

BEFORE THE CENTRAL OTAGO DISTRICT COUNCIL

IN THE MATTER OF of the Resource Management Act 1991

AND

IN THE MATTER OF Private Plan Change 13 to the Central Otago District Plan
– River Terrace Developments Limited, Cromwell

STATEMENT OF EVIDENCE BY MEGAN JUSTICE

16 MAY 2019

1. INTRODUCTION

QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Megan Justice. I hold a Masters degree in Regional and Resource Planning from Otago University, obtained in 1999 and I am a full member of the New Zealand Planning Institute. I am a certified Resource Management Act decision maker. I am an Associate Consultant with the firm Mitchell Daysh Limited, which practices as a planning and environmental consultancy throughout New Zealand.
- 1.2 I have been engaged in the field of town and country planning and resource and environmental management for eighteen years. My experience includes a mix of local authority, Government and consultancy resource management work. In recent years, this experience has retained a particular emphasis on providing consultancy advice with respect to Regional and District Plans, plan changes, designations, resource consents, environmental management and environmental effects assessments. This includes extensive experience with large-scale projects involving inputs from a multidisciplinary team, many of which are located within Central Otago and particularly the Queenstown Lakes District.
- 1.3 An outline of projects in which I have provided resource management advice in recent times is included as **Appendix A**.
- 1.4 I confirm my obligations in terms of the Environment Court's Code of Conduct for Expert Witnesses contained in the Practice Note 2014. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.5 I have been engaged by Public Health South to provide resource management planning advice with respect to River Terrace Developments Limited's proposed private Plan Change 13 ("PC13") that seeks to rezone approximately 49.8 hectares of land from Rural Resource

Area and Rural Residential Resource Area to a new site specific zone entitled River Terrace Resource Area ("RTRA").

- 1.6 I assisted Public Health South with the preparing of its submission and further submission on this Plan Change.

SCOPE OF EVIDENCE

- 1.7 In this statement of evidence, I address the following matters:
- Describe the Public Health South's submission and further submission on PC13 and relief sought;
 - Set out the statutory tests for plan changes;
 - Provide an assessment of noise, spray drift and reverse sensitivity effects;
 - Consider the plan change in relation to relevant provisions of the policy statements and plans and the purpose of the Act;
 - Set out my conclusions.
- 1.8 Public Health South has commissioned expert witness evidence in relation to noise effects and spray drift to assist understanding of the actual and potential environmental effects associated with PC13. This evidence includes:
- Evidence of Dr Chiles who outlines the noise effects arising from locating approximately 900 residential units and other noise sensitive activities in close proximity to noise generating activities; and
 - Evidence of Ms Wickham who has analysed the activities of the neighbouring horticultural activities and identified potential effects associated with spray drift.
- 1.9 I draw from this evidence, as well as the evidence provided by the Plan Change proponent, where it relates to the topics set out in my paragraph 1.7, and the s42A report, where relevant to assist my analysis of PC13.
- 1.10 In preparing this brief of evidence I have visited the site. I confirm that I have read:

- 1.10.1 The summary of submissions and further submissions on PC13;
- 1.10.2 The section 42A report prepared Mr Whitney;
- 1.10.3 The proponents evidence;
- 1.10.4 The PC13 application.

PUBLIC HEALTH SOUTH'S SUBMISSION AND FURTHER SUBMISSION

- 1.11 Public Health South lodged a submission opposing PC13. This submission describes Public Health South's key objective to improve, promote and protect the health of people and communities. Additionally, Public Health South has a responsibility to promote the reduction of adverse social and environmental effects on the health of people and communities. Public Health South submitted on PC13 as, in its view, it does not promote the reduction of adverse effects on the health of people and communities, and the potential for these effects to result in reverse sensitivity effects on the existing activities nearby. I agree with this submission based on the potential for adverse noise effects and the potential effects of spray drift affecting activities at the PC13 site.
- 1.12 Public Health South's further submission opposed the noise insulation standards and no complaints covenants proposed by Riverview Terrace Limited in its submission. Public Health South supported submissions that sought additional provisions to manage potential reverse sensitivity effects should the plan change be approved, whilst maintaining the view that the plan change should be rejected.
- 1.13 The relief sought by Public Health South is for the plan change to be rejected. In the event that the plan change is not rejected, Public Health South sought different insulation and ventilation standards be imposed to mitigate internal noise effects on sensitive activities and other relief necessary to address its concerns relating to the proximity of horticultural activities.

2. STATUTORY AND NON-STATUTORY CONSIDERATIONS

2.1 I consider it important to set out the statutory context under which this application for a plan change must be considered. The statutory tests set out in Mr Brown's evidence¹ provides a useful summary, and is as follows:

2.1.1 Whether the provisions accord and assist the Council in carrying out its functions and achieve the purpose of the Act (section 74(1);

2.1.2 Whether the provisions accord with Part 2 of the Act (section 74(1)(b);

2.1.3 Whether the provisions give effect to national policy statements (section 75(3)(c);

2.1.4 Whether the provisions have regard to the actual and potential effects on the environment, including, in particular, any adverse effect (Section 76(3);

2.1.5 The extent to which the objectives are the most appropriate way to achieve the purpose of the Act (section 32(1)(a);

2.1.6 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 section 32(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.

2.2 In addition, I consider the Regional Plan: Air for Otago to be relevant to the current application. This was likely not included in the list provided by

¹ Evidence of Mr Brown, dated 23 April 2019, paragraph 3.1.

Mr Brown, as the Environment Court case summary he has referred to related to appeals on the provisions to be included in the Auckland Unitary Plan, as part of the preparation of that Plan. Being a unitary plan that combines both district plan and regional plans, consideration of whether the provisions in that case gave effect to the regional plan would have been inherent in the section 32(1)(b) assessment. As the Central Otago District Plan is not a unitary plan, I consider it appropriate to add the following to the list of statutory tests:

2.2.1 Whether the provisions give effect to a regional plan (section 75(4)(b));²

2.3 Schedule 1 of the Act assists further in summarising the matters for consideration for privately initiated plan changes:³

Clause 25(4) The local authority may reject the request in whole or in part, but only on the grounds that—

(c) The request or part of the request is not in accordance with sound resource management practice; or

(d) The request or part of the request would make the policy statement or plan inconsistent with Part 5;

2.4 The purpose of the Act is to promote sustainable management of natural and physical resources, which means managing the use, development, and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while sustaining the potential of physical and natural resources to meet the needs of future generations, and safeguarding the life supporting capacity of air, water, soil and ecosystems; and avoiding, remedying or mitigating any adverse effects of activities on the environment.⁴

² I have added this clause to Mr Brown's list of statutory tests at paragraph 3.1 of his evidence.

³ Schedule 1, Part 2 clause 25 of the Act.

⁴ Section 5 (1) and (2) of the Act.

- 2.5 Section 72 of the Act states that the purpose of District Plan is to assist territorial authorities to carry out their functions in order to achieve the purpose of the Act.
- 2.6 Section 31 states that the functions of a territorial authority, in giving effect to the purpose of the Act, is to establish, implement, and review objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district⁵, and requires the control of the emission of noise and the mitigation of the effects of noise.⁶
- 2.7 Section 31 also includes the recent addition of clause (aa) which adds the additional function to establish, implement, and review objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.⁷

3. ASSESSMENT OF EFFECTS

- 3.1 I turn firstly to assessing the environmental effects of the plan change, as this evaluation informs the other statutory tests.
- 3.2 A comprehensive assessment of effects has been carried out by Mr Whitney in the s42A report and by Mr Brown in his evidence, and I do not intend to repeat these assessments in my evidence. In my view, the key adverse effects associated with the plan change relate to noise, including reverse sensitivity effects, and potential effects of spray drift, including reverse sensitivity effects. I note that the plan change will result in other adverse environmental effects, relating to transportation, landscape and visual amenity, rural amenity, loss of productive land, and urban design effects. Due to the scope of Public Health South's submission, my evidence focusses on:
- the noise effects affecting the proposed RTRA activities;

⁵ Section 31(1)(a) of the Act.

⁶ Section 31(1)(d) of the Act.

⁷ Section 31(1)(aa) of the Act.

- the potential effects of spray drift from horticultural activities; and
- the potential for reverse sensitivity effects arising from both potential spray-drift and noise effects.

Noise Effects

- 3.3 In his evidence Mr Styles has described the methods proposed to manage noise effects at the PC 13 site. Dr Chiles has commented on these methods in his evidence. Dr Chiles concludes that the PC13 methods suggested are not effective to manage internal noise levels (within dwellings and other building used for noise sensitive activities), and that they do not mitigate the effects of noise outdoors.
- 3.4 The effects of noise are required to be managed by territorial authorities.⁸ Noise impacts upon amenity values – those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes. Dr Chiles has described the World Health Organisation (“WHO”) findings which state that noise annoyance is a pertinent health effect and has established Community Noise Guidelines to manage this effect. The Community Noise Guidelines that are often quoted are sleep disturbance effects being observed above a sound level of 30 dB L_{Aeq} inside bedrooms, and people being moderately annoyed by daytime activities with sound levels above 50 dB L_{Aeq} outside, or highly annoyed by levels above 55 dB L_{Aeq} outside.
- 3.5 As you have heard from Dr Chiles, the noise from existing surrounding activities will result in noise levels at the RTRA site that are not compatible with noise sensitive activities such as residential activities. In terms of outdoor noise, the sound from daytime events at Highland Motorsport Park (“HMP”) and the Central Motor Speedway (“CMS”) are predicted to be approximately 65 to 75 dB L_{Aeq} and 60 to 80 dB L_{Aeq} respectively across the PC13 land. Dr Chiles explains that this substantially exceeds the 50 and 55 dB L_{Aeq} WHO outdoor guideline

⁸ Section 31(1)(d) of the Act.

levels.⁹ Mr Styles states that such noise levels would dominate the noise environment across the site and would compromise the outdoor acoustic amenity to the point where some residents would likely seek respite indoors for much or all of the day, or leave home, and some may attend the motorsport event.

3.6 These high levels of noise are expected to occur approximately 36 times per year, during summer months, and typically during the weekend. This would equate to more than one event per weekend, if the 'summer months' are from October to April.¹⁰ I agree with Dr Chiles' view that these noise effects cannot be dismissed as infrequent and of relatively short duration. The fact that these events are typically on weekends, when most people spend more time at home, increases the intensity of the adverse effect. Dr Chiles concludes that with respect to daytime motorsport sound, there will be regular exceedances of WHO guideline levels both during events and potentially during normal daily activity. On this basis, and from his experience with the Ruapuna Motorsport Park in Christchurch, he considers that there will be significant disturbance and adverse noise effects. Dr Chiles considers that when considering all noise sources affecting the site, the environment is not suitable for residential activity.¹¹

3.7 I note that the current zoning of the site enables some residential use to establish here, albeit subject to a controlled or restricted discretionary activity consent process, through which adverse noise effects could be managed to some extent. In my view, there should be a difference between amenity values expectations of those choosing to live in a rural or rural residential environment as opposed to establishing a medium-high density urban development adjacent to rural and motorsport activities. In reality however, occupants of dwellings in rural residential areas are sensitive to noise. Based on the evidence of Dr Chiles, use of the PC13 land for any residential activity will be adversely affected by

⁹ Paragraph 22 of Dr Chiles' evidence.

¹⁰ There are approximately 30 weekends from October to April.

¹¹ Evidence of Dr Chiles, paragraph 30.

noise. This situation will be exasperated under the PC13 which would enable 900 medium - high density urban households in this area.

- 3.8 The plan change proponents propose internal sound insulation to manage potential adverse noise effects on the sensitive activities enabled at the PC13 land, and no complaint covenants. As you have heard from Dr Chiles, the noise insulation standards are not considered to be adequate to mitigate internal noise effects, and he has suggested a higher standard of insulation be required should the plan change be approved.
- 3.9 While the noise management regime promoted by the PC13 proponents goes some way to addressing the potential noise effects arising from Highlands Motorsport Park, the Central Speedway and horticultural operations *inside* residential dwellings, it is important to understand that such measures are not effective at addressing the effects on outdoor amenity. Residents of the RTRA will undoubtedly find that the utilisation and enjoyment of their property (particularly outdoors in the summer months) is affected by noise. Acoustic treatment cannot mitigate this effect.
- 3.10 Dr Chiles has stated that the noise levels arising during the 36 motorsport events, which are typically held on weekends during summer months, is not likely to be acceptable for most people. The no-complaints covenants do not assist in mitigating or remedying these adverse noise effects.

Horticultural Activities

- 3.11 The evidence of Ms Wickham sets out the potential effects of spray drift from the neighbouring horticultural activities at the proposed RTRA site. She discusses the mitigation measures suggested by the plan change proponents and their effectiveness, and she describes how potential spray drift could be mitigated with suitable buffer areas. While Ms Wickham notes that the adverse health effects of pesticide spray is widely documented, the focus of her evidence is on the use of land use

planning tools to avoid the potential health effects and reverse sensitivity effects of spray drift.¹²

- 3.12 Based on her evaluation of the type of pesticide spraying that occurs at the immediately adjacent Suncrest Orchard, Ms Wickham recommends further setbacks in addition to the 3 metre ("m") high solid fence structure, the establishment of a 2m wide and 2m high (at time of planting) planted buffer, and a 5m setback from the boundary.
- 3.13 Ms Wickham holds the view that the establishment of sensitive activities within 100m of the Suncrest Orchard would increase the spray drift hazard to 'high' (as classified in the Regional Air Plan and New Zealand's national code of practice for management of agrichemicals, NZS 8409: 2004). This could significantly affect the ability of the orchard to undertake their spray activities while also placing residents in a high-risk location. Ms Wickham considers that a separation distance of 100m between future RTRA residents and agrichemical application is required to manage unintended or accidental discharges, which may occur, for instance, if weather conditions change whilst spraying is occurring.
- 3.14 I acknowledge that the Regional Plan Air for Otago requires spraying activities to not result in any ambient concentrations for contaminants at or beyond the boundary of the property that have noxious or dangerous effects.¹³ Administering this requirement is the role of the Otago Regional Council. However, managing the potential risk of adverse spray drift events through land use planning tools is the role of the District Council.
- 3.15 Currently there are no dwellings on the PC13 site near the boundary of the Suncrest Orchard. The nearest dwelling to the Suncrest Orchard boundary is approximately 41m away, and this is located on Rural Residential Resource Area zoned land to the south of the orchard, and there is extensive vegetation between this dwelling and the orchard boundary.

¹² Paragraph 35 of Ms Wickham's evidence, dated 16 May 2019.

¹³ Regional Plan: Air for Otago, Rule 16.3.9.2(d).

- 3.16 Under the Rural Resource Area provisions of the District Plan that currently apply to the PC13 site, a new dwelling requires a controlled activity resource consent to establish in the Rural Residential Area. Matters of control include methods to avoid, remedy or mitigate the effects of existing activities including the provision of screening, landscaping and methods of noise control.¹⁴ These controls could require mitigation of potential spray drift if this is a relevant consideration at the site in question.
- 3.17 For residential activity in the Rural Resource Area, a Discretionary (Restricted) consent is required. One matter of discretion includes *"methods to avoid, remedy or mitigate the effects of existing activities including potential for reverse sensitivity, the provision of screening landscaping and methods for noise control"*.¹⁵
- 3.18 Also of note, internal boundary setback requirements include 25m from an adjoining boundary for the Rural Resource Area and 10m for the Rural Residential Resource Area. These setbacks are greater than those proposed from the proposed RTRA boundary.
- 3.19 Therefore, under the operative District Plan provisions that apply to the site currently, the potential effects of spray drift would be addressed via the resource consenting process.
- 3.20 Around 18 dwellings could be established (albeit subject to a controlled or restricted discretionary activity consent process through which adverse effects of spray drift, and reverse sensitivity effects which I discuss below, could be managed at the PC13 site under the operative zoning. Whereas 900 dwellings could be established under the PC13 provisions. Based on the evidence of Ms Wickham, in my view larger setback requirements are required to be imposed in the District Plan to manage potential spray drift effects if PC13 is accepted.

¹⁴ District Plan Rule 4.7.2.

¹⁵ District Plan Rule 4.7.3(vii).

Reverse Sensitivity Effects

- 3.21 The adverse noise effects and effects associated with the interface with neighbouring horticultural activity will also likely result in reverse sensitivity effects. In this situation, reverse sensitivity effects could result in constraints on horticultural and motorsport activities as a means of mitigating noise and spray drift effects, for instance, on the RTRA community. Due to the scale of development enabled via PC13, the reverse sensitivity effects could be significant. The PC13 provisions promote no-complaint covenants to manage reverse sensitivity effects.
- 3.22 No-complaints covenants are occasionally utilised to manage potential reverse sensitivity effects. I am aware through the considerable airport work undertaken by my firm, that no-complaints covenants are not an effective, long term solution for managing reverse sensitivity effects, as they do not manage the environmental effects. No-compliant covenants are commonly used in situations where District Plan provisions have not effectively managed environmental effects arising from incompatible uses locating in close proximity. They are typically offered as conditions of consents by resource consent applicants. While they may be adequate where one or two properties are affected, I do not consider such covenants are appropriate as District Plan rules, and do not represent sound resource management practice.
- 3.23 In my view, sound resource management practice should result in incompatible activities being separated with effective buffer distances or methods to reduce adverse noise, and other nuisance type effects, to acceptable levels. It is not good practice to enable incompatible activities to locate in close proximity where known adverse effects will be a nuisance. I consider the plan change provisions requiring all residential property owners to agree to a no-complaints covenant for both the motorsport activities and the horticultural activities, is evidence that the RTRA site is not suitable for the proposed use.
- 3.24 Further, I consider imposing a rule that requires a no-complaints covenant to be entered into in a District Plan does not meet the territorial

authority's obligation under section 31 to ensure its District Plan mitigates the effects of noise.¹⁶

Summary of Environmental Effects

- 3.1 In developing District Plan provisions, regard must be had for the actual or potential effects on the environment of activities.¹⁷ It is my view that the proposed plan change provisions and proposed zoning will result in adverse noise effects on the residential occupants of the PC13 land and will also result in adverse reverse sensitivity effects. These effects can be better managed under the operative zoning and provisions that apply to the site the status quo alternative).
- 3.2 Based on my conclusions regarding the effects on the environment, I do not consider that the PC13 provisions, including the proposed zoning, will assist the Council in carrying out its functions set out in section 31 of the Act. PC13 will not achieve:
- The integrated management of the effects of the use, development of land (s31(1)(a);
 - The control of the emission of noise and the mitigation of the effects of noise (s31(1)(d).
- 3.3 PC13 may assist in achieving the recently inserted clause (aa) which relates to ensuring there is sufficient development capacity in respect to housing and business land to meet expected demands. At the time of writing, I have seen Mr Whitney's section 42A report, where he has concluded that the PC13 land is not required to meet demand for housing¹⁸, and the evidence of Ms Hampson who concludes that the land is required for these purposes.¹⁹

¹⁶ Section 31(1)(d) in part.

¹⁷ Section 76(3) of the Act.

¹⁸ Section 42A report for Plan Change 13, prepared by D Whitney, dated 21 March 2019, paragraph 7.1.3.

¹⁹ Evidence of Ms Hampson, dated 23 April 2019, paragraph 72.

- 3.4 Whether or not the land is required to address section 31(1)(aa) of the Act, the land in question is not, in my opinion, suitable for residential or noise sensitive activities.

4. ASSESSMENT OF RELEVANT PROVISIONS

- 4.1 The following section of my evidence sets out my consideration of whether or not the plan change gives effect to a relevant national policy statement and the Partially Operative Regional Policy Statement ("RPS"), and whether it is consistent with relevant regional plans.

NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT CAPACITY

- 4.2 In my view, Objectives and Policies PA1-PA4 of the National Policy Statement on Urban Development Capacity 2016 ("NPS Urban Development", or "NPS") are relevant to the Central Otago District, based on the evidence of Ms Hampson concludes that Cromwell is part of an urban environment, and, at the time of writing, I have not read any evidence that disagrees with Ms Hampson's view. Cromwell is not identified as a high growth or medium growth area under the NPS for Urban Development, so I do not consider that other provisions of this NPS are relevant.
- 4.3 Policies PA1-4 apply to any urban environment expected to grow. They require local authorities to ensure that there is sufficient housing and business land development capacity (PA1), and that infrastructure is available (PA2). Other policies seek to ensure that planning decisions that affect development capacity must provide for the social, economic, cultural and environmental wellbeing of people and communities (PA3), and that the benefits of urban development are taken into consideration (PA4).
- 4.4 The RTRA will provide considerable choice in housing options and benefits in terms of increasing the supply of housing land. However, in my view, the amenity values at the RTRA will not provide for social or environmental wellbeing of the community, which is an outcome sought

via Policy PA3,²⁰ due to the noise effects impacting the site and reverse sensitivity effects.

- 4.5 I have not reproduced the relevant provisions of the NPS for Urban Development in full, as these are included in Document 4 of the plan change request documents.

PARTIALLY OPERATIVE OTAGO REGIONAL POLICY STATEMENT

- 4.6 I generally agree with Mr Brown's assessment of the PC13 provisions against the relevant RPS provisions set out in Appendix C of his evidence, with the exception of his opinion on:
- Policy 1.1.2 – Social and cultural wellbeing and health and safety, clause (d) avoid significant adverse effects of activities on human health;
 - Objective 4.5 – Urban growth and development will be well designed, occurs in a strategic and coordinated way and integrates effectively with adjoining urban and rural environments;
 - Policy 4.5.1 – Providing for urban growth and development, in particular, clause (h) which relates to managing reverse sensitivity effects;
 - Policy 4.5.3 – Urban Design, in particular, clause (a) which seeks to provide a resilient, safe and healthy community; and
 - Policy 5.3.1 - Rural activities – in particular, clause (d) which seeks to restrict establishment of incompatible activities that are likely to lead to reverse sensitivity effects.

²⁰ NPA for Urban Development Capacity Policy PA3:

When making planning decisions that affect the way and the rate at which development capacity is provided, decision-makers shall provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, whilst having particular regard to:

a) Providing for choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses;

b) Promoting the efficient use of urban land and development infrastructure and other infrastructure; and

c) Limiting as much as possible adverse impacts on the competitive operation of land and development markets.

- 4.7 Mr Brown's conclusions that PC13 will achieve these provisions is partially based on his conclusions that adverse effects on the occupants of the PC13 land, and adverse reverse sensitivity effects can be appropriately managed.
- 4.8 In my view, the PC13 provisions do not adequately manage adverse noise effects, the interface with horticultural activities nor adverse reverse sensitivity effects. Given the adverse effects and potential for spray drift effects and reverse sensitivity effects affecting the site, PC13 will not result in a healthy urban environment that is well integrated with neighbouring land uses, nor provide for urban growth in a manner which avoids reverse sensitivity effects, nor will it adequately manage reverse sensitivity effects. As a result, it is my view that PC13 does not give effect to the above provisions of the RPS.

REGIONAL PLAN: AIR FOR OTAGO

- 4.9 The Regional Plan: Air for Otago includes provisions that are relevant to this plan change. Objective 6.1.2 requires:
- To avoid adverse localised effects of contaminant discharges into air on:*
- (a) Human health;*
 - (b) Cultural, heritage and amenity values;*
 - (c) Ecosystems and the plants and animals within them; and*
 - (d) The life-supporting capacity of air.*
- 4.10 Policy 8.2.8 seeks "to avoid discharges to air being noxious, dangerous, offensive or objectionable to the surrounding local environment".
- 4.11 As described by Ms Wickham, this Plan encourages the use of land use planning mechanisms and other land management techniques to mitigate adverse effects from agricultural spray drift, as well as requiring spray applicants to avoid spray drift beyond the target property and avoid adverse effects on human health and safety, ecosystems, sensitive areas

or places, amenity values and other non-target areas or species.²¹ The explanation beneath the policy clarifies that 'sensitive areas' includes residential dwellings, education activities, and also refers to Method 17.2.1.2 for the land use planning mechanisms that can be used to mitigate adverse effects of spray drift. Method 17.2.1.2 states:

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.*

4.12 In the context of considering PC13, PC13 cannot be inconsistent with Regional Plan: Air for Otago.²² Consideration of the Regional Plan: Air for Otago is also relevant when considering if the objectives of PC13 are the most appropriate way to achieve the purpose of the Act, as this Air Plan is one of a suite of higher order documents that inform a Part 2 assessment.²³

4.13 In my view, zoning land to enable urban activities in close proximity to the existing horticultural activities, which results in the potential for spray drift effects on the urban activities, is not consistent with Objective 6.1.2 which seeks to avoid the localised effects of air discharges.

4.14 PC13 Objective 20.3.10 states "*Protect existing activities from the adverse reverse sensitivity effects of existing activities adjacent to the Resource Area, particularly Highlands Motorsport Park, Cromwell Speedway and horticultural activities/orcharding, so that constraints on those activities*

²¹ Regional Plan: Air for Otago, Policy 12.1.1.

²² Section 75(4)(b).

²³ Section 32(1)(a).

resulting from reverse sensitivity effects are avoided". This policy is not consistent with Air Plan Objective 6.1.2 which requires that localised adverse effects from discharges are avoided. If the buffer area within PC13 land recommended by Ms Wickham is incorporated into the PC13 Structure Plan and provisions, then I consider the plan change would be more consistent with the Regional Plan: Air for Otago.

5. SECTION 32 EVALUATION

- 5.1 Section 32 of the Act requires proposals to change District Plans to be evaluated to determine whether the objectives are the most appropriate way to achieve the purpose of the Act (s32(1)(a)) and whether the policies and methods are the most appropriate way to achieve the objectives (s32(1)(b)).
- 5.2 The proposed RTRA objectives are set out in full in Appendix B of Mr Brown's evidence, and they seek to, in particular:
- Provide an efficient, co-ordinated, integrated greenfields development.
 - Provide a diversity of housing product and housing affordability.
 - Provide a well-designed built environment that provides high quality amenity for residents.
 - Provide retirement living opportunities.
 - Protect existing activities from adverse reverse sensitivity effects.
 - Construction of healthy buildings that provide quiet and healthy internal environments that protect residents from effects of existing activities.
- 5.3 The proposed RTRA will insert a new chapter in the District Plan, and accordingly, all of the existing objectives of the District Plan will be retained without change. Mr Brown assesses the RTRA objectives against these operative District Plan objectives (where relevant to PC13) in full in Appendix C of his evidence. In general, I consider that the RTRA objectives are not inconsistent with these District Plan objectives, and

could, in isolation, be considered to achieve the purpose of the Act, as required under s32(1)(a). However, I do not consider that the RTRA provisions (zone, rules, and other methods) will be effectively in achieving the RTRA objectives, or other higher order objectives of the District Plan.

5.4 The PC 13 provisions include a suite of methods including rules and plans to achieve the RTRA objectives. Based on the adverse noise and spray drift effects that will impact on the PC13 site and the reverse sensitivity effects associated with noise and spray drift, I do not consider that the PC13 provisions (policies, zoning, rules and methods) are the most appropriate way of achieving the proposed RTRA objectives or the following District Plan provisions from Section 6: Urban Areas and Section 12: District Wide Rules and Performance Standards:

- Objective 6.3.1 clause (a): Needs of People and Communities - To promote the sustainable management of the urban areas in order to
(a) Enable the people and communities of the district to provide for their social, economic and cultural wellbeing and their health and safety.
- Objective 6.3.2 Amenity Values – *To manage urban growth and development so as to promote the maintenance and enhancement of the environmental quality and amenity values of the particular environments found within the District's urban areas.*
- Objective 6.3.3 Adverse Effects on Natural and Physical Resources - *To avoid, remedy or mitigate the adverse effects of urban areas on the natural and physical resources of the District.*
- Policy 6.4.1 clauses (a) and (b) *Maintenance of Quality Life within Urban Areas - To maintain and, where practicable, enhance the quality of life for people and communities within the District's urban areas through*

(a) Identifying and providing for a level of amenity which is acceptable to the community; and

(b) Avoiding, remedying or mitigating the adverse effects on the community's social, economic and cultural well-being and health and safety which may result from the use, development and protection.

- Policy 6.4.2 clause (a) Expansion of Urban Areas - *To enable the expansion of urban areas or urban infrastructure in a manner that avoids, remedies or mitigates adverse effects on:*
(a) Adjoining rural areas.
- Objective 12.3.2 Protection from Noise - *To avoid, remedy or mitigate the adverse effects of noise on the District's amenity values and the health and wellbeing of the District's people.*
- Policy 12.4.2 Noise - *To determine the suitability of noise generating activities in any given locality by having regard to: The specific characteristics and amenity values of the locality from which the noise originates, and*
(b) The sound pressure level of the proposed activity, and
(c) The frequency that the noisy activity takes place, and
(d) The length of time that the noise continues, and
(e) Any special characteristics of the noise,
To ensure that the adverse effects of noise on other activities and the natural and physical resource of the locality (including cumulative effects) reflect standards acceptable to the community.

5.5 Mr Brown's conclusion that the plan change achieves the above provisions is based on the proposed PC13 rules, acoustics standards and the no-complaints covenants, effectively mitigating reverse sensitivity effects and effects on occupants of the PC13 land. In my view, the PC13 provisions are not effective in managing these adverse effects and therefore are not effective in achieving the objectives of the District Plan nor the proposed objectives of the RTRA. Therefore, the PC13 provisions are not, in my view, the most appropriate way of achieving the PC13 objectives, as is required by s32(1)(b), when compared with the status quo alternative.

6. PART 2 OF THE ACT

6.1 Based on the evidence of Dr Chiles and Ms Wickham, I do not consider that PC13 is the most appropriate way to achieve the purpose of the Act, as it will not avoid, remedy or mitigate adverse effects of the existing activities at the site, nor adequately avoid, remedy or mitigate potential

reverse sensitivity effects. I do not consider that the sustainable management of natural and physical resources is achieved by locating noise sensitive activities at the RTRA site. PC13 is not the most appropriate way for people and communities to provide for their social and cultural wellbeing nor for their health. In my view, PC13 does not accord with Part 2 of the Act, as is required under section 74 of the Act.

7. CONCLUSION

- 7.1 Drawing from the evidence from Dr Chiles and Ms Wickham, it is my opinion that the proposed RTRA is not an appropriate location for the activities promulgated by the plan change. I consider the effects of noise on the sensitive activities enabled by the plan change will be significant, and the potential adverse effects of spray drift are not appropriately managed. In addition, there is high potential for significant reverse sensitivity effects. In my view, no methods have been identified to adequately mitigate or manage these adverse environmental effects to an appropriate level.
- 7.2 It is my opinion, from the evidence I have read about environmental effects, and from my evaluation of the relevant provisions, that:
- the PC13 is in accordance with sound resource management practice;²⁴
 - PC13 does not fulfill the Central Otago District Council's function to mitigate the effects of noise;²⁵
 - the PC13 policies and methods are not the most appropriate way to achieve the PC 13 objectives and the relevant objectives of the District Plan;²⁶
 - PC13 does not give effect to the partially operative Regional Policy Statement and is inconsistent with Regional Plan: Air for Otago;²⁷ and

²⁴ Schedule 1 Part 2 Clause 25(4) of the Act.

²⁵ Section 31(a)(d) of the Act.

²⁶ Section 32(1)(b) of the Act.

²⁷ Section 75(3)(c), section 75(4)(b) and section 32(1)(a) of the Act.

- PC13 will not assist the Council in carrying out its functions and achieve the Purpose of the Act.²⁸

Megan Justice

16 May 2019

²⁸ Section 74(1) of the Act.

APPENDIX A

SUMMARY OF RECENT PROJECT EXPERIENCE

- Queenstown Lakes District Council –preparation of Plan Change 50 s32 evaluation to rezone land in central Queenstown in the Queenstown Lakes District Plan
- Port Marlborough New Zealand Limited – submissions and further submissions and evidence, and preparation of planning provisions on the Proposed Marlborough Environment Plan
- Port Marlborough New Zealand - preparation of resource consent application for extension to Waikawa Marina
- Queenstown Lakes District Council – preparing subdivision applications for Lakeview site, central Queenstown
- Kingston Village Limited - preparing subdivision and landuse application for 217 lot subdivision at Kingston
- Otago Regional Council – preparation of a Notice of Requirement to designate the site for the Central City Bus Hub
- Ryman Healthcare Limited – preparing submissions planning provisions specific to retirement villages, and evidence for the Proposed Christchurch Replacement District Plan process
- HW Richardson Group – preparing evidence on the Proposed Invercargill District Plan
- Ryman Healthcare Limited – involved with preparing planning provisions specific to retirement villages for the Auckland Unitary Plan and preparing evidence on the Auckland Unitary Plan
- Ryman Healthcare Limited – obtain land use and regional level resource consents for the Howick Retirement Village, Auckland City
- Ryman Healthcare Limited – obtain subdivision, land use and regional level resource consents for the Rangiora Retirement Village, Rangiora
- PowerNet Limited – preparing submissions, further submissions and Notices of Requirement for numerous Designations in Dunedin City District, Invercargill District and Clutha District, and attendance at the relevant Council hearings
- New Plymouth District Council – preparation of Plan Change 47 to the New Plymouth District Plan
- Otago Regional Council – submissions, further submissions and notices of requirement for the Dunedin City Council Proposed Plan, and attendance at the relevant Council hearings

- Queenstown Lakes District Council – contracted to process resource consent applications