

TO: CODC Hearings administrator, Tarryn Lines, [districtplan@codc.govt.nz](mailto:districtplan@codc.govt.nz)

**BEFORE HEARING COMMISSIONERS  
IN CROMWELL**

**UNDER THE** Resource Management Act 1991 (“**Act**”)  
**IN THE MATTER OF** of Plan Change 19 Residential Chapter Provisions  
**AND** **SUGARLOAF VINEYARDS LIMITED**  
 Submitter  
**AND** **TOPP PROPERTY INVESTMENTS 2015 LIMITED**  
 Submitter  
**AND** **CENTRAL OTAGO REGIONAL COUNCIL**  
 Planning authority

**RESPONSE ON BEHALF OF THE SUGARLOAF AND TOPP PROPERTY  
SUBMITTERS: STAGE 2 HEARING OPPORTUNITY / SCOPE**

*Chair:* Deputy Mayor Gillespie

*Commissioners:* Councillors McPherson and Cooney

**INTRODUCTION**

1. Sugarloaf and Topp Property wish to be heard on site specific matters within the scope of their respective submissions, as part of Stage 2 of the hearing of submissions on Plan Change 19.
2. Together with the Klevstuls, on 21 April 202, those submitters sought an extended period of time for the Stage 2 hearing, beyond the usually allocated 15 minutes. Yesterday, the Panel, declined the request by Sugarloaf and Topp Property (but not the Klevstuls<sup>1</sup>) – including the ability for Sugarloaf and Topp Property to appear at all at Stage 2. This was based on (in summary):

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<sup>1</sup> The Klevstuls were allocated 45 minutes, and that is much appreciated by them.

- (a) Sugarloaf and Topp Property having not in their respective submissions “identify[jied] or request[ed] a change to the zoning of any property”;
- (b) The section 42A report and associated evidence prepared for Stage 2 by CODC not identifying any site-specific zoning request by Sugarloaf and Topp Property.
- (c) These being “jurisdictional” issues that preclude the request being granted.

### RESPONSE

3. Sugarloaf and Topp Property have noted the Panel’s record in para [8] of its response, stating that:

This response is based on information before the panel at this time in terms of the content of the submissions received.

4. I had been in the process of preparing a memorandum addressing Sugarloaf and Topp Property’s exclusion from Stage 2 in its entirety, and so have been able to provide the additional information below for the Panel’s assistance, in relatively short order (although this is late filing).

#### Earlier assurances – procedural fairness / legitimate expectation

5. Regrettably, the process has not been entirely clear, and the Panel may not have been aware of earlier assurances given by Council staff of Sugarloaf and Topp Property’s ability to appear at Stage 2.
6. Council administrative staff confirmed early on that both Topp and Sugarloaf could be heard in relation to site specific matters at Stage 2 , as follows (highlighting added, text relating to a different query deleted for convenience and shown by “[...]”):

**From:** District Plan <[DistrictPlan@codc.govt.nz](mailto:DistrictPlan@codc.govt.nz)>  
**Sent:** Wednesday, April 12, 2023 11:28 AM  
**To:** Werner Murray <[wmurray@propertygroup.co.nz](mailto:wmurray@propertygroup.co.nz)>  
**Cc:** James Gardner-Hopkins <[james@jgh.nz](mailto:james@jgh.nz)>; District Plan <[DistrictPlan@codc.govt.nz](mailto:DistrictPlan@codc.govt.nz)>; Jo Skuse <[jskuse@propertygroup.co.nz](mailto:jskuse@propertygroup.co.nz)>  
**Subject:** RE: Submissions for Sugarloaf

Kia ora Werner,

**Yes, Sugarloaf can be provided with time at the zoning hearing.** I have asked Tarryn to make a note of that for when they are arranging speaking orders.

Ngā mihi,  
Adam  
[...]

**From:** Werner Murray  
**Sent:** Tuesday, April 11, 2023 12:00 PM  
**To:** District Plan <[DistrictPlan@codc.govt.nz](mailto:DistrictPlan@codc.govt.nz)>  
**Cc:** James Gardner-Hopkins <[james@jgh.nz](mailto:james@jgh.nz)>; Jo Skuse <[jskuse@propertygroup.co.nz](mailto:jskuse@propertygroup.co.nz)>  
**Subject:** RE: Submissions for Topp and Sugarloaf

Great thanks Adam – can I also clarify, is Sugarloaf Vineyards also provided with a speaking time in the zoning hearing?  
[...]

**From:** District Plan <[DistrictPlan@codc.govt.nz](mailto:DistrictPlan@codc.govt.nz)>  
**Sent:** Tuesday, April 11, 2023 11:51 AM  
**To:** Werner Murray <[wmurray@propertygroup.co.nz](mailto:wmurray@propertygroup.co.nz)>  
**Cc:** James Gardner-Hopkins <[james@jgh.nz](mailto:james@jgh.nz)>; District Plan <[DistrictPlan@codc.govt.nz](mailto:DistrictPlan@codc.govt.nz)>  
**Subject:** RE: Submissions for Topp and Sugarloaf

Kia ora Werner,

**Yes, Topp will also be provided with a speaking time in the zoning hearing.**  
More instructions regarding this hearing should be available soon.

[...]  
Ngā mihi,  
Adam  
[...]

**From:** Werner Murray <[wmurray@propertygroup.co.nz](mailto:wmurray@propertygroup.co.nz)>  
**Sent:** Tuesday, 11 April 2023 10:50 am  
**To:** District Plan <[DistrictPlan@codc.govt.nz](mailto:DistrictPlan@codc.govt.nz)>  
**Cc:** James Gardner-Hopkins <[james@jgh.nz](mailto:james@jgh.nz)>  
**Subject:** Submissions for Topp and Sugarloaf

Hi Tarryn,

I just wanted to check with you I can see that the submission that I lodged for:

- Topp Property Investments 2015 Ltd submitter #161

I can see that we are scheduled for Thursday 11<sup>th</sup> May 2023 as part of the provisions hearing. I am keen to know if they will also have a spot in the Zoning hearing stream. This submitter has asked for provisions to be changed but ultimately if the provisions do not get changed they are also seeking a change to the zoning to be residential. So while there may be a general relevance of the provisions ultimately their interest and focus is site specific to the land that they own.  
[...]

7. With these assurances in place, each of Sugarloaf and Topp Property had planned their strategy accordingly. They provided planning evidence for Stage 1 which clarified with their broad general relief, while indicating their specific sites of interest as identified in that evidence (of Ms Skuse). They anticipated following up that “foreshadowed” interest at Stage 2 with site-

specific evidence (including from the experts identified in their request for additional hearing time). The experts were instructed accordingly, and had planned their time accordingly. It is simply not possible for Sugarloaf and Topp Property to produce their site-specific evidence in time or have their expert attend their allocated time in Stage 1 (ie, tomorrow).

8. It is therefore, based on the assurances of Council Officers, a general matter of procedural fairness and natural justice for both Sugarloaf and Topp Property to be allocated time at the Stage 2 hearing. They each have a legitimate expectation of being able to have been heard at Stage 2. They have each relied on that legitimate expectation, to their detriment, as they could otherwise have brought all their evidence (on both the general relief and site specific alternatives) at the same time for Stage 1. In that sense, the Council could be considered estopped from preventing Sugarloaf and Topp Property from appearing at Stage 2.

### **Scope / Jurisdiction**

9. In addition to the Panel's indication of its reasons as to scope / jurisdiction, Ms Rodgers had raised earlier, more detailed, concerns as to scope to Mr Murray and Ms Skuse, as follows:

I think we have some scope issues in terms of the submissions as lodged.

We cannot find anywhere that Sugarloaf Vineyards Ltd or Topp Property Investments 2015 Ltd submissions that seeks site specific relief for the property owned in Lowburn and Clyde respectively.

The relief sought in both submissions is:

The Submitter requests the following decision:

- (a) Primary relief: reject, refuse, or otherwise decline the Plan Change.
- (b) In the alternative: if the Plan Change is to be adopted, to amend, vary or otherwise modify the Plan Change to address the concerns, issues, and other matters raised in this submission (including any necessary additional or consequential relief).

The matters raised in both submissions appear to be almost identical and relate generally to the development of provisions and the provisions themselves rather than seeking any site-specific relief. These matters have been addressed in the section 42A for Stage 1.

On this basis we are seeking advice on scope and will advise in due course if the site-specific matters can be addressed.

10. The response to this is straightforward. It has always been open to a submitter to seek “lesser relief”, than what they originally sought in a submission: refer, eg *Hodge v Christchurch City Council* [1996] NZRMA 127, where that was accepted without question;<sup>2</sup> and, more recently, eg: *Transpower v QLDC* [2023] NZEnvC 69.<sup>3</sup>
11. In the case of Sugarloaf and Topp Property:
- (a) Topp Property is seeking general relief as follows:
- (i) conversion of the Future Growth Overlay to Low Density Residential Zone;
  - (ii) provision for Comprehensive Residential Development in the LDRZ as a fully discretionary activity, to allow infrastructure capacity to be addressed; and
  - (iii) allowing a density of 250m<sup>2</sup> as part of any such discretionary Comprehensive Residential Development, rather than the currently proposed density of 450m<sup>2</sup>.
- (b) If the Panel is not convinced to grant that relief across the entirety of the Future Growth Overlay and the LDRZ (which is a *rezoning*), then Topp wishes to have the Panel consider the application of that relief, or some lesser or appropriate alternative to its site (which could include a specific rezoning with, say, a structure plan allowing similar or lesser development outcomes).
- (c) Sugarloaf is seeking:
- (i) a reduction in the minimum lot size proposed for the Large Lot Residential Zone – Precinct 2 from 3,000m<sup>2</sup> to 1,500m<sup>2</sup>, and
  - (ii) for Comprehensive (or Multi-Unit) Residential Development to apply to all LLRZs (across all precincts) allowing a density of 250m<sup>2</sup> for any such developments, rather than the currently proposed very low (eg 3,000m<sup>2</sup>) densities proposed. Retaining low density requirements as part of any Comprehensive Residential Development rules defeats the very purpose of the regime.
- (d) Again, that relief is being sought across all the LLRZ, but if they Panel is not convinced to apply that relief generally, Sugarloaf wishes to have the Panel consider some lesser or appropriate alternative to its site (which could again include a rezoning of its

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<sup>2</sup> “However, we are prepared to grant the rest of the relief sought by the association particularly now that it is confined to subdivision for leases. **This is, of course, a lesser relief than was sought originally** in the association’s first submission.”

<sup>3</sup> “[The] ...amendment is within scope of the Transpower appeal, being more restrictive than the controlled activity status [originally] sought ...”

site with a structure plan allowing similar or lesser development outcomes).

### **Conclusion**

12. Sugarloaf and Topp Property do not consider there to be any jurisdictional or scope bar to their seeking site specific (or specific zone relief). They are concerned that a procedural error will have occurred if they are denied the ability to be heard (and file evidence) at Stage 2.
13. To the extent that there is any procedural issue arising from any site-specific relief for those submitters not being considered in the s42A Report, and associated evidence, that can be cured through the officers' right of reply. It is often the case that they will undertake a further s32AA evaluation in response to what evidence has been produced through the hearing process.
14. Accordingly, Sugarloaf and Topp Property respectfully ask the Panel reconsider its decision to refuse their request to be heard as part of Stage 2 of this hearing process.

**DATED** 10 May 2023



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J D K Gardner-Hopkins  
**Project Manager for the Submitters**