

**BEFORE COMISSIONERS ON BEHALF OF THE CENTRAL OTAGO DISTRICT COUNCIL (CODC)**

**IN THE MATTER OF** the Resource Management Act 1991 (**RMA**).

**AND**

**IN THE MATTER OF** Operative Central Otago District Plan: Plan Change 13: River Terrace  
Developments Limited

**STATEMENT OF EVIDENCE OF WALTER CHRISTOPHER DENLEY on behalf of DJ Jones Family Trust  
and Suncrest Orchards Limited**

**16 May 2019**

## **QUALIFICATIONS AND EXPERTISE**

My full name is Walter Christopher Denley.

I am a Resource Management Planner at Landpro Limited, a firm of consulting planners, and surveyors. I have been employed by Landpro Limited since June 2017.

I hold the qualifications of a Bachelor of Science (Geography) and a Postgraduate Diploma majoring in Planning from Massey University. I have eight years' professional experience in planning and resource management, which includes two years as a planning consultant in Taupo and four years at the Southland Regional Council.

During this period, I have been involved in a range of resource consent matters from both a regulatory and consultancy viewpoint, including preparing resource consent applications, stakeholder engagement and processing resource consent applications.

## **CODE OF CONDUCT**

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

## Statutory tests

Various statutory tests are to be applied when considering the most appropriate provisions for the District Plan. I include the most relevant tests in my opinion with regards to the concerns that DJ Jones Family Trust (DJJFT) and Suncrest Orchards Limited (SOL) have with the current application.

In making a rule, the territorial authority shall have regard to the actual or potential effects on the environment, including in particular, any adverse effect (section 76(3)).

The most relevant categories of effects that will result from the proposed River Terrace Developments Limited (RTDL) from the point of view of the DJJFT and SOL are

1. Effects on productive capacity of the subject land
2. Reverse sensitivity effects

I disagree with the evidence provided by Mr Browns where he concludes that the foreclosure of the primary productive capacity of the soils of the subject site by adoption of the RTRA would not generate any adverse effects on the environment. While the land has not been used for many years for any meaningful primary productive activity, parts of this property have the same underlying soil and the same local climate conditions as the neighbouring locally significant Suncrest Orchard. While the status quo doesn't necessarily guarantee that this land will be developed for this purpose, if the RTDL were receive approval then this resource (soil/climate) will be forever lost to the Cromwell community as a source of potential economic wellbeing. Due to the fact that there is a finite amount of land suitable for the regionally significant horticulture industry, as described by Michael Jones, the RTRA presents a potential significant adverse effect on the productive capacity of the subject land.

Given the significant increase in sensitive receivers that would inhabit the RTRA compared with the operative status quo District Plan provisions, the real effects of the established neighbouring orcharding activities and motorsport activities would be significant and varied on the proposed future RTDL, particularly noise effects generated by existing activities. So, despite the proposed no-complaints covenants on all future RTDL properties, I consider that any reasonable assessment would conclude that the adverse effects from the existing activities on future RTDL residents would be significantly more than minor.

The statutory test under section 76(3) of the RMA is whether the provisions have regard to the actual or potential effects on the environment, including, in particular, any adverse effect. I consider the effects that would arise out of the RTDL would be adverse to the environment and the proposed mitigation inadequate in dealing with real lasting effects of the proposed RTDL changes.

Not covered currently by the proposed no complaints covenant are Horticultural Sprays. DJJFT and SOL are particularly concerned about the current application eroding their ability to manage their orchard. In particular, they are concerned about the zone change along their boundary, which they believe will cause them issues in the long run if allowed to proceed as set out. Specifically, the different expectations that different zoning brings, along with the potential introduction of additional receptors that residential zoning would bring to their boundary.

Horticultural sprays are currently governed by Rule 16.3.9.2 of the Regional Plan: Air for Otago. Sprays are permitted, providing:

- (a) The agrichemical and any associated additive are authorised for use in New Zealand and are used in accordance with the authorisation; and
- (b) The discharge is carried out in accordance with the manufacturer's directions; and

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

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

Point (d) is of particular interest in the context of the current application, considering the common English definitions of “noxious” or “dangerous”.

The Concise Oxford Dictionary defines “noxious” as “harmful, unwholesome”. Noxious effects may include significant adverse effects on the environment (e.g., on plant and animal life) although the effects may not necessarily be dangerous to humans.

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

“Ambient concentrations” – being a measure of environmental quality indicating the amount of pollutants found per unit volume in different environmental media.

It is DJJFT and SOLs concern that having numerous residential dwellings on their boundary will lead to significant increased scrutiny of their normal existing permitted activities and will ultimately impact on the productive capacity of their own area of land. For example DJJFT and SOL do not want to be in a position where they have to constantly test at this boundary to prove to the neighbours that they are only applying chemicals at the appropriate concentrations, as this will add additional cost to their normal orchard management operations, so may need to introduce setback within their own property, which is currently planted close to the boundary, to avoid problems with the neighbours, or stop spraying these adjoining blocks to the subject site altogether. The key point being that what may be considered offensive or objectionable in an urban area, may not necessarily be considered offensive or objectionable in a rural area and the definition of noxious or dangerous is still open to some interpretation. These sprays are an integral part of Cherry Growing and other summer fruit, without them the Cherries in particular would not be suitable for export.

As an example of the potential for reverse sensitivity risk arising from DJJFT and SOL current operations to the subject site, in the 2017 to 2018 growing season there were 49 separate spraying days in the horticulture blocks which border the subject site. Application of these sprays within the orchard were undertaken with a mix of boom sprayers and air blast sprayers. This equates to 49 separate instances where a new resident may have cause to complain about the activities occurring on the adjoining land.

#### Whether the provisions accord and assist the Council in carrying out its functions and achieve the purpose of the Act

In relation to s31(1)(aa) of the RMA I concur with Mr Whitney that while the RTDL plan change is intended to accommodate to the RTDL projected demand for residential land in Cromwell to help address an estimated shortfall in long term capacity, this demand can be satisfied by utilizing other land currently in the Rural Resource Area that is located within the urban limits of Cromwell, and through greater infill subdivision in the short to medium term, which will allow time to complete the finalisation of the community lead Cromwell Masterplan process, which will then feed into the District Plan Review that is now due for renewal. It is through this integrated community-led process that Council will achieve a better outcome for Cromwell as a town. So in this instance, due to the progressing Master Plan process and upcoming District Plan Review, keeping the status quo zoning in

the short term will achieve the purpose of the Act and allow for a more strategic approach to accommodation/managing Cromwell's long-term population growth.

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

The key Section 7 matters (matters to which regard must be given) that DJJFT and SOL would like me to cover are

- The efficient use and development of natural and physical resources
- Any finite characteristics of natural and physical resources

I consider that the Rural and Rural Residential zonings represent the efficient use and development of natural and physical resources. I say this because this location represents part of a limited and finite amount of land with specific soil and typical climatic conditions that allow for the growth of export-quality cherries. It is these specific growing conditions that have allowed the locally and regionally significant cherry industry to become such a big part of the local economy. Within the Rural Residential zone for instance, because of current returns generated by Central Otago export cherries, a 2ha parcel of land with dwelling can still produce a sustainable and sometimes significant income. It is my view that the RTRA proposal would not only remove the subject area from any future potential growth in a prime horticulture area, but it would also encroach on the existing local horticultural operations and may hinder the efficient use of these developed areas through the previously raised reverse sensitivity concerns.

With regards to the finite characteristics of the subject site, it is logical to assume that the subject site on top of the terrace has the same characteristics as the neighbouring high-value orchard owned and operated by DJJFT and SOL. If this area is rezoned as RTRA seek, then any future opportunity to grow high value crops on this land is lost. Land with this combination of natural attributes is a finite resource which the District Plan should recognize and protect from inappropriate development. Keeping the current zoning within the District Plan is more consistent with the principles in sections 6 and 7 of the Act than the proposed RTRA changes.

The statutory test is whether the provisions accord with Part 2 of the Act, under s74(1)(b). It is my view that the status quo zoning better achieves the purpose and principles of the Act compared to the proposed RTRA option, as the status quo enables the land to continue to be available for high-value primary production, sustaining the potential of the site's resources for future generations, which have the ability to contribute meaningfully to the economic wellbeing of Cromwell.

Whether the provisions give effect to the Regional Policy Statement (section 75(3)(c))

I consider that the existing Rural and Rural Residential zoning is a more sustainable use than the proposed RTRA. This is because the subject site contains a finite resource, being specific soil and climate conditions, which allow the growth of high-value horticultural crops. The RTDL will result in loss of potential high-value horticulture production land and will likely, through reverse sensitivity effects, effect adjoining existing high value production land.

The statutory test is whether the provisions give effect to the RPS, under section 75(3)(c). The status quo provisions give effect to the relevant RPS provisions to use resources sustainably to promote economic wellbeing through safeguarding subject site for future generations.

The extent to which the objectives are the most appropriate way to achieve the purpose of the Act (s32(1)(a))

In this matter I am of the opinion that that the RTDL objectives are not the most appropriate way to achieve the purpose of the Act based on the basis of lack of integration with existing pattern of development in Cromwell and incompatibility with existing activities in the surrounding environment.

I support Mr Whitney's conclusion that Plan Change 13 is not consistent with the function of the Council to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the District.