

**Note:** This Fifth Version of the River Terrace Resource Area plan provisions is updated from the Fourth Version circulated by Memorandum dated 21 June 2019 as follows:

- Modifications (additions and ~~deletions~~) in **red** are additional or amended provisions since the adjournment of the hearing on 5 July 2019.

## SECTION 20: RIVER TERRACE RESOURCE AREA

### 20.1 INTRODUCTION

The River Terrace Resource Area at Cromwell comprises 49 hectares across two distinct terraces, with frontage to State Highway 6 and Sandflat Road. It is approximately 1km from Cromwell's main employment/business precinct.

The Resource Area is to be comprehensively developed for urban activities including medium- and higher-density residential, retirement living, a neighbourhood centre, and a possible school, with an associated open space network, walkways, roading and infrastructure.

Development is guided by a structure plan which delineates the general layout of activities, roads, open spaces, and Development Parcels. The provisions of the Resource Area allow each of these Development Parcels to be subdivided and developed comprehensively to promote high quality residential neighbourhoods. Ready access to open space and wider vistas to the surrounding mountainous landscapes will be strong features of the development.

The Resource Area is adjacent to a variety of existing activities that affect the nature of the existing environment. These include the Highlands Motorsport Park, the Central Otago Speedway, orchard activities and the Cromwell aerodrome. It is recognised that these existing activities all generate noise and other effects that will compromise the amenity values of the Resource Area to varying degrees. Highlands and Speedway events and orchard activities generate noise effects on outdoor amenity for residents within the Resource Area. Acoustic insulation and ventilation will be required for some buildings within the Resource Area to mitigate the effects of Highlands and Speedway events and orchard activities on indoor living environments. Objectives, policies, rules and other methods are included in the Resource Area to protect existing activities from reverse sensitivity effects.

## 20.2 ISSUES

The resource management issues of the River Terrace Resource Area are:

- 20.2.1 Spatial expansion of Cromwell to meet current and future residential land demands**
- Cromwell's popularity as a place to live, work and visit is increasing, and its population is projected to continue to grow significantly. Additional greenfields land for accommodating this growth is required to avoid a shortfall. Adequate zoned and development-ready capacity and efficient use of land resources are necessary to meet housing demand and to maintain housing affordability.
- Cross-Reference  
Section 2  
Objectives: 20.3.1 – 20.3.4*
- 20.2.2 Quality, compact urban development**
- Well thought-out masterplanning that takes into account locational attributes, market demands, and best practice urban design will deliver high quality urban intensification and efficient use of land while fostering communities, improving environmental sustainability, promoting affordability, and improving overall well-being. Diversity of housing choice, a variety of open space opportunities, safe walking and cycling connections, and slow-speed safe roads all contribute to a successful medium and higher density living environment that maintains long term amenity values and environmental quality for residents.
- Cross Reference  
Section 2  
Objectives: 20.3.1 – 20.3.5, 20.3.8 – 20.3.9*
- 20.2.3 Maximising infrastructural efficiencies**
- Integrated planning of land use and infrastructure optimises the provision and use of roading and infrastructural services, encourages the efficient use of existing community facilities and provides for new community facilities.
- Cross Reference  
Sections 2, 15, 16  
Objectives: 20.3.6, 20.3.7*
- 20.2.4 Ensuring compatibility with surrounding activities**
- The existing environment surrounding the Resource Area includes significant tourism and community facilities, including the Highlands Motorsport Park, Cromwell Speedway, orchard activities and the Cromwell aerodrome that need to be protected from reverse sensitivity effects arising from increased noise sensitive activity in close proximity. Methods must be adopted to ensure that adverse reverse sensitivity effects on these existing activities are avoided.
- Cross Reference  
Section 2  
Objectives: 20.3.10*
- 20.2.5 Other issues**  
**Issues 6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, 6.2.6, 6.2.7 and 6.2.10 apply in the River Terrace Resource Area.**
- Explanation to Issues 20.2.1 – 20.2.5**
- Cromwell's population is growing at a comparatively high rate in relation to other similarly sized towns in New Zealand and Otago, and needs additional zoned land for the housing to accommodate this growth. Applying best practice urban design to new areas for urban development will deliver optimum amenity and quality of life outcomes for residents and the community, housing diversity and affordability, and efficiencies in the provision of parks, open space, roading and infrastructure. Existing activities adjacent to the Resource Area are important contributors to the social, economic and cultural wellbeing of the Cromwell and Central Otago communities that need to be protected from potential adverse reverse sensitivity effects arising from the development of the Resource Area for residential/noise sensitive purposes.*
- Cross Reference  
Section 6  
Objectives: 6.3.1 – 6.3.6*

## 20.3 OBJECTIVES

The objectives contained in this section are specific to the River Terrace Resource Area. The objectives in the following sections of the District Plan are also relevant to the subdivision, use, development, and protection of land in the River Terrace Resource Area:

Section 3.3 (Manawhenua)  
 Section 6.3 (Urban Areas)  
 Section 12.3 (District Wide)  
 Section 13.3 (Infrastructure, Energy and Utilities)  
 Section 14.3 (Heritage)  
 Section 15.3 (Financial Contributions)  
 Section 16.3 (Subdivision)  
 Section 17.3 (Hazards)

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|--------|--|---|
| 20.3.1 | <p><b><u>Objective – Diversity of housing product and housing affordability and availability</u></b><br/>         Increased short term (within 3 years) and medium term (within 10 years) housing supply, variety and choice by creating a well-designed residential development comprising a range of housing densities and typologies to enable a range of affordable price options available as soon as possible.</p> | <p><i>Cross reference to Issue 20.2.1, 20.2.2, Policies 20.4.1, 20.4.2</i></p>                  |
| 20.3.2 | <p><b><u>Objective – Efficient, co-ordinated, integrated greenfields development</u></b><br/>         Efficient greenfields development that is co-ordinated by way of a Structure Plan to achieve an integrated, connected, high quality residential neighbourhood.</p>   | <p><i>Cross reference to Issue 20.2.1, 20.2.2, Policies 20.4.2, 20.4.3,</i></p>                 |
| 20.3.3 | <p><b><u>Objective – Well-designed built environment</u></b><br/>         A well-designed built environment that provides for and positively responds to roads and open spaces, provides high quality amenity for residents, and contributes to public safety.</p>   | <p><i>Cross reference to Issue 20.2.1, 20.2.2, Policies 20.4.1, 20.4.2, 20.4.4, 20.4.5,</i></p> |
| 20.3.4 | <p><b><u>Objective – Retirement living opportunities</u></b><br/>         A variety of residential opportunities for retirement-age people, along with related services and amenities.</p>   | <p><i>Cross reference to Issue 20.2.1, 20.2.2, Policies 20.4.3, 20.4.8</i></p>                  |
| 20.3.5 | <p><b><u>Objective – Parks and open space network</u></b><br/>         Parks and open spaces that cater for the recreation and amenity needs of residents, and a network of pedestrian and cycle connections and greenways that are safe and convenient and which, along with the road network, allow easy connections within and beyond the Resource Area.</p>  | <p><i>Cross reference to Issue 20.2.2, Policies 20.4.1, 20.4.2, 20.4.4</i></p>                  |
| 20.3.6 | <p><b><u>Objective – Road network</u></b><br/>         A safe and efficient road network within the Resource Area that provides for all transport modes, including walking and cycling, while also integrating with the existing transport network and possible future development in surrounding areas.</p>   | <p><i>Cross reference to Issue 20.2.3, Policy 20.4.6</i></p>                                    |
| 20.3.7 | <p><b><u>Objective – Public infrastructure</u></b><br/>         Adequate connections to public infrastructure systems and appropriate distribution of infrastructure through the Resource Area, and an appropriate total number of dwellings within the Resource Area in line with servicing capacities.</p>   | <p><i>Cross reference to Issue 20.2.3, Policy 20.4.7</i></p>                                    |
| 20.3.8 | <p><b><u>Objective – Neighbourhood Centre</u></b><br/>         A neighbourhood centre in a convenient location to provide for the day to day convenience needs of the residential neighbourhood, and to complement and not undermine the existing Cromwell retail and business centres.</p>  | <p><i>Cross reference to Issue 20.2.1, 20.2.2, Policy 20.4.9</i></p>                            |
| 20.3.9 | <p><b><u>Objective – Education precinct</u></b><br/>         Land is provided for a school or other educational facility, to cater for the</p>   | <p><i>Cross reference to Issue 20.2.1, 20.2.2,</i></p>  |

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needs of the immediate and wider community.

*Policy 20.4.10*

**20.3.10 Objective – Reverse sensitivity**

**Activities adjacent to the Resource Area are protected from adverse reverse sensitivity effects, particularly Highlands Motorsport Park, Cromwell Speedway and horticulture activities/orcharding, so that constraints on those activities resulting from reverse sensitivity effects are avoided.**

*Cross reference to  
Issue 20.2.4, Policy  
20.4.11, 20.4.12*

**20.3.11 Objective – Healthy buildings**

**Construction of buildings that provide quiet and healthy internal environments that protect residents, to the extent necessary, from effects of existing activities adjacent to the Resource Area.**

*Cross reference to  
Issue 20.2.4, Policy  
20.4.11, 20.4.12*

## 20.4 POLICIES

The policies contained in this section are specific to the River Terrace Resource Area. The policies in the following sections of the District Plan are also relevant to the subdivision, use, development, and protection of land in the River Terrace Resource Area:

- Section 3.4 (Manawhenua)
- Section 6.4 (Urban Areas)
- Section 12.4 (District Wide)
- Section 13.4 (Infrastructure, Energy and Utilities)
- Section 14.4 (Heritage)
- Section 15.4 (Financial Contributions)
- Section 16.4 (Subdivision)
- Section 17.4 (Hazards)

- 20.4.1**      **Policy – Housing Affordability and availability**  
 Enable a range of dwelling types and sizes to help meet the housing needs of households on moderate incomes, while maintaining a high quality of urban and building design, and ensure that a significant quantity is available within three years.
- Cross reference:  
Objectives 20.3.1,  
20.3.3, 20.3.5; Rules  
20.7.3(viii), 20.7.8,  
20.7.9, 20.7.10,  
20.7.11*
- 20.4.2**      **Policy – Masterplanned Development**  
**Policy 20.4.2A:** Provide for the River Terrace Resource Area Structure Plan to manage the spatial layout of development in the Resource Area, including:
- (a) Roads, and the roading hierarchy;
  - (b) Parks and open spaces;
  - (c) Setback of built development from State Highway 6;
  - (d) Two distinct residential Sub-Areas, based on residential density:
    - (i) Residential Sub-Area A, located within the main core of the Resource Area, where higher residential density is appropriate;
    - (ii) Residential Sub-Area B, located around much of the periphery of the Resource Area, with lower residential density;
  - (e) A Retirement Living Overlay;
  - (f) A Neighbourhood Centre Overlay;
  - (g) An Education Overlay.
- Policy 20.4.2B Policy:** Ensure that development gives effect to the River Terrace Resource Area Structure Plan by:
- (a) Requiring that subdivision and development proposals are generally consistent with the Structure Plan;
  - (b) Requiring subdivision and development plans to be staged in one or more Development Parcels and to demonstrate the interrelationship and future integration with adjoining areas.
- 20.4.3**      **Policy – Built environment, density and diversity**  
 Require development to:
- (a) provide for a high quality public realm that is coordinated throughout the Resource Area, including by way of consistent road cross-sections, landscaping, road lighting and paving.
  - (b) deliver sites that are an appropriate size and shape for residential development at a range of densities.
- Cross reference:  
Objectives 20.3.2,  
20.3.4;  
Rules 20.7.3(viii)(d),  
20.7.1*
- 20.4.4**      **Policy – Parks and Open Spaces**  
 Require development to address the recreation and amenity needs of residents by:
- (a) providing public open spaces;
  - (b) enabling passive surveillance of public open spaces by ensuring public open spaces are generally fronted with roads; and
- Cross reference:  
Objectives 20.3.3,  
20.3.5;  
Rules 20.7.3(viii),  
20.7.9, 20.7.10*

- (c) requiring pedestrian and/or cycle linkages (including cycle lanes within the road environment) to connect with the public open spaces, the neighbourhood centre, the school area, the retirement living area and the adjacent public cycleway network.

**20.4.5 Policy – Form of development**

Manage the height, bulk, location, form and appearance of buildings and site landscaping and fencing, to:

- (a) achieve a variety of residential densities and character.
- (b) provide usable and accessible outdoor living space and privacy and to have access to daylight and sunlight.
- (c) allow neighbouring properties to have a reasonable standard of sunlight access and privacy.
- (d) achieve acceptable indoor amenity outcomes taking into account noise generating activities on properties adjacent to the Resource Area.

*Cross reference:*  
*Objective 20.3.3,*  
*Rules 20.7.1,*  
*20.7.3(ii) – (vii)*

**20.4.6 Policy – Transport**

Require development to be designed to provide a road and block pattern which:

- (a) is easy and safe to use for motorists, pedestrians and cyclists;
- (b) is safely and efficiently connected to State Highway 6, Sandflat Road and any nearby public transport routes;
- (c) limits cul-de-sac roads where practicable;
- (d) is public;
- (e) incorporates principles of crime prevention through environmental design.

*Cross reference:*  
*Objective 20.3.6;*  
*Rules 20.7.3(viii),*  
*20.7.8, 20.7.9,*

**20.4.7 Policy – Infrastructure**

Require development to provide servicing:

- (a) in a coordinated and integrated manner and in line with the capacity of the networks;
- (b) so that power and telecommunications services are reticulated underground to each site;
- (c) so that lots and buildings can be connected to the reticulated wastewater and potable water networks.

*Cross reference:*  
*Objectives 20.3.7;*  
*Rules 20.7.3(viii),*  
*20.7.8, 20.7.9,*

**20.4.8 Policy – Retirement Living Overlay**

Provide adequate land for a retirement village within Residential Sub-Area A that:

- (a) enables a range of residential options for retirement-age people, including standalone villas, terrace housing and apartment housing;
- (b) provides for central services and amenities located to enable synergies with the neighbourhood centre and the open space and walkway network;
- (c) integrates with the wider Resource Area.

*Cross reference:*  
*Objective 20.3.4;*  
*Rules 20.7.1(ii),*  
*20.7.3(ii) – (iii),*  
*20.7.8*

**20.4.9 Policy – Neighbourhood Centre Overlay**

**Policy 20.4.9A:** Provide for a neighbourhood centre containing small scale retail, professional services, care facilities, community facilities, and food and beverage premises of a scale and in a location to meet the local convenience needs of residents.

**Policy 20.4.9B:** Limit the extent of retail to avoid any significant adverse effects on:

- (a) the small-scale character of the neighbourhood centre,
- (b) residential amenity in the vicinity,
- (c) the vitality and viability of existing Cromwell commercial centres,
- (d) the safe and efficient operation of the transport network.

*Cross reference:*  
*Objective 20.3.8;*  
*Rules 20.7.1(iv),*  
*20.7.3(iv), 20.7.8*

**20.4.10 Policy – Education Overlay**

Provide for educational facilities and for open space(s) that suit both the needs of the school and the wider community.

*Cross reference:*  
*Objectives 20.3.9;*  
*Rules 20.7.1(v),*  
*20.7.3(v), 20.7.8*

- 20.4.11**     **Policy – Compatibility with surrounding established land uses**  
**Policy 20.4.11A: Provide for a wide, green setback from State Highway 6 to provide amenity for residents of the Resource Area and highway users.**
- Policy 20.4.11B: Ensure that sensitive activities (including residential and any childcare or other care activity) are adequately protected from spray drift from adjoining rural production activities.**
- Cross reference:  
Objective 20.3.10;  
Rules 20.7.1(ii)(i),  
20.7.3(viii)(f), 20.7.7  
(vii), (viii), (ix), 20.7.8*
- 20.4.12**     **Policy – Reverse Sensitivity**  
**Avoid reverse sensitivity effects on land uses in the neighbourhood, particularly the Highlands Motorsport Park, Cromwell Speedway, horticulture / orcharding activities, and the Cromwell aerodrome.**
- Cross reference:  
Objective 20.3.11;  
Rules 20.7.7(x)*

## 20.5 METHODS OF IMPLEMENTATION

### 20.5.1 Creation of the River Terrace Resource Area

The planning maps identify the River Terrace Resource Area which has a Structure Plan (Rule 20.7.8), a Movement Plan (Rule 20.7.9), a Development Parcel Plan (Rule 20.7.10), Indicative Road Cross Section Plans (Rule 20.7.11), and rules (Rules 20.7.1 – 20.7.7) applicable only within this Resource Area.

The River Terrace Resource Area is to be comprehensively developed in the short and medium term for urban activities in accordance with the Structure Plan. Activities include medium and higher density residential, retirement living, neighbourhood centre, an associated open space network, walkways, roading and infrastructure, and potential educational facilities.

Rules are included to manage the development of noise sensitive activities to mitigate, to the extent necessary, adverse effects of noise from Highlands Motorsport Park, Cromwell Speedway and horticulture / orcharding activities on residents within the Resource Area and to avoid reverse sensitivity effects on those nearby activities.

Reason:

*Masterplanning to create desirable urban outcomes, including variety and choice in housing product, high quality public and private amenities and a wider “sense of place”, relies on establishing and implementing a robust structure plan, with associated rules that set the parameters for subdivision and development. The River Terrace Structure Plan, Movement Plan, Development Parcel Plan, Indicative Road Cross-Section Plans, and the River Terrace provisions in Section 20.7 below, will best achieve the development aspirations set out in the objectives and policies for the Resource Area.*

Cross Reference

*Policies: 20.4.1 -  
20.4.12*

*Rules: 20.7.1 -  
20.7.11*



## 20.6 PRINCIPAL REASONS FOR ADOPTING OBJECTIVES, POLICIES AND METHODS

**20.6.1** The land comprising the River Terrace Resource Area is greenfields and needs to be developed in a coordinated, integrated and efficient manner to yield high quality urban outcomes while helping to accommodate Cromwell's growth. The provisions provide for diversity of housing product to enable a range of price options, and a well-designed built environment comprising a range of residential living options, including retirement living, and the community amenities of a neighbourhood centre and potentially a school.

*Cross Reference:  
Issues 20.2.1 – 20.2.5;  
Objectives 20.3.1 –  
20.3.10, 23.3.11;  
Policies 20.4.1 –  
20.4.11, 20.4.13;  
Rules 20.7.1 – 20.7.11,*

The Structure Plan and Movement Plan ensure appropriate spatial layout of activities, a safe and efficient road network and a green network of reserves and open space.

The Resource Area is adjacent to existing activities which generate effects that will be experienced within the Resource Area. The provisions recognise these existing effects and include measures to reduce the impact of them on people within the Resource Area.

The Resource Area provisions promote the development of a quality compact neighbourhood that:

- (a) Fosters a community by providing shared amenities and boundary conditions that encourage neighbourhood interaction, a variety of high quality open space opportunities, and diversity of housing choice;
- (b) Improves physical and mental well-being by providing safe walking and cycling connectivity, slow-speed safe roads, reduction of crime through passive road surveillance, and a variety of recreation opportunities;
- (c) Improves sustainability by encouraging walking and cycling for local trips, minimising impervious surfacing, maximising green spaces, and promoting effective solar orientation;
- (d) Enables affordability by promoting compact infrastructure, and a range of lot sizes to create a choice of housing types
- (e) Requires the construction of buildings that will address the effects of existing adjacent activities and create healthy internal living environments for people.
- (f) Recognises and avoids potential reverse sensitivity effects on existing nearby activities.

## 20.7 RULES – RIVER TERRACE RESOURCE AREA

### 20.7.1 PERMITTED ACTIVITIES

(i) **Compliance with standards**

Any activity that is not listed as a controlled, discretionary (restricted), discretionary, non-complying or prohibited activity and that complies with the rules and standards set out in Sections 11 to 15 of this Plan and the standards set out in Rules 20.7.1(ii) – (vi) is a permitted activity.

(ii) **Residential activities and buildings within Residential Sub-Areas A and B**

Residential activities and buildings within Residential Sub-Areas A and B as shown on the River Terrace Resource Area Structure Plan, excluding buildings and activities within the Retirement Living Overlay for retirement living purposes, are permitted activities provided they meet the following standards:

(a) **Building Height**

The maximum height of any building shall not exceed 9m except that the maximum height of any building located within 25m of the western boundary of the Resource Area adjoining Sections 33-36, Sarita Subdivision, shall not exceed 5m.

(b) **Height in relation to boundary**

Buildings shall not project beyond a 45-degree recession plane measured from a point 4.5m vertically above ground level along rear and side boundaries.

(c) **Building coverage**

The maximum coverage for all buildings on a site shall be 45%.

(d) **Setback from boundaries**

The minimum setback from all boundaries of any building on a site shall be 1m except that, where any units share a common wall, no setback is required from the common boundary between the units.

(e) **Outlook from principal living rooms and bedrooms**

An outlook space is an open outdoor area adjacent to the window of a room, to provide daylight access to and outlook from the room.

One outlook space must be provided from external windows of a habitable room (being a living room or a bedroom), in accordance with the following:

- (i) Where the room has two or more external faces with windows the outlook space must be provided from the face with the largest area of windows.
- (ii) The minimum dimensions for a required outlook space are as follows:
  - the principal living room must have an outlook space with a minimum dimension of 4m in width and 4m in depth, all located within the site;
  - the principal bedroom must have an outlook space with a minimum dimension of 3m in depth and 3m in width, all located within the site; and
  - any secondary bedroom must have an outlook space with a minimum dimension of 1m in depth and 2m in width, all located within the site.
- (iii) The depth of the outlook space is measured at right angles to and horizontal from the window to which it applies.

- (iv) The width of the outlook space is measured parallel to the window to which it applies.
- (v) Outlook spaces required from different rooms within the same building may overlap.
- (vi) Outlook spaces may overlap where they are on the same building face plane.
- (vii) Outlook spaces must:
  - be clear and unobstructed by buildings;
  - not extend over adjacent sites, except where the outlook space is over a public or common space;
  - not extend over an outlook space or outdoor living space required by another dwelling.

(f) **Outdoor living space**

An outdoor living space is an outdoor area intended for amenity and outdoor recreation. An outdoor living space must be provided as follows:

- (i) An outdoor living space of minimum diameter of 4m that opens directly from the primary living area of the dwelling must be provided. The outdoor living space must be clear of any parking or vehicle manoeuvring area and any buildings except for decks, terraces, pergolas or similar open structures, and building eaves.

(g) **Internal Boundary fences and walls**

The maximum height of boundary fences and walls shall be:

- On front boundaries: 0.9m
- On side boundaries in front gardens (in front of the principal front building line): 0.9m
- On side boundaries (behind the principal front building line) when adjoining another private property: 1.8m
- On rear boundaries when adjoining another private property: 1.8m
- On side or rear boundaries when adjoining a lane, accessway, greenway or other public or common space: 1.2m

For the purposes of this Rule and Rule 20.7.1(e) above:

- Any fence or wall located within 1m of a boundary is deemed to be on the boundary;
- The principal front building line is a line drawn along the largest building face which faces an adjoining road and extending to the side boundaries;
- Any private land legally accessible to or by more than one individual property is a common space.

(h) **Driveways**

Driveways shall be a minimum of 5m in length or a maximum of 1.5m in length (but not between 1.5 – 5m).

(i) **Set-back from Resource Area boundary**

The minimum setback of buildings from the Resource Area boundary shall be 5m.

(j) **Carparking**

A minimum of 2 carpark spaces per dwelling shall be provided on site, plus an additional carpark shall be provided in association with a home occupation.

(k) **Building design**

The design of any building shall be approved by a Design Review Board

as complying with the River Terrace Design Guidelines. The Board and the Guidelines shall be established and applied through a design review process implemented through a Consent Notice condition imposed under Rule 20.7.3(vii)(n).

Reasons:

*The spatial layout of activities across the Resource Area is guided by the Structure Plan. The development standards for permitted residential activities in the Residential Sub-Areas ensure that the bulk and location of dwellings (including building height, height in relation to boundary, setbacks from boundaries, outlook space, and outdoor living space) are appropriate in the medium and higher density residential environment and do not, individually or collectively, create adverse effects on the amenities of the neighbouring properties or on the wider neighbourhood.*

*The permitted activity status for dwellings that meet the standards minimises the consenting costs for individual landowners and the Council, and contributes to overall affordability for landowners.*

*The permitted standards specify maximum heights for walls and fences along property boundaries. These are intended to enable a reasonable degree of privacy while maintaining visibility and passive surveillance from dwellings to public and common open spaces. Boundary hedges are not restricted.*

*The standard for the length of driveways discourages car parking that results in the ends of cars hanging over lanes or footpaths.*

*Setback from Resource Area boundaries is required to avoid reverse sensitivity effects on rural activities on adjoining properties.*

*A design review process is important to achieve high quality, integrated medium density residential development.*

(iii) **Activities within the Retirement Living Overlay**

The following activities are permitted activities within the Retirement Living Overlay:

- (a) Residential activities including Living Accommodation.
- (b) Centralised activities including food preparation and related activities, Care Centre activities, and medical activities limited to the premises of doctors and other health care professionals.

*Breach:  
Non-complying activity  
– see Rule 20.7.5(v)*

(iv) **Activities within the Neighbourhood Centre Overlay**

The following activities are permitted activities within the Neighbourhood Centre Overlay:

- (a) Retail activities.
- (b) Cafés, restaurants.
- (c) Care Centre activities.
- (d) Community activities.
- (e) Medical activities, limited to the premises of doctors and other health care professionals.
- (f) Residential activities.
- (g) Recreational activities.
- (h) Travellers Accommodation.

*Breach:  
Non-complying activity  
– see Rule 20.7.5(v)*

(v) **Activities within the Education Overlay**

The following activities are permitted activities within the Education Overlay:

- (a) Community facilities, limited to educational facilities and pre-school care

*Breach:  
Non-complying activity  
– see Rule 20.7.5(v)*

activities.

Reasons:

*The activities listed as permitted activities are those expected within the Overlay areas of the Resource Area. Within the Overlay areas buildings to contain the permitted activities are a discretionary (restricted) activity (see Rule 20.7.3 below). Other general standards for the activities, including, for example, for noise, also apply (see Rule 20.7.7 below).*

(vi) **Subdivision precedes building**

A subdivision consent which achieves compliance with Rule 20.7.3(vii)(n) (Design Controls) and Rule 20.7.7(viii) (Reverse Sensitivity Covenants) must precede commencement of construction of any building.

Reasons:

*Residential building design controls and avoidance of reverse sensitivity effects are integral aspects of development within the Resource Area which need to be in place before building construction commences.*

## 20.7.2 **CONTROLLED ACTIVITIES**

(i) **Subdivision**

Subdivision for the following purposes shall be a controlled activity:

- (a) Network and public utilities.
- (b) Reserves.
- (c) Boundary adjustments.

The Council shall exercise its control in respect of the following matters:

1. The area of the proposed allotment taking into consideration the proposed use of the allotment.
2. The location, design and construction of access, and its adequacy for the intended purpose of the subdivision.
3. The amenities of neighbouring properties.
4. Public access requirements.
5. The provision of services and their adequacy for the intended purpose of the subdivision.
6. Any amalgamations and easements that are appropriate.
7. Any financial contributions necessary for the purposes set out in Section 15 of the Plan.
8. Any other matters provided for in section 220 of the Act.

Any application made under this rule will generally not be notified or require the written consent of affected persons.

Reason:

*Subdivision for these activities has only a limited effect on the environment. A minimum allotment size to control density of development is not necessary given the purpose of these activities.*

## 20.7.3 **DISCRETIONARY (RESTRICTED) ACTIVITIES**

(i) **Breach of Standards for Permitted or Controlled Activities**

Any activity or building listed in Rule 20.7.1(ii) that does not meet the relevant standards listed with that activity or building is a discretionary (restricted) activity, with the Council's discretion restricted to:

1. The purpose of the standard;
2. The effects of the infringement of the standard;
3. The effects on the amenity of neighbouring sites;

4. The effects of any special or unusual characteristic of the site which is relevant to the standard;
5. The characteristics of the development proposed; and
6. Where more than one standard will be infringed, the effects of all infringements.

Any application made under this rule will generally not be notified where the written approval of affected persons is provided except that any application which includes compliance with, or breach of, Rules 20.7.3(viii)(l) or 20.7.3(viii)(m) or any application for consent under Rule 20.7.3(x) shall be limited notified to the New Zealand Transport Agency.

**Reason:**

*Any proposal that does not meet the relevant development standards is a discretionary (restricted) activity to enable the Council to review the effects of the proposed infringement(s) on the environment.*

*The Council has flexibility as to whether to notify any application made under these rules. In some instances discretionary (restricted) activities will only have a minor effect and do not justify notification. Applications will be processed non-notified where affected neighbours have given their written approval to the proposal. Applicants have greater certainty in that attention can be focused upon those matters identified for consideration. This in turn will increase efficiency in processing such applications.*

(ii) **Buildings for residential activities within the Retirement Living Overlay**

Buildings for residential activities within the Retirement Living Overlay used for retirement living purposes (including single unit, duplex or multiple unit buildings) are a discretionary (restricted) activity provided that any building meets the following standards:

*Breach:  
Discretionary activity – see  
Rule 20.7.4(iii)*

- (a) **Building Height**  
The maximum height of any building shall not exceed 9m.
- (b) **Height in relation to boundary**  
Buildings shall not project beyond a 45-degree recession plane measured from a point 4.5m vertically above ground level along rear and side boundaries.
- (c) **Building coverage**  
The maximum coverage for all buildings on a site shall be 45%.
- (d) **Set-back from Resource Area boundary**  
The minimum setback of buildings from the Resource Area boundary shall be 5m.
- (e) **Carparking**  
A minimum of 0.7 carpark spaces per independent residential unit shall be provided on site.

The Council's discretion is restricted to:

1. The external appearance and design of buildings;
2. Associated earthworks and landscaping;
3. Vehicle access;
4. Relationship with and accessibility to outdoor living space and outlook space for each residential unit;
5. The location and layout of vehicle parking;
6. Integration between the proposed building(s) and other consented development within the Overlay.

*Reason: Development within the Retirement Living Overlay may comprise single units, duplex or multiple unit buildings. The discretionary (restricted) activity status and development standards are appropriate to provide sufficient flexibility in the layout of the units, while retaining control over various design aspects of the development.*

**(iii) Buildings for centralised activities within the Retirement Living Overlay**

Buildings for centralised activities, including food preparation and related activities, residential care and communal facilities, within the Retirement Living Overlay are a discretionary (restricted) activity provided that any building meets the following standards:

*Breach:  
Discretionary activity – see  
Rule 20.7.4(iii)*

**(a) The standards in Rule 20.7.1(ii)(a) – (j), except that the following standard applies:**

(i) The maximum height of any building shall not exceed 12m.

**(b) Carparking**

A minimum of 0.7 carpark spaces per independent residential unit shall be provided on site, in a shared configuration. For central facilities or Care Centre, one carpark for every 40m<sup>2</sup> GFA of the central facilities or Care Centre and in addition one carpark for every 100m<sup>2</sup> GFA for visitors shall be provided.

The Council shall exercise its discretion in respect of the matters in 20.7.3(vi) below.

Reasons:

*Buildings for centralised activities within the Retirement Living Overlay are a discretionary (restricted) activity provided they achieve certain development standards. The standards are generally the same that apply to the Residential areas within the Resource Area, in relation to bulk and location of buildings, other than a specific standard enabling greater building height.*

*Carparking rates for retirement living are based on rates accepted in the industry, for per-unit parking, visitor parking, and parking for central facilities and assisted residential care.*

**(iv) Buildings within the Neighbourhood Centre Overlay**

Buildings within the Neighbourhood Centre Overlay are a discretionary (restricted) activity provided that any building meets the following standards:

*Breach:  
Discretionary activity –  
see Rule 20.7.4(iii)*

**(a) Building Height**

The maximum height of any building shall not exceed 12m;

**(b) Building coverage**

The maximum coverage for all buildings on a site shall be 75%.

**(c) Setback from boundaries**

No set-back of any building from road boundaries is required. Buildings shall be set back a minimum of 1.5m from all other boundaries.

**(d) Maximum Floor Area per premise**

The maximum gross floor area of any retail or service premise shall be 200m<sup>2</sup> except that any medical centre / general practitioner facility shall have a maximum gross floor area of 400m<sup>2</sup>.

**(e) Maximum Total Floor Area**

The total combined gross floor area of all retail premises shall be 1000m<sup>2</sup>.

**(f) Carparking**

Minimum on-site carparking shall be provided as follows:

Retail and café/restaurant activities	1 carpark per 30m <sup>2</sup> GFA for staff and visitors
Childcare facilities	0.10 carparks per child or other person other than employees, plus 0.5 carparks per full time employee
Community facilities (including medical facilities)	1 carpark per 10m <sup>2</sup> public floor area of the facility
Residential	1 carpark per residential unit and one additional carpark shall be provided in association with a home occupation.

The Council shall exercise its discretion in respect of the matters in Rule 20.7.3(vi) below.

Reasons:

*Buildings within the Neighbourhood Centre Overlay are a discretionary (restricted) activity provided they achieve certain development standards. The standards provide for a reasonable critical mass of building within a small land area, to create a focal point for the centre and to enable co-location of activities including small scale retail, childcare facilities, and medical care facilities in close proximity to the Retirement Living Overlay. Carparking rates for the activities are based on rates accepted in the industry.*

(v) **Buildings within the Education Overlay**

Buildings within the Education Overlay are a discretionary (restricted) activity provided they meet the following standards:

*Breach:  
Discretionary activity –  
see Rule 20.7.4(iii)*

(a) **Building Height**

The maximum height of any building shall not exceed 15m.

(b) **Height in relation to boundary**

Buildings shall not project beyond a 45-degree recession plane measured from a point 4.5m vertically above ground level along rear and side boundaries of the Overlay.

(c) **Building coverage**

The maximum coverage for all buildings on a site shall be 50%.

(d) **Setback from road boundary**

The minimum set-back from road boundaries of any building shall be 1.5m.

(e) **Carparking**

Minimum on-site carparking shall be provided as follows: 0.5 carparks per full time equivalent employee plus 1 visitor carpark per classroom.

The Council shall exercise its discretion in respect of the matters in Rule 20.7.3(vi) below.

Reasons:

*Buildings within the Education Overlay are a discretionary (restricted) activity provided they achieve certain development standards. The standards provide for a reasonable balance of building area and open space for a school.*

*Carparking rates are based on rates accepted in the industry for staff and visitor parking.*



(vi) **Matters over which discretion is restricted**

For buildings within the Retirement Living Overlay, the Neighbourhood Centre Overlay and the Education Overlay, the Council's discretion is restricted to the following matters:

1. The external appearance and design of buildings, having regard to the assessment matters in Rule 20.7.3(vii) below;
2. Associated earthworks and landscaping;
3. Access;
4. The location and layout of vehicle parking;
5. Hours of operation;
6. Noise;
7. Signage;
8. Integration between the proposed building and other consented development within the Overlay.
9. For a school or other educational facility within the Education Overlay, the effects of traffic on the local transportation network including the State Highway 6 / Sandflat Road intersection.

*Reasons:*

*Buildings within the Retirement Living Overlay, the Neighbourhood Centre Overlay, and the Education Overlay are a discretionary (restricted) activity with the Council's discretion restricted to a range of matters. This is to provide the Council with power to impose conditions on these matters, where necessary.*

(vii) **Assessment matters for the external appearance and design of buildings**

- (a) The extent to which the external appearance and design of the building contribute to a coherent neighbourhood theme,
- (b) That the building integrates appropriately with the neighbourhood including with the road, open space and pedestrian connections, and existing buildings;
- (c) That orientation of buildings takes into account views, sun exposure and relationship with open space;
- (d) That building façades help define and give character to open spaces, roads, paths, greenways and parks.

*Reasons: The assessment matters provide guidance to applicants and the Council when, respectively, formulating and assessing proposals for discretionary (restricted) activity buildings. The assessment matters focus on ensuring that developments contribute to a high quality urban setting and integrate into the neighbourhood.*

(viii) **Subdivision**

Except as provided by Rule 20.7.2(i), subdivision is a discretionary (restricted) activity provided that the subdivision complies with the following standards:

(a) **Adherence to the River Terrace Resource Area Structure Plan and Movement Plan**

All subdivision must be in general accordance with the River Terrace Resource Area Structure Plan at Rule 20.7.8 and the Movement Plan at Rule 20.7.9, in respect of the location of sub-area boundaries, roads, overlay boundaries, and greenway locations.

A location variation of up to 50m shall be considered to be in general accordance with the Structure Plan and Movement Plan.

(b) **Roading**

All roads shall comply with the minimum overall width and minimum carriageway widths of the Indicative Road Cross Section Plans in Rule

20.7.10 below; and shall be in general accordance with the other features of those cross-sections.

**(c) Development Parcels**

An application to subdivide any Development Parcel shown on the Development Parcel Plan at Rule 20.7.10 within Residential Sub-Area A shall include an access lane that:

- (i) Serves all lots within the Development Parcel, except any lots that have access direct from an adjoining road;
- (ii) Have a width of 5m – 6m (for two-way access) or 3m (for a subsidiary one-way access or pedestrian only access);
- (iii) Integrates with the adjoining road(s);
- (iv) Integrates with the adjoining Development Parcel(s) where it is logical to connect the access lane to access lanes in the adjoining Development Parcels.

**(d) Minimum and maximum lot sizes**

The minimum and maximum lot sizes shall be:

<b>Sub-Area</b>	<b>Minimum lot size</b>	<b>Maximum lot size</b>
Residential Sub-Area A	160m <sup>2</sup>	500m <sup>2</sup>
Retirement Living Overlay	No minimum	No maximum
Residential Sub-Area B	400m <sup>2</sup>	1000m <sup>2</sup>
Neighbourhood Centre Overlay	No minimum	No maximum
Education Overlay	No minimum	No maximum

**(e) Open Space Sub-Areas and Greenways**

The Open Space Sub-Areas and Greenways shown on the Structure Plan at Rule 20.7.8 and the Movement Plan at Rule 20.7.9 shall be designed and implemented in stages, as part of the development of the adjacent Development Parcels, in accordance with the following:

- (i) An application for subdivision of any Development Parcel that adjoins an Open Space Sub-Area and/or Greenway shall include the adjoining Open Space Sub-Area and/or Greenway (unless that Open Space Sub-Area and/or Greenway is vested or consented);
- (ii) The application for subdivision of the Development Parcel shall be accompanied by a design plan(s) for the adjacent part of the Open Space Sub-Area and/or Greenway;
- (iii) The design plan(s) shall show the layout of the open space and outdoor recreational purpose of the relevant part of the Open Space Sub-Area and/or Greenway, including walkways, cycleways, and associated landscaping, and shall show how these integrate with any adjoining sections of the Open Space Sub-Area and/or Greenway;
- (iv) The approved design plan(s) shall be implemented as part of the works required to achieve s224(c) certification for the subdivision of the relevant Development Parcel.

**(f) Periphery treatment at boundaries of the Resource Area**

- (i) At the time of subdivision, every lot within Residential Sub-Areas A or B with a boundary adjoining the western boundary of the Resource Area and adjoining Section 98, Block I Cromwell SD shall be planted in vegetation to provide a suitable buffer from the potential effects of rural activities on the opposite side of the boundary. The planting shall:
  - (a) be a width of 2m parallel with the Resource Area boundary;
  - (b) be evergreen, and have a minimum height at planting of 2m and planted at a density of not less than 1m centres;
  - (c) not be trimmed below a minimum height of 5m;

- (d) be retained and maintained in perpetuity, and this shall be ensured by the imposition of a consent notice on the record of title of each affected lot.
- (ii) At the time of subdivision, a solid fence of minimum height 2m shall be constructed along the Resource Area boundary adjoining Lots 1 – 3 DP25841 and Section 98, Block I Cromwell SD.
- (iii) At the time of subdivision, a solid fence shall be constructed along the Resource Area boundary adjoining Sections 33 – 36, Sarita Subdivision. The fence shall:
  - (a) be 3m high above the ground based on the final contours along its length;
  - (b) have a surface density not less than 10kg/m<sup>2</sup>;
  - (c) have no gaps, and if palings are used they shall be overlapped or the joints battened to prevent gaps appearing;
  - (d) have no gaps along the bottom between the fence and the ground.
- (iv) The fences required by (ii) and (iii) above shall be retained and maintained in perpetuity, and this shall be ensured by the imposition of a consent notice on the record of title of each affected lot within the Resource Area.

This rule, and mechanisms to implement it, shall cease to apply when, and to the extent that, the adjoining land is not zoned Rural Resource Area or Rural Residential Resource Area.

**(g) Greenways**

The width of the Greenways as shown on the Movement Plan at Rule 20.7.9 shall be 15m.

**(h) Infrastructure**

All lots (other than any lot created for the purpose of roads, utilities, or reserves) shall be connected to reticulated services for potable water, wastewater, telecommunications and power.

**(i) Accidental archaeological discovery protocol**

Any subdivision consent shall include a condition requiring that, if during site works pre-European (Māori) material is discovered, Kai Tahu ki Otago and Heritage New Zealand must be consulted, and all work is to cease immediately with a 20m exclusion zone established around the find with damage to any material minimised or avoided, until Kai Tahu ki Otago and/or Heritage New Zealand have finished assessing the find.

**(j) The matters set out in 1 – 8 of Rule 20.7.2(i) for controlled activity subdivision.**

**(k) Water races**

Prior to any works commencing on the site, the water races shall be topographically surveyed and an archaeological authority from Heritage New Zealand shall be obtained for any modifications to the race. The northern race shall be retained provided that any modifications shall be for access across it only.

**(l) Stage One development works**

Stage One of the subdivision of the Resource Area shall comprise at least 400 residential lots, and shall include the following works:

- (i) The sealing of the balance of Sandflat Road to Pearson Road;
- (ii) The shoulder sealing of Pearson Road between Sandflat Road and Bannockburn Road;
- (iii) The intersection upgrades required at the State Highway 6 / Sandflat Road intersection under Rule 20.7.7(ii) (left turn deceleration and

- acceleration lanes);
- (iv) A formed off-road walkway/cycleway 3m wide, along
- (aa) Sandflat Road, State Highway 6 and Cemetery Road (to the Cemetery Road / Chardonnay Street intersection); or
- (bb) Sandflat Road and Pearson Road connecting River Terrace to Bannockburn Road; or
- (cc) Any alternative route, width and distance approved by the Council.
- (m) **Stage Two development works**  
Stage Two of the subdivision of the Resource Area (being the stage which enables the 401<sup>st</sup> residential lot to be created) shall include provision for an area of land at the Sandflat Road / State Highway 6 intersection to be vested in or transferred to the New Zealand Transport Agency. The area of land shall be located and dimensioned as determined by NZTA as being sufficient and appropriate to enable a roundabout (as designed by NZTA) to be constructed at the Sandflat Road / State Highway 6 intersection.
- (n) **Residential Building design**  
Any application for subdivision consent for any part of the Residential A and Residential B Sub-Areas shall include proposed Design Guidelines (for residential buildings excluding retirement living buildings) and a Design Review Board process to be approved by the Council and implemented through a Consent Notice condition.

The Council shall exercise its discretion in respect of the matters in Rule 20.7.3(vii).

For subdivision, the Council shall restrict the exercise of its discretion to the following:

1. The provision of adequate network utility services and in particular the location, design and construction of these services.
2. The location, design and construction of access to public roads and the upgrading of public roads.
3. Earthworks necessary to prepare the site for development and/or use.
4. Subdivision design including the shape and arrangement of allotments to:
  - Facilitate convenient, safe and efficient access to all lots.
  - Facilitate the safe and efficient operation and the economic provision of roading and network utility services to secure an appropriate and coordinated ultimate pattern of development.
  - Maintain and enhance amenity values.
  - Facilitate adequate access to any rear lots.
6. The design of the Open Space Sub-Areas and Greenways, to provide for the open space and recreational needs of the community.
7. The design of road amenities including the species and spacing of road trees to provide a coherent streetscape throughout the Resource Area.
8. Provision for pedestrian movement, including the provision of walkways and cycleways within and connecting to the Resource Area.
9. Any financial contributions necessary for the purposes set out in Section 15 of this Plan.
10. Any amalgamations and easements that are appropriate.

Note: see Section 16.7 General Standards (page 16:14) for the standards that are likely to be imposed as conditions of consent.

Any application made under this rule will generally not be notified or require the

written approval of affected parties.

Reasons:

*Subdivision in the Resource Area is required to be in general accordance with the Structure Plan and the Movement Plan, so that the overall desired spatial layout of roads and open spaces is achieved. Roads are required to be in general accordance with the Indicative Road Cross Sections.*

*Providing for a range of lot sizes across the Resource Area promotes a variety of dwelling typologies and range of affordability across the Resource Area*

*The adverse effects of subdivision can generally be overcome by appropriate conditions and standards. The minimum allotment sizes identified reflect the expected range of densities in the various Sub-Areas and Overlays within the Resource Area. Subdivision (other than subdivision allowed as a controlled activity under Rule 20.7.2(i)) is a discretionary (restricted) activity to ensure that the Council can impose conditions in relation to the matters listed, and if necessary the Council can refuse the application if any potential adverse effects cannot be addressed through conditions.*

*Upgrades to the transportation network are required to properly service the Resource Area.*

#### **20.7.4 DISCRETIONARY ACTIVITIES**

**(i) Breach of General Standards in Rule 20.7.7**

Any proposal that does not meet the general standards at Rule 20.7.7 except Rules 20.7.7(vii), 20.7.7(viii), 20.7.7(ix) and 20.7.7 (xii).

**(ii) Breach of subdivision standards in Rule 20.7.3(viii)**

Any subdivision that does not meet the standards for discretionary (restricted) subdivision in Rule 20.7.3(viii).

**(iii) Breach of standards for buildings in Overlay areas**

Any proposal that does not meet the standards for buildings in the Overlay areas at Rules 20.7.3(ii) – 20.7.3(v).

#### **20.7.5 NON-COMPLYING ACTIVITIES**

**(i) Noxious effects**

Rule 7.3.5(i) of the Residential Resource Area (Noxious Effects) applies in the Resource Area.

**(ii) Direct Access onto Sandflat Road**

Any direct vehicle access from a private property onto Sandflat Road.

Reason:

*Non-complying status discourages any proposal for direct vehicle access from any private property onto Sandflat Road to ensure traffic safety standards are maintained.*

**(iii) Any proposal that infringes Rule 20.7.3(iv) (e) or (f) (for retail floor areas in the Neighbourhood Centre Overlay).**

- (iv) **In Residential Sub-Area A, any subdivision that creates an individual residential lot that is not part a comprehensive subdivision of all of a Development Parcel.**
- (v) **Activities not listed as permitted, controlled, discretionary (restricted) or discretionary activities in Rules 20.7.1 – 20.7.4 and not listed as prohibited activities in Rule 20.7.6**

*Reasons:*

*These activities are not anticipated in the Resource Area and are therefore non-complying. Any proposal will need to be assessed under section 104D of the Act.*

- (vi) **Horn's Shaft setback area**

Within the Horn's Shaft setback area marked on the Structure Plan:

- (a) No buildings shall be constructed; and  
(b) There shall be no stormwater discharge to ground.

*Reason:*

*The Horn's Shaft setback marked on the Structure Plan is close to where a historic mineshaft (Horn's Shaft) existed on neighbouring land. The mineshaft has been filled in, but there is potential risk of ground settlement in the event of an earthquake or from the discharge of stormwater nearby the filled area.*

- (vii) **Outdoor fires**

Burning of any garden wastes, rubbish, or materials of any kind whatsoever other than solid fuel (such as wood or coal) burned within a barbeque when cooking. For the purposes of this rule "barbeque" means any portable or permanent device constructed or placed for the purpose of outdoor cooking.

- (viii) **Breach of General Standards in Rule 20.7.7**

Any proposal that does not meet the general standards at Rules 20.7.7(vii), 20.7.7(viii), 20.7.7(ix) and 20.7.7(xii).

*Reason:*

*Any breach of the general standards for acoustic insulation and reverse sensitivity is non-complying to reflect the significance of these standards.*

- (ix) **Travellers Accommodation**

*Reason:*

*The purpose of the Resource Area to provide for residential activities should not be undermined by development of travellers accommodation.*

**20.7.6 PROHIBITED ACTIVITIES**

- (i) **Any road or direct vehicle access from the River Terrace Resource Area onto State Highway 6.**

*Reason:*

*All vehicle access to the Resource Area is via new roads connecting with Sandflat Road. Any direct vehicle access onto State Highway 6 is likely to have adverse safety and efficiency effects on the State Highway and is therefore prohibited.*

- (ii) **Failure to comply with Rule 20.7.7(xii) within time period**

- (a) The sale of 200 affordable lots and 200 affordable houses as required by Rule 20.7.7(xii) must be completed within three years after the date Plan Change 13 (creating the Resource Area) becomes operative, subject to subclause (b) below.
- (b) The three year period referred to in subclause (a) above shall be extended by the following periods (excluding any part of such periods between the date the Council requests further information in order to process the

relevant application and the date the applicant supplies that information to the Council):

- (aa) if any application for resource consent necessary to comply with Rule 20.7.7(xii) is publicly notified, that period between the date of public notification and the date the resource consent becomes operative;
  - (bb) if the Council fails to process any resource consent application required to comply with Rule 20.7.7(xii) within three months after the application is lodged, the period by which the time taken to process the resource consent application exceeds three months;
  - (cc) if the Council fails to process any application for subdivision engineering approval required to comply with Rule 20.7.7(xii) within three months after the application is lodged, the period by which the time taken to process the application for engineering approval exceeds three months;
  - (dd) if the Council fails to process any application for s224(c) certification required to comply with Rule 20.7.7(xii) within one month after the application is lodged, the period by which the time taken to process the application for s224(c) certification exceeds one month;
  - (ee) if the Council fails to process any building consent application required to comply with Rule 20.7.7(xii) within three months after the application is lodged, the period by which the time taken to process the building consent application exceeds three months;
  - (ff) if any affordable lot or affordable house required to be sold under Rule 20.7.7(xii) is completed and marketed for sale at a price within the required price range, and does not sell, the period between the date one month after marketing commences and the date the affordable lot or affordable house is sold.
- (c) If this standard is breached, any subdivision or land use which requires resource consent is a prohibited activity during the period between the date of breach and the date the breach is remedied provided that this subclause does not apply to any application for subdivision or land use consent required to enable the breach to be remedied so that the requirements under this rule are complied with.

Reason:

*Part of the purpose of the Resource Area is to deliver housing to the market within the short term.*

**20.7.7 GENERAL STANDARDS**

**The following standards shall apply in the River Terrace Resource Area:**

(i) **Traffic generation and characteristics of activities**

Rule 7.3.6(i) in the Residential Resource Area except that Rule 7.3.6(i) does not apply to retailing activities and services in the Neighbourhood Centre Overlay, or educational facilities in the Education Overlay.

*Breach:*

*Discretionary activity – see Rule 20.7.4(ii)*

(ii) **State Highway 6 / Sandflat Road intersection upgrade**

- (a) No more than 40 residential lots shall be created within the Resource Area until a median separated left-turn deceleration lane is constructed at the State Highway 6 / Sandflat Road to the NZ Transport Agency standards or as otherwise agreed with NZ Transport Agency.
- (b) No more than 300 residential lots shall be created within the Resource Area until a left-turn acceleration lane is constructed at the State Highway 6 / Sandflat Road intersection to the NZ Transport Agency standards or as otherwise agreed with NZ Transport Agency.
- (c) No more than 400 residential lots shall be created within the Resource Area until a Transportation Assessment is undertaken on the impact of stages of the development following Stage 1 on the safe and efficient operation of the SH6/Sandflat Road intersection, so as to determine the intersection improvements required (if any) to enable such stages of the development to be undertaken. The Transportation Assessment evaluation methodology and recommendations should be independently peer reviewed and any intersection improvements required for the SH6/Sandflat Road intersection agreed with the NZ Transport Agency. Any intersection improvement works required to mitigate the effects of the development at the SH6/Sandflat Road intersection shall be implemented as required by the outcome of that Transportation Assessment to the NZ Transport Agency standards or as otherwise agreed with the NZ Transport Agency.

*Reason:*

*Development within the Resource Area will require upgrades to the State Highway 6 / Sandflat Road intersection.*

(iii) **Signs in the Residential Sub-Areas**

Rule 7.3.6(vii) in the Residential Resource Area applies in the Residential Sub-Areas A and B.

(iv) **Signs in the Neighbourhood Centre Overlay**

Rule 8.3.6(iv) in the Business Resource Area applies in the Neighbourhood Centre Overlay.

(v) **Keeping of animals**

Rule 7.3.6(viii) in the Residential Resource Area.

*Reasons:*

*The rule ensures that new urban development will not be adversely affected by the keeping of animals.*

(vi) **Total number of residential units within the Resource Area**

The maximum number of residential units (including retirement living units) in the Resource Area shall be 900.

*Reason:*

*The limit is imposed because of infrastructural and spatial limits to the amount of development that can be contained within the Resource Area.*

(vii) **Acoustic insulation of dwellings near State Highway 6**

- (a) Any new residential buildings, or buildings containing activities sensitive to road noise, located within 80m of the boundary with State Highway 6 shall be designed, constructed and maintained to ensure that the internal noise level does not exceed 40dB  $L_{Aeq(24hr)}$  in bedrooms and all other habitable spaces. This shall take account of any increases in noise from projected traffic growth during a period of not less than 10 years from the commencement of construction of the development.
- (b) Compliance with this rule shall be demonstrated by a report from a suitably qualified and experienced acoustics expert. The report shall detail the



constructions and assumptions used in the calculation process. Noise measurement is not required.

- (c) The records of title affected shall be encumbered with a consent notice requiring ongoing compliance with this standard in perpetuity.

*Reason:*

*The rule avoids the potential for adverse effects of road noise from the State Highway on sensitive activities within the Resource Area.*

**(viii) Reverse sensitivity covenants**

- (a) Activities enabled under Rules 20.7.1, 20.7.3 and 20.7.4 must be subject to a restrictive no-complaint covenants for the benefit of:
- (i) Cromwell Motorsport Park Trust Limited in respect of Lot 400 DP466637 and Lot 1 DP 307492 as the benefited land (Motorsports Covenant Land);
  - (ii) Central Otago District Council in respect of Lot 1 DP 403966 as the benefited land (Speedway Covenant Land);
  - (iii) Alan Bevin McKay in respect of Lot 2 DP300152 and Sections 28- 36 Sarita Subdivision as the benefited land (Orchard Covenant Land);
  - (iv) Peter John Mead and Alastair David Stark in respect of Part Lot 2 DP19059 as the benefited land (Orchard Covenant Land);
  - (v) 45 South Cherry Orchards Limited in respect of Lot 3 DP19744 and Lot 2 DP421474 as the benefited land (Orchard Covenant Land);
  - (vi) Central Otago District Council in respect of Section 91 Block III Cromwell Survey District and Lot 2 DP301554 as the benefited land (Aerodrome Covenant Land).
- (b) For the purposes of this rule a “restrictive no-complaint covenant” is a restrictive covenant which:
- (i) is registered against the records of title to all of the burdened land on which the activities will take place (being all of the land within the Resource Area) for the benefit of the benefited land and is registered upon deposit of the Stage One subdivision plan;
  - (ii) in the case of the Motorsports Covenant Land, prevents any owner or occupier of the burdened land from complaining about or taking any steps to prevent or limit motorsports and related activities lawfully carried out as authorised by the terms and conditions of resource consent numbers RC070149 and RC150225 including any variations operative prior to 19 May 2018;
  - (iii) in the case of the Speedway Covenant Land, prevents any owner or occupier of the burdened land from complaining about or taking any steps to prevent or limit speedway and stock car track and related activities lawfully carried out as authorised by the terms and conditions of the planning consent for those activities issued by the (former) Vincent County Council dated 29 September 1980 including any variations operative prior to 19 May 2018;
  - (iv) in the case of any Orchard Covenant Land, prevents any owner or occupier of the burdened land from complaining about or taking any steps to prevent or limit:
    - (aa) noise being generated in the normal course of orcharding activities being undertaken on the benefited land, including noise from frost-fighting, bird-scaring and orchard- related helicopter activities;
    - (bb) smoke from the burning of wood and foliage on the benefited land as a result of orchard tree trimming and replacement activities;
    - (cc) spray drift resulting from orchard spraying activities on the benefited land;
  - (v) in the case of the Aerodrome Covenant Land, prevents any owner or occupier of the burdened land from complaining about or taking any

- steps to prevent or limit aerodrome activities;
- (vi) is binding on successors in title;
  - (vii) is in the format detailed in Rule 20.7.13, Rule 20.7.14 or Rule 20.7.15 (whichever is applicable) or alternative wording approved by the Council. In the case of the Aerodrome Covenant Land, the covenant shall be in the format detailed in Rule 20.7.14 except that the Approved Activities will be activities associated with the operation of an aerodrome on the Aerodrome Covenant Land.
- (c) This rule shall be complied with by either or both of the following methods (listed in order of preference):
- (i) by registration of a restrictive covenant (under the Property Law Act 2007 and the Land Transfer Act 2017) registered against the records of title to the burdened land and the benefited land, if the owner of the benefited land allows and enables such registration;
  - (ii) if the owner of the benefited land does not allow and enable registration under (i) above, by subdivision consent condition imposing the restrictions required by this rule and recorded in a consent notice registered against the records of title to the burdened land.

*Reason:*

*Existing motorsports, speedway, orcharding and aerodrome activities on land near the Resource Area are entitled to protection from reverse sensitivity effects caused by residents and occupiers within the Resource Area.*

**(ix) Acoustic insulation of buildings containing noise sensitive activities**

- (a) Noise Sensitive Spaces located within the Resource Area shall be designed, constructed and maintained to ensure that the following noise level reductions are achieved in the Acoustic Insulation Zones shown on the Acoustic Insulation Plan at Rule 20.7.11

<b><u>Acoustic Insulation Zone</u></b>	<b><u>D<sub>2m,nTw</sub>+C<sub>tr</sub> for Bedrooms</u></b>	<b><u>D<sub>2m,nTw</sub>+C<sub>tr</sub> for Other Noise Sensitive Spaces</u></b>
A	38	34
B	40	36
C	36	32

- (b) The  $D_{2m,nTw}+C_{tr}$  assessment shall be determined in accordance with ISO 717-1 *Acoustics – Rating of sound insulation in buildings and of building elements – Part 1: Airborne Sound Insulation*;
- (c) Noise Sensitive Spaces includes:
- (i) Bedrooms, kitchens, living areas and any other habitable rooms in dwellings;
  - (ii) classrooms and indoor learning areas, lecture theatres in schools or educational facilities;
  - (iii) conference of function spaces, bedrooms and living areas associated with visitor accommodation;
  - (iv) Noise sensitive spaces in medical facilities; and
  - (v) Any other rooms containing noise sensitive activities that are occupied frequently or for extended periods; but this does not include spaces insensitive to noise such as hallways, laundries, bathrooms, toilets, garages, closets, lobbies, workshops or storage spaces.

- (d) Compliance with this rule shall be demonstrated by a report from a suitably qualified and experienced acoustics expert. The report shall detail the constructions and assumptions used in the calculation process. Noise measurement is not required.
- (e) Where the design requires windows and doors to be closed to meet the requirements, all Noise Sensitive Spaces shall be ventilated or supplied with fresh air to meet the requirements of the Building Act, and shall be mechanically cooled (air conditioned) to ensure that the occupants do not need to open windows or doors for thermal comfort.
- (f) The records of title affected shall be encumbered with a consent notice requiring ongoing compliance with this standard in perpetuity.

*Reason:*

*The standard ensures that noise sensitive areas of dwellings and other developments within the Resource Area are constructed so that occupants are not adversely affected by noise generated by existing noise generating activities on land near the Resource Area, including motorsport activities and orcharding activities. The standard will work in tandem with the standards in Rules 20.7.7(vii), (viii) and (ix) to manage the effects of noise on residents and the reverse sensitivity effects on the noise generating activities.*

- (x) **Heating**  
Any domestic heating appliance installed has a particulate emission rate of 0.7g/kg or less of fuel burnt and has a thermal efficiency of not less than 65%.
- (xi) **Stage Two commercial development**  
Before the Council issues s224(c) certification for the Stage Two subdivision plan (being the Plan which creates the 401<sup>st</sup> residential lot) at least one commercial premise containing at least 200m<sup>2</sup> gross floor area must be fully constructed for the purpose of a neighbourhood convenience retail activity.

*Reason:*

*Provision for neighbourhood retail will minimise the need for vehicle trips to central Cromwell.*

- (xii) **Sale prices**  
Stage One of the subdivision of the Resource Area shall result in 200 affordable lots and 200 affordable houses (ie: total 400) being sold. For the purposes of this standard:
  - (a) ‘Affordable lot’ means a freehold residential lot, capable of accommodating a two bedroom or three bedroom residential unit, which is sold for a price within the price range \$180,000 to \$250,000 or less;
  - (b) ‘Affordable house’ means a freehold residential lot, with a fully constructed and landscaped two bedroom or three bedroom residential unit, which is sold for a price within the price range of \$485,000 to \$600,000 or less;
  - (c) Compliance with this standard shall be demonstrated by delivery to the Council of a copy of the relevant sale and purchase agreement together with written confirmation from a law firm that the affordable lot or affordable house was sold at the price specified in the sale and purchase agreement and that the purchaser was not related to the vendor;

- (d) Unless compliance with this standard is demonstrated to the Council, the Council shall be entitled to impose a condition on any consent for subsequent stages of subdivision within the Resource Area that s224(c) certification for such subdivision shall not issue until this standard has been complied with;
- (e) Compliance under subclause (d) above may be achieved in a progressive cumulative manner; ie: demonstration of compliance in respect of (for example) 20 lots (with or without houses) shall enable s224(c) certification to be given by Council for an additional 20 lots beyond Stage One so that, as compliance is demonstrated in respect of each lot, an additional lot may be created.

**20.7.8 – [Structure plans and related plans attached]**  
**20.7.12**

*Reason:*

*The Structure Plan and Movement Plan co-ordinate the spatial layout of activities, roads and open space throughout the Resource Area. The Indicative Road Type Cross Sections provide for the consistent width and features of the different roads within the Resource Area.*

**20.7.13- [Restrictive No-Complaint Covenants attached]**  
**20.7.15**

*Reason:*

*The restrictive no-complaint covenants are an essential aspect of development within the Resource Area.*

**20.7.8 RIVER TERRACE RESOURCE AREA: STRUCTURE PLAN**

**20.7.9 RIVER TERRACE RESOURCE AREA: MOVEMENT PLAN**

**20.7.10 RIVER TERRACE RESOURCE AREA: DEVELOPMENT PARCEL PLAN**

**20.7.11 RIVER TERRACE RESOURCE AREA: ACOUSTIC INSULATION PLAN**



**20.7.12 RIVER TERRACE RESOURCE AREA: INDICATIVE ROAD TYPE CROSS-SECTIONS**

20.7.13 **RIVER TERRACE RESOURCE AREA: MOTORSPORT RESTRICTIVE NO-COMPLAINT COVENANT**

# MOTORSPORT COVENANT

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

Form 26

## Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

### Covenantor

River Terrace Developments Limited

### Covenantee

Cromwell Motorsport Park Trust Limited

### Grant of Covenant

**The Covenantor**, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

### Schedule A

*Continue in additional Annexure Schedule, if required*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenants (as set out in Schedule B)	All that land contained within the Burdened Land	Part Section 24 and Section 28 Block 1 Cromwell Survey District RT's OT16A/611 and OT7D/1155	Lot 400 Deposited Plan 466637 RT 663001 Lot 1 Deposited Plan 466637 RT 29017

### WARNING!

**To: Prospective purchasers and residents within River Terrace (the Burdened Land)**

River Terrace is located immediately beside the Highlands Motorsport Park. Loud motorsports activities operate every day of the year. Extremely loud motorsports activities take place on 16 days of the year. Loud noise is also caused by helicopters delivering people to and from the motorsports facility.

Noise generated by the motorsports and related activities may significantly adversely affect residential amenities within River Terrace, particularly outdoor amenities during the summer.

The purpose of this covenant is to:

- 1. Warn prospective residents within River Terrace about the high levels of noise they will experience from motorsports and related activities.**
- 2. Prevent anybody within River Terrace from complaining about the noise from the motorsports and related activities.**
- 3. Prevent anybody within River Terrace from taking any action to prevent or limit the operation of the Highlands Motorsport Park in any way.**

**Covenant rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert memorandum number as required.*

*Continue in additional Annexure Schedule if required.*

The provisions applying to the specified covenants are those set out in:

[Memorandum number \_\_\_\_\_, registered under section 209 of the Land Transfer Act 2017].

Annexure Schedule B.

## Schedule B

### CONTINUATION OF COVENANT PROVISIONS

#### Background

- A. The Covenantor is the registered owner of the relevant Burdened Land.
- B. The Covenantee is the registered owner of the relevant Benefited Land.
- C. The Covenantee operates a motorsports facility on the Benefited Land which results in, and is likely to result in, very loud noise, bright lights, disturbances and other usual incidences of motorsports activity which will have consequences beyond the boundaries of the Benefited Land, including upon the Burdened Land. That motorsports activity is operated under the terms and conditions of resource consents held by the Covenantee.
- D. The Covenantor proposes to carry out a residential development on the Burdened Land which is adjacent to the Benefited Land. The Covenantor has agreed to take steps to ensure that future residents and occupiers on the Burdened Land are informed about the motorsports facility on the Benefited Land and will not complain about, or take any other steps to prevent or limit in any way, the operation of the motorsports facility on the Benefited Land.
- E. The Covenantor and Covenantee have agreed that the Burdened Land will be subject to the Covenants for the benefit of the Benefited Land.

#### 1. Interpretation

1.1 For the purposes of this Instrument:

- (a) **Application** means any planning or approval process under the RMA or other legislation which enables or facilitates subdivision, use or development of land and includes:
  - (i) any resource consent application (including variation), designation procedure, change or variation to a District Plan (whether initiated by a Relevant Authority or requested by any other person or body);
  - (ii) any change, review or cancellation of any condition(s) of any consent or other approval which enables any subdivision, use or development of land;
  - (iii) any planning or approval process under any legislation which facilitates the subdivision, use or development of land such as, by way of example, an application to create, stop or relocate a legal road under the Public Works Act 1981 or the Local Government Act 2002.
- (b) **Approved Activities** means the development of a motorsports facility and the operation of motorsports activities as developed and operated in accordance with the terms and conditions of the operative Resource Consents as at 19 May 2018.
- (c) **Benefited Land** means all or any part of the land contained or formerly contained in the benefited land set out in Schedule A of this Instrument.
- (d) **Council** means the Central Otago District Council.
- (e) **District Plan** means any operative or proposed plan under the RMA including any regional policy statement, regional plan, district plan or unitary plan.
- (f) **Burdened Land** means all or any part of the land contained or formerly contained in the burdened land set out in Schedule A of this Instrument.
- (g) **Covenants** means the covenants set out in this Instrument.
- (h) **Covenantee** means the registered owner of the Benefited Land from time to time together with (where the context so allows) its lessees, occupiers or invitees carrying out Approved Activities on the Benefited Land.
- (i) **Covenantor** means the registered owner of the Burdened Land from time to time together with (where the context so allows) its lessees, occupiers or invitees on the Burdened Land.

- (j) **Instrument** means all of this Motorsport Covenant instrument including all of its Schedules.
- (k) **Lodge any Submission** means (without limitation) personally or through any agent or servant (including by being a member of any group or society, whether incorporated or not), directly or indirectly lodge a submission or objection or support in any way (financial or otherwise) any submission or objection to any Planning Proposal or take any steps whatsoever in relation to any Planning Proposal and includes (without limitation) taking part in any hearing, mediation, caucusing or appeal arising in respect of any Planning Proposal whether as a party, surrogate or otherwise.
- (l) **Planning Proposal** means any Application for, or in relation to:
  - (i) any Approved Activities;
  - (ii) any commercial, recreational or residential activity;but does not include:
  - (iii) any additional Tier 2 Activity as defined in resource consent RC150225;
  - (iv) any increase in allowable noise emission limits applicable to Tier 1 Days and Tier 2 Days/Activities as provided for in resource consent RC150225 as operative on 19 May 2018;
  - (v) any building over 9 metres in height above ground level.
- (m) **Relevant Authority** means any court, tribunal, government, local, statutory or non-statutory body, including the Council, having jurisdiction over the land referred to in this Instrument.
- (n) **Resource Consents** means resource consent RC070149 issued by the Council, as finally confirmed by the Environment Court in Decision C132/2009 dated 23 December 2009, and resource consent RC150225 issued by the Council, authorising the development and operation of the Approved Activities, including and subject to any variations to those consents granted by the Council prior to 19 May 2018.
- (o) **RMA** means the Resource Management Act 1991.

1.2 For the avoidance of doubt:

- (a) words importing the singular number include the plural and vice versa.
- (b) references to the parties are references to the Covenantor and the Covenantee.
- (c) a covenant to do something is also a covenant to permit or cause that thing to be done and a covenant not to do something is also a covenant not to permit nor cause that thing to be done.
- (d) this Instrument binds the Covenantors and their heirs, executors, successors and assigns in perpetuity and also any lessee, occupier or invitee of or on the Burdened Land.
- (e) this Instrument benefits the Covenantees and their heirs, executors, successors and assigns in perpetuity.
- (f) a reference to a statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute.

## 2. General Covenants

2.1 The Covenantor covenants and agrees:

- (a) to observe and perform all the Covenants at all times.
- (b) that the Covenants shall run with and bind the Burdened Land for the benefit of the Benefited Land.
- (c) to do all things necessary to ensure that any invitees of the Covenantor on the Burdened Land and any mortgagees, lessees or occupiers of the Burdened Land comply with the provisions of this Instrument.

- (d) to pay the Covenantantee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Covenantantee's rights, remedies and powers under this Instrument.
- (e) to indemnify the Covenantantee against all claims and proceedings arising out of a breach by the Covenantor of any of its obligations set out in this Instrument.

### 3. Covenants in Relation to Approved Activities

3.1 The Covenantor covenants and agrees with the Covenantantee that the Covenantor:

- (a) acknowledges that the Covenantantee is entitled to carry out the Approved Activities on the Benefited Land in accordance with the Resource Consents.
- (b) acknowledges that the Burdened Land is in close proximity to the Benefited Land and that the Approved Activities necessarily involve very loud noise, lights, disturbances and other usual incidences of motorsports activities which residents, occupiers and invitees on the Burdened Land may find disturbing and very annoying.
- (c) shall not:
  - (i) make or lodge; nor
  - (ii) be party to, procure, assist or support; nor
  - (iii) finance or contribute to the cost of,  
  
any complaint, submission, application, proceeding or other action (under the RMA or otherwise), to or with the Council or any Relevant Authority, designed or intended to, or having the effect of, limiting the Covenantantee's conduct or implementation of Approved Activities on the Benefited Land.
- (d) acknowledges that:
  - (i) clause 3.1(c) above includes any action under or in respect of sections 16, 17 and 128 of the RMA; and
  - (ii) the creation of the River Terrace Resource Area does not result in any adverse effect, and is not a change in circumstance, for the purposes of Section 128 of the RMA and Condition 99 of RC150225.
- (e) shall include a provision in all leases, contracts or other written documents enabling any use or occupation of any building on the Burdened Land in the same form as 3.1(c) above, to bind all third party lessees, licensees, occupiers or visitors.
- (f) take steps to enforce any provision referred to in clause 3.1(e) above against any person or entity acting in breach of such provision, if the Covenantantee requests the Covenantor to take such steps.
- (g) acknowledges generally that the Covenantantee is entitled to carry out Approved Activities as authorised by the Resource Consents without having to respond in any way to any complaint or objection by any Covenantor in relation to the operation of the Approved Activities.

### 4. Covenants in Relation to Planning Proposals

4.1 The Covenantor covenants and agrees with the Covenantantee that the Covenantor:

- (a) will not at any time Lodge any Submission to any Planning Proposal lodged by the Covenantantee and further, if called upon to do so by the Covenantantee, will provide written approval (including affected person's approval under the RMA) in respect of any such Planning Proposal (referred to as **Covenantor's Written Approval**).
- (b) hereby gives Covenantor's Written Approval for any Planning Proposal referred to in the previous subclause 4.1(a). The Covenantantee shall be entitled to provide a copy of this Instrument to the Relevant Authority as evidence that the Covenantor's Written Approval is given.
- (c) irrevocably nominates, constitutes and appoints the Covenantantee to be the true and lawful attorney of the Covenantor for the purposes of executing all documents and plans and performing all acts, matters and things as may be necessary (without limitation) to provide any Covenantor's Written Approval.

4.2 The parties acknowledge and agree that:

- (a) the covenants contained within this Instrument will attach to and run with the Burdened Land as a burden on that land to the extent that they restrict the Covenantor from acting in relation to the Burdened Land by exercising rights under the RMA or other legislation which arise from ownership or occupation of the Burdened Land and which the Covenantor would otherwise have been able to exercise for the benefit of the Burdened Land.
- (b) the burden placed upon the Burdened Land by this Instrument is for the benefit of the Benefited Land.

## 5. Vesting of Roads or Reserve

### 5.1 The Covenantee:

- (a) consents to the deposit or registration of any survey plan by a Covenantor which has the effect of vesting or dedicating all or any part of a Burdened Land as road or reserve in any local authority, territorial authority or the Crown (such plan referred to as **Survey Plan**).
- (b) agrees that the covenants in this Instrument shall cease to apply in respect of any land to vest or dedicate upon such Survey Plan immediately prior to the date of lodgement with Land Information New Zealand of such Survey Plan for deposit or registration.
- (c) agrees that this clause will be deemed to be the written consent of the Covenantee to the deposit or registration of any Survey Plan (including under section 224(b)(i) RMA).
- (d) will, at its cost, on a Covenantor's request, immediately:
  - (i) give any additional written consent as required by a Covenantor to deposit or register any Survey Plan.
  - (ii) sign all documents (including Authority and Instruction Forms) and do all things reasonably required to register a surrender of this Instrument, in respect of any part of the Burdened Land, to vest or dedicate as road or reserve, upon the deposit or registration of such Survey Plan (**Easement Surrender Instrument**).
  - (iii) use reasonable endeavours to obtain any consents from any registered owner (**Encumbrancee**) of an encumbrance, mortgage or interest registered against the Benefited Land required to deposit or register any Survey Plan or to register the Easement Surrender Instrument.

### 5.2 Any caveator or registered owner of an encumbrance, mortgage or interest registered against the Benefited Land which is registered after the date of registration of this Instrument:

- (a) will take its interest/s in the Benefited Land subject to the terms of this Instrument; and
- (b) will be deemed to have given its consent to the:
  - (i) deposit or registration of any Survey Plan (including under section 224(b)(i) RMA); and
  - (ii) registration of any Easement Surrender Instrument (including under the Land Transfer Act 2017).

### 5.3 Notwithstanding any other provision of this Instrument, the Covenantee irrevocably appoints the Covenantor or its successor in title as its attorney to:

- (a) sign any consent necessary in the required form to deposit or register a Survey Plan;
- (b) sign all documents and do all things required to register an Easement Surrender Instrument; and
- (c) obtain all required Encumbrancees' consents to deposit a Survey Plan or register an Easement Surrender Instrument.

No person dealing with the Covenantor as the attorney in this capacity need inquire if the Covenantor is validly exercising its powers as attorney under this clause 5.3.

## 6. Breach of Covenant

6.1 Subject to clause 6.2, any Covenantor responsible for a breach or non-observance of any of the Covenants (Breach) shall be liable to pay, as liquidated damages, the sum of \$150 per day (Damages) from the date the Breach occurs until the date the Breach is remedied. Such sum shall be payable within 14 days of written demand being made by a Covenantee (Demand). If more than one Covenantee makes demand in respect of a Breach, such sum shall be shared equally between such Covenantees.

6.2 Damages payable under clause 6.1 shall:



- (a) subject to clause 6.3, not be payable if the Covenantor remedies the Breach within the 14 day period referred to in clause 6.1 or within 14 days of receiving written notice from the Covenantee requesting that the breach be remedied;
- (b) be in addition to:
  - i. any other remedies available to the Covenantee in respect of such breach; and
  - ii. any other liability which the Covenantor may have to the Covenantee.

6.3 Clause 6.2.a shall not apply if the Covenantor responsible for the Breach acts through any proxy, or entity such as an incorporated society, with the consequence that, when the Breach occurs, the Covenantee is not able to discover the identity of the Covenantor.

## **7. General**

7.1 Any notice required to be served on any party shall be in writing and served in accordance with the Property Law Act 2007.

7.2 Any failure by a party to enforce any clause of this Instrument, or any forbearance, delay or indulgence granted by that party to any other party, will not be construed as a waiver of the first party's rights under this Instrument.

7.3 The Covenantor will not seek to have this Instrument removed from the title to the Burdened Land due to any lack of proximity between the Burdened Land and the Benefited Land.

## **8. Liability**

8.1 Without prejudice to the Covenantor's and Covenantee's other rights, this Instrument binds the Covenantor's successors in title so that, contemporaneously with the acquisition of any interest in the Burdened Land, all such successors in title become bound to comply with this Instrument. However, the liability of any Covenantor under this Instrument is limited to obligations and liabilities that accrue during that Covenantor's time as registered owner of the Burdened Land and only in respect of that part of the Burdened Land owned by that Covenantor. A Covenantor will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as registered owner of the Burdened Land (however, for the avoidance of doubt, any Covenantor shall remain liable for any such antecedent breach following the transfer of the Burdened Land).

## **9. Severability**

9.1 If any of the provisions of this Instrument are judged invalid, unlawful or unenforceable for any reason whatsoever by a Court of competent jurisdiction, such invalidity, unenforceability or illegality will not affect the operation, construction or interpretation of any other provision of this Instrument to the intent that the invalid, unenforceable or illegal provisions will be treated for all purposes as severed from this Instrument. In the event of any such severance the parties will use reasonable endeavours to negotiate with the intent that the Instrument shall achieve the economic, legal and commercial objectives of the unenforceable term, covenant or obligation.

**20.7.14 RIVER TERRACE RESOURCE AREA: SPEEDWAY RESTRICTIVE NO-COMPLAINT COVENANT**

# SPEEDWAY COVENANT

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

Form 26

## Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

### Covenantor

River Terrace Developments Limited

### Covenantee

Central Otago District Council

### Grant of Covenant

**The Covenantor**, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

### Schedule A

*Continue in additional Annexure Schedule, if required*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenants (as set out in Schedule B)	All that land contained within the Burdened Land	Part Section 24 and Section 28 Block 1 Cromwell Survey District RT's OT16A/611 and OT7D/1155	Lot 1 Deposited Plan 403966 RT413533

### WARNING!

**To: Prospective purchasers and residents within River Terrace (the Burdened Land)**

**River Terrace is located immediately beside the Cromwell Speedway. Extremely loud motorsports speedway and stock car activities take place on a number of days of the year extending into the late evening.**

**Noise generated by the motorsports and related activities may significantly adversely affect residential amenities within River Terrace, particularly outdoor amenities during the summer.**

**The purpose of this covenant is to:**

- 1. Warn prospective residents within River Terrace about the high levels of noise they will experience from motorsports and related activities.**
- 2. Prevent anybody within River Terrace from complaining about the noise from the motorsports and related activities.**
- 3. Prevent anybody within River Terrace from taking any action to prevent or limit the operation of the Cromwell Speedway in any way.**

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

**Covenant rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert memorandum number as required.*

*Continue in additional Annexure Schedule if required.*

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number \_\_\_\_\_, registered under section 209 of the Land Transfer Act 2017].~~

Annexure Schedule B.

## Schedule B

### CONTINUATION OF COVENANT PROVISIONS

#### Background

- A. The Covenantor is the registered owner of the relevant Burdened Land.
- B. The Covenantee is the registered owner of the relevant Benefited Land.
- C. The Covenantee operates a motorsports facility on the Benefited Land which results in, and is likely to result in, very loud noise, bright lights, disturbances and other usual incidences of motorsports activity which may have consequences beyond the boundaries of the Benefited Land, including upon the Burdened Land. That motorsports activity is operated under the terms and conditions of a resource consent held by the Covenantee.
- D. The Covenantor proposes to carry out a residential development on the Burdened Land which is adjacent to the Benefited Land. The Covenantor has agreed to take steps to ensure that future residents and occupiers on the Burdened Land are informed about the motorsports facility on the Benefited Land and will not complain about, or take any other steps to prevent or limit in any way, the operation of the motorsports facility on the Benefited Land.
- E. The Covenantor and Covenantee have agreed that the Burdened Land will be subject to the Covenants for the benefit of the Benefited Land.

#### 1. Interpretation

##### 1.1 For the purposes of this Instrument:

- (a) **Approved Activities** means the development of a speedway and stock car track and ancillary buildings and facilities and the operation of speedway and stock car activities as developed and operated in accordance with the terms and conditions of the Resource Consent which apply as at 19 May 2018.
- (b) **Benefited Land** means all or any part of the land contained or formerly contained in the benefited land set out in Schedule A of this Instrument.
- (c) **Council** means the Central Otago District Council.
- (d) **Burdened Land** means all or any part of the land contained or formerly contained in the burdened land set out in Schedule A of this Instrument.
- (e) **Covenants** means the covenants set out in this Instrument.
- (f) **Covenantee** means the registered owner of the Benefited Land from time to time together with (where the context so allows) its lessees, occupiers or invitees carrying out Approved Activities on the Benefited Land.
- (g) **Covenantor** means the registered owner of the Burdened Land from time to time together with (where the context so allows) its lessees, occupiers or invitees on the Burdened Land.
- (h) **Instrument** means all of this Speedway Covenant instrument including all of its Schedules.
- (i) **Relevant Authority** means any court, tribunal, government, local, statutory or non-statutory body, including the Council, having jurisdiction over the land referred to in this Instrument.
- (j) **Resource Consent** means the Conditional Use Consent dated 29 September 1980 granted under s72 Town and Country Planning Act 1977 by the (former) Vincent County Council, authorising the development and operation of the Approved Activities, including and subject to any variations to that consent granted by the Council prior to 19 May 2018.
- (k) **RMA** means the Resource Management Act 1991.

##### 1.2 For the avoidance of doubt:

- (a) words importing the singular number include the plural and vice versa.
- (b) references to the parties are references to the Covenantor and the Covenantee.

- (c) a covenant to do something is also a covenant to permit or cause that thing to be done and a covenant not to do something is also a covenant not to permit nor cause that thing to be done.
- (d) this Instrument binds the Covenantors and their heirs, executors, successors and assigns in perpetuity and also any lessee, occupier or invitee of or on the Burdened Land.
- (e) this Instrument benefits the Covenantees and their heirs, executors, successors and assigns in perpetuity.
- (f) a reference to a statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute.

## **2. General Covenants**

2.1 The Covenantor covenants and agrees:

- (a) to observe and perform all the Covenants at all times.
- (b) that the Covenants shall run with and bind the Burdened Land for the benefit of the Benefited Land.
- (c) to do all things necessary to ensure that any invitees of the Covenantor on the Burdened Land and any mortgagees, lessees or occupiers of the Burdened Land comply with the provisions of this Instrument.
- (d) to pay the Covenantee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Covenantee's rights, remedies and powers under this Instrument.
- (e) to indemnify the Covenantee against all claims and proceedings arising out of a breach by the Covenantor of any of its obligations set out in this Instrument.

## **3. Covenants in Relation to Approved Activities**

3.1 The Covenantor covenants and agrees with the Covenantee that the Covenantor:

- (a) acknowledges that the Covenantee is entitled to carry out the Approved Activities on the Benefited Land in accordance with the Resource Consent.
- (b) acknowledges that the Burdened Land is in close proximity to the Benefited Land and that the Approved Activities necessarily involve very loud noise, lights, disturbances and other usual incidences of motorsports activities which residents, occupiers and invitees on the Burdened Land may find disturbing and very annoying.
- (c) shall not:
  - (i) make or lodge; nor
  - (ii) be party to, procure, assist or support; nor
  - (iii) finance or contribute to the cost of,
 

any complaint, submission, application, proceeding or other action (under the RMA or otherwise), to or with the Council or any Relevant Authority, designed or intended to, or having the effect of, limiting the Covenantee's conduct or implementation of Approved Activities on the Benefited Land.
- (d) acknowledges that:
  - (i) clause 3.1(c) above includes any action under or in respect of Sections 16, 17 and 128 of the RMA; and
  - (ii) the creation of the River Terrace Resource Area does not result in any adverse effect for the purposes of Section 128 of the RMA.
- (e) shall include a provision in all leases, contracts or other written documents enabling any use or occupation of any building on the Burdened Land, in the same form as clause 3.1(c) above, to bind all third party lessees, licensees, occupiers or visitors.
- (f) take steps to enforce any provision referred to in 3.1(e) above against any person or entity acting in breach of such provision, if the Covenantee requests the Covenantor to take such steps.

- (g) acknowledges generally that the Covenantee is entitled to carry out Approved Activities as authorised by the Resource Consent without having to respond in any way to any complaint or objection by any Covenantor in relation to the operation of the Approved Activities.

#### 4. Vesting of Roads or Reserve

##### 4.1 The Covenantee:

- (a) consents to the deposit or registration of any survey plan by a Covenantor which has the effect of vesting or dedicating all or any part of a Burdened Land as road or reserve in any local authority, territorial authority or the Crown (such plan referred to as **Survey Plan**).
- (b) agrees that the covenants in this Instrument shall cease to apply in respect of any land to vest or dedicate upon such Survey Plan immediately prior to the date of lodgement with Land Information New Zealand of such Survey Plan for deposit or registration.
- (c) agrees that this clause will be deemed to be the written consent of the Covenantee to the deposit or registration of any Survey Plan (including under section 224(b)(i) RMA).
- (d) will, at its cost, on a Covenantor's request, immediately:
- (i) give any additional written consent as required by a Covenantor to deposit or register any Survey Plan.
  - (ii) sign all documents (including Authority and Instruction Forms) and do all things reasonably required to register a surrender of this Instrument, in respect of any part of the Burdened Land, to vest or dedicate as road or reserve, upon the deposit or registration of such Survey Plan (**Easement Surrender Instrument**).
  - (iii) use reasonable endeavours to obtain any consents from any registered owner (**Encumbrancee**) of an encumbrance, mortgage or interest registered against the Benefited Land required to deposit or register any Survey Plan or to register the Easement Surrender Instrument.

##### 4.2 Any caveator or registered owner of an encumbrance, mortgage or interest registered against the Benefited Land which is registered after the date of registration of this Instrument:

- (a) will take its interest/s in the Benefited Land subject to the terms of this Instrument; and
- (b) will be deemed to have given its consent to the:
- (i) deposit or registration of any Survey Plan (including under section 224(b)(i) RMA); and
  - (ii) registration of any Easement Surrender Instrument (including under the Land Transfer Act 2017).

##### 4.3 Notwithstanding any other provision of this Instrument, the Covenantee irrevocably appoints the Covenantor or its successor in title as its attorney to:

- (a) sign any consent necessary in the required form to deposit or register a Survey Plan;
- (b) sign all documents and do all things required to register an Easement Surrender Instrument; and
- (c) obtain all required Encumbrancees' consents to deposit a Survey Plan or register an Easement Surrender Instrument.

No person dealing with the Covenantor as the attorney in this capacity need inquire if the Covenantor is validly exercising its powers as attorney under this clause 4.3.

#### 5. Breach of Covenant

##### 5.1 Subject to clause 5.2, any Covenantor responsible for a breach or non-observance of any of the Covenants (Breach) shall be liable to pay, as liquidated damages, the sum of \$150 per day (Damages) from the date the Breach occurs until the date the Breach is remedied. Such sum shall be payable within 14 days of written demand being made by a Covenantee (Demand). If more than one Covenantee makes demand in respect of a Breach, such sum shall be shared equally between such Covenantees.

##### 5.2 Damages payable under clause 5.1 shall:

- (a) subject to clause 5.3, not be payable if the Covenantor remedies the Breach within the 14 day period referred to in clause 5.1 or within 14 days of receiving written notice from the Covenantee requesting that the breach be remedied;
- (b) be in addition to:

- (i) any other remedies available to the Covenantee in respect of such breach; and
- (ii) any other liability which the Covenantor may have to the Covenantee.

5.3 Clause 5.2.a shall not apply if the Covenantor responsible for the Breach acts through any proxy, or entity such as an incorporated society, with the consequence that, when the Breach occurs, the Covenantee is not able to discover the identity of the Covenantor.

## **6. General**

6.1 Any notice required to be served on any party shall be in writing and served in accordance with the Property Law Act 2007.

6.2 Any failure by a party to enforce any clause of this Instrument, or any forbearance, delay or indulgence granted by that party to any other party, will not be construed as a waiver of the first party's rights under this Instrument.

6.3 The Covenantor will not seek to have this Instrument removed from the title to the Burdened Land due to any lack of proximity between the Burdened Land and the Benefited Land.

## **7. Liability**

7.1 Without prejudice to the Covenantor's and Covenantee's other rights, this Instrument binds the Covenantor's successors in title so that, contemporaneously with the acquisition of any interest in the Burdened Land, all such successors in title become bound to comply with this Instrument. However, the liability of any Covenantor under this Instrument is limited to obligations and liabilities that accrue during that Covenantor's time as registered owner of the Burdened Land and only in respect of that part of the Burdened Land owned by that Covenantor. A Covenantor will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as registered owner of the Burdened Land (however, for the avoidance of doubt, any Covenantor shall remain liable for any such antecedent breach following the transfer of the Burdened Land).

## **8. Severability**

8.1 If any of the provisions of this Instrument are judged invalid, unlawful or unenforceable for any reason whatsoever by a Court of competent jurisdiction, such invalidity, unenforceability or illegality will not affect the operation, construction or interpretation of any other provision of this Instrument to the intent that the invalid, unenforceable or illegal provisions will be treated for all purposes as severed from this Instrument. In the event of any such severance the parties will use reasonable endeavours to negotiate with the intent that the Instrument shall achieve the economic, legal and commercial objectives of the unenforceable term, covenant or obligation.



20.7.15 **RIVER TERRACE RESOURCE AREA: ORCHARD RESTRICTIVE NO-COMPLAINT COVENANT**

# ORCHARD COVENANT

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

Form 26

## Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

### Covenantor

River Terrace Developments Limited

### Covenantee

[to be completed]

### Grant of Covenant

**The Covenantor**, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

### Schedule A

*Continue in additional Annexure Schedule, if required*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenants (as set out in Schedule B)	All that land contained within the Burdened Land	Part Section 24 and Section 28 Block 1 Cromwell Survey District RT's OT16A/611 and OT7D/1155	[to be completed]

### WARNING!

**To: Prospective purchasers and residents within River Terrace (the Burdened Land)**

River Terrace is located immediately beside and near a number of orchards. Loud orcharding activities operate many days of the year, including frost fans in winter and very loud bird scaring guns in summer. Loud noise is also caused by helicopters fighting frost in winter and drying fruit after rain in summer.

Noise generated by the orcharding and related activities may significantly adversely affect residential amenities within River Terrace, particularly outdoor amenities during the summer.

The purpose of this covenant is to:

1. Warn prospective residents within River Terrace about the high levels of noise they will experience from orcharding and related activities.
2. Prevent anybody within River Terrace from complaining about the noise from the orcharding and related activities.
3. Prevent anybody within River Terrace from taking any action to prevent or limit the operation of the orcharding activities in any way.

This approved format may be used for lodgement as an electronic instrument under the Land Transfer Act 2017

**Covenant rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert memorandum number as required.*

*Continue in additional Annexure Schedule if required.*

The provisions applying to the specified covenants are those set out in:

[Memorandum number \_\_\_\_\_, registered under section 209 of the Land Transfer Act 2017].

Annexure Schedule B.

## Schedule B

### CONTINUATION OF COVENANT PROVISIONS

#### Background

- A. The Covenantor is the registered owner of the relevant Burdened Land.
- B. The Covenantee is the registered owner of the relevant Benefited Land.
- C. The Covenantee operates an orchard on the Benefited Land which results in, and is likely to result in, very loud noise disturbances and other usual incidences of orcharding activity which may have consequences beyond the boundaries of the Benefited Land, including upon the Burdened Land. That orcharding activity is operated by the Covenantee.
- D. The Covenantor proposes to carry out a residential development on the Burdened Land which is adjacent to the Benefited Land. The Covenantor has agreed to take steps to ensure that future residents and occupiers on the Burdened Land are informed about the orcharding activity on the Benefited Land and will not complain about, or take any other steps to prevent, the operation of the orcharding activity on the Benefited Land.
- E. The Covenantor and Covenantee have agreed that the Burdened Land will be subject to the Covenants for the benefit of the Benefited Land.

#### 1. Interpretation

##### 1.1 For the purposes of this Instrument:

- (a) **Application** means any planning or approval process under the RMA or other legislation which enables or facilitates subdivision, use or development of land and includes:
  - (i) any resource consent application (including variation), designation procedure, change or variation to a District Plan (whether initiated by a Relevant Authority or requested by any other person or body);
  - (ii) any change, review or cancellation of any condition(s) of any consent or other approval which enables any subdivision, use or development of land;
  - (iii) any planning or approval process under any legislation which facilitates the subdivision, use or development of land such as, by way of example, an application to create, stop or relocate a legal road under the Public Works Act 1981 or the Local Government Act 2002.
- (b) **Approved Activities** means the development of an orcharding activity and the operation of orcharding activities as developed and operated in accordance with the Central Otago District Plan and/or the terms and conditions of any Resource Consent which apply as at the date of this Instrument.
- (c) **Benefited Land** means all or any part of the land contained or formerly contained in the benefited land set out in Schedule A of this Instrument.
- (d) **District Plan** means any operative or proposed plan under the RMA including any regional policy statement, regional plan, district plan or unitary plan.
- (e) **Burdened Land** means all or any part of the land contained or formerly contained in the burdened land set out in Schedule A of this Instrument.
- (f) **Council** means the Central Otago District Council.
- (g) **Covenants** means the covenants set out in this Instrument.
- (h) **Covenantee** means the registered owner of the Benefited Land from time to time together with (where the context so allows) its lessees, occupiers or invitees carrying out Approved Activities on the Benefited Land.
- (i) **Covenantor** means the registered owner of the Burdened Land from time to time together with (where the context so allows) its lessees, occupiers or invitees on the Burdened Land.
- (j) **Instrument** means all of this Orchard Covenant instrument including all of its Schedules.

- (k) **Lodge any Submission** means (without limitation) personally or through any agent or servant (including by being a member of any group or society, whether incorporated or not), directly or indirectly lodge a submission or objection or support in any way (financial or otherwise) any submission or objection to any Planning Proposal or take any steps whatsoever in relation to any Planning Proposal and includes (without limitation) taking part in any hearing, mediation, caucusing or appeal arising in respect of any Planning Proposal whether as a party, surrogate or otherwise.
- (l) **Planning Proposal** means any Application for, or in relation to:
  - (i) any Approved Activities;
  - (ii) use of audible bird deterrence devices;
  - (iii) use of frost fans.
- (m) **Relevant Authority** means any court, tribunal, government, local, statutory or non-statutory body, including the Council, having jurisdiction over the land referred to in this Instrument.
- (n) **Resource Consent** means any resource consent (including any Certificate of Compliance) operative as at the date of this Instrument which authorises any orchard related activity on the Benefited Land.
- (o) **RMA** means the Resource Management Act 1991.

1.2 For the avoidance of doubt:

- (a) words importing the singular number include the plural and vice versa.
- (b) references to the parties are references to the Covenantor and the Covenantee.
- (c) a covenant to do something is also a covenant to permit or cause that thing to be done and a covenant not to do something is also a covenant not to permit or cause that thing to be done.
- (d) this Instrument binds the Covenantors and their heirs, executors, successors and assigns in perpetuity and also any lessee, occupier or invitee of or on the Burdened Land.
- (e) this Instrument benefits the Covenantees and their heirs, executors, successors and assigns in perpetuity.
- (f) a reference to a statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute.

## 2. General Covenants

2.1 The Covenantor covenants and agrees:

- (a) to observe and perform all the Covenants at all times.
- (b) that the Covenants shall run with and bind the Burdened Land for the benefit of the Benefited Land.
- (c) to do all things necessary to ensure that any invitees of the Covenantor on the Burdened Land and any mortgagees, lessees or occupiers of the Burdened Land comply with the provisions of this Instrument.
- (d) to pay the Covenantee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Covenantee's rights, remedies and powers under this Instrument.
- (e) to indemnify the Covenantee against all claims and proceedings arising out of a breach by the Covenantor of any of its obligations set out in this Instrument.

## 3. Covenants in Relation to Approved Activities

3.1 The Covenantor covenants and agrees with the Covenantee that the Covenantor:

- (a) acknowledges that the Covenantee is entitled to carry out the Approved Activities on the Benefited Land in accordance with the Resource Consent.
- (b) acknowledges that the Burdened Land is in close proximity to the Benefited Land and that the Approved Activities necessarily involve very loud noise, disturbances and other usual incidences of orcharding activities which residents, occupiers and invitees on the Burdened Land may find disturbing and very annoying.

- (c) shall not:
  - (i) make or lodge; nor
  - (ii) be party to, procure, assist or support; nor
  - (iii) finance or contribute to the cost of,

any complaint, submission, application or proceeding or other action (under the RMA or otherwise), to or with the Council or any Relevant Authority, designed or intended to or having the effect of limiting the Covenantee's conduct or implementation of Approved Activities on the Benefited Land.
- (d) acknowledges that:
  - (i) clause 3.1(c) above includes any action under or in respect of sections 16, 17 and 128 of the RMA; and
  - (ii) the creation of the River Terrace Resource Area does not result in any adverse effect for the purposes of Section 128 of the RMA.
- (e) shall include a provision in all leases, contracts or other written documents enabling any use or occupation of any building on the Burdened Land, in the same form as 3.1(c) above, to bind all third party lessees, licensees, occupiers or visitors.
- (f) take steps to enforce any provision referred to in clause 3.1(e) above against any person or entity acting in breach of such provision, if the Covenantee requests the Covenantor to take such steps.
- (g) acknowledges generally that the Covenantee is entitled to carry out Approved Activities without having to respond in any way to any complaint or objection by any Covenantor in relation to the operation of the Approved Activities.
- (h) will, if the Burdened Land adjoins the commercial orchard on the western boundary of the River Terrace Resource Area, advise the owner or operator of that orchard by email at [*insert email address*] of a contact email address for the owner or occupier of the Burdened Land to enable notification of spraying activities.

#### 4. Covenants in Relation to Planning Proposals

4.1 The Covenantor covenants and agrees with the Covenantee that the Covenantor:

- (a) will not at any time Lodge any Submission to any Planning Proposal lodged by the Covenantee and further, if called upon to do so by the Covenantee, will provide written approval (including affected person's approval under the RMA) in respect of any such Planning Proposal (referred to as **Covenantor's Written Approval**).
- (b) hereby gives Covenantor's Written Approval for any Planning Proposal referred to in the previous subclause 4.1(a). The Covenantee shall be entitled to provide a copy of this Instrument to the Relevant Authority as evidence that the Covenantor's Written Approval is given.
- (c) irrevocably nominates, constitutes and appoints the Covenantee to be the true and lawful attorney of the Covenantor for the purposes of executing all documents and plans and performing all acts, matters and things as may be necessary (without limitation) to provide any Covenantor's Written Approval.

4.2 The parties acknowledge and agree that:

- (a) the covenants contained within this Instrument will attach to and run with the Burdened Land as a burden on that land to the extent that they restrict the Covenantor from acting in relation to the Burdened Land by exercising rights under the RMA or other legislation which arise from ownership or occupation of the Burdened Land and which the Covenantor would otherwise have been able to exercise for the benefit of the Burdened Land.
- (b) the burden placed upon the Burdened Land by this Instrument is for the benefit of the Benefited Land.

#### 5. Vesting of Roads or Reserve

5.1 The Covenantee:

- (a) consents to the deposit or registration of any survey plan by a Covenantor which has the effect of vesting or dedicating all or any part of a Burdened Land as road or reserve in any local authority, territorial authority or the Crown (such plan referred to as **Survey Plan**).
- (b) agrees that the covenants in this Instrument shall cease to apply in respect of any land to vest or dedicate upon such Survey Plan immediately prior to the date of lodgement with Land Information New Zealand of such Survey Plan for deposit or registration.
- (c) agrees that this clause will be deemed to be the written consent of the Covenantor to the deposit or registration of any Survey Plan (including under section 224(b)(i) RMA).
- (d) will, at its cost, on a Covenantor's request, immediately:
  - (i) give any additional written consent as required by a Covenantor to deposit or register any Survey Plan.
  - (ii) sign all documents (including Authority and Instruction Forms) and do all things reasonably required to register a surrender of this Instrument, in respect of any part of the Burdened Land, to vest or dedicate as road or reserve upon the deposit or registration of such Survey Plan (**Easement Surrender Instrument**).
  - (iii) use reasonable endeavours to obtain any consents from any registered owner (**Encumbrance**) of an encumbrance, mortgage or interest registered against the Benefited Land required to deposit or register any Survey Plan or to register the Easement Surrender Instrument.

5.2 Any caveator or registered owner of an encumbrance, mortgage or interest registered against the Benefited Land which is registered after the date of registration of this Instrument:

- (a) will take its interest/s in the Benefited Land subject to the terms of this Instrument; and
- (b) will be deemed to have given its consent to the:
  - (i) deposit or registration of any Survey Plan (including under section 224(b)(i) RMA); and
  - (ii) registration of any Easement Surrender Instrument (including under the Land Transfer Act 2017).

5.3 Notwithstanding any other provision of this Instrument, the Covenantor irrevocably appoints the Covenantor or its successor in title as its attorney to:

- (a) sign any consent necessary in the required form to deposit or register a Survey Plan;
- (b) sign all documents and do all things required to register an Easement Surrender Instrument; and
- (c) obtain all required Encumbrancees' consents to deposit a Survey Plan or register an Easement Surrender Instrument.

No person dealing with the Covenantor as the attorney in this capacity need inquire if the Covenantor is validly exercising its powers as attorney under this clause 5.3.

## 6. Breach of Covenant

6.1 Subject to clause 6.2, any Covenantor responsible for a breach or non-observance of any of the Covenants (Breach) shall be liable to pay, as liquidated damages, the sum of \$150 per day (Damages) from the date the Breach occurs until the date the Breach is remedied. Such sum shall be payable within 14 days of written demand being made by a Covenantor (Demand). If more than one Covenantor makes demand in respect of a Breach, such sum shall be shared equally between such Covenantors.

6.2 Damages payable under clause 6.1 shall:

- (a) subject to clause 6.3, not be payable if the Covenantor remedies the Breach within the 14 day period referred to in clause 6.1 or within 14 days of receiving written notice from the Covenantor requesting that the breach be remedied;
- (b) be in addition to:
  - (i) any other remedies available to the Covenantor in respect of such breach; and
  - (ii) any other liability which the Covenantor may have to the Covenantor.

6.3 Clause 6.2.a shall not apply if the Covenantor responsible for the Breach acts through any proxy, or entity such as an incorporated society, with the consequence that, when the Breach occurs, the Covenantor is not able to discover the identity of the Covenantor.

7. **General**

- 7.1 Any notice required to be served on any party shall be in writing and served in accordance with the Property Law Act 2007.
- 7.2 Any failure by a party to enforce any clause of this Instrument, or any forbearance, delay or indulgence granted by that party to any other party, will not be construed as a waiver of the first party's rights under this Instrument.
- 7.3 The Covenantor will not seek to have this Instrument removed from the title to the Burdened Land due to any lack of proximity between the Burdened Land and the Benefited Land.

8. **Liability**

- 8.1 Without prejudice to the Covenantor's and Covenantee's other rights, this Instrument binds the Covenantor's successors in title so that, contemporaneously with the acquisition of any interest in the Burdened Land, all such successors in title become bound to comply with this Instrument. However, the liability of any Covenantor under this Instrument is limited to obligations and liabilities that accrue during that Covenantor's time as registered owner of the Burdened Land and only in respect of that part of the Burdened Land owned by that Covenantor. A Covenantor will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as registered owner of the Burdened Land (however, for the avoidance of doubt, any Covenantor shall remain liable for any such antecedent breach following the transfer of the Burdened Land).

9. **Severability**

- 9.1 If any of the provisions of this Instrument are judged invalid, unlawful or unenforceable for any reason whatsoever by a Court of competent jurisdiction, such invalidity, unenforceability or illegality will not affect the operation, construction or interpretation of any other provision of this Instrument to the intent that the invalid, unenforceable or illegal provisions will be treated for all purposes as severed from this Instrument. In the event of any such severance the parties will use reasonable endeavours to negotiate with the intent that the Instrument shall achieve the economic, legal and commercial objectives of the unenforceable term, covenant or obligation.



## **20.8 ENVIRONMENTAL RESULTS ANTICIPATED**

- 20.8.1** An integrated, masterplanned urban development providing for residential (including retirement) living, a small neighbourhood centre, a network of open space areas, the opportunity for a school, and suitable road and infrastructure networks.
- 20.8.2** Co-ordinated public walkway and cycleway access throughout the Resource Area.
- 20.8.3** A wide range of residential living opportunities and affordability levels, and managed distribution of residential densities with emphasis on increased density centrally and less density peripherally.
- 20.8.4** A safe and efficient road network that integrates with the existing roading network and likely future development on adjoining land.
- 20.8.5** A well-designed built environment that provides a high quality of amenity for residents and visitors.
- 20.8.6** A conveniently located neighbourhood centre with amenities to serve the Resource Area while complementing and not undermining the existing business centres in Cromwell.
- 20.8.7** Adverse reverse sensitivity effects on adjoining rural activities, the State Highway, Cromwell Aerodrome and the nearby motorsport activities will be avoided.