

**BEFORE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY THE CENTRAL OTAGO DISTRICT COUNCIL**

UNDER THE Resource Management Act 1991 ("**Act**")

IN THE MATTER OF A requested change to the Central Otago District Council's Operative District Plan – Plan Change 14 ("**PC14**")

BETWEEN **NEW ZEALAND CHERRY CORP (LEYSER) LP LIMITED**

Requestor

AND **CENTRAL OTAGO DISTRICT COUNCIL**

Planning authority

**MEMORANDUM OF COUNSEL FOR RESIDENTS FOR RESPONSIBLE
DEVELOPMENT CROMWELL INC: FURTHER REPORT UNDER s41(C)**

9 JUNE 2020

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MAY IT PLEASE THE COMMISSIONERS:**Introduction**

1. This memorandum is filed on behalf of Residents for Responsible Development Cromwell (“**R4RDC**”, or the “**Society**”).
2. The Society met, through Mr Murray and Mr James Dicey with the Proponent, through Mr Giddens, yesterday (Monday 8 June 2020).
3. The focus of that meeting was on the potential for refinements to be made to the text of PC14 that might accommodate the R4RDC concerns. R4RDC had, through Mr Dicey, provided further information in advance of that meeting. I am instructed that the meeting was positive, and that the Proponent was intending to provide a more formal response to R4RDC in the nature of updated provisions of PC14 prior to finalising its version of PC14 for submission to the Commissioners with its closing/reply.
4. R4RDC thanks the Proponent for its approach in respect of this matter. It is understood that the timing for the Proponent’s closing/reply is likely to be a week and a half away, or more.
5. One of the issues discussed, and of concern to R4RDC (including in its evidence and submissions) is the extent of land which is retained, or which is continued to be enabled for, productive use. The Proponent appears to have accepted that productive use should be protected (or enabled) through PC14, to the extent practicable. At least, that is R4RDC’s “take” on what the Proponent appears to have said.
6. However, in this case, the potentially limiting factor as to the extent to which land can be put into productive use is the availability of water (rather than, say, the soils, climate, etc of the site). There is a very real question as to how much water is available, or could, on a reasonable basis, be made available. There is also the related question of how it might be applied.
7. In other words, there are fundamental assumptions that need to be made (and tested) about:
 - (a) how much water is available, or could be made available; and

(b) how that water could be efficiently applied for productive purposes (including other than for cherries).

8. In R4RDC's opinion, the Commissioners need independent and reliable information on both of these matters, so it can make robust findings on them. Information has been produced in a piecemeal way to date in this regard. This includes the latest evidence, circulated yesterday on behalf of the Proponent. While Horticulture NZ have also added evidence into the mix, the evidential basis before the Commissioners on this important issue remains incomplete.

9. R4RDC therefore requests the Commissioners to commission an independent consultant to prepare a report on the issue of water availability and its efficiency of use for productive purposes on the site.

Statutory basis

10. Section 41C(4) provides:

At the hearing, the authority may commission a consultant or any other person employed for the purpose to prepare a report on any matter on which the authority requires further information, if all the following apply:

- (a) the activity that is the subject of the hearing may, in the authority's opinion, have a significant adverse environmental effect; and
- (b) the applicant is notified before the authority commissions the report; and
- (c) the applicant does not refuse to agree to the commissioning of the report.

11. In my submission, the loss of productive land that could otherwise be maintained and put to productive use is a "significant" adverse effect on the environment. Accordingly, pre-condition (a) is satisfied.

12. While the Proponent must agree to the commissioning of an independent report, the Commissioners should put that to the Proponent. There is significant benefit to the Commissioners, Submitters, and Proponent in having an independent review and report of the information and evidence available on the "water supply and use" issue. For example:

(a) It will better inform the Commissioners on this important issue.

- (b) It will provide comfort to submitters that this important issue has been the subject of independent and considered evidence, rather than limited, piecemeal, evidence (or information) arguably in some instances outside the qualifications of an expert (but provided in an attempt to assist the Commissioners).
 - (c) It will also better inform the Proponent at this stage, rather than leaving the issue unresolved to be clarified further at the Appeal stage.
13. In terms of particular issues arising from the latest evidence on these matters, I am instructed that they include:
- (a) The lateness of the evidence, and the introduction of what appears to be new material (eg Waterforce report) without the ability for submitters to reply.
 - (b) Evidence of frost fighting at 4mm/hr which is a figure used for impact frost sprinklers. This appears to contradict Mr Larsen's initial evidence that only frost fans would be needed, or that under tree frost fighting mini-sprinklers (2.5mm/hr) would be used, and also contradicts the fact that impact sprinklers cannot work with frost fans.
 - (c) The Waterforce report does not reference, nor does the Proponent reference the Aqualinc report which provides the basis by which the Regional Council assesses how much water should be allocated based on a particular use.
 - (d) The figure used by Mr Dicey of 60,000 litres for peak growing season is a worst case scenarios, and not normal water usage. It allows for the worst dry season scenario. Typically less water is used (rainfall, wind, clouds all affect this). The monthly water usage for cherries was also supported by more experienced cherry grower Tim Jones from 45 South.
 - (e) The issues with the quality of water race can be resolved – it is not a fundamental impediment. So too can issues with peak demand – potentially through storage options.

- (f) Industry practice is that frost fighting water usage is only ever planned for a 3 day event (never 4). Frost events are typically only one bad night followed by two milder nights.

Conclusion

14. Positive progress has been made between R4RDC and the Proponent to date.
15. A key outstanding issue, including in respect of the evidential base before the Commissioners, relates to the “water supply and use” issue.
16. It would be appropriate for the Commissioners to commission their own report on this issue. While the Proponent might refuse, if it was considered important by the Commission to clarify the issues, the Proponent may well agree.
17. It would be to all parties benefit to have better information on the issues at this stage, rather than leave uncertainty until the Appeal stage. For R4RDC’s part, it is looking to remove issues from contention, both now and with any future Appeals (including by others, rather than R4RDC) in mind.

DATED 9 June 2020



J D K Gardner-Hopkins
Counsel for R4RDC