

DECISION OF THE CENTRAL OTAGO DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	CHP Developments Ltd
RM reference:	RC 170378
Location:	1 Alpha Street, Cromwell.
Proposal:	To subdivide an existing site into 173 residential Lots and for land use consent to authorise residential activity on each of those Lots.
Legal Description:	Lot 2 DP 27651 and 3/40 th share of Lot 38 DP 315130, Part Section 47 Block III Cromwell Survey District, and Part Lot 1 DP 20644, as contained in Identifiers [Certificates of Title] 87625, OT 10A/92 and OT 13A/1256 (respectively),
Zoning:	Rural Resource Area.
Activity Status:	Non-Complying Activity
Notification:	Publicly Notified
Commissioners:	A Henderson and J Lane
Decision:	Granted, subject to attached conditions.
Date:	23 January 2018

Introduction

1. We have been given delegated authority to hear and determine this application by the Central Otago District Council (“Council”) under section 34 of the Resource Management Act 1991 (“the Act”) and, if granted, to impose conditions of consent.
2. CHP Developments Ltd seeks subdivision consent to undertake a 173 lot residential subdivision and for land use consent to authorise residential activity on each of those allotments.
3. The subject site is located at 1 Alpha Street in Cromwell and is currently occupied by the Cromwell Top 10 Holiday Park.

The Proposal

4. The proposal is described in detail in the Application and in the section 42A report, and we summarise the key elements below:
 - (i) The site is to be subdivided site into 173 residential allotments between 250m² and 2055m² (Lot 151) in area. A block of small allotments (less than 300m²) are internal to the site, and larger allotments are provided at the periphery of the site. A variation in lot sizes is proposed to provide for a range of housing types, ranging from traditional standalone detached dwellings through to attached dwellings with party wall arrangements on the smaller allotments. The applicant advises that each allotment will have sufficient space for two parking spaces to minimise on road parking within the subdivision.
 - (ii) 13 Lots are to be vested as road (Lots 300 – 312), with two Rights of Way to be created. Four lots are to vest as reserve, and two (Lots 400 and 401) are to be subject to a no build restriction and reserved for sale to the adjoining owner (Freeway Orchard) for a period of 5 years.
 - (iii) The subdivision (and development) will be staged over a period of 10 years. Stage 1 comprises Lots 1-5 (with frontage to Alpha Street) and Lots 6 & 7 and Lot 8 (that will achieve access via The Dunes access lot). Stage 2 is to comprise Lots 9 to 40; and Stage 3 will involve the subdivision of the remaining residential allotments (possibly in several further stages).
 - (iv) Land use consent is sought to construct a dwelling on each allotment, subject to bulk and location controls and other design controls to be imposed as conditions of consent or conditions subject to a consent notice.
 - (v) The primary access to the subdivision is to be off Alpha Street, where a controlled Give Way intersection is to be formed opposite Robertson Court. A strip of land immediately to the south of the intersection is to be vested as Road to improve the sightline to the south along Alpha Street. Internally, the applicant proposes a hierarchy of road construction as detailed in the application, with varying road reserve widths (between 20 metres (for road type 1a and 3) and 8 metres for road type 4a), and various types of landscaping and verge treatments.
 - (vi) The site has existing water and sewer connections to the Cromwell town reticulation in Alpha Street. It is proposed to extend this reticulation network throughout the subdivision to provide services to each allotment. Fire hydrants will be located within the road reserves to provide a fire fighting water supply.
 - (vii) Stormwater from each of the allotments is to be disposed of on site. Stormwater from road reserves will be disposed of through appropriately located and designed soakage pits. We note that at the hearing the Applicant was open to connecting the first stage of roading to the Council stormwater network.
 - (viii) Confirmation has been provided from the relevant network utility providers that power and telecommunication connections will be provided to each allotment underground.
 - (ix) Landscaping is proposed within the roads and reserves, including a pedestrian link to Alpha Street (in Lot 203) and a pedestrian/cycle link to the Right of Way that crosses D85 and serves The Dunes (via Lot 200).

- (x) The applicant advises that the design of the development has taken into consideration the relevant principles of Crime Prevention Through Environmental Design (CPTED), noting that the open spaces do not exhibit any blind spots, and that the open spaces include “living streets” that are subject to passive surveillance afforded by the adjacent residential allotments.
- (xi) Landscaping and fencing requirements are proposed around the perimeter of the subdivision, including permeable fencing and landscaping along the boundary with the golf course (D85); a 5 metre setback and a landscape strip of 2.5 metres wide to be established (with fencing) abutting the boundary with The Dunes subdivision, and a 1.8 metre fence is proposed at the boundary with the Freeway Orchard.

Site Description

- 5. Full descriptions of the site and surrounds were provided in both the section 42A report and in the evidence of Mr Milne for the Applicant. We agree with their factual descriptions, however note that there was disagreement over whether and the extent to which the site exhibited rural characteristics. This was one of the principal points of contention in the hearing, as a determination as to the rural nature (or otherwise) of the proposal has a direct bearing on the application of the Objectives and Policies of the Rural Resource Area. We return to this matter later in this decision.
- 6. The site is held in three computer freehold register identifiers, being Lot 2 DP 27651 and 3/40th share of Lot 38 DP 315130, Part Section 47 Block III Cromwell Survey District, and Part Lot 1 DP 20644, as contained in Identifiers [Certificates of Title] 87625, OT 10A/92 and OT 13A/1256 (respectively), at the Otago Land Registry.

Notification and Submissions

- 7. The application was publicly notified and 18 formal submissions in response to the proposal were received by the closing date of 5 October 2017. Four late submissions were received from W & A Terry and V & L Topping on 6 October 2017, F & S Scott on 9 October 2017, and K Jackson, J Eldridge and A Stark, owners of Freeway Orchard on 9 November 2017.
- 8. Section 37(1) of the Resource Management Act 1991 (the Act) provides the consent authority with the discretion to extend a time limit or waive compliance with a time limit having taken into account the matters listed in section 37A(1) of the Act. Having taken into account the matters listed in section 37A(1), we hereby **accept** the late submissions, and note that no party is prejudiced by their receipt. We also note the applicant had no objection to the late submissions being received.
- 9. The submissions received and decisions sought were summarised in the section 42A report. We have read each submission in full and where relevant refer to matters raised in this decision.
- 10. The applicant has provided written approvals to the application from Kevin Jackson of Jackson Orchards (being the lessee of Freeway Orchard) and from the New Zealand Transport Agency (NZTA).

The Hearing

- 11. A hearing to consider the application was convened on 16 and 17 November 2017 in Cromwell. In attendance were:
 - (a) The Applicants, represented by Ms Bridget Irving (Counsel), Mr John Searle (Applicant), Mr Tony Milne (landscape architect), Mr Andy Carr (transportation engineer), Mr Wally Sanford (surveyor) and Mr Jake Woodward (planner).
 - (b) Council Officers, being Mr David Whitney (consultant planner) and Ms Louise van der Voort (Manager, Planning and Environment).
- 12. We had the benefit of a section 42A report prepared by Council's consultant planner, Mr David Whitney. Based upon his assessment of the application and the evidence presented, Mr Whitney recommended that the application be refused.

Summary of Evidence Heard

13. The following is a brief outline of the submissions and evidence presented. The summary does not detail all of the material that was advanced at the hearing but captures the key elements of what we were told. The material presented reinforced the matters included in the application and precirculated evidence. Where relevant, we address specific issues or views put in the evidence in this decision.

Applicant's Evidence

14. **Ms Irving** provided legal submissions and submitted that overall the proposal was an efficient use of the land and that the subdivision would avoid any significant adverse effects on the amenity or character of the rural environment. She noted that the key issue for our determination related to the effects of the development and their relationship to the Objectives and policies of the District Plan. As the site is zoned Rural, she indicated that a careful analysis of the existing environment is required before an assessment of the effects of the development can be undertaken.
15. **Mr John Searle**, a Director and Shareholder of CHP developments Ltd, explained the history of the site and the Applicant's rationale for the proposal. Mr Searle noted that the development would be undertaken in stages, with the Holiday Park continuing to operate for some time. He did not consider there would be a conflict between the two activities, and there would always be a road separating the holiday park from the development. He also noted that the water infrastructure was historically put in by the Ministry of Works. Irrigation water is taken from a well by the Lake and there are no supply issues.
16. **Mr Tony Milne**, the Applicant's consultant landscape architect, spoke to his landscape assessment. Notably, his evidence identified what in his view are the most important aspects of the site, as follows:
- *The current aesthetic appearance of the site is obviously derived from modification through human occupation and use. The landscape is highly modified and does not contain natural elements, patterns and processes that would be present within landscapes of high natural character.*
 - *Although the site is zoned as a Rural Resource Area, it can be more properly described as a mixed use landscape. Surrounding land-uses comprise areas of residential living to the east and west, a golf course to the south and an orchard to the north.*
 - *The application site lacks most traits characteristic of a rural landscape, particularly traits distinctive to the rural landscapes of Central Otago.*
17. Mr Milne's view was that the proposal would have no, or only a negligible effect, on the rural landscape. He concluded that the proposal is appropriate for the proposed location, is compatible with the neighbouring land uses and immediate urban context, and that the associated landscape strategy and development rules will ensure the development is of a high standard in amenity. He considered that any potential adverse effects on the landscape of the proposed development are appropriately mitigated and that the overall resulting landscape and visual effects of the proposed development will be largely neutral or beneficial.
18. Mr Milne considered that the proposed high density lots had sufficient area to accommodate development that satisfied the proposed conditions, including two car parks, amenity areas, stormwater disposal and other elements. He considered that common themes would develop by default; for example, builders or developers may buy blocks and develop them along a common theme.
19. Aesthetics would be reduced if there were no grass or swales, and the result would be a low amenity outcome. Planting within the streetscape, whether trees, shrubs or grass provides visual and psychological benefits. The proposal includes 3,965m² of reserves, which is more than is normally required. In relation to the fencing along the golf course boundary, Mr Milne considered that a 1.2 metre fence in tandem with a 2.5 metre landscaping strip with specified species would be appropriate. A 1.8 metre fence would be detrimental to the amenity values of both sides of the fence. He also noted that the planted swale that ran centrally through the main road of the proposal had been amended such that it now ran on the northern side of the carriageway, and that the trees to be planted within this swale had been removed from the proposal.

20. **Mr Andy Carr** addressed the effects of the proposed development on the surrounding roading network, and provided advice on the layout and design of the internal road network. His overall view was that:
- the traffic that will be generated can be accommodated on the adjacent roading network, and that there will be no capacity or efficiency effects arising; and
 - the proposed site layout largely complies with all of the District Plan's transportation requirements, apart from sight distances at some lots, and that the differences between the Council's subdivision code and NZS 4404:2010 were not significant.
21. Mr Carr noted that NZTA has already agreed to a right turn bay into Alpha Street off the State Highway, and that there is funding available for the current financial year.
22. Mr Carr also noted that two access points into the adjacent Freeway Orchard would be optimal to provide for future connectivity, but one would be appropriate.
23. Overall, Mr Carr supported the proposal from a traffic and transportation perspective, and considered that there were no traffic or transportation reasons why consent could not be granted. The roads would operate within their capacity.
24. **Mr Wally Sanford**, a surveyor, identified that the development could be appropriately serviced. In response to questions, he noted that there had been no modelling of the capacity of the water or waste water infrastructure. The site is presently serviced, and the Applicant's assumption is that there is sufficient capacity. This would be proved (or disproved) prior to section 224(c) certification, with the Applicant's risk being that if it could not be proved then the subdivision could not be given effect to. Mr Sanford noted that he would be open to discussing having parts of the road stormwater discharging into the Council's network.
25. **Mr Jake Woodward**, the Applicant's planning consultant, set out a number of amendments that had been made to the proposal as a result of the submissions and section 42A report, the most significant of which are:
- The access to Lots 6 and 7 from the Dunes will be provided in accordance with the Applicant's underlying obligations under their easement for the access.
 - Road 9 will become a Right of Way and will not be vested in the Council.
 - A complaints register is to be included as a condition of consent
 - Street lighting will include full cut off luminaires
 - The planted swale that was originally proposed in the centre of the main road has been relocated to the berm adjacent to the residential allotments, and the trees within the swale removed. The applicant will install the necessary irrigation for the proposed swales, living streets and greenspaces. Water will come from the existing water take and upon completion of the subdivision will be transferred to the Council, with the expectation that the future landowners will maintain verges and swales (including irrigation) in front of their properties.
 - The landscape strip adjacent to The Dunes will be 100% planted using at least 60% of natives species found throughout The Dunes development.
 - A lapse period of 10 years is sought for the land use consent, and 7 years for the subdivision consent.
26. Mr Woodward relied on the evidence of Mr Milne that open space, landscape, natural character and amenity values on the site were non-existent or depleted given the prevailing use of the site and the context within which it sits. He accepted that the adverse effects on these values would be no more than minor. Similarly on the basis of Mr Milne's assessment of the landscape and rural character and the circumstances surrounding the site being such that the Rural Resource Area values do not exist on the site, or are largely diminished and of low quality, Mr Woodward considered the proposal is not contrary to the relevant objectives and policies of the District Plan.

Submitters

27. No submitters attended the hearing. However, letters were tabled from the owners of Freeway Orchard and Ms Julene Anderson.

28. The letter tabled from Mead and Stark Ltd on behalf of the owners of Freeway Orchard noted that agreement had been reached between the Applicant and Freeway Orchard, with the Applicant offering the following conditions:
1. *Lots 400 and 401 must be retained by the consent holder and must not be developed for residential purposes for 5 years from date of 224(c) approval for stage 1 of this subdivision, unless they are transferred to the registered proprietor of Lot 1 DP18843 or as may be otherwise agreed with Council.*
 2. *In the event Lot 400 and 401 are transferred to the registered proprietor of Lot 1 DP18843 they must not be used for any purpose other than providing good connectivity from this subdivision to Lot 1 DP18843.*
 3. *If, at the end of the 5 year period Lots 400 and 401 have not been transferred to the registered proprietor of Lot 1 DP18843 or Council the consent holder must as part of the next stage of this subdivision vest Lot 400 as Local Purpose Reserve (Road Access).*
29. The submitter also requested that the proposed 1.8 metre fence be required along the boundary of the orchard. Mr Woodward confirmed that these conditions had been accepted by the Applicant.
30. Ms Anderson's letter queried why neither the Applicant nor Mr Whitney considered piping the proposed stormwater into the Alpha Street infrastructure. In this regard we refer to Mr Sanford's view that he supported piping at least some of the stormwater (perhaps from the early stages of the subdivision) into this reticulation.

Late Evidence of Mr G Ward

31. Subsequent to the adjournment of the hearing, we were advised that Mr Ward, a submitter, had inadvertently been omitted from the list of submitters advised of the hearing. We therefore provided leave for Mr Ward to provide his submissions and evidence by December 4, with the Applicant having the opportunity to respond by December 11.
32. Mr Ward provided a statement of evidence and legal submissions prepared by **Ms Hamilton**. Ms Hamilton submitted that there would be adverse visual effects from the proposal, particularly on Mr Ward's property opposite the site, and subsequently on his property values. She considered that the proposal would set a precedent for other large sale out of zone developments and would compromise the integrity of the District Plan. A Plan Change would be the more appropriate means to secure the development.
33. **Mr Ward** agreed with the section 42A report, noting that:
- Views from the submitters' property would significantly change. The property was chosen for its rural outlook.
 - The proposal will generate additional traffic that will disrupt their enjoyment of the submitters' property and adversely affect their health and wellbeing.
 - There will be negative effects associated with the loss of the campground, as 55,000 bed nights per year must contribute greatly to the local economy.
 - Overall the proposal will have adverse effects on the open space, landscape, natural character and amenity values of the area.

Officer's Review

34. Mr Whitney stood by his original recommendation, and noted that:
- There is a fundamental difference in the environment expected between rural residential and rural resource areas. Rural zoning anticipates a more open format, driven by the objectives and policies, whereas in the Rural residential, residential form dominates, including domestication and curtilage areas.
 - The block within which the site is located, including the Golf Course and Freeway Orchard, has a rural character. The holiday park has a park like setting, and is not a residential environment.
 - Residential development surrounding the site was developed after it was zoned for residential purposes. If the Plan Change process was followed for other developments, why should it not be in this case?

- There is a landscape 'continuum' in the district. The Rural Resource Area covers most of the district, and includes ONL type landscapes through to peri-urban or urban fringe areas.
- It is not uncommon for land in rural areas to not have the dry, semi-arid, schist top characteristics, or to have a park like appearance, or to have a mixture of open space and built form.
- The proposal will have a clear precedent effect. There is a fundamental difference between rural and residential land. The character to be established on the site will be contrary to the outcome sought in the Rural Resource Area.
- The proposal relies on a more expensive roading and planting system to maintain than has been previously accepted in Cromwell, and the costs will fall on future ratepayers.
- The residential rules are deliberately light handed to reduce the need for resource consents and the administrative demands on Council, whereas the Applicant's proposal is complex and includes detailed conditions that could result in simple things such as mailboxes requiring a variation, being treated as a full discretionary activity.

Applicant's Right of Reply

35. Ms Irving addressed a number of matters that arose throughout the course of the hearing, as follows:

- Questions had arisen around whether this proposal should be sought through the consent or plan change process. The Applicant has the right to seek resource consent, and there is no scope to decline on the basis that a plan change process is more appropriate. The plan change issue is irrelevant.
- Ms Irving considered that there was an element of scaremongering in the concerns relating to the 'complexity' of the framework to apply to the new lots. The Applicant is seeking a higher quality subdivision that could be achieved by residential zoning. Reliance on zone rules would still have conditions to secure the intended outcomes.
- The Applicant disagreed that there would be an increased administrative burden on the Council.
- The maintenance of the swales in the road corridors was a substantive issue. She indicated that if the Council's preference was for berms, that could be accommodated. Maintenance requirements are not significant as it is the Applicant's expectation that maintenance of grass verges and berms will be the responsibility of future lot owners.
- The only expert landscape evidence was from Mr Milne, and his view was that the site has no rural character values, although he acknowledged that there is a variety in the Rural Resource Area.
- Ms Irving invited us to consider what values are identified in the District Plan as those requiring management in the Rural Resource Area. The Introduction to Chapter 4 (Rural Resource Area) identifies these values and in Ms Irving's submission, none are affected by the proposal. She asked us to consider whether the proposal was an appropriate use of the site with reference to the values identified in the District Plan, and what could be done to avoid, remedy or mitigate any adverse effects.
- Issues around precedent and plan integrity do not arise where the effects are considered acceptable. The anchor for the assessment is in the effects assessment, and the Objectives and Policies flow on from that. It is not acceptable to refuse an application on the grounds of precedent and integrity if the finding is that effects are minor.
- With regard to precedent, Ms Irving noted that it is uncommon for a block of land to have no rural values, have residential activity on two sides and a reserve on another. The golf course has more open space values than the applicant's site. It is uncommon to have a site where such a number of these factors exist, and Ms Irving therefore did not accept that a grant of consent would result in a slew of applications relating to sites with the same features.

36. Ms Irving concluded that the Applicant has put forward a proposal that comprehensively responds to the environment and will achieve a high quality outcome that will set a bar for future development in

Cromwell. It does not impose any undue obligations on the Council and does not compromise the fundamental tenets of the Rural Resource Area.

District Plan provisions

37. The site is located within the Rural Resource Area in the Operative Central Otago District Plan (Operative District Plan/District Plan). We agree with the section 42A report that overall the following consents are required:
- A non-complying activity subdivision consent pursuant to Rule 4.7.5(iii) for a subdivision in the Rural Resource Area which creates allotments with an average area of less than 8 hectares and a minimum area of less than 2 hectares.
 - A discretionary (restricted) activity pursuant to Rule 4.7.3(i) as the 10 metre front yard and 25 metre side and rear yards specified in Rule 4.7.6A(a) are to be breached.
 - A discretionary (restricted) activity pursuant to Rule 4.7.3(iii) as the proposal breaches Rule 4.7.6D(a) which specifies materials and colours for the finish of all buildings in the Rural Resource Area.
 - A discretionary activity pursuant to Rule 4.7.4(i) as the proposal breaches Rule 4.7.3(vii)(b), which stipulates that there shall be no more than one residential activity on the relevant Certificate of Title.
 - A discretionary activity pursuant to Rule 4.7.4(i) as the proposal breaches Rule 4.7.3(vii)(d), which stipulates a 50 metre separation distance between dwellings or from any urban area.
 - A discretionary (restricted) activity pursuant to Rule 12.7.1(viii) as the proposal breaches the sight distances specified in Rule 12.7.1(ii).
38. We also note that the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) came into force on 1 January 2012. In this instance the proposal, we agree with the section 42A report that the proposal is a restricted discretionary activity in terms of Regulation 10(2) of the NES as a Detailed Site Investigation confirms that soil contamination exceeds the applicable standard in Regulation 7.
39. On the basis of the above, we agree that the proposed subdivision is required to be assessed as a non-complying activity, and the proposed residential activity requires resource consent as a discretionary activity in the Rural Resource Area of the Operative District Plan, and that consent is required for a restricted discretionary activity in terms of Regulation 10(2) of the NES.
40. Overall the application is required to be assessed as a non-complying activity.

Relevant Statutory Provisions

41. As a non-complying activity, we agree that this application must be considered in terms of Section 104D, 104 and 104B of the Act.
42. Subject to Part 2 of the Act, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:
- a) *any actual and potential effects on the environment of allowing the activity; and*
 - b) *any relevant provisions of:*
 - (i) *A national environmental standards;*
 - (ii) *Other regulations;*
 - (iii) *a national policy statement*
 - (iv) *a New Zealand coastal policy statement*
 - (v) *a regional policy statement or proposed regional policy statement*
 - (vi) *a plan or proposed plan; and*

- (c) *any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

43. In addition, Section 104D (Particular Restrictions on non-complying activities) states that:

- (1) *Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –*
 - (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (b) *the application is for an activity that will not be contrary to the objectives and policies of-*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

44. Following assessment under Section 104, the application must be considered under Section 104B of the Act. Section 104B states:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

- a) *may grant or refuse the application; and*
if it grants the application, may impose conditions under section 108.

45. Sections 108 and 220 empower us to impose conditions on land use and subdivision consents respectively should they be granted.

46. Section 104(3)(b) requires that we have no regard to effects on people who have given written approval to the application. Written approvals have been received from NZTA and the operators of the adjacent Freeway orchard. In this regard it is also noted that the Applicant has reached an agreement with the owners of the orchard.

47. In reaching our decision we note that we have taken into account all of the information provided with the application, the section 42A report and appended assessments, the pre-circulated evidence and the evidence presented at the hearing. We undertook a site visit on 16 November 2016. We have also considered the provisions of the relevant plans, and Part 2 of the Act.

Assessment

48. In the following sections we assess the actual and potential effects of the proposal. For convenience we have adopted the same order as in the section 42A report. However, before considering the effects, we have considered the issue of the existing character of the site, as we were invited to do so by Ms Irving.

49. The site and surround area were both comprehensively described in the section 42A report and in the evidence of Mr Milne for the Applicant. Both were consistent in their description of the nature of the surrounding environment. We have set out the differences in their opinions below.

50. The section 42A report opined that:

The effect of the proposal will be to subdivide and develop the subject site to a density consistent with that found (or provided for) in the Residential Resource Area. In our view such subdivision and development will have an adverse effect on the open space, landscape, natural character and amenity values currently enjoyed by those who travel along Alpha Street and Neplusultra Street; and by those who reside in the Residential Resource Area generally to the east of Alpha Street, to the south of Neplusultra Street and at The Dunes, where such residents have a view of the site. We consider that such effects on the open space, landscape, natural character and amenity values

enjoyed by passers-by and neighbours will be adverse and significant having regard to the intensity of subdivision and development which would otherwise be expected in the context of the Rural Resource Area.

Mr Milne has described the subject site as being located firmly within the urban limits of Cromwell. We concur with this assessment but again acknowledge that the subject site, the Freeway Orchard, and land to the west of The Dunes is located within the Rural Resource Area. This land, and land designated for Recreation Purposes being D85 (which is utilised for the Cromwell Golf Course) provides open space, landscape, natural character and amenity values which are enjoyed by those who pass through or reside within the Cromwell urban area. The proposal will result in a significant area of the Rural Resource Area in Cromwell being used for residential subdivision and development. We consider that such subdivision and development would be incongruous in the context of this Rural Resource Area.

51. Mr Milne, on the other hand, considered that:

The current aesthetic appearance of the site is obviously derived from modification through human occupation and use. The landscape is highly modified and does not contain natural elements, patterns and processes that would be present within landscapes of high natural character...

Development of the application site will result in the loss of any remaining rural character, however the extent of the rural character present on the site is minimal. The proposed development will replace a holiday park with an urban development, however this does not necessarily mean that the resulting level of visual amenity will be lower than at present. A combination of factors such as the proposed pattern of development, boundary treatments and activity area rules will create a high amenity urban environment that is visually sympathetic to its surroundings.

The effects of the proposal on the existing landscape character and visual amenity of the site will not extend beyond the immediate neighbours.

It is recognised that the landscape outcome achieved by the proposal is not entirely in accordance with the objectives and policies of the....zoning. However, it is also not entirely contrary to their intent either. While the proposal departs from the existing character of the application site (a holiday park) in the context of its broader setting it is consistent with the adjacent residential uses and built form to the east and west of the site.

52. As invited by Mr Irving, we have considered the characteristics of this site within the context of the description of the rural environment of the District as expressed in the Rural section of the Plan. We note in particular that the Rural Resource Area zone description includes the following:

The Rural Resource Area comprises the rural environment of the District. This area has been identified as distinct from the urban areas of the District on the basis of its environmental character. The amenity values of the rural environment are dominated by Central Otago's unique, semi-arid landscape of broad basins separated by low mountain ranges with sparse vegetation, covered in tussock grassland and exotic pasture, and broken by schist rock outcrops. This landscape retains a high natural character and has significant scenic values and some of it is identified in this District Plan as an outstanding natural landscape or outstanding natural feature. These values can be enhanced by human made elements which include orchards and vineyards; homesteads accompanied by stands of trees (often poplars); remnant stone cottages; small irrigation and stock water dams and water races; energy generation facilities; and shelter belts of trees. Former mining sites also give the District a distinctive character

53. Having considered the character of the site in the context of the rural environment as described in the Plan, we prefer the evidence of Mr Milne in this instance, for reasons including the following:

- The application site is not 'distinct' from the urban areas of the district. Rather, as identified in the section 42A report and Mr Milne's evidence, the site is considered to be within the urban limits of Cromwell;

- The site has residential development to the east and west, and the developed nature of the site is such that it does not display the unique characteristics that dominate the Central Otago landscape;
- Any effects on landscape character will not be visible to any parties beyond the immediate neighbours, and as such the visual amenity of the rural area will not be significantly adversely affected; and
- The proposal will have characteristics that are similar to the existing residential development to the east and west.

Assessment of Effects on the Environment

Effects on Open Space, Landscape, Natural Character and Amenity Values

54. We agree that intensive subdivision and development within the Rural Resource Area can detract from open space, landscape, natural character and amenity values. However, as described above, we do not consider that the site has significant landscape or natural character values. We also note that although the visual character of the site will change, the extent of development within the site will largely be screened to external viewers (whether travellers on the roads or in established residential areas) by the establishment of residential activity around the periphery of the site.
55. We consider that the proposed development will be similar in character to the established residential properties to the east in particular, and we consider overall that the proposed development will read as part of the urban environment of Cromwell, noting as we did above that the application site is not 'distinct' from the urban areas of the district. Rather, as identified in the section 42A report and Mr Milne's evidence, the site is considered to be within the urban limits of Cromwell.
56. On the basis of our view on the characteristics of the site, and our acceptance of the evidence of Mr Milne, overall we consider that there will be no more than minor adverse effects on the visual amenity and character of the site or surrounding area.

Traffic Effects

57. Mr Carr addressed the actual and potential effects of the traffic that will be associated with the development of the site. Overall, we accept Mr Carr's view that the effects of the vehicle movements can be accommodated within the existing roading network.
58. We consider that the traffic effects generally relate to:
- Effects related to the volume of traffic to be generated;
 - Effects on the intersection of Alpha Street and State Highway 8;
 - Connectivity with Freeway Orchard;
 - The access onto Alpha Street; and
 - Roding standards within the subdivision.
59. We note Mr Carr's evidence that and that there is overall little difference between the traffic generation of the proposed development and that generated by the existing Holiday Park, although we note the Holiday Park traffic will be seasonal. That notwithstanding, the evidence is that the peak traffic generated can be accommodated within the roading network, and this was not refuted by the contributors to the section 42A report.
60. We note in this regard that the section 42A report also reached the overall conclusion that transportation related effects will be less than minor, although there was disagreement over some of the standards that should apply to particular road designs and standards, and we record our views and findings below.
61. Mr Carr identified that the NZ Transport Agency has programmed an upgrade of the Alpha Street/SH8 intersection to accommodate a right turn bay for vehicles turning into Alpha Street from SH8, and correspondence has been provided from the Agency which indicates that the operation of the State Highway will not be affected by the proposal. We are satisfied that the State Highway will not be affected by the proposal.

62. Mr Carr has assessed the sightlines available at the existing entrance to the holiday park and has recommended that an area of land to the south of the holiday park entrance be set aside to improve the sight distances for vehicles exiting the subdivision onto Alpha Street. We note that the plan of subdivision provides for this strip of land (adjacent to Lot 151) to form part of Lot 300 (to vest as Road), and consider that this satisfactorily addresses any concerns relating to sight lines from the access onto Alpha Street.
63. The Applicant has also proposed connections through to the site occupied by Freeway Orchard. While Mr Carr considered one would suffice, he indicated in response to questions that two would be optimal. The plan of subdivision currently provides for two connections to the Freeway Orchard site in order to facilitate future road connections. We note, however, that the existence of these connection points does not indicate that development of the site is presently contemplated, as we were told that it is not; rather, it is sensible to secure connection points now rather than attempt to negotiate them in the future when the land may have been developed.
64. We note in this regard that the Applicant has agreed the following conditions with the owners of Freeway Orchard:
- i Lots 400 and 401 must be retained by the consent holder and must not be developed for residential purposes for 5 years from the date of s224(c) approval for stage 1 of the subdivision, unless they are transferred to the registered proprietor of Lot 1 DP 18843 or as may be otherwise agreed with Council.*
 - ii In the event Lot 400 and 401 are transferred to the registered proprietor of Lot 1 DP 18843 they must not be used for any purpose other than providing road connectivity from this subdivision to Lot 1 DP 18843.*
 - iii If, at the end of the 5 year period Lots 400 and 401 have not been transferred to the registered proprietor of Lot 1 DP 18843 or Council the consent holder must as part of the next stage of this subdivision vest Lot 400 as Local Purpose Reserve (Road Access).*
65. We are satisfied that these conditions appropriately provide for connection points between the site and the adjacent orchard.
66. The application did not provide for the construction of roading infrastructure in Stage 1. We agree with the section 42A report that it would be appropriate to extend the footpath in Alpha Street to serve Lots 1-5 and that it would also be appropriate to construct a carriageway off the existing access lot carriageway in The Dunes to serve Lot 6 and Lot 7, and we note that this was accepted by the Applicant at the hearing.
67. Both Mr Carr and the section 42A report comprehensively addressed the internal roading design and while there was ultimate agreement that the adverse effects relating to roading design and traffic movements would be minor, there was some disagreement between the Council and the Applicant as to the appropriate standards relating to carriageway widths and other design standards for some of the internal roads.
68. As we understand it, the difference was driven by the Council's engineering standard referring to the 2004 version of NZS4404, whereas the Applicant relied upon the 2010 version of the same standard.
69. Mr Carr addressed this matter in his evidence, noting that the 2004 version of the Standard was superseded by the 2010 version, which notes that
- A significant proportion of all new infrastructure is created by land development and subdivision projects. As a community, we need to get this right. That is why NZS4404:2010 aims to encourage good urban design and remove road blocks to liveability and environmental quality.*
70. As identified by Mr Carr, the 2010 standard also noted that a key difference from the 2004 version is that "road design needs to allow 'context' or 'place' to be given significant emphasis and to require roads to achieve safe (slower) operating speeds".
71. Mr Carr's evidence captures the essence of this issue and we repeat his view below:

Interestingly, the 2010 standard notes that the 2004 version had the objective of permitting alternative solutions, but that “in practice, well-designed solutions that were not in accordance with the standard often had difficulty gaining RMA consents. This led to delays...or a less desirable design being adopted”. This appears to be the case here. In my view the adoption of the 2010 version within the application represents current best practice. The recommendation that the 2004 version, albeit modified in 2008, should be used instead represents a less desirable design because it is based on a design philosophy that is now superseded.

72. We have considered the differences between the road widths preferred by Council’s engineering advisors (Stantec) and Mr Carr, which were presented to us in table form at the hearing. The Applicant’s designs comply with the 2010 standard and in many cases exceed it in terms of road widths and provision of parking lanes. Whereas the 2004 standard seeks wider carriageways in some instances, we do not consider the shortfall to constitute a significant adverse effect for reasons including the following:
- The subdivision does not provide for through traffic, and the only users of the roads will be residents and their visitors, and service vehicles; and
 - The narrower road widths will achieve the intent of the 2010 standard in achieving lower operating speeds.
73. We therefore prefer the evidence of Mr Carr and consider that overall, and subject to the conditions imposed with respect to roading design, that the traffic effects of the proposal will be no more than minor.

Subdivision Design

74. The applicant seeks resource consent to establish a residential activity (dwelling) on each allotment to avoid the need for individuals to apply for future individual resource consents, which the applicant considers is more efficient from a regulatory perspective.
75. The applicant proposes that the bulk and location and other proposed controls be imposed on the individual computer freehold register identifiers via a consent notice. If any owner wishes to breach the relevant design control conditions that this would necessitate a change to a condition(s) of land use consent as well as an application to vary a condition(s) specified in a consent notice. We also note that should a landowner seek to undertake an activity not specified in the conditions, a further consent would be required.
76. There was some discussion at the hearing about whether this situation would result in a greater administrative burden for the Council, as opposed to what could occur had the subdivision been undertaken as a plan change, and development undertaken accordance with zone rules. Ultimately, we do not consider that there is any evidence that would support this concern. It is incumbent on any land owner to undertake their own due diligence, and should they seek to depart from the relevant rules or controls, it is their right to do so through the consent process.
77. The section 42A report raised concerns that conflict could occur between pedestrians and cyclists and traffic using the right of way to access The Dunes and with golfers crossing the carriageway which passes through the Cromwell Golf Course. In this regard, we accept Mr Carr’s evidence that conflict between cyclists and pedestrians is a common perception, but in practice there is little. He deferred to the NZTA Pedestrian Planning and Design Guide the sets out that cyclists can be permitted as guests in a pedestrian space, and we rely overall on Mr Carr’s view that there will be no adverse effects arising from the proposed pedestrian linkage. Similarly, we are satisfied that the links with and through the golf course can be appropriately managed by the conditions of consent.
78. A significant matter that was raised related to the applicant’s proposed use of grassed and planted swales for stormwater management purposes, and the expectation that the maintenance burden for these and of the proposed irrigation system would fall on individual property owners and ultimately the Council once the development was complete. We do not consider it appropriate that the maintenance burden for the in road irrigation system and swales should fall to individual landowners. Should only one landowner neglect to maintain the part of the irrigation in front of their property, the entire system could be compromised, with the ultimate expectation placed on the Council to fix it. We consider this expectation is likely, particularly given that the applicant does not propose to create

a management company or body corporate type structure that would be responsible for the ongoing maintenance.

79. The Council's approach is that individual landowners are responsible for the grass berms in front of their properties, and in order therefore to avoid the risk of the swales and irrigation system not being maintained, we are of the view that the grass swales and irrigation system should be removed from the proposal, and the grass swales replaced with grass verges. This requirement is reflected in the conditions attached to this decision.

Effects on Servicing and Infrastructure

80. There are existing water and wastewater connections to the site; power and telecommunication services are proposed; and stormwater is proposed to be disposed of within the subdivision. We understand that the adequacy of the existing water reticulation and wastewater reticulation downstream of the subdivision will be modelled to demonstrate that it is sufficient to serve the subdivision, and that this modelling will be undertaken in order to prove capacity prior to certification pursuant to s224(c). In this regard we accept that the risk falls on the applicant, such that if the capacity cannot be proved, then the subdivision cannot be given effect to in its present form and would require, in the least, a variation to the conditions.
81. Ms Ludlow has raised concerns with respect to the use of soakpits and has promoted that a reticulated stormwater system should be provided to connect to the stormwater main in Alpha Street. The Applicant indicated that it would explore the ability to accommodate stormwater within the Council's reticulated system. As identified above, we accept the Council engineering consultant's advice that the stormwater swales are not appropriate, and consider that kerb and channel should instead be utilised, which will facilitate the discharge of road water at least into the existing reticulation.
82. Overall, we were provided with no evidence that identified any significant adverse effects arising from the proposed servicing of the site that could not be addressed by way of conditions of consent, and subject to the changes we have imposed through this decision, agree with the section 42A report that any adverse effects in terms of servicing and infrastructure will be no more than minor.

Construction and Nuisance Effects/Effects of Earthworks

83. We accept the section 42A report's advice that no resource consent is required for earthworks for roading. However, we note that there is no indication of the overall quantum of earthworks proposed and that therefore it cannot be determined whether the earthworks required to form the subdivision overall complies with Rule 4.7.6J(b) which provides for the extraction (including excavation and/or displacement) of material to a maximum of an area of 2000m² or a quantity of 3000m³ as a permitted activity. Should either of these quantities be breached then a further land use consent will be required.
84. Adverse effects associated with construction are to be mitigated by adherence to a Site Management Plan which specifies the operating conditions which contractors will be required to adhere to, including matters such as operating hours, procedures for controlling dust during periods of high winds, and restrictions on the use of specific equipment during sensitive periods of the day. This Management Plan can be required through conditions of consent.
85. As the subdivision is to be undertaken in stages, we agree with the section 42A report that the source of any construction and nuisance effects will not be static but will change in location as the work progresses.
86. Overall we are satisfied that any adverse effects of the earthworks proposed can be appropriately managed by conditions of consents and that they will be no more than minor overall.

Contaminated Land

87. As identified in the application, the site is a 'piece of land' for the purposes of the NES due to the subject site having a history of activities with the potential to impact soil quality, including broadacre application of agrichemicals associated with horticultural and historical farming use. In addition the site is adjacent to an operational orchard being the Freeway Orchard. Based upon the PSI and DSI

provided in support of the application, we are satisfied that any effects in terms of contaminated land will be no greater than minor.

Effects of Staging

88. We agree with the section 42A report that any effects in terms of staging will be less than minor. We understand that as a consequence of staging the physical works associated with the development of the subdivision will be prolonged, and agree with the Applicant that the Site Management Plan will assist in ensuring that appropriate procedures are put in place to mitigate effects, particularly nuisance effects on adjacent properties.

Reverse Sensitivity Effects

89. We noted that written approval has been received from the operators of Freeway Orchard, and that the Applicant has reached (and provided) an agreement the owners of the Freeway Orchard, which indicates their support for the development. On this basis we have not considered any effects on Freeway Orchard pursuant to section 104(3)(b) of the Act.
90. We acknowledge the concerns raised by submitters with respect to reverse sensitivity effects associated with the operation of the Cromwell Golf Course on land designated D85. Having visited the site and considered the evidence, we agree with the section 42A report that as the Cromwell Golf Course adjacent to the site is located on a recreation reserve that is designated for Recreation Purposes, any such reverse sensitivity effects will be limited given that the Cromwell Golf Course is an established recreational activity on this reserve.

Effects on Heritage

91. We are satisfied that the proposal will have no particular effect in terms of heritage, and consider that the application of an Accidental Discovery Protocol through the conditions of consent will provide appropriate guidance in the event that any items of cultural or historical significance are discovered or disturbed through the construction process.

Cumulative Effects

92. We have earlier determined that the site is within the urban extent of Cromwell, and that development of the site for residential purposes will be consistent with the existing character of residential activity on the eastern side of Alpha Street. We therefore consider that any cumulative effects will be no more than minor.

Positive Effects

93. We consider that the proposal will have a positive effect in terms of adding to the supply of residential allotments and housing stock in Cromwell. We have not considered any potential positive effects associated with affordable housing, as while the applicant has referred to considering including an affordable housing element, no detail is provided.

Summary of Effects

94. Overall, we have reached the view that the actual and potential effects of the proposal will be no more than minor, and accordingly consider that the proposal satisfies the first gateway test of section 104D(1)(a), which enables us to proceed with a wider assessment of the application in terms of section 104.

Assessment of relevant planning documents

Central Otago District Plan

95. The relevant objectives and policies of the Operative District Plan were addressed by both Mr Woodward and in the section 42A report. We have earlier found that the site does not exhibit the characteristics of the rural zone that the plan seeks to protect, and in preferring the evidence of Mr Milne, we are satisfied that the site is within the urban extent of Cromwell, and that accordingly the

proposal will not have any adverse effects that are more than minor on rural amenity or character values.

96. On this basis, and on the basis of our assessment of the effects of the proposal outlined above, we do not consider that the proposal adversely affects rural amenity values created by the open space, landscape, natural character and built environment values of the site as they are reflected in the objectives and policies of the Plan.
97. Overall, we prefer the evidence of Mr Milne and Mr Woodward, and conclude that the proposal is not contrary to the relevant objectives and policies of the Operative District Plan.

Regional Policy Statement/Proposed Regional Policy Statement

98. The Regional Policy Statement for Otago (RPS) became operative on 1 October 1998. We agree with the section 42A report that the objectives and policies in the RPS are general in nature and are of no particular relevance in assessing the current proposal.
99. We also note that the Proposed Regional Policy Statement for Otago (PRPS) was publicly notified on 23 May 2015, with decisions on submissions released on 1 October 2016. Given that many of the objectives and policies are subject to appeal, we agree that little weight can be placed on the PRPS because of the inchoate status of those provisions.

Regional Plans

100. We agree with the section 42A report that the Regional Plan: Water, the Regional Plan: Air and the Regional Plan: Waste are of no particular relevance to the proposal.

National Policy Statements

101. The National Policy Statement on Urban Development Capacity (NPSUDC) applies to the urban environment which is defined as being a concentrated settlement of 10,000 people or more. Given that Cromwell has a population less than 10,000 we agree that the NPSUDC is of no particular relevance in this instance.

National Environmental Standards

102. The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) have been addressed in the context of "Effects of Contaminated Land" above, and we agree that any potential effects relating to soil contamination in the context of this piece of land will not be significant.

Summary of Statutory Documents

103. Overall, we consider that the proposal is not contrary to the relevant provisions of the relevant plans. Accordingly, we consider that the proposal also satisfies the second gateway test for a non-complying activity, although we note below that in order to be considered under section 104, the proposal need only pass through one of the gateways.

Overall consideration – section 104(1)

104. Section 104D contains two gateways for a non-complying activity. If an application passes through either gateway then we must then consider the proposal in accordance with section 104(1) and in terms of the overall discretion inherent in section 104B of the Act.
105. As identified above, we have concluded that the proposal passes through the section 104D gateway. In terms of the broader s104(1) assessment, we have concluded that adverse effects of the activity on the environment in terms of open space, landscape, natural character and amenity values will not be more than minor and can be addressed through conditions of consent. We have also considered the relevant planning documents and concluded that the proposal is not contrary to them. In reaching this view we have carefully considered the characteristics of the site and surrounding environment, and have reached the site possesses few of the values that the Plan identifies for the rural zone, a

view advanced by Ms Irving and one that we accept. We therefore consider that the proposal is not contrary to the relevant provisions.

Other Matters

106. Section 104(1)(c) enables us to have regard to any other matter we consider relevant and reasonably necessary to determine the application.
107. The issues of precedent and plan integrity were raised by a number of submitters who were concerned that a grant of consent would result in similar applications being made to the Council with the expectation of similar treatment.
108. Both of these issues were addressed by Ms Irving in her submissions. We accept Ms Irving's submission that precedent is not an environmental effect, and that it is appropriate that our assessment be 'anchored' in assessment of effects on the environment, which we have done above. She referred us to case law that clearly identifies that each case should be assessed on its own merits, and that there is no true concept of precedent in the Act¹. We also note that:

...it is not necessary for a site being considered for a non-complying activity to be truly unique before plan integrity ceases to be a potentially important factor.a decision maker in such an application would look to see whether there might be factors which take the particular proposal outside the generality of cases.

Only in the clearest of cases, involving an irreconcilable clash with the important provisions, when read overall, of the District Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined.

109. We have reached the view, as expressed earlier in this decision, that the proposal does not represent an 'irreconcilable clash' with the provisions of the Central Otago District Plan. Despite being zoned Rural Resource Area, the site does not possess many of the characteristics that the Plan identifies as characteristic of the Central Otago rural environment. We are therefore satisfied that the proposal will neither result in a precedent or in a challenge to the integrity of the plan, and agree in this case with the view expressed by Ms Irving, that

...the proposal does not irreconcilably clash with the plan provisions. Essentially, the site does not represent a part of the zone that is demonstrative of rural landscape and character values that the plan seeks to maintain. Therefore it is difficult to see how this proposal could irreconcilably compromise the administration of the plan.

110. Finally, with respect to other matters, we note that while the section 42A report considered that the Plan Change process would be the more appropriate route for this proposal, we accept the legal submission of Ms Irving that whether the proposal could or should have proceeded by way of a Plan Change is irrelevant and not a matter to which regard can be had.

Part 2

111. As a result of recent case law, the process of undertaking an overall judgement under part 2 of the Act is no longer necessary, as the Objectives and Policies of the relevant statutory documents are to be taken on their face as giving effect to Part 2. Part 2 need only be considered where the relevant planning instruments are considered to be incomplete, uncertain, or invalid. The Central Otago District Plan is none of these and we therefore do not consider a Part 2 assessment to be necessary.

Determination

112. Consent is sought to subdivide an existing site into 173 residential lots and for land use consent to authorise residential activity on each of those lots. Land use consent is also sought under Regulation 10(2) of the NES for Assessing and Managing Contaminants in Soil to Protect Human Health for a restricted discretionary activity as contamination on part of the site exceeds background levels.

¹ *Beacham v Hastings DC EnvC W075/09*

113. The proposed subdivision was assessed as a non-complying activity under sections 104, 104B and 104D of the Act.
114. The proposed land use consent was assessed as a discretionary activity under sections 104 and 104B of the Act.
115. With respect to the subdivision consent, we are satisfied that the proposal passes the gateway tests in section 104D of the Act, as the adverse effects are no more than minor (s104D(1)(a), and the proposal is not contrary to the provisions of the relevant plans (s104D(1)(b).
116. With respect to the land use consent, we are satisfied having regard to the matters in section 104 that the adverse effects of the proposal can be appropriately avoided, remedied or mitigated.
117. We also consider that the relevant matters in the NES are addressed such that there will be no adverse effects on human health associated with removal of the contaminated soil on the site and the subsequent use of the piece of land for residential purposes.
118. Accordingly, we determine that Consent be GRANTED pursuant to sections 104, 104B and 104D of the Act, and Regulation 10(2) of the NES, subject to the attached conditions which are imposed under section 108 and 220 of the Act.
119. Dated at Christchurch this 23rd day of January 2018.



Andrew Henderson

For the Hearings Commission