

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

SUPPLEMENTARY STATEMENT OF EVIDENCE BY MEGAN JUSTICE

28 JUNE 2019

1. INTRODUCTION

QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Megan Justice.
- 1.2 My qualifications and experience are as detailed in my primary evidence prepared for this hearing.
- 1.3 I reconfirm my obligations in terms of the Environment Court's Code of Conduct for Expert Witnesses contained in the Practice Note 2014. I refer to my primary evidence on Plan Change 13 ("PC13") dated 16 May 2019, as prepared and pre-circulated prior to this hearing.
- 1.4 In this supplementary evidence I discuss the Cromwell Eye to the Future Masterplan Spatial Framework Stage 1: Spatial Plan ("Cromwell Spatial Plan"), and provide analysis of the National Policy Statement on Urban Development Capacity ("NPS-UDC") objectives in relation to PC13. I also provide an overview of the most up-to-date planning regime adopted by Queenstown Airport Corporation in the Queenstown Lakes District Plan, which provides a recent example of the methods used to manage noise sensitive activities located in close proximity to a noise generating activity.

2. CROMWELL SPATIAL PLAN

- 2.1 On 7th June 2019 the Central Otago District Council and the Cromwell Community Board publicly announced that the Cromwell Community Board had adopted the Cromwell Spatial Plan. It was explained that Stage 1 is the Cromwell Spatial Plan that provides a coordinated approach to growth management for Cromwell over the next 30 years. It is intended to reflect the community's preferred option of growth within Cromwell, and includes future residential zones at a number of densities, increased housing options and amenity through more intensified development within the walkable distance from the town centre, design guidelines for subdivision and residential development, provisions to

support greenway retention and development and increased industrial opportunities.

- 2.2 I understand that these initiatives will be delivered through a series of changes to the District Plan.
- 2.3 In my view, the Cromwell Spatial Plan is relevant to the consideration of PC13. While it is a non-statutory document, it is recent, was developed with input from the community and addresses the same matters of residential and business capacity that are the primary activities enabled by PC13. I consider that the Cromwell Spatial Plan assists in enabling the evaluation of PC13 under s32 of the Resource Management Act 1991 (“the Act” or “the RMA”), in terms of examining the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the Act.

3. NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT CAPACITY

- 3.1 The NPS-UDC states that the objectives of the NPS-UDC “*apply to all decision-makers when making planning decisions that affect an urban environment*”.¹ Policies PA1 - PA4 apply to any urban environment that is expected to experience growth.² There remains disagreement between the planners involved in PC13 as to whether or not Cromwell is an ‘urban environment’ for the purpose of determining whether or not the NPS-UDC is relevant to the consideration of PC13. This disagreement is based on interpretation of the definition of Urban Environment in the NPS-UDC, which is:

*Urban environment 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.*³

¹ NPS-UDC page 10.

² NPS-UDC page 11.

³ NPS-UDC page 8.

3.2 At the time of filing primary evidence for PC13, to my knowledge, the Central Otago District Council had not made a determination on whether or not any of its communities were considered to be 'Urban Environments' under this NPS-UDC. The Cromwell Eye to the Future Cromwell Spatial Plan has since been adopted, and this document states:

The NPS-UDC does not currently apply to the Cromwell township and will not do so until Cromwell's urban environment, as defined in the NPS, reaches 10,000 or more people.⁴

3.3 In my view, the definition of Urban Environment in the NPS-UDC does apply to Cromwell, as it includes the phrase '*...or intended to contain...*'. In my view, the information in the Cromwell Spatial Plan, as I understand it, demonstrates how a population of over 10,000 will be accommodated, albeit over a long time frame. The Urban Environment definition in the NPS-UDC does not include a time frame for when such a population can be reached, and for that reason, I consider that Cromwell is captured by this definition.

3.4 In the event that the Commission considers the NPS-UDC to be relevant to its consideration of PC13, I have provided a more detailed assessment of the NPS-UDC objectives and policies, taking into account the Cromwell Spatial Plan where I consider it relevant, which I provide below.

3.5 I consider the preamble to the NPS-UDC provides useful context for applying the NPS-UDC to planning decisions. Some excerpts from this preamble are set out below:

Local authorities play an important role in shaping the success of our cities by planning for growth and change and providing critical infrastructure. Ideally, urban planning should enable people and communities to provide for their social, economic, cultural and environmental wellbeing through development, while managing its effects.

This national policy statement aims to ensure that planning decisions enable the supply of housing needed to meet demand. This will

⁴ Cromwell Spatial Framework – Stage 1: Spatial Plan, page 28.

contribute to minimising artificially inflated house prices at all levels and contribute to housing affordability overall. Currently, artificially inflated house prices drive inequality, increase the fiscal burden of housing-related government subsidies, and pose a risk to the national economy.

Local authorities need to provide for the wellbeing of current generations, and they must also provide for the wellbeing of the generations to come. The overarching theme running through this national policy statement is that planning decisions must actively enable development in urban environments, and do that in a way that maximises wellbeing now and in the future.

This national policy statement does not anticipate development occurring with disregard to its effect. Local authorities will still need to consider a range of matters in deciding where and how development is to occur, including the direction provided by this national policy statement.

This national policy statement also places a strong emphasis on planning coherently across urban housing and labour markets, which may cross local authority administrative boundaries. This will require coordinated planning between local authorities that share jurisdiction over urban housing and labour markets. This includes collaboration between regional councils and territorial authorities who have differing functions under the RMA, but which all impact on and are impacted on by urban development.⁵

- 3.6 In my view, the preamble establishes a clear mandate to ensure sufficient capacity is provided within urban environments in order to meet demand for housing and business land for their populations to happily live and work. In doing so it anticipates that this will provide for their social, economic and environmental wellbeing.
- 3.7 In terms of whether PC13 gives effect to the relevant objectives and policies of the NPS-UDC, I consider these provisions below:

⁵ Exerts from the NPS-UDC Preamble, pages 3-4.

Objectives Group A – Outcomes for planning decisions

Objective OA1: Effective and efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing.

- 3.8 In my view, the PC13 site is not suitable for residential use, due primarily to the noise residents will be exposed to from surrounding established activities, which I have discussed in my primary evidence. The methods proposed in PC13 are not effective in adequately managing these adverse effects. For this reason, I do not consider that PC13 will result in an urban environment that provides for the social, cultural and environmental wellbeing of people, communities and future generations.

Objective OA2: Urban environments that have sufficient opportunities for the development of housing and business land to meet demand, and which provide 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.

- 3.9 PC13 seeks to enable the development of approximately 900 new dwellings, significantly increasing the number of dwellings in Cromwell. The urgent or short-term demand for this number of additional residential dwellings in the township has not yet been proven in my view.
- 3.10 Alternative land uses for this site have not been considered in the s32 evaluation. Such uses could include commercial or industrial development, or, as described by Mr Dicey, viticulture.⁶ In my view, the opportunity costs of not developing this land for other potential uses have not been adequately considered and assessed in s32 terms. Further, Mr Copeland has concluded that PC13 will likely adversely affect established business (on the basis that reverse sensitivity effects may impact on the neighbouring horticultural and motorsport activities)⁷, and Mr Mead considers that future business land opportunity would be lost by rezoning the land for primarily residential use.⁸ This economic cost has

⁶ Primary evidence of Mr Dicey, paragraph 4.1.

⁷ Mr Copeland's primary evidence, paragraph 35-40, 41-43, 56.

⁸ Primary evidence of Mr Mead, paragraph 120.

not been considered in the s32 evaluation. A fulsome cost benefit analysis that quantifies potential economic and employment benefits and costs is required by s32(2)(a)(i) and (ii) of the Act. Such an evaluation is, in my view, necessary for a plan change of this nature and scale.

- 3.11 For these reasons, while I acknowledge that PC13 will provide considerable housing choice and some business opportunities, I do not consider that sufficient analysis of other zoning options for the site, or of the economic benefits and costs of PC13, is available to conclude that Objective OA2 is given effect to, particularly when the Cromwell Spatial Plan describes alternative solutions for accommodating residential growth.

Objective OA3: Urban environments that, over time, develop and change in response to the changing needs of people and communities and future generations.

- 3.12 I consider that PC13 would enable the development and change of land use at the subject site. However, it is my view that there remains some uncertainty about the need for this plan change. I also note that the Cromwell Spatial Plan establishes an alternative plan for accommodating housing and business growth for Cromwell, and the PC13 land is not earmarked for the provision of housing.

Objective Group B – Evidence and monitoring to support planning decisions

Objective OB1: A robustly developed, comprehensive and frequently updated evidence base to inform planning decisions in urban environments.

- 3.13 In my view, PC13 is neutral in terms of giving effect to this objective. My understanding of this objective is that a document such as the Cromwell Spatial Plan would give effect to this objective. Sound and complete evidence on PC13 that satisfies the requirements of s32 of the Act would also give effect to this objective.

Objective Group C – Responsive Planning

Objective OC1 - Planning decisions, practices and methods that enable urban development which provides for the social, economic, cultural and environmental wellbeing of people and communities and future generations in the short, medium and long-term.

- 3.14 In my view, the PC13 site is not suitable for residential use, due primarily to the noise residents will be exposed to from surrounding established activities. For the reasons I have outlined in my primary evidence, I do not consider that the methods proposed in PC13 to be effective in managing these adverse effects. I therefore do not consider that PC13 will result in an urban environment that provides for the social, economic, cultural and environmental wellbeing of people, communities and future generations.

Objective OC2 - Local authorities adapt and respond to evidence about urban development, market activity and the social, economic, cultural and environmental wellbeing of people and communities and future generations, in a timely way.

- 3.15 In my view, this objective places the onus on the Council to provide a flexible planning regime in order to adapt and respond to evidence that additional housing or business land is required within identified urban areas. In my view, the Cromwell master planning process, and any subsequent plan changes which fall out of that, appropriately aligns with this direction.

Objective Group D – Coordinated planning evidence and decision-making

Objective OD1 - Urban environments where land use, development, development infrastructure and other infrastructure are integrated with each other.

- 3.16 No constraints have been identified in terms of the provision of infrastructure (three-waters, telecommunications and electricity) to service the PC13 development. However, Mr Copeland states that generally dispersed forms of urban development give rise to higher costs

for infrastructure, and therefore, PC13 has the potential to lead to increased public infrastructure costs and increased transport costs.⁹

- 3.17 Further, PC13 will not, in my opinion, integrate well with other established land uses near the site, due to the noise residents of the PC13 site will be exposed to and the potential for reverse sensitivity effects. I therefore consider that this objective is given effect to in part.

Objective OD2 - Coordinated and aligned planning decisions within and across local authority boundaries.

- 3.18 In my view, a decision to approve PC13 will not align with the existing environment. This is due to the horticultural activities, the Highlands Motorsport Park and the Cromwell Speedway being part of the existing environment. These activities either operate under resource consents or as permitted activities. Based on the evidence of Dr Chiles and Ms Wickham, residential development is not appropriate in this location due to the noise residents will be exposed to and the risk of adverse effects from spray drift.

- 3.19 The NPS-UDC contains an extensive number of associated policies to give effect to the objectives. On the basis that no areas within the Central Otago District are identified as a medium or high growth area, only Policies PA1-PA4 are potentially relevant to this proposal.¹⁰

PA1: Local authorities shall ensure that at any one time there is sufficient housing and business land development capacity according to the table below:

⁹ Primary evidence of Mr Copeland, paragraph 10.

¹⁰ If Cromwell is deemed to comprise an 'urban environment'.

Short term	Development capacity must be feasible, zoned and serviced with development infrastructure.
Medium term	Development capacity must be feasible, zoned and either: <ul style="list-style-type: none"> • serviced with development infrastructure, or • the funding for the development infrastructure required to service that development capacity must be identified in a Long Term Plan required under the Local Government Act 2002.
Long-term	Development capacity must be feasible, identified in relevant plans and strategies, and the development infrastructure required to service it must be identified in the relevant Infrastructure Strategy required under the Local Government Act 2002.

3.20 Policy PA1 directs local authorities to provide development capacity that is feasible in the short, medium and long term. I understand that development capacity is feasible if it is commercially viable to be developed, and that this can be calculated by considering the current likely costs, revenue and yield from any development. PC13 would assist in achieving this policy by providing residential development capacity. In addition, the Cromwell Spatial Plan provides an alternative framework for where development capacity can be provided.

PA2: Local authorities shall satisfy themselves that other infrastructure required to support urban development are likely to be available.

3.21 With regard to infrastructure, I understand that no capacity issues have been identified that would limit the development of the PC13 land.

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.*

3.22 This policy seeks to ensure that the spatial arrangement of housing and business zones within an urban area is well thought out and integrated. In this regard it seeks to achieve an urban area which has integration between the land use activities, transport infrastructure and services that enhance people's wellbeing and livelihoods. As set out in my primary evidence, PC13 will provide considerable choice in housing options and benefits in terms of increasing the supply of housing land. However, in my view, the residential amenity values resulting from PC13 will not provide for social or environmental wellbeing of the community, which is the ultimate outcome sought via Policy PA3, due to the noise residents will be exposed to.

3.23 Guidance on the NPS-UDC for this policy states that where the existence of reverse sensitivities may have a significant effect on decisions about how to provide development capacity, local authorities are encouraged to identify types of land uses that are potentially incompatible and define the distance over which any reverse sensitivity may arise.¹¹ The evidence of Ms Wickham¹² and my primary evidence sets out the recommended setbacks to manage the potential adverse effects of spray drift. As discussed by Dr Chiles, the effects of noise can be managed internally via insulation. However, no mitigation measures have been provided to manage the external noise effects for residents at PC13.¹³

PA4: When considering the effects of urban development, decision-makers shall take into account:

- a) *The benefits that urban development will provide with respect to the ability for people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing; and*

¹¹ National Policy Statement on Urban Development Capacity Guide on Evidence and Monitoring, page 86.

¹² Evidence of Ms Wickham, 16 May 2019, paragraph 44.

¹³ Evidence of Dr Chiles, 16 May 2019, paragraphs 32 and 36.

b) *The benefits and costs of urban development at a national, inter-regional, regional and district scale, as well as the local effects.*

3.24 I do not consider that an adequate evaluation of the economic and employment benefits and costs arising from PC13 has been provided, nor the consideration of other options, to be able to conclude whether or not the plan change is consistent with PA4(b).

3.25 With regard to PA4(a), PC13 will provide considerable housing choice for the community, which is a benefit of the proposal. As I have discussed in my primary evidence, I do not consider that the land is suitable for residential use due to noise residents will be exposed to from surrounding established activities. For this reason, I do not consider that PC13 will provide for people, communities and future generations' social, economic, cultural and environmental wellbeing.

4. NO-COMPLAINTS COVENANTS

4.1 Given several examples of no-complaints covenants associated with airports have been presented by Mr Goldsmith, it may be useful to provide context around best practice land use management surrounding airports in New Zealand and how this has informed planning methods used at Queenstown Airport, including the use of no-complaints covenants. I also comment on my knowledge of the use of no-complaints covenants at Wellington Airport.

NZ Standard for Airport Noise Management and Land Use Planning

4.2 The New Zealand Standard for Airport Noise Management and Land Use Planning NZS6805 ("the Airport Noise standard" or "the standard") is recognised as the key guiding document for managing aircraft noise at New Zealand airports.

4.3 Within the Air Noise Boundary, where aircraft noise exposure is expected to exceed 65dB L_{dn}, the standard recommends prohibiting **new** noise sensitive activities.¹⁴ The standard also recommends that within this area,

¹⁴ Table 1. New Zealand Standard for Airport Noise Management and Land Use Planning NZS6805: 1992.

existing residential properties be acoustically treated to ensure a satisfactory internal noise environment. Similarly, the standard recommends that any additions or alterations to existing residential properties also be acoustically treated.

- 4.4 Within the Outer Control Boundary, where aircraft noise exposure is expected to exceed 55dB L_{dn}, the standard recommends prohibiting **new** noise sensitive activities *“unless a district plan permits such uses, subject to a requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment”*.
- 4.5 I understand that acoustic experts engaged by the Queenstown Airport Corporation (“QAC”) are of the view that this statement provides clear intention that new noise sensitive activities should be prohibited as the starting point when developing District Plan provisions.¹⁵

Queenstown Airport Operative Land Use Planning Framework

- 4.6 Plan Change 35 (“PC35”) was a Council adopted plan change that established a planning regime to manage noise sensitive activities establishing within the aircraft noise contours at Queenstown Airport.
- 4.7 The Airport Noise standard (described above) was used as the foundation of the approach adopted in PC35, however in recognition of historic land use patterns in lower Frankton, QAC took a more moderated approach than the standard specified for **existing** residential zones. In summary, the planning framework is generally as follows:
- Within existing Residential Zones – maintain existing density and require all new noise sensitive activities within the aircraft noise contours to provide appropriate acoustic treatment.
 - All other zones (i.e. rural and industrial) – prohibit new noise sensitive activities within the aircraft noise contours and require all additions/alterations to provide acoustic treatment.

¹⁵ Paragraphs 68 and 69 of the Evidence of Mr Christopher William Day for Queenstown Airport Corporation Limited on the Queenstown Lakes District Plan, Stage 1 (Submitter Number 422 and Further Submitter 1340), dated 9 June 2017, with respect to aircraft noise.

- 4.8 To complement PC35, QAC filed an associated notice of requirement to update the noise management obligations contained with Aerodrome Purposes designation. This included (amongst other matters) an obligation for QAC to provide acoustic treatment for existing buildings containing noise sensitive activities within the 60dB L_{dn} noise contour.
- 4.9 As set out in condition 20 of that designation, noise mitigation funding offered by the QAC is only required where the benefitting building owner agrees to the noise mitigation offered and agrees to enter into a binding property agreement or covenant to the effect that the owners or occupiers of the property:
- 4.9.1 are aware that the property may be subject to increased levels of aircraft noise (as enabled by the noise contours). It does not prevent involvement in future planning processes;
 - 4.9.2 agree that any complaint arising from noise related activities shall be dealt with in accordance with the complaints procedures set out in the noise management plan for the airport. That is, noise complaints will be made via the Airport's noise administrator and will be reported to the Queenstown Airport Liaison Committee (which is fully funded by QAC); and
 - 4.9.3 will not remove or lessen the effectiveness of the acoustic insulation and/or mechanical ventilation that is installed by QAC without its prior approval.
- 4.10 The Queenstown Airport covenant referred to by Mr Goldsmith¹⁶ therefore only applies to existing properties within land zoned for residential use that are now within defined noise contours for which noise mitigation has been provided by QAC in order to assist with the mitigation of increasing noise effects generated by QAC.
- 4.11 The circumstances around its establishment and implementation are therefore quite different to PC13, as Frankton was already zoned for

¹⁶ Attachment 2 (second 2) of the Legal Submissions for the Proponent, River Terrace Developments Limited, dated 10 June 2019.

residential use and established as a residential neighbourhood. QAC actively seek to avoid any new noise sensitive activities from establishing within the noise contours to protect these activities from the adverse noise effects. This is considered best practice for managing the adverse effects of aircraft noise on noise sensitive activities.

- 4.12 As noted in paragraphs 3.6 and 3.10 above, I understand that Queenstown Airport utilises no-complaints covenants in the context of its noise mitigation programme for existing buildings containing noise sensitive activities within the aircraft noise boundaries.
- 4.13 However, it is beyond the aircraft noise boundaries that use of no-complaints covenants is more frequent, as this is where there are no other District Plan controls in place to manage the establishment of noise sensitive activities that may be exposed to aircraft noise. Jacks Point, as identified by Mr Goldsmith, is one such example.
- 4.14 Despite QAC holding no-complaints covenants, they do not prevent complaints from occurring, nor do they prevent pressure being imposed on the QAC to revoke them. For example, in early 2018 a number of Quail Rise residents publicly complained about aircraft noise from “flightseeing” planes. Later that same year when QAC released its proposed noise planning changes for public consultation, QAC was asked at a public meeting to revoke the Shotover Country no-complaints covenants to allow encumbered landowners to take part in formal planning processes. I understand similar feedback was received via the public consultation process.¹⁷ Both of these situations arose despite Quail Rise and Shotover Country land owners both being subject to no-complaints covenants.
- 4.15 With respect to Wellington Airport, I understand that covenants are typically used to ensure that acoustic treatment installed by Wellington International Airport Limited, as part of their “Quieter Homes”, is

¹⁷ Refer to www.our.queenstownairport.com/noise-planning.

maintained in good condition.¹⁸ They are not used broadly by the Airport. The two examples identified by Mr Goldsmith¹⁹ relate to the same site, and did not arise from a plan change proposal, rather via a resource consenting process for an over density development.

5. CONCLUSION

- 5.1 I do not consider that the need for PC13 has been demonstrated, particularly in light of the Cromwell Spatial Plan which provides an alternative for accommodating Cromwell's projected growth.
- 5.2 A plan change of this scale justifies the quantifying of the economic costs and benefits, including the potential costs to existing businesses that may be affected by reverse sensitivity effects. In my view, there is some uncertainty around the economic benefits and costs of the plan change.
- 5.3 As I have discussed in my primary evidence, I do not consider that the PC13 site is suitable for residential uses, due to the noise that residents will be exposed to, and the potential effects of spray drift. No methods have been proposed to manage these effects. The proposed use of no complaints covenants acknowledges this incompatibility. In my view, including a requirement for a no complaints covenant as a rule in a District Plan, while allowing a noise sensitive activity to locate in an area known to be impacted by high noise levels, it is not sound resource management practice.

Megan Justice

28 June 2019

¹⁸ Refer to page 6, [Quieter Homes Reducing aircraft noise at your place](https://www.wellingtonairport.co.nz/noise/quieter-homes/) (<https://www.wellingtonairport.co.nz/noise/quieter-homes/>).

¹⁹ Attachment 2 (the second 2) of the Legal Submissions for the Proponent, River Terrace Developments Limited, dated 10 June 2019.