

**BEFORE THE HEARING COMMISSIONERS
AT CENTRAL OTAGO**

IN THE MATTER of the Resource Management Act 1991 (“the
Act”)

AND

IN THE MATTER of the Proposed Plan Change 13 to the
Central Otago District Plan

**STATEMENT OF EVIDENCE BY LYNETTE PEARL WHARFE
FOR HORTICULTURE NEW ZEALAND
16 MAY 2019**

1. QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Lynette Pearl Wharfe. I am a planning consultant with The AgriBusiness Group. I have a BA in Social Sciences and post graduate papers in Environmental Studies, including Environmental Law, Resource Economics and Resource Management.
- 1.2 I am an accredited commissioner under the Making Good Decisions programme with Ministry for the Environment.
- 1.3 I have been a consultant with The AgriBusiness Group since 2002. The Agribusiness Group was established in 2001 to help build business capability in the primary sector.
- 1.4 I have spent over 18 years as a consultant, primarily to the agricultural industry and rural sector, specialising in resource management, environmental issues, and environmental education and facilitation, including 18 years of providing advice to Horticulture New Zealand ("HortNZ") and its precursor organisations, NZ Vegetable and Potato Growers Federation, NZ Fruitgrowers Federation.
- 1.5 As part of providing advice to HortNZ for submissions and plans across the country I have been involved in development of Regional Policy Statements, Regional Plans and District Plans, including omnibus plans such as the Auckland Unitary Plan and the Horizons One Plan so am familiar with the range of matters to be addressed in the Proposed Plan Change 13 (PC13).
- 1.6 I have been involved as a consultant to HortNZ on various plan changes in Central Otago and also the Otago Regional Policy Statement and Regional plans, contributing to submissions and further submissions and hearings.
- 1.7 I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out in Appendix 1. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. SCOPE OF EVIDENCE

- 2.1 This evidence provides a planning assessment of those provisions on which HortNZ submitted and addresses the matters pertaining to effects of the proposal on horticulture land use arising from the proposed rezoning of land identified as RDRA from rural to urban.

- 2.2 There are aspects of the proposal that are not directly related to HortNZ's interests which are not addressed in this evidence. However, it should be noted that I generally concur with the assessment and conclusion of the s42A Report for the Council in respect of the adverse effects arising from PC13.
- 2.3 In undertaking this assessment I have considered:
- (a) The Request Documents as lodged by the Proponent;
 - (b) The evidence lodged by the Proponent
 - (c) The s32 Reports for PC13
 - (d) The Section 42A Hearings Report prepared by the Council
 - (e) Operative District Plan for Central Otago District
 - (f) The National Policy Statement for Urban Development Capacity (NPS-UDC)
 - (g) The Partially Operative Regional Policy Statement for Otago
 - (h) The Regional Air Plan for Otago
 - (i) NZS8409:2004 Management of Agrichemicals
 - (j) Hazardous Substances (Hazardous Property Controls) Notice 2017

3. MY UNDERSTANDING OF HORTICULTURE NEW ZEALAND'S SUBMISSIONS

- 3.1 HortNZ made a submission and further submission on Proposed PC13 opposing Plan Change 13 in its entirety because of the potential impacts on horticulture in the district.
- 3.2 The submission also identified that PC13 is inconsistent with the proposed Otago Regional Policy Statement, in particular as it relates to recognition and providing for significant soils (Policy 3.2.17, 3.2.18)
- 3.3 The submission also identified that PC13 does not adequately assess the actual and potential reverse sensitivity effects on horticulture and the significant impact on horticultural operations as a result of the proposal.

4. MY UNDERSTANDING OF THE PC 13 REQUEST

- 4.1 River Terrace Developments Ltd (RTDL) seek a plan change to amend the zoning of the identified River Terrace site from Rural and Rural Residential to Urban and develop 900 new residential lots. This equates to a 41% increase in the occupied dwellings in Cromwell in 2018 (s42A Report Pg 60).
- 4.2 The land in questions is located within the rural area adjacent to existing horticulture operations.
- 4.3 A change from rural to urban zoning will affect the existing horticulture operations.
- 4.4 I note that the proponent has previously undertaken similar private plan changes in Queenstown Lakes District and Waikato District. While a similar approach appears to have been applied to the River Terrace Development there are significant differences that need to be recognised because of the existence of horticulture operations and also motorsport facilities. Such constraints did not exist with other plan changes that have been undertaken so they should not be taken as setting a precedent for PC13.

5. MATTERS THIS EVIDENCE WILL ADDRESS

- 5.1 This evidence will address the planning matters as they relate to HortNZ's interests in PC13:
 - (a) Planning framework for assessing PC13
 - (b) Operative District Plan
 - (c) Regional Policy Statement
 - (d) NPS-UDC
 - (e) Soils
 - (f) Discharges to Air
 - (g) Noise
 - (h) Airport
 - (i) Reverse sensitivity

6. PLANNING FRAMEWORK FOR ASSESSING PC13

- 6.1 Various statutory tests are required when considering the most appropriate provisions in a district plan.

- 6.2 Mr Brown in his evidence (3.1) sets out tests from *R Adams and others v Auckland Council* [2018] NZEnvC 008 and has adopted them as a basis for his evidence.
- 6.3 However, I note that the case was related to the Auckland Unitary Plan which is a unitary plan developed under special legislation and was a council-initiated Plan, rather than a Private Plan Change such as PC13.
- 6.4 Therefore, in assessing a private plan change at district level there is a need to ensure that the tests applied are those required for the request.
- 6.5 Various sections of the RMA set out requirements:
- (a) Section 31 sets out the territorial authority functions to establish plans;
 - (b) Section 73 sets out provisions for preparation and change of district plans with s31 (2) providing for private plan changes as set out in Part 2 or 5 of Schedule 1;
 - (c) Section 74 lists matters to be considered by territorial authority;
 - (d) Section 75 Contents of district plans including relationship with other documents;
 - (e) Schedule 1 Part 2 sets out requirements for requests for changes to policy statements and plans of local authorities. Clause 22 sets out the form of request for private plan changes and where environment effects are anticipated the request shall describe those effects taking into account clauses 6 and 7 of Schedule 4;
 - (f) Schedule 4 clauses 6 and 7 state information required in assessment of environmental effects and matters that must be addressed by assessment of environmental effects;
 - (g) Section 32 sets out requirements for preparing and publishing evaluation reports, including specific requirements where a proposal is amending an existing plan (s32 (3)).
- 6.6 In addition to the list that Mr Brown bases his assessment on I consider there also needs to be consideration of:
- (a) Whether the provisions are not inconsistent with a regional plan for any matter specified in s30 (1) (refer s75 (4));

- (b) The assessment of environmental effects as set out in Schedule 4 clauses 6 and 7 as a specific requirement of private plan requests;
 - (c) The extent to which the provisions of the existing objectives and policies of the Operative District Plan are relevant to the Plan Change (amending proposal) (S32 (3)).
- 6.7 I will address these additional requirements throughout this evidence, particularly as they relate to the Regional Plan: Air for Otago and consideration of the provisions in the Operative District Plan.
- 6.8 In respect to Schedule 4 matters these are generally covered in the AEE but consider that reference should be made to the requirement. I consider that a major effect of interest to HNZ to be considered is:
- 7(1)a Any effect on those in the neighbourhood and, where relevant the wider community, including any social, economic or cultural effects.*
- 6.9 I have provided my assessment of the required tests in Attachment 2 of this evidence.

7. OPERATIVE CENTRAL OTAGO DISTRICT PLAN

- 7.1 The Operative District Plan provides the existing planning framework in which horticulture operates in Central Otago. This provides the basis for comparing the existing operating environment to that which would exist if the RTRA rezoning occurred and assessing the extent to which the RTRA zone meets the objectives and policies of the Operative District Plan.
- 7.2 PC13 seeks to insert a whole new section into the District Plan – Section 20 River Terraces Resource Area.
- 7.3 PC13 does not seek to amend the existing objectives, policies, rules and definitions of the Operative District Plan, therefore such provisions are relevant and apply to PC13.
- 7.4 The Environment Court, in *Appealing Wanaka Inc v Queenstown Lakes District Council (2015 WL 7753745)* Para 34, when deciding whether or not to confirm the rezoning, accepted that the objectives, policies and rules of the Plan Change were required to implement the existing objectives and policies of the operative District Plan.

- 7.5 The case was similar to PC13 in that it was a plan change to amend rural zoning to urban for residential development, so the same principle will apply for PC13.
- 7.6 Mr Brown in his evidence compares the existing subdivision status as Option 1 of the RTRA area with the RTRA proposal as Option 2. However, in my opinion the comparison also needs to consider the policy framework, not just the subdivision potential of the two options.
- 7.7 Relevant provisions in the district plan 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
- 7.8 Section 2 The Resources and Significant Resource Management Issues of the District identifies a range of significant issues for the district, including Soil Resources and Special Land Resources (2.3.3). The special land resource section includes a map of areas known to have 800 and above growing degree days which includes the Cromwell Basin. Growing degree days (GDD) are defined in the Plan as being calculated by adding all the degrees above 10 degrees centigrade for all the days that the mean daily temperature exceeds 10 degrees centigrade in the growing season. GDD is suitable for delineating areas for appropriate crops; e.g. commercial production of grapes requires at least 900 GDD whereas commercial apricot production requires 800 GDD.
- 7.9 The significant issue identifies these areas as special land resources where the potential for the resource to meet the reasonably foreseeable needs of future generations should be sustained. This is implemented in the Plan through Issue 4.2.6, Objective 4.3.7 and related policies.
- 7.10 Section 4 Rural Resource Area includes a suite of provisions that seek to ensure that special land resources are retained and that development in rural areas does not compromise existing primary production. Such provisions include:
- (a) Issues 4.2.6 Special land resources, Policy 4.2.15 Development in Rural Areas

- (b) Objectives 4.3.1 Needs of the District's people and communities, Policy 4.3.7 Soil Resource
 - (c) Policies 4.4.6 Adverse effects on the soil resource, Policy 4.4.9 Effects of rural activities, and Policy 4.4.10 Rural subdivision and development
 - (d) Method 4.5.1 Creation of Rural Resource Area
 - (e) Rules:
 - i. 4.7.1 Permitted Activities
 - ii. 4.7.2 Controlled activities – residential activity,
 - iii. 4.7.3 Restricted Discretionary activities Breach of standards such as separation distances,
 - iv. 4.7.4 Discretionary activities – Residential activities, subdivision and matters of consideration including potential for reverse sensitivity on existing rural production activities,
 - v. 4.7.6 Standards – bulk and location requirements, including a side and rear yard of 25m for residential buildings in the RA (4.7.6 A a), noise (4.7.6 (E).
 - (f) Environmental Results Anticipated – continuing reduction in conflict between land uses occurring in the rural environment
- 7.11 Issue 4.2.15 Development in Rural Areas identifies that development can have adverse effects including the loss of unique land resources and areas of high class soil and high growing degree days.
- 7.12 High class soils are defined in the Plan as *'soils that are capable of being used intensively to produce a wide variety of plants including horticultural crops. This definition requires good soil and other resource features that combine to be capable of producing a wide range of crops. It does not include areas that may be suited to one or two specialist crops, largely due to the climate rather than soil quality.'*
- 7.13 The approach is to define the Rural Resource Area, recognise and accept the prevailing environmental characteristics associated with production and ensure that rural production is able to continue.
- 7.14 Such an approach provides surety for growers that they can continue growing in the rural area without undue imposition from

other activities that establish in the area by retaining the integrity and cohesion of the rural area.

- 7.15 However, a rezoning of the RTRA to urban will remove the protections that currently exist with the Rural Zoning of the land.
- 7.16 Section 6 Urban Areas provides a framework for the urban areas of the district, including Cromwell. Urban areas include land zoned, residential, business, industrial and rural settlement areas.
- 7.17 Issue 6.2.10 identifies the effects of land use on adjoining rural areas as an issue and that adverse effects of land use activities within urban areas on adjoining rural areas need to be avoided, remedied or mitigated. An effect that urban land use may create is existing primary production and residential activities coming into conflict and that this effect needs to be addressed when determining the extent of the district's urban areas and is linked to Issue 4.2.15 in the Rural Section.
- 7.18 Policy 6.4.2 Expansion of urban areas seeks to enable the expansion of urban areas in a manner that avoids, remedies or mitigates adverse effects on adjoining rural areas.
- 7.19 Therefore, the creation of the RTRA needs to demonstrate that the adverse effects of the rezoning can adequately avoid, remedy or mitigate the adverse effects on adjoining rural areas.
- 7.20 Section 7 Residential Resource Area includes Objective 7.1.2 Protection of Living Environment which seeks to provide a pleasant living environment while accommodating appropriate change at the interface with other resource areas. Objective 7.1.3 Management of change seeks to manage change at the interface between different resource areas.
- 7.21 The policies in Section 7 describe the residential character that could be anticipated in residential areas. Policy 7.2.8 specifically provides for management of change at the interface between resource areas to be considered within the wider context of the plan as a whole.
- 7.22 The Standards in the residential areas require a side and rear yard setback of 3m but there are different yard standards to reflect the different amenity found within the various residential areas.
- 7.23 Section 12 District Wide Rules and Performance Standards addresses issues that are relevant throughout the district across various resource areas. They include provisions for odour, dust and noise. Policy 12.4.2 addresses suitability of noise generating activities having regard to the specific characteristics and amenity

values of the locality from which the noise originates. The approach is that noise sensitive activities are protected by locating away activities that generate high levels of noise.

- 7.24 12.7.4 includes general provisions for noise and lists a number of exemptions in iii), which includes primary production:

Noise limits in any part of the plan shall not apply:

- i) in any area to activities of a limited duration necessary of the production (but not processing) of primary products.*

- 7.25 Therefore, the noise that is generated on orchards in the rural area for activities of limited duration is not subject to the noise limits in the plan, including within an adjoining residential area.

- 7.26 All these district plan provisions work together to provide a framework that has resulted in a pattern of zoning in Cromwell area where there are clear demarcations between rural and urban activities. The Clutha River, Lake Dunstan, racecourse, golf course, industrial land, motorsport park and the roading network all provide an interface with the rural zoned land around Cromwell that generally avoids the location of residential properties immediately adjacent to rural zoned land. The location of Rural Residential Areas within the Rural Resource Area also contributes to providing a buffer between rural production activities and residential areas. As such there are defensible boundaries which ensure that the adverse effects of rural land use are not located adjacent to residential use.

- 7.27 Retaining such buffers between rural production activities and residential activity is identified in the Plan as important to ensure that incompatibilities do not arise.

8. REGIONAL POLICY STATEMENT

- 8.1 There are a range of provisions in the Partially Operative Otago Regional Policy Statement that are relevant to PC13.

- 8.2 Both Mr Brown for the Requestor and Mr Whitney for the Council have assessed the specific provisions that they consider relevant.

- 8.3 Mr Brown's assessment is in Attachment C to his evidence and Mr Whitney addresses it at 9.3.5 in his evidence.

- 8.4 Because of HortNZ's specific interests my assessment of the RPS provisions relates to provisions relating to soil, rural activities, urban development and reverse sensitivity.

- 8.5 Provisions that I identify as relevant to PC13 include:

- (a) Objective 1.1 Otago's resources are used sustainably to promote economic, social and cultural wellbeing for its people and communities
 - (b) Policy 1.1.1 Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources.
 - (c) Objective 3.1 The functions and values of Otago's ecosystems and natural resources are recognised, maintained or enhanced where degraded
 - (d) Policy 3.1.7 Soil values (Proposed) safeguard the life supporting capacity of soil and manage soil to achieve listed considerations.
 - (e) Objective 3.2 Otago's significant and highly values natural resources are identified and protected or enhanced where degraded.
 - (f) Policy 3.2.17 Identifying significant soils
 - (g) Policy 3.2.18 Managing significant soils
 - (h) Objective 4.5 Urban growth and development is well designed, occurs in a strategic and coordinated way and integrates effectively with adjoining urban and rural environments.
 - (i) Policy 4.5.1 Providing for urban growth and development
 - (j) Policy 5.3.1 Rural activities
 - (k) Method 4.1.6 by managing urban growth and development and subdivision of land to protect significant soils
- 8.6 My assessment of the relevant objectives and policies in the RPS is in Attachment 1 and identifies that there are important policies relating to rural activities that need to be given effect to in the Central Otago District Plan, including consideration of reverse sensitivity and providing for rural production.
- 8.7 In my opinion PC13 does not adequately give effect to these policies because it does not give due regard to the importance of rural production or significant soils.
- 8.8 As an overall comment I consider that the RPS seeks to strike a balance between enabling primary production and providing for urban growth and development.

- 8.9 I was involved in the hearings and mediations on the RPS for HortNZ and am very aware that there were considerable tensions surrounding the balance between activities. While HortNZ was not totally satisfied with the final outcome it recognised that there is a need for urban development in appropriate areas and sought to ensure that there was a robust policy framework so that when proposals are being considered there would be due recognition given to primary production and the need to ensure that it is not compromised through urban development.
- 8.10 In particular the provisions relating to the NPS-UDC were added through the mediation process as the NPS became operative during the time that mediation was occurring. At the time HortNZ was assured that Central Otago would not meet the thresholds for the NPS-UDC and so agreed to the inclusion of the provisions. Therefore the extent to which the NPS-UDC is relevant to PC13 is important in terms of ongoing implementation of the RPS.

9. NATIONAL POLICY STATEMENT URBAN DEVELOPMENT CAPACITY (NPS-UDC)

- 9.1 HortNZ submitted that PC13 gave inappropriate weight to the NPS-UDC as Central Otago is not a medium or high urban growth district.
- 9.2 The NPS-UDC recognises the national significance of urban environments and the need to enable such environments to develop and change and provide sufficient development capacity to meet the needs of people and communities and future generations in urban environments.
- 9.3 The NPS-UDC Objectives apply when making decisions that affect an urban environment. Policies PA1-PA4 apply to any urban environment that is expected to experience growth.
- 9.4 Therefore the extent to which these objectives and policies apply is dependent on the application of the definition of urban environment and whether Cromwell meets that definition.
- 9.5 Urban environment is defined in the NPS-UDC means:
- An area of land containing, or intended to contain, a concentrated settlement of 10,000 people or more and any associated business land, irrespective of local authority or statistical boundaries.*
- 9.6 There appears to be a difference of opinion as to whether Cromwell meets the definition of 'urban environment' and therefore the extent to which the NPS-UDC applies to PC13.

- 9.7 Mr Whitney for the Council in the s42A Report (9.3.1) does not consider that Cromwell will meet the threshold of 10,000 to be classed as an NPS-UDC urban environment.
- 9.8 Ms Hampson for the Requestor disagrees and considers that Cromwell is an NPS-UDC urban environment (Evidence Para 54-65). She reaches that conclusion based on CODC projections that combines Cromwell Urban (6780) and Outer Cromwell (3275) to reach 10,055 by 2038.
- 9.9 Outer Cromwell includes Pisa Moorings, Lowburn and Bannockburn.
- 9.10 The definition of urban environment refers to a concentrated settlement of 10,000 people (my emphasis).
- 9.11 I take 'concentrated' in this context to mean *contained or existing or happening together in a small or narrow space or area: not spread out* (Webster Dictionary).
- 9.12 While Pisa Moorings, Lowburn and Bannockburn are part of the wider Cromwell community the extent to which they are determined to be part of the Cromwell concentrated urban environment is at issue, and therefore the extent to which the NPS-UDC applies.
- 9.13 Given the definition of 'concentrated' I would not consider Outer Cromwell to be part of the Cromwell NPS-UDC urban environment.
- 9.14 Aside from the debate about population projections, Mr Whitney has assessed PC13 against the objectives Policies PA1- PA4 of NPS-UDC and determined that PC13 does not meet those objectives and policies.
- 9.15 I concur with his assessment on this matter, particularly the regard to established land use activities in the immediate environs of the land subject to PC13.

10. SOILS

- 10.1 The HortNZ submission identified policies relating to soil in the RPS which the Plan Change did not give effect to.
- 10.2 A number of submitters have raised concerns about the loss of productive land if the rezoning is to be approved.
- 10.3 The s42A Report for Council considers this issue at 7.13, noting that the proposals will have an adverse effect in terms of loss of productive potential, particularly the upper terrace, which is the same land classification as nearby orchards.

- 10.4 Mr Hill presents soil evidence for the Requestor and Ms Hampson also addresses the issue in her statement of evidence at Para 66. Mr Brown refers to the evidence of Ms Hampson and Mr Hill (4.19) and concludes that the foreclosure of primary productive capacity of the soils on the subject site would not generate any adverse effects on the environment.
- 10.5 Ms Hampson refers to a proposed National Policy Statement on Highly Productive Land that she is contracted to provide advice on to Ministry of Primary Industries.
- 10.6 While there has been some discussion in the media about the possible NPS I consider that discussion of a proposed National Policy Statement for Highly Productive Land at this stage is pre-emptive and potentially misleading. Reliance should not be placed on either media reports or information obtained through those involved in the process. Until the NPS has been through the Cabinet process and signed off by the Minister for consultation no assumptions can be made about what will be in the document. Furthermore, no weight is given to provisions of an NPS until it is operative (s74(1)(ea)).
- 10.7 Ms Hampson determines in her assessment that the River Terrace site does not sit on highly productive soils. Mr Hill also confirms that in his opinion the land does not sit on high class soils.
- 10.8 The evidence of both the proponent and the Council (s42A Report) identify the site as having LUC IVs 9 on the top terrace area and LUC VIs 7 on the lower terrace area. Generally, the top terrace is zoned rural and is adjacent to the existing Suncrest Orchard while the lower terrace is partly rural residential.
- 10.9 The soils on the site are identified as Molyneux Soils. McIntosh (1993) refers to some of these as high-class soils.
- 10.10 The proponent's evidence has focused on the issue of high-class soils and because, in their opinion, the site does not meet the criteria as high-class soils, the area is not important for production.
- 10.11 Fundamental to this position is a determination that the definition of high-class soils is considered to be Class I – III soils.
- 10.12 However, there is a definition for high-class soils in the Operative District Plan which is not limited to particular classes:

'High class soils' means soils that are capable of being used intensively to produce a wide variety of plants including horticultural crops. This definition requires good soil and other resource features that combine to be capable of producing a wide range of crops. It

does not include areas that may be suited to one or two specialist crops, largely due to the climate rather than soil quality.'

- 10.13 When tested against that definition the land in question could be determined to be high class as it is *capable of being used intensively to produce a wide variety of plants including horticultural crops*, as evidenced by the land adjacent to the RTRA site.
- 10.14 In my opinion the emphasis on high-class soils should be focussed on 'significant soils' as provided for in the Otago RPS.
- 10.15 Such soils are wider than 'high class soils' as the RPS states that significant soils include Class I, II and III and also soils of significance for primary production:
- Policy 3.2.17 Identifying significant soils*
- Identify areas of soil that are significant using the following criteria:*
- a) *Land classified as land use capability I II and IIIe in accordance with the NZ Land Resource Inventory*
 - b) *Degree of significance for primary production*
 - c) *Significance for providing contaminant buffering or filtering services*
 - d) *Significance for providing water storage or flow retention services*
 - e) *Degree of rarity*
- Policy 3.2.18 Managing significant soil*
- Manage areas of significant soil by all of the following:*
- a) *Maintaining those values which make the soil significant*
 - b) *Avoiding remedying or mitigating other adverse effects*
 - c) *Recognising that loss of significant soil to urban development may occur in accordance with any future development strategy*
 - d) *Controlling the adverse effects of pest species, preventing their introduction and reducing their spread.*
- 10.16 Policy 3.2.18 is implemented by Method 4.1.6 by managing urban growth and development and subdivision of land to protect significant soils.
- 10.17 The issue here is not the adverse effects of taking the land out of production, but rather the extent to which PC13 would not give effect to the RPS.
- 10.18 Therefore, the focus of consideration of soils in respect to the application should be on the degree of significance and value of the soils for horticulture in the area.

- 10.19 Mr Weaver presents evidence for HortNZ that sets out his assessment of the value of the soil at the RTRA site and the importance of retaining such soils for horticulture production.
- 10.20 In my opinion retaining the values of the soil at the RTRA site is important to ensuring that high value primary production can be undertaken on the site and that production on adjacent land is not compromised through the 'sacrificing' of the RTRA land to urban development.
- 10.21 It is recognised in the RPS that some significant soil may be lost to urban development in accordance with a future development strategy. 'Future development strategy' is defined in the RPS as in accordance with the NPS Urban Development Capacity.
- 10.22 The NPS-UDC sets out in Policies PC12 to PC14 how a future development strategy will be developed. At present there is no future development strategy as per the NPS-UDC for Cromwell so Policy 3.2.18 c) and loss of significant soils to urban development is not relevant to this application.

11. NOISE

- 11.1 Noise has been identified as a significant issue that will lead to adverse effects on the RTRA development and also reverse sensitivity effects on nearby rural land uses and orchards, particularly from use of bird scarers, frost fans and general orchard activities such as chainsaws, mulching and machinery.
- 11.2 Mr Reeves presents evidence for HortNZ on acoustic considerations and I defer to his assessment of potential impacts.
- 11.3 The Operative District Plan recognises the potential for noise in rural environments and provides a planning framework to ensure that rural activities are not constrained by incompatible activities. Policy 4.4.9 Effects of rural activities is particularly relevant. The Explanation notes:
- Although such inconveniences, discomforts, disturbances or irritation may not be acceptable in an urban area, they may be expected in rural areas.*
- 11.4 What PC13 is proposing is to place an 'urban area' immediately adjacent to a rural area and subject the residents to the inconveniences, discomforts, disturbances or irritation that may not be acceptable in an urban area.

- 11.5 The Operative District Plan in 12.7.4 iii) explicitly exempts rural activities of limited duration necessary for producing primary products from the noise limits in any area.
- 11.6 Therefore the noise limits in the Chapter 4.7.6 E do not apply to activities such as general orchard activities such as chainsaws, mulching and machinery.
- 11.7 The Environment Court made an interesting finding relating to noise in *Ngatarawa Developments Ltd v Hastings District Council (2008 WL 2122412)* (attached as Appendix 3).
- 11.8 Ngatarawa was a subdivision application and land use consent to develop 95 residential units on land owned by a golf course and adjacent to an aerodrome and horticulture development. Consent was granted by the Council but the Court declined the consent, partly on the grounds of reverse sensitivity on nearby activities and the inappropriateness of proposed mitigation. One issue was the noise. The court states:
- We find that it is not appropriate to permit the number of notional noise boundaries surrounding working rural land to proliferate beyond the number permitted by the district plan. To do so would unreasonably and unfairly constrain the activities appropriately located in the Plains Zone. (63)*
- 11.9 I consider that the same principle applies to the RTRA development where the number of notional noise boundaries would proliferate, in excess of the Ngatarawa extent, if the RTRA site is rezoned urban.
- 11.10 As set out above, the Operative District Plan provides for clear delineation of the Rural Resource Area to ensure that the effects of rural activities do not adversely affect urban communities. To breach that boundary undermines the integrity and intent of the District Plan.
- 11.11 The proponent is proposing a number of methods to mitigate the effects of noise, which I address under reverse sensitivity below.
- 11.12 My conclusion is that the proposed methods do not adequately address the issues to mitigate the reverse sensitivity effects.
- 12. DISCHARGES TO AIR**
- 12.1 Horticulture activities discharge to air when undertaking agrichemical spraying, fertiliser applications and outdoor burning.

- 12.2 There is potential for complaints to arise because of the effects of the activities, particularly where there are residential dwellings in proximity to the horticulture activity.
- 12.3 These activities are managed by the Regional Plan: Air for Otago (Air Plan). Attached to this evidence (Appendix 2) is a collation of relevant sections from the Air Plan.
- 12.4 The Regional Policy Statement is also relevant.
- 12.5 The Hazardous Substances (Hazardous Property Controls) Notice 2017 and NZS8409:Management of Agrichemicals are also relevant to consideration of spray drift.

Spray drift

- 12.6 Spray drift is addressed in the:
- (a) AEE by the Requestor at 11.4
 - (b) Evidence of Mr Brown for the Requestor at 4.24 and
 - (c) s42A Report for the Council. at 7.10.4.6
- 12.7 The Air Plan defines Agrichemical spray drift as the airborne movement of aerosol or droplets containing agrichemicals onto non-target areas.
- 12.8 It can also be called 'off-target movement' and can occur as drift (primary movement as droplets) or secondary drift as a vapour or spray contaminated dust.
- 12.9 NZS8409:2004 Management of Agrichemicals (NZS8409) Appendix G Spray Drift and Weather conditions includes a description of off target movement and how to manage the risk of drift hazard.
- 12.10 Agrichemical use is an essential activity on orchards and currently the growers can undertake the activity as a permitted activity subject to conditions. Agrichemicals are used to control pest and diseases that can render a crop of lesser value, or of no value, so it is important that they are able to be used as part of the economic activity.
- 12.11 Growers do not seek to create spray-drift as it means the active ingredient is not falling on the target, but there are some circumstances where even with the application of all best management practice some spray drift does occur.
- 12.12 The RTDL AEE identifies that NZS8409 includes guidelines for buffer zones and shelter belts to assist in the management of

activities sensitive to agrichemicals including the following distances:

a) With shelter:

- Boom sprayer - 2m
- Air blast sprayer – 10m
- Aerial application – 100m

b) Without shelter:

- Boom sprayer - 10m
- Air blast sprayer – 30m
- Aerial application – 300m

- 12.13 The AEE considers that the proposed RTRA 5m setback from the boundary with a 2m buffer planting strip will be adequate to mitigate the effects of spray drift from boom and air blast spray application methods so the RTRA will not cause any adverse effects on the health of residents within the RTRA arising from spray drift from agrichemicals from nearby orchard operations.
- 12.14 The AEE discusses a land covenant for potential noise effects but not spray drift.
- 12.15 A 5m setback is well short of the guidance distances set out in NZS8409 so it cannot be determined that there will be no adverse effects on the residents arising from spray drift from agrichemicals from nearby orchard operations.
- 12.16 The AEE does not consider the effect of potential complaints about spray drift on the orcharding operations.
- 12.17 Mr Brown addresses spray drift at 4.24 in his evidence and reiterates the AEE that the 5m setback from the boundary with a 2m buffer planting strip adjacent to the boundary will mitigate the effects of spray drift of agrichemicals. In addition, he is recommending a new rule be added to the RTRA provisions requiring a 3m solid fence be constructed along the boundary with the orcharding operations to further mitigate any potential for spray drift from agrichemicals.
- 12.18 Mr Brown then refers to the Regional Air Plan requirements and determines that the adjoining operations should not be allowing spray to cross the boundary (Rule 16.3.9.2 d) hence there should be no effects of spray drift on residents on the land whether developed under the RTRA or the existing zonings, and therefore

there will not be any adverse effects of spray drift on residents within the RTRA.

- 12.19 I disagree with Mr Brown's conclusion in respect of the application of Rule 16.3.9.2 d) and will address it in consideration of the Regional Air Plan requirements below.
- 12.20 Nor does Mr Brown consider the effects on the orcharding operations from complaints about spray drift from residents.
- 12.21 Mr Whitney considers spray drift at 7.10.4.6 of the s42A Report and identifies that the proposed 5m setback from the boundary with a 2m buffer planting strip adjacent to the boundary will be inadequate to mitigate the effects of agrichemical application from an air blast sprayer or aerial application based on the guidance distances in NZS8409. He also identifies that the 5m setback applies to buildings but not outdoor living space within that 5m.
- 12.22 Mr Whitney also notes (7.10.4.7) that the restrictive no-complaints covenant only applies to noise from the Jones Orchard so there would be no provisions for a no-complaints covenant for agrichemical applications.
- 12.23 At 7.10.5 the s42A Report concludes that PC 13 will have significant adverse effects on neighbouring land use activities as the owners and occupiers of residential properties in the RTRA are likely to be adversely affected by the activities undertaken on neighbouring properties and reverse sensitivity effects are likely to arise.
- 12.24 Use of agrichemicals is controlled by a number of agencies and users have a range of requirements to meet.
- 12.25 These include controls through the Regional Air Plan, Hazardous Substance Controls, and industry requirements which are relevant to consideration of the management of spray drift, especially adjacent to residential development.

Regional Plan: Air for Otago

- 12.26 The Regional Plan: Air for Otago is a regional plan developed to manage discharges to air, which is a matter specified in s30(1) f).
- 12.27 S75 (4) requires that a district plan must not be inconsistent with a regional plan for any matter specified in Section 30 (1).
- 12.28 Therefore, PC13 needs to be not inconsistent with the Regional Plan: Air for Otago.
- 12.29 Policy 12.1.1 sets out a policy for agrichemical spray drift that requires applicators to undertake spraying in a manner that avoids

spray drift beyond the target area or the boundary of the property and avoids adverse effects on sensitive areas or places.

12.30 The policy also encourages district councils to use land use planning mechanisms to mitigate adverse effects from spray drift.

12.31 The Explanation provides reference to NZS8409 as best practice to reduce drift hazard, particularly to sensitive areas and places and also Schedule 4 of the Plan which includes a summary of best practice.

12.32 The reasons for adopting the policy states:

This policy recognises that where the use of agrichemicals is necessary, applying good management practices will reduce the risk of spray drift and the potential for adverse effects to occur. It also recognises that there are mechanisms available to city and district councils which can assist in mitigating the adverse effects of spray drift and achieving integrated management.

12.33 Policy 12.1.1 is implemented through Rule 16.3.9.2 Discharges from agrichemical application on production land and industrial or trade premises - permitted activity.

12.34 The rule includes a limited number of conditions:

(a) The agrichemical and any associated additive are authorised for use in New Zealand and are used in accordance with the authorisation; and

(b) The discharge is carried out in accordance with the manufacturer's directions; and

(c) The discharge does not exceed the quantity, concentration or rate required for the intended purpose; and

(d) The application does not result in any ambient concentrations of contaminants at or beyond the boundary of the property that have noxious or dangerous effects.

12.35 The most pertinent condition is d) which requires that the application does not result in noxious or dangerous effects beyond the boundary.

12.36 It should be noted that the rule does not state 'there is to be no drift beyond the boundary'. Rather it requires that there are no 'noxious or dangerous effects'.

12.37 The Plan provides guidance as to what are noxious or dangerous effects at 16.2.9 Noxious, dangerous, offensive and objectionable effects:

Noxious is defined in the Concise Oxford Dictionary as "harmful, unwholesome". "Dangerous" is defined as "involving or causing danger". Dangerous discharges include those that are likely to cause adverse physical health effects, such as discharges containing toxic levels of chemicals.

- 12.38 The description notes that that these are not objective measures and that what may be considered noxious, dangerous, offensive or objectionable will depend on the circumstances relevant to each case.
- 12.39 Therefore, any drift beyond the boundary should not create effects that could be determined to be noxious or dangerous and may vary according to the situation. Any complaint about spray drift would need an assessment to be undertaken to determine if the effects are noxious or dangerous.
- 12.40 It is also relevant to note that Policy 12.1.1 encourages district councils to use land use planning as a means to addressing the adverse effects of agrichemical drift and refers to Method 17.2.1.2 which includes managing discharges through district plans by:
- (1) Achieving physical separation of incompatible land uses through buffer zones or shelter belts;*
 - (2) Recognising existing use rights and reverse sensitivity;*
and
 - (3) Encouraging people undertaking land use activities to manage the effects of their activities through following codes of practice or environmental management systems where appropriate.*
- 12.41 Policy 12.1.1 and Method 17.2.1.2 are relevant to PC13 in that there is clear guidance in the Regional Air Plan of the need for the district council to include methods to manage adverse effects through district plan provisions, including separation of incompatible activities and recognising existing use rights and reverse sensitivity.
- 12.42 Generally, it is considered that location of residential development adjacent to rural areas where agrichemical spraying is undertaken is considered to be an incompatible activity.
- 12.43 The Operative District Plan recognises this issue in 4.2.15, Development in rural areas, and includes provisions that clearly delineate the Rural Resource Area and the need for space so sensitive activities are not affected by effects from rural activities (eg Policies 4.4.9, 4.4.10) including requiring a minimum setback of 25m for residential buildings in the Rural Resource Area. The

potential for reverse sensitivity effects on rural production activities is a matter of consideration for subdivision in the RRA. Rural areas are also to be considered in expansion of urban areas (Policy 6.4.2).

- 12.44 While the Operative District Plan has recognised the need to provide for such activities, PC13 is limited in such recognition and the methods proposed to manage reverse sensitivity will not avoid the effects.
- 12.45 Given the extent of potential impact of aerial spraying on the RTRA a significant buffer zone would need to be established and a clear expectation of existing use rights and reverse sensitivity.
- 12.46 Another matter of concern relating to agrichemical spraying is notification of affected persons. While the Air Plan does not require notification NZS8409:2004 Management of Agrichemicals does require that that users inform directly affected persons of agrichemical spraying being undertaken (5.3.1 Notification of use). Notification is considered to be best practice and is likely to be included in the Regional Air Plan when reviewed. Most regional air plans include notification requirements.
- 12.47 The location of a considerable number of parties adjacent to rural areas and orchards will place an reasonable imposition on the orchard operators in terms of notification of agrichemical use.
- 12.48 The principle set out in Ngatarawa regarding the proliferation of notional boundaries equally applies to the proliferation of parties requiring notification of agrichemical applications.

Hazardous Substance (Hazardous Property Controls) Notice 2017

- 12.49 Users of agrichemicals need to comply with the Health and Safety at Work Regulations as they pertain to Class 1 -8 substances. Most agrichemicals are Class 9 (Ecotoxic) and are managed by the Environment Protection Agency.
- 12.50 The Hazardous Substances (Hazardous Property Controls) Notice 2017 (HS Controls) set out the controls to ensure that hazardous substances are stored and used in a manner that protects the environment, and people in places other than workplaces to which the Health and Safety at Work Act 2015 applies.
- 12.51 Clause 46 requires that a person who applies a class 9 pesticide *must take all reasonable steps to ensure that the substance does not cause any significant adverse effects to the environment beyond the application area.*

- 12.52 The notice also sets out records, qualification and signage requirements which users must meet. Competency of users is critical in terms of managing potential for spray drift and understanding actions that can be taken to not cause significant adverse effects beyond the application area.
- 12.53 Meeting the requirements of the HSNO controls will assist in ensuring that the potential for adverse effects beyond the boundary are reduced.

Industry programmes

- 12.54 In addition to requirements in the Regional Air Plan and HSNO Control Notice growers have industry requirements to meet through programmes such as NZGAP and GlobalGAP, such as maintaining spray diaries and operating at best practice.

Mitigating adverse effects of spraydrift

- 12.55 While there are considerable provisions in place to ensure that agrichemical spraying is undertaken using best practice there are instances where movement of droplets or vapour can occur beyond the control of the operator, such as through change in wind direction or inversion layers.
- 12.56 The proponent is proposing that a 3m high solid fence and 2m high buffer planting will adequately mitigate the potential adverse effects of spray drift and reverse sensitivity. I assess the efficiency of these methods under reverse sensitivity below.
- 12.57 In my experience complaints about spray drift are not limited to an actual event. Some people's sensitivity is such that they will complain when they hear machinery operating, or smell an odour from an agrichemical, even if there is no drift that will create an adverse effect.
- 12.58 In such situations the most appropriate mechanism to address the issue to ensure there are adequate separation distances between incompatible activities, as anticipated in the Regional Air Plan.
- 12.59 PC13 does not provide such distances so therefore imposes an unreasonable responsibility on the nearby orchards (not just those on the immediate boundary) which is likely to constrain their activities. This is inconsistent with the objectives and policies of the District Plan that seeks to provide for rural activities.

Outdoor burning

- 12.60 Another air quality issue of concern is outdoor burning.

- 12.61 The RTRA site and adjacent area is currently in Air Zone 3 which provides for outdoor burning under Rule 16.3.2.3 of the Regional Air Plan.
- 12.62 Cromwell township is gazetted within Air Zone 1. Within that zone there are more restrictive outdoor burning provisions in 16.3.2.2, including not burning within 100m of any dwelling on another property.
- 12.63 There is the potential that the expansion of the urban area of Cromwell to include the RTRA site will lead to an amendment of the Air Zones which could place greater imposition on orchardists who need to burn tree prunings and trees removed, including as a means to manage disease.
- 12.64 The requirements of Rule 16.3.2.3 also mean that any discharge of smoke, odour or particulate matter is not offensive or objectionable at or beyond the boundary of the property.
- 12.65 A description of offensive or objectionable is in the Air Plan at 16.2.9:
"Offensive" is defined as "... *giving or meant or likely to give offensive... disgusting, foul smelling, nauseous, repulsive...*".
"Objectionable" is defined as "*open to objection, unpleasant, offensive*".
- 12.66 There is the potential, given the close proximity of residential dwellings to the Rural Resource Area, that reverse sensitivity complaints that consider smoke to be offensive or objectionable could be made. This would affect the ability of orchardists to undertake necessary activity on their properties.
- 12.67 The Air Plan (16.2.9) lists key consideration in assessing such complaints to be the location of an activity and sensitivity of the receiving environment:
What may be considered offensive or objectionable in an urban area, may not necessarily be considered offensive or objectionable in a rural area. The converse may also be true.
- 12.68 Reasonableness and existing uses are also key considerations.
- 12.69 Given that the existing rural use is legally established, the imposition of an urban receiving environment in close proximity presents considerable challenges.
- 12.70 There has been no consideration by the proponent of how the adverse reverse sensitivity effects of smoke will be addressed.

- 12.71 I do not support the location of incompatible activities adjacent to legally established activities. Therefore, PC13 is an inappropriate development adjacent to the Rural Resource Area.

13. AIRPORT

- 13.1 Mr Whitney in the s42A Report (7.18) identifies that some submitters have noted that the RTRA is located in the vicinity of the Cromwell Aerodrome and that the site is located approximately 900 metres from the Cromwell Aerodrome.
- 13.2 Of significance is the fact that the RTRA site is located on or near the main approach to the runway from the south.
- 13.3 Therefore, it can reasonably be assumed that aircraft will fly over, or near, the RTRA development as part of utilising an existing community facility.
- 13.4 Civil Aviation guidance is that an aircraft should operate at over 1000ft over populated areas, but this would be breached if the RTRA site is developed.
- 13.5 Cromwell Aerodrome is used by a number of private operators, both fixed wing and helicopters, and also commercial operators who service the agriculture and horticulture sectors. It is important that the aerodrome remains viable and able to be used for such purposes.
- 13.6 Should complaints about aircraft movements eventuate from the RTRA development then there is potential for that usage to be compromised

14. REVERSE SENSITIVITY

- 14.1 It is widely accepted that there is potential for reverse sensitivity effects from new residential occupiers on adjacent rural land uses.
- 14.2 Such effects may be generated by noise, smoke or spray drift.
- 14.3 The evidence of Mr Brown considers that the measures included in the revised proposal avoid or adequately mitigate the effects of those activities on residents within the RTRA as they will be expected to accept 'inconveniences, discomforts, disturbance or irritation that are caused and will be caused by nearby activities.' The proposed covenant is the method to ensure this and to avoid reverse sensitivity effects' (Pg 68).

- 14.4 So the question to be answered for HortNZ is: Does the proposal adequately avoid, remedy or mitigate effects on adjoining rural land uses?
- 14.5 This is an important question because if it does not, then the Plan Change is inconsistent with the Operative District Plan and the Partially Operative Regional Policy Statement.
- 14.6 Methods that are included in the revised proposal to mitigate adverse effects on adjoining rural land uses are:
- (a) 5m setback for residential dwellings with planting a 2m wide vegetation buffer to a minimum height of 2m on the boundary with existing orcharding operations;
 - (b) Construction of a 3m high solid fence on the Rural boundary with Sarita Subdivision (Rule 20.7.3 viii) f);
 - (c) Inclusion of a requirements for acoustic insulation and mechanical ventilation in buildings containing noise sensitive activities (20.7.7.x);
 - (d) Inclusion of 'No complaints covenant' over the Sarita Subdivision land (20.7.7 ix).

5m setback for residential dwellings and 2m wide vegetation buffer

- 14.7 Mr Brown (4.24) considers that a 5m setback from the boundary with a 2m buffer planting strip adjacent to the boundary will mitigate the effects of spray drift of agrichemicals.
- 14.8 While the 5m applies to the residential dwelling it is possible that the distance between the dwelling and the boundary could be used for outdoor activities and therefore not part of the consideration as to mitigation of the effects.
- 14.9 I note that the existing setback for residential dwellings in the Rural Resource Area is 25m.
- 14.10 Therefore, the RTRA significantly increases the likelihood of reverse sensitivity complaints from the existing provisions that apply to the rural land uses.
- 14.11 As stated above in respect of spray drift the guidance in NZS8409:2004 is that a distance of at least 10m is required with shelter from spraying with an air blast sprayer and 100m for aerial application.
- 14.12 In my opinion the proposed 5m setback with a 2m wide planting is inadequate to address the potential reverse sensitivity effects.

3m high solid fence

- 14.13 Mr Brown, in his evidence at 4.24, recommends the addition of a requirement for a solid fence of minimum height of 3m adjoining the Sarita Subdivision. This is intended to 'complement the planting already required and the existing tall shelter row, to further mitigate any potential spray drift from agrichemicals.'
- 14.14 There appears to be an assumption that spray drift will be no higher than 3m. The potential for drift is linked to height of release of agrichemicals. While much orchard spraying will be done by air blast sprayers operating at ground level and blowing the agrichemical upward, there is also the potential to use aerial applications in some instances. The efficacy of a 3m high fence in such a situation is probably limited.
- 14.15 PC13 provides for a dwelling height of 9m so a 3m high fence will only provide a limited barrier between such a dwelling and the neighbouring rural land use.
- 14.16 It should be noted that there are often odours added to agrichemicals so that it is evident where they have been sprayed. People in the RTRA could potentially smell an odour across the boundary even though there may be no spray drift and complain about the smell. A 3m high fence is unlikely to mitigate such an odour.

Acoustic insulation

- 14.17 Mr Brown recommends that acoustic insulation is required as a method to mitigate potential noise from motorsports and orcharding activities.
- 14.18 Acoustic insulation would assist with mitigation of noise from frost fans operating at night. However other noise generating activities on orchard occur during the day, including bird scarers, so acoustic insulation would be of limited value, especially during summer months when outdoor areas are in use.
- 14.19 Therefore, in my opinion requirements for acoustic insulation may mitigate some adverse effects, but not all.

No complaints covenants

- 14.20 The main method that the proponent is advocating for mitigating reverse sensitivity effects is the restrictive 'no-complaints' covenant (20.7.7 ix).
- 14.21 Effectively the intent would be that the covenant would be registered in favour of the neighbouring orchard, Sarita Subdivision and

prevent the owner or occupier of the servient land from complaining about noise from the orcharding activity.

- 14.22 In my opinion the scope of the covenant proffered is inadequate as it is only registered over one orchard and is not related to all orchard activities, including agrichemical applications.
- 14.23 The question arises that if a 'no-complaints' covenant is required to be registered over 900 residential properties: is the development located in an appropriate place?
- 14.24 The Environment Court has assessed the use of no-complaint covenants. In *Ngatarawa Development Trust Ltd v Hasting District Council* the court noted:
- Such covenants do not avoid, remedy or mitigate the primary effects — nothing becomes quieter, less smelly or otherwise less unpleasant simply because a covenant exists. On their face, they might avoid or mitigate the secondary effect of the ensuing complaints upon the emitting activity. But all they really mean is: If you complain, we don't have to listen, and there are issues about such covenants which have not, to our knowledge, been tested under battle conditions. We are not to be understood as agreeing that they are a panacea for reverse sensitivity issues. (27)*
- 14.25 Ngatarawa was a subdivision application and land use consent to develop 95 residential units on land owned by a golf course and adjacent to an aerodrome and horticulture development. Consent was granted by the Council but the Court declined the consent, partly on the grounds of reverse sensitivity on nearby activities and the inappropriateness of proposed mitigation.
- 14.26 RTDL are proposing a covenant similar in concept to that proposed by Ngatarawa for similar purposes to avoid or mitigate adverse effects of the proposal.
- 14.27 I concur with Mr Whitney in the s42A Report (7.10.4.7) that the effectiveness and appropriateness of no-complaint covenants is questioned, in particular that they do not avoid effects on residential amenity.
- 14.28 For an urban development in an existing rural area to be appropriate it should meet the objectives and policies in the Operative District Plan by avoiding, remedying or mitigating adverse effects on adjoining rural activities.
- 14.29 As the Court said in Ngatarawa they are unsure if such covenants have been 'tested under battle conditions'. HortNZ does not want its growers to be the ones placed in the position of testing such

provisions as the cost and risk to the horticulture activity would be significant.

- 14.30 In my opinion a no-complaints covenant may limit the extent of complaint that is received but it in no way avoids the effects. Given the extent of the development of 900 lots in the RTRA I consider that no-complaints are an inappropriate form of mitigation.
- 14.31 The evidence of Mr Brown considers that the objectives and policies of various documents can be met through the mitigation proposed by the proponent. Given that in my opinion the mitigation is not appropriate the consequence is that the objectives and policies cannot be met.

15. CONCLUSION

- 15.1 The creation of the RTRA needs to demonstrate that the adverse effects of the rezoning can adequately avoid, remedy or mitigate the adverse effects on adjoining rural areas.
- 15.2 While a number of mechanisms are proffered by the proponent to mitigate adverse effects, my assessment is that these mechanisms are inappropriate and will not adequately address the effects.
- 15.3 The request also needs to demonstrate that the provisions of the existing objectives and policies of the Operative District Plan are achieved through the Plan Change.
- 15.4 My assessment has determined that the objectives of the Operative District Plan to define a robust rural boundary to ensure that rural production activities can be undertaken is not met by PC13.
- 15.5 The integrity and cohesion of the Rural Resource Area is threatened by removing the RTRA site. The site contributes to the integrity of the RRA as it comprises an important link in the rural zone. In my opinion the site is important not only for its productive potential but also as a key component of the RRA, which is necessary to be retained to ensure that reverse sensitivity effects do not adversely affect the rural activities in the RRA.
- 15.6 The request does not give effect to the Partially Operative Regional Policy Statement and does not provide for the economic wellbeing of the district through enabling high value horticulture production.
- 15.7 When reverse sensitivity effects are placed alongside other aspects of the proposal such as effects on the soil resource, it is apparent that it fails to meet the tests of the district plan, RPS and Pt 2 of the RMA.

15.8 For these reasons, I recommend that the plan change be declined.

Lynette Wharfe

16 May 2019

Attachment 1: Assessment of Otago RPS provisions relevant to PC13

Relevant provisions	Brown comments	L Wharfe comments
Objective 1.1 Otago's resources are used sustainably to promote economic, social and cultural wellbeing for its people and communities	Pg 35 RTRA land under-utilised and not used for productive purpose. Urban use more sustainable	Rural land needs to be retained to protect rural production so that the objective can be achieved. Just because land has been under-utilised is not a reason for foreclosing on productive use, especially given its identification as suitable for high value horticultural use.
Policy 1.1.1 Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources.	Pg 35 Land in current state and zoning does not contribute to economic wellbeing	Just because land has been under-utilised is not a reason for foreclosing on productive use, especially given its identification as suitable for high value horticultural use.
Objective 1.2 Recognise and provide for the integrated management of natural and physical resource to support the wellbeing of people and communities in Otago.	Pg 35 Operative zonings integrate with nearby rural land uses. Operative zonings do not contribute to land needs for urban expansion	Rural land needs to be retained to protect rural production so that the objective can be achieved and reverse sensitivity managed through adequate separation distances. The Council is assessing the need for urban growth areas in Cromwell and PC13 is pre-empting that process.
Objective 3.1 The functions and values of Otago's ecosystems and natural resources are recognised, maintained or enhanced where degraded	Not addressed	Soil is a natural resource in Otago that needs to be recognised and maintained so that Objectives 1.1 and 1.2 can be met.
Policy 3.1.7 Soil values (Proposed) Safeguard the life supporting capacity of soil and manage soil to:	Pg 49 Soils are not high class and loss to urban development is minor.	Policy 3.1.7 recognises the importance of safeguard the life supporting capacity of soil and importance to primary production. It is recognised that soil values may be lost as a result of

Relevant provisions	Brown comments	L Wharfe comments
<p>a) Maintain or enhance as far as practicable</p> <ul style="list-style-type: none"> i. Soil biological diversity ii. Biological activity in soils iii. Soil function in the storage and cycling of water, nutrients and other elements through the biosphere iv. Soil function as a buffer or filter for contaminants resulting from human activities, including aquifers at risk of leachate contamination v. Soil fertility where soil is used for primary production <p>b) Where a) is not practicable, minimise adverse effects</p> <p>c) Recognise that urban and infrastructure development may result in loss of soil values</p> <p>d) Control the adverse effects if pest species, prevent their introduction and reduce their spread</p> <p>e) Retain the soil mantle where it acts as a repository for historic heritage objects unless an archaeological authority has been obtained.</p> <p>To be implemented by Methods 4.1.5 and 4.1.6</p>	<p>Urban use of land significantly outweighs the loss of productive capacity of these soils.</p>	<p>urban development but such development needs to be consistent with the policy framework in the RPS that provides for urban development.</p> <p>The importance of the soil values are considered as part of that framework.</p> <p>The relevant method for Policies 3.1.7, 3.2.18, 4.5.1 and 5.3.1 is 4.1.6 (Operative) by managing urban growth and development and subdivision of land to protect significant soils.</p> <p>The proposal does not protect the significant soils for horticulture production in the RTRA.</p> <p>Refer to my evidence and that of Mr Weavers on the significance of the soils.</p>
<p>(Proposed)</p> <p>Objective 3.2 Otago's significant and highly valued natural resources are identified and protected or enhanced where degraded.</p>	<p>Not addressed</p>	<p>The RPS identifies significant soils as a highly valued resource to be identified and protected.</p> <p>Mr Weaver identifies the importance of the RTRA for rural production.</p>
<p>Policy 3.2.17 Identifying significant soils</p> <p>Identify areas of soil that are significant using the</p>	<p>Pg 51</p> <p>Soils are not high class and loss</p>	<p>Policy 3.2.17 is significant in that it sets out criteria for significant soils that are not based solely on LUC, but</p>

Relevant provisions	Brown comments	L Wharfe comments
<p>following criteria:</p> <ul style="list-style-type: none"> a) Land classified as land use capability I II and IIIe in accordance with the NZ Land Resource Inventory b) Degree of significance for primary production c) Significance for providing contaminant buffering or filtering services d) Significance for providing water storage or flow retention services e) Degree of rarity <p>To be implemented by Method 2 Regional, City and District Council Relationships</p> <p>Method 5 Research Monitoring and reports Method 5.1.3c) and 5.2.1 d)</p>	<p>to urban development is minor.</p> <p>Urban use of land significantly outweighs the loss of productive capacity of these soils as degree of significant to primary production very limited</p>	<p>includes the degree of significance for primary production.</p> <p>Mr Weaver identifies the importance of the RTRA for rural production. Therefore it is important that the land is retained for primary productive use,</p>
<p>Policy 3.2.18 Managing significant soil</p> <p>Manage areas of significant soil by all of the following:</p> <ul style="list-style-type: none"> a) Maintaining those values which make the soil significant b) Avoiding remedying or mitigating other adverse effects c) Recognising that loss of significant soil to urban development may occur in accordance with any future development strategy d) Controlling the adverse effects of pest species, preventing their introduction and reducing their spread <p>Policy 3.2.18 is to be implemented by Methods 2.1,</p>	<p>Pg 51 Soils are not high class and loss to urban development is of minor consequence.</p> <p>Urban use of land significantly outweighs the loss of productive capacity of these soils as degree of significant to primary production very limited.</p> <p>Clause c) recognises that urban development may result in loss of soil, inviting consideration as to determining whether the loss of</p>	<p>Mr Weaver identifies the significance of the RTRA for rural production. Therefore it is important that the land is retained for primary productive use. Retaining the land is important to the integrity of the Rural Zone and primary production in the area.</p> <p>Clause c) refers to soil that may be lost in accordance with a future development strategy. 'Future development strategy' is defined in the RPS as in accordance with the NPS Urban Development Capacity.</p> <p>The NPS-UDC sets out in Policies PC12 to PC14 how a future development strategy will be developed. At present there is no future development strategy as per the NPSUDC for Cromwell so Policy 3.2.18c) is not applicable</p>

Relevant provisions	Brown comments	L Wharfe comments
2.2, 3.1.4 and 4.1.6	soil resource in question outweighs the value to the wider economy of urban use.	to PC13.
(Operative) Objective 4.5 Urban growth and development is well designed, occurs in a strategic and coordinated way and integrates effectively with adjoining urban and rural environments.	Pg 40 Considers that the RTRA is well designed and internally integrated, strategically located will integrate with existing nearby activities.	The rezoning of rural land to urban will not integrate with existing nearby rural activities because the potential reverse sensitivity effects cannot be adequately avoided or mitigated, thereby having the potential to constrain primary production which is significant to the social and economic wellbeing of the district.
Policy 4.5.1 Providing for urban growth and development Provide for urban growth and development in a strategic and co-ordinated way, including by: a) Ensuring future urban growth areas are in accordance with any future development strategy for that district. b) Monitoring supply and demand of residential, commercial and industrial zoned land; c) Ensuring that there is sufficient housing and business land development capacity available in Otago; d) Setting minimum targets for sufficient, feasible capacity for housing in high growth urban areas in	Pg 40 In respect of f) considers that the land is not necessary for primary production. In respect of g) considers that reverse sensitivity can be adequately managed by the RTRA provisions.	The RTRA will not provide for rural production activities as adverse effects on significant soils and activities which sustain food production cannot be minimised through appropriate provisions that adequately manage reverse sensitivity, thereby placing constraints on existing rural production which is significant to the social and economic wellbeing of the district. Retaining the land as rural will ensure efficient use of the land as there will be less constraints placed on primary production. The relevant method for Policies 3.1.7, 3.2.18, 4.5.1 and 5.3.1 is 4.1.6 (Operative) by managing urban growth and development and subdivision of land to protect significant

Relevant provisions	Brown comments	L Wharfe comments
<p>Schedule 6</p> <p>e) Coordinating the development and the extension of urban areas with infrastructure development programmes, to provide infrastructure in an efficient and effective way.</p> <p>f) Having particular regard to:</p> <p>i. Providing for rural production activities by minimising adverse effects on significant soils and activities which sustain food production;</p> <p>ii. Minimising competing demands for natural resources;</p> <p>iii. Maintaining high and outstanding natural character in the coastal environment; outstanding natural features, landscapes, and seascapes; and areas of significant indigenous vegetation and significant habitats of indigenous fauna;</p> <p>iv. Maintaining important cultural or historic heritage values;</p> <p>v. Avoiding land with significant risk from natural hazards;</p> <p>g) Ensuring efficient use of land;</p> <p>h) Restricting urban growth and development to areas that avoid reverse sensitivity effects unless those</p>		<p>soils.</p> <p>The proposal does not protect the significant soils for horticulture production in the RTRA.</p> <p>Refer to my evidence and that of Mr Weavers on the significance of the soils.</p>

Relevant provisions	Brown comments	L Wharfe comments
<p>effects can be adequately managed;</p> <p>i) Requiring the use of low or no emission heating systems where ambient air quality is:</p> <p>i. Below standards for human health; or</p> <p>ii. Vulnerable to degradation given the local climatic and geographical context;</p> <p>j) Consolidating existing coastal settlements and coastal urban areas where this will contribute to avoiding or mitigating sprawling or sporadic patterns of settlement and urban growth.</p> <p>To be implemented by Method 2: Regional, City and District Council Relationships</p> <p>Method 2.1, Method 2.2</p> <p>Method 4: City and District Plans</p> <p>Method 4.1.6, Method 4.1.13, Method 4.2.4, Method 4.2.7, Method 4.2.10</p>		
<p>Objective 5.3 Sufficient land is managed and protected for economic production</p>	<p>Pg 45</p> <p>RTRA would foreclose on productive capability but land is not necessary for economic production.</p>	<p>The RTRA will not provide for rural production activities as adverse effects cannot be minimised through appropriate provisions that adequately manage reverse sensitivity, thereby placing constraints on existing rural production which is significant to the social and economic wellbeing of the district.</p> <p>Retaining the land as rural will ensure efficient use of the</p>

Relevant provisions	Brown comments	L Wharfe comments
		land as there will be less constraints placed on primary production.
<p>Policy 5.3.1 Rural activities</p> <p>Manage activities in rural areas, to support the region's economy and communities, by:</p> <ul style="list-style-type: none"> a) Enabling primary production and other rural activities that support that production; b) Providing for mineral exploration, extraction and processing; c) Minimising the loss of significant soils; d) Restricting the establishment of incompatible activities in rural areas that are likely to lead to reverse sensitivity effects; e) Minimising the subdivision of productive rural land into smaller lots that may result in a loss of its productive capacity or productive efficiency; f) Providing for other activities that have a functional need to locate in rural areas. <p>Method 4: City and District Plans Method 4.1.6, Method 4.2.4</p>	<p>Pg 46</p> <p>Soils are not high class and their loss to urban development is of minor consequence to the regional and local economy.</p> <p>The RTRA provisions will adequately address the potential for reverse sensitivities with nearby activities.</p>	<p>Just because the RTRA land is not currently being used for primary production does not mean that it has no value for primary production. Development to urban will foreclose on such use.</p> <p>Retaining the land as rural will retain a cohesive rural resource area that can operate without the constraints of urban residential use in the immediate vicinity.</p> <p>The soils are significant for horticulture production and should be retained.</p> <p>The rezoning of rural land to urban will establish incompatible activities in the areas and the potential reverse sensitivity effects cannot be adequately avoided or mitigated, thereby having the potential to constrain primary production which is significant to the social and economic wellbeing of the district.</p>

Attachment 2: Assessment of tests applied to PC13 by J Brown for the Requestor

Tests applied	Reference Brown evidence	Brown conclusions	L Wharfe response
(a) 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);	Section 5 Page 17	Consider that Option B is most appropriate to achieve councils function	<p>The Council is in the process of reviewing development capacity in respect of housing and business land and PC13 pre-empts that process.</p> <p>The RTRA does not protect the established land uses around the RTRA so does not assist the Council.</p> <p>Consideration also need to be given to 31 (1)b). The proposal limits the ability of the Council to control the potential reverse sensitivity effects arising from the proposal.</p> <p>The proposal does not adequate avoid the reverse sensitivity effects of noise.</p>
(b) whether the provisions accord with Part 2 of the Act (section 74(1)(b));	Section 6 Page 19	Option B better achieves purpose and principles because Option B can better provide for wider wellbeing and better sustains the potential of resources for future generations	<p>Efficient use and development:</p> <p>6.4 b) The location is not appropriate for the scale of proposed development because of reverse sensitivity effects that cannot be avoided.</p> <p>6.4 d) The RTRA provisions do not avoid or mitigate reverse sensitivity effects.</p> <p>6.5 a) The Council is in the process of reviewing development capacity in respect of housing and business</p>

Tests applied	Reference Brown evidence	Brown conclusions	L Wharfe response
			<p>land and PC13 pre-empts that process.</p> <p>6.5 b) The RTRA is suitable for horticulture development which would have economic benefits to the district</p> <p>6.7 The effects on external receivers are not adequately addressed in the proposal.</p> <p>6.8 The RR development under Option A would be consistent with other RR development in the district.</p> <p>6.9 RTRA does not have the ability to co-exist with other land uses in the vicinity and does not recognise the finite soil resource.</p>
c) whether the provisions give effect to the regional policy statement (section 75(3)(c);	Section 7 Page 23	Option A does not address sufficient housing land development capacity	<p>PC13 does not give effect to the RPS provisions relating to significant soils and enabling rural production.</p> <p>The RPS provisions relating to urban capacity will be addressed after the Cromwell MasterPlan project has been released. PC13 seeks to pre-empt that process and not enable an appropriate planning response to give effect to the RPS.</p>
(d) whether the provisions give effect to a national policy statement (s75(3)(a);	Section 8 Page 25	Option B gives effect to the NPS-UDC	<p>The extent that the NPS-UDC is given effect to is dependent on the extent to which it applies to Cromwell. In my assessment Cromwell is not an 'urban environment' under the NPS-UDC and so has limited</p>

Tests applied	Reference Brown evidence	Brown conclusions	L Wharfe response
			application to PC13.
(e) whether the provisions have regard to the actual or potential effects on the environment, including, in particular, any adverse effect (s76(3));	Section 4 Page 7	Considers that overall effects are acceptable Both option A and B can manage effects on the environment.	The assessment of effects is addressed in my evidence above as it relates to noise, agrichemical spraying and smoke. I do not consider that the provisions of PC13 adequately address the reverse sensitivity effects that the RTRA will have on adjacent rural activities.
(f) the extent to which the objectives are the most appropriate way to achieve the purpose of the Act (s32(1)(a));	Section 9 Page 26	Option B gives better effects to purpose of the Act	The current RRA in the Operative District Plan provides for the economic, social and cultural wellbeing of the district and the sustainable management of natural and physical resources.
(g) 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): (i) the benefits and costs of the proposed policies and methods; and (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods	Section 10 Page 27	Option B provisions are appropriate and achieve objectives of the Plan	As set out in my evidence I do not consider that the PC13 provisions adequately provide for achieving the objectives of the Operative District Plan, especially in regard to providing for rural production activities.

Appendix 1: Experience of Lynette Wharfe

Some of the projects I have been involved in that I consider are particularly relevant in this context are:

- a) Project Manager and facilitator for a Sustainable Management Fund (“SMF”) Project ‘Reducing nitrate leaching to groundwater from winter vegetable crops’, to develop management tools for vegetable growers to implement best practice for fertiliser applications, to assist in changing fertiliser usage.
- (b) Managed an SMF project for NZ Agrichemical Education Trust communicating the revised NZS 8409:2004 Management of Agrichemicals to local authorities throughout NZ, including development and leading workshops with councils.
- (c) Revised the Manual for the Introductory GROWSAFE® Course for the NZ Agrichemical Education Trust, to make the Manual more user friendly and accessible and to align it with the Hazardous Substances and New Organisms legislation. (
- (d) Managing the research component for SFF project – SAMSN – developing a framework for the development of Sustainable Management Systems for agriculture and horticulture.
- (e) Project Manager MAF Operational Research Project Effectiveness of Codes of Practice investigating the use of codes of practice in the agriculture and horticulture sectors.
- (f) Undertook a review of Current Industry and Regional Programmes aimed at reducing pesticide risk, including assessing a number of Codes of Practice.
- (g) Contributed as a project team member for a Sustainable Farming Fund project ‘Environmental best practice in agricultural and rural aviation’ that included developing a Guidance Note on agricultural aviation, which is now on the Quality Planning website.
- (h) Undertook a review of agrichemical provisions in the Auckland Regional Air Land and Water Plan and developed a risk based response for inclusion in the Proposed Auckland Unitary Plan.

Appendix 2: Extracts of relevant provisions from Regional Plan: Air for Otago

12.1 Policy for agrichemical spray drift

12.1.1 The Otago Regional Council will:

- (a) Require the applicators of agrichemicals to undertake spraying in a manner that avoids:
 - (i) Spray drift beyond the target area or boundary of the property being sprayed; and
 - (ii) Adverse effects on human health and safety, ecosystems, sensitive areas or places, amenity values and other non-target areas or species; and
- (b) Encourage city and district councils to use land use planning mechanisms and other land management techniques to mitigate adverse effects from agrichemical spray drift.

Explanation

Part (a) of this policy indicates the Otago Regional Council's view that it is not adequate to merely remedy or mitigate adverse effects, and that people applying agrichemicals need to take proactive measures to avoid adverse effects beyond the target area or boundary of the property.

In order to address the effects of spray drift, it is important that best practice is adopted to avoid the drift itself occurring. Best practice is the subject of the *Code of Practice for the Management of Agrichemicals* (NZS 8409:1999), developed by the New Zealand Agrichemical Education Trust. The code details management practices that can be adopted to lower the risk of drift hazard and reduce the potential for adverse effects to occur. Schedule 4 of this Plan contains a summary of these practices, and the Otago Regional Council encourages those applying agrichemicals to follow them, to ensure that users are adopting best practice.

The avoidance of adverse effects shall be achieved primarily through adopting management practices which produce the lowest risk of drift hazard. Should this fail to avoid spray drift, this policy provides guidance to people applying agrichemicals about the range of values, areas or places which are sensitive to the effects of agrichemical sprays and which people applying agrichemicals should avoid affecting.

Sensitive areas or places shall include but not be limited to:

- Residential dwellings and associated private property;
- Educational facilities;
- Places of public assembly;
- Public amenity areas including parks, reserves, gardens, sports grounds, beaches, and thoroughfares;
- Public roads;
- Domestic or community water supply catchments and intakes;
- Water bodies and wetlands, and associated riparian vegetation;
- Areas of significant indigenous vegetation and significant habitats of indigenous fauna; and
- Commercially important or sensitive plants, crops or farming systems (eg, organic farms).

This list however is not exhaustive, as sensitive areas may change over time and there may be other areas, places or features that are particularly sensitive to the effects of agrichemical spray at the local level.

Part (b) indicates the Otago Regional Council view that city and district councils should consider using land use planning and other mechanisms as a means of addressing the adverse effects of agrichemical drift following discharge into air. Some options are outlined in Method 17.2.1.2.

Principal reasons for adopting

This policy recognises that where the use of agrichemicals is necessary, applying good management practices will reduce the risk of spray drift and the potential for adverse effects to occur. It also recognises that there are mechanisms available to city and district councils which can assist in mitigating the adverse effects of spray drift and achieving integrated management.

Rules 16.3.9.1 to 16.3.9.4, 16.3.14.1

Methods 17.2.1.1, 17.2.1.2, 17.3.1.1, 17.5.1.1, 17.5.1.2, 17.5.2.1, 17.5.2.2

13.1 Policy for the burning of vegetative matter on production land

13.1.1 To encourage people undertaking vegetation burning to adopt good management practices, including those set out in Schedule 5 to avoid or mitigate adverse effects.

Explanation

The discharge of smoke from the burning of vegetation can cause adverse effects including nuisance, amenity and visibility effects. In order to avoid or mitigate these effects, it is important that good burning practices are adopted. These practices are outlined in Schedule 5. Where good practices do not mitigate such effects, the Council will encourage the use of alternative means to dispose of or clear unwanted vegetation.

Principal reasons for adopting

Policy 7.5.2 of the Regional Policy Statement for Otago requires adverse effects on human health, the environment, visual impacts and odour to be avoided, remedied or mitigated. This policy aims to avoid or mitigate the adverse effects of discharges into air from the burning of vegetation on production land.

Method 17.2.1.1, 17.2.1.2, 17.5.1.2

16.2.9 Noxious, dangerous, offensive and objectionable effects

Several rules in this Plan use the terms "*noxious*", "*dangerous*", "*offensive*", and "*objectionable*". These terms are also included in Section 17 of the Resource Management Act 1991. They are not, however, defined in the Act and this means that they bear their natural and ordinary meaning as applied by common English usage.

The terms are not defined in the Glossary to this Plan because of the need to take account of case law precedent as it develops, i.e., the Plan cannot override interpretations decided by the judiciary.

The following notes are intended to provide some guidance for interpreting these terms. It should be noted however, that they are not objective measures and that what may be considered noxious, dangerous, offensive or objectionable will depend on the circumstances relevant to each case.

Noxious, dangerous - The Concise Oxford Dictionary defines "*noxious*" as "*harmful, unwholesome*". At the time of writing this Plan, the term "*noxious*" did not appear to have been defined or considered in case law relating to the Resource Management Act 1991. Noxious effects may include significant adverse effects on the environment (e.g., on plant and animal life) although the effects may not be dangerous to humans.

"*Dangerous*" is defined as "*involving or causing danger*". Dangerous discharges include those that are likely to cause adverse physical health effects, such as discharges containing toxic levels of chemicals.

Offensive, objectionable - "*Offensive*" is defined as "... *giving or meant or likely to give offensive... disgusting, foul smelling, nauseous, repulsive...*".

"*Objectionable*" is defined as "*open to objection, unpleasant, offensive*". Case law has established that what may be offensive or objectionable under the Resource Management Act 1991 cannot be defined or prescribed except in the most general of terms. Each case will depend upon its own circumstances.

Key considerations include:

(i) The location of an activity and sensitivity of the receiving environment -

What may be considered offensive or objectionable in an urban area, may not necessarily be considered offensive or objectionable in a rural area. The converse may also be true;

(ii) Reasonableness - Whether or not an activity is likely to be considered offensive or objectionable by an ordinary person who is representative of the community and neither hypersensitive nor insensitive, deciding whether the activity is disgusting, nauseous, repulsive or otherwise objectionable.

Representative community surveys can also be used in some instances; and

(iii) Existing uses - It is important to consider what lawfully established activities exist in an area, that is, if a new activity requires a permit, the cumulative effects of both the existing and proposed discharges of contaminants into air should be considered.

Within Otago the effects of offensive or objectionable odours are often commented on by individuals. While each investigation of a complaint concerning offensive or objectionable odour will depend on the specific circumstances of the discharge, the general investigative approach adopted by Council officers will be to take into account the FIDOL factors.

The FIDOL factors were identified by the Ministry for the Environment in a report entitled "*Odour Management Under the Resource Management Act*" (1995) as the main factors which influence the significance of adverse odour effects. The FIDOL factors are:

- **Frequency** of the odour occurrence;
- **Intensity** of the odour;
- **Duration** of exposure to the odour;
- **Offensiveness** of the odour; and
- **Location** of the discharge.

Such assessments are likely to be based initially on observations made by Council officers. Information may also be gained from the discharger, independent consultants, other observers and people living or working in the area. Techniques such as odour diaries and community surveys, olfactometry measurements, or electronic measuring devices, may also be used.

16.3.2.2 Discharges from outdoor burning on non-residential properties, including production land, in Air Zone 1 or 2 - permitted activity

Except as provided for by Rule 16.3.2.5, the discharge of contaminants into air from outdoor burning on any non-residential property, including production land in Air Zone 1 or 2;

is a **permitted activity**, providing:

- (a) Only paper, cardboard, vegetative matter or untreated wood is burnt; and
- (b) The material is from the property where the burning occurs; and
- (c) The material is dry at the time of burning; and
- (d) The burning does not occur within 100 metres of any dwelling on any other property; and
- (e) Any discharge of smoke, odour or particulate matter is not offensive or objectionable at or beyond the boundary of the property.

16.3.2.4 Discharges from outdoor burning on production land in Air Zone 3 - permitted activity

Except as provided for by Rule 16.3.2.5, the discharge of contaminants into air from outdoor burning on any property which is production land, in Air Zone 3;

is a **permitted activity**, providing:

- (a) No material specified in Rule 16.3.3.1 is burnt; and
- (b) Any discharge of smoke, odour or particulate matter from burning waste is not offensive or objectionable at or beyond the boundary of the property.

16.3.9.2 Discharges from agrichemical application on production land and industrial or trade premises - permitted activity

The discharge of any agrichemical into air using aerial or ground based application methods:

- (1) On production land; or
- (2) On roadsides adjoining production land when applied by the adjacent landowner or his/her employee; or
- (3) On industrial or trade premises;

is a **permitted activity**, providing:

- (a) The agrichemical and any associated additive are authorised for use in New Zealand and are used in accordance with the authorisation; and
- (b) The discharge is carried out in accordance with the manufacturer's directions; and
- (c) The discharge does not exceed the quantity, concentration or rate required for the intended purpose; and
- (d) The application does not result in any ambient concentrations of contaminants at or beyond the boundary of the property that have noxious or dangerous effects.

Schedule 4 Good Management Practices for Agrichemical Application

This schedule is based on the information contained in the New Zealand Standard 8409:1999: *Code of Practice for the Management of Agrichemicals*, August 1999, developed by the New Zealand Agrichemical Education Trust. It has been included in the Plan in a simple and convenient form for general public information and education purposes. The information contained in this Schedule also provides general guidance on the best practice for avoiding or minimising adverse effects on the environment from agrichemical application. This information may be useful for those carrying out discharges of agrichemicals into air under rules in 16.3.9, but it does not negate the conditions in any such rule.

This information caters for a wide range of purposes for spraying. Some, not all, will be applicable depending on the purpose and scale of spraying.

For further, more detailed information reference should be made to the Code of Practice itself. This document can be obtained from Standards New Zealand (Private Bag 2439, Wellington, Ph (04) 498 5990 or Fax (04) 498 5990), e-mail: snz@standards.co.nz, website: www.standards.co.nz, or can be viewed at the Otago Regional Council's Dunedin Office.

To achieve the Plan's objectives, any person discharging agrichemical sprays is requested to observe the following, in conjunction with the accompanying chart. All such persons should:

- (a) Not spray upwind of the sensitive areas (listed in the explanation to Policy 12.1.1), unless adequate buffer distances are observed, or additional techniques for avoiding spray drift are used.
- (b) Not spray when wind direction is unpredictable or when there are high winds, or very low or no wind conditions. Some wind may assist in correct targeting of spray.
- (c) Not spray during inversion conditions.
- (d) Make use of appropriate and effective buffer zones and/or shelter belts to minimise the risk of spray drifting to non-target areas.
- (e) Have particular regard to the selection of nozzle size and pressure from the spray unit, in order to minimise the risk of spray drift. (*Use equipment generating a droplet size of at least 50 microns in diameter and preferably greater than 250 microns.*)
- (f) In the case of ground application methods, apply spray at a height preferably less than 0.5 metres above, but no greater than 1.5 metres above the target.
- (g) In the case of aerial application methods, be a person who holds a Growsafe Pilots' Agrichemical Rating Certificate of Qualification.
- (h) Comply with the manufacturer's instructions, as stated on the container label or in information sheets.
- (i) Preferably use spray formulations of low volatility and toxicity.
- (j) Dispose of surplus spray solution and spray containers according to the *Code of Practice for the Management of Agrichemicals*, 1999 and the recommendations of the manufacturer or supplier, as stated in the directions on the product container label.

(k) Keep specific records of the type of each spray and any additive applied, the pest species targeted, the volume of spray, the volume of product, concentrations used, the time, date and locality, identification of any sensitive area (see (a) above), the meeting of any notification requirements, and equipment calibration details, as well as a specific inventory of the types and volumes of any chemicals in storage.

(l) Use only those agrichemicals currently authorised for use in New Zealand.

(m) Also take into account the information provided on the following chart to minimise the risk of drift hazard:

17.2 Liaison with city and district councils

17.2.1 Land use planning

17.2.1.1 The Otago Regional Council will seek the inclusion of appropriate land use policy, rules and methods within district plans as necessary to further the objectives and policies contained in this Plan.

17.2.1.2 The Otago Regional Council will encourage Otago's city and district councils to control the adverse effects on air quality from land use activities and in particular those involving dust, agrichemical application or potentially odorous discharges through district plans, land use consents or education and information by:

- (1) Achieving physical separation of incompatible land uses through buffer zones or shelter belts;
- (2) Recognising existing use rights and reverse sensitivity; and
- (3) Encouraging people undertaking land use activities to manage the effects of their activities through following codes of practice or environmental management systems where appropriate.

Principal reasons for adopting

Method 17.2.1.1 is adopted to promote integrated management of the effects of land use activities on air quality between the Otago Regional Council and Otago's city and district councils.

Method 17.2.1.2 recognises the importance of land use planning provisions in the management of adverse effects on air quality arising from land use activities involving agrichemical application, dust emissions or potentially odorous discharges. It indicates the Otago Regional Council's intention to support and promote the role that city and district councils can play, within their functions, to control any actual or potential effects on air quality arising from the use, development or protection of land. Furthermore the method recognises that such functions are not restricted to regulatory mechanisms and that there are a variety of non-regulatory approaches which can be used to raise public awareness of these issues.

The term "reverse sensitivity" generally refers to the development of a sensitive activity in an area where it may be adversely affected by activities that are lawfully pre-existing. The new, sensitive development then raises an expectation that those existing activities should be constrained for the benefit of the new one. Case law has established that reverse sensitivity can be recognised by land use planning mechanisms within district plans that regulate or control certain land uses because of their sensitivity to discharges of contaminants from other land uses.

Appendix 3: Ngatarawa Developments Ltd v Hastings District Council

Westlaw NZ Delivery Summary

Request made by: MASSEY UNIVERSITY . IP ACCESS
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Content Type: Cases
Title Ngatarawa Development Trust Ltd v Hastings District Council
Delivery selection: Current Document
Number of documents delivered: 1

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Ngatarawa Development Trust Ltd v Hastings District Council C

Jump to:	
Court:	Environment Court, Wellington
Judges:	JudgeThompson, CommissionerEdmonds, CommissionerHowie
Judgment Date:	14/4/2008
Jurisdiction:	New Zealand (NZ)
Court File Number:	W017/08
Citations:	2008 WL 2122412
Attachments:	Judgment Text 
Party Names:	Ngatarawa Development Trust Limited (Appellant), Hawkes Bay Gliding Club & ors (Appellant), D and G Magon & ors (Appellant), Gourmet Blueberries Limited (Appellant), The Hastings District Council (Respondent)
Legal Representatives:	A McEwan for Ngatarawa Development Trust Ltd; H E S Hamilton & B S Chote for Hawkes Bay Gliding Club, D & G Magon & Ors; B I J Cowper & B A Watts for Gourmet Blueberries Ltd; B W Gilmour for the Hastings District Council
Classification:	» Civil procedure > Appeals » Resource management > Activity > Non complying » Resource management > Consents > Type > Subdivision

Judgment

Ngatarawa Development Trust Ltd v Hastings District Council

Decision issued: 15 APR 2008

- A. The appeal by Ngatarawa Development Trust Ltd is declined. The other appeals are allowed.
- B. Costs are reserved

DECISION OF THE COURT

JudgeC J Thompson, CommissionerK A Edmonds, CommissionerW R Howie

Introduction

- [1] In a decision dated 6 March 2007 a Commissioner appointed by the Hastings District Council granted subdivision and land use resource consents to Ngatarawa Development Trust Ltd to enable the subdivision of, and construction of housing and associated infrastructure on, land presently owned by the Hawkes Bay Golf Club Inc at 114 Valentine Road, Bridge Pa, near Hastings.
- [2] Ngatarawa Development Trust Ltd, the applicant, has appealed against part of the decision reducing the number of residential lots, but it has redesigned the proposal, which now has fewer lots than originally proposed. The other appellants, who include users of the neighbouring aerodrome, and owner/occupiers of neighbouring land, have appealed against the grant of the consents in their entirety.

Background

- [3] In 1969 the newly formed Hawkes Bay Golf Club Inc purchased the land from the predecessor to the District Council and set about establishing an 18-hole golf course. In its halcyon days the club's membership exceeded 800 playing members, but presently it has about 420 members and it is not in a strong financial position. It is, as its President Mr Michael Maguire describes it, asset rich but cash poor. Much of its mobile plant and equipment is in need of replacement, requiring expenditure of not less than \$250,000. Fixed plant, including the irrigation equipment, is also due for replacement at a likely cost of over \$500,000. Mr Maguire says that traditionally the club has been a *working man's* golf club, and it is important to keep subscriptions as low as possible. Presently they are some \$700pa but, given the necessary future expenditure, the prospect is that they will need soon to be closer to \$1,000pa, a figure he fears will meet considerable market resistance. The club has therefore been looking for alternative solutions to the financial challenges it faces.
- [4] One possible solution has been presented by Ngatarawa Development Trust Ltd (Ngatarawa), which has proposed using some of the club's land for a housing development. The proposal, as it now stands, is to redesign the golf course

and to create four areas within it where a total of 95 residential units can be built. Some 29 residential lots are proposed at the western end of the site. Towards the centre of the property, between the front and back 9 holes, a mixed community is proposed, comprising three standard residential lots, eight two-storey villa lots and an apartment building with eight apartments. Close to the Clubhouse and members' facilities a further two-storey apartment building comprising eight apartments is proposed, together with six two-storey villas and ten single-storey villas. There will also be a single residential house site at the end of the row of single-storey villas. At the eastern end of the golf course a further 22 residential lots are proposed, some of which will not have a direct frontage to the golf course but they will retain access to it. Also, close to the present entry to the site off Valentine Road there will be a single tennis court and croquet green, with a sports pavilion and pool. The balance of the land will be held in common ownership through an incorporated society, of which all landowners will be members. The golf club will retain the right to use the course and facilities, on payment of an annual fee.

Site and area description

- [5] The golf club land is 56.43ha in area and is a rectangular shape about 1600m long and 400m deep, with the longer axis running approximately north-east to south-west. The residential developments will occupy between 6.8ha and 10ha. (The figure varied somewhat between witnesses, probably as a consequence of the progressively revised layouts of lots and infrastructure). Around most of its perimeter are agricultural and horticultural blocks, the latter being vineyards, orchards and the Gourmet Blueberries operation. On one block at the northern end of the land there is a *pinus radiata* wood lot. To the north-east the Hawkes Bay Equestrian Trust Inc has an equestrian centre. On the southern corner another golf club, the Hastings Golf Club, (the course being known as *Bridge Pa*) adjoins the land on an angle. On the south-western boundary and next to the Hastings Golf Club land is the Hastings, or Bridge Pa, Aerodrome. The suburb of Flaxmere is about 1.5 - 2km to the north, with agricultural/horticultural land intervening. The Hastings City CBD is about 7km to the east.

Activity status

- [6] It is common ground that, overall, both the proposed subdivision and the land use are *non-complying* activities in terms of the District Plan, operative since 2003. They must therefore be able to pass either of the s 104D thresholds - ie that their adverse effects are not more than minor, or that they are not contrary to the objectives and policies of the District Plan. If they can do so, they may then be assessed under s 104 and Part 2.

Hastings Aerodrome

- [7] It is necessary to describe the aerodrome and its operations in some detail because it assumes importance in discussing direct noise effects and reverse sensitivity. The aerodrome's main sealed runway (Runway 01/19) is aligned approximately north-south. It is 1075m in length and relatively narrow. It is restricted to aircraft weighing under 7,500kg. There is also a shorter (884m) and partly sealed runway aligned approximately east-west (Runway 11/29). The northern end of runway 01 is about 80m from the golf club boundary and its extended centreline runs across the golf course, about midway between the club house and the proposed housing development at its eastern end.
- [8] In 1976 runway lighting was installed to enable night air ambulance operations, now undertaken by Skyline Aviation Ltd, a company of which Mr Michael Toogood is managing director. Mr Toogood is also managing director of Ngatarawa, and his family interests are the shareholders of that company. The Aero Club's commercial flight training arm is Air HB Ltd which operates a professional air training operation having a current full-time student roster of 30. This training operation also requires some night operations.
- [9] There are 30 aircraft hangars on the aerodrome with nine such hangars, two Aero Club buildings and two student temporary accommodation units having been built between 2001 and 2007, with more hangars now in the planning stages. There are presently 55 aircraft permanently based on the aerodrome and many more visit for maintenance and repairs at two commercial maintenance facilities, Hawkes Bay Aviation Ltd and Avionics Hawkes Bay Ltd. There are ten aviation-related businesses and three clubs (gliding, skydiving and the Aero Club) based on the aerodrome. In addition the Hastings Air Training Corps No 11 Squadron, with 30 cadets, is about to move its base to the aerodrome. The RNZAF has based exercises on the aerodrome, extending over two weeks, with 200 personnel living on site for that period.
- [10] Mr Bruce Govenlock is presently secretary of the Aero Club, but gave evidence in his private capacity and did not profess to speak for the club which takes a position the opposite from his own. He has calculated that 46 people are

directly employed on the aerodrome, with a further 20 more employed in the Hastings offices of aerodrome-based businesses. He estimates the direct contribution of the aerodrome and its businesses to the regional economy as being in excess of \$10Mpa. In addition, there is the indirect economic benefit to the region of the fertiliser, herbicide and pesticide spraying and topdressing services provided from, or supported by, the aerodrome.

- [11] There was an irreconcilable conflict in the evidence about the numbers actually involved, but during the frost season (September to November) a number of helicopters can operate off the aerodrome during at night for frost protection on local orchards and vineyards. Helicopters operate off the aerodrome for agricultural/horticultural and general work throughout the year.
- [12] The standard flight path for powered aircraft on the main 01 (ie north-facing) runway is a left-hand circuit, meaning that aircraft taking off from that runway will turn to the left on achieving a safe height to do so. For powered aircraft the downwind leg (ie in preparation for a landing on runway 01) runs down the western side of the aerodrome. Prevailing winds mean that this is the most frequently (about 70% of operations) used runway and it was the one which occupied the greatest attention in evidence. The point at which a climbing aircraft will achieve a safe manoeuvring height after take-off will depend on many variables — wind direction and speed and air temperature for instance, but most of all the performance characteristics of the aircraft itself. Self-evidently, a corporate jet and a Tiger Moth will demonstrate different climb-out profiles. There was no agreement on what is a minimum safe manoeuvring height. The 1953 Regulations prescribed 500ft, but the current Regulations do not. But the weight of opinion, as we understood it from such knowledgeable witnesses as Mr William Lamb and Mr Bernard Lewis, is that 500ft is regarded as best practice, and we adopt that as a reliable guide.
- [13] Conflicting depictions of *typical* tracks of aircraft in the runway 01 circuit were also presented to us; some showing aircraft consistently making a left turn over, or very close to, the northern boundary of the golf course. Others, from the opposing camp, showed those turns being made at or beyond the mid-way point between the golf course and the southern boundary of Flaxmere. The characteristics and typical track of the Aero Club's principal basic training aircraft, the Piper PA38 Tomahawk, seemed to receive most focus, although effects on the Club are not, for reasons we shall come to, in issue. Nevertheless the Tomahawk tracks can be taken as an example of light single-engine aircraft using the runway. We noted the comments of Mr Max Dixon, a very experienced instructor, who said that he had taken a student on his Private Pilot's Licence test, in a Tomahawk, at the aerodrome just days before the hearing. He told the student to fly a standard circuit off runway 01 in an 8kt wind, and he flew it just as he had been taught - climbing on full throttle at 75kts, achieving a climb rate of 500-600 ft per minute, and making a left-hand turn at 500ft. The turn occurred at the point mid-way between the golf course and the Flaxmere boundary. Mr Brian Anderson, a private pilot who operates his own aircraft from the aerodrome, said that in his view the Sample Track "A2" showing left turns at around the mid-point between the golf course and Flaxmere was ... *typical*. For what it is worth, what those two witnesses said was confirmed by our own observations of a Tomahawk in the circuit, using runway 01, on the afternoon of our site visit.
- [14] All of that said, we must accept that there is a commonly, if not universally, followed track of aircraft making their left-hand turns close to the golf course's northern boundary. We also accept that the present pattern for aircraft approaching the aerodrome and making a standard rejoin to the circuit for runway 01 is to come in from the east and cross the centre of the aerodrome. We return to the point in paras [20] and [21] and conclude that there is undoubtedly a potential for noise complaints.
- [15] The Hawkes Bay Gliding Club operates on a grass runway running parallel to the eastern side of runway 01/19. The evidence is that during gliding training on weekends there may be more than 20 launches of gliders being towed by a towplane, per day. Gliding operations have a right-hand circuit off the grass runway, which means that towing aircraft and gliders, when turning after takeoff, turn in the opposite direction to powered aircraft so as to keep separation. We were told by Mr David Davidson that the club pilots generally regard about 400ft as a good compromise between a safe manoeuvring height, and a horizontal distance that would allow a reasonable chance of turning back to the airfield in the event of a rope break or similar mishap soon after take off. Depending on wind conditions, a towplane and glider would typically achieve 400ft at a point close to the northern boundary of the golf course. This would mean that they would be turning away very close to being overhead the proposed houses at the eastern end of the golf course.
- [16] There were some, very faint, suggestions that at some time in the future Hastings Aerodrome might be a base for scheduled passenger services and, still more faintly, that its owner/operator might be given status as a requiring authority to enable it to compulsorily acquire land for future expansion. So there is no doubt about it, we make it clear that we regard such possibilities as presently being unsupported speculation, and have taken no account of them.

Section 104D — adverse effects

Approvals of the proposal

- [17] The owner and operator of the aerodrome is the Hawkes Bay and East Coast Aero Club Inc, which has operated from it since 1932. It is important to note that the Aero Club, as a legal person, has given its written approval to the Ngatarawa proposal. As at the date of hearing the consent had not been withdrawn and that means that in terms of s 104(3)(b) the Court must not have regard to any effects of the proposal on the Aero Club. Persons who are members of the Aero Club have expressed opposition in their individual capacities, as have other users of the aerodrome. While drawing a distinction between effects on those persons, and on the Aero Club, is not easy in practical terms, the attempt must be made. The other occupiers and users of the aerodrome do so under contractual or licence arrangements with the Club but their right to have effects on them considered are not subsumed by the Club's approval.
- [18] The Hawkes Bay Equestrian Trust Inc, the owner of the equestrian centre on land bordering the north-east of the site, has also given its written approval to the proposal.

The other aerodrome users' positions

- [19] In short, the concern expressed by Mr Govenlock and other witnesses of a similar view is that the aerodrome is a regionally significant asset, providing employment directly and indirectly, and services to rural industries which are important to the Hawkes Bay economy. Additionally, it provides a recreational resource for many, other than those coming under the umbrella of the Aero Club. Even if a suitable site could be found, the affected users of the aerodrome could relocate only at what Mr Govenlock believes would be prohibitive cost. Putting 95 residential units in such close proximity to its activities would, he believes, be likely to generate a level of complaint about noise that would be politically irresistible and lead to the aerodrome's use being unreasonably restricted, or stopped altogether. This is the phenomenon known as *reverse sensitivity*, to which we shall return shortly.
- [20] We heard from two well-qualified acoustics witnesses, Mr Nevil Hegley for Ngatarawa and Mr Richard Finley for the opposing appellants. There is a consensus that NZS 6805:1992 provides the appropriate standard for assessing airport noise, and that an external noise level of 55dBA L^{dn} is considered reasonable for a residential environment. This would translate to a level of 45dBA L^{dn} inside a dwelling, with open windows. There was no agreement on where the contour of a 55dBA L^{dn} would actually fall *on the ground* however, because each witness was working off different, and irreconcilable, patterns of flight paths typically followed off runway 01. Mr Hegley worked off patterns provided to him which showed the left-hand turns being made at about mid-point between the golf course and Flaxmere. Mr Finley had been given patterns showing the turns being made above or very close to the golf course. What Mr Hegley had been given squared with his experience with other, and generally larger, airports where the approaching and departing aircraft follow a *straight in — straight out* pattern.
- [21] We find it impossible to satisfactorily resolve this issue, in the sense of being able to say that one view is right, and the other wrong. The District Plan does not include noise contours for the aerodrome and, within aviation safety parameters, there is no control over the tracks that aircraft may follow when crossing the golf course. We can be no more definite than to say that, for so long as the present situation continues, houses in any of the clusters of the proposal will regularly be exposed to aircraft noise at levels higher than the generally accepted level of 55dBA L^{dn}.

Reverse sensitivity

- [22] 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. 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. It is when sensitive activities (usually, but not always, residential activities) seek to establish within range of a lawfully established but effect-emitting activity that management may become difficult. This is the concept of *reverse sensitivity*. There is a useful description of it in an article by Bruce Pardy and Janine Kerr: *Reverse Sensitivity — the Common Law Giveth and the RMA Taketh Away* 1999 3NZJEL 93, 94:

“Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The ‘sensitivity’ is this: if the new use is permitted, the established use may be

required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.”

It is well settled law now that reverse sensitivity is an adverse effect, and is therefore to be avoided, remedied or mitigated.

- [23] There may be different management solutions for different activities and sites, but there are some discernible principles. First among them is the view that activities should internalise their effects unless it is shown, on a case by case basis, that they cannot reasonably do so. For an airfield, the complete internalisation of aircraft noise is self-evidently not possible, unless its site area is so vast that neighbours are pushed beyond range. Nor is it likely that Gourmet Blueberries could do so, given the nature of its operations. That said, there is no absolute requirement in the RMA that internalisation of effects must be achieved. See eg; *Catchpole v Rangitikei District Council* (W35/03).
- [24] Secondly, to justify imposing restrictions on the use of land adjoining an effects-emitting site, that activity must be of some considerable economic or social significance locally, regionally or nationally.
- [25] Thirdly, where there is a low-impact effects scenario 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. It is inevitable that some lawful activities will at times be unable to totally internalise their effects and the law does not require that. This is generally understood by those who choose to bring themselves within range of an effect emitting activity. But residential occupiers in particular may have a different view and it is they who have the greatest potential to generate reverse sensitivity effects.

“No complaints” covenants

- [26] As well as measures such as noise insulation in the houses, landscaping and so on, Ngatarawa proposes so-called *no-complaints* covenants as one of the ways of dealing with reverse sensitivity issues. The owners of the incoming activity (ie properties in the residential development) would be contractually required to not complain about or take any enforcement action against the adverse effects being emitted by the existing neighbouring activities. The creation of such a covenant would be a condition of the consent under s 108 RMA, and could be registered on the title of the receiving sites under s 109. Prospective owners of the receiving sites would therefore have notice of the covenant and would be able to decide whether or not to buy on those terms. It is plain that a condition imposed under s 108 must meet the tests in *Newbury District Council v Secretary of State for the Environment*[1981] AC 578, that is, it must:

- be for a resource management purpose
- fairly and reasonably relate to the development authorised by the consent to which it is attached
- must not be unreasonable, in the sense that no reasonable authority could have imposed it.

Most cases seem to have assumed that such a condition meets those tests, but in *Ports of Auckland v Auckland City Council*[1999] 1 NZLR 601, Baragwanath J found that the imposition of such a condition without the consent of the applicant was not lawful:

“ ... neither a council nor this Court may order an unwilling party to surrender, as a condition under s 108, the right as affected party to receive notice of an application under s 93(1)(e), to make submissions under s 96, and to appeal under s 120.”

And in *Christchurch International Airport v Christchurch City Council*[1997] NZRMA 145 at 158, Tipping J was at pains to emphasise that his view that a *no complaints* covenant was not unlawful was confined to a consideration of Bill of Rights issues, and not to vires or reasonableness under the RMA.

- [27] Ngatarawa, as mentioned, is volunteering such an arrangement, so the *Ports of Auckland* issue does not immediately arise. Such covenants do not avoid, remedy or mitigate the primary effects — nothing becomes quieter, less smelly or otherwise less unpleasant simply because a covenant exists. On their face, they might avoid or mitigate the secondary effect of the ensuing complaints upon the emitting activity. But all they really mean is: *If you complain, we don't have to listen*, and there are issues about such covenants which have not, to our knowledge, been tested under battle conditions. We are not to be understood as agreeing that they are a panacea for reverse sensitivity issues.

Reverse sensitivity — other nearby activities

- [28] Mr Jonathan Wiltshire gave evidence about the intensive orchard to be developed, as a permitted activity by his family trust on land adjoining the western boundary of the golf club. This will mean that the edge of the orchard, comprising some 39,600 trees, will be about 7m from the common boundary. In common with the aerodrome users, he has understandable concerns that placing 29 houses close to that boundary will generate complaints about machinery

noise, odour and dust, all of which will inevitably be generated by the orchard operations and which will not be able to be internalised.

Conclusions on reverse sensitivity

- [29] We accept that the aerodrome, and the horticultural activities surrounding the golf club are locally and regionally significant activities, and we certainly recognise the possibility that the secondary effect of reverse sensitivity may arise. But we think that there does need to be a measure of robustness about this. Those who might come to this golf course to live have to expect some noise, and just have to accept that as a fact of life, or not come at all.
- [30] And, in any event, if there are complaints of a level that begin to cause issues, aerodrome users may have possibilities open to them, short of unreasonable restrictions on their activities. For instance, a local “rule” that aircraft climbing out from runway 01 should not turn before the mid-point between the golf course and Flaxmere (except of course when safety dictates otherwise) would go a long way to avoiding aircraft directly overflying the proposed houses at either end of the golf club's land, while not imposing any unreasonable restriction on aviation. We noted that experienced pilots said that they already attempted to do something similar, in not directly overflying the edge of Flaxmere, simply in the interests of being a *good neighbour*.
- [31] We take account of reverse sensitivity as an adverse effect in coming to our overall view. Had it stood alone, we doubt that it would have been enough to carry the day, but when added to the issues we are about to discuss, it certainly helps settle our views.

Gourmet Blueberries Ltd's position

- [32] Gourmet Blueberries now owns a total of 113ha adjoining the boundaries of the golf club, with the common boundary on the northern side of the golf club land extending for some 540m. Some 38ha is already planted, with overhead netting and irrigation etc in place. This produces some 500 tonnes of fruit pa. The company proposes to expand production into the balance of its land on that northern boundary, with a total of some 80ha to be planted. It too is concerned about the possibility of reverse sensitivity: - complaints from residents on the golf club land about adverse effects of noise in particular, but also spray drift, and odour, and of the impact on visual amenity arising from the hail netting and other structures on its land.
- [33] The company also has a concern about the possible direct effects of District Plan noise restrictions on its operations. The Plan contains limits for noise that may be generated from any site, with the levels of noise to be measured at the boundaries, or notional boundaries, of neighbouring residential properties. At present of course there are no residential properties there, and there is no issue. The proposal would insert 29 dwellings close to the Gourmet Blueberries boundary, immediately creating a requirement for it to comply with the noise limits. Its operations require the use of a variety of machinery, and the employment of large numbers of people, particularly during harvesting. It fears that it may simply be unable to comply. The company is a significant contributor to the local and regional economy. All up, it will invest some \$20M in its Hawkes Bay operation, and its crop has a present annual value in the vicinity of \$9M. At the height of the harvest it presently employs up to 450 people on the property, and this is likely to increase to around 1000 when production expands. Its location close to Flaxmere and Hastings, and the pools of potential labour they contain, is an important factor for it.

Effects on Gourmet Blueberries and general Rural Land Use

- [34] The focus of Ngatarawa's evidence was on the reverse sensitivity effects and it paid little attention to the limitations that would be placed on the use of adjoining land following the erection of dwellings within the golf course. Mr Denis Nugent, Gourmet Blueberries' consultant planner, gave evidence that the development would create an adverse effect on surrounding activities in terms of the noise rules in the District Plan, and the same issues arise with other surrounding activities also.
- [35] An adverse effect that Ngatarawa cannot mitigate is the creation of many more notional boundaries than the District Plan permits in the *Rural zone* or *Plains* sub-zone. The District Plan applies noise level controls at notional boundaries, in addition to noise level controls at property boundaries. A notional boundary is ... *a line 20 metres from the facade of any dwellinghouse, or any building being part of a residential activity, visitor accommodation ... or the legal boundary, whichever is closer to the dwellinghouse or building.*

- [36] The proposed development would create of the order of 80 more notional boundaries than the Plan permits on the golf club land, with more than half of the new notional boundaries around or close to the perimeter of the site, exacerbating the effect. Even if the subdivision was the four lots allowed by the Plan as a *controlled* activity, they would likely be rural in character, with their boundaries further from the noise source, and their residents more likely to be accepting of a rural noise environment.
- [37] Rural activities need only meet a noise standard of 65dBA L¹⁰ at the boundary of the site (if there is no dwelling on the neighbouring land) and 50dBA at the notional boundary of dwellings on adjacent sites during the day, reducing to 40dBA at night (Table 14.2.8.1-1). Rule 14.2.8.3(1) exempts vehicles and mobile and portable machinery from these noise levels, provided the best practicable option is adopted to ensure the noise does not exceed a reasonable level. Additionally, Rule 14.2.9 provides special noise requirements, different from those in Table 14.2.8.1-1, for audible bird scaring devices, hail cannon, and frost protection fans, including separation distances from residences.
- [38] In practical terms, in respect of Gourmet Blueberries' operations, there is nothing presently on the golf course site that requires them to achieve a noise level below 65dBA on the boundary of any Gourmet Blueberries' land. With the erection of a dwelling at the western end of the site, Gourmet Blueberries is going to have to comply with a noise limit of 50dBA at a point as little as 10m from its existing operation between 7 am and 7 pm Monday to Friday and 7 am to 12 noon on Saturdays, reducing to 40dBA at all other times. A similar, but lesser, effect will occur for the planned expansion on the land now owned by Gourmet Blueberries: - a future environment in the sense discussed in [Queenstown Lakes DC v Hawthorn Estate Ltd](#)[2006] NZRMA 424. This same effect will apply to other potentially productive land adjoining the residential use proposed near the boundary of the golf course.
- [39] On top of that, there is the restriction on the permitted activity status of audible bird scaring devices of a noise limit of 115dBC peak between sunrise and sunset at the notional boundary of any residential building. The guide in Rule 14.2.9 suggests that rotating gas guns or gas guns pointing towards the relevant boundary if located within 150 metres, with a smaller separation for gas guns fixed away from the relevant boundary and/or noise barriers used, may not comply with that performance standard and be at risk of enforcement action. The outcome sought is controlling bird-scaring devices so as to avoid excessive intrusion on adjoining residents. That would be relevant to a resource consent application, which may be less likely to be granted given the effects on golf course residents.
- [40] For frost protection fans as a permitted activity (Rule 14.2.9.3), there is a need for users to adopt the best practicable option to avoid creating an unreasonable level of noise. While the separation distance refers to any residential zone, it is a guide as to what would be considered as being the best practicable option, and an unreasonable level of noise. That separation distance is 300m from the boundary of any residential zone, with a location as close as 100m subject to their being fitted with equipment demonstrated to comply with a limit of 65dBAL¹⁰ at the boundary. For a resource consent application, the outcome sought is to control frost protection fans so as to reduce adverse effects for residents in the area.
- [41] Users of hail cannons as permitted activities (Rule 14.2.9.2) must adopt the best practicable option to avoid creating an unreasonable level of noise, with no hail cannon to be used within 200 metres of any residence not located on the same site. The outcome sought, and relevant to any resource consent application, is the controlling of hail cannons so as not to endanger the hearing of neighbouring residents, or to avoid excessive intrusion on people in residential areas.
- [42] All these noise restrictions would have the potential to trigger the requirement for a rural user undertaking activities connected with the soil resource to obtain a resource consent. There is no certainty that a resource consent would be granted, or that conditions imposed would be acceptable for rural production, given the *urban* nature of the proposal. We had no map or plan demonstrating the areal extent of these restrictions. However, it is clear that they could cover a significant land area, and there was no agreement from most of the neighbours of the adjoining rural land to accept such restrictions.

Section 104D — objectives and policies of the District Plan

- [43] We had evidence from four planners. Mr Matthew Holder covered all planning aspects. Mr Greg Osborne gave evidence on potential reverse sensitivity effects from aircraft noise and Mr Michael Foster on potential impacts of the continued operation and expansion of Bridge Pa aerodrome. Mr Denis Nugent dealt with those aspects that would affect Gourmet Blueberries. We also had extensive submissions from Counsel, and we should say that we found Mr Cowper's submissions particularly helpful on Plan issues.
- [44] Mr Holder gave evidence that the proposal would not be contrary to the overall intent of the objectives and policies of

the District Plan. Mr Nugent gave evidence that the objectives and policies of the district plan set a clear strategy for development on the Heretaunga Plains, comprising four elements. He listed the first as maintaining the productive potential of the soils, including for new and innovative production methods or species. He saw the second as development that is not based on the productive use of the soils should not hinder the use of adjacent land for productive rural activities. The third was that rural productive activities are entitled to create adverse effects that would not be acceptable in urban areas provided these adverse effects are kept to a level reasonable for amenity values of a rural area. Finally that the potential for conflict between adjacent activities should be minimised. He considered the proposal is contrary to that strategy for two reasons. It proposes to place residential activities on a site surrounded by potentially incompatible activities and would remove the potential for this land to be put to any other productive rural use in the future.

Judgment

Ngatarawa Development Trust Ltd v Hastings District Council

- [45] Mr Foster was of the opinion that the proposal would be contrary to objectives and policies of the Plan referring to Bridge Pa Aerodrome, because of the potential for the development to impose limitations on its future operations and its ability to grow. He considered the plan provisions establish that the aerodrome is a key district resource (notwithstanding it is not listed as a regionally significant piece of transport infrastructure in the Regional Policy Statement) with a long-standing expectation that the aerodrome will continue to grow. Mr Osborne considered the objectives and policies of the district plan did not put any priority on protecting the aerodrome from reverse sensitivity concerns from neighbours about aircraft noise.

Rural Resource Strategy

- [46] The Rural Resource Strategy has as an objective to promote the maintenance of the life-supporting capacity of the Hastings District's rural resources at sustainable levels (RO1). A second objective is to enable the efficient, and innovative use and development of rural resources while ensuring that adverse effects associated with activities are avoided, remedied or mitigated (RO2). A third objective is to enable the effective operation of land based production activities within established amenity levels in the rural areas of the Hastings District (RO3).
- [47] The policies for the Rural Resource Strategy include enabling rural activities which might generate adverse effects such as noise or smell, to operate in rural areas in accordance with accepted practices, without being significantly compromised by other activities demanding higher levels of amenity (RP2). Another policy is to provide for the establishing of a wide range of activities which complement the resources of the rural area, provided that the sustainability of the natural and physical resources of the area is safeguarded (RP3). Also the policy is to manage rural land close to urban areas to avoid sporadic and uncontrolled conversion to activities that will individually or cumulatively adversely affect the sustainability of the rural resource base (RP5).
- [48] Redeveloping the site would not remove any additional *Rural/Plains* land from agricultural use, given its current use as a golf course. However, the life supporting capacity of the land would be lost by being built over with housing and roading and fragmented into land parcels too small to farm, foreclosing opportunities for efficient and innovative uses of the land, such as blueberry production (RO1, RO2 and RP3). The proposed development would result in the establishment of landholdings incapable of supporting a ... *wider range of activities that can retain the life supporting capacity of the Plains resources* (RO3 and RP3 and Plains zone PLO3). The proposed intensive residential use would juxtapose conflicting and uses, with associated adverse effects (RO2). Far from internalising and dealing with its adverse effects, the proposal does the reverse by potentially constraining rural production activities on adjacent land. The development would not ensure the continued "right to farm" for neighbouring sites.
- [49] The amenity level needs and expectations of the golf course residents would not fit within established amenity levels in the rural area (RP2). Reverse sensitivity could be a problem and restrain rather than enable rural production and land uses (RO2 and RO3). Worse than that, the presence of residential uses around the perimeter of the golf course would impose real constraints on accepted practices in the rural area (RP2). Activities on neighbouring properties that could occur as of right under the permitted activity category would require a resource consent, and that could be declined or made subject to conditions. The sustainability of surrounding productive land uses could therefore be undermined and the activities would not safeguard the sustainability of natural resources (RP3 and RP5).

Plains Zone

[50] The *Plains* Zone carries through the themes, and even some of the wording of the Rural Resource Strategy and *Rural* Zone objectives and policies. Relevant provisions are:

“Objectives:

PL01 To maintain the life-supporting capacity of the unique resource balance of the Heretaunga Plains.

PL02 To avoid, remedy or mitigate potential adverse effects of land use activities on the rural community, adjoining activities, marae, and the economy.

PL03 To provide for the establishment of landholdings on the Plains which can accommodate a wider range of activities that can retain the life-supporting capacity of the Plains resource.

PL04 To ensure that existing levels of amenity associated with existing land based primary production on the Plains are maintained.

Policies

PLP1 Enable the establishment of a wide range of activities provided they maintain the life supporting capacity of the soil resource of the Heretaunga Plains for future use.

PLP2 Ensure that subdivision results in properties on the Heretaunga Plains capable of supporting a diverse range of activities that utilise the soil resource in a sustainable manner.

PLP4 Control the adverse effects of activities on the community, adjoining activities, and the environment.

PLP5 Activities locating in the Plains Zone will need to accept existing amenity levels associated with well established land use management practices involved with the sustainable use of the soil resource.

PLP6 Limit the scale and intensity of the effects of Commercial Activities in the Plains Zone in order to ensure the sustainable management of the soil resource and to mitigate adverse effects.

PLP11 Noise levels should not be inconsistent with the character and amenity of the Plains Zone.

PLP12 Activities which support tourism development on the Plains and are based on the sustainable management of resources will be encouraged.

PLP14 Provide for the continued use and development of the Bridge Pa Aerodrome within its existing site.”

[51] The proposal would fragment and convert rural land for residential uses that would conflict with neighbouring land uses and diminish, rather than maintain, the life-supporting capacity of the Plains for the future (PLO1, PLO2 and PLP1). The presence of residential activities at such intensity and in the locations proposed would potentially have adverse effects on adjoining activities and the economy as a consequence of rural production limitations (PLO2). The intensive nature of the proposed residential development would make it difficult for neighbouring land users to continue existing activities while maintaining existing amenity levels (PLO4).

[52] The proposal would not sustainably utilise the soil resource (PLP2). It would constrain the uses to which both the golf club land and neighbouring land could be put, rather than enabling a wide range of land uses (PLP2). The effects of conflicting rural and residential land uses would not be controlled, with the minimal separation distances between new residential activities and agricultural activities (PLP4). Golf course residents could not be forced to accept the existing amenity levels associated with well-established land management practices (PLP5) and there would be the potential for reverse sensitivity conflicts (PLP6). The establishment of a residential enclave in the middle of a working rural environment adjacent to an aerodrome would fail to recognise that activities in the *Plains* Zone generate significant amounts of noise and to protect their continued economic operation (PLP11). The proposal would not meet the imperatives for the encouragement of tourist and recreation activities in the *Plains* Zone given the adverse effects (PLP12). There would be likely demands by residents and visitors for the restriction of rather than the continued use and development of the Bridge Pa Aerodrome (PLP14).

Urban development and strategic urban directions

[53] The Hastings District Plan provides direction for new urban developments in Urban Development and Strategic Urban Directions. Relevant objectives are to establish an effective, and sustainable, supply of residential land to meet the current and future demands of the Hastings District Community (UDO1). A second objective is to minimise the expansion of urban activity onto the versatile soils of the Heretaunga Plains (UDO2). A third objective is to continue to promote infill development and the redevelopment of existing residential areas (UDO3). A fourth is to minimise future environmental hazards, at the urban/rural interface (UDO4).

[54] Relevant policies are to implement an urban development strategy which ensures that there is adequate residential land to meet demand and so avoid pressure for rezoning land on an ad hoc basis for residential development (UDP1). Also to ensure that a diverse range of residential development opportunities are available throughout the district

(UDP2). There is also a policy to investigate a range of alternative urban development strategies for the future which avoid, remedy or mitigate adverse effects, including minimising effects on high quality and versatile soils in terms of their life supporting capacity and the reasonably foreseeable needs of future generations (UDP3). Another policy is to manage the extent and effect of the rural-urban interface (UDP4). Finally, there is a policy to encourage higher density development, as both a short and long-term mechanism, to avoid, remedy or mitigate adverse effects including the effects on high quality and versatile soils (UDP5).

[55] The proposed subdivision may go some way towards supplying residential housing demands for those wishing to live on a golf course (UDO1). However in terms of the objective of effective and sustainable supply, there is no certainty of the future success of the golf course. Once the land is subdivided into small parcels and sold, and particularly when houses and apartments are erected, the situation would be irreversible. If the project overall was not successful in saving the golf course, the end result would be clusters of housing isolated in a rural environment. In addition, the residual golf course land would potentially be of limited value for production, given the proximity of the houses within it and around its perimeter. In any event, there would be urban encroachment onto the soils that are, at the least, suited to blueberry production (UDO2).

[56] The proposal is the kind of ad hoc development that the Plan aims to avoid (UDP1). The result would be an inappropriate interface between rural land uses, aerodrome activities and intensive residential development (UDP4).

Subdivision

[57] There is an objective to provide for the subdivision of land which supports the overall objectives and policies for the various zones and promotes sustainable management of natural and physical resources (SDO1). A further objective is to ensure that sites created by subdivision are physically suitable for a range of land use activities allowed by the rules of the District Plan (SDO3).

[58] The proposal would not create sites that are physically suitable for a range of permitted activities. The residential activities could not support a productive activity on the land.

Recreation

[59] There is an objective to provide for the establishment, operation, development and maintenance of land for reserves and recreation activities, while ensuring that adverse effects on the environment are avoided, remedied or mitigated (REO1). Another is to provide for the continued operation and development of regionally significant recreational facilities, while protecting the amenity of adjoining properties and the operation of activities provided for as *permitted* in the adjoining zones. Also there is a policy to ensure that places of assembly and any recreation activities undertaken there are located, designed and operated in a manner that will not adversely affect the environment, including adjoining activities and the character and amenities of the area where they are located (REP2).

[60] The proposal would result in improvements to the golf course, but would not provide any additional golfing opportunities to the District. For the residents in and around the golf course it would provide a more readily enjoyed recreational experience. The Aerodrome is the only recreational resource for aviation enthusiasts in the District, while there are other golf courses. The potential effect of the development on Bridge Pa Aerodrome's recreational activities is not known. However, it is clear that the development would compromise legitimate adjoining existing and potential land uses, and the working rural amenity otherwise permitted in the surrounding area, and would be inconsistent with the Recreation objectives and policies to that extent.

Transport

[61] There are relevant objectives and policies as follows:

“Objective

TO6 To promote the continued use and development of Bridge Pa Aerodrome in a manner that remains sensitive to the environmental and amenity values of adjoining communities.

Policies

TP7 Review in conjunction with the Hawkes Bay Aero Club and the wider Bridge Pa community, future development opportunities, constraints and environmental consequences associated with the continued growth and development of the Bridge Pa Aerodrome.

Explanation

The Bridge Pa Aerodrome is a key resource of the District. ...

Any extension of the aerodrome is likely to have direct impact on the District road network, and on the local Bridge Pa community. The Council will work with the Hawke's Bay Aero Club and the community to establish a long term future plan for the aerodrome and establish the environmental bottom lines for the operation of the aerodrome, and the community.

TP8 Manage the effects associated with the operation of the Bridge Pa Aerodrome on adjoining activities.

Explanation

Noise associated with the use of Bridge Pa Aerodrome will generate negative effects on adjoining land uses. The District Plan will control the establishment of activities which are incompatible with the operation of the aerodrome, as well as establishing appropriate noise limits for the operation of the aerodrome and its associated activities."

The proposal would be contrary to the objectives and policies on the Bridge Pa Aerodrome, in introducing urban-style residential uses which would be subject to unreasonable noise effects. As Mr Foster identified, there is a need for the review referred to in Policy TP7.

Overall Assessment of Plan provisions

- [62] The proposal would therefore be contrary to key objectives and policies, particularly the overall thrust of the Rural Resource Strategy, *Plains* zone, Urban Development and Strategic Urban Directions, and Subdivision sections of the District Plan. It would therefore not meet the gateway test in s 104D.

Conclusion on the s 104D thresholds

- [63] We find that it is not appropriate to permit the number of notional noise boundaries surrounding working rural land to proliferate beyond the number permitted by the District Plan. To do so would unreasonably and unfairly constrain the activities properly located in the *Plains* Zone. The adverse effects of the proposed development on the use of the rural land surrounding the golf club land would individually, and more so cumulatively, be more than minor. As discussed in paras [20] and [21] there would, we consider, be direct adverse noise effects on the proposed housing within the golf course site. The conclusions expressed about reverse sensitivity upon aerodrome users and other surrounding owner/occupiers; while not decisive standing alone, reinforce our view that on any reasonable assessment the adverse effects of the proposal will be significantly more than minor.
- [64] For the reasons we have outlined, our clear conclusion is that the proposed activities will plainly be contrary to the objectives and policies of the District Plan. We are conscious of course that a *non-complying* activity will be unlikely to find support in the Plan's provisions, and that is not the test we apply. We consider that there is irreconcilable conflict between the proposal and the Plan's objectives and policies.
- [65] That being so, the consents cannot be granted in terms of s 104D(l). We should add though that even if it might be thought that we have applied too rigid a test in considering s 104D, we would not have granted the consents under s 104, and we can briefly outline why that would be so.

Section 104(1)(a) — positive effects

- [66] Whether the Ngatarawa proposal will actually succeed, at least to the point of revitalising the golf club's financial position, is not an issue for us. We must deal with the resource consent issues on the assumption that what is proposed will be commercially viable. On that basis there will be positive effect for the economic wellbeing of the club,

and at least the social wellbeing of its members. For those who come to the amenity of living on the golf club land, there will also positive effects for their social (ie golfing) wellbeing.

Section 104(1)(a) — adverse effects

[67] We have discussed the adverse effect of reverse sensitivity, and the direct effects on Gourmet Blueberries of noise restrictions, and there is nothing that need be added to those points.

Section 104(1)(b) - Regional Plan and Policy Statement

[68] Mr Nugent points out that the RPS contains, in section 3.5, Objective 16:

“For future activities, the avoidance or mitigation of nuisance effects arising from the location of conflicting land use activities.”

And Policy 6

“To recognise that the future establishment of potentially conflicting land use activities adjacent to, or within the vicinity of each other is appropriate provided no existing land use activity (which adopts the best practicable option or is otherwise environmentally sound) is restricted or compromised. This will be primarily achieved through liaison with territorial authorities and the use of mechanisms available to territorial authorities, which recognise and protect the ongoing functioning and operation of those existing activities.”

Those provisions, as one would expect, are matched by the District Plan provisions, which we have already extensively reviewed.

Section 104(1)(c) — other relevant matters

[69] As we have had occasion to mention in a recent decision — *McKenna v Hastings DC* (W016/2008) — the credibility and integrity of the District Plan as an instrument for avoiding, mitigating and remedying adverse effects is an issue that can be dealt with as an ... *other matter ... relevant and reasonably necessary to determine the application*. Because this proposal is, in our judgement, so irreconcilably contrary to the provisions of the District Plan, to allow it would call into question the ability of the Council to use the Plan as a means of managing the potential effects identified during the Plan development process.

Part 2 matters

[70] There are no relevant issues arising under s 8 or s 6. In terms of s 7, paras:

- “(aa) The ethic of stewardship,
- (b) The efficient use and development of natural and physical resources,
- (c) The maintenance and enhancement of amenity values,
- (f) Maintenance and enhancement of the quality of the environment, and
- (g) Any finite characteristics of natural and physical resources,”

were all raised to a greater or less extent. Without needing to repeat what has been said in discussing effects and Plan provisions, we see it as unlikely to promote stewardship, or the efficient use of resources, or to have regard to the finite resource of the *Plains* zone land, to allow this proposal when it is likely to bring about restrictions on the use of neighbouring land for productive purposes. While the surrounding land, and the golf course land itself, may not comprise elite soils there is more than enough evidence to persuade us that, as with the Gourmet Blueberries land, they can be very productive under the right regime.

Section 290A — the Council's Decision

[71] Section 290A requires us to *have regard to* the Council's decision - in this case of course it is the decision of the Commissioner to whom, for good reason, the Council delegated its decision-making role. We find ourselves in fundamental disagreement with that decision on key points. In considering adverse effects, the Commissioner regarded the issue of reverse sensitivity, insofar as it arose at all, as largely being dealt with by *no complaints* covenants. While, taken alone, the reverse sensitivity issue may not have been decisive for us, we did not regard it as having been dealt with to the point that we could put it aside entirely.

[72] While the Commissioner noted that a representative of Gourmet Blueberries spoke against the proposal, the concerns of that company about the direct effects of noise limits did not seem to have been expressed to him in the same way as they were to us, and we found that position influential.

[73] It was the Commissioner's view that the proposal was not contrary to the objectives and policies of the District Plan. For the reasons outlined, our view is that it plainly is contrary to them.

Result

[74] For the reasons outlined, it is our view that the resource consents should not be granted. Formally, the appeal by Ngatarawa Development Trust Ltd against the condition is declined, but the appeals by the other parties against the grant of the resource consents are allowed.

Costs

[75] Costs are reserved. Any applications should be lodged by 9 May 2008, and any responses lodged by 23 May 2008.