

Presented at hearing 2 July 2019 by Alistair Logan. (B)

**BEFORE COMMISSIONERS ON BEHALF OF  
THE CENTRAL OTAGO DISTRICT COUNCIL**

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

**BY** **RIVER TERRACES DEVELOPMENTS LIMITED**  
**Proponent**

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**SUBMISSIONS ON BEHALF OF THE MCKAY FAMILY TRUST  
(SUBMITTER 228) AND 45 SOUTH GROUP OF COMPANIES  
(SUBMITTER 123)**

Dated 2 July 2019

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(SUBMITTER 228) AND 45 SOUTH GROUP OF COMPANIES  
(SUBMITTER 123)**

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**MAY IT PLEASE THE COMMISSIONERS:**

**Introduction**

- 1 These submissions are presented for:
  - 1.1 45 South Group of Companies ("45 South"); and
  - 1.2 The McKay Family Trust.
- 2 Evidence in support is provided by:
  - 2.1 Alan McKay (McKay Family Trust);
  - 2.2 Tim Jones (45 South); and
  - 2.3 Aaron Staples (acoustic expert), jointly with Highlands Motorsport Park and Central Speedway.
- 3 The submitters oppose Plan Change 13 ("PC13").
- 4 These submissions and supporting evidence should be read alongside the evidence and submissions of other opposing submitters; including in particular:
  - 4.1 Highlands Motorsport Park;
  - 4.2 Central Speedway Club Cromwell;
  - 4.3 Public Health South;
  - 4.4 DJ Jones Family Trust and Suncrest Orchards Limited;
  - 4.5 Sarita Orchards Limited;
  - 4.6 Horticulture New Zealand;
  - 4.7 Central Otago District Council; and
  - 4.8 Residents for the Responsible Development of Cromwell.

**Summary**

- 5 PC13 must be declined because:
  - 5.1 The site is unsuitable for residential use because of its exposure to noise from several sources;
  - 5.2 The noise levels are incompatible with residential amenity;

- 5.3 Acoustic insulation may achieve an acceptable level of indoor amenity; but outside, noise cannot be reduced to levels consistent with residential amenity;
- 5.4 Residential development will lead to reverse sensitivity impacts on adjoining properties;
- 5.5 These reverse sensitivity impacts cannot be avoided, remedied or mitigated;
- 5.6 PC13 places other established activities, principally rural production and motorsport at risk;
- 5.7 The site is disconnected from Cromwell itself and is an unnecessary and inappropriate encroachment into the productive Ripponvale Flats;
- 5.8 Approval of the Plan Change will not constitute integrated management of land resources;
- 5.9 PC13 is not the result of a strategic planning exercise for Cromwell;
- 5.10 PC13 cuts across the community-based approach undertaken by the Central Otago District Council in the development of the Cromwell Masterplan;
- 5.11 If adopted PC13 would defeat the principles and outcomes of the masterplan process;
- 5.12 PC13 fails to give effect to the National Policy Statement on Urban Development Capacity ("NPS-UDC"), if relevant;
- 5.13 PC13 fails to give effect to the Partly Operative Otago Regional Policy Statement 2019 ("RPS 19");
- 5.14 PC13 fails to conform with the unchanged provisions of the Operative District Plan;
- 5.15 PC13 cannot achieve its own objectives.

### **The Submitters**

- 6 The Ripponvale Flats host a multi-million-dollar food export industry. That industry provides significant benefits to the local economy and is in turn a cornerstone of the local community.
- 7 There are approximately <sup>217</sup> 270 hectares of orchards, producing in 2017/18 fruit in excess of \$19 million dollars in value.
- 8 45 South alone produced 470 tonnes of fruit worth over \$5.5 million dollars in 2017/18. It has 60.2 hectares of orchards bound by State Highway 6 and Ripponvale and Ord Roads. It operates a packhouse on the corner of Ord Road and State Highway 6. The packhouse handles approximately 860 tonnes of cherries annually. 45 South has over 40 full time staff and engages 400 to 500 seasonal workers, paying approximately \$4.5 million dollars in wages. Goods and services are provided by local suppliers.

- 9 You have already heard from Mr McKay on behalf of the McKay Family Trust. The McKay Family Trust owns the triangular shaped property immediately to the north of the subject site.
- 10 Both 45 South and the McKay Family Trust envisage further development of their orchard properties.

### **The Proposal**

- 11 If approved, PC13 will convert rural land into an urban area containing up to 900 residential units. The requestor has calculated the comparable "baseline" to be 18 units<sup>1</sup>. 900 residential units is plainly of a different order of magnitude of development. It can be expected that well over 900 residents will be introduced to the neighbourhood.
- 12 As well as housing, other noise-sensitive activities are contemplated: retirement accommodation, cafes, restaurants, as well as recreational and educational activities. All can be expected to involve the use of both indoor and outdoor space.

### **The PC13 Site**

- 13 The site is sandwiched between the Highlands Motorsport Park, and the Cromwell Speedway to the east and orchards to the west and north.

### **The Effects**

- 14 Motorsport and horticulture are noise-generating activities. Much of the noise emitted is significant.
- 15 The PC13 site is exposed to that noise. It cannot be shielded from that noise so long as these activities can continue.
- 16 Statutory planning regimes, culminating in the RMA, were established in 20<sup>th</sup> century New Zealand to (among other things) segregate incompatible activities to protect people's health and remove nuisances that diminish amenity, particularly residential amenity.
- 17 Experience had shown that placing housing in noisy or dirty locations did not provide for peoples' health and wellbeing while private law remedies were inefficient, costly and ineffective mechanisms to resolve problems created by conflicting land uses.
- 18 This proposal reverts to a past where those lessons are ignored.
- 19 The latest iteration of the proposal (circulated 21 June 2019) itself acknowledges the unsuitability of the site and the degraded residential amenity that would result:

*"The River Terrace Resource Area is adjacent to a variety of existing activities that affect the nature of the existing environment. These include the Highlands Motorsport Park, the Central Otago Speedway, orchard activities and the Cromwell aerodrome. It is recognised that these existing activities all generate noise and other effects that will compromise the amenity value of the Resource Area to varying degrees. Highlands and Speedway events and orchard activities*

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<sup>1</sup> W Goldsmith, Opening Submissions, Attachment 1

*generate noise effects on outdoor amenity for residents within the Resource Area. Acoustic insulation and ventilation will be required for some buildings within the Resource Area to mitigate the effects of Highlands and Speedway events and orchard activities on indoor living environments. Objectives, policies, rules and other methods are included in the Resource Area to protect existing activities from reverse sensitivity effects"*

- 20 While there is an ability to provide sound insulation for habitable areas indoors, there is no ability to protect outdoor areas.
- 21 The acoustic experts agree that indoor noise effects can be mitigated with appropriate sound insulation but disagree on the standard of insulation. Whatever the standard, doors and windows will need to be kept shut and mechanical ventilation provided<sup>2</sup>.
- 22 The experts disagree on the acceptability of adverse external noise effects outside<sup>3</sup>.
- 23 The requestor's acoustic expert Mr Styles acknowledges "*outdoor amenity is necessarily compromised*"<sup>4</sup>. The other experts concur but go further, considering "*that outdoor noise exposure on the Site is incompatible with sensitive activities, such as residential use*"<sup>5</sup>.
- 24 Mr Styles "*partly agrees*" that outdoor noise exposure is incompatible with noise sensitive activities, such as residential use, but considers:
- 24.1 Residents will have lowered expectations of amenity;
- 24.2 The objectionable noise will be seasonal and intermittent; and
- 24.3 Residents can seek refuge indoors.
- 25 Similar arguments of residents' expectations of degraded amenity are made by Mr Meehan<sup>6</sup> and Mr Brown<sup>7</sup>.
- 26 These claims ignore certain irrefutable realities:
- 26.1 The noise might be seasonal, but the preponderance of high noise levels is concentrated in the period of spring through summer and into autumn;
- 26.2 In that period, noise can be emitted simultaneously from several sources and one noise generating event can be closely followed by another;
- 26.3 That is the period in Central Otago where indoor/outdoor living is valued;
- 26.4 It is also the period when people want to have doors and windows open;

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<sup>2</sup> Joint Witness Statement, paragraph 10.4

<sup>3</sup> Joint Witness Statement, paragraph 10.3

<sup>4</sup> Summary of Evidence, paragraph 43

<sup>5</sup> Joint Witness Statement, paragraph 7.5

<sup>6</sup> C Meehan, paragraphs 70 and 74

<sup>7</sup> J Brown, e.g. paragraph 10.2(d) of 23 April 2019 Evidence, and analysis in its attachments

- 26.5 To describe noise from individual sources as intermittent might be accurate in a very narrow sense, but it says nothing about the frequency of noise from, for example, bird scarers and shotguns when trees are in fruit; nor does it say anything about the duration of the noise, for example, from a motorsport event; nor does it say anything about the timing, for example, frost fighting when people want to sleep.
- 26.6 Confining oneself indoors rather defeats the purpose of living in the district;
- 26.7 Diminished expectations of amenity rely on covenants;
- 26.8 Covenants cannot convey the actual nature and extent of noise emitted by neighbours;
- 26.9 Nobody has been able to present any evidence that covenants are effective in creating realistic expectations of degraded amenity. Words cannot adequately capture the nature and level of noise, the different characteristics of noise from different sources or the effect of concurrent and consecutive noise generating activities;
- 26.10 Being put on notice of noise is very different to the real world experience of noise;
- 26.11 People have a range of tolerances to noise. Many will be sensitive or become sensitive to the noise and want it stopped; and
- 26.12 Mr Staples, Mr Styles and Dr Chiles all regarded the noise experienced on the site as annoying and agreed that annoying noise can have adverse health effects. In short, PC13 will create a low quality residential environment with low amenity values. To countenance such an outcome does not fit easily within the concept of sustainable management; it hardly provides for peoples' wellbeing<sup>8</sup>.
- 27 Dr Chiles rightly described the proposal as "*incomprehensible*" in his oral presentation.
- 28 If there are 900 residential units and other noise sensitive activities (as contemplated), there will be a large number of people who find the noise to which this site is exposed unacceptable. Outdoor noise levels cannot be avoided, remedied or mitigated except at source.
- 29 The requestors' answer is covenants.
- 30 In truth, the proposed covenants are an acknowledgement the site is unsuitable for residential development. For example the latest version of the orchard covenant (lodged 21 June 2019) describes "*loud orcharding activities*", "*very loud bird scaring guns*", "*loud noises also caused by helicopters*" and includes an acknowledgement that "*Approved Activities necessarily involve very loud noise, disturbance and other usual incidences of orcharding activities which residents, occupiers and invitees on the burdened land may find disturbing and very annoying*"<sup>9</sup>. Similar

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<sup>8</sup> Section 5(2) RMA

<sup>9</sup> Proposed Clause 3.1(b).AA for approved activities

provisions apply to motorsport which is described as "very loud" and "very annoying".

- 31 These appropriate concessions by the requestor confirm the proposal is, as Dr Chiles stated, "incomprehensible". The scale of adverse noise effects is such that residents should not be exposed to it at all. People will not tolerate very loud and very annoying noise and they will seek to stop or curtail the noisy neighbours.

### Covenants

- 32 Covenants cannot immunise unhappy residents from the adverse health effects described by the acoustic experts.
- 33 They do not at the stroke of a pen make the noise go away. They are not avoidance, remediation or mitigation. At best they pretend the problem has been resolved by trying to stop people making a noise about noise. They are a questionable resource management technique, although it must be acknowledged a method that has been sanctioned by the Courts on occasions. The same comments apply to the use of consent notices, an alternative first promoted in the 7 June 2019 iteration of PC13. Simply because they are offered, does not mean covenants are acceptable in any particular case. The present is a case where covenants cannot hide or manage either the adverse effects of noise on residential amenity or the impacts on adjoining properties from the understandable responses of residents.
- 34 Even assuming covenants or consent notices are an appropriate resource management tool in these circumstances, the protection available under the proposal is inadequate:

34.1 Objective 20.3.10 reads:

*"Existing activities adjacent to the Resource Area are protected from adverse reverse sensitivity effects, particularly Highlands Motorsport Park, Cromwell Speedway and horticulture activities/orcharding, so that constraints on those activities resulting from reverse sensitivity effects are avoided."*  
(emphasis added).

34.2 Policy 20.4.12 reads:

*"Avoid reverse sensitivity effects on existing land uses in the neighbourhood, particularly the Highlands Motorsport Park, Cromwell Speedway and horticulture/orcharding activities"*  
(emphasis added).

- 34.3 The draft covenant applies to "Approved Activities" which is to mean "the development of an orcharding activity and the operation of orcharding activities as lawfully developed and/or operated in accordance with the Central Otago District Plan and the terms and conditions of any Resource Consent which applies at the date of this instrument".

- 35 There are several points which arise.

- 36 First, the effectiveness of a covenant depends on what it means and how it applies. There are invariably questions of interpretation and application. The definition of "*Approved Activities*" is rife with these questions. Maybe these issues could be partly resolved by more elaborate drafting but there is inherent difficulty in drafting adequate documents and questions of construction can never be eliminated. It is the neighbouring orchardists (or motorsport activities) that are left to deal with these questions.
- 37 For example, what is "*lawfully developed*"?
- 38 The intention is that residents cannot complain about "*lawful*" noise<sup>10</sup>. This prohibition assumes they can tell what is lawful and what is not. They cannot. As Mr McKay narrated, he thought Highlands was exceeding its noise limits but the monitoring data showed otherwise. The Council and the noise generator have to establish whether or not the noise is "*lawful*". They carry the burden and the cost.
- 39 Secondly, the policies and proposed covenants are confined to existing activities and provide no protection for future orchard activities. Orchards are dynamic. It is difficult (if not impossible) to draft a document that futureproofs protection.
- 40 Thirdly, housing will impinge on current activities, if wind fans and gas guns are going to continue to be operated in their current locations.
- 41 Establishment of houses on the subject site will encroach into the separation distances for wind fans and bird deterrent devices set out in rule 4.7.6E of the Operative District Plan.
- 42 Fans must be set back 100 metres from the closest house<sup>11</sup>. Percussive bird deterrent devices (ie gas guns) will have to be in the order of 850 metres from houses on the subject site<sup>12</sup>. Use of existing devices will have to be moved back with a consequent risk to crop yields. This would be an immediate and significant impact on orchardists.
- 43 Permitted activity status will be lost. A certificate of compliance is not protection – as the activity must comply with the rules in the plan at all times. If houses come closer, the gas guns and fans must be moved away or not be used at all<sup>13</sup>. And the Council has a duty to enforce its plan, including the conditions applicable to permitted activities<sup>14</sup>. To continue current operations, orchardists will need to obtain resource consents.
- 44 Fourthly, residential development will limit the ability to lawfully change and refine the use of adjoining orchard properties as of right without resource consents. The McKay and 45 South properties have land which is to be planted in fruit trees. Frost fans and bird scaring devices will need consent if PC13 proceeds.
- 45 Resource consents will be required if the current use of frost fans and gas guns is to lawfully continue. Likewise if more land within the separation distances is planted with fruit trees.

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<sup>10</sup> It is noted that the draft does not expressly stop complaints.

<sup>11</sup> Rule 4.7.6E(c)

<sup>12</sup> Rule 4.7.6E(b) and Joint Witness Statement, paragraph 4.15

<sup>13</sup> North Canterbury Clay Target Association Inc v Waimakariri District Council [2016] NZCA 305

<sup>14</sup> Section 84 of the RMA



- 46 Consent will be needed for restricted discretionary activities. Discretion is reserved to the effects of noise on the amenity values of the neighbourhood, particularly adjoining properties. Consent can be declined.
- 47 The current iteration of the covenant includes purported written approvals and obligations to sign written approvals if called upon. Nonetheless it is the orchardist who bears the burden and cost of getting consent.
- 48 Fifthly, the utility and effectiveness of covenants is a matter of considerable doubt. No evidence has been presented to demonstrate that they succeed in lowering expectations or protect neighbouring activities. Evidence on the latter point is, if anything, to the contrary.
- 49 Sixthly, the covenants place the beneficiary in the invidious position of potential conflict with neighbours and fellow members of a small community. There is a social cost which cannot be ignored. There is no justification for orchardists to be exposed to this moral hazard. No one wants conflict or litigation with neighbours.
- 50 Reverse sensitivity is more than legal vulnerability. As RPS 19 recognises reverse sensitivity is *"the potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity."*
- 51 It is not simply legal challenges which constitute reverse sensitivity. Community and political sentiment can be mobilised against noisy activities leading to pressure for land use change. Examples such as Ruapuna have been given in evidence.
- 52 Seventhly, the validity, value and effectiveness of the covenants are of course not the developer's concern. It develops today and is gone tomorrow. Covenants and consent notices transfer responsibilities and costs from the developer to the neighbour. It is not an adequate answer to say that costs can be recovered from the covenantor.
- 53 A plan change should not be based on such foundations. Nor should it impose costs on adjoining activities. That is an adverse effect which cannot be avoided, remedied or mitigated.
- 54 Eighthly, there are other orcharding activities which newcomers will perceive as adverse effects, notably spraying and outdoor burning.
- 55 Finally, the changed receiving environment will increase the exposure of horticulturists to:
- 55.1 Section 16 of the RMA: the duty to avoid unreasonable noise;
  - 55.2 Section 17 of the RMA: the duty to avoid, remedy or mitigate adverse effects; and
  - 55.3 Sections 326 to 328 of the RMA excessive noise.

- 56 These obligations apply irrespective of any permitted activity status, resource consent, covenant or consent notice<sup>15</sup>. Enforcement proceedings under the Resource Management Act can be brought by persons who do not actually suffer an adverse effect.
- 57 The curtailment of neighbouring activities cannot be adequately alleviated by covenants or consent notices. It is the type of effect that has led to consent being declined<sup>16</sup>. It should likewise lead to refusal of this plan change. The proposed covenants demonstrably fail to avoid reverse sensitivity effects. In fact, they compound them, by imposing additional, uncompensated costs and burdens on adjoining activities.

### NPS-UDC

- 58 It is doubtful that the NPS-UDC applies as Cromwell is not an urban environment containing or intended to contain a "*concentrated*" settlement of 10,000 people.
- 59 It is illogical to include the small and distinct enclaves of Pisa Mooring, Lowburn and Bannockburn as part of a "*concentrated*" settlement. To do so defies the natural and ordinary meaning of the word.
- 60 If that approach is wrong, PC13 fails to give effect to some of the relevant provisions of the NPS-UDC.
- 61 It fails to meet these objectives:
- 61.1 Objective OA1 "*effective and efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing*" because it introduces a residential area to a rural setting in a manner which compromises the sustainability of existing rural activities.
  - 61.2 Objective OC1 "*planning decisions, practices and methods that enable urban development which provides the social, economic, cultural and environmental wellbeing of people and communities and future generations in the short, medium and long-term*" because the site is unsuitable for residential use.
  - 61.3 Objective OD1 "*urban environments where land use, development, development infrastructure and other infrastructure are integrated with each other*" because incompatible land uses do not achieve integration.
  - 61.4 Objective OD2 "*coordinated and aligned planning decisions within and across local authority boundaries*". Juxtaposing conflicting land uses patently fails this objective.
- 62 Because the establishment of an incompatible urban area in this rural environment does not achieve integrated management of resources, and compromises rural activities, PC13 fails to provide for the social, economic, cultural wellbeing of people and communities and future generations. Policies PA3 and PA4 of the NPS will not be given effect to.

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<sup>15</sup> Springs Promotion Ltd v Springs Stadium Residents' Association Inc [2006] 1 NZLR 846 at [88] to [89]

<sup>16</sup> Ngatarawa Development Trust v Hasting District Council w017/08

- 63 PC13 is therefore contrary to the National Policy Statement. The statutory requirement to give effect to the NPS is non-negotiable. PC13 does not and cannot give effect to it<sup>17</sup>.

### **Partly Operative Regional Policy Statement**

- 64 PC13 also encounters insurmountable difficulties with giving effect to the RPS 19. In particular it fails to implement relevant provisions including:
- 64.1 Objective 1.1 which is to use resources sustainably to promote economic, social and cultural wellbeing. PC13 promotes neither the wellbeing of residents nor neighbours.
  - 64.2 It does not provide for the economic wellbeing of people and communities by enabling the resilient and sustainable use and development of resources, contrary to Policy 1.1.1.
  - 64.3 It fails to achieve integrated management of the subject site and adjoining land contrary to Objective 1.2 and Policy 1.2.1.
  - 64.4 It does not ensure that urban growth and development is well-designed, occurs in a strategic and coordinated way and integrates effectively with adjoining land uses, contrary to Objective 4.5 and Policy 4.5.1.
  - 64.5 It does not adequately manage the effects on activities which sustain food production, contrary to Policy 4.5.1(f)(i); the soils on site are as suitable for viticulture and horticulture as the adjoining land.
  - 64.6 It does not conform to the direction to restrict urban growth to areas that avoid reverse sensitivity effects or to locations where those effects can be adequately managed, contrary to Policy 4.5.1(h).
  - 64.7 PC13 is contrary to the injunction in Objective 5.3 that sufficient land is managed and protected for economic production.
  - 64.8 It is contrary to Policy 5.3.1 which (as far as applicable) is to enable primary production in rural areas and to restrict the establishment of incompatible activities that are likely to lead to reverse sensitivity effects.
- 65 As PC13 fails to give effect to the relevant provisions of RPS 19, it cannot be approved<sup>18</sup>.

### **Operative District Plan**

- 66 PC13 fails to align with the objectives and policies for urban areas. Those objectives and policies determine the expected character of the urban environment.

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<sup>17</sup> Contrary to Section 75(3)(a) of the RMA

<sup>18</sup> Contrary to Section 75(3)(c) of the RMA

- 67 The provisions of Chapter 6 apply, as the requestor's planner Jeff Brown acknowledges. Cromwell is an urban area. Although PC13 will be a dormitory node outside the urban limit, its proponents plainly envisage that it be regarded as part of the town<sup>19</sup>.
- 68 PC13 does not reflect the kind of urban growth and development contemplated in the objectives and policies of Chapter 6. In particular:
- 68.1 The likelihood of PC13 jeopardising economic activities on adjoining land is contrary to Objective 6.3.1;
- 68.2 The very noisy environment of the subject site is not consistent with the type of urban character which Objective 6.3.2 seeks to foster;
- 68.3 The inevitable adverse effects of residential development of the subject site on adjoining land runs counter to Objective 6.3.3;
- 68.4 The comments made about Objective 6.3.2 are equally applicable to Policy 6.4.1, but with the additional observation that the proposal does not avoid, remedy or mitigate the effects of noise on the subject site and future residents; and
- 68.5 For the reasons given, PC13 does not meet Policy 6.4.2 because of the inability to effectively avoid, remedy or mitigate real adverse reverse sensitivity effects on adjoining rural areas.

#### **PC13 Itself**

- 69 The PC13 proposal must also be evaluated in terms of its own objectives and policies.
- 70 Here it also runs into significant difficulties:
- 70.1 Objectives 20.3.1 and 20.3.3 promise a "*high quality residential neighbourhood*" and "*high quality amenity*" respectively. Because of the exposure of the site to noise from surrounding properties, these objectives can simply not be achieved.
- 70.2 Policies 20.4.1 and 20.4.3 promise "*a high quality of urban and building design*" and a "*high quality public realm*" respectively. Again because of the site's exposure to noise from surrounding land, these policies can simply not be implemented.
- 70.3 Policy 20.4.5 requires "*usable and accessible outdoor living space*" while ironically requiring indoor amenity outcomes to take into account noise generating activities on properties adjacent to the Resource Area. The contradiction in the policy makes the point: the amenity of outdoor living space is severally compromised by inescapable and unmitigated noise<sup>20</sup>.
- 71 As Mr Brown and Mr Styles accepted, outdoor noise cannot be avoided, remedied or mitigated.
- 72 PC13 cannot deliver on its own objectives and policies. It is fatally flawed.

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<sup>19</sup> See 20.2 issue

<sup>20</sup> This policy is implemented through Rule 20.7.1(ii)(f)

## Sections 32 and 32AA

- 73 These provisions require a comparison of the proposal with “*reasonably practicable*” alternatives. The site is suitable for horticulture and viticulture use. No analysis has been undertaken to compare these uses of the land with the proposal. The Section 32 analyses are inadequate.

## Cromwell Masterplan

- 74 RPS 19 requires a strategic and coordinated approach to urban growth and development<sup>21</sup>. The issue statement of this section of RPS 19 identifies the problem:

*“Unanticipated growth places pressure on adjoining productive land, and risks losing connectivity with adjoining urban areas.*

*Urban development has not always had regard for the local environment or the needs of the community.”*

- 75 PC13 is precisely the type of ad hoc development, RPS seeks to avoid.
- 76 It is the territorial authority which under section 31(1)(aa) of the RMA has the task of establishing and implementing objectives to ensure there is sufficient land for housing to meet the demands of the district.
- 77 CODC has through its Cromwell Masterplan process undertaken the very kind of strategic and coordinated approach which RPS 19 envisages.
- 78 PC13 is the antithesis of the preferred outcomes of the Cromwell Masterplan – that is a compact and consolidated town within its current urban boundaries: a proposition accepted by Ms Hampson and perhaps somewhat more reluctantly by Mr Ray, the two relevant expert witnesses for the requestor.
- 79 The principles crystallised through the Masterplan exercise include relevantly<sup>22</sup>:
- 79.1 Identified and enduring urban/rural boundaries;
  - 79.2 Recognition of the importance of productive land for the town and district;
  - 79.3 Retention of productive capacity and character of rural areas;
  - 79.4 Segregation of rural and residential activities; and
  - 79.5 Avoiding reverse sensitivity.
- 80 These principles echo the directions of RPS 19.
- 81 PC13 offends each of these principles.
- 82 The Masterplan is a comprehensive and community-based exercise to determine the future of Cromwell and its surrounds.

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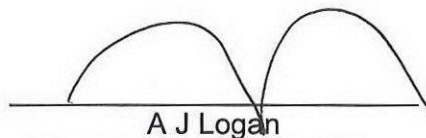
<sup>21</sup> Objective 4.5 and Policy 4.5.1

<sup>22</sup> Pages 20 to 21

- 83 To approve PC13 (with or without amendment) completely frustrates that exercise and community aspirations. The latter are faithfully reflected in the overwhelming opposition in submissions on PC13. The number and weight of opposing submissions cannot be ignored.
- 84 PC13 has been rejected by the community in the Masterplan process. It is rejected in submissions. To now adopt PC13 would not only defeat the purpose and the results of the Masterplan exercise but it would also be a rejection of the strategic and coordinated approach required by RPS 19. The District Plan is the community's plan. The District Plan ought to embody the community's aspirations. PC13 does not.
- 85 Ms Hampson calculated there is sufficient land to meet housing demand to until at least 2033. That evidence rebuts the requestor's claim of a housing crisis requiring an immediate plan change that pre-empts the careful, iterative and systematic approach of the Masterplan and the plan changes to give it effect.

### **Conclusion**

- 86 PC13 puts conflicting land uses side by side.
- 87 This proposal puts the orchards and their contribution to the local economy and community in jeopardy. It places other adjoining land uses at risk together with their contributions to the local economy and community.
- 88 Covenants do not protect residents from noise and its effects on their health and wellbeing.
- 89 Covenants do not protect the neighbours from reverse sensitivity impacts. Indeed they create additional burdens for neighbours and Council (and through Council, the community).
- 90 If approved, the decision sets up an inevitable process of curtailment and potentially closure of adjacent land uses.
- 91 This outcome is not sustainable management.
- 92 This proposal should be declined.

A handwritten signature consisting of two overlapping arches, resembling a stylized 'M' or 'L', written in black ink.

A J Logan  
Counsel for 45 South Group of Companies  
and the McKay Family Trust

Date: 2 July 2019