

Before the Independent Hearings Panel
At Central Otago District Council

Under the	Resource Management Act 1991 (RMA or Act)
In the matter of	an application for subdivision and land use consent to establish another 44 residential allotments in the rural resource area at 112 & 144 Ripponvale Road, Cromwell (RC250155)
And	New Zealand Cherry Corp (Leyser) LP Applicant

Legal Submissions on behalf of the Applicant

4 August 2026

Applicant's solicitor:

Sarah Eveleigh / Tallulah Parker
Anderson Lloyd
Floor 2, The Regent Building, 33 Cathedral Square, Christchurch 8011
PO Box 13831, Christchurch 8141
DX Box WX10009 Christchurch
p +64 27 204 1479 / +64 21 703 767
sarah.eveleigh@al.nz / tallulah.parker@al.nz

**anderson
lloyd.**

Introduction

- 1 These legal submissions are provided on behalf of New Zealand Cherry Corp (Leyser) LP (**Applicant**) in relation to an application to the Central Otago District Council (**CODC** or **Council**) for subdivision consent and land use consent (RC250155) to establish an additional 44 residential allotments in the Rural Resource Area (5) (**RRA(5)**) at 112 & 144 Ripponvale Road, Cromwell (**Site**).¹
- 2 A concurrent application under section 127 of the RMA seeks to vary RC220396, as previously varied, to update the approved subdivision scheme plan, staging and associated conditions so that the proposed intensified layout can be implemented as part of the wider Shannon Farm subdivision (together, the **Application**).
- 3 At its core, the Application concerns the continued evolution of Shannon Farm, developed in response to market demand and with regard to the environmental features of the Site and the wider Cromwell context. It requires the Commissioners to consider whether a modest increase in residential yield can be accommodated while retaining the environmental outcomes sought through RRA(5).

Scope of submissions

- 4 These submissions address the following matters to assist the Commissioners:
 - (a) The Application;
 - (b) Planning context and the existing environment;
 - (c) The relevant statutory framework, including section 104D, 104 and Part 2 of the Resource Management Act 1991 (**RMA**);
 - (d) A high-level overview of the environmental effects of the Application;
 - (e) Assessment of the Proposal against the relevant objectives, policies and other statutory considerations;
 - (f) The significance of departures from the Structure Plan and concerns relating to precedent and plan integrity;

¹ Legal Description(s): Section 54 Block III Cromwell Survey District, Section 26, 100 Block III Cromwell Survey District, Section 27-28, 96, 99, 102 Block III Cromwell Survey District, Lot 2 Deposited Plan 330709 and Section 4, 11, 98, 101, 103 Block III Cromwell Survey District and Part Section 5, 25 Block III Cromwell Survey District and Part Run 1201R.

- (g) Amendment to the Application; and
- (h) Conditions of consent.

Executive Summary

- 5 The Application will provide rural living opportunities in response to demonstrated market demand and within the evolving Cromwell context. As such, it will contribute economic and housing capacity benefits and assists in contributing to a well functioning urban environment. It can be serviced by and makes efficient use of infrastructure that is already proposed as part of the Shannon Farm development, and has no impact on rural productive values.
- 6 Effects are generally agreed to be acceptable, with the exception and landscape effects in RLA6 and rural character effects. The evidence for the Applicant is that the proposed development is carefully located and controlled. When assessed against the values of, and in the context of other development within, the Significant Amenity Landscape (**SAL**), landscape and amenity effects are no more than minor. Rural character will be maintained through the revised lot layout and retention of built form and landscaping controls. In our submission, the Applicant's evidence on these matters should be preferred.
- 7 Generally, an assessment of relevant objectives and policies requires "a fair appraisal of the objectives and policies read as a whole", although it will be appropriate to place greater weight on the RRA(5) specific objective and policy. Assessment against 'avoid' policies should be undertaken in accordance with established case law, the policy direction being satisfied where there is no material harm. Although the Application does not accord with all aspects of Policy 4.4.18, it accords with the majority of that policy and the overall intent of Objective 4.3.10. The Application is properly assessed as largely consistent with, and not-contrary to, the objectives and policies of the District Plan.
- 8 Accordingly, the application passes through both gateways of s104D and can be approved under s104. Conditions of consent are largely agreed, with final refinements proposed through the Applicant's evidence.

The Application

- 9 A full description of the Application is outlined in **Mr Woodward's** evidence.² In summary, the Proposal seeks consent for:
- (a) An additional 44 Lots, bringing the "total" number of residential Lots within the Shannon Farm development to 204 Lots. This will be achieved by intensifying the later stages of the Shannon Farm subdivision by reducing and reconfiguring some allotments within areas already consented for subdivision (yielding an additional 28 Lots) and adding 16 "new" Lots as follows:
 - (i) RLA 3: an additional 6 allotments, ranging from 1,770m² to 3,530m² (average 2,385m²).
 - (ii) RLA 4: an additional 22 allotments, ranging from 1,895m² to 6,895m² (average 3,115m²).
 - (iii) RLA 6: an additional 16 allotments (created from one original allotment), ranging from 2,290m² to 5,150m² (average 3,400m²). The balance of RLA 6 (approximately 36ha) is proposed to be retained as open pasture and amalgamated with Lot 166 (via proposed Lot 600).
 - (b) Additional earthworks of up to 293,679.36m³ over an area of 132,553m². Cuts will be up to a maximum of 3.1 meters in depth, while fill will be up to 2.1 meters in height.
 - (c) One road (being an upgrade of an existing Right of Way) and two new Right of Ways are proposed to service the additional Lots.
- 10 All servicing and infrastructure approved and under development as part of the existing development has been sized to accommodate the additional Lots.

Planning context and the existing environment

- 11 The Proposal forms part of the Shannon Farm development on Ripponvale Road, Cromwell. Shannon Farm was enabled through PC14 to the Central Otago District Plan (**District Plan**), which introduced a bespoke RRA(5) framework for long-term development of the Site.
- 12 As outlined in the evidence of **Mr Woodward** and **Mr Croft**, and detailed in the explanatory text to Policy 4.4.18, the purpose of that framework was

² Evidence of Jake Woodward at [24] – [27].

designed to provide for a range of rural living opportunities and densities in an integrated and planned manner, while protecting the Outstanding Natural Landscape (**ONL**), maintaining the values of the SAL, retaining productive land, providing for rural amenity and ensuring development is appropriately serviced.³

- 13 PC14 established the overarching framework for future development, rather than a fixed end-state.⁴ It identified areas capable of accommodating different densities of rural lifestyle development and contemplated/ enabled future resource consent applications, to refine development within that framework over time. At the same time, PC14 embedded a series of controls to protect key environmental values. These included the extension of the ONL boundaries, identification of a No Build Area within RLA6 to maintain the open and legible character of the SAL, retention of productive land within the Rural Lifestyle Production Area (**RLPA**), and controls relating to the location, design and form of future development.⁵
- 14 Following approval of PC14, subdivision consent RC220396⁶ was granted to implement the Shannon Farm development.⁷ Since that time, Shannon Farm has been progressively developed, with significant investment in roading, three waters infrastructure, earthworks, landscaping, recreational amenities and residential allotments.⁸ As stated by **Mr Croft**, development is now well underway, with residential allotments created and sold, and supporting infrastructure continuing to be delivered across the Site.⁹
- 15 The existing environment includes not only the current physical environment, but also the future environment as shaped by activities that are permitted under the District Plan and consented developments that are likely to be implemented.¹⁰ A description of the Site and the receiving environment is included in the evidence of **Mr Woodward** and **Mr Milne**.¹¹
- 16 Subsequent to PC14, **Mr Croft** explains that the Applicant has developed a deeper understanding of how the framework established through PC14 translates into outcomes on the ground, the preferences of building

³ Evidence of Jake Woodward at [91]-[95]; Evidence of Paul Croft at [10]-[16].

⁴ Evidence of Jake Woodward at [121].

⁵ Evidence of Jake Woodward at [94]-[96]; Evidence of Paul Croft at [14]-[16].

⁶ Consented under RC220396 and subsequent variants (RC220396V1, RC220396V2 and RC220396V4).

⁷ Evidence of Jake Woodward at [22]-[23].

⁸ Evidence of Paul Croft at [17]-[18].

⁹ Evidence of Fraser Colegrave at [43]-[48] and [53]-[57].

¹⁰ *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 at [84].

¹¹ Evidence of Mr Woodward at [22]-[23]; Evidence of Mr Milne at [32]-[46].

companies and future residents, and where adjustments to the initial layout would improve the ultimate development.¹²

- 17 The wider Cromwell environment has also continued to evolve, with **Mr Colegrave** identifying sustained population and employment growth, additional residential capacity being provided elsewhere in Cromwell, and a shift in market demand towards smaller rural lifestyle allotments than those originally anticipated when PC14 was approved.¹³ More recently, the Council has notified and implemented Plan Change 19 (**PC19**), which provides for additional residential growth and development capacity within Cromwell in alignment with the National Policy Statement on Urban Development (**NPS-UD**) (see **Appendix One**).
- 18 Accordingly, the existing environment against which the Application is required to be assessed is not one in which the Site remains in its pre-PC14 rural state. Rather, it is an environment in which rural lifestyle development has been anticipated, enabled, consented and substantially implemented, against a backdrop of sustained population, employment and residential growth in Cromwell, and a planning framework that has continued to evolve since PC14 through subsequent policy and statutory changes.
- 19 Against that backdrop, the Application represents the next stage in the evolution of Shannon Farm. It seeks a modest additional 44 residential allotments through the reconfiguration and intensification of later stages of the development, while retaining the open space areas, productive land areas and landscape protection measures established through PC14.
- 20 Additionally, and more broadly, this Application is being determined during a period of significant transition in New Zealand's resource management system. The proposed replacement of the RMA with the Planning and Natural Environment Acts reflects a legislative shift towards a more enabling planning framework, focused on facilitating development while managing material environmental effects. Notably, the proposed reforms would narrow consideration of landscape effects and remove from consideration matters such as visual amenity effects, views from private property, competition effects and other indirect impacts that have historically featured prominently in planning disputes.

¹² Evidence of Paul Croft at [18].

¹³ Evidence of Fraser Colegrave at [23]-[28], [39]-[42] and [51].

Relevant Statutory Framework

- 21 The planning witnesses agree the Application is a non-complying activity overall. As a non-complying activity, the Application must pass the section 104D RMA 'gateway' test. That is, the consents may only be granted if the decision maker is satisfied that either:
- (a) the adverse effects of the activity on the environment will be minor (s104D(1)(a)). Positive effects are not to be considered; or
 - (b) the Application is for an activity that will not be contrary to the objectives and policies of the relevant plan (s 104D(1)(b)).
- 22 If the Application passes either of the limbs, then it can move on to be considered under s104. On the evidence of **Mr Woodward**, it is the Applicant's submission that the Proposal passes both gateway tests, subject to the imposition of conditions.¹⁴ We address the assessment against s104D further below in relation to the assessment of effects and the assessment against the planning framework.

Section 104 of the Resource Management Act 1991

- 23 Where the Application passes the gateway test, the Commissioners must, pursuant to section 104(1), have regard to the actual and potential effects of allowing the activity, including positive effects, the relevant provisions of plans, policy statements and national environmental standards or regulations, and any other matter considered relevant and reasonably necessary to determine the Application.
- 24 An evaluation requires giving 'genuine thought and attention' to the various matters set out in section 104 of the RMA.¹⁵ However, the requirement to "have regard to" does not require these matters to be "given effect to". Rather, the matters identified in s 104 are to be considered on equal footing, so that none of the subsections is to be elevated to a primary status.¹⁶ All matters are to be considered and afforded such weight as is appropriate in the circumstances of the particular case.¹⁷

¹⁴ Evidence of Jake Woodward at [124].

¹⁵ *Foodstuffs South Island Limited v Christchurch City Council* (1999) 5 ELRNZ 308 (HC), at p 309.

¹⁶ *Norwood Lodge v Upper Hutt City Council* HC Wellington CIV-2004-485-2068; *Henderson v Papakura District Council* A019/03 at [34].

¹⁷ *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209 at [25]; *Kennett v Dunedin City Council* (1992) 1A ELRNZ 168 at 182.

25 In undertaking that evaluation, the Commissioners must:

- (a) Assess the relevant actual and potential effects of the Proposal, including in light of the objectives, policies and rules of the relevant statutory documents. An assessment under section 104 is required to consider all relevant effects, both positive and negative; otherwise the assessment may be incomplete, and the balancing of conflicting considerations may be distorted.¹⁸
- (b) Have regard to relevant statutory instruments and place different weight on their objectives and policies. The correct weight to be given to plan provisions flows from the provisions themselves, both their terms and their context. Generally, an assessment of relevant objectives and policies requires "a fair appraisal of the objectives and policies read as a whole".¹⁹
- (c) National instruments are part of the context in which the Commissioners must assess the Application.²⁰ They inform rather than dictate the outcome of an assessment. All objectives and policies must be considered comprehensively and, where possible, appropriately reconciled.²¹
- (d) More specific or directive provisions may warrant greater weight, noting that enabling provisions can have directive character. Provisions which are qualified and seek to enable activities while controlling effects do not set environmental bottom lines.²²
- (e) Weigh these conclusions to determine whether the consent can be granted, and the purpose of the RMA is achieved.
- (f) The obligation to refer to Part 2 remains unless the Commissioners are assured that it would not add to the evaluative exercise under s104 of the RMA to do so²³. If a fair appraisal of the objectives and

¹⁸ *AFFCO v Far North District Council* A 6/94 at 233 (adopting what was said in *Te Aroha Air Quality Protection Group v Waikato Regional Council (No 2)* A 70/93; see also *Baker Boys Ltd v Christchurch City Council* (1998) 4 ELRNZ 297.

¹⁹ *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209 at [25]; Referred to with approval in *Davidson R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [73].

²⁰ Evidence of Jake Woodward at [76]–[86].

²¹ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2021] NZHC 390, [2021] NZRMA 303 at [30] (in rejecting a suggestion that "environmental bottom lines" stood in the way of a proposal).

²² *Te Runanga o Ngati Whatua v Auckland Council* [2023] NZEnvC 277, at [243].

²³ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, at [73]–[76]; in resource consent decisions it is not limited to the exceptions in *King Salmon* (uncertainty, invalidity or incomplete coverage).

policies means the appropriate response to a particular application is obvious, it effectively presents itself. Genuine consideration and application of relevant plan provisions leave little room for Part 2 to influence the outcome.

- 26 The Commissioners should be mindful that there is an evidential burden on all parties to produce evidence tending to support an allegation.²⁴ It is not enough to speculate, to entertain a possibility, pose questions, or to assert that something "may be" an outcome of this Proposal. That is not the threshold. There must be cogent evidence to support a particular conclusion. In other words, there needs to be material of probative value which tends to show the existence of facts consistent with the finding logically.

Assessment of environmental effects of the Application

- 27 The environmental effects of the Proposal have been assessed in the Application, the Section 42A Report and the evidence of the Applicant.²⁵
- 28 **Mr Woodward** has commented on each of the effects and highlighted where there is either agreement or a difference to that of **Mr Monthule-McIntosh's** assessment.²⁶ There is now substantial agreement between the experts in relation to transport, servicing, productive land, reverse sensitivity, earthworks, ecological and heritage effects.
- 29 In relation to the outstanding areas of disagreement, it is the Applicant's submission that the adverse effects of the Application are no more than minor, particularly when assessed against the planning and environmental context as it has evolved since PC14 was approved.

Landscape and Urban Design effects

- 30 In the periphery of Shannon Farm the landscape and urban design effects are required to be considered in the context of the RLPA, together with the landscape values associated with the ONL and SAL.
- 31 There is no dispute that the landscape and visual effects associated with RLAs 3 and 4 are no more than minor.²⁷ The principal area of disagreement

²⁴ *West Coast Abattoir v Westland District Council* M126/82 and *McIntyre v Christchurch City Council* (1996) 2 ELRNZ 84, as confirmed more recently in *Wakatu Inc v Tasman District Council* [2012] NZEnvC 75 at p 7-8.

²⁵ Evidence of Jake Woodward (Planning); Evidence of Tony Milne (Landscape and Urban Design); Evidence of Andy Carr (Transport); Evidence of Fraser Colegrave (Economics); Evidence of Paul Croft (Company); and Evidence of Roy Buchanan (Survey and Engineering Design).

²⁶ Evidence of Jake Woodward at [32]-[74].

²⁷ Evidence of Jake Woodward at [34].

relates to RLA6.²⁸ **Mr Woodward** considers that the relevant question is whether the Proposal maintains the values of the SAL, rather than whether additional development occurs within it (as development is contemplated within the SAL under the Structure Plan).²⁹ In reliance on **Mr Milne's** evidence, he concludes that it maintains those values.

32 The District Plan provides no policy framework for SALs, and similarly places limited control on development within the SAL; outside of RRA(5) there is a single standard imposing a different maximum building height within the RRA where the building is to be located in the SAL.³⁰ The District Plan identifies that the SALs emerged from the Rural Study commissioned by the Council in 2005 and are to be managed in accordance with s7(c), which requires decision makers to have particular regard to the maintenance and enhancement of amenity values.

33 Assessing amenity values requires consideration of the perspectives of those who value them, objectively evaluated against the relevant planning framework.

34 In *Schofield v Auckland Council*³¹ the Environment Court stated:

The topic of amenity can be emotionally charged, as this case has revealed. People tend to feel very strongly about the amenity they perceive they enjoy. Whilst s 7(c) of the RMA requires us to have particular regard to the maintenance and enhancement of amenity values, assessing amenity values can be difficult. The Plan itself provides some guidance, but at its most fundamental level the assessment of amenity value is a partly subjective one, which in our view must be able to be objectively scrutinised. In other words, the starting point for a discussion about amenity values will be articulated by those who enjoy them. This will often include people describing what an area means to them by expressing the activity they undertake there, and the emotion they experience undertaking that activity. Often these factors form part of the attachment people feel to an area or a place, but it can be difficult for people to separate the expression of emotional attachment associated from the activity enjoyed in the space, from the space itself. Accordingly, whilst the assessment of amenity values must, in our view, start with an understanding of the subjective, it must be able to be tested objectively.

35 Significantly, and despite public notification, no submissions were received in relation to landscape or amenity effects arising from the Application and as stated by **Mr Croft**, PC14 received considerable community support which has continued through to the current Application.³²

²⁸ Evidence of Jake Woodward at [35]-[43].

²⁹ Evidence of Jake Woodward at [40]-[43].

³⁰ Rule 4.7.6(f).

³¹ *Schofield v Auckland Council* [2012] NZEnvC 68 at [51].

³² Evidence of Paul Croft at [12].

- 36 Objectively **Mr Milne** identifies the key values of the SAL at Shannon Farm as its moderate natural character, highly legible and visually distinctive folded landform, and high level of visual amenity.³³ He explains that the No Build Area was specifically established through PC14 to protect the most sensitive and visible parts of that landform.³⁴ Because the Proposal avoids the No Build Area, retains the existing open character of the upper slopes and ridgelines, and concentrates development on the lower slopes adjacent to the existing Shannon Farm development, he concludes that the openness, visual coherence and legibility of the SAL will be maintained.³⁵
- 37 Importantly, **Mr Milne** does not consider development within the SAL to be inappropriate per se. The planning framework anticipates development within those parts of the SAL. In his view, the proposed RLA6 lots are carefully located on the lower slopes, while approximately 36 hectares of RLA6 will remain as open pastureland.³⁶ Accordingly, **Mr Milne** concludes that the Proposal will maintain the openness and legibility of the SAL, without fundamentally altering the character of the receiving environment, and will result in no more than minor landscape and visual effects.³⁷
- 38 In respect of RLA6, **Ms Harshey** considers that the proposal will compromise the openness and legibility of the SAL, and that effects will be more than minor. As is evident from **Ms Harshey's** report, the initial assessment was undertaken on the basis that parts of the proposal were located on land visible from Cromwell township. That is not the case. As **Mr Milne** describes, the additional lots have been carefully located and controlled, with development in the SAL deliberately confined to the lower parts of the slope.³⁸
- 39 Although **Ms Harshey's** assessment has been updated to correct this error and remove reference to views from Cromwell township, her assessment is otherwise unchanged with this revised understanding of the location of proposed development. It is not clear whether the implications of the correct visibility assessment have been reflected in her conclusions. This is significant, as visibility is fundamental to the assessment of landscape values and related effects including amenity values. The values of natural character, openness, legibility, and the folded landform, in the most

³³ Evidence of Tony Milne at [64]-[65].

³⁴ Evidence of Tony Milne at [65]-[67].

³⁵ Evidence of Tony Milne at [67]-[68].

³⁶ Evidence of Tony Milne at [20], [56]-[58] and [91].

³⁷ Evidence of Tony Milne at [77]-[79] and [150]-[153].

³⁸ Evidence of Tony Milne at [77].

simplistic of terms, need to be visible in order for those amenity values to be viewed and enjoyed.

- 40 Through the course of PC14 and subsequent resource consent applications, **Mr Milne** has undertaken detailed and repeated assessment of the Site over a period of 9 years, including caucusing with now three landscape experts engaged by CODC. He has given extensive consideration to the Site's landform, values and visibility, including through realignment of the ONL and SAL lines and consideration of the Site's capacity to absorb development. His assessment is founded on a greater knowledge and more detailed assessment of the Site and the Proposal, and in our submission should be preferred.

Effects on Rural Character

- 41 In assessment of rural character it is considered that the Proposal should remain "in character" with its surrounding environment.³⁹ As discussed above, the existing environment against which the Application is required to be assessed is not one in which the Site remains in its pre-PC14 rural state.
- 42 Similar to the above **Mr Monthule-McIntosh** does not consider that the proposed intensification of RLAs 3 and 4 would, in isolation result in more than minor adverse rural character effects. However, he considers that the degree of intensification across RLAs 3, 4 and 6 would cumulatively weaken the planned distinction between the various RLAs.
- 43 **Mr Woodward** disagrees the Proposal will result in more than minor adverse rural character effects.⁴⁰ While the Proposal increases density beyond that anticipated by PC14, it retains the established character of Shannon Farm, including the graduated pattern of development and hierarchy of allotment sizes. In his opinion, any effects are largely internal to the development, which will continue to function as a cohesive and comprehensively planned rural lifestyle community.
- 44 **Mr Milne** similarly concludes that the Proposal will not fundamentally alter the character of Shannon Farm or undermine the spatial framework established through PC14.⁴¹

³⁹ *Schofield v Auckland Council* [2012] NZEnvC 68 at [73].

⁴⁰ Evidence of Jake Woodward at [47]-[54].

⁴¹ Evidence of Tony Milne at [123]-[125].

Positive effects

- 45 The s 42A Report accepts that there is demand for rural lifestyle allotments within Shannon Farm but affords that matter limited weight due to the absence of updated economic evidence. That evidential gap has now been addressed. **Mr Colegrave** concludes that the Proposal responds to genuine and current demand for smaller rural lifestyle allotments within Cromwell, particularly within the 1,500m² to 3,000m² size range.⁴²
- 46 As detailed by **Mr Colegrave** and **Mr Croft**, the Proposal will generate positive economic and social effects by increasing the supply of allotments within an existing master-planned and serviced development, responding to identified market demand while making efficient use of infrastructure that has already been consented and delivered.⁴³
- 47 These positive effects are a relevant and important consideration in the overall s 104 evaluation and must be weighed alongside any identified adverse effects and planning concerns.

Assessment of the Proposal against the relevant objectives, policies and other statutory considerations

Assessment against the relevant plan

- 48 The Shannon Farm Rural Residential Zone was established through the RRA(5), which inserted Objective 4.3.10 and Policy 4.4.18 specifically for this Zone.
- 49 **Mr Woodward** concludes that the Proposal remains consistent with the purpose of the Zone and the outcomes sought by Objective 4.3.10 and Policy 4.4.18. In particular, it continues to provide for rural living opportunities integrated with productive land and open space, while avoiding development within the ONL and the No Build Area.⁴⁴
- 50 Although **Mr Milne** accepts that the Proposal departs from aspects of the allotment size framework anticipated by the Structure Plan, he considers that it nevertheless achieves the Structure Plan's overarching purpose by delivering a well-integrated development that respects the area's landscape values and does not result in unacceptable adverse effects.⁴⁵

⁴² Evidence of Fraser Colegrave at [20]-[22] and [50]-[51].

⁴³ Evidence of Fraser Colegrave at [20]-[22] and [50]-[51]; Evidence of Mr Croft at [30]-[34].

⁴⁴ Evidence of Jake Woodward at [97].

⁴⁵ Evidence of Tony Milne at [140]-[142].

- 51 Ultimately, both **Mr Woodward** and **Mr Milne** conclude that the Proposal remains consistent with the intended development pattern for Shannon Farm, avoids the most sensitive landscape areas, retains a substantial open balance lot, and achieves the landscape outcomes sought by Objective 4.3.10 and Policy 4.4.18.⁴⁶

What does "avoid" mean?

- 52 Avoid (and in the inverse adherence) policies arise in this Application pursuant to 4.4.18(c) and 4.4.18(q).

- 53 It is now well established that avoid means to 'not allow', or 'prevent the occurrence of'⁴⁷, while noting that *it is improbable that it would be necessary to prohibit an activity that has minor or transitory adverse effects*⁴⁸. Since *King Salmon* defined 'avoid' in this manner, the concept of materiality of adverse effects has gained momentum in the higher courts. The Supreme Court in *Port Otago Limited v Environmental Defence Society Incorporated and Others (Port Otago)* relevantly concluded, in relation to 'avoidance policies', that⁴⁹:

the avoidance policies in the NZCPS must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any development, whether measures can be put in place to avoid material harm to those values and areas.

- 54 In coming to this conclusion, the Supreme Court considered both the *King Salmon* interpretation of 'avoid' and the *Trans-Tasman* 'material harm test' – which was summarised as⁵⁰:

decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean:

(i) material harm will be avoided;

(ii) any harm will be mitigated so that the harm is no longer material; or

(iii) any harm will be remedied within a reasonable timeframe so that, taking into account the whole period harm subsists, overall the harm is not material...

- 55 The concept of material harm has now been utilised in a resource consent application (as opposed to a plan change) in *Te Rūnanga o Ngāti Whātua*

⁴⁶ Evidence of Jake Woodward at [97]; Evidence of Tony Milne at [145]-[147].

⁴⁷ *Environmental Defence Society Inc v NZ King Salmon Co Ltd* [2014] NZRMA 195, at [96].

⁴⁸ *Environmental Defence Society Inc v NZ King Salmon Co Ltd* [2014] NZRMA 195, at [145].

⁴⁹ *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112, at [68].

⁵⁰ *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112, at [66].

v Auckland Council [2023] NZEnvC 277, upheld on appeal to the High Court in *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794.

- 56 The expert evidence has appropriately assessed the Proposal against the relevant directive policies which use the term "avoid" and "adhere", and **Mr Woodward** is satisfied the Proposal is consistent with those policy directions.⁵¹

Section 104D(b) – "gateway"

- 57 In *Calveley v Kaipara District Council* [2014] NZEnvC 182, which concerned a proposed rural residential subdivision within the Brynderwyn Ranges ONL, the Environment Court considered whether the Proposal was contrary to the relevant objectives and policies of the Kaipara District Plan for the purposes of s 104D(1)(b). In doing so, the Court emphasised that the assessment is directed to the planning framework as a whole, rather than individual objectives and policies in isolation, stating:⁵²

We find that the Proposal (with or without the additional lots and dwellings sought for the Upper Part of the Site) would not be 'contrary to the objectives and policies of the Plan, in the sense of being 'opposed to in nature; different; opposite to' the Plan's objectives and policies considered as a whole.

- 58 In alignment with this approach, the question is not whether the Proposal is inconsistent with particular aspects of Objective 4.3.10 or Policy 4.4.18. Rather, the question under s 104D(1)(b) is whether the Proposal is contrary to the objectives and policies of the District Plan as a whole. As **Mr Woodward** notes, while Objective 4.3.10 and Policy 4.4.18 are the key provisions for RRA(5), they must be assessed within the context of the wider planning framework.⁵³
- 59 That distinction is important in the present case. **Mr Monthule-McIntosh** accepts that the Proposal is consistent with a range of District Plan provisions relating to servicing, roading, open space, recreation, productive land, reverse sensitivity, ecology, heritage and natural hazards.⁵⁴ The remaining dispute is therefore a narrow one, namely whether the Proposal's departures from aspects of the RRA(5) framework are sufficient to render it contrary to the District Plan overall. It is the Applicant's submission that it is not, and that **Mr Woodward's** approach of considering these particular

⁵¹ Mr Woodward para [95]-[100].

⁵² *Calveley v Kaipara District Council* [2014] NZEnvC 182 at [144].

⁵³ Evidence of Jake Woodward at [91].

⁵⁴ Evidence of Jake Woodward at [102].

aspects within the context of Objective 4.3.10 and Policy 4.4.18 as a whole is more consistent with the Court's direction and should be preferred.

Assessment against the wider statutory framework

- 60 Overall, **Mr Woodward** concludes that the wider statutory and policy framework supports the grant of consent.⁵⁵
- 61 In that context, the NPS-UD provides important direction for the assessment of the Proposal. As set out in **Appendix One**, whether the Application forms part of the urban environment is not confined to the Site's existing zoning or character, but must consider whether the Site forms part of a wider urban environment, having regard to growth patterns, housing and labour markets, and strategic planning documents. That analysis demonstrates that the wider Cromwell Basin, including the Application Site, forms part of an area identified for long-term growth through the Cromwell Spatial Framework and related planning instruments. Accordingly, it is appropriate to have regard to the NPS-UD direction when considering the Application.
- 62 The Proposal builds on the strategic planning decision made through PC14 that Shannon Farm is an appropriate location for growth, and represents a refinement of an already approved and serviced development in response to demonstrated market demand. **Mr Woodward** considers that the Application is consistent with the NPS-UD's enabling direction, promotes a well-functioning urban environment which supports additional housing choice, development capacity and the efficient use of existing infrastructure.⁵⁶ **Mr Colegrave** assesses that the Application will increase development capacity, support competition in the housing and land market, and provide additional housing choice in Cromwell, consistent with the objectives and policies of the NPS-UD to achieve well-functioning urban environments that enable a variety of homes that meet the needs, in type, price and location, of different households.⁵⁷

Concerns relating to precedent effects and plan integrity

- 63 **Mr Monthule-McIntosh** raises concerns regarding the integrity of the PC14 planning framework, including the extent to which the Proposal departs from the yield and allotment size controls established through that process. However, that concern must be approached with caution.

⁵⁵ Evidence of Jake Woodward at [76]-[90].

⁵⁶ Evidence of Jake Woodward at [84]-[86] and [106]-[108].

⁵⁷ Evidence of Fraser Colegrave at [35].

- 64 The assessment of a non-complying activity is directed to the effects of the activity itself and is concerned with the effects of that activity as it impacts on the existing environment.⁵⁸ Accordingly, the Courts have consistently found that resource consent decisions do not create precedents in the strict legal sense, as each application must be determined on its own facts and merits.⁵⁹ That is acknowledged by **Mr Monthule-McIntosh**.⁶⁰ While a previous consent may influence the assessment of a later proposal where there are factual similarities, decision-makers are not bound by earlier consent decisions.⁶¹ Rather, the assessment is directed to the effects of the activity itself on the environment and the relevant statutory considerations.
- 65 In this case, it is of particular relevance that RRA(5) establishes a bespoke planning framework for the Site; the provisions in question have no wider application and there can be no similar applications beyond the Site. Within the Site, **Mr Croft** explains that development of early stages is well progressed, with the Application relating to the later stages of development. As such, the opportunity for further applications of a similar nature within the Site must be limited. The evidence of **Mr Milne** and **Mr Woodward** is that, although the Application is inconsistent with aspects of Policy 4.4.18, it continues to achieve the overall intent of the policy and Objective 4.3.10, providing for rural living opportunities while maintaining identified environmental values. Accordingly, in our submission effects on plan integrity must be non-existent or at least very limited and should not be afforded weight.

Amendments to the Application

- 66 Amendments to resource consent applications are commonplace. Applications are frequently refined during the consenting process in response to expert evidence, matters raised in submissions, and issues identified through the hearing. As recognised by the Court, the RMA process contemplates that proposals may be modified to address concerns raised by submitters and the decision-maker.⁶²

⁵⁸ *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209, at [40].

⁵⁹ *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209, at [32]-[36];

⁶⁰ Planner's Report at page 34.

⁶¹ *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209, at [40].

⁶² *H.I.L.Ltd v Queenstown Lakes District Council* [2014] NZEnvC 45; *Haslam v Selwyn District Council* (1992) 2 NZRMA 628 (PT) at 634.

- 67 The Applicant may amend the Application at any time up until the close of the hearing.⁶³ Whether amendments can occur is dependent on whether the proposed amendments remain within scope of the original Application.
- 68 An amended proposal falls outside the scope of the original application only if it is significantly different in its scale, intensity, character, or effects from that originally applied for and notified. Relevant considerations include:⁶⁴
- (a) the scale and intensity of the proposed activity; and
 - (b) the altered character and effects of the Proposal.
- 69 In applying that test, the Court has recognised that amendments which reduce the scale of a proposal or diminish its adverse effects will generally not give rise to jurisdictional concerns. As the Environment Court explained:⁶⁵

[25] Normally, if a modification reduces the scale of a proposal and in particular diminishes the character, scale or intensity of its adverse effects, there is no challenge to the consent authority or court's jurisdiction to hear the modified application. Difficulties tend to arise only when a modification is perceived to increase the potential adverse effects on at least one or more persons. In these cases, the courts have developed a test as to whether the modification is within jurisdiction for the consent authority or court to consider.

Amendments Relating to Access Sight Distance Requirements

- 70 The Application as lodged sought consent for potential infringement of the accessway sight distance requirements under Rule 12.7(ii). **Mr Monthule-McIntosh** considers that it is necessary to determine the access locations at each lot, find the vehicle speeds and assess the sight distances prior to consents being granted.
- 71 The Applicant no longer seeks consent for any potential infringement of Rule 12.7.1(ii). **Mr Carr** explains that driveway locations are not fixed at the subdivision stage and any sight distance effects can only be assessed once access locations are known.⁶⁶ **Mr Woodward** confirms that the Applicant no longer seeks consent to breach Rule 12.7.1(ii), with any future sight distance issues to be addressed by future landowners if required.⁶⁷

⁶³ *Darroch v Whangarei District Council* A18/93 at page 27, as confirmed more recently in *Simons Hill Station Ltd v Canterbury Regional Council* [2013] NZEnvC 62 at [20].

⁶⁴ *Atkins v Napier City Council* (2008) 15 ELRNZ 84 at [32]. See also *H.I.L.Ltd v Queenstown Lakes District Council* [2014] NZEnvC 45 for a general overview of the case law on amendment.

⁶⁵ *H.I.L.Ltd v Queenstown Lakes District Council* [2014] NZEnvC 45 at [25].

⁶⁶ Evidence of Andrew Carr at [18]-[21].

⁶⁷ Evidence of Jake Woodward at [57]-[58].

- 72 These amendments remove a consent trigger from the Application and defer any site-specific assessment of sight distance effects to a future consenting process.
- 73 In 50km/hr speed zones, Rule 12.7(ii) requires sightlines from intersections and vehicular accesses of 40m for local roads and 45m for collector roads. Where sightlines required by Rule 12.7(ii) are not achieved, consent is required as a restricted discretionary activity, with relevant matters of discretion being the safe and efficient operation of the affected road, having regard to the intensity and duration of the activity and the classification and use of the road.
- 74 **Mr Carr** identifies that, although sightlines for *posted* speeds may not be achieved in some locations, the length of a sight distance is directly proportional to *actual* vehicle speeds. As actual speeds would be reduced by the intersections and curves impacting sightlines, this meant that a lower sight distance would be appropriate in these instances and would not give rise to adverse road safety outcomes. He also highlights that this is a residential area where driveways will be common, so road users will anticipate and be alert for vehicles moving to and from lots.
- 75 In these circumstances, potential infringement of access sightlines will not create unacceptable effects or impede residential use of the lots, and is a matter appropriately considered by way of a future application, once the detail of proposed access locations is known.
- 76 Relying on the evidence of **Mr Carr**, we submit that in these circumstances it is acceptable to defer consenting of any non-compliance with Rule 12.7(ii) to development of individual lots. Respectfully, we do not consider it is appropriate to impose consent notices requiring that sightlines be preserved in perpetuity, as the need for consent arises where adherence to sightlines is not possible.

Conditions of consent

- 77 Conditions of consent are largely agreed, with minor refinements addressed in the evidence of **Mr Buchanan** and **Mr Woodward**, and provided in **Appendix F** to **Mr Woodward's** evidence.

Conclusion

- 78 The Application represents a modest and appropriate refinement of the consented Shannon Farm development. It responds to demonstrated demand and makes efficient use of existing and planned infrastructure.

- 79 The Applicant's evidence demonstrates that the proposal has been carefully located and controlled so that development remains concentrated on the lower slopes of the Site, avoiding the No Build Area and retaining the openness, legibility and visual coherence of the SAL. On that basis, the Application will maintain the key landscape and amenity values of the Site and will not fundamentally alter rural character.
- 80 The Application is broadly consistent with the objectives and policies of the District Plan and continues to achieve the overall intent of the RRA(5) framework. While there are some departures from aspects of Policy 4.4.18, those departures do not undermine the key outcomes sought for Shannon Farm, including integrated rural living, protection of the ONL and No Build Area, retention of open space and productive land, and maintenance of landscape and amenity values.
- 81 The Application positively contributes to achieving the objectives and policies of the NPS-UD.
- 82 For the reasons set out in these submissions, and on the basis of the Applicant's evidence, the Application satisfies both limbs of the section 104D gateway test. The Applicant respectfully submits that consent should be granted, subject to the proposed conditions as refined through the Applicant's evidence.

Dated this 4 August 2026

A handwritten signature in black ink, appearing to read 'SEveleigh', written over a horizontal line.

Sarah Eveleigh / Tallulah Parker

Counsel for New Zealand Cherry Corp (Leyser) LP

Legal Submissions on behalf of the Applicant – Appendix A: the "urban environment" under the National Policy Statement on Urban Development 2020 (NPS-UD)

Before the Independent Hearings Panel
At Central Otago District Council

Under the	Resource Management Act 1991 (RMA or Act)
In the matter of	an application for subdivision and land use consent to establish another 44 residential allotments in the rural resource area at 112 & 144 Ripponvale Road, Cromwell (RC250155)
And	New Zealand Cherry Corp (Leyser) LP Applicant

Legal Submissions on behalf of the Applicant – Appendix A: the "urban environment" under the National Policy Statement on Urban Development 2020 (NPS-UD)

4 August 2026

Applicant's solicitor:

Sarah Eveleigh / Tallulah Parker
Anderson Lloyd
Floor 2, The Regent Building, 33 Cathedral Square, Christchurch 8011
PO Box 13831, Christchurch 8141
DX Box WX10009 Christchurch
p +64 27 204 1479 / +64 21 703 767
sarah.eveleigh@al.nz / tallulah.parker@al.nz

**anderson
lloyd.**

Appendix One: the "urban environment" under the National Policy Statement of Urban Development 2020 (NPS-UD)

1 The Section 42A Report states:¹

The proposal is rural lifestyle development rather than urban development and is not subject to the National Policy Statement on Urban Development 2020.

2 The Applicant considers that the applicability of the National Policy Statement on Urban Development (**NPS-UD**) requires a broader assessment than that undertaken in the Section 42A Report. Whether the NPS-UD applies does not depend solely on whether land is presently zoned urban or exhibits urban characteristics. Rather, it requires consideration of whether the land forms part of an "urban environment" as defined in the NPS-UD and understood in its statutory and planning context.

3 In summary, it is the Applicants' submission that:

- (a) The definition of "urban environment" is broad and forward looking. It may extend beyond existing urban areas and local authority boundaries. The focus is on the wider housing and labour market, the strategic planning framework, and the potential pattern of urban growth, rather than a site-by-site assessment of existing zoning or character.
- (b) Cromwell meets the definition of an "urban environment". It either currently forms part of, or is intended to form part of, "a housing and labour market of at least 10,000 people"; and the township and adjacent areas are properly characterised as "predominantly urban in character".
- (c) The Application Site forms part of the Cromwell urban environment and the proposal must be assessed having regard to the relevant directions of the NPS-UD.

Definition of "urban environment" under the NPS-UD

4 The NPS-UD seeks to achieve well-functioning urban environments through objectives and policies that promote sufficient development

¹ 250155 and 220396 Planers Report, page 26.

capacity, housing choice, and planning responses that are responsive to growth and demand.²

5 Clause 1.3 of the NPS-UD directs that:

This National Policy Statement applies to:

(a) all local authorities that have all or part of an urban environment within their District or region (i.e., tier 1, 2 and 3 local authorities); and

(b) planning decisions by any local authority that affect an urban environment

It is therefore necessary to consider whether the Central Otago District Council (**CODC**) has all or part of an 'urban environment' within their District and to what extent the Application Site forms part of this 'urban environment'.

6 This requires a planning and legal analysis of the urban environment. As with all national policy statements, the NPS-UD is secondary legislation and must be interpreted in accordance with the ordinary principles of statutory interpretation. Its meaning is to be ascertained from its text, in light of its purpose and context.³

7 "urban environment" is defined in Clause 1.4 of the NPS-UD as:⁴

means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

(a) is, or is intended to be, predominantly urban in character; and

(b) is, or is intended to be, part of a housing and labour market of at least 10,000 people

[Emphasis ours.]

8 Based on a plain and ordinary reading of the definition:

- (a) The phrase '*any area of land (regardless of size, and irrespective of local authority or statistical boundaries)*' implies that the term will, or can, apply over large geographical areas rather than discrete settlements or urban zones.
- (b) The phrase '*is or is intended to be*', clearly provides for areas that are not presently urban in character and/or part of a housing and labour market of at least 10,000 people.

² National Policy Statement on Urban Development 2020, Objectives 1 – 8 and Policies 1 - 11.

³ Legislation Act 2019, s 10.

⁴ National Policy of Urban Development 2020, cl 1.4; Resource Management Act 1991, s 77F.

- (c) The phrase '*is or is intended to be*', does not state who must have the intention (i.e. there is no reference to the intention of a territorial authority, or an intention expressed in a Future Development Strategy). This is notable when read alongside policy 8 and clause 3.8 of the NPS-UD, which provides for unanticipated or out-of-sequence developments.
 - (d) The phrase '*predominantly urban in character*', anticipates that areas that are non-urban (i.e. rural, open space, etc) in character may also fall within the urban environment, provided that the character of the urban environment remains 'predominantly urban'. This supports the view that the definition is focused on wider areas (which may include a mix of urban and non-urban land), rather than specific settlements or urban zones which would be exclusively urban.
 - (e) The phrase '*part of a... market*' has similar implications as the preceding point insofar that it anticipates areas that form a part of a larger market, rather than areas that are a market in and of themselves. If the latter were the intention, the words '*part of*' would not be needed in the definition.
 - (f) '*Housing and labour markets of at least 10,000 people*' may not operate within strict geographical boundaries of specific settlements or urban zones, and a broader focus may be required when attempting to define the spatial extent of those markets.
- 9 The definition is broad. It can encompass multiple, varied, and potentially overlapping urban areas that together form part of a common housing and labour market. This is reflected in the Appendix to the NPS-UD, which identifies Tier 1 and Tier 2 urban environments that span multiple local authority areas and include several distinct urban settlements.
 - 10 Consistent with the objectives of the NPS-UD, it recognises that urban environments may extend beyond existing urban areas and local authority boundaries. The focus is therefore on the wider housing and labour market, the strategic planning framework, and the potential pattern of urban growth, rather than a site-by-site assessment of existing zoning or character.
 - 11 This interpretation is reinforced by section 77F of the RMA, which defines an "urban non-residential zone" in the context of the NPS-UD as "any zone in an urban environment that is not a residential zone".

12 As Mr Colegrave explains:⁵

These urban environments are generally not limited to land that is only zoned urban. In my experience, they commonly include parks, reserves, rural land, open space, and other undeveloped areas within their boundaries. Urban environments are instead often defined by their functional relationship for providing for a housing and labour market of at least 10,000 people, rather than a fragmented approach which would occur if a Council was required to look at the character or zoning of every parcel of land.

Application of the NPS-UD within the Greater Christchurch context

13 Greater Christchurch provides a useful example of how the concept of an "urban environment" has been interpreted and applied in practice. The Appendix to the NPS-UD identifies Christchurch as a Tier 1 urban environment. It lists Canterbury Regional Council, Christchurch City Council, Selwyn District Council and Waimakariri District Council as the relevant local authorities. The NPS-UD therefore contemplates a single urban environment extending across multiple local authority areas and encompassing several distinct urban settlements to accommodate growth and meet the objectives of the NPS-UD.

14 Consistent with that approach, planning documents prepared for Greater Christchurch identify the relevant urban environment as the broader Greater Christchurch area:

(a) *Our Space 2018-2048: Greater Christchurch Settlement Pattern Update* states:⁶

the Partnership has determined that the Greater Christchurch area shown in Figure 1 should be the geographic area of focus for the Update and the relevant urban environment for the purposes of the NPS-UD requirements.

(b) The Greater Christchurch Spatial Plan similarly identifies Greater Christchurch as the relevant urban environment for the purposes of the NPS-UD; and

(c) The Canterbury Regional Policy Statement requires sufficient development capacity to be provided within the Greater Christchurch urban environment and expressly identifies the Greater Christchurch area shown on Map A as the Tier 1 urban environment for the NPS-UD.⁷

⁵ Evidence of Fraser Colegrave (Economics), dated 23 July 2026 at [30].

⁶ *Our Space 2018-2048: Greater Christchurch Settlement Pattern Update* Whakahāngai O Te Hōrapa Nohoang at 6.

⁷ Canterbury Regional Policy Statement, Policy 6.2.1a - Principal reasons and explanation.

- 15 Numerous plan changes and rezoning decisions have proceeded on the basis that the relevant urban environment is Greater Christchurch, rather than the individual urban settlements contained within it.⁸ This is a separate inquiry from the NPS-UD requirement that local authorities provide sufficient development capacity within their region or District to meet expected demand for housing and business land,⁹ as the area over which demand is assessed will not necessarily correspond with the boundaries of a particular urban environment.
- 16 Collectively, this example demonstrates that an urban environment may encompass multiple urban areas, together with future growth areas and other land, including rural land that forms part of a common housing and labour market. The assessment is therefore broader than the existing zoning, development, or character of any individual site.

Plan Change 19 to the Central Otago District Plan

- 17 Recently, the CODC undertook Plan Change (**PC 19**) to respond to demand for residential land, housing affordability concerns and anticipated growth over the next 30 years. PC19 was informed by the Cromwell and Vincent Spatial Plans, which were prepared to identify where future development capacity should be provided and how growth should be accommodated across the Central Otago District (**District**).
- 18 In the context of PC 19, the Hearing Panel considered the application of the NPS-UD within the District. While the Panel refused to determine whether CODC was a Tier 3 authority, it stated that it:¹⁰

Would prefer to consider the matters raised in terms of providing for future residential growth across the District within the context of the submissions received and the actions required of a Tier 3 authority.

- 19 In meeting those requirements under the NPS-UD and in undertaking that assessment, the Panel noted that:¹¹

.. variety should be considered as a whole, rather than township by township and that sufficient variety of residential zones proposed in PC19 is sufficient to give effect to the requirements of the NPS-UD, and that a shortfall in one area is not automatically inconsistent with the NPS-UD if sufficient capacity is provided overall.

⁸ Including PC67 and PC68 to the Selwyn District Plan; PC66, PC75, PC76, PC79 and PC80 at Rolleston; PC67 at West Melton and PC68 in Prebbleton; Waimakariri District Plan Review process.

⁹ National Policy Statement on Urban Development 2020, cl 3.2 – 3.3.

¹⁰ Central Otago District Council "Plan Change 19 – Decision of the Central Otago District Council Hearing Panel" at [62].

¹¹ Central Otago District Council "Plan Change 19– Decision of the Central Otago District Council Hearing Panel" at [66] – [67].

The NPS-UD requires that sufficient capacity is provided to meet demand and the Panel is of the view that it is appropriate for the Council to determine where it is best to provide capacity and variety. In the context of the Cromwell and Vincent wards this has been done through the development of the Cromwell and Vincent Spatial Plans.

- 20 The Panel's reasoning is consistent with the broader approach required by the NPS-UD, in assessing growth, housing demand, and development capacity across the District as a whole.¹² However, that assessment is distinct from the question of whether a particular area forms part of an "urban environment" under the NPS-UD, the requirement to achieve "well-functioning urban environments",¹³ and ensure that New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities and future generations.¹⁴
- 21 While the Panel did not determine whether Central Otago contains an "urban environment" in terms of the NPS-UD, its analysis supports a broader assessment than that adopted in the Section 42A Report. Further, the Panel recognised the role of the Cromwell and Vincent Spatial Plans in accommodating future growth in alignment with direction under the NPS-UD.

The Cromwell "urban environment" under the NPS-UD

- 22 Cromwell is not identified in the Appendix to the NPS-UD. It is the Applicant's submission that part of Cromwell constitutes an "urban environment" within the meaning of clause 1.4 of the NPS-UD and that the Application Site forms part of that Tier 3 "urban environment".
- 23 In determining the extent of that urban environment, regard must be had not only to existing urban development, but also to the planned growth pattern identified in Council planning documents. Those documents show that the wider Cromwell Basin, including the Application Site, is intended to accommodate a significant proportion of the District's future growth and identify where that growth is to occur.

¹² National Policy Statement on Urban Development 2020, cl 3.2.

¹³ National Policy Statement on Urban Development 2020, Objective 1.

¹⁴ National Policy Statement on Urban Development 2020, Objective 4.

Whether Cromwell is, or is intended to be, part of a housing and labour market of at least 10,000 people?

- 24 The NPS-UD adopts a long-term planning horizon, addressing growth and development needs over the short term (three years), medium term (three to ten years), and long term (ten to thirty years).
- 25 As outlined in the evidence of **Mr Colegrave**, Cromwell either currently forms part of, or is intended to form part of, a housing and labour market of at least 10,000 people within an NPS-UD context. **Mr Colegrave** states:¹⁵

The Cromwell Ward had around 9,840 residents in 2021 and, on the Council's medium projection, passed 10,000 by 2024. The urban core of the Ward, made up of the Cromwell East and Cromwell West statistical areas, is projected to grow from around 7,060 residents in 2023 to around 10,350 by 2038 on the medium projection, and to over 10,000 sooner on the high projection.

Importantly, the definition spans the size of the combined housing and labour market, not just the resident population alone. According to Stats NZ data, the Ward had 10,900 usual residents and 6,780 workers in 2025, with 2023 Census data further indicating that about one in six Ward jobs is filled by someone living outside the Ward. This suggests that the size of the combined housing and labour market in 2025 was more than 12,000 people.

The corresponding figure for the two statistical areas that comprise urban Cromwell was 8,500 people in 2025, but is set to exceed 10,000 within the next five years under the Stats NZ medium population projection.² Much of the inward worker flow to the Cromwell urban area comes from the rest of the Ward's mainly rural areas, which wrap around the town and include Ripponvale.

Accordingly, I consider that Cromwell is, or is soon expected to be, part of a housing and labour market of at least 10,000 people.

- 26 Accordingly, **Mr Colegrave's** evidence establishes that Cromwell either currently forms part of, or is intended to form part of, a housing and labour market of at least 10,000 people. Such an outcome falls squarely within clause 1.4(b) of the NPS-UD.

Whether Cromwell is, or is intended to be, predominantly urban in character?

- 27 In the context of the CODC and Cromwell in particular, the "urban environment" of Cromwell was considered by the expert consenting Panel in the Wooing Tree Estate Project, under the COVID-19 Recovery (Fast-Track consenting) Act 2020. The Panel's analysis was undertaken in the context of accommodating growth and future demand over a 30-year planning horizon and recorded:¹⁶

The Panel accepts Brookfield's advice as to the proper interpretation of 'intended to be'. We find with reference to CODC's letter of 16 August

¹⁵ Evidence of Fraser Colegrave (Economics), dated 23 July 2026 at [31] – [34].

¹⁶ Minute 4 Response (MacTodd Lawyers): National Policy Statement on Urban Development 2020 and Plan Change 19, dated 11 August at [10]; Wooing Tree Estate Project Decision at [299].

2021 that the Cromwell ward as a whole could not be properly characterised as 'predominantly urban in character' – but Cromwell township itself and areas adjacent to the township that have been identified for future urban growth would be properly characterised in that manner.

- 28 While the Wooing Tree Panel is not binding on the current Application, the Wooing Tree Panel logically held that the area of land comprising Cromwell township and adjacent areas identified for future urban growth was an 'urban environment' characterised as predominantly urban in character.¹⁷
- 29 This approach is reflected in the Council's subsequent strategic planning documents. The current 10-Year Plan (Long-term Plan 2025–2034) recognises that Cromwell is experiencing significant growth and records that:¹⁸

To assist in meeting demand in Cromwell, the Cromwell Community Board is freeing up land for residential and industrial development. The Board has embarked on a Masterplan project for the wider Cromwell area, to address growth. The Plan includes infrastructure planning, transport planning and cover community facility requirements to cater for growth. A spatial framework has been produced that addresses zoning and urban development, which will be implemented through a series of plan changes.

- 30 The LTP demonstrates that the Council's strategic response to growth in Cromwell is not confined to the existing urban footprint. Rather, it adopts a Masterplan approach for the wider Cromwell area. The Spatial Framework: Stage 1 Spatial Plan (**Spatial Framework**) states:¹⁹

The Cromwell 'Eye to the Future' Masterplan provides a clear framework for the future growth of Cromwell from a town of around 5,000 people to approximately 12,000. The Masterplan is guided by a Vision that aims to support sustainable growth of the town while retaining aspects of Cromwell's 'country town' character and the 'World of Difference' values, which are highly valued by the community.

- 31 The Spatial Framework was prepared to guide growth across the Cromwell area over a 30-year horizon. It does not focus solely on the existing urban footprint of Cromwell township. Rather, the Masterplan considers that Cromwell and its surrounding settlements, including Lowburn, Pisa Moorings, Bannockburn and Tarras, and expressly identifies options for accommodating future growth within both the township and the rural environment and those surrounding settlements.

¹⁷ Minute 4 Response (MacTodd Lawyers): National Policy Statement on Urban Development 2020 and Plan Change 19, dated 11 August at [10]; Wooing Tree Estate Project Decision at [308].

¹⁸ Long-term Plan 2025-2034, page 222.

¹⁹ Spatial Framework, page 9 – 10.

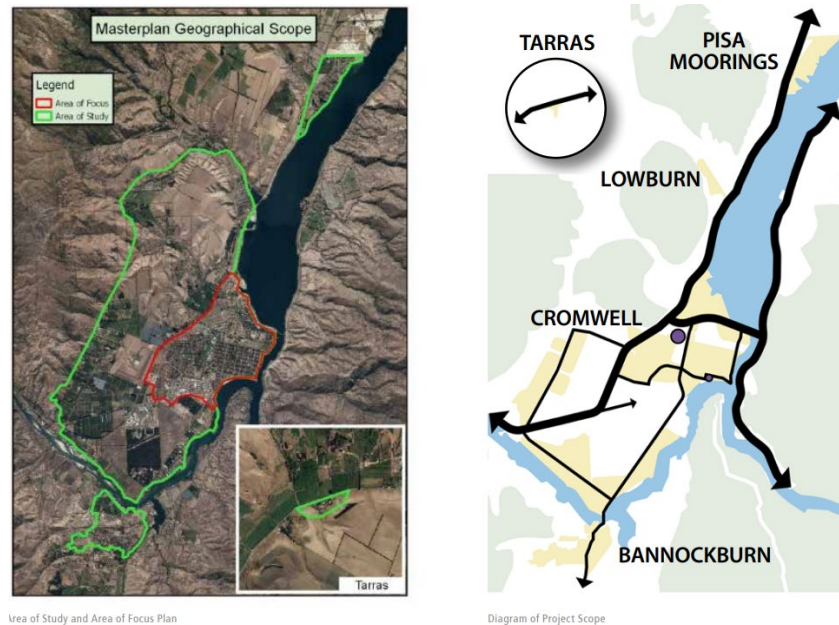


Figure 1: Cromwell Masterplan Geographical Scope

- 32 The significance of Figure 1 is that the Spatial Framework does not treat Cromwell township in isolation but instead considers the wider Cromwell Basin. The Masterplan was developed to understand *"what the future (from now until 2050) holds for Cromwell and its surrounding areas"* and to *"enable Cromwell to get ahead of growth"*.²⁰ Importantly, the Application Site falls within that wider study area and therefore within the area identified by the Council as relevant to Cromwell's long-term growth of its "urban environment".
- 33 The Spatial Framework adopts a coordinated and sustainable approach to growth management across the wider Cromwell area. In doing so, in alignment with the NPS-UD²¹ it provides for "a range of housing types and residential densities appropriate to the different areas, and sub-precincts of the town", reflecting the community's desire for housing that is both available and affordable to meet Cromwell's future needs.

²⁰ Spatial Framework, page 9 – 10.

²¹ National Policy Statement on Urban Development 2020, Policy 1(a)(i); Planning decisions contribute to well-functioning urban environment, which are urban environment that, as a minimum have or enable a variety of homes that meet the needs, in terms of type, price and location, of different households.

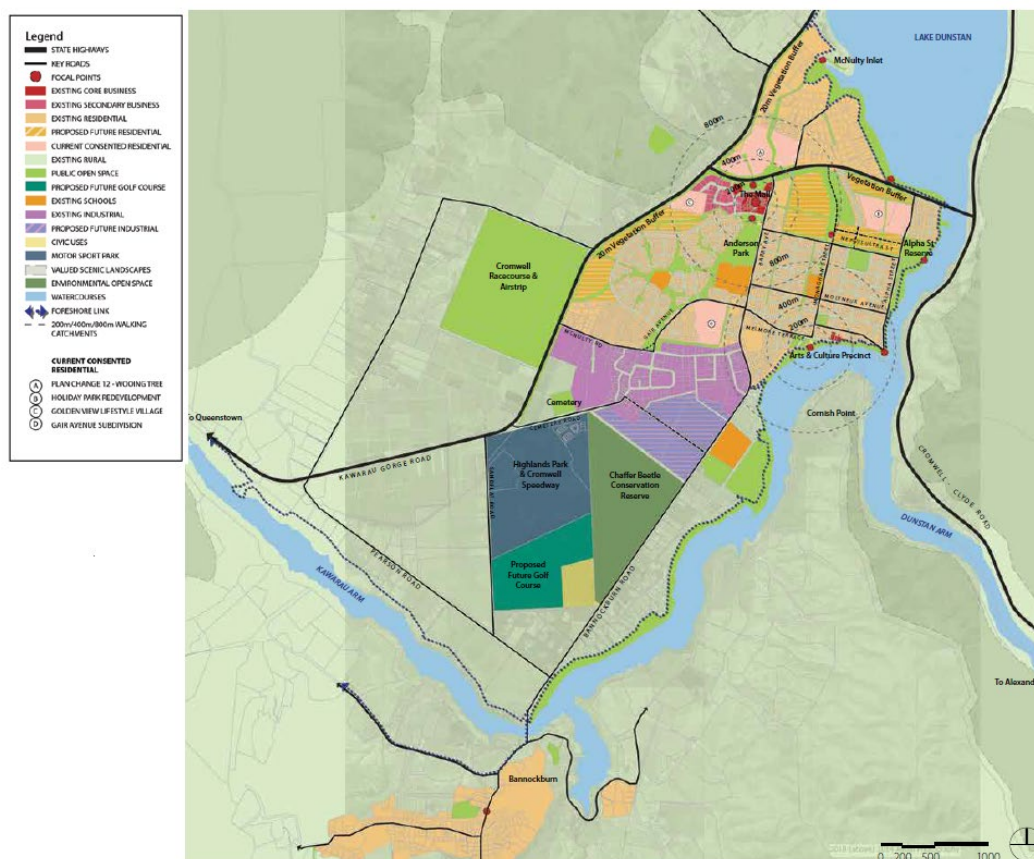


Figure 2: The Spatial Framework Plan

- 34 Consistent with that approach, the Spatial Framework does not assess growth solely by reference to existing urban-zoned land. While the preferred option was "growth focused within existing Cromwell", the Framework expressly recognises that the wider growth strategy extends beyond the existing urban footprint and encompasses a range of urban, rural living and rural environments. This is reflected in the "future assessed yield" of residential development opportunities across different zones and densities, including "Rural areas along Pearson Rd (RU[RR]) ranging from approximately 1ha upwards",²² and in the recognition that the Spatial Plan intends to "[protect] rural land around the town and within wider Basin in a considered and strategic manner, acknowledging the significance of climatic and other factors to localised growing environments, allied productivity outputs, and GDP."²³
- 35 Read as a whole, the Spatial Framework recognises that growth associated with the "urban environment" of Cromwell will be accommodated across a range of urban, rural living and rural environments within the wider area

²² Spatial Framework, page 29.

²³ Spatial Framework, page 23.

considered by the Masterplan, specifically within an area that encompasses the Application Site.

- 36 Accordingly, the Section 42A Report adopts an unduly narrow interpretation of the NPS-UD by focusing on the existing zoning and character of the Application Site. Properly interpreted, the NPS-UD requires consideration of the wider urban environment, including areas intended to accommodate future growth. On that basis, the Applicant submits that the Application Site forms part of the Cromwell urban environment and that the proposal must be assessed having regard to the relevant directions of the NPS-UD.