

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
APPOINTED BY THE CENTRAL OTAGO DISTRICT COUNCIL**

**UNDER THE** Resource Management Act 1991 ("Act")

**IN THE MATTER** A requested change to the Central Otago District Council's  
**OF** Operative District Plan - Plan Change 13 ("PC13")

**BETWEEN** **RIVER TERRACE DEVELOPMENTS LIMITED**

Requestor

**AND** **CENTRAL OTAGO DISTRICT COUNCIL**

Planning authority

**JOINT MEMORANDUM OF COUNSEL  
STATUTORY TESTS FOR A PLAN CHANGE**

**8 JUNE 2019**

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May it please the Commission

- 1 This memorandum is prepared by counsel for The Requestor, Highlands Motorsport Park, Central Speedway Club Cromwell Inc, Central Otago District Council and Greg Wilkinson, Residents for Responsible Development of Cromwell, McKay Family Trust and 45 South, (the parties).
- 2 The parties agree that in accordance with the most recent and relevant authorities *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] onwards, updates to capture amendments made by the Resource Management Amendment Act 2013 and *R Adams and others v Auckland Council*, Decision [2018] NZEnvC 008 at [53], the statutory requirements for the decision maker in preparing a district plan or plan change are set out below.
- 3 Under section 73(2) a person may request a change (as is the case here) which is to be processed in accordance with Schedule 1, Part 2 of the RMA. Schedule 1, Part 1 of the RMA applies to consideration of a Plan Change request.<sup>1</sup>
- 4 A territorial authority must change its district plan in accordance with:<sup>2</sup>
  - (a) its functions under section 31;<sup>3</sup> and
  - (b) the provisions of Part 2.
- 5 The district plan (change) must also be prepared in accordance with any regulation<sup>4</sup> (there are none at present) and any direction given by the Minister for the Environment<sup>5</sup>.
- 6 A district plan must give effect to:<sup>6</sup>

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<sup>1</sup> Schedule 1, Part 2, clause 29

<sup>2</sup> Section 74 (1) RMA

<sup>3</sup> As described in section 31 RMA. See also Section 72 purpose of district plans.

<sup>4</sup> Section 74 (1)(f) RMA

<sup>5</sup> Section 74 (1) RMA

<sup>6</sup> Section 75 (3) RMA

- a) Any national policy statement and New Zealand Coastal Policy Statement; and
  - b) Any operative regional policy statement.
- 7 The relevant NPS in the case of PC13 is the National Policy Statement on Urban Development Capacity. The New Zealand Coastal Policy Statement is not relevant.
- 8 Whether the National Policy Statement on Urban Development Capacity and associated provisions are actually engaged in this case will be a matter of separate legal submission from the parties. The parties do not agree on whether it is applicable or not.
- 9 When preparing or changing a district plan, a territorial authority shall have regard to:<sup>7</sup>
- a) Any proposed regional policy statement; or
  - b) Proposed regional plan in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4.
- 10 A district plan must not be inconsistent with a regional plan for any matter specified in section 30(1)<sup>8</sup>.
- 11 Plan Change 13 must therefore give effect to the ORPS 1998 (only parts of which remain operative) and the ORPS 2019, which is partially operative. It must also have regard to all provisions of the Proposed Otago Regional Policy Statement that are not yet operative.
- 12 A district plan must also:
- (a) Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register<sup>9</sup>; and to consistency with plans and proposed plans of adjacent territorial authorities<sup>10</sup>;

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<sup>7</sup> Section 74 (2)

<sup>8</sup> Section 75 (4) (b) RMA

<sup>9</sup> Section 74 (2) (b) RMA

<sup>10</sup> Section 74 (2) (c) RMA

- (b) Take into account any relevant planning document recognized by an iwi authority<sup>11</sup>; and
  - (c) Not have regard to trade competition or the effects of trade competition.<sup>12</sup>
- 13 There is a formal requirement that a district plan (change) must<sup>13</sup> also state its objectives, policies and the rules (if any) and may state other matters<sup>14</sup>.
- 14 Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act<sup>15</sup>. The provisions (policies and rules) are to be evaluated on the extent to which they achieve the objectives by considering the matters set out in section 32(1)(b).<sup>16</sup> The evaluation under section 32 is to be had particular regard to when assessing the proposal under section 74.<sup>17</sup>
- 15 The policies are to implement the objectives. The rules are for the purpose of carrying out the Council's functions under the Act and achieving the objectives and policies of the plan<sup>18</sup>. Because PC13 is a proposal to amend an existing plan the assessment under section 32(1)(b) must relate to both the provisions of the Plan Change and the existing plan.<sup>19</sup>
- 16 Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives<sup>20</sup> of the district plan taking into account:

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<sup>11</sup> Section 74 (2A) RMA

<sup>12</sup> Section 74 (3) RMA

<sup>13</sup> Section 75 (1) RMA

<sup>14</sup> Section 75 (2) RMA

<sup>15</sup> Section 32(1)(a)

<sup>16</sup> Section 32(1)(b)

<sup>17</sup> Section 74(1)(e)

<sup>18</sup> Section 76 (1)

<sup>19</sup> Section 32 (3) RMA

<sup>20</sup> Section 32 (3) (b) RMA

- a. The benefits and costs of the proposed policies and methods (including rules), where possible these should be quantified; and
- b. The risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the policies, rules, or other methods<sup>21</sup>; and
- c. If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances<sup>22</sup>. This provision is not considered to be relevant in this case.

- 17 Rules may be included for the purpose of carrying out the Council's functions or achieving the Objectives and Policies of the Plan<sup>23</sup>. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment<sup>24</sup>.
- 18 Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive<sup>25</sup> than those under the Building Act 2004. The parties do not consider this provision to be relevant in this case.

Dated this 8th day of June 2019



Warwick Goldsmith – Counsel for the Requestor

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<sup>21</sup> Section 32 (4) RMA

<sup>22</sup> Section 32 (3A) RMA

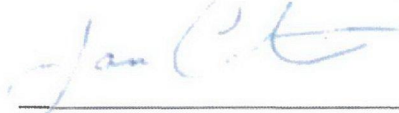
<sup>23</sup> Section 76(1). Note that as per section 32(3) the rules are to achieve both the objectives in the amending proposal and the existing objectives.

<sup>24</sup> Section 76 (3) RMA


<sup>25</sup> Section 76 (2A) RMA



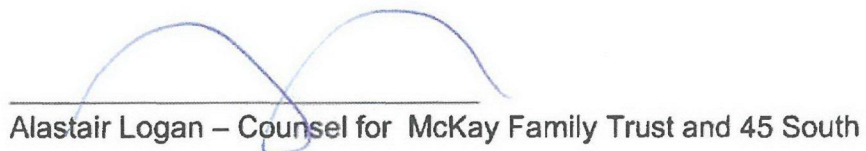
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