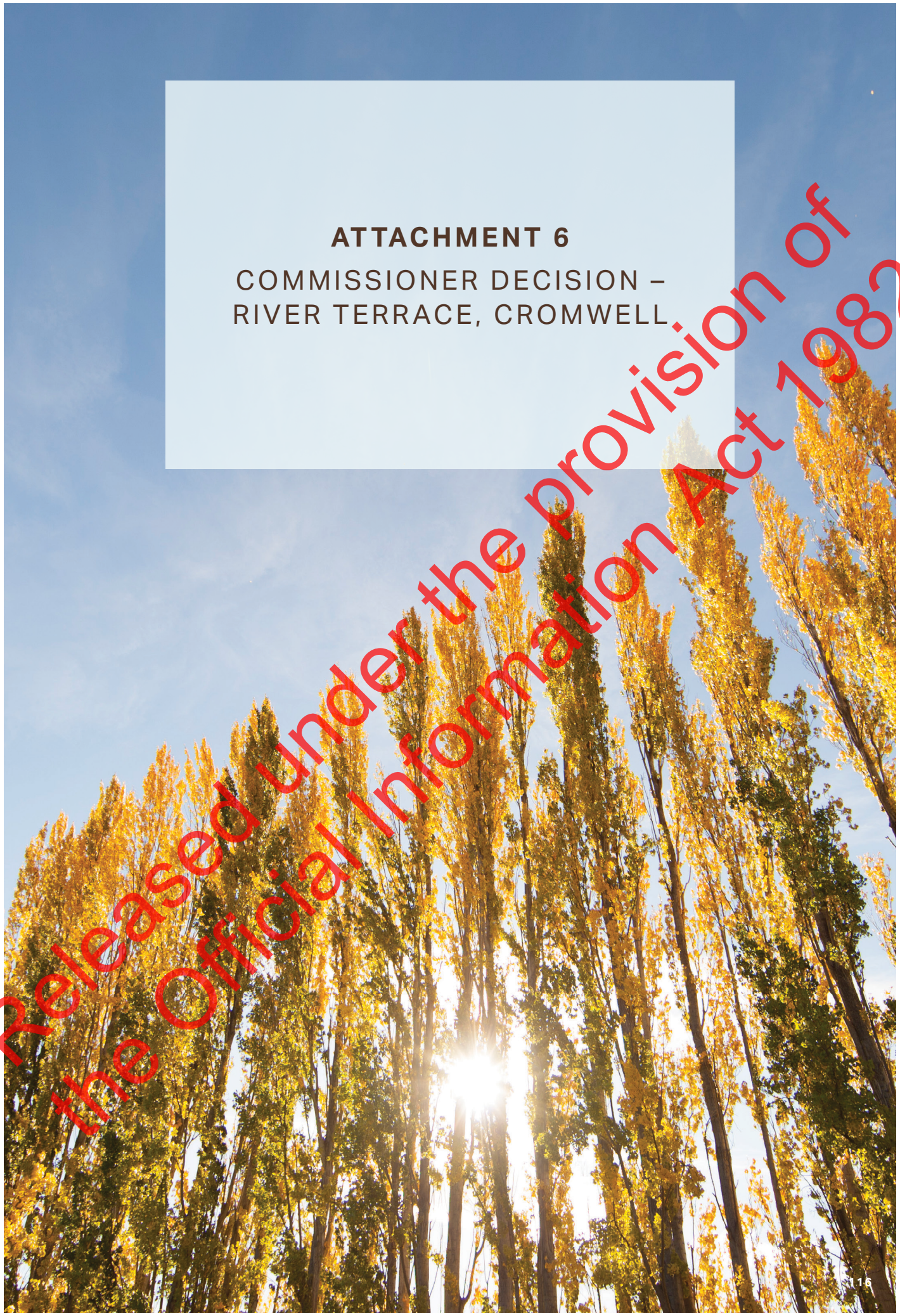

ATTACHMENT 6

COMMISSIONER DECISION – RIVER TERRACE, CROMWELL

Decision of Independent Hearing Panel

PLAN CHANGE 13

RIVER TERRACE RESOURCE AREA

Decision Report of the Independent Hearing Panel appointed by the Central Otago District Council pursuant to Section 34 of the Resource Management Act 1991

5 November 2019

CONTENTS

SCHEDULE OF APPENDICES

INDEX OF ABBREVIATIONS

This report utilises several abbreivations and acronyms as set out in the glossary below:

Abbreviation	Means…
"the Act"	Resource Management Act 1991
"CLH"	Central Land Holdings Limited
"CODC"	Central Otago District Council
"COMC"	Central Otago Motorsport Club Inc
"the Council"	Central Otago District Council
"CSCC"	Central Speedway Club Cromwell Incorporated
"Highlands"	The Highlands Motorsport Park
"HMP"	Highlands Motorsport Park Limited
"HNZ"	Horticulture New Zealand
"MoE"	Ministry of Education
"MNZ"	Motorsport New Zealand
NES- CL	"Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011"
"NPS-ET"	National Policy Statement on Electricity Transmission 2008
"NPS-UDC"	National Policy Statement for Urban Development Capacity 2017
"NZTA"	New Zealand Transport Agency
"ORC"	Otago Regional Council
"the Plan"	Operative Central Otago District Plan 2008
"PC13"	Proposed Change 13 to the Operative District Plan
"the plan change"	Proposed Change 13 to the Operative District Plan
"the proponent"	River Terrace Development Limited
"PRPS"	Partially Operative Regional Policy Statement 2019
"RMA"	Resource Management Act 1991
"RPS"	The Operative Regional Policy Statement 1998
"RRDC"	Residents for Responsible Development Cromwell Society Incorporated
"RTD"	River Terrace Development Limited (the proponent)
"RTRA"	River Terrace Resource Area
"s[#]"	Section Number of the RMA, for example s32 means Section 32
"s42A report"	The report prepared by CODC pursuant to s42A, RMA
"the site"	The land at Sandflat Road and State Highway 6, Cromwell – subject to this plan change request
"Speedway"	Central Motor Speedway
"Transpower"	Transpower New Zealand Limited
"WHO"	World Health Organisation

Central Otago District Council
Private Plan Change 13
River Terrace Resource Area

Decision of the Independent Hearing Panel

Proposal Description:
Proposed Change 13 to the Central Otago District Plan:
River Terrace Resource Area

Hearing Panel:
G Rae – Independent RMA Hearing Commissioner, Chair
G Lister – Independent RMA Hearing Commissioner
DJ McMahon – Independent RMA Hearing Commissioner

Date of Hearing:
10-14 June & 2-5 July 2019

Hearing Officially closed:
5 September 2019

1.0 INTRODUCTION

Report purpose

1.1 This report sets out our decision on Proposed Plan Change 13 to the operative Central Otago District Plan 2008.

1.2 We were appointed by the Council to hear submissions made on the plan change and to consider and make a decision under delegated authority of the Council under Section 34 of the Resource Management Act 1991 as to whether PC13 should be declined, approved or approved with amendments.

1.3 The plan change seeks to create a new River Terrace Resource Area, which includes the rezoning of 50 hectares of rural land off State Highway 6 in Cromwell for a new urban development. It proposes amendments and additions to the Plan's issues, objectives, policies, rules, methods principal reasons and anticipated environmental results.

1.4 The plan change has an extensive background, which we will canvas in due course. It has been the subject of a section 32 report[1], consultation with stakeholders, and, of course, the public notification and hearing process, culminating in our decision.

1.5 Before setting out the details of PC13, the submissions to it and our substantive evaluation, there are some procedural matters that we will address, beginning with our role as an Independent Panel.

[1] Section 32 of the RMA sets out the requirements for preparing and publishing reports that evaluate the appropriateness of a plan change.

Role and report outline

1.6 As noted above, our role is to make a decision about the outcome of the plan change on the Council's behalf. The authority delegated in us by the Council includes all necessary powers under the RMA to hear and make all decisions on the submissions received on the plan change.

1.7 The purpose of this report is to satisfy the Council's various decision-making obligations and associated reporting requirements under the RMA.

1.8 Having familiarised ourselves with PC13 and its associated background material, read all submissions, conducted the hearing and site/locality visits, we hereby record our recommendations.

1.9 In this respect, our report is broadly organised into the following two parts:

(a) Factual context for the plan change:

This non-evaluative section (comprising report Section 2) is largely factual and contains an overview of the land subject to the plan change and an outline of the background to the plan change and the relevant sequence of events. It also outlines the main components of the plan change as notified. This background section provides relevant context for considering the issues raised in submissions to the plan change. Here, we also briefly describe the submissions received to the plan change, and provide a summary account of the hearing process itself and our subsequent deliberations. We also consider here various procedural matters about the submissions received.

(b) Evaluation of key issues:

The second part of our report (comprising Sections 3-6) contains an assessment of the main issues raised in submissions to PC13 and, where relevant, amplification of the evidence/statements presented at the hearing (in Section 3). We conclude with a summary of our recommendations (in Section 6), having had regard to the necessary statutory considerations that underpin our considerations (in Section 4). In section 5 we record some concluding comments about the proposal, the issues arising and our overall findings. All these parts of the report are evaluative, and collectively record the substantive results of our deliberations.

Comments on the parties' assistance to us

1.10 In advance of setting out the Plan Change context, we would like to record our appreciation at the manner in which the hearing was conducted by all the parties taking part.

1.11 All those in attendance enabled a focused hearing process that greatly assisted us in assessing and determining the issues, and in delivering our decision.

1.12 These initial thoughts recorded, we now set out the factual background to the Plan Change.

2.0 PLAN CHANGE CONTEXT

Site & local environment

2.1 The site is located on the southwest corner of the State Highway 6 / Sandflat Road intersection, approximately 1km west of the Cromwell urban area. As shown in **Figure 1**, It comprises 50ha of pastoral land on two flat terraces, separated by a sloping 10m-high escarpment.

Figure 1: Plan Change site (yellow outline) and locality. Not to scale. (*image source: Google Earth*[2])

2.2 The site is primarily covered in grass, with sporadic scrub and some shelterbelt pines. There are no buildings or structures erected on the site, apart from the foundations of a previous dwelling near the southern boundary, fences around the site perimeter, a sales sign and a small temporary building.

2.3 We provide further discussion regarding some of the key land uses in the immediate locality in our evaluation in Section 3, but in the meantime it is pertinent to briefly identify three such activities; being the Central Motor Speedway, the Highlands Motor Sport Park and the Suncrest Orchard.

a. The Central Motor Speedway and the Highlands Motor Sport Park are directly to the east, across Sandflat Road. The former is a dirt track speedway which has operated for approximately 40 years. We were advised that the Speedway generally operates up to 16 times per year, with 10:30pm being the target finish time for events.

b. The Motor Sport Park is a large, multi-attraction recreational facility opened in 2013. Among the facilities there, the park includes a racetrack, go kart track, buggy adventure, miniature golf course, sculpture park, the National Motorsport Museum and a café. The facility holds a range of races, has a "GT Club" for regular member use of the track, accommodates vehicle testing and filming, holds promotional, community and educational events.

c. The motorsports activities are divided into "Tier 1" and "Tier 2" events which have different durations and occurrences and therefore different noise

[2] Imagery date 2019. Retrieved July 2019

characteristics. We refer to this in greater detail in Section 3 of this report dealing with noise effects but essentially the Tier 1 activities are very regular (consented to up to up to 363 times a year whereas the Tier 2 events generate more noise and are limited in duration to 16 times a year.

d. Highlands also includes an 'Innovation and Technology Park' which has involved the development of 70 lots to provide for residential, visitor accommodation and light commercial activities. The latter uses currently include specialist vehicle upholsterers, car detailers, race car equipment sales, and race team headquarters. Residential activities are not permitted on ground floor of these sites. All properties in the Innovation and Technology Park are subject to an encumbrance that places a range of controls on them, including a no-complaints obligation in regard to Highlands.

e. Suncrest Orchard adjoins the western boundary of that part of the site located on the upper terrace. It is separated from the site by a shelter belt of mature pine trees. The land is owned by DJ Jones Family Trust and is currently leased and operated by Suncrest Orchard Ltd. The company grows a range of stone and pip fruit, in particular cherries. It exports fruit and also operates a road-side retail facility, 'Mrs Jones Fruit Stall'.

2.4 The remainder of the adjacent land is in pasture or orchards. This includes orchards on land owned by the McKay Family Trust and the 45 South Group of Companies on the north side of State Highway 6, and rural lifestyle properties on the site's eastern and south-western boundaries.

2.5 The Kawarau River is approximately 400m to the south of the site, flowing out of the Kawarau Gorge. The area between the river and the site is characterised generally by a mix of rural activities, consistent with the site and its immediate environs.

Operative District Plan

2.6 The site is zoned Rural Resource Area in the operative Plan, with the lower terrace southern portion of the site (approximately half the site area) also subject to the Rural Residential Notation. Adjacent to the site's northern boundary, State Highway 6 is subject to a Limited Access Road Designation notation on the planning maps. No other overlays or map features are relevant to the site.

2.7 The Rural Resource Area objectives, policies and rules in Section 4 of the Plan are relevant to the management of natural and physical resources on the site, as are some of the District-wide provisions contained in following sections of the Plan:

a. Section 3 – Manawhenua;
b. Section 12 – District-wide rules and performance standards;
c. Section 13 – Infrastructure, energy & utilities;
d. Section 16 – Subdivision; and
e. Section 17 – Hazards.

2.8 Furthermore, some of the description of the District's resources and significant resource management issues (in Section 2 of the Plan) are also relevant to understanding the site and local environment.

2.9 The anticipated environmental outcomes for the site in the operative objectives include:

a. *the community's need to provide for its social, economic and cultural wellbeing and its health and safety is recognised while ensuring environmental quality is maintained and enhanced*[3]*;*

b. *rural amenity values created by the open space, landscape, natural character and built environment values of the District's rural environment will be maintained and where practicable enhanced*[4]*;*

c. *the quality of the District's recreational resources and public access to those resources will be maintained and enhanced*[5]*;*

d. *subdivision will avoid, remedy or mitigate adverse effects on the safe and efficient operation of the roading network*[6]*;*

e. *subdivision will contribute to the open space, recreation and reserve needs of the community*[7]*;* and

f. *subdivisions are designed to facilitate an appropriate and co-ordinated ultimate pattern of development having regard to the particular environment within which the subdivision is located.*[8]

2.10 These objectives are, in turn, implemented by corresponding policies, rules and other methods in the Plan chapters summarised above.

2.11 The Plan Change request states that the proposal is "*necessary to achieve the purpose of the Act*[9]", which implies that the site's current Rural Resource Area classification and associated objectives no longer achieve the Act's sustainable management purpose. This conclusion is reinforced in the supporting s32 Evaluation, which finds:

> *In summary, in combination, the objectives enable peoples' and the community's social, economic and cultural wellbeing while addressing the matters in section 5(2)(a) –(c) of the Act, and are the most appropriate to achieve the purpose of the Act.* [10]

2.12 There is no corresponding evaluation of the status quo objectives or any other alternative objectives for achieving the Act's purpose in the notified s32 Report, and there is no express requirement in s32 of the RMA to carry out such an evaluation. It is, however, clear in the request document that the proponent considers the existing objectives are sub-optimal for achieving sustainable resource management.

Plan Change Request: Reasons, Purpose, Evaluations and Provisions

2.13 Part 2 of the RMA's First Schedule sets out various requirements for private plan changes such as PC13. Under Clause 22, any private plan change request is to:

a. explain in writing the purpose of, and reasons for, the proposed change;

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3 Objective 4.3.1
4 Objective 4.3.3
5 Objective 4.3.4
6 Objective 16.3.4
7 Objective 16.3.7
8 Objective 16.3.10
9 Plan Change Request (March 2018). p.9
10 S32 Report (March 2018). p.11

b. contain the required evaluation under s32 of the Act; and

c. describe the anticipated environmental effects of the proposal in such detail that corresponds with the scale and significance of the effects.

2.14 Each of these are discussed further below, followed by a summary of the proposed plan change provisions.

Reasons and Purpose for the plan change

2.15 The request describes the reasons for the proposal as follows:

> *There is demand for more residentially zoned land to accommodate the growing population of Cromwell. The existing population of 5600 is expected to grow by between 5000 (the medium growth scenario) and 8,600 (the high growth scenario) by 2030, and this will require an additional 2000 –3400 dwellings.*
>
> *Under Section 31(1)(aa) of the RMA a function of territorial authorities in giving effect to the purpose of the Act is the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district. Further, Policy Statement –Urban Development Capacity(NPS) directs all local authorities to provide sufficient development capacity for housing and business growth demand.*
>
> *The Requestor's analysis of the future housing demand in Cromwell is that, even if all current proposals for new urban residential development are approved and developed, the urban area of Cromwell is unlikely to provide adequate feasible capacity to meet housing demand in the long term (to 2043). In this period a significant shortfall of urban residential capacity is anticipated, in the order of around 1000 dwellings, unless further land is able to be zoned and developed. If any of the other development proposals do not materialise, the shortfall would be worse and affect the market sooner.*
>
> *As with most smaller New Zealand local authorities experiencing population growth, the preferred method of providing for growth is urban expansion into suitable greenfields areas. Suitable greenfields areas are:*
>
> - *Adjacent to or in reasonable proximity to existing urban areas;*
> - *Able to integrate with available infrastructural services and roading;*
> - *Able to be developed efficiently, in relation to construction costs and servicing;*
> - *Able to co-exist with other land uses in the vicinity;*
> - *Not committed to another activity worth retaining in the long term;*
> - *Not affected by a natural value worth protecting, such as an ecological or a landscape feature, or land of high value for rural production;*
> - *Able to contribute to a quality, compact urban form.*
>
> *The subject land at Sandflat Road possesses all of these attributes and is a suitable greenfields location for Cromwell's urban expansion to assist in meeting the foreseeable demand for new residential stock.*
>
> *Other greenfields areas that possess these attributes are already committed to development, and their rollout to the market will, collectively, not fulfil the demand for new housing stock at Cromwell.*
>
> *The subject land is within the Rural Resource Area and the Rural Residential Resource Area in the DP. Endeavouring to subdivide and construct dwellings on the land by way of one or multiple resource consent applications would be complicated and very*

> *inefficient and inflexible for all parties, including the owner, the Council, future purchasers of properties, and the community. Rezoning the land to a suitable urban zone is the most efficient and effective resource management method for meeting the market demand.*
>
> *Further, in line with wider urban trends in New Zealand and internationally, larger residential sections are giving way to smaller sections and smaller residential units, particularly where a development as a whole can offer more shared amenity including outlook and public open space, and strong pedestrian links. Smaller sections and units tend to be less expensive, thereby contributing to housing affordability. Greater density within the same area is also more efficient for roading and infrastructure. Convenient walkability and cyclability to a neighbourhood centre, open space, and potentially a school, also contributes to the overall "liveability" of a new urban area.*
>
> *The plan change request to rezone this rural land for urban activities will contribute to fulfilling the demand for more –and more affordable –housing stock, in the short to medium term, and will, therefore, benefit Cromwell and the wider Central Otago area.*
>
> *The Requestor therefore seeks to rezone the land to the "River Terrace Resource Area". The RTRA is the product of a comprehensive urban design analysis of the site, taking into account the wider urban trends. Development will be guided by a Structure Plan that delineates the layout of activities, roads, open spaces and development blocks, to achieve the overall vision of an integrated, connected, high quality residential neighbourhood with increased housing supply, variety and choice with a range of densities, typologies, and price options, all contributing to increase affordability of housing in Cromwell.* [11]

2.16 There is no express statement of the plan change purpose in the request or in the s32 Report. This omission would have perhaps been of greater consequence if, for example, the proposal did not include any new objectives – in which case, the plan change's purpose would have been the 'objective' to be assessed against the purpose of the RMA in the s32 Report[12]. As we detail further below, the plan change *does* propose new objectives, and so that scenario is avoided; and it is those objectives (and the Objectives of the operative Plan) that the proposal is assessed against.

2.17 The s32 Report does outline 'goals' for the RTRA, and identifies various options for achieving those goals. For our current purposes, we have inferred that the plan change purpose and the purported goals are generally interchangeable. The s32 Report describes the goals as follows:

> *RTDL's goals for the RTRA are, fundamentally*:
>
> - *To rezone the subject land at Sandflat Road to enable urban expansion and assist with the foreseeable demand for new housing stock, including for retirement living;*
> - *To provide for smaller sections sizes and smaller residential units, to enable more affordability in the housing market, while providing for a high level of residential amenity;*
> - *To provide walkability and cyclability to a neighbourhood centre; and*
> - *To provide the opportunity for a school.* [13]

2.18 We also record Mr Goldsmith's description in the first paragraph of his opening submissions, which stated that "[the] *purpose of the Request for PC13 is to create the River*

[11] Plan Change Request (March 2018), p.3-5
[12] Per s32(6)(b), RMA
[13] s32 Report (March 2018), p.4-5

Terrace residential neighbourhood to provide and enable 900 new, affordable homes to address the housing crisis."[14] We return to the theme of a "housing crisis" and the timeframe it relates to in section 3 of this report.

Section 32 Report

2.19 The proponent's s32 evaluation report is labelled as 'Document 4' in the plan change request bundle. It includes an evaluation of the proposed objectives' implementation of the Act's purpose, and an evaluation of the proposed policies and methods in their implementation of the proposed objectives, including costs, benefits and alternatives.

2.20 The s32 report also finds that the plan change will address the higher order issues in Section 2 of the operative Plan and implement the objectives for Urban Areas in Section 6.[15]

2.21 The s32 Report also includes a discussion of the risk of acting or not acting. Such an evaluation is only required under s32 of the Act where there is uncertain or insufficient information about the subject matter of the plan change provisions. There is no indication in the report that those circumstances exist, but the risk assessment finds that (in summary):

a. there is no significant risk of acting (i.e. proceeding with PC13); and

b. the risks of not acting are an undersupply of housing (with associated economic, social and cultural effects), and an opportunity cost related to the failure to achieve optimal development intensity if the site is otherwise subdivided for rural residential use in line with the Plan's expectations.[16]

2.22 Furthermore, the s32 Report finds that the plan change implements the RPS and PRPS, and is consistent with the relevant Regional Plans and National Policy Statements. [17]

Environmental effects assessment

2.23 'Document 3' of the plan change request includes the assessment of environmental effects. It draws on the various technical expert reports in economic, urban design, transportation, infrastructure, geotechnical, contamination and archaeology disciplines also attached to the plan change request bundle.

2.24 The proponent's effects assessment concludes:

> *(a) The change will provide adequate land for urban expansion of Cromwell, to meet Cromwell's projected rapid population increase.*
>
> *(b) The RTRA reflects accepted industry standards for urban design and will enable a well-designed development that will be functionally linked with and complementary to Cromwell.*
>
> *(c) There are minor but acceptable adverse effects on cultural values. One of the existing historic water races will be protected by its inclusion in an open space reserve area within the masterplan.*

[14] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.1, para 1
[15] s32 Report (March 2018), p.43-44
[16] s32 Report (March 2018), p.43
[17] s32 Report (March 2018), p.44-47

(d) There are no adverse effects on ecological values.

(e) There are no adverse effects on traffic safety and efficiency.

(f) There are no geotechnical conditions and natural hazards that would create adverse risk for the development; any risk can be adequately avoided or mitigated.

(g) There are no soil contamination problems that would cause adverse effects on the residential environment.

(h) Infrastructure can be adequately planned for and implemented, without adverse effects on the existing systems.

(i) There are no adverse effects on landscape values;

(j) Any perceived adverse effects on surrounding properties, including the Motorsport Park, the speedway, rural residential owners and rural activities are adequately avoided or mitigated.

(k) There would be no adverse effects on Cromwell's existing commercial centres.

(l) The RTRA will have various positive effects on the environment.

In broad summary, the proposed plan change will have no significant adverse effects on the environment; any adverse effects have been identified and methods are included in the Change for their avoidance or mitigation. The net effects of the change on the environment are, overall and on balance, positive. [18]

Plan Change provisions

2.25 The additions and edits to the Plan proposed by PC13 are outlined in section 4 of the request document. In summary, these include:

a. alteration to Planning Map 44 to show the zoning of the site as RTRA, and associated amendment to the map legend to match the zoning notation with the zoning name; and

b. create a new Section 20 in the Plan as summarised in the table below[19]:

Section #	Description
20.1	**Introduction** A brief introduction to the RTRA –location, purpose and brief summary of the provisions.
20.2	**Issues** A statement of the relevant resource management issues the RTRA is addressing, including, in summary: • The spatial expansion of Cromwell to meet current and future residential land needs; • Quality, compact urban development; • Maximising infrastructural efficiencies; • Ensuring compatibility with surrounding activities;

[18] Assessment of effects on the environment (1 March 2018), p.14-15
[19] Table adapted from request document, p.6-7

Section #	Description
20.3	**Objectives** There are 10 objectives for the Resource Area, responding to the resource management issues, and to achieve the purpose of the Act.
20.4	**Policies** There are 15 policies to achieve the objectives
20.5	**Methods of Implementation** A summary statement setting out the key methods to achieve the objectives.
20.6	**Principal reasons for adopting the objectives, policies and methods** A summary statement setting out the reasons.
20.7	**Rules** The rules include: • activity rules; • development standards; • assessment matters and criteria; • the Structure Plan and related plans, including the Movement Plan (showing roads, the roading hierarchy and greenways); the Development Parcel Plan; Roading cross sections; the Structure Plan contains two residential areas: the Residential Sub-Area A and B, which differ in their allowable density capacity. There are three "overlays", each of which have their own set of activity rules and development standards: • the Retirement Living overlay; • the Neighbourhood Centre overlay; and • the Education Overlay. Buildings within the overlays require resource consent, to ensure that they are of appropriate design quality. The Neighbourhood Centre Overlay, which provides for neighbourhood-level amenities including potential for shops, café, and community activities (allied with the Retirement Living Overlay) is subject to development standards to ensure that the centre remains small in scale and does not undermine the main business and retail areas of Cromwell. The standards also manage reverse sensitivity effects in relation to surrounding activities including the Motorsport Park, the State Highway and rural production activities. Subdivision is to follow the Structure Plan, the Movement Plan, and, where relevant, the Development Parcel Plans, and road designs are guided by the cross-sections. This will ensure a cohesive quality of subdivision design throughout the Resource Area.
20.8	**Environmental results anticipated** A statement setting out the outcomes expected from implementation of the RTRA provisions.

2.26 The provisions enable the site to be developed for urban activities including medium and higher density residential activity, retirement living, a neighbourhood centre and a potential school, with an associated open space network, walkways, roading and infrastructure.

2.27 Future development is to be guided by a Structure Plan, which establishes a broad pattern of development areas, open spaces, roading links and other spatial information.

2.28 Up to 900 dwellings will be enabled. Proposed standards provide for residential allotments down to a minimum lot size of 160m^2 in parts of the development, ranging up to 1000m^2 in other areas.

Notification and submissions

2.29 The plan change was publicly notified on 19 May 2018. The closing date for submissions was 20 June 2018.

2.30 A total of 417 submissions were lodged with the Council, with 15 of those being received after the closing date.

2.31 A summary of submissions was prepared and subsequently notified for further submissions on 13 October 2018 with the closing date for receiving further submissions being 29 October. Eighty further submissions were received.

2.32 The Council's s42A Report noted several procedural issues relating to the submissions and further submissions, which we address shortly.

2.33 Virtually all of the submissions were in opposition to the proposal, though a small number (<3%) were neutral or supported the proposal with amendments suggested. Without taking away from the finer detail provided in the submissions, the matters raised generally fall into one of more of the following categories:

a. concerns over reverse sensitivity effects for existing rural activities and the Highlands Motorsport Park and Speedway facilities, and including flow-on effects for employees of these activities;
b. opposition to the loss of productive land;
c. preference for rural, industrial or recreational use of the site;
d. no complaints covenants are ineffectual;
e. the site has poor physical connections with Cromwell, including walking and cycling facilities;
f. potential economic effects on existing businesses;
g. insufficient consideration of alternative sites has been carried out / other land in Cromwell is better suited to cater for housing demand;
h. potential effects on the local transport network, including State Highway 6;
i. the proposal has the potential to undermine the strategic value of the proposed Cromwell Masterplan process / township expansion should be planned in a more comprehensive manner;
j. opposition to various policies and rules in the proposed plan change;
k. potential effects on municipal infrastructure capacity and level of service;
l. the proposal does not give effect to the RPS or the PRPS;
m. the proposal does not give effect to the NPS-ET and may result in adverse effects on the operation of the National Grid;

n. the proposal affords unnecessarily high weight to the NPS-UDC as Cromwell is neither a medium nor high growth area;

o. any additional demands for school facilities in Cromwell can be met at existing school sites, and there is no need for additional facilities to be provided on the site; and

p. that the provisions should be amended to include noise reduction / noise insulation requirements for new buildings.

2.34 We discuss these issues (and the submissions underpinning them) in greater detail under our key issue evaluation in Section 3 of this report below.

Pre-hearing directions and procedures

2.35 Prior to the commencement of the hearing, we issued 11 minutes to the parties to address various administrative and substantive matters. These minutes, and the others we issued through the course of the hearing and deliberations processes are available on Council file.

2.36 In summary, these minutes addressed the following:

a. **Minute 1** (7.11.2018) – this provided a brief summary of the hearing process and including our request for further expert assessments to be provided in relation to noise effects from the Highlands Motorsport Park, and to various urban design matters not addressed in the original plan change request;

b. **Minute 2** (13.11.2018) – advised the parties of a request we received from HNZ for the additional noise assessment sought in Minute 1 to include noise effects from existing horticulture activities in the area, and our agreement that the request was appropriate;

c. **Minute 3** (19.11.2018) – recorded that the proponent drew our attention to its submission on the plan change, which included an independent expert acoustic assessment of the noise effects from Highlands Motorsport Park and surrounding horticulture activities, which we accepted as satisfying our request for additional noise assessment in Minute 1;

d. **Minute 4** (5.12.2018) – advised that the proponent had provided the requested additional urban design assessment and attached the assessment for all parties to review – we also confirmed our view that sufficient information was available for the proposal to proceed to hearing in 2019;

e. **Minute 5** (21.12.2018) – provided a brief update to the parties ahead of the end-of-year break advising that the s42A report was expected in late February 2019, that parties should take opportunities to confer and meet in the interim, and that a hearing timetable would be set down after receipt of the s42A Report;

f. **Minute 6** (13.3.2019) – advised of the proponent's progress with pre-hearing meetings; that pre-hearing acoustic conferencing would be arranged prior to the start of the hearing; that the delivery of the s42A Report was delayed until 22 March; that the hearing would be held on 10-14 June 2019; and included a timetable for the exchange of evidence and expert conferencing in the March-May period;

g. **Minute 7** (3.4.2019) – advised the parties of a request from the proponent to extend the timetable for delivery of its and submitters' evidence on transportation matters, and our granting of that request;

h. **Minute 8** (23.5.2019) – circulated memoranda we received from the proponent regarding witness conferencing, and recommended the proposed conferencing proceed with some refinements to the particulars – we also requested conferencing on matters relating to the supply of zoned and serviced residential land in Cromwell, anticipated medium-and-long-term housing demand figures, and the relevance of the NPSUDC;

i. **Minute 9** (28.5.2019) – advised all parties of a formal request from a media company to film the hearing proceedings, and sought clarification from parties about their preference as to whether the request for filming should be granted by us;

j. **Minute 10** (29.5.2019) – provided some additional clarification about the scope of scheduled witness conferencing and about the ability for all parties to have sufficient time to present to us during the hearing; and

k. **Minute 11** (4.6.2019) – confirmed that we declined the request for the proceedings to be filmed, noting that many of the parties we heard from on the matter following Minute 9 were not in support of filming.

2.37 All reports and evidence were made available to all parties in accordance with the proposed timetable – including the allowance for additional time for transportation evidence to be prepared as canvassed in Minute 7.

2.38 Joint witness statements of acoustic and planning experts were also circulated to the parties, having been prepared on 29 May and 5 June 2019 respectively.

2.39 The final – and, we note, very helpful – piece of information we received during the pre-hearing sequence was a joint memorandum of Counsel for the proponent, Highlands Motorsport Park, The Council, RRDC, McKay Family Trust and 45 South. The purpose of the memorandum was to confirm the relevant decision-making requirements for us as captured in the *Colonial Vineyard Ltd v Marlborough District Council* decision of the Environment Court in 2014, with relevant updates to capture legislative change to the RMA over the ensuing period.

2.40 We return to those requirements at the outset of Section 3 below as they are fundamental to our evaluation.

The Hearing

2.41 The hearing commenced at 9:30am on Monday 10 June 2018 in the Cromwell Presbyterian Church on Elspeth Street.

2.42 At the outset of proceedings, we outlined the manner in which we expected the hearing to be conducted, and called for appearances and introductions from the attendees. We also set out a range of procedural matters and outlined our role and the relevant statutory matters framing our consideration of the proposal.

2.43 During the course of this first week of hearings, a key procedural matter arose in relation to the Cromwell Spatial Plan, its relevance to our decision-making and the process for our

receiving evidence about the Spatial Plan in a timely and fair manner to all parties involved.

2.44 The issue arose when we were hearing presentations from HMS and CSCC. We were told that, following a master plan process, the Council had adopted a new Spatial Plan for Cromwell the week prior and witnesses for the submitter intended to present to us on the matter despite it not being originally included in pre-circulated evidence.

2.45 Mr Goldsmith took exception to that proposed presentation, noting that it would introduce an issue of procedural unfairness for the proponent. We were compelled to adjourn at that time to consider the best course of action. We then provided a preliminary verbal finding on the matter at the outset of proceedings on Friday 14 June.

2.46 We ultimately decided to accept the Spatial Plan and to hear presentations on it, allowing any interested party to address it at a reconvened hearing. We stated at that time that the weighting of the Spatial Plan would be a matter for our deliberations.

2.47 Over the course of the proceedings, we heard from the following people:

Proponent

- Warwick Goldsmith, Legal Counsel
- Chris Meehan, Director of RTD
- Marc Bretherton, Director of Winton Group (under which RTD is wholly owned subsidiary)
- David Tristram, Registered Property Valuer
- Stephen Skelton, Landscape Architect
- Reece Hills, Soil Consultant
- Natalie Hampson, Economic Consultant
- Alistair Ray, Urban Design Consultant
- Jon Styles, Acoustic consultant
- Andy Carr, Consultant Engineer - Transportation
- Jeff Brown, Planning Consultant

Council s42A Advisors

- David Whitney, Planning Consultant
- Andrew Metherell, Consultant Engineer - Transportation

Submitters

- Alan McKay – local resident
- Richard Shaw – Senior Planner for NZTA
- Matthew Gatenby- Principal Engineer for NZTA
- Bridget Irving – Counsel for Highlands
- Josie Spillane – Chief Operating Officer for Highlands
- Aaron Staples – Acoustic Consultant for Highlands
- Michael Copeland – Economist for Highlands
- David Mead – Planning & Urban Design Consultant for Highlands
- Kate Scott – Consultant Planner for Highlands
- Andrew Erskine – Speedway President
- Stephen Chiles – Acoustic Consultant for Public Health South
- Louise Wickham – Air Quality Specialist for Public Health South

- Tom Scott – Health Protection Officer for Public Health South
- Megan Justice – Consultant Planner for Public Health South
- James Dicey – viticulturalist and local resident
- Greg Wilkinson – local resident
- Gary Kirk & Ali Timms – local residents
- James Gardener-Hopkins – Counsel for RRDC
- Simon Giles – local resident
- Wally Sandford – local resident
- Rachel McClung – Policy Advisor for HortNZ
- Carl Muller – Agricultural Specialist for HortNZ
- William Reeve – Acoustic Consultant for HortNZ
- Earnsey Weaver – Horticultural Specialist for HortNZ
- Lynette Wharf – Consultant Planner for HortNZ
- Michael Jones – Director of Suncrest Orchard Ltd
- Walter Denley – Consultant Planner for DJ Jones Family Trust & Suncrest Orchard
- Alastair Logan – Counsel for McKay Family Trust & 45 South Group of Companies
- Tim Jones – Chief Executive Officer of 45 South Group of Companies
- Jan Caunter – Counsel for CODC, Greg & Vivienne Wilkinson
- Edward Guy – Consultant Engineer for CODC, Greg & Vivienne Wilkinson
- Marylin Brown – Consultant Planner for CODC, Greg & Vivienne Wilkinson
- Peter Brass – local resident
- Carolyn Squire – local resident
- Juliet Walker – local resident
- Rex Edgar – local resident
- Steve Lyttle – local resident
- Trevor Tinworth – local resident
- Richard Ford – local resident
- Ian Anderson – local resident
- Julene Ludlow – local resident
- Graham Williamson – local resident
- John Lister – local resident
- Ron Stillwell – local resident
- Hillary Lenox – local resident
- Irene Wallace – local resident
- Shirley Calvert – local resident
- Tim & Valda Muller – local residents
- Werner Murray – local resident
- Robin Dicey – local resident
- Matthew Dicey – local resident

2.48 A tabular presentation of these appearances giving submitter names and witnesses corelated to submitter reference numbers is given in Appendix 1 to this report.

Hearing adjournment and reconvening

2.49 We adjourned the hearing on Friday 14 June, noting verbally at the time that we would be advising the parties subsequently of a date to reconvene the proceedings.

2.50 We then issued **Minute 12** on Tuesday 18 June, confirming that the hearing would be reconvening on 2-5 July to:

a. hear from several submitters and witnesses who were not able to be called during the first week;

b. allow the Council and other interested parties to present evidence on the Cromwell Spatial Plan; and

c. provide opportunity for the Proponent to present amended plan provisions, and an updated section 32 evaluation.

2.51 Having completed the reconvened sessions, we conducted our final site and locality visits (having previously undertaken such visits prior to and during the hearing) and thanked all parties in attendance and advised we would commence our deliberations presently.

Post-hearing

2.52 Our first action after adjournment was to issue **Minute 13**, which indicated to all parties that the only remaining information we required was the proponent's closing statement from Mr Goldsmith. We also responded to procedural matters arising during the hearing, including:

a. criticism by some submitters about the substance of the proponents' updated s32 evaluations of amended provisions; and

b. the request by Mr Whitney that we formally address an accusation of bias made by Mr Goldsmith at the outset of the hearing.

2.53 We indicated that the former was a matter for the proponent to address in closing if it chose to, but that we did not require a response. With respect to the latter, we noted that Mr Goldsmith apologised and withdrew his accusation towards Mr Whitney on the final day of the hearing. That was the end of the matter from our perspective and we noted this in Minute 13.

2.54 Having received the closing submissions from Mr Goldsmith and the appended s32AA evaluation from Mr Brown, out of fairness we invited the submitters to provide us any comment on the latter in **Minute 14**. We clarified that this was not an invitation to provide comments beyond the proponent's s32AA evaluation, including on the substance of matters to which the evaluation related.

2.55 We were promptly advised that the timeframes set in Minute 14 for the receipt of comments from submitters was not achievable for some parties. We issued **Minute 15** immediately to extend that deadline by 2 working days.

2.56 **Minute 16** acknowledged that we received responses to Minute 14 from submitters and that our deliberations would address those.

2.57 Following this, we completed our deliberations and issued **Minute 17** to formally close the hearing on Thursday 5 September.

Procedural Ruling - Late & Invalid Submissions

2.58 The final aspect of the hearing we capture here for the formal record relates to the late and invalid submissions received on the plan change.

2.59 Mr Whitney addressed the matter of late and invalid submissions in his s42A report[20], advising that:

a. 15 of the 417 submissions received on the plan change were received within the week following the closing date for submissions;

b. 3 of those 15 late submissions were incomplete;

c. 1 of the 402 submissions received on time was also incomplete;

d. 10 further submissions did not identify the original submission(s) to which they relate.

2.60 Mr Whitney recommended that a waiver be granted for the 12 complete late submissions[21], but that the remainder of the submissions and further submissions described above (and specifically identified in Mr Whitney's s42A report) be treated as invalid for failing to meet the requirements for submissions under the RMA.

2.61 Section 37 of the RMA sets out that the Council may either extend a time period specified in the Act (in this case the time period for receiving submissions on a proposed plan) or to grant a waiver for failure to comply with such timeframes. Section 37A then sets out the requirements for waivers and extensions if they are to be granted – in this instance, under s37A(1) and (2), which state:

> *[1] A consent authority or local authority must not extend a time limit or waive compliance with a time limit, a method of service, or the service of a document in accordance with section 37 unless it has taken into account—*
> *(a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and*
> *(b) the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and*
> *(c) its duty under section 21 to avoid unreasonable delay.*
>
> *[2] A time period may be extended under section 37 for—*
> *(a) a time not exceeding twice the maximum time period specified in this Act; or*
> *(b) a time exceeding twice the maximum time period specified in this Act if the applicant or requiring authority requests or agrees.*

2.62 Taking these matters into account at the hearing, we satisfied ourselves that no party would be directly (adversely) affected by waiving the time limit to receive the 12 complete late submissions, the interests of the community in achieving an adequate assessment of effects have been considered, and unreasonable delay is avoided by allowing the submissions to be received. Moreover, we observed that the submissions were received considerably less than 20 working days after the closing date of submissions, and so Clause [2] is met. We also note that the proponent was not opposed to Mr Whitney's recommendations on this matter.

2.63 Accordingly, we made a ruling to accept the 12 complete late submissions. We also adopted Mr Whitney's recommendation regarding the invalidity of submissions 81, 82, 130 and 174 and further submissions 501, 523, 524, 543, 544, 551, 552, 574, 575 and 580.

[20] s42A Report (21 March 2019), p.1-2
[21] Submissions 3, 60, 84, 88, 134, 152, 171, 181, 235, 247, 339 and 394

3.0 EVALUATION OF ISSUES

Overview

3.1 For the purposes of this evaluation, we have grouped our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the *matters*[22] to which they relate – rather than assessing each issue on a submitter-by-submitter basis.

3.2 This approach is not to downplay the importance of the input from submitters; to the contrary, their input has been invaluable in shaping the grouping of issues and for our consideration of those matters. However, we note that there was a high degree of commonality among the submissions on key issues and we consider it will be to everyone's benefit for our decision to be as tightly focused on the key issues as possible.

3.3 To that end, we have organised our discussion of issues as follows:

- **ISSUE 1:** The need for the plan change and positive effects
- **ISSUE 2:** Health and nuisance effects
- **ISSUE 3:** Reverse sensitivity
- **ISSUE 4:** Integration with existing township
- **ISSUE 5:** Rural character, amenity and landscape effects
- **ISSUE 6:** Loss of productive land
- **ISSUE 7:** Transportation network – efficiency and safety
- **ISSUE 8:** Services – capacity and levels of service
- **ISSUE 9:** Plan change 'mechanics'
- **ISSUE 10:** Other matters

Evaluation Preamble – Statutory Framework

3.4 Before formally recording our consideration of the above issues, we summarise here the relevant statutory matters that frame our evaluation. As noted above, these matters were helpfully summarised for us in the joint memorandum of counsel circulated on 8 June[23]. They have been derived from the Environment Court's *Colonial Vineyards* decision[24], and include the following considerations:

General Requirements

a. the District Plan should be designed in accordance with[25], and assist the Council to carry out, its functions[26] so as to achieve the purpose of the Act;[27]

b. when changing the District Plan, the Council must:

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22 Clause 10(2)(a) of Schedule 1, RMA sets out that a plan change decision may address submissions by grouping them according to either the provisions of the plan change to which they relate, *or* to the matters to which they relate.
23 Joint memorandum Goldsmith, Irving, Caunter, Gardner-Hopkins & Logan 'Statutory Tests for a plan change' (8 June 2019),
24 ENV-2012-CHC-108, [2014] NZEnvC 55
25 s74(1), RMA
26 s31, RMA.
27 ss 72, 74(1), RMA.

i. give effect to any NPS[28], the NZCPS[29] or any RPS[30];[31]

ii. have regard to any *proposed* RPS;[32]

iii. have regard to any management plans and strategies under any other Acts and to any relevant entry on the NZ Heritage List and to various fisheries regulations (to the extent relevant), and to consistency with plans and proposed plans of adjacent authorities; [33]

iv. take into account any relevant planning document recognised by an iwi authority;[34]

v. not have regard to trade competition;[35]

vi. be in accordance with any regulation;[36]

c. in relation to regional plans:

i. the District Plan must not be inconsistent with an operative regional plan for any matter specified in s30(1) or any water conservation order;[37] and

ii. shall have regard to any proposed regional plan on any matter of regional significance;[38]

d. the District Plan must also state its objectives, policies and the rules (if any) and may state other matters;[39]

e. the Council has obligations to prepare an evaluation report in accordance with section 32 and have particular regard to that report;[40]

f. the Council also has obligations to prepare a further evaluation report under s32AA where changes are made to the proposal since the s32 report was completed;

Objectives

g. the objectives of the Plan Change are to be evaluated to the extent which they are the most appropriate way to achieve the Act's purpose;[41]

Provisions

h. the policies are to implement the objectives, and the rules (if any) are to implement the policies;[42]

i. each provision is to be examined as to whether it is the most appropriate method for achieving the objectives of the TRMP, by:

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28 National Policy Statement
29 New Zealand Coastal Policy Statement
30 Regional Policy Statement for the Tasman Region
31 s75(3)(a)-(c), RMA.
32 s74(2), RMA.
33 s74(2)(b)-(c), RMA.
34 s74(2A), RMA.
35 s74(3), RMA.
36 s75(1)-(c), RMA.
37 s75(4), RMA.
38 s74(1)(f), RMA.
39 s75(1)-(2), RMA.
40 Schedule 1, Part 2, Clause 22, RMA.
41 s32(1)(a), RMA.
42 s75(1), RMA.

i. identifying other reasonably practicable options for achieving the objectives;[43]

ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives[44], including:

a) identifying and assessing the benefits and costs anticipated, including opportunities for economic growth and employment opportunities that may be provided or reduced;[45]

b) quantifying those benefits and costs where practicable;[46]

c) assessing the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions;[47]

Rules

j. in making a rule, the Council shall have regard to the actual or potential effect on the environment of activities, including (in particular) any adverse effect;[48] and

Other Statutes

k. the Council may be required to comply with other statutes

3.5 Importantly, we observe here that the further evaluation under s32AA is required only in respect of any changes arising since the Plan Change was first notified. We note that this s32AA evaluation must contain a level of detail that corresponds to the scale and significance of the effects that are anticipated from the implementation of the provisions as amended.

3.6 In considering all of the matters above, we record that our decision is based upon our consideration of the following documents:

a. the notified Plan Change and s32 evaluation;

b. the submissions and further submissions received;

c. the Council s42A report;

d. the evolving s32AA evaluations provided by Mr Brown over the course of the hearing; and

e. the statements/presentations from all parties appearing before us.

3.7 As we emphasised at the hearing, it is important that all parties understand that it is not for us to introduce our own evidence on these ten issues listed above, and we have not done so – rather, our role has been to:

a. establish that all relevant evidence is before us (or where it isn't, consider whether we should commission additional reports or information[49]); and

[43] s32(1)(b)(i), RMA.
[44] s32(1)(b)(ii), RMA.
[45] s32(2)(a), RMA.
[46] s32(2)(b), RMA.
[47] s32(2)(c), RMA.
[48] S76(3), RMA.
[49] Under s 41C(4) of the Act.

b. test the evidence of others, and to determine the most appropriate outcome based on the views we consider best achieve sustainable management.

3.8 It is that dual role to which the following evaluation addresses. Before doing so, and as a closing comment to this preamble, we observe that s32AA(1)(d)(ii) enables our further evaluation reporting to be incorporated into this report as part of the decision-making record. To this end, our evaluation of each issue has been structured to satisfy the evaluation report requirements of s32AA as outlined above. In other words, for each issue we have considered the merits of any proposed alterations to the notified provisions (introduced primarily by Mr Brown) to assist in ascertaining the appropriateness of the provisions.

Issue 1: The need for the plan change & positive effects

Issue identification & evidence

3.9 In the plan change documentation and in its presentations and evidence at the hearing, the proponent outlined several drivers for the plan change and positive effects that would be realised if approved. Perhaps the most notable purported driver for the proposal was the presence of a so-called housing crisis in Cromwell, though other factors also contributed to the case in favour of the plan change.

3.10 The thrust of submissions in support of the plan change (including support by the proponent as a submitter) was:

a. support for the development pattern providing a viable transport network and mode choice options for new residents, including any necessary upgrades to the adjoining local road and State Highway network;

b. that the plan change provides the most suitable option to accommodate the rapid growth in Cromwell, including cost-effective integration with infrastructure and provision of affordable housing; and

c. the site is more suitable for development than more visually prominent hillside areas.

3.11 A number of submitters refuted these benefits as we detail further below.

3.12 On the above basis, in Minute 8 we requested that a stream of conferencing be undertaken on the following matters:

a. Capacity for Growth (supply of residential land) – and in particular to determine if there was any consensus between the experts on the availability of land zoned or otherwise for housing in Cromwell.

b. Housing Demand – and in particular to see if there was any agreement on the growth projections for the medium term (up to 2028) and long term (up to 2043/48), and on the rate of growth during those periods.

c. NPS-UDC – and in particular the relevance of the NPS-UDC to PC13; and if relevant, the extent to which PC13 would give effect to it.

3.13 Distilling the key themes that emerged from the joint witness statements arising out of the above expert conferencing, along with the evidence produced over the course of the hearing, we have organised this topic to assess whether there is there a demonstrable housing crisis in Cromwell, and if so whether PC13 is needed to address it. The issue is broken down into the following components:

a. is there a housing supply shortfall over the short, medium or long term;

b. is there a particular issue with housing affordability;

c. what is the relevance of the proponent's focus on the provision of warm, healthy homes;

d. what weight should be applied to the Cromwell Masterplan Spatial Framework and what is its role; and

e. what is the relevance of the NPS-UDC?

3.14 Each of these components are detailed in turn below.

Supply shortfall?

3.15 As mentioned above, in Minute 8 we requested that that an additional stream of conferencing be undertaken on capacity for growth (supply of residential land and housing demand).

3.16 We note firstly that the proponent's case on the supply and demand dynamics evolved over the course of the hearing. In his opening submissions, for example, Mr Goldsmith told us that the purpose of the plan change is to meet the housing crisis in Cromwell. He also submitted that there are no other developments in train to deliver new homes over the next 4 years.[50]

3.17 In his closing submissions, Mr Goldsmith noted that much was made about the term 'housing crisis' during the hearing, and he offered his interpretation of what that term entails. He submitted that it means an existing or imminent severe shortage of residential housing at the more affordable end of the price range. Mr Goldsmith listed various anecdotal information sources and evidence presented at the hearing and concluded that there comes a point when the accumulation of such indicators results in the establishment of fact – in the context of the plan change, that fact being that Cromwell is facing a housing crisis however one defines it.[51]

3.18 In his evidence, Mr Meehan explained that it is difficult to extract meaningful data about growth projections. He explained that he personally relies on guidance from real estate trends and figures, and anecdotal evidence such as newspaper articles and social media – some of which he attached to his evidence. Mr Meehan also added the view that the supply and demand dynamics of Cromwell are linked with those of Queenstown and Wanaka. He described River Terrace as a "*build it and they will come*" situation, and he was confident all 900 homes would sell quickly once on the market.[52]

3.19 As noted previously, we issued Minute 8 in an attempt to get some assistance from the parties around the supply and demand dynamics relevant for Cromwell. Our preference was for all relevant experts for the proponent, Council and submitters to confer so as to achieve as much commonality as possible on matters of fact and opinion that we could

[50] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.1 & 4, para 1 & 19
[51] Closing submissions of W Goldsmith (29 July 2019), p. 12-13, para 40-41.
[52] Meehan EiC (23 April 2019)p.20-22, para 88-93

rely upon. While effort was made by some parties, unfortunately, not all parties we would have expected to have participated were in attendance at conferencing.

3.20 Stepping through the relevant responses we received on the minute, we firstly note Ms Brown's memo from 31 May 2019 which updated her evidence relating to forecast household demand, and expected yields (supply) for existing zoned land and Cromwell Masterplan areas.

3.21 Mr Mead and Ms Hampson helpfully conferred on the matter, and while they were not entirely aligned on the feasibility and delivery for particular development areas in the town, they generally agreed with Ms Brown's estimate that the total growth demand figure for Cromwell over the long term (30 years) is around 2,500 households.[53]

3.22 Ms Hampson addressed the matter further in her evidence summary presented at the hearing. She gave the view that existing residential supply will cater for demand to 2028, with infill providing enough supply to 2033. Ms Hampson's view was accordingly that PC13 can be seen as addressing short to medium term shortfall based on realistic assumptions about the yield of greenfield sites and redevelopment potential.[54]

3.23 Ms Hampson also helpfully warned us against confusing the concepts of 'capacity' and 'supply'. In this context, she gave the view that the application site, if consented, would be "development-ready" and able to provide supply over the short-medium term. Ms Hampson was less certain about the speed with which other developments in and around Cromwell are capable of providing capacity are able to convert that potential to supply. [55]

3.24 Relatedly, it was Ms Hampson's view that capacity provided by the Masterplan Spatial Framework which requires future rezoning cannot be relied upon with any certainty, just as plan-enabled capacity cannot always be relied upon, even in the face of strong demand.[56]

3.25 Addressing his speaking notes at the hearing, Mr Mead expressed a slightly different view to Ms Hampson. In his opinion, it is reasonable to take into account land that requires rezoning for the purposes of establishing long-term capacity. Importantly, Mr Mead noted, the anticipated life of a District Plan is 10 years. This translates to at least two plan reviews over the next 30 years, each affording formal opportunity to respond to market changes and population dynamics through zoning and plan provisions.

3.26 Mr Mead also told us that providing for additional long-term supply over the minimum required amount required via a short-term source may be beneficial; however, the location must be right in the context of all available options.

3.27 Ms Brown's summary statement outlined reasons why she believed Ms Hampson's growth projections are too conservative. These included Ms Brown's assumptions that there will be a greater uptake of infill housing than Ms Hampson believes will occur.[57] Ms Brown's view was that the proposed growth options shown in the Masterplan Spatial Framework will provide sufficient capacity for the next 30 years' growth in areas that are more appropriate than the PC13 site.

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53 *Joint statement arising from expert conferencing – dwelling capacity – Plan change 13* (5 June 2019)
54 Hampson evidence summary (10 June 2019) p.7-8, para 26-28
55 Hampson evidence summary (10 June 2019) p.8-9, para 30
56 Hampson supplementary evidence (28 June 2019) p.4, para 11
57 Brown, M evidence summary (30 June 2019) p.7-8, para 40-53

3.28 In his s42A Report, Mr Whitney noted the Council's efforts to address housing supply over the short, medium and long term through the Masterplan Spatial Framework. He concluded that:

> *Our*[58] *conclusion is that while the plan change is intended to respond to demand for residential land at Cromwell to help address an estimated shortfall in long term capacity; such a response can be achieved, in large part, by utilising other land currently in the Rural Resource Area that is located within the urban limits of Cromwell; and within other areas (or through greater infill) as may be identified in the outcome of the Cromwell Masterplan process.*[59]

3.29 Mr Guy for the CODC (as submitter) also addressed us on the matter of the purported housing crisis. In his view, there is limited tangible evidence to support a conclusion that a crisis exists, and his own professional investigations indicate that the market is responding to demand currently.

Affordability issues?

3.30 Mr Guy also spoke to the matter of affordability. He said that due to large section sizes and a lack of housing diversity there are limited housing choices in the Cromwell market. Mr Guy added that house prices are increasing, driven in a large part by significant price increases in neighbouring Queenstown Lakes District. The increasing unaffordability of housing in Cromwell is having a flow-on effect into the social fabric of the community, with financial pressures and increased workloads seeing people leave the district, impacting the community's quality of life, and increasing mental health issues.

3.31 In her supplementary statement, Ms Scott addressed us on her role and experience as a trustee on the Central Otago Community Housing Trust. She noted the Trust has commissioned a report to provide some evidence about housing needs and affordability, but that the work has not been completed to date. In the absence of such work, her view was that it is premature to say there is an existing affordability crisis – though she added her observations that there has been a decrease in affordability in Central Otago in recent years.[60]

3.32 Ms Scott also addressed the affordable housing delivery in her evidence. In her view, affordable housing solutions require mixed delivery methods. While private developments such as River Terrace may play a role in that mixed model, Ms Scott said it was her experience that private development alone is not effective.[61]

3.33 She also commented on a shortcoming of affordable housing provided to an open market, versus such housing being provided by non-profit entities – namely, the relative difference in enduring affordability. That is, affordable market housing is only affordable to the first purchaser, with subsequent sales being subject to regular market forces. Non-profit or trust-based models provide solutions to this shortcoming according to Ms Scott.[62]

3.34 As with his evidence on growth projections, Mr Meehan referred to anecdotal sources that point toward housing affordability problems in Cromwell. For example, he quoted an article by Mayor Cadogan which expressed the Mayor's view that (among other matters):

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58 Presumably Mr Whitney's use of "our" is referring to the opinion of Johnston Whitney – the company Mr Whitney is a Director of.
59 s42A Report (21 March 2019), p.10
60 Scott supplementary evidence (28 June 2019) para 3.1-3.8
61 Scott supplementary evidence (28 June 2019) para 4.1-4.3
62 Scott supplementary evidence (28 June 2019) para 4.4-4.5

a. the cost of housing in parts of Central Otago is the biggest single issue of importance to the district;

b. the lack of supply of the right houses is a significant issue in this respect;

c. relatedly, big houses on bigger sections are not affordable to many seeking to live in the district and as yet, the market has mostly failed to provide other options; and

d. the result is a situation where the market is not meeting the demand, resulting in soaring costs for purchasers and renters alike.[63]

3.35 To address the affordability issues, Mr Meehan explained how the proposed development at River Terrace would enhance affordability in the Cromwell market. In his evidence summary, Mr Meehan committed to delivery of at least 200 freehold titles with fully constructed and landscaped houses at prices between s 9(2)(b)(ii) and a further 200 residential lots in the range of s 9(2)(b)(ii) as part of the development's first stage.[64]

3.36 Mr Brown explained to us how the proposed rule revisions adopted by the proponent would assist with the realisation of Mr Meehan's commitment. While he outlined a variety of ways in which affordable housing could be achieved, he concluded that introducing a prohibited activity rule for development that failed to meet the prescribed price points within three years would be the most effective method. This, we observe, would only enable development where the financial standards are met – there would be no alternative available to an applicant via a resource consent process.[65]

3.37 Mr Goldsmith submitted that the delivery of a large quantity of new, affordable houses and sections which are desperately needed is the single overwhelmingly positive outcome of PC13.[66] In his closing, Mr Goldsmith added that the essential point regarding affordability is the contention that the proponent can and will supply residential product to the market within price ranges cheaper than almost all, if not all, other existing and future residential property developers in Cromwell.[67]

Warm, healthy homes

3.38 At several junctures, Mr Meehan identified the benefits of the plan change providing warm, healthy homes. For example, told us:

> *46 PC13 is intended to benefit people who do not already own houses because they cannot afford them, plus possibly some of the 87% of Cromwell residents living in houses built before 2000 who live in old and inadequately insulated houses (according to Public Health South).*
>
> *47 My objective is to give those people the choice of purchasing a new, warm, well insulated house at a price they can afford, or a residential lot on which they can build a small, new, warm, well insulated house which they can afford to build. I believe it should be their choice as to whether or not to purchase a River Terrace section or house.*[68]

63 Meehan EiC (23 April 2019)p.21, para 90
64 Meehan evidence summary (10 June 2019) p.2, para 5
65 Brown, J Supplementary evidence (21 June 2019) p.7, para 30
66 Opening legal submissions of Warwick Goldsmith (10 June 2019), p.1 & 4, para 48
67 Closing submissions of W Goldsmith (29 July 2019), p. 11, para 38.
68 Meehan evidence summary (10 June 2019) p.10, para 46-47

3.39 Mr Goldsmith reinforced this point in his closing, relating it also to the noise effects anticipated by future residents at River Terrace. He submitted that if there is a choice between a new warm house in an environment which is noisy at times on the one hand, and an old cold house or no house on the other hand, that choice should be left to individuals to make and should not be made for them by somebody else who is not in their situation.[69]

3.40 We note also Mr Goldsmith's answers to our questions on the matter of warm, healthy homes where he was critical of Public Health's participation in this plan change process given a presentation by the Medical Officer of Health to the Council earlier in the year and the contribution that old, cold houses make toward adverse health outcomes.

Weighting and role of Masterplan Spatial Framework?

3.41 We heard from several parties about the role of the Masterplan Spatial Framework and the weight that should be applied to it. An important fact to clarify about the Spatial Framework is that it identifies land to provide for short, medium and long-term growth of Cromwell; however, the PC13 site is not one of the identified areas to provide that growth.

3.42 Ms Caunter, Mr Guy and Ms Brown all addressed various aspects of the Spatial Framework, including the timeframes, consultation, research base, and contents. This collective body of information was extensive and we will not repeat it here.

3.43 Suffice it to say, the Spatial Framework document has been recently produced with input from the community and includes a co-ordinated approach to managing growth in Cromwell over the next 30 years. The document sets an overall vision for Cromwell, strategic directions to achieve the vision, and a spatial plan, being a key delivery mechanism. In its introduction, the Spatial Framework includes the following overview:

> *The Cromwell 'Eye to the Future' Masterplan provides a clear framework for the future growth of Cromwell from a town of around 5,000 people to approximately 12,000. The Masterplan is guided by a Vision that aims to support sustainable growth of the town while retaining aspects of Cromwell's 'country town' character and the 'World of Difference' values, which are highly valued by the community.* [70]

3.44 At a broad level, we heard from several submitters who demonstrated a high level of community 'buy-in' to the Spatial Framework, with some noting it was a catalyst for their involvement in the PC13 process.

3.45 We also heard from submitters and their representatives on more specific aspects of the Spatial Framework, the weighting we should afford it and its relationship with PC13.

3.46 For example, Mr Logan's submissions were that (in summary):

a. whereas the Masterplan Spatial Framework is the very kind of strategic and coordinated approach to growth management anticipated by the RPS, the plan change is the type of ad hoc development the RPS seeks to avoid;

b. the plan change is the antithesis to the compact, consolidated township form preferred in the Framework; and

[69] Closing submissions of W Goldsmith (29 July 2019), p. 36, para 150.
[70] Cromwell 'Eye to the Future' Masterplan Spatial Framework. Stage 1: Spatial Plan (Adopted 29 May 2019)

c. to approve the plan change would be to completely frustrate the Masterplan exercise and the associated community aspirations – as demonstrated by the overwhelming opposition to the plan change from submitters.[71]

3.47 Mr Gardner-Hopkins similarly spoke to the community buy-in to the Masterplan exercise and its relevance to the consideration of the plan change. In response to the question of the Framework's status or otherwise as a statutory document, Mr Gardner-Hopkins noted the document is not a planning instrument under the RMA, unlike an RPS or NPS. However, he submitted that to disregard it or give it no weight would be a failure of law.[72]

3.48 Mr Gardner-Hopkins added that the Spatial Framework is clearly relevant to the plan change and should be given considerable weight as: it is very recent; it addresses critical issues relevant to the plan change; while not complete, is advanced and has a finalised spatial dimension; is the result of significant community participation; and can be taken as strong and direct evidence of the community's wishes.[73]

3.49 Ms Justice made similar observations in her supplementary evidence, where she said:

> *2.3 In my view, the Cromwell Spatial Plan is relevant to the consideration of PC13. While it is a non-statutory document, it is recent, was developed with input from the community and addresses the same matters of residential and business capacity that are the primary activities enabled by PC13. I consider that the Cromwell Spatial Plan assists in enabling the evaluation of PC13 under s32 of the Resource Management Act 1991 ("the Act" or "the RMA"), in terms of examining the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the Act.* [74]

3.50 Mr Mead, in his verbal presentation, also gave the view that the Spatial Framework is relevant; and while it is not an RMA document, some weight should be afforded to it in the consideration of the options for development capacity.

3.51 Mr Brown expressed the view that the questions of applicability and weighting to be afforded to the Framework depends on the extent to which it:

a. can be shown to reflect the wishes of the community;

b. has been subject to robust examinations of alternatives; and

c. identifies practical methods to achieve what it wants to achieve.[75]

3.52 Stepping through each of these factors, Mr Brown concluded that very little, if any weight should be afforded to the Spatial Framework. He further justified that position by noting that it fails to contain any reference to, or broad assessment against, the key RMA matters in the RPS and District Plan.[76]

3.53 Mr Goldsmith noted that the Spatial Framework and PC13 are not mutually exclusive – that is, PC13 can be implemented in conjunction with other greenfield and infill development such that the Masterplan aspirations are achieved. He noted in particular the aspiration of affordable housing in the document.[77]

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71 Legal Submissions of A J Logan (2 July 2019), p.13-14, para 74-84
72 Legal Submissions of James Gardner-Hopkins (13 June 2019), p.8, para 29
73 Legal Submissions of James Gardner-Hopkins (13 June 2019), p.9, para 34
74 Justice supplementary evidence (28 June 2019) p.2 para 2.3
75 Brown, J Supplementary evidence (28 June 2019) p.2, para 7
76 Brown, J Supplementary evidence (28 June 2019) p.2-4, para 8-16
77 Closing submissions of W Goldsmith (29 July 2019), p. 29, para 117-119.

3.54 That said, Mr Goldsmith's submission was that little, if any weight can be placed on the Spatial Framework. He drew on several authorities in reaching that position, on the basis that non-statutory documents are not subject to the same rigour as the Schedule 1 RMA process. Mr Goldsmith also pointed to shortcomings in the cases referred to by Mr Gardner-Hopkins as to their transference to the plan change context. Mr Goldsmith also outlined his reasons for concluding that PC13 has been subject to a more rigorous examination than the Framework.[78]

Relevance of NPS-UDC?

3.55 The final matter we outline here in this section is the relevance of the NPS-UDC to our consideration of the proposal. As with the other sub-topics outlined above, this was an additional matter where we heard differing views upon.

3.56 Mr Goldsmith gave voice to the applicant's position that the NPS-UDC is directly relevant. He noted that the source of debate amongst the parties was whether Cromwell comes under the definition of "urban environment" as defined in the NPS-UDC.[79] We repeat that definition here for context:

> ***Urban environment*** *means an area of land containing, or intending to contain, a concentrated settlement of 10,000 people or more and any associated business land, irrespective of local authority or statistical boundaries.*

3.57 As noted by Mr Goldsmith, this definition is inherently imprecise as there is no clear indication how an area of land may be determined, or a timeframe for the population basis, or a clear interpretive aide as to what is meant by "concentrated settlement."[80]

3.58 Mr Goldsmith referred to several plain and ordinary meanings of terms which may be of assistance as a basis for concluding that Cromwell is an urban environment because: it is a logical and sensible interpretation of '*concentrated settlement*'; and it would be artificial to separate central Cromwell from the nearby smaller settlements which clearly depend on Cromwell's urban facilities. He further submitted that in light of the NPS-UDC's purpose and Cromwell's growth pressures, any ambiguity in interpretation should be resolved in favour of Cromwell being an urban environment.[81]

3.59 We make a brief aside here to observe that the Masterplan Spatial Framework reflects Ms Goldsmith's appraisal that Cromwell is not limited to the central urban area, and includes wider satellite areas. It also envisages that 12,000 people will be living in that settlement area over its 30-year lifespan.

3.60 Mr Goldsmith also referenced relevant objectives and policies in the NPS-UDC and concluded that they are relevant to the plan change and that PC13 will implement them to a significant extent, thereby assisting the Council to meet its statutory obligations.[82]

3.61 Irrespective of that ambiguity he identified with the NPS-UDC's application, Mr Goldsmith also helpfully reminded us that s31(1)(aa) of the RMA identifies as one of Council's

[78] Closing submissions of W Goldsmith (29 July 2019), p. 26-29, para 105-115
[79] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.7, para 31
[80] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.7, para 32
[81] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.7-8, para 33-37
[82] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.10, para 45

functions the establishment, implementation and review of objectives, policies and methods to ensure sufficient development capacity to meet the demands of the District. [83]

3.62 Mr Gardner-Hopkins acknowledged the same ambiguity as Mr Goldsmith in the NPS-UDC, but his submission was that it is not applicable to Cromwell. Like Mr Goldsmith, he focussed on the language used in the NPS-UDC, noting:

a. the phrase *"intended to contain"* includes some futurity as otherwise it would have simply been *"containing"*;

b. that phrase also requires "*someone*" to "*intend*" the containment, and logically this can only be the relevant local authority; and

c. the ordinary definition of *"concentrated"* does not support a "summing" approach across multiple diverse areas to get to a specified threshold. [84]

3.63 Ms Caunter also reinforced the issue of ambiguity in her submissions, noting the lack of consensus amongst the expert planners and counsel for the various parties. Her interpretation was aligned with Mr Gardner-Hopkins for the reasons he expressed; and she amplified his submissions on the concept of *"concentrated"* which does not align with a broader amalgamated area on a district-wide or sub-district-wide basis. [85]

3.64 Ms Irving agreed with the other counsel that the urban environment definition in the NPS-UDC is imprecise and open to interpretation. Like Mr Gardner-Hopkins, Ms Irving focussed on the *"intending to contain"* and *"concentrated"* concepts referred to in the NPS-UDC.

3.65 On the former, Ms Irving firstly noted that there is no timeframe expressed regarding the population thresholds intended to be contained. She submitted that determining that timeframe requires consideration of the statutory process engaged with. Ms Irving added that the NPS-UDC clearly has a 30-year timeframe, whereas PC13 has a statutory horizon of 10 years. She advised that it is the latter which we should consider when interpreting the *"intended to contain"* timeframe. [86]

3.66 On the interface of the NPS-UDC with Council's functions under sections 31(a) and (aa), Ms Irving also submitted that it is important to ensure that integrated management does not become subservient to provision of development capacity. [87]

3.67 Ms Irving advised us to raise the question of the meaning of the term "*concentrated*" with planning experts as it is ultimately a matter for evidence. She submitted that the interpretation could either be that "*concentrated":*

a. acknowledges that residents of Bannockburn, Lowburn and Pisa Moorings are likely to gain access to urban amenity and services from Cromwell and therefore form part of the concentration; or

b. focusses more on accessibility and close physical connections immediately in the vicinity of the Cromwell urban area.[88]

3.68 Mr Logan submitted that it is doubtful that the NPS-UDC applies as Cromwell is not an urban environment containing or intended to contain a *"concentrated"* settlement of

[83] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.8, para 38
[84] Legal Submissions of James Gardner-Hopkins (13 June 2019), p.16-17, para 68-71
[85] Legal Submissions of Jan Caunter (2 July 2019), p.25-28, para 116-122
[86] Legal Submissions of Bridget Irving (12 June 2019), p.20-21, para 60-62
[87] Legal Submissions of Bridget Irving (12 June 2019), p. 21, para 63
[88] Legal Submissions of Bridget Irving (12 June 2019), p. 21, para 66

10,000 people. He added that it is illogical to include outlying enclaves as part of the population as it defines the natural ordinary meaning of concentrated.

3.69 Furthermore, Mr Logan submitted that – on the interpretation that the NPS-UDC does apply – the plan change is contrary to it because establishment of an incompatible urban area in this rural environment does not achieve integrated resource management and fails to provide for social, economic and cultural well-being. [89]

3.70 Mr Mead's expert view was aligned with Mr Logan's submissions that the NPS-UDC does not apply because it relates only to 'concentrated' areas. By definition, this would exclude the outer settlement areas at Bannockburn, Lowburn and Pisa Moorings from the population, which means the 10,000 threshold is not met.

3.71 Also, like Mr Logan, Mr Mead noted that if that interpretation is incorrect, his view was that the plan change does not give effect to the NPS-UDC. He told us that the NPD doesn't open all doors to all developments by virtue of its direction.

3.72 Mr Whitney[90] and Ms Brown[91] agreed that Cromwell town will not reach the 10,000 threshold over the life of the NPS-UDC, but that the Cromwell ward will reach that number in approximately 20 years. They shared Mr Mead's view that outlying settlements are not concentrated with Cromwell, and therefore found the NPS-UDC does not apply. Mr Whitney additionally expressed the same view as Mr Mead that the plan change is inconsistent with the NPS-UDC in the event it is found to be relevant.

3.73 Ms Scott described the NPS-UDC not being *"of great relevance to the proposal"*. She shared Mr Mead's view that the wider Cromwell area may well exceed 10,000 people within the life of the NPS-UDC, but as the outlying settlements are not concentrated with the Cromwell township, they do not collectively amount to an urban area under the NPS. Ms Scott described Bannockburn, Pisa Moorings and Lowburn as distinctly separate from the concentrated urban area of Cromwell itself. She also gave the view that the plan change does not meet the objectives and policies of the NPS-UDC in the event it is applicable. [92]

3.74 Ms Justice's interpretation differed from the other planners and turned on the concept of the urban area *"intending to contain"* 10,000 people. She observed that the Masterplan Spatial Plan indicates a population of 10,000 will be accommodated over the long-term, which is within the life of the NPS-UDC. She added that the NPS-UDC does not stipulate at what time the population threshold is to be achieved by. [93] For these reasons she concluded that the Spatial Framework is relevant to PC13. Ms Justice also helpfully carried out a detailed assessment of the plan change against all of the relevant objectives and policies of the NPS-UDC finding the proposal to be consistent with some provisions and inconsistent with others. [94]

3.75 Like Ms Justice, Mr Brown gave the view that the NPS-UDC is relevant. In his evidence, he found the proposal to be consistent with the relevant statutory direction in the NPS and he concluded that while the plan change gives effect to the NPS, the operative provisions do not.[95]

89 Legal Submissions of A J Logan (2 July 2019), p.10-11, para 58-63
90 s42A Report (21 March 2019), p.76-77
91 Brown, M evidence summary (30 June 2019) p.7-8, para 40-53
92 Scott EiC (22 May 2019), p. 36-37, para 8.3-8.7
93 Justice supplementary evidence (28 June 2019) p.3 para 3.3
94 Justice supplementary evidence (28 June 2019) p.4-11 para 3.7-3.25
95 J Brown EiC (23 April 2019), p.25-26, para 8.1-8.3

3.76 Ms Hampson also provided her view as an economist as to what constitutes an urban environment under the NPS-UDC. She expressed the opinion that Bannockburn, Lowburn and Pisa Moorings have been zoned and further expanded to help accommodate urban growth in Cromwell; and that they function as part of Cromwell. Ms Hampson added that if Cromwell township were to be hypothetically removed from the environment, then the remaining settlements would not function effectively or efficiently.[96]

3.77 That the settlements are not contiguous with Cromwell township is of little importance in Ms Hampson's view. She noted her firm's experience with other Councils in Selwyn, Waimakariri and Waipa Districts, all of which included discrete, non-contiguous urban areas in their capacity assessments under the NPS-UDC. Ms Hampson added her observations that Hamilton City also includes one non-contiguous area in its urban environment, and that Auckland similarly comprises Whangaparoa peninsula despite its geographic isolation from the main Auckland urban area. Christchurch City, she noted, is in one contiguous area. These examples, in Ms Hampson's view, illustrate that current practice puts more weight on urban function than on contiguousness.[97]

Discussion and findings

3.78 We firstly observe that the issues summarised above are clearly examples of resource management issues where informed and experienced experts can reach different conclusions. We therefore have taken some care to outline those different views and to systematically respond to them. We start that response with our consideration of whether there is a housing crisis in Cromwell.

3.79 As submitted by Mr Goldsmith, whether the proponent has established that a housing crisis exists is a determination to be made by us on the basis of evidence presented. In short, we do not think the evidence leads to such a finding.

3.80 In terms of housing supply, the evidence is clear and consistent that there are no critical shortages anticipated over the short-to-medium-term. There will be a need for a longer-term supply solution, and the plan change site certainly could perform a role in that respect. However, there was no evidence to suggest that is a necessary solution and, through the Masterplan process, we note that the Council clearly has an eye on the long-term housing needs of the District in informing the carrying out of its functions under section 31(aa) of the RMA.

3.81 That said, we accept Ms Hampson's evidence that the plan change would overcome any potential deliverability or supply chain issues associated with other growth sites and infill. That the proponent has made the plan change site an 'easy' supply option in that respect is not insignificant.

3.82 On the issue of the residential supply chain for Cromwell, our view is somewhere between Ms Hampson and Mr Mead. Over the short term, we share Ms Hampson's view that it would not be reasonable to rely upon un-zoned land for the purposes of identifying capacity; however, we agree with Mr Mead that it is reasonable over the longer-term given that the Council will have at least two plan reviews over the next 30 years. We note that the NPS-UDC directs Councils to constantly monitor their respective markets and to stay ahead of demand through zoning that (if anything) errs on the over-supply side for capacity purposes. It follows that the Council may need to amend its zoning pattern

[96] Hampson evidence summary (10 June 2019) p.14, para 38
[97] Hampson evidence summary (10 June 2019) p.14-15, para 40

several times over the next 30 years, so some allowance should be made for that in determining capacity.

3.83 As a final comment on this sub-issue, we want to signal our disappointment that there was not a willingness from all relevant experts to participate in conferencing. We specifically set out a process in Minute 8 for that to occur on the basis that it would assist our decision-making through a narrowing of issues in contention. We are grateful to those who did confer, but note that our consideration of this matter would have been considerably more focussed with the benefit of greater collaboration. We encourage the Council's witnesses in particular to be more participatory in future such processes.

3.84 Regarding affordability and its contribution to the notion of a housing crisis in Cromwell, we record that no party presented any quantitative evidence that was able to be conclusive in any way. There was, however, plenty of anecdotal evidence to suggest that it is at least becoming an issue for the District, and it is clear to us that the Council (among others) is taking steps to become more informed about the matter and to act if necessary.

3.85 In any case, the rules proposed by the proponent (particularly those rules containing a requirement for a defined delivery of a set number of dwellings within a given time period) would undoubtedly have benefits to purchasers over the short term. There was no challenge to the evidence from the proponent that the plan change would enhance housing affordability in Cromwell. The proposal establishes a highly-effective framework to rapidly deliver several hundred houses to market at affordable price points.

3.86 As to the proponent's observations that the plan change will deliver warm, healthy homes which contrast with the typical housing stock in Cromwell, we have not placed much weight on that contention. We would expect any new homes to be at least compliant with New Zealand building regulations, which would provide for warmer, healthier homes relative to older housing stock. Warm, healthy homes are not a unique or meaningful driver for the plan change in our view.

3.87 We decided during the hearing to receive the Masterplan Spatial Framework and to hear evidence and submissions on its applicability and its substance. For the reasons expressed by the proponent, however, we have applied very low weight to that document. It has had no material bearing on our substantive decision, though we take some comfort in that it demonstrates Council's commitment to planning for its long-term growth. We are not in a position to make a finding that the plan change is contrary to the Framework or otherwise.

3.88 Also, for the reasons expressed in the proponent's case, we agree that the NPS-UDC is applicable. That said, we adopt Ms Justice's evidence that the extent to which the proposal implements the NPS is not clear cut.

3.89 We observe in this respect that the NPS-UDC is more complex and multi-faceted than other NPSs, which is not unexpected given its focus of providing for development capacity across urban areas. To that same end, it is not surprising to us that the expert evidence on the extent to which the plan change implements the NPS was variable as well.

3.90 Importantly, we can establish without contention that Cromwell does not meet the definition of a "medium" or "high growth" area under the NPS-UDC. The upshot is that the only policy direction of the NPS-UDC that is relevant to the plan change is found in Policies PA1 to PA4. These are considered to implement the NPS's objectives for urban areas which are not medium or high growth.

3.91 We are inclined to adopt the view of the planning experts (excluding Mr Brown) that the plan change is at least partially in conflict with Policy A3. As we detail below, we have concerns about a range of effects arising from the proposal and find that it is not effective in providing for the social, economic, cultural and environmental wellbeing of people and communities. Furthermore, the proposal's poor physical connection with Cromwell township does not amount to efficient integration of urban land development and infrastructure.

3.92 However, we are aligned with Mr Brown's view that the balance of the relevant policies is implemented by the plan change, and on that basis we find that plan change can be said to give effect to the NPS-UDC to the extent relevant.

3.93 The evidence before is also that there are other means available to implement the NPS-UDC and the necessity of adopting PC13 for the express purpose of implementing the NPS in the Cromwell urban area is therefore not a binary matter. In other words, whether the proposal implements the NPS-UDC or not it is not, in our view, a determinative driver for the plan change.

Issue 2: Health & nuisance effects

Issue identification

3.94 This second issue relates to the site's suitability for residential use given certain potential health and nuisance effects generated by established activities comprising the existing environment. Namely, we consider the nuisance and health/safety effects of the following in turn:

a. noise from existing activities; and

b. air quality effects from neighbouring rural land uses, including dust, smoke, odour and spray drift.

3.95 This suite of effects has a direct and functional relationship with the matters we consider in Issue 3, regarding reverse sensitivity. However, we have considered these effects separately to avoid "double-counting" and in acknowledgement of Mr Goldsmith's helpful clarification that they ultimately are distinct from one another.[98] While there was commonly a conflation of the two effects by experts and submitters at the hearing, we have tried to avoid that in our decision-making and reporting.

Noise effects: submissions & evidence

3.96 The plan change document was not accompanied by an assessment of noise effects by an acoustic expert, nor did the provisions contain any rules to mitigate existing noise sources from the local environment.

3.97 The proponent did, however, seek amendments to the rules through its submission on the plan change, supported by an acoustic assessment prepared by Styles Group. The

[98] Closing submissions of W Goldsmith (29 July 2019), p. 12-13, para 50-51.

recommended amendments included requirements for noise sensitive buildings to achieve minimum noise reduction levels in bedrooms and other noise sensitive spaces.

3.98 A large number of submissions raised the issue of noise, but this was mostly focussed on the resulting potential for reverse sensitivity effects for noise generators than it was on the effects of noise on people's health, safety, well-being and amenity. There were some exceptions to this, including the submission from Public Health South, who expressed that the plan change is not consistent with s5 of the RMA as it does not enable people or the community to provide for their social, economic and cultural wellbeing, or for their health and safety, due to exposure to significant levels of noise.

3.99 A small number of other individual submitters raised concerns about health impacts on the future residents on-site from noise more generally, with some noting that the no-complaints covenant proposed by the proponent would do nothing to mitigate such effects.[99]

3.100 The existing sources of noise in the local environment we were referred to include Highlands, the Speedway, State Highway 6, Cromwell Aerodrome, helicopters, frost fans, bird scaring devices, and other horticultural activities.

3.101 Having encouraged expert conferencing on this matter prior to the start of the hearing (via Minute 6), we benefitted from a joint witness statement of acoustic experts[100] which clearly articulated areas of agreement and disagreement on key issues.

3.102 We have not repeated the substance of that statement verbatim here; however, we record several of the key points made by the conferencing experts, starting with the matters which were agreed.

Key points agreed by acoustic experts

3.103 Firstly, the following descriptions of various noise sources and the noise levels received from those sources within the site were agreed in the joint witness statement:

a. noise from **"Tier 1"** events at Highlands based on current activity will be compliant with a limit of 55dB L_{Aeq} when received in the northern portion of the site, but levels enabled under the existing resource consent could be higher when received across a larger area of the southern part of the site;

b. noise levels across the site are likely to be 60dB L_{Aeq} to 70dB L_{Aeq} for typical Highlands **"Tier 2"** and Speedway events, but they may be up to approximately 5-10dB higher during the loudest events;

c. the Highlands resource consent enables 16 **Tier 2** days per year, though they are not to occur when the Speedway is operative as far as practicable – the number of Speedway events assumed by the acoustic experts to occur each year ranged from 12-20, though there is no limit imposed by the existing resource consent granted in 1980;

d. noise from helicopters authorised by resource consent at Highlands are limited in number and are expected to fall below the guideline levels in the relevant New Zealand Standard for management of noise from helicopter landing areas;

[99] For example, submissions 43, 45, 144, 192, 197, 207, 256, 316, 384 and 394
[100] Joint Witness Statement – Acoustics. J Styles, S Chiles, A Staples, W Reeve (29 May 2019).

e. on the understanding that new dwellings within 25m of the site's western boundary are to be single-story and that a 3m-high noise barrier is to be constructed along the site's western boundary in accordance with prescribed noise articulation parameters:

   i. Mr Staples' modelling results show that noise levels from infrequent helicopter use for frost fighting and crop drying would be between 55-70dB L_{Aeq};

   ii. modelling results of Mr Styles and Mr Staples are consistent and show that noise levels would range from 60-70dB L_{Aeq} on the site if all frost fans in the vicinity are operating simultaneously under moderate temperature inversion conditions – additional frost fans have been consented in the area and not erected, and other frost fans could be installed in the area in compliance with operative District Plan rules;

   iii. noise from existing bird scaring devices in the area may need to be reduced in order to meet District Plan L_{AFmax} limits if a dwelling is built within 25m of the western boundary of the PC13 site;

   iv. daytime noise limits of 55dB L_{Aeq} should be met from general horticultural activities such as mowing and mulching – however, daytime use of chainsaws during pruning seasons would exceed that limit for several days per year; and

f. current traffic flows on State Highway 6 are predicted to generate a noise level of approximately 60dB $L_{Aeq(24h)}$ at a 50m-distance from the source, and 57dB $L_{Aeq(24hr)}$ at 100m;

3.104 We record that the conferencing experts unanimously agreed that the presence of a no-complaints covenant would have nil effect on the degree of noise exposure on the site.

3.105 There was also agreement among the experts that indoor noise levels for future residents on the site could be mitigated to an acceptable level provided that sufficient acoustic insulation, ventilation and temperature control are installed so that windows can remain closed. The experts accepted that these measures would affect the style of living for residents in the warmer months.

3.106 There was also consensus between the experts that the most appropriate method for achieving acceptable internal levels is to specify the acoustic insulation performance of buildings (i.e. the extent of noise attenuation), rather than to stipulate an internal noise level to be achieved. The experts were also in agreement as to the parameters to be achieved for building ventilation; however, the appropriate internal noise level to be achieved and therefore the acoustic insulation performance to be specified , was a matter in contention as we outline further below.

3.107 We heard from the experts that both the level and character of noise are relevant considerations. The experts agreed that the characteristics of noise from Highlands and the Speedway, gas guns, firearms and helicopters would be more annoying subjectively that other typical environmental noise.

3.108 They also shared the view that noise from general horticultural activities (e.g. mowing & mulching) carried out to the west of the site would be mitigated to a reasonable level by the proposed noise barrier and the single storey requirement for buildings within 25m of the western boundary. Noise from bird scaring devices and helicopters would, however,

impact significantly on outdoor amenity for new dwellings built on the site near to the western boundary.

3.109 For road noise from State Highway 6, the experts agreed that attenuation for new dwellings should be designed to achieve an internal level of 40dB $L_{Aeq(24h)}$ which is consistent with New Zealand Standard NZS 6806:2010: *Acoustics – Road-traffic noise – New and altered roads* and the approach promoted by NZTA across the State Highway Network.

Key points in contention between acoustic experts

3.110 The main points which the acoustic experts did not reach full agreement on included:

a. the compatibility of the proposed use of the site for noise-sensitive activities with the existing noise environment; and

b. the level of noise that should be achieved indoors for new dwellings (and therefore the degree of noise attenuation to be specified);

3.111 Regarding the former matter, Dr Chiles and Mr Staples gave the view that the outdoor noise exposure on the site is incompatible with residential and other noise-sensitive uses. Mr Styles agreed with this in part – but qualified his agreement in the joint witness statement as follows:

> *7.6. Mr Styles partially agrees, but he considers that the degree of incompatibility or sensitivity of the residents in this case is quite different to a typical situation (such as where a noise maker 'comes to' a residential area where the expectation is for a low noise environment) because it will be mitigated by the covenant having affected expectations and by the seasonal and intermittent nature of the noises along with the acoustic insulation of the dwellings which will provide respite if desired.* [101]

3.112 Re the latter matter, the different views about the noise level (and therefore level of attenuation required) that should be achieved inside new dwellings were expressed by the experts on the basis of noise source.

a. For *motorsport noise*, Mr Styles gave the view that noise attenuation requirements should be based on achieving an internal level of 40db L_{Aeq} for Highlands Tier 2 days and Speedway events given that the noise occurs primarily during the day with sleep disturbance not a primary concern. Dr Chiles and Mr Staples preferred a level of attenuation based on achieving a 30dB L_{Aeq} internal noise level for *all* motorsport activities, given the character of that noise.

b. For the mitigation of *night time noise from horticultural activities*, Mr Styles considered that the appropriate internal design level should be 35dB L_{Aeq} given the source is seasonal, intermittent and therefore not covered by WHO guidelines. Dr Chiles, Mr Staples and Mr Reeve gave the view that an internal noise level of 30dB L_{Aeq} would provide the appropriate protection during night time and day time hours.

[101] Joint Witness Statement – Acoustics. J Styles, S Chiles, A Staples, W Reeve (29 May 2019), para 7.6

3.113 Mr Styles elaborated on his reasons for having a different view from other acoustic experts in the evidence summary he circulated at the hearing. Regarding the appropriate indoor noise levels for future dwellings, Mr Styles considered the 30dB L_{Aeq} levels favoured by Dr Chiles and Mr Staples are too stringent for *motorsport noise* as:

a. lower internal design levels are typically required to protect against sleep disturbance, whereas the vast majority of noisy motorsport activities will occur during the day;

b. the 30dB L_{Aeq} level inside bedrooms amounts to "*a very high standard*" that is not common in New Zealand, especially where sleep disturbance is not a concern; and

c. 30dB L_{Aeq} is a very quiet noise level and it would be very common for higher levels to be experienced in most urban dwellings during the day with windows open.[102]

3.114 Mr Styles maintained the view that 40dB L_{Aeq} is sufficient to provide a high level of respite from motorsport, and would be sufficiently low to avoid interference with normal residential activity.[103]

3.115 For mitigation against noise from *horticultural activities*, Mr Styles firstly observed that Mr Staples and Dr Chiles cite WHO guidelines to support their preference for the lower design level to be achieved. Mr Styles explained to us that:

> 26 *Whilst the WHO guidelines do refer to a level of 30dB L_{Aeq} for bedrooms at night, this level of protection is designed to avoid adverse health effects arising from long term exposure to higher noise levels. The recommendations are based on epidemiological studies of thousands of people living in major cities where noise exposure is continuous, all day, every day and all night, every night. The WHO guidelines do not have any recommendations or applicability to a situation such as this where the noise is generated only occasionally over a year.* [104]

3.116 Mr Styles reiterated that noise attenuation to achieve 30dB L_{Aeq} would amount to a "*gold standard*" in the New Zealand planning context, and that 35dB L_{Aeq} would be sufficient to protect against sleep disturbance.[105]

3.117 In contrast to Dr Chiles and Mr Staples, Mr Styles did not reach a definitive view on the site's compatibility with the existing noise environment. Rather, Mr Styles explained that the focus of his investigations was on describing the effects anticipated and the measures to be adopted to manage those effects. These factors are, in turn, to be weighed against other matters. Some of the points he emphasised to this end included (in summary):

a. the site will be subject to a range of increased noise levels from intermittent sources throughout each year;

b. for some periods, the noise levels arising from these sources when received on the site will be high – in the order of 60-70dB L_{Aeq}, and for the louder events 65-75dB L_{Aeq}; however, there will be long periods of time when the noise levels across the site will be normal for residential activity;

[102] Styles Evidence Summary (16 May 2019), p.7-8, para 21
[103] Styles Evidence Summary (10 June 2019), p.8, para 22
[104] Styles Evidence Summary (10 June 2019), p.8, para 26
[105] Styles Evidence Summary (10 June 2019), p.8-9, para 27-28

c. these intermittent elevated noise levels are comparable to noise experienced every day and night of the year in other area urban/residential areas in New Zealand, including locations near state highways, ports and airports;

d. while such noise exposure is not ideal it "*would seem necessary to cope with demand for housing*"; and

e. the high levels of noise in these situations do not automatically make residential use incompatible with the surroundings where adequate insulation is provided to prevent sleep disruption and maintain reasonable indoor noise levels during the day.[106]

3.118 Mr Reeve's evidence was focussed primarily on noise effects from horticultural activities, and did not address noise from SH6, motorsport activities or the aerodrome. He largely spoke to the potential for reverse sensitivity effects to arise on neighbouring orchards due to such factors as the nature of noise sources and the exemption for temporary horticulture activities (such as pruning and spraying) from District Plan noise standards, among other matters. We discuss that acoustic evidence below in the context of reverse sensitivity effects.

3.119 Mr Reeve did, however, address mitigation options for horticultural noise in further detail in his evidence. In his view, the 'normal' horticultural activities that may occur intermittently at noise levels exceeding the permitted standards as of right are best to be mitigated by a spatial buffer located 50-60m from sensitive receptors.[107]

3.120 Mr Reeve also clarified that, while he shared Mr Styles' view that building insulation and ventilation methods would be a reasonable control to mitigate night time noise from frost fans, the proposal introduces a large number of dwellings into an area where the recommended WHO night time guideline may be exceeded if the dwellings are only designed to achieve the District Plan night time noise standards.[108]

3.121 Mr Staples opened his evidence summary with the view that the proposal is '*incompatible with the existing noise environment due to the significant cumulative adverse noise effects that would be experienced by a large number of residents as a result of existing lawfully established and compliant motorsport and horticultural activities.*'[109] In his view, while individual noise sources are significant in their own right, it is the cumulative effects of various noise sources which are of greatest concern.[110]

3.122 Mr Staples added that the outdoor amenity for new dwellings and recreational areas would be '*compromised*,' owing to the high levels of motorsport noise for around 28 days and evenings per year and elevated noise levels from bird scaring devices, wind machines and helicopters during critical growing and harvesting periods for horticultural activities. Furthermore, Mr Staples described the noise levels received on the site from the daily (non-Tier 2 day) operations of Highlands to be '*not characteristic of a residential environment.*'[111]

3.123 Mr Staples also echoed Mr Reeve's concern about dwelling insulation design levels achieving suitable mitigation from frost fan noise. Specifically, he told us:

[106] Styles Evidence Summary (10 June 2019), p.9-11, para 34-40
[107] Reeve EiC (16 May 2019), p.10, para 48-49
[108] Reeve EiC (16 May 2019), p.9, para 42
[109] Staples EiC (16 May 2019), p.3, para 2.1
[110] Staples EiC (16 May 2019), p.7, para 7.1
[111] Staples EiC (16 May 2019), p.3, para 2.3-2.4

> *I calculate that a 40dB reduction would be required to achieve the District Plan 45dB L_{AFmax} noise limit inside bedrooms. Wind machines and helicopters produce high levels of low-frequency (bass) sound which is more challenging to mitigate than mid and high frequency sound. This restricts the types of constructions available for the proposed dwellings to high mass (e.g. masonry) and/or large cavity walls. Windows would need to be restricted in size and use heavy glass panes which adds cost. Lightweight roofing would likely require sarking and the ceilings would require multilayer high-density plasterboard linings. An alternative form of ventilation would also be essential so that windows can remain closed.* [112]

3.124 Mr Staples added that while noise from State Highway 6 could be mitigated internally for new dwellings, the outdoor noise environment would be degraded. This, in his view, contributes further to the significance of potential cumulative adverse noise effects.[113]

3.125 Mr Staples also directly addressed Mr Styles' evidence on several points, including the following:

a. Mr Staples disagreed with Mr Styles' statement that noise from motorsport activities would be restricted to annoyance only – with Speedway activities operating until 10pm[114] Mr Staples expressed the view that sleep disturbance is likely, particularly for children, even with insulation treatment adopted; and

b. Mr Staples described Mr Styles comparison of the proposal to residential activities being located near State Highways, ports, airports and railways as invalid – primarily as motorsport activities are not accepted as integral parts of modern living and given the character of the noise motorsport and horticultural activities entail.[115]

3.126 Among other points, Dr Chiles referred us to various guidelines for community and environmental noise published by the WHO over the last 20 years which remain – in his view – appropriate for setting pragmatic noise limits. He drew our attention to those parts of the guidelines which cite sleep disturbance effects being observed above a sound level of 30dB L_{Aeq} inside bedrooms, and people being moderately annoyed by daytime activities with sound levels above 50dB L_{Aeq} outside, or highly annoyed by levels above 55dB L_{Aeq} outside.[116]

3.127 He added that the guidelines describe noise annoyance as a health effect. Based on those guidelines, Dr Chiles' opinion was that noise annoyance is a pertinent health effect and the guideline levels are relevant for consideration of the plan change.[117] This, we observe, was in contrast to Mr Styles who did not connect annoyance factors with adverse health outcomes.

3.128 Noting a lack of any national or international standards or guidance regarding motorsport noise specifically, Dr Chiles assisted us by drawing on his own experience with Ruapuna Motorsport Park near Christchurch. Dr Chiles explained that, from that example, many people find motorsport sound more disturbing than other environmental noise. He added:

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[112] Staples EiC (16 May 2019), p.7, para 6.2
[113] Staples EiC (16 May 2019), p.8, para 7.8
[114] Or even later as we were told by others
[115] Staples EiC (16 May 2019), p.9, para 8.3-8.5
[116] Chiles EiC (16 May 2019), p.4-5, para 16-17
[117] Chiles EiC (16 May 2019), p.5, para 18

> *General noise limits are based on generic research and are applied to a wide range of sources, although human responses to different sound sources vary. In my experience, people respond to motorsport sound at lower levels than other general sources. Mr Styles does not appear to have accounted for the characteristics of motorsport sound in his assessment.* [118]

3.129 Dr Chiles drew further parallels between the Ruapuna example and the site's relationship with neighbouring motorsport activities in Cromwell. He noted that while outdoor noise environments for residents in proximity to Ruapuna would be quieter than expected on the plan change site,[119] those residents reported substantial noise disturbance and sought restrictions on motorsport activities through Environment Court proceedings. Dr Chiles further explained that general weekday activity at Ruapuna was a common source of complaint for neighbours there; and he described that weekday noise as similar to the commercial driving experiences currently advertised as being available most days at Highlands (i.e. the consented Tier 1 events).[120]

3.130 In questioning, Dr Chiles clarified that his view on motorsport noise was not to suggest that it attracts a 'penalty' for its special audible characteristics, but rather to illustrate the high annoyance factor common to that specific type of noise.

3.131 Dr Chiles' concluding comments on the comparability of the Ruapuna and Cromwell examples were as follows:

> 37. *There were previously residents living within a few hundred metres of* [Ruapuna]. *The Christchurch City Council determined that noise effects from louder events up to around 60dB L_{Aeq} were unreasonable, and consequently offered to buy seven houses to avoid that existing noise disturbance. By 2015, six of those house purchases had been completed. The Christchurch District Plan (rule 6.1.7.1.5) now makes any new noise sensitive activity non-complying within the "Ruapuna Inner Noise Boundary", which equates to approximately 60 dB $L_{Aeq(1h)}$ during an event. This motorsport sound level will be routinely exceeded throughout the PC13 land. While RMP and HMP are not directly comparable, in my opinion the same rationale for removing existing and avoiding new noise sensitive receivers near RMP should apply to HMP. I consider a motorsport park and residential activities to be fundamentally incompatible in terms of noise, such that they should be physically separated to protect public health. Residential sections near a motorsport park would have poor amenity, with residents likely to suffer from significant noise disturbance*

3.132 Taking these factors into account and considering the cumulative effects of other local noise sources such as frost fans and gas guns, Dr Chiles concluded that the site is unsuitable for residential activity. Dr Chiles further amplified this view in his presentation and responses to questions at the hearing, adding that the effects "cannot be mitigated" and amount, in his view, to a "fatal flaw" inherent in the proposal.[121]

3.133 Regarding attenuation required for internal spaces in new dwellings on the site, Dr Chiles agreed with Mr Styles that this is a common approach for managing noise effects; however, Dr Chiles added the approach is primarily used in locations where residential development is already permitted or in constrained urban environments. For a less constrained area such as Cromwell, Dr Chiles' view was that avoidance is the good practice approach, rather than mitigation.[122]

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118 Chiles EiC (16 May 2019), p.6-7, para 26
119 In the order of 55dB L_{Aeq}
120 Chiles EiC (16 May 2019), p. 7, para 28
121 Chiles EiC (16 May 2019), p. 7-8, para 30
122 Chiles EiC (16 May 2019), p. 8, para 33

Other expert evidence and submissions

3.134 Several other experts (primarily planning and urban design experts), submitters and counsel addressed us on noise effects.

3.135 For example, consultant planner Ms Justice drew on Dr Chiles evidence to stress that no measures proposed by the proponent will mitigate the adverse effects on new outdoor living areas of noise from various sources. She also discussed the scenario under the operative Plan that would enable new low-density dwellings to be constructed on site as a controlled or discretionary activity. In Ms Justice's view, the amenity expectations of those living in a rural or rural residential environment under the operative Plan standards should be expected to be different to the higher density residential environment proposed. While she accepted that *any* people living on the site would be adversely affected by noise, the situation would be exacerbated under the plan change given the 900 households proposed.[123]

3.136 Another planning practitioner - Ms Wharfe - told us that '*[w]hat PC13 is proposing is to place an "urban area" immediately adjacent to a rural area and subject the residents to the inconveniences, discomforts, disturbances or irritation that may not be acceptable in an urban area.*' [124]

3.137 Drawing on Mr Staples' evidence, Ms Scott – a local planning consultant - gave the view that the effects of noise on future residents would be adverse and that the plan change does not avoid those effects or mitigate the effects on amenity. [125]

3.138 In his evidence summary, the proponent's planner - Mr Brown - told us that he preferred Mr Styles' position on the compatibility of the site with the existing noise environment over the other acoustic experts. Like Mr Styles, Mr Brown considered that the proposed no complaints covenant would temper future residents' sensitivity to the noise environment by clearly signalling to residents that the environment is noisy and that they cannot complain or take any action to restrict the noise. Mr Brown described three dwellings he has chosen to live in over the years all of which were in the vicinity of major noise sources. Mr Brown noted that, like him, prospective purchasers of River Terrace could make similar choices to live there, despite the noise, if other factors were more important.[126]

3.139 One of the first submitters to present at the hearing was Mr McKay, who lives at 346 Kawarau Gorge Road where he operates an 8ha cherry orchard, with a further 12ha dedicated to grazing and lifestyle activities. His land is on the opposite side of State Highway 6 from the PC13 site. Mr McKay gave us a useful insight into what it is like to live with existing noise sources in the area, including noise from his own frost fans.

3.140 In respect to the frost fans, Mr McKay advised that the noise was akin to a low frequency bass sound which creates a vibration within his house and regularly disrupts his sleep. He advised that, such was his dislike of the noise/vibration, that he routinely set the fans to activate at the latest possible time (usually 1 degree from the onset of frost when standard practice is usually at least 2 degrees beforehand) so as to reduce the disturbance that he and his family experience from the fans. In doing so, he noted he was taking a controlled risk with his orchard, but was prepared to do so as a trade-off for increased amenity/sleep.

[123] Justice EiC (16 May 2019), p. 8-9, para 3.7-3.10
[124] Wharfe EiC (16 May 2019), p. 15-16, para 11.4-11.9
[125] Scott EiC (22 May 2019), p. 18, para 5.40
[126] J Brown Evidence Summary (11 June 2019), p.4-5, para 22-27

3.141 In response to the questions we asked about motorsport noise, Mr McKay said that, from his perspective, noise from the Tier 1 day-to-day operation of Highlands is largely masked by the highway noise. He added, however, that the noise could still be annoying from time to time, including at times when it is complying with the 55dB $L_{eq(15)}$ daytime limit.[127] This, we observe, is consistent with Dr Chiles' own experience with Ruapuna as summarised above.

3.142 Mr McKay described the Tier 2 days at Highlands as "*something else*." He added:

> *On up to 16 days per year they can run events. This can be three or four consecutive days when we get extremely loud noise that completely dominates everything. It is of extreme nuisance value and goes on for hours during the day and when the cars are not racing there is loudspeaker noise, which we hear loud and clear at our house. I do not like it and often we will leave town during these periods.*[128]

3.143 Mr McKay also described the uncontrolled use of the Speedway as being worse than the noise from Highlands. He advised that there had been times when the speedway noise was received in his house at midnight. Such was the disruption to his sleep, that he had approached the speedway operator and sought a voluntary restriction on hours of operation from them. He advised that in general the speedway will voluntarily cease speedway racing at 10.30 pm. This was confirmed by Mr Erskine in his presentation for the Speedway, although he advised that such a 'curfew' was not always practical for all events – particularly the national championship events they are contracted to operate from the National Speedway Association. Also, the voluntary 'curfew' applies only to actual racing not the close down and departure of participants and spectators which could also be noisy.

3.144 In combination, Mr McKay considered that the Tier 2 days and Speedway operations are unreasonable to the extent that s16 of the RMA should be engaged.[129]

3.145 Mr Edgar of Sandflat Road and the owner /occupier of the closest dwelling to both the speedway/motorsport park and the PC13 site, described the proposed no-complaints covenant as "*smoke and mirrors*" and that future purchasers of houses at River Terrace would have no idea of the actual extent of noise from motorsport activities.[130] Mr Edgar acknowledged in response to questioning that he had purchased his property from Highlands Park and that he had a no-complaints covenant in favour of Highlands Park. He weighed this against other benefits of his property. He said he was interested in motorsport and often attended Highlands Tier 2 events, but regularly planned to be away from his property on evenings when the Speedway was held.

3.146 Mr and Mrs Squires of Pearson Road similarly told us how unpleasant, harsh and aggressive the noise from the motorsport activities is. They added that the unpredictable frequency and duration of the activities amplifies this effect. [131]

3.147 Mr Murray who lives in Bannockburn gave a presentation that focussed on his own experience, having lost sleep in the last year due to frost fans operating at night. He also echoed the acoustic experts' shared view that the no-complaints covenant would be ineffectual at mitigating the effects of noise. [132]

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127 McKay EiC (28 May 2019), p.3, para 6
128 McKay EiC (28 May 2019), p.3, para 7
129 McKay EiC (28 May 2019), p.3-4, para 9-12
130 Edgar Statement (undated) p.4
131 Squires Statement p.3
132 Murray Statement (undated), para 18-20

3.148 Drawing on the view of several experts appearing at the hearing, Ms Caunter submitted that the proposal will not achieve a high level of wellbeing for future residents, nor will it provide for their health and safety.[133] This appraisal from Ms Caunter was in the context of the proposal's alignment with Objective 4.3.1 of the Plan – which we discuss in Section 4 below.

3.149 Mr Logan critiqued various aspects of the proponent's evidence on the issue of noise in his submissions. He considered the proponent's witnesses "*ignored certain irrefutable realities*" including (among others):

a. while noise sources may be seasonal, the preponderance of high noise levels is concentrated in the period of spring, through summer and into autumn;

b. in that period, noise can be emitted simultaneously from several sources and one noise generating event can be closely followed by another;

c. this period is where indoor/outdoor living is valued, and where people wish to have doors and windows open;

d. confining oneself indoors rather defeats the purpose of living in the district; and

e. being put on notice of noise is different to the real-world experience of noise, and this concept is not easily conveyed.[134]

3.150 Mr Logan added:

> *In short, PC13 will create a low quality residential environment with low amenity values. To countenance such an outcome does not fit easily within the concept of sustainable management; it hardly provides for peoples' wellbeing.*[135]

3.151 Among other points regarding noise, Ms Irving stressed that the scale of the proposed development relative to the density enabled under the operative Plan is relevant to the consideration of noise effects and their significance. She observed that scenarios under the Operative Plan might provide for 40-60 people on the site, whereas the plan change would introduce 2,500-3,000. Ms Irving submitted that the acoustic evidence is clear that adverse effects on residents would be significant and adverse, and that outcome would be exacerbated by the proposal's scale.[136]

3.152 In his s42A report, Mr Whitney expressed doubt that the proposal will provide for the purported[137] high quality of amenity for new residents given the noise effects from existing activities.[138] In his view the proposed noise insulation rule does not avoid, remedy or mitigate the adverse effects from motorsport activities on amenity values, including in relation to noise received in outdoor living areas.[139]

3.153 In his opening submissions, Mr Goldsmith described the proponent's position on noise effects as '*very simple*.' He said:

[133] Legal Submissions of Jan Caunter (2 July 2019), p.19, para 77
[134] Legal Submissions of A J Logan (2 July 2019), p.5-6, para 26
[135] Legal Submissions of A J Logan (2 July 2019), p.6, para 26.12
[136] Legal Submissions of Bridget Irving (12 June 2019), p.10, para 26-27
[137] As noted in the Application as a positive effect from the proposal
[138] s42A Report (21 March 2019), p.57
[139] s42A Report (21 March 2019), p46

> *Future terrace homeowners will be forewarned by the registered covenants. They will have a choice. They can choose to purchase or not to purchase. That is their choice, and it should be their choice to make.* [140]

3.154 Mr Goldsmith addressed noise effects in much greater detail in his closing submissions. On the matter of acoustic expert disagreement about the extent of internal noise attenuation required, Mr Goldsmith drew our attention to the less stringent standard favoured by Mr Styles being adopted in respect of dwellings near various airports and ports in New Zealand. He asked us to take into account that adopting the so-called 'Gold Standard' of attenuation favoured by other acoustic experts would have '*significant adverse construction costs consequences*.' Relatedly, Mr Goldsmith amplified Mr Styles' evidence that the WHO guidelines relied upon by Dr Chiles relate to continuous noise exposure, rather than intermittent noise.[141]

3.155 In his closing, Mr Goldsmith also submitted that no evidence was presented at the hearing to support any contention that significant adverse health effects would arise if the plan change is approved. He made reference to Dr Chiles' evidence which highlighted the linkage between annoyance and health effects; however, Mr Goldsmith's submission was that no evidence established that the particular noise levels and frequency which might be experienced will result in adverse health effects in this case, let alone significant adverse health effects.[142]

3.156 Relatedly, Mr Goldsmith referred us to the 2008 Environment Court Decision which endorsed the current operations of Highlands. Mr Goldsmith noted that evidence of an occupational and environmental medicine specialist was accepted by the Court, which confirmed that the noise generated by the facilities would not result in an adverse health effect. This was owing to the expert identifying that adverse health effects could be avoided if – over a working lifetime – noise exposure is not above 85dBA Leq for more than 8 hours a day. [143]

Discussion and findings: noise effects

3.157 In evaluating the submissions and evidence before us on the matter of noise, we firstly note our alignment with Mr Goldsmith's appraisal of the matter's importance in his closing where he said:

> *The most significant issue which arises for determination is whether, in the context of the factual scenario under debate, it is appropriate to create a residential zone in a neighbourhood which is, at times, noisy.*[144]

3.158 We agree also with Mr Goldsmith that this is a matter that turns on the evidence presented at the hearing, which we have summarised above.

3.159 Our starting point in that respect is to record that we find no reason not to accept the expert evidence of the acoustic witnesses on all matters where they have reached consensus. For the purposes of our decision-making, we adopt those shared views as our own and are grateful for their constructive assistance in that respect.

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[140] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.18, para 88
[141] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.35-36, para 147-149
[142] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.37, para 152
[143] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.1, para 3.h.
[144] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.37, para 153

3.160 This leaves two fundamental points of difference for us to resolve, which again relate to:

a. the degree of noise attenuation that should be specified for new dwellings (indoors); and

b. the compatibility of the proposed use of the site for noise-sensitive activities with the existing noise environment.

3.161 Regarding the level of internal acoustic attenuation to be specified in the proposed rules, we must firstly clarify our understanding that this method will have benefits both for mitigating noise effects and for reducing the potential for reverse sensitivity effects. We have been careful not to conflate the two issues above, but note it would be unnecessarily artificial to consider the two effects separately on this isolated matter of building performance.

3.162 For the reasons they expressed, we are aligned with Dr Chiles, Mr Reeve and Mr Staples on the level of attenuation required to achieve WHO guidelines for avoidance of sleep disturbance.

3.163 Furthermore, and as we discuss in the second point of difference below, given that that there would be little or no respite for outdoor spaces from various high noise generators operating at key times throughout the year, we agree with the three aforementioned acoustic experts that a greater impetus should be placed on achieving high performance indoors.

3.164 We also believe additional precaution is required, given the evidence from both Dr Chiles and Mr Staples about the particular characteristics of motorsport noise even at lower levels. We rely on their respective experience with other motorsport facilities, and adopt their shared view that, even at lower levels, the day-to-day activities at Highlands would still be audible outdoors across much of the development at levels likely to cause serious annoyance for many. Indeed, this very point was made crystal clear to us by Mr McKay as to his own experience in the vicinity of the site. Again, in our view this emphasises a need for indoor respite.

3.165 As we discuss further below in respect to the reverse sensitively issue (Issue 3), we are not convinced that the proponent's covenant solution for avoiding reverse sensitivity effects would be the "silver bullet" they assert. Accordingly, we find it appropriate that the more stringent internal noise reduction level be adopted to also minimise residual potential for reverse sensitivity effects on horticultural and motorsport activities. For reasons we describe shortly, this relates also to the significance of the existing high-noise generators in the area and the consequences operational curtailment may have.

3.166 Finally, we record that acknowledge Mr Goldsmith's warning that the more stringent controls would have an impact on construction costs for the proponent and therefore a flow on effect for affordability. As no party presented us with any detailed economic evidence to quantify the scale or significance of that cost, we are not compelled to take that matter much further. Suffice it to say, we accept that there may well be additional costs owing to more stringent building performance requirements; however, there is no information before us to suggest such measures are financially unjustified given the amenity benefits they would entail.

3.167 Regarding the compatibility of the proposed use of the site with its surrounding environment, we note that Mr Styles' reasons for withholding his agreement with the other acoustic experts were threefold. Namely that: the noise sources are intermittent;

attenuation will be provided for internal spaces; and residents will know what they are buying into by virtue of the proposed no-complaints covenant.

3.168 We find this last reason to be in conflict with Mr Styles' acceptance – along with all other acoustic and planning experts we heard from on the matter – that the covenant will provide no mitigation for the effects of noise whatsoever. By extension, we discard the proposed use of covenants as having any bearing on the site's compatibility with the surrounding environment as relates specifically to noise effects.

3.169 It is not in contention that the proposal includes rules requiring new dwellings to be designed such that residents have some respite from the various local noise sources. However, this is clearly limited to internal spaces with no mitigation available outdoors.

3.170 We accept also that the noise sources of most concern will indeed be intermittent. Nevertheless, this point has, we believe, been oversimplified by Mr Goldsmith and Mr Styles. The evidence before us is that it is not simply one or two noise sources of a brief or intermittent nature that residents will be exposed to, but several sources with a high annoyance factor that will overlap and combine with other noise at times and affect day time and night time amenity throughout the year. Cumulatively, this includes nearly two months-worth of collective exposure to very high day/evening noise from motorsports, night-time noise from frost fans and helicopters, noise from bird-scarers over several months, combined with lower levels of noise from other horticultural activities, day-to-day motorsport activities, and the state highway. In this respect, we share Mr Staples' express concern about the cumulative effects of noise on future residents.

3.171 We did ask Mr Styles several questions about this thread of his evidence, and we found his response to a question from the Chair to be telling. The specific question was whether, in his experience, Mr Styles was aware of any other large planned greenfield development near a major noise source that required restrictive covenants and insulation as proposed by the plan change. Mr Styles was not aware of any such examples.

3.172 For these reasons, we find it a tenuous prospect to adopt Mr Styles' qualifiers as to the site's compatibility with the local environment. Rather, we are aligned with Mr Reeve, Mr Staples and Dr Chiles that the existing noise environment is not compatible with the residential use proposed for the reasons they have expressed.

3.173 Furthermore, we do not agree with Mr Goldsmith's submissions that this is simply a 'buyer beware' scenario. One could make the same contention about any adverse effect – but this sidesteps, rather than addresses, the issue of site suitability. As we set out in section 4 of the report below, such an interpretation is also unsatisfactorily narrow to address the breadth of considerations required under the RMA for determining the appropriateness of the plan change.

3.174 Relatedly, we do not accept Mr Meehan's inference that the choice before us – or indeed before future house buyers in Cromwell – is a binary decision between living in an "*old, cold, damp house*" or a "*new, warm, dry well insulated house with a bit of noise outside on a few days of the year*[145]." Any new home built in Cromwell must meet modern building regulations – this is not a unique feature of the proposed development at River Terrace. And we understand there are areas where new, warm homes are being provided at present which will avoid the adverse noise effects anticipated at River Terrace.

[145] Meehan Evidence Summary (10 June 2019), p.39, para 38

3.175 For completeness, we are compelled to record that we did hear from submitters who volunteered that they live in proximity to, and are not troubled by noise from, the two motorsport facilities. We accept there will be a certain percentage of the population who will fall into this camp; however, we also note the evidence of Dr Chiles and Mr Staples that many others will not, and will instead find the noise from the motorsport activities and the other cumulative sources discussed above of significant annoyance.

3.176 As a final point on the matter of site suitability, we record our acceptance of Mr Goldsmith's submission that we received no evidence from any expert to quantify potential health effects from noise exposure. While Dr Chiles' evidence described noise annoyance as a health effect, we received no information from Public Health or any other party before us to confirm that the significant adverse annoyance effects would equate to an adverse health effect.

3.177 While we accept Mr Goldsmith's submission on this point, based on the evidence we received we consider that the location of this site next to significant noise generating activities, including motorsports facilities which have special audible noise characteristics known to cause significant annoyance to nearby residents at such locations (including near the Ruapuna Speedway), is such that there is a potential for adverse nuisance and amenity effects to arise affecting a large number of people who would take up residence on the subject site.

3.178 Accordingly, we conclude that exposure to noise will have significant adverse effects with respect to future resident's well-being because of nuisance, annoyance and reduced amenity values.

Air quality effects: submissions & evidence

3.179 Before setting these matters out in detail, we record our understanding of the Council's functions under s31 of the RMA as being distinct from the Regional Council's functions under s30. The latter functions include the management of contaminant discharges to air, and our consideration of the plan change's ability or need to implement that function has therefore been purposefully short. It is not for the District Plan to implement s30 functions.

3.180 That said, and as we discuss in section 4 below, there is a need to ensure that the Council meets its statutory direction under the Act as relates to the relationship between a district plan change and the substance of any proposed or operative regional plan. This requirement has therefore formed part of our consideration of this suite of effects from existing land use activities.

3.181 Moreover, it is within the plan change's remit to consider the need or otherwise for methods to manage the generation of dust, odour, spray or smoke associated with the future use and development of the site – for example, fugitive dust from earthworks activities necessary to form roads, building platforms and other aspects of the proposed development.

3.182 This latter point of dust and other airborne nuisance effects was raised in several of the submissions received.[146] Other submitters were more concerned about dust, spray drift and/or odour from the Speedway or nearby agriculture generating nuisance effects on

[146] For example, Submissions 155, 311, 400

new residents at River Terrace – though we observe many of these submissions were made in the context of the potential for reverse sensitivity.[147]

3.183 Transpower also expressed concern in its submission about dust from earthworks adversely affecting nearby National Grid facilities.

3.184 Several of the submitters and their representatives elaborated on these effects in their presentations at the hearing.

3.185 In his evidence for McKay Family Trust & others, Mr Jones told us of the smoke from burning tree waste that occurs on orchards in winter and spring. He noted that the burning activities are not simply to remove waste, but also to manage the spread of any detected diseases. Mr Jones noted that the prevailing winds take smoke in the direction of River Terrace from the orchards.[148]

3.186 Mr Jones also told us that the use of agrichemicals is necessary to produce high quality fruit for the orchards. His concern in this respect is the perception that the public may have when seeing crop sprayers in use. Mr Jones noted that over 50% of sprayer applications are either fertilisers or organic products, though public perceptions may be that all sprays are toxic.[149]

3.187 Ms Wickham's evidence for Suncrest was that the spray drift hazard for the plan change site was high based on the notified provisions. She based this finding on an assessment under the relevant NZ Standard for management of agrichemicals[150], noting the assessed risks for buffer zones, proximity, shelter belts and toxicity all fell in the high range and the particle size in the moderate range.[151]

3.188 Ms Wickham recommended a minimum 100m buffer to provide a reasonable distance for dispersion and manage potential accidental or unintended discharges.[152] We note this was also the express view of Mr Dicey in his evidence for the winegrowers association.[153]

3.189 Similar to the noise experts, Ms Wickham gave the view that the proposed no-complaints covenant would not address potential adverse effects arising from spray drift.[154]

3.190 In her oral presentation at the hearing, Ms Wickham clarified her view that the proponent's amendment to the proposed rules requiring a 5m-high continuous hedge/shelterbelt would be effective such that any health risk from spray drift would be mitigated.

3.191 Ms Justice relied on Ms Wickham's evidence in her own statement. She also drew our attention to the existing requirements of the Rural Resource Area provisions for new dwellings to obtain a controlled activity resource consent before construction, and that conditions may be imposed to manage the effects of existing rural activities, including requirements for screening, landscaping and methods of noise control.[155]

[147] For example, Submissions 17, 123, 126, 143, 151, 155, 164, 182, 188, 189, 203, 272, 362, 384
[148] McKay EiC (2 July 2019), p. 8, para 31-32
[149] Jones EiC (2 July 2019), p. 7-8, para 29-30
[150] NZS 8409:2004 – *Management of Agrichemicals*
[151] Wickham EiC (16 May 2019), p. 10, para 27-28
[152] Wickham EiC (16 May 2019), p. 15, para 43-44
[153] Dicey EiC (20 May 2019), p. 24, para 7.21
[154] Wickham EiC (16 May 2019), p. 14, para 41
[155] Justice EiC (16 May 2019), p. 11, para 3.16

3.192 Ms Wharfe's evidence for HortNZ was expansive on this matter. In her view, the plan change's proposed 5m setback from adjoining rural boundaries is well short of the guidance in the relevant NZ Standard for agrichemical management, and it cannot therefore be determined that there will be no adverse effects on future residents arising from spray drift. [156]

3.193 Ms Wharfe helped us identify relevant policy direction in the Regional Air Plan, which the plan change must not be inconsistent with. We discuss this further in Section 4 below, but note here that among other provisions in the Regional Air Plan, agrichemical discharges to air are not to result in ambient concentrations of contaminants at or beyond a site boundary that have noxious or dangerous effects. Ms Wharfe added that these are not objective measures of effects and the extent to which a discharge may be deemed noxious, dangerous, offensive or objectionable will depend on given circumstances. [157]

3.194 This latter point was also made by Mr Denley, who told us that context is important when defining whether an activity has a noxious or dangerous effect. In his view, these thresholds will mean different things to people used to living in a rural environment versus those in a residential setting. [158]

3.195 Mr Whitney's s42A Report also addressed the issue of spray drift, noting the potential for aerial spray application of agrichemicals. In his view, the associated adverse effects on future residents' amenity would not be adequately avoided, remedied or mitigated by the plan change. [159]

3.196 Mr Brown gave the view that the proposed boundary treatments as notified would ensure current spray practice at neighbouring orchards could be carried out in accordance with the relevant guidelines in the NZ Standard for agrichemical management such that any adverse effects on future residents would be avoided. [160]

3.197 In his opening, Mr Goldsmith submitted that the Regional Air Plan obligations for managing spray drift sit with the sprayer. He described the boundary fence and planting combination proposed in the notified provisions as possibly '*the best in situ spray drift buffer in the whole of Cromwell*'. He further submitted that there was no evidence to suggest this mitigation package would not be completely effective at addressing spray drift effects on the site from neighbouring orchards. [161]

3.198 Mr Goldsmith reinforced his position in the proponent's closing, adding that there is a prevalence of land where agricultural and residential activities adjoin one another (in Cromwell and beyond – a point also graphically made by Mr James Dicey) without adverse health effects arising from spray drift. He noted that by adopting the amended 3m-high solid fence and 2m-wide x 5m-high hedge, the plan change boundary would bring the existing ground-based air spraying regime used by Suncrest into compliance with the NZ standard for agrichemical management. [162]

[156] Wharfe EiC (16 May 2019), p. 18, para 12.13
[157] Wharfe EiC (16 May 2019), p. 19-21, para 12.26-12.38
[158] Denley Statement for DJ Jones Family Trust & Suncrest Orchards (16 May 2019), para 20
[159] s42A Report (21 March 2019), p.54-55
[160] J Brown Evidence summary (11 June 2019), p.3, para 14
[161] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.14-15, para 68-72
[162] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.33-34, para 138-142

Discussion and findings: air quality effects

3.199 Given the additional mitigation measures adopted by the proponent during the hearing, we are aligned with Mr Goldsmith that there is no evidence before us to suggest the future residents of River Terrace would be at particular risk of adverse health effects from airborne dust, odour, smoke or spray. We adopt Ms Wickham's verbal evidence at the hearing that the revised plan change provisions – including the proposed 5m-high hedge – would be effective to avoid such health effects.

3.200 There is the potential for dust, smoke odour and spray to generate general nuisance effects – both of neighbouring land uses on River Terrace residents and vice versa – and we observe that the plan change site shares a lengthy boundary with adjoining rural activities. However, the proposed provisions, in combination with relevant Regional Air Plan provisions and other District Plan land use provisions are capable of managing such effects to an appropriate extent based on the evidence before us.

3.201 We note also that the likelihood of such effects arising will ever decrease with increased distance from the site's boundaries.

3.202 We discuss these matters further immediately below in the context of reverse sensitivity effects, and further in Section 4 with our statutory evaluation. For the purposes of this section, however, we agree with the proponent that the plan change has adequately avoided or mitigated potential effects on people's health and amenity arising from airborne nuisances.

Issue 3: Reverse Sensitivity

Issue identification & evidence

3.203 The potential for reverse sensitivity effects to arise for existing rural and motorsport activities was the most prevalent issue raised in submissions.

3.204 There is no definition of 'reverse sensitivity' in the Plan, but there is one in the PRPS, which the plan change must give effect to. The PRPS definition reads:

> *The potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity.* [163]

3.205 Several hundred submissions expressed concern about such effects arising in respect of Highlands, the Speedway and/or neighbouring horticultural activities, and we heard from many of these parties in greater detail at the hearing. We've grouped the respective presentations by sub-topic below, focussing first on the reverse sensitivity effects themselves, then on the efficacy of the proposed no-complaints covenant.

[163] PRPS, p.107

Reverse sensitivity effects – nature, scale and extent

3.206 The many representatives for the local horticultural industry addressed us in depth on this matter. In his submissions, Mr Logan said that proposed housing on the site will impinge on current activities if wind fans and gas guns are going to continue to be operated in their current locations. He explained that a rule in the Plan requiring minimum separation distances for these facilities from dwellings[164] would be contravened with the introduction of new houses on site such that '*permitted activity status would be lost.*' The options available to the affected horticulture activities would then be to:

a. move the facilities such that compliance can be achieved, albeit with increased risk to crop yields;

b. apply for resource consent to retain the facilities in their current location; or

c. cease operation of the facilities.[165]

3.207 Similarly, Mr Logan submitted that the introduction of housing on the site would limit the ability of neighbouring horticultural activities to lawfully change and refine the use of their operations as of right without resource consent.[166]

3.208 Tim Jones' evidence spoke to the significance of the 45 South Group of Companies' operations and the potential consequences if their operations were curtailed. He told us that 45 South's 60ha cherry orchard operation in the Ripponvale Flats produced a crop in 2017/18 valued in excess of $5.5M, and that this value is anticipated to rise with additional crop becoming available. Mr Jones explained that the orchard currently comprises 5ha of unplanted land, which is expected to be planted over coming years.[167]

3.209 Mr Jones also gave the view that the introduction of 900 new homes immediately adjacent to the existing orchards in the area would affect the existing activities' ability to obtain outdoor burning permits.[168]

3.210 Like Mr Jones, Mr McKay spoke to the value of his current operations. He told us that his current orchard (conservatively) produces over 80 tonnes of cherries with a potential turnover of $800,000. Were Mr McKay to plant out the balance of his land not currently in orchard, the yield would extend to over 200 tonnes with a value in excess of $2M.[169]

3.211 Mr Michael Jones provided similar information in his statement for Suncrest Orchards and DJ Jones Family Trust. He advised that in the last 5 years alone, the submitters have invested $4.2M on land, trees, irrigation, packhouse technology and plant, wind machines and other machinery and have plans for further investment in the future. Mr Jones added that their payroll for the last 5 years totals at $15.9M.[170]

3.212 Mr Jones identified as a major concern the potential for spraying activities to be curtailed by reverse sensitivity on the orchards adjacent to the plan change site. He advised that – by virtue of the requirements for buffer zones and other restrictions in the regulations that manage agrichemical spraying – the introduction of new intensive housing would erode the operation's ability to continue its current lawful operational practices. By his

[164] Rule 4.7.6E
[165] Legal Submissions of A J Logan (2 July 2019), p.8, para 40-43
[166] Legal Submissions of A J Logan (2 July 2019), p.8, para 44-45
[167] T Jones EiC (2 July 2019), p.2, para 4-5
[168] Jones EiC (2 July 2019), p. 8, para 31-32
[169] McKay EiC (28 May 2019), p. 9, para 23
[170] Statement of M Jones (undated), para 1.1-1.5

estimation, this would result in a loss of at least 2.5ha of productive land with an associated loss of $125,000 per year in operational profit.[171]

3.213 Ms McClung's evidence for HortNZ took a broader view to valuation of export cherry crops. She explained that the value of fruit produced and packed in the Ripponvale area in the 2017/18 season was more than $25M.[172]

3.214 Ms McClung stressed the importance of yield to a grower's return, noting the related role played by frost fans, bird scaring devices and other facilities. In her view, if such tools were to be restricted or prohibited, this would in turn affect a given orchard's viability.[173] She went on to say that these tools are critical to the industry and that without them, '*a zero yield is highly likely*.'[174]

3.215 Ms McClung added that, in order to retain its premium position in the international market, the local cherry industry must retain a focus on high value fruit, which requires growers to rely on the Plan to uphold their right to lawfully operate and to ensure sufficient land is managed and protected for economic production.[175]

3.216 Ms McClung also established a connection between local horticulture and motorsport activities, noting that both are aware of a need to operate under a "social license". Expanding on this concept, she noted:

> *A social license to operate is a community's perceptions of the acceptability of an activity and its operations. So, this isn't just complying with the law, social license is 'in the eye of the beholder' it's 'perception', it's 'value based', and often not evidence based, but experience based. Social license is influenced by public values and perceptions of whether an industry or organisation is credible and can be trusted.*[176]

3.217 Ms Wharfe drew a parallel between the proposal and an Environment Court decision from Hastings District where the Court found the creation of multiple notional noise boundaries surrounding rural land was inappropriate.[177] Drawing on this, Ms Wharfe added that while noise insulation would provide for some mitigation of noise effects (and therefore reverse sensitivity effects), it would not be fully effective.[178]

3.218 Ms Scott's evidence also related to new notional boundaries, albeit in the context of effects from motorsport activities rather than horticulture. Ms Scott expressed reasons why she believed the introduction of 900 houses at the site would increase the level of difficulty for Highlands or the Speedway to grow or alter their operations. This, she explained, is owing to the manner in which existing Tier 1 noise limits are applied at Highlands and to the new noise generation rules that would apply for any expansion or change to the Speedway or Highlands operations by virtue of the River Terrace site being subject to residential noise receiver rules in the Plan. Ms Scott added that '*this means that the compliance point for both Highlands and Speedway in relation to any new application is now significantly closer than currently afforded when the facilities are surrounded by rurally zoned land*.'[179]

[171] Statement of M Jones (undated), para 3.5-3.6
[172] McClung EiC (20 May 2019), p. 4, para 8
[173] McClung EiC (20 May 2019), p. 3-4, para 14
[174] McClung Summary (2 July 2019), p. 6, para 28
[175] McClung EiC (20 May 2019), p. 4, para 15
[176] McClung Summary (2 July 2019), p. 6, para 25
[177] Wharfe EiC (16 May 2019), p. 27, para 14.18-14.19
[178] Wharfe EiC (16 May 2019), p. 15-16, para 11.4-11.9
[179] Scott EiC (22 May 2019), p. 16-17, para 5.27-5.33

3.219 Ms Scott also drew on the same Environment Court case as Ms Wharfe to systematically evaluate the potential for reverse sensitivity effects. She outlined the following three management principles identified by the Court and assessed each in turn as relates to this proposal:

a. activities should internalise their effects unless it is shown that they cannot reasonably do so;

b. to justify imposing restrictions on the use of land adjoining an effects-emitting site, that activity be of some considerable economic, or social significance; and

c. where the impact of the effect-emitting activity beyond the site is low, it is better to incur occasional, minor adverse effects than to impose controls on adjoining sites owned by others. [180]

3.220 Stepping through this assessment and drawing on the evidence of Mr Staples, Ms Spillane, Mr Copeland and Mr Whitney, Ms Scott concluded that the reverse sensitivity effects arising from the proposal would be significant and contrary to the RMA's purpose.[181]

3.221 Ms Scott also invited us to hypothetically consider the issue in reverse, whereby the 900 homes at River Terrace are established and a new motorsport complex of Highlands' ilk is proposed nearby. She said:

> *Would it be considered good planning practice to establish a motorsport facility in the middle of an established residential area? The answer to this is of course No. So why therefore is it appropriate to site a residential area next to a motorsport facility, where cumulative effects of noise are expected to be significant?* [182]

3.222 Ms Spillane and Mr Copeland's respective evidence spoke to the economic and social significance of Highlands. Ms Spillane advised that around $32M has been invested in the operation to date[183], and Mr Copeland advised that as of 2017 the facilities' annual turnover figures were $6M.[184]

3.223 Mr Copeland added that the economic significance of Highlands is such that any reverse sensitivity effects that caused it to reduce or cease its operations would not just directly affect its owners and staff, but the wider economies of Cromwell and Central Otago. However, Mr Copeland stopped short of quantifying those effects. [185]

3.224 Relatedly, Mr Erskine's evidence identified that the Speedway generates $1.5-2M in revenue to Cromwell per season. [186]

3.225 In addressing us on reverse sensitivity effects, Ms Irving submitted that the management of these effects goes to the exercise of Council's functions under s31 of the RMA. She referred us to an Environment Court Decision from Auckland where the Court did not accept that people are best to judge their own needs as relates to their protection from their own folly or failing to consider the position of those who come to a nuisance, noting

[180] Scott EiC (22 May 2019), p. 19, para 5.46
[181] Scott EiC (22 May 2019), p. 25, para 5.68
[182] Scott EiC (22 May 2019), p. 25, para 5.66
[183] Spillane EiC (16 May 2019), para 58
[184] Copeland EiC (16 May 2019), para 35
[185] Copeland EiC (16 May 2019), para 36-37
[186] Erskine EiC (16 May 2019), p.3, para 12

that such a position fails to respond to those s31 functions.[187] Ms Caunter's submissions similarly directed us to this same line of decision-making.[188]

3.226 Ms Irving also told us that the scale of the proposed plan change development is relevant to consider, in that it would introduce a significant number of new sensitive receivers into the environment. Compared to a 'complying' subdivision under the operative zoning, this would amount to a change in potential development scenario from one involving around 40-60 residents to one involving 2,500-3,000.[189]

3.227 For these and other reasons, it was Ms Irving's submission that the proposed development:

a. would constrain the future evolution of Highlands Park and the Speedway;

b. is highly likely to have the effect of curtailing existing activities through associated political pressure and application of s16 (and presumably s17) of the RMA; and

c. is not appropriate given the nature and scale of effects – avoidance is the only option.[190]

3.228 Ms Justice also addressed reverse sensitivity effects in her evidence. She drew our attention to objectives and policies in the RPS which deal with the management of such effects, and it was Ms Justice's view that the plan change does not give effect to those RPS provisions. We address this further in report section 4 below.[191]

3.229 Mr Brown and Mr Whitney both addressed reverse sensitivity effects in the various material they presented through the course of the hearing – though their focus was principally on the no-complaints covenant which we turn to shortly.

3.230 Mr Brown also provided some helpful evidence about the plan change provisions and their management of reverse sensitivity effects. He told us:

> *The RTRA provisions therefore go further than what the operative provisions otherwise require, in relation to avoiding and mitigating reverse sensitivities, and I consider this is justified given the significant increase in sensitive receivers that would inhabit the RTRA compared with the operative development capacity. Nevertheless, if developed under the operative zonings, even though the risk is probably low there is no guarantee that there would not be complaints about the noise sources, whereas under the RTRA the residents will be obliged not to complain.*[192]

3.231 Mr Goldsmith's opening submissions outlined reasons for his position that we need have no concern at all for reverse sensitivity effects[193] and he expanded on those reasons in his closing having heard the position of the other parties. In response to submitter concerns that the plan change could lead to or affect the processing of a s128 (RMA) condition review of the existing resource consents for Highlands, Mr Goldsmith described such fear as '*not valid*' given the requirements of the 'no-complaints' covenant.[194]

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187 Legal Submissions of Bridget Irving (12 June 2019), p.8, para 24
188 Legal Submissions of Jan Caunter (2 July 2019), p.37-38, para 167-172
189 Legal Submissions of Bridget Irving (12 June 2019), p.8, para 26
190 Legal Submissions of Bridget Irving (12 June 2019), p.12, para 31
191 Justice EiC (16 May 2019), p.15-16, para 4.6-4.8
192 J Brown EiC (23 April 2019), p.15, para 4.41
193 Opening legal submissions of Warwick Goldsmith (10 June 2019), p.14-15, para 68-72
194 Closing legal submissions of Warwick Goldsmith (29 July 2019), p.4, para 20

3.232 Mr Goldsmith's closing also addressed submissions from other counsel that highlighted different cases to those highlighted in his opening, and it also spoke to the variety of definitions of reverse sensitivity preferred by others. During the hearing Mr Goldsmith pointed out that the term 'no complaints' covenant is something of a misnomer. In his closing, Mr Goldsmith said:

> *It does not matter which 'definition' of reverse sensitivity one refers to, or which of the number of previous cases dealing with reverse sensitivity that one refers to, one fundamental point is constant. A reverse sensitivity effect only arises if a neighbouring activity is legally prevented, hindered or adversely affected. It does not matter if 100 or 1,000 complaints are lodged. That does not comprise a reverse sensitivity effect if those complaints do not result in legal interference with an existing activity.* [195]

3.233 Mr Goldsmith identified that there was a lack of evidence called by any party to establish a factual basis to support a contention that the lodging of complaints against an activity – whether subject to a covenant or not – has adversely affected the legal operation of that activity; or by extension, that such an outcome would arise in respect of any existing activity near the plan change site as a result of the current proposal.[196]

3.234 Regarding the further presentations by others as summarised above, Mr Goldsmith's submissions were that:

a. the covenant has been amended to ensure that neighbouring orchards can apply for any necessary consent for bird deterrent devices and frost fans without effects on River Terrace being able to be taken into account;

b. the revised covenant provides greater security for those orchards' ongoing operations than a complying subdivision under the operative Plan without a covenant;

c. putting to one side whether the concept of a 'social license' is a relevant RMA matter, the proposed covenant will establish such a license and the related expectations of River Terrace's future residents; and

d. the various authorities referred to us by others were less relevant to our decision-making than the *Powerlands* and *Coneburn Planning* decisions Mr Goldsmith referred us to which validate the use of restrictive covenants whereby covenantors surrender rights to take legal action in respect of other activities. [197]

3.235 On this last point, we note that the extent to which the proposed covenants will avoid or effectively manage any potential reverse sensitivities is inherent in our consideration of this issue. The parties' presentations to us on that point follow below.

Efficacy of no-complaints covenant

3.236 Mr Goldsmith focussed a great deal of his presentation on the restrictive covenant and its efficacy as an effects-management tool over the course of proceedings. In his opening, Mr Goldsmith submitted that covenants are widely-accepted tools and he added that no evidence was presented in the pre-circulated material to suggest that a well drafted

[195] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.13, para 54
[196] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.15-16, para 62
[197] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.15-21, para 60 & 84-87

restrictive no-complaint covenant will not fully and completely protect existing activities from any adverse reverse sensitivity effect.[198]

3.237 Ms Irving described it as '*trite*' to suggest that no-complaints covenants have been widely deployed as a mitigation tool. In her submission, covenants are often adopted as a commercial solution between applicants and neighbours or in relation to large infrastructure where location of the infrastructure is inflexible and any bit of protection is worthwhile. For this particular plan change, Ms Irving asserted that covenants are simply not adequate.[199]

3.238 Expanding on this notion, Ms Irving said that consideration of a covenant's efficacy in managing an adverse effect must factor-in the significance of that effect. To that end, she submitted that a covenant may be appropriate to provide extra reinforcement as a '*belts-and-braces*' solution to manage any residual low-level reverse sensitivity effects. Where effects are significantly adverse, however, Ms Irving said that covenants should not be deployed as a '*work around*' because the effects will continue to be significant and the covenants are unlikely to withstand increasing pressure from sensitive receivers or their proxies.[200]

3.239 Ms Irving cited multiple cases where reverse sensitivity effects had arisen due to new sensitive activities establishing in proximity to existing activities which were operating lawfully, but which also generated substantial off-site effects that were incompatible with those new sensitive activities. In synthesising the learnings of these cases, Ms Irving said they serve to demonstrate how fallible a 'no-complaints' covenant is and that covenants are no substitute for genuine resource management planning that avoids placing blatantly incompatible activities next to one another.[201]

3.240 Mr Gardner-Hopkins expressed his alignment with Ms Irving on the issue of covenants. Specifically, he supported Ms Irving's submissions that 'no-complaints' covenants:

a. are not "battle tested" and therefore cannot be relied upon by the Panel; and

b. will not resolve s16 (RMA) issues, opposition to variations, consent process or social license to operate, or the outcome of any review condition that may allow the reopening of a consent should circumstances change.[202]

3.241 Mr Logan accepted in his submissions that the Courts have sanctioned the use of covenants on occasions, though he described their use as '*questionable*.' On this point, he said that covenants '*cannot immunise unhappy residents*' from adverse effects. Mr Logan added that covenants are not avoidance, remediation or mitigation and at best '*they pretend the problem has been resolved by trying to stop people making a noise about noise.*'[203]

3.242 Mr Logan also expressed concern about the drafting of the covenants themselves, noting a risk that they will be misinterpreted which could undermine their efficacy. He added that covenants cannot be entirely future-proofed against changes to neighbouring activities which are dynamic in nature, such as orchards.[204]

[198] Opening legal submissions of Warwick Goldsmith (10 June 2019), p.15-16, para 74 & 80
[199] Legal Submissions of Bridget Irving (12 June 2019), p.13, para 36
[200] Legal Submissions of Bridget Irving (12 June 2019), p.13, para 38-39
[201] Legal Submissions of Bridget Irving (12 June 2019), p.19, para 55
[202] Legal Submissions of James Gardner-Hopkins (13 June 2019), p.14-15, para 55-56
[203] Legal Submissions of A J Logan (2 July 2019), p.7, para 32-33
[204] Legal Submissions of A J Logan (2 July 2019), p.8, para 36-39

3.243 Whereas Mr Goldsmith submitted that there was no evidence to suggest a covenant would not be entirely effective, Mr Logan said the opposite was also true. That is, Mr Logan expressed that no evidence was presented to demonstrate that covenants succeed in lowering expectations or protecting neighbouring activities. [205]

3.244 Ms Spillane conveyed Highlands' scepticism about the proposed covenants, the concern being that the costs of enforcing them will be transferred to Highlands in practice. She told us of her experience that people perceive noise differently and it can be difficult for lay people to distinguish whether noise exceeds consent conditions or not. This, in turn has led to complaints being referred to Highlands whether fairly or not, and Ms Spillane identified the time and money required to respond as significant.[206] Mr Erskine raised similar concerns with respect to the Speedway. [207]

3.245 Related to her evidence about reverse sensitivity effects more broadly, Ms Scott expressed the view that the necessity for a 'no-complaints' covenants raises the question of whether the site is suited for the proposed development. She added that such measures are more suited to situations that may impact a small number of people and not a high-density residential development of up to 900 homes. [208]

3.246 Ms Justice expressed a similar view that, while covenants may be adequate where one or two properties are affected, such covenants are not appropriate as rules in a Plan or representative of sound resource management practice. She drew on her firm's extensive experience with airport planning issues to conclude that 'no-complaints' covenants are not an effective, long-term solution for managing reverse sensitivity as they do not manage the environmental effects giving rise to the reverse sensitivity effects.[209]

3.247 In his s42A Report, Mr Whitney gave the view that the 'no-complaint' covenant provided in the plan change is inappropriate as it will prevent owners or occupiers of River Terrace properties from complaining about or taking steps to prevent activities that have an adverse effect upon them. He also questioned the efficacy of the covenant given that residents could complain through third parties.[210]

3.248 Mr Brown's view was not aligned with Mr Whitney's. Highlighting the successful use of covenants near the Ports of Auckland, Mr Brown considered covenants to be an effective method for identifying the established noise environment to people coming into a noisy environment, setting their expectations, preventing complaints and avoiding reverse sensitivity effects. [211]

3.249 In response to matters raised in submissions and evidence presented by other parties at the hearing, Mr Goldsmith outlined refinements to the draft no-complaints covenants in his closing. Those included addition of financial penalties for breach of the covenant, which may also be triggered where third parties may be acting as a proxy on behalf of future River Terrace residents. As amended, Mr Goldsmith said that there is no reasonable possibility of any action being taken in contravention of the covenants and having any prospect of succeeding.[212]

[205] Legal Submissions of A J Logan (2 July 2019), p.9, para 48
[206] Spillane EiC (16 May 2019), para 61
[207] Erskine EiC (16 May 2019), p.6-7, para 27-28
[208] Scott EiC (22 May 2019), p. 24, para 5.65
[209] Justice EiC (16 May 2019), p. 12, para 3.22
[210] s42A Report (21 March 2019), p.46-48
[211] J Brown Evidence Summary (11 June 2019), p.6, para 30
[212] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.4, para 18-22

3.250 In summary, Mr Goldsmith made the following additional points about matters raised by submitters and their representatives:

a. no factual basis was presented to support a contention that lodging complaints has adversely affected the legal operation of existing activities subject to covenants or would adversely affect any activities subject to the covenants proposed by PC13;

b. the Council is under no legal obligation to respond to or take action as a consequence of any complaint lodged in respect of activities protected by the PC13 no-complaints covenant and there is no basis to conclude that any administrative burden would arise;

c. similarly, no factual basis was established to conclude that any enforcement burden would fall to neighbouring activities; and

d. even if those scenarios do arise such that one or more covenantors take legal action, the likelihood of such action being successful is equally remote given the terms of the covenants.[213]

3.251 Mr Goldsmith also took some time in his closing to respond to legal submissions and cases cited by submitters' counsel. We do not repeat those submissions here but note that they contrasted with the arguments made by Ms Irving, Mr Gardner-Hopkins, Mr Logan and Ms Caunter.

Discussion and findings

3.252 Our starting point for this evaluation has been to firstly record the uncontested principle we heard from multiple presenters that reverse sensitivity is a valid effect to be avoided, remedied or mitigated.

3.253 We also record our understanding that restrictive covenants are a method that has been adopted to manage such effects, and that in at least some contexts the Courts have upheld their use for that purpose.

3.254 That said, we do not have the same confidence as Mr Goldsmith that a covenant at River Terrace will "*fully and completely*" protect all adjoining activities from reverse sensitivity effects.

3.255 For example, it was uncontested that adjoining horticultural activities will more than likely be required to alter and/or curtail at least parts of their existing operations if they are to be fully compliant with all district and regional rules following the development of the plan change site. To maintain existing certain operational levels or indeed to expand operations within existing regulatory limits would require resource consent.

3.256 Mr Goldsmith downplayed this effect by noting the covenant's role in precluding opposition to any consents for the rural activities affected. In our view, that ignores the fact that there is an administrative burden introduced on those activities which does not currently affect their operation, and – as we heard – there is no guarantee that the necessary consents will be granted.

[213] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.15-17, para 62-68

3.257 As to more fundamental threats to the viable and ongoing operation of neighbouring horticultural and motorsport activities, we share Mr Logan and Mr Goldsmith's view that no party produced any evidence either way to categorically confirm that the plan change will be malignant or benign. We are grateful to the several experts who drew on their own professional experience to aide our practical understanding of reverse sensitivity effects, and to the counsel who further advised us on those effects and the use of covenants.

3.258 Nevertheless, we consider the number of different activities engaged by the covenant in this situation, and the large number of parties involved, introduces a degree of uncertainty. This engages the need for a risk assessment of acting or not acting under s32 and s32AA of the Act. The two major components of such an assessment involve the concepts of probability and consequence.

3.259 It is the first of these two concepts – probability - that we find there is a lack of clear evidence on, both from the proponent and from the submitters. Based on the presentations we received, the probability of an effect arising appears low. In this respect, we are more aligned with the proponent than the submitters we heard from.

3.260 However, we are not satisfied that the covenant reduces that probability to nil. It is not a prophylactic against s16, s17, s327 or s128 of the RMA. All of these duties, powers and procedures of the Act apply irrespective of covenants, and all take into account environmental context when being applied. In that respect, it is irrefutable that the post-plan change context would be markedly different to the current state of the environment.

3.261 We also find some difficulty with the issue of a third-party agent acting in the interests of River Terrace residents in engaging various complaint channels with a view of curtailing neighbouring activities. While the covenant prevents the residents themselves from seeking such action from a third party, it does nothing to prevent people acting independently. Unlikely as such a scenario may appear, it is not unreasonable to conceive – for example – that a future resident's friend or family member may be concerned about the resident's health, well-being or amenity and take action to remedy that. In his presentation, Mr McKay suggested that he was prepared to take such action as he is not bound by any covenant. The covenant has no ability to control such a course of action by him or any others who are not bound by the covenant.

3.262 Accepting that there remain channels for complaint, an additional aspect of probability to consider is whether such complaints are likely lead to curtailment of the activities subject to the complaint. We cannot predict that with any certainty based on the evidence we heard, but we cannot rule it out either.

3.263 As to the second factor – consequence – the evidence presented by the motorsport and horticultural submitters that operate immediately adjacent to the site is clearer. Significant public and private investment has been made in these activities over a lengthy period, and they are important contributors to the local and regional economy, with wider qualitative benefits afforded to people's social and cultural well-being. Curtailment of those activities on the lower end of the consequence spectrum – such as increased compliance obligations and imposed operational adaptations – are not necessarily insignificant in our view. And if the activities were forced to cease operations altogether, such an outcome would indeed be substantial.

3.264 For these reasons, we consider that the risk of acting as proposed by the plan change is clearly higher than not acting, even with mitigation afforded by the covenant arrangements. We adopt the view given by various of the submitters' representatives

that avoidance in this case would be more effective than mitigation with uncertain efficacy and potentially high consequence. We discuss this further in section 4 below.

Issue 4: Integration with existing township

Issue identification & evidence

3.265 Several submissions expressed that the plan change does not integrate well with the existing Cromwell township, or that it is not a good example of an integrated planning outcome.

3.266 At the hearing, we heard several viewpoints on this issue, with the main points falling into the following integration sub-issues:

a. physical effects;
b. economic effects; and
c. social effects.

3.267 We outline each of these sub-issues in turn below, starting with physical effects.

Physical integration effects

3.268 An important point of clarification we record here is that this issue – by its integrated nature – has some commonality with other issues we have discussed in other report sections. For example, there is a demonstrable relationship between this topic and our subsequent consideration of transportation and servicing effects.

3.269 However, and as with nuisance and reverse sensitivity issues, we have been careful not to 'double-count' effects despite any apparent cross-over.

3.270 Those preliminary points aside, we heard from several presenters on the issue of the site's *physical* integration with the existing township. Mr Ray, for example, gave the view that there is a strategic planning logic to a southern urban extension to Cromwell. He added that in an ideal world, new growth would occur only within or immediately adjacent to the existing urban area; however, where insufficient capacity exists in that spatial extent to accommodate forecast demand, then the selection process should move to the next best option.[214]

3.271 In his summary presented at the hearing, Mr Ray gave the view that initially the plan change site will not be a contiguous part of the town's urban form, but that the same could be said about any southern area used for future expansion.[215] In response to our questions on this point, Mr Ray's professional opinion was that a more integrated development pattern would be better than the more detached pattern promoted by the plan change.

3.272 Mr Skelton's evidence was similarly that the proposed development would be "*somewhat disconnected from the existing urban areas of Cromwell"* and would *"establish a patch of*

[214] Ray EiC (12 April 2019), p. 14, para 7.32
[215] Ray Evidence Summary (10 June 2019), p.2, para 14

urban development in an area which is somewhat detached from the urban areas of Cromwell Town." [216]

3.273 Mr Brown drew upon Mr Ray's evidence in considering integration effects, drawing also on PRPS Policy 1.2.1 as an assessment road map. On that basis, Mr Brown concluded that the proposal does not generate adverse effects in relation to the integrated management of effects as any potential effects that relate to activities within or beyond the site boundaries have been addressed. [217]

3.274 In considering the extent to which the plan change implements the PRPS, Mr Mead referred us to PRPS Policy 4.5.1. His evaluation was that the proposal has significant shortcomings in this respect and that the request would not result in the coordinated urban development that integrates well with adjoining developments. [218]

3.275 Overall, Mr Mead described the effects of the proposal on Cromwell's urban form to be "*profound*." While Mr Mead accepted that the urban form of the town would likely expand over time, he did not share the proponent's view that the plan change site represents the next logical step in this respect. [219]

3.276 Mr Whitney's conclusion was similar to Mr Mead, where he gave the view that the plan change would result in a substantial residential area being developed remote from the existing residential, commercial and community activities in Cromwell. [220]

3.277 Mr Whitney added that the proposed scale of the development was equivalent to 41% of the total number of occupied dwellings in Cromwell as at 2018. In his view, a development of such a scale should be integrated in with the existing community rather than in a separate location. Mr Whitney described the proposal as being in stark contrast with historical expansions of Cromwell, and as a "*satellite*" residential area which will not be integrated with the existing town. [221]

3.278 While Mr Whitney considered that the physical connections for urban water, wastewater and stormwater services could be readily accommodated on the site, he considered the lack of facilities and connections for non-car transport modes and the anticipated increase in local traffic mixing with state highway traffic would amount to adverse integration effects of the proposal. [222]

3.279 While Mr Gatenby and Mr Shaw's presentation generally focussed more on the safety and efficiency of the transport-network, they also touched on matters of connectivity/integration. These NZTA witnesses pointed out that vehicle connections between the PC13 site and Cromwell are limited to two primary options, the shorter one by way of State Highway 6 and McNulty Road or SH8, and the longer one by way of local roads that require motorists to travel south along Sandflat Road and Pearson Road before doubling back to the north along Bannockburn Road. With respect to integration matters, NZTA's submission focused on management of local and state highway traffic mixing on SH6, and the lack of provision for active modes (walking and cycling).

[216] Skelton EiC (12 April 2019), p. 10-11, para 38 & 45
[217] J Brown EiC (23 April 2019), p.15-16, para 4.43-4.45
[218] Mead EiC (16 May 2019), p. 28-30, para 122 127
[219] Mead EiC (16 May 2019), p. 22-23, para 93 & 101
[220] s42A Report (21 March 2019), p15
[221] s42A Report (21 March 2019), p15
[222] s42A Report (21 March 2019), p29-32

3.280 In the JWS Mr Carr outlined options for cycleway and pedestrian routes to connect the plan change site to the township, including a route via Sandflat Road and Pearson Road to link onto the existing off-road route on Bannockburn Road; and two other alternative routes providing more direct links from Sandflat Road to Bannockburn Road.

3.281 The JWS records Mr Metherell's view was that the distance to Cromwell township will allow cycling to be a feasible mode of travel however the distance would be long for pedestrian trips. He was also concerned that the indirect nature of the routes to Cromwell will detract from the uptake of cycling as a mode of travel and that a more direct route will likely be chosen via SH6 and Cemetery Road which has no separated facilities for its use by cyclists.

3.282 During the course of the hearing another route option was discussed, for a formed off-road walking/cycleway 3 metres wide along Sandflat Road, SH6 and cemetery Road to the Cemetery Road/Chardonnay Street intersection. Mr Carr advised that these matters could be addressed in the plan change provisions, and this was done with the plan change provisions in their final form making provision for a cycleway/pedestrian connection to Cromwell to be made at the time of subdivision using either of the two routes described above, or via another route that Council may determine as appropriate[223].

3.283 In comparing a more consolidated urban development pattern to the form proposed by the plan change, Ms Brown's evidence was that the former would enable a more vibrant and diverse retail, office and living environment in the town centre. [224]

3.284 Ms Brown added her view that good physical connections are an important feature of Cromwell's urban fabric and a key element in supporting growth as envisaged in the Masterplan Spatial Framework. On this point, she concluded:

> *7.1.15 The desirability of accommodating growth within an existing urban environment is recognised as fundamental to good planning for communities. The growth proposed by way of PPC13 does not align with such underpinnings.*
>
> *7.1.16. There are, in addition, other anticipated cumulative effects. PPC 13 would likely absorb the greater part of the assessed housing needs for Cromwell into the medium term (and possibly beyond if urban zoning were to be extended to the south), thereby impacting on the community's preferred response to growth, and affecting the realisation of benefits that would otherwise accrue to the existing township. This is also a factor to considerations of sustainable management.* [225]

3.285 Mr and Mrs Squires addressed us on the matter of connectivity among several other points raised in their hearing presentation. They spoke of their concern about the lack of good connectivity to a range of amenities – such as a community pool, bike parks, playgrounds, library, schools and fields – in combination with the development's proposed small lot sizes which does not enable high on-site amenity. They also noted that the town centre, in contrast, has all of those amenities and that good planning would dictate locating new residents in close (walkable) proximity.[226]

3.286 During their presentation, Mr and Mrs Muller told us of their personal experiences cycling from their land immediately south of the plan change site into Cromwell Township. They advised that the available routes lack convenience, attractiveness and safety and noted

[223] Rule 20.7.3viii(l)(iv)

[224] Brown, J Supplementary evidence (21 June 2019) p.2, para 60-61
[225] Brown, M EiC (20 May 2019), p.15, para 7.1.15-7.1.16
[226] Statement of C & M Squires (2 July 2019) p.2

that the plan change would not remedy this for future residents of River Terrace. Mr Muller elaborated on his experience cycling through the McNulty Road industrial area (between the PC13 site and Cromwell) which he considered unattractive and potentially unsafe. Ms Hillary Lennox, who is a cyclist also familiar with the roads in the area, corroborated this view.

3.287 The Mullers added that much of the proposed development would be outside the catchment area for the existing school bus, so private vehicle reliance will be high unless children walk (50 minutes approx.) or cycle.[227] We note that Mr Timworth corroborated that approximate walking time based on his experience during his oral presentation.

Economic integration effects

3.288 On the issue of economic integration effects, Mr Copeland's evidence was that dispersed forms of development generally carry greater economic costs relative to more compact forms. These higher potential relative costs relate to:

a. public infrastructure costs – owing to operation and maintenance costs on greater average lengths of reticulated services, and to delayed recovery costs for infrastructure investment elsewhere in the district arising from displaced development; and

b. transport costs – including increased greenhouse gas emissions from longer average trips, increased road accident costs, increased congestion effects for road users, increased costs to develop any future public transport system in Cromwell, and reduced health benefits to residents owing to reduced utilisation of active transport modes.[228]

3.289 Mr Copeland also gave the view that there may be a greater tendency for residents of the plan change site to utilise retail and other services outside Cromwell in conjunction with work commuting trips, due to the site's greater distance from the Cromwell town centre and its convenient location on the commuter route to Queenstown. This, in turn, would suppress growth and critical mass of Cromwell and its local employment opportunities in his view.[229]

3.290 Ms Hampson expressed her disagreement with Mr Copeland's view in that respect. In her opinion, any detour required to also visit Cromwell on a trip to Wanaka or Queenstown would be such a marginal change to the total distance travelled that it would be highly unlikely to deter local convenience shopping in Cromwell.[230]

3.291 In his closing, Mr Goldsmith submitted that while Mr Copeland may have identified potential adverse effects that might arise in a general sense, he provided no evidence or factual basis to suggest such effects would follow as a result of the plan change. Mr Goldsmith also noted Mr Copeland's omission of the positive economic effects of the proposal, or any acknowledgement that its associated development contributions and new rating base would contribute to the funding of development, infrastructure and community facilities.[231]

[227] Statement of T&V Muller (undated) para.21-22
[228] Copeland EiC (16 May 2019), para 28-34
[229] Copeland EiC (16 May 2019), para 47
[230] Hampson evidence summary (10 June 2019) p.19, para 48(g)
[231] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.38-39, para 157-161

Social integration effects

3.292 In addition to the matters raised the raised about physical effects, the Mullers spoke of Cromwell's development history and its impact on the Town's social fabric. They highlighted the Cromwell Dam construction process and the decision by the (then) Ministry of Works and Development to establish a new housing area for workers and other residents separate from the old township, contrary to the wishes of the existing residents. The Mullers said this has had lasting negative effects on the social structure of Cromwell, and their desire was for that outcome not to be repeated at River Terrace.[232]

3.293 We also heard from Mr Murray about social effects. He identified that the plan change included no social impact assessment to formally identify the social effects on Cromwell's community. Such an assessment should be required in Mr Murray's view[233], and we note Ms Brown shared this perspective.[234]

3.294 Mr Murray added that the proposal will affect the well-being of individuals and the community by changing the physical and social environments in which they live. He noted his collaboration with other Cromwell residents who volunteer time to work towards goals, aspirations and values held dear by clubs and societies in the town. These values, according to Mr Murray, are reflected in the Masterplan process and the submissions against the plan change.[235]

Discussion and findings

3.295 We start our discussion of these issues by observing the uncontested fact that the site is disconnected from existing residential areas and the Cromwell Town Centre. We note also the general consensus that its location, lack of available public transport and poor cycling and walking connections make it largely car-dependent.

3.296 We also find that the car-dependency, reliance on the State highway for local trips, and the circuitous nature of the alternative local road route, will contribute to sub-optimal integration between the PC13 site and existing Cromwell.

3.297 We acknowledge that the proponent suggested several options for additional walking and cycling linkages to the town during the hearing process in an attempt to reduce car dependency. Whilst these options were codified into the proposed plan provisions , the evidence we heard from transportation experts was that further investigation would be required to confirm any of the options. In our view, this reduced the effectiveness and appropriateness of the provisions.

3.298 Moreover, issues were raised for each of the options. One of the options passed across the Chafer Beetle Nature Reserve which would require additional authorisations under other legislation with uncertainty around the process or outcome. Options passing south of the Chafer Beetle Nature Reserve entail a substantial deviation from the shortest routes between the PC13 site and Cromwell. The shortest and most intuitive options adjacent to SH6 and Cemetery Road pass through the unattractive and potentially unsafe industrial area. Doubt was also raised as to whether there was adequate room to accommodate a sufficiently wide path between the left-turn lane required on SH6 and the boundary with

[232] Statement of T&V Muller (undated) para.18
[233] Statement of W Murray (undated), para 64-65
[234] Brown, M EiC (20 May 2019), p.15, para 7.1.14
[235] Statement of W Murray (undated), para 66-68

Highlands. We therefore find that the lack of walking and cycling connections are not remedied or mitigated, and will contribute to sub-optimal integration between the PC13 site and Cromwell.

3.299 In terms of social effects, we share the planning experts' view (excluding Mr Brown) that the new community to be established at River Terrace would, by its separated nature, limit accessibility for new residents to community, cultural, recreational and other high-amenity activities and in turn would limit the overall community cohesiveness of the Town. We acknowledge the Mullers' observations about the impacts on community cohesion from the development pattern established during the Cromwell Dam construction process and are cautious of that history being repeated here.

3.300 There was no evidence to refute Mr Copeland's summary of additional general costs a more dispersed form of development carries relative to a more consolidated pattern. We adopt Mr Copeland's evidence accordingly; however, we record also that Mr Copeland did not quantify what such general effects would translate to in the Cromwell context, let alone in deliberately comparing the effects of River Terrace with other development locations. Accordingly, we cannot conclude that such additional costs will be in any way significant.

3.301 Our view is also aligned with Mr Whitney, Ms Brown, Mr Ray and Mr Mead that a more consolidated form of development for Cromwell is ultimately a better outcome than the development pattern proposed by the plan change for the reasons they expressed. We similarly adopt Mr Mead's related view that the plan change site is not representative of the 'next logical step' for Cromwell's urban growth, notwithstanding the proponent's contention to the contrary.

3.302 Overall, we find the compelling evidence leads us to a conclusion that the plan change site:

a. is not the only option available to provide housing supply to accommodate the future growth of Cromwell;

b. is suboptimal in terms of location and physical separation from the town centre;

c. will not be well-integrated with the existing Town in terms of urban form and connectivity – particularly walking and cycling; and

d. the lack of physical integration is likely to also reduce social integration and add to relative economic cost.

3.303 Accordingly, we conclude that the lack of integration between the PC13 site and Cromwell counts against the site's suitability for the type of residential development proposed.

Issue 5: Rural character, amenity & landscape effects

Issue identification & evidence

3.304 This issue relates to the loss of rural character and rural amenity values as a consequence of urbanisation. Matters raised under this issue include erosion of Cromwell's 'rural frame', changes to the experience of approaching Cromwell from the Kawarau Gorge, and effects on outlook from places in the surrounding landscape.

3.305 The only expert evidence from a landscape architect was from Mr Skelton on behalf of RTD. Mr Skelton contextualised the site as part of the Cromwell Basin landscape which he described as a '*mix of modified character areas bounded by the natural frame of the surrounding mountains and waterways*'.[236] He noted that the area is not identified as an 'Outstanding Natural Landscape' (ONL) in the Plan, and agreed it is not an ONL. [237]

3.306 Mr Goldsmith also referred in his opening submissions to the Highlands Environment Court decision to reinforce his contention that the area does not have high natural character or significant scenic values.[238]

3.307 Mr Skelton characterised the site's surroundings as 'peri-urban' and illustrated his appraisal with photos from representative viewpoints. In response to questions, he explained that the area comprises productive rural activities and open grassland but is modified by such features as the Highlands motorsport facility, the existing house (Mr Edgar's property), the retail facility on Suncrest Orchards ('Mrs Jones' Fruit Stall'), and glimpses of the industrial area in the vicinity of Cemetery Road. He said that the motorsport facility inherently has neither a rural or urban character – it depends on its surroundings.[239] In response to a question, Mr Skelton acknowledged that, while the area is modified, it is currently '*more rural than urban*'.

3.308 Mr Skelton's evidence was that the Plan Change would result in a 'patch of urban development in an area which is somewhat detached from the urban areas of Cromwell Town.'[240] However, he considered there would be low adverse effects on landscape character because the site is part of a mix of rural and urban activities on the Cromwell Flats.[241] In his view, the proposed 30m setback and planting would also assist in screening the development and maintaining 'natural character' in views from SH6.[242]

3.309 Mr Whitney considered the existing landscape in the vicinity of the site has a rural character.[243] He noted the prominence of the site from SH6, and the sequence of contrasting character for people approaching Cromwell – from the 'rugged natural grandeur' of the Kawarau Gorge, to the rural horticultural landscape, to the urban character that is encountered in the vicinity of McNulty Road.[244] Mr Whitney said *"In our (sic) view the proposal will have a significant adverse effect on landscape and visual amenity values in this location… The proposal will result in an island of urban development being established in a locality which has established rural landscape character and amenity values."*[245] He considered the urban development would be visible from SH6 regardless of the 30m setback and landscaping.

3.310 There was some contention over the use of the term 'natural'. Mr Skelton contrasted the area with such 'natural' landscapes as the Kawarau Gorge. He considered the landscape was neither 'natural' nor 'urban', but 'modified'.[246] Mr Whitney said that *"…the site and environs has a rural landscape character with landscape "naturalness' derived from the presence of shelterbelts, orchards, open pasture and plantations…"*[247] We consider this a

[236] Skelton, EIC, p.3, para 9
[237] Skelton, EIC, p.3, para 10
[238] Opening legal submissions of Warwick Goldsmith (10 June 2019)
[239] Skelton, EIC, p.9, para. 33, plus response to questions
[240] Skelton, EIC, p.11, para. 45
[241] Skelton, EIC, p.11, para. 46
[242] Skelton, EIC, p.8, para. 30
[243] S42A Report, p.37, section 7.9.1
[244] S42A Report, p.37-38, section 7.9.1
[245] S42A Report, p. 38-39, section 7.9.2
[246] Skelton, EIC, p.9, para. 34
[247] S42A Report, p.37, section 7.9.1

case of terminology being used in different ways, and the different meanings of the witnesses is clear.

3.311 Mr Ray, on behalf of RTD, agreed the Plan Change would result in change to landscape character, but that questions of whether this is an adverse effect or not revolve around whether the land is appropriate for residential expansion. He said *"if it is determined that the best place for Cromwell to grow is the River Terrace land (and other adjacent land around Sandflat / Pearson Road), then the corollary of that is that the land will change from rural to urban and the urban boundary for the town will change – the character of the land will change as a result of that. If the central argument is rejected, that this land is not appropriate for future residential expansion, then it remains as rural land with a rural character."*[248]

3.312 Submitters raised concerns about effects on the experience from SH6 and surrounding areas. Mr M Dicey, for example, submitted that the development would affect the amenity of dwellings located to the south during day and night.[249] Mr Ford told us the development would have adverse effects on the rural outlook from Bannockburn during day and night, and impact on the night sky.[250] Mt Difficulty Wines submitted it would detract from the outlook from their Cellar Door. Mr Edgar raised concerns about direct impacts on his property which adjoins the site on three sides. [251]

Discussion and findings

3.313 We firstly accept Mr Skelton's explanation of the 'peri-urban' character of the site and its surroundings – the area is predominantly rural but is flavoured by its location near the outskirts of Cromwell and the distinctive character of the motorsport facilities. We also accept the evidence of Mr Skelton and Mr Whitney that the Plan Change would change the site's character to a 'patch' or 'island' of urban development somewhat disconnected from the main Cromwell urban area – a finding we made in the previous issue regarding connectivity.

3.314 As a consequence, we agree that the Plan Change would diminish Cromwell's 'rural frame' – and curtail the experience of a productive rural landscape on the approach to Cromwell from the Kawarau Gorge. We consider the proposed set-back and planting will soften views but not alter the fundamental change in character. We consider the degree of effect lies between the 'low' of Mr Skelton and the 'significant' of Mr Whitney; and in all likelihood is probably more aligned with Mr Skelton's expert view than the generalist view of Mr Whitney.

3.315 We accept the proposition that urban development of rural land will necessarily have such effects and the acceptability of such effects largely depends on the appropriateness of the land for urbanisation. In this regard, we consider the effects on landscape character and amenity are adverse and aligned with those discussed above with respect to the disconnect between the Plan Change site and the existing Cromwell area. In this instance however, such effects on rural character, amenity and landscape contribute to, but are not determinative of, the outcome of this plan change.

[248] Ray, EIC, p.16, para. 7.40
[249] Submission of M. Dicey, p.2, para. 12
[250] Submission of R. Ford, p.6
[251] Statement of Mr Edgar.

Issue 6: Loss of productive land

Issue identification & evidence

3.316 This issue relates to loss of the site's productive potential as a consequence of urbanisation. Matters of contention included:

a. The productive potential of the land; and

b. The likelihood that the land would be used for such productive purposes.

3.317 As discussed earlier, the site is currently in grassland and scrub, and comprises upper and lower terraces. The lower terrace contains a Rural-Residential notation in the Plan.

3.318 Mr Hill provided expert evidence on soil classification on behalf of RTD. He was the only expert witness on soil classification. Mr Hill explained that a soil must be suitable for arable cropping and capable of supporting many uses to be regarded as a 'high-class soil'. Such soils are normally limited to LUC[252] Class 1 to 3.[253] Mr Hill classified the upper terrace as Class 3 and 4, and the lower terrace as Class 6.[254] His evidence was that, with the exception of a small part of the upper terrace (containing some Class 3 soil) , the site did therefore not comprise high-class soils.

3.319 Other experts and submitters, however, maintained that productive capacity is based on a range of factors and the requirements of different crops, and is not limited to high-class soils. They maintained that the site – or at least the upper terrace – is suitable for high-value crops for which Cromwell is known such as orchards (including cherries) and vineyards.

3.320 Mr Weaver, on behalf of HORTNZ, provided evidence that soils other than Class 1-3 are important for productive uses.

3.321 Mr James Dicey gave evidence, on behalf of Central Otago Winegrowers, drawing on his extensive experience advising on development of vineyards within the area. His evidence was that the land was suitable for vineyards that could produce high-quality wines[255] and that growing grapes on the land would be commercially viable.[256] He analysed a range of site factors including heat, rainfall/irrigation, frost, wind, vine varieties, size of site, and soil. With respect to the latter he said the lower water and nutrient holding capacity of the Molyneux soils found on the site are valued because they enable vigour to the controlled which is a desirable trait when growing quality grapes.[257]

3.322 Other submitters made similar points. For example, Mr Robin Dicey submitted that the land was suitable for orchards and vineyards and said its urbanisation would be a 'wastage of good agricultural soils'. Others pointed to the cherry orchards on the adjacent land to the west and north of the site.

3.323 Mr Brown's planning evidence concluded the Plan Change would not have adverse effects on productive capacity relying on Mr Hill's evidence that the land does not comprise high-

[252] Land Use Capability
[253] Hill, EIC, p.2, paras 17 and 19
[254] Hill, EIC
[255] J. Dicey, EIC, p.3, para. 4.1 (a)
[256] J. Dicey, EIC, p.3, para. 4.1 (b)
[257] J. Dicey, EIC, p.9, para. 5.20

class soils, and the fact that the land has not been used for many years for any meaningful primary production.[258]

3.324 Mr Whitney, on the other hand, concluded in the planning report that the proposal would have adverse effects on productive potential of the land,[259] particularly with respect to the upper terrace which is in the same land inventory unit as the adjacent land to the west and north that is currently used for orchards.[260]

3.325 With respect to the second matter – the likelihood the land would/should be used for productive purposes – Mr Meehan said that the site would be subdivided into Rural Residential lots in the event the Plan Change was not approved. He pointed out that the land had been on the market for some time prior to his purchasing it, and others had not taken up the opportunity to purchase it for rural production purposes. Mr Tristram, a qualified valuer, provided a valuation report and stated that the 'highest and best use' is rural residential. Mr Tristram, however, did not provide evidence on the site's value for horticulture or viticulture.

3.326 Mr Goldsmith in his closing statement acknowledged that upper terrace seems likely to contain soil similar to the adjoining Suncrest Orchard and is probably suitable to grow cherries, apples and other stonefruit crops with appropriate interventions (irrigation and fertiliser).[261] However, he went on to say that the relevant objectives and policies refer only to high-class soils and that these must be capable of intensive use for a wide range of crops.

3.327 Alternatively, Mr Goldsmith submitted the proposal could only offend the relevant objectives and policies to a minor degree taking into account the soil evidence, the Rural-Residential notation for the lower terrace, and the lack of previous interest from purchasers for the upper terrace.[262]

Discussion and findings

3.328 While we accept the expert evidence of Mr Hill that the land does not contain more than a small area of 'high-class soils' (those in LUC Classes 1-3 with some moisture and nutrient limitations), we also accept the evidence and submissions of other witnesses that at least the upper terrace has potential for high-value productive uses such as orchards or vineyards subject to interventions involving irrigation and fertiliser. Loss of this potential is an adverse effect irrespective of objectives and policies relating to high-class soils (which we address below in Section 4).

3.329 We consider the degree of adverse effect is not negligible, but neither is it significant having regard to the limited size of the upper terrace, differences in productive potential between the upper and lower terraces, and the potential for the lower terrace to be subdivided into Rural Residential lots. It is therefore not a determinative issue on the outcome of the plan change.

3.330 We acknowledge Mr Meehan's stated intention to subdivide the land into rural-residential lots in the event the Plan Change is not approved but note that subdivision of the upper

[258] J. Brown, EIC, p.11-12, para. 4.20-4.22
[259] S42A Report, p.59, Section 7.13.3
[260] S42A Report, p.58, Section 7.13.2
[261] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.31, para.126-127
[262] Closing legal submissions of Warwick Goldsmith (29 July 2019), p.31, paras.126-132

terrace would be constrained to some extent by the absence of the Rural-Residential notation on this part of the site.

3.331 We note that this issue relates to the productive potential of the site itself. While there might also be potential loss of productive capacity on adjacent sites through reverse sensitivity effects, we are conscious to not double-count such effects.

Issue 7: Transportation Network – efficiency & safety

Issue identification & evidence

3.332 This issue relates to effects on the efficiency and safety of the adjacent road network, taking account of the generation and distribution of traffic from the proposed development.

3.333 The adjacent road network includes State Highway 6 and its intersections with Sandflat Road and McNulty Road in particular, and local roads including Sandflat Road, Pearson Road, Bannockburn Road, Cemetery Road and McNulty Road.

3.334 A number of transportation concerns were raised in submissions by NZTA, and by local residents. We had the benefit of expert transportation evidence from Mr Carr (for the proponent), Mr Gatenby (for NZTA) and Mr Metherell (for CODC in its reporting function). Those experts also participated in expert conferencing, at our direction, and produced a Joint Witness Statement, dated 11 June 2019. We discuss the JWS in terms of key topics below. Mr Shaw, planner for NZTA, provided further evidence on the transportation issue following the issue of the JWS.

3.335 These aspects are all addressed below, in terms of: the JWS; issues raised by other submitters; and the Plan Change Response.

Joint Witness Statement

(a) Traffic distribution

3.336 The Transportation Assessment accompanying the plan change adopted a traffic distribution based on a bias of 25% of vehicle movements towards Cromwell and 60% towards Queenstown. Mr Carr subsequently revised that in light of a memorandum from Mr Metherell arising from analysis of census data suggesting a much higher bias of trips towards Cromwell rather than Queenstown. Mr Carr's alternative analysis allowed for a distribution of 75% of traffic movements to/from Cromwell, and 10% towards Queenstown, which was consistent with the analysis that had recently been undertaken for the recent Wooing Tree Plan Change.

3.337 The JWS recorded that the experts agreed that the two tested distributions of traffic to and from the plan change site can be accommodated by the transport network, and that all potential variations between those distributions can also be accommodated[263].

[263] Transportation JWS, 11 July 2019, paragraph 10

(b) Traffic generation

3.338 The JWS recorded that the experts adopted Mr Carr's expected traffic generation figure of 8 vehicles per day (vpd) per household used in his Transportation Assessment, and they accepted a revised figure of 2 vpd for proposed retirement living. The experts adopted Mr Carr's hourly traffic generation rates. They also agreed to exclude traffic generation from non-residential activities in the assessment of external traffic effects.

3.339 A related issue was the scale of development anticipated and provided for through the rules of the plan change. Mr Carr's assessment had been based on 690 standard residential households and 150 retirement units, i.e. a total of 840 households/ units. The experts noted, in the JWS, that the plan change provides for a maximum of 900 residential units. In addition, they noted that Rule 20.7.1(iii) provides for residential activities within the Retirement Living Overlay, and when combined with Rule 20.7.3.x (proposed by the Proponent's planner Mr Brown) which provides for permitted development to 839 residential units, the experts noted that this could result in more standard residential units than has been allowed for in the traffic generation assessments, resulting in greater traffic generation.

(c) Intersection performance

3.340 Mr Carr revised his intersection performance assessments on the basis of those agreed distribution and generation expectations. The JWS also recorded that the experts agreed that forecasting of traffic growth should be based on a longer-term average of 4.6% per annum over the last 10 years. The impact of those agreed distribution and generation expectations on specific intersections is discussed below.

(i) SH6/Sandflat Road

3.341 The Transportation Assessment identified a requirement for a defined left turn lane from SH6 into Sandflat Road for Stage 1 of the development. NZTA submitted that its current expectation was for a median-separated left turn lane, in order to maximise sightlines for those waiting to turn out of Sandflat Road and improve the efficiency of the intersection.

3.342 At the request of the other experts Mr Carr undertook an additional analysis with an adjusted gap acceptance. This showed that the critical right movement has an acceptable Level of Service C or better (i.e. an average delay of 25 seconds or less). The analysis showed in the PM peak a lower than desirable Level of Service is predicted for both the Queenstown weighted distribution (E), and Cromwell weighted distribution (D). The JWS recorded that, whilst the former demonstrates a poor provision for this right turn movement, a relatively minor re-allocation of trip distribution towards Queenstown and/or greater use of the district road network for trips to Cromwell would result in a Level of Service D which the experts consider to be acceptable[264].

3.343 It was acknowledged by the experts that this intersection is sensitive to increases in through traffic on SH6. Mr Carr confirmed that the Proponent was agreeable to setting aside an area of 30m by 30m at the north-eastern corner of the Plan Change site for NZTA to construct a roundabout in the future if required, and this was supported by Mr Gatenby. This was codified into the plan change rules as outlined in the section below on 'Plan Change Response'.

[264] Transportation JWS, 11 July 2019, paragraph 29

(ii) SH6/McNulty Road

3.344 Mr Carr also undertook some additional analysis for the McNulty Road intersection. The JWS recorded that acceptable levels of service will be achieved in both peak hour periods for the critical right turn movements from McNulty Road, noting also that alternative route via Bannockburn Road is available for trips to and from Cromwell which would likely reduce average delay for this movement at the intersection.

3.345 Overall, the experts agreed that from an efficiency point of view the SH6 intersections at both Sandflat Road and at McNulty Road will be within an acceptable level of service allowing for 10 years of growth at the agreed forecast growth rate[265].

(d) Local Roads

(i) Sandflat Road

3.346 The JWS records the agreement of the experts that Sandflat Road will need to be reclassified from a Local Road to a Collector Road as a result of development on the Plan Change site. Mr Carr and Mr Metherell also agreed that sealing of the balance of Sandflat Road to Pearson Road will be required as well as upgrading some existing sealed sections of Sandflat Road.

(ii) Pearson Road

3.347 The experts considered that the standard of Pearson Road between Sandflat Road and Bannockburn Road will need to be assessed at the time of subdivision to ensure it is up to Council standards.

(iii) Bannockburn Road

3.348 The JWS recorded Mr Metherell's view that if the plan change request is approved, Council may need to consider widening Bannockburn Road. He noted however that Bannockburn Road performs an arterial road function in the Council's road hierarchy and did not request any provision in the plan change rules to address potential upgrades to Bannockburn Road in the future.

(e) Further issue raised by NZTA

3.349 Following the issue of the JWS, Mr Richard Shaw, planner for NZTA, attended the hearing and presented a statement. Mr Shaw expressed some concern as to whether or not safety issues at the Sandflat Road/SH6 intersection had been properly addressed. That concern mainly related to the appropriate trigger point for further assessment of appropriate form of intersection improvement at the intersection. This is further addressed below under 'Plan Change Response'.

Issues raised by Other Submitters

3.350 Ms Hillary Lennox said she is concerned that inadequate measures have been proposed to avoid/manage/mitigate likely adverse effects arising from increased traffic movements;

[265] Transportation JWS, 11 July2019, paragraph 39

and considered an alternative access onto State Highway 6 should be obtained unless specific alterations to the new State Highway 6 intersection can be provided, such as a roundabout and speed restrictions.

3.351 The McKay Family Trust raised concerns regarding potential effects on the submitter's access onto the highway as a result of the plan change, and suggested that a roundabout at the State Highway 6/Sandflat Road intersection will be required.

3.352 Mark and Rebecca Schofield were concerned that surrounding roads, especially Pearson Road, will become very busy, making it dangerous for them to undertake their usual activities including walking, cycling and horse riding along Pearson Road.

3.353 Mr Rex Edgar noted that no modelling had been conducted with respect to the State Highway 6/Cemetery Road intersection, and expressed his concerned at the effects of queuing traffic turning right into Cemetery Road. Mr Edgar also raised concerns with respect to the performance of the SH6/ Sandflat Road intersection at times when there is an event on at the Highlands complex.

3.354 Several submitters expressed concern at the addition of traffic from the plan change site travelling towards Queenstown on State Highway 6 through the Kawarau Gorge. Theresa Edgar, for example, noted that State Highway 6 in peak hours leading to and from Queenstown is already congested; and that more cars will only add to the problem. Mr Werner Murray said that the commute to Queenstown could be extended by 20 minutes (each way), and that this would have further safety implications.

3.355 Submissions on the cycleway/pedestrian connection routes are recorded in the discussion above on Issue 4: Integration with existing township.

Plan Change Response

3.356 During the course of the hearing the proponent had produced variations of the proposed rules to respond to matters raised in response to the JWS and to other submissions.

3.357 Mr Goldsmith attached a final set of plan change provisions as part of the Closing Statement, which also responded to the matter raised by Mr Shaw following the issue of the JWS. These are summarised in turn below.

3.358 In the General Standards (Rule 20.7.7) are the following requirements for upgrades to the SH6/Sandflat Road intersection:

a. no more than 40 residential lots are to be created before a median separated left turn deceleration lane is constructed to NZTA standards;

b. no more than 300 residential lots are to be created before a left turn acceleration lane is constructed to NZTA standards; and

c. no more than 400 residential lots are to be created before a Transportation Assessment is undertaken on the impact of stages of the development following Stage 1 on the safe and efficient operation of the intersection so as to determine any intersection improvements required, to be peer reviewed and agreed with NZTA, and such improvements to be implemented; this trigger point represents a reduction from the 740 threshold in a previous version of the rule.

3.359 In the Subdivision Rules 20.7.3(viii)(l) and (m) (Restricted Discretionary Activities), there are requirements for:

a. Stage 1 (up to 400 lots)– sealing of balance of Sandflat Road to Pearson Road; shoulder sealing of Pearson Road between Sandflat Road and Bannockburn Road; intersection upgrades at SH6/Sandflat Road (as outlined above); formed off-road walkway/cycleway along Sandflat Road, SH6 and Cemetery Road or Sandflat Road and Pearson Road connecting River Terrace to Bannockburn Road, or an alternative route approved by Council; and

b. Stage 2 (more than 400 lots) - to provide an area of land at the SH6/Sandflat Road intersection to be vested in or transferred to NZTA for future roading purposes sufficient to enable a roundabout as designed by NZTA to be constructed.

c. A formed off-road walkway/cycleway 3m wide, to be provided along:

- Sandflat Road, State Highway 6 and Cemetery Road (to the Cemetery Road/ Chardonnay Street intersection); or
- Sandflat Road and Pearson Road connecting River Terrace to Bannockburn Road; or
- Any alternative route, width and distance approved by the Council.

3.360 Mr Shaw issued a statement, dated 15 July 2019, to confirm that these rules address NZTA's safety related concerns.

Discussion and findings

3.361 The transportation impacts arising from the scale of development envisaged under Plan Change 13 are clearly a key issue for assessment. As noted above, this issue relates primarily to effects on the safety and efficiency of State Highway 6 and the local road network. Issues relating to connectivity between the PC13 site and Cromwell (including provision for cycling and walking), are addressed separately under Issue 4.

3.362 These safety and efficiency aspects have been addressed extensively through the JWS, by transportation experts representing the proponent, NZTA and the Council. We acknowledge the agreement of experts on the expected generation and, distribution of traffic, and on the improvements and upgrades required to local roads and to the intersection of SH6 and Sandflat Road. Further, NZTA has confirmed its acceptance of appropriate rule provisions to set aside land for a future roundabout at SH6/Sandflat Road intersection and to trigger a further transportation assessment as the development proceeds.

3.363 We do not consider that the additional traffic travelling to Queenstown via Kawarau Gorge is a relevant consideration when assessing the suitability of this particular site for the development proposed, noting that this may be an expected outcome for new development sites in any location in Cromwell.

3.364 Overall, we are satisfied – based on the uncontested expert evidence - that the transportation effects, in terms of the safety and efficiency of both the local road and State Highway network for vehicular traffic are acceptable, with the appropriate codification of solutions into the plan change provisions as discussed above.

Issue 8: Services – capacity & levels of service

Issue identification & evidence

3.365 This issue here is whether there are any servicing constraints for development of this site in the manner proposed, in terms of capacity of available services and the levels of service that can be achieved.

3.366 The principal evidence on this topic was an Infrastructure Report prepared by Paterson Pitts Group and provided with the plan change request.

3.367 That report confirmed that there will be insufficient capacity to supply the development of the plan change site with water supply and wastewater servicing. Potential solutions identified include construction of a 300mm pipe duplication along Bannockburn Road and connection between Bannockburn Road and Cemetery Road to the end of the watermain along Cemetery Road. A potential wastewater upgrade involves the installation of a new pipe along the same route, which would enable costs savings from doing both upgrades at the same time.

3.368 The Paterson Pitts report also advises a new trunk ring main would be constructed along Sandflat Road and Pearson Road, connecting to the water main in Bannockburn Road.

3.369 A submitter, Mr Thomas Coull, was concerned that the plan change will impose costs for ratepayers in requiring upgrading of the Cromwell Water Treatment and Wastewater Treatment plant. However, the Paterson Pitts report notes that whilst the treatment plants will require upgrading, Council's Water Services Manager, Mr Adams, had advised this will benefit development irrespective of where it occurs in Cromwell, and they will be funded from a variety of sources, including development contributions.

3.370 The Paterson Pitts report also notes that site stormwater flows can be managed by discharge to ground and that the plan change site has gravels which are highly permeable, and no issues were identified with respect to stormwater runoff.

3.371 The Paterson Pitts report advises that there are no issues with respect to servicing the site with electricity and telecommunications, and in terms of constructing suitable road pavements within the site.

3.372 There was no written evidence presented at the hearing on this issue, however Mr Miles Garmonsway, surveyor, of Paterson Pitts Group appeared at the hearing and answered questions regarding the Paterson Pitts report. In addition, Mr Whitney's section 42A Report addressed this issue, and summarised the infrastructure and servicing aspects as follows:

> *"Provision can be made for water supply, wastewater disposal, stormwater disposal and the provision of network utility services to serve the River Terrace Development. Engineering solutions are available and we again note that it is the Council's practice to fund growth related improvements to headworks from development contributions".*[266]

[266] Section 42A report, section 7.4.6, page 32

Discussion and findings

3.373 We accept the evidence of Mr Whitney, based on the Paterson Pitts Infrastructure Report, that provision can be made for all infrastructural services and network utility services to serve the plan change site, and the upgrades to treatment plants and headworks can be funded from development contributions or other appropriate means available.

Issue 9: Plan change 'mechanics'

Issue identification & evidence

3.374 This topic relates generally to the methods proposed by the plan change and its overall design quality.

3.375 In summary, the comments made in submissions relevant to this issue included that:

a. the proposed size of new residential allotments is too small, that the development density is too high and/or the development will become a slum[267];
b. the development is poorly designed or will result in poor residential amenity for future residents[268];
c. road widths are too narrow or not fit for purpose[269];
d. insufficient provision is made for parking[270]; and
e. the orientation of lots/homes will achieve poor solar gain[271].

3.376 Mr Ray addressed many of these submissions in his evidence for the proponent. In his view, the development represents good urban design practice as it:

a. provides for a much greater range of housing and lot sizes and types with a particular focus on affordability;
b. is compact and walkable;
c. makes generous provision for open space and greenways;
d. is laid out to reflect the historic pattern of development in Cromwell, helping to reinforce and authentic local character and identity;
e. provides for a high-quality landscape setting with generous street trees and further planting in reserves and private land;
f. enables local commercial/community facilities to be constructed at a scale that provides convenience and does not undermine the town centre's primacy; and
g. will provide sufficient access to daylight and sunlight with the proposed rules for building height, recession planes and outlook protection. [272]

[267] For example, submissions 29, 56, 59, 92, 96, 120, 289, 309, 343, 395
[268] For example, submissions 16, 74, 90, 164, 182, 308, 348
[269] For example, submissions 52, 63, 92, 188, 252
[270] For example, submissions 52, 63, 90, 92, 122, 252, 289, 308
[271] For example, submissions 308
[272] Ray Evidence Summary (10 June 2019), p.2-3, para 15-17

3.377 Mr Ray also commented on the issue of parking under-provision. He highlighted Mr Whitney's acknowledgement that the District Plan expects residential lots to provide at least one car parking space, and added that the plan change proposes two on-site spaces for most proposed lots. In his view, the on-site parking and kerbside parking enabled by the plan change is more than adequate.[273]

3.378 In response to the criticism from submitters about the proposed street design elements, Mr Ray told us that the design is in accordance with current best practice in order to provide a greater balance between quality of place, pedestrian and cycle movement and vehicle movement. He added that it is widely accepted that reduced road widths result in slower, safer and more attractive streets.[274]

3.379 Mr Carr similarly noted that the street design concept is aligned with current best practice rather than the Council's older Engineering Design Standards. In response to Mr Whitney's contention that some of the streets would result in significant congestion due to conflict between traffic and parked vehicles, Mr Carr noted the street typology was in accordance with New Zealand standard NZS4404:2010 and he accordingly did not share Mr Whitney's concern. Mr Carr added that the future subdivision stages would enable further opportunity to manage more detailed design issues, such as the placement of driveways relative to kerbside parking areas.[275]

3.380 Mr Carr also shared Mr Ray's view on the provision of carparking being in excess of the minimum required by the Plan and sufficient.[276]

3.381 In the Joint Witness Statement on Transportation, there was some disagreement between traffic experts as to the internal site layout with respect to roading. Mr Metherell, for CODC, was of the view that Roads A, B, and C need some refinement to improve internal network legibility and to improve roadway widths to meet Council standards. Mr Carr, for the proponent, did not consider changes were necessary at this stage noting that subdivision will be required to be 'in accordance with' a Structure Plan which gives further discretion as to the appropriateness of roading networks, and he also noted that the roads denoted on the Structure Plan also serve an urban design function.

3.382 In addition to the views he expressed on road design and carparking as summarised above, Mr Whitney addressed a number of other issues on this topic in his s42A Report and his supplementary statement. For example, Mr Whitney observed that the development will result in a range of housing typologies and that the anticipated density of development will be greater than anticipated under the Residential Resource Area provisions in the Plan. However, Mr Whitney made no comment on whether this was a positive, adverse or neutral outcome of the proposal.[277]

3.383 Mr Whitney also leant his support to the presentation by Mr Sanford regarding sunlight access anticipated by the proposed layout and building bulk and location provisions. Mr Sanford – a licensed surveyor – was appearing in his capacity as a submitter, rather than as an expert. He attached shading diagrams he generated based on the development pattern and building controls in the plan change, and described the diagrams as not painting a good picture. Mr Sanford concluded that the proposed bulk and location

[273] Ray EiC (12 April 2019), p.19, para 7.51-7.53
[274] Ray EiC (12 April 2019), p.17, para 7.48
[275] Carr EiC (22 April 2019), p.8, para 55
[276] Carr EiC (22 April 2019), p.9, para 58
[277] s42A Report (21 March 2019), p.11

provisions would not effectively achieve the direction set out under proposed Policy 20.7.1 to promote effective solar orientation.[278]

3.384 Mr Mead gave the view in his evidence that the plan change provisions would positively add to housing supply and choice, and promote a desire for a well-designed urban environment. [279] Furthermore, Mr Mead said:

> *74. One of the benefits of the RTRA is identified as 'good urban design'. The site is large enough that within the development, there is likely to be a range of open spaces, as well as a potential small neighbourhood centre. No doubt roads and streets will be well laid out and attention paid to house designs that support CPTED principles. These are positive outcomes, but they cannot outweigh the likely costs to environmental health from the site's location.* [280]

3.385 Like Mr Mead and Mr Ray, Mr Brown was of the view that the plan change provisions generally provide for an attractive urban environment with good amenity for residents. He indicated his reliance upon Mr Ray's evidence in this respect, and regularly assisted us throughout the hearing by providing revised rule provisions and associated s32AA RMA analysis as the proposal evolved in response to submissions and matters raised at the hearing.

3.386 In his closing submissions, Mr Goldsmith confirmed a number of final rule amendments proposed by the proponent in response to the submissions and Mr Whitney's reporting on this issue. For example, he confirmed that Rule 20.7.1(ii)(j) is amended to formally require 2 on-site carparks per residential lot. [281]

3.387 Mr Goldsmith also reinforced the proponent's proposed amendment in the fourth version of the rules which extend the need for design controls from the retirement dwellings (as notified) to include all residential buildings. These controls would be administered by a private covenant imposed between purchaser and seller, rather than via a district plan-led Council process. [282] We observe that Mr Whitney supported this approach in his supplementary statement, but also recommended the drafting of a rule that could be included in the plan change to require that written agreement between the parties be provided to the Council as a certification method, should such an approach be desirable.[283]

Discussion and findings

3.388 We firstly observe our overall impression that the opposition on design matters expressed by submitters spoke more to external integration issues than to internal layout, function and amenity. That said, those internal matters were clearly subject to valid submissions as we have summarised above.

3.389 As an additional preliminary comment, we note Mr Brown's continued willingness to assist us by providing clear revisions to the provisions as the proponent's proposal evolved. We are grateful for his efforts and his further advice around the efficiency, effectiveness, cost and benefits of those amendments relative to the notified provisions. From the perspective of functionality, we generally found the provisions were fit-for-

[278] Statement of K Sanford (undated), para 1.28-1.45
[279] Mead EiC (16 May 2019), p. 2, para 5
[280] Mead EiC (16 May 2019), p. 17, para 74
[281] Closing submissions of W Goldsmith (29 July 2019), p. 2, para 9.
[282] Closing submissions of W Goldsmith (29 July 2019), p. 39-40, para 165-166
[283] Whitney supplementary response (5 July 2019), p. 17-18, para 102-107

purpose and provided a legible framework from the objectives through to the rules and methods. Again, we discuss those provisions in greater detail in section 4 below.

3.390 More substantively, our view on this issue is aligned with Mr Ray in respect of all internal design, layout and amenity matters. At the very least, the development will be no worse than a more 'standard' residential development of this scale, and (as Mr Mead acknowledged) we suspect materially better.

3.391 The provisions are designed to provide for a comprehensively-planned development with mixed densities and typologies. We accept the evidence from Mr Ray and Mr Meehan that this approach is enabling of greater choice and clearly has a flow-on effect for affordability as well. These are demonstrable benefits of the proposal in our view – a view shared again by Mr Mead.

3.392 For the reasons Mr Ray and Mr Carr expressed, we so not share Mr Whitney's concerns about the amount of carparking required or the design parameters of the proposed internal roading. We nevertheless note the proponent's final amendments which cater to some of those concerns at least.

3.393 Finally, we were not convinced by Mr Sanford and Mr Whitney's assertion that the bulk and location provisions will be contrary to the proposed or settled objectives and policies regarding access to daylight and on-site amenity. We prefer Mr Ray's explanation on the factors influencing shading and adopt his assessment that the general layout and associated building rules are appropriate in this respect for the reasons he outlined at the hearing..

3.394 Overall, we are satisfied that the methods proposed by the plan change and its overall design quality are fit for purpose and largely provide good linkages between its policy and rule provisions which would lead to acceptable internal layout outcomes for the development.

Issue 10: Other matters

Issue identification & Discussion

3.395 In this final issue section, we briefly address some additional discrete matters raised in submissions and during the hearing, starting with potential impacts of the proposal on the commercial vitality of the existing town centre.

3.396 We depart from the approach used in the preceding issues and include our discussion under each of the relevant sub-topics below for the sake of brevity.

Effects on Cromwell Town Centre

3.397 Some submissions expressed concerns that the proposal would affect the vitality of Cromwell Town Centre.[284] Generally these submissions either expressed a view that the site's location would support town centre vitality less than locating new residences in close proximity to the centre or that the proposed commercial activities in the site would detract from the commercial viability of existing businesses.

[284] For example, submissions 22, 155, 188, 199, 325

3.398 Mr Whitney's view was that the provision of convenience retail and service activities at River Terrace is appropriate, particularly given the "*significant distance*" which exists between the town centre and the site. He added this would also reduce the number of local traffic movements on the state highway that would otherwise be associated with convenience shopping journeys.[285]

3.399 Ms Hampson also presented evidence on this issue, stating that the new convenience centre on the site would ensure new residents enjoy the same opportunity to access convenience retail as existing residents without increasing overall average travel distances for such trips. [286]

3.400 We have already outlined Ms Hampson and Mr Copeland's evidence regarding economic integration effects and will not repeat that here. No other evidence was presented on the matter at the hearing. For the reasons provided by Ms Hampson and Mr Whitney, we consider that the proposed commercial and community activities enabled by the proposal will be appropriate, with no associated adverse effects anticipated on the function of the Cromwell Town Centre.

Provision of school

3.401 The Ministry of Education submitted that a school within the PC13 site on land earmarked by the proponent is unlikely to be required given the relevant demographic factors that inform such decisions.

3.402 Mr Whitney noted this fact at several junctures in his s42A Report and other submitters took the opportunity to point the Ministry's submission out to us during their respective presentations.

3.403 The Ministry did not attend the hearing or table any further statement in this respect.

3.404 We note that there is provision made for a school site within PC13 should that be a desirable outcome for the Ministry and the proponent. We have already discussed the integration of the PC13 site with Cromwell – including the separation from existing schools – under Issue 4 and do not double-count such effects here. In the event a school was constructed within the PC13 site it would facilitate walking and cycling to the school and reduce requirements for vehicle travel..

Geotechnical suitability

3.405 There were no submissions received on the suitability of the site's geotechnical suitability.

3.406 There was a geotechnical report attached to the plan change documentation, which found the site generally suitable for its intended use; and this was acknowledged in the s42A Report.

3.407 We record that there was no contention made by any party that the land is unsuitable for subdivision and development on geotechnical grounds, and we have no reasons to consider otherwise.

[285] s42A Report (21 March 2019), p.56
[286] Hampson EiC (23 April 2019), p. 3, para 15

Cultural effects, historic heritage and archaeology

3.408 There were similarly no submissions received on any historic heritage or archaeological effects arising from the proposal.

3.409 The proposal was accompanied by an archaeological assessment, which identified that the two water races on the site are evidence of pre-1900 human settlement and are therefore archaeological features. The assessment also identified no known Maori cultural values associated with the site's history, but recommends the use of an accidental discovery protocol to manage any effects on such values in the event sites of cultural or historical significance are uncovered during works. This recommendation is codified in the proposed rules for subdivision in the plan change.

3.410 For the reasons he expressed, we adopt Mr Whitney's conclusions that:

> *Plan Change 13 will have an adverse effect to the extent that the southern water race is to be lost. It appears that any effects associated with this loss will be minor given that water races are a relatively common feature within Central Otago and as the northern water race is to be retained. It is anticipated that general recommendations contained in the Archaeological Assessment will be followed during any future subdivisional works to mitigate any other effects on archaeological values, and it is again noted that a rule is proposed to require an accidental archaeological discovery protocol if pre-European (Māori) material is discovered.* [287]

3.411 While we share his conclusion that any effects on heritage and archaeology will be no more than minor, we hesitate to do the same in relation to cultural effects based on the information before us. This is not to say that the proposal *will* have adverse effects on Māori cultural values; however, we note that the proposal was not informed by a Cultural Impact Assessment or by any submissions from Iwi such that such values have been identified or otherwise.

3.412 That said, we take some comfort in the proposal's use of an accidental discovery protocol and note further that an archaeological authority will be required from Heritage New Zealand to disturb the site. There are at least some measures in place, therefore, to allow for the management of cultural effects should it come to light that the site does have cultural values for Māori.

Contaminated soils

3.413 The effects of contaminated soil on human health was additionally not raised in any submissions.

3.414 The proposal was accompanied by a Preliminary Site Investigation prepared by a suitably qualified expert which identified a range of contaminants present under the site, which will need to be further investigated under the NES-CL before the site is suitable for its proposed use.

3.415 We share Mr Whitney's conclusion[288] that any potential adverse effects of soil-based contaminants on the site can be managed through a future consent process under the NES-CL with the benefit of the recommended Detailed Site Investigation.

[287] s42A Report (21 March 2019), p.35
[288] s42A Report (21 March 2019), p.34

Ecological effects

3.416 We adopt the assessment in the plan change and Mr Whitney's report[289] the proposal is not anticipated to have any adverse ecological effects, and will rather entail opportunity for ecological enhancement through proposed landscaping.

3.417 Again, there were no submissions in relation to this issue.

Effects on the National Grid

3.418 There was a submission from Transpower seeking various amendments to the plan change for the purposes of managing potential adverse effects on the National Electricity Grid, which includes facilities in the site vicinity. The proposed amendments were largely an extension of existing rules in the Plan that currently apply to other zones, such that they would also apply at River Terrace.

3.419 Mr Whitney agreed with the submission that the District-wide rules in Chapters 11-15 of the Plan (including those relating to the National Grid) should apply. However, given the distance between the site and the nearest National Grid facilities, Mr Whitney questioned the extent to which the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) would be relevant. He also gave the view that any risk of dust effects from subdivision would be able to be appropriately managed during the subdivision process.

3.420 We share Mr Whitney's view in all of the above respects for the reasons he expressed.[290]

Alternative use of the site for industrial purposes

3.421 While some submitters sought retention of the rural zoning to enable productive land use activities, other submitters expressed a preference for the site to be rezoned for industrial use.[291]

3.422 In his s42A Report, Mr Whitney gave the view that the site may well be suited for future industrial use, given the constraints imposed by established activities in the area. He added that the plan change discourages that outcome by making industrial activities non-complying activities, and would further discourage industrial activities in the local environment given its proposed introduction of some 900 activities which would be potentially sensitive to such uses. This limitation on Cromwell's urban expansion amounted to an adverse effect of the proposal in Mr Whitney's view.[292]

3.423 Ms Hampson found Mr Whitney's view to directly contradict his concerns about the loss of productive land by urban land use. She added that Mr Whitney did not support his view with any evidence on industrial land supply, demand and capacity that would inform the need for the site to be protected for future industrial use. Ms Hampson also noted that the Council's own growth planning strategic documents – which plan out to the year 2050 – do not identify any need for the site to be rezoned for industrial use, favouring expansion immediately south and west of the existing industrial precinct.[293]

[289] s42A Report (21 March 2019), p.36
[290] s42A Report (21 March 2019), p.62
[291] For example, Submissions 2, 6, 10, 14, 59, 73, 85, 90, 91, 122, 127, 395, 401, 411, 412, 413
[292] s42A Report (21 March 2019), p.61
[293] Hampson EiC (23 April 2019), p. 19-20, para 68-71

3.424 Mr Brown advised that the plan change did not consider the option of using the site for industrial or other business purposes, and that such a consideration was not necessary as:

a. the proponent is a residential developer who has identified the site as a place where market demand for housing can be fulfilled, including with affordable options;

b. there is no mandate to examine every possible future land use option, and the alternatives sought by submitters would be contrary to the express purpose of PC13; and

c. there is no compulsion for developers or anyone else to wait for local planning processes – which may or may not identify an alternative zoning preference for the site – to catch up with their own development aspirations and timing. [294]

3.425 For the reasons expressed by Ms Hampson and Mr Brown, we do not accept the submissions seeking that the site be rezoned for industrial purposes. There is neither a compulsion for such an option to be considered by this plan change process, nor has there been any evidence presented by any party to be in any way compelling that an industrial zoning is the most appropriate use of the site.

[294] J Brown Evidence Summary (11 June 2019), p.6-7, para 32

4.0 STATUTORY CONSIDERATIONS

4.1 Drawing on consideration of the Plan Change material, the submissions and further submissions, and the evidence presented, this part of our report addresses the statutory requirements outlined at the start Section 3 above.

4.2 We have adopted a thematic approach to presenting our findings in this respect, using the *Colonial Vineyards* criteria as a 'road map.' In particular, we rely on the detailed reasoning in Section 3 and added to it where appropriate in the context of each thematic question we outline in turn below.

Is the Plan Change designed to accord with, and assist the Council to carry out its functions so as to achieve the purpose of the Act?

4.3 In our view, the plan change is clearly designed to accord with and assist the Council in carrying out its functions.

4.4 It includes objectives, policies and methods to achieve integrated resource management and to assist with the provision of development capacity in respect of housing and business land to meet the expected demands of the district.

4.5 It also includes provisions to control:

a. any actual or potential effects of the use, development or protection of land; and

b. the emission of noise and mitigation of the effects of noise.

4.6 Accordingly, we find that the Plan Change is designed to accord with and assist the Council to carry out its s31 functions. We note also, however, that this finding does not factor in any evaluative component as to efficacy, which is the role of subsequent limbs of the statutory evaluation considered below. It is rather to record that the plan change generally provides information as anticipated under the Act.

Does the Plan Change give effect to any NPS or the NZCPS?

4.7 The NZCPS is not relevant to the Plan Change. The same can also be said for the National Policy Statements for Renewable Energy Generation and Freshwater Management.

4.8 As noted in its submission, a primary driver for Transpower's relief sought on the proposal was the need for the provisions to give effect to the NPS-ET. We have accepted Mr Whitney's view that there is at most a passive relevance of the strategic direction in that Policy Statement to the plan change site. To that extent, and on the understanding that amendments could be made to the proposed plan change provisions to clarify that the relevant district-wide provisions in the Plan apply to the River Terrace site, the plan change can be said to give effect to the NPS-ET.

4.9 We have found in section 3 above that the NPS-UDC is relevant to the proposal, but that it is not an imperative that the plan change be approved in order for the statutory direction of the NPS-UDC to be met. We will not repeat our reasons in these respects here, but

simply reinforce that the plan change would implement the NPS-UDC to the extent relevant.

Does the Plan Change give effect to the Regional Policy Statement?

4.10 We firstly note here that the operative Regional Policy Statement in this context includes provisions of both the RPS and PRPS. As set out at section 9.2.1 of the s42A Report, the majority of the operative provisions are now in the PRPS, with the provisions of PRPS Chapter 3 remaining in a 'proposed' state.

4.11 We adopt Mr Whitney's assessment that the associated provisions in the RPS which remain operative include Objectives 5.4.1 and 5.4.2 and their supporting policies. These seek the promotion of sustainable land management and the avoidance, remediation or mitigation of resource degradation from activities utilising the land resource.

4.12 We have adopted Mr Hill's evidence that while the site is *predominantly* not high-class soil, there are some areas of high-class soil present on the upper terrace and mostly interspersed within non-high-class soil areas. Also as advised by Mr Hill, we record our understanding that the terrace riser and lower terrace are not high-class soils.

4.13 In implementing Objectives 5.4.1 and 5.4.2 RPS Policy 5.5.2 directs:

> *5.5.2 To promote the retention of the primary productive capacity of Otago's existing high class soils to meet the reasonably foreseeable needs of future generations and the avoidance of uses that have the effect of removing those soils or their life-supporting capacity and to remedy or mitigate the adverse effects on the high class soils resource where avoidance is not practicable.*

4.14 We received no compelling evidence to confirm that it is not practicable for the high-class soils on site to be retained in productive use. On that basis, we are left with a direction to promote retention of primary productive capacity of those soils and avoiding uses that remove or undermine their role in that capacity.

4.15 We were reminded by Mr Goldsmith that the term 'avoid' has been well canvassed in New Zealand resource management in recent years. As noted by the Supreme Court in its *King Salmon* decision 'avoid' means 'do not allow'. We find it difficult to conclude, therefore, that the plan change achieves such a direction given the scale and intensity of urban development proposed and the associated loss of high-class soil – even if those soils are not a significant quantum.

4.16 Even if that were an overly stringent interpretation, the plan change proposes no remediation or mitigation for the loss of those soils, being the alternative required where avoidance is not practicable. The plan change clearly fails to implement the RPS direction under Policy 5.5.2 in this respect at least.

4.17 As for the operative aspects of the PRPS, we largely adopt Mr Brown's assessment that the plan change implements the relevant direction, with some important exceptions as detailed below.

4.18 Firstly, we adopt the view shared by Mr Whitney, Ms Scott, Ms Wharfe, Ms Justice and Mr Mead that Objective 4.5 and its supporting Policy 4.5.1 are not implemented by PC13. For the reasons expressed in their respective evidence and as we have summarised in section 3 above (particularly in Issues 2, 3 and 4), we do not find that the proposal amounts to

urban development that occurs in a strategic, coordinated way and that integrates effectively with adjoining urban and rural environments.

4.19 PRPS Policy 4.5.3 is another provision where we find the proposal fails, at least in part, in its implementation role. In particular, (and as discussed in Issues 4 and 7) we do not consider that the plan change results in a built form that relates well to its surrounding environment or provides good access and connectivity within and between communities. Given the nature of the existing noise environment (Issue 2), we also find the proposal has meaningful limitations in its ability to create an area where people can live, work and play.

4.20 Objective 5.3 and Policy 5.3.1 in the PRPS similarly are poorly implemented by the plan change. It fails to minimise the loss of significant soils and is disenabling of primary production and other rural activities on the site and surrounding area (Issue 6). Also, and as discussed in Issue 3, PC13 introduces incompatible activities into the rural area which have the potential to lead to reverse sensitivity effects.

4.21 For the foregoing reasons, we find that the proposal does not give effect to the operative Regional Policy Statement.

Has the Plan Change had regard to the proposed regional policy statement?

4.22 As noted above, the provisions in Chapter 3 of the PRPS are not beyond legal challenge and therefore remain in a proposed state.

4.23 Objectives 3.1 and 3.2 and their supporting policies are relevant to the plan change.

4.24 The proposal has clearly considered these provisions, and we have had further regard to them with the benefit of submissions and evidence on the plan change.

4.25 While the proposal is more aligned with these provisions than their operative counterparts, it does not fully align with the direction in the proposed policies. In particular, the plan change does not manage soils to achieve the purposes set out under PRPS Policy 3.1.7.

4.26 We did not receive any evidence to correspond Mr Hill's appraisal of the high-class soils on the site with the 'significant soils' label used in the PRPS; though to the extent that those two labels are transferable, the plan change would also – at least in part – fail to align with PRPS Policies 3.2.17 and 3.2.18.

Is the Plan Change consistent with any regional plans or proposed regional plans?

4.27 We have no evidence before us not to accept the proponent's assessment that the plan change is not inconsistent with any regional plans.

What (if any) regard should be given to relevant management plans and strategies under other Acts, including any relevant entry in the Historic Places Register?

4.28 There are no relevant entries in the Historic Places Register of relevance to the plan change.

4.29 As set out in section 3 above, we have considered the Cromwell Masterplan Spatial Framework, which is a document adopted by the Council under the Local Government Act. Ultimately, we have placed low weight on this document such that it has no material bearing on our assessment of the plan change's appropriateness.

4.30 To the extent that our decision is consistent with the Framework (or otherwise) is coincidence.

To what extent does the District Plan need to be consistent with the plans or proposed plans of adjacent territorial authorities?

4.31 We were not advised of any cross-boundary issues that require any particular measures to be adopted by the plan change. We are satisfied that the proposal has had sufficient regard to the extent to which it needs to be consistent with other plans of other territorial authorities.

Are the proposed objectives the most appropriate way to achieve the purpose of the Act?

4.32 This was a point of fundamental difference between Mr Brown and Mr Whitney, with the former finding the proposed objectives to be the most appropriate outcome and Mr Whitney preferring the status quo.

4.33 We have observed above that the notified plan change included 10 proposed objectives, which established the following outcomes for the site:

a. 20.3.1 – Efficient, co-ordinated, integrated greenfields development;
b. 20.3.2 – Diversity of housing product and housing affordability;
c. 20.3.3 – Well-designed built environment;
d. 20.3.4 – Retirement living opportunities;
e. 20.3.5 – Parks and open space network;
f. 20.3.6 – Road network;
g. 20.3.7 – Public infrastructure;
h. 20.3.8 – Neighbourhood Centre;
i. 20.3.9 – Education precinct; and
j. 20.3.10 – Compatibility with surrounding activities.

4.34 In part 8.1 of his s42A Report, Mr Whitney pointed to three aspects of the objectives that led him to a conclusion that the objectives are not the most appropriate to achieve the Act's purpose; however, we observe that in all three respects those reasons related to Ms Whitney's view that the objectives would not be implemented by the provisions, rather than assessing the objectives themselves against the Act's purpose.

4.35 Our view is more aligned with Ms Justice's that, in isolation, the objectives can be considered to achieve the Act's purpose. That is, the concepts of structure planned development, promoting housing choice and affordability, well-designed buildings and common areas that cater to the needs of people, safe, efficient and effective infrastructure and compatibility with neighbouring land uses are all outcomes consistent with

sustainable resource management. However, and we perhaps go further than Ms Justice in this respect, the efficacy of these outcomes must relate specifically to the environment in which they are considered.

4.36 To this end, and relying particularly on the discussion in Issues 2, 3 4 and 6, we find that the objectives are not the most appropriate by virtue of their seeking to establish a large-scale residential development in an environment in which it is poorly-suited to. Based on the submissions and evidence we have heard, the sustainable management of natural and physical resources will be better achieved if the outcomes anticipated under the operative Plan objectives are achieved.

4.37 This follows with our finding above that the proposal fails to give effect to the operative Regional Policy Statement, which has been prepared to give effect to the Act's purpose.

Are the provisions the most appropriate way to implement the "objectives," having regard to their efficiency and effectiveness, actual and potential environmental effects and reasonable alternatives?

4.38 Notwithstanding our finding immediately above, we have considered this question for completeness. On this point, we are aligned with Mr Whitney and Ms Justice that the proposed policies and rules are not the most appropriate to implement the proposed objectives of the Plan Change. In particular and based on the submissions and evidence before us, our view is that:

a. as discussed in Issue 4, the proposal does not include sufficient measures to achieve an integrated or connected neighbourhood as sought under Objective 20.3.2, particularly as relates to integration with the surrounding environment and connection to areas of high social, cultural, recreational and economic value for its future residents;

b. as discussed in Issue 2, the proposal will not provide for high-quality amenity for residents as anticipated by proposed Objective 20.3.3 – while there would be aspects of the proposal that are positive and enable good residential amenity, the significant effects of existing noise on outdoor amenity in the development cannot be mitigated by the plan change provisions; and

c. as discussed in Issue 3, the proposal is unable to completely avoid the potential for reverse sensitivity effects and constraints on existing motorsport and horticultural activities.

4.39 As the Plan is to be read as a whole, the proposed policies, rules and methods should also be assessed against the settled objectives of the Plan where relevant. As noted by Ms Justice, this should include consideration of the Objectives in Chapters 6 and 12 of the Plan, which relate to Urban Areas and District-wide outcomes respectively. We share Ms Justice's view that the provisions are not the most appropriate for achieving those objectives, in particular:

a. Objective 6.3.2 to manage urban growth and development to maintain and enhance environmental quality and amenity values; and

b. Objective 12.3.2 to avoid, remedy or mitigate the adverse effects of noise on amenity values, health and well-being.

4.40 Overall, we find that the provisions are not the most appropriate way to implement the "objectives," having regard to their efficiency and effectiveness, actual and potential environmental effects and reasonable alternatives (including the status quo).

5.0 SUMMARY AND CONCLUDING COMMENTS

5.1 For the reasons we have set out above in Sections 3 and 4, we conclude that the plan change should not be accepted.

5.2 Fundamentally, those reasons speak to site suitability. As captured by Mr Goldsmith at the end of his closing submissions:

> *191. At the outset of the hearing the Commission posed seven broad issues or questions. Six of them have been canvassed extensively and will not be addressed further. The seventh was the question "Is this a suitable site?".*

5.3 The evidence we have found most compelling is that this site is not suitable for the proposed purpose given the existing environmental conditions. In particular,

a. the proposal will be subject to significant levels of noise from lawfully established horticultural and motorsport activities which constitutes a significant adverse effect in terms of nuisance and amenity; and

b. the site is poorly integrated with the urban form of Cromwell.

5.4 Both of these effects, we were told, are significant and unmitigable based on the existing environment. Accordingly, we consider these two matters to be material and determinative factors of the outcome of this proposal. In short, those factors - both singularly and in combination - mean that the proposal is not the most appropriate outcome to best achieve the sustainable management purpose and principles of the Act.

5.5 We have acknowledged above that the proposal has the ability to deliver demonstrable positive effects; however, these are not a panacea for the significant adverse effects arising.

5.6 To that same end, we find some utility in contemplating the hypothetical reverse scenario posed by Ms Scott whereby the River Terrace development is fully established, and proposals are made to authorise Highlands, the Speedway and the surrounding horticultural activities. We struggle to imagine how those activities, in the scale and extent they currently operate, would be able to be introduced next to 900 homes because of the adverse effects that would arise. It confirms our view that the proposal is incompatible in this context.

5.7 Furthermore, the proposal fails to give effect to the Regional Policy Statement for similar reasons, and its objectives are less appropriate than the settled aims of the Plan for the achievement of the Act's sustainable management purpose.

5.8 While we have deemed the NPS-UDC to be applicable, and found the plan change to generally implement the relevant policy direction in the NPS, implementation is not a binary matter such that approving the plan change is the only answer. Contrastingly, we have accepted that Cromwell Masterplan Spatial Framework is applicable, but have applied low weight to it. To the extent that the Framework does not envisage the future urban development of River Terrace has not been a determining factor for us.

6.0 OVERALL DECISION

6.1 Based on our consideration of all the material before us, including the section 42A report from the council advisors, submissions, further submissions, evidence presented at the hearing and following consideration of the requirements of Section 32AA and other relevant statutory matters, our decision is that:

(a) a waiver be granted, pursuant to s37 of the RMA, for receiving late submissions from Submitters 3, 60, 84, 88, 134, 152, 171, 181, 235, 247, 339 and 394 as identified in the Council's summary of submissions;

(b) the Plan Change **not be accepted** and that all submissions on the Plan Change be accepted or rejected to the extent that they correspond with that conclusion and the matters we have set out in the preceding report sections; and

(c) pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991, Council give notice of its decision on submissions to Plan Change 13.

DATED AT WELLINGTON THIS 5th DAY OF NOVEMBER 2019

GM Rae
Chair

G Lister
Independent Commissioner

DJ McMahon
Independent Commissioner

APPENDIX 1
Schedule of Appearances

Date	Submitter Number	Submitter Name	Appearances
10/06/2019 – 11/06/2019	RTDL	River Terrace Development Ltd	Mr Jeff Brown, Planning Consultant Mr Warwick Goldsmith, Counsel Chris Meehan Marc Bretherton David Tristram, Property Valuer Steve Skelton, Landscape Architect Reece Hill, Soil Consultant John Styles, Acoustics Consultant
11/06/2019	228/537	McKay Family Trust	Alan McKay
11/06/2019	RTDL	River Terrace Development Ltd	Warwick Goldsmith, Counsel Andrew Carr, Transport Consultant Matthew Gatenby, Transport Consultant Andrew Metherell
12/06/2019	254	New Zealand Transport Agency	Richard Shaw, Senior Planner Andrew Carr
12/06/2019	RTDL	River Terrace Developments Ltd	Natalie Hampson, Economist Alastair Ray, Urban Designer Jeff Brown
12/06/2019	144/522	Highlands Motorsport Park Ltd	Bridget Irving, Counsel Josie Spillane, Highlands COO
13/06/2019	45/507	Central Speedway Club Cromwell	Andrew Erskine, Speedway President
13/06/2019	144/522	Highlands Motorsport Park Ltd	Aaron Staples, Acoustics Consultant Michael Copeland, Economist David Mead, Planning and Urban Design Consultant
13/06/2019	285/548	Public Health South	Stephen Chiles, Acoustics Consultant Louise Wickham, Air Quality Specialist
13/06/2019	90/511	James Dicey	James Dicey
13/06/2019	396	Greg & Vivienne Wilkinson	Greg Wilkinson
14/06/2019	62, 318/557, 286/549, 372	Sarah & Nelson Cottle, Richard Scott, Geoff Pye, Les & Vicky Topping	James Dicey
14/06/2019	175	Gary Kirk & Ali Timms	Gary Kirk & Ali Timms
14/06/2019	R4RDC	Residents for the Responsible Development of Cromwell	James Gardener-Hopkins, Counsel
14/06/2019	131/519	Simon Giles	Simon Giles
14/06/2019	308	Wally Sandford	Wally Sandford
02/07/2019	151/526	HortNZ	Rachel McClung, Planner Carl Muller William Reeve, Acoustic Engineer Earnsey Weaver, Horticultural Expert Lynette Wharfe, Planner
02/07/2019	164/529	DJ Jones Family Trust & Suncrest Orchard Ltd	Michael Jones Walter Denley, Planning Consultant
02/07/2019	228/537, 123/518	McKay Family Trust, 45 South Group	Alastair Logan, Counsel Tim Jones
02/07/2019	285/548	Public Health South	Tom Scott, Health Protection Officer

			Megan Justice, Planner
02/07/2019 – 03/07/2019	506, 396	Central Otago District Council, Greg & Vivienne Wilkinson	Jan Caunter, Counsel Edward Guy, Managing Director Rationale Marilyn Brown, Planning Consultant
03/07/2019	144/522, 45/507	Highlands Motorsport Park, Central Speedway Club	Bridget Irving, Counsel David Mead Kate Scott
03/07/2019	26	Peter Brass	Peter Brass
03/07/2019	346/565	Carolyn Squire	Carolyn Squire
03/07/2019	383	Juliet Walker	Juliet Walker
03/07/2019	96	Rex Edgar	Rex Edgar
03/07/2019	368	Three G Family Trust	Steve Lyttle
03/07/2019	370/570	Trevor Tinworth	Trevor Tinworth
03/07/2019	122	Richard Ford	Richard Ford
04/07/2019	8/502	Ian Anderson	Ian Anderson
04/07/2019	191/534	Julene Ludlow	Julene Ludlow
04/07/2019	403	Graham Williamson	Graham Williamson
04/07/2019	189/533	John Lister	John Lister
04/07/2019	352	Ron Stillwell	Ron Stillwell
04/07/2019	183/532	Hillary Lennox	Hillary Lennox
04/07/2019	384	Irene Wallace	Irene Wallace
04/07/2019	40/504	Shirley Calvert	Shirley Calvert
04/07/2019	540	Muller Family Trust	Tim & Valda Muller
04/07/2019	252/542	Werner Murray	Werner Murray
04/07/2019	11, 216, 543, 325, 118, 18 117, 92/514	Anne Ashby-Neilson, Heather McPherson, Patricia O'Neil, Linda Shea, Michelle Feyen, Alan Beaton, Karl Feyen, Robin Dicey	Robin Dicey
04/07/2019	91/513	Matthew Dicey	Matthew Dicey
04/07/2019	RTDL	River Terrace Development Ltd	Warwick Goldsmith Jeff Brown
04/07/2019	DW	Reporting Officer & s42A Report Author	David Whitney

ATTACHMENT 7

RESOURCE CONSENTS REQUIRED

Table 1: Northbrook Arrowtown Resource Consent Requirements

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
Queenstown Lakes Operative District Plan	5.3.3.3(i)(a) Buildings	The construction of buildings in the Rural Zone. All buildings require resource consent	Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	5.3.3.3 (iv)(a) Surface of Lakes and Rivers - Any structure or mooring which passes across or through the surface of any lake and river or is attached to the bank of any lake and river	The construction of works (bridges) to and over the ephemeral stream	Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	5.3.3.4 Commercial Activities	Consent is required for the childcare centre (not associated with the Retirement Village) and medical centre (which will be open to the public as well as those staying in the Retirement Village)	Non-complying Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	5.3.5.1 (iii) Nature and Scale of Activities (a) The maximum gross floor area of all buildings on the site, which may be used for the activities shall be 100m^2;	Consent is required consent is required for the childcare centre (not associated with the Retirement Village) and medical centre (which will be open to the public as well as those staying in the Retirement Village) as they both exceed 100m^2 in area	Restricted Discretionary Activity	Ayr Avenue, Arrowtown

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
Queenstown Lakes Operative District Plan	14.2.4.1 (v) Size of Parking Spaces	There are parking shortfalls for the clubhouse and active recreation building if assessed on their own	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	14.2.4.1 (v) Size of parking spaces Mobility parking space specifications	Un-numbered mobility spaces in the vicinity of the reception and care home carpark, and the medical and childcare centre carpark, will each have a space of 2.5m and a shared area of 1.1m	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	14.2.4.1 (vi) Parking Area and Access Design	Road 1 does not provide a footpath on each side of the road and parking along its full length	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	14.2.4.1 (xii) Set Down Areas	Specific set down areas are not provided	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	14.2.4.2 (ix) Reverse Manoeuvring	Reverse manoeuvring onto Waterfall Park Access Road will be required	Restricted Discretionary Activity	Ayr Avenue, Arrowtown

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
Queenstown Lakes Operative District Plan	14.2.4.2 (ii) Design of Vehicle Crossings	A vehicle crossing is 10m wide rather than 6m	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	14.2.4.2 (iv) Minimum Site Distances from Vehicle Access	Shortfalls in minimum sight distances from vehicle accesses	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	14.2.4.1 (vi) Distances of Vehicle Crossings from Intersections	Shortfalls in the separation distance of vehicle crossings and intersections	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	22.3.2.4 (b) Bulk Earthworks Total volume of 50,000m^3 within the Site, within one consecutive 12-month period	A total volume of 102,700m^3	Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Operative District Plan	22.3.3 (iv) Earthworks within 7m of the bed of any water body shall not exceed 20m^3 in volume	Creating ponds and weirs	Restricted Discretionary Activity	Ayr Avenue, Arrowtown

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
Queenstown Lakes Proposed District Plan	24.4.1[1] Any activity not listed in Tables 24.1 and 24.2	Buildings not on registered building platforms. Landscaping and riparian planting associated with the unnamed stream	Non-complying Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	24.4.6 The construction of buildings for residential activity that are located within a building platform approved by a resource consent and registered on the applicable Computer Freehold Register before 21 March 2019.	Buildings located within building platforms	Controlled Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	24.4.8[2] The construction of buildings for residential activity outside a building platform approved by a resource consent and registered on the applicable Computer Freehold Register on a site where there is such a building platform.	Buildings outside a building platform	Non-complying Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	24.4.18 The construction and alteration of buildings for non-residential activities, not otherwise provided for in Table 24.1.	For the construction of non-residential buildings such as the Clubhouse, Café, Gym, Medical Centre and Rest home.	Restricted Discretionary Activity	Ayr Avenue, Arrowtown

[1] Subject to appeal
[2] Subject to appeal

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
	24.4.20 Cafes and restaurants	Clubhouse building contains a café and restaurant.	Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	24.4.22 Community Activities	Childcare centre, medical centre and health care facilities.	Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	24.5.1.4[3] Any site in the Wakatipu Basin Rural Amenity Zone located wholly outside the Precinct in respect of which the Computer Freehold Register for the site was issued before 21 March 2019 and with an area less than 80 hectares, a maximum of one residential unit per site.	There are 162 residential units on the site.	Non-complying Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	24.5.5[4] Building coverage The ground floor area of all buildings not subject to Rule 24.5.4 must not exceed 15% of net site area, or 500m² ground floor area, whichever is the lesser.	The ground floor area of all buildings on the site will exceed 500m²	Restricted Discretionary Activity	Ayr Avenue, Arrowtown

[3] Subject to appeal
[4] Subject to appeal

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
Queenstown Lakes Proposed District Plan	24.5.7.2 Building Height The maximum height of buildings shall be 6m.	Buildings will exceed 6min height	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	24.5.12 Setback of buildings from waterbodies The minimum setback of any building from the bed of a wetland, river or lake shall be 30m.	Buildings will be located closer than this to the ephemeral stream	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	25.4.2[5] Earthworks that do not comply with the standard for the maximum total volume in Table 25.2	A total volume of 102,700m^3 of earthworks required	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	25.5.4[6] Earthworks volume - Wakatipu Basin Rural Amenity Zone – 400m^3	A total volume of 102,700m^3 of earthworks required	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes	25.5.11 Earthworks over a contiguous area of land shall not exceed the following area:	115,000m² of land exposed	Restricted Discretionary Activity	Ayr Avenue, Arrowtown

[5] Subject to appeal
[6] Subject to appeal

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
Proposed District Plan	10,000m² where the slope is less than 10°.			
Queenstown Lakes Proposed District Plan	25.5.15 The maximum depth of any cut shall not exceed 2.4 metres	A maximum cut depth of 3m is required	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	25.5.16 The maximum height of any fill shall not exceed 2 metres	The maximum fill height will be 3m	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	25.5.19[7] Earthworks within 10m of the bed of any water body, or any drain or water race that flows to a lake or river, shall not exceed 5m³ in total volume, within any consecutive 12-month period	Earthworks will be undertaken within 10m of the ephemeral stream will exceed 5m³	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	25.5.21[8] No more than 300m³ of Cleanfill shall be transported by road to or from an area subject to Earthworks.	Fill transported to the site will exceed 300m³	Restricted Discretionary Activity	Ayr Avenue, Arrowtown

[7] Subject to appeal
[8] Subject to appeal

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
Queenstown Lakes Proposed District Plan	29.4.11[9] High Traffic Generating Activities	More than 50 vehicle movements in commuter peak hour will be generated	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	29.5.1[10] Units: 1 parking space per elderly persons housing unit Care home: 1 parking space per 5 beds for visitors plus 1 parking space per 5 beds for staff Clubhouse: 1 parking space per 25m^2 PFA plus 1 space per 100m^2 PFA Community centre: 1 parking space per 10m^2 PFA Recreation building: 1 parking space per 10m^2 PFA	There is a shortfall if the clubhouse and the active recreation building are assessed separately	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	29.5.3[11] Size of Parking Spaces and Layout Mobility spaces – 3.6m wide	Un-numbered mobility spaces in the vicinity of the medical centre and Childcare Centre will each have a space of 2.5m and a shared area of 1.1m. Space 6 and 15 have varying aisle widths.	Restricted Discretionary Activity	Ayr Avenue, Arrowtown

[9] Subject to appeal
[10] Subject to appeal
[11] Subject to appeal

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
Queenstown Lakes Proposed District Plan	29.5.5 Mobility Parking Spaces	Mobility park at the tennis court	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	29.5.6 Drop off/Set down areas	The childcare centre has a shortfall of 12 spaces.	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	29.5.7 Reverse manoeuvring and reverse manoeuvring of Heavy Vehicles	Reverse manoeuvring onto Waterfall Park Access Road will be required	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	29.5.14[12] Access and Road design	Road 1 does not provide a footpath on each side of the road and parking along its full length.	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	29.5.15 Width and design of vehicle crossing – urban zones	The vehicle crossing to Apartment 2 is 10m wide rather than 6m.	Restricted Discretionary Activity	Ayr Avenue, Arrowtown

[12] Subject to appeal

Relevant Plan/ Standard	Relevant rule/regulation	Reason for consent	Activity Status	Location of proposed activity
Queenstown Lakes Proposed District Plan	29.5.18 Minimum sight distances from vehicle access	Shortfall in sight distances	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Queenstown Lakes Proposed District Plan	29.5.22 Minimum distances of Vehicle Crossings from Intersections	The vehicle crossings for 16 retirement units/blocks are closer than 25m to an intersection	Restricted Discretionary Activity	Ayr Avenue, Arrowtown
Regional Plan: Water for Otago	13.2.2.1 Erection or placement of Structures	For the construction of one vehicle and two pedestrian/cycle crossings and culverts over and through the ephemeral stream as the bridge soffit is lower than the top of the higher river bank.	Discretionary Activity	Ayr Avenue, Arrowtown
Regional Plan: Water for Otago	13.5.3.1 Alteration of a bed of a river	For the disturbance of the bed of the ephemeral stream for the purposes of the construction of weir structures, vehicle and pedestrian/cycle crossings and localised shaping of the channel bed, as the works will exceed 10 hours in duration	Discretionary Activity	Ayr Avenue, Arrowtown
Regional Plan: Water for Otago	14.2.2.1 Drilling	For the drilling of land over an aquifer, for the purposes of directional drilling of a wastewater pipeline.	Controlled Activity	Ayr Avenue, Arrowtown

Table 2: Northbrook Wanaka Resource Consent Requirements

Relevant plan or standard	Relevant Rule or regulation	Reason for Consent	Activity Status	Location of proposed activity
Queenstown Lakes Operative District Plan	12.34.2.2 (ii) Buildings in Activity Area C1 – C4	Residential units and associated buildings within Activity Area C2	Controlled activity	Outlet Road, Wanaka
Queenstown Lakes Operative District Plan	12.34.2.3 (i) Residential Activities (excluding buildings) in Activity Areas B1 – B5 and C1 – C4	Residential Activities in Activity Area C2	Restricted Discretionary activity	Outlet Road, Wanaka
Queenstown Lakes Operative District Plan	12.34.2.3 (ii) Residential, Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages (all excluding buildings) in Activity Area D1	A Retirement Village in Activity Area D1	Restricted Discretionary activity	Outlet Road, Wanaka
Queenstown Lakes Operative District Plan	12.34.2.3 (iii) Residential Buildings	Buildings containing four residential units	Restricted Discretionary activity	Outlet Road, Wanaka
Queenstown Lakes Operative District Plan	12.34.2.3 (iv) Buildings for Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages within Activity Area D1	Buildings for a Retirement Village within Activity Area D1	Restricted Discretionary activity	Outlet Road, Wanaka

Relevant plan or standard	Relevant Rule or regulation	Reason for Consent	Activity Status	Location of proposed activity
Queenstown Lakes Operative District Plan	12.34.2.4 (ii) Residential Activities (excluding buildings) in Activity Areas B1 to B5 and C1 to C4 and Residential, Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Village (all excluding buildings) in Activity Area D1 where an Outline Development Plan is proposed for only part of Activity Areas B1 to B5, C1 to C4 and D1.	Residential Activity in Activity Are C2 and Retirement Village in Activity Area D1, including an Outline Development for parts of the Activity Areas.	Discretionary activity	Outlet Road, Wanaka
Queenstown Lakes Operative District Plan	12.34.2.5 (ix) Visitor Accommodation, Commercial, Retail and Community Activities and Retirement Villages within Activity Areas A, B1 to B5 and C1 to C4.	Retirement Village in Activity Area C2	Non-complying activity	Outlet Road, Wanaka
Queenstown Lakes Operative District Plan	12.34.4.2 (iii) The density of residential units within each Activity Area shall achieved limits set out in Table 1 plus or minus 15%	Density greater than 4.5 units per hectare within Activity Area C2	Non-complying activity	Outlet Road, Wanaka
Queenstown Lakes Operative District Plan	12.34.4.2 (iv) Building Height – Flat sites	Buildings greater than 8m in height within Activity Area C2	Non-complying activity	Outlet Road, Wanaka

Relevant plan or standard	Relevant Rule or regulation	Reason for Consent	Activity Status	Location of proposed activity
Queenstown Lakes Operative District Plan	14.2.4.1 (i) Minimum Parking Space Numbers	Shortfall in carparking numbers – 74 carparking spaces are provided within the site	Restricted Discretionary activity	Outlet Road, Wanaka
Queenstown Lakes Operative District Plan	15.2.3.3 (x) Within the Northlake Special Zone – any subdivision of any Activity Areas B1 to B5, C1 to C4 and D1 into more than one lot prior to a grant of consent for the relevant Activity Area under Rule 12.34.2.3.i or Rule 12.34.2.3.ii.	Subdivision of Activity Areas C2 and D1 to create new lots for the retirement village	Discretionary activity	Outlet Road, Wanaka
Queenstown Lakes Operative District Plan	15.2.3.3 (xi) Within the Northlake Special Zone any subdivision shall be a Restricted Discretionary Activity	Subdivision of Activity Areas C2 and D1 to create new lots for the retirement village	Restricted Discretionary activity	Outlet Road, Wanaka
Queenstown Lakes Proposed District Plan	29.4.11[13] High Traffic Generating Activities	There are 90 residential units which exceeds the threshold.	Restricted Discretionary activity	Outlet Road, Wanaka

[13] Subject to appeal

Relevant plan or standard	Relevant Rule or regulation	Reason for Consent	Activity Status	Location of proposed activity
Queenstown Lakes Proposed District Plan	29.5.1[14] Minimum parking requirements	Shortfall in carparking numbers – 74 carparking spaces are provided within the site.	Restricted Discretionary activity	Outlet Road, Wanaka

[14] Subject to appeal

Table 3: River Terrace Resource Consent Requirements

Relevant plan or standard	Relevant Rule or regulation	Reason for Consent	Activity Status	Location of proposed activity
Central Otago District Plan	4.7.3(vii)(b) Residential Activities Per Site	The proposed retirement village will result in multiple residential units (activities) on a single Title.	Discretionary Activity	Sandflat Road, Cromwell
Central Otago District Plan	4.7.5(iii) Subdivision	The proposed subdivision does not meet the average allotment size requirements required for subdivision within the Rural Residential and Rural Resource Area (2).	Non-complying Activity	Sandflat Road, Cromwell
Central Otago District Plan	4.7.5(iv) Retail Activity	The proposal seeks to create a commercial centre which will require resource consent under this rule.	Non-Complying Activity	Sandflat Road, Cromwell
Central Otago District Plan	4.7.6A(a) Yards	The residential dwellings created as a consequence of the proposed subdivision will not meet the requirements of a minimum side and rear yard of 25 metres and a front yard of 10 metres.	Restricted Discretionary Activity	Sandflat Road, Cromwell
Central Otago District Plan	4.7.6A(b) Open Space in Rural Resource Area (2)	Every dwelling shall have an open space of not less than 45m^2 in area with a minimum dimension of 5 metres.	Restricted Discretionary Activity	Sandflat Road, Cromwell
Central Otago District Plan	4.7.6A(f) Height	Dwellings and buildings within the retirement village and commercial centre will exceed 5-metres in height	Restricted Discretionary Activity	Sandflat Road, Cromwell

Relevant plan or standard	Relevant Rule or regulation	Reason for Consent	Activity Status	Location of proposed activity
National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ("NESCS")	Regulation 10	Earthworks (soil disturbance) on the subject site, where a detailed site investigation exists and states that the soil contamination exceeds the applicable standard in regulation 7. A remedial action plan has been prepared.	Restricted Discretionary Activity	Subject Site