

Presented at hearing 2 July 2019 by
L Wharfe.

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**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

**HEARING STATEMENT OF EVIDENCE BY LYNETTE PEARL WHARFE
FOR HORTICULTURE NEW ZEALAND
2 JULY 2019**

1. SUMMARY

- 1.1 I am Lynette Wharfe, consultant planner to HortNZ.
- 1.2 I have prepared a statement of evidence for this hearing (EIC), which sets out my qualifications and experience.
- 1.3 I have also prepared a Supplementary Statement of Evidence dated 28 June 2019 in response to matters raised in the Supplementary Statement of Mr J Brown for the Proponent.
- 1.4 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 of my EIC. 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.
- 1.5 I participated in the planning caucusing conference call but because of limited availability have not signed the Joint Witness Statement as yet.

2. MY EVIDENCE IN CHIEF AND THIS SUMMARY STATEMENT

- 2.1 My Evidence in Chief 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 and includes:
 - a) Planning framework for assessing PC13
 - b) Operative Central Otago District Plan
 - c) Regional Policy Statement
 - d) NPS-UDC
 - e) Soils
 - f) Noise
 - g) Discharges to Air
 - h) Airport
 - i) Reverse sensitivity
- 2.2 Since writing this statement there has been further evidence presented, Joint Witness Statements and suggested amendments

to the PC13 provisions. Therefore some of the matters addressed may now be in a different place than when I wrote my EIC.

- 2.3 I take my EIC as read and am happy to take questions on any of the matters addressed.
- 2.4 This summary statement provides a set of 'talking points' that have arisen out of the hearings thus far, suggested amendments and issues that appear to require further explanation. It does not claim to be an exhaustive statement addressing the issues but rather identifying matters that I specifically want to draw the Commissioners attention to.
- 2.5 I do not address the statutory tests as they are adequately covered by counsel for other submitters apart from reference to the Cromwell MasterPlan and the Regional Air Plan.
- 2.6 Key topics I wish to address in this statement are:
- a) Philosophy underpinning the Operative District Plan
 - b) Alternatives
 - c) Joint Witness Statement - Planning
 - d) NPS
 - e) RPS
 - f) Cromwell Master Plan
 - g) Discharges to Air including Agrichemical use and NZS8409:2004 Management of Agrichemicals
 - h) Soils
 - i) Noise
 - j) Mitigations
 - k) Conclusion
- 2.7 I am also reliant on the statements provided for HortNZ by Ms McClung, Mr Carl Muller, Mr Earnscy Weaver of Weavers Horticulture, and Mr William Reeves, Acoustic Engineer.
- 2.8 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. PHILOSOPHY UNDERPINNING THE OPERATIVE DISTRICT PLAN

3.1 To me the starting point for assessing PC13 is what the Operative District Plan (ODP) provides for, and why. That is - the rationale that sits behind the plan which provides the benchmark for assessing PC13 (Refer s32 (3)).

3.2 Section 2 of the ODP sets out the resources and significant resource management issues for the district. These include:

- a) Kai Tahu and historic links
- b) Land – including landscape, landforms , soils and landuse
- c) Water
- d) Flora and fauna
- e) Built Environment
- f) Heritage
- g) Demographics

3.3 The plan sets out the significant issues for the various resources which then inform the objectives and policies in the Plan.

3.4 For instance the significant issue for special land resources states:

There are some areas of land in the District that because of particular soil characteristics and quality that in combination with the local climate and irrigation are considered to be a special resource. The potential of this resource to meet the reasonably foreseeable needs of future generations should be sustained. This potential is capable of being compromised by activities which have the effect of reducing the life supporting capacity of these soils.

3.5 This issue is then implemented through the plan in Issue 4.2.6 and Objective 4.3.7 and associated policies and methods.

3.6 Recognition of these key issues and the approach to address them is fundamental to the integrity and cohesion of the ODP, including the zonings which deliberately set out the rationale for identification of the specific zones (eg Methods 6.5.1 and 4.5.1). These zones are a key method to achieve the sustainable management of the natural and physical resources of the district.

3.7 All the 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.

- 3.8 Retaining such buffers between rural production activities and residential activity is identified in the Plan as important to ensure that incompatibilities do not arise.
- 3.9 While there have been a number of plan changes since the plan was developed they have essentially retained the core underpinnings of the Plan. For instance the Wooing Tree Plan Change 12 was an amendment to the residential activity type, rather than a rezoning of land to residential. The discussion on the use and the productive value of the land and reverse sensitivity effects occurred at a much earlier time and the Plan Change did not significantly alter the core under- pinnings of the plan.
- 3.10 The review of the district plan will assess whether the philosophy is still appropriate and at that time it will become apparent whether the extent of deviation, as sought in PC13, is consistent with community expectations. Indications through submissions on PC13 indicate that the community consider the current rationale to still be relevant and appropriate.
- 3.11 The Cromwell MasterPlan process is part of the district plan review and the objectives the community seeks do not appear to be inconsistent with the current approach in the ODP.
- 3.12 However PC13 seeks to develop high density residential development within what is currently a rural zoned area. It would effectively be an 'island' of high density residential use surrounded by rural zoned land that is used for activities that are appropriately located in the rural environment, such as orchards, packhouses, motorsport and speedway.
- 3.13 The effect of PC13 goes beyond the immediate effect of the rezoning of the PC13 because the change would breach the clearly defined rural boundary and threaten the cohesion of the rural zone and the provisions in the Plan which provide for rural production activities to be undertaken.
- 3.14 This presents a significant deviation from the overall approach in the ODP and in my opinion, without going through all the objectives and

policies in detail, is inconsistent with the objectives and policies of the ODP (refer to Section 7 of my EIC).

4. CONSIDERATION OF ALTERNATIVES

4.1 Legal submissions for the proponent touched briefly on the issue of alternative sites and did not consider that consideration of alternative sites is a relevant matter.

4.2 However the legal statement does state:

In any event, evidence has been presented about RTDL's consideration of potential alternatives before settling on River Terrace.

4.3 The reference to the specific evidence inferred is not included but I presume it is to the statement of Mr Bretherton dated 23 April 2019.

4.4 In his statement Mr Bretherton sets out in Para 22 the key criteria for selecting a site for the development.

4.5 The criteria can be summarised as:

- a) Land area needed to be of a large enough size for integrated development
- b) Scale of the site is important to suit Winton's experience and expertise in large scale master planned developments
- c) Ensure efficiencies in development, to provide potential benefits to surrounding areas and economies of scale by being between 1000 – 2000 residential sections
- d) Site needed to be between 50-150ha
- e) Site needed to be largely flat for higher density housing to be practical and minimise development costs
- f) Needed to be serviced or serviceable by key infrastructure
- g) Proximity to the State Highway
- h) Land in single ownership with sensible and realistic vendor
- i) Price of land needed to be at the right level to achieve product in affordability range
- j) Price needed to reflect the required re-zoning process.

4.6 All these criteria which underpinned consideration of alternatives by the proponent are focused on the needs of the developer – driven it

seems by what would achieve the most optimal outcome in terms of return on investment.

- 4.7 None of these criteria focus on what is the community's interest, preference or criteria.
- 4.8 So while alternatives may have been considered they did not do so with a clear intent of providing for the wider social, economic and cultural wellbeing of people and communities, other than provision of affordable housing for a specific group of people and the interests of the developer.
- 4.9 The principles and objectives of the Cromwell Masterplan Spatial Framework provide criteria which are important to the community, developed through community consultation. These would be more appropriate criteria for assessing potential alternative sites.
- 4.10 In addition there has been no s32 cost benefit analysis on the effects of the development on horticultural or the benefits of retaining the land as rural productive land.
- 4.11 To this extent I consider the consideration of alternatives undertaken by the proponent to be limited and will not achieve the purpose of the Act.

5. JOINT WITNESS STATEMENT – PLANNING

- 5.1 Due to prior commitments in the Environment Court for the Southland Regional Land and Water Plan my ability to contribute to the planning caucusing has been limited which was unfortunate but the time available was a consequence of the extension of the timeframes for the proponent to file evidence. I participated in the Conference Call but was driving to the airport at the time so the contribution was limited.
- 5.2 I do wish to comment on some areas of disagreement within the statement that has been tabled with the Commissioners.
- 5.3 The first relates to the inclusion of provisions from Section 7 of the ODP – Residential Resource Area, particularly Objective 7.1.2. Protection of the living environment:
- To manage the use of land to promote a pleasant living environment by ensuring that adverse effects of activities are avoided, remedied or mitigated, while accommodating appropriate change at the interface with other resource areas.*
- 5.4 Mr Brown states in the JWS that this provision is not relevant because the RTRA is intended to be different to the Residential

Resource Area and contains its own specific objectives, policies and methods to manage the expected living environment. He expands on this further in his Summary Statement of Evidence (para 34).

- 5.5 I agree that Section 7 sits under Section 6 – Urban Areas - as residential use is a subset of the urban environment.
- 5.6 The structure of the ODP clearly intended for all residential resource areas to sit within the framework of Section 7 and so provides for the range of Residential Resource Areas 1-13 that exist in the Plan.
- 5.7 The policy framework specifically includes provisions that address management of change – recognising that it will occur but providing the framework in which it is to occur. Objective 7.1.3 Management of Change and Policy 7.2.8 Management of Change are relevant in this regard:

Objective 7.1.3

To recognise that it is inevitable that the use of land shall change over the period of this plan and beyond in order to enable the community to provide for its wellbeing. The process of change can occur randomly within the various resource areas but will be most obvious at the interface between different resource areas. It is a purpose of this plan to manage that change.

Policy 7.2.8

In recognition of the difficulty anticipating the timing and extent of change to the pattern of land use that is necessary to enable the community to provide for its wellbeing and to reconcile with the foregoing policies, it is appropriate that any major change at the interface between the various resource areas be considered within the wider context of the plan as a whole.

- 5.8 The interface between residential areas and the rural area is a key consideration in this hearing.
- 5.9 By seeking that the RTRA sits outside the OPD framework in Chapter 7 undermines the intent of the framework in the Plan. In particular it seeks to disregard an objective and policy that identifies the need to consider the wider context of the plan when there is major change at the interface between different resource areas.
- 5.10 Such an approach is inconsistent with, and undermines the integrity of the ODP.
- 5.11 The relevance of Section 4 Rural Resource Area was also considered in the JWS with Mr Brown giving it limited relevance to

the extent to which it assists in informing whether the zone or the RTRA better achieves the higher order RPS objectives and policies.

- 5.12 I disagree. The Rural Resource Area clearly sets out the expectations anticipated in the rural environment and provides the benchmark for the management of the interface between the zones.
- 5.13 Therefore consideration of Section 4 is relevant to this hearing as I have set out in my EIC.
- 5.14 PC13 will significantly change the rural environment at the interface with the RTRA and I consider this to be inconsistent with the objectives and policies in the ODP.

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

- 6.1 There is disagreement in the evidence and the JWS Planning as to the extent to which the NPS-UDC is relevant to PC13.
- 6.2 Having heard the position of others I retain my original position that the NPS-UDC is not relevant.
- 6.3 I do not consider Outer Cromwell to be part of the Cromwell 'concentrated urban environment' and therefore those areas should not be included in the calculations of population projections which are the catalyst for the relevance of the NPS-UDC.
- 6.4 I note the comment in the statement of Ms M Brown (Para 45-46) that there are distinct differences between the outer settlements and the RTRA because of difference in size and density. Regarding PC13 as akin to the outer settlements is not appropriate as those settlements all have specific characteristics different to a high-medium density development sought by PC13.

7. REGIONAL POLICY STATEMENT (RPS)

- 7.1 I will not traverse the RPS provisions in this summary as my assessment of the relevant objectives and policies in the RPS is in Attachment 1 of my EIC. My assessment 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.
- 7.2 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.

- 7.3 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. CROMWELL MASTERPLAN

- 8.1 Much debate centres on the relevance of the Cromwell Masterplan.
- 8.2 The proponent contends that it is not relevant and should not be considered as part of PC13 deliberations.
- 8.3 RMA Section 74 sets out matters to be considered by a Territorial Authority when preparing or changing a district plan. Section 74 (2) b) i) specifically provides for regard to be given to any management plan or strategy prepared under other Acts.
- 8.4 As I understand it, the Cromwell Masterplan is being prepared under the Local Government Act and will contribute to the review of the district plan and which will also give effect to policies in the RPS relating to urban development.
- 8.5 The Stage 1 Spatial Plan has been accepted by the Cromwell Community Board, an arm of the CODC.
- 8.6 Increasingly Councils are undertaking development of strategy documents which contribute to the district plan development. HortNZ has been involved in such processes in Whangarei, Waimakariri, Timaru and the Greater Growth Christchurch Plan to name a few. They inform the s32 and provide the context for plan changes.
- 8.7 The Masterplan is useful as it articulates community aspirations for Cromwell which is important in the context of PC13.
- 8.8 The Masterplan seeks for growth to be focussed within the existing town area with a consolidated urban form and recognising the importance of the rural community to the district and town.
- 8.9 Objective 7 of the plan seeks to provide for the effective and efficient functioning of rural areas within the Cromwell Basin, ensuring that development if compatible with rural character and avoids reverse sensitivity effects, provides appropriate separation or buffering for environmental protection and clearly demarcates rural and urban boundaries.
- 8.10 These outcomes are similar to the principles that underpin the ODP and reinforce the community's recognition of the rural contribution to the district.

- 8.11 Therefore in my opinion the Cromwell Master Plan is relevant to PC13 to test the extent to which the Plan Change will achieve the objectives set out in the Masterplan.

9. SOILS

- 9.1 Section 10 of my EIC addressed the issue of soils, in particular policies relating to soils in the RPS and the extent to which these are given effect to in PC13.
- 9.2 My EIC responded to evidence for the proponent that was based on the concept of high class soils, which I did not accept as the appropriate framework for consideration of the assessment of effects on soils in PC13.
- 9.3 The evidence presented by Mr Hill for the proponent in the first week of hearing has continued to take the same approach and refutes my evidence on this topic.
- 9.4 Since EIC was filed Mr Weaver has undertaken a soil assessment on the PC13 site and neighbouring orchard land and has presented his findings to you today.
- 9.5 The conclusion he reaches is that the whole of the PC13 site is suitable for horticultural use and should be retained for that purpose.
- 9.6 The fundamental area of variance in opinion relates to the relevant soil classification in respect of PC13.
- 9.7 Mr Hill maintains use of a 'high class soil' definition that is limited to Class I, II and III and has undertaken soil tests to demonstrate that the site only has limited areas of such soils so is not important for production purposes and would not generate any adverse effects on the environment.
- 9.8 However, the definition for high-class soils in the Operative District Plan and the Operative Regional Policy Statement is not limited to particular soil 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.'*
- 9.9 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.

- 9.10 Mr Hill¹ disagrees with my interpretation because the use by one or two specialist crops does not constitute a 'wide variety of plants' and the use is largely due to climate rather than soil quality.
- 9.11 The statement of Mr Weaver demonstrates that the attributes of the soil are clearly suited for horticulture production, with much production occurring on such land.
- 9.12 While the focus of my evidence was on two horticultural crops that could be grown on the land, it should not be taken as only limited to those crops. Rather they are the crops most suited to the land and for which there are ready, and valuable, markets.
- 9.13 Mr Weaver considers that crops such as apricots, nectarines, peaches, cherries, plums, pears and apples as well as walnuts, hazelnuts, olives, boysenberries and raspberries, and grapes could all be grown on the land subject to PC13.
- 9.14 I consider that this comprises 'a wide variety of plants, including horticultural crops'.
- 9.15 Mr Hill does not address the issue of significant soils as identified in the RPS Policy 3.2.17 other than to only refer to one criteria – being Class 1,2 or 3e soils. He does not address the fact that significant soils also include the degree of significance to 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*

- 9.16 The significance of horticulture in Central Otago has been outlined by Ms McClung. Much of this significance is dependent on the use of natural resources in Central Otago for that production, of which soils are a part. Based on this significance I consider that the productive soils in Central Otago are significant for primary production, regardless of whether they are Class I, II or IIIe.

¹ Reece Hill Summary statement Para 21

- 9.17 Therefore the provisions of the pRPS Policy 3.2.17 and 3.2.18 and associated methods are appropriate considerations when assessing PC13.
- 9.18 Mr Hill includes a report attached to his statement that includes Table 4 comparing the main characteristics of the mapped LUC units with a column based on high class soil classification based on Otago RPS significant soil criteria.
- 9.19 The table is inaccurate as it is only based on an assessment of clause a) of Policy 3.2.17. If both clauses a) and b) are included in the assessment the determination would be that the soils in the PC13 site are 'significant soils' as determined by the criteria in Policy 3.2.17.

10. DISCHARGES TO AIR INCLUDING AGRICHEMICAL USE

- 10.1 Section 12 of my EIC outlined in considerable detail issues relating to discharges to air, including agrichemical use and also outdoor burning.
- 10.2 There appear to be a number of misunderstandings about agrichemical use and the potential for spray drift and the use of NZS8409:2004 Management of Agrichemicals.
- 10.3 It is technically not feasible to ever state that there will be no spray drift. All the best practices can be applied, but changes in weather beyond the control of the applicant, can lead to unintended drift.
- 10.4 Of particular concern is the notion that the Regional Air Plan does not provide for any spray drift.
- 10.5 The key issue is whether the drift is noxious or dangerous.
- 10.6 I wish to draw the panel's attention to 16.2.9 in the Regional Air Plan which sets out a description of noxious and dangerous. (Refer Appendix 2 of my EIC for an extract).
- 10.7 The problem that exists with the description is that it states that the descriptors are not objective measures and that it depends on the circumstances of each case, which will usually be assessed after a complaint is made.
- 10.8 So the rule fails a basic premise of a permitted activity rule in that it is not certain. A grower could not undertake an activity with certainty that the condition will be met.
- 10.9 Regardless of this failing the rule does not state that no drift should occur.

- 10.10 NZS8409:2004 Management of Agrichemicals is a New Zealand Standard that sets out best practice for agrichemical use, is widely referred to in respect of agrichemical use and is appropriate to use as the basis for provisions in the Plan.
- 10.11 NZ Agrichemical Education Trust (NZAET) was formed in 1990, in response to the impending implementation of the RMA. The trust is responsible for NZS8409 which was developed to meet the requirements of the RMA prior to HSNO being enacted. The first version was in 1991 as an Agrichemical Users Code of Practice developed by a joint primary industry working party and revised as NZS8409:1995 by a wide ranging group through a NZ Standards process. It was again revised in 1999 and in 2004 was amended to also meet the requirements of HSNO while still retaining provisions pertaining to the RMA. It was accepted as an Approved Code of Practice by the EPA in September 2004.
- 10.12 The Standard includes the RMA as relevant legislation, along with HSNO and Health and Safety legislation. It is not solely a document to address hazardous substances legislation and states that they standard may satisfy the requirements of the Resource Management Act.
- 10.13 The Standard is not regulation but it is given regulatory weight through use in other relevant regulations and programmes, including EPA, Regional Councils and industry programmes.
- 10.14 While not included in the Operative Air Plan for Otago in this way many regional air plans require compliance with specific parts of the standard that are relevant to the councils functions.
- 10.15 The Standard's purpose is the safe responsible and effective management of agrichemicals and includes provisions relating to spraydrift.
- 10.16 Fundamental to assessing agrichemical applications is the use of NZS8409 Management of Agrichemicals, in particular Table GI that you have been referred to.
- 10.17 It is important to note that the buffer guidelines are just that – guidelines. Various other factors can affect the efficacy of a buffer. NZS8409 does not state that the buffer needs to be provided on the property undertaking the application – just that a buffer distance between the application site and a spray sensitive activity could assist.
- 10.18 Currently agrichemical applications can occur without spray sensitive activities in close proximity. This will change if PC13 is approved. The imposition on a grower to implement buffer distances

as a result of the residential development is a considerable imposition on the grower and an adverse effect of the plan change.

- 10.19 The other consequence will be notification to nearby properties. At present the number of parties to be notified is limited. This will change if PC13 is approved. The imposition on a grower to have to notify multiple – that is hundreds – of parties as a result of the residential development is a considerable imposition on the grower and an adverse effect of the plan change.
- 10.20 I note that the proponent is now suggesting that the no-complaint covenant require owners of properties that adjoin the commercial orchard on the western boundary of the RTRA to provide an email address for the purpose of notification of spraying activities.
- 10.21 There is no legal requirement for growers to notify neighbours of spraying but they currently do so as best practice and to retain their social license to operate. It is anticipated that in future a revised Regional Air Plan would include notification requirements.
- 10.22 Mr Muller has described some of the issues associated with notification and while email addresses may be provided it does not necessarily mean that the message will be received by the current owner or resident.
- 10.23 At present growers only have a few neighbours to contact and can keep in touch to update contacts. This will be different with RTRA and in my opinion will place an additional and unreasonable constraint on growers undertaking their lawfully established business.
- 10.24 I note in the proponents Design Report for the RTRA the neighbourhood centre is located on the Upper Terrace adjacent to the existing orchards (Refer Pg 209 and 231). While the owners or operators in the neighbourhood centre could possibly be notified it would be unlikely that such notification would extend to those visiting the neighbourhood centre. There is a difference between a private property in the vicinity and open public areas.
- 10.25 There is some interesting case law which considers the issue of spray drift.
- 10.26 One case is *Avatar Glen Ltd v New Plymouth District Council*². Ms Irving referred to it her statement in reference to no-complaints covenants.
- 10.27 The case is interesting as Avatar sought to establish a dementia care unit in a rural area with a tamarillo orchard on the boundary.

² *Avatar Glen Ltd v New Plymouth District Council* (2016) NZEnvC 126

The resource consent application was declined by the council but the case went to the Environment Court on appeal. The issue of agrichemical use was a key consideration.

- 10.28 After a somewhat long and convoluted process consent was granted on the following basis:
- [9] The manager of the home will know when spraying occurs and will be well able to keep residents indoors for any period required, or considered wise. Similarly they will be able to advise staff and visitors of the need to take precautions about being outside the building during, or soon after, the spraying operations.*
- 10.29 In other words because of the nature of the facility and notification from the neighbouring orchardist the situation could be managed to confine residents indoors so the potential for adverse effects was considered to be adequately mitigated. It was only on that basis that resource consent was granted.
- 10.30 Such an approach would be impossible with PC13 with 900 residences in the RTRA. Firstly the notification requirement would be onerous and there is no overall authority to control the movement of residents at the time.
- 10.31 Initially the proponent was offering a no-complaint covenant over the Jones orchard for noise, but has now extending it to cover two other orchards in the vicinity and include agrichemical spraying.
- 10.32 I have raised concerns about the no-complaint covenants in my Supplementary Evidence. I also note the Supplementary Evidence of Ms Justice which outlines difficulties with no-complaint covenants around Queenstown Airport.
- 10.33 The issues encountered by Mr Muller reinforce my opinion that no-complaint covenants are an inappropriate form of mitigation to address agrichemical use.
- 10.34 I am aware of instances where spray sensitive people have complained about being adversely affected by agrichemical sprays and it has turned out that it was only water being applied. Such is the level of sensitivity and paranoia by some people that they will complain because of perception rather than reality. Responding to such complaints is time consuming and stressful to orchardists. RTRA will place an additional burden on the growers which is unreasonable and far in excess of the current operating environment.
- 10.35 I specifically requested that Method 17.1.2 from the Regional Air Plan for Otago be included in the JWS. This method sets out the

role of district councils to manage land use to assist in the management of discharges to air by achieving physical separation of incompatible land uses through buffer zones and setbacks and recognising existing use rights and reverse sensitivity.

- 10.36 This is a method that is relevant to PC13 given the clear incompatibilities that exist between the existing uses and the proposed residential development.
- 10.37 I also raised the issue of smoke from outdoor burning in my EIC but this issue has not been addressed in any evidence by the proponent, although it is now suggested that smoke be added to the no-compliant covenant from the specified orchards. It remains a concern that residential dwellers may object to smoke from outdoor burning on other nearby orchards.

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 Section 11 of my EIC sets out my planning response to the issues.
- 11.3 Mr Reeves presents evidence for HortNZ on acoustic considerations and has participated in caucusing with other acoustic experts.
- 11.4 There appear to be a number of outstanding issues relating to noise mitigations:
- The level of protection from frost fan noise to be achieved by acoustic insulation;
 - The extent to which the acoustic fence will assist in mitigating noise from orchard activities.
- 11.5 An issue was raised by Ms Irving relating to the location of new residential dwellings in terms of who needs to mitigate the effects of the noise.
- 11.6 If the birdscarers and frost fans need to relocate in order to achieve the required standards because of the location of 900 new sensitive notional boundaries within 5m of the zone boundary then this will be a considerable imposition on the growers and have adverse effects on their operations.

11.7 The proponent is proposing a number of methods to mitigate the effects of noise, which I address below.

11.8 My conclusion is that the proposed methods do not adequately address the issues to mitigate the reverse sensitivity effects.

12. MITIGATIONS

12.1 A number of mitigations are now being offered by the proponent to address potential reverse sensitivity effects on orchardists.

12.2 These include:

- A 3m acoustic fence
- Boundary planting
- A boundary setback
- A height limitation
- Internal acoustic insulation
- No-complaints covenants

12.3 These mitigations are within the PC13 site, not within the orchards.

12.4 I wish to address issues relating to the various methods proposed.

12.5 Acoustic fence. This fence, while maybe useful for reducing some noise generated in the orchard will be limited as not all noise generating activities occur below 3m. This solid fence will also stop airflow through the orchard and could have the consequence of increasing the number of nights that frost fans would need to be used. This would be an additional cost and stress to the grower. Mr Reeves also identifies that the fence may assist, but not avoid, noise particularly where the source or receiver is close to the fence. However noise generated further from the fence is unlikely to be adequately mitigated by the acoustic fence so is unlikely to be an effective mitigation. This is particularly relevant to noise from bird scarers.

12.6 Buildings height and setbacks: The JWS acoustics 4.3 was based on a building height of 5m within 25m of the boundary of the orchard. The latest version of PC13 (purple) 20.7.1 ii) a) has the height of 9m except that maximum height is 5m if located within 25m of the Sarita boundary. While the intent is acknowledged the boundary setback of 5m is considerably less than the 25m that currently exists within the rural zone.

- 12.7 Internal acoustic insulation: While such insulation may assist in addressing issues with frost fan noise at night it does not mitigate noise when outdoors in the RTRA.
- 12.8 No complaint covenants: I canvassed the efficacy of such covenants in my EIC and others have also addressed this issue. I retain the opinion that they are an inadequate form of mitigation and will have limited benefit, if any, for orchardist. The Environment Court findings on the limitations of no-complaints covenants, such as in the Ngatarawa case attached to my EIC, is also relevant.
- 12.9 The Orchard covenant proffered by the proponent only binds the owner of the property. While the 'warning' includes prospective purchasers and residents and the covenantee includes 'lessees occupier or invitees' there is no surety that an investor landlord would advise potential tenants of the existence of the covenant. Nor would the covenant bind organisations to which covenantees may belong. Mr Muller has advised of a group recently formed in Kerikeri to oppose agrichemical spraying. Such groups could form within RTRA and not be bound by the restrictions in the covenant.
- 12.10 These issues demonstrate that the dependence on a no-complaints covenant to mitigate adverse effects is inappropriate and provides no surety for the orchard owners or others affected by the RTRA development.

13. CONCLUSION

- 13.1 Much of the proponent's case centres on the specific wording of PC13.
- 13.2 In my opinion the focus should be at a higher level and whether the RTRA is appropriate.
- 13.3 There are a range of reasons that make the location an inappropriate place for the density of development anticipated:
- Incompatibilities with adjacent activities
 - The reverse sensitivity effects on horticulture, motorsport park and speedway
 - The dislocation from the town centre
 - The breach of the rural zone boundary and loss of cohesion of the rural zone
 - Does not give effect to the pRPS
 - Inconsistency with the Operative District Plan

- Inconsistency with the Cromwell Masterplan
 - Inconsistency with the Regional Air Plan
 - The imposition that the development would place on existing lawfully established activities
 - The inadequacy of proposed mitigations
- 13.4 In my opinion the focus of the application should be on avoiding adverse effects where there are alternative locations for the activity.
- 13.5 If the adverse effects cannot be avoided the location is inappropriate.
- 13.6 Remedying or mitigating should only be considered if there are no alternative locations.
- 13.7 In the case of PC13 I am not convinced that this is the only suitable location for development of additional housing in Cromwell. It may be considered the only appropriate location if limited to the proponents criteria. But I consider much wider criteria relating to meeting the objectives and policies of the ODP should be the basis of determining if it is an appropriate location.
- 13.8 The wider consequences and ongoing costs arising from the development will extend well beyond the involvement of the developer and will be borne by the community for future generations. In my opinion that is not an appropriate outcome to place on the Cromwell community.
- 13.9 The proposal breaches a cohesive district plan zoning framework which protects the ability to undertake rural production activities. Such activities are an important part of providing for the social and economic wellbeing of the community so it is important that the integrity of the zone is retained.
- 13.10 For these reasons, I retain my opinion from my EIC and recommend that the plan change be declined.

Lynette Wharfe

2 July 2019

Presented at hearing 2 July 2019 by
L Wharfe.

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**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

**HEARING STATEMENT OF EVIDENCE BY LYNETTE PEARL WHARFE
FOR HORTICULTURE NEW ZEALAND
2 JULY 2019**

1. SUMMARY

- 1.1 I am Lynette Wharfe, consultant planner to HortNZ.
- 1.2 I have prepared a statement of evidence for this hearing (EIC), which sets out my qualifications and experience.
- 1.3 I have also prepared a Supplementary Statement of Evidence dated 28 June 2019 in response to matters raised in the Supplementary Statement of Mr J Brown for the Proponent.
- 1.4 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 of my EIC. 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.
- 1.5 I participated in the planning caucusing conference call but because of limited availability have not signed the Joint Witness Statement as yet.

2. MY EVIDENCE IN CHIEF AND THIS SUMMARY STATEMENT

- 2.1 My Evidence in Chief 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 and includes:
 - a) Planning framework for assessing PC13
 - b) Operative Central Otago District Plan
 - c) Regional Policy Statement
 - d) NPS-UDC
 - e) Soils
 - f) Noise
 - g) Discharges to Air
 - h) Airport
 - i) Reverse sensitivity
- 2.2 Since writing this statement there has been further evidence presented, Joint Witness Statements and suggested amendments

to the PC13 provisions. Therefore some of the matters addressed may now be in a different place than when I wrote my EIC.

- 2.3 I take my EIC as read and am happy to take questions on any of the matters addressed.
- 2.4 This summary statement provides a set of 'talking points' that have arisen out of the hearings thus far, suggested amendments and issues that appear to require further explanation. It does not claim to be an exhaustive statement addressing the issues but rather identifying matters that I specifically want to draw the Commissioners attention to.
- 2.5 I do not address the statutory tests as they are adequately covered by counsel for other submitters apart from reference to the Cromwell MasterPlan and the Regional Air Plan.
- 2.6 Key topics I wish to address in this statement are:
- a) Philosophy underpinning the Operative District Plan
 - b) Alternatives
 - c) Joint Witness Statement - Planning
 - d) NPS
 - e) RPS
 - f) Cromwell Master Plan
 - g) Discharges to Air including Agrichemical use and NZS8409:2004 Management of Agrichemicals
 - h) Soils
 - i) Noise
 - j) Mitigations
 - k) Conclusion
- 2.7 I am also reliant on the statements provided for HortNZ by Ms McClung, Mr Carl Muller, Mr Earnscy Weaver of Weavers Horticulture, and Mr William Reeves, Acoustic Engineer.
- 2.8 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. PHILOSOPHY UNDERPINNING THE OPERATIVE DISTRICT PLAN

3.1 To me the starting point for assessing PC13 is what the Operative District Plan (ODP) provides for, and why. That is - the rationale that sits behind the plan which provides the benchmark for assessing PC13 (Refer s32 (3)).

3.2 Section 2 of the ODP sets out the resources and significant resource management issues for the district. These include:

- a) Kai Tahu and historic links
- b) Land – including landscape, landforms , soils and landuse
- c) Water
- d) Flora and fauna
- e) Built Environment
- f) Heritage
- g) Demographics

3.3 The plan sets out the significant issues for the various resources which then inform the objectives and policies in the Plan.

3.4 For instance the significant issue for special land resources states:

There are some areas of land in the District that because of particular soil characteristics and quality that in combination with the local climate and irrigation are considered to be a special resource. The potential of this resource to meet the reasonably foreseeable needs of future generations should be sustained. This potential is capable of being compromised by activities which have the effect of reducing the life supporting capacity of these soils.

3.5 This issue is then implemented through the plan in Issue 4.2.6 and Objective 4.3.7 and associated policies and methods.

3.6 Recognition of these key issues and the approach to address them is fundamental to the integrity and cohesion of the ODP, including the zonings which deliberately set out the rationale for identification of the specific zones (eg Methods 6.5.1 and 4.5.1). These zones are a key method to achieve the sustainable management of the natural and physical resources of the district.

3.7 All the 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.

- 3.8 Retaining such buffers between rural production activities and residential activity is identified in the Plan as important to ensure that incompatibilities do not arise.
- 3.9 While there have been a number of plan changes since the plan was developed they have essentially retained the core underpinnings of the Plan. For instance the Wooing Tree Plan Change 12 was an amendment to the residential activity type, rather than a rezoning of land to residential. The discussion on the use and the productive value of the land and reverse sensitivity effects occurred at a much earlier time and the Plan Change did not significantly alter the core under- pinnings of the plan.
- 3.10 The review of the district plan will assess whether the philosophy is still appropriate and at that time it will become apparent whether the extent of deviation, as sought in PC13, is consistent with community expectations. Indications through submissions on PC13 indicate that the community consider the current rationale to still be relevant and appropriate.
- 3.11 The Cromwell MasterPlan process is part of the district plan review and the objectives the community seeks do not appear to be inconsistent with the current approach in the ODP.
- 3.12 However PC13 seeks to develop high density residential development within what is currently a rural zoned area. It would effectively be an 'island' of high density residential use surrounded by rural zoned land that is used for activities that are appropriately located in the rural environment, such as orchards, packhouses, motorsport and speedway.
- 3.13 The effect of PC13 goes beyond the immediate effect of the rezoning of the PC13 because the change would breach the clearly defined rural boundary and threaten the cohesion of the rural zone and the provisions in the Plan which provide for rural production activities to be undertaken.
- 3.14 This presents a significant deviation from the overall approach in the ODP and in my opinion, without going through all the objectives and

policies in detail, is inconsistent with the objectives and policies of the ODP (refer to Section 7 of my EIC).

4. CONSIDERATION OF ALTERNATIVES

4.1 Legal submissions for the proponent touched briefly on the issue of alternative sites and did not consider that consideration of alternative sites is a relevant matter.

4.2 However the legal statement does state:

In any event, evidence has been presented about RTDL's consideration of potential alternatives before settling on River Terrace.

4.3 The reference to the specific evidence inferred is not included but I presume it is to the statement of Mr Bretherton dated 23 April 2019.

4.4 In his statement Mr Bretherton sets out in Para 22 the key criteria for selecting a site for the development.

4.5 The criteria can be summarised as:

- a) Land area needed to be of a large enough size for integrated development
- b) Scale of the site is important to suit Winton's experience and expertise in large scale master planned developments
- c) Ensure efficiencies in development, to provide potential benefits to surrounding areas and economies of scale by being between 1000 – 2000 residential sections
- d) Site needed to be between 50-150ha
- e) Site needed to be largely flat for higher density housing to be practical and minimise development costs
- f) Needed to be serviced or serviceable by key infrastructure
- g) Proximity to the State Highway
- h) Land in single ownership with sensible and realistic vendor
- i) Price of land needed to be at the right level to achieve product in affordability range
- j) Price needed to reflect the required re-zoning process.

4.6 All these criteria which underpinned consideration of alternatives by the proponent are focused on the needs of the developer – driven it

seems by what would achieve the most optimal outcome in terms of return on investment.

- 4.7 None of these criteria focus on what is the community's interest, preference or criteria.
- 4.8 So while alternatives may have been considered they did not do so with a clear intent of providing for the wider social, economic and cultural wellbeing of people and communities, other than provision of affordable housing for a specific group of people and the interests of the developer.
- 4.9 The principles and objectives of the Cromwell Masterplan Spatial Framework provide criteria which are important to the community, developed through community consultation. These would be more appropriate criteria for assessing potential alternative sites.
- 4.10 In addition there has been no s32 cost benefit analysis on the effects of the development on horticultural or the benefits of retaining the land as rural productive land.
- 4.11 To this extent I consider the consideration of alternatives undertaken by the proponent to be limited and will not achieve the purpose of the Act.

5. JOINT WITNESS STATEMENT – PLANNING

- 5.1 Due to prior commitments in the Environment Court for the Southland Regional Land and Water Plan my ability to contribute to the planning caucusing has been limited which was unfortunate but the time available was a consequence of the extension of the timeframes for the proponent to file evidence. I participated in the Conference Call but was driving to the airport at the time so the contribution was limited.
- 5.2 I do wish to comment on some areas of disagreement within the statement that has been tabled with the Commissioners.
- 5.3 The first relates to the inclusion of provisions from Section 7 of the ODP – Residential Resource Area, particularly Objective 7.1.2. Protection of the living environment:
- To manage the use of land to promote a pleasant living environment by ensuring that adverse effects of activities are avoided, remedied or mitigated, while accommodating appropriate change at the interface with other resource areas.*
- 5.4 Mr Brown states in the JWS that this provision is not relevant because the RTRA is intended to be different to the Residential

Resource Area and contains its own specific objectives, policies and methods to manage the expected living environment. He expands on this further in his Summary Statement of Evidence (para 34).

- 5.5 I agree that Section 7 sits under Section 6 – Urban Areas - as residential use is a subset of the urban environment.
- 5.6 The structure of the ODP clearly intended for all residential resource areas to sit within the framework of Section 7 and so provides for the range of Residential Resource Areas 1-13 that exist in the Plan.
- 5.7 The policy framework specifically includes provisions that address management of change – recognising that it will occur but providing the framework in which it is to occur. Objective 7.1.3 Management of Change and Policy 7.2.8 Management of Change are relevant in this regard:

Objective 7.1.3

To recognise that it is inevitable that the use of land shall change over the period of this plan and beyond in order to enable the community to provide for its wellbeing. The process of change can occur randomly within the various resource areas but will be most obvious at the interface between different resource areas. It is a purpose of this plan to manage that change.

Policy 7.2.8

In recognition of the difficulty anticipating the timing and extent of change to the pattern of land use that is necessary to enable the community to provide for its wellbeing and to reconcile with the foregoing policies, it is appropriate that any major change at the interface between the various resource areas be considered within the wider context of the plan as a whole.

- 5.8 The interface between residential areas and the rural area is a key consideration in this hearing.
- 5.9 By seeking that the RTRA sits outside the OPD framework in Chapter 7 undermines the intent of the framework in the Plan. In particular it seeks to disregard an objective and policy that identifies the need to consider the wider context of the plan when there is major change at the interface between different resource areas.
- 5.10 Such an approach is inconsistent with, and undermines the integrity of the ODP.
- 5.11 The relevance of Section 4 Rural Resource Area was also considered in the JWS with Mr Brown giving it limited relevance to

the extent to which it assists in informing whether the zone or the RTRA better achieves the higher order RPS objectives and policies.

- 5.12 I disagree. The Rural Resource Area clearly sets out the expectations anticipated in the rural environment and provides the benchmark for the management of the interface between the zones.
- 5.13 Therefore consideration of Section 4 is relevant to this hearing as I have set out in my EIC.
- 5.14 PC13 will significantly change the rural environment at the interface with the RTRA and I consider this to be inconsistent with the objectives and policies in the ODP.

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

- 6.1 There is disagreement in the evidence and the JWS Planning as to the extent to which the NPS-UDC is relevant to PC13.
- 6.2 Having heard the position of others I retain my original position that the NPS-UDC is not relevant.
- 6.3 I do not consider Outer Cromwell to be part of the Cromwell 'concentrated urban environment' and therefore those areas should not be included in the calculations of population projections which are the catalyst for the relevance of the NPS-UDC.
- 6.4 I note the comment in the statement of Ms M Brown (Para 45-46) that there are distinct differences between the outer settlements and the RTRA because of difference in size and density. Regarding PC13 as akin to the outer settlements is not appropriate as those settlements all have specific characteristics different to a high-medium density development sought by PC13.

7. REGIONAL POLICY STATEMENT (RPS)

- 7.1 I will not traverse the RPS provisions in this summary as my assessment of the relevant objectives and policies in the RPS is in Attachment 1 of my EIC. My assessment 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.
- 7.2 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.

- 7.3 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. CROMWELL MASTERPLAN

- 8.1 Much debate centres on the relevance of the Cromwell Masterplan.
- 8.2 The proponent contends that it is not relevant and should not be considered as part of PC13 deliberations.
- 8.3 RMA Section 74 sets out matters to be considered by a Territorial Authority when preparing or changing a district plan. Section 74 (2) b) i) specifically provides for regard to be given to any management plan or strategy prepared under other Acts.
- 8.4 As I understand it, the Cromwell Masterplan is being prepared under the Local Government Act and will contribute to the review of the district plan and which will also give effect to policies in the RPS relating to urban development.
- 8.5 The Stage 1 Spatial Plan has been accepted by the Cromwell Community Board, an arm of the CODC.
- 8.6 Increasingly Councils are undertaking development of strategy documents which contribute to the district plan development. HortNZ has been involved in such processes in Whangarei, Waimakariri, Timaru and the Greater Growth Christchurch Plan to name a few. They inform the s32 and provide the context for plan changes.
- 8.7 The Masterplan is useful as it articulates community aspirations for Cromwell which is important in the context of PC13.
- 8.8 The Masterplan seeks for growth to be focussed within the existing town area with a consolidated urban form and recognising the importance of the rural community to the district and town.
- 8.9 Objective 7 of the plan seeks to provide for the effective and efficient functioning of rural areas within the Cromwell Basin, ensuring that development if compatible with rural character and avoids reverse sensitivity effects, provides appropriate separation or buffering for environmental protection and clearly demarcates rural and urban boundaries.
- 8.10 These outcomes are similar to the principles that underpin the ODP and reinforce the community's recognition of the rural contribution to the district.

- 8.11 Therefore in my opinion the Cromwell Master Plan is relevant to PC13 to test the extent to which the Plan Change will achieve the objectives set out in the Masterplan.

9. SOILS

- 9.1 Section 10 of my EIC addressed the issue of soils, in particular policies relating to soils in the RPS and the extent to which these are given effect to in PC13.
- 9.2 My EIC responded to evidence for the proponent that was based on the concept of high class soils, which I did not accept as the appropriate framework for consideration of the assessment of effects on soils in PC13.
- 9.3 The evidence presented by Mr Hill for the proponent in the first week of hearing has continued to take the same approach and refutes my evidence on this topic.
- 9.4 Since EIC was filed Mr Weaver has undertaken a soil assessment on the PC13 site and neighbouring orchard land and has presented his findings to you today.
- 9.5 The conclusion he reaches is that the whole of the PC13 site is suitable for horticultural use and should be retained for that purpose.
- 9.6 The fundamental area of variance in opinion relates to the relevant soil classification in respect of PC13.
- 9.7 Mr Hill maintains use of a 'high class soil' definition that is limited to Class I, II and III and has undertaken soil tests to demonstrate that the site only has limited areas of such soils so is not important for production purposes and would not generate any adverse effects on the environment.
- 9.8 However, the definition for high-class soils in the Operative District Plan and the Operative Regional Policy Statement is not limited to particular soil 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.'*
- 9.9 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.

- 9.10 Mr Hill¹ disagrees with my interpretation because the use by one or two specialist crops does not constitute a 'wide variety of plants' and the use is largely due to climate rather than soil quality.
- 9.11 The statement of Mr Weaver demonstrates that the attributes of the soil are clearly suited for horticulture production, with much production occurring on such land.
- 9.12 While the focus of my evidence was on two horticultural crops that could be grown on the land, it should not be taken as only limited to those crops. Rather they are the crops most suited to the land and for which there are ready, and valuable, markets.
- 9.13 Mr Weaver considers that crops such as apricots, nectarines, peaches, cherries, plums, pears and apples as well as walnuts, hazelnuts, olives, boysenberries and raspberries, and grapes could all be grown on the land subject to PC13.
- 9.14 I consider that this comprises 'a wide variety of plants, including horticultural crops'.
- 9.15 Mr Hill does not address the issue of significant soils as identified in the RPS Policy 3.2.17 other than to only refer to one criteria – being Class 1,2 or 3e soils. He does not address the fact that significant soils also include the degree of significance to 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*

- 9.16 The significance of horticulture in Central Otago has been outlined by Ms McClung. Much of this significance is dependent on the use of natural resources in Central Otago for that production, of which soils are a part. Based on this significance I consider that the productive soils in Central Otago are significant for primary production, regardless of whether they are Class I, II or IIIe.

¹ Reece Hill Summary statement Para 21

- 9.17 Therefore the provisions of the pRPS Policy 3.2.17 and 3.2.18 and associated methods are appropriate considerations when assessing PC13.
- 9.18 Mr Hill includes a report attached to his statement that includes Table 4 comparing the main characteristics of the mapped LUC units with a column based on high class soil classification based on Otago RPS significant soil criteria.
- 9.19 The table is inaccurate as it is only based on an assessment of clause a) of Policy 3.2.17. If both clauses a) and b) are included in the assessment the determination would be that the soils in the PC13 site are 'significant soils' as determined by the criteria in Policy 3.2.17.

10. DISCHARGES TO AIR INCLUDING AGRICHEMICAL USE

- 10.1 Section 12 of my EIC outlined in considerable detail issues relating to discharges to air, including agrichemical use and also outdoor burning.
- 10.2 There appear to be a number of misunderstandings about agrichemical use and the potential for spray drift and the use of NZS8409:2004 Management of Agrichemicals.
- 10.3 It is technically not feasible to ever state that there will be no spray drift. All the best practices can be applied, but changes in weather beyond the control of the applicant, can lead to unintended drift.
- 10.4 Of particular concern is the notion that the Regional Air Plan does not provide for any spray drift.
- 10.5 The key issue is whether the drift is noxious or dangerous.
- 10.6 I wish to draw the panel's attention to 16.2.9 in the Regional Air Plan which sets out a description of noxious and dangerous. (Refer Appendix 2 of my EIC for an extract).
- 10.7 The problem that exists with the description is that it states that the descriptors are not objective measures and that it depends on the circumstances of each case, which will usually be assessed after a complaint is made.
- 10.8 So the rule fails a basic premise of a permitted activity rule in that it is not certain. A grower could not undertake an activity with certainty that the condition will be met.
- 10.9 Regardless of this failing the rule does not state that no drift should occur.

- 10.10 NZS8409:2004 Management of Agrichemicals is a New Zealand Standard that sets out best practice for agrichemical use, is widely referred to in respect of agrichemical use and is appropriate to use as the basis for provisions in the Plan.
- 10.11 NZ Agrichemical Education Trust (NZAET) was formed in 1990, in response to the impending implementation of the RMA. The trust is responsible for NZS8409 which was developed to meet the requirements of the RMA prior to HSNO being enacted. The first version was in 1991 as an Agrichemical Users Code of Practice developed by a joint primary industry working party and revised as NZS8409:1995 by a wide ranging group through a NZ Standards process. It was again revised in 1999 and in 2004 was amended to also meet the requirements of HSNO while still retaining provisions pertaining to the RMA. It was accepted as an Approved Code of Practice by the EPA in September 2004.
- 10.12 The Standard includes the RMA as relevant legislation, along with HSNO and Health and Safety legislation. It is not solely a document to address hazardous substances legislation and states that they standard may satisfy the requirements of the Resource Management Act.
- 10.13 The Standard is not regulation but it is given regulatory weight through use in other relevant regulations and programmes, including EPA, Regional Councils and industry programmes.
- 10.14 While not included in the Operative Air Plan for Otago in this way many regional air plans require compliance with specific parts of the standard that are relevant to the councils functions.
- 10.15 The Standard's purpose is the safe responsible and effective management of agrichemicals and includes provisions relating to spraydrift.
- 10.16 Fundamental to assessing agrichemical applications is the use of NZS8409 Management of Agrichemicals, in particular Table GI that you have been referred to.
- 10.17 It is important to note that the buffer guidelines are just that – guidelines. Various other factors can affect the efficacy of a buffer. NZS8409 does not state that the buffer needs to be provided on the property undertaking the application – just that a buffer distance between the application site and a spray sensitive activity could assist.
- 10.18 Currently agrichemical applications can occur without spray sensitive activities in close proximity. This will change if PC13 is approved. The imposition on a grower to implement buffer distances

as a result of the residential development is a considerable imposition on the grower and an adverse effect of the plan change.

- 10.19 The other consequence will be notification to nearby properties. At present the number of parties to be notified is limited. This will change if PC13 is approved. The imposition on a grower to have to notify multiple – that is hundreds – of parties as a result of the residential development is a considerable imposition on the grower and an adverse effect of the plan change.
- 10.20 I note that the proponent is now suggesting that the no-complaint covenant require owners of properties that adjoin the commercial orchard on the western boundary of the RTRA to provide an email address for the purpose of notification of spraying activities.
- 10.21 There is no legal requirement for growers to notify neighbours of spraying but they currently do so as best practice and to retain their social license to operate. It is anticipated that in future a revised Regional Air Plan would include notification requirements.
- 10.22 Mr Muller has described some of the issues associated with notification and while email addresses may be provided it does not necessarily mean that the message will be received by the current owner or resident.
- 10.23 At present growers only have a few neighbours to contact and can keep in touch to update contacts. This will be different with RTRA and in my opinion will place an additional and unreasonable constraint on growers undertaking their lawfully established business.
- 10.24 I note in the proponents Design Report for the RTRA the neighbourhood centre is located on the Upper Terrace adjacent to the existing orchards (Refer Pg 209 and 231). While the owners or operators in the neighbourhood centre could possibly be notified it would be unlikely that such notification would extend to those visiting the neighbourhood centre. There is a difference between a private property in the vicinity and open public areas.
- 10.25 There is some interesting case law which considers the issue of spray drift.
- 10.26 One case is *Avatar Glen Ltd v New Plymouth District Council*². Ms Irving referred to it her statement in reference to no-complaints covenants.
- 10.27 The case is interesting as Avatar sought to establish a dementia care unit in a rural area with a tamarillo orchard on the boundary.

² Avatar Glen Ltd v New Plymouth District Council (2016) NZEnvC 126

The resource consent application was declined by the council but the case went to the Environment Court on appeal. The issue of agrichemical use was a key consideration.

- 10.28 After a somewhat long and convoluted process consent was granted on the following basis:
- [9] The manager of the home will know when spraying occurs and will be well able to keep residents indoors for any period required, or considered wise. Similarly they will be able to advise staff and visitors of the need to take precautions about being outside the building during, or soon after, the spraying operations.*
- 10.29 In other words because of the nature of the facility and notification from the neighbouring orchardist the situation could be managed to confine residents indoors so the potential for adverse effects was considered to be adequately mitigated. It was only on that basis that resource consent was granted.
- 10.30 Such an approach would be impossible with PC13 with 900 residences in the RTRA. Firstly the notification requirement would be onerous and there is no overall authority to control the movement of residents at the time.
- 10.31 Initially the proponent was offering a no-complaint covenant over the Jones orchard for noise, but has now extending it to cover two other orchards in the vicinity and include agrichemical spraying.
- 10.32 I have raised concerns about the no-complaint covenants in my Supplementary Evidence. I also note the Supplementary Evidence of Ms Justice which outlines difficulties with no-complaint covenants around Queenstown Airport.
- 10.33 The issues encountered by Mr Muller reinforce my opinion that no-complaint covenants are an inappropriate form of mitigation to address agrichemical use.
- 10.34 I am aware of instances where spray sensitive people have complained about being adversely affected by agrichemical sprays and it has turned out that it was only water being applied. Such is the level of sensitivity and paranoia by some people that they will complain because of perception rather than reality. Responding to such complaints is time consuming and stressful to orchardists. RTRA will place an additional burden on the growers which is unreasonable and far in excess of the current operating environment.
- 10.35 I specifically requested that Method 17.1.2 from the Regional Air Plan for Otago be included in the JWS. This method sets out the

role of district councils to manage land use to assist in the management of discharges to air by achieving physical separation of incompatible land uses through buffer zones and setbacks and recognising existing use rights and reverse sensitivity.

- 10.36 This is a method that is relevant to PC13 given the clear incompatibilities that exist between the existing uses and the proposed residential development.
- 10.37 I also raised the issue of smoke from outdoor burning in my EIC but this issue has not been addressed in any evidence by the proponent, although it is now suggested that smoke be added to the no-compliant covenant from the specified orchards. It remains a concern that residential dwellers may object to smoke from outdoor burning on other nearby orchards.

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 Section 11 of my EIC sets out my planning response to the issues.
- 11.3 Mr Reeves presents evidence for HortNZ on acoustic considerations and has participated in caucusing with other acoustic experts.
- 11.4 There appear to be a number of outstanding issues relating to noise mitigations:
- The level of protection from frost fan noise to be achieved by acoustic insulation;
 - The extent to which the acoustic fence will assist in mitigating noise from orchard activities.
- 11.5 An issue was raised by Ms Irving relating to the location of new residential dwellings in terms of who needs to mitigate the effects of the noise.
- 11.6 If the birdscarers and frost fans need to relocate in order to achieve the required standards because of the location of 900 new sensitive notional boundaries within 5m of the zone boundary then this will be a considerable imposition on the growers and have adverse effects on their operations.

11.7 The proponent is proposing a number of methods to mitigate the effects of noise, which I address below.

11.8 My conclusion is that the proposed methods do not adequately address the issues to mitigate the reverse sensitivity effects.

12. MITIGATIONS

12.1 A number of mitigations are now being offered by the proponent to address potential reverse sensitivity effects on orchardists.

12.2 These include:

- A 3m acoustic fence
- Boundary planting
- A boundary setback
- A height limitation
- Internal acoustic insulation
- No-complaints covenants

12.3 These mitigations are within the PC13 site, not within the orchards.

12.4 I wish to address issues relating to the various methods proposed.

12.5 Acoustic fence. This fence, while maybe useful for reducing some noise generated in the orchard will be limited as not all noise generating activities occur below 3m. This solid fence will also stop airflow through the orchard and could have the consequence of increasing the number of nights that frost fans would need to be used. This would be an additional cost and stress to the grower. Mr Reeves also identifies that the fence may assist, but not avoid, noise particularly where the source or receiver is close to the fence. However noise generated further from the fence is unlikely to be adequately mitigated by the acoustic fence so is unlikely to be an effective mitigation. This is particularly relevant to noise from bird scarers.

12.6 Buildings height and setbacks: The JWS acoustics 4.3 was based on a building height of 5m within 25m of the boundary of the orchard. The latest version of PC13 (purple) 20.7.1 ii) a) has the height of 9m except that maximum height is 5m if located within 25m of the Sarita boundary. While the intent is acknowledged the boundary setback of 5m is considerably less than the 25m that currently exists within the rural zone.

- 12.7 Internal acoustic insulation: While such insulation may assist in addressing issues with frost fan noise at night it does not mitigate noise when outdoors in the RTRA.
- 12.8 No complaint covenants: I canvassed the efficacy of such covenants in my EIC and others have also addressed this issue. I retain the opinion that they are an inadequate form of mitigation and will have limited benefit, if any, for orchardist. The Environment Court findings on the limitations of no-complaints covenants, such as in the Ngatarawa case attached to my EIC, is also relevant.
- 12.9 The Orchard covenant proffered by the proponent only binds the owner of the property. While the 'warning' includes prospective purchasers and residents and the covenantee includes 'lessees occupier or invitees' there is no surety that an investor landlord would advise potential tenants of the existence of the covenant. Nor would the covenant bind organisations to which covenantees may belong. Mr Muller has advised of a group recently formed in Kerikeri to oppose agrichemical spraying. Such groups could form within RTRA and not be bound by the restrictions in the covenant.
- 12.10 These issues demonstrate that the dependence on a no-complaints covenant to mitigate adverse effects is inappropriate and provides no surety for the orchard owners or others affected by the RTRA development.

13. CONCLUSION

- 13.1 Much of the proponent's case centres on the specific wording of PC13.
- 13.2 In my opinion the focus should be at a higher level and whether the RTRA is appropriate.
- 13.3 There are a range of reasons that make the location an inappropriate place for the density of development anticipated:
- Incompatibilities with adjacent activities
 - The reverse sensitivity effects on horticulture, motorsport park and speedway
 - The dislocation from the town centre
 - The breach of the rural zone boundary and loss of cohesion of the rural zone
 - Does not give effect to the pRPS
 - Inconsistency with the Operative District Plan

- Inconsistency with the Cromwell Masterplan
 - Inconsistency with the Regional Air Plan
 - The imposition that the development would place on existing lawfully established activities
 - The inadequacy of proposed mitigations
- 13.4 In my opinion the focus of the application should be on avoiding adverse effects where there are alternative locations for the activity.
- 13.5 If the adverse effects cannot be avoided the location is inappropriate.
- 13.6 Remedying or mitigating should only be considered if there are no alternative locations.
- 13.7 In the case of PC13 I am not convinced that this is the only suitable location for development of additional housing in Cromwell. It may be considered the only appropriate location if limited to the proponents criteria. But I consider much wider criteria relating to meeting the objectives and policies of the ODP should be the basis of determining if it is an appropriate location.
- 13.8 The wider consequences and ongoing costs arising from the development will extend well beyond the involvement of the developer and will be borne by the community for future generations. In my opinion that is not an appropriate outcome to place on the Cromwell community.
- 13.9 The proposal breaches a cohesive district plan zoning framework which protects the ability to undertake rural production activities. Such activities are an important part of providing for the social and economic wellbeing of the community so it is important that the integrity of the zone is retained.
- 13.10 For these reasons, I retain my opinion from my EIC and recommend that the plan change be declined.

Lynette Wharfe

2 July 2019