

**BEFORE THE COMMISSIONERS ON BEHALF OF THE Central Otago District
Council**

IN THE MATTER The Resource Management Act 1991

AND

IN THE MATTER RC210142 Douglas Development Limited

**STATEMENT OF EVIDENCE OF ANITA JAYNE DAWE ON BEHALF OF THE
OTAGO REGIONAL COUNCIL**

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MAY IT PLEASE THE COMMISSIONERS:

Introduction

1 My full name is Anita Jayne Dawe. I am the Policy and Planning Manager at the Otago Regional Council (ORC).

Qualifications and Experience

2 I hold the qualifications of Bachelor of Arts (Geography and Economics) and a Masters in Regional and Resource Planning, both from the University of Otago. I am an Intermediate Member of the New Zealand Planning Institute and a member of the Resource Management Law Association.

3 I have almost 20 years' planning experience working in both local government and the private sector. During this time, I have been:

- Employed as a Consents Officer for the Central Otago District Council from 2004 to 2010 processing resource consents, warranted as a Compliance and Enforcement Officer, and assisting with policy development.
- Employed as a Senior Planner and latterly, Planning Manager, for a small surveying and planning firm, working for a range of small and large private clients, applying for resource consents ranging from hydro electricity generation, subdivision and land use consents, to water and discharge permits, across the South Island.
- Employed as Planning Manager at the Southland Regional Council (2014 - 2018) and responsible for the operative Regional Policy Statement, the proposed Southland Water and Land Plan, and ancillary minor plan changes and bylaw reviews.
- While working for a consultancy, contracted to the Central Otago District Council (July 2018 – March 2019) as their acting Consents Manager, responsible for all resource consent functions, all compliance and

monitoring and enforcement. I continued to assist the Central Otago District Council with consent processing for a short time after March 2019.

- While working for a consultancy, contracted to the Otago Regional Council (June 2018 – May 2020) as their Acting Policy Manager, responsible for managing appeals to the Queenstown Lakes District Plan and the Dunedin City 2GP, responsible for overseeing the RPS, and other statutory planning functions.
- Since May 2020, I have been permanently employed by the ORC as its Policy and Planning Manager.

- 4 I have extensive experience in territorial resource consenting, including as applicant and as a processing planner. I have prepared applications across the South Island for a range of activities.
- 5 I have about a decade of experience in compliance, monitoring and enforcement, including most recently for the Central Otago District Council while engaged as their Acting Consents Manager.
- 6 I have extensive experience in policy development and planning and have been involved in the Southland Regional Policy Statement, the proposed Southland Water and Land Plan and Plan Changes 6AA, 7 and 8 to the Regional Plan: Water and Plan Change 1 to the Regional Plan: Waste in Otago, and the proposed Otago Regional Policy Statement which was notified in June of this year.
- 7 I also have extensive mediation experience, over some 14 years of practice, including mediation on the Southland RPS, the pSWLP, the Invercargill City District Plan, the Southland District Plan, the Queenstown Lakes District Plan and the Dunedin City District Plan, and the Regional Plan: Water for Otago and the partially operative Otago RPS.
- 8 I also have extensive experience in the Central Otago District Plan and was involved in both Variation 1 and Plan Change 5H. Variation 1 was withdrawn when the decisions on Plan Change 5H were notified. Plan Change 5H introduced the discretionary and non-complying subdivision rules into the District Plan.

Code of Conduct

- 9 While this is a Council hearing, I acknowledge that I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2014. I have complied with the code in preparing my evidence.
- 10 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
- 11 Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Material considered

- 12 In preparing this evidence, I have reviewed the following documents:
- (a) The application, including the s92 response and the memorandum from Align; and
 - (b) The s42A report prepared by the consultant planner; and
 - (c) The applicant's evidence; and
 - (d) The National Policy Statement for Urban Development 2020; and
 - (e) The National Policy Statement for Freshwater Management 2020; and
 - (f) The 2019 partially operative Regional Policy Statement; and
 - (g) The proposed Otago Regional Policy Statement 2021; and
 - (h) The Central Otago District Plan 2008.

Reason for Submission

- 13 I directed and co-authored the submission on RC210142 lodged with the Central Otago District Council, in my role as Policy and Planning Manager at the Otago Regional Council.
- 14 Part of the role of the ORC policy team is to assess plan changes, variations to plans and resource consent applications to ensure they are consistent with the

RPS. This role, in practical terms, means that ORC submits, either in support of or opposition to resource management proposals on a regular basis. The submissions are directed toward whether particular activities are consistent with the RPS.

- 15 ORC also submits, from time to time, on operational matters including for example, buildings or works in or on flood schemes, and for natural hazards reasons, water quality and water quantity purposes.

Scope of Evidence

- 16 My evidence will address the following:

- (a) The reasons ORC is involved in this process (ORC's submission);
- (b) An outline of the relevant legislative context for ORC's submission; and
- (c) A brief commentary on the s42A report; and
- (d) ORC's primary concern, which is not with the merits of the application per se, but with respect to precedent and plan integrity, given the severe and significant departure from the Central Otago District Plan.

Summary of ORC's Submission

- 17 ORC has duties and obligations in respect of RPS'. ORC is required to have an operative Regional Policy Statement in place at all times. The partially operative RPS (pRPS) 2019 sets policy direction that territorial authorities need to give effect to.
- 18 ORC has functions under the NPSUD 2020.
- 19 ORC has functions under the NPSFM 2020.
- 20 ORC has duties and obligations in respect of RPS' s.

Legislative Framework

Resource Management Act

- 21 The Resource Management Act 1991 (the Act) sets out a framework for managing urban development at a broad level. The purpose of the Act is to promote the sustainable management of natural and physical resources.

Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.¹*

- 22 Section 6 identifies the matters of national importance. It requires all persons exercising functions and powers under it to recognise and provide for a range of matters but none of these bear direct relevance to this matter.

- 23 Section 7 of the Act sets out the following:

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:*
- (aa) the ethic of stewardship:*
- (b) the efficient use and development of natural and physical resources:*
- (ba) the efficiency of the end use of energy:*
- (c) the maintenance and enhancement of amenity values:*
- (d) intrinsic values of ecosystems:*
- (e) [Repealed]*
- (f) maintenance and enhancement of the quality of the environment:*
- (g) any finite characteristics of natural and physical resources:*
- (h) the protection of the habitat of trout and salmon:*

¹ Section 5, RMA

(i) *the effects of climate change:*

(j) *the benefits to be derived from the use and development of renewable energy.*

National Policy Statement for Freshwater Management 2020

24 The National Policy Statement for Freshwater Management 2020 (the NPSFM) has a hierarchy of obligations, the first of which is to prioritise the health and wellbeing of freshwater and freshwater ecosystems.

25 It is founded on a premise, or fundamental concept of Te Mana o te Wai.² It is described as a...

concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.

26 The NPSFM notes that the concept of Te Mana o te Wai is relevant to all freshwater management rather than being limited to just the aspects referred to in the NPSFM.

27 Te Mana o Te Wai has six principles that set out the roles of tangata whenua and other New Zealanders in managing freshwater. Those principles are set out below, and inform both the NPSFM, and its implementation.

(a) *Mana whakahaere*: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater

(b) *Kaitiakitanga*: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations

(c) *Manaakitanga*: the process by which tangata whenua show respect, generosity, and care for freshwater and for others

(d) *Governance*: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future

(e) *Stewardship*: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations

² Clause 1.3 of the NPFM 2020

(f) *Care and respect*: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.

28 Te Mana o te Wai contains a hierarchy of obligations that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems

(b) second, the health needs of people (such as drinking water)

(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

29 The hierarchy within Te Mana o te Wai is replicated in the sole objective of the NPSFM which is to ensure that

natural and physical resources are managed in a way that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems

(b) second, the health needs of people (such as drinking water)

(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future³.

30 There are 15 policies that sit under Objective 2.1 of the NPSFM. Those policies are set out in full below, but of particular relevance to this application is policy 3.

Policy 1: *Freshwater is managed in a way that gives effect to Te Mana o te Wai.*

Policy 2: *Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.*

Policy 3: *Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*

Policy 4: *Freshwater is managed as part of New Zealand's integrated response to climate change.*

Policy 5: *Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.*

Policy 6: *There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*

³ Objective 2.1 NPSFM 2020

Policy 7: *The loss of river extent and values is avoided to the extent practicable.*

Policy 8: *The significant values of outstanding water bodies are protected.*

Policy 9: *The habitats of indigenous freshwater species are protected.*

Policy 10: *The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.*

Policy 11: *Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.*

Policy 12: *The national target (as set out in Appendix 3) for water quality improvement is achieved.*

Policy 13: *The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.*

Policy 14: *Information (including monitoring data) about the state of water bodies and freshwater ecosystems, and the challenges to their health and well-being, is regularly reported on and published.*

Policy 15: *Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.*

31 The NPSFM sets out a range of obligations for local authorities. In particular, Clause 3.5 Integrated management which states {my emphasis added}:

Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must:

(a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and

(b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and

(c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and

(d) encourage the co-ordination and sequencing of regional or urban growth.

32 Clause 3.5 (4) sets out responsibilities for territorial authorities to provide for the health and well-being of water bodies, freshwater ecosystems and receiving environments.⁴

National Policy Statement on Urban Development 2020

33 There are several provisions in the NPSUD that relate to the use of land. Objective 1⁵ of the NPSUD is a generic objective that broadly mimics Part 2 of the Act and while relevant, does not provide detailed assistance.

34 Policy 10⁶ is relevant and directs that integrated land use and infrastructure planning occurs.

35 The NPSUD also helpfully sets out what is meant by the terms *plan enabled* and *infrastructure ready*, at Clause 3.4.

Partially operative Regional Policy Statement 2019

26 The relevant provisions from the partially operative RPS 20219 (pRPS) in relation to this topic have been made operative. These provisions are therefore accorded full weight under section 104 of the Act.

27 The pRPS contains a range of relevant Objectives and Policies and I do not intend to set them out in full in here but highlight the key ones for ease of reference.

28 Objective 1.1 seeks to ensure that Otago's resources are used sustainably to promote economic, social, and cultural wellbeing for its people and communities. The issue that the objective is managing is outlined as

...loss or degradation of resources can diminish their intrinsic values and constrains opportunities for use and development now and into the future.

⁴ Clause 3.5(4) Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.

⁵ Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

⁶ Policy 10: Tier 1, 2, and 3 local authorities: that share jurisdiction over urban environments work together when implementing this National Policy Statement; and engage with providers of development infrastructure and additional infrastructure to achieve integrated land use and infrastructure planning; and engage with the development sector to identify significant opportunities for urban development.

- 29 Policy 1.1.1 requires the provision of economic wellbeing by enabling the resilient and sustainable use and development of natural and physical resources.
- 30 Policy 1.1.2 is a general provision that requires the social and cultural wellbeing and health and safety of people to be provided. The policy articulates that promoting community resilience and the need to secure resources as one of the ways that wellbeing should be provided.
- 31 Policy 1.2.1 Focuses on integrated resource management and seeks this to be achieved in a number of ways. This policy is set out in full, and in particular, clauses (a),(b),(c),(e) and (f) are of most relevance.

Policy 1.2.1 Integrated resource management

Achieve integrated management of Otago’s natural and physical resources, by all of the following:

- a) Coordinating the management of interconnected natural and physical resources;*
- b) Taking into account the impacts of management of one natural or physical resource on the values of another, or on the environment;*
- c) Recognising that the value and function of a natural or physical resource may extend beyond the immediate, or directly adjacent, area of interest;*
- d) Ensuring that resource management approaches across administrative boundaries are consistent and complementary;*
- e) Ensuring that effects of activities on the whole of a natural or physical resource are considered when that resource is managed as subunits.*
- f) Managing adverse effects of activities to give effect to the objectives and policies of the Regional Policy Statement.*
- g) Promoting healthy ecosystems and ecosystem services;*
- h) Promoting methods that reduce or negate the risk of exceeding sustainable resource limits.*

- 32 Objective 4.5 states *urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.*
- 33 This objective goes on to explain that unplanned urban growth and development risks exceeding the carrying capacity of existing infrastructure and services, adversely affecting community resilience. It notes that unanticipated growth places pressure on adjoining productive land, and risks losing connectivity with adjoining urban areas.
- 34 Policy 4.5.1 requires the provision of urban growth to be undertaken in a strategic and co-ordinated way, including by
- (a) Ensuring future urban growth areas are in accordance with any future development strategy for that district.*

(b) Monitoring supply and demand of residential, commercial and industrial zoned land;

(e) Coordinating the development and the extension of urban areas with infrastructure development programmes, to provide infrastructure in an efficient and effective way.

(f) Having particular regard to:

i. Providing for rural production activities by minimising adverse effects on significant soils and activities which sustain food production;

ii. Minimising competing demands for natural resources;

iii. Maintaining high and outstanding natural character...

iv. Maintaining important cultural or historic heritage values;

v. Avoiding land with significant risk from natural hazards;

(g) Ensuring efficient use of land;

(h) Restricting urban growth and development to areas that avoid reverse sensitivity effects unless those effects can be adequately managed;

(i) Requiring the use of low and no emission....

(j) Consolidating existing coastal settlements and...

35 Policy 4.5.2 seeks to achieve strategic integration of infrastructure with land use by planning, designing and constructing infrastructure to align with actual land use change.

36 Policy 4.5.3 sets direction to manage new urban development, having regard to a range of factors including resilient community, built form that relates well to its surrounding environment, good access and connectivity within and between communities.

37 Objective 5.3 requires that *sufficient land is managed and protected for economic production.*

38 Policy 5.3.1 then seeks to manage activities to support the region's economy and communities, by:

- (a) Enabling primary production and other rural activities that support that production;*
- (b) Providing for mineral.....*
- (c) Minimising the loss of significant soils;*
- (d) Restricting the establishment of incompatible activities in rural areas that are likely to lead to reverse sensitivity effects;*
- (e) Minimising the subdivision of productive rural land into smaller lots that may result in a loss of its productive capacity or productive efficiency;*
- (f) Providing for other activities that have a functional need to locate in rural areas.*

Proposed Otago RPS 2021

- 39 The proposed Otago RPS 2021 (PORPS21) was notified on 26 June 2021, and the Summary of Decisions Requested was made available in November for further submissions, and a further corrigendum notified in late November for a small number of corrected submission points.
- 40 The PORPS21 has not been tested through any hearing process yet and while it has provisions which are directly relevant, the weight of consideration should be with the partially operative RPS. For this reason, I will not assess the application against the PORPS21.

The Central Otago District Plan

- 41 The Central Otago District Plan was made operative in 2008. Since that time there have been a number of plan changes. Despite these plan changes, the Plan has not been updated to give effect to the partially operative RPS.
- 42 I broadly agree with the assessment of the relevant provisions as identified in the s42A report and do not intend to repeat those in full here.
- 43 Objective 4.3.1 is a high-level objective that broadly mimics part 2 of the Act. It has relevance to the application but no specificity.

- 44 Objective 4.3.3 seeks to at least maintain, and enhance where practicable, the rural amenity values created by the open space, landscape, natural character and built environment.
- 45 Objective 4.3.7 seeks to maintain the life-supporting capacity of the district's soil resource to ensure that the needs of present and future generations are met.
- 46 Following the objectives, there are a range of policies that implement them including Policy 4.4.17, 4.4.6 *Adverse Effects of Soil Resources*, 4.4.9 *Effects of Rural Activities*, and 4.4.10 *Rural Subdivision and Development*.

S42A Report

- 47 I have reviewed the s42A report and provide the following comments.
- 48 Firstly, I acknowledge that our submission contained errors in land areas that relate to the application. These errors were simply typographical and do not change the nature or content of our original submission.
- 49 ORC supports the s42A report writer in recommending a communal wastewater system. ORC has been actively involved in a range of applications and rezoning over the last few years where significant sized developments seek to install individual on-site wastewater systems.
- 50 ORC has opposed these – across Queenstown Lakes, Dunedin City and Waitaki District, instead seeking as a minimum, communal wastewater systems. ORC's reasons for this are broadly to ensure freshwater is protected, to ensure developments are appropriately designed with infrastructure provided, and to ensure land use change is strategic, planned, and appropriately located.
- 51 In almost all circumstances, there has been agreement to a single communal system, even with staged developments. ORC considers that this development is no different and developing residential sites that rely on individual infrastructure is no longer appropriate, having regard to the NPSFM, the NPSUD and the partially operative RPS.
- 52 We acknowledge that the Regional Plan:Water currently contains a permitted activity for onsite wastewater disposal, so simply wish to draw attention to the

development of the Land and Water Regional Plan(LWRP). As part of developing the LWRP the appropriateness of the current permitted rules will be assessed against the regulatory framework, and in particular providing for Te Mana o te Wai.

- 53 ORC seeks to ensure an appropriate water supply is provided. There are significant changes occurring in the regulatory framework managing potable water, and these changes and the security they are seeking to achieve, should be a consideration.
- 54 Of particular note, ORC has concerns about the volume of roof area required to capture sufficient supply of rainwater to service a residential activity. The Lindis Valley is a low rainfall area, with rivers running dry in summer, and the reliance on rainwater is not considered secure or appropriate.
- 55 ORC supports the requirement for a new and separate bore, with appropriate volumes to support residential activity and provide for fire fighting supply.
- 56 ORC also notes an inconsistency in relation to the upper terrace, where the subdivision is proposed. The application stresses that irrigation water cannot be made available to the upper terrace, thereby rendering this area relatively less productive. Despite this, irrigation water to support tree planting to mitigate an effect is proposed. The application notes that cost is the current barrier to making this terrace more productive.
- 57 ORC does not have any specific comments on other matters raised in the s42A report, except to note we share the s42A report authors concern about the length of time for screening to be effective. During that time, ORC understands that the adverse effects on natural character will be more than minor.

ORC's Primary Concern - Precedent

- 58 ORC's most significant concern relates to the precedent of this application. In my opinion, based on significant consenting and planning experience in Central Otago, over a number of years, if this application were to be granted, there is nothing unique or different that would prevent other similar applications being granted.

59 My primary concerns relate to the average and minimum lot sizes, the unplanned approach to residential development, reverse sensitivity effects, the disconnection from any urban areas, lack of infrastructure, and loss of productive land and soils, and the scale of built form.

Planning context for the average and minimum allotment sizes on rural land

60 For context, Rule 4.7.4(iii) was introduced firstly by Variation 1, and then Plan Change 5H which sought to move away from the previous rural subdivision provisions that allowed up to 5 allotments of 8 hectares as controlled activities.

61 These controlled activity provisions were no longer appropriately managing rural development and the blanket 8 hectare requirement under the controlled activity framework was creating adverse effects while also not enabling appropriate consideration of particular landscape characteristics.

62 The minimum 2ha/average 8ha regulatory framework was introduced in the rural area to enable site specific consideration – subdivision in a nonlinear way that considered the unique characteristics of the land, but still provided a density that was appropriate for the rural area. The average of 8 hectares was introduced to ensure an appropriate density, and the 2hectare minimum to achieve an appropriate size of allotment.

63 Separately, the CODP has a specific approach to rural residential subdivision, which is clearly distinguishable to rural subdivision, and which provides for a 2ha average.

64 The CODP clearly and legibly distinguishes rural and rural residential development, both from each other, and also from residentially zoned land.

Average allotment size and rural zoned land

65 In relation to the size of the allotments, I note neither the application nor the s42A report dwells on this, despite them being significantly undersized.

66 Rule 4.7.4(iii) of the Central Otago District Plan (CODP) provides for a discretionary subdivision provided a ***minimum of 2 hectares and an average of 8 hectares*** is provided. Failure to meet either of these limbs' defaults to non-complying.

67 While the application is correctly identified as non-complying, there is significant discussion on achieving a density akin to the discretionary rule, and therefore the

application being similar to that anticipated by the Plan, and similar to the neighbouring subdivision (RC190042 – Greenlight Land Limited).

- 68 ORC did not oppose RC190042 because that application met the discretionary standards, with an average of 8 hectares, and a minimum of 4 hectares. The pattern of development was anticipated by the Plan, evidenced by its discretionary activity status.
- 69 In my opinion, there is no similarity at all to the neighbouring subdivision and comparing the two is both inappropriate and inaccurate. There is also no similarity to the discretionary standards in Rule 4.7.4(iii) of the Plan.
- 70 The average allotment size under this application is 1.13 hectares, which is some 14% of the required average size. This average is significantly enhanced by the inclusion of Lot 17, the balance allotment (using 16 ha as outlined in Rule 4.7.4(iii)). Removing Lot 17 creates an average of 2036m² which is 2.5% of the 8-hectare average.

Minimum Allotment Size

- 71 In addition to my concerns with respect to the significant breach of the average allotment, which sets the density standard, the subdivision is also a considerable step change from the minimum 2 ha requirement.
- 72 The minimum site size is 1720m²⁷ which is some 8.6% of the required minimum lot size in the rural resource area. Importantly, while a significant departure from the anticipated minimum site size in the rural area, it is also significantly smaller than the rural residential zoned land that the plan anticipates and provides for.
- 73 The CODP is clear in terms of expectations for different land zonings – rural, rural residential, business, industrial and residential. The lot sizes for this proposal are clearly residential in size, nature and extent. Despite the application describing them as rural residential, that description does not align with the CODP provisions and subdivision requirements.
- 74 The minimum and average site sizes as proposed in this application are sized to be residential zoned land, like land in areas such as Old Golf Course, Bell Avenue, and other large lot residentially zoned land across the District.

⁷ There is reference to 1800m² in the applicants evidence as a new minimum. This represents 9% of the minimum site size.

- 75 In my opinion, the proposal cannot be said to be creating rural residential zoned land but creating residential allotments (small scale urban development), in the middle of a large farming operation.
- 76 The proposed subdivision is such a significant departure from that anticipated by the Plan that, in my planning opinion, I cannot conceivably reconcile the subdivision with the overarching provisions in the CODP.
- 77 In my opinion, the subdivision creates allotments that are urban in nature and character, both in how they are sized, and how they are described – with the intention of having a dwelling, sheds, and lawns/curtilage.
- 78 To create a small urban environment comprising 16 residential allotments in the middle of a productive rural landscape, with no reticulation of services, with no connection to any residential area, with no strategic planning and no demonstrable demand is directly contrary to the provisions of the NPSUD and the partially operative RPS and cannot be reconciled.
- 79 The NPSUD sets out a clear approach to providing for urban growth and development and growth and this application does not address this at all.
- 80 The identified provisions from the partially operative RPS also seek coordinated, integrated and strategic approaches to urban growth and development. This application does not address any of these provisions, nor the NPSUD, and fails to articulate how it will not set a precedent.

Visual Precedent

- 76 To that end, I note the Align Report already identifies a visual precedent being set by the neighbouring subdivision, which is a discretionary subdivision. Given this, it is my opinion that the proposal currently before the Hearing Panel, based on landscape grounds, will likely create adverse cumulative visual effects. Given there is already a visual precedent set on the neighbouring site, the application fails to address how or why this application will not further add to that, and how other land owners will not be able to apply for like activities.

Reverse Sensitivity

- 77 Reverse sensitivity is a significant issue in the Central Otago District in relation to the rural resource area. During 2018/19 while Acting Consents Manager, I was

involved in compliance and enforcement work around permitted rural activities – frost fighting, bird scaring and harvesting. These activities are noisy, occur at the start and end of a day, and create dust, and sometimes lightspill.

- 78 Managing reverse sensitivity is a challenging issue and conditions of consent can be imposed to prevent complaints. These conditions of consent do not however prevent the reverse sensitivity effects being experienced.
- 79 This was evidenced in relation to Plan Change 13 where the appropriateness of locating residential zoning in the midst of an industrial and commercial precinct, when activities that already created noise and other effects were established was discussed.
- 80 I have a similar concern with this subdivision. The reality is that it will create 16 residential allotments in the middle of a productive working farm, which is itself located in the middle of a rural landscape. The presence or otherwise of conditions to prevent complaints do not, of themselves, manage the effects.
- 81 Enforcement of reverse sensitivity complaints will reside with CODC, adding to the already significant compliance and enforcement work.
- 82 It is not good or strategic planning to develop ad hoc residential development in this way and is contrary to the direction in both the NPSUD and the partially operative RPS.

Impact on productive land

- 83 Both the applicant and the s42A author have outlined that the effects can be considered no more than minor because the subdivision minimises the loss of productive land. The reality is that the subdivision results in productive land being lost, irrespective of whether that loss is minimised. The subdivision is fragmentation of rural land and loss of productive land.
- 82 In my opinion, while acknowledging that the clustering minimises the fragmentation, it still occurs, and is contrary to the relevant partially operative RPS provisions as identified earlier.

Scale of built form

- 84 The application notes that Lot 1 has a consented residential dwelling and small ancillary workers' unit. In total, these two buildings represent some 600m² of built form. The proposed subdivision will add significantly to this. Even if each

allotment builds a modest scale residential dwelling of 200m², this will still result in 2000m² of buildings on the upper terrace. In addition, garaging and small ancillary buildings are also anticipated.

- 85 I acknowledge that there is no restriction on the number of farm buildings that can be constructed as of right (subject to bulk and location compliance) however built form of this scale is, in my opinion, likely to be out of character and scale for the area, and contrary to the description of the environment in the Align memo.

Conclusion

- 86 The ORC has functions in relation to a range of environmental matters, and also in relation to having, and ensuring consistency with, its RPS.
- 87 I consider that RC210142 is inconsistent with the NPSUD 2020, the 2019 RPS and the CODP. I consider the application fails to meet the purpose of the Act, fails to achieve sustainable management of natural and physical resources, and fails to provide for the social, economic and cultural wellbeing now, and in the future.
- 88 I consider that the application does not satisfy the gateway test in s104D of the Act and therefore cannot be granted. The application and the s42A report note that there will be adverse effects that are more than minor on natural character; and the activity is inconsistent with the relevant objectives and policies of the partially operative RPS, contrary to the NPSUD, and contrary to the provisions of the CODP.
- 89 I consider the application has no distinguishable or differentiating features that would ensure, by granting this application, it did not set a precedent. To the contrary, I consider that granting this application may result in similar applications for subdivision being lodged and granted – applications with no strategic planning, no infrastructure provision, no consideration of the loss or fragmentation of rural land, and creation of residential sites in rural areas that will create reverse sensitivity effects.
- 90 I consider the application represents such a significant departure from the provisions of the CODP that it cannot properly be considered as an application for subdivision consent. Creating allotments that are less than 20% of the anticipated average and less than 10% of the anticipated minimum site size is clearly not anticipated by the Plan.

91 For completeness, I consider that the application, given the significance of the departure from the rules in the CODP, is more appropriate to be considered as a plan change. There is no requirement in law for a plan change to be of a specific size before it can be properly considered and this application, as noted by the applicant, Mr Morris' evidence and the s42A report, has not been anticipated by the Plan. It is contrary to relevant objectives and policies, and contrary to the partially operative RPS.

A handwritten signature in blue ink, appearing to read 'Anita Dawe', is positioned above the printed name.

Anita Dawe

27 January 2022