

PROPOSED PLAN CHANGE 14
SHANNON FARM, RURAL RESOURCE AREA (5)



**Recommendation Report of the Independent Hearing Panel
appointed by the Central Otago District Council**

3 May 2021

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APPENDIX 1: Schedule of Appearances

INDEX OF ABBREVIATIONS

This report utilises several abbreviations and acronyms as set out in the glossary below:

Abbreviation	Means...
“the Act”	Resource Management Act 1991
“CODC”	Central Otago District Council
“the Council”	Central Otago District Council
“HortNZ”	Horticulture New Zealand
NES-CL	“Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011”
“NPS-UDC”	National Policy Statement for Urban Development Capacity 2016
“Waka Kotahi NZTA”	Waka Kotahi New Zealand Transport Agency
“ORC”	Otago Regional Council
“ONL”	Outstanding Natural Landscape
“the Plan”	Operative Central Otago District Plan 2008
“PC14”	Proposed Change 14 to the Operative District Plan
“the plan change”	Proposed Change 14 to the Operative District Plan
“PRPS”	Partially Operative Regional Policy Statement 2019
“Requestor”	New Zealand Cherry Corp (Leyser) LP Ltd
“RMA”	Resource Management Act 1991
“RPS”	The Operative Regional Policy Statement 1998
“R4RDC”	Residents for Responsible Development Cromwell Society Incorporated
“s[#]”	Section Number of the RMA, for example s32 means Section 32
“SSA”	Safe System Assessment
“s42A report”	The report prepared by CODC pursuant to s42A, RMA
“the site”	The land at Ripponvale Road, Cromwell – subject to this plan change request
“SH6”	State Highway 6
“Spatial Framework”	The Cromwell Spatial Master Plan Framework
“SAL”	Significant Amenity Landscape
“WHO”	World Health Organisation

Central Otago District Council
Private Plan Change 14
Shannon Farm, Rural Resource Area (5)

Recommendation Report of the Independent Hearing Panel

Proposal Description:

Proposed Change 14 to the Central Otago District Plan:
Rural Resource Area (5)

Requestor:

New Zealand Cherry Corp (Leyser) LP Ltd

Hearing Panel:

N Gillespie – RMA Hearing Commissioner, Chair
G Rae – Independent RMA Hearing Commissioner

Date of Hearing (via Zoom):

25-28 May, 9 June 2020 & 5 November 2020

Hearing Officially closed:

19 April 2021

1.0 INTRODUCTION**Report purpose**

- 1.1 This report sets out our recommendation on Proposed Plan Change 14 to the operative Central Otago District Plan 2008.
- 1.2 We were appointed by the Council to hear submissions made on the plan change request and to make a recommendation under delegated authority of the Central Otago District Council ('the Council') under Section 34A of the Resource Management Act 1991 ("RMA") as to whether PC14 should be declined, approved or approved with amendments.
- 1.3 The plan change seeks to create a new 'Rural Resource Area (5)' at Shannon Farm, Cromwell, to provide for a new comprehensive and integrated rural lifestyle subdivision and development of the land, which includes the rezoning of 142 hectares of rural land which has frontage to Ripponvale Road, to facilitate the development including expansion of an adjacent cherry orchard. It proposes amendments and additions to the Plan's policies and rules. The plan change also seeks to amend the Outstanding Natural Landscape ("ONL") and Significant Amenity Landscape ("SAL") areas depicted on the planning maps.
- 1.4 The plan change has been the subject of a section 32 report¹, consultation with stakeholders, and the public notification and hearing process, culminating in our recommendation.

¹ Section 32 of the RMA sets out the requirements for preparing and publishing reports that evaluate the appropriateness of a plan change

- 1.5 Before setting out the details of PC14, the submissions to it and our substantive evaluation, there are some procedural matters that we will address, beginning with our role as an Independent Panel.

Our role and the report outline

- 1.6 As noted above, our role is to make a recommendation to Council on the outcome of the plan change request. The authority delegated in us by the Council includes all necessary powers under the RMA to hear and make recommendations on the submissions received on the plan change.
- 1.7 Having familiarised ourselves with PC14 and its associated background material, read all submissions, conducted the hearing and site/locality visits, we hereby record our recommendations.
- 1.8 In this respect, our report is broadly organised into the following two parts:

(a) *Factual context for the plan change:*

This non-evaluative section (comprising report Section 2 and 3) is largely factual and contains an overview of the land subject to the plan change and an outline of the main components of the plan change. This background section provides relevant context for considering the issues raised in submissions to the plan change. Here, we also briefly provide a summary account of the hearing process itself which involved, at our request, provision of further information and evidence from the parties. Through this process several modifications were made to the proposed plan change provisions. We also consider here various procedural matters about the submissions received. The statutory framework for consideration of the plan change request is also outlined (in Section 3).

(b) *Evaluation of key issues:*

The second part of our report (comprising Sections 4-8) contains an assessment of the main issues raised in submissions to PC14 (Section 4) and, where relevant, reference is made to the evidence/statements presented at the hearing. We conclude with a summary of our findings (in Section 6), having had regard to the necessary statutory considerations that underpin our considerations (in Section 5). In section 7 we record some concluding comments about the proposal, the issues arising, and our overall findings, with our recommendation in Section 8. All of these parts of the report are evaluative, and collectively record the substantive results of our deliberations.

Comments on the parties' assistance to us

- 1.9 We would like to record our appreciation at the manner in which the hearing was conducted by all the parties taking part.
- 1.10 Firstly, due to the COVID-19 pandemic lockdown we were obliged to run the hearing remotely, in three separate sessions, via a web-based platform.
- 1.11 Secondly, in the course of considering the evidence, we issued a series of instructions and requests for further information and evidence. This involved significant work and effort from witnesses and counsel, and we are grateful for this assistance.

2.0 PLAN CHANGE CONTEXT

Site & local environment

- 2.1 The site is located at 144 Ripponvale Road, to the north-west of the Cromwell town urban area, and is known as 'Shannon Farm'. It comprises four titles of land, comprising a total land area of some 244 hectares, and as shown in **Figure 1**, it consists of a flat farmland basin and gently sloping terraces, framed by steeper western and eastern gullies.

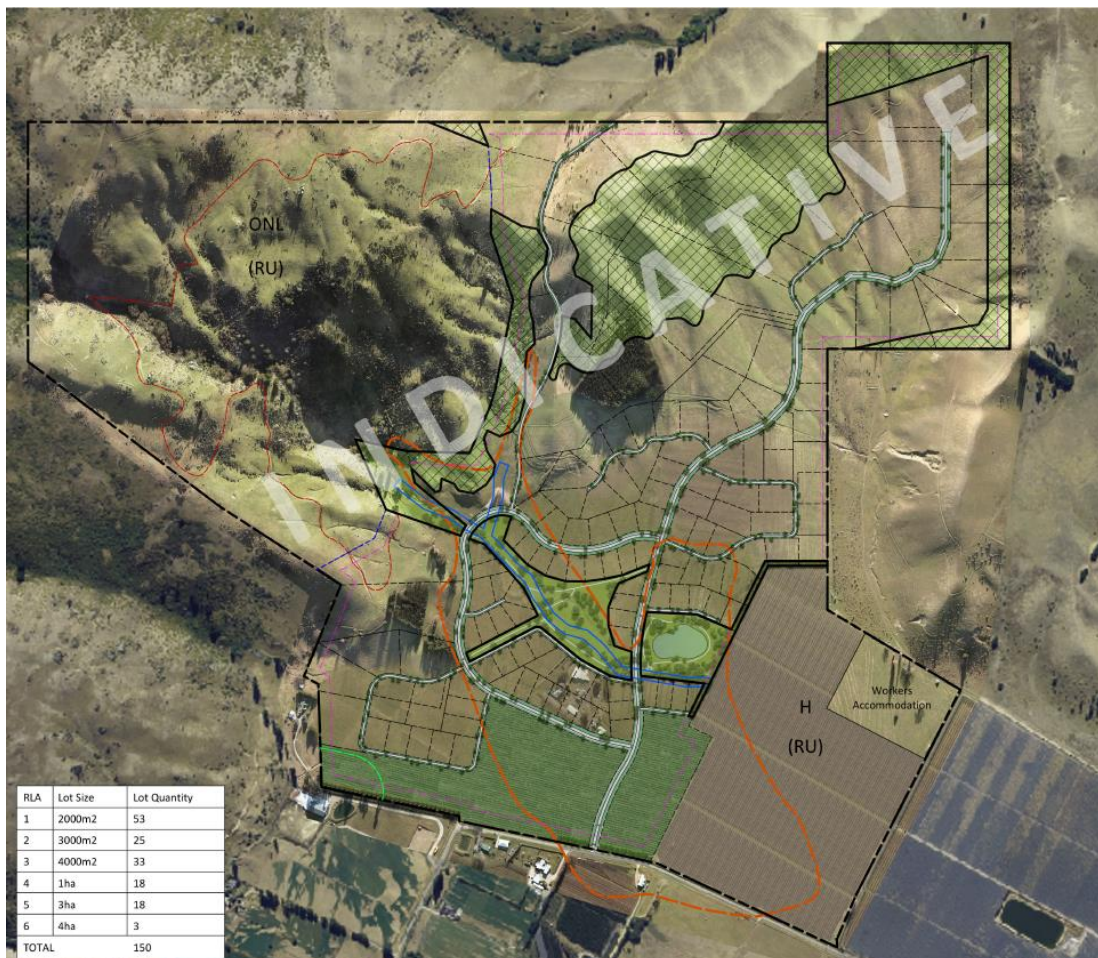


Figure 1: Plan Change 14 site showing Indicative Structure Plan (as amended during the process). Ripponvale Road forms the southern boundary of the site

- 2.2 The farmland basin has orchards and open pasture land, divided by tall shelterbelts of exotic trees. A cluster of farm buildings is accessed from a driveway from Ripponvale Road. This land also features water races, and irrigation ponds. The terraces contain pasture, orchards, water races and stands of pine. The grassed East Gully area contains the SAL area as part of the lower terraces of the Pisa Range. The West Slope area is steeper rugged land with native scrub and in the upper west slope is in the ONL.
- 2.3 The Ripponvale Road area is characterised by pastoral farmland, vineyards, orchards, and large lifestyle lots. The NZ Cherry Corp orchard lies adjacent to the south-east of the site. Other land uses in the locality include the Cromwell Racecourse and the Cromwell Aerodrome diagonally opposite and to the south of the

site, and Rockburn Winery to the southwest. Ripponvale Road meets State Highway 6 at two intersections, at the western edge of Cromwell township and also in the south near to the entrance to Kawarau Gorge.

Operative District Plan

- 2.4 The site is zoned Rural Resource Area in the operative Plan (as shown on Planning Map 44). The Western Slope area is subject to an ONL notation and the eastern Gully also subject to a SAL notation (both as shown on Planning Map 51). The site is also subject to an active geological fault, shown as notation 'F' on Map 51.
- 2.5 The Rural Resource Area's objectives, policies and rules in Section 4 of the Plan are relevant to the management of natural and physical resources on the site, as are some of the District-wide provisions including: Section 2 (Resources), Section 3 (Manawhenua), Section 12 (District-wide rules and performance standards), Section 13 (Infrastructure, energy & utilities), Section 16 (Subdivision), and Section 17 (Hazards).
- 2.6 The most relevant provisions to consideration of PC14, which are not proposed to be changed by PC14, include:
- a. *the community's need to provide for its social, economic and cultural wellbeing and its health and safety is recognised while ensuring environmental quality is maintained and enhanced²;*
 - b. *rural amenity values created by the open space, landscape, natural character and built environment values of the District's rural environment will be maintained and where practicable enhanced³;*
 - c. *the quality of the District's recreational resources and public access to those resources will be maintained and enhanced⁴;*
 - d. *subdivision will avoid, remedy or mitigate adverse effects on the safe and efficient operation of the roading network⁵;*
 - e. *subdivision will contribute to the open space, recreation and reserve needs of the community⁶; and*
 - f. *subdivisions are designed to facilitate an appropriate and co-ordinated ultimate pattern of development having regard to the particular environment within which the subdivision is located.⁷*
- 2.7 These objectives are, in turn, implemented by corresponding policies, rules and other methods in the Plan chapters summarised above.

Plan Change Request: Reasons, Purpose, Evaluations and Provisions

- 2.8 Part 2, Clause 22, of the RMA's First Schedule sets out various requirements for private plan changes. These are outlined below as they are relevant to our evaluation of the issues and our deliberations.

² Objective 4.3.1

³ Objective 4.3.3

⁴ Objective 4.3.4

⁵ Objective 16.3.4

⁶ Objective 16.3.7

⁷ Objective 16.3.10

Purpose and reasons for the plan change

2.9 The Request document describes the purpose of the proposal as follows:

“Purpose of the Proposal

To enable the subdivision, use and development of approximately 142 hectares of land located at 144 Ripponvale Road to provide a mix of different land use densities to meet demand for rural lifestyle development outside of urban Cromwell; recognise and provide for the natural landscape values of the Pisa Range; and facilitate use of a further approximately 29 hectares of land for horticultural development. Rural lifestyle development is to occur in an integrated, sustainable and planned manner to meet the needs of the District’s people and communities, while avoiding, remedying or mitigating potential adverse effects on:

- *The Pisa Range – Outstanding Natural Landscape*
- *Landscape and amenity values*
- *Water resources*
- *The soil resource*
- *Surrounding land uses*
- *Natural hazard risk.”*

2.10 The key reason for the plan change is described as follows:

What is the Key Issue and its Context, Scope, Scale and Significance?

The key issue is centred around growth of the Cromwell Ward which has experienced a period of prolonged growth. The Requestor’s analysis shows that projected growth in this ward between 2016 and 2043 equates to approximately 1,850 dwellings. A significant share of the dwelling growth has occurred in Cromwell’s rural fringe and rural areas and this has led to active subdivision of rural land in recent years, creating distinct pockets such as at Queensbury, Lowburn and Bannockburn, along the lake and river edge and along Ripponvale Road, as well as ad-hoc subdivisions in the rural zone. The Council’s dwelling projections suggest continued strong demand for dwellings particularly in Cromwell’s rural fringe/rural area. Suitable new land needs to be identified, zoned and serviced at appropriate time and scales within these areas to ensure the demand can be met.

2.11 The Request document also includes a description of how the key issue is tied to identified outcomes; the drivers and what is currently being done to address the problem; why local government intervention is warranted, and the outcomes that the proposed plan change seeks to achieve.

Section 32 Report

2.12 The request documents include a s32 evaluation report. As no new objectives are proposed as part of PC14 the s32 evaluation report includes an evaluation of the purpose of the proposal as required by s32(1) to examine the extent to which the proposal is the most appropriate way to achieve the purpose of the Act. PC14 is also assessed as an ‘amending proposal’ under s32(1)(a) and (b).

2.13 The s32 report assesses three options to achieve the purpose of the plan change, as Option 1 (Status Quo); Option 2 (Re-zone the site to a Residential Resource Area);

and Option 3 (Rezone the site to a new Rural Resource Area with guidance through a Structure Plan).

- 2.14 The Requestor assessed Option 1 as inappropriate because it does little to enable future growth of the district and represents an inefficient use of land. Option 2 was found to have merit in providing for growth but it would lead to conflicts between the densities of development and the landscape values of the site and surrounds and has potential for significant reverse sensitivity effects. Option 3 was considered as being complementary with existing rural zoning and would meet the demand for rural living opportunities while upholding the rural character of the site and surrounds. Overall, Option 3 was the Requestor's preferred option.
- 2.15 The plan documentation includes a discussion of the risk of acting or not acting, and this is summarised in the s32 report as:
- a. there is no risk of acting (i.e. proceeding with PC14) given that the provisions manage effects of the activities on the wider environment; and
 - b. there is no uncertainty in or insufficiency of the information about the subject matter of the provisions; and
 - c. the risk of not acting is the finite land resource could be lost to inefficient land uses, and there is a risk that unplanned and unintegrated development in this location could impact on the special landscape values of the Pisa Range and the ONL.
- 2.16 Overall, the s32 report finds the proposal will achieve the higher order objectives of the District Plan and the purposes and principles of the RMA.

Environmental effects assessment

- 2.17 The PC14 request includes an assessment of environmental effects, and contains technical expert reports including those related to landscape and visual amenity, transportation, infrastructure, geotechnical, soils, and economics (land demand and supply). A specialist Noise Assessment Report was submitted in April 2020 following the close of the submission period.
- 2.18 The Requestor's effects assessment concludes that: "... *adverse effects can be appropriately avoided, remedied or mitigated, and that there will be a range of positive effects arising from the plan change. The site can be adequately serviced and there are no impediments to development in accordance with the proposed zoning.*"⁸

Plan Change provisions

- 2.19 Changes to the Plan proposed by PC14 can be summarised as:
- a. **Planning Map** - alterations to Planning Maps 44 and 51 to show the new Rural Resource Area (5) ("RRA(5)") zoning of part of the site; to enlarge the ONL location; and to amend the SAL within the site; and consequential changes to the Planning Maps legend;

⁸ Request document, part G14.0, p.91

- b. **Policy** - a new Policy 4.4.18 in Section 4 (Rural Resource Area) which is specific to enabling integrated rural lifestyle subdivision and development in the RRA(5), and which is linked to existing Objective 4.3.9;
 - c. **Rules** - new and amended rules in Section 4 for the Structure plan area, including the new RRA(5); and
 - d. **Structure Plan** - a new Structure Plan; Indicative Circulation Plan and Recommended Planting Schedule for the RRA(5) into Section 19 (Schedules).
- 2.20 No changes are proposed to the existing objectives in Section 4 of the District Plan (Rural Resource Area) or to the anticipated environmental outcomes. The plan documents state that the new RRA5 is underpinned by existing Objective 4.3.9 (Integrated, Comprehensive Mixed-Use Development), Objective 4.3.3 (Landscape and Amenity Values), and Objective 4.3.1 (Needs of the District's People and Communities).
- 2.21 The provisions enable the site to be developed, on the new RRA(5) area, for up to 160 rural lifestyle lots. The rural lifestyle development is tied by a rule to the development of the balance of the site (244 hectares) for a 29 hectare expansion of the existing NZ Cherry Corp orchard. The ONL is to be enlarged to provide greater protection of the Pisa Range hill country areas that form part of the western visual backdrop to the Cromwell township, and the line denoting the SAL in the eastern ridges is to be amended. Provision is made for public access through the site for recreation purposes.
- 2.22 Future development of the RRA(5) is to be guided by a Structure Plan, which has as its key features:
- a. Rural Lifestyle Areas (RLA's) with minimum lot sizes ranging from 2,000m² (RLA1) to 3 hectares (RLA5)⁹;
 - b. The smaller RLA's located on the central flat part of the site, with the lot sizes progressively increasing towards the outlying areas of the site – to reflect the landscape values and degree of landscape sensitivity;
 - c. Identification of 'no-build' areas - to retain open space character and avoid development in visually sensitive areas and land subject to natural hazards;
 - c. A planted amenity edge along Ripponvale Road and adjacent to the Horticulture Area (cherry orchard), together with boundary setbacks across the zone - to provide an amenity frontage and buffer to surrounding rural activity;
 - d. Controls on building materials and colour, landscape planting, and requirement for building platforms to be identification in more visually prominent areas of the site; and
 - e. An open space network encompassing stormwater flow paths, native tree planting, and recreational trails.

Notification and submissions

- 2.23 The plan change was publicly notified on 16 November 2019. The closing date for submissions was 18 December 2020. A total of 94 submissions were lodged with the

⁹ An amendment made during the process was to include an area of RLA6 providing 3 allotments of 4 hectares

Council. One submission¹⁰ was received after the closing date, but was subsequently withdrawn prior to the hearing.

- 2.24 A summary of submissions was prepared and subsequently notified for further submissions on 15 February 2020, with the closing date for receiving further submissions being 28 February 2020. Seventy-five further submissions were received.
- 2.25 The Council's s42A report noted some procedural issues relating to the submissions and further submissions, which are addressed later in this Recommendation report.
- 2.26 The s42A report records that three quarters (74.5%) of submissions support or conditionally support PC14, whilst a quarter of submissions (24.4%) oppose the plan change in total or in part.
- 2.27 The matters raised in submissions were concisely summarised in the evidence of Mr Giddens as follows:

In support:

- a. PC14 provides a well-planned transition from urban land use in Cromwell to surrounding pastoral and horticultural uses;
- b. Opportunity for trails to be used for public recreation including mountain biking, walking and horses for both Cromwell residents and visitors;
- c. Provides for growth to meet the demand for rural/residential lifestyle living within an area experiencing growth pressures and in close proximity to Cromwell;
- d. Development is going to happen anyway and it is better to have a well-considered proposal rather than having numerous ad hoc infill lifestyle blocks;
- e. Complements the wider objectives of the Cromwell Master Plan;
- f. Economic benefits and opportunity for future growth of Cromwell, benefits Cromwell as a centre;
- g. Sustainable growth (including horticulture) and employment opportunities in Cromwell and surrounding areas (orchards and builders/contractors during construction phase); and
- h. Significant portion of prominent hill country will be protected.

In opposition:

- a. Negative effect of development on landscape values;
- b. Reverse sensitivity from frost fans, bird scarers, agricultural spraying;
- c. Loss of productive soils;
- d. Not in accordance with Cromwell Master Plan Spatial Framework;
- e. Increase in traffic on Ripponvale Road and at Ripponvale Road and State Highway No.6 intersection.
- f. Infrastructure will be expensive to put in place and the impact on community has not been considered;

¹⁰ Submission from Mr Ricky Larsen

- g. Community connectedness with the established urban environment of Cromwell; and
 - h. Contrary to some of the objectives and policies of the Otago Regional Policy Statement and the Central Otago District Plan.
- 2.28 We discuss these issues (and the evidence and submissions relating to them) in greater detail under our evaluation of key issues in Section 4 of this Recommendation Report.

Pre-hearing directions and procedures

- 2.29 Prior to the commencement of the hearing, we issued three minutes to the parties to address various administrative and substantive matters. These minutes, and the others we issued through the course of the hearing and deliberations processes are available on the Council file.
- 2.30 In summary, these minutes addressed the following:
- a. **Minute 1** (6.05.2020) – this set out our requirements for exchange of evidence and asked the Requestor to confirm it would proceed with a hearing to be held remotely on 25 May 2020;
 - b. **Minute 2** (7.05.2020) – advised the parties that the Requestor wished to proceed with a remote hearing and confirmed the timetable for exchange of evidence; and
 - c. **Minute 3** (21.05.2020) – set out some instructions and protocols ahead of the hearing.
- 2.31 All reports, evidence and further information were made available to all parties in accordance with the timetable outlined in the above Minutes.

The Hearing Process

- 2.32 The hearing was held remotely over three separate sessions, via web based platforms. It commenced on 25 May 2020 and continued until 28 May 2020. It was then adjourned, and reconvened on 9 June 2020, and then further reconvened on 5 November 2020, as outlined below.
- 2.33 Appendix 1 of this report sets out the names of the participants, and their respective roles, that we heard from during the hearing process. The participants are referred to by name throughout this report without further description of their role, simply for reasons of efficiency.

Hearing adjournment and reconvening

- 2.34 Following the hearing on 28 May 2020, we issued a further minute as follows:
- **Minute 4** (3.06.2020) – to formally advise the hearing was adjourned, to direct that traffic expert witness conferencing be undertaken, and to request further information from the Requestor on water availability. It also advised the parties of revised provisions being prepared and confirmed the date for the hearing to be reconvened on 9 June 2020.
- 2.35 Subsequently a Joint Witness Statement (“JWS”) of the traffic experts and a statement of evidence from Mr Tom Heller were circulated to the parties.

Reconvened hearing 9 June 2020

- 2.36 At the reconvened hearing¹¹ on 9 June 2020 we heard from Mr Gibson (the one remaining witness of Horticulture NZ who was still to be heard). Mr Heller presented evidence on groundwater information, in response to our Minute 4, relating to the Cromwell Terrace Aquifer, expected groundwater yield from existing and possible new wells on and adjacent to the site, and the associated consenting requirements. Mr Larsen presented supplementary evidence on the availability of additional water to support productive land use. We asked some follow up questions of Ms Hampson on her evidence relating to demand for rural lifestyle development. Finally, Mr Whitney provided some verbal responses to the evidence he had heard presented at the reconvened hearing.
- 2.37 The hearing was adjourned on 9 June 2020. We carried out site visits on 15-16 June 2020, and issued minutes as follows:
- **Minute 5** (22.06.2020) – to provide a brief update on the process, and to request further information on the Ripponvale Irrigation Scheme; soils to be mapped on the indicative site layout plan; an assessment of landscape effects from earthworks and internal roading; and a visual simulation of built development to be provided. The Requestor was also asked to provide an update on discussions it was having with the submitter R4RDC. Reference was also made to written notes received from Mr Espie and to recorded verbal answers he gave to our questions at the reconvened hearing; and
 - **Minute 6** (30.6.2020) – advised that the Commissioners had agreed to the Requestor providing the whole package of information requested in Minute 5, including the outcomes from its meetings with the submitter R4RDC, by 24 July 2020.
- 2.38 All of the information requested in Minute 5 was received from the Requestor on 27 July 2020, and was sent to the parties. This included the amendments made to PC14, as outlined below.

Amendments to PC14

- 2.39 The main amendments made to PC14 were described by the Requestor as being designed to achieve a more 'clustered' development concept. In summary these were:
- a. A new low density RLA6 area of 13.7 hectares, located at the southern part of the site, with a minimum lot size of 4 hectares - to encourage productive use;
 - b. An increase in the development density, from RLA2 to RLA1, of an area between the southern portion of the loop road to the south and the open stormwater corridor to the north;
 - c. A small extension of the RLA1 to the north, adjacent to the Horticulture Block; and
 - d. An increase in the development density, from RLA3 to RLA2, of an area immediately north of the northern portion of the loop road.

¹¹ Via the Zoom platform

- 2.40 Other amendments, through the revised PC14 provisions and Structure Plan, were for:
- a. Increased setback, of 80 metres, from the Rockburn Vineyard boundary;
 - b. Removal of the planting edges within the area now identified as RLA6 adjacent to Ripponvale Road and adjacent to the Horticulture block, which were no longer considered necessary or appropriate given the intended rural productive use of the RLA6 area;
 - c. Removal of the proposed rule (that had been introduced at the hearing) requiring that 50% of lots in the RLA2, RLA3 and RLA4 be set aside for agricultural or horticultural use. Instead, productive uses are now provided in the Horticulture block and the new RLA6 area. In the RLA6 the area of built form is restricted, and areas to be identified must be retained for horticultural or agricultural use;
 - d. Reversion to a maximum of 160 allotments as a cap for the maximum demand on infrastructure (following a proposed reduction in the number of lots that had earlier been suggested at the hearing). The Requestor noted that whilst the indicative structure plan shows only 150 allotments it is possible this could be further refined to provide some additional allotments; and
 - e. A requirement for construction of a pedestrian and cycle underpass under State Highway 6 before issue of a section 224 certificate for the 51st lot.
- 2.41 A letter was provided from R4RDC¹² to confirm that this submitter now supported the amended proposal. This submitter did however also suggest that the indicative Structure Plan could be further improved by increasing the area of flat land retained for productive use.
- 2.42 Minute 7, issued on 20 August 2020, advised that following advice from the Reporting Officer we were satisfied the changes outlined above were within the scope of PC14 as notified. We also advised the parties that the extent of changes and new assessments were such that the hearing should be reconvened, on 6 October 2020, to enable the parties to make any further comment and for us to ask further questions.

Procedural Rulings – Hearing process and new evidence on soils

- 2.43 Minute 8 was issued on 1 September 2020 in response to a memorandum of counsel received from Horticulture NZ outlining its concerns at the process¹³. We advised that the reconvened hearing would take place as scheduled.
- 2.44 Minute 9, issued on 18 September 2020, advised the parties that the process was suspended whilst we considered whether the (new) evidence received from Mr Hill, a soils specialist, would be accepted into the process.
- 2.45 Minute 10, issued on 29 September 2020, advised the parties that, having considered the responses from Horticulture NZ, Rockburn Wines, and Mr Alan McKay, we had

¹² Letter signed by W Murray and J Dicey, dated 17 July 2020

¹³ Letter from Horticulture NZ dated, 28 August 2020

decided to accept Mr Hill's evidence into the process. We also advised the parties that the date for the reconvened hearing would be deferred to 5 November 2020 to allow more time for the parties to prepare evidence.

Reconvened hearing 5 November 2020¹⁴

- 2.46 The Requestor's witnesses Mr Giddens, Mr Milne and Mr Hill presented evidence relating to the proposed changes to PC14 and on the new information and assessments that had been provided as part of the process. Ms McMinn presented evidence for NZTA in relation to the proposed pedestrian and cyclist underpass on SH8. Mr Whitney presented a supplementary s42A Report on the changes to PC14 and on the new assessments provided by the Requestor. Mr Espie provided comments on the landscape and visual effects of earthworks and roads, and on the visual simulations of built development that had been provided.
- 2.47 Whilst Horticulture NZ's witnesses did not take part in the hearing, we had earlier received and considered statements of supplementary evidence from its witnesses Ms Wharfe, Ms McClung, and Mr Gibson.
- 2.48 Minute 11, issued on 5 November 2020, advised that the hearing was adjourned and requested that the Requestor provide its closing statement, which was subsequently received on 19 November 2020, and sent to the parties.

Final Amendments to PC14

- 2.49 The Requestor's closing statement included a final Structure Plan, and a final set of PC14 provisions that had evolved throughout the process in response to submissions and questions by the Commissioners. Two final amendments to the proposal, that had been signalled at the hearing on 5 November 2020, were confirmed as follows:
- a. Re-instatement of the Amenity Edge planting along Ripponvale Road; and
 - b. Removal of the reference in PC14 to "*any other formalised crossing point*" in the rule requiring the SH6 pedestrian and cycle underpass - to confirm the precise nature of the underpass that now formed part of the PC14 provisions.

Section 32AA Evaluation

- 2.50 Minute 12 was issued on 24 March 2021 asking the Requestor to provide an evaluation report under section 32AA of the RMA to address the changes made to PC14 since the section 32 evaluation report had been prepared.
- 2.51 The section 32AA report was received on 12 April 2021 and sent to the parties under Minute 13 on 13 April 2021.
- 2.52 The hearing was formally closed by issue of Minute 14 on 19 April 2021.

Procedural Matter - Late and invalid Submissions

- 2.53 The final aspect of the hearing process we capture here for the formal record relates to the late and invalid submissions received on the plan change.

¹⁴ Via the Microsoft Teams platform

- 2.54 Mr Whitney addressed the matter of late and invalid submissions in his s42A report¹⁵, advising that:
- a. 1 submission had been received 2 days after the closing date for submissions; and
 - b. 7 of the further submissions were considered incomplete, as no address for service was provided.
- 2.55 As noted earlier, the late submission was withdrawn prior to the hearing and so a ruling was not required on that. The further submissions all relate to the original submission by the Cromwell Mountain Bike Club. Mr Whitney recommended those further submissions be treated as invalid for failing to meet the requirements in the RMA¹⁶.
- 2.56 Having taking into account the circumstances in Section 37A of the RMA, we accept Mr Whitney's advice and we accordingly recommend that the further submissions as listed in the s42A Report (104), (123), (14), (132), (138), (154) and (164) are declared invalid.

3.0 STATUTORY FRAMEWORK

- 3.1 Ms Eveleigh, counsel for the Requestor, advised us in opening legal submissions that the relevant statutory matters for assessing a plan change are contained in the Environment Court's *Colonial Vineyards* decision¹⁷. We understand these include the following considerations¹⁸:

General Requirements

- a. the District Plan should be designed in accordance with¹⁹, and assist the Council to carry out, its functions²⁰ so as to achieve the purpose of the Act;²¹
- b. when changing the District Plan, the Council must:
 - i. give effect to any NPS²², the NZCPS²³ or any RPS^{24,25}
 - ii. have regard to any *proposed* RPS;²⁶
 - iii. have regard to any management plans and strategies under any other Acts and to any relevant entry on the NZ Heritage List and to various fisheries regulations (to the extent relevant), and to consistency with plans and proposed plans of adjacent authorities;²⁷
 - iv. take into account any relevant planning document recognised by an iwi authority;²⁸

¹⁵ s42A Report (4 May 2020), p.1-2

¹⁶ S42A Report, page 2

¹⁷ ENV-2012-CHC-108, [2014] NZEnvC 55

¹⁸ As described in the Commissioners' decision on Plan Change 13, Central Otago District

¹⁹ s74(1), RMA

²⁰ s31, RMA.

²¹ ss 72, 74(1), RMA.

²² National Policy Statement

²³ New Zealand Coastal Policy Statement

²⁴ Regional Policy Statement for the Otago Region

²⁵ s75(3)(a)-(c), RMA.

²⁶ s74(2), RMA.

²⁷ s74(2)(b)-(c), RMA.

²⁸ s74(2A), RMA.

- v. not have regard to trade competition;²⁹
- vi. be in accordance with any regulation;³⁰
- c. in relation to regional plans:
 - i. the District Plan must not be inconsistent with an operative regional plan for any matter specified in s30(1) or any water conservation order;³¹ and
 - ii. shall have regard to any proposed regional plan on any matter of regional significance;³²
- d. the District Plan must also state its objectives, policies and the rules (if any) and may state other matters;³³
- e. the Council has obligations to prepare an evaluation report in accordance with section 32 and have particular regard to that report;³⁴
- f. the Council also has obligations to prepare a further evaluation report under s32AA where changes are made to the proposal since the s32 report was completed;

Objectives

- g. the objectives of the Plan Change are to be evaluated to the extent which they are the most appropriate way to achieve the Act's purpose;³⁵

Provisions

- h. the policies are to implement the objectives, and the rules (if any) are to implement the policies;³⁶
- i. each provision is to be examined as to whether it is the most appropriate method for achieving the objectives of the TRMP, by:
 - i. identifying other reasonably practicable options for achieving the objectives;³⁷
 - ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives³⁸, including:
 - a) identifying and assessing the benefits and costs anticipated, including opportunities for economic growth and employment opportunities that may be provided or reduced;³⁹
 - b) quantifying those benefits and costs where practicable;⁴⁰
 - c) assessing the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions;⁴¹

²⁹ s74(3), RMA.

³⁰ s75(1)-(c), RMA.

³¹ s75(4), RMA.

³² s74(1)(f), RMA.

³³ s75(1)-(2), RMA.

³⁴ Schedule 1, Part 2, Clause 22, RMA.

³⁵ s32(1)(a), RMA.

³⁶ s75(1), RMA.

³⁷ s32(1)(b)(i), RMA.

³⁸ s32(1)(b)(ii), RMA.

³⁹ s32(2)(a), RMA.

⁴⁰ s32(2)(b), RMA.

⁴¹ s32(2)(c), RMA.

Rules

- j. in making a rule, the Council shall have regard to the actual or potential effect on the environment of activities, including (in particular) any adverse effect;⁴² and

Other Statutes

- k. the Council may be required to comply with other statutes.

3.2 Our report addresses these matters, and commences with an evaluation of what we consider to be the key issues raised in submissions and evidence. We have grouped our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the matters⁴³ to which they relate – rather than assessing each issue on a submitter-by-submitter basis. This approach acknowledges there was a high degree of commonality among the submissions on the key issues, and it is more efficient and convenient for readers if the discussion is focused on those issues.

3.3 In considering all of the matters above, we record that our recommendation is based upon our consideration of the following documents:

- a. the notified Plan Change and s32 evaluation;
- b. the submissions and further submissions received;
- c. the Council s42A report, and supplementary reports;
- d. the evolving changes to the plan provisions provided by Mr Giddens over the course of the hearing and the s32AA evaluation provided following the hearing; and
- e. the statements/presentations from all parties appearing before us.

3.4 Prior to setting out our evaluation of the eight issues listed below It is important that all parties understand that it is not for us to introduce our own evidence on these issues. Rather, our role has been to:

- a. establish that all relevant evidence is before us (or where that was considered not to be the case we commissioned additional reports or information⁴⁴); and
- b. test the evidence, and to determine the most appropriate outcome based on the views we considered would best achieve sustainable management.

3.5 It is that dual role to which the following evaluation addresses. Before doing so, we observe that s32AA(1)(d)(ii) enables our further evaluation reporting to be incorporated into this report as part of the decision-making record. To this end, our evaluation of each issue has considered the merits of any proposed alterations to the notified provisions to assist in ascertaining the appropriateness of the provisions, having had regard to the Requestor's s32AA evaluation report.

⁴² S76(3), RMA.

⁴³ Clause 10(2)(a) of Schedule 1, RMA sets out that a plan change decision may address submissions by grouping them according to either the provisions of the plan change to which they relate, or to the matters to which they relate.

⁴⁴ Under s 41C(4) of the Act

4.0 EVALUATION OF KEY ISSUES

4.1 We have evaluated the evidence and submissions with respect to the following key issues:

- **ISSUE 1:** What type of residential development is proposed in PC14?
- **ISSUE 2:** The need for the plan change
- **ISSUE 3:** Effects on rural character, landscape and visual effects
- **ISSUE 4:** Effects on productive potential of the land
- **ISSUE 5:** Transportation network
- **ISSUE 6:** Integration with Cromwell township
- **ISSUE 7:** Noise, spray drift and reverse sensitivity effects
- **ISSUE 8:** Other matters

Issue 1: What type of residential development is proposed in PC14?

Issue identification & evidence

- 4.2 The 'Purpose of Proposal' for PC14 is "...to meet demand for rural lifestyle development outside of urban Cromwell". The aim is to achieve this by providing "...a mix of different land use densities ..." in an integrated manner that will "... facilitate the use of an additional 29 hectares for horticultural development" on the land subject to the plan change at Shannon Farm on the outskirts of Cromwell.
- 4.3 An issue in contention amongst submitters and experts was whether the residential component of the development is 'rural lifestyle development', or whether it is 'residential' or 'large lot residential' or 'rural residential' development. This may also be relevant to our determination of some other issues, including the need for the plan change (Issue 2); effects on rural character (Issue 3); and integration with the Cromwell township (Issue 6).
- 4.4 Mr Whitney's evidence was that much of the subdivision and development to be enabled by PC14 is essentially for residential purposes, and the lot sizes proposed in the Rural Lifestyle Areas 1-4 are comparable (in terms of the minimum lot areas required) to the residential zones of the District Plan⁴⁵. Mr Whitney, in supplementary evidence considered the changes to PC14 will increase the number of smaller allotments, representing an even greater density of residential scale development.
- 4.5 Mr Giddens gave contrasting evidence on this point. In his view the development is distinguishable from a residential development in particular as the occupants of the PC14 land will appreciate that their allotments are able to be used for productive purposes, are located in the "*rural character landscape of Ripponvale*", and will also benefit from being in "*the wider open landscape*"⁴⁶.
- 4.6 In Mr Giddens' supplementary evidence he considered that Mr Whitney's comments on the changes to the Structure Plan was too focussed on the higher density RLA areas. Mr Giddens considered that more weight should be given to the contribution provided by the Horticultural block, the new RLA6 area, and the future use of the

⁴⁵ S42A Report, discussion in section 7.2

⁴⁶ Mr Giddens, EIC, discussion on pages 14 and 15

extended Outstanding Natural Landscape Area for recreational and complementary rural use.

- 4.7 Mr Whitney's evidence was that the development enabled by PC14 does not fit the definition of 'rural lifestyle zone' in the National Planning Standards⁴⁷, which is;

"Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur." [emphasis Added by Mr Whitney]

- 4.8 Ms Wharfe provided evidence on this point, essentially in agreement with Mr Whitney, noting in particular the results of a study in Western Bay of Plenty that showed that up to 82% of allotments smaller than 1.5 hectares were not used for primary production after subdivision⁴⁸.
- 4.9 We understood the main difference in approach between the evidence of Mr Giddens and that of both Mr Whitney and Ms Wharfe to be that that Mr Giddens had assessed the land in an overall sense. In doing so he had taken greater account of PC14 providing for approximately 42.7ha of land to be both used for and to enable primary production to occur alongside rural living. His view was that PC14 needs to be read as a whole as it is guided by a Structure Plan rather than isolated into a consideration of the allotment sizes as Mr Whitney has done.

Our Findings

- 4.10 We acknowledge Mr Whitney's evidence relating to comparative allotment sizes in the various residential and rural residential zones in the District Plan, and can agree with him that the major part of the residential component of PC14 (i.e. the 119 lots in RLA1 – RLA 4) is for essentially residential or large lot residential activity. We also agree with Ms Wharfe that the majority of those allotments will have a low propensity to be used for rural productive purposes, as addressed further under Issue 4 ('Effects on productive potential of the land').
- 4.11 However, on balance, we are more persuaded by the evidence of Mr Giddens that, when read as a whole, PC14 is best described as a rural lifestyle zone. We acknowledge it contains a concentration of large lot residential-scale allotments on part of the site, however this area is interconnected with other elements of the PC14 proposal including the Horticulture Block, the expanded ONL area, public access and recreation, and open space areas all on the same site. We also note that development of the Horticulture Block (of some 29 hectares) is a pre-cursor to the residential development, and the amended Structure Plan provides another 66 hectares of land within the RLA5 and the RLA6 containing allotments of 3 – 4 hectares which are larger than normal residential or larger lot residential development and have some potential for primary production to occur.

⁴⁷ National Planning Standards, 2019

⁴⁸ Ms Wharfe, EIC, para 8.21

Issue 2: The need for the plan change

Issue identification & evidence

- 4.12 One of the key drivers for PC14 is to meet a demand for rural lifestyle development outside of Cromwell. The issue in contention was whether there is a need for this type of development in this general location, and whether PC14 is appropriate to help meet that need.
- 4.13 Ms Hampson's evidence was that PC14 would enable a maximum of 160 dwellings on lots between 2,000m² and 3 ha in Cromwell's rural fringe, and that this will by itself cater for approximately 18% of the demand for dwellings projected between 2016 and 2043 in areas outside the Cromwell urban area but within the Cromwell ward⁴⁹. Her evidence on demand was based on Council's dwelling growth projections (released in 2016) which she considered provide a conservative estimate of 71% growth in demand for the catchment area over that period, with most demand anticipated in the areas relatively close to Cromwell (i.e. between Pisa Moorings in the north and Bannockburn in the south).
- 4.14 Ms Hampson said that there is no realistic opportunity to create more large lot residential capacity within the existing urban area of Cromwell, and to do so would be counter-intuitive. She noted that PC12 for example had changed the zoning of land which would have had capacity for large lot residential development to now allow for a higher density of development. Ms Hampson noted that Council's Spatial Framework – Spatial Plan⁵⁰ was based on further intensification of the Cromwell Urban Area and was likely to push even more demand for larger lot residential living into the rural fringe, rural and satellite urban areas of the Cromwell Basin, but that the Spatial Framework states the satellite urban areas are not to be expanded.
- 4.15 For these reasons, Ms Hampson considered that suitable land outside of the Cromwell urban area will need to be identified and zoned to ensure the projected demand for rural lifestyle living opportunities can be met over the long term. She said that a significant share of the projected growth will be for lots between 2,000m² – 1 ha, and also 1 ha – 8ha, in keeping with past trends⁵¹. Her evidence was that PC14 will assist to meet that demand, in an appropriate location, and will provide integrated development rather than meeting the demand through ad-hoc subdivision.
- 4.16 Mr Whitney's evidence was that Ms Hampson had assessed the demand and supply of large lot residential allotments rather than allotments that have a rural character or association⁵², based on her use of terminology regarding 'rural residential', 'residential' and 'rural' which did not correspond with the District Plan definitions. He acknowledged there will be a need for dwellings especially outside of Cromwell township, and that concentrating a substantial number of allotments in one location, as proposed, has benefits in providing for subdivision and development in a co-ordinated manner. However, Mr Whitney re-iterated his view that PC14 is for large lot residential development and questioned whether PC14 is in the appropriate way to provide for this type of development compared to consolidating such development within existing urban areas.

⁴⁹ Ms Hampson, para 31

⁵⁰ The 'Cromwell Master Plan Spatial Framework' is further addressed in section 3, Issue 8(h) of this Recommendation report.

⁵¹ Ms Hampson, EIC, para 30

⁵² S42A Report, page 52

- 4.17 Mr Giddens' evidence was that the existing planning framework in the District does not provide an active mechanism to meet the demand identified by Ms Hampson. He noted in particular that the District Plan was made operative over 20 years ago in 1998, and provides insufficient capacity in existing zones to meet the demand that PC14 is seeking to address.

Our Findings

- 4.18 We accept that, based on the only expert evidence we received on the demand and supply projections (i.e. from Ms Hampson), that there will be strong demand for large residential allotments (in the 2,000m² – 1 ha range) and for rural residential allotments, (in the 1 ha – 8ha range) on the rural fringes of Cromwell township. Whilst Ms Hampson has used descriptors of rural residential and rural lifestyle that differ to the District Plan terminology, we consider it is the range of lot sizes, and the location in the rural fringe area of Cromwell, that are the relevant considerations for an assessment of this kind. It is also accepted that PC14 would achieve its purpose, at least in part, by meeting some of that demand. We note, however, that this does not mean we accept the precise location of the site is suitable, or that PC14 is an appropriate way, to meet this need. Those matters are examined further in the subsequent issues.
- 4.19 We received no evidence as to the capacity of existing rural residential zones near to Cromwell, however Mr Whitney's evidence was that subdivision can continue to occur in those rural fringe areas as a controlled activity to an average lot size of 2 hectares. Other options such as expansion of the satellite urban areas such as at Bannockburn and Lowburn cannot yet be ruled out as, notwithstanding the intentions of the Spatial Framework⁵³ further planning provisions have yet to be developed from that.
- 4.20 Whilst those other options might meet some of the demand identified by Ms Hampson, we also acknowledge PC14 provides for a wide range of allotment sizes, including at the lower end of the range which, in the rural fringe areas, would not be likely under current zoning. We also accept the point made by Mr Giddens that PC14 provides for development in a more structured and integrated way than is usually the case for subdivisions in the rural area.
- 4.21 In summary, our findings on Issue 1 ('What type of residential development is proposed in PC14?') and Issue 2 ('The need for the plan change') are that PC14 is a zone providing for rural lifestyle living, and it is an appropriate way to help meet an identified need for rural lifestyle living opportunities in the rural fringe areas of Cromwell.
- 4.22 We now turn to examine the other key issues to determine whether Shannon Farm at Ripponvale is a suitable site for the development proposed by PC14.

Issue 3: Effects on rural character, landscape, and visual effects

Issue identification & evidence

- 4.23 There was disagreement between experts as to the existing character of Ripponvale, the extent to which the development enabled by PC14 will affect that character, its effects on the natural landscape, and visual effects from various viewpoints into the site.

⁵³ As explained in Section 3, Issue 3(h) of this Decision Report

(a) Rural character

- 4.24 The s42A Report describes Ripponvale as retaining “a strong rural character associated with fruit growing in particular, and also viticulture and pastoral farming”⁵⁴. Mr Espie’s evidence was that “productive horticultural and agricultural land uses dominate the area”⁵⁵. Ms Wharfe described the dominant pattern along Ripponvale Road as a “rural working environment”, and with “only sporadic presence of smaller lifestyle lots”⁵⁶. Mr Milne described the character of Ripponvale as portraying a “working rural character with an overlay of rural lifestyle character”⁵⁷. He further noted the “evolving rural lifestyle character of the surrounding environment”⁵⁸.
- 4.25 PC14 will provide for the subdivision and development of up to 160 allotments on the site to the north of Ripponvale Road, most of which will have a minimum area of 2,000m² – 4,000m². Mr Whitney considered that this concentrated form of subdivision contrasts with the pattern and density of subdivision that has occurred in the area. He said it also contrasts with the development that is likely to occur in terms of the Rural zoning, and also the Rural Residential notation which requires subdivision to have an average allotment size of at least 2 hectares.
- 4.26 Mr Whitney’s evidence was that the proposed lot sizes in PC14 for RLA1 – RLA4 are commensurate with the minimum lot sizes required in the District Plan for the Residential Resource Areas 2 – 4, and concluded: “... much of the subdivision and development proposed by PC14 is not a continuation of the existing rural residential/rural lifestyle subdivision and land use along Ripponvale Road; but rather is an enclave of larger lot residential subdivision and development on the subject site”⁵⁹. He commended further on the amendments to PC14, noting that: “... the latest version of the Indicative Master Plan dated 22 July 2020 now provides for an indicative yield of 111 lots for residential activity having minimum areas between 2,000m² and 4,000m² in the RLA 1-3 and 18 lots for residential activity having a minimum area of 1 hectare in the RLA 4”⁶⁰.
- 4.27 Mr Milne considered that the proposed development is an appropriate extension to this existing character of this area. He considered that “... lots of 2-hectares or more are not essential to maintain rural character and that some variation in lot sizes based on site attributes, sensitivity and the surrounding environment will not only maintain the landscape qualities of the surrounding environment but also provide for a wider range of lifestyle types and land uses”⁶¹.
- 4.28 Mr Milne acknowledged that through the amendments to the Structure Plan there will be an increase in density at the core of the site (through expansion of the RLA1), but considered that the provision of the RLA6 area along the south boundary will increase the sense of rural character of the site⁶².
- 4.29 Mr Espie considered that PC14 will create an area of residential density that is “quite a departure” from the current character of the Ripponvale Road area, noting also that:

⁵⁴ S42A Report, page 6

⁵⁵ Mr Espie, Peer Review Report, para 12

⁵⁶ Ms Wharfe, EIC, para 9.14 & 9.15

⁵⁷ Mr Milne, EIC, para 66

⁵⁸ Mr Milne, EIC, para 67

⁵⁹ S42A Report, page 8

⁶⁰ Supplementary s42A Report, page 3

⁶¹ Mr Milne, EIC, para 107

⁶² As shown on the Indicative Master Plan Rev B (dated 22 July 2020)

“The flatter part of the site will accommodate a significant area of large-lot suburban land use”⁶³.

- 4.30 Ms Wharfe’s evidence included Google Map images of areas in, and near to, Cromwell (including at Bannockburn, Roberts Drive in Cromwell, and Lowburn) which she said have lot sizes similar to PC14. Her evidence was that these serve to demonstrate development of this kind will have a significantly higher density to, and will not represent an extension to, the existing character along Ripponvale Road.
- 4.31 Mr Giddens maintained his view that the development proposed is not ‘large lot residential’ as outlined in Issue 1 above⁶⁴, and concurred with the evidence of Mr Milne that PC14 will represent a continuation of the character of the area.

(b) Landscape and visual effects

- 4.32 Mr Milne presented a Visual Amenity Assessment, including graphic simulations of the development as seen from several viewpoints into the site. At our request he also provided a simulation of development that might be expected to occur on the site in accordance with the amended Structure Plan, taken from a ‘bird’s eye’ view of the site. He also presented an assessment of the visual and landscape effects arising from the construction of internal roading.
- 4.33 Mr Milne’s conclusions were that:
- a. The lower elevations of the site will be considerably changed, but are relatively contained and already modified (historic water races, fence-lines, and modified grasslands) and so have greater capacity for change;
 - b. The smaller rural lifestyle lots will be located on these lower slopes, at the core of the site, with larger lots at the periphery paired with an amenity edge to provide a transition into the surrounding rural landscape;
 - c. Effects on the Significant Amenity Landscape (SAL) will be largely mitigated or avoided through ‘no build’ zones on the visually sensitive ridgelines and ‘bespoke rules’⁶⁵ for low density development to ensure it will be readily absorbed and only a low degree of openness and naturalness will be lost within the SAL; and
 - d. There will be no development in the Outstanding Natural Area (ONL) and positive effects will arise from the extension of the ONL as proposed in PC14.

- 4.34 Mr Milne’s evidence was that, overall, the effects on visual amenity arising from the proposed plan change will be moderate-low in context of the receiving environment⁶⁶. He said that, while it is inevitable that the existing qualities and characteristics of the site will change, the proposal will not result in significant adverse landscape or visual amenity effects that cannot be avoided or mitigated⁶⁷.

- 4.35 Mr Espie’s evidence was that some low-degree adverse effects on landscape character will eventuate but in a way that is relatively confined and that, on a broader

⁶³ Mr Espie, Peer Review Report, para 28

⁶⁴ Mr Giddens, EIC, para 54 & 55

⁶⁵ Rules include controls on building materials and colour, landscape planting, and to identify building platforms in mire visually prominent areas at the time of subdivision

⁶⁶ Mr Milne, EIC, para 139

⁶⁷ Mr Milne, EIC, para 138

landscape scale, the changes are consistent with their setting⁶⁸. He considered that the changes made to the Structure Plan, in particular the larger lots on the RLA 6 area, would reduce the degree of adverse effects experienced from Ripponvale Road as rural living would be buffered by the area of open space and productive use. Mr Espie retained some concerns at what he considered to be moderate adverse effects in the East Gully SAL area, and he accordingly recommended a reduced and reconfigured treatment of that part of the site.

- 4.36 Mr Whitney's evidence was that the proposal will have significant adverse landscape and visual effects⁶⁹. He considered the additional subdivision and development that will result from the amended Structure Plan within the RLA 1 and RLA 2 on sloping land within the central portion of the site will further exacerbate the adverse landscape and visual effects when compared to the development enabled by the notified structure plan and the plan amended at the hearing on 28 May 2020⁷⁰.
- 4.37 Mr Whitney noted that there was no viewpoint presented of the modelled development from Viewpoint 15, that being from the most frequented public place from which the proposal will be viewed on State Highway 6 at the intersection with McNulty Road. He was also concerned at the extent of development that will be visible from Viewpoint 12 on Ripponvale Road, and that the PC14 development will be prominent to views from Viewpoint 14 at the entrance driveway where the background vista includes the ONL of the Pisa Range. He was also concerned at effects on views from Viewpoint 15 on SH6, where motorists travelling northwards will have a clear view of the PC14 site across the unobstructed open land at the aerodrome and racecourse.
- 4.38 Mr Whitney concurred with a concern expressed by the McKay Family Trust (60/6) that those residents will be able to see the built development including in the East Gully SAL from Viewpoint 16, and at night this would represent an 'island of light' conspicuous in an otherwise dark night time environment. He acknowledged the effect was not so pronounced from various other viewpoints including from State Highway 6 west of the Sandflat Road intersection.
- 4.39 Mr Whitney also considered that despite the focus on particular viewpoints from roads and private properties on the ground, the 'birds eye view' of development on the site would be seen by users of the Cromwell Aerodrome and by participants in scenic helicopter flights. He also considered that aerial perspective did not reflect the full extent of built development enabled by PC14 for example accessory buildings and other structures such as farm buildings and water tanks were not modelled.
- 4.40 Several submissions from residents were concerned at the visual and landscape effects of built development on the hillsides⁷¹. Reference was made to the Schooner development, consented on land adjacent to the site, to envisage what the visual effects on the hillside might become, noting that that development has an average lot size of 8.7 hectares and with 5 lots of 2 hectares⁷².

Our findings

- 4.41 This is a key, and we consider determinative, issue for consideration of PC14.

⁶⁸ Mr Espie, Peer Review Report, para 28

⁶⁹ Sec 42A, clause 8.1.7

⁷⁰ Sec 42A Supplementary, clause 5.4

⁷¹ Submissions by A McFarlane (52/6), McKay Family Trust (60/6), J Dicey (117/27), B Tovey (85/1), and D Stark (82/4&5)

⁷² S42A Report, page 20

- 4.42 We accept the evidence of Mr Whitney, Ms Wharfe and Mr Espie that the Ripponvale Area in the vicinity of the site has a strong rural character and is dominated by horticultural and agricultural activity. We also agree with those experts that PC14, with its concentrated development of much smaller allotments, which in turn will generate considerable traffic and activity along Ripponvale Road, provides a starkly different character to that which exists in this locality.
- 4.43 We do not accept Mr Milne's evidence that this can be seen as an extension to existing rural residential development in Ripponvale. From viewing the 'bird's eye' simulation and comparing it to Ms Wharfe's aerial photographic figures of Roberts Drive in Cromwell, parts of Bannockburn, and Lowburn, we agree with Ms Wharfe that the enclave of rural lifestyle allotments proposed on the PC14 site appears to be of similar size and character to those areas of urban settlement. The only difference is that the PC14 development is separated, to some degree, from the main frontage road.
- 4.44 We acknowledge there are a range of measures built into PC14 to mitigate the effects on rural character, including the amendments made to the Structure Plan. We agree with Mr Milne and Mr Espie that the RLA6 adjoining Ripponvale Road, and the re-instatement of a planted amenity strip, will provide some visual buffer into the site. There are also several controls to soften the visual impact of built development, including rules to identify least-impact building platforms, no-build areas on prominent ridgelines in the SAL, use of appropriate colour palettes, planting measures, and lower impact street lighting.
- 4.45 However, we consider that those measures can only go so far to mitigate the effects of a development of this scale and density. On balance we accept the evidence of Mr Whitney that there will still be adverse visual effects from the enclave of development within the RLA 1 and RLA 2 areas, as further expanded in terms of the amended Structure Plan, on sloping land within the central portion of the site.
- 4.46 We note that whilst Mr Espie had assessed 'low-degree adverse effects' on landscape character and in a way that is 'relatively confined' it was our impression his evidence was in the context that the land need might need to be rezoned for intensive development of this kind. He considered the measures built into PC14 would then generally provide a good fit in the landscape. Mr Espie confirmed in written evidence that, regardless of that, he retained some concerns regarding development in the SAL and recommended some changes in that area which were not accepted by the Requestor.
- 4.47 We concur with Mr Whitney that the viewpoints presented by Mr Milne do not provide a full and accurate representation of the landscape and visual effects of a development of this scale. We consider it is evident from the 'bird's eye' perspective, which in a single image portrays the large scale, extent, and visual prominence of built development, that the assessment of visual and landscape effects cannot be accurately assessed and represented from only 16 viewpoints into the site. The site is partly elevated and in close proximity to Cromwell and will be able to be viewed from many other possible viewpoints, including various points along the State Highway, the Cromwell racecourse, and also by users of the Cromwell Aerodrome. We also agree with several submitters, including Mr McKay, that there will be an adverse effect arising from night-time lighting that will be clearly visible from his property, and from other properties and viewpoints which currently have a dark night time backdrop of the hills.

- 4.48 In conclusion, whilst we acknowledge the measures built into the PC14 provisions to reduce the rural character, landscape and visual impact of development enabled by PC14 on this site, we consider the location, scale and intensity of development on this particular site to be such that adequate mitigation of those adverse effects is not possible.

Issue 4: Effects on productive potential of the land

Issue identification

- 4.49 This issue is whether, or to what extent, development enabled by PC14 will affect the potential of the land (determined by its soils, topography, climate, and availability of water) at Shannon Farm to be used for primary productive purposes.
- 4.50 We heard evidence from Ms McClung and Ms Wharfe of Horticulture NZ⁷³, in particular, as to the economic value of orcharding that utilises the soils found at Ripponvale, and the contribution this makes to the regional economy. There seemed to be no disagreement between the parties on this, however there was considerable disagreement on the productive capacity of the land and the effects PC14 might have on this.

Context

- 4.51 A substantial amount of evidence, further information, and supplementary evidence was presented on this issue during the course of the hearing process. We have carefully considered all of that information evidence and information but consider it is not practicable to summarise, and comment on, all of it in this Recommendation Report. For efficiency reasons we have addressed this issue in a different format to the other key issues with our findings included in the overall discussion on each point.

(a) Productive potential of the land

- 4.52 The high-level mapping by Leamy and Saunders 1967 was accepted by the soils experts (Mr Hill and Mr Gibson) as the most detailed of the available soil map information⁷⁴. The evidence from that was that the PC14 site contains 'W5 Waenga fine sandy loam' soils, described by Peter McIntosh as "*the most valuable of the Waenga soil types for horticulture and highly suitable for irrigation and a wide range of crops*"⁷⁵. From Mr Gibson's evidence the site also contains 'R2', 'W3' and 'L' soils also suitable for fruit and vine growing, as well as other 'high country soils' that have less productive potential. Mr Gibson's evidence was that the total organic matter component of the soils has raised the value of the W5 soils from 'high class' to 'outstanding'⁷⁶.
- 4.53 We understood the evidence for the Requestor⁷⁷ to be that there will be a loss of an area of the soil resource, but the effects of this are not significant. The Request document included an assessment by Mr Lynn⁷⁸ who found that none of the five soils mapped at the site meet the criteria required to be classified as 'high class soils'⁷⁹. As

⁷³ Supported by submissions from J Dicey (117/26), K Wardle (170/1)

⁷⁴ Mr Gibson, 2nd Supplementary Statement, para 5.17 & Mr Hill, EIC, para 55

⁷⁵ Reference made in Mr Gibson's EIC, para 10.7 to P McIntosh, "Soils for Horticulture – Central Otago"

⁷⁶ Mr Gibson, EIC, para 10.19

⁷⁷ Evidence of Mr Hill, Mr Larsen, Mr Edwards, Mr Giddens

⁷⁸ Senior scientist/capability leader at Manaaki Whenua Landcare Research

⁷⁹ As defined in the ORPS

the s42A Report noted, that was based on the suitability of the soils for arable cropping, and not for horticulture such as fruit growing as is in evidence on adjacent land and throughout Ripponvale. The evidence was also that their productive potential is significantly restricted by site constraints (availability of water for irrigation, topography and exposure to frosts).

- 4.54 However, we are more persuaded by the evidence for Horticulture NZ⁸⁰, and the s42A Report, that the site does contain soils (in particular the W5 Waenga soils) appropriately defined as 'high class'. In that regard, we accept the evidence that the site is suitable for a wide range of crops, in addition to the 'mainstream' crops in this locality of cherries and grapes. Mr Dicey's evidence, as an experienced viticulturalist in central Otago and an expert in the wine industry, was that the establishment and operation of a commercial winegrowing operation at the PC14 site is economically viable⁸¹.
- 4.55 We accept the evidence of Mr Gibson regarding the suitability of the PC14 site for a wide range of primary production. We were similarly persuaded by the evidence called by Horticulture NZ, in the s42A Report, and also by Mr Dicey, that the site constraints for primary production are somewhat overstated in the Requestor's evidence.
- 4.56 In relation to water availability we are satisfied that from the further information received from the Requestor⁸² there is a realistic prospect for water to be supplied from the Ripponvale Irrigation Scheme at critical high demand periods given the existing race capacity. Whilst there are infrastructure limitations at some points in the distribution system, the irrigation company indicated it would consider making improvements to the system if it was approached by existing or new shareholders to make this a viable proposition.
- 4.57 Mr Dicey's evidence was that there is currently sufficient water available to plant 87 hectares of the site in grapes⁸³. Mr Heller's evidence confirmed there is an existing bore on the site to serve the 22 hectares of plantings within the new orchard on the site. We understood his evidence to be that the balance of the land has a potential for another bore irrigation source in the south-east corner which could obtain a reasonable yield for further production, sufficient for an 11 hectare cherry orchard on the site within the RRA(5) zone.
- 4.58 Mr Hill's evidence was that, based on climate data⁸⁴, the exposure of the site to frost was a significant limiting factor for horticulture. However, we favour Mr Gibson's evidence on this aspect, based on his knowledge of horticultural growing systems in Central Otago and experience of the limitations of climate. Mr Gibson's evidence was that the very warm temperatures in this region are sufficient for a wide range of crops including stone fruit and grapes, and frost mitigation is common place and is not an impediment. He observed that the PC14 has the same number of frost-free days as the adjacent Ripponvale area and much of the Pisa Flats to Wanaka where fruit production is successfully undertaken⁸⁵.
- 4.59 Our finding is that, overall, the PC14 contains soils that have high productive potential appropriately defined as high class, and has other soils that are well suited for

⁸⁰ Evidence of Mr Gibson, Ms Wharfe

⁸¹ Mr Dicey, para 4.1(c)

⁸² Correspondence from Mr Tim Jones of the Ripponvale Irrigation Company dated 23 July 2020

⁸³ Mr Dicey, para 4.1

⁸⁴ GrowOtago climate data

⁸⁵ Mr Gibson, 2nd Supplementary Statement, page 9

development of a wide range of horticultural and other crops. We do not consider the site constraints to be a significant impediment to realisation of the potential for increased primary production of this land.

(b) Effects of PC14

4.60 The Requestor's evidence was that the proposal itself will not affect the productive potential of the land, and will enhance it, based on:

- a. the development of a 29 hectare cherry orchard, and
- b. the larger allotments (in particular the RLA 5 and RLA 6) will enable rural productive use, and the smaller allotments will still provide some potential for primary production to occur.

a. Cherry orchard expansion

4.61 Mr Edwards' evidence, that PC14 will provide a significant increase to the current production on the site, we understood was based on his assessment of constraints to production under the status quo and on the economic constraints that would be removed by injection of investment under PC14. He identified the constraints of irrigation water, and climate/microclimates, as 'high impact' constraints. Our findings above are that we do not consider these to be significant constraints for horticultural production on this site.

4.62 Whilst the development of a new cherry orchard will come with significant economic costs, and PC14 will provide an opportunity to invest in a new orchard, we do not consider we received sufficient evidence to persuade us that the land cannot be further developed under the status quo in similar manner to other horticultural enterprises at Ripponvale.

b. Rural lifestyle lots

4.63 Mr Gibson identified some 32 hectares of W5 soils outside of the cherry orchard expansion in the Horticulture Area of the RRA(5). Mr Hill's evidence, in essence, was that the amendments to the Structure Plan will provide a better match of development to the soils on the site⁸⁶. We understood that some of the area of W5 soils adjacent to Ripponvale Road has been reclassified as RLA6 (with a minimum lot size of 4 hectares) and a very small area of W5 soils has been incorporated into the RLA5 (minimum lot size of 3 hectares). Mr Giddens' estimated that 13.7 hectares land is enabled for productive use through these changes⁸⁷. That evidence is accepted. We also acknowledge that the submitter R4RDC supported the amendments made to the indicative plan, whilst suggesting it could be further improved by increasing the area of flat land retained for productive use.

4.64 However we need to balance that against the still very significant areas of W5 or W3 soils in the RLA1 and RLA2 (which have minimum lot sizes of between (2,000m² – 3,000m²). Ms Wharfe's estimate was that there are 46 such lots (having also noted the precise figure may change as the master plan is indicative at this stage). Mr Whitney's evidence was that the revised Structure Plan shows 34 of the RLA1 lots are on W5 soils and 12 of the RLA2 lots are on W5 or W3 soils. We are satisfied from

⁸⁶ Mr Hill, paras 112 – 115, & 145

⁸⁷ Mr Giddens, 2nd statement, para 8c

the evidence of Mr Gibson that the site constraints are not such that these areas of W5 and W3 soils are not suitable for horticulture or viticulture.

- 4.65 Ms Wharfe's evidence was that those soils, to be occupied by approximately 45 or 46 lots, "*are essentially lost to productive purposes*"⁸⁸ in reference to, in particular, the results of the Western Bay of Plenty study (referred to in Issue 1). Mr Gibson's evidence was that smaller blocks such as those enabled by PC14 have little practical use for production given that up to 2,000m² can be lost to dwelling, driveway, garages, and gardens⁸⁹. His evidence was that lots of 4 – hectares are required. Mr Whitney's evidence was on a similar vein, and questioned whether the density of allotments provides the ability for the soil resource to be utilised within the allotments for any meaningful productive purpose⁹⁰.
- 4.66 We note that the provision in the notified version of PC14 to require 50% of each smaller allotment to be set aside for potential production was removed as part of the subsequent amendments to provisions, and we also note that Mr Edwards had excluded production from those lots for the purposes of his economic model. Our impression from the evidence was that the Requestor's case was not relying on the smaller lots as holding any realistic potential for significant rural productive use.

Overall finding

- 4.67 In balancing the evidence on this aspect, our overall finding is that PC14 will provide for increased production on the land, but there was inconclusive evidence to persuade us that this could not occur in terms of the characteristics of the site and its current zoning for rural purposes. In overall terms, it will remove the potential for significantly more production to occur by excluding, or severely impacting on, the potential for production to occur on another 32 hectares of high class soils.
- 4.68 We also place significant weight on Mr Whitney's evidence that W5 soils are a finite resource, and in Ripponvale they are essentially confined to this particular site with only very small isolated pockets occurring outside the site's boundaries⁹¹.

Issue 5: Effects on the transportation network

Issue identification & evidence

- 4.69 This issue relates to effects on the efficiency and safety of the adjacent road network, taking account of the generation and distribution of vehicular, cyclist and pedestrian traffic to and from the proposed development. The integration of PC14 site with Cromwell township is addressed separately, in Issue 6.
- 4.70 The road network adjacent to the site is described in the s42A Report, and this is adopted⁹². In summary the site is accessed via Ripponvale Road, and that road has two intersections with State Highway 6 ('SH6') to the north and south of the site.
- 4.71 A number of transportation concerns were raised in submissions by NZTA, and by local residents. We had the benefit of expert transportation evidence from Mr Carr (for the Requestor), Mr Gatenby (for NZTA) and Mr Facey (for CODC in its reporting

⁸⁸ Ms Wharfe, 2nd supplementary statement, para 5.64

⁸⁹ Mr Gibson, EIC, para 10.21 supplementary statement,

⁹⁰ S42A Report, page 48

⁹¹ Reference to Leamy and Saunders 1967 original detailed survey attached to Mr Gibson's EIC, Appendix 1

⁹² S42A Report, section 8.3.1, pages 24 & 25

function). Those experts also participated in expert conferencing, at our direction, and produced a Joint Witness Statement ('JWS')⁹³. The issues addressed in the JWS, and by planning experts and other submitters are set out below.

(a) Transportation JWS

- 4.72 The JWS focused on an assessment of the safety of SH6 and its two intersections with Ripponvale Road, pedestrian and cyclist movements across SH6, and effects on Ripponvale Road, using a 'Safe Systems Assessment' (SSA) as had been requested by NZTA in its submission.
- 4.73 In the JWS the experts agreed that the results of the SSA indicated that no improvements would be required to be made to the two intersections of SH6 and Ripponvale Road east and west of the site.⁹⁴
- 4.74 The experts considered that there will be an increase in pedestrian and cyclist crossing movements of the highway each day to between 20 – 30 pedestrian and 20 – 30 cyclist crossings with PC14 fully developed. Differing positions were recorded as to the appropriate solutions for crossing the State highway, with Mr Gatenby favouring an underpass at the outset of development of PC14; Mr Facey considering an at-grade solution was acceptable if provided at the outset; and Mr Carr considered neither of those options was required but that any solution need not be provided until there are 50 residential lots occupied on the site. All experts agreed that an appropriate location for any crossing would be north of the SH6/Ripponvale Road (east) intersection.
- 4.75 The experts agreed that Ripponvale Road, between SH6 and the site access, should be improved to include a shared footpath/cycle path prior to occupation of the first residential lot within the PC14 site; and the carriageway widened at the time 50 lots are occupied within the PC14 site.

(b) Issues raised by Other Submitters

- 4.76 C McNulty (55/1) considered widening and improvements to the camber of Ripponvale Road will be required. The submission by R Wallis and C Woods (87/3) also requested improvements to Ripponvale Road to provide for the additional traffic, noting there are seasonal flows of significant volumes of traffic including cyclists and cars parking on both sides of the road.
- 4.77 B Tovey (85/5) requested a dedicated cycle/footpath to link the PC14 land to the township. C Atherton (3/1), supported by the Cromwell Mountain Bike Club (116/2), said that mountain bikers will make use of the PC14 site to access trails, and Mr Bartrum from this group told us he expected many of the mountain bikers will likely cycle directly to the site.
- 4.78 Several other submitters requested a pedestrian/cyclist crossing facility on SH6, including J Dicey (117/29), Hort NZ (130/7), and Public Health South (68/8). The latter two submitters specifically requested an underpass for SH6 to allow for safe access for pedestrians and cyclists to Cromwell, and to reduce the community severance effect.

⁹³ Transportation JWS, 4 June 2020

⁹⁴ Transportation JWS, 4 June 2020, paragraph 23

(c) Plan Change Response

- 4.79 The Requestor introduced a new provision to the plan change, in response to matters in the JWS and the submissions. This was to require a pedestrian and cycle underpass at State Highway 6 to be constructed and operational prior to the issue of a section 224c certificate for the 51st lot.
- 4.80 Ms McMinn subsequently confirmed that this meets the safety concerns raised in NZTA's submission, and accordingly NZTA's submission is now neutral on whether PC14 is granted or declined⁹⁵.

Our findings

- 4.81 We consider the transportation impacts arising from the development envisaged under PC14 have been thoroughly addressed through the JWS process. We accept the agreed position of those experts representing the Requestor, NZTA and the Council that there is no need to make changes to the two intersections of Ripponvale Road with SH6; and that a shared footpath/cycle path should be provided on Ripponvale Road at the outset, and with the road carriageway to be widened before the 51st allotment is occupied.
- 4.82 We also consider that the volunteered change made to PC14 to require a pedestrian and cycle underpass under State Highway 6, as described above, resolves the only matter that was outstanding from the JWS, and should also satisfy the concerns raised by other submitters on this issue.
- 4.83 Overall we are satisfied, based on the expert evidence and the additional measures volunteered by the Requestor, that the use of the subject site in the manner proposed by PC14 is appropriate in terms of its transportation effects.

Issue 6: Integration with Cromwell*Issue identification & evidence*

- 4.84 This issue relates to how well the PC14 site is integrated with the Cromwell township, including transportation connection, infrastructure and essential services. This issue also addresses the submission relating to a connection through the site to the paper road end of McFelin Road, north of the site. The submissions specifically relating to the Cromwell Spatial Plan Framework are discussed in Issue 8(h) of this Decision report.

(a) Severance from Cromwell

- 4.85 At the hearing, we heard several viewpoints on this Issue.
- 4.86 For the Requestor, Mr Giddens acknowledged that "... *the site is not integrated (as in adjacent)*"⁹⁶, noting that the plan change area is around 2.8 kilometres from Cromwell town centre. He said this is of less importance in the context of PC14 providing for a "*rural lifestyle area*" rather than an urban settlement. Mr Giddens noted that the land will be readily serviced, and residents will have access to Cromwell by cycling and it is an easy driving distance on roads with capacity and no significant safety issues. Mr Carr said the route for cycling and driving was on lightly trafficked roads, other than a

⁹⁵ Ms McMinn, Supplementary Evidence, 29 October 2020

⁹⁶ Mr Giddens, EIC, para 123

0.4 kilometre section alongside the highway. He said if there was to be a bus network in the future, or if long distance services were to stop nearby, then this could readily be achieved in the vicinity of the SH6/Ripponvale Road intersection.

- 4.87 Mr Balderstone's evidence was that PC14 will have a lack of natural integration into the existing centre. He considered that *"this location creates an isolated enclave of relatively intensive large lot residential or suburban activity located such that it will make it difficult for the resulting population to integrate logically, sustainably, and naturally with the existing urban centre, including by not proposing to provide for more active and sustainable transport choices into and from the existing Cromwell urban area..."*⁹⁷. Ms Wharfe said that PC14 will be an enclave of 160 and will be 'disjointed', given the distance to the township including crossing a major State Highway⁹⁸.
- 4.88 Ms McMinn evidence was that developments like PC14 could potentially eventuate in Cromwell being bisected by SH6 leading severance, connectivity and potential safety effects⁹⁹. As noted earlier, NZTA's submission was subsequently changed to neutral, as it was satisfied its safety concerns had been addressed by the inclusion of an underpass of SH6 in the plan change provisions.
- 4.89 Several submitters and further submitters, including S Bailey (4/1), M Bruhns (7/1), B Lister (49/1) and C McNulty (145/1), supported the proposal as being a logical location for lifestyle/rural residential living in close proximity to Cromwell township. Other submitters, including W Murray (64/2), J Dicey (117/28), Public Health South (68/7) and R4RDC (70/6) were concerned at the lack of connectivity of the site with the established urban environment of Cromwell, and considered the proposal is inconsistent with containing future growth within Cromwell.
- 4.90 Mr Whitney's evidence was that: *"Whilst the potential exists to provide connectivity for various modes of transport including pedestrians, cyclists and motor vehicles, this will not achieve physical integration of the substantially urban subdivision and development proposed in PC14 ..."* and that overall *"...the proposal will have a significant adverse effect in terms of its lack of integration with the existing urban area of Cromwell"*¹⁰⁰.

(b) Connection to McFelin Road

- 4.91 Submissions were also made on a 'Minor Road' connection through the PC14 site to the north along a 'paper road' to the end of McFelin Road, which then connects to Burn Cottage Road¹⁰¹. D Scheibmair (74/1) opposed any such connection. L Scott (75/1) supported this link, and G Stewart (83/1) requested that public access for walking, cycling, would be enhanced by this link.
- 4.92 Mr Whitney supported retaining the potential for a road connection to the northern boundary which would also provide access for recreational users to the ONL area within the site. Mr Dymock's evidence was that the paper road will never be formed as its alignment and steep slope were prohibitive, but that it would be suitable for a pedestrian connection.

⁹⁷ Mr Balderstone, EIC, para 10

⁹⁸ Ms Wharfe, EIC, para 15.5 & 15.8

⁹⁹ Ms McMinn, EIC, para 7.5

¹⁰⁰ S42A Report, page 58

¹⁰¹ Schedule 19.24 (the 'Circulation Plan')

(c) *Infrastructure and emergency services*

- 4.93 The s42A Report advised that the water and wastewater services can be provided from the Cromwell town reticulation; that stormwater can occur within the site; and that power and telecommunication services are available from the relevant providers. Overall, the conclusion was that *“any adverse effects of servicing can the development enabled by PC14 will be limited”*¹⁰².
- 4.94 Fire and Emergency NZ (FENZ) (24/4) recommended that a new rule be added to the plan change provisions to require provision of an adequate firefighting water supply and firefighting access. This was also raised as an important issue by submitters R Wallis & C Woods, Public Health South (155/1), D Griffin (29/4) and J Dicey (117/24).

Our findings

- 4.95 For Issue 3 ('Effects on rural character, landscape and visual effects') we found that PC 14 is, overall, appropriately described as a rural lifestyle zone. One factor in that consideration was that PC14 is an (internally) integrated development. It does however provide for up to 160 dwellings and it can be expected the residents will have associations with the shops and facilities provided in the Cromwell township, and therefore its integration with the township is a valid issue for consideration.
- 4.96 We note Mr Giddens' evidence that PC14 is located only 2.8 kilometres from the Cromwell town centre. We have also accepted, in Issue 5, that PC14 will provide suitable transportation connections along Ripponvale Road, and across SH6, enabling safe and efficient access to Cromwell township and further afield.
- 4.97 There was very little evidence to persuade us that community severance will be a significant adverse effect arising from PC14. We note that PC14 appears to be little different in scale and intensity of development to other areas of settlement on the western side of SH6 near to Cromwell, including at localities such as at Lowburn which have road connections but do not have underpasses of the State highway as is now proposed for PC14. It is also noted that we can place little or no weight on any directions contained in the Cromwell Spatial Plan as to where future areas of rural lifestyle, rural-residential, or large lot residential growth might be expected to occur¹⁰³.
- 4.98 We accept Mr Whitney's evidence that the PC14 land can be adequately connected to Cromwell's reticulated water and waste water services, and we consider FENZ's request for a rule relating to firefighting water supply and access is warranted.
- 4.99 We accept Mr Dymock's evidence that the minor road connection through the site to a paper road has no realistic prospect of providing vehicular traffic to McFelin Road, and it is considered this meets the concerns expressed in the submission in opposition. It will however provide opportunities for recreational access and we accept Mr Whitney's evidence that it should be retained.

¹⁰² S42A Report, page 36

¹⁰³ As explained in Issue 8(h) of this Recommendation Report

Issue 7: Noise, spray drift, and reverse sensitivity effects

Issue identification & evidence

- 4.100 PC 14 would enable up to 160 new dwellings to be built on land that lies adjacent to established horticultural, viticultural and other farming activities, and dwellings will also be located near to the NZ Cherry Corp orchard which is to be expanded onto the plan change site. This issue relates to whether PC14 will have adverse effects on those established activities that might arise from complaints from residents of the PC14 or other actions to curtail or affect the ability of established adjacent activities to continue to operate. The key aspects to be considered are the generation of noise, and effects from agrichemical spraying, on activities that will be sensitive to those effects.
- 4.101 By way of context, we heard evidence from Ms McClung as to the importance of the stone fruit growing industry to Central Otago, and how the right to farm and 'social license' of orchardists can be eroded by incompatible activities.
- (a) *Noise*
- 4.102 Mr Humpheson said the proposed rural lifestyle development area of the PC14 site will experience noise from a variety of sources, with from frost fans, helicopters and audible bird scaring devices being the most dominant. He noted that each of these will operate at different times in terms of seasonality and time of day.
- 4.103 He said that a range of measures would be provided to mitigate noise from these sources. Those measures include:
- a. Installation of quieter 5-bladed frost fans on the NZ Cherry Corp orchard expansion and located at least 100 metres from any new dwellings, or existing dwellings on adjacent land;
 - b. Dwellings on the PC14 site to be set back minimum distances from the cherry orchard extension area, from Ripponvale Road and from the property at 146 Ripponvale Road; and
 - c. Special sound insulation and ventilation requirements for dwellings on the PC14 site, so that the relevant World Health Organisation guideline standards are met, including development in accordance with noise contour lines taking account of the separation of dwellings from the cherry farm extension and from Ripponvale Road¹⁰⁴.
- 4.104 Mr Humpheson considered that these measures will ensure that future residents are protected from adverse noise effects, without the need for use of 'no complaints' covenants.
- 4.105 Several submitters¹⁰⁵ referred to their experiences of noise effects from frost fans at exiting cherry growing areas near their rural residential properties at Letts Gully and O'Neill Lane near Alexandra. Mr Humpheson clarified that those cherry operations had been using 2 and 3 bladed fans which had different tonal characteristics to the 4 and 5 bladed fans which will be in proximity to dwellings at the PC14 site. He also

¹⁰⁴ Mr Humpheson, para 52

¹⁰⁵ Submitters listed in S42A Report page 37

clarified that in the PC14 setting no adjustments are required for 'Special Audible Characteristics' of these frost fans¹⁰⁶.

- 4.106 Mr McKay also expressed concern at the potential noise from frost fans, saying that he is kept awake by fans on his own property but more from fans located on other properties. He considered that the 5-blade fans will operate only 2dBA quieter than existing fans, and will still cause complaints to be lodged¹⁰⁷.
- 4.107 Mr Whitney acknowledged that new dwellings will be set back from frost fans so as to comply with Rule 4.7.6E(c) in the District Plan, and the noise from audible bird scaring devices may also comply with Rule 4.7.6E(b). His concern was that those rules apply to the Rural zone where it is not envisaged that development will occur at a density such as is proposed with PC14, and that it is not sufficient to rely on those rules when assessing the acceptability of noise from adjacent horticultural activities to a development of this scale and density. Ms Wharfe also noted in evidence that Rule 12.7.4(iii) explicitly exempts rural activities of limited duration necessary for producing primary products from the noise limits in any area, and that Rule 4.7.6E does not apply to activities such as operating chainsaws, mulching and machinery.¹⁰⁸
- 4.108 Mr Whitney also considered that the new residents of the PC14 allotments are likely to be more sensitive to horticultural noise than would normally be the case for much lower density development in the rural areas¹⁰⁹. He also noted that there are no measures to reduce noise received in outdoor areas of the allotments. Ms Wharfe shared that concern noting in particular that audible bird scaring devices will operate at random times during the day
- 4.109 Overall Mr Whitney considered "... while noise effects can be mitigated through the adoption of rules as described it is likely the introduction of up to 160 new dwellings, many of which are on residential allotments will result in a significant adverse effect in terms of reverse sensitivity"¹¹⁰. Ms Wharfe gave evidence to similar effect¹¹¹.
- 4.110 Mr McLachlan advised that during Rockburn Wines Limited's production season trucks, and heavy machinery must access the winery at all hours of the night, and considered this nearby residential activity will be incompatible with this and could lead to complaints. He also was concerned that PC14 will introduce new compliance points for noise standards. As noted earlier, the PC14 provisions had been amended in response to provide an increased 80 metre setback distance for dwellings from this vineyard. Mr Humpheson also advised that a sound insulation standard of 30 dB Rw + Ctr would be appropriate to protect future residents at night in that regard¹¹². Ms Eveleigh also commented that the establishment of this existing noise generating activity should not be seen as preventing further development of adjacent land as had been demonstrated by the Schooner Developments subdivision consent referred to earlier in this decision.

(b) Spray drift

- 4.111 Mr Giddens advised that PC14 is premised on meeting NZS8409:2004, being the relevant NZ standard for management of agrichemicals, which sets the expectations

¹⁰⁶ Mr Humpheson, para 63

¹⁰⁷ Mr McKay statement, para 5

¹⁰⁸ Ms Wharfe, EIC, para 12.7 & 12.8

¹⁰⁹ S42A Report, page 39

¹¹⁰ S42A Report, page 41

¹¹¹ Ms Wharfe, EIC, para 12.6

¹¹² Mr Humpheson, para 67

as to what is required to mitigate the risk and adverse effects from agrichemical spraying¹¹³. He said further mitigation for potential spray drift onto the site is to be from planting in the 15 metre wide 'Amenity Edge' area shown on the Structure Plan between the Horticulture Block and the adjacent rural lifestyle properties (excluding the RLA6 area).

- 4.112 Ms Wharfe made reference to the Otago Regional Air Plan which she said sets guidance for district council to manage adverse effects through plan provisions including the separation of incompatible activities. She said that the exposure to agrichemical spray drift, as well as to smoke from outdoor burn offs from farming activities, means these activities are incompatible¹¹⁴. She also referred to the notification provisions of the NZ Standard, and the unreasonable imposition that would place on the orchard operators who will be required to inform a large number of parties each time agrichemical spraying is to be undertaken.
- 4.113 Ms Wharfe said she acknowledged the additional mitigation (30 metre setback along Ripponvale Road, and the shelter belt is to be extended next to the Jakimm Orchard with a 30 metre setback for buildings). However, she had a residual concern about the intensity of development on the lower part of the PC14 site, and the need to notify occupiers of agrichemical use¹¹⁵.
- 4.114 Public Health South's submission (68/6) refers to evidence presented by its Air Quality advisor at the Plan Change 13 hearing to the effect that NZS8409:2004 offers inadequate protection, especially at times of abnormal operation. This submitter requested a separation distance of at least 100 metres from spraying activity to any residential activity. Mr Dicey's evidence was that in his experience drift can 'hang' in the air and travel considerable distances, as anticipated in the Standard, and refuted Mr Larsen's suggestion that it is unlikely to exceed 10 metres from the boundary¹¹⁶.
- 4.115 Mr Whitney's evidence was that having taken account of these matters adverse reverse sensitivity effects associated with agrichemical spraying may well result from the proposal¹¹⁷.

Our findings

- 4.116 The only expert evidence on noise effects was from Mr Humpheson. We accept his evidence that the measures in PC14, including separation distances and insulation requirements, will ensure that the noise received inside of dwellings will comply with the District Plan rules.
- 4.117 We also accept the evidence of Mr Giddens that the PC14 site will be laid out in such a manner that the minimum separation distances in the NZ standard for managing the use of agrichemicals will be able to be met.
- 4.118 However we consider that the determination of site suitability in a situation like this, where a large number of dwellings are proposed in relatively close proximity to established orchards and vineyards, goes beyond an assessment of compliance with minimum rural zone standards. We accept the evidence of both Mr Whitney, and supported by Ms Wharfe, that the development enabled by PC14 will be at a

¹¹³ Mr Giddens, EIC, para 75

¹¹⁴ The Otago Regional Air Plan is addressed in section 3, Issue 8(i) of this Decision

¹¹⁵ Ms Wharfe, EIC, paras 13.19 & 13.20

¹¹⁶ Mr Dicey, para 7.22

¹¹⁷ S42A Report, page 42

considerably greater density than is envisaged in the Rural Character Area, and a greater number of residents new to a working rural character area like this would be exposed to the potential adverse effects from farming activities in close proximity.

- 4.119 We also agree with Mr Whitney that there are no particular measures proposed to mitigate the effects from day time noise received in the outdoor areas of the proposed allotments, from audible bird scaring devices and from other noises associated with horticultural activity. While we can understand, in principle, Ms Wharfe's evidence relating to the notification requirements of NZS8409:2004 and the practical difficulties this may cause for adjacent orchardists where a large number of potentially affected parties are required to be notified, we did not receive any evidence on this from adjacent horticultural operators.
- 4.120 We find that, on the evidence, PC14 will achieve minimum levels of compliance with rural zone rules relating to exposure to noise, and relevant standards relating to potential spray drift. Whilst we heard no detailed evidence to persuade us there will be adverse reverse sensitivity effects (i.e. to the extent that adjacent farmers will have their operations curtailed) we agree with Mr Whitney and Ms Wharfe that there is potential for this to occur.
- 4.121 Overall, we have reservations about the compatibility of a new fairly intensive and small lot rural lifestyle development, as envisaged in PC14, with intensive rural productive activities in this area, including with the proposed 29 hectare expansion of the cherry orchard onto the PC14 site.

Issue 8: Other matters

- 4.122 In this final Key Issue we briefly address some other matters, in the same order as they are addressed in the s42A Report.
- (a) Recreation*
- 4.123 PC14 makes provision for public pedestrian access connections for recreation purposes through the site and over the Pisa Range ONL. These are an integral part of the Circulation Plan which also shows indicative open space areas and a stormwater corridor.
- 4.124 The submission by G Stewart (83/4) supports the public access through the PC14 site to the ONL area. Submissions from C Artherton (3/1) and others supported by Cromwell Mountain Bike club (116/2) expressed supported for PC14 on the basis that the recreation area is made available for mountain bike users, and that trails are constructed for mountain bikers to use.
- 4.125 We note that the amended provision show provision for pedestrian and cycling connections protected by easements in gross. However, as advised by Mr Whitney, any new trails to be established in the ONL will require resource consents and are considered beyond the scope of PC14.
- 4.126 Overall, we concur with Mr Whitney that PC14 will have a positive effect in terms of enhanced recreational opportunities¹¹⁸.

¹¹⁸ S42A Report, section 8.2, page 24

(b) *Geotechnical and natural hazards*

- 4.127 Council commissioned an independent geotechnical engineer¹¹⁹ to reviewed the Flood Hazard Assessment and Geotechnical Investigation report included in the plan change documentation. The S42A Report advises that low risk geotechnical hazards and risks are present within the property, but that some 'no-build' areas have been identified and remedial measures are available so that, overall, these will not place any limitation on rural residential development.
- 4.128 The review of the Flood Hazard Assessment was that building sites can be determined at the time of subdivision so that they are unaffected by watercourse on the property so that the risk from flooding will be minimal.
- 4.129 We therefore accept and adopt the advice in the Section 42A Report that “*any adverse effects associated with geotechnical considerations and natural hazards can will be no greater than minor*”¹²⁰.

(c) *Ecological values*

- 4.130 The S42A Report notes that the main ecological feature of the site is the west gully and this is subject to the ONL notation, which is be extended as part of PC14, and that the remainder of the site has been used for pastoral farming and orcharding.
- 4.131 Whilst PC14 would allow for subdivision to smaller lot sizes than is currently provided by the Rural Character Area zoning of the land we accept the advice that the part of the site to be located in the RLA1 – RLA5 (and also in the amended RLA6) has little ecological value.
- 4.132 Overall we accept and adopt Mr Whitney’s evidence¹²¹ that the proposal will have a minor positive effect in terms of extending the ONL part of the site that has some ecological value.

(d) *Heritage and cultural values*

- 4.133 There are 19th century water races present on the site in various degrees of preservation, as well as an historic stone building used for storage of pesticides located centrally within the site. The S42A Report advises that the plan change request documents indicate the stone building is intended to be retained, but that those items are not listed in either the NZ Heritage List or in the District Plan. However, an archaeological authority will be required for any modifications to the water races.
- 4.134 The s42A Report advises that no sites of significance for Kai Tahu ki Otago have been identified in the District Plan, and no submission was lodged by iwi in response to PC14. The Requestor will be required to adhere to the Heritage New Zealand Pouhere Taonga Archaeological Discovery Protocol through the matters of control for subdivision.

¹¹⁹ Mr Lee Paterson, Stantec New Zealand

¹²⁰ S42A Report, section 8.6.3, page 46

¹²¹ S42A Report, section 8.7, page 46

4.135 We accept and adopt Mr Whitney's evidence that overall, any adverse effects in terms of effects on heritage values will be no more than minor¹²² and there will be no particular effects on cultural values¹²³.

(e) Soil contamination

4.136 A Preliminary Site Investigation (PSI) was attached to the plan change request document. It confirms that the site has been used for several activities associated with various farming and orcharding activities as described in the Hazardous Activities and Industries List (HAIL). The s42A Report advises that the PSI recommends a Detailed Site Investigation (DSI) should be undertaken on various parts of the site and the NES¹²⁴ procedures followed in regard to any contaminants that are found in the soils.

4.137 On that basis we concur with Mr Whitney's conclusion that any potential adverse effects of soil-based contaminants on the site can be managed through a future consent process under the NES with the benefit of the recommended Detailed Site Investigation¹²⁵.

(f) Expansion of cherry farm and worker's accommodation

4.138 Several submissions¹²⁶ have expressed support for the expansion of the cherry orchard which will also bring increased employment opportunities.

4.139 The S42A Report acknowledges this, but makes the point that such horticultural development is a permitted activity in the rural zone, and could proceed irrespective of approval being granted to the plan change request. It also notes that the PC14 will result in subdivision into large lot residential allotments occupying land otherwise suitable for horticulture.

4.140 Some submissions¹²⁷ referred to the provision of worker accommodation as a positive aspect of PC14. Other submissions in opposition note that PC14 makes no specific provision for worker accommodation¹²⁸. The S42A Report advises that seasonal workers' accommodation is in any event provided for in the District Plan.

4.141 We accept that the expansion of the cherry farm is a positive effect of PC14, in terms of economic benefits and employment opportunities from increased production. However, consistent with our findings on Issue 4 ('Productive potential of the land'), we consider those benefits are tempered by, and need to be balanced against, the removal of other areas of the site that have high potential for primary production which would then be used for smaller lot rural lifestyle purposes.

¹²² S42A Report, section 8.10

¹²³ S42A Report, section 8.11

¹²⁴ Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011"

¹²⁵ S42A Report, section 8.12

¹²⁶ Including R Chatfield (11/1) opposed by J Dicey (117/1)

¹²⁷ Including S Davey (16/1), C Fleming (25/1), B Lister (49/1), C McNulty (145/1), and T Wallis (88/1)

¹²⁸ Including J Dicey (117/13, 117/15), Hort NZ (130/1, 130/3)

(g) Precedent

- 4.142 Several submitters¹²⁹ have raised issues with respect to the granting of PC14 as setting a precedent for other developers to purchase orchards at Ripponvale or other orcharding areas near Cromwell and then to subdivide sections as small as 2,000m².
- 4.143 The S42A Report made the point that PC14 relates specifically to the property at 144 Ripponvale Road and has no bearing on the rules that relate to subdivision and development of other land in the Rural Resource Area. It was further noted that whilst a “like for like” principle could be advanced to justify other plan change requests, any such request would need to be assessed on its merits.
- 4.144 As a general proposition we do not consider the approval of any private plan change request can set a precedent as to how other plan change requests, or resource consent applications, will need to be determined. We further observe that, in any event, PC14 contains a unique set of integrated provisions that are specific to the site at Shannon Farm which also has its own particular circumstances, such as areas of ONL and SAL. It seems unlikely that any other development proposal would be able to replicate those provisions or circumstances on another site. We accept Mr Whitney’s recommendation that precedent is not a relevant matter for consideration¹³⁰.

(h) Cromwell Masterplan Spatial Framework and District Plan review

- 4.145 The submission by W Murray (64/11 & 64/15), and supported by J Dicey (117/28), was that PC14 should be rejected as the Council is currently going through a master planning process and a District Plan Review. The concern is that PC14 will undermine this process, and is therefore not in accordance with sound resource management practice.
- 4.146 The Cromwell Masterplan Spatial Framework¹³¹ is a strategy prepared under the Local Government Act 2002 and was funded by CODC. As advised in the S42A Report, it has been produced with input from the community and includes a co-ordinated approach to managing growth at Cromwell over the next 30 years.
- 4.147 Mr Giddens’ evidence was that PC14 is in a rural enclave outside the urban edge of the Cromwell township and accordingly falls outside of the areas being considered under the three growth options for Cromwell Basin. He said that, as PC14 seeks to provide for rural lifestyle development rather than residential development this distinguishes it from the Spatial Framework process. He said that in any event as the Spatial Framework is still in the development phase and is a non-statutory document no statutory weight should be placed on it in the context of this plan change application¹³².
- 4.148 Mr Whitney’s evidence was that as the proposal provides for large lot residential allotments at Ripponvale it does not consolidate urban development within existing Cromwell (in reference to Objective 1 of the Spatial Framework). However, he concluded by acknowledging that limited weight can be given to the Spatial Framework as it has not been subject to the statutory submission and appeal process

¹²⁹ Including D Griffin (29/5), DJ Jones Family Trust and Suncrest Orchard (45/3), NZTA (65/14), Hort NZ (130/5), K & R Wardle (171.3/1), ORC (67/15), A Smith (78/6), and J Dicey as further submitter in support

¹³⁰ S42A Report, section 8.17

¹³¹ Cromwell ‘Eye to the Future’ Masterplan Spatial Framework Stage 1: Spatial Plan, 5 June 2019

¹³² Mr Giddens, EIC para 146 in reference to Part E4.0 of the Request Document

provided for by the RMA, and no proposed plan changes have resulted from that process for us to consider.

- 4.149 As both expert planners have advised us that no weight, or little weight, can be given to the Spatial Framework we have not considered it further for our determination of PC14, other than to note we have earlier in this report accepted Mr Giddens' evidence with respect to PC14 being, overall, for a 'rural lifestyle zone' rather than an 'urban development'.
- 4.150 Similarly, Mr Whitney advised us that the District Plan review process is in its early stages and has not resulted in a proposed district plan at this stage.
- 4.151 We are obliged to consider the plan change request now, regardless of the timing of the Spatial Framework process and the District Plan review process. We do not accept this to be counter to sound resource management practice, as was suggested by the two submitters on this point.

(i) Air quality

- 4.152 Some submitters¹³³ requested that if PC14 is approved the use of low or no emission heating systems within the site are to be required. That is in order to reflect the location of the site in Air Zone 3, and also near to Air Zone 1, in the Regional Plan: for Otago.
- 4.153 Ms Wharfe's evidence supported this request, noting the adverse effects that the use of a large number of additional solid fuel heating systems might have on air quality in this area¹³⁴. Her main concern was that any degradation of air quality could result in the Air Zone 1 being revised to include outer areas such as Ripponvale, potentially affecting growers' ability to operate Mr Whitney also considered the request to be appropriate. Mr Giddens said in evidence that he did not consider it is necessary or appropriate to include specific restrictions regarding heating appliances in the PC14 provisions as the Regional Plan is the principle means of controlling air discharges¹³⁵.
- 4.154 We consider that a change the District Plan in order to rezone a large area of land for development at this scale and density should be consistent with the relevant provisions of the Regional Plan, and therefore we accept the evidence of Ms Wharfe and Mr Whitney in this regard.

(j) Pest control

- 4.155 Submissions from G Stewart (83/4) and D Young (93/1) refer to the need to control rabbits and to provide grazing to reduce fire risk. The S42A Report had requested clarification as to the intentions of the Requestor with regard to this issue. Whilst no further information was provided, we do not consider this issue to be particularly relevant to our consideration of the plan change request.

¹³³ Including ORC (67/3), J Dicey (117/30), Hort NZ (130/6) and Public Health South (155/5)

¹³⁴ Ms Wharfe, EIC, para

¹³⁵ Mr Giddens, EIC, para 153

5.0 STATUTORY CONSIDERATIONS

- 5.1 Drawing on consideration of the Plan Change material, the submissions and further submissions, and the evidence presented, this part of our report addresses the statutory requirements outlined at the start of Section 3 above.
- 5.2 We have adopted a thematic approach to present our findings, using the *Colonial Vineyards* criteria as a 'road map.' In particular, we rely on the detailed reasoning in Section 4 of this Recommendation Report, and have added to it where appropriate in the context of each thematic question we outline in turn below.

Is the Plan Change designed to accord with, and assist the Council to carry out its functions so as to achieve the purpose of the Act?

- 5.3 We consider that the proposed plan change is clearly designed to accord with and assist the Council to carry out its s31 functions. The plan change request includes a new Policy and Rules designed to achieve integrated resource management and to assist with the provision of development capacity in respect of rural lifestyle development and housing to meet the expected demands of the district.
- 5.4 It also includes provisions to control:
- a. any actual or potential effects of the use, development or protection of land; and
 - b. the mitigation of the effects of noise.
- 5.5 We note, however, that this finding does not factor in any evaluative component as to efficacy, which is the role of subsequent limbs of the statutory evaluation considered below. It is rather to record that the plan change generally provides information as anticipated under the Act.

Does the Plan Change give effect to any NPS or the NZCPS?

- 5.6 The NZ Coastal Policy Statement is not relevant to the plan change.
- 5.7 We received evidence on the National Policy Statement on Urban Development Capacity 2016 (NPS-UDC). Mr Whitney's evidence was that the objectives and policies of the NPS-UDC are of no relevance in the context of PC14. That is because Cromwell is not an 'urban environment' as defined in the NPS-UDC, as it does not contain, or is not intended to contain, a concentrated settlement of 10,000 people or more¹³⁶. Mr Whitney went on to assess PC14 against the objectives of the NPS-UDC in the event that the Requestor made a case and presented evidence that it is relevant. However, that did not transpire.
- 5.8 Mr Giddens said the NPS-UDC is not directly relevant to the consideration of PC14, for the reasons outlined in the S42A report, noting also that Central Otago district does not contain any high or medium growth urban area as defined. Ms Wharfe also commented in evidence that the NPS-UDC is of limited relevance as PC14 is not an 'urban' activity¹³⁷.

¹³⁶ S42A Report, section 10.3.1

¹³⁷ Ms Wharfe, EIC, Attachment 2

- 5.9 We accept the evidence of the planners that the NPS-UDC is of limited or no relevance in the context of PC14. We also comment that, notwithstanding this, the provision of additional housing (in the context of a rural lifestyle zone) does not appear to be inconsistent with the general policy direction of the NPS-UDC which is to increase the supply of housing.
- 5.10 Mr Gardner-Hopkins provided legal submissions to the effect that the draft NPS for Highly Productive Land should be taken into account. However, we accept Mr Whitney's evidence that this document at that time was in draft form and he observed that section 74(2)(a) of the RMA makes no reference to a proposed or draft National Policy Statement. Accordingly, we have given it no weight in our consideration of PC14.

Does the Plan Change give effect to the Regional Policy Statement?

- 5.11 We firstly note here that there is an operative Regional Policy Statement for Otago 1998 (the RPS) and also a Partially Operative RPS 2019 (the PoRPS). As set out in the s42A Report, there is also a Proposed Regional Policy Statement for Otago 2015 (the PRPS) and most provisions of that are now operative.

(a) RPS

- 5.12 We adopt Mr Whitney's assessment¹³⁸ that the relevant provisions in the RPS which remain operative include Objectives 5.4.1 and 5.4.2 and their supporting policies. These seek the promotion of sustainable land management and the avoidance, remediation or mitigation of resource degradation from activities utilising the land resource.
- 5.13 In implementing Objectives 5.4.1 and 5.4.2, Policy 5.5.2 directs:
- 5.5.2 To promote the retention of the primary productive capacity of Otago's existing high class soils to meet the reasonably foreseeable needs of future generations and the avoidance of uses that have the effect of removing those soils or their life-supporting capacity and to remedy or mitigate the adverse effects on the high class soils resource where avoidance is not practicable.*
- 5.14 In his discussion on this, and the associated Policy 5.5.3, Mr Giddens' evidence was that the land does not include highly productive soils, but that in any event in reference to the evidence of Ms Hampson the regional land resource will be impacted by only "a minute degree"¹³⁹. In our discussion on Issue 4 we determined that the land does contain soils appropriately defined as high class soils and we consider the loss of up to 32 hectares of Waenga 5 soils from meaningful productive potential is significant, even on a regional basis.
- 5.15 We received no compelling evidence to confirm that it is not practicable for all of the high-class soils on site to be put into productive use. On that basis, we are left with a direction to promote retention of primary productive capacity of those soils and avoiding uses that remove or undermine their role in that capacity. The plan change proposes no remediation or mitigation for the loss of those soils, other than by expanding the cherry orchard to ensure that some production will occur as a precursor to other development on the site. However, as discussed in Issue 4, we do not

¹³⁸ S42A report, section 10.3.4

¹³⁹ Mr Giddens, EIC, par 93 (e)

consider this to be mitigation as the land and the soils concerned are eminently well suited to horticultural production regardless of the PC14 proposal. We consider the plan change fails to implement the RPS direction under Policy 5.5.2 in this respect at least.

(b) *PoRPS*

- 5.16 We adopt Mr Whitney's assessment¹⁴⁰ that the most relevant parts of the PoRPS are Objective 4.3 (relating to infrastructure being managed and developed in a sustainable way), Objective 4.5 (relating to urban growth and development being well designed, and occurring in a strategic, co-ordinated and integrated manner), and the associated Policy 4.5.1, Policy 4.5.3 and Policy 5.3.1.
- 5.17 From our assessment of the Key Issues it was determined that PC14 provides for integrated development of large lot residential, rural residential, horticultural and open space and recreation activities in an integrated manner. The site is also connected to the State Highway network and to Cromwell township in terms of transportation links for all modes, and there was no evidence to persuade us that there will be any adverse severance effects. We also determined that the Spatial Framework cannot be afforded much weight but that in any event we do not consider this rural lifestyle zone can, in this context, be considered as 'urban development' for the purposes of the NPS-UDC and future growth strategies.
- 5.18 However, from our findings with respect to Issue 4, we consider that PC14 is not consistent with Policy 4.5.1(f) in that it does not serve to provide "*for rural production activities by minimising adverse effects on significant soils and activities which sustain food production*", is not consistent with Policy 5.3.1 (c), (e) and (f) in that it does not "*minimise the loss of significant soils*", does not "*minimise the subdivision of productive rural land into smaller lots that may result in a loss of its productive capacity or productive efficiency*", and does not "*have a functional need to locate in rural areas*". We concur with the evidence of Mr Whitney, Ms Wharfe and Mr Balderstone in this respect.
- 5.19 From our findings on Issue 7 ('Noise, spray and reverse sensitivity effects') effects on residential amenity will be compromised in the Rural Resource Area (5), especially in relation to outdoor living environments. We consider that it "*introduces activities that are incompatible in rural areas that are likely to lead to reverse sensitivity effects*". We therefore consider PC14 is inconsistent with Policy 4.5.1(h), Policy 4.5.3 (a) and (b), and Policy 5.3.1 (f), and we concur with Mr Whitney's evidence on those aspects¹⁴¹.
- 5.20 Overall, we consider that whilst PC14 provides for co-ordinated and integrated development, the site in this setting has significant constraints for residential development (even in a rural lifestyle context), and has potential adverse effects on established farming activities that have a functional need to locate in this rural area.
- 5.21 For the foregoing reasons, overall, we find that the proposal does not give effect to the operative Regional Policy Statement.

Has the Plan Change had regard to the proposed regional policy statement?

¹⁴⁰ S42A Report, section 10.3.5

¹⁴¹ S42A Report, pages 78 & 79

- 5.22 Mr Whitney's evidence was that most provisions of the Proposed Regional Policy Statement for Otago 2015 (the PRPS) are now operative, however the provisions in Chapter 3 are not beyond legal challenge and therefore remain in a proposed state.
- 5.23 Objectives 3.1 and 3.2 and their supporting policies are relevant to the plan change. The policy direction is to identify, and to protect or enhance, Otago's significant and highly-valued natural resources. Of relevance are Policies 3.1.7 (soil values), 3.2.17 (identifying significant soil) and Policy 3.2.18 (managing significant soil).
- 5.24 From our discussion on Issue 4 ('Productive potential of the land'), we accept the evidence of Ms Wharfe and Mr Gibson that the soils on the lower portions of the PC14 site are significant soils for primary production.
- 5.25 Mr Whitney's evidence was that PC14 is not consistent with Policies 3.1.7 and 3.2.18 of the PRPS as it will not serve to manage urban growth and development and subdivision of land to protect significant soils.
- 5.26 We do not consider Policy 3.1.7 is particularly relevant as it simply requires significant soils to be identified. In terms of Policy 3.2.18, we do not consider PC14 is strictly 'urban expansion'. However, it nevertheless enables development to occur on a large part of the site which has significant soils. Whilst PC14 also involves expansion of a cherry orchard and includes larger allotments in the RLA6 to make good use of other significant soils on the site, overall, our finding is that it will not "*avoid significant adverse effects on those values which make the soil significant*" (Policy 3.2.18(a)).
- 5.27 For the foregoing reasons, having had regard to the PRPS we consider PC14 is, overall, not consistent with its policy provisions relating to protecting Otago's significant and highly-valued soil resources.

Is the Plan Change consistent with any regional plans or proposed regional plans?

- 5.28 Mr Whitney's evidence was that the Policy 9.1.4 of the Regional Plan: Air for Otago (2013) is relevant. That policy promotes clean heating in new residential areas where discharges are likely to have an adverse impact on air quality in Air Zones 1 or 2 or degrade high quality air.
- 5.29 This matter is addressed in Issue 8 (i) ('Other matters – Air quality'), and we consider PC14 would be consistent with the Regional Air Plan by a provision requiring the use of low or no emission heating systems within the Rural Resource Area (5).
- 5.30 The s42A Report advises that water and wastewater is to be reticulated to the Cromwell town systems, with some larger lots in the RLA5 possibly disposing of wastewater on site in accordance with the relevant NZ standard, and stormwater disposal will be possible without resource consents. On that basis we accept Mr Whitney's evidence that the plan change is consistent with the Regional Plan: Water (2004).

What (if any) regard should be given to relevant management plans and strategies under other Acts, including any relevant entry in the Historic Places Register?

- 5.31 There are no relevant entries in the Historic Places Register of relevance to the plan change.

- 5.32 As set out in Issue 8 (h) above, we have considered the Cromwell Masterplan Spatial Framework, which is a document adopted by the Council under the Local Government Act. Ultimately, we have placed low weight on this document such that it has no material bearing on our assessment of the plan change's appropriateness. To the extent that our decision is consistent with the Spatial Framework (or otherwise) is coincidence.
- 5.33 Both Mr Whitney and Mr Balderstone considered the Otago Southland Regional Land Transport Plan (RLTP) as relevant. Mr Balderstone's evidence was that this provides a policy framework that seeks (principally through Policy 7 and Policy 8) to improve modes of transport, specifically cycling and walking, and that urban development provides for a range of transport modes.
- 5.34 Mr Balderstone considered that PC14 does not give effect to these policies¹⁴², whilst Mr Whitney's evidence was that PC14 if it were to proceed should be made for a dedicated cycling and walking path along Ripponvale Road and an appropriate crossing of SH6 (measures which were subsequently adopted by the Requestor).
- 5.35 From our determination of Issue 6 ('Integration with Cromwell township') we consider PC14 is not inconsistent with the RLTP.

To what extent does the District Plan need to be consistent with the plans or proposed plans of adjacent territorial authorities?

- 5.36 We were not advised of any cross-boundary issues that require any particular measures to be adopted by the plan change.

Are the proposed objectives the most appropriate way to achieve the purpose of the Act?

- 5.37 The plan change request does not introduce any new objectives, rather it relies on objectives contained in the District Plan (except if it does propose to introduce a new policy, as discussed in the next topic below). In that circumstance, we accept Mr Whitney's advice that, for the purposes of section 32(1) we must evaluate the purpose of the proposal to determine whether it is the most appropriate way to achieve the purpose of the Act¹⁴³.
- 5.38 Mr Whitney's evidence was that the plan change will not achieve its purpose, that being to "*meet demand for rural lifestyle development outside of urban Cromwell*" because it is providing for an enclave of large lot residential development in the rural area. He considered this was not the most appropriate way to achieve the purpose of the Act.
- 5.39 We have determined, in our discussion on Issue 1 ('The need for the plan change'), that PC14 will assist to meet the identified need for rural lifestyle development. We also consider that the purpose of the proposal is wider than simply providing for rural lifestyle development, noting it is also to facilitate use of a further 29 hectares of land for horticultural development while avoiding, remedying or mitigating potential adverse effects on landscape and amenity values and natural resources.
- 5.40 We also acknowledge that, in isolation, the various elements that make up the purpose of the proposal can each be considered to achieve the Act's purpose. That

¹⁴² Mr Balderstone, para 74, note this evidence predates the changes to PC14 including an underpass of SH6

¹⁴³ S42A Report, section 9.1

is, the integrated structure planned development, promoting housing choice, well-designed buildings, and open space and recreation areas that cater to the needs of people are all outcomes consistent with sustainable resource management. However, we consider the efficacy of these outcomes must relate specifically to the environment in which they are considered.

- 5.41 To this end, and relying particularly on the discussion in Issue 3 ('Effects on rural character, landscape and visual effects'), Issue 4 ('Productive potential of the land') and Issue 7 ('Noise, spray and reverse sensitivity effects'), we find that the purpose of the proposal is not the most appropriate way to achieve the purpose of the Act by virtue of the proposal being to establish a consolidated area of mainly large lot residential and rural residential development in an environment which it is not well suited to.
- 5.42 This follows on from our finding above that the proposal fails to give effect to the Regional Policy Statement, which has been prepared to give effect to the Act's purpose.

Are the provisions the most appropriate way to implement the objectives, having regard to their efficiency and effectiveness, actual and potential environmental effects and reasonable alternatives?

- 5.43 As the District Plan is to be read as a whole, the proposed provisions should also be assessed against the settled objectives of the District Plan where relevant.
- 5.44 As noted above, PC14 includes a new policy and new rules, but does not include any new objectives, and instead relies upon the existing objectives in the District Plan. In that regard, and from our findings on the relevant Key Issues in section 4 of this Recommendation Report, we agree with the tenor of planning evidence by Mr Whitney and Ms Wharfe. That is, the proposal is inconsistent with Objective 4.3.1 (Needs of the District's People and communities), Objective 4.3.3 (Landscape and Amenity Values), and Objective 4.3.7 (Soil Resource). We agree with Mr Whitney and Mr Giddens it is consistent with Objective 4.3.2 (Outstanding Natural Landscapes) and Objective 4.3.4 (Recreation Reserve).
- 5.45 The proposed new Policy 4.4.18 is specific to the proposed new RRA(5) zone and provides for the type of development anticipated under the rule framework. The PC14 provisions are framed in such a way that this new policy is directly linked to, and sits under, existing Objective 4.3.9 (Integrated, Comprehensive Mixed-Use Development), as well as linking to Objectives 4.3.1 and 4.3.3.
- 5.46 Our finding above is that PC14 is inconsistent with those two latter objectives. Mr Whitney's evidence was that there is also a difficulty in the new policy relying on Objective 4.3.9, as that objective is specific to the Rural Resource Area (4) development at McArthur Ridge. The RRA(4) zone specifically provides for a 130 hectare development building on an established vineyard and high country sheep station and the zone enables a further vineyard and golf course development with related travellers' accommodation, recreational, residential and lifestyle development. Mr Whitney's evidence was that Objective 4.3.9 is therefore not relevant to PC14, and accordingly it is not appropriate for the new RRA(5) policy to sit under, and to implement, that particular objective¹⁴⁴.

¹⁴⁴ Mr Whitney, statement of evidence in response dated 28 May 2020, paras 44 & 45

- 5.47 We understood Mr Whitney's evidence to be that for a new zone in the Rural Resource Area, providing for a different type of development than is envisaged in the other RRA's, it would then require its own specific objective which could then be implemented by proposed Policy 4.4.18. We accept Mr Whitney's evidence on this aspect, and we note that the Requestor did not respond to this particular point either in evidence or in closing legal submissions.
- 5.48 For the foregoing reasons we find that, overall, the proposed provisions are not the most appropriate way to implement the objectives, having regard to their efficiency and effectiveness, actual and potential environmental effects and reasonable alternatives, which we consider are better achieved by the status quo.

6.0 SUMMARY

6.1 Our evaluation of PC14, in terms, of the Key Issues has found:

- a. The proposal is appropriately described as a rural lifestyle zone, as whilst it includes a concentration of a relatively large number of large lot residential and rural residential allotments, it also requires expansion of the adjacent cherry orchard, expansion of the Outstanding Natural Landscape area, and it provides opportunities for public access and recreation.
- b. The proposal will assist to meet the recognised need for rural lifestyle development of this kind in the rural fringe areas of Cromwell.
- c. The development enabled by the plan change would constitute a significant change to the existing rural character of Ripponvale. Whilst amendments to the layout were made, and careful attention has been placed on building design, and controls to lessen the impact, the scale and density of development in this location are such that the adverse visual and landscape effects of development are significant and not able to be adequately mitigated.
- d. Whilst the plan change will result in an expansion of the adjacent cherry orchard, it will at the same time remove, or at least severely impact the potential for production on, another 32 hectares of soils that are particularly well suited to primary production in particular for stone fruit production.
- e. The transportation effects of the proposal, which includes provision for an underpass of State Highway 6 and improvements to Ripponvale Road, and the site's integration with Cromwell township and the wider network are considered acceptable particularly with the amended provisions which include a state highway underpass.
- f. The location of the site amidst established horticultural activities, including the expansion of a cherry orchard, exposes future residents on the PC14 site to adverse effects of noise and agrichemical spray drift, with the likelihood of reverse sensitivity effects arising.
- h. The proposal is considered acceptable in relation to a range of other matters including natural hazards, soil contamination, and cultural and heritage values, and we do not consider weight can be placed on the Spatial Framework and the district plan review process at this time.

6.2 In applying the statutory tests for a plan change request, we have found:

- a. The Plan Change is designed to accord with, and assist the Council to carry out its functions so as to achieve the purpose of the Act. It provides for an integrated zone providing living opportunities in a rural setting, linked with an expansion of the adjacent cherry orchard and expansion of the ONL area. This will have economic and social benefits, and recreational use of this area will be enhanced by provision of cycleways and walkways through the site.
- b. The National Policy Statement for Urban Development Capacity is not relevant to PC14, however the provision of up to 160 additional dwellings is a positive effect of the proposal.
- c. The proposal is not inconsistent with the Otago Southland Regional Land Transport Plan, and it would be consistent with the Otago Regional Air Plan if a provision was included to require the use of no or low emission heating systems.
- d. The proposal is overall inconsistent with the relevant Regional Policy Statements (operative, partially operative, and proposed RPS's) mainly in relation to the potential effects on high quality land for primary production, and the incompatibility of land uses.
- e. PC14, as amended during the hearing process, is not the most appropriate way to achieve its purpose, or achieve the objectives of the District Plan, noting also that the new Policy 4.4.18 is incorrectly linked to an existing objective which relates specifically to another rural resource area.

7.0 CONCLUDING COMMENTS

- 7.1 For the reasons we have set out above in Sections 3, 4, and 5 we have come to the conclusion that the plan change should not be accepted, and have recommended accordingly.
- 7.2 We acknowledge that the issues are finely balanced, but overall, Issue 3 (effects on rural character, landscape and visual effects); Issue 4 (productive potential of the land); Issue 7 (noise, spray and reverse sensitivity effects) were considered as determinative.
- 7.3 Despite that overall finding, it is with some reluctance that we make a recommendation to not accept a generally well designed and integrated development opportunity. As we have acknowledged, it would bring significant benefits to the community not least in the provision of a substantial amount of new housing supply in a location near to Cromwell which has an identified need for housing.
- 7.4 Fundamentally, the reasons for our recommendation speak to site suitability. The evidence we have found most compelling is that this site is not suitable for the scale and intensity of development given the potential of the land to be used overall for much more intensive rural primary production, its significant adverse visual effects and effects on rural character, and the co-location of essentially incompatible activities.
- 7.5 By way of final comment, our observation is that those effects would have been diminished by a plan change proposal providing for a substantially less intensive development of this site.

8.0 OVERALL RECOMMENDATION

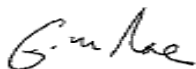
8.1 Based on our consideration of all the material before us, including the section 42A report from the council advisors, submissions, further submissions, evidence presented at the hearing and following consideration of the requirements of Section 32AA and other relevant statutory matters, our recommendation is that:

- (a) The further submissions 104, 123, 124, 132, 138, 154 and 164 as identified in the Council's summary of submissions are declared invalid;
- (b) the Plan Change **not be accepted** and that all submissions on the Plan Change be accepted, accepted in part, or rejected to the extent that they correspond with that conclusion and the matters we have set out in the preceding report sections; and
- (c) pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991, Council gives notice of its decision on submissions to Plan Change 14.

DATED this 3rd day of May 2021



NJ Gillespie, Independent Hearing Commissioner
PC14 Hearings Panel



GM Rae, Independent Hearing Commissioner
PC14 Hearings Panel

APPENDIX 1

Schedule of Appearances

Date	Submitter Name	Appearances
Requestor		
25/05/20 – 26/05/20, 09/06/20, 05/11/20	New Zealand Cherry Corp (Leyser) Limited Partnership	<ul style="list-style-type: none"> • Sarah Eveleigh, Legal Counsel • Iain Weir, Infinity Investment Group Holdings Development Manager • Ricky Larsen, General Manager, NZ Cherry Corp Ltd • Tony Milne, Landscape Architect • Paul Edwards, Agriculture Expert • Darren Humpheson, Acoustic Engineer • Peter Dymock, Surveyor • Natalie Hampson, Economist • Andy Carr, Transportation Engineer • Tom Heller, Environmental and Water Resources Consultant • Brett Giddens, Planner
Council s42A Advisors		
28/05/20, 09/06/20, 05/11/20	CODC	<ul style="list-style-type: none"> • David Whitney, Planning Consultant • Antoni Facey, Consultant Traffic Engineer • Ben Espie, Consultant Landscape Architect
Submitters		
26/05/20	Fire and Emergency NZ	<ul style="list-style-type: none"> • Steve Johns • Nicolle Vincent, Consultant Planner
27/05/20	Alan McKay	<ul style="list-style-type: none"> • Alan McKay
27/05/20	NZTA	<ul style="list-style-type: none"> • Julie McMinn, Planner • Matthew Gatenby, Transportation Engineer
27/05/20	James Dicey	<ul style="list-style-type: none"> • James Dicey
27/05/20	R4RDC	<ul style="list-style-type: none"> • James Gardener-Hopkins – Legal Counsel
27/05/20, 09/06/20	HortNZ	<ul style="list-style-type: none"> • Rachel McClung, Policy Advisor • Lynette Wharf, Consultant Planner • Roger Gibson, Consultant
		<ul style="list-style-type: none"> •
27/05/20	Robin Dicey	<ul style="list-style-type: none"> • Robin Dicey
		<ul style="list-style-type: none"> •
27/05/20	Werner Murray	<ul style="list-style-type: none"> • Werner Murray
27/05/20	Otago Regional Council	<ul style="list-style-type: none"> • Kyle Balderston, Planner
27/05/20	Daniel Scheibmair	<ul style="list-style-type: none"> • Daniel Scheibmair
27/05/20	Gerrard Eckhoff	<ul style="list-style-type: none"> • Gerrard Eckhoff
27/05/20	Gordon Stewart	<ul style="list-style-type: none"> • David Campbell
		<ul style="list-style-type: none"> •
27/05/20	Carl McNulty	<ul style="list-style-type: none"> • Carl McNulty
27/05/20	Cromwell Mountain Bike Club	<ul style="list-style-type: none"> • Alex Bartrum, Club President
28/05/20	Rockburn Wines Limited	<ul style="list-style-type: none"> • Derek McLachlan, Legal Counsel