

**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

**LEGAL SUBMISSIONS FOR:
RESIDENTS FOR RESPONSIBLE DEVELOPMENT CROMWELL INC**

27 MAY 2019

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MAY IT PLEASE THE COMMISSIONERS:**Introduction**

1. These submissions are made on behalf of Residents for Responsible Development Cromwell (“**R4RDC**”, or the “**Society**”). The Society is supported in its case with evidence from:
 - (a) Mr Murray; and
 - (b) Mr James Dicey.
2. Mr Dicey is appearing in two capacities. He wears a “hat” as an expert witness, and is also speaking on behalf of the R4RDC. I address this issue briefly below.
3. The formal object (or purpose) of the Society is:

The responsible, sustainable quality growth and development of Cromwell and surrounding areas in consultation with the residents of these areas.
4. The Society was formed specifically in response to PC13, but saw a wider need to represent the community in planning matters. It has formal membership numbering 130 individuals, and has given careful thought as to how it wishes to approach planning matters. Mr Dicey will talk to this further. It is sufficient for me at this stage to emphasise that R4RDC is not “anti-development”. As its name suggests, it wishes to see, and support, “responsible development”.
5. In its submission, R4RDC requested the following decision:
 - (a) Decline PC14.
 - (b) In the alternative, amendments to PC14 to avoid, remedy or mitigate the effects / concerns identified [in the submission].
6. This was not just for “jurisdictional purposes”, but because R4RDC had genuine concerns as to the appropriateness of PC14. It would be fair to say that while R4RDC continues to have concerns with PC14, it can potentially see a way forward. In the time available (and the hearing was brought on very quickly), it has not been able to provide a set of critical

amendments that might satisfy its concerns. However, the witnesses will identify the key areas of concern to R4RDC.

Outcome sought

7. Given that there may be an agreed way forward – with an entity that represents a substantial number of people in the community – I therefore propose a procedural step for the Commissioners’ consideration. That is, following the completion of the hearing, a short period of time be set aside for the Proponent to engage with R4RDC in respect of a revised version of PC14 that might address R4RDC’s concerns.
8. It is not unusual for a Proponent to update its Plan Change after submissions have been heard. A Proponent will often engage informally with others in doing so. All R4RDC is seeking is that this practice be formalised through appropriate orders. R4RDC is seeking that this be formalised through appropriate orders to provide rigour and certainty to the process.

Evidence

9. In addition to the lay evidence that he will give, Mr Dicey has prepared, and filed in advance, a statement of expert evidence. This is on the basis that Mr Dicey is offering opinion evidence on matters of viticulture and soils based on his expertise and experience in those matters. In this context Mr Dicey is an expert.
10. Mr Dicey also has an acknowledged personal interest in PC14, both as a resident of Cromwell as well as in the capacity of an active member of R4RDC. He has been quite upfront about that.
11. There is no doubt that you have jurisdiction to receive Mr Dicey’s evidence, including his expert opinion evidence.¹ The matter of weight you give to it is for you to resolve in the usual way (what is the experience, are the underlying assumptions robust, does it trespass into advocacy, etc).²

¹ Section 41 RMA, section 4B Commissions of Inquiry Act 1908.
² Refer, eg *Re Whitewater NZ Incorporated* [2013] NZEnvC 131: as Judge Jackson put it, the usual tests are: “relevance, coherence, consistency, balance, and insight”.

12. The same approach generally applies to non-expert evidence. In that regard, while Mr Murray is not holding himself out as an expert, his experience weighs towards giving his evidence weight to a greater extent than someone who does not have that same sort of experience.

Rural lifestyle or large lot residential development?

13. From R4RDC's perspective, the critical issue is not what the PC14 proposal is called or termed. Rather, it is the effects of the proposal that are important – assessed against the relevant planning instruments. For R4RDC, this includes the Masterplan.
14. What is important, however, is that the proposal is not approved as a rural lifestyle development, if it is in fact a large lot residential development; if the latter is not appropriate from an effects or policy perspective.
15. In other words, a term should not be adopted in order to inappropriately promote a proposal; nor should it be adopted and applied in an unduly pejorative way.
16. In my submission, you should look closely at what the rules allow, the policies of PC14 anticipate, and the likely effects in terms of resolving whether PC14 is “most appropriate”; rather than short-hand terminology.
17. In terms of effects, you will need to resolve the extent and significance of (among other things):
- (a) the loss of productive land (and how “productive” land retained for “planting” will actually be – ie will any planting be productive, or just token or aesthetic and of little productive purpose); and
 - (b) reverse sensitivity effects on other productive uses in the vicinity.

Integration

18. The Proponent's case appears to be that because PC14 is a rural lifestyle development, then it cannot be as “integrated” with Cromwell as an alternative more “urban” proposal might be.

19. The starting point must be what the Act says about integrated management:

31 Functions of territorial authorities under Act —

Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

- (a) The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use development or protection of land and associated natural and physical resources of the district:
20. Unfortunately, the Act doesn't say very much more, if anything, about it. Nor do the authorities, in terms of explaining what it means, although they:
- (a) have described it as an "essential function" of a territorial authority,³
- (b) distinguished "integrated development" from "ad hoc" development, which would "pre-empt the strategic planning exercises currently in process",⁴
21. So, we know that "integrated management" is important, should not amount to "ad hoc" planning, and should not undermine strategic planning. Clearly, "integrated management" extends beyond having roading, cycling, and walking connections.
22. In this case, this brings into focus the role of the MasterPlan in the strategic planning exercise. If the MasterPlan is relevant to that issue (ie strategic planning), then it is relevant to the question of integrated management,⁵ and a relevant consideration; even if not a "statutory" plan.⁶ It is direct evidence of the community's wishes.
23. R4RDC places considerable weight on the MasterPlan. Even Mr Giddens acknowledged yesterday that:

the MasterPlan is a "valuable document" for the Community – it should be proud of it.

³ *Environmental Defence Society v Kaipara District Council* [2010] NZEnvC 284 Aug 23, 2010, Judge LJ Newhook.

⁴ *G Bettley & Sons v Waikato District Council* A122-08 Nov 5, 2008, Judge Whiting, MP Oliver & B Gollop. In a similar way to *Imrie Family Trust v Whangarei District Council* [1994] NZRMA 453.

⁵ ie section 31, brought into consideration under section 74(1).

⁶ ie in terms of section 74(2).

24. However, he then went on to minimise the relevance of the MasterPlan, on the basis that it hadn't been through a statutory process, and that its focus was on Cromwell Township, rather than land outside that area. He then returned to seeking support from the MasterPlan, saying that it supported private plan changes as a means of implementation, like PC14.
25. In my submission:
- (a) The MasterPlan does have relevance beyond Cromwell Township.
 - (b) It included options to focus residential growth across "Cromwell Basin" (as opposed to the Township).
 - (c) The preference however was to focus growth on existing Cromwell due to it "encouraging a vibrant town centre and offering high density housing options".
 - (d) Accordingly, by the time it got to the detail of the spatial plan, and the MasterPlan's vision for accommodating growth, the focus was on Cromwell Township and its more immediate surrounds.
26. That said, the Masterplan was less focused on how to plan for "rural lifestyle" development – or, without pigeonholing the proposal into that term, it was less focused on the type of proposal that PC14 appears to be emerging to be. If that were to be the case – which may require some revisions to its provisions – then PC14 would not necessarily be contrary to the MasterPlan. The devil will, as they say, be in the detail.

Draft National Policy Statements

27. The draft NPS for Highly Productive Land can also be taken into account – even though, until adopted, it is also a "non-statutory" document (although it is a document on the pathway to being one). While it may not be a "mandatory" relevant consideration under section 74(2), it would not be an error for you to take it into account. Obviously, you do not have to give effect to a draft NPS. The weight you give it should depend on how relevant you find it – on the evidence – but bearing in mind that it may be subject to

change; so it is the broader intent and outcomes emphasised that are important, rather than the nuances of any particular policy.

28. The draft NPS on Urban Development can also be taken into account. It might even be gazetted by the time you make your decision. With that in mind, particular attention should be paid to it, in case it is gazetted and its provisions then “bite”. The NPS-UD is likely to require councils to prepare a Future Development Strategy, to “carry out long-term planning to accommodate growth and ensure well-functioning cities”. Local authorities like CODC will be “encouraged” to include a FDS in their planning framework. While the MasterPlan cannot (yet) be an FDS, it may well form the basis of an FDS in the near future.

Conclusions

29. In terms of the legal matters emphasised for R4RDC:
- (a) Mr Dicey’s evidence is deserving of weight, notwithstanding he is also a member of R4RDC and is providing evidence in a personal capacity as well.
 - (b) Your effects assessment – on the evidence – should drive your findings as to the appropriateness of PC14.
 - (c) Achieving the elusive goal of “integrated management” is also key. What constitutes integrated management, in these circumstances, is also informed by the MasterPlan.
 - (d) The draft NPS for Highly Productive Land and on Urban Development can, and should, also be taken into account.
30. R4RDC further seeks a direction for the Proponent to confer with it, and other submitters (if they wish) before the Proponent submits a final version of the PC14 provisions to the Commissioners for their consideration.

DATED 27 May 2019



J D K Gardner-Hopkins
Counsel for R4RDC