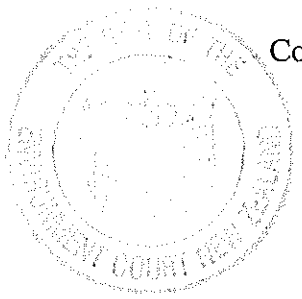
BEFORE THE ENVIRONMENT COURT

Decision No. [2015] NZEnvC 167

IN THE MATTER	of appeals pursuant to Clause 14 of the Resource Management Act 1991 (**the Act**)
BETWEEN	QUIETER PLEASE (TEMPLETON) INC (ENV-2013-CHC-000085) CANTERBURY CAR CLUB INC (ENV-2013-CHC-000086 Appellants
AND	CHRISTCHURCH CITY COUNCIL Respondent
AND	WARWICK & MARIANNE WRIGHT CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED CHRISTCHURCH SPEEDWAY ASSOCIATION INC Section 274 parties

Hearing at:	Ashburton on 18, 19, 21, 22 May 2015 and Christchurch on 25 May 2015 The parties' final proposed provisions were filed on 24 June 2015
Site visits:	20 May and 24 May 2015
Court:	Environment Judge M Harland Environment Commissioner A J Sutherland Environment Commissioner R M Dunlop



Appearances: Ms P Steven QC for Quieter Please (Templeton) Inc
Ms A Dewar for the Canterbury Car Club Inc
Mr MG Conway and Mr HP Harwood for the Christchurch City Council
Mr A Schulte for the Christchurch Speedway Association Inc
Mr W Wright (in person) for himself and Mrs M Wright.

Date of Decision: 23 September 2015

INTERIM DECISION OF THE ENVIRONMENT COURT

A. The appeals by the Canterbury Car Club Inc and Quieter Please (Templeton) Inc are allowed in part to the extent outlined in this decision.

B. Under s293 of the Act, the parties led by the Council are directed to lodge submissions and prepare changes to the District Plan to address the matters referred to in paragraphs [195] – [203] of this decision.

C. The Council is to provide the Court with a Memorandum outlining the matters addressed in paragraph [204] of this decision regarding s293 consultation no later than 9 October 2015.

REASONS FOR DECISION

Introduction

[1] These appeals concern proposed provisions contained in Plan Change 52 ("**PC52**") to the operative Christchurch City Plan (**the operative Plan**) and they relate to the activities undertaken at the Ruapuna Motorsport Park ("**the Motorsport Park**") just outside of Templeton in Christchurch. In a nutshell, PC52 seeks to address the noise emissions from the Motorsport Park, which since 2004 have created problems for residents living nearby, whilst at the same time not unreasonably restraining the use of the Motorsport Park for its intended purpose. The key issue for us to decide is

which of the provisions proposed by each of the parties best ensure that the noise emitted from the Motorsport Park does not exceed a reasonable level.

The appeals

[2] The Council's decision on PC52 was made by an independent commissioner. The provisions she approved were in part based on her understanding that the activities undertaken at the Motorsport Park attracted existing use rights. Neither Quieter Please (Templeton) Inc ("**Quieter Please**"), a residents' group, nor the Canterbury Car Club Inc ("**the Car Club**") entirely agreed with the approved provisions and both appealed aspects of them to this Court. Under s290A of the Act we must have regard to the decision of the Council but, as will become apparent, the proposed provisions we are now being asked to consider are considerably different, both in form and content, from those that were approved by the Commissioner; and whilst we received submissions from the Christchurch Speedway Association Inc ("**the Speedway Association**") about existing use rights, no party ran their case relying on them. We will refer to the Commissioner's decision where relevant in our evaluation of the provisions now proposed, and we adopt the "Decisions Version" to refer to the parts of PC52 approved by the commissioner.

[3] By the time the appeal was heard the Car Club appeal had largely been resolved as between the Club and the Council, with the result that the main challenge to the revised provisions presented to the Court was from Quieter Please, with Mr Wright challenging some of the revised provisions, but supporting others. These revised provisions were referred to in the hearing as "the Dale provisions."

[4] Towards the end of the hearing, as a result of the evidence called before us, the Dale provisions were amended further, and we were also provided with an alternative set of provisions by Quieter Please. Mr Wright quite rightly highlighted that the proposed provisions were complicated and should be simplified. He very clearly outlined the areas of concern to him and his wife. Because the parties all required more time to consider these sets of proposed provisions, we allowed further time after the hearing for this to occur, and for the parties to provide us with their final proposed provisions.

[5] The end result is that we are now being asked to consider two separate sets of proposed provisions; one from the Car Club, which is largely supported by the Council and the Speedway Association but with differences identified by tracked

changes/comment box text ("**the other parties provisions**") and the other from Quieter Please ("**the Quieter Please provisions**").[1] These are the proposed provisions that we will evaluate in this decision.

[6] There are still fundamental differences between Quieter Please, Mr Wright (to a lesser extent) and the other parties about the frequency, duration and level of the noise emissions from the Motorsport Park that should be permitted under PC52. Differences also remained about proposed development controls on surrounding land said to be for reverse sensitivity purposes.

Background

[7] There is a considerable history to PC52 which needs to be outlined to provide a context to PC52 and the provisions that are now proposed.

[8] In this section we provide an overview of the facilities and activities provided for at the Motorsport Park, as well as describing the environment that surrounds it. We then outline how PC52 came to be, with particular focus on the acoustic reports as these provide the basis for the submissions made to us about the proposed noise levels and the suggested frequency of events.

The Motorsport Park

[9] The Motorsport Park is accessed from Hasketts Road north west of State Highway 1 at Templeton. It is located on land administered by the Council as a recreation reserve under the Reserves Act 1977 and comprises some 55 hectares. It contains a racetrack, a speedway and a remote-control vehicle track which are each operated independently. The racetrack is operated by the Car Club, which was formed in 1946 and has operated from the site since 1961. It is used on an almost daily basis by a mix of vehicles, some of which have a benign noise signature (bicycles, street legal vehicles[2]) and some of which emit considerable noise (racing cars, drag racers and drifting cars). Most racing takes place over the summer months.

[10] The speedway is operated by the Speedway Association, which has operated from the site since the late 1950s. It runs about 15 events per season over the summer

[1] Both were attached to the Memorandum of counsel for the Car Club dated 24 June 2015
[2] Meaning vehicles licensed to operate on public roads

plus practices, and in the past has operated activities on the burn-out pad. Unlike the raceway, the speedway operates at night.[3]

[11] There are separate leases for the racetrack and the speedway in favour of the Car Club and the Speedway Association.[4]

[12] The remote-controlled vehicle track is operated by the Canterbury Radio-Controlled Car Club, but there is no evidence that its track is a significant source of noise. The Club did not participate in the hearing and we confirm the Commissioner's recommendation on the rules applying to the remote-controlled vehicle track.

[13] In addition to the racing tracks, there are other items of infrastructure on the site including a control tower, ambulance station/first aid rooms, pit lane garages, a fuel bunker, safety devices, car parking, administration/hospitality/spectator facilities, public address systems and a permanent shared continuous noise data logger installed by the Council near the south west Motorsport Park boundary in February 2014 (the boundary logger). Data from it is uploaded to a publicly accessible website every 15 minutes.[5]

[14] We accept that the component parts of the Motorsport Park comprise a longstanding, substantial physical resource that is used by those interested in motorsport within the region, and from time to time by those with similar interests from further afield.

The surrounding environment

[15] Like much of Christchurch, both the Motorsport Park and surrounding land are flat for a considerable distance. The land surrounding the Motorsport Park is used for a variety of activities. There are residential and pastoral activities in the Rural 2 and 5 zones; quarries in the Rural Quarry Zone to the immediate north and north east (Fulton Hogan) and to the south in the Rural 5 Zone[6]; the Templeton golf course just across Hasketts Road (Open Space 2 zone) and Christchurch prison (designated by the Minister of Corrections). The Motorsport Park is located under the southern approach

[3] Mr Dale, evidence-in-chief, paragraph [3.3]
[4] Mr Dale, evidence-in-chief, paragraph [3.2]
[5] Acoustic Experts' Joint Witness Statement, 21 January 2015, paragraph [8.2]
[6] Exhibit 2

path for Christchurch International Airport and it is within the 50dBAL_{dn} airport noise contours. [7]

[16] The operative Plan's 400m development setback around the boundary remains largely free of development except for portions of the Fulton Hogan quarry, the Templeton golf course and a cluster of seven dwellings to the south-east on Hasketts Road.[8]

[17] A distinguishing feature of the surrounding environment are the substantial areas largely to the north, east and west held by a relatively small number of owners, and the use of these properties for activities not generally regarded as being sensitive to noise. Whilst this pattern is not maintained to the south (where the subdivision and ownerships patterns are more fragmented), we accept Mr Dale's evidence that there is limited potential for future development in this area.[9]

[18] The residences of Quieter Please members now living in the area are generally located to the south and south-east of the Motorsport Park, mostly on rural properties of differing sizes. These properties are situated on Pound, Maddisons and Barters Roads at distances from the Park of approximately 850m to 1,100m. Others live further away in the Templeton urban area in Bailey and Kissell Streets; the latter being some 2 kilometres away with Bailey Street further again to the west.[10] The Wrights' property is also located on Pound Road, which is a major road leading to Christchurch Airport and the Fulton Hogan quarry, with an emerging business estate nearby on the opposite side of the road.

The genesis of PC52

[19] The Motorsport Park is zoned Open Space 3 in the operative Plan.[11] This zone recognises the site as containing facilities of metropolitan importance for recreational and community activities.[12] In 1999 the Council introduced changes to the operative Plan, which introduced very liberal noise controls.[13] As a result, the Car Club and Speedway expanded their operations. This led to some residents living

[7] Mr Dale, evidence-in-chief, paragraph [3.4]
[8] Exhibit 2
[9] Mr Dale, evidence-in-chief, paragraph [9.30] ff and Exhibit 2.
[10] Mr Rich, evidence-in-chief, paragraph [2]
[11] Proposed to be replaced in the proposed Replacement District Plan by an equivalent Specific Purpose Ruapuna Zone; Mr Conway, opening submissions, paragraph [4.4]
[12] Mr Dale, evidence-in-chief, paragraph [3.4]
[13] Mr Camp, evidence-in-chief, paragraph [6.1]; Mr Dale, evidence-in-chief, paragraph [3.6]

nearby complaining to the Council about the noise being emitted from the Motorsport Park, both in terms of its level and frequency. The noise levels were described as excessive, unreasonable and affecting the health and wellbeing of the residents living nearby.

[20] In response to the increasing complaints, the Council undertook acoustic testing in 2005 and 2006, and in 2007 Marshall Day Acoustics were engaged by the Council to prepare a comprehensive report[14] on the potentially adverse noise effects arising from the activities taking place at the Motorsport Park. This report ("**the 2007 report**") confirmed that the noise then being emitted by events at the Motorsport Park was unreasonable at seven of the nearest residences, and would become unreasonable for a significant number of additional dwellings if the noise levels increased to take full advantage of the operative provisions. More will be said of this later.

[21] In response to the 2007 report the Council established a working party in 2009 and resolved to:[15]

(a) initiate a plan change;

(b) purchase the seven properties identified in the 2007 report as being affected by unreasonable levels of noise;[16]

(c) engage with the Car Club and Speedway Association to vary their leases to introduce additional measures to control noise, and

(d) "restrict the noise levels and frequency of events and track usage to limit the use of Ruapuna Reserve to the current levels ...."

[22] A further report was commissioned from Marshall Day Acoustics by the Council in 2012 ("**the 2012 report**"). This was used to prepare PC52.

Overview of the now proposed PC52

[23] At the highest level PC52:

(a) introduces more restrictive rules for noise levels and track usage;

[14] Marshall Day Acoustics, "Ruapuna Park and Christchurch Kart Club Noise Assessment", 2007
[15] Mr Dale, evidence-in-chief, paragraphs [3.10] and [3.11], Appendix 1 and Appendix 2 at pp 2 and 3
[16] In fact only six were purchased as the seventh, owned by Housing NZ, did not wish to sell

(b) widens the residential development setback from 400m to correspond with a 60 dBA inner noise boundary contour (within the setback, new noise sensitive activities are non-complying); and

(c) incorporates restrictions on new or additional noise sensitive activities between 60 and 55 dBA inner and outer noise boundary contours.

The above are achieved by amending parts of the operative Plan as well as adding new provisions to it.

[24] The operative Plan comprises a number of volumes; Volume 2 contains the objectives and policies and Volume 3, the rules. We now summarise the more significant aspects of the plan change with reference to the operative Plan, noting that the structure of it (but not the substance) is the same for all of the parties:

(a) A new Objective 14.6: Motorsport is proposed to be inserted into Volume 2, Section 14 Recreation and Open Space, supported by new Policy 14.6.1. Together they expressly recognise and provide for the Motorsport Park facility and provide that:

(i) noise sensitive activities in the receiving environment are not to be subject to unreasonable noise; and

(ii) new and/or extended noise sensitive activities, for example dwellings, are controlled where they would be affected by motorsport noise both for their own benefit and to manage potential reverse sensitivity effects on the Motorsport Park. This is to be achieved by Rules 2.5.15 and 2.5.5 based on Inner and Outer Noise Boundary Contours to be added to the planning maps and by building work controls to achieve specified indoor design sound levels.

(b) An amended Rule 1.3.5(ii) Ruapuna Motorsport Park is proposed to be inserted in Volume 3 Part 11 Health and Safety. It deletes the existing liberal provisions and provides a suite of new controls for the Motorsport Park designed to implement the previously described objective/policies and others in the operative Plan. The rule has eight parts that set permitted activity limits. Should the limits not be met an activity becomes discretionary. The parties were agreed on the overall structure of the rules

but differed, sometimes markedly, on their detailed provisions. We describe these differences in detail in subsequent sections.

(c) Rule 1 contains four tables, one for each of the primary facilities at the Park (the raceway, speedway and remote-controlled vehicle tracks) and one for other non-racing activities (called "all other activities"). Permitted activity limits are set for different types of racing at each of the tracks and for the "other activities". The limits prescribe noise levels on a $L_{Aeq(15\ min)}$ and L_{AFmax} basis; hours and days of operation; and maximum number of days per year.

(d) Rule 2 sets a minimum number of weekend days between 31 October and 31 March (the principal racing season) when only Table 4 – non-racing "other activities" can be conducted to provide respite for people living nearby in what is technically referred to as " the noise receiving environment."

(e) Other rules deal with the scheduling of different types of racing to avoid timing overlaps, exceptions to the permitted activity regime to allow for unforeseen circumstances, reduced noise limits not to be exceeded on public holidays, details on how and where emitted noise is to be measured and the maintenance of operational/activity records.

(f) Rule 7 provides that each of the lessees is to prepare a Noise Management Plan to be approved by the Council that, amongst other things, contains a published calendar of planned events, demonstrates how activities are to be conducted to comply with the controls, establishes reporting and complaints procedures, and allows for a community liaison committee.

(g) Rule 8 sets out the interests to be represented on the community liaison committee, membership numbers, administration-related matters and the like.

[25] Having set out a broad overview of the now proposed PC52, we set out the legal and planning framework that applies to it.

Legal and planning framework

[26] In this section we outline the legal provisions that apply to plan changes, the process by which PC52 will become part of the proposed Replacement District Plan

for Christchurch, and we foreshadow that the Court's jurisdiction under s293 of the Act is sought to be invoked. We also analyse the duty to avoid unreasonable noise (s16 of the Act) in the context of this case. We then provide an overview of the relevant provisions from the higher order statutory planning instruments that we must consider.

Legal framework: plan changes

[27] The legal framework for considering proposed district plan provisions is contained largely in s31, s32 and ss72–76 of the Act. The matters that need to be addressed were comprehensively set out by the Court in ***Colonial Vineyard Limited v Marlborough District Council***[17] and succinctly summarised in ***Reiher v Tauranga City Council***[18] as follows:

> [10] In examining a provision under the Act, including Section 32, we must consider:
>
> a) Whether it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act;
>
> b) Whether it is in accordance with Part 2 of the Act;
>
> c) If a rule, whether it achieves the objectives and implements the policies of the Plan; and
>
> d) Whether having regard to efficiency and effectiveness, the provisions are the most appropriate way to achieve the objectives of the proposed plan, having regard to the benefits, the costs and the risks of not acting.
>
> [11] In doing so the Court must take into account the actual and potential effects that are being addressed to consider the most appropriate provisions, if any, to respond to this.

[28] As well, s74 requires PC52 to accord with the Council's functions under s31, which include amongst other things:

(a) the implementation of objectives/policies/methods to achieve integrated management of the effects of the use of physical resources; and

(b) the control of actual or potential effects on the use of land, including for the purpose of *"the control of the emission of noise and the mitigation of the effects of noise."* [19]

[17] [2014] NZEnvC 55
[18] [2012] NZEnvC 121
[19] s31(1)

[29] As PC52 was notified in October 2012 the relevant s32 provisions are those in the RMA in force 1 October 2011–3 December 2013. Concerning s32(3) we adopt the interpretation of *most appropriate* given in ***Rational Transport Society Incorporated v New Zealand Transport Agency***,[20] namely:

> Section 32 requires a value judgement as to what on balance, is the most appropriate, when measured against the relevant objectives. "Appropriate" means suitable, and there is no need to place any gloss upon that word by incorporating that it be "superior".

[30] In this case the focus was on the new proposed objective, whether or not the policies provided implement the objective, and whether the rules proposed by the Car Club (supported by the Speedway Association and the Council) are sufficient to control the emission of noise from the Motorsport Park and/or mitigate the effects of it, so that it can be said to be reasonable in terms of s16 of the RMA.

Legal framework: The Replacement District Plan and s293.

[31] The Canterbury Earthquake (Replacement District Plan) Order 2014 (**"the Order")** provides a streamlined process for decisions on the Council's Replacement District Plan.[21] If PC52 is made operative while the Order is in force it is deemed to be part of the Replacement District Plan, but if not, the Council would have to notify the proposed Motorsport Park provisions in sufficient time to enable the hearings panel to make all decisions in respect of it no later than 9 March 2016. The most efficient way is therefore for PC52 to be made operative whilst the Order is in force.

[32] We mention this because some of the proposed provisions are not within the scope of the appeals and therefore the Court's jurisdiction under s293 is sought to be invoked. The power in s293 is one which must be exercised sparingly. An important factor to be considered is whether or not there are other interested parties who may need to be notified about the proposed changes, and given the right to be heard in relation to them. Because of the timeframes associated with the Order, this is a matter of some importance.

[33] The parties identified seven aspects of the amended provisions said to require a direction from the Court utilising its extended jurisdiction under s293 of the Act. They are:

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[20] [2012] NZRMA 298

[21] The Parties' Joint Memorandum, Statement of agreed and disputed facts and issues and s293 matters, 24 February 2015, paragraphs [15]ff; restated in their joint Memorandum 12 March 2015

(a) enabling weekday motor [racing] vehicles using the racetrack at 70 $dBL_{Aeq\ (15\ min)}$ and 90 dBL_{AFmax} 80 days per year on any day except Mondays and (primarily) 0900 – 1800 hours;

(b) including the proposed Objective 14.6;

(c) deleting the Explanations and Reasons sections of PC52 to conform with the style of the proposed Replacement Plan;

(d) simplifying and clarifying the provisions to make them more user-friendly in accordance with Objective 3.3.2 of the proposed Replacement Plan;

(e) amending the special noise rule for F5000 vehicles to be changed to *special interest vehicles* and including a new definition of *special interest vehicles* ;

(f) deleting the amended provisions for the PA system and amplified noise so that those sources of noise are captured by the *all other activities* rule (which is significantly more restrictive); and

(g) adding text to clarify that data from the noise-logger is sufficient to determine compliance *subject to verification that noise is attributable to activities at Ruapuna.*

[34] The Court has added an eighth aspect to these, namely:

(h) a proposed amendment of the *noise sensitive activities* definition.

[35] No party submitted that the power under s293 should not be invoked; rather the challenges from Quieter Please were to do with the substance of the matters referred to in aspects (a) and (b) above. There was, however, initially a procedural challenge to amending the "residential activities" component of the definition for *noise sensitive activities* by Quieter Please.[22] Although this seemingly resolved itself by the time the final proposed versions were filed after the hearing, as the Quieter Please provisions did not raise it as an issue, the Court has residual jurisdiction concerns. We will address s293 issues in the round at the end of our decision.

[22] Submissions of Ms Steven, Transcript page 408, line 25

Legal framework: the duty to avoid unreasonable noise

[36] Under s16 of the Act, there is a duty on every occupier of land to adopt the best practicable option to ensure that the emission of noise from that land does not exceed a reasonable level.[23] We agree with Ms Steven for Quieter Please that s16 creates a general obligation in the sense that it applies to all, with the result that it is an overarching obligation in relation to noise including in respect of formulating plan provisions. The obligation is expressed as a duty, which rests with the occupiers of the Motorsport Park and not the occupiers of land within their receiving environment.

[37] We also agree with Ms Steven that there are two discrete aspects to the s16 duty imposed upon the Motorsport Park which must inform the Council and the Court in relation to the Council's s31 functions. These are whether :

(a) adverse effects are being internalised as far as reasonably possible, having done all that is reasonably achievable (the *best practicable option* aspect of s16); and

(b) adverse effects beyond the boundary are reasonable, having regard to the context of the environment beyond the boundary of the subject site (the *reasonable level* aspect of s16).

[38] In terms of the first aspect arising under s16 (*the best practicable option*), Ms Steven submitted and we agree, that it is necessary to separately consider the practical options available to reduce the possibility of unreasonable effects and the financial implications of such options. As was outlined in ***Auckland Kart Club Inc v Auckland CC***[24] the best practicable option is the optimum combination of all methods to limit noise to the greatest extent achievable.

[39] Whether a particular level of noise is reasonable (the second aspect of s16) depends on the circumstances of the case and the assessment of it is a factual and objective one. On the facts of this case, as we have signalled above, the reasonableness of the level of noise from the Motorsport Park at the receiving environment must take into account the volume of it (the dB level), its qualitative components (the characteristics of it, e.g. pitch and tonality) and its frequency (how often is it occurring), and the duration of the individual occurrences.

[23] s16(1) of the Act
[24] A124/92

[40] We address both aspects of s16 in our overall analysis of the proposed provisions.

Planning framework

[41] Whilst relatively high level we were referred to one objective from the Canterbury Regional Policy Statement ("**the RPS**") to support the inclusion of the proposed new Objective 14.6 and a RPS definition relevant to the insulation and development restrictions within the inner and outer noise boundaries. We set these out in more detail where they are relevant to our analysis.

[42] In relation to the operative Plan, there are city-wide and specific recreation and open space provisions of relevance. We summarise the former and set out in greater detail the latter.

[43] In pursuit of the objective of a pleasant city,[25] there is a policy[26] concerned with achieving a low ambient level of noise and with protecting the environment from noise that can "*disturb the peace, comfort or repose of people*" to the extent necessary to manage unreasonable levels. The Explanation attached to the policy speaks of how *"unwanted sound"* can have serious effects on a person's enjoyment of their property, cause stress and severe annoyance and interfere with the ability to conduct daily activities. Reaction to noise is said to be a function of such matters as its characteristics, type of source, time of day, and previous exposure. It is expressly recognised that:

> ...the noise environment will be influenced by existing activities, and that noise intrusion will occur at the interface between living environments and ....recreation ...activities.

[44] Two specific policies are concerned with sound levels. The first is to take into account the receiving environment and its sensitivity to noise intrusion when achieving satisfactory ambient noise levels.[27] The second is for the plan to provide maximum acceptable sound levels so that emitters can manage their activities to comply and to *"enable recipients to protect themselves against such levels."*[28] The Explanation to this policy notes that noise impacts are a function of their duration, intensity and time of day as well as the sensitivity of the receiving environment. The

[25] Objective 4.2: Amenity
[26] Policy 4.2.9: Impacts of Noise
[27] Policy 4.2.10: Sound levels.
[28] Policy 4.2.11: Sound levels

Rural Zone where many Quieter Please members live is included amongst the most sensitive noise environments.

[45] There is an objective and policies for metropolitan community facilities, which are to be provided for, and which may be both removed from the central city and for specialist recreation. Facilities of this type are to be managed so that the amenity values of adjoining land and the wider area are maintained.[29]

[46] Although the Motorsport Park is not located in the Rural Zone, its effects are experienced by people living in this zone. For this reason we note Objective 13.4: Rural Amenity Values which provides that over the rural area as a whole amenity values, including recreational opportunities, should be maintained and whenever possible enhanced, and that adverse effects should be controlled.

[47] There are a number of objectives and policies in relation to recreation and open space which are sufficiently relevant to warrant setting out in full, namely:

> **1. Objective 14.1: Provision and Diversity**
> a) Open space and recreational facilities that are equitably distributed and conveniently located throughout the City.
> b) Diversity in the type and size of open space and recreational facilities to meet local, district, regional and national needs.
>
> **2. Policy 14.1.5: Existing Open Space**
> To recognise the contribution of existing open space to the City including private open space, and where appropriate maintain the open space function of such areas.
>
> **3. Policy 14.1.7: Metropolitan Recreational Open Space**
> To develop or facilitate the development of metropolitan, regional or national open space and facilities.
> The policy is said to address the development of recreational open space spaces and facilities of the stated type, where there is strong incentive for the City to become involved, and where there is a strong and sustainable demand for the activity. Such activities *"could be the provision of special sports centres".*
>
> **4. Objective 14.2: Efficient and Effective Use**
> The efficient and effective use of open space and recreational facilities in meeting the recreational needs of the community.
>
> **5. Objective 14.4: Adverse Environmental Effects**
> That the establishment or development of open space and recreational facilities is undertaken in a manner which enables adverse effects on amenity values to be avoided, mitigated or remedied.
>
> **6. Policy 14.4.1: Adverse Effects**

[29] Policy 9.2.4: Managing Effects.

> To ensure that activities associated with open space and recreational facilities do not have the effect of giving rise to adverse effects (noise, glare, visual detraction), including through incremental increases in scale and intensity[30], without separation or mitigation measures.

[48] The Explanation[31] to Policy 14.4.1 states that "*It is important that activities associated with open space and recreational facilities do not adversely effect [sic] the surrounding community*". The Plan is said to provide measures for assessing and controlling effects of recreation activities including controls on noise and separation from neighbours, "*recognising their particular function and the nature of the surrounding environment.* It is explained that "*the particular effects of motorsport associated noise are reflected in rules requiring the control of activities at Ruapuna*". By ensuring adjoining land uses are not adversely affected the Policy is also said to manage potential reverse sensitivity effects, that might otherwise result in pressure for the curtailment or cessation of recreational uses.

[49] The objectives and policies highlight tensions in this case, namely the desire to provide for recreational activities whilst avoiding, mitigating or remedying any adverse effects on amenity arising from them.

Site visits

[50] We undertook two separate site visits, including the Motorsport Park and the surrounding area in both, with the result that we gained a very real understanding of the proximity of the residences to the Motorsport Park and the other activities, such as the airport and the road network nearby. During both of our site visits motorsport activities were being undertaken at the Motorsport Park.

[51] On the first visit (a Wednesday) we were able to experience a trackday event which comprised races undertaken in street legal vehicles. The event involved 10-20 vehicles with 10-12 cars on the racetrack at any one time. We were advised that this event takes place approximately once every 6 weeks. We also experienced a V8 Superdrive car undertaking practice laps and we were advised that this activity generally occurs two afternoons a week. We experienced the noise generated from these events from both the trackside and from outside the nearest affected residence, being Mr Richie's at 79 Barters Road.

[30] It is proposed that the words underlined be added by PC52.
[31] Which the parties propose be deleted to align PC52 with the Replacement District Plan

[52] On the second visit (a Sunday) there was a club day taking place at the racetrack with races involving saloon cars (Classes 1-5 and Classic saloons) and sports and single-seater race cars. The day started at 8.30am[32] and was scheduled to finish at around 4.30pm. On this occasion, as well as attending the racetrack we also visited several of the properties owned by members of Quieter Please. We visited the Alfeld property at 64 Maddisons Road, Mr Rich's property at 18 Kissell Street in Templeton, the Kistra/Harnett property at 173 Pound Road, the Wright property at 111 Pound Road and the Ritchie property at 79 Barters Road during racing events. We could hear the vehicles on the racetrack in the background from all of the residences to varying degrees. We could also hear the racing activities from the Hornby Mall amongst background noise.

[53] Because the noise emitted from the Motorsport Park depends on a number of complicated and interrelated factors including the level, duration, character and frequency of the noise, as well as the wind direction (which can change during the day as we experienced on our Sunday site visit), we do not assume that what we experienced on our site visits was anything apart from an indication of what occurs on some days outside of the main racing calendar; the Car Club advised that our experiences were typical and the residents considered they were not, in the sense that the events were quieter than those which often occurred.

The issues

[54] The following key issues require our determination:

(a) Are the proposed objectives and policies appropriate?

(b) What maximum noise level, duration and frequency controls should apply to the Motorsport Park?

(c) What controls should be placed (if any) on noise sensitive activities between the Inner and Outer Noise Boundaries?

Are the proposed objective and policies appropriate?

[55] Although it did not occupy a lot of hearing time, we commence with this topic because rules and other methods are required to be the most appropriate way to

[32] The parties' final provisions limit racing as a permitted activity to 0900 hours start time.

achieve the objectives of the proposal. For this reason, we now address the proposed new objective, its companion policy 14.6.1 and amended policy 14.4.1 before dealing with the contested rule changes.

Objective 14.6

[56] A new **Objective 14.6: Motorsport** is proposed to be added which would expressly provide for the continued operation of the Motorsport Park. It reads:

> **14.6 Objective: Motorsport**
>
> (a) Ruapuna Motorsport Park continues to operate as a facility of regional importance servicing motorsport, as well as training and recreational activities, whilst ensuring the adverse noise effects of activities at the Park on the surrounding community and environment are effectively managed to not increase, and if possible, are reduced.

[57] The objective would sit within the suite of objectives and policies concerned with Recreation and Open Space. It requires s293 action to facilitate inclusion in PC52 as there is no objective for the Motorsport Park in the notified provisions.[33]

[58] Quieter Please did not agree that the underlined words "*of regional importance*" should be included in the proposed objective, but otherwise did not oppose it. There being no dispute about inclusion of the objective or its provisions, other than the specific words noted above, we spend no further time on its overall merits. For the record, without prejudging related s293 considerations which we will address as a separate topic at the end of this decision, we find it appropriate that there be a specific Motorsport Park objective as the basis for related policies and rules.

[59] Ms Steven submitted that the new objective was somewhat opportunistic as it only appeared late in 2014 after the parties had decided to ask the Court to exercise its powers under s293. Ms Steven submitted that the objective appears to have been deliberately worded to justify what Quieter Please considers to be an overly liberal regime of controls weighted heavily in favour of the Motorsport Park at the expense of residents' amenity and wellbeing.[34] Quieter Please did not dispute the extent to which Ruapuna provides social and economic benefits to Christchurch; rather its case was concerned with ensuring appropriate regard is given to noise impacts on the receiving environment.[35]

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[33] Statement of Agreed and Disputed Facts and Issues and s293 Matters, 24 February 2015 paragraph [24]
[34] Ms Steven, opening submissions [75]
[35] Ms Steven, opening submissions [77.3]

[60] We received planning and economic evidence on the significance of the Motorsport Park. Mr Dale, the planner for the Council, noted that the Council's s32 report describes the Motorsport Park as "*a regionally significant facility*" for both motorsport and meeting community recreational needs while providing economic benefits to the wider community,[36] however he conceded that the Regional Council had not been consulted about this. Also, the operative Plan identifies that "areas and facilities in the Open Space 3 Zone are important physical resources for the City and may also be important regional and national resources". Furthermore, Policy 14.1.7 (metropolitan recreational open space and facilities) seeks "*to develop or facilitate the development of metropolitan, regional or national recreational open space and facilities.*"[37]

[61] Mr Dale also considered Objective 5.2.1 of the RPS relevant.[38] It speaks of avoiding adverse effects on significant physical resources including regionally significant infrastructure. Although the Motorsport Park does not meet the RPS definition of "*regionally significant infrastructure*," Mr Dale inferred it could be considered a significant physical resource.

[62] Mr Kyle, who gave planning evidence for the Car Club, endorsed Mr Dale's evidence stating: [39]

> The Motorsport Park represents a multi-user recreational facility for which there is no equivalent in the Canterbury Region.

[63] Mr Kyle told us that the racetrack was identified as serving a "*region rather than local purpose*" in the 1985 Paparua District Scheme.[40] Mr Kyle also identified two further limbs of Objective 5.2.1 (concerned with enabling business activities in appropriate locations and avoiding conflicts between incompatible activities), and he considered that Objective 14.6 would be consistent with this aspect of it.

[64] Mr Copeland, who gave economic evidence for the Car Club, told us that:[41]

> The Motorsport Park is a significant economic asset for Christchurch City which also has a wider regional and on occasions a national catchment in terms of attracting competitors and spectators.

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[36] Mr Dale, evidence-in-chief, paragraph [7.4]
[37] Ibid, paragraph [7.6]
[38] Mr Conway, Opening submissions paragraphs [6.38]ff
[39] Mr Kyle evidence-in-chief, paragraph [30(c)]
[40] Mr Kyle, rebuttal evidence, paragraph [13]
[41] Mr Copeland, evidence-in-chief, paragraph [49]

None of this evidence was controverted.

[65] The submissions and evidence for the Council and Car Club match the understanding we have gained about the role that the Motorsport Park plays in Christchurch, Canterbury and national motorsport. This was also abundantly clear in the evidence of the Car Club and Speedway witnesses involved directly in the Motorsport Park's management and operations.[42] For these reasons we find that the Motorsport Park is an important motorsport facility within the region, and that the disputed words should be included in Objective 14.6 to reflect this. Properly interpreted, we do not consider inclusion of the words determines how lower order aspects of PC52 are framed to safeguard the community from adverse noise effects, which was Quieter Please's concern. It would be a long reach to interpret either Objective 5.2.1 or Objective 14.6 as enabling motor racing or business activities at the Motorsport Park ahead of other aspects of the objective. In short, we agree with Mr Kyle that Objective 5.2.1 is equally concerned with avoiding conflicts between incompatible activities as it is with other matters "including enabling business activities in appropriate locations, enabling rural activities that support the rural environment and seeking the continued safe, efficient and effective use of regionally significant infrastructure".

Policy 14.6.1: Motorsport

[66] A new **Policy 14.6.1: Motorsport** is proposed to implement Objective 14.6: Motorsport. It reads:

> **14.6.1 Policy: Motorsport**
>
> a) To ensure that motorsport activities operate in a manner which do not result in an unreasonable level of noise being received by activities which are noise sensitive.
>
> b) To manage noise sensitive activities where they would be affected by noise from motorsport.

[67] Part (a) recognises the duty in s16 and provides how that part of Objective 14.6 concerned with avoiding adverse noise effects is to be implemented. Part (b) provides the basis for what some termed the "*reverse sensitivity*" rules (Rules 2.5.5 and 2.5.15.) plus the Inner and Outer Noise Boundaries depicted on the planning maps. The term "*noise sensitive activities*" is defined in the PC52 definitions. As the policy was included in the final preferred versions of all parties, it is not in dispute.

[42] Mr Mitchell for the Speedway Association and Messrs Cowan and Wederell for the Car Club

We confirm part (a) and reserve our decision on part (b) to the section below on related rules.

Amendments to Policy 14.4.1

[68] It is proposed that Recreation and Open Space policy 14.4.1 be amended by including the following underlined words.

> **14.4.1 Policy: Adverse effects**
>
> To ensure that activities associated with open space and recreational facilities do not have the effect of giving rise to adverse effects (noise, glare, visual detraction), including through incremental increases in scale and intensity, without separation or mitigation effects.

[69] The amended policy was included in both the Quieter Please and other parties' provisions. Mr Conway explained that it would implement Objective 14.6 and the operative Plan objectives.[43] We were not greatly assisted with evidence on the proposed amendment, but as it is not disputed it is confirmed. In doing so, we note Mr Dale's understanding that:

> ...Policy 14.4.1 will become redundant in the context of the Replacement District Plan. Instead, new policies will be included within a new Specific Purpose Ruapuna Zone which will provide the basis for managing the environmental effects of activities within the Motorsport Park. PC52 in its final form will be incorporated into the zone chapter upon it being made operative.[44]

What maximum noise level, duration and frequency controls should apply to the Motorsport Park?

[70] We commence this section by providing a summary of the current level of activity conducted at the racetrack and the speedway. We then outline the arguments advanced by each of the parties, before summarising the evidence and our evaluation of it.

Current racetrack and speedway activities

The racetrack

[71] As previously described, the racetrack operates on an almost daily basis. The busiest period is from 1 October to 31 March with a high demand for summer

[43] Mr Conway, opening submissions [6.44]
[44] Mr Dale, rebuttal evidence, paragraph [6.9]

weekend days especially Saturday afternoons and Sundays. The number of cars on the racetrack is generally limited to a maximum of 45 with this number achieved only at national events. Winter events are generally smaller and have fewer spectators. Motorsport activity on the racetrack was said to not occur before 0900 hours and on most weekdays is finished by 1700 hours or 1800 hours on weekends.[45]

[72] The racetrack has over 55 different users per year.[46] These include international, national and regular local club events typically conducted over a day or half day.[47] Regular users include the Car Club (30 events over 35 days per year), Motorcycling Canterbury (9 events over 11 days), Pegasus Bay Drag Racing Club (7 events over 8 days), British European American Racing (8 events over 9 days), Drift NZ (1 event over 2 days), Supermoto NZ (8 events over 8 days), Classic Action Motorcycle Sport (6 events of over 6 days) and Christchurch Trackdays (8 events over 8 days) totalling 87 days. In addition there are at least 6 smaller organisations that are regular users.[48]

[73] Mr Wederell, the Car Club's General Manager, understood the level of activity at the racetrack to have been relatively consistent in volume and competitor numbers over the last few years.[49]

[74] Since mid-2014 the Car Club has tried to avoid noisy vehicles on Mondays when it generally schedules driver training at low speeds. Vehicles are required to comply with the Motorsport NZ maximum noise level of 95 dBA measured 30m from the track when the vehicle is at maximum power during practice and competition.[50]

[75] The Car Club's operations are funded by a combination of racetrack usage charges and tenants (6) who use the racetrack.

The speedway

[76] The speedway season runs from October through to March.[51] As previously described, the Speedway Association runs approximately 15 meetings per year which involves about 45 hours of meeting time/season and 15 hours of actual racing time. In

[45] Mr Wederell, evidence-in-chief, paragraphs [24]ff
[46] Ibid, paragraphs [12]ff
[47] Mr Cowan, evidence-in-chief, Appendix 4: summary of track usage 2012 - 2013
[48] Mr Wederell, evidence-in-chief, paragraph [34(g)]
[49] Ibid, paragraphs [36]ff
[50] Mr Budd, evidence-in-chief, paragraph [38]
[51] Mr Mitchell, evidence-in-chief, paragraph [14]

addition there are approximately 5 practice meetings.[52] The level of activity has reduced over recent years.[53]

[77] Racing typically occurs between 1830 – 2200 hours. Weeknight events are very rare only occurring, for example, because of rained-out national title races. The Speedway Association hosts national events in addition to club nights with races conducted for multiple classes of speedway vehicles.[54]

[78] Vehicles are required to comply with the Speedway NZ maximum noise level of 95 dBA measured on the infield.[55]

The Council's position

[79] The Council characterised the PC52 provisions finally before the Court as a significant improvement on those in the operative Plan, pointing in particular to the following responses to residents' requests, being the inclusion of:[56]

(a) noise free weekend days;

(b) quiet Mondays (which the Council contended were adequate compensation for enabling double-day events, which are days when both the racetrack and speedway operate back-to-back events, and which the Speedway could not operate without);

(c) reduced operating hours;

(d) a permanent noise data logger which makes free up-to-date information about noise levels available to the public;

(e) noise management plans;

(f) a community liaison group;

(g) a publicly available annual calendar of events;

[52] Ibid, paragraph [28]
[53] Mr Jemmett, evidence-in-chief, paragraphs[10]ff
[54] Mr Mitchell, evidence-in-chief, Attachment A
[55] Mr Mitchell, evidence-in-chief, paragraph [54]
[56] Mr Harwood, closing submissions, paragraph [6.2]

(h) a publicly available calendar which shows the current month's activities, including information about the times and noise categories of each activity.

[80] As to the noise levels proposed by the Council's witnesses, Mr Conway submitted that they strike the right balance between allowing significant activities and assets at the Motorsport Park to continue to be utilised whilst avoiding unreasonable noise levels in the receiving environment. He highlighted that annoyance from the special audible characteristics arising from motorsport noise had been accounted for when determining the proposed noise levels, which explained the absence of a penalty for such.[57] This is confirmed in the 2012 report, which records that: [58]

> the noise rules ....have been developed to specifically address noise from motorsport activity, and adjusting the rules based on [SAC] "corrections" could inadvertently allow higher noise levels".

[81] Mr Conway submitted that the package of rules must be viewed in the round, and that its various elements need to be balanced and complementary in order to reach a reasonable outcome. He submitted that:

- PC52 will lead to some noise reductions from the status quo and prevent further increases;
- To impose more restrictive noise controls is likely to be less effective, because the lessees may turn their back on the proposals designed to provide respite for residents. (We interpret this as a thinly veiled reference to the Car Club and Speedway Association potentially seeking existing use rights declarations to validate their operations at current levels);
- In terms of s32 of the Act, the benefits of PC52 outweigh any costs; and
- The amended provisions before the Court will achieve integrated management of the effects of the use and development of land, and will control noise emissions and mitigate their effect (s31 of the Act).[59]

[57] Mr Conway, closing submissions, paragraph [3.6] and Acoustic: Joint Witness Statement, paragraph [6.4]
[58] The 2012 report, paragraph [9.1], pages 15 - 16
[59] Mr Conway, opening submissions, paragraphs [6.55]ff

Quieter Please's position

[82] Ms Steven submitted that the PC52 provisions before the Court reflect a rather skewed balancing of the competing statutory provisions, unduly weighted in favour of the Motorsport Park to the detriment of adjoining residents. She submitted that:[60]

> undue weight had been given to the dictates of the Car Club and Speedway and to the economic benefits deriving from their activities with undue weight attaching to other important matters bearing on ss 5 and 7 imperatives.

[83] Ms Stevens referred specifically to the need for plan provisions to enable people and communities to provide for their wellbeing, the requirements in s5(c) to manage adverse effects on the receiving environment and in s7(c) to maintain or enhance amenity values.[61]

[84] During the course of the hearing the relief sought by Quieter Please, outlined in Ms Harnett's evidence, was modified to that contained in Quieter Please's proposed provisions.[62] As we have already identified, these are the provisions that we are required to consider when describing and evaluating the case for Quieter Please.

[85] Ms Steven emphasised that it was important the appropriateness of the PC52 provisions be assessed in light of the Council's 2005/06 monitoring results, the 2007 report on the implications of that data, and the ensuing Council 2009 resolution. More particularly, Quieter Please considered the relief it sought to be reasonable and a better fit with the *"noise footprint"* monitored by the Council in 2005/06 and assessed in terms of its "reasonableness" in the 2007 report.[63] She characterised the case for the other parties as wanting the PC52 rules to reflect the current level of Motorsport Park, while Quieter Please considers that this would result in unreasonable levels of noise. She submitted that the noise footprint for the Motorsport Park should be shrunk.

[86] Ms Steven made detailed supporting submissions on the preceding propositions, not all of which need be recorded here. So that the Court might

[60] Which we interpret to mean "insufficient weight"
[61] Ms Steven, opening submissions, paragraph [12]
[62] Attached to counsel for the Car Club's memorandum of 24 June 2015
[63] Ms Steven, opening submissions, paragraphs [16] ff

completely understand her client's case Ms Steven gave a verbal summary which we found especially helpful, the principal points being as follows: [64]

(a) The Marshall Day Acoustics 2007 study, which both acoustic witnesses agreed was based on an appropriate process and methodology, reported that if the Motorsport Park activities triggered the operative 200 day rule 60 times each year by emitting 80 dBA $L_{10\ (1\ hour)}$ at the Park boundary, noise levels between the 55 and 60 dBA Inner and Outer Noise Boundaries would be moderate to significant and unreasonable.

(b) That conclusion is relevant to determining PC52. Quieter Please's case is that it is the number of high noise days that most affects the size of the noise footprint, namely the degree of adverse effects on receivers, who are the residents.

(c) The 2007 report stated that the 17 high noise days (up to 80 dBA $L_{10\ (1\ hour)}$) recorded during 2005/06 monitoring constituted a reasonable level of noise and would have no more than minor to moderate effects between the 55 and 60 dB Inner and Outer Noise Boundaries. But if those levels increased to 60 high noise days the effects would become moderate to significant and become unreasonable.[65]

(d) The other parties' cases lack transparency about why exposure at levels between 55 and 60 dB on potentially 143 to 180 occasions would be reasonable.[66] Or, put another way, it is not apparent in the experts' acoustic evidence how they have come to the conclusions expressed. All of this in a situation where the Council by its 2009 resolution set out to restrict noise levels, and the frequency of events, at then current levels.

(e) Ms Steven contended that over time the activities at the Motorsport Park appear to have increased, as demonstrated by Dr Chiles.[67] However, we note that the bulk of that increase occurred in the road legal vehicle category, which we do not understand to have a problematic noise signature.

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[64] Transcript, page 395, line 7

[65] Interpolations added to Transcript by the Court based on our interpretation of inaudible gaps.

[66] We apprehend the precise number is not critical to the submission and may have altered as the case progressed. By way of example, the other parties' finally preferred version excluding special interest vehicles would enable 148 days at up to 80 $dBL_{Aeq\ (15\ min)}$ comprising 120 + 8 + 15 + 5 days. We understood Ms Steven to be making a higher order point about relative levels/frequency.

[67] Dr Chiles, evidence-in-chief, paragraph [27]

(f) The essence of the Quieter Please case was that the Court should not move too far away from that which the Council set out to achieve by its 25 June 2009 resolution and, interpolating, be drawn into enabling current levels of activity. And that was what Marshall Day was said to have done in 2007; they looked at the number of high noise days and found that 17 was a reasonable number and 60 was unreasonable based on relevant acoustic standards and guides. Standards specifically relevant to motor racing were said to typically provide that as noise levels are lowered, the permitted frequency of activities increases and, we infer, the opposite should also apply. The dynamic between the number of days and the noise was evident in the 2007 report and that was how Marshall Day came to their view on reasonableness.

[87] Overall, Quieter Please sought a marked reduction in the number of high noise racetrack days, avoidance of concurrent "motorised activity"[68] at the racetrack and speedway (in substitution for the Decisions Version double day rule), restrictions on the hours of operation, restrictions on the number of days drag racing and SIVs vehicles can operate, and more respite days.

The Car Club's position

[88] Referring to Quieter Please's position in the parties' 12 March 2015 Joint Memorandum,[69] Ms Dewar submitted that the proposed 20 day cap on combined Car Club and Speedway activities at noise levels up to 80 dB L_{Aeq} and 95 dB L_{AFmax} would mean that most of the Car Club's activities could not operate. Apart from the logistical challenge inherent in sharing a noise allocation, the Car Club's position was that it would make the raceway financially unviable to the extent that it would need to close.[70] However we are not sure from the Joint Memorandum that Quieter Please intended that the Car Club and Speedway share a 20 day cap.[71] At best this is ambiguous and it certainly was not Quieter Please's position as recorded in Tables 1 and 2 of its finally preferred version of the Change where separate allocations are made for the two entities totalling 43 days at 80 $dBL_{Aeq\ (15\ min)}$.

[68] Which we interpret to mean motor racing
[69] Ms Dewar, opening submissions, paragraphs [24(b)]
[70] Ibid, paragraphs [26]ff
[71] The parties' Updated Statement of agreed and disputed facts and issues and s293 matters, 12 March 2015, paragraph [40(b)]; repeated in Ms Harnett's evidence-in-chief, paragraph [3.2]

[89] The Car Club proposed that the Decisions Version "double day" rule, that would require motor racing cease by 1800 hours on days when it occurred at both tracks, be amended to preclude racing at the same time (supported by set finishing times).

[90] It was the Car Club's case that, based on the available data, noise effects from the existing activities at the Motorsport Park are reasonable at nearby residences (excluding those purchased by Council). Relying on the Car Club's acoustic evidence, Ms Dewar submitted that the revised PC52 provisions will actually:

> reduce noise effects from the raceway for residents relative to existing activity, the operative rules and both the notified and decisions versions of [the Change]

She submitted that the residents' concerns about adverse health effects resulting from motor racing noise could be discounted as the environmental physician called by the Car Club (Dr Black) found no related direct health effects.[72]

[91] Ms Dewar submitted that *annoyance* should not be considered as a separate effect when considering noise. Citing case law[73] (albeit not necessarily of precedent effect), she contended that if it were considered at all, such effects as annoyance should be considered an amenity effect, but caution was needed to avoid double counting such effects as both amenity and noise effects. From a practical perspective she noted the Court's finding that there are: [74]

> ...real difficulties in measuring annoyance with any degree of certainty given the subjective nature of it and the fact it is unable to be objectively assessed or measured and is unpredictable".

[92] In the preceding case the Court found that compliance with noise standards will not necessarily avoid annoyance, and people outside applicable setbacks may be annoyed even when the noise is at a reasonable level. These aspects of Ms Dewar's submissions addressed two significant aspects of this case; namely the extent to which Quieter Please members are outliers, or not, in the continuum of how people experience noise, and the evaluation of lay witnesses' assessments of the reasonableness of noise levels.[75]

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[72] The parties' Updated Statement of agreed and disputed facts and issues and s293 matters, 12 March 2015,, paragraphs [120]ff

[73] ***Re Meridian Energy Limited*** [2013] NZEnvC 59

[74] Ibid [287]

[75] Ms Dewar, opening submissions paragraph [155]

[93] Ms Dewar submitted that the other parties proposed provisions are more appropriate than those proposed by Quieter Please.[76]

The Speedway Association's position

[94] Mr Schulte reiterated that the double-day rule in the Decisions Version, which precludes "motorised activities" at both the racetrack and speedway on the same day unless activities at both cease by 6 pm, jeopardised the survival of the speedway.[77] This is because the racetrack operates almost every Saturday during the summer[78] and the speedway typically races on the same day as the Car Club, with crowds from the latter moving on to evening speedway events. In Mr Schulte's words *"the Speedway would be unable to operate unless the Car Club chose to let it."*[79]

[95] Whilst the Speedway Association acknowledged the concerns expressed by Quieter Please members, it considered many to be historical and to have been addressed by more recent mitigation measures. The Speedway Association considers it has pared its activities to a minimum feasible level with the other parties' provisions enabling the speedway to operate a maximum of 15 race meeting days and 5 practice days per year. Mr Schulte pointed to the following specific mitigation measures taken in the recent past to avoid generating unreasonable noise[80]:

- Meetings now commence earlier to ensure a 2200 hours finish, which is confirmed in Table 2 of the Speedway Association's final proposed version.
- The Speedway Association has taken and implemented professional acoustic advice to avoid unnecessary public address system noise, which is now subject to proposed Noise Management Plan provisions.
- The Speedway Association has actively participated in working party meetings to pursue settlement of the appeals, including accepting the draft Noise Management Plan.
- It has lodged a submission on the proposed Replacement District Plan against relocating another motor-sport club to the Motorsport Park.

[76] Ms Dewar, closing submissions paragraph 1 [4] and [5]
[77] Decisions Version Rule 3 7th bullet, page 9
[78] Mr Dale, evidence-in-chief, paragraph [9.9]
[79] Mr Schulte, opening submissions, paragraph [97]
[80] Ibid, paragraph [13]

[96] Based on monitoring results, Mr Schulte submitted that the Speedway Association is confident it can operate within the PC52 noise limits including the 95 dBL_{AFmax} control, and relying on Mr Camp's evidence, that between the 55 and 60 dBA Noise Boundaries the level of speedway noise is reasonable.[81] Mr Schulte also drew our attention to Mr Camp's evidence that the 55 and 60 dBA Noise Boundaries represent the worst case scenario of the loudest events at Ruapuna. He said that the data logger monitoring results confirmed that the speedway has always operated at below the 80 dBA L_{eq}/95 dBL_{AFmax} limit, and on this basis complied at the 60 dBA contour.[82]

The residents' evidence

Quieter Please

[97] Five members of Quieter Please, Ms Harnett, Ms Shaw (who has moved out of the area in recent years), Mr Ritchie, Mr Rich and Mrs Alfeld gave evidence. Ms Harnett (the Chairperson of Quieter Please) explained that the residents seek an overall reduction in the total number of activities at the racetrack and speedway together with a reduction in the Lmax level. She detailed specific amendments sought to achieve the desired outcome. In addition to limiting the number and duration of noisy events, amendments were proposed that would provide respite days including at weekends and after major events.

[98] Like Ms Harnett, other Quieter Please witnesses described their personal perceptions of how activities and the Motorsport Park's noise footprint had increased over time. They relayed their personal experiences of how the noise impacted negatively on the enjoyment and use of their properties during the day and into the evening, especially outdoors. They described, often vividly, the negative response of visitors to noise levels experienced at their homes and having to leave their properties during the day for respite. There were references to effects on sleep patterns, including shift workers needing to sleep during the day, on residents' health and the ability to study indoors during the day. While cognisant of ambient noise generated by other activities in the area, the motorsport noise was said to be frequent, continuous and to have different tonal characteristics from other sources. Mr Ritchie, who lives 900 m from the racetrack at 79 Barters Road, stated that his main concern

[81] Mr Schulte, opening submissions, paragraphs[67]ff
[82] Ibid, paragraph [74]

was the duration and frequency and not the level of noise.[83] He sought what he described as "proper respite". Mr Ritchie's evidence does not necessarily counter or detract from that of other residents; it simply illustrates how noise is received differently by different persons and how some may have lower annoyance or tolerance levels than others.

[99] We mean no disrespect by not detailing the residents' evidence at greater length. Suffice to say we were struck by the sincerity of the statements and the witnesses' genuine concern to achieve relief from the noise they experience. We also acknowledge their preparedness to engage constructively on mitigation measures raised during the hearing while maintaining their position on principal grounds of relief.

Mr Wright

[100] Mr Wright, who lives at Pound Road near to Ms Harnett's address, was concerned with broad aspects of the noise controls as well as the specific reverse sensitivity measures which we come to below. He told us that it was only in more recent years the noise levels, and more particularly, the frequency, timing and diversity of activities had caused concerns.[84] Mr Wright explained that the submission lodged by him and his wife asked for PC52 to be declined because it did little to reduce activity or noise levels and failed to achieve a satisfactory balance between providing for recreational facilities and rural amenity values.[85] Mr Wright was a member of the working party formed to prepare a Noise Management Plan for the Motorsport Park and we note his evidence that:

> "During the course of the working party discussions I identified and experienced a significant and welcome change in the culture and management attitudes of both the Canterbury Car Club and the Speedway towards dealing with noise management issues. Both organisations have demonstrated a new and vastly improved level of responsibility, understanding of the issues, and engagement with the local community"[86]

[101] Mr Wright did not make reply submissions[87] and therefore we do not have his position on how either of the final proposed provisions deal with the two matters of particular concern to him, namely:

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[83] Mr Ritchie, evidence-in-chief, paragraph [19]
[84] Mr Wright, evidence-in-chief, paragraph [5]
[85] Ibid, paragraph[14]
[86] Ibid, paragraph [10]
[87] Transcript, page 466, line 20

(a) The requirement for 8 weekend "free of racing" days to be scheduled during the season 31 October–1 March (Rule 2). He was concerned that these days should not be scheduled either over the less active Christmas–early New Year period or at the shoulders either end of the season. In the other parties' provisions, Rule 2 requires 4 of the weekend days be scheduled between 2 January–31 March, which may not fully address Mr Wright's concern. Rule 2 in the Quieter Please provisions provides:

> "There shall be a minimum of 3 weekend days per calendar month, and on every day following 2 consecutive days of motorised activities, where there shall be no motorised activities permitted at the Motorsport Park".

(b) That there is adequate respite following double-event days. Mr Wright's evidence was that double-event days, especially when they are followed the next day with further circuit events, deliver the most excessive doses of noise for the greatest duration.[88] Rule 3 as finally proposed by all parties now precludes contemporaneous racing on the racetrack and speedway and the other parties' final provisions afford the certainty of Mondays being free of racing at both facilities.

Expert evidence

[102] In this section, we summarise the key points arising from the acoustic experts; Mr Camp for the Council and Dr Chiles for the Car Club.

Mr Camp

[103] Mr Camp is a principal consultant employed by Marshall Day Acoustics ("**Marshall Day**") with 32 years experience. In preparing his evidence, Mr Camp relied on reports produced by his company in 2007 and 2012. We have already briefly referred to the 2007 report and we now address it in more detail.

[104] The 2007 report studied areas surrounding the Motorsport Park, and its purpose was to:

- establish the reasonableness of the noise for surrounding residents

[88] Mr Wright, evidence-in-chief, paragraph [17]

- predict the noise environment should the Park operate within the maximum operative District Plan limits; and

- discuss possible noise attenuation measures for the area.

[105] Marshall Day used monitoring data gathered by the Council over the busiest four months, being November–March, of the 2005/06 racing season, which included continuous monitoring for 26 days covering the biggest events for the season.[89] Mr Camp's opinion was the 2007 report applied the most appropriate methodology to assess effects, and to determine what controls would be most appropriate at the Motorsport Park and that its conclusions remained valid.[90]

[106] The second report he relied on, the 2012 report, analysed additional noise monitoring data, compared the results with those reported in the 2007 report, and considered whether the Motorsport Park was complying with the operative Plan rules. The 2012 report was used to prepare PC52.

[107] As we have outlined above, Mr Camp's evidence-in-chief was relatively succinct considering that the subject is complex; however it was complemented in part by the substantial Joint Witness Statement ("**Acoustics: JWS**") he and Dr Chiles had prepared. To provide context for the evaluation that follows we record the following broad points made by Mr Camp:

(a) The number of days of activity at the Motorsport Park has remained essentially unchanged between 2007 and 2012.[91] This is at odds with Dr Chiles' evidence that the total number of days of activity has increased from 288 days to 328 days over the same period, although this is not necessarily a precise assessment.[92] We come to the significance of the level of the noise emitted on those additional days below, but we signal that the number of high noise days had not increased by many.

(b) Changes the Council seeks through s293 action, which go beyond the Decisions Version are appropriate in his opinion to address issues that have arisen subsequently.[93]

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[89] Transcript, page 60, line 26 and page 61, line 10
[90] Acoustics:Joint Witness Statement, paragraphs [5.1] and [5.2]
[91] Mr Camp, evidence-in-chief, paragraph [2.1]
[92] Dr Chiles, evidence-in-chief, paragraphs [24]ff and [27].
[93] Mr Camp, evidence-in-chief, paragraph [2.4]

(c) 20 dB and 25 dB reductions in noise levels occur from the Motorsport Park boundary data logger to the 60 and 55 dB Inner and Outer Noise Boundaries respectively.[94] As a guide it is reasonable to expect an outdoors noise level would be reduced by 15 dB indoors with windows open and by 20 to 25 dB with windows closed.[95]

(d) Mr Camp explained that:[96]

> ..... the Ruapuna noise contours are a composite which indicates the worst case conditions assuming all wind directions at once. The modelling is based on current international algorithms which are also valid for moderate temperature inversions ....

The 2007 report, which the contours are based on, used a *"sophisticated proprietary noise calculation programme called SoundPLAN to predict noise levels from the racetrack operational activities."*[97] The model takes account of a large range of factors affecting the propagation of sound, including meteorological effects such as wind direction. When doing the modelling MDA took three operational activities into account. It adopted the noise emitted by two V8 supercars operating 0900 to 1700 hours with a slight downwind propagation as a fair representation of levels of noise during weekdays.[98] It created a NZV8 scenario based on a review of noise monitoring from a number of large Ruapuna events as the basis for noise from large racetrack events operating 1000 to 1800 hours.[99] And it based speedway racing on international sprint cars, being a genre that is approximately 4 dB louder than other events measured at the speedway.[100] Monitoring showed there to be a good correlation between the SoundPLAN model predictions and measured noise levels.[101] The modelled noise levels were plotted graphically for "race operations" for the racetrack and speedway and included in the 2007 report as Appendix 1, Figures 1(a) – 1(f).[102] Separate plots are produced for the predominant wind directions (north-east and south-west) and the north-west, which

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[94] Transcript, page 88, line 15
[95] Ibid, page 105, line 25
[96] Mr Camp, rebuttal evidence, paragraph [10.4]
[97] The 2007 report, Section 6.3, page 40
[98] Ibid, section 7.1, page 47
[99] Ibid, section 7.1, page 48
[100] Ibid, section 7.1, page 48
[101] Ibid, section 6.6.2, page 44
[102] Ibid, section 7.1, page 49

occurs "less than 10% of the time". Mr Camp considered the contours to be a reliable indication of noise levels in the area.[103]

(e) The Council's modified position, including noise limits, restrictions on hours of operation and number of days per year, will ensure that noise effects on 13 existing residences located between the 55 dBA and 60 dBA Noise Boundaries will be minor to moderate from 0700–2200 hours.[104] Moderate and significant adverse effects were predicted above the 60 dBA and 65 dBA contours respectively.

(f) Mr Camp considered Quieter Please's proposal that the number of events permitted to produce 80 dB L_{Aeq} and 95 dB L_{max} be limited to 20 days per year unnecessarily stringent in light of the 2007[105] noise emissions, which he was satisfied were minor beyond the 55 dB contour, and this limit was not required to reduce noise to reasonable levels. However, we note there are a number of residences belonging to Quieter Please members within the latter contour. Mr Camp was silent about the effects on them. He contrasted Quieter Please's relief with the provisions in the operative plan and PC52 which enable up to 200 days at 80 dBA $_{L10\ (1\ hour)}$ and up to 154 days per year at 80dBAL_{Aeq} respectively.[106]

(g) Mr Camp did not support the proposal by Quieter Please that drag racing be reduced from 8 to 3 days per year because it was an activity which residents had consistently ranked as being of little concern due to the short duration of these events relative to other circuit events.[107] He said that drag racing had not been raised as a significant concern until the Council hearing.[108] We note that in their Table 1 Quieter Please would also reduce the other parties' finally preferred drag racing L_{max} level from 105 dBL_{AFmax} to 100dBL_{AFmax}.

(h) Mr Camp did not support either the 36 noise-free weekend days sought by Quieter Please or the 10 provided for in the Decisions Version, noting the former would mean that the Motorsport Park would become unavailable to several of the clubs which currently use it in circumstances where the

[103] Mr Camp, rebuttal evidence, paragraph [11.1]
[104] Mr Camp, rebuttal evidence, paragraph [2.5]
[105] Mr Camp, evidence-in-chief,, paragraph [3.3]
[106] Ibid, paragraph [14.3]
[107] Ibid, paragraph [14.6]
[108] Mr Camp, rebuttal evidence, paragraph [9.9]

effects are minor beyond the 55 dBA contour.[109] Nor did he support the Decisions Version 6 pm restriction on finish times on double event days.[110] In the event, Council finally proposed a minimum of 8 weekend days during the racing season when only "other" (non-racing) activities would be permitted (Rule 2) and that motor and speedway racing not occur at the same time (Rule 3).

(i) Mr Camp did not have relevant monitoring data when advising the Council in 2012 on limits that would be appropriate for weekdays. His initial advice that 65dBL_{Aeq} would be appropriate was shown to be restrictive when the first six months of logger data showed that existing activity is marginally noisier for short periods.[111] As the Acoustics: JWS records, this occurs in the order of 50 weekdays a year. We understand that is the genesis of the proposed Table 1 rule that motor racing on the racetrack be a permitted activity for a maximum of 80 days per annum up to 70 dB $L_{Aeq\ (15\ min)}$ and 90 dB L_{AFmax}.[112]

[108] In rebuttal evidence, Mr Camp agreed with Dr Chiles that it may be possible to delete the specific provision for Formula 5000 cars in PC52 by providing for them in the *special interest vehicle* (SIV) activity category.[113] In the event, this is what the other parties finally preferred; in their Table 1, special interest vehicle events are limited to 6 days per year as part of another permitted activity for a maximum of 90 minutes/day with maximum noise levels of 90 dB L_{Aeq} and 105 dB L_{AFmax}.

[109] Mr Camp also responded to the evidence of Quieter Please witnesses in his rebuttal evidence, providing explanations as to why their sincerely expressed concerns would either not arise or lacked a sound technical basis. Much of this evidence did not influence the final outcome or, in some instances, has been overtaken by concessions now included in the other parties' proposed provisions. We limit ourselves to the following aspects of general significance:

(a) The concerns of Mr Ritchie and Ms Harnett about conducting outdoor conversations without the need to shout was said to be negated by the predicted outdoor noise levels at their residences (57 dB L_{Aeq}), which does

[109] Mr Camp, evidence-in-chief, paragraph [14.7]
[110] Mr Camp, evidence-in-chief, paragraph [7.4]
[111] Mr Camp, rebuttal evidence, Section 8.
[112] Acoustics: JWS, 21 January 2015, paragraphs [8.6]ff
[113] Mr Camp, rebuttal evidence, Section 4.

not require raised voices to converse and traffic noise at Mr Ritchie's property is at a similar level. Also on many days when the Motorsport Park is downwind noise will be at a lower level than the predictions that underpin PC52. As we shall see this is a significant point.[114]

(b) That tree planting on Council-owned land in Hasketts Road is unlikely to provide significant benefit to many houses.[115]

(c) Specific requests and comments about mufflers, weekend noise-free days, shorter racing hours, and for cars to be checked before racing are addressed through either amended PC52 provisions and/or the proposed Noise Management Plan(s).[116]

(d) Any combined Car Club and Speedway Association noise limits would be difficult to enforce and, if the Speedway Association did not use all of its allocation, this has the potential to enable the Car Club to extend its operations into the evening.[117] Further, Speedway and Car Club data logger monitoring results can be readily differentiated for enforcement purposes.[118]

(e) Noting Ms Harnett's evidence that the 2005/06 monitoring data show comfortable compliance without invoking the operative Plan's 5-day rule, and only 15 occasions which invoked the 200 day rule, Mr Camp deposed that:

> .... monitoring was based on a limited data set. [It] did not include the entire year, it did not measure every event, and the results reported did not include regular weekday activity. In addition, monitoring at that time focused on noise levels in the south-eastern corner of [the Park] given the closest dwellings at that time were in that area."[119]

(f) Mr Camp disassociated himself from the view attributed to him by Ms Harnett that *"the more exposed [residents] are [to noise] the more [they] get used to it."* Rather, he deposed that noise from a particular source in the subject area is not as noticeable as it would be in more remote areas because of the number of activities that contribute to ambient levels. Further, traffic volumes on Pound Road where Ms Harnett lives have

[114] Acoustics: JWS, 21 January 2015, paragraphs [7.3] and [9.10]
[115] Ibid, paragraph [7.10]
[116] Ibid, paragraph [8.1]
[117] Ibid, paragraph [9.2]
[118] Ibid, paragraph [9.6]
[119] Ibid, paragraph [9.3]

nearly doubled to 8,500 vpd in the period 2006 to 2012, and are calculated by Mr Camp to produce a noise level around 65 dB L_{Aeq} 30m off the road at her property.

[110] Mr Camp's answers to questions put in cross-examination and by the Court elicited further helpful evidence. We note in particular his following answers to questions from Ms Steven.

(a) Mr Camp confirmed that the 2007 report stated that if the Motorsport Park were to operate at the noise levels permitted by the operative Plan (200 days per year at noise levels of up to 80 dB $L_{10\ (1\ hour)}$ at the site boundary) the levels between which noise is judged to be *reasonable* noise should be reduced by 5 dB and become 50 to 55 dBA L_{eq} between the hours of 0700 and 2200.[120] This is consistent with the Marshall Day finding that it is reasonable for residents to receive up to a moderate level of noise, which in Table 9 of the report is assessed as 55 dBA L_{Aeq} for the given frequency of 200 days per year at up to 80dB$_{L10\ (1\ hour)}$.[121] The assessment contrasts with the position implicit in PC52 that it is *reasonable* for residents to receive 55 to 60 dBA $L_{Aeq\ (15\ min)}$ between the Inner and Outer Noise Boundaries. Table 9 in the 2007 report was based on an assumption that, if the Motorsport Park held 200 large events per year, 60 of these would require the operative 80 dBL_{10}limit to be invoked. Notably, the other parties in their Table 1 proposed provisions would allow at least 148 days at up to 80 dB $L_{Aeq\ (15\ min)}$ excluding the comparatively modest special interest vehicle allowance.[122]

(b) Ms Stevens asked Mr Camp to bear in mind that in the 2007 report he had said that if racing exceeded 65 dBL_{Aeq} 60 times per year, it would result in unreasonable noise between the 55 and 60dB contours. When asked why he now considered that a reasonable noise environment would be provided for residents living between the same contours with 65 dBL_{Aeq} exceeded on 200 or more occasions, Mr Camp opined that PC52 does not enable 65 dB to be triggered (meaning exceeded) that many times.[123] Explaining his

[120] Transcript, page 55, line 15 and the 2007 report, Table 9
[121] The 2007 report, section 4.6.2 at pages 28-29 of 91
[122] 120 motor racing + 8 drag racing + 15 speedway racing + 5 speedway practice days = 148 days.
[123] We understand the question to be based on Table 9 Section 4.6.4 and Section 7.2 of the 2007 report and to reflect that the other parties' finally preferred version of PC52 enables combined motor racing, drag racing, special interest vehicles and speedway noise in excess of 65 dB on some 228 days per year

position, Mr Camp noted that speedway activities on Friday or Saturday always coincide with noisy activities at the racetrack (resulting in one noisy day, not two) and the racetrack does not operate every weekend.[124] We are not convinced that these factors are compelling.

(c) On a closely-related theme, Mr Camp accepted that PC52 in the form attached to Mr Dale's evidence would enable 145 to 150 days racing when permitted activities could emit noise up to 80 dB. He also accepted this was *"twice as much"* as the 60 days used in the 2007 report to assess the reasonableness of noise emitted at that level and frequency (in Table 9). Mr Camp (this time) conceded that if he were to take a consistent approach to that taken in the 2007 report, he would conclude that noise at the preceding level and frequency *"would result in an unreasonable noise environment between the 55 and 60 dBA contours"* if the racetrack and the speedway operated at "*absolute capacity*". He acknowledged there is nothing to stop them doing so *"except that there are wet days et cetera where they won't operate, but in theory, no."*[125] On its face, this was a significant concession. However, when a very similar question was put to him a second time by Ms Steven, Mr Camp did not accept the proposition maintaining that the 2007 report's assessment of reasonableness *"was based on a level of activity that was happening at that time."*[126] Ms Steven had difficulty with the veracity of that answer given the previously described implications of increasing the frequency of activities at levels up to 80 dBA for "reasonableness". We do not think this was a comprehensive answer.

(d) We also had some difficulty accepting Mr Camp's reasoning about why the 20 days of activity at up to 80 dBA sought by Quieter Please is not close to the 17 days at the same level assessed as reasonable in the 55 to 60 dBA range by the 2007 report (at Table 8). Mr Camp said he disagreed with this proposition because the 17 occasions were not monitored at the noisiest position on the boundary, which is where the data logger is now located. Mr Camp deposed that if the events were re-monitored at the data logger there would be a greater number of exceedences of the 65 dBA rule. We do not see how this helps the case Mr Camp supported as it reinforces the effect of the evaluation underpinning Table 9. We expect

[124] Transcript, page 78, line 20
[125] Transcript, page 80, lines 31-32
[126] Ibid, pages 83-84, lines 17-18

Ms Steven was on sound ground when she noted that Mr Camp knew where the monitoring locations were when he prepared the 2007 report, and that he had repeatedly said he stood behind the report methodology, which led to an assessment of what was reasonable.[127]

(e) Mr Camp accepted that the purpose of PC52 is to cap activity at the level that existed in 2007, but resisted Ms Steven's suggestion that he meant *"at the levels that [he] assessed in 2007 as being reasonable."*[128]

[111] In response to questions from the Court, Mr Camp stated that assessing cumulative effects in the receiving environment is difficult; it is not simply a matter of adding different sources; he was unsure how it should be done, but accepted it is a factor which should be given weight in an overall assessment.[129] We understand from his evidence that probably in the order of 100 aircraft (depending on the wind direction) fly over the subject area daily and that these typically generate around 75 decibels for about a minute. Aircraft movements are readily discernible in the noise logger data.[130]

Dr Chiles

[112] Dr Chiles is an acoustics engineer, who has worked in that field since 1996. Dr Chiles is currently employed in his own practice, but spends half his time as a Principal Environmental Specialist for the NZ Transport Agency. Dr Chiles also provided a succinct brief of evidence-in-chief that complemented the comprehensive Acoustics: JWS. Again, significant evidence was elicited through cross-examination.

[113] Dr Chiles was clear in the view that between 2007 and 2014 the scale and nature of activities at the racetrack have not changed in terms of noise. Whilst there has been an increase in road vehicle driver training, he considered that this activity generates negligible noise effects, which he said was generally the case for road legal vehicles.[131] His evidence was that whilst some motorsport activities have increased, others had decreased. Overall, he considered that the race track had *"generally maintained the same overall scale and nature of activities."*[132] We accept that the nature of the activities is unchanged, but record that "road vehicles" usage has grown

[127] Transcript, pages 82-83
[128] Ibid, page 81, line 8
[129] Ibid, pages 93, 102 & 103.
[130] Mr Camp, rebuttal evidence, paragraph [9.6]
[131] Dr Chiles, evidence-in-chief, paragraph [59]
[132] Ibid, paragraphs [15] and [27]

markedly. In Dr Chile's opinion the changes sought by Quieter Please would prevent a substantial "proportion" of racetrack activities, and the changes are not necessary to maintain reasonable noise effects.[133]

[114] He considered noise effects from the existing activity at the racetrack in combination with activities at the speedway to be *"reasonable inside and outside surrounding houses"* given that the noise is experienced during the day (this is to overlook noise from the speedway which the other parties would enable up to 2200 hours) and, importantly we think, varies depending not only on the specific activity but on the meteorological conditions.[134] Wind direction is especially significant in the latter respect. For example, Dr Chiles explained that 55 dB and 60 dB levels are only reached at residences in downwind conditions, and that if the wind was not blowing in this direction the levels are typically 5 dB lower.[135] Also the 2007 report noted that:[136]

> Wind effects are normally only noticeable in light to moderate wind conditions, as during times of strong winds, noise in trees and general wind related noise tends to mask out intrusive noise to some degree.

[115] Dr Chiles further developed this aspect of his evidence in rebuttal when responding to Ms Harnett's evidence.[137] Here he noted that the prevailing wind in Christchurch is from the north-east as illustrated in the 2007 report.[138] Dr Chiles analysed wind direction data recorded by the boundary data logger over a 90 day period from 1 January to 31 March 2015 between 0900 and 1800 hours.[139] On 40 days the average wind direction was in the prevailing north east quadrant (44%). On only 6 days (7%) was the wind from the north-west quadrant, that is upwind of where the Quieter Please residents predominantly live. The remaining 44 days were split between the south-east and south-west quadrants. This data is consistent with the 2007 report, in which it was noted that most noise complaints occur when the wind is blowing from the north-west quadrant during which time many of the Quieter Please residences are downwind of the Motorsport Park.[140] Dr Chiles noted that the sound level contours that have been used when determining the proposed control boundaries

[133] Dr Chiles, rebuttal evidence, paragraph [22]
[134] Ibid, paragraph [20]
[135] Ibid, paragraph [57]
[136] The2007 report, [6.1.1] page 35
[137] Dr Chiles, rebuttal evidence, paragraphs [44]ff
[138] Mr Camp, evidence-in-chief, Attachment B Graph 3 page 36
[139] Dr Chiles, rebuttal evidence, paragraph [45]
[140] The 2007 report, paragraph [6.1.1] page 36

and when considering noise levels are shown in Mr Camp's evidence.[141] The relevant Appendix to the 2012 report shows: [142]

> ...composite contours, which combine the predictions for each wind direction. For each location the composite contours show the highest sound level for all of the wind directions modelled.

[116] The Appendix carries a note which states:

> Care should be taken in interpreting these contours. The [appendix] should not be taken as noise levels that will occur at all times but rather as a guide to the worst case noise levels that could occur under any wind direction."
>
> (underlining added)

[117] Dr Chiles explained that the composite contours at Ms Harnett's house in Pound Road, which is located between the 55dB and 60 dB contours:

> are determined by the north-westerly wind, so for most of the time under the prevailing north-easterly wind or southerly wind the sound levels will actually be in the order of 5 dB lower than shown on the contours.

[118] When quieter racetrack activities such as race driver training are being conducted, Dr Chiles indicated that sound levels will be in the order of 10 dB lower. At the nearest downwind houses where the level might be 50 dB L_{Aeq}, Dr Chiles expected the racetrack to still be audible, but at other houses where the level is 45 dB L_{Aeq} he said it was likely to be only faintly audible. We find this evidence (which was not contradicted) to be significant and more lucid than Mr Camp's explanation of this important aspect.[143]

[119] Dr Chiles explained that the rule enabling up to 50 weekdays of motor racing at 70dB$L_{Aeq\ (15\ min)}$ has arisen because insufficient monitoring data was available when PC52 was first drafted and consequently the limits do not allow for some existing weekday activities at the raceway. Dr Chiles did not consider that this rule would lead to any increase in existing noise effects, presumably because it is less than 80dB$L_{Aeq\ (15\ min)}$ – a level that Dr Chiles predicted would provide a reasonable receiving environment. Whether the effect would be significantly different at the maximum of 80 days as finally proposed by the other parties (Table 1) is a moot point to which we return in our s293 section below.

[141] Mr Camp, evidence-in-chief, Attachment C Appendix 2
[142] Dr Chiles, rebuttal evidence, paragraph [47]
[143] Dr Chiles, evidence-in-chief, paragraph [59]

[120] Dr Chiles was cross-examined at length by Ms Steven. Answers germane to matters we must decide included:

(a) Dr Chiles was uncertain how the dBA $L_{eq\ (1\ hour)}$ measurements used in the 2007 report[144] were "translated" into the $L_{eq(15\ min)}$ metric used in PC52, but was confident that related predictions are based on measurements taken when there was activity on the track and that the contours will over estimate the sound levels if there is not activity on the track. He also noted that the operative Plan requirement to use $L_{eq\ (1\ hour)}$ may have yielded to the NZS 6802:2008 requirement to use $L_{eq(15\ min)}$.[145] We see no disadvantage to the residents in this change because as Dr Chiles intimated a measurement taken over 15 minutes of racing better depicts the effects of it than a measurement taken over an hour when racing may be interspersed with quieter activities or no activity.

(b) We have concluded that little if anything turns on the extensive questioning of Dr Chiles about the implications of where the 2005/06 monitoring occurred at the Motorsport Park including towards the south-eastern boundary. We expect, as Dr Chiles deposed, that Marshall Day was aware of the implications of this for noise levels at different points on the Motorsport Park boundary and will have taken it into account when recommending the levels to be achieved at the data logger site and when the Inner and Outer Noise Boundaries were plotted.[146]

(c) Dr Chiles did not accept that the 2007 report prediction of 60 "noisy days" up to 80 dB resulting from 200 large events per year was based on monitoring 57 large events with 17 noisy days.[147] Rather, it was his understanding that *"the frequency analysis was primarily based on conversations with the Car Club about how many events there are in the annual calendar."*[148] He expanded on this by explaining that he understood that the Council did the monitoring, provided the results to Marshall Day with a Car Club events calendar and that Marshall Day would have deduced what the noisy days were.[149]

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[144] Transcript page 269 and The 2007 report, pages 49 and 91
[145] Transcript, page 270
[146] Transcript, pages 272 and 283
[147] Ibid page 279
[148] Ibid, page 279
[149] Ibid, page 280

(d) When asked further questions around this topic, Dr Chiles said that having accepted Table 8 in the 2007 report he did not need to look at Table 9 because PC52 *".... reduces the level of activity so I have not needed to consider what [the effect would be] if the activity increased ..... but I agree that if the activity did increase the effects would increase as well."*[150] The latter must be correct, and all things being equal, the approximately 148[151] days racing per year at up to 80 dB enabled by the other parties' provisions would potentially have a greater effect than the projected 60 days which underpin the Table 9 level of effects assessment. This needs to be viewed, however, in the context of the potential in the operative Plan for up to 200 days at 80 dBA, with more liberal provisions on 20 of those days and the 170 days at 80 dBA_{Leq} suggested by the 2012 report.[152] It also needs to be understood in the context of what received noise levels will be in prevailing wind conditions. Table 8 and presumably Table 9 are for the predominant wind conditions, namely north-east and south-west.[153] Thus they do not reflect the north-west condition under which noise effects at the residences of the Quieter Please's members are the greatest.

(e) Dr Chiles maintained his position that effects in the receiving environment between the 55 and 60 dB contours will be minor to moderate, notwithstanding the 2007 report put to him by Ms Steven that triggering $80dBAL_{10\ (1\ hour)}$ on 60 occasions per year between 0900 and 2300 hours would lead to moderate to significant effects.[154] We are puzzled by Dr Chiles reasoning that this was because he did *"not consider that there can be any significant increase in the number of exceedences of those noise levels that occurred at that time."*[155] On its face, this ignores the level of activity enabled by PC52. The answer may have been an intended reference to the likely frequency of high noise days, but we keep in mind that noise effects are a function of both level and frequency (amongst other factors). Dr Chiles maintained this position, however, when essentially the same question was put a second time responding *".... In my evidence I have said I considered the noise would be reasonable at all of the existing dwellings outside the 60*

[150] Transcript, page 288
[151] Subject to the Court's final determination
[152] The 2012 report, paragraph [9.1: 5th bullet], page 16
[153] The 2007 report, Section 4.6.2, page 28
[154] Transcript, page 294, line 3
[155] Ibid, page 294, line 3

contour."[156] Again, this answer needs to be understood in the context of what received noise levels will be in prevailing wind conditions.

Evaluation and findings

[121] We agree with Ms Steven that the opinions expressed by the acoustic experts, and on which the planning witnesses relied, lacked transparency on the important point of how they determined a 55dB to 60 dBA footprint to be reasonable at the frequency enabled by the other parties' proposed provisions. Taking a charitable view, we assume this resulted from how the cases for the Council and the Car Club were presented and to a lesser degree how the acoustic evidence was framed. Both acoustic experts acknowledged that noise at the same level experienced more frequently, and for a longer duration, has a greater adverse effect. We were therefore troubled by their apparent reluctance to accept, as Ms Steven pointed out repeatedly, that on its face the Table 9 scale of effects requires a *reasonable* receiving environment of 50 dB to 55 dB for the level of activity (approximately 148 days) and level of noise (80 $dBL_{Aeq(15\ min)}$ and 95 dBL_{AFmax}[157]) proposed for motor racing and speedway.

[122] This is to overlook, however, the significance of how wind direction was dealt with in producing the 55 dB – 65 dB contours. Significantly, as explained by Dr Chiles and more obliquely by Mr Camp, because the residents' properties are downwind of the Motorsport Park on relatively few occasions noise levels between the 55 to 60 dB contours will typically be 5 dB lower for most of the time and thus within the minor–moderate effects range deemed reasonable in the 2007 report. This was recognised by Ms Dewar in closing submissions when she observed *"The contours which form the basis of what is a reasonable amount of noise are not based on the number of events [but] rather the actual dose of noise in all wind directions."*[158] Indoors the levels will be lower again, and within the range generally considered appropriate for sleep with windows open. We also remind ourselves that the 2007 report Tables 8 and 9 assessment of reasonableness is based on the operative Plan, which allows more liberal operating provisions than those now proposed including, for example, 200 days per year at $80dBAL_{10}$ up to 2300 hours with

[156] Transcript, page 299, line 4
[157] Excluding drag and special interest vehicles at 105 dBL_{AFmax}
[158] Ms Dewar, closing submissions, paragraph [9.13]

speedway until 2400 hours on 15 of those days. On a further 5 days no L_{max} level applies.[159]

[123] That is not to say that some persons will not find noise at the described levels annoying, causing a reduction in their outdoor amenity. It is clear from the evidence that some residents are affected in this way. This is inherent in how noise is experienced by the population at large, and as Mr Ritchie and Mr Wright's evidence showed, noise effects can turn on factors other than level, for example, frequency, duration, and degree of respite.

[124] Overall, we find that in most wind conditions noise levels between the 55 and 60 dB contours will be reasonable for the activity levels enabled by the other parties' proposed provisions. Those occasions when there are light–moderate north-westerly conditions do not occur frequently enough to warrant a different conclusion.

[125] As well, the mitigation measures proposed, including the Noise Management Plans, are relevant to our evaluation of what noise is reasonable in the receiving environment. These measures complement and act in concert with the permitted noise and frequency levels. We note in particular from the other parties' proposed provisions:

(a) The operation of Table 1 racetrack activities is limited to between 0900 and 1800 hours, except on a maximum of 15 Saturdays or Sundays and 5 Fridays per year when there is provision for an extension to 2000 hours (being 20 of the 182 days in the six month Car Club racing season 1 October – 31 March)[160]. This compares favourably with the operative "any day" rule of 2200 hours and 200 day exception to 2300 hours. We return to the extent of the extended hours below.

(b) Speedway racing is to be finished by 2200 hours and practices by 1800 hours.

(c) The certainty that there will be a "quiet day" at both tracks every Monday and clarity on the five public holidays and for the period 25-31 December when there is effectively to be no racing (Rule 5).[161]

[159] Mr Schulte, Opening submissions, paragraph [72]
[160] Mr Wederell, evidence-in-chief, paragraph [19]
[161] Christmas Day and Boxing Day are 2 of the six public holidays, falling within the period 25-31 December

(d) Rule 2 which requires a minimum of 8 weekend days during the season be race free (8 days out of 52 weekend days during the season). We evaluate the merits of extending this to 10 weekend days below.

(e) The Noise Management Plan provision, which introduces a suite of information and process requirements, including the certainty afforded by an updated public calendar of events (activities, times, noise categories, respite weekend days); protocols for sharing noise monitoring data and reporting noise level exceedences; vehicle noise and public address system controls; and a complaints procedure.

(f) The requirement for a Community Liaison Committee that is to include local residents.

[126] We had no compelling evidence of other viable measures that might be adopted to reduce noise levels at the Motorsport Park boundary. The 2007 report investigated and found that a noise barrier, such as a 8 m high bund to the south of the racetrack and speedway, would not result in a significant reduction in levels at most surrounding dwellings (less than 2 dB);[162] and we would not view this as cost-effective or the best practical option. In any event, there is already an existing bund at a lesser height around the southern side of the racetrack, which was assessed by Marshall Day as having "*some effectiveness*" and there is also a full sheet steel wall encircling the speedway.[163] We had no compelling evidence that the noise emitted by vehicles could be reduced by enhanced muffler technology beyond what is required and being done in accordance with Motorsport NZ and Speedway NZ standards. The Car Club public address system has attracted complaints and is (now) proposed to be controlled at suitable day and night levels, and is to be addressed in the Noise Management Plan. The speedway has engaged an acoustic expert to investigate its public address system and implemented their recommendations on how unnecessary noise can be best avoided.[164] Reducing the frequency of high noise events as Quieter Please proposed is a further potential mitigation measure. However, we are not persuaded that this is necessary to provide an appropriate noise footprint for residents and, although not the sole test, we had uncontroverted evidence on the adverse financial viability implications of limiting the racetrack and speedway to a markedly reduced number of high noise days, such as the 43 finally proposed by Quieter

[162] The 2007 report, paragraph [7.7], page 62
[163] The 2007 report [7.7], page 62
[164] Mr Schulte, opening submissions, paragraph [13.2]

Please.[165] Additionally, the limitation would have a disproportionate effect on the scale of recreational activity able to be conducted.

[127] Overall, we find that the other parties' proposed version comprises an appropriate mix of potentially available measures and controls. We are satisfied, subject to fine-tuning, including the maximum number of Table 1 days permitted at up to 70 $dBL_{Aeq\ (15\ min)}$, that the mitigation measures now proposed for noise control other than its level will, in conjunction with the noise level standards we have endorsed, result in a reasonable noise environment for residents between the Inner and Outer Noise Boundaries.

Controls on noise sensitive activities between the Inner and Outer Noise Boundaries

Rule 2.5.15: Noise sensitive activities – Ruapuna Noise Boundary

[128] The Decisions Version confirmed Rule 2.5.15 Noise Sensitive Activities – Ruapuna Noise boundary. The rule requires that between the Inner and Outer Noise Boundaries in any Rural Zone[166] surrounding the Motorsport Park any new noise sensitive activity, and additions[167] to identified noise sensitive activities,[168] be designed to ensure that prescribed indoor sound levels are not exceeded with windows/doors closed. For residential units compliance can be achieved using either a design solution in the Plan (Volume 3 part 4 Appendix 7) or by a specialist report from a suitably qualified person submitted with a building consent application. The Decisions Version explains that: [169]

> Within the Ruapuna Outer Noise Boundary, the establishment of new noise sensitive activities should be discouraged unless the dwelling can meet acoustic insulation requirements. Noise from Ruapuna will be clearly audible in this area and needs to be managed.....In the event these levels could or would not be met, resource consent for a non-complying activity would be necessary."

The rule is to implement new policy 14.6.1(b) "To manage noise sensitive activities where they would be affected by noise from motorsport".

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[165] Mr Copeland, evidence-in-chief, paragraph [10] and [40], and Mr Cowan, evidence-in-chief, paragraphs [104]-[142]
[166] Except the Rural Quarry Zone
[167] In excess of 25 m^2
[168] Sleeping areas, other habitable areas and named education facilities.
[169] Council would delete the rule's Explanation and Reason to bring PC52 into alignment with the Replacement Plan's format using s293 – refer Joint Parties Memorandum 24.2.2015 [25].

[129] The rule's detail evolved somewhat during the course of the hearing through evidence and closing submissions, but its evolutionary trail is of limited consequence. We shall concentrate on the parties' proposed provisions that followed closing submissions.

The Car Club's position

[130] This was a topic upon which the Car Club and Council ultimately took different positions. Ms Dewar explained that the Car Club had not participated in earlier decision-making on the *"so called reverse sensitivity provisions."*[170] The Car Club's acoustic advice was that the attenuation measures between the Inner and Outer Noise Boundaries were not imperative.[171] Given the residents' concerns about the provisions and the equivocal acoustics evidence, which we come to, the Car Club's position was that the rule's attenuation measures should be deleted; compliance with the Christchurch Airport 50 to 55 dBA noise contour rules that overlay the area should be relied on,[172] and the PC52 Boundaries should be retained for information purposes only. Ms Dewar saw these measures collectively as being an appropriate way to give the public notice of the area's acoustic environment without placing a financial compliance burden on residents and raising any related equity considerations. The Car Club included amended rule provisions that would implement this approach in its proposed final provisions.

The Council's position

[131] In opening submissions for the Council, Mr Conway provided little assistance with the underlying rationale for Rule 2.5.15 beyond referring to the Council's acoustic evidence, that the rule would afford reduced noise effects for the residents of new dwellings and that the building compliance costs would be relatively modest.[173] In its proposed final version the Council asked for retention of the Decisions Version of the rule for the reasons given in evidence by Messrs Camp and Dale, which we discuss below. In its proposed final provisions, the Council, commenting on the Car Club's preferred approach, noted that: [174]

> ... the airport noise contour insulation requirements are not as strict as those in PC52, and do not provide for an exemption for extensions up to 25 m^2. In

[170] Ms Dewar, closing submissions, paragraphs [12]ff
[171] Transcript, page 479, line 14
[172] As shown on Exhibit 2.
[173] Mr Conway, opening submissions, paragraphs [6.50]ff
[174] Comment box p3/8 of the other parties provisions filed with the Car Club 24 June 2015 Memorandum

> addition, the airport noise contour insulation requirements are subject to change through the proposed Replacement District Plan process.

[132] No specific evidence on these aspects was provided.

[133] In closing submissions, Mr Harwood (for the Council) accepted that the rule was not being sought because noise levels between the Inner and Outer Noise Boundaries would otherwise be unreasonable.[175] He indicated that if the Court decided that the rule was not required, the Council would like to see both boundaries retained for public information purposes as suggested by the Car Club.[176]

Mr Wright's position

[134] Mr Wright expressed his surprise and concern that Rule 2.5.15 was included in PC52; he had not anticipated a control of its type would result from the Council's originating resolution.[177] He considered that PC52 should focus on reducing noise levels and activities, and not place reverse sensitivity restrictions on residential activity, which he considered punitive, unfair and unjustified.

[135] Mr Wright also referred to the Airport Noise Boundaries updated in December 2013, and opined that they adequately address any reverse sensitivity effects. He submitted that *"there is no valid reason therefore why PC52 needs to have its own special provisions."*[178] He also considered the rule to be unnecessary in light of Mr Camp's evidence that *"the noise effects on many of the properties between the inner and outer noise boundaries [are] minor."* That should perhaps be minor to moderate but we understand Mr Wright's point. We understood Mr Wright to seek deletion of the Outer Noise Boundary and related aspects of Rule 2.5.15.

Quieter Please's position

[136] In opening submissions for Quieter Please, Ms Steven contended that it was difficult to reconcile the Council's case about the reasonableness of noise received between the Inner and Outer Noise Boundaries with its justification for reverse sensitivity controls.[179] Ms Steven saw Rule 2.5.15 shifting the onus onto landowners to mitigate Motorsport Park noise emissions and justifying this on the basis that

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[175] Mr Harwood, closing submissions Section 4
[176] Mr Harwood, closing submissions paragraph [4.3]
[177] Mr Wright, evidence-in-chief, pages 5, 12ff
[178] Mr Wright, evidence-in-chief, pages 11 & 12
[179] Ms Steven, opening submission, paragraphs [31]ff

without the rule the noise environment would not be reasonable for new residents between the 55 and 60 dBA contours. She submitted that reverse sensitivity constraints are typically imposed on occupiers in a receiving environment as an exception to the principle that it is for the person generating the effects to avoid, remedy or mitigate the effects of their activities, (to which we would add, "to the maximum reasonable extent"). Ms Steven considered the term "reverse sensitivity" cannot be used to disguise the fact that the "primary" effects addressed by the rule are on amenity resulting from unreasonable levels of noise. She noted that PC52 does not provide any mitigation for existing residents, who are under no obligation to "attenuate" their dwellings to give respite, and she argued that it followed that: [180]

> ...if the noise environment is reasonable between the 55 and 60 dBA contours [for them], there can be no justification for reverse sensitivity controls [for newcomers]."

This is a point well made.

[137] In its notice of appeal, Quieter Please sought that either the Rule 2.5.15 restrictions be removed or that a requirement be inserted that building mitigation costs would be borne by the Council/lessees.[181] In its closing submissions Quieter Please indicated that deletion of the Rule 2.5.15 was dependent on its primary relief [on the number and level of high noise days] being granted.[182] When filing its final proposed provisions, Ms Steven indicated that Quieter Please was: [183]

> .... not opposed to the Car Club's proposal that [the Rule 2.5.15 provisions] be deleted, although its position is that without a reduction in noise footprint on the terms [Quieter Please] seeks, there will not be adequate mitigation of noise from Ruapuna. The Car Club appeal did not seek deletion of these provisions, and this further amendment now sought by the Car Club can only be pursued under s293, unless deletion is part of the package of relief pursued by Quieter Please.

By way of clarification, we reiterate that the Car Club did not seek deletion of Rule 2.5.15 but rather its substantial amendment in the ways previously described.

The expert evidence

[138] Mr Camp offered little evaluative technical evidence justifying Rule 2.5.15 beyond stating that:

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[180] Ms Stevens, opening submission, paragraph [35]
[181] Quieter Please Notice of Appeal, paragraph [8.8]
[182] Transcript page 460, lines 10-15
[183] Quieter Please proposed provisions, Appendix 2, page 2, comments box

(a) he considered it important;

(b) the compliance costs would not be significant; and

(c) a standard brick dwelling constructed to current Building Code requirements would generally comply subject to upgrading bedroom ceilings and windows.

[139] He considered *"the benefit of creating areas that are protected from noise both inside and outside new dwellings [to] far outweigh [the] cost."*[184] Mr Camp's reference to mitigating outside noise is notable because although adverse effects on outdoor amenity was part of the residents' case, little hearing time was spent on how this might be achieved (except by reducing the frequency of events); yet we find a recommendation in the 2012 report attached to Mr Camp's evidence that, because adverse effects will occur outside dwellings, particularly during summer months, *"any new or altered dwellings within the noise contours should be required to provide an outdoor living space which is screened from noise from Ruapuna."*[185]

[140] A draft rule wording was provided, namely: [186]

> Require any new or altered dwellings to be provided with "an outdoor living space, not less than 50 m^2 [Council to confirm this value], screened by a solid wall or fence not less than 2.5 m high and not more than 2 metres from the edge of the outdoor living space closest to Ruapuna. The design and location of screens shall be in accordance with [Appendix 3] or be designed by a suitably qualified acoustic consultants to achieve a noise reduction of not less than 5 dBA based on the design noise spectrum given in [above condition].

[141] In his rebuttal, Mr Camp did not accept that the Christchurch Airport noise contour insulation requirements are adequate without Rule 2.5.15[187]. He deposed that any standard modern house construction will achieve the airport requirements but the purpose of the rule: [188]

> is to provide an indoor respite area as additional mitigation if residents are annoyed by motorsport noise, and this requires some additional treatment to new houses."
>
> [underlining added]

Mr Camp did not provide a quantified noise level analysis.

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[184] Mr Camp, evidence-in-chief, Section 10
[185] Mr Camp, evidence-in-chief, Attachment C the 2012 report, page 17, line 23
[186] Ibid, evidence-in-chief, Attachment C of the 2012 report, page 20
[187] Mr Camp, rebuttal evidence, paragraphs [7.9] and [11.2]
[188] Ibid, paragraph [7.9]

[142] Replying to questions put to him in cross-examination, Dr Chiles rejected the proposition that he supported Rule 2.5.15 on the basis that a certain level of attenuation is justified to achieve a satisfactory internal noise environment.[189] He said that the rule was there because, although the outdoor levels are reasonable, there are people who have found the Motorsport Park noise annoying, and the rule is to mitigate that reverse sensitivity effect. We understood Dr Chiles to be referring to people who are more readily annoyed by noise than the population at large, and that he saw the purpose of the rule being to mitigate an effect which could otherwise cause such people to be annoyed indoors.

[143] Dr Chiles was unaware of reverse sensitivity controls around other motorsport parks and having considered Mr Camp's evidence in support found *"there's no right or wrong answer, [the rules] appear to be a reasonable approach."*[190]

[144] This approach strikes the Court as equivocal support at best. We understood Dr Chiles to support retention of the requirement in the Decisions Version rule for [mechanical] ventilation and/or air conditioning, which the other parties' proposed provisions would strike out.[191]

[145] Dr Chiles confirmed that the effect of Rule 2.5.15 would be to achieve a higher degree of attenuation than the 15 dB reduction typically achieved between outdoors/indoors with windows open; describing it as a "*step change.*"[192] Dr Chiles confirmed that PC52 did not require mitigation of outdoor noise at the receiving environment, but noted that Mr Camp's previously cited recommendation in the 2012 report had not been followed through.[193] Dr Chiles accepted that although he had used the term *"reverse sensitivity effects"* when discussing Rule 2.5.15 the rule was essentially concerned with *"amenity annoyance effects."*[194]

[146] In the Acoustics: Joint Witness Statement ("**Acoustics: JWS**")the experts considered that exempting minor alterations less than 25m^2 to existing dwellings was a pragmatic approach to minimising residents' compliance costs.[195] Otherwise the

[189] Transcript, page 299, lines 20ff
[190] Ibid page 300, line 2
[191] Ibid, page 300, line 22 and other parties provisions, Attachment 3, page 3, line 8
[192] Transcript page 301, line 30
[193] Ibid, page 302, line 15
[194] Ibid, page 303, line 24
[195] Acoustics: JWS, 21 January 2015, paragraph [9.5]

Acoustics: JWS offered no comment on Rule 2.5.15 that we could see beyond acknowledging its inclusion in the notified version.[196]

[147] Mr Dale considered all noise need not be controlled at source and, because some activities cannot completely internalise their effects, the Council is required to consider alternative methods of managing adverse effects guided by higher order RMA and Plan provisions. We understood him to view the Rule 2.5.15 controls as an alternative method. He told us that much of the land between the Noise Boundaries is owned by the Department of Corrections, Islington Park (Business 8), Transpower and Fulton Hogan. The majority of the remaining properties within the affected zones have existing dwellings. While subdivision of further sites at a minimum density of 4 hectares *"is theoretically possible"* Mr Dale considered *"the realities of significant subdivision in this area unlikely due to land configuration and use"* and the potential for future noise sensitive activities between the Noise Boundaries to be limited.[197] Mr Dale confirmed that much of the area within the PC52 55 dBA boundary is covered by the previously mentioned airport 50-55 dBA controls, which trigger their own requirements for acoustic insulation.

[148] Notwithstanding the potential for limited future development, relying on Mr Camp's evidence, Mr Dale considered *"the noise insulation requirements to be appropriate to mitigate effects on amenity and wellbeing"*. He described in considerable detail the degree to which existing rural dwellings are caught by Rule 2.5.15 with reference to the RPS definition of noise sensitive activities,[198] the Decisions Version and proposed Replacement District Plan panel decisions on strategic objectives. We note his conclusion that because Motorsport Park noise is different from that emitted by other sources, he considered greater restrictions on residential activities to be appropriate between the PC52 Inner and Outer Boundaries than what the other referenced instruments require.[199]

[149] In rebuttal, Mr Dale responded to Mr Kyle's views about the detailed wording of Rule 2.5.15.[200] He agreed with Mr Kyle that if confirmed, the rule should refer to buildings being both *"designed and constructed"* to the required design standard. Mr Dale did not support Mr Kyle's suggestion to delete the $25m^2$

[196] Ibid, paragraph [6.5]
[197] Mr Dale, evidence-in-chief, paragraphs [9.26] – [9.46]
[198] Ibid, paragraph [9.40]. Summarised, the definition includes residential activities other than those in conjunction with rural activities that comply with relevant district plan rules as at 23 August 2008, specified education activities, travellers' accommodation and healthcare facilities.
[199] Ibid, paragraph [9.46]
[200] Mr Kyle evidence-in-chief, paragraphs [44]ff

extensions exemption. He considered it provided flexibility for dwellings to be reconfigured or to evolve in a way that did not substantially increase their size or exacerbate reverse sensitivity effects. This did not address Mr Kyle's evidence that the exemption is essentially an appeasement that would enable reasonably substantial additions to *"sleeping areas or other spaces that might comprise important listening environments such as studies or lounge spaces."*[201] Mr Dale did, however, accept Mr Kyle's point that the rule's purpose could be negated by successive additions and recommended amending the rule so *"that additions are not to exceed a total of 25m^2 from the time the rules become operative."*[202]

Evaluation and findings

[150] Rule 2.5.15 is clearly not required for health or sleep deprivation purposes,[203] nor, in our judgment, is it required because the indoor noise levels in the receiving environment would otherwise not be reasonable as Ms Steven submitted. We accept that the purpose of the rule was accurately described by Dr Chiles as being for amenity annoyance purposes.

[151] At the risk of repetition we reiterate that the rule is concerned with indoor design sound levels. We were not assisted by the paucity of quantified analysis of these levels with and without Rule 2.5.15, but find the following factors relevant:

(a) Ownership and land use patterns mean potentially affected parts of the receiving environment are very largely located south and south-east of the Motorsport Park.

(b) On the relatively small number of occasions when the wind is blowing from the north and north-west outdoor daytime noise levels in the receiving environment will be in the range 55 to 60 dBA. At other times when the dominant north-easterly is blowing or the receiving environment is upwind of the Motorsport Park outdoor levels will be typically be in the range of 50 to 55 dBA.

(c) On the latter occasions approximately 15 dBA attenuation will be achieved indoors with the windows open, delivering noise levels in the order of 35 to 40 dBA. We understand these levels to be reasonable for

[201] Ibid, paragraph [45]
[202] Mr Dale, rebuttal evidence, paragraph [4.3]ff
[203] Dr Chiles, Transcript, page 303

most people engaged in indoor activities being equal to or less than commonly required night-time levels for sleep purposes.[204] A further degree of attenuation may be achieved by the extant Christchurch Airport noise contour building controls, which noise sensitive activities are to be designed in accordance with, but we had no quantified evidence on their effect and do not rely on them for our findings.

[152] We have determined that it would not be a proportionate response to maintain Rule 2.5.15 in an unamended form with the controls applicable to all noise sensitive activities and persons, when the rule is concerned with reducing noise levels for a relatively small group of people who may experience amenity annoyance. This is especially so in a situation where there is limited potential for new development.

[153] For these reasons we see merit in the Car Club's finally preferred version of Rule 2.5.15 including that the 55 and.60 dBA Inner and Outer Noise Boundaries be retained on the Planning Maps for public information purposes with a suitable explanatory note describing their status. The Inner Noise boundary is required in any event for Rule 2.5.3(2), which we come to below. However, recognising Ms Steven's submission that adoption of the Car Club's preferred approach may require s293 action we reserve making a determination on Rule 2.5.15 and deal with the matter further below with other s293 matters.

Rule 2.5.5

[154] We have come to the same conclusion in respect of Rule 2.5.5 which would apply the same or very similar controls to the Special Purpose (Hospital) Zone as Rule 2.5.15. The Car Club and Council maintained their respective differences in respect of Rule 2.5.5 with both seeking the same outcome that they sought for Rule 2.5.15[205]. We had little or no evidence suggesting that the outcome for Rule 2.5.5 should be different from Rule 2.5.15 and find accordingly.

[155] Finally, we grant the Council leave, should it wish to include a suitably worded Advice Note in PC52 as a non-regulatory method advising owners that screens, of the type described in the 2012 report, can provide noise mitigation for outdoor living spaces.

[204] Refer NZ S 6802:2008 Acoustics Environmental Noise [8.6.2] and Table 3
[205] Refer the other parties' provisions, Attachment 3, page 6 comment boxes

Rule 2.5.3 (2): Inner Noise Boundary Control and definition of Noise Sensitive Activities.

[156] The rule provides that any new noise sensitive activity shall not be located within the Ruapuna Inner Noise Boundary surrounding Ruapuna Motorsport Park as shown on the relevant planning maps. Any such proposal is a non-complying activity.

[157] The Decisions Version contains the same rule with residential activities defined as "*Residential activities other than those in conjunction with rural activities that comply with the rules in the relevant district plan.*"[206] Mr Dale told us that the definition should be further amended to simply read "*Residential activities.*"[207] Mr Dale was questioned robustly by Ms Steven about the effect his amendment would have on her clients' ability to establish dwellings in conjunction with permitted rural activities, be it on existing or future sites.[208] In giving his answers, we think Mr Dale made assumptions about the likelihood of consents being granted and the acoustic insulation conditions that might attach to such, which were not grounded in the amendment he supported. In the event, Quieter Please elected not to pursue this matter in its proposed provisions, which we accept as a conscious choice given the lapsed time between the hearing and filing.[209] The change was not disputed in the parties' proposed provisions and we acknowledge (other aspects of) Mr Dale's evidence that because potentially relevant RPS provisions are concerned with aircraft noise they do not constrain PC52, and that the definition should catch all residential activity. We stop short of upholding the definition amendment at this juncture, however, because it is not clear to the Court that there is jurisdiction in either of the appeals for it. We return to the topic below in the context of s293.

[158] We note that the noise sensitive activities definition is expressed in the parties' proposed provisions as being for the purpose of Rule 1.3.5.[210] We expect that the definition is intended to also apply to Rule 2.5.3(2) which controls noise sensitive activities within the inner noise boundary. Assuming this is not secured by some other means, leave is granted the Council to include any necessary cross referencing to achieve the outcome required.

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[206] Decisions Version Volume 3, Part 1 Definitions
[207] Mr Dale, rebuttal evidence, paragraph [3.4(a)] and evidence-in-chief, paragraphs [9.40] - [9.46]
[208] Transcript, pages 121-124
[209] Quieter Please provisions , Appendix 1 Definitions, page 8 and Appendix 2, Rule 2.5.3(2), page 2, line 7
[210] Refer, for example, other parties' provisions, Attachment 1, page 7, line 5

Less substantive disputed matters

Rule 1.3.5 Ruapuna Motorsport Park: Format and Provisions

[159] The proposed provisions of all parties, although based on the revised Rule 1.3.5 structure initiated by the Car Club in its closing submissions, contained numerous differences in addition to those upon which we have made substantive findings. We now turn to these matters.

Table 1

[160] The other parties propose four activity categories, namely quieter vehicles other than motor racing, motor [racing],[211] drag racing and special interest vehicles. Quieter Please wish to delete the first category and divide the second category into two; namely an unlimited amount of relatively quiet vehicle activities on any day and 20 high noise events per year (80 $dBL_{Aeq\ (15\ min)}$) on any Friday or weekend day. Quieter Please did not elaborate on its preferred approach when filing its proposed provisions but we infer that it reflects its case that there should be a reduced number of noisy vehicle activities and a simplified structure to match.

[161] With our substantive finding on noise levels/frequency in mind, we have determined that it is appropriate to base Table 1 on the four activity categories proposed by the other parties as they reflect the existing activities known to the public and provide a suitable basis for matters such as the Noise Management Plan provisions, event scheduling advice and compliance reporting. It is also a suitable way to structure the provisions for motor racing at different noise levels and frequencies. We have previously endorsed the reasonableness of received noise resulting from up to 120 racetrack days per year at 80 dB $L_{Aeq\ (15\ min)}$ while reserving our position on the maximum number of days .at 70 dBA subject to s293 action. We come to the Table 1 drag racing "allocation" below.

[162] We adopt the other parties' provision for quieter vehicles on Mondays 0900–1800 hours. Although this enables some racetrack use on Mondays, the noise level is limited to 65 $dBL_{Aeq\ (15\ min)}$, which on the evidence will not cause adverse effects.

[211] We adopt this term from the definitions and expect it to intend it to be used in Table 1 Row 2 (as it is in Row 1). If we are correct in this, leave is granted the Council to make the necessary change.

[163] We also endorse the "Monday free" provision for the noise Table 1 activity categories. This affords certainty that there will be a respite day after weekend racing, and that it will be Monday as opposed to either "Monday or Tuesday". Although it was said to be neutral on the proposal, the Council raised the possibility of adding further certainty about the level of weekday high noise activity by enabling only 50 of the 120 days[212] per year to be Tuesday–Friday inclusive.[213] This is consistent with the Decisions Version.[214] The Car Club did not oppose the proposal in its proposed provision although being on notice. We are reluctant to depart from the Decisions Version without demonstrated cause and find the Council's amendment should be added.

[164] Quieter Please asked for racing on noisy days to be finished by 1800 hours. The other parties accept this, except on 15 Saturdays or Sundays and 5 Fridays when racing could continue until 2000 hours. This equates to approximately 25% of Friday/Saturday/Sundays over a 6 month season. Mr Wederell gave evidence on operating days and hours for the Car Club.[215] He stated that a few planned events run later than 1800 hours and gave the Twilight Pursuit Sprint finishing 1930 hours and Kiwinats finishing 2000 hours as examples, both being held once a year. He also explained that unplanned circumstances can cause racing to run late, which we accept should not trigger non-compliance or a consent requirement. On the other hand we had evidence from the residents that traffic takes some time to clear the area after racing has finished, and related noise can be intrusive. It strikes us that an allocation of 20 days when racing can extend to 2000 hours is excessive given the evidence on the scale of planned events that extend into the evening. Keeping in mind that Mr Wederell may not have given an exhaustive list of such events, we find that 5 days is a sufficient total allocation on Friday, Saturday or Sunday.

[165] The other parties' provisions allow for drag racing on 8 days per year at the same 80 dBL_{Aeq} level as noisy motor racing but, significantly, at a 10 dB higher $L_{AF\ max}$ of 105 dB. These metrics are unchanged from the Decisions Version. Quieter Please would limit this activity to 3 days and 100 $dBL_{AF\ max}$. Drag events are of short duration, being conducted over 400 metres on the northern side of the racetrack, with a pulse of high noise and a maximum of 2 vehicles at a time.[216] In the 2012/13 year

[212] Recognising that all parties also provide for high noise drag racing.
[213] Refer the other parties' provisions, Attachment ,1 page 2 comments box.
[214] PC52 Decisions Version Rule 3 1st bullet
[215] Mr Wederell, evidence-in-chief, paragraphs [21]ff
[216] PC52 Definitions

there were events on 6.5 summer days and 3 winter days.[217] We had no technical evidence that drag racing could comply at the $L_{AF\ max}$ level sought by Quieter Please. The noise level allowed in the other parties' proposed provisions is capped, which contrasts favourably with the operative provisions that enable 5 events per year with no L max.[218] We understand the latter was allowed for in the Marshall Day 2007 modelling of the operative provisions and related assessment of noise effects.[219] Mr Camp's evidence was that drag racing was not the subject of complaint before the first instance PC52 hearing,[220] and Mr Wederell indicated that, when consulting on the preparation of the draft Noise Management Plan, drag racing was mentioned as *"short bursts"* and not being as annoying as other activities.[221] However we find there is no considered basis to increase the events to 8 per year and that 5 days per year (the operative provisions) is appropriate.

[166] The other parties want to allow for special interest vehicles activities on 6 days per year as part of another permitted activity for a maximum of 90 minutes per day between 1000 and 1700 hours. These are the noisiest vehicles permitted at 90 $dBL_{Aeq(15\ min)}$ and 105 $dBL_{AF\ max}$. Quieter Please wants to limit activity to 1 day per year and 100 dB $L_{AF\ max}$. The Plan defines special interest vehicles as historical vehicles that cannot be engineered to lower noise levels and (now) includes the F5000 class.[222] The Decisions Version did not expressly provide for special interest vehicles that we can see; rather, it enabled 6 days per year of F5000 activity subject to the same limits now proposed for special interest vehicles.[223] Mr Budd, the General Manager of Motorsport NZ (for the Car Club), told us that there are single seaters, which we understand would fall into the this category, where *"there is simply very little room where an engineer can design and mount an exhaust silencer of sufficient size to achieve the limits [otherwise] imposed."*[224] Mr Budd further explained that in these situations mufflers have been *"established"* that delicately balance noise emission with sufficient heat extraction and minimum weight, with no scope for *further reducing* noise emissions without impacting on engine reliability. This evidence was not challenged and, going in the opposing direction, we had no evidence that special interest vehicles could operate at 100 dBL_{AFmax}. We find there is no

[217] Mr Cowan, evidence-in-chief, Appendix 4, page 2
[218] Not limited to a particular activity but presumably an allowance for the noisiest activities
[219] Mr Camp, evidence-in-chief, Appendix B: The 2007 report, pages 28-29
[220] Mr Camp, rebuttal evidence, paragraph [9.9]
[221] Transcript, page 242, lines 5ff
[222] Mr Camp, rebuttal evidence, paragraph [4.2] where there was a degree of uncertainty on whether F5000 could be accommodated within the SIV category, which we take to now be the case.
[223] Decisions Version Rule 3 8th bullet
[224] Mr Budd, evidence-in-chief, paragraphs [42]ff

considered basis on which to reduce the number of events per year (6) for up to 90 minutes/day and $dBL_{AFmax.}$ or to otherwise depart from the Decisions Version beyond broadening the F5000 provision to encompass all special interest vehicles.

Table 2

[167] For the speedway, all parties agreed there should be 15 race meeting and 5 practice days per year, maximum noise levels of 80 $dBL_{Aeq\ (15\ min)}$ and 95 $dBL_{AFmax,}$ with practice occurring between 1200 and 1800 hours, and racing between 1600 and 2200 hours. Quieter Please would also enable 10 further speedway race meetings per year at lower maximum noise levels ($65dBL_{Aeq\ (15\ min)}$ and $90dBL_{AFmax}$) during the day provided there was no "motorised" activities at the same time at the racetrack. The origins of this provision pre-date the other parties proposed provisions.[225] In closing submissions Mr Schulte indicated that the latter was an orphan provision, the speedway could not conduct complying activities in accordance with it and would not complain if it was deleted. We accordingly exclude it.[226] The other parties proposed provisions allowed for Mondays to be free of activity, which we endorse for the reasons we have previously given. On the question of race meeting hours, we note the Speedway's evidence that in the 2014 – 2015 season it commenced meetings at 1830 hours and generally finished by 2200 hours.[227] We find that this arrangement, which reduces the duration of noise emitted by racing, should be reflected in the Table 2 hours of operation and direct the wording be amended by specifying that "there are to be no races before 1800 hours". Other race meeting activities may commence at 1600 hours.

Table 3

[168] The provisions for remote-controlled vehicles were agreed between all of the parties, including that activities be permitted to occur any day except Monday; the Decisions Version, however, enables activities to be conducted on any day.[228] Parties with an interest in these activities were not represented at the hearing, nor was it raised as a matter for potential s293 action. We heard no evidence on the merits of the limitation now proposed, and we find that there is no reason to depart from Decisions Version wording.

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[225] Mr Dale, rebuttal evidence, Appendix B P12/16 Activities (a) – (d)
[226] Transcript, page 485
[227] Mr Mitchell, rebuttal evidence, paragraph [10.1]
[228] Decisions Version Rule 2, 3rd bullet

Table 4

[169] There being no dispute on any matter arising from Table 4, it is confirmed.

Rule 2

[170] The rule provides for weekend respite days free of noisy activities. The other parties propose a minimum of 8 weekend days between 31 October and 31 March, of which 4 must occur after 2 January, when there would be no racetrack, speedway or remote-control vehicle activities. Quieter Please, having departed from the "Monday free" approach of the other parties in Tables 1 and 2, sought a differently worded Rule 2, namely that on 3 weekend days per month (15 over the 5 month period) plus the day following 2 consecutive days of motorised activities, there be no motorised activities permitted at the Motorsport Park. The Decision's Version required 10 weekend days free between 1 October and 30 March.[229]

[171] We see problems with the Quieter Please approach. It would apply to the Motorsport Park as a whole and thus any motorised activity at either the racetrack or the speedway one day followed the next day by any motorised activity at either facility would mean no motorised activity at either on the third day. As a result every third day would be a non-motorised day. As a consequence scheduling at both the racetrack and speedway would be severely disrupted and activities reduced markedly below current levels. Mr Wederell, for example, told us that the racetrack operates "*on an almost daily basis.*"[230] And that he did not believe the racetrack *"would be financially viable or feasible based on the current number of users to provide what Quieter Please is seeking.*"[231]We found no basis in the evidence, be it adverse noise effects or otherwise, for a limitation of the type Quieter Please sought, and we decline the relief it seeks.

[172] Mr Wederell also told us about the implications of retaining the Decisions Version requirement of 10 "non-motorised" weekend days. Conflating two rules, he said that scheduling would be challenging enough if there were both a no double-day rule[232] and 8 weekend-free days, however this would not arise if the Decisions Version double-day rule limit was amended as the other parties propose in Rule 3. Mr Wederell also stated that the Car Club did not have *"the spare capacity to provide*

[229] Decisions Version Rule 3, 10th bullet, page 9
[230] Mr Wederell, evidence-in-chief, paragraph [21] and Appendix 4, Track usage 2007 - 2015
[231] Ibid, paragraph [54]
[232] Meaning racetrack and speedway not allowed on the same day.

[for] 10 non-motorised weekend days during summer because [it is] already significantly constrained by the tight scheduling requirements and the current number of raceway users. Any remaining flexibility to accommodate users would be removed."[233] Although not entirely clear, this section of Mr Wederell's evidence also intimated that 10 weekend respite days would constrain the Car Club's ability to accommodate additional and new activity. We recall here the purpose of PC52, namely to cap or reduce the activity at the Motorsport Park. Mr Cowan told us that *"10 days would be too many days out of the busy summer calendar and there would not be sufficient available days to allow current user organising groups to stage their events at the raceway."*[234] He also spoke of the financial costs to the Car Club if there were fewer weekend day activities, stating that *"each weekend day results in a lost income to the Car Club of a minimum of $3,000/day and if a major meeting is lost, lost income could be as much as $80,000."*[235] We expect the Car Club could organise its schedule to avoid the latter.

[173] We lacked sufficient evidence to persuade us that two fewer weekend days over 5 months would provide insufficient days for current groups to stage their events or that it would have an unmanageable economic effect. We are also mindful that the purpose of PC52 as initiated by Council's resolution was not to accommodate more or new activity at the Motorsport Park. Together with the statutory holidays and Mondays when there is to be no high noise racing, the weekend-free days are clearly important to the residents for respite purposes and we think key to striking a sustainable balance of the type required by Objective 14.6 and Policies 14.6.1 and 14.4.1. For these reasons, we find that it is more appropriate to retain the Decisions Version requirement for 10 weekend-free days and direct that this amendment be made to the other parties' proposed version of Rule 2, which is otherwise endorsed.

Rule 3

[174] The other parties proposed that the Decisions Version be amended by providing that motor racing shall not occur at the racetrack and speedway at the same time. Quieter Please by its Rule 3(a) would preclude all activities from occurring at the same time.

[233] Mr Wederell, evidence-in-chief, paragraph [52]
[234] Mr Cowan, evidence-in-chief, paragraph [111]
[235] Ibid, paragraph [125(j)]

[175] Quieter Please's case was about noise from vehicles racing and its reasonableness as opposed to the effects of accessory activities. We had no compelling evidence that suggested problems with the latter. Provided racing activities do not overlap at the 2 facilities creating an adverse cumulative noise effect, which the other parties' wording achieves, we see no need to avoid other activities overlapping. For these reasons we endorse the other parties wording.

[176] Quieter Please also proposed a Rule 3(b) which would have the effect of, firstly, precluding drag or special interest vehicle events at the same time as another activity on the racetrack and, secondly, should either event be conducted on the same day as another high noise Table 1 activity, this would be treated as 2 days of activity.

[177] We find there is merit in part of Quieter Please's proposal. Drag racing has its own allocation of high noise race days per year and typically occupies a full day.[236] It is permitted at a higher L_{AFmax} than other high noise activities; albeit experienced in relatively short bursts. The rule of thumb is that noise at the same level from two different sources produces a 3 dB total increase. Assuming it was possible, we would therefore expect an adverse cumulative effect if drag racing and another high noise activity were to occur simultaneously. We are not sure that it could or would occur at the same time, but we accept Quieter Please's position that it should not. We also accept its proposition that if both activities were to occur on the same day, the effect would be such as to warrant it being treated as two days of racing.

[178] We do not accept that the same approach should apply to special interest vehicles, as they are restricted to a maximum of 90 minutes in a day as part of another Table 1 activity. For this reason, although having a 10 $dBL_{Aeq(15\ min)}$ higher limit than drag racing, we do not see special interest vehicles having the same level of adverse effect in conjunction with other activities.

[179] The result is that we find that the Quieter Please Rule 3(b) should be adopted, but amended by deleting the reference to special interest vehicles and, given our earlier substantive finding, by deleting the words "20 scheduled high noise days" and inserting "other 120 high noise days".

[236] Mr Cowan, evidence-in-chief, Appendix 4 page 3, Pegasus Bay Drag Racing Club data

Rule 4

[180] The other parties' proposed rule comprises 4 limbs. Quieter Please would combine 2 of the limbs with no change in the limbs' combined effect. We find the other parties' wording is clearer, and there being no other aspect in dispute we find that it should be adopted.

Rule 5

[181] All parties agree on the wording of Rule 5 and thus it is accepted.

Rule 6

[182] There was a difference between the parties on where compliance with the noise levels for Table 1 and 2 activities on the one hand, and Table 3 and 4 activities on the other, should be measured. This emerges in the competing wording of Rules 6(c)/(d) and the Tables. The other parties proposed that Table 1 and 2 activities comply at the boundary logger, and Tables 3 and 4 activities comply at the boundary. Quieter Please proposed that all activities comply at the boundary logger. In relation to its proposed rule, it advised that: [237]

> "[The Car Club's approach] is said to be on the basis of information from Dr Chiles provided to the Car Club following the close of the hearing, which has not been presented to the Court. Quieter Please is not in a position to understand the rationale or implications of two different compliance monitoring sites."

[183] The boundary logger is located a short distance in from the Motorsport Park boundary and *"slightly closer to the raceway than the boundary"* where it is said to *"provide an appropriate representation of noise levels measured at the actual boundary."*[238] The Court is in the same position as Quieter Please with regards to any post hearing advice Dr Chiles may have provided the Car Club, however, as compliance of all activities is to be ascertained using boundary logger data, we find that it should be adopted for all activities and Tables. The compliance locations in Tables 3 and 4 are to be changed to match those in Tables 1 and 2 and Quieter Please's Rule 6(c) substituted for the other parties' Rules 6(c)/(d). For the avoidance of possible doubt, if there is an inconsistency between this direction and the effect of

[237] The Quieter Please provisions Appendix 1 p 5/8 and Appendix 2, page 7, comment boxes
[238] Acoustics: JWS, paragraph [8.4]

Rule 1.2.1 and Clause 1.3.1(b) as they apply to PC52, the Council is granted leave to amend PC52 to make the Court's finding effective.

[184] We agree with the parties that verification is required that the noise measured for the purposes of the rule is from the Motorsport Park activities. Certainty is also required about who is responsible for verification. We prefer the other parties' unambiguous wording, that "verification is to be confirmed by the Council" and find accordingly.

Rule 7

[185] The other parties have accepted Quieter Please's relief that there be Noise Management Plans for the racetrack and speedway.[239] Drafts have been prepared through a collaborative process, that reflects well on the participants. We expect the plans will make a material contribution to the management of effects experienced by the residents through the provision of improved information, greater certainty and processes for dealing with issues that arise. The rule sets out the requirements for Noise Management Plans, with both parties seeking amendments to the provisions. We find the provisions as finally proposed by the other parties appropriate subject to the specific amendments that follow:

(a) We accept and find that the introductory paragraph should stipulate that Noise Management Plan certification is to be undertaken *"by a suitably qualified and experienced person (appointed by the City Planning Unit Manager)"*. We do not consider it necessary for subsequent Noise Management Plan iterations to be certified by a delegated officer as Quieter Please proposed. We anticipate the Noise Management Plans will be living documents, that many changes will be of a minor nature, and they will all be for the stated purpose of *"not increasing, and if possible reducing, adverse noise effects on the environment."* As well, the Council will remain abreast of changes through its membership of the Community Liaison Committee. That said, we find it would be appropriate to include a provision enabling the Council, for stated reasons and with adequate notice, to review either one or both Noise Management Plans in consultation with the lessees and the Community Liaison Committee, resulting potentially in re-certification of the Plan(s) and we find accordingly.

[239] Quieter Please, Notice of Appeal relief, paragraph [8.7]

(b) Rule 7(c) requires the Noise Management Plans provide for annual event calendars to be publicly notified and updated monthly. Quieter Pease sought an amendment to Rule 7(c)(i) to reflect the relief it sought for Rule 2, which we have not upheld. We confirm the other parties' wording for Rule (c)(i).

(c) The other parties' proposal to add a third limb to Rule 7(l) to read *"(iii) ensuring that the boundary logger is calibrated to accurately record noise at the Raceway and the Speedway"* is appropriate and confirmed.

Rule 8

[186] Rule 8 expands on the requirements for a Community Liaison Committee ("**CLC**") required in the Noise Management Plan provisions. Rule 8(a) sets out how the membership is to be structured. The other parties support representation by local Templeton residents, whereas Quieter Please sought representation by local affected residents. *"Appointment procedures"* are to be determined through the Noise Management Plans. It is understandable that Quieter Please members would consider themselves to be affected residents and want to be represented given the journey they have travelled with PC52. This is not an unreasonable expectation. We anticipate the Car Club, Speedway Association and Council will be cognisant of this and factor it into related decision-making. However, it is also the case that wider community representation than *"affected residents"* may be appropriate, and we find that there should be sufficient flexibility provided by the rule to accommodate this by confirming the other parties' wording *"local Templeton residents"*. We also find it appropriate that the Note, which states if local Templeton residents elect not to form a community liaison committee this will not constitute a breach of the rules by either the Council, the Car Club or the Speedway Association, be retained in the interests of certainty and find accordingly.

Section 32

[187] Section 32(3) comprises the statutory test for the appropriateness of the plan change. As we have outlined, every policy, rule or other method proposed by PC52 needs to be considered and justified under s32. Whilst Ms Steven submitted that the s32 analysis supporting the Dale provisions was flawed because it did not identify and evaluate the proposal in light of all relevant policies, the provisions now proposed by

all parties, and which we have evaluated, move some way away from the Dale provisions, and we consider are not subject to the same criticism.

[188] During our evaluation we have specifically considered the proposed new Objective and Policy, the amendment to Policy 14.4.1 and the various rules. The final versions of these that we have approved are those that we consider to be the most appropriate. To be clear, and specifically considering the s32 test, we find:

(a) Objective 14.6 is the most appropriate way to achieve the purpose of the Act. We have rejected Quieter Please's argument that the objective will place undue weight on motorsport activities at the Motorsport Park ahead of other considerations, particularly those concerning amenity. There are other objectives, which we have referred to early on in our decision that will ensure that the types of competing interests evident in this case can be fairly approached if the need arises. In other words, the addition of the new Objective does not give the Motorsport Park an unfair advantage.

(b) We consider the new Policy and the amended Policy are the most appropriate to achieve the new Objective. There is no issue in our view regarding their efficiency and effectiveness.

(c) The rules that we have approved in our view implement the policies, and having regard to their efficiency and effectiveness we also consider them to be the most appropriate for achieving the objective of PC52.

(d) The Inner and Outer Noise Boundaries are required for the purposes of Rules 2.5.3(2) (inner boundary), 2.5.15 and 2.5.5 and as the Car Club submitted provide notice to third parties about potential issues relating to noise from the Motorsport Park.

[189] We record that in undertaking our evaluation, as will be evident from our findings, we have taken into account the costs and benefits of the policies and rules and other methods. We are also satisfied that it is necessary for the objective, policies and specific rules to be implemented in order to ensure that the noise emissions from the Motorsport Park are not unreasonable.

[190] It will be evident from our evaluation that what is reasonable, in terms of noise levels, has been specifically addressed by us and in our view the rules we have approved deal most appropriately with the noise footprint created by the various

activities undertaken at the Motorsport Park. We have also considered the requirement in s16 that adverse effects are internalised as far as reasonably possible, having done all that is reasonably achievable (the *best practicable option* aspect of s16). We consider that the rules we have imposed about the frequency of events, and the types of events that can be undertaken – including the limits we have placed on double-day events – ensure that this aspect of s16 has also been met. To be clear, whilst we have taken into account the cost to the Car Club and the Speedway Association of reducing the numbers and types of events and the financial implications this might have, these considerations have only been part of our overall judgment as to what rules are appropriate.

[191] Overall, we consider the objective, policies and rules and the Inner and Outer Noise Boundaries will enable the Council to carry out its functions through the integrated management of noise effects in order to achieve the purpose of the Act.

Section 16

[192] As will be evident from our findings, we consider that the approved provisions ensure that the s16 requirements we elaborated upon in paragraphs [36] to [39] above have been met.

Part 2

[193] We are satisfied that PC52 as we have approved it, now promotes the sustainable management of natural and physical resources. The physical resources evident at the Motorsport Park are taken into account, as are the physical resources of the residents who live nearby. We are satisfied that the rules we have approved will provide the appropriate balance to enable those who enjoy Motorsport Park activities and those who live nearby to provide for their social and economic wellbeing. We are satisfied that adverse health effects will not arise, and that the provisions provide appropriately for the amenity of the residents. We are satisfied that any ongoing amenity effects can be appropriately dealt with through the Noise Management Plans and the Community Liaison Committee.

Section 290A consideration

[194] We record that we have had regard to the Commissioner's decision, but that the provisions proposed by all parties differ considerably from those which were

before her. Because of the way the case was run we do not have regard to the Commissioner's decision in relation to existing use rights, but we have had regard to the Commissioner's decision in relation to the appropriate noise levels and the frequency and type of events undertaken.

Section 293 considerations

[195] As previously noted, prior to the hearing counsel identified seven topics requiring s293 action to make changes to the Decisions Version, which could not otherwise be made for want of jurisdiction.[240] It is necessary that we review each of these in light of our preceding findings and provide directions. In addition there are three further matters that arose during the course of the hearing, which are addressed below.

[196] We have decided at this juncture that it is appropriate to exercise our discretion under s293 of the Act on six of the seven topics identified by counsel. We consider in relation to each of the proposed amendments there is a clear nexus between the relief sought by the appellants in these appeals and the matters in respect of which the Court is being asked to exercise its powers under s293. We set out our reservations about the seventh matter below (Explanations and Reasons). The supported changes seek to achieve an integrated and effective approach to the noise management regime that applies to the Motorsport Park, which was the purpose of PC52. None of the parties to these appeals have objected to the Court exercising its discretion for jurisdictional reasons, rather by the end of the submissions the challenge from Quieter Please was in relation to specific substantive issues relating to the wording of Objective 14.6, and the increase in the weekday noise level now outlined as for 80 days per year at 70 dBA whereas previously it was 50 days at 70 dBA. Each of the topics is now addressed specifically below noting that the substantive objections to Objective 14.6 are dealt with in our evaluation above.

Weekday Noise

[197] In Mr Conway's opening submissions for the Council he identified that the Council, Car Club and Speedway had agreed that there should be an increase in the week day noise level to 70dB for 50 days per year. He indicated that this proposal required the Court's approval under s293. For reasons not explained to us, the other

[240] Joint Memorandum of Counsel, "Statement of Agreed and Disputed Facts and s293 Matters," 24 February 2015, paragraphs [19]ff

parties' final provisions record an increase in the number of days from 50 to 80. The increase might be explained with reference to the Monday and weekend limits, but it would be inappropriate for us to reach any conclusion about the reasons without submissions on the point. We therefore direct the other parties to provide submissions on the reasons for this proposed provision, including why s293 should be invoked in respect of it, **6 working days** from the date of this decision. Quieter Please will then have a further **6 working days** to respond. Thereafter, we will decide the matter on the papers.

Objective 14.6

[198] We have previously endorsed the appropriateness of including a specific Ruapuna Motorsport Park objective in the Plan Change as a foundation for the provisions that follow. The topic therefore remains relevant and we note from counsels' Memorandum it will also assist incorporation of the PC52 provisions in the proposed Replacement District Plan."[241] Leave is granted the Council to file a proposed basis for initiating s293 action for inclusion of the objective.

Edits to improve clarity, eliminate excessive complication and duplication

[199] We have already commented favourably on the parties' collective efforts in these areas. We expect the improvements will materially assist implementation and, if necessary, enforcement of the Change. Assuming the parties are correct, that we are not seized of jurisdiction to adopt the improved structure used in their final provisions, leave is granted the Council to file a proposed basis for doing so by way of s293.

Inclusion of F5000 vehicles in special interest vehicle provision

[200] All parties are agreed that the separate provisions in the Decisions Version and planning evidence[242] for these classes of vehicles should be dispensed with and a combined activity enabled in Table 1 supported by a suitably amended definition of "*special interest vehicles.*"[243] Council is granted leave to amend "historic" to read "historical" in the definition and to file a proposed basis for s293 action.

[241] Joint Memorandum of Counsel, "Statement of Agreed and Disputed Facts and s293 Matters," 24 February 2015, paragraph [24]; and Mr Conway, opening submissions, paragraph [6.58(b)]
[242] Decisions Version page 9; and Mr Dale, evidence-in-chief, Appendix 4, pages 13 and 15
[243] Other Parties final provisions Attachment 1 p 2/7 and Quieter Please FPV Appendix 1 p 2

Public Address System

[201] It is proposed that the Decisions Version provision, which differentiated between race events usage and pit usage with no evident maximum noise level, be amended by the parties' Table 4 provision limiting noise levels to 50 dB $L_{Aeq\ (15\ min)}$ and 40 dB $L_{Aeq\ (15\ min)}$ between 0700 – 2200 hours and 2200 – 0700 hours respectively. The levels would be supported by L_{AFmax} measures. We understand the amendment to align this aspect of PC52 with the Plan's general noise rules.[244] Leave is granted the Council to file a proposed basis for making necessary amendments using s293.

Verification of Boundary logger data

[202] The parties are agreed that Rule 6, which provides that compliance with specified noise levels is to be determined at the permanent boundary data logger, should be amended by inclusion of the words *"subject to verification that noise is attributable to activities at the Ruapuna Motorsport Park."*[245] The other parties would add the further words following *"Verification is to be confirmed by the Council"*. We understand the changes would amend the Decisions Version requirement that measurements be made at the boundary, defined as *"the boundary of any site not within the OS3 (Ruapuna Raceway) zone"*. The amendments are important as it is necessary, firstly, that noise from non Park sources such as overflying aircraft be eliminated from compliance monitoring and, secondly, that verification of this process has independent oversight. The amendments were put to us as a *"possible s293 issue"*. Assuming there is a lack of jurisdiction for them, we concur that it would be prudent to follow due process and leave is granted the Council to file a proposed basis for making necessary amendments using s293.

[203] As signalled above, three other matters have arisen from the hearing and this interim Decision that require consideration in terms of possible s293 action:

(a) We are puzzled by Ms Steven's submission (noted above) that because the Car Club's appeal does not provide jurisdiction to delete Rule 2.5.15 this can only be achieved by s293 action. This appears to overlook the alternative relief sought in Section [8.8] of Quieter Please's own appeal, namely *"Remove restrictions on noise receivers within defined noise*

[244] Joint Memorandum of Counsel, "Statement of Agreed and Disputed Facts and s293 Matters," 24 February 2015, paragraph [28]

[245] The other parties' proposed provisions Attachment 1, page 4; and Quieter Please's proposed provisions, Appendix 1, page 5

boundaries around Ruapuna." Amending the rule in the manner proposed by the Car Club in its final provisions would fall between the Decisions Version and Quieter Please's relief and therefore seemingly be within scope. Although little hearing time was spent on it we expect Quieter Please's relief would also apply to Rule 2.5.5 for the Special Purpose (Hospital) Zone with the same result re jurisdiction. Policy 14.6.1(b) would remain appropriate if the rules are amended as the Car Club proposes. **By 9 October 2015**, all parties are to file and serve advice, preferably by a joint memorandum, on whether it is accepted there is jurisdiction for the amendment of both rules. If jurisdiction is confirmed the wording of both rules will be finalised by the Court. Should there not be jurisdiction the matter will be the subject of s293 directions.

(b) As foreshadowed, we are concerned that there may not be jurisdiction to amend the residential component of the Noise Sensitive Activities definition so that it reads "residential activities," as proposed by Mr Dale and shown in the parties' final provisions. This was not the amendment sought in the Car Club's notice of appeal.[246] Within **6 working days** of this interim decision the Council is to prepare an explanation of the proposed amendment to the Decisions Version, the reasons for it and a list of potentially affected persons for consultation purposes under s293(1)(b).

(c) The parties sought that the Explanations and Reasons sections be deleted from the Change on the basis that the Council does not propose to include such in the Replacement District Plan.[247] We do not recollect being provided with an authority for this position and expect that it may ultimately be a matter for the Replacement District Plan Hearings Panel rather than the Council. **By 9 October 2015**, the parties led by the Council are to either provide the Court with an authority for their proposition or otherwise advise how they consider this topic should be progressed under s293 - if at all.

[204] A remaining issue for us to consider is whether there are any other persons in addition to the parties who need to be notified about the s293 matters.[248] We have foreshadowed our tentative thinking in respect of Explanations and Reasons above but

[246] Car Club Notice of Appeal 17 July 2013 [14(b)] p 3
[247] The parties' Joint Memorandum 12 March 2015 [35]
[248] Joint Memorandum of Counsel, "Statement of Agreed and Disputed Facts and s293 Matters," 24 February 2015, paragraphs [19]ff

made no determination. On other matters we are inclined to agree with Ms Dewar that all persons who would have an interest in these matters have been involved in these proceedings and have presented their respective views. Nonetheless, we consider it prudent to invite the Council to advise us whether it thinks there are any other persons likely to be affected by the proposed provisions that have not already been consulted. We consider it reasonable for the Council to advise us of its view about these matters **by 9 October 2015**.

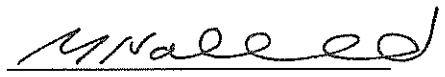
Summary of findings

[205] We have made findings and given directions at various points through this Interim Decision, including in respect of s293 action. For the assistance of the parties these matters are summarised in the attached Schedule with paragraph references to where they are dealt with in the main body of the Decision. By its nature the Schedule is a truncated version of the Decision text. In the event of any inconsistency the latter prevails. The same applies to any omissions.

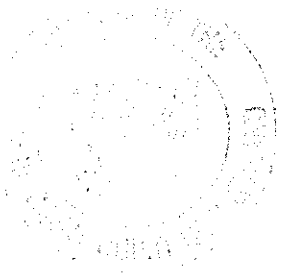
[206] When final, this decision is to be effective from 1 July 2016 to accommodate Motorsport Park booking commitments in the 2015/2016 year.[249]

SIGNED at AUCKLAND this 23rd day of September 2015

For the Court



M Harland
Environment Judge



[249] Ms Dewar, closing submissions, paragraph [231]

First Interim Decision

SCHEDULE OF SUMMARY OF FINDINGS AND AMENDMENTS
DIRECTED to the parties' final provisions for Christchurch City District Plan
Proposed Change 52 – Ruapuna Motorsport Park – Management of Noise

Topic	Determination	Interim Decision Paragraph(s)
1. New Objective 14.6.	Council directed under s293(1)(a) to add new Objective 14.6: Motorsport to the District Plan: (a) Ruapuna Motorsport Park continues to operate as a facility of regional importance servicing motorsport, as well as training and recreational activities, whilst ensuring the adverse noise effects of activities at the Park on the surrounding community and environment are effectively managed to not increase, and if possible, are reduced.	[64]
2. New Policy 14.6.1(a)	Council directed to include in the District Plan new Policy 14.6.1 - Motorsport: a) To ensure that motorsport activities operate in a manner which do not result in an unreasonable level of noise being received by activities which are noise sensitive. b) To manage noise sensitive activities where they would be affected by noise from motorsport	[67] and [203](a)

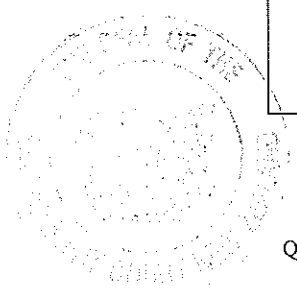
3. Amended Policy 14.4.1	To be amended by including the underlined words: To ensure that activities associated with open space and recreational facilities do not have the effect of giving rise to adverse effects (noise, glare, visual detraction), including through incremental increases in scale and intensity, without separation or mitigation effects.	[69]
4. Rule 1 Tables 1 – 4 permitted activities structure.	Confirmed in the structure proposed in the other parties' final provisions subject to specific amendments set out below and s293 directions.	[129]
5. Controls on noise sensitive activities between inner and outer noise boundaries.	Subject to the parties confirming jurisdiction, Rules 2.5.15 and 2.5.5 will be finalised by the Court, which sees merit in the amendments proposed in the Car Club's final provisions, including retention of the inner and outer noise boundary contours. Absent jurisdiction, the topic is to be subject to s293 directions.	[153], [154] and [203](a)
6. Amendment to residential component of the Noise Sensitive Activities definition for purposes of Rule 1.3.5.	Council is to prepare an explanation of the other parties' proposed amendment, with supporting reasons and a list of potentially affected persons as the basis for s293 action. Leave is granted the Council to add any necessary cross referencing required to clarify that the NSA definition for Rule 1.3.5 purposes also applies to Rule 2.5.3(2).	[158] and [203](b) [158]

7. Advice Note for outdoor living screens	Leave is granted the Council to include an Advice Note as a non-regulatory method on acoustic screens for outdoor living spaces.	[155]
8. Rule 1 Table 1	Leave is granted the Council to amend row 2 to read "motor racing vehicles" to align the term with the other parties' final Definition.	[160] and footnote 211
	Table 1 is to be based on the four activity categories in the other parties' final provisions.	[161]
	The proposal to enable a maximum of 80 days at $70dB_{ALeq\ (15\ min)}$ is to be subject to s293 action with supporting explanatory material provided by Council.	[161] and [196]
	The Monday free provision for three activity categories proposed by the other parties is confirmed.	[163]
	Only 50 of the permitted 120 high noise days per year are to be Tuesday – Friday inclusive.	[163]
	The exception to the hours of operation to be amended to enable 5 days Friday – Sunday that may occur 0900 – 2000 hours.	[164]
	The maximum number of days for drag racing is set at 5.	[165]
	The other parties' final provisions for special interest vehicles (SIVs) are confirmed.	[166]

9. Rule 1 Table 2	The Monday free provision for the two activity categories is confirmed. The other parties' final permitted activity provisions are confirmed except that there are to be no races before 1800 hours.	[167] [167]
10. Rule 1 Table 3	The permitted activities are enabled to operate on all days absent evidence on why Mondays should be precluded.	[168]
11. Rule 1 Table 4	Confirmed in the parties' final form.	[169]
12. Rule 2	The other parties' final form is confirmed with the Decisions Version requirement for 10 weekend-free days retained.	[173]
13. Rule 3	The other parties' final form is confirmed with Quieter Please's final Rule 3(b) added but amended by deleting the references to SIVs and substituting "other Table 1 120 high noise days" for "20 scheduled high noise days". Also, should drag and other racing occur at the racetrack on the same day it is to be expressly counted as 2 days of racing.	[174] - [179] [177]
14. Rule 4	The other parties' final form is confirmed.	[180]
15. Rule 5	Confirmed in the parties' final form.	[181]

16. Rule 6	Compliance with permitted noise levels in all Tables and for all activities is to be at the boundary logger. Quieter Please's final Rule 6(c) is substituted for the other parties' Rules 6(c) and 6(d) with the words "Verification is to be confirmed by the Council" added. The Council is granted leave to amend PC52 to make the preceding directions effective if there is any conflict between Rule 6 as determined and Rule 1.2.1 and Clause 1.3.1(b).	[183] and [184] [183]
17. Rule 7	The requirement for Noise Management Plans is confirmed in the form set out by the other parties' final provisions subject to the amendments that follow: - The other parties' final wording of the introductory paragraph is confirmed without the need for subsequent NMP iterations to be certified by an officer. There is to be an amendment that enables Council NMP reviews for stated reasons and with adequate notice leading potentially to re-certification. - The other parties' final wording of Rule 7(c)(i) is confirmed. - The other parties final wording of Rule 7(l)(iii) is confirmed.	[185] [185](a) [185](b) [185](c)
18. Rule 8	The other parties' final wording in Rule 8(a) which provides for "local Templeton	[186]

	residents" membership of the Community Liaison Committee is confirmed. The Note at the end of the Rule which the other parties propose in their final wording is confirmed.	 [186]
19. Other s293 matters	In addition to the s293 topics identified above, it is confirmed that the following matters identified by the parties 12 March '15 as requiring s293 implementation action should be progressed in the same manner. By way of confirmation these are: i) simplifying and clarifying the provisions to make them more user-friendly in accordance with Objective 3.3.2 of the proposed Replacement District Plan; ii) amending the special noise rule for F5000 vehicles to be changed to *special interest vehicles* and including a new definition of *special interest vehicles* ; iii) deleting the amended provisions for the PA system and amplified noise so that those sources of noise are captured by the *all other activities* rule (which is significantly more restrictive); and iv) addition of text to clarify that data from the noise-logger is sufficient to determine compliance *subject to verification that noise is attributable to activities at Ruapuna.*	[33] and [194] and [195]



20. Authority required to delete Explanation and Reasons using s293 action	The parties led by Council are to provide authority for their 12 March 2015 proposition that the Explanation and Reasons in PC52 should be deleted so that the Change conforms to the format proposed for the Christchurch Replacement District Plan.	[203](c)