

ATTACHMENT P

ASSESSMENT PURSUANT TO SECTION 104D(1)(b) OF THE RESOURCE MANAGEMENT ACT

Section 104D sets out the so-called ‘gateway tests’ which apply to all non-complying activities. Section 104D states:

104D Particular restrictions for non-complying activities

- (1) Despite any decision made for the purpose of notification 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.

Section 140D(1)(b) refers to the relevant regional and district plans. For the purpose of this analysis, this is the Otago Regional Council’s Regional Policy Statement, Regional Plan: Air for Otago and Regional Plan: Water for Otago and the Central Otago District Council (CODC)’s Central Otago District Plan.

My understanding of the legislation and associated case law on section 104D(1)(b) is that:

- (a) The gateway test of section 104D(1)(b) does not require a detailed ‘policy by policy’ assessment but rather an overall consideration of the proposal within the context of the relevant plan provisions.
- (b) The Environment Court has considered the definition of “contrary” referring to the objectives and policies. This has effectively been found as being either “repugnant to” or “opposed to”. It is not simply that the proposal does not find support from the relevant objectives or policies.

I have set out below the relevant regional and district objectives and policies which I think are relevant to this section 104D analysis. I have set out the relevant objective/policy together with my comment on how this proposal does or does not give effect to, or is consistent with the objective/policy.

For each I identify whether this development is:

- supportive of the objective/policy;
- neutral to the objective/policy;
- not supported by the objective/policy; or
- opposed or repugnant to the objective/policy.

I have found no objectives or policies against which I think this development would rate as repugnant but I have turned my mind to whether or not this is the case.

A. OTAGO REGIONAL POLICY STATEMENT

1. Objective 4.5

Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.

Comment:

- The Wooing Tree Estate is being developed within the existing defined “urban” area of Cromwell.
- It is on land currently zoned for housing and some business activity.
- It is a masterplanned development that achieves a broad range of housing typologies at medium density.
- Through the underpass and the Barry Avenue roundabout, it connects back to the town centre.

Section 104D conclusion

This development supports this objective by providing for urban expansion within the urban area on land zoned for residential and some business.

2. Policy 4.5.1

4.5.1 Providing for urban growth and development

Provide for urban growth and development in a strategic and co-ordinated way, including by:

- Ensuring future urban growth areas are in accordance with any future development strategy for that district.*
- Monitoring supply and demand of residential, commercial and industrial zoned land.*

- c) *Ensuring that there is sufficient housing and business land development capacity available in Otago.*
- d) *Setting minimum targets for sufficient, feasible capacity for housing in high growth urban areas in Schedule 6.*
- e) *Coordinating the development and the extension of urban areas with infrastructure.*
- f) *...*
- g) *Ensuring efficient use of land.*
- h) *Restricting urban growth and development to areas that avoid reverse sensitivity effects unless those effects can be adequately managed.*
- i) *...*
- j) *...*

Comment:

- Development of Wooing Tree is consistent with the CODC’s Cromwell Spatial Framework Plan which identifies the area for medium and high residential growth in the future.
- This development will be located on land currently zoned residential.
- The Market Economics analysis demonstrates there is a demand for residential land within Cromwell and this will help meet that demand.
- The site is appropriately serviced with infrastructure.
- Efficient use of this land helps remove pressure from later demands for urban expansion of Cromwell.
- Reverse sensitivity effects will be successfully managed.

Section 104D conclusion

This development is supportive of this policy. It is supportive in that it help to meet the CODC’s growth targets and will achieve land efficiency. It is also within Cromwell’s existing urban area and is well integrated with infrastructure. It also ensures that any reverse sensitivity effects of urban growth in this location can be successfully managed through the conditions of consent

3. Policy 5.2.1

5.2.1 Distribution of commercial activities

Manage the distribution of commercial activities by:

- a) *Enabling a wide variety of commercial, social and cultural activities in central business districts, and town and commercial centres.*
- b) *Enabling smaller commercial centres to service local community needs.*

- c) *Restricting commercial activities outside of a) and b) when such activities are likely to undermine the vibrancy and viability of those centres.*
- d) *Encouraging the adaptive reuse of existing buildings.*

Comment:

- This proposal adopts the current cap (as included in the CODC's District Plan) of 4,020m² of retail and food and beverage development only. This is to protect the current town centre.
- Part of this development is the Wooing Tree tasting shed which is an existing business entity on the land. This will simply move locations to improved premises.
- Conditions of consent are proposed and have been strengthened in response to feedback to ensure a cap on the level of business activity.
- There is also provision for 6,000m² for a tourist accommodation facility that will contribute to the vibrancy and vitality of those centres (rather than undermine it).

Section 104D conclusion

This development is supportive of the policy by limiting the size of retail activity so that it does not unduly compete with the town centre.

B. REGIONAL PLAN: AIR

"10. Policy for dust from area sources

10.1.1 The Otago Regional Council will encourage:

- (a) People undertaking land use activities to adopt management practices to avoid, remedy or mitigate any adverse effects of dust beyond the boundary of the property; and*
- (b) City and district councils to use land use planning mechanisms and other land management techniques to manage land use activities which have the potential to result in dust beyond the boundary of the property."*

Comment:

- Dust management is an issue on the construction site and effective measures have been put in place for Stage 1 of the development which is already consented.
- Construction methods have been put in place on site to control any dust nuisance. These includes

sprinkler systems and water carts.

- Conditions of consent are imposed to ensure these methods are applied.

Section 104D conclusion

This development is neutral in that dust is a potential issue, but is controlled through conditions of consent.

C. CENTRAL OTAGO DISTRICT PLAN

1. Residential

7.1.1 Objective – Maintenance of Residential Character

To manage urban growth and development to maintain and enhance the built character and amenity values of those parts of the district that have been identified as the Residential Resource Area as well as the social, economic and cultural wellbeing, and health and safety of the residents and communities within those areas.

Comment:

- Wooing Tree is an area identified and zoned for residential development.
- The intensity of development is consistent with the Cromwell Spatial Framework Plan which is effectively the CODC's growth strategy for Cromwell.
- The masterplanned nature of this development and the urban design approach taken to this neighbourhood (including a requirement in the consent conditions and sale and purchase agreements to comply with the Wooing Tree Design Guidelines), will ensure high amenity values are incorporated as part of the development.
- If approved under this fast-track legislation, this application will deliver significant economic benefit to an area that has been adversely affected economically by the Covid-19 pandemic.

Section 104D conclusion

This development is either supportive, neutral or unsupported of the various components of this objective. The development does provide for urban growth in an area of Cromwell identified as such. It is within the walkable catchment of the town centre and it is consistent with the Cromwell Spatial Framework Plan. It is, however, at an intensity of development greater than that contemplated by the existing underlying zoning. To that extent, it does not find support from this relevant objective. However, it is a high quality masterplanned development which will ensure enhanced amenity values

are achieved for both Wooing Tree residents and Cromwell generally.

A key advantage of the increased density is to provide market affordable housing. The smaller sections will enable brand new house and land packages starting from \$640,000. This benefit is addressed in a report from Veros at Attachment T to this reply

7.1.2 *Objective – Protection of Living Environment*

To manage the use of land to promote a pleasant living environment by ensuring that adverse effects of activities are avoided, remedied or mitigated, while accommodating appropriate change at the interface with other resource areas.

Comment:

- This development has no impact on the primary landscape features of the Cromwell Basin.
- The masterplanned development ensures the retention of the rural buffers (albeit at 15m), the scheduled Wooing Tree, the development of the linear park, and a high streetscape amenity within the development.
- It will promote a pleasant living environment.
- The conditions of consent will ensure any adverse effects of activities will be avoided, remedied and mitigated.

Section 104D conclusion

This development is either support or neutral of the objective. It will provide a high quality, pleasant living environment with a range of housing typologies and open space. The greenway, Wooing Tree park, central plaza, and buffers to the perimeter of the site, are all provided. The layout of the subdivision ensures good solar access to properties and appropriate daylight and sunlight. All these factors 'support' the objective, albeit it is noted that the buffer to the state highways is reduced.

7.2.1 *Policy – Residential Character*

To ensure that the character and amenity values of residential areas are protected by ensuring that the adverse effects of:

- (a) Excessive noise including noise associated with traffic generation and night time operations,*
- (b) The generation of traffic over and above that normally associated with residential activities and in particular heavy vehicles, and demand for parking,*
- (c) Glare, particularly from building finish, and security lighting,*

- (d) Structures at the street frontages that do not complement the character and/or scale of development in the neighbourhood,*
 - (e) A reduction in privacy, access to daylight and sunlight,*
 - (f) A reduction in visual amenity due to excessive signage, large areas of hard standing surfaces, and the storage of goods or waste products on the site,*
 - (g) The generation of odour, dust, wastes and hazardous substances,*
 - (h) The use and/or storage of hazardous goods or substances, and*
 - (i) The loss of a sense of amenity, security and companionship caused by non-residential activities.*
- are avoided, remedied or mitigated.*

Comment:

- The environment has been designed for low speed traffic. That will help address the issues of traffic noise.
- The 15m buffer to SH8B and SH6 will ensure separation and help manage noise, as will the noise attenuation requirements for new residential buildings within 80m of the state highways in the conditions for consent.
- All buildings approved as part of this development meet the height controls of the District Plan.
- New homes meet the 'height in relation to boundary' controls ensuring daylight and sunlight access to properties.
- There is no hazardous waste or odour or dust generating activities (other than dust during construction which is managed under the Construction Management Plan and the conditions of consent).
- The non-residential development is grouped into a small hospitality and neighbourhood centre and will not detract from residential amenity.

7.2.2 Policy – Amenity Values

To ensure that the amenity values of residential sites, including privacy and ability to access adequate daylight and sunlight, are not significantly compromised by the effects of adjoining development.

Comment:

- The masterplanned nature of this development will ensure a high quality of residential amenity.

7.2.3 Policy – Environmental Quality

To preserve the environmental quality found within particular areas of the District's residential environment.

Comment:

- Stormwater is fully managed through ground soakage.
- The site is masterplanned and driven off an urban design strategy
- The network of parks and open spaces are established
- The layout of the subdivision creates a variety of site sizes, which offers opportunity for a range of housing typologies

Section 104D conclusion

This development is supportive or neutral. Appropriate controls on stormwater particularly, and other utilities, ensure that this development meets the environmental quality policies. Issues of amenity and landscaping will achieve a high quality in both the design of the subdivision and associated open spaces, and on the amenity of individual sites when they are developed. The Design Guidelines will assist in ensuring a high quality development. Non-statutory guidelines have been successfully used in other jurisdictions. The proposed density of the development will still ensure the environmental quality of this location is preserved and a high level of amenity is provided. It will do this in an environment where a broader range of house typologies and price points is being offered to future residents. That in turn assists with market affordability.

7.2.7 Policy – Residential Resource Areas (3) and (11)

To ensure that subdivision and development in the areas shown as Residential Resource Areas (1)-(13) complement the character and amenity of these areas and provide for the protection of significant landscape features, where such features are present.

Comment:

- This development does not impact the dominant landscape features of the ranges, lakes and river of the Cromwell Basin.
- The character and amenity of the area is preserved through this masterplanned approach (and implementation of the Design Guidelines). It is a more intensive development than contemplated within the District Plan but is consistent with the intensity of development contemplated in the Cromwell Spatial Framework Plan

Essentially the issue of residential character is the nub of this application. There are three basic scenarios, either:

- (a) this development proceeds now under the CRFCA where development is based on an effects approach where the economic benefit in the COVID recovery stage of the New Zealand economy warrants acceleration of this project; or
- (b) the land is developed now in accordance with the underlying zoning and the opportunity for medium to high density residential development on a site within walking distance of the Cromwell town centre (and identified in the Cromwell Spatial Framework Plan for medium to high density development) is lost. This is the argument about squandering the scarce resource of critically located residential land. If growth cannot be accommodated here, then there is an obvious flow-on effect putting further pressure on urban expansion into rural farmland within the Cromwell Basin; or
- (c) Nothing happens on this site for a timeframe while the CODC rolls through its normal programme of plan changes and then the applicant seeks resource consent. This does preserve land for the future, but the opportunity for economic recovery is deferred. The critical time period for supporting the Central Otago economy is in the short term when there is a need for construction activity in this region, particularly with the inevitable slow-down in international tourism.

The premise of this application is that the first scenario is the correct one. This development demonstrates that the effects are significantly beneficial or can all be managed. It identifies that most of the objectives and policies for the precinct can be satisfied. It is a greater intensification on this site than contemplated by the District Plan. However the Cromwell Spatial Framework Plan effectively signals that the CODC will review this policy with a view to promoting this area as medium to high density development. In an RMA statutory sense, this development relies on the fact that the effects are less than minor. It is not seeking to say that it is consistent with the objectives and policies. The non-compliance relates to the density rules. This proposal is at a higher density than the current permitted activity density controls. However in terms of the policy itself, this proposal is neutral.

Section 104D conclusion

It is clear that the scale and intensity of development proposed at Wooing Tree is not consistent with the existing underlying zoning densities. However in terms of providing for a range of different housing typologies into the Cromwell community, providing for growth, and doing this in a

masterplanned way; this development does assist in providing for housing needs with a high level of amenity. Furthermore, the smaller sections will come at a cheaper cost which will help with housing affordability in this part of Central Otago. Refer Attachment T and the analysis by Veros. This development is consistent with an objective of promoting a broader range of housing typologies with some medium and higher density in this location. At an average of 13.5 dwellings per hectare, this is characteristic of a low density neighbourhood although the range of section sizes makes this more medium density. In my view, this is a case where the proposal does not find the support from the relevant policies and objectives but would not be considered “repugnant” or “opposed to”.

2. Business

8.1.1 Objectives – Community Focal Points

To maintain the business areas of the District’s urban areas as focal points for the community.

Comment:

- The size of the business facility within Wooing Tree is at a scale such that it provides for visitor/hospitality retail and local neighbourhood servicing. It does not undermine the Cromwell town centre but does provide an additional contribution to the Central Otago ‘offer’ targeting the tourism/visitor market.
- It also provides an additional population within the walkable catchment of the town centre. The town centre in particular lacks a residential catchment to the north. Population growth can only assist in supporting commercial activity in the centre.

Section 104D conclusion

The hospitality centre is designed so as not to detract from the town centre itself. It is at a constrained scale with a particular type of activity which is consistent with the current zoning, albeit in a different location. This is seen as supportive of this objective.

In response to comments from the CODC, the applicant is undertaking some design changes to the centre.

8.1.2 Objective – Safe and Convenient Business Areas

To ensure that the business areas are safe and convenient areas to visit and conduct business within.

Comment:

- Providing a small neighbourhood retail centre for the community creates services within the neighbourhood to the benefit of residents. This addresses safety and convenience.

Section 104D conclusion

This development is supportive of this objective. It provides a small neighbourhood shopping centre which will provide services to the Wooing Tree residents and people of Cromwell North.

8.1.3 Objective – Environmental Quality

To maintain and enhance the environmental quality of the business areas to ensure they remain pleasant places to visit and work.

Comment:

- The hospitality and neighbourhood centre has been masterplanned to ensure it is of a high amenity.

Section 104D conclusion

The proposal is supportive of the objective in that the quality of buildings finished in the streetscapes will create a high amenity area.

8.2.1 Policy – Provision for a Variety of Activities

To enable the development of a wide range of activities within the Business Resource Area provided significant adverse effects are avoided, remedied or mitigated.

Comment:

- The range of activities are relatively limited. That is because of the desire not to dilute the impact of the Cromwell town centre. The activities are therefore confined to the hospitality tourism industry and to neighbourhood servicing.

Section 104D conclusion

The proposal is supportive of this objective in that the retail activities are limited to those which will service the local community but constrained in terms of directly competing with the town centre.

8.2.2 Policy – Visual Amenities

To ensure the visual amenity values of the Business Resource Areas are maintained and enhanced and to avoid, remedy or mitigate any adverse visual effects on the environment through:

- (a) Retaining a continuity in building heights.*
- (b) Ensuring the design, dimension and location of signs is not visually obtrusive.*
- (c) Retaining a common design theme of building facades in selected areas.*
- (d) Mitigating the harsh, stark appearance of large areas of hard standing surface by requiring landscaping,*
- (e) Requiring that cables be installed underground where practicable,*
- (f) Maintaining a continuity of frontage in selected areas.*

Comment:

- The masterplanned nature of the development ensures a high quality of amenity.
- There is a common design theme.
- All services are undergrounds.
- It is an active main street frontage.
- Landscaping will achieve high amenity.

Section 104D conclusion

This proposal is neutral or supportive in that the buildings do achieve a good quality standard and so will maintain and enhance visual amenity values. They are rather limited in size and targeted at servicing the local community.

8.2.3 Policy – Safe and Convenient Environment

To maintain a safe and convenient environment for pedestrians and motorists alike by:

- (a) Providing for off-street parking in association with developments that generate significant volumes of traffic or where this is not practical, requiring a financial contribution towards the provision of public parking facilities,*
- (b) Providing safe and efficient access,*
- (c) Providing for off-road loading and manoeuvring facilities on selected road frontages,*
- (d) Ensuring that the planting and siting of vegetation and other structures maintains motorist and pedestrian safety,*
- (e) Providing for verandahs on identified road frontages.*

Comment:

- The main street design will provide a low speed vehicle environment.
- There is good pedestrian connection into the residential community.
- Off street loading of facilities occurs behind the shops.
- Landscaping is integrated into the main street to ensure a high quality but also to not block pedestrian and vehicle sightlines.

Section 104D conclusion

This development is neutral. The small neighbourhood centre has a slow speed traffic environment, provides for parking in appropriate places behind the centres, and provides good pedestrian connections.

8.2.4 Policy – Mitigation of Effects on Residential Resource Areas

To ensure that the adverse effects that activities carried out within the Business Resource Area can potentially have on activities in neighbouring Residential Resource Areas are avoided, remedied or mitigated by:

- (a) Ensuring appropriate separation distances are provided,*
- (b) Providing appropriate landscaping,*
- (c) Ensuring noise levels are acceptable,*
- (d) Avoiding the visual intrusion of signs.*

Comment:

- No high noise generating activities are provided as part of this development. There will be food and beverage and outdoor dining but this can be managed.
- The masterplan nature ensures an appropriate interface to the residential homes.

Section 104D conclusion

The proposal is neutral in that conditions of consent ensure any effects of the business area on the residential areas that ought to be controlled are appropriately mitigated.

8.2.8 Policy – Wooing Tree Overlay Area – Business Resource Area (2)

To provide for the development of high quality travellers accommodation with associated tourist oriented “vineyard village” themed retail and commercial activities in a manner that complements other business activities in Cromwell.

Comment:

- This proposal provides for high quality travellers' accommodation and the cellar door facility associated with the vineyard.

Section 104D conclusion

Wooing Tree has had a long-established cellar door on the site and will continue to do so. Travellers' accommodation close to the centre will assist in providing additional visitor accommodation in this part of Central Otago. It also provides a travellers' accommodation with which, through the underpass, is within easy walking distance of the town centre and thus will complement other business activities in Cromwell.

3. Rural

4.4.10 Policy – Rural Subdivision and Development

To ensure that the subdivision and use of land in the Rural Resource Area avoids, remedies or mitigates adverse effects on:

- (a) The open space, landscape and natural character amenity values of the hills and ranges and of the wider rural environment,*
- (b) N/A*
- (c) The amenity values of neighbouring properties,*
- (d) The safety and efficiency of the roading network,*
- (e) The loss of soils with special qualities,*
- (f) The ecological values of significant indigenous vegetation and significant habitats of indigenous fauna,*
- (g) The heritage and cultural values of the District,*
- (h) The water quality of the District's surface and groundwater resources and*
- (i) Public access to or along the rivers and lakes of the District, particularly through the use of minimum (and average) allotment sizes.*

Comment:

- The purpose of the rural zoning is more about creating a buffer to the State Highway and rural and residential land, than in preserving rural production.
- The area is subdivided down to less than rural subdivision standards. However, this is a consequence of the zone identifying these strips of land for buffering purposes. The inevitable consequence of this is small sites.
- This proposal has no impact on the roading network.

- There is no indigenous vegetation.
- Water quality issues and groundwater matters are appropriately addressed through the stormwater management processes outlined in the Paterson Pitts Group report.
- The vineyard will continue to use its water take consents but there is no change proposed. In fact, there will be a significant reduction in the volume of water taken under these consents.

Section 104D conclusion

This development is neutral in terms of this policy. It is clearly a much smaller rural zoned site than is contemplated in the District Plan but then in terms of bringing down a rural lot through zoning within the District Plan as a buffer, the inevitable consequence was that these were going to be long, narrow lots. In this particular context, the size and nature of the lot is that essentially contemplated by the District Plan, albeit that the width of the buffer is 15m rather than 30m.

D. OVERVIEW

In weighing up the relevant objectives and policies in the Regional Policy Statement / Plans and District Plans, it is clear that:

- (a) The Wooing Tree Estate is zoned for residential development and as such there is always going to be a change in the character of this land from its current vineyards to housing.
- (b) This development provides an integrated masterplanned subdivision with a variety of different section sizes conducive to a variety of different housing typologies.
- (c) This will bring a range of price points on houses – the benefit of being able to buy a smaller section therefore at a cheaper land /home price.
- (d) The range of section sizes and the intensity of development is different to that contemplated within the current zoning. However, the principle of putting the lower density or larger sites in the north, and putting the medium density and higher intensity smaller sections in the central part of the subdivision, is consistent with the District Plan provisions.
- (e) The Cromwell Spatial Framework Plan does identify this area for medium and higher density development. It is one of the few areas within good walking distance of the town centre which is available now for residential development.

- (f) The development will ensure high amenity values and a pleasant living environment for its residents, via the masterplanning that has been undertaken, the conditions of consent and application of the Wooing Tree Design Guidelines.
- (g) This development will trigger the underpass and the Barry Avenue roundabout upgrade which are to the benefit of not only the Wooing Tree residents but Cromwell residents generally and, in particular, residents of Cromwell North.
- (h) A number of aspects of this development is consistent with and supportive of the objectives and policies of the relevant plans. Others aspects of the development are neutral in that the conditions of consent ensure the development proceeds in a manner consistent with controlling the impact of development on adjacent areas.
- (i) The key area is the impact along the northern neighbours. The current plan provides a 10m landscape buffer to these residents that would be unable to be developed for housing. This proposal achieves that same objective. Part of this buffer will vest in the CODC as land they want to take as part of the park network. If the CODC does not want the remaining portion of the buffer (this seems likely), then that will be protected through other legal instruments on the titles. Houses will not be closer to residents in the north than was currently provided for. But, as people drive through the subdivision, they will find a higher intensity of housing than the current District Plan contemplates. In my view, that is not a feature which is either “repugnant” to or “opposed” to the objectives and policies of the plan.

In conclusion, in my view the Application will not be contrary to the objectives and policies of the relevant planning documents and so will pass the second gateway test under section 104D(1)(b).