

In the matter of A Proposed Private Plan Change 13 to the Central Otago District Plan

By River Terrace Developments Limited
"the requestor"

**EVIDENCE OF KATE LOUISE SCOTT
ON BEHALF OF HIGHLANDS MOTORSPORT PARK LIMITED (SUBMITTER 144) AND CENTRAL
SPEEDWAY CLUB CROMWELL INC (SUBMITTER 45)**

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1 INTRODUCTION

- 1.1 My full name is Kate Louise Scott and I am an Executive Director at Landpro Limited, a firm of consulting planners, surveyors and engineers. I hold the qualification of BA (Geography) and BA (Political Science) from Victoria University, Wellington. I have been a planning consultant for sixteen years providing consultancy services for a wide range of clients throughout New Zealand. I also hold the qualification of 'approved provisional auditor' for ISO140001.
- 1.2 I hold professional membership with the Resource Management Law Association (RMLA), New Zealand Institute of Management (NZIM), New Zealand Institute of Primary Industry Management (NZIPIM) and the New Zealand Institute of Directors (NZIOD).
- 1.3 During my time as a planner, I have undertaken a wide variety of resource management related work for various clients, including preparing resource consent applications in both a district and regional planning context. I have extensive experience with large-scale projects throughout New Zealand, including within the Central Otago District. I am also experienced in facilitating stakeholder engagement and consent management services.
- 1.4 I have been engaged by Highlands Motorsport Park Limited (Highlands) and Central Speedway Club Cromwell Inc (Speedway) to provide planning evidence in relation to the request by River Terraces Development Limited (RTDL) to amend the Operative Central Otago District Plan (ODP), known as Plan Change 13 (PC13).
- 1.5 I am very familiar with the RTDL land, and the adjoining properties, including Highlands and the Speedway, due to my extensive experience working in the Cromwell area over the past 12 years. I also drive past the land subject to the request on an almost daily basis as part of my regular route to my home in Bannockburn.
- 1.6 Landpro have been involved in the provision of planning and surveying related services since the park's construction, including preparing the replacement consent documents which were granted in 2015, a copy of which is appended as Appendix

B to the Section 42A Report. We have also previously provided advice to the Speedway with respect to activities undertaken at their site.

1.7 In preparing this statement I have:

- Reviewed the plan change request documents
- Reviewed the submissions and further submissions
- Visited the site and surrounds
- Read the section 42A report
- Reviewed the evidence of the requestor, in particular, the evidence of Mr Brown, Mr Bretherton, Ms Hampson, Mr Ray, and Mr Styles.

1.8 I have also read the evidence called by Highlands Motorsport Park Trust including;

- Mr Staples; Noise
- Mr Mead; Urban Design
- Mr Copeland; Economics
- Ms Spillane; Highlands Motorsport Park
- Mr Erskine; Central Speedway Club Cromwell Inc.

1.9 I generally agree with the recommendations and planning analysis contained within the Section 42A report prepared by Mr Whitney on behalf of the Central Otago District Council (CODC). I have therefore endeavoured to focus my evidence on areas where I have a different opinion to the planning evidence presented on behalf of the requestor, and/or where I consider additional information may assist the Commissioner.

1.10 Whilst this is a Council Hearing, I acknowledge I have read the Code of Conduct for Expert Witnesses contained within the *Environment Court Consolidated Practice Note 2014* and I agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in this evidence.

1.11 My evidence is structured as follows:

- Summary of Highlands Motorsport Park Limited submission on PC13;
- Summary of Decision-Making Framework
- Assessment of Effects
- Statutory Matters
- Part 2 RMA
- National Policy Statement – Urban Development Capacity
- Regional Policy Statement – Proposed and Operative
- Central Otago District Plan
- Conclusion

1.12 I note for completeness that Mr Mead has addressed matters relating to urban planning, and urban design. To avoid un-necessary double up of evidence on these matters, I have adopted Mr Mead’s findings in regard to these matters instead.

2 SUMMARY OF PROPOSAL BY RIVER TERRACES DEVELOPMENT LIMITED

2.1 River Terraces Development Limited (RTDL) are seeking to rezone approximately 49.8 hectares of Rural Resource Area and Rural Residential Resource Area zoned land to a new zone known as River Terrace Resource Area (RTRA), as set out in the documentation attached to ‘Plan Change 13’ (PC13). The subject site is located on the corner of Sandflat Road and State Highway 6, on the outskirts of Cromwell.

2.2 PC13 seeks to amend the planning maps and legend of Planning Map 44 of the ODP, to add an additional zone known as the River Terrace Resource Area (RTRA). This land is currently zoned under the ODP as Rural Resource Area, with part of the land subject to a Rural Residential notation.

2.3 PC13 seeks to insert Section 20 into the ODP, which sets out the objective, policy and rule framework for subdivision and development of the RTRA, which would result in both medium and high-density residential activity, retirement living, and a neighbourhood centre, plus associated open space network and infrastructure.

2.4 PC13 does not seek to amend the existing objectives, policies, rules and definitions of the ODP, accordingly these provisions are relevant to the request, and apply to PC13.

2.5 Mr Brown's evidence¹ sets out two options with respect to the zoning for the land, described as;

Option A – The Central Otago District's Operative District Plan (ODP) zoning, being the Rural and Rural Residential Resource Area boundaries; and

Option B – RTDL's requested zoning – the RTRA.

2.6 In my view there are a number of other alternative options which could also be considered for the site, including;

- Rezoning for other purposes that are more compatible with the existing rural land use, i.e. industrial zone; and
- Enhancement of the current land for productive rural purposes.

2.7 In Mr Brown's planning evidence (Paragraph 2.3) he infers (although does not directly state) that Option A is the equivalent of the permitted baseline. However, I note that any subdivision or development of the existing land would still require a series of resource consents dependent upon the underlying zoning (rural resource area or rural residential notation), including;

- A controlled activity consent for residential activity (subject to meeting the controlled activity standards) in the rural residential notation area in accordance with Rule 4.7.2 (i).
- A controlled activity consent for subdivision (subject to meeting the controlled activity standards) in the rural residential notation area in accordance with Rule 4.7.2 (ii) with an average lot size of 2 hectares.
- In accordance with Rule 4.7.2 (a)(iv) the maximum number of allotments on a plan of subdivision in the rural residential notation area shall be 5. A breach of this standard would require consent for a discretionary activity subdivision under Rule 4.7.4 (iii) ODP.

¹ Evidence of Mr Brown, 23 April 2019, Paragraph 2.1 – 2.7.

- A discretionary activity consent for subdivision in the rural zone in accordance with Rule 4.7.4(iii) where an average allotment of 8 hectares and a minimum allotment of 2 hectares shall apply.
- Whilst a discretionary activity, Rule 4.7.4(iii) sets out a number of matters that will be given particular consideration in assessing an application for subdivision, including the following matters (I have only included those of relevance to PC13);
 - 3. Capability for sustainable use of the productive land and soil resource.
 - 4. The potential for reverse sensitivity effects and methods to address such effects on existing rural production activities and on existing infrastructure, including the use of separation distances and yards.
 - 17. The appropriate size of any allotment bearing in mind any of the factors.

2.8 Whilst I agree it is possible that the site could technically accommodate around 18 rural residential lots and one rural lot as set out in Paragraph 2.3 of Mr Brown's evidence, it is my view that such a development is likely to trigger the need for a consent as a discretionary activity in accordance with Rule 4.7.4 (iii), due to the inability of the proposal to meet the requirements of Rule 4.7.2(a)(iv).

2.9 Additionally, when considering the matters that the council will have particular regard to in assessing an application for subdivision, it is my view that the application would likely struggle to meet the matters (3), (4) and (17) identified above, due to residential development removing the capability for sustainable use of productive land and soil resources, as well as the subdivision giving rise to reverse sensitivity effects, especially from Highlands, Speedway and adjoining horticultural activities.

2.10 Therefore, in my opinion, it is wrong to promote 'Option A' as a quasi permitted baseline on the grounds that consent is likely to be required for a discretionary activity as opposed to a controlled activity, and therefore it cannot be assumed that consent for the subdivision has been granted.

3 SUMMARY OF SUBMISSION BY HIGHLANDS MOTORSPORT PARK LIMITED

3.1 Highlands have submitted in opposition to the development proposed by River Terraces Development Limited. I was involved in the preparation and review of this submission and further submission and I am familiar with the concerns that Highlands Motorsport Park has raised in respect to proposed PC13.

3.2 The specific matters that Highlands have submitted in opposition to include;

- Reverse Sensitivity Effects;
- Incompatibility of motorsport and noise sensitive activities;
- Failure of PC13 to avoid, remedy or mitigate the effects of urban development on existing physical resources;
- Poor residential amenity;
- Increased constraints on Highland's ability to develop and evolve in the future.

3.3 The relief sought by Highlands is for the plan change to be refused in its entirety. In the event that the plan change is not refused, Highlands has sought amendments to the provisions as set out in the original submission.²

3.4 Highlands also filed further submissions with respect to original submissions that raised the above matters and matters associated with the urban development of Cromwell and the effects of PC13 on that issue more generally.³

4 DECISION MAKING FRAMEWORK

4.1 A number of statutory tests apply to the consideration of a request for a Plan Change to a district plan. Sections 31 – 32 and 72 - 76 RMA as well as Schedule 1 RMA all provide direction as to how a request for a plan change shall be undertaken and assessed, including;

4.1.1 Section 31 sets out the territorial authority functions to establish plans which give effect to the purpose of the Act shall include establishing, implementing,

² Highlands Submission, 20 June 2018.

³ Highlands Further Submissions on Mt Difficulty Wines (Submitter 249) and Anthony Streeter (Submitter 353); Central Speedway Club Cromwell Inc Further Submission on Mt Difficulty Wines (Submitter 249) and Anthony Streeter (Submitter 353).

and reviewing objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district (S31(1)(a)), and requires the control of the emissions of noise and the mitigation of the effects of noise (S31(1)(d)).⁴

- 4.1.2 For completeness, Section 31(1)(aa) provides an additional function for territorial authorities to establish, implement and review 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.
- 4.1.3 Section 32 details the requirement for preparing evaluation reports, including specific requirements including identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects (S32 (2)) and where a proposal is amending an existing plan, setting out the examination required in relation to the amending proposal [PC13] and the existing proposal [Operative District Plan] (S32 (3));
- 4.1.4 Section 72 sets out the purpose of district plans is to assist territorial authorities to carry out their functions such that they can achieve the purpose of the Act.
- 4.1.5 Section 73 provides direction for preparation and changes to district plans, including setting out that any person may request to change a district plan, and that the plan may be changed in the manner set out in Part 2 or Part 5 of Schedule 1;
- 4.1.6 Section 74 outlines the matters that must be considered by territorial authorities;
- 4.1.7 Section 75 directs the contents of district plans, and outlines at (5) the hierarchy of documents that must be given effect to within a district plan.

⁴ The underlined provisions have been highlighted for emphasis purposes.

- 4.1.8 Section 76 relates to district rules, and at 76 (3) directs that “*in making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities, including in particular any adverse effect*”;
- 4.1.9 Schedule 1 Part 2 sets out the required results for changes to policy statements and plans of local authorities, with Clause 22 setting out the form of request for private plan changes. This section directs that where environmental effects are anticipated that the effects shall be described taking into account Clause 6 and Clause 7 of Schedule 4 RMA;
- 4.1.10 Schedule 4, Cause 6 and 7 set out the information required in assessing environmental effects of a proposed activity [including a request for a plan change] and outlines the matters that must be addressed by assessment of environmental effects;
- 4.1.11 Under Section 32 of the RMA the Commissioners must examine whether the objectives of the proposal and its provisions are the most appropriate way for achieving the purpose of the Act; identify any other reasonably practicable options for achieving the objectives; and assess the efficiency and effectiveness of the provisions in achieving the objectives of the proposal. This assessment was set out in the ‘Section 32 Report’ lodged by the RTD.
- 4.2 In considering the most appropriate provisions for a district plan, Mr Brown has usefully set out the test’s which shall be followed based on the *R Adams and others v Auckland Council*, Decision [2018] NZEnvC008.
- 4.3 I consider the summary to be helpful, and following this framework provides the clearest way to address the matters raised by Mr Brown. I have therefore adopted the test framework that Mr Brown has utilised⁵, (included below for completeness) which I note is also generally consistent with the analysis contained within the Section 42A Report.
- 4.3.1 Whether the provisions accord and assist the Council in carrying out its functions and achieve the purpose of the Act (section 74(1) of the Act);

⁵ Evidence of Mr Brown, 23 April 2019, Paragraph 3.1 (a – g).

- 4.3.2 Whether the provisions accord with Part 2 of the Act (section 74(1)(b));
 - 4.3.3 Whether the provisions give effect to the regional policy statement (section 75(3)(c);
 - 4.3.4 Whether the provisions give effect to a national policy statement (s75(3)(a);
 - 4.3.5 Whether the provisions have regard to the actual or potential effects on the environment, including, in particular, any adverse effect (s76(3);
 - 4.3.6 The extent to which the objectives are the most appropriate way to achieve the purpose of the Act (s32(1)(a));
 - 4.3.7 Whether the policies and methods are the most appropriate way to achieve the objectives, having regard to their efficiency and effectiveness (s32(1)(b)) and taking into account (under s32(2):
 - 4.3.8 The benefits and costs of the proposed policies and methods; and
 - 4.3.9 The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules of other methods.
- 4.4 In addition to the matters set out below, in my view it is also necessary to consider in greater detail;
- (a) The assessment of environmental effects in accordance with Schedule 4 clauses 6 and 7;
 - (b) Whether the objectives and policies of the existing operative district plan are relevant to the Plan Change.

5 ASSESSMENT OF ENVIRONMENTAL EFFECTS

- 5.1 In forming a view of the proposal under the statutory tests, it is necessary to start with an assessment of the effects of the proposal on the environment.

- 5.2 The evidence of Mr Brown and the Section 42A Report prepared by Mr Whitney between them provide a detailed assessment of the range of adverse effects of PC13, which I do not intend to repeat. I consider the main adverse effects of the proposal to be adverse effects associated with noise, including reverse sensitivity effects, especially with respect to the lawfully established activities carried out by Highlands and Speedway.
- 5.3 In addition, I also consider other adverse effects will arise in relation to transportation, effects on rural amenity, and urban design. Other effects such as effects on productive land may also occur as a result of PC13, albeit this matter is not of specific relevance to the submission made by Highlands or Speedway and has not been addressed further in this evidence.
- 5.4 Paragraphs 5.5 to 5.91 below provide an outline of the effects of PC13 on the Highlands Motorsport Park, and Speedway. This adds to the assessments carried out by Mr Brown and Mr Whitney.

Overview of Existing Environment

- 5.5 To understand the actual and potential effects of PC13, it is necessary to understand the nature of the existing environment.
- 5.6 The RTRA covers an area of approximately 49 hectares located between Sandflat Road and State Highway 6 Cromwell.
- 5.7 The site is zoned Rural Resource Area under the ODP, with a portion of the site subject to a Rural Residential Notation (RR). Immediately to the south and west of the site horticultural land use is predominant, with scattered residential dwellings.
- 5.8 The RR Notation provides for the subdivision of land (subject to this notation) to an average size of 2 hectares, as outlined in Rural Rule 4.7.2 (ii), 4.7.4 (iv) and 4.7.4(iii), and depending on the ability of the subdivision to achieve the controlled activity standards, will be considered to be either a controlled activity or a discretionary activity. A subdivision of the nature promoted as 'Option A' by the proponent is not likely to achieve the controlled activity standards and would likely fall to be considered as a discretionary activity.

- 5.9 The implications of this are that the site subject to PC13, can be subdivided beyond the current configuration as a controlled activity (subject to standards), or more likely as a discretionary activity, albeit the scale and intensity of a development of the RR zoned land as anticipated by the Operative District Plan is significantly lower than proposed by PC13, and provides for any subdivision to control effects on the productive capacity of the soils, and reverse sensitivity effects.
- 5.10 The balance of the land which is zoned Rural Resource Area (RU) is able to be subdivided to a minimum lot size of 2 hectares and an average of 8 hectares as a discretionary activity in accordance with Rule 4.7.4(iii)(b).
- 5.11 To the north of the RTRA area is the Highlands Motorsport Park, which is located on the opposite corner of State Highway 6 and Sandflat Road. Also located immediately to the North of RTRA and adjoining the Highlands Motorsport Park is the Central Speedway. Both of these facilities are located in the Rural Zone as set out on Planning Map 44 of the ODP.
- 5.12 The motorsport park was granted resource consent in 2009 and has been operating since of construction was completed in 2013. Since this time, the motorsport park has evolved into a premium tourism and motorsport facility. Highland's sought to re-consent it's activities in 2015. A detailed description of the activities undertaken at Highlands is outlined in the evidence of Ms Spillane, however I have provided a brief summary below for context, with particular reference to the conditions of consent upon which the motorsport park is authorised to operate.
- 5.13 In accordance with resource consent RM150225 Highlands is authorised to undertake a wide range of motorsport and tourism related activities, including;
- Fast laps and self-drive experiences in a range of ride cars;
 - National motorsport museum, function centre and café;
 - Mini golf and children's playground;
 - Jurassic Park Safari;
 - Motor vehicle sculpture park;
 - Dirt Buggy activities;
 - Conference facilities;
 - Bespoke events;

- Driver training; and
- Go Kart facilities.

5.14 The motorsport park is also authorised to undertake a range of other commercial and recreational activities at the site, including the annual Easter Egg Hunt, and Christmas in the Park.

5.15 RM150225 Condition 35 and 37 authorises 'Tier 1 Days' on any day of the year excluding Christmas Day and before 1pm on Anzac Day. On Tier 1 days, noise levels from Highlands are consented to a noise limit of 55dB LAeq at the notional boundary of any dwelling identified on the plan attached to the consent, between the hours of 0800 and 1800 and 40dB LAeq between the hours of 1800 and 0800, with the exception that the 55dB LAeq shall apply until 2100 hours on a maximum of five Tier 1 days per year.

5.16 RM150225 also authorises up to 16 'Tier 2 Days' which are considered to be race or major event days. Such events typically result in large numbers of people and vehicles attending the site, with there being no conditions limiting the number of attendees at such events. These Tier 2 Days have no noise limit applying to them other than the requirement that all race vehicles meet a limit of 95dB L_{Amax} when measured at 30 metres from the sound source. A noise limit of 40dB LAeq between the hours of 1800 and 0800 applies on Tier 2 Days.

5.17 In addition, RM150225 also authorises helicopter landing and take-offs which are ancillary to the use of the motorsport facility. The consent authorises a maximum of 30 helicopter movements (15 flights) on any Tier 2 Day; and a limit of 6 helicopter movements per day (3 flights) or up to 10 per week (5 flights) on Tier 1 Days.

5.18 Mr Staples notes at Paragraph 2.3 that:

"In addition to the high motorsport noise levels generated on 28 days per year by Highlands and Speedway, Highlands operates on every non-Tier 2 day of the year generating a lesser, but still significant noise level across much of the River Terrace site. This noise is not characteristic of a residential environment".

5.19 The decision which originally authorised activities at the motorsport park (Decision 131/2008), clearly states that the facility would have adverse noise effects on

surrounding dwellings/properties, and based on my knowledge of and involvement with the previous consenting process, consent was granted on the balance of fact being that the site was located in the rural zone, in a close proximity to existing Speedway and was not surrounded by extensive residential development.

- 5.20 It is also important to touch on the nature of activities carried out by the Central Speedway, and on adjoining rural/horticultural properties. The nearby Cromwell Airport is also considered to be an important aspect of the existing environment.
- 5.21 As outlined in the Section 42A Report [Section 7.10.2.3] the 1980 planning consent for the Speedway contains no specific controls relating to noise emissions; and does not restrict the number of days or hours of operations of the speedway facility. As outlined by Mr Staples, approximately 12 race meetings are held per year (with some variability from year to year), and these typically run until around 10pm.
- 5.22 As outlined in Figure 3 of Mr Staples evidence, noise generated during speedway events is expected to range between 70dB LAeq and 56dB LAeq across the RTRA.
- 5.23 When considering the variety of activities that currently occur in the vicinity of the proposed RTRA, either occurring as permitted activities under the ODP or as authorised by resource consent, the overall nature of the existing environment is one which is highly reflective of its rural zoning, and which allows activities which would not be considered appropriate in a residential zone.

Noise Effects

- 5.24 The generation of noise is relevant to the current site zoning and is addressed in Section 4 – Rural Resource Area and Section 12 - District Wide Rules, of the Operative District Plan.
- 5.25 Rule 4.7.6E(a) is relevant to noise generating activities in the Rural Zone.

(a) All activities shall be conducted so as to ensure the following noise limits are not exceed at any point within the notional boundary of any dwelling, rest home or hospital, or at any point within any Residential Resource Area or any Rural Settlements Resource Area;

On any day 7.00am to 10.00pm 55dBA L_{10}
 10.00pm to 7.00am the following day 40dBA L_{10}
 70dBA L_{max}

Provided that the above noise limits shall not apply to:

- 1. any temporary activity (as defined)*
- 2. devices used to protect crops from birds or frost*
- 3. sirens associated with emergency service activities.*

- 5.26 Where compliance with the above standard cannot be achieved, consent is required for a Restricted Discretionary Activity in accordance with Rule 4.7.3(iv). In assessing an activity under this rule, Council shall restrict the exercise of its discretion on the effects of noise on amenity values of the neighbourhood, particularly on the amenity values of adjoining properties.
- 5.27 As previously outlined, On Tier 1 day's noise levels from Highlands are consented to a noise limit of 55dB LAeq at the notional boundary of any dwelling identified on the plan attached to the consent, between the hours of 0800 and 1800 and 40dB LAeq between the hours of 1800 and 0800, with the exception that the 55dB LAeq shall apply until 2100 hours on a maximum of five Tier 1 days per year.
- 5.28 Tier 2 Days have no noise limit applying to them other than the requirement that all race vehicles meet a limit of 95dB LAmax when measured at 30 metres from the sound source, albeit a noise limit of 40dB LAeq between the hours of 1800 and 0800 applies on Tier 2 Days.
- 5.29 There are no controls on the noise emissions from the Speedway, nor are there any restrictions on the days and hours of operations.
- 5.30 The implications of Rule 4.7.6E(a) for both Highlands and Speedway, is that if any further consents are sought in relation to activities at Highlands, this rule is the baseline from which an activity will be assessed, and in the case of Speedway, any change to their activity (outside the scope of the existing consent) existing use rights would also mean that this rule becomes the consenting test for future activities.

- 5.31 Currently this would present less of an issue for both Highlands and Speedway because the notional boundaries of dwellings remain, for the most part, some distance from both facilities. However, in the event of the RTRA being approved, there would be some 900 dwellings, therefore a much greater number of potential 'notional boundaries' located across the road from both facilities, and given the intent is to change the zoning to a residential zone, Rule 4.7.6E(a) would take effect from the middle point between the Highlands/Speedway Rural Resource Area zoning and the River Terraces Resource Area residential zoning.
- 5.32 Essentially 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.
- 5.33 If we consider this significant imposition in terms of the revised compliance point, it becomes apparent that having a medium to high-density residential development across the road from existing motorsport activities is inappropriate and will give rise to significant reverse sensitivity effects. Reverse sensitivity is discussed below.
- 5.34 In respect to noise effects, Mr Styles for the proponent notes (Paragraph 9(b)(e)):
- "Noise effects would be restricted to annoyance only, which will be mitigated by the expectations set by the no complaints covenant".*
- 5.35 As set out in my evidence below (Paragraph 5.65 – 5.66), I hold a differing view to Mr Styles and strongly disagree that a no-complaints covenant will mitigate effects. It may well prevent some complaints about noise, but certainly it will not stop the effects of noise occurring.
- 5.36 The updated provisions of the RTRA Zone were appended to the evidence of Mr Brown. Rule 20.7.7 provides for a number of general standards that would apply to the RTRA, including that all buildings within the RTRA are to be acoustically insulated, as well as providing for a no complaints covenant. As noted in the evidence of Mr Staples (Paragraph 8.8):
- "Throughout Mr Styles' evidence, the proposed sound insulation rules are referred to as "providing respite" from external noise. However, his evidence does not state that noise effects will be acceptable or will meet generally agreed guideline values."*

5.37 Mr Staples goes on to state that he agrees that respite will be provided in the sense that noise levels indoors will be substantially lower than outdoors;

“internal noise levels during Highlands Tier 2 events and Speedway events would still be above criteria considered acceptable for residential living which in my view would result in adverse noise effects such as annoyance and sleep disturbance in the case of Speedway activities.”

5.38 In a personal capacity, and as a resident of Bannockburn (some 2.5 to 3km from the Speedway), I can confirm that I am able to clearly hear motorsport events at both the Speedway and Highlands, and can only assume based on the level of noise at my dwelling, that noise will be significantly louder within the RTRA some few hundred metres from Highlands and the Speedway.

5.39 This touches on the issue of amenity, and whether the existing noise environment gives rises to adverse amenity effects, particularly given the acoustic evidence regarding the effects on outdoor amenity. Effects on amenity are discussed further below.

5.40 Overall, I am of the view that the effects of noise on residents within the RTRA will be adverse, and that the proposed measures do not avoid those effects, nor do they mitigate the effects of reverse sensitivity and amenity.

Reverse Sensitivity Effects

5.41 The existing environment as described in Paragraphs 5.5 to 5.23 above is an important starting point for considering the effects of reverse sensitivity.

5.42 In the context of the Resource Management Act 1991 (RMA) reverse sensitivity is described as being *‘The vulnerability of the existing user to the legal objections of the new noise sensitive users⁶’*.

⁶ Affco NZ Ltd v Napier City Council, EnvC W082/04, 4 November 2004.

- 5.43 In *Ngatarawa Development Trust v Hastings District Council*, *EnvC W017/08*, 14 April 2008 the Court made a number of helpful findings in relation to noise and reverse sensitivity effects.
- 5.44 Ngatarawa was a residential subdivision application to create 95 residential units on land owned by a golf course outside of Hastings, which was adjoining and adjacent to an aerodrome and horticultural activities. Consent was initially granted by the Hastings District Council, but subsequently declined by the Environment Court on the grounds of reverse sensitivity on neighbouring land and the inappropriateness of proposed mitigation measures.
- 5.45 The Ngatarawa decision outlines that some lawfully existing activities may produce adverse effects on their surrounding environments, or at least they are perceived to do so. Reactions to those effects, or perceived effects, by way of complaints or actions in nuisance can stifle their growth or, in extreme cases, drive them elsewhere. That stifling, or that loss, may be locally, regionally or even nationally significant. The Court found that if an activity likely to emit adverse effects seeks to come into a sensitive environment, the problem should be manageable by designing appropriate standards and conditions, or by refusing consent altogether.⁷
- 5.46 Reverse sensitivity is an adverse effect, and must therefore be avoided, remedied or mitigated. In *Ngatarawa Development Trust v Hastings District Council*, *EnvC W017/08*, 14 April 2008 the court found that there were three discernible principles in managing reverse sensitivity effects. These include;
- 5.46.1 That activities should internalise their effects unless it is shown that they cannot reasonably do so.
- 5.46.2 To justify imposing restrictions on the use of the land adjoining an effects-emitting site, that activity be of some considerable economic, or social significance locally, regionally or nationally.
- 5.46.3 Where there is a low-impact effects existing beyond the emitting site boundary it is usually better to incur occasional relatively minor adverse effects than to impose controls on adjoining sites owned by others.

⁷ *Ngatarawa Development Trust v Hastings District Council*, *EnvC W017/08*, 14 April 2008.

- 5.47 Following the logic set out above, I have assessed the proposed RTRA development in accordance with these three principles.
- 5.48 Firstly, I have considered the ability for Highlands to internalise the effects of motorsport activities; On the basis that Highlands has an existing resource consent which authorises the emission of noise from the site, (and that where such activities are carried out in accordance with the consent), will result in the mitigation of the effects of noise to a point, but effects will occur beyond the boundary of the site, especially during Tier 2 days, as well as many Tier 1 days.⁸ In my view there is nothing further that Highlands can reasonably or practicably do to internalise the effects of motorsport activities.
- 5.49 Conversely, when considering whether RTDL can internalise the effects which arise as a result of the reverse sensitivity the proposed plan change would create, it is clear that the effects are unable to be internalised, but in this case there is a distinction as to whether it is reasonable to do so. In my opinion it is reasonable to expect the new noise sensitive activity to take steps to mitigate the effects of noise, and in this case reverse sensitivity. The proposal falls short however in terms of the measures to internalise effects, as the proposed no-complaints covenant will only transfer the risk of reverse sensitivity effects to the adjoining rural land uses, including Highlands, Speedway and adjoining horticultural activities.
- 5.50 The second test outlines that the activity must be of some considerable economic or social significance locally, regionally or nationally. In forming a view on this matter, I have referred to the evidence of Ms Spillane for the Motorsport Park and Mr Erskine for the Speedway. Mr Erskine estimates that the Speedway contributes between \$1.5 and \$2 million dollars per annum to the Cromwell community.⁹ Ms Spillane indicates that over \$32 Million has been invested in the development of Highlands to date and total expenditure from the Highlands 101 event alone is in the order of \$1.5 million dollars¹⁰. Ms Spillane's evidence sets out how the park promotes and contributes to Central Otago tourism and the community through its activities.

⁸ Evidence of Mr Staples, 16 May 2019, Paragraph 2.1 – 2.8.

⁹ Evidence of Mr Erskine, 16 May 2019, Paragraph 12.

¹⁰ Evidence of Ms Spillane, 16 May 2019, Attachment 1.

- 5.51 Annual expenditure of this nature is in my view considerable certainly locally, but also likely to be significant in a district wide context as well. Mr Copeland notes at Paragraph 11:

"Highland Motorsport Park, the Cromwell Speedway and horticultural activities adjacent or near to the PC13 site are economically significant activities for Cromwell and the Central Otago District. PC13 will lead to reverse sensitivity effects for these activities with consequent adverse economic effects for residents and businesses within the wider Cromwell and Central Otago communities".

- 5.52 I also consider whether it is appropriate that an existing activity (Highlands, Speedway and Horticulture) which is of considerable economic and social significance at a local, regional and national scale should be displaced by another activity which is arguably of the same or lesser value and can be located elsewhere. In my view a residential subdivision in Cromwell is likely to fail in terms of providing value at a regional or national scale, compared to the existing lawfully established activities. I am of the view that it is not appropriate for an existing lawful activity to be displaced by a new noise sensitive activity.

- 5.53 At Paragraph 7.12 and 7.13 of Mr Whitney's report he has outlined the availability of land for residential development purposes. I agree with the conclusion reached by Mr Whitney;

"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"

- 5.54 In reaching this conclusion Mr Whitney refers to a number of sites and areas within the Cromwell Township that can be utilised to provide for the actual or potential demand, including the Top 10 Site, Freeway Orchard, the Wooing Tree and the Cromwell Golf Course. This excludes additional infill subdivision that is likely to occur within Cromwell itself.

- 5.55 Additionally, it is anticipated that there will be continued subdivision in and around the existing satellite communities of Bannockburn, Lowburn and Pisa Moorings, all of which would in my view be more appropriate given the existing built form and

servicing that exists compared with a new 'Greenfields' development that would result if PC13 is approved.

- 5.56 The basis for my statement in 5.45 is firstly reached through the consideration of the Commissioners decision on The Top 10 Holiday Park Subdivision (RC170378); where I note two of the key aspects of the decision related to the site being "within the urban limits" which I consider to mean adjacent or adjoining existing residential development in Cromwell [or for consistency within Bannockburn, Lowburn or Pisa Moorings also].
- 5.57 The second reason for my comments in relation to availability of land for development purposes, comes from my experience as the owner of a Surveying & Planning company which is headquartered here in Cromwell. I can attest to the large number of current and proposed residential development projects that we have on our project list which have not been mentioned by Mr Whitney. I therefore fully support the view expressed in the Sec. 42A report that there is sufficient land available within Cromwell and surrounds to meet current urban growth predictions, and that through the Masterplan Process it is likely that further land will be identified as being suitable for residential development purposes which is integrated with the existing residential networks of Cromwell.
- 5.58 The third test works on the principal of where the effects emitting beyond the boundary are of low impact then it is "better to incur low level impacts than to impose controls". To this test I note firstly that in the view of Mr Staples that the effects of noise beyond the boundary of the site will be significant¹¹. Mr Styles notes in his evidence¹² however that where noise levels are high that such effects are mitigated by the no complaints covenant and through indoor acoustic insulation, that conclusion is not supported by the evidence of Mr Staples. In my view this is contrary to the above test, as the noise impacts are not low level, and controls are required to be imposed to mitigate these effects.
- 5.59 My interpretation of this test is that where controls of the magnitude proposed by RTDL (extensive noise treatments and a no complaints covenant) are necessary the effects could not be assumed as being low impact, therefore referring back to the determination set out in Paragraph 5.30, it would be appropriate to refuse the

¹¹ Evidence of Mr Staples, 16 May 2019, Paragraph 2.3.

¹² Evidence of Mr Styles, 23 April 2019, Page 2

plan change all together on the grounds that reverse sensitivity effects cannot be appropriately managed

- 5.60 Furthermore, Mr Styles has omitted to address within his evidence the cumulative effects of noise when considering the effects of surrounding land use (and its associated noise) on the proposed residential environment, noting only that the noise is “intermittent and seasonal in nature”.
- 5.61 Plan Change 13 will impose operational constraints on the adjoining land uses, which are inappropriate and overly restrictive for the existing rural zoning of the land. An example of this is provided by Ms Spillane, at Paragraph 60, where she discusses the closure of the restaurant business at the Motorsport Park because of the complaints from rural residential neighbours, which ultimately resulted in restrictions in the way that the restaurant could operate and rendered the business unprofitable. The establishment of an urban environment in the middle of the rural resource area will only serve to heighten the risk of reverse sensitivity effects.
- 5.62 Ms Spillane also discusses at Paragraph 42 the continued evolution of Highlands to meet ongoing demand for tourism related activities which occur at the park. Ms Spillane expresses her concern that a high-density residential development in such close proximity will ultimately curb existing operations as well as preventing further expansion/evolution.
- 5.63 I share the concerns of Ms Spillane from a planning perspective. It is perhaps best articulated by considering a hypothetical example. Highlands want to expand their operations to provide additional tourism facilities on the site. The proposed expansion would trigger the need for consent. In the current environment, consideration of the effects of Highland’s activities on adjoining residential properties is confined to a handful of dwellings located adjacent to the site where the compliance point for noise is known and understood. In this scenario it is much easier to engage directly with the neighbours and to ensure that any effects are avoided, remedied or mitigated. The converse situation is where the same proposed expansion of activities is to occur but the backdrop to the expansion is 900 additional residential dwellings within a residential zone within close proximity to the motorsport park. These residents are subjected to ‘nuisance’ noise and cumulative noise effects from the adjoining rural land use activities (including Speedway, and Horticultural activities). As set out by Mr Staples the noise levels

are such that residents will likely become sensitised and highly resistant to change. This is perceived to increase activity. Obtaining consent for any expansion will be much more difficult when the existing environment contains residential development of the nature and scale proposed by PC13, and which has the effect of moving the compliance point from notional boundary of the existing dwellings to the boundary between the zones. Inevitably, this will curb the ability for further growth and expansion.

- 5.64 The Section 42A Report (Section 7.10.2.6) has also expressed concern with the effects of reverse sensitivity on future activities at Highland or the Speedway:

“A restrictive no-complaint covenant...relates to the activities...operative prior to 19 May 2018. As a consequence, the restrict no-complaint covenant would not apply to any activities authorised by a future resource consent or a change of condition at either Highlands or the Speedway after 19 May 2018. Complaints could therefore be made with respect to future activities at Highlands of the Speedway.” And Mr Whitney goes on to state;

“The restrictive no-complaint covenant would also not prevent residents of the RTRA submitting on an application for resource consent or an application to change a condition of consent at Highlands or the Speedway, if such an application were to be notified (or limited notified to them).”

- 5.65 I agree with the concerns that have been raised in the Section 42A report and am of the view that where an activity requires such controls (no-complaints covenant), then it is appropriate to ask whether the site is in fact suited for the proposed development. In my view a no-complaints covenant is intended to cover the situation where effects may impact on a small number of people, and not an entire high-density residential development of up to 900 new allotments.

- 5.66 It is also helpful to consider this issue in reverse. 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? Mr Staples notes¹³;

¹³ Evidence of Mr Staples, 16 May 2019, Paragraph 2.1

“I consider the proposed River Terrace development to be 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”

- 5.67 Whilst the requestor has allowed for the establishment of a no-complaint covenant at Rule 20.7.7 (viii)(b) and 20.7.7 (ix) (b), I do not believe that this mechanism will avoid, remedy or mitigate reverse sensitivity effects which will arise if PC13 is approved, it simply means that the parties to the covenant are not able to complain about the effects which will arise from existing activities. They are still subjected to them.
- 5.68 The reverse sensitivity effects which arise as a result of the proposal, are significant, and in my view would be contrary to the Act as set out in Section 6 of this evidence.
- 5.69 In respect to the suitability of no-complaints covenants, it is my opinion that where such covenants are considered necessary to mitigate the effects of a proposed activity, that we must carefully consider whether the activity is in fact an appropriatedevelopment in the location proposed. A covenant may be acceptable where residual effects are relatively low level. However that is not the case here.
- 5.70 It is also worth considering how a no-complaint covenant may work in practice, and whether this in turn gives rise to further operational constraints for lawfully established existing activities. The example given by Mr Staples (Paragraph 8.10) is for the Ports of Auckland. Mr Staples comments on the difficulty the Ports of Auckland have encountered in terms to administering no-complaints covenants. This is a matter which is likely to be compounded, if up to 900 dwellings/buildings are required to adhere to this condition. Ms Spillane also discloses the management process that they have adopted to ensure residents understand their obligations in the Innovation Park.
- 5.71 Mr Copeland also quantifies the effects of reverse sensitivity from an economic perspective noting¹⁴;

¹⁴ Evidence of Mr Copeland, 16 May 2019, Paragraph 37.

“This indicates a significant risk of reverse sensitivity economic externality costs for Highlands and the wider Cromwell and Central Otago District communities. Whilst it may be argued these reverse sensitivity economic externality costs could be offset by economic externality benefits from the PC 13 (and Highlands) land being available for residential and other development, Mr Mead’s evidence and the Council’s Section 42A Report suggest that it is possible that Cromwell can retain the economic benefits from the ongoing operation of Highlands and accommodate the anticipated growth in residential and other development if PC13 does not eventuate. In other words, PC13 is not a pre-requisite for accommodating Cromwell’s future anticipated residential and other development.”

- 5.72 In addition, the ODP provides for a clear delineation of the Rural Resource Area to ensure that the effects of rural activities, including Highlands Motorsport Park do not adversely affect urban areas. Providing for medium to high density residential development within the middle of a Rural Resource Area would seek to undermine the integrity and purpose of the District Plan, as well as presenting considerable challenges to the ongoing operation and future development of Highlands, Speedway and other surrounding rural land uses.
- 5.73 In addition to the issues that a no complaints covenant attempts to address, when considering the effects of rezoning on the Motorsport Park, we need to look beyond continuation of the current activities, but also to some degree of growth, change or expansion as opportunities arise. We also therefore need to consider the future consenting environment when seeking new consents, or alterations to the land use consents for the Highlands Motorsport Park. Should the land be rezoned, the number of potentially affected parties, parties whom may object to or oppose a consent application, increases to the extent where the long term, continued viability of the motorsport activity may be in jeopardy. The no complaints covenant does not seek to prevent landowners participating in new processes.
- 5.74 Overall, I conclude that the proposed methods set out by RTDL to address reverse sensitivity effects are inappropriate and will not adequately avoid, remedy or mitigate reverse sensitivity effects.

Amenity Effects

- 5.75 Section 7(c) RMA sets out that a proposal shall ensure “*The maintenance and enhancement of amenity values*”.
- 5.76 Amenity values are defined in the RMA has being;
- “Those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”*
- 5.77 The Section 32 Evaluation which accompanied the request for PC13 considers amenity effects from the perspective of the design of the subdivision, noting that the provision of “greenways” will serve to establish and maintain amenity values for the new residents¹⁵.
- 5.78 The request also goes onto note that the methods proposed by RTDL will manage effects on amenity values from external sources, including the Motorsport Park.
- 5.79 I am of the view that of itself, proposed PC13 as a master planned development will provide for amenity of the future residents, however in the context of the existing environment, and surrounding rural activities, including Highlands, Speedway, and horticultural activities, it will have an adverse effect. I agree with the conclusion of the Section 42A report (Page 46 and 48) that the noise effects of motorsport activities will significantly affect residential amenity within the PC13 development.
- 5.80 Rule 20.7.2(1), matters 1 to 8 discusses the importance of maintaining and enhancing amenity values, however in my opinion, the proposed future subdivision of RTRA would be unable to give effect to this provision because of the existing noise environment, albeit the proposed controlled activity status would mean that irrespective of the severity of effects on amenity values, it would be irrelevant given that a controlled activity shall be granted consent, subject to appropriate conditions.
- 5.81 Mr Staples (Paragraph 4.3) outlines that almost the entire River Terrace Site would be exposed to noise levels of 60-70 dBL_{Aeq(15min)}, and that “*for noise levels this high, there are no practical noise mitigation measures to reduce motorsport noise to suitable levels for outdoor residential amenity*”.

¹⁵ River Terrace Developments Limited – Request for Plan Change, March 2018, Page 8.

- 5.82 This indicates that there are no conditions that can be imposed that will adequately address that amenity effect. Section 6 ODP sets out a number of objectives and policies including;

6.3.1 Amenity Values; To manage urban growth and development so as to promote the maintenance and enhancement of the environmental quality and amenity values of the particular environments found within the Districts urban areas.

- 5.83 Based on the evidence of Mr Staples and Mr Mead, I am of the view that PC13 will not maintain or enhance amenity values.

Cumulative Effects

- 5.84 The Section 32 Evaluation which accompanied the request for PC13 has not considered the cumulative effects of existing land use activities in the rural environment on the proposal residential development.

- 5.85 In considering the existing effects of Highlands, Speedway, Cromwell Airport, and Rural Horticultural activities, we have an environment that creates a high degree of noise.

- 5.86 The evidence of Mr Brown [Page 64] provides a very brief assessment in regard to Policy 12.4.2 ODP. Policy 12.4.2 (e) directs that in determining the suitability of noise generating activities in any given locality, must ensure that the adverse effects of noise on other activities and the natural and physical resources of the locality (including cumulative effects), reflects standards acceptable to the community. Mr Brown is correct in noting that RTRA is not of itself a noise generating activity, and that the policy does apply to the extent that there is the need to ensure that the adverse effects of noise on other activities and the natural and physical resources of the locality (including cumulative effects) reflect standards acceptable to the community.

- 5.87 Mr Brown has however in my opinion, failed to adequately consider the cumulative effects of noise generated within the existing environment. Mr Brown notes that the measures inherent in the RTRA rules, including acoustic standards and covenants proposed will ensure that such effects are mitigated.

- 5.88 I have however arrived at a different view based on the evidence of Mr Staples, who at Paragraph 7.5 and 7.6 notes;

“The cumulative effect of residents being exposed to high levels of motorsport noise throughout the year without adequate respite would in my view result in significant adverse noise effects, particularly as there is a risk that residents become more sensitised to motorsport noise (i.e. more sensitive to the sound of motorsport noise).

In addition, high levels of noise received from wind machines, helicopters and bird scaring devices during the growing and harvesting season would exacerbate the issue causing greater cumulative adverse noise effects.”

- 5.89 In my opinion the proposal is contrary to Policy 12.4.2, and the mitigation measures proposed through the RTRA rules, standards and covenants will not be sufficient to ensure that the effects of noise are acceptable to the community. I consider this point to be further demonstrated through the fact that the acoustic standards will enable the resident to safely occupy the internal parts of the dwelling (albeit with a high level of annoyance), but not the external parts of the dwelling.
- 5.90 I agree that the *“noise effects of motorsport activities...will significantly affect residential amenity within the [development]”* (Section 7.10.2.5, Page 46 Section 42A Report), and do not consider that proposed Rule 20.7.7 (x) avoids, remedies or mitigates the adverse effects of the motorsport activities, (as well as other noise generating activities located in the rural zone), as it only addresses the effects of noise internal to the buildings, leaving the outdoor living spaces subject to noise effects.
- 5.91 Additionally, a no complaints covenant in my view doesn't allow for the mitigation of the effects of noise or amenity, it simply means that those affected are unable to raise a complaint about the said effect (or if they do it must be ignored). Therefore, I am of the opinion that the no complaints covenant is not a method which avoids, remedies or mitigates the adverse effects of noise and impacts on amenity in this case.

6 STATUTORY MATTERS

- 6.1 Taking into account the statutory tests which must be considered, I set out my comments below in relation to the analysis undertaken by Mr Brown as summarised in Paragraphs 11.1 to 11.9 of his evidence. A summary of the statutory tests is outlined in Section 4 of my evidence.
- 6.2 Mr Brown provides an analysis of the proposal and whether the provisions accord and assist the Council in carrying out its functions and achieve the purpose of the Act (section 74(1) of the Act) at Paragraphs 5.1 to 5.6.
- 6.3 Mr Brown's broad conclusion is that "*the RTRA provisions both enables the use and development of the land and protects the various established uses of resources surrounding it. The RTRA integrates within itself...and with its external surroundings and activities*".
- 6.4 With respect to RTRA's integration both internally and externally I do not support the conclusion reached by Mr Brown. In my view PC13 does not achieve the integrated management of the effects of the use, development or protection of land and associated natural and physical resources as directed by Section 31. I have arrived at this view because the effects of PC13 on Highlands Motorsport Park and Speedway will be significant. This is based on the evidence of Mr Staples, and Mr Mead which address the incompatibility of land uses, being motorsport and medium to high density residential land use.
- 6.5 Where an incompatibility of land uses arises as a result of a proposed activity, that cannot be adequately avoided or mitigated, it is my view that the proposed activity cannot be said to be integrated.
- 6.6 The Section 42A report¹⁶ reaches a similar conclusion' that;
- "Plan change 13 will result in a substantial residential area being developed remote from the existing residential areas of Cromwell, and remote from commercial and community facilities, such as schools. As a consequence, the RTRA will not be integrated with the existing town of Cromwell"*.

¹⁶ Section 42A Report, 21 March, Paragraph 7.2.11.

6.7 Mr Mead also notes at Paragraph 117 that;

“The plan change does not achieve integrated management of effects as it does not adequately address the effects of adjacency to the Motorsport Park, the speedway and productive rural activities. This is in terms of the amenity of the residential area to be created, as well as reverse sensitivity effects on these activities”.

6.8 With respect to Section 31(1)(d) of the Act, Plan Change 13 does not adequately mitigate the effects of noise from established land use activities in the immediate vicinity, including from Highlands Motorsport Park and the Speedway. RTDL does not achieve this as it is seeking to mitigate reverse sensitivity effects with a no-complaints covenant which does not avoid the effects of noise on the RTRA. The incompatibility of residential activities and motorsport events is outlined in Paragraph 2.1 of the evidence of Mr Staples. Ms Spillane also sets out the difficulties that have arisen historically with a much lower level of residential development surrounding Highlands.

6.9 In my opinion, PC13 will not achieve the integrated management of the effects of the use or development of land (Section 31(1)(a)), and nor will PC13 meet the requirements of Section 31(1)(d) in controlling the emissions of noise and the mitigation of the effects of noise.

6.10 The purpose of a district plan (Section 72) is to assist council to carry out their functions in order to achieve the purpose of the Act. The functions of district councils are listed in Section 31 of the Act and include;

- (a) Integrated management of the effects of the use, development and protection of land and associated natural and physical resources of the District.
- (b) The control of any actual or potential effects of the use, development or protection of land.
- (c) the control of the emission of noise and the mitigation of the effects of noise.

6.11 Mr Brown summarises at Paragraph 11.2 that the statutory test under Section 76(3) is whether the provisions have regard to the actual or potential effects on the environment, including in particular, any adverse effect. Mr Brown states that;

“Overall, the effects are acceptable, and that both Option A and Option B meets the statutory test as to whether the provisions have regard to the actual or potential effects on the environment, including, in particular any adverse effect.”

6.12 Based on the evidence of Mr Mead, Mr Staples, Ms Spillane and Mr Erskine, I am of the view that the proposal and its associated provisions do not have regard to the actual or potential effects on the environment, particularly with respect to cumulative noise effects, and reverse sensitivity effects. The provisions promoted by the requestor do not in my view suitably mitigate the effects of noise and reverse sensitivity, and therefore fail to achieve the requirements of Section 76(3) RMA.

6.13 In regard to the statutory test under Section 74(1)(b) and the proposal being able to meet Part 2 of the Act, I consider that the proposal does not meet the purpose and principles of the Act. Specifically, I would question whether the proposal enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety, especially in regard to cumulative effects of noise on residential activities from Highlands, Speedway and adjoining Horticultural Activities.

6.14 Further, in considering whether the proposal is capable of avoiding, remedying or mitigating any adverse effects of activities on the environment, based on the technical evidence of Mr Mead and Mr Staples, I am of the view that the proposed mitigation of noise effects via a no-complaints covenant and through the provision of acoustic insulation will not adequately mitigate noise effects, and will ultimately give rise to adverse effects in terms of amenity values and reverse sensitivity. I do not therefore consider the proposal to be consistent with the Part 2 of the Act.

6.15 The Section 42A report (Section 9.4.2) also concludes;

“Plan Change 13 will also not serve to avoid, remedy or mitigate adverse effects of the activities on the environment, including reverse sensitivity effects, as these relate to the effects of established neighbouring land uses including Highlands, the Speedway and Jones Orchard”.

6.16 Turning to Section 75(3)(c), Mr Brown notes at Paragraph 11.5 of his evidence that the proposal generally gives effect to the RPS in terms of promoting economic

wellbeing by ensuring that there is sufficient housing land development capacity available.

- 6.17 I disagree with the assessment, as the proposal fails to account for the loss of soil values that would occur as a result of the RTRA as the assessment does not give consideration to the importance of rural production or significant soils as promoted by the proposed Regional Policy Statement Policy 3.1.7, and Policy 3.2.17 and 3.2.18.
- 6.18 Additionally, Objective 4.5 directs that urban growth and development is well designed, occurs in a strategic and coordinated way and integrates effectively with adjoining urban and rural environments. I have no reason to believe that the proposal is not well designed (internally at least), however I do not believe that the proposal is strategic or coordinated in terms of effectively integrating with adjoining urban and rural environments. The proposal is also contrary to Policy 4.5.1(h) which directs that urban growth and development shall manage reverse sensitivity effects.
- 6.19 Policy 5.3.1 Rural Activities seeks to restrict establishment of incompatible activities that are likely to lead to reverse sensitivity effects. In my opinion Plan Change 13 is contrary to this policy as the proposal will directly give rise to reverse sensitivity effects which will not be adequately avoided, remedied or mitigated via the proposed measures.
- 6.20 In my opinion, PC13 does not manage adverse noise effects or adverse reverse sensitivity effects and nor does it provide for urban growth in a manner which avoids reverse sensitivity effects. The measures promoted by the proponent also fail to manage effects, therefore PC13 does not adequately give effect to these provisions of the RPS.
- 6.21 Section 75(3)(c) requires the provisions to give effect to any national policy statements. As outlined in the evidence of Mr Mead, the Section 42A report, and in Section 7 of this evidence, Cromwell does not meet the threshold of an Urban Environment, and therefore the NPS-UDC does not in my opinion apply to the proposal.

- 6.22 Irrespective of whether Cromwell constitutes an urban environment, when I assess the general policies set out in PA1-PA4 of the NPS-UDC, PC13 does not meet the objectives and policies of the NPS, especially with regard to local effects (PA4 (b)).
- 6.23 Overall, I believe that the proposal fails to meet the suite of statutory tests required. Specifically, the proposal fails to adequately identify and manage effects of noise, including cumulative noise effects, gives rise to reverse sensitivity effects, as well as being inconsistent with the NPS, PRS and ODP.

7 PART 2 RMA

7.1 Section 6 of the Act requires all persons exercising functions and powers under the Act in relation to managing the use, development and protection of natural and physical resources, to recognise and provide for matters of national importance. Overall, I consider that the plan change is consistent with Section 6.

7.2 Section 7 of the Act identifies other matters that particular regard is to be given to. Those matters of key importance to the proposed plan change include;

- (b) the efficient use and development of natural and physical resources
- (c) the maintenance and enhance of amenity values.

In my view the proposed plan change is inconsistent with these matters.

7.3 The use of productive rural land for residential purposes, is not in of itself in an efficient use of natural and physical resource. In the event that this land is re-zoned as RTRA then it will be lost from productive use.

7.4 As set out above PC13 will give rise to significant reverse sensitivity effect that will compromise the efficient use and development of Highlands and Speedway.

7.5 I am also of the view that PC13 fails to maintain or enhance amenity values. I have formed my opinion based on the expert evidence of Mr Staples regarding the impacts of noise from existing motorsport park, speedway and horticultural activities. Mr Staples notes (Paragraph 4.3);

“For noise levels this high, there are no practical noise mitigation measures to reduce motorsport noise to suitable levels for outdoor residential amenity”.

- 7.6 Furthermore, the evidence of Mr Mead (Paragraph 8) also clearly sets out that the inability to utilise outdoor living areas free from significant noise incursion also affects amenity;

“The residential amenity to be created by the plan change will be less than that typically expected in a residential neighbourhood due to noise and other effects generated by adjacent activities. The adverse effects of adjacent activities on residential amenity are not adequately mitigated. In particular use of outdoor areas and outdoor-related activities will be exposed to high levels of noise on a regular basis. Enjoyment of outdoor areas (on-site or in the local neighbourhood) is a fundamental aspect of neighbourhood amenity”.

- 7.7 The proposal does not therefore enable the maintenance or enhancement of amenity.

- 7.8 Section 73 of RMA requires the CODC to prepare and change district plans in accordance with Part 2 of the RMA. In addition, under Section 31 The CODC is required to carry out its functions for the purpose of giving effect to the RMA.

- 7.9 Part 2 RMA sets out the purpose and principles of the RMA. Section 5 states that the purpose of the RMA is the sustainable management of natural and physical resources. The key part of this for PC13 is that resource are to be used “in a way, or at a rate which enables people and communities to provide for their social, economic, and cultural well-being...while: (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

- 7.10 It is clear that environmental, social, cultural and economic considerations are all relevant considerations under Part 2 and must be considered.

- 7.11 The expert evidence of Highlands has shown that the plan change will not result in the land resource being used in accordance with Part 2 (Section 5) of the RMA.

8 NATIONAL POLICY STATEMENT

8.1 Section 75(3) (a) RMA directs that district plans must give effect to any National Policy Statements (NPS) [amongst other matters].

8.2 Having considered each of the NPS documents, it is my view the only NPS that requires consideration in the context of Plan Change 13 is the *National Policy Statement on Urban Development Capacity, 2016* (NPS-UDC).

8.3 I have read the NPS-UDC, and accept that it applies to all local authorities, including the Central Otago District Council. However, my interpretation of the NPS-UDC is that given neither Central Otago generally or Cromwell specifically meet the high-growth urban area or medium-growth urban area thresholds (defined as having an urban area with a resident [or combined; including visitor population] population of over 30,000 people), I do not consider that overall the NPS-UDC is of great relevance to the proposal.

8.4 In light of the contention around whether the NPS UDC does or does not apply (as set out by Ms Hampson and Mr Whitney respectively) I have considered Policies PA1 – PA4 of the NPS-UDC in any event. I am of the view that they apply more generally to urban environments that are expected to experience growth, and while I agree that Cromwell will continue to experience growth, I do not support the assessment provided by Ms Hampson (Para 54-65 Ms Hampson Evidence) that Cromwell will be classified an Urban Environment as set out in the NPS-UDC. As noted by Mr Mead (Paragraph 58);

“My assessment would be that the plan change adds capacity which may help to provide more choice into the local housing market, but it is not needed to meet demands post 2028. I disagree that by 2043 there will be a significant shortfall”.

8.5 As set out in the evidence of Mr Mead (Paragraph 20) despite the potential for the Cromwell area to exceed 10,000 people in 2038; I support the view that this is the projected population of the ‘wider’ Cromwell area, and therefore not a ‘Concentrated Settlement’ or an urban environment for the purposes of the NPS-UDC. Accordingly, and as outlined by Mr Whitney (Section 9.3.1);

“If Cromwell is not an urban environment..., the objectives and policies of the NPS-UDC would be of no relevance in the context of Plan Change 13”.

8.6 Furthermore, as a resident of Bannockburn, my view is that Bannockburn, like Pisa Moorings, and Lowburn are part of the wider Cromwell area, but distinctly separate from the concentrated urban environment of Cromwell itself.

8.7 I concur with the assessment of Mr Whitney that the proposal does not meet the objectives and policies of the NPS-UDC (if relevant), and specifically that PC13 has not had regard to the established land use activities that exist in the immediate environs, as required by Policy PA3.

9 REGIONAL POLICY STATEMENT

The Partially Operative Regional Policy Statement

9.1 The Proposed Regional Policy Statement for Otago was publicly notified on 23 May 2015. Decisions on submissions on the Proposed Regional Policy Statement were issued on 1 October 2016; and the Proposed Regional Policy Statement for Otago became partially operative on 14 January 2019.

9.2 While most provisions of the Proposed Regional Policy Statement as notified in 2015 are now operative; I note that Chapter 3 in Part B entitled “Otago has high quality natural resources and ecosystems” remains part of the Proposed Regional Policy Statement.

9.3 Both Mr Brown and Mr Whitney have discussed the specific provisions of the Partially Operative Otago Regional Policy Statement (PORPS). Mr Brown reaches the conclusion that PC13 is consistent with the PORPS while Mr Whitney is of the opinion that PC13 is not consistent with the policies of the PORPS as Plan Change 13 will not manage urban growth and development and the subdivision of land to protect significant soils, as outlined in Attachment C and Section 9.3.5 respectively.

9.4 There are a number of provisions in the PORPS that I consider to be of relevance to PC13; including the provisions relating to rural activities, urban development and reverse sensitivity.

9.5 I have reached a similar conclusion as Mr Whitney and am of the opinion that PC13 is inconsistent with the PORPS because it does not have appropriate regard to managing the adverse effects of noise, or the adverse reverse sensitivity effects.

9.6 I also do not consider that the proposal provides for urban growth in a way which avoids reverse sensitivity, and nor do I consider that the measures proposed by the proponent will avoid adverse reverse sensitivity effects. This means that in my view PC13 fails to integrate with neighbouring rural land uses, and as such PC13 does not give effect to the provisions of the PORPS.

10 CENTRAL OTAGO DISTRICT PLAN

10.1 The Central Otago Operative District Plan (ODP) provides the existing planning framework within which activities are required to operate. In accordance with s32 (3) RMA, the ODP provides the basis for assessing the 'existing proposal' compared to that proposed by RTDL under PC13.

10.2 The issues, objectives and policies of the ODP set a clear direction to guide development in the region, and the relevant provisions of the District Plan which apply to PC13 include;

(a) Section 2 – The Resources and Significant Resource Management Issues of the District;

(b) Section 4 – Rural Resource Area;

(c) Section 6 – Urban Areas;

(d) Section 7 – Residential Resource Area;

(e) Section 12 – District Wide Rules and Performance Standards;

Section 2 – The Resources and Significant Resource Management Issues of the District

10.3 Section 2 of the CODP outlines the significant resource management issues that are to be addressed in the context of the District Plan. I consider the following 'significant issues' to be of particular relevance to PC13;

- Soil Resources
- Special Land Resources
- Land Use (Horticulture and Tourism)
- Increasing Visitor Numbers

10.4 Section 2 provides specific recognition for tourism related activities, and for increasing visitor numbers. Highlands continues to be recognised as a tourism business as outlined by Ms Spillane (Paragraph 8) "*Day to day operation of the park has seen an increase in numbers as the facility becomes recognised as both a domestic and international destination for tourism*", and as a result continues to provide for increasing visitor numbers. Speedway has also continued to provide for an increasing number of spectators, many of whom are from out of town, "*large events attract in the order of 4000 spectators and around 200 competitors. Approximately 60% of the competitors come to Cromwell from outside of the district*"¹⁷.

10.5 In my view, the RTRA would compromise the ability of both Highlands and Speedway to continue to provide for an increase in visitor numbers and for the ongoing expansion of tourism related activities, both of which are recognised as being significant issues for the Central Otago District.

10.6 These significant resource management issues are also addressed in the other sections of the ODP, which I will discuss in turn below;

Section 4 – Rural Resource Area

10.7 Section 4 of the CODP outlines the issues, objectives and policies of the Rural Resource Area. This section is of relevance as the land subject to PC13 is currently located within the Rural Resource Area.

10.8 The objectives and policies for the rural resource area which are relevant to PC13 are summarised below;

¹⁷ Evidence of Mr Erskine, 16 May 2019, Paragraph 12.

10.8.1 **4.3.1 Objective – Needs of the Districts People and Communities**

To recognise that communities need to provide for their social, economic and cultural wellbeing, and for their health and safety at the same time as ensuring environmental quality is maintained and enhanced.

10.8.2 **4.3.3 Objective – Landscape and Amenity Values**

To maintain and where practicable enhance rural amenity values created by the open space, landscape, natural character and built environment values of the Districts rural environment, and to maintain the open natural character of the hills and ranges.

10.8.3 **4.3.7 Objective – Soil Resource**

To maintain the life-supporting capacity of the Districts soil resource to ensure that the needs of present and future generations are met

10.8.4 **4.4.2 Policy – Landscape and Amenity Values**

To manage the effects of land use activities and subdivision to ensure that adverse effects on the open space, landscape, natural character and amenity values of the rural environment are avoided, remedied or mitigated through;

- (b) Development which is compatible with the surrounding environment including the amenity values of adjoining properties.

10.8.5 **4.4.6 Policy – Adverse Effects on Soil Resources**

To ensure that the location, construction and or operation of land use activities and subdivision make adequate provision for the protection of the soil resource by avoiding, remedying or mitigating adverse effects.

10.8.6 **4.4.8 Policy – Adverse Effects on the Amenity Values of Neighbouring Properties**

To ensure that the effects associated with some activities including:

- (a) Noise (including noise associated with traffic generation, night-time operations), and vibration.

Do not significantly adversely affect the amenity values and privacy of neighbouring properties of the safe and efficient operation of the roading network.

10.8.7 4.4.9 Policy - Effects of Rural Activities

To recognise that some rural activities, particularly those of a short duration or seasonal nature often generate noise and other effects that can disturb neighbours by ensuring that new developments locating near such activities recognise and accept the prevailing environmental characteristic associated with production and other activities found in the Rural Resource Area.

The explanation to this policy states: People looking to reside in the rural zone should be prepared to accept the inconvenience, discomforts, disturbance or irritation that are caused by [rural activities]. Although such inconveniences, discomforts, disturbances or irritations may not be acceptable in an urban area, they are expected in rural areas. It is therefore considered appropriate that those activities that locate adjacent to an existing rural activity should take steps to mitigate the effects that the existing rural activity may have upon them.

10.8.8 4.4.10 Policy – Rural Subdivision and Development

To ensure that the subdivision and use of land in the Rural Resource Area avoids, remedies or mitigates adverse effects on;

- (c) The production and amenity values of neighbouring properties
- (d) The safety and efficiency of the roading network
- (e) The loss of soils with special qualities

10.9 The objectives and policies of the rural zone have been developed to protect productive and rural land uses, including the protection of soils and maintenance and enhancement of amenity values. The rezoning of the RTRA to an urban/residential zone will create an expectation for residents that they can enjoy residential amenity, free from the inconveniences, discomforts, disturbances and irritations caused by rural activities. Although as the evidence demonstrates, that will not be the case with respect to noise and amenity. Therefore the rezoning in my opinion does not achieve the outcome sought by these provisions.

- 10.10 In my opinion, PC13 is inconsistent with the policies and objectives of Section 4 - Rural Resource Area ODP. I agree with the conclusion in the Section 42A (Section 8.2.1) report which states:

"We consider that the objectives of the Operative District Plan that apply to the Rural Resource Area are more appropriate for the promotion of the sustainable management of the land resource subject to PC13 than the objectives proposed for the RTRA in Plan Change 13".

Section 6 – Urban Areas

- 10.11 Section 6 of the ODP relates specifically to the townships and settlements of the District. In my view PC13 with a maximum of 900 residential units will effectively create an urban zone, therefore the objectives and policies of Section 6 are relevant.

10.11.1 6.3.1 Objective – Needs of People and Communities

To promote the sustainable management of the urban areas in order to:

- (a) Enable the people and communities of the district to provide for their social, economic and cultural wellbeing and their health and safety; and
- (b) Meet the present and reasonably foreseeable needs of these people and communities

10.11.2 6.3.2 Objective – Amenity Values

To manage urban growth and development so as to promote the maintenance and enhancement of the environmental quality and amenity values of the particular environments found within the District's urban areas.

10.11.3 6.3.3 Objective - Adverse Effects on Natural and Physical Resources

To avoid, remedy or mitigate the adverse effects of urban areas on the natural and physical resources of the District.

10.11.4 **6.4.1 Policy – Maintenance of Quality of Life within Urban Areas**

To maintain and, where practicable, enhance the quality of life for people and communities within the District's urban areas through:

- (a) Identifying and providing for a level of amenity which is acceptable to the community; and
- (b) Avoiding, remedying or mitigating the adverse effects on the community's social, economic and cultural wellbeing and health and safety which may result from the use, development and protection of natural and physical resources, and
- (c) Recognising that change is inevitable in the use of land to enable the community to provide for its wellbeing.

10.11.5 **6.4.2 Policy – Expansion of Urban Areas**

To enable the expansion of urban areas or urban infrastructure in a manner that avoids, remedies or mitigates adverse effects on:

- (a) Adjoining rural areas.
- (b) Outstanding landscape values.
- (c) The natural character of water bodies and their margins.
- (d) Heritage values.
- (e) Sites of cultural importance to Kai Tahu ki Otago.
- (f) The integrity of existing network utilities and infrastructure, including their safe and efficient operation.
- (g) The life supporting capacity of land resources.
- (h) The intrinsic values of areas of significant indigenous vegetation and habitats of significant indigenous fauna.

10.12 Policy 6.4.2 is clear that any expansion of urban areas, as essentially proposed by PC13, shall be undertaken in a manner which avoids, remedies or mitigates adverse effects on adjoining rural areas. In my view the adverse effects of noise, reverse sensitivity and amenity are not adequately avoided, remedied or mitigated via the methods adopted in PC13. This will create an urban area that does not possess a level of amenity expected or acceptable to the community, whilst also having adverse effects on the surrounding material and physical resources.

Section 7 – Residential Resource Area

- 10.13 The objectives and policies of Section 7 ODP – Residential Resource Area, are in my view of relevance to PC13 on the grounds that the RTRA if approved would effectively result in the development of a new Residential Resource Area. The provisions of this zone provide guidance on the expectations for residential areas in CODC.
- 10.14 Objective 7.1.2 is in my view most relevant;

10.14.1 7.1.2 Objective – Protection of Living Environment

To manage the use of land to promote a pleasant living environment by ensuring that adverse effects of activities are avoided, remedied or mitigated, while accommodating appropriate change at the interface with other resource areas.

- 10.15 In my opinion PC13 will fail to provide a pleasant living environment for residents. Even with significant acoustic insulation measures it will not be possible to enjoy indoor areas of the proposed residential dwellings free from the effects of noise. It is demonstrated by Mr Staples that noise levels within dwellings will still result in annoyance. During motorsport events, and residents will endure outdoor amenity that is significantly compromised.

Section 12 – District Wide Rules and Performance Standards

- 10.16 Section 12 CODP is relevant to PC13 in relation to the controls it seeks to place on the generation of noise. I note for completeness that there are other matters that Section 12 addresses which are relevant to PC13, such as Odour and Dust, however these issues are not directly relevant to the matters raised by Highlands and Speedway, therefore have not been considered further. It is anticipated that other submitters, including Horticulture New Zealand, and Public Health South will address these matters.

10.16.1 12.2.2 Issue – Noise

Noise generate by land use activities can have a detrimental effect on the health and wellbeing of the District's people and the amenity values of the District's communities.

10.16.2 **12.3.2 Objective – Protection from Noise**

To avoid, remedy or mitigate the adverse effects of noise on the District's amenity values and the health and wellbeing of the Districts people.

10.16.3 **12.4.2 Policy – Noise**

To determine the suitability of noise generating activities in any given locality by having regard to;

- (a) The specific characteristics and amenity values of the locality from which the noise originates, and
- (b) The sound pressure level of the proposed activity, and
- (c) The frequency that the noisy activity takes place, and
- (d) The length of time that the noise continues, and
- (e) Any special characteristics of the noise,

To ensure that the adverse effects of noise on other activities and the natural and physical resources of the locality (including cumulative effects) reflect standards acceptable to the community.

10.17 The explanation to the policy goes on to state that the activities that generate high levels of noise shall locate away from noise sensitive areas and activities.

10.18 This is one of the reasons that Highlands and the Speedway are located where they are within the Rural Resource Area, as they are currently largely remote from noise sensitive areas and can therefore operate in a manner which does not impact upon the health and wellbeing of the community.

10.19 If PC13 is approved, it will create a situation that places residential activity in close proximity to noise generating activities, and will result in a significant cumulative noise effect, contrary to the direction of Policy 12.4.2.

11 **CONCLUSION**

11.1 I consider the proposed River Terraces development to be contrary to the objectives and policies of the Operative Central Otago District Plan (ODP), the partially operative and proposed Regional Policy Statement, and Part 2 RMA.

- 11.2 Overall, I conclude that PC13 is contrary to the ODP for two reasons;
1. Establishing residential activity on a site which is surrounded by potentially incompatible activities is inconsistent with the Policies and Objectives of Sections 4, 6, 7 and 12 of the ODP and does not enable the sustainable use of natural and physical resources.
 2. It would remove the potential for this land to be used for any other productive rural or other land use in the future, which is also contrary to the Objectives and Policies of the ODP.
- 11.3 Proposed PC13 fails to implement the existing objectives and policies of the ODP, in particular Section 2 which outlines the resource and significant resource management issues of the district. Section 2.3.3 relates to Soils and Section 2.3.4 Land Use.
- 11.4 The actual effects on the environment will in my view be significant, particularly with respect to cumulative noise effects, amenity values, and reverse sensitivity effects.
- 11.5 The proposed mitigation measures as outlined in the original request for a private plan change, and the subsequent modifications set out in Attachment B of the evidence of Mr. Brown (for the requestor) will not in my view, avoid, remedy or mitigate the establishment of an urban area in a rural resource zone.
- 11.6 For these reasons, I support the recommendation set out in the Section 42A Report that Plan Change 13 be declined.

Kate Scott

22 May 2019