to be developed.
99. To address this concern, the Applicant proposes to amend the Proposed Subdivision Master Plan (**Master Plan**) to remove the yellow and red tracks connecting lot 40 to lot 50 and instead connect the walkway in lot 40 to lot 51 instead. If required, a connection from lot 50 to the boundary of lot 40 can be

provided later when lot 50 is subdivided or otherwise an informal link may occur connecting the two over time.

100. The following changes are proposed to the Master Plan attached at **Appendix E**:

- (a) removal of the red and yellow track connections from lot 50 to lot 40;
- (b) change in colour of the track within lot 51 from red to yellow;
- (c) change to track key so yellow track are described as "Proposed indicative tracks";
- (d) change to track key so red tracks are described as "Existing informal tracks"; and
- (e) the Track Key is enlarged so it's legible when printed in A4.

101. Secondly, the Applicant is concerned about future maintenance and legal responsibilities regarding maintenance. The Applicant is comfortable with formalising access over the proposed tracks shown in yellow on the amended Master Plan across lots 40 and 51 and is also comfortable with costs associated with formation of these walkways (to the limited extent that this is necessary). However the trustees of the two family trusts that comprise the Applicant are not comfortable with the risk of potential liability under Health and Safety legislation in the event someone is injured on these tracks.

102. Maintenance costs are expected to be relatively limited, and the cost of maintenance is not the issue. The trustee's concern is the ongoing obligation to maintain the walkways in perpetuity in circumstances where the family trusts are not a land development company and the trustees themselves are not land developers, but rather retired persons most of whom are based in Christchurch. For these reasons, the Applicant seeks that the Council or some other legal entity that has the capability and experience in such matters assume legal responsibility for maintenance of the proposed walkways.

Protection and promotion of heritage values associated with historic mining operations

103. Positive effects arising from the Proposal on heritage values include the following:

- (a) Provision of walking tracks over Lot 40 and 51 providing public access to an area containing significant heritage values;
- (b) Lot 30 will be set aside as a recreation reserve, which will enable the latter extent of the upper twin water race to be retained;⁵³
- (c) Inclusion of interpretation panels, explaining heritage landscape and features associated with subdivision and adjacent land;⁵⁴
- (d) Lots 30, 40, 50 and 51 are undeveloped which will enable heritage features and heritage landscapes to remain intact for better preservation, legibility, appreciation and consistency of management into the future;⁵⁵
- (e) Preservation of all of the gold working sequences; sluice gulches; stacked tailings, sluice channels; and⁵⁶
- (f) Adaptively repurpose all of the lower water race into a footpath within the remnant water race structure, with appropriate residential drive crossing treatments which allow combined residential driveway use and allow active access and egress along the pedestrian footpath on the adapted downslope water race berm.⁵⁷

IS THE PROPOSAL CONSISTENT WITH THE PROVISIONS OF RELEVANT PLANNING INSTRUMENTS?

104. The planning experts for the Applicant (Mr Craig Barr) and for the Council (Ms Kirstyn Royce) both assess the Proposal to be consistent with relevant objectives and policies of the ODP and PC19. These experts confine their assessment to Section 7.0 (Residential Resource Area), Section 16 (Subdivision); Section 17 (Hazards) and to PC19 Section 7 (Residential Zones – Large Lot Residential and Residential Zones - Subdivision).
105. This approach is considered appropriate in light of the restricted matters available for exercise of the councils' discretion at Rules 7.3.3(i)(c) and Rule 12.7.7.(ii).⁵⁸ In the context of a restricted discretionary activity, the Council can consider the objectives and policies of the ODP but only insofar as they are relevant to the

⁵³ Evidence of Matt Sole at [21].

⁵⁴ At [56].

⁵⁵ At [55].

⁵⁶ At [22].

⁵⁷ At [29.2(a)].

⁵⁸ And for the reasons discussed above at [57] – [60] regarding application of policy 7.2.8.

restricted matters of discretion on the basis that such provisions will inform interpretation and understanding of the matters of discretion.

106. It is noteworthy that neither Mr Barr nor Ms Royce consider Section 4 (Rural Resource Area) or Section 5 (Water Surface and Margin Resource Area) to be relevant when assessing the potential landscape or amenity effects of the Proposal. BRDI's planning expert, Mr Murray, does not seriously contest the views of Mr Barr and Ms Royce regarding the above matters.
107. An important point emerging from the evidence of Mr Barr is that PC19 seeks to replace Section 7 of the ODP with a new Section 7. This new Section 7 does not include policy 7.2.8 Management of Change. As discussed above, decisions on PC19 have been released and several appeals have been filed, however it is understood that none of these appeals challenge the removal of policy 7.2.8 from the ODP, or seek retention of any ODP Section 7 text. Consequently little or no weight should be given to policy 7.2.8 and it cannot be relied on to enable resort to provisions of Section 4 relating to management of the Rural Resource Area zone.
108. In the event the Panel disagrees with the Applicant regarding the relevance of Section 4 objectives and policies to assessment of the Proposal, then the decision of the Environment Court in *Canyon Vineyard Ltd v Central Otago District Council* contains guidance regarding interpretation of these provisions.⁵⁹ The Applicant considers that when that guidance is applied to the circumstances of this case the Proposal should be assessed as consistent with Section 4 objectives and policies in any event.

ARE THERE ANY OTHER MATTERS RELEVANT TO THE PROPOSAL?

Plan integrity and precedent

109. The issue of precedent is raised in the evidence of James Dicey⁶⁰ and Mr Murray⁶¹ for BRDI. Ms Stevens evidence refers to the need to uphold the "integrity" of the BLR.⁶²

⁵⁹ *Canyon Vineyard Ltd v Central Otago District Council* [2021] NZEnvC 136 at [133]-[158].

⁶⁰ James Dicey evidence at [19].

⁶¹ Werner Murray evidence at [31].

⁶² Anne Steven evidence at [101](a).

110. Matters of precedent and integrity are frequently raised by submitters in opposition. In this case, the argument that these matters warrant decline of the Application cannot be sustained for the following reasons:

- (a) The Proposal has several unique and distinguishing factors such as the protection of heritage values, provision of proposed tracks, creation of a recreation reserve, and the varied topography of the Site that would be difficult for others to replicate in terms of precedent;
- (b) Each case must be considered on its own merits and as expressed in *Harris v Central Otago District Council*⁶³ if the effects are minor, then the question of plan integrity should only rarely be raised;
- (c) *Harris* also notes that cases concerned with more intangible elements of the environment called “amenity values” are not amenable to opposition on grounds of breaching the plan’s integrity;⁶⁴ and
- (d) Precedent issues are generally considered to be irrelevant when deciding a restricted discretionary application.⁶⁵ The Exception to this is where the restricted matters of discretion give rise to the consideration of precedent issues.⁶⁶

ARE THE PROPOSED CONSENT CONDITIONS APPROPRIATE?

111. Attached at **Appendix F** to these submissions is an updated version of consent conditions taking into account changes arising since Mr Barr filed his evidence. There are likely to be further changes required (e.g. incorporating recommendations in Ms Pfluger’s supplementary evidence and arising from matters discussed during the hearing.

CONCLUSION

112. A key point of difference between the Applicant and submitters is the meaning and purpose of the BLR provisions in the CODP. The submitters’ view appears to be that these provisions operate as a prohibition on any residential development

⁶³ *Harris v Central Otago District Council* [2016] NZEnvC 52 at [63].

⁶⁴ *Supra* at [57]-[59].

⁶⁵ *Campbell v Napier CC* EnvC W067/05 at [59], [63] – [65].

⁶⁶ *Kirton v Napier City Council* [2013] NZEnvC 66 at [77] and *Campbell v Napier CC* EnvC W067/05 at [65].

within the BLR. The Applicant's view is that these provisions are intended to restrict and carefully manage development within the BLR.

113. The case for the Applicant is that the Site is zoned RRA(4) zone in the ODP and subject to a rule that requires restricted discretionary consent approval for any residential dwellings within the BLR shown on planning maps. We are not here dealing with a plan change proposal to rezone rural land to residential zone; or a non-complying consent application to subdivide rural zoned land for a residential development; or even a non-complying subdivision application to create undersized lots.
114. Instead, the Proposal is generally consistent with the outcome anticipated by the RRA(4) zone, namely low-density residential development. The Proposal extends over land within the BLR area. Within this area residential development is deliberately restricted to less sensitive land and will be carefully managed through various design controls and consent conditions. Consequently the Proposal will result in an appropriate outcome for the Site in terms of effects on visual amenity, landscape and historic heritage, and will result in an outcome that is consistent with development anticipated by the relevant planning instruments.
115. Finally, even if the Application is not assessed as a restricted discretionary activity, the Applicant has demonstrated that the Proposal is nonetheless deserving of consent.

Dated 25 February 2025



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

APPENDICES

Appendix A – Evidence filed on behalf of the Applicant

Appendix B - Vincent District Plan 1987 Provisions & Planning Map regarding the BLR

Appendix C - Snip from the Operative CODP E-Plan showing the location of the BLR over land at Bannockburn

Appendix D – Extract from PC19 s42A Report – Report on Submissions and Further Submissions PART 2 (Zoning Requests) – prepared by Liz White

Appendix E - Amended Proposed Subdivision Master Plan dated 25.02.25

Appendix F - Updated Proposed Consent Conditions dated 25.02.25

APPENDIX A**Evidence filed on behalf of the Applicant**Evidence filed 27 September 2024:

- Evidence of Tony Milne (Landscape)
- Evidence of Jason Bartlett (Transport)
- Evidence of Matthew Sole (Heritage and Archaeology)
- Evidence of Richard (Thomas) Justice (Geotech)
- Evidence of Gareth (David) Ward (Contamination)
- Evidence of Richard Ford (Infrastructure)
- Evidence of Craig Barr (Planning)

Evidence filed 10 February 2025

- Supplementary Evidence of Tony Milne (Landscape)
- Visual Simulations