

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under clause 14 of the First Schedule of the Act
BETWEEN	RIVER TERRACE DEVELOPMENTS LIMITED
	(ENV-2020-CHC-006)
	Appellant
AND	CENTRAL OTAGO DISTRICT COUNCIL
	Respondent

MEMORANDUM OF COUNSEL FOR THE PARTIES
(1 MAY 2020)

1. This Memorandum is lodged in response to the Court's Minute dated 17 March 2020 and is lodged by counsel for the parties, following consultation between counsel in relation to the list of matters to be addressed detailed in paragraph 4 of the Court's Minute dated 17 March 2020.

Mediation

2. The parties do not consider that reference to mediation would be productive or would narrow issues in contention beyond the extent advised in this Memorandum.

Preliminary or jurisdictional issues

3. There are no preliminary or jurisdictional issues which are required to be addressed.

Essential facts

4. Plan Change 13 (**PC13**) is a private plan change which seeks to rezone 49.92ha of pastoral land (**Site**) to create a new zone entitled 'River Terrace Resource Area' (**RTRA**) in the Respondent's operative District Plan (**District Plan**). The Site is identified on the attached plan which also identifies, by capital letters, adjoining and adjacent areas of land described below.

5. The proposed RTRA would be an urban zone enabling medium density residential development of up to 900 residential dwellings, including a retirement home, and also includes provision for a primary school.
6. The Site contains two flat terraces separated by a sloping 10m-high escarpment. The Site is primarily covered in grass, with sporadic scrub and some shelter pines. There are no buildings or structures on the Site apart from the foundations of a previous dwelling, fences around the Site perimeter, a sales sign and a small temporary building.
7. The upper terrace adjoins State Highway 6 (**SH6**) and Sandflat Road and contains 13.22ha. The upper terrace is zoned Rural in the District Plan, enabling a range of rural activities, including one dwelling as a controlled activity. Consent has been obtained for a land use consent for a building platform on this lot (RC190381).
8. The lower terrace adjoins Sandflat Road and contains 36.70ha. The lower terrace is zoned Rural and is subject to the Rural Residential notation under the District Plan, enabling a range of rural activities plus residential dwellings on lots having an average area of 2ha. . Consent has been obtained to subdivide 4 rural residential allotments (RC190404). Land use consent for the establishment of dwellings on these allotments has not yet been obtained. Up to 16 allotments and dwellings can be consented on the lower terrace through a series of controlled activity consent applications.
9. Adjacent to the Site, on the opposite (eastern) side of Sandflat Road, is located the Highlands Motorsport Park (**marked A** on the attached plan). Highlands is a large, multi-attraction recreational facility. It contains *inter alia* a race track, go kart track, buggy adventure, miniature golf course, sculpture park, the National Motorsport Museum and a café. Highlands hosts a range of motor vehicle racing activities. Highlands was established pursuant to resource consents, initially RC070149. It now operates in accordance with RC150225.
10. Also adjacent to the Site, on the opposite (eastern) side of Sandflat Road, is the Central Motor Speedway (**marked B** on the attached plan). The Speedway is a dirt track speedway which hosts speedway events. The Speedway operates pursuant to a specified departure issued in 1980.
11. Adjoining the Site along the northern part of its western side is Suncrest Orchard (**marked C** on the attached plan) which is a well-established commercial production orchard containing a variety of fruit trees. The activity is generally permitted under the District Plan, subject to performance standards.

12. Land subject to the Rural Residential notation adjoins the southern part of the western boundary of the Site (marked **D** on the attached plan) and the southern boundary of the Site (marked **E** on the attached plan). The southern part of the land on the eastern side of Sandflat Road opposite the Site (marked **F** on the attached plan) is zoned Rural.
13. Land to the north of the site, on the opposite side of SH6 (marked **G** on the attached plan), contains established horticultural activities, including orchards of 45 South.

Essential issues in dispute

14. This section of this Memorandum summarises the significant issues between RTDL on the one hand and the Respondent and s274 Parties on the other hand. In respect of each issue in dispute, RTDL generally adopts one view or position and one or more of the opposing parties adopt(s) a contrary or different view or position. Any reference to 'the opposing parties' below is a reference to one or more of the opposing parties.

Need for PC13 – Positive effects

15. RTDL contends that Cromwell faces a 'housing crisis', meaning an existing or imminent severe shortage of residential housing at the more affordable end of the price range. PC13 is intended to address that housing crisis by providing a significant number of residential houses (house and land packages) and residential sections to the market in the short term and the medium term. This issue is claimed by RTDL as the primary driver of PC13.
16. The opposing parties generally contend that there is no housing crisis, that there is an adequate supply of residential product in the short, medium and long term, and that this issue does not support or justify confirmation of PC13. They consider the primary driver of PC13 to be RTDL's commercial interests.
17. A component of any housing supply issue relates to affordability. RTDL contends that PC13 is necessary to deliver residential product to the market at the more affordable end of the price range. The opposing parties disagree.
18. Relevant to this issue is the issue of how much weight should be placed on the Cromwell 'Masterplan Spatial Framework' which was adopted by the Respondent immediately prior to the PC13 hearing. The Masterplan Spatial Framework is a document prepared and adopted by the Respondent under the Local Government Act 2002 to provide a spatial framework to guide the future development of Cromwell. RTDL contends that little or no

weight should be placed upon the Masterplan Spatial Framework. The opposing parties take the contrary view that considerable weight should be placed on that document.

19. Also relevant to this issue is the National Policy Statement – Urban Development Capacity 2016 (NPS-UDC). In relation to this aspect there are two matters in contention:

- a. Whether Cromwell falls within the definition of "Urban environment" as defined in the NPS-UDC, and therefore whether the NPS-UDC is relevant to consideration of PC13;
- b. If the NPS-UDC is relevant, the extent to which PC13 implements the NPS-UDC and the weight that should be placed upon that factor.

20. RTDL contends that Cromwell is an "Urban environment" as defined in the NPS-UDC, that PC13 would implement the relevant objectives and policies of the NPS-UDC, and that considerable weight should be placed upon that factor. The opposing parties generally take opposing views on some or all of those considerations.

Noise effects

21. The Site is exposed to considerable levels of noise generated by activities on adjacent properties, including motor vehicle noise generated by activities carried out within the Highlands and Speedway properties, and noise generated by horticultural activities on Suncrest Orchard and the horticultural land to the north including noise generated by wind machines (frost protection), helicopters (frost protection and drying fruit) and bird scaring devices. The northern boundary of the site is also affected by noise from the State Highway. The extent of noise generated by those activities is generally not in dispute. RTDL contends that the need for residential housing which PC13 will provide, and the unlikelihood that such residential housing will be provided elsewhere, justifies the enabling of residential development on the Site through PC13 despite the noisy environment. The opposing parties contend that levels and extent of noise are such that the Site is not suitable for residential development.

22. A component of this issue relates to acoustic insulation and ventilation. RTDL proposes acoustic insulation and ventilation requirements intended to mitigate the effects of noise generated by the adjacent activities on internal residential amenities within the Site. There is disagreement both over the appropriateness of acoustic insulation and ventilation as a mitigation technique in this location and over the appropriate standard of acoustic insulation, should PC13 be approved.

23. Another component of this issue relates to outdoor noise effects. The parties agree that controls have not been proposed that would mitigate outdoor noise effects. The opposing parties generally consider that the level of unmitigated outdoor noise for future residents is unacceptable. RTDL does not agree.

Air quality effects

24. The Site is potentially exposed to spray drift from activities on adjacent and adjoining properties. In particular, the Site is located adjacent to the Suncrest Orchard which employs agrichemical sprays. RTDL proposes to address this issue by including a 5m setback from the Site boundary and a fence and hedge between the Suncrest Orchard property and future residential activities on the Site. The opposing parties generally contend that the proposed measures are inappropriate, unrealistic or inadequate to address potential air quality effects.

Health effects

25. The opposing parties contend that the noise and air quality effects, as described above, would have resulting impacts on the health of the people living at the Site. There is disagreement between RTDL and the opposing parties as to the existence, degree and significance of these public health effects.

Reverse sensitivity effects

26. RTDL proposes to rely on a requirement for registration of 'no-complaints restrictive covenants' to avoid reverse sensitivity effects arising in respect of noise generated by the existing adjacent activities. The opposing parties generally contend that such covenants are ineffective and/or will not avoid or adequately mitigate potential reverse sensitivity effects relating to noise.
27. The issue of reverse sensitivity also arises in relation to air quality effects arising from spray drift and/or dust and/or smoke and/or odour generated by the adjacent existing activities and potentially adversely affecting residential amenities within the Site. RTDL contends that the potential for such reverse sensitivity effects to arise is adequately mitigated through the provisions of PC13 to the extent that any such effects will be avoided or adequately mitigated. The opposing parties take a variety of different and opposing views.

Integration with existing township

28. RTDL and the opposing parties differ on:

- a. the extent to which the PC13 development will be integrated with the existing Cromwell township;
- b. the significance of this consideration in the overall context of PC13.

Loss of productive land

29. It is generally accepted that the upper terrace containing 13.2ha zoned Rural is probably suitable for growing stonefruit trees (like Suncrest Orchard next door) and potentially other crops such as grapevines. PC13 would result in a loss of that productive potential. There is disagreement between RTDL and the opposing parties as to the significance of that loss in the context of PC13.

Rural character, amenity and landscape effects

30. This issue relates to the loss of rural character and associated rural amenity values as a result of urbanisation. Matters raised under this issue include erosion of Cromwell's "rural frame" and changes to the experience of approaching Cromwell from the Kawarau Gorge. There may also be impacts on dark-night sky in Cromwell. It is accepted that development pursuant to PC13 will result in a change of landscape character and amenity. There is disagreement between RTDL and the opposing parties about the degree and significance of these effects.

Transportation

31. There are concerns in respect of the additional traffic being added to the network, including in respect of efficiency as well as safety. Who will bear the cost of any necessary upgrades to the network is also at issue. The implications of PC13 for public transport connections and alternative modes of transport are also at issue. There is disagreement between RTDL and the opposing parties as to the extent and significance of these matters.

Social impacts

32. The opposing parties are concerned that the potential social impacts of PC13 have not been considered or fully assessed in the proposal to date. RTDL considers social impacts to have been sufficiently considered and assessed through the other various assessments.

Detailed PC13 plan provisions

33. It is the opposing parties' primary position that PC13 is entirely incompatible with the surrounding environment such that it must be declined. Further, the opposing parties do

not consider it is possible to remedy the deficiencies of the site with the provisions of PC13.

34. The opposing parties consider that the PC13 provisions proposed are internally inconsistent and do not implement the provisions of the CODC District Plan or the objectives of the RTRA zone itself.

Issues not in dispute (and related documents)

35. This is an additional item not listed in the Court's Minute which is addressed, for the Court's assistance, to advise the Court on matters which are not challenged by the opposing parties and which the Court therefore may not have to consider.

- a. Urban design (internal to PC13), noting that the opposing parties are not endorsing RTDL's proposed design, but are not bringing evidence or otherwise proposing to challenge these matters.

Witnesses to be called

36. Witnesses to be called are set out in the Tables below, one Table for each party, with specific references to names and expertise and/or subject of evidence to be presented.

Table 1 – Witnesses for the Proponent River Terrace Developments Limited		
	Name	Expertise/Subject of evidence
1.	Chris Meehan	Background to PC13. Demand for affordable, residential housing.
2.	Marc Bretherton	Background to PC13
3.	David Tristram	Valuation
4.	tba	Demographics
5.	Reece Hill	Soils
6.	Natalie Hampson	Economics
7.	Alistair Ray	Urban Design
8.	Jon Styles	Acoustic

9.	Andy Carr	Transportation
10.	Stephen Skelton	Landscape
11.	Jeff Brown	Planning

Table 2 – Witnesses for the Respondent Central Otago District Council

	Name	Expertise/Subject of evidence
1.	David Whitney	Planning
2.	Craig Batchelar	Strategic Planning
3.	Fraser Colgrave	Economics

Table 3 – Witnesses for Highlands Motorsport Park Limited, Central Speedway Cromwell, Suncrest Orchard Limited

	Name	Expertise/Subject of evidence
1.	Josie Spillane	Highlands Motorsport Park
2.	Andy Erskine	Central Motor Speedway Club Inc
3.	Michael Jones	Suncrest Orchards Limited
4.	Aaron Staples	Acoustics (to be shared with Horticultural Interests)
5.	David Mead	Strategic Planning (TBC – to be shared with Horticultural Interests)
6.	Stuart Ford	Economics (to be shared with Horticultural Interests)
7.	Kate Scott	Planning (to be shared with Horticultural Interests)

Depending on the conclusions of the economic, valuation and demographic evidence to be filed by the Appellant, Counsel may wish call expert evidence in relation to these matters.

Table 4 – Witnesses for 45 South Group, Gregory Hinton & Ros Hinton		
	Name	Expertise/Subject of evidence
1.	Tim Jones	45 South
2.	Alan McKay	Orchardist
3.	Aaron Staples	Acoustics (as per Table 3)
4.	Stuart Ford	Economics (as per Table 3)
5.	Kate Scott	Planning (as per Table 3)

Table 5 – Witnesses for Horticulture New Zealand		
	Name	Expertise/Subject of evidence
1.	Rachel McClung	Horticulture NZ
2.	Richard Palmer	Summerfruit NZ
3.	Kiwifruit industry representative [name to be confirmed]	New Zealand Kiwifruit Growers Association – reverse sensitivity matters
4.	David Mead	Strategic Planning (TBC as per Table 3)
5.	Stuart Ford	Economics (as per Table 3)
6.	Aaron Staples	Acoustics (as per Table 3)

7.	Kate Scott	Planning (as per Table 3)
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Table 6 – Witnesses for Public Health South

	Name	Expertise/Subject of evidence
1.	Tom Scott	Public Health South
2.	Dr Stephen Chiles	Acoustic
3.	Louise Wickham	Air Quality
4.	Dr Anura Jayasinghe	Public Health
5.	Megan Justice	Planning

Table 7 – Witnesses for Residents for Responsible Development Cromwell

	Name	Expertise/Subject of evidence
1.	Simon Giles, chair R4RDC	Background to the Society, and overview of the community's concerns
2.	TBC	Social Scientist / Social Impacts
3.	Various members / community representatives [likely 8-12], including: <ul style="list-style-type: none"> - Alan Coull - James Dicey - Robin Dicey - Shirley Calvert - Werner Murray 	Various examples of specific concerns community / local concerns, as well as drawing on where members have technical or other experience

Expert conferencing

37. Expert witness conferencing was carried out prior to the PC13 Council hearing relating to three areas of expertise. The parties consider expert witness conferencing in the same three areas of expertise would likely be of assistance to the Court. Those three areas of expertise are:
- a. noise;
 - b. demand for and supply of residentially zoned land;
 - c. planning (focused on the planning framework, given the proposed timing before other specialist evidence is exchanged).
38. The parties recommend that expert witness conferencing be carried out prior to preparation and circulation of primary evidence as that could reduce the amount of primary evidence in relation to those three areas of expertise.
39. Counsel for the parties appearing before the PC13 Hearing Commissioners prepared and lodged a Joint Memorandum of Counsel confirming the relevant decision-making requirements applicable to consideration of PC13. The PC13 Decision records that as having been very helpful. Counsel propose to prepare and lodge a similar Joint Memorandum to the Court.

Timetable

40. The parties propose the following timetable (noting that the Respondent supports its decision to refuse PC13 and that all s274 Parties support the Respondent's decision):
- a. 2 July 2020 – expert witness conferencing to be concluded and joint witness statements filed, and Joint Memorandum of Counsel confirming the relevant decision-making requirements to be completed and filed;
 - b. 30 July 2020 – evidence for the Appellant to be filed and served;
 - c. 27 August 2020 – evidence for the Respondent to be filed and served;
 - d. 24 September 2020 – evidence for the s274 Parties to be filed and served;
 - e. 15 October 2020 – rebuttal evidence for the Appellant to be filed and served.

Duration of the hearing

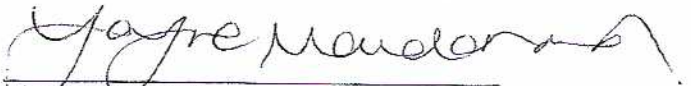
41. The parties estimate that the hearing will take between 7-10 days.

Any other matters

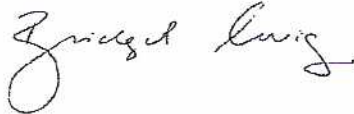
42. The parties have sought to anticipate and provide a list of their witnesses as best as possible, based on RTDL's list of witnesses and the evidence previously adduced by RTDL at the first instance hearing. They reserve the right to amend their witnesses for the purpose of responding to RTDL's evidence, should that appear to be necessary to do so. The same applies to RTDL.



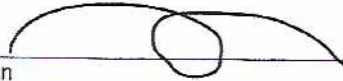
Warwick Goldsmith
Counsel for River Terrace Developments
Limited



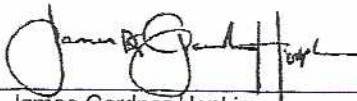
Jayne Macdonald
Counsel for Central Otago District Council



Bridget Irving/Derek McLachlan
Counsel for Highlands Motorsport Park
Limited, Central Speedway Cromwell,
Suncrest Orchard Limited



Alastair Logan
Counsel for 45 South Group, Gregory
Hinton, Ross Hinton



James Gardner-Hopkins
Counsel for Residents for Responsible
Development Cromwell

Helen Atkins
Counsel for Horticulture New Zealand

Joshua Leckie/Annabel Linterman
Counsel for Public Health South

Duration of the hearing

41. The parties estimate that the hearing will take between 7-10 days.

Any other matters

42. The parties have sought to anticipate and provide a list of their witnesses as best as possible, based on RTDL's list of witnesses and the evidence previously adduced by RTDL at the first instance hearing. They reserve the right to amend their witnesses for the purpose of responding to RTDL's evidence, should that appear to be necessary to do so. The same applies to RTDL.

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Counsel for River Terrace Developments
Limited

Jayne Macdonald
Counsel for Central Otago District Council



Bridget Irving/Derek McLachlan
Counsel for Highlands Motorsport Park
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Alastair Logan
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Helen Atkins
Counsel for Horticulture New Zealand

James Gardner-Hopkins
Counsel for Residents for Responsible
Development Cromwell



Joshua Leckie/Annabel Linterman
Counsel for Public Health South



G

State Highway 6

Lot 1 DP 541276
(13.22Ha)

C

[Ru]

Sandflat Road

B

A

Site

Lot 2 DP 541276
(36.70Ha)

[Ru(RR)]

D

E

F

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Client/Owner

River Terrace
Developments Limited

Project/Design Title

ENV-2020-CHC-006

Drawn by: XMG
Checked by: PD
Approved by: PD

Original Size
A3

Scale
1:5000

DO NOT SCALE

Job No.
PC13_PLAN

Sheet No.
1

Revision No.
A

Date Created
01/05/2020

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