

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2020-CHC-

Under the Resource Management Act 1991 (**RMA**)

In the matter of an appeal under clause 14(1) of Schedule 1 of the RMA in relation to the Central Otago District Council's decision on Plan Change 13

Between **River Terrace Developments Ltd**

Appellant

And **Central Otago District Council**

Respondent

Notice of Appeal

24 February 2020

Appellant's Solicitors

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To: The Registrar
Environment Court
Christchurch

Introduction

- 1 River Terrace Developments Limited (the **Appellant**) appeals against the decision (**Decision**) in respect of submissions on proposed private Plan Change 13: River Terrace Resource Area to the Central Otago District Plan (**PC13**).
- 2 The Appellant was the requestor for PC13 and made a submission (#298) on PC13.
- 3 The Decision was made by the Central Otago District Council (the **Respondent**).
- 4 The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
- 5 The Decision was made on 5 November 2019.
- 6 The Appellant received notice of the Decision on 21 December 2019.

The Decision

- 7 The Decision being appealed is the Decision by the Respondent:
 - (a) to not accept PC13; and
 - (b) to accept or reject the submissions lodged to PC13 to the extent that such acceptances/rejections correspond with the primary Decision not to accept PC13 and in respect of the findings detailed in the Decision.

Reasons for the appeal

- 8 The reasons for the appeal are set out below, using the same primary issue headings, and in the same order, as set out in the Decision.

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

- 9 The Respondent erred in reaching its determination in paragraph 3.79 of the Decision that the Appellant did not establish that a 'housing crisis' exists in Cromwell ('housing crisis' meaning an existing or imminent severe shortage of residential housing at the more affordable end of the price range – refer paragraph 3.17 of the Decision). In particular the Respondent:

- (a) failed to place appropriate weight on the evidence of Mr Meehan in relation to this issue, including the significant extent of anecdotal evidence which supported the contention that a housing crisis exists.
 - (b) failed to make any reference to, and therefore place appropriate weight on, the valuation evidence presented by the Appellant.
 - (c) failed to take into account, and therefore to place appropriate weight on, the severe shortage of affordable housing in the Queenstown and Wanaka areas and the impact that shortage has on housing demand in Cromwell.
 - (d) inappropriately concluded that the Council has an eye on the long-term housing needs of the district in informing the carrying out of its functions under s31(aa) RMA, and in reaching that conclusion:
 - (i) gave inappropriate weighting to the Masterplan Spatial Framework (**Masterplan**) despite subsequently reaching the conclusion that little or no weight should be placed upon the Masterplan;
 - (ii) inappropriately counted the conclusion in d. above as a factor relevant to its determination on this issue.
- 10 The conclusion reached by the Respondent that no housing crisis exists consequentially resulted in incorrect conclusions in relation to the Respondent's ability to adequately enable and provide for housing demands and needs in the Cromwell area in the short and medium term.
- 11 The Respondent's finding at paragraph 3.84 of the Decision that no party presented any quantitative evidence (in relation to affordability of housing and its contribution to a housing crisis) was incorrect, and could not have reasonably been reached, taking into account the expert valuation advice presented by the Appellant which is not referred to in the Decision.
- 12 The Respondent erred in its determination in paragraph 3.86 of the Decision to place little weight on the potential provision of warm, healthy homes. In particular:
- (a) the Respondent addressed that issue by way of comparison with (presumably) other theoretical new homes, when that was not the point being made by the Appellant;
 - (b) the Respondent failed to consider, and place appropriate weight on, the potential for future residents in Cromwell to have a choice between new, warm and healthy housing to be provided through PC13 and the existing inadequate (in terms of warmth and health) housing stock in Cromwell.

- 13 In paragraphs 3.88-3.93 of the Decision the Respondent reached incorrect or inappropriate determinations in relation to the NPS:UDC. In particular:
- (a) The Respondent did not address the significance of the NPS:UDC in the overall planning framework. The consequence of that failure was that insufficient weight was placed upon the achievement by PC13 of the objectives and policies of the NPS:UDC.
 - (b) The Respondent incorrectly concluded that PC13 is partially in conflict with NPS:UDC Policy A3.
 - (c) The conclusion in paragraph 3.93 of the Decision that there are other means available to implement the NPS:UDC is not supportable by the evidence presented at the PC13 hearing, particularly bearing in mind the conclusion reached by the Respondent that little or no weight should be placed upon the Masterplan.
 - (d) The Respondent applied an inappropriate test that the Appellant should demonstrate that PC13 is necessary for the express purpose of implementing the NPS:UDC.

Issue 2: Health and nuisance effects

- 14 The Respondent erred in concluding in paragraph 3.162 of the Decision that (should PC13 be accepted) the level of internal acoustic attenuation (for mitigating noise effects and for reducing the potential for reverse sensitivity effects) should be as recommended by Dr Chiles, Mr Reeve and Mr Staples in preference to the level recommended by Mr Styles. That error arises from:
- (a) in general, the assessment by the Respondent of the evidence presented in relation to this issue;
 - (b) in particular, the determination that the appropriate level of attenuation is the level required to achieve WHO guidelines for avoidance of sleep disturbance.
- 15 In relation to site suitability for residential development, the Respondent:
- (a) did not place sufficient weight on the variety (in the general populace) of susceptibility to noise and the fact that a percentage of the general population could reasonably be expected to consider the anticipated noise levels acceptable.
 - (b) placed insufficient weight on the significance of the proposed no-complaint restrictive covenants in enabling people to make choices about their future

residential environment in general and in particular about the potential extent of adverse noise effects arising from neighbouring activities.

- (c) again misinterpreted, and did not reach the appropriate conclusions arising from, Mr Meehan's evidence (referring to paragraph 3.174 of the Decision – being the same point as raised in paragraph 12 above of this Notice of Appeal).

Issue 3: Reverse sensitivity

- 16 The Respondent's determination at paragraph 3.255 (relating to curtailment of existing operations) is incorrect because it fails to take into account:
 - (a) existing use rights;
 - (b) in addition to (a) above, the ability to apply for Certificates of Compliance.
- 17 In respect of the determinations of the Respondent in relation to the efficacy of non-restrictive covenants to avoid reverse sensitivity effects, the Respondent:
 - (a) failed to analyse or consider the detail of the no-complaint restrictive covenants proposed by the Appellant.
 - (b) failed to adequately consider the relevant case law cited by the Appellant.
 - (c) failed to apply the facts of the case to the legal principles arising from the relevant case law cited by the Appellant.
 - (d) placed inappropriate weight upon the possibility of third-party intervention (refer paragraph 3.261 of the Decision), and the likelihood of such action giving rise to a potential reverse sensitivity effect, taking into account the proposed no-complaint restrictive covenants which the PC13 land would be subject to.
- 18 The Respondent reached an incorrect and inappropriate determination in paragraph 3.259 of the Decision that there was a lack of clear evidence from the Appellant in relation to the issue of probability of reverse sensitivity effects arising, and in particular erroneously based that conclusion on a consideration of evidence. The appropriate conclusion should be arrived at through a clear and careful application of relevant legal principles to the facts of the PC13 proposal.
- 19 The Respondent made incorrect and unsupported determinations in relation to the probability of reverse sensitivity effects arising.

Issue 4: Integration with existing township

- 20 In reaching its conclusions on this issue the Respondent:
- (a) Did not adequately take into account the current dispersed nature of Cromwell, including its satellite communities;
 - (b) did not accord appropriate weight to evidence relating to the likelihood and probability of eventual expansion of Cromwell in a southerly direction;
 - (c) focused on the fact of alleged lack of integration without adequately considering the relatively minor extent (in distance terms) of that outcome;
 - (d) placed inappropriate weight on the availability and efficiency of potential walkways/cycling links between the PC13 site and central Cromwell;
 - (e) placed inappropriate weight on alleged lack of social integration and alleged additional relative economic cost without any detailed evidence in relation to those issues having been presented and without examining the extent and significance of such alleged undesirable outcomes bearing in mind the facts of PC13's location;
 - (f) inappropriately determined that PC13 should be the "next logical step" for Cromwell's urban growth.

Issue 5: Rural character, amenity and landscape effects

- 21 To the extent that the determinations of the Respondent in relation to this issue counted against PC13 (which is relatively minor) the Respondent failed to consider:
- (a) the general context of the variety of approaches to Cromwell;
 - (b) the extent to which additional landscaping could have adequately mitigated any such adverse effects.

Issue 6: Loss of productive land

- 22 In determining that PC13 would result in a degree of adverse effect (more than negligible but not significant – refer paragraph 3.329 of the Decision) in relation to this issue, the Respondent:
- (a) does not appear to have accorded appropriate weight to the fact that only a small proportion of the PC13 upper terrace comprises LUC Classes 1-3.
 - (b) has not accorded appropriate weight to evidence presented that extensive other areas of rural zoned land are under consideration for productive uses such as orchards or vineyards.

- (c) has not taken any account of the comparative economic and social value of the use of the PC13 upper terrace for residential purposes rather than rural purposes.

Statutory framework

- 23 The analysis of PC13 against the relevant statutory framework, in the Decision, is in summary form. The conclusions reached essentially flow from the relevant determinations under the different 'Issue' headings addressed above. The Appellant contends that the Respondent has reached inappropriate or incorrect conclusions in relation to the statutory framework for the same reasons as are detailed above in relation to the 'Issues'.

Relief sought

- 24 The Appellant seeks the following relief:
- (a) that the Respondent's decision be cancelled;
 - (b) that PC13 be accepted, in the form as presented at the close of the PC13 hearing including various amendments to provisions to address issues raised during the hearing;
 - (c) that such alternative, additional or consequential relief be granted as may be considered appropriate as a consequence of acceptance of PC13;
 - (d) that the Appellant be reimbursed for the costs of and arising from this Notice of Appeal.

Attached documents

- 25 The following documents are attached to this Notice:
- (a) The PC13 Request as originally lodged by the Appellant and as notified;

Note: A number of the Documents forming part of the PC13 Request deal with Issues which were not in contention at the Council hearing or were subsequently updated for the Council hearing.
 - (b) The Appellant's Submission to PC13, adding some additional provisions to PC13;
 - (c) The proposed PC13 plan provisions in their final form, as presented with closing legal submissions after the Council hearing, incorporating all amendments made during the course of the PC13 hearing to address issues raised during the PC13 hearing;

- (d) a copy of the Decision; and
- (e) a list of names and addresses of persons to be served with a copy of this notice.

Dated this 24th day of February 2020

A handwritten signature in blue ink, appearing to read "Warwick Goldsmith".

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- 26 within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the Appellant; and
- 27 within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Christchurch.