Before Independent Hearing Commissioners

Appointed by the Central Otago District Council

In the matter of	The Resource Management Act 1991
And	A requested change to the Central Otago District Council's Operative District Plan – Plan Change 13 (“PC13”)

CLOSING LEGAL SUBMISSIONS for the Proponent

River Terrace Developments Limited

Dated 29 July 2019

Counsel:
Warwick Goldsmith
Barrister
PO Box 2366, Wakatipu 9349
m + 64 021 220 8824
warwickgoldsmith@gmail.com

MAY IT PLEASE THE COMMISSION

Introduction and Overview of Closing Submissions

1. The 'real world' issue to be determined through this hearing is whether or not 900 residential lots or houses will be delivered to the market at the more affordable end of the price range of residential product in this area. PC13 will deliver that outcome. On the evidence presented there is little, if any, doubt that, if PC13 is refused, that outcome will not eventuate.

2. I do not intend to advise the Commission how to apply the relevant statutory regime. That is a task for the Commission to undertake, on the basis of the evidence presented. These Closing Submissions focus on the evidence, and legal points relevant to that evidence.

3. The case for PC13 remains generally as presented to the Commission (some further plan provision amendments are addressed below). While challenges have been presented with some force and at some length I submit that, on the evidence presented, those challenges have not undermined the case for the Proponent. I summarise the essential elements of that case and then address them in detail. Those essential elements are:

    a. The short term provision of more affordable housing is a major benefit of PC13.

    b. The existing zoning is a relevant starting point.

    c. Reverse sensitivity (applicable to both noise and spray drift) is fully and appropriately addressed.

    d. The Cromwell Masterplan Spatial Plan (**Spatial Plan**) should be accorded little, if any, weight.

    e. The NPSUDC is both relevant and a mandatory consideration.

    f. The loss of productive soils is a very minor consideration.

    g. Potential adverse health effects arising from spray drift are not a relevant consideration.

    h. The most significant issue which arises for determination is whether, in the context of the factual scenario under debate, it is appropriate to create a residential zone in a neighbourhood which is, at times, noisy.

    i. Confirmation of PC13 will result in little or no downside, compared to the significant upside in terms of provision of housing.

4. I acknowledge the extent, and detail, of evidence presented by submitters. I do not intend to respond to every point, particularly where lay opinions are expressed about matters subject to expert evidence, such as traffic related issues. I respond to particular aspects of the evidence which potentially have a direct bearing on factual matters to be determined.

Further amendments to plan provisions

5. Accompanying these Closing Submissions are:

   a. A Fifth Version (tracked change) PC13 plan provisions – the previous Fourth Version tracked change amendments have all been accepted – the latest Fifth Version amendments are highlighted in red;

   b. An s32AA(1) evaluation of the latest amendments;

   c. A Fifth Version (clean) PC13 plan provisions with all tracked changes accepted.

6. The Fifth Version (tracked change) highlights the following further amendments to the PC13 rules.

7. A number of minor 'tidy up' amendments have been made which should be self-explanatory and will not be further commented on.

8. The word '*existing*' has been removed from Objective 20.3.10 and Policy 20.4.12 in response to submissions by Mr Logan. Mr Logan raised a reasonable point, particularly as the covenants have now been amended to provide for specified future activities. The word "*existing*" has been deleted accordingly.

9. Rule 20.7.1(ii)(j) has been amended to provide for a requirement of two on-site carparks per residential lot. PC13 as originally notified provided for one on-site carpark per residential lot, being the standard CODC District Plan requirement. That was amended to provide for one on-site carpark plus one off-site carpark per residential lot, in response to concerns raised in the s42A Report. Some generic concerns were expressed by some submitters about the sufficiency of carparking, but the issue was not addressed in detail by any expert evidence (other than the evidence of Andy Carr for the Proponent). In his closing remarks Mr Whitney indicated that concerns around this issue still existed, again without addressing the issue in detail. In the event this might still be an outstanding issue, the Proponent has elected to provide for two on-site carparks per residential lot. That amendment, in addition to addressing this issue fully, brings River Terrace in line with Winton's earlier Bridesdale, Northlake and Lakeside medium density developments which also provide for two on-site carparks per residential lot.

10. Rule 20.7.3(viii)(f) has been amended to provide that the proposed hedge along the western boundary must be maintained to a minimum height of 5m, rather than 3m. This is in response to the evidence of Ms Wickham[1] for Public Health South to the effect that 3m is too low, due to the height of the orchard trees to be sprayed, but that 5m would be effective.

11. Rule 20.7.3(viii)(l)(iv) has been amended to provide Council discretion over the width of the proposed walkway/cycleway, in response to verbal evidence from Mr Whitney that the full desired 3m width may not be available at one point.

12. Rule 20.7.3(ix) [travellers' accommodation as a discretionary activity] has been deleted, and a new rule 20.7.5(ix) [travellers' accommodation as a non-complying activity] has been inserted in order to reinforce the purpose of PC13 to provide for residential accommodation and to respond to some submissions (and comment from Mr Whitney) opposing the enabling of travellers' accommodation.

13. Rule 20.7.3(x) has been deleted and new rule 20.7.7(ii)(c) has been inserted in response to the evidence presented by Richard Shaw for the NZTA. That evidence complicated transportation considerations to a degree because it was presented after the Joint Witness Statement of the transportation experts which had generally reached agreement on transportation issues, and added an element of uncertainty as to whether or not safety issues at the Sandflat Road/SH6 intersection had been properly addressed. After further consultation with NZTA the Proponent has amended the 'trigger' for a further Transportation Assessment from 740 lots down to 401 lots. NZTA has confirmed that this amendment addresses NZTA's safety related concerns (refer **Attachment 1**).

14. Rule 20.7.6(ii)(b) has been amended to ensure that a failure by an applicant to provide further information requested by Council cannot contribute to any extension of the three year period referred to in this rule.

15. Rule 20.7.7(viii)(b) has been amended to ensure that the restrictive covenants must be registered against the records of title to all of the PC13 land upon deposit of the first plan of subdivision for Stage One, to ensure that all of the PC land is subject to the covenants from the outset of development.

16. Rule 20.7.7(x) has been amended to impose the Airshed One control criteria over home heating appliances (rather than the Airshed Three criteria), and to include coal burning appliances, to ensure that the standards applicable within PC13 are the same as those applicable within Central Cromwell (in response to a submission made on the last day of the hearing). I note that outdoor fires are a non-complying activity under Rule 20.7.5(viii).

---

[1] Verbal response to question from the Commission.

17. Rule 20.7.7(xii)(c) has been amended to address the concern expressed that the developer may seek to evade the obligations imposed under this rule by selling to a related entity.

18. Further amendments have been made to the three draft restrictive no-complaint covenants in response to some valid points in relation to drafting raised in submissions. Some of those amendments should be self-explanatory and will not be commented on further. Others warrant some comment.

19. Submissions were made to the effect that inclusion of the word "*lawful*" might be interpreted as imposing an obligation on a potential complainant to first determine whether the relevant noise is being lawfully generated. To avoid that possible interpretation references to "*lawful*" have been deleted.

20. Submissions were made to the effect that the approval of PC13 might result in Council initiating a review of the Highlands Motorsport Park consent conditions under s128 of the Act. Putting to one side the point that there would be no reason for Council to do that if these restrictive covenants were in place, the submission point is actually not valid because s128 triggers the standard resource consent application process and the provisions of the Motorsports Covenant prevent any River Terrace covenantor from lodging any submission or in any other way seeking any condition more stringent than the current consent conditions. However one further amendment has been made to reinforce that position.

21. Quite a lot of emphasis was placed on submissions to the effect that River Terrace covenantors could somehow take action through a 'proxy' such as Mr McKay, or an incorporated society, while somehow remaining 'hidden from view' themselves. No example was given of a restrictive no-complaint covenant being subverted by that method, despite the extensive use of restrictive no-complaint covenants in many other situations. No conceptual basis of how that course of action could succeed was presented (the emphasis being on 'succeed', given the existence of the restrictive covenants in the first place). However in response to that submission an additional provision has been included.

22. Some of the other restrictive no-complaint covenant examples referenced in Opening Submissions for the Proponent contain financial penalty provisions which apply in the case of breach. Such a penalty provision has now been included in the proposed restrictive covenants. Any proxy or incorporated society openly or secretly taking action on behalf of any River Terrace covenantor would have to specifically reference alleged adverse effects on occupants of land within River Terrace. That could lead to enforcement of the penalty provision.

23. Even without that penalty provision I submit that there is no reasonable basis to anticipate a River Terrace covenantor seeking to evade the legal obligations in

the manner suggested. In the unlikely event of that possibility arising, I submit that the penalty provision is a more than adequate deterrent.

24. In respect of all of the above I make the overriding point that, with the restrictive no-complaint covenants clearly establishing the basis upon which PC13 has been established, there is no reasonable possibility of any action being taken in contravention of the covenants and having any prospect of succeeding.

Provision of affordable housing

25. The purpose of PC13 is to enable the delivery of 900 residential lots, some of which are to be delivered as part of house and land packages, to the market, in the short term and medium term, at price ranges which will be more affordable than is likely to be the case in most, if not all, other existing and future residential developments in Cromwell. That 'purpose' comprises a number of different elements.

26. The evidence of Chris Meehan is relevant to a number of those aspects. That evidence was challenged on the basis that it is not independent, expert evidence. That challenge is rejected. Clearly Chris Meehan cannot give independent expert evidence as he has a financial interest in the outcome of PC13. However he is fully entitled to give factual evidence about the residential development industry which he specialises in.

27. That evidence included evidence relating to the history of Winton Group and its various projects, the factors which are contributing to the housing crisis throughout New Zealand, the factors specifically relevant to the delivery of more affordable housing product to the market, and in particular factors relevant to the increased costs of multi-unit, intensive urban development compared to stand-alone and duplex suburban development. To the extent that that is factual evidence based upon Chris Meehan's experience, that is valid evidence. That factual evidence could have been challenged, particularly by the Council as submitter given the fact that the Council is also a developer in the residential market and given the apparently extensive work carried out by the Council to prepare the Spatial Plan which identifies, as one of its five key 'Aspirations', that "*housing is affordable and available*"[2]. Chris Meehan's evidence on those issues was not challenged in any way.

28. One aspect of the 'purpose' stated above is the delivery of residential product in the short term and medium term. The evidence of Chris Meehan relating to the development history of the Winton Group establishes that that is exactly what the Winton Group does. Winton Group is not a land banker which sits on land in the long term waiting for its capital value to rise. Winton Group buys land and then

[2] Spatial Plan at page 008, left hand column, fourth bullet point.

carries out development, and sells residential product, as fast as it can. That is the business of the Winton Group.

29. In response to questions from the Commission, Chris Meehan gave his commitment to the Stage One delivery of 200 residential lots plus 200 residential house and land packages to the market at specified price ranges. That resulted in the drafting of rules intended to secure and enforce that commitment through this plan change process. I acknowledge that the rules are unusual. They required careful drafting. The Commission might consider they could be improved. However they are not *ultra vires*. They are a valid method to achieve their intended outcome.

30. While on this point I record my verbal response to the submission by Ms Caunter that "*… the Act does not enable a territorial authority to control the price of housing …*"[3]. In response I cited the *Infinity Investment Group*[4] case relating to Queenstown Lakes District Council's Plan Change 24 intended to address affordable housing issues. I also provided the Commission with copies of Part 4.10 and Rule 15.2.20.1 of the QLDC Operative District Plan, the latter being a specific rule which controls the sale price of the land. That rule is part of the entire suite of Northlake Special Zone provisions which were approved by the Environment Court. Just because a specific method (to achieve an objective and/or policy) is not specifically authorised by the Act does not mean it is not a valid method. Ms Caunter does not provide any other reason to substantiate her contention that this particular method is *ultra vires*. I submit that the concept of this method is entirely valid. Any enquiry should be limited to the drafting of the relevant rules, and whether they are effective and efficient in achieving their intended outcome.

31. I remind the Commission that the introduced rules relating to sales at specified prices within a specified period, and related prohibited activity status if those requirements are breached, have been introduced to support other provisions, and the stated commitment of Chris Meehan, to achieve those outcomes. Even if there were to be any difficulty with those introduced rules, the situation remains that:

    a. If PC13 is approved Winton Group will immediately proceed with the River Terrace development;

    b. Rule 20.7.3(viii)(e) requires that Stage 1 contain 400 residential lots;

    c. Chris Meehan has provided a commitment in evidence about the intended sale price ranges of the first 200 lots and 200 house and land packages;

---

[3] Legal submissions of Ms Caunter dated 2 July 2019, at paragraph 142 on page 32.
[4] *Infinity Investment Group Holdings Limited v QLDC [2010] NZEnvC 234.*

d. The marketing of 200 lots and 200 house and land packages in the relatively small Cromwell market must reasonably be expected to have a competitive impact in terms of sale prices;

e. The combination of a.-d. above can reasonably be expected to achieve the outcomes which those recently introduced rules are intended to achieve, whether or not those additional rules are included in PC13.

32. At this point I respond to the query raised by Commission McMahon about jurisdiction for the Proponent to amend Objective 20.3.1 (as amended in the Fourth Version PC13 plan provisions presented at the hearing). The query presumably also applies to the related amendment to Policy 20.4.1.

33. My primary response is that it is a well-established legal principle that there is jurisdiction to amend a proposal such as PC13 provided the amendments fall within the range between the status quo and what is being proposed. It is not permissible to enlarge the scope of the proposal, but it is permissible to restrict or refine the scope of the proposal. As the proposed amendments to the objective and the policy (together with the inclusion of related rules) impose more stringent requirements which must be complied with, they are within jurisdiction[5].

34. I further submit that an entirely separate basis for jurisdiction would arise if any weight is to be placed upon the Spatial Plan because the amendments relate directly to one of the key Aspirations of the Spatial Plan which is that "*housing should be affordable and available*". However I do not pursue that submission further because of my submission below that little, if any, weight should be placed on The Spatial Plan.

35. In any event I note that that Objective 20.3.1 (pre-amendment) read:

> "*Increased 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 price options.*"

and Policy 20.4.1 (pre-amendment) read:

> "*Enable a range of dwelling types and sizes to help meet the housing needs of households on moderate incomes, or maintaining a high quality of urban and building design.*"

36. Even if some or all of the amendments were held to be beyond scope, I submit that the proposed additional rules would fall within scope as a method to further

---

[5] A recent example of a Council Decision which supports this submission, and which will be familiar to Commissioner McMahon, is the Report and Recommendations to Kapiti Coast District Council dated 8 September 2017 in respect of Private Plan Change 84, where the Commission recommended amendments to the Operative District Plan policy framework beyond what had originally been proposed.

and better implement the unamended objective and policy quoted above, particularly if the NPSUDC is held to be relevant and is therefore required to be given effect to.

37. There have been challenges around the fact that the word *"affordable"* has not been defined. That is acknowledged. It is not possible to achieve a definition without first defining who (in terms of which particular segment of the market for housing) the term is intended to relate to. There can be no absolute, objective definition. Chris Meehan acknowledged this in his evidence when he stated:[6]

> *"… There is a particular demand for what is frequently referred to as 'affordable housing', which I interpret as being housing for those people who are less well-off than many others but who are not sufficiently well-off to qualify for social housing …"*

38. The essential point relating to affordability is the contention that RTDL can and will supply residential product to the market within price ranges cheaper than almost all, if not all, other existing and future residential property developers in Cromwell. That contention has been established by evidence which has not been challenged.

39. On this point there were only two potential evidentiary challenges which I respond to as follows:

 a. Ms Caunter produced an email[7] dated 12 June 2019 relating to Freeway Orchard. I submit that no weight can be placed on that email. That is evidence introduced by way of legal submission and is therefore only evidence of the existence of the email. The email cannot be evidence of the contents of the email.

 Note: As an aside I note a query about the contents of the email. The various Tables presented by Marilyn Brown record that the Freeway Orchard property contains 8.8ha. Marilyn Brown then deducts 20% (which is a relatively standard deduction for roads, reserves, etc) to arrive at a net development area of 7ha. The email refers to a proposed residential development of approximately 80-90 dwellings. 7ha developed into (say) 85 residential lots would result in an average lot size of 823m². Therefore the reference in the email to sites being between 270m² and 350m² does not make sense.

 b. Ms Caunter also produced a letter[8] dated 11 June 2019 from the owner of the Sey Hoy property. I submit that no weight can be placed upon that letter

---

[6] Primary Evidence of Chris Meehan dated 23 April 2019, at paragraph 11 on page 2.
[7] Legal submissions of Ms Caunter, at paragraph 29 on page 8 and Attachment D.
[8] Ibid, at paragraph 28 on page 8 and Attachment C.

for the same reasons. I also note it merely refers to conversations being had with the Council and does not record any specific intention.

40. There has been a lot of focus on the term 'housing crisis' and there have been challenges as to whether any such housing crisis exists. The term 'housing crisis' describes a situation which could be described more objectively, and at greater length, as 'an existing or imminent severe shortage of residential housing at the more affordable end of the price range'. Whether the Proponent has established that that situation exists is a determination to be made by the Commission on the basis of evidence presented. It is up to the Commission to give evidence such weight as the Commission considers appropriate under the circumstances. I highlight the following factors which may inform that determination:

    a. The Stage One 400 lots/houses commitment by RTDL, which RTDL is willing to enshrine in PC13, which could be considered a market indicator.

    b. The various newspaper articles annexed to Chris Meehan's primary evidence, particularly the articles quoting the Mayor.

    c. The newspaper article dated 13 April 2019 quoting the Medical Officer of Health of the Southern District Health Board referenced in Opening Submissions for the Proponent[9].

    d. The evidence of Thomas Scott for the Southern District Health Board[10].

    e. The excerpt from the CODC Economic Development Strategy 2018-2023 referenced in Opening Submissions for the Proponent[11].

    f. The valuation evidence of David Tristram.

    g. The evidence of Gary Kirk who produced a list of sale prices of 72 sections sold within the Cromwell area over the period May 2018 to May 2019 at sale prices ranging from $91,667 to $590,000 (only ten of which were within RTDL's proposed price range for the first 200 residential lots of $180,000 to $250,000).

    h. The evidence of Ms Scott relating to the establishment of the Central Otago Community Housing Trust.

    Note: Counsel has been unable to locate any CODC Agenda Item relating to the establishment of this Trust, but was able to locate a

---

[9] Opening Submissions for the Proponent, Attachment 4.
[10] Evidence of Thomas Scott at paragraph 11.
[11] Opening Submissions for the Proponent, Attachment 5.

newspaper article dated 4 October 2017 which records the reasons the Trust was established – refer **Attachment 2**.

i. The evidence of Edward Guy[12].

j. The anecdotal evidence of Rex Edgar, who advised the Commission that he is in the business of moving households and that Cromwell is definitely facing housing affordability problems in his experience.

41. There comes a point when an accumulation of indicators results in the establishment of a fact. I submit that the evidence presented establishes that Cromwell is facing a housing crisis (however one might describe the situation). If that is accepted, I submit that four further conclusions must follow:

a. That situation has arisen despite the current rate of residential development in Cromwell and the (unchallenged) existence of at least about ten years' zoned residential capacity in Cromwell. This reinforces the contention by RTDL that the existence of zoned capacity is only one of a number of factors relevant to addressing a housing shortage.

b. Given the size of Cromwell, and the 900 lots proposed by PC13, RTDL's intention to immediately supply the market with very competitively priced residential product must be considered a very significant positive outcome of PC13.

c. That significant positive outcome has not been accorded appropriate weight in any of the submissions or evidence presented by or on behalf of opposing submitters.

d. That significant positive outcome has not been accorded appropriate weight in either the original s42A Report or in Mr Whitney's closing Response.

42. Relevant to this issue is the speed (or lack of speed) of the Council's response to this situation. I note that:

a. As recorded in Attachment 2, the establishment of a Trust intended to address this issue was announced on 4 October 2017.

b. The Trust was incorporated on 31 August 2018[13].

c. As at July 2019 nothing further appears to have happened, other than progress towards the commissioning of a housing affordability needs

---

[12] Primary Evidence of Edward Guy dated 20 May 2019, at paragraph 49 on page 12, and Summary Evidence of Edward Guy dated 2 July 2019, at paragraphs 23, 24 and 30.

[13] Supplementary Hearing Statement of Kate Scott dated 28 June 2019, at paragraph 3.1.

assessment[14]. The current status of that assessment is not clear, but it does not appear to have been commenced.

d. The Spatial Plan (to the extent that it is relevant) signals an intention to explore housing affordability issues as one of the 'workstreams' to be undertaken at an unspecified time in the future.

e. It appears to be anticipated that these various investigations may have a bearing on the content of future changes to the District Plan[15] (whether by way of variation or review).

f. All of the above can be contrasted with the speed at which PC13 has been developed, commencing in early 2017, and the speed with which the committed residential product can be delivered to the market if PC13 is confirmed.

Existing zoning - baseline

43. In his Response Mr Whitney produced[16] a copy subdivision consent dated 24 May 2019 lodged on behalf of the Proponent to achieve the subdivision detailed in Attachment 1 to my Opening Submissions. Mr Whitney expressed surprise that the application had not previously been disclosed. The reason it was not disclosed is that it was not considered relevant. As it has been tabled, I respond to Mr Whitney's comments in relation to it.

44. The application was prepared and lodged due to RTDL's concern that future plan changes being signalled by CODC may include a review of the Rural Residential (**RR**) zoning applicable to the lower terrace on the PC13 site. That zoning has value. RTDL wishes to secure that value. This action has proved prescient in the light of verbal statements by Ms Caunter and Ms Brown during the hearing that the Council intends to review that RR zoning.

45. That application was lodged seeking discretionary activity consent on the basis of advice from the local planning firm which prepared the application that, when subdivision of an RR site into a number of RR lots can be achieved through a sequence of controlled activity applications (no more than five in each application) a discretionary application which shortens the process into one step is normally treated on a non-notified basis as if it were a controlled activity application. In this case CODC decided to publicly notify the application. As a consequence that application has now been placed on hold.

---

[14] Ibid at paragraphs 3.4-3.5.
[15] Ibid at paragraph 4.2.
[16] Response by David Whitney dated 5 July 2019, at paragraph 66 on page 12.

46. The previous paragraph also responds to the comment by Ms Scott[17] that, while a sequential controlled activity path is possible, it is 'convoluted'. That is correct, but it is an option open to RTDL as landowner, particularly when the Council places barriers in the path of a speedier process.

47. The PC13 site owned by RTDL is contained in two Records of Title, one which largely contains the RR lower terrace and the other which largely contains the Rural upper terrace. However the title boundary between those two areas does not quite coincide with the zone boundary. As verbally advised by Mr Whitney, RTDL has now lodged a subdivision consent application to realign the title boundary with the zone boundary. That boundary adjustment subdivision does not involve any physical works, has no effects, and does not create any new right to build a dwelling. While the consent status of that application is discretionary (simply because it partially involves an area of land zoned Rural) there is no basis upon which it could reasonably be refused.

48. The relevant District Plan subdivision provisions then enable subdivision of the RR lower terrace into 17 RR lots to proceed by way of a sequence of controlled activity subdivision consent applications. Reverse sensitivity is not a relevant matter of control. Houses can then be built on each of those lots as a controlled activity (providing certain standards are met). A house could be also built on the upper Rural lot as a restricted discretionary activity (subject to compliance with standards) with consent highly unlikely to be refused. That is the realistic, plan-enabled baseline for the PC13 property.

49. I submit that existing baseline situation is relevant to this hearing in at least two respects:

    a. The likelihood of the lower RR terrace being used for horticultural purposes;

    b. Existing reverse sensitivity considerations relating to Suncrest Orchard, particularly relating to the likelihood of Suncrest Orchard having to obtain future resource consent for use of audible bird deterrent devices (and possibly also frost fans, depending upon their location and noise generating characteristics).

Reverse sensitivity

50. The consistent position of the Proponent throughout this hearing has been that PC13 is presented upon the basis that any potential reverse sensitivity effects will be avoided. The use of the term "*avoided*" is in the *King Salmon* interpretation that "*avoid*" means "*avoid*". That remains the position of the Proponent. Given the extent of evidence presented in relation to this issue, I address it in some detail. Consideration of reverse sensitivity includes the 'reverse sensitivity'

[17] Hearing Statement of Kate Scott dated 3 July 2019, at paragraph 4.5.

aspect of spray drift (as opposed to any potential adverse health aspect which is a different effect).

51. Much of the evidence presented during the hearing demonstrates a misunderstanding of one or both of two aspects of reverse sensitivity:

    a. Reverse sensitivity is not the actual or potential adverse effect of noise or spray drift on a River Terrace resident. Reverse sensitivity is the actual or potential adverse effect on the activities (motorsports/speedway/orcharding) of a River Terrace neighbour.

    b. The lodging of a complaint does not amount to reverse sensitivity. Reverse sensitivity is the effect of the complaint on the adjoining neighbour's activity.

52. The extent of confusion about the first point above is surprising. However the point should be self-evident, and should not require further elaboration as far as the Commission is concerned.

53. The second point above has created a greater degree of confusion and does require some emphasis. This is particularly the case in respect of the Response of Mr Whitney[18] in relation to reverse sensitivity which, I submit, is based upon a fundamental legal misunderstanding that the likelihood of complaints being made is a reverse sensitivity effect. That is not correct.

54. It does not matter which 'definition' of reverse sensitivity one refers to, or which of the number of previous cases dealing with reverse sensitivity that one refers to, one fundamental point is constant. A reverse sensitivity effect only arises if a neighbouring activity is legally prevented, hindered or adversely affected. It does not matter if 100 or 1,000 complaints are lodged. That does not comprise a reverse sensitivity effect if those complaints do not result in legal interference with an existing activity.

55. As an aside, I note that it is likely that the confusion arises, in part, from the common reference to 'restrictive no-complaint covenant'. A more legally apt term would be 'restrictive reverse sensitivity covenant' because that term relates to the effect that the covenant is intended to address. However, from a layman's point of view, the term 'restrictive no-complaint covenant' is probably easier to understand.

56. Before turning to the case law and responding to submissions presented, I emphasise two points:

---

[18] Response of David Whitney dated 5 July 2019, at paragraphs 153-191 on pages 26-31.

a. This issue turns on the efficacy, and acceptability (in a resource management sense) of the proposed restrictive covenants. That is essentially a legal issue.

b. As with many a legal issue, the underlying facts are of critical importance.

57. As far as the underlying facts are concerned, the following critical facts arise from the draft restrictive covenants. The covenants address the following separate, but to some degree related, issues:

a. They prevent the Covenantor (as defined) from taking any legal action of any nature, directly or indirectly, which would or could have the effect of legally hindering the relevant activity.

b. They prevent the Covenantor from, directly or indirectly, lodging any complaint about the relevant activity.

c. They provide Affected Party Approval in advance to specified Planning Proposals. That has the effect that the Covenantor cannot oppose the relevant Planning Proposal, and that any effects of the relevant Planning Proposal on the Covenantor's land cannot be taken into account.

58. The drafting of the restrictive covenants, and the fact that they cover the three separate aspects detailed in the previous paragraph, are important when considering the allegedly relevant case law, much of which can be distinguished either because it does not deal with a situation involving a restrictive covenant or because the relevant proposed restrictive covenant does not cover those three separate aspects.

59. Other factual matters critical to consideration of this issue include:

a. The primary Highland Motorsports consent RC150225 includes a very detailed suite of noise compliance conditions, particularly including Condition 47 relating to the requirement to prepare and implement a Noise Management Plan which goes so far as to require noise monitoring results to be available online to the general public. Highlands must continually monitor its operations, ensure that it is in compliance with its consent conditions, and ensure that information is available to the public (which presumably includes the Council). There is no basis for a suggestion that approval of PC13 could conceivably add to what are already very stringent noise compliance obligations.

b. The Speedway consent dated 29 September 1980 does not contain any noise or operational restrictions.

c. The Orchard Covenant includes APA for any future consent application relating to the use of bird deterrent devices or frost fans (meaning that the Covenantee orchard can apply for consent for bird deterrent devices and/or frost fans without any effects on River Terrace being able to be taken into account).

d. Assuming PC13 proceeds, which means the restrictive covenant rules must be implemented, CODC will have full knowledge of the content and intent of the relevant restrictive covenant provisions.

60. In my Opening Submissions I cited and annexed two cases which, I submit, are the two critical, and directly applicable, cases of relevance to this hearing. Those cases are:

a. The ***Powerlands***[19] case in which the High Court definitively confirms the lawfulness of a restrictive covenant whereby covenantors surrender all rights to complain about, or take any legal action in respect of, potential adverse effects such as noise effects. Significantly the case specifically addresses the full range of potential rights of action under the RMA including under s16, s17, and the enforcement provisions in Part 12 of the Act. The Commission's attention is drawn in particular to paragraphs [61] to [67] of this judgment.

b. The *Coneburn Planning*[20] case in which the Environment Court definitively confirms that a person can surrender rights to submit on a planning process and can give Affected Party Approval in respect of a planning process (so that any effects on that person cannot be taken into account), both in advance of any specific planning proposal being made. The Proponent relies on this case in respect of the covenant provisions whereby future River Terrace landowners and occupants cannot submit against, and are deemed to give Affected Party Approval to, virtually any planning proposal by Highlands to develop its business in the future (excluding any increase in noise levels) and to planning proposals by adjacent orchardists seeking consent for audible bird deterrent devices and/or frost fans.

61. These two cases provide the legal foundation for the submissions for the Proponent in relation to reverse sensitivity, and the effectiveness of restrictive no-complaint covenants to fully address all concerns raised about potential adverse reverse sensitivity effects. The Commission is respectfully requested to read those two cases carefully.

62. Considerable emphasis has been placed on allegations that, regardless of the existence and content of any restrictive covenants, complaints will be made which will or may have an adverse legal effect on the carrying out of the relevant

[19] Refer Opening Submissions for the Proponent, (Second) Attachment 9.
[20] Ibid, (Second) Attachment 10.

neighbouring activity and/or will create unacceptable administrative burdens on the neighbouring activities or the Council. In response I submit that:

a. Despite the existence of these types of restrictive no-complaint covenants up and down the country, and even if there have been complaints lodged in breach of any such covenants, no factual basis has been presented to support a contention that the lodging of such complaints has adversely affected the legal operation of the relevant activity.

b. No factual basis has been established in evidence to the effect that, assuming PC13 is approved and the proposed restrictive covenant provisions are implemented, the lodging of any complaints in contravention of any covenant would have the adverse consequences contended for.

63. In relation to the previous point I note in particular that:

a. The nature of the covenants is such that the lodging of any complaint does not require any response. A polite response (probably by standardised email) pointing out the existence of the covenant might be a good neighbourly thing to do, but it is not essential.

b. Given the very strict consent requirements pertaining to the Highland Motorsports activities, and the acknowledged existence of already sensitive neighbours, Highlands Motorsport Park is already subject to extensive and detailed reporting and monitoring conditions. If any complaints were made by or on behalf of River Terrace residents, there may be a minor administrative consequence in terms of the obligation to maintain a record of complaints, but that would not be significant.

c. As the Speedway is under no restrictions at all, no action would be required if complaints were to be lodged.

d. If complaints were lodged in respect of any bird scaring devices or frost fans, and assuming any required consents are in place (which cannot be opposed by any River Terrace covenantor) then no action will be required.

64. As far as any administrative burden on the Council is concerned:

a. The Council is under no legal obligation to respond to, or take action as a consequence of, any complaint lodged with the Council.

b. Most Councils have an internal procedure involving a determination of whether the lodging of a complaint justifies any action being taken.

c. In the case of River Terrace, the Council will be fully cognisant of the facts detailed in the previous paragraph, the contents of the restrictive covenant

provisions and existing consents in place, and will be under no obligation to do anything other than perhaps point out the existence of the restrictive covenant obligations and any existing consents in place.

d. There is no basis to conclude that any administrative burden would arise.

65. All of the above assumes that River Terrace residents, who have purchased their properties on a fully informed basis, would act in breach of their legal covenant obligations by lodging complaints. That assumes that those people will not be law abiding in the sense of not complying with their contractual obligations. No reasonable factual basis has been presented which would support that contention.

66. The contention was repeatedly made in submissions and evidence that a covenant enforcement burden would fall upon the relevant neighbouring activities and/or the Council. I submit that no factual basis for that contention has been established. The only theoretical situation that would arise would be if some form of legal action were taken, contrary to the covenanted obligations, to somehow prevent, hinder or inhibit the neighbouring activities. That would require a deliberate decision by one or more covenantors to breach covenant obligations and institute legal proceedings. Regardless of any penalty provisions, that is not a realistic contention. As a 'belts and braces' response on that point, penalty provisions have now been included with the consequence that any covenantor taking such legal action would expose themselves to a definitive and accumulating financial penalty. The chance of that happening must be considered remote.

67. Even if the above submission proved inaccurate, and one or more covenantors did take such legal action, the likelihood of such action being successful (against the background of the existence of the covenant obligations in the first place) must be considered equally remote. There is no reasonable basis to assume that any such covenantor acting in breach of the covenant obligations would have any reasonable expectation of a successful outcome.

68. Taking into account the relevant factual background canvassed above, I now respond briefly to legal submissions presented by opposing counsel in relation to reverse sensitivity, with specific reference to cases cited. I will refer to, but not repeat, the cited extracts. I assume the relevant cases have been supplied to the Commission.

Ms Irving for Highlands/Speedway

69. In paragraph 18 Ms Irving references the *Independent News* case. That case related to the possibility of complaints about Auckland Airport putting pressure on

Auckland Airport activities. However that case does not involve a restrictive covenant and is distinguishable on that basis.

70. In paragraph 20 Ms Irving cites the ORPS definition of 'reverse sensitivity'. I submit that that definition is no different from the definition referenced in my Opening Submissions[21].

71. In paragraph 23 Ms Irving cites the *McQueen* case. However that case included a finding of fact that the proposed activity would result in constraints upon the operation of neighbouring orchards. The evidence in this case does not support any such finding.

72. In paragraph 24 Ms Irving references the *Auckland RC v Auckland CC* case. However that case addressed the appropriateness or otherwise of District Plan controls to address reverse sensitivity. The Court held that such controls could be included in a District Plan. That is exactly what the Proponent is proposing.

73. In paragraph 28 Ms Irving references the *Ngatarawa* case (also cited in Opening Submissions for the Proponent[22]). The following points are relevant to consideration of that case:

   a. While there is a passing *obiter* reference to issues relating to covenants not having been tested under battle conditions, there is no explanation of what those issues are or what that reference means. There is no further consideration of that issue.

   b. A no-complaints covenant was volunteered in relation to aircraft noise.

   c. The Court held at paragraph 31 that, while reverse sensitivity as an adverse effect was relevant, that issue alone would not have resulted in consent being declined. There were a number of other issues adverse to a grant of consent, including reverse sensitivity issues relating to rural activities which were not proposed to be subject to the no-complaints covenant.

   d. A significant issue counting against a grant of consent was the fact that the additional proposed residential houses would have resulted in neighbouring rural activities having to obtain consent for noise emitting activities. Nothing was proposed by the Applicant to address that concern. That is exactly the same issue arising in this case in relation to bird deterrent devices and frost fans. In this case the proposed restrictive Orchard Covenant directly addresses this issue by providing APA for any future consent application for

[21] Opening Submissions for the Proponent, at paragraph 76 on page 16.
[22] Ibid at paragraph 75 on page 15.

bird deterrent devices and frost fans so that effects on River Terrace cannot be taken into account.

e. The *Ngatarawa* case precedes both the *Powerlands* case and the *Coneburn Planning* case and, to the extent relevant to this hearing, its findings must be read subject to those two subsequent cases.

74. In paragraph 37 Ms Irving references the *Avatar Glen* case. However in that case consent was granted, in part in reliance upon a proposed no-complaints covenant.

75. In paragraph 41 Ms Irving states that she cannot find any examples where a dominant tenement has taken enforcement action. Given the extensive use of restrictive no-complaint covenants as a planning tool, a reasonable conclusion from that statement is that they are generally effective and do not need to be enforced.

76. In paragraph 45 Ms Irving effectively restates the previous point and refers to compliance costs on Highlands because Highlands will have the job of enforcing the covenants. That ignores the basic fact pointed out above that no enforcement action is required. All Highlands has to do is comply with its consent requirements.

77. In paragraph 54 Ms Irving references Northlake as an example of where restrictive covenants have allegedly been circumvented. No evidence was presented in support of that submission. In actual fact, in that case the covenant in question was not a reverse sensitivity covenant, and was not relevant to the consent application or the consent decision.

78. In paragraphs 56 and 57 Ms Irving critiques the 'back up' Consent Notice option. While the critique can be debated, the primary consideration here is that the situation would only arise if Highlands refused the benefit of the primary restrictive covenant option. That situation is therefore under the control of Highlands.

79. As a final point in relation to Ms Irving's legal submissions, I note that:

a. There has been no response from Highlands to the point made in Opening Submissions for the Proponent that Highlands relies on a no-complaints covenant in relation to the residential units within Highlands or the query about how Highlands was intending to protect itself from complaints from residents within the golf course development it was considering on adjoining land.

b. Mr Rex Edgar advised the Commission that he purchased his property (located between River Terrace and Highlands) from Highlands who in turn

had purchased it from the previous owner in order to remove or deal with a neighbour complaining about noise from Highlands. Mr Edgar advised that his property is subject to a restrictive covenant preventing any complaints about noise from Highlands. **Attachment 3** contains a copy of Mr Edgar's Record of Title, with the referenced covenant highlighted, together with a copy of the registered restrictive no-complaints covenant. One can conclude that Highlands sought to get rid of an objecting neighbour and is reliant on the restrictive no-complaints covenant, which it has put in place, to prevent any future complaints from, or reverse sensitivity concern arising in respect of, that property. One can further conclude that Highlands considers this method of addressing potential reverse sensitivity concerns to be effective and good planning practice.

Mr Gardner-Hopkins for R4RDC

80. In his paragraph 54 Mr Gardner-Hopkins critiques reliance by the Proponent on the *Coneburn Planning* case. In response:

    a. Mr Gardner-Hopkins contends that Coneburn Planning Limited was unopposed by the party subject to the covenant, so there was no primary contradictor. However he ignores the fact that Coneburn Planning Limited was challenging a decision made by Council appointed Commissioners, and that the Council actively opposed Coneburn Planning Limited in the hearing which resulted in the *Coneburn Planning* decision[23].

    b. Mr Gardner-Hopkins contends that *Coneburn Planning* is contrary to public policy, is unenforceable, and cannot be relied on as good law. The arguments he makes were thoroughly canvassed in the *Coneburn Planning* decision. The decision is a Declaration by the Environment Court which is binding on all parties at the level of this hearing, regardless of whether Mr Gardner-Hopkins agrees with it.

    c. Mr Gardner-Hopkins references the *Schrantzes* who appear to have taken action in contravention of a restrictive covenant. No detail was provided to enable that contention to be examined. In any event, the fact that somebody may have elected not to enforce a no-objection covenant (against somebody acting in breach of the covenant) is not evidence of any difficulty with such enforcement. It is no more than evidence that somebody made a decision not to enforce the covenant.

81. In paragraph 56 Mr Gardner-Hopkins contends that a covenant will not resolve section 16 issues. That submission is in direct contradiction of the *Powerlands* case.

---

[23] *Coneburn Planning Limited v QLDC* [2014] NZEnvC 267, at paragraphs 21, 28 and 39-41.

82. In paragraph 57 Mr Gardner-Hopkins raises the issue of a review condition. That issue has been specifically addressed in the proposed restrictive covenants.

Mr Logan for McKay Family Trust and others

83. Mr Logan contends that there is inherent difficulty in drafting adequate documents and questions of construction can never been eliminated. It is very easy to make such a generic statement without providing any detail. Plenty of opportunity has been provided for submitters to comment on the draft restrictive covenants. To the extent that comments have been made, they have been taken on board and amendments made where appropriate.

84. Mr Logan raises the issue of the potential need for future consents for frost fans and bird deterrent devices. This situation definitely arises in respect of bird deterrent devices. It is less clear whether it arises in respect of gas guns. In any event, the Orchard Covenant has now been amended to ensure that the neighbouring orchards can apply for any necessary consent for bird deterrent devices and frost fans without effects on River Terrace being able to be taken into account.

85. I emphasise the point made during the hearing that the Suncrest Orchard in particular is already vulnerable on this issue, particularly in relation to gas guns. The Acoustic Joint Witness Statement records that the consenting of a single house on the upper terrace of the River Terrace property would result in the need for Suncrest Orchard to apply for resource consent for gas guns if closer than about 850m. Development of the River Terrace Rural Residential lower terrace in accordance with the District Plan provisions would have the same effect. In relation to this issue therefore, the proposed restrictive covenants provide much greater security for Suncrest Orchard than is currently the case.

86. Mr Logan references examples such as Ruapuna where community and political sentiment has been mobilised against noisy activities leading to pressure for land use change. No evidence has been presented that any of those referenced instances (which include Western Springs as well as Ruapuna) had the benefit of registered no-complaints covenants. Those situations simply cannot be compared with what is proposed at this hearing involving restrictive covenants and River Terrace purchasers being forewarned.

87. The previous point is also relevant to the "*social licence*" issue raised by Mr Logan and other submitters. Putting to one side the question of whether that term amounts to a valid RMA consideration, it is the proposed restrictive covenants which will establish and codify the relevant 'social licence' and the expectations of the River Terrace community.

Ms Caunter for CODC

88. Ms Caunter's submissions on this topic do not cover any points not covered by the submissions referred to above.

Summary

89. All aspects of the proposed restrictive no-complaint covenants are based upon clear and authoritative case law. The covenants have been carefully drafted, and any concerns raised during the hearing in relation to drafting detail have been addressed. They are a valid method to address potential reverse sensitivity effects. Rules have been drafted and included in PC13 to ensure that the intended outcome will be achieved. I submit that it has been conclusively established that the methods proposed will achieve the relevant objective and policy requirement to avoid adverse reverse sensitivity effects.

Spatial plan – Relevance and weight

90. I acknowledge that the Spatial Plan is a potentially relevant management plan or strategy prepared under another Act for the purpose of s74(2)(b). I agree with the submission made to the Commission that the requirement to "*have regard to*" the Spatial Plan requires due consideration to be given and a determination of how much weight, if any, should be accorded to the Spatial Plan. The extent to which the Spatial Plan is relevant to this hearing therefore depends upon the weight to be placed upon it.

91. This is particularly the case as, not only has the Spatial Plan been presented in evidence, numerous submitters have placed very considerable weight on it, including to the extent of testing PC13 against the 'objectives' (so to be speak) of the Spatial Plan.

92. In my Opening Submissions I commented that a number of cases have addressed the question of weight to be given to non-statutory plans. I did not cite those cases because, at that point in time, there was no completed non-statutory plan to discuss, and therefore the cases were not on point. The Spatial Plan was tabled following the close of the case for the Proponent and accepted by the Commission, with the caveat that any decision about weight be afforded to the Spatial Plan would be a matter for further submission and determination. As the Spatial Plan is a completed non-statutory plan, the cases referred to above become relevant and need to be considered.

Infinity Group v Queenstown Lakes District Council C010/2005

93. This case involved an interim decision on appeals concerning the proposed extension of Wanaka town on a peninsula to the north-east. The partly operative

Proposed District Plan had zoned the site as Rural General. The Council proposed a special zoning for the site by publishing a variation (Variation 15) to its proposed plan.

94. Wanaka Residents Association filed a further submission which referred to, and sought to rely upon, the Wanaka 2020 Workshop. The Court had to consider whether the Council was entitled to take this Workshop's findings into account. The Court stated at paragraphs [86] and [87] [underlining added]:

> *[86] "Whatever value the Wanaka 2020 programme may have, it is not a substitute for the well-established process under the Resource Management Act by which the public are entitled to notice of proposals to alter planning instruments, and have legal rights to take part in formal hearings about them. There is no evidence that the public were given notice that the Wanaka 2020 workshop might lead to increasing the density under the Peninsula Bay Zone the subject of Variation 15 from 250 to 400 residential units. The evidence indicates that expressions of views on that topic were the subject of development by facilitators and a technical support team, but we are unable to form an opinion on whether that was an objective process. Further, people interested in the content of Variation 15 were entitled to confine their attention to steps in the procedure prescribed by the Resource Management Act, and should not be prejudiced by not having taken part in the Wanaka 2020 exercise, however valuable that might have been for other purposes."*
>
> *[87] "In short, we find that conclusions of the Wanaka 2020 workshop, or any report of it, cannot be relied on to justify the Council's decision to make the alterations in question to Variation 15."*

Campbell v Napier City Council W67/2005

95. This case involved an appeal by the Campbells against the decision of the Napier City Council refusing resource consent to subdivide their 2.38ha property into 6 lots. It is on point to the extent that there may be considered to be a degree of similarity between the judgment required under s104(1)(c) [any other matter the consent authority considers relevant and reasonably necessary to determine the application] and s74(2)(b).

96. The Court stated at paragraphs [56]-[57]:

> *"In 1992 and 1999, the respondent published urban growth strategy documents in consultation with the community, in which the Jervois Town area was identified as an area of potential urban consolidation but which should remain subject to the status quo in the short term because of "servicing issues".*

"We can place little weight on these documents for two reasons. First, they cannot be a substitute for statutory documents produced under the processes of Schedule 1 of the Act by which the public are entitled to comment through formal processes of submission and appeal. We make reference to the recent decision of the Environment Court in Infinity Group Limited v Queenstown Lakes District Council, in particular paragraphs [80] to [87] of that decision where for detailed reasons recorded (with which we agree) the Court considered that the results of an informal process, something called the Wanaka 2020 Workshop, should have little weight placed upon them. Secondly, matters of infrastructure are agreed between the parties not to be an impediment to consent on this standalone proposal."

Redvale Lime Company Limited v Auckland Regional Council 140/2005

97. *Redvale* involved application for resource consents to establish a lime quarry. Witnesses referenced a Structure Plan which had been adopted by the District Council after a public consultation process including hearings and deliberations on submissions. There was an intention that a variation and plan changes would be undertaken to implement the Structure Plan, but public notification of the proposed variation and plan changes had not yet occurred. In *Redvale* Judge Newhook reaffirmed what the Environment Court said in *Campbell* and *Infinity*:

[71] "We take no issue with Mr Serjeant's assessment that "it will take at least 3-4 years for this process…to be completed and for the area within the Silverdale North Structure plan to be rezoned so as to provide for urban development". However, we have a more fundamental concern about the relevance of the SNSP. Because of its non-statutory nature it has not been subject to the processes of the First Schedule RMA. The limitations that attach to documents of this type, and the weight properly to be ascribed to them, are described in recent decisions of the Court. We respectfully adopt the findings in the ***Infinity*** *decision, and confirm those made by our division of the Court in* ***Campbell****. Very little weight can attach to them – clearly, even less than the minimal weight that can usually be given to statutory instruments newly proposed and not yet tested by submissions."*

Mapara Valley Preservation Society Incorporated v Taupo District Council [2007] A083/07

98. This case considers the question of what weight should be given to a proposed district plan, or variation and in that context considers how a non-statutory document which has helped shape a variation or proposed district plan should assist consideration of how much weight to give the variation or proposed district plan.

99. The Court determined that the weight to be given to a proposed plan should be assessed on a case by case basis, and as the merits of a particular case need to be assessed in their factual context, the Court considered it necessary to look at the historical development that led to the Variation being notified.

100. The case involved Variations 19 and 21 which had been preceded by a District Growth Management Strategy 'Taupo District 2050' in the context that some of the recommendations of that Strategy were reflected in Variations 19 and 21. i.e. the Taupo District 2050 was a non-statutory document that identified strategies for the management of growth that were incorporated into the Proposed Plan through Variations, and therefore gave context to what the Variations attempted to achieve.

101. The Court found that substantial weight should be given to the Variations, because they were based on and informed by a comprehensive growth strategy carried out by the Council, which, while not a statutory document, was based on professional reports, an extensive landscape study, and was publicly notified for consultation in conjunction with the 2006-16 Long Term Council Community Plan under the LGA 2002. The Court stated at paragraph 49:

> *"[49] … In our view, Variations 19 and 21 are based on, and informed by, a comprehensive growth strategy which the Council has carried out for its district. We acknowledge it is not a statutory document. However, it is based upon professional reports the Council has received, including an extensive landscape study referred to by Ms Maresca in her evidence. The TD2050 was publicly notified for consultation in conjunction with the 2006-16 long-term Council community plan using the special consultative procedures under the Local Government Act 2002. We thus find that the variations should be given substantial respect and weight."*

102. Mapara therefore provides guidance about both the point in the planning process at which weight might be afforded to a relevant non-statutory document, being when the subsequent variation or proposed plan is being considered, and guidance as to the extent to which weight should be placed on the preceding non-statutory document depending upon the relevant circumstances.

Johns Road Horticulture Ltd v Christchurch City Council [2011] NZEnvC 185

103. This case involved proceedings to settle the objectives and policies in the district plan of the Christchurch City Council (CCC) for north-west Belfast (s293). The Court in this case was asked to consider the Belfast Area Plan (**BAP**) prepared by the CCC. This was a "strategic planning document: prepared under the LGA 2002 after public consultation" [Paragraph 22]. The Court was uneasy about the BAP for the following reasons [Paragraph 24]:

a. The status of the plans in it was unclear – they were not referred to in its objectives.

b. It was a non-statutory document.

c. The Court did not know how rigorous and careful the consultation was. Framing of the initial consultation document can go a long way towards determining the outcome that CCC officers had suggested.

d. There had been no independent, objective check of the BAP. There had not been a submission and hearing process carried out by the CC, let alone a hearing by the Environment Court, since the LGA does not provide for those checks on local authorities.

104. Consequentially, the Court placed very little weight on the BAP.

Summary

105. *Infinity, Campbell* and *Redvale* all establish that non-statutory documents alone should be given little weight. In *Infinity, Campbell* and *Redvale* the primary justification the Court provides for placing little weight on non-statutory documents is that they are not subject to the same processes that planning instruments created under Schedule 1 of the Act are subject to.

106. In *Mapara*, the Court found that substantial weight should be given to the proposed plan changes, because they were based on and informed by a comprehensive growth strategy carried out by the Council, which, while not a statutory document, was based on professional reports, an extensive landscape study, and was publicly notified for consultation in conjunction with the 2006-16 Long Term Council Community Plan under the LGA 2002.

107. In *Johns Road*, the Court was uneasy about a non-statutory document in the context of a district plan change because the Court was not sure how rigorous and careful the consultation was and there had been no independent, objective check of the non-statutory document. There had not been a submission and hearing process or a hearing by the Environment Court on the non-statutory document.

108. In summary the cases place little weight on non-statutory plans as they are not a replacement for, and not as reliable an expression of the community's intention in the context of the correct legal framework, as statutory plans.

109. Before applying the theme of the above case law to the facts in this case, I respond to the legal submissions of Mr Gardner-Hopkins on this point[24]. Mr Gardner-Hopkins cites three cases in support of his contention that weight should be placed upon the Spatial Plan. I submit that none of those cases actually support that contention. I comment:

   a. In the *Sandspit* case the three non-statutory documents referred to were all held to be well out of date, had been overtaken by subsequent District Plan documents, and no weight was placed upon them.

   b. In the *Malory* case, the referenced Structure Plan had been developed over three years, comprising eight separate phases, including the development and public notification of a draft Structure Plan for submission and three phases of extensive public consultation. The factual background is therefore significantly different.

   c. The *Imrie* case did not involve consideration of any non-statutory document and is not on point at all.

110. Returning to the cases I have cited above, I submit that the reasoning which underpins the theme which is clear from those cases is easy to understand. The Schedule 1 process which results in changes to a District Plan is rigorous and thorough, particularly in the area of consideration of alternative options. The statutory consultation process has been put there for a reason. It is obviously dangerous to accord weight to the outcome of a non-statutory process without a detailed knowledge of the process that has been undertaken and the basis of the assessment that has resulted in the conclusions of that non-statutory process. Without traversing matters in detail, such dangers are evidenced by (at least) the following aspects of the CMP process resulting in the Spatial Plan.

111. I submit the Commission must have considerable concern arising from the revelation by Mr Guy that PC13, as a possible component in any future growth option for Cromwell, was discarded by a small 'inner circle' group comprising Council staff plus the CMP consultants before the Growth Options (being the final three selected) were put out for public consultation. This is particularly the case as the reason given for excluding PC13 was the simple fact of the number of submissions lodged in opposition to PC13 and a concern on behalf of the consultant team that it would be "*suicide*"[25] for the consultants to present an option which included PC13.

112. As I stated during the hearing, this is the equivalent of rejecting PC13 on the basis of the number of submissions lodged without even having a hearing to assess

[24] Legal Submissions of James Gardner-Hopkins dated 13 June 2019, at paragraphs 29-36 on pages 8-10.
[25] Verbal comment by Mr Edward Guy in response to question from the Commission.

the merits of PC13 and the merits of submissions in opposition. In this case that issue is compounded by the public and social media campaign run against PC13 as referenced in my Opening Submissions[26]. The situation was in turn further compounded by the extensive degree of misunderstanding about steps proposed by the Proponent to address reverse sensitivity concerns, resulting in a very large number of submissions being lodged by people concerned about the future of Highlands Motorsport Park and/or the Speedway, many of whom live outside the district and almost all of whom are not affected by PC13 at all.

113. Through the CMP process the Proponent lodged a submission in support of the 'Balanced Growth' option involving intensification in the urban town centre plus greenfield residential development to the south. 30% of the Survey respondents supported the Balanced Growth option[27]. However it is apparent that the CMP team assessed those Survey results on the basis that the Balanced Growth option did not include PC13. Under those circumstances I submit it is simply not possible to reach any judgment about the attitude of the overall community to PC13, particularly if PC13 is properly understood.

114. The final major factor relevant to the Spatial Plan that I point to is the acknowledged extent of uncompleted 'workstreams' which form part of, and flow from, the Spatial Plan. That includes:

    a. The various uncompleted matters detailed on Page 061 of the Spatial Plan, including consideration of further measures to "*Promote and achieve sufficient residential yield*" and "*Mechanisms for affordable housing*" (the latter of which might or might not relate to the housing affordability needs assessment to be carried out by the Central Otago Community Housing Trust referenced above);

    b. The proposed Housing Stocktake and Market Analysis project referred to by Mr Guy[28].

115. Given the factors addressed above I submit that there is no reasonable basis upon which anybody could conclude that:

    a. The outcome of the s32 process which must be part of preparation of any District Plan variation or review will reach the same conclusions as are shown in the Spatial Plan;

---

[26] Opening Submissions for the Proponent, at paragraph 154 and Attachment 14.
[27] Second Statement of Supplementary Evidence of Jeff Brown dated 28 June 2019, at paragraph 10 and Attachment.
[28] Summary Evidence of Edward Guy dated 2 July 2019, at paragraph 21 on page 4.

b. The outcome of any District Plan variation or process will accord with the outcomes signalled in the Spatial Plan.

116. Accordingly I submit that very little, if any, weight can be placed upon the Spatial Plan in these proceedings. In making that submission I am not saying that the CMP and the Spatial Plan do not contain useful factual information which may assist the Commission in its deliberations. Facts are facts, and much of the background to the CMP and Spatial Plan is probably beyond debate. My submission is directed to the conclusions and recommendations embodied in the Spatial Plan.

117. Even if the Spatial Plan were to be accorded some weight, I reiterate my Opening Submissions to the effect that approval of PC13 will not adversely affect the potential achievement of the 'Aspirations' of the Spatial Plan. In fact, bearing in mind that one of those Aspirations relates to housing availability and affordability, PC13 will assist to achieve the Aspirations of the Spatial Plan.

118. Various statements have been made to the effect that PC13 will adversely affect Spatial Plan outcomes, but those statements are not supported by proper evidentiary analysis. PC13 will attract residents who are unlikely to be attracted to more expensive, urban infill development because of affordability considerations. PC13 residents will be part of the Cromwell community and will add to the commercial viability and community viability of Cromwell. No evidence has been led which challenges that contention and supports that challenge on an analytical basis.

119. It is almost as if the Spatial Plan and PC13 are being presented or considered as binary alternatives. That is not the case. The Proponent supports the 'Balanced Growth' option for Cromwell which involves both urban intensification in the centre and some greenfield development to the south. There is no reason to suggest that development in both areas cannot and will not occur at the same time, and ultimately achieve the Spatial Plan Aspirations.

CODC as trade competitor

120. Given my submission above, which is fully supported by relevant case law, I deal with this issue briefly. On the facts available I fail to see how CODC cannot be considered a trade competitor to the Proponent. None of the case law cited by Ms Caunter was on point. Had CODC's joint venture partner (in the Gair Avenue project) submitted in opposition to PC13, there can be no doubt that that partner would be considered a trade competitor. What applies to one partner must apply to the other. However the case law on the consequences of a 'trade competitor' finding is complex, and these proceedings are complex enough as it is. This issue would only potentially be of significance if the evidence introduced by the Council as submitter (being primarily the Spatial Plan) could have a significant

bearing on the outcome. I therefore rely on my submissions above that little, if any, weight can be accorded to the Spatial Plan, and I do not pursue the trade competitor issue any further.

NPSUDC

121. This issue has been addressed at length during the hearing. I stand by, and will not reiterate, my Opening Submissions which I submit have been strengthened as this issue has been debated and have not been successfully challenged by opposing views presented. There appears to be little, if any, doubt that Cromwell is an 'urban environment' for the purposes of the NPSUDC if Cromwell includes Bannockburn, Lowburn and Pisa Moorings. There may be a doubt if Cromwell does not include those adjacent urban areas. I stand by my Opening Submissions that any consideration of 'Cromwell' realistically includes those adjacent urban areas, as is evidenced by the Council's CMP process which clearly treats those areas as part of Cromwell.

122. Assuming the NPSUDC applies, it is a directly relevant higher order policy document which must be given effect to. I will not traverse the relevant provisions which are set out in my Opening Submissions. I submit that these provisions must be read carefully when they are being considered. It is for the Commission to consider the facts when applying the provisions. I do emphasise the NPSUDC definition of 'Demand', with particular reference to demand for different price points which I submit must include the concept of affordability.

123. I also emphasise Policy PA4(b) which reads:

> "*PA4: When considering the effects of urban development, decision-makers shall take into account:*
>
> *a) ….*
>
> *b) The benefits and costs of urban development at a national, inter-regional, regional and district scale, as well as the local effects".*

124. The above Policy is the response to various submissions (particularly by Mr Gardner-Hopkins) and evidence to the effect that Cromwell should be considered in isolation and that the shortage of affordable housing in Queenstown and Wanaka is not a relevant consideration. One might reasonably conclude that it is the existence of that kind of attitude which is in part responsible for inclusion of the above Policy in the NPSUDC.

125. On this point I also note that it is public knowledge that the level of commercial activity in Cromwell is in part very much a consequence of the tourism industry centred upon, and flowing out from, Queenstown. By way of example, it is

unlikely that the Mt Difficulty restaurant referred to in evidence would have achieved the success it has achieved if Queenstown had not achieved the degree of tourism growth which it has experienced over recent years. Cromwell cannot expect to share the upside of tourism growth without also sharing the downside and contributing to the solutions to the downside.

Productive soils

126. Putting to one side the likelihood of the PC13 lower RR terrace being used for horticultural purposes, RTDL has not challenged Mr Robin Dicey's evidence that the PC13 site could accommodate viticulture (assuming irrigation water is available, which has not been established and in respect of which RTDL holds no water rights). As the upper terrace seems likely to contain soil similar to the adjoining Suncrest Orchard, at least the upper terrace is probably suitable to grow cherries, apples and other stonefruit crops which have been referred to in evidence.

127. However the various witnesses who have given evidence in relation to this issue have all acknowledged that interventions would be required for successful crop establishment, particularly in relation to irrigation (if water is available) and appropriate fertilisers. There is no doubt that some crops (specifically cherries and grapes) can grow in Cromwell's climate, and if the climate is acceptable you can probably grow many things in almost any soil if you apply water and the right fertiliser, so there is no doubt the PC13 site has some potential for horticultural use. However that is not the relevant test.

128. While different definitions relating to soils have been referred to, they are fairly similar. In particular the District Plan definition of 'high class soils', which appears to be very similar to the Operative ORPS definition, reads:

> "*Means soils that are capable of being used intensively to produce a wide variety of plants including horticultural crops. This definition requires good soil and other resource features that combine to be capable of producing a wide range of crops. It does not include areas that may be suited to one or two specialist crops, largely due to the climate rather than soil quality.*"

129. With the exception of two small areas on the upper terrace identified by Mr Hill, I submit that the evidence does not establish that the soils in the PC13 site fall within the definition quoted above. The possibility of being able to grow grapes or cherries or other stonefruit varieties, subject to the caveat that significant interventions would be required even for those crops, does not fall within the definition which clearly requires the relevant soil to be able to be used intensively for a wide range of crops. None of the evidence presented establishes that that definition applies to the PC13 site.

130. I acknowledge the statement in the Supplementary Evidence by Mr Weaver that other crops that can be successfully grown on the River Terrace site include apples, pears, walnuts, hazel nuts, boysenberries, raspberries and olives[29]. However, with the exception of apples, that evidence was not included in Mr Weaver's Primary Evidence and was only presented to the Commission following the close of the Proponent's case. The evidence therefore could not be tested.

131. In addition, I note that Mr Weaver's bald statement was not supported by any detailed analysis explaining what factors were or were not supportive of the growing of those crops, what climatic conditions might be relevant, and what interventions might be necessary to enable those crops to be grown. I submit that no weight can be placed on that aspect of Mr Weaver's evidence:

132. My primary submission on this issue is that PC13 does not offend objectives and policies relevant to consideration of soil productivity. My alternative submission is that PC13 could only possibly offend those objectives and policies to a minor degree, taking into account in particular the RR baseline situation of the lower terrace, the evidence regarding soil quality, and the fact that the upper terrace was recently marketed for sale and apparently attracted no interest from anyone wishing to use the land for horticultural purposes.

Spray drift – health effects

133. In this section of these submissions I do not address the reverse sensitivity aspect of spray drift. I address the potential for spray drift to result in adverse health effects on future River Terrace residents.

134. I stand by, and will not repeat, my Opening Submissions to the effect that spray drift cannot be a relevant consideration due to the obligations on sprayers not to enable or allow meaningful adverse effects beyond the boundary of their property. Those are overriding obligations which must be complied with. That does not mean there may not be minor discharges across the boundary of minimal effect, but that is a reverse sensitivity issue not an adverse health effect issue.

135. There has been a remarkable degree of confusion around the issue of 'buffers'. Mr James Dicey, when he was talking about various buffer distances applicable to various properties identified in Attachment 7 of my Opening Submissions, was clearly including distances between the relevant spraying activity and the relevant nearby house. Ms Wickham for Public Health South continues to hold the position that relevant buffer distances can include land on the property potentially affected as well as land on the property where spraying is occurring. I submit that that is not, and cannot, be the situation. The obligation is to achieve certain

[29] Supplementary Evidence of Earnscy Weaver dated 2 July 2019, at paragraph 3.10 on page 5.

outcomes at the property boundary. The buffer distances are recommended to enable achievement of the required outcomes. It must follow that any recommended buffer distance must be located within the property on which the spraying is occurring.

136. There has been no detailed evidence presented which establishes a danger of spray drift potentially causing an adverse health effect on a River Terrace occupant. There have been various lists of chemicals produced, and various statements about potential adverse effects of chemicals, but there has been no specific analysis of how a particular chemical, properly applied in accordance with relevant standards and guidelines, could cause an adverse health effect for a River Terrace occupant.

137. The previous paragraph applies without (ie: before) the proposed 3m fence and adjoining hedge (now to be maintained at a height no lower than 5m). There has been no 'apples for apples' comparison of any other allegedly similar situations to the situation proposed by PC13. No specific evidence has been led which could lead to a conclusion that a potential adverse health effect arising from spray drift could occur.

138. In a broader sense, there has been no appropriate response to my Opening Submissions to the effect that the situation of orchards beside residential development appears to arise in a number of places throughout Cromwell and does not ever appear to have been a concern in the past (as far as adverse health effects are concerned). While Mr James Dicey pointed out that some of the identified orchards currently use organic chemicals, there is no certainty of that continuing. The fact remains that there are orchards alongside residential development in a number of locations within Cromwell and its surrounds (and in many other places in New Zealand).

139. Public Health South did not explain why, despite being involved as a submitter to the Wooing Tree Plan Change 12, it did not have concerns about houses being nestled in amongst vineyards. Public Health South also did not explain why it took no part in the publicly notified Top 10 Holiday Park hearing which led to a decision putting houses right beside an existing orchard without the issue of potential adverse health effects being raised at all.

140. In relation to the previous point, Mr Whitney in his Response[30] refers to the fact that the adjacent Freeway Orchard provided an Affected Persons Approval in relation to the publicly notified Top 10 application. I acknowledge that removes reverse sensitivity in relation to spray drift as a relevant consideration in that case. However that does not remove adverse health effects on Top 10 residents as a relevant consideration. The Top 10 consent places houses right alongside an

[30] Response of David Whitney dated 5 July 2019, at paragraph 94 on page 16.

existing orchard, with only a 1.8m fence along the boundary (which may or may not be a consent requirement) and with no reference to buffer distances or potential adverse health effects.

141. Against the background detailed above, PC13:

a. proposes a 3m solid fence along the entire Suncrest Orchard boundary;

b. backs up that fence with a 2m wide hedge which must be planted at 2m height and must not be trimmed below 5m;

c. by installing that solid shelter along the boundary, brings the existing 10m buffer distance on the Suncrest Orchard property (between spraying activities and the boundary) into compliance with the NZ Standard NZS 2409:2004 recommended 10m buffer distance for ground based air blast spraying when there is solid shelter in place along the boundary.

142. To the extent that potential adverse health effects arising from spray drift are a relevant consideration at all, I submit that this consideration does not count against PC13.

Noise

143. This section of these submissions does not address the reverse sensitivity aspect of noise. It addresses the effects of noise on River Terrace residents.

144. As far as indoor noise levels are concerned, and with the exception of one point, the acoustic experts are generally in agreement. In particular they are in agreement that internal noise effects can be adequately managed by acoustic insulation. The one point of disagreement relates to the internal noise levels intended to be achieved through the acoustic insulation requirements (with the exception of road noise where the experts agree on an internal noise level criterion of 40dB).

Note: This section of these submissions only refers to noise levels by ‘dB’, as the more technical expressions of the different kinds of noise levels are addressed in the evidence.

145. The Proponent initially applied the same 40dB criterion to indoor noise levels relating to other noise sources. In response to evidence presented, that has been amended to 35dB for bedrooms and 40dB for other critical listening areas. Opposing acoustic evidence proposes a 30dB internal noise level.

146. I submit that the position taken by Mr Styles for the Proponent is robust and is supported by numerous other examples. In my Opening Submissions I referenced a number of examples of restrictive no-complaint covenants, some of

which included acoustic insulation requirements to achieve specified indoor noise levels. None of the specified indoor internal noise levels went as low as 30dB.

147. In case it may assist the Commission, the following table details required indoor noise level criteria in relation to noise sensitive areas in respect of various airports and other infrastructure.

Location	Plan Provisions	Db Limit
Auckland International Airport	Auckland Unitary Plan, D24 – Aircraft Noise Overlay, D24.6.3(1)	40db in all habitable rooms with external doors/windows closed.
Christchurch Airport	Christchurch District Plan, Chapter 5, 6.1.6.2.7.2	40db for habitable rooms Retrofitting program by the airport per Rule 6.1.6.2.7.2 Acoustic treatment and advice
Wellington Airport	Wellington District Plan Chapter 11A Airport Precinct Rules and Wellington Airport Noise Management Plan	40db in all habitable rooms with external doors/windows closed if has adequate ventilation system. Funding for acoustic treatment above 65db.
Nelson Port	Nelson Resource Management Plan – Port Control Overlay, Appendix 19 and Rule REr.65A	40db inside any new or altered habitable space Port required to help contribute to costs at varying levels for homes in areas 55dBA and above.
Napier Port	Appendix 33B of the City of Napier District Plan	45 db indoors with doors and windows open unless adequate ventilation is provided. Port required to help contribute to costs in areas 65dBA and above
Queenstown Airport	Queenstown Lakes District Plan – Chapter 7 Residential Areas – Rule 7.5.5.3.vi Airport Noise	40dB within any Critical Listening Environment

148. Mr Styles referred to the proposed 30dB criterion as a 'Gold Standard' which is rarely sought to be achieved anywhere else. While it may be an attractive proposition to pursue a 'Gold Standard', I ask the Commissioners to take into account the fact that such a criterion will have significant adverse construction cost consequences. The internal noise criterion should be what is considered appropriate to the circumstances. That is a matter for the Commission to determine on the evidence.

149. I remind the Commission that, when critiquing reliance upon the World Health Organisation guidelines, Mr Styles pointed out that the guidelines relate to continuous noise exposure and do not provide guidance for intermittent noise exposure of the nature that will be experienced at River Terrace.

150. As far as outdoor amenity issues are concerned, the Proponent accepts that there will be occasions when noise levels will detrimentally affect outdoor amenity. RTDL's response is essentially that:

   a. There are many examples where people choose, for their own reasons and purposes, to live in an environment which is at times noisy;

   b. Subclause a. above is evidenced by the submitters living in the immediate neighbourhood who gave evidence, some of whom had lived there for a considerable period of time, some of whom had no difficulty with the noise, and none of whom had chosen to move away from the neighbourhood;

   c. The existence of the restrictive covenants, and the Warnings contained in the restrictive covenants, can reasonably be expected to 'weed out' potential purchasers who are particularly sensitive to noise;

   d. If there is a choice between a new warm house in an environment which is noisy at times on the one hand, and an old cold house or no house on the other hand, that choice should be left to individuals to make and should not be made for them by somebody else who is not in their situation;

   e. The previous point finds support in s5 of the Act which refers to enabling "*… people and communities to provide for <u>their</u> social, economic and cultural wellbeing …*" [underlining added].

151. A number of statements were made to the effect that, when noisy activities were taking place, River Terrace occupants would have to remain indoors and would not be able to enjoy outdoor amenities. However those statements are based upon an unproven assumption about how people will react to noise. It is very evident from evidence presented during the hearing that different people react to noise differently, both in terms of loudness and in terms of character. The fact that people will have a choice to go indoors in order to mitigate external noise

effects does not necessarily mean they will want to do that. This point relates back to the 'choice' point addressed in the previous paragraph.

152. Ms Caunter made reference to[31] ORPS provisions relevant to "*... avoiding significant adverse effects on human health ...*". In response I submit that no evidence has been presented to support any contention that significant adverse health effects will or may arise if PC13 is approved. There was reference to the fact that annoyance can result in adverse health effects, but there was no evidence to the effect that the particular noise levels and frequency which might be experienced will result in adverse health effects in this case, let alone significant adverse health effects.

153. On this issue I refer the Commission to the *Armstrong*[32] case, being the Environment Court decision which consented the Highlands Motorsport Park, where the Court stated at paragraph 59:

> *"[59] The Applicant called evidence from Dr D R Black, a specialist in occupational and environmental medicine. He opined that exposure to the noise levels proposed would not cause adverse health effects. He noted that 85dBA is used both in New Zealand and the United States as a limit for continuous occupational noise exposure, a standard expressed as 85dBA Leq (8 hours). In other words, exposure should not be above 85dBA Leq for 8 hours per day over a working lifetime if adverse health effects were to be avoided. He said that exposure to these levels, and levels in excess of them could occur without any damage to health provided that these levels are not sustained."*

154. When considering the statement quoted above it should be borne in mind that the Court would have been taking into account potential effects on residents at Mr McKay's property and presumably also upon residents at what is now Rex Edgar's property (Rex Edgar's Record of Title shows that Highlands purchased that property in 2007 and sold it to Mr and Mrs Edgar in 2009).

155. Accordingly I submit that the potential for adverse health effects arising from noise exposure is not a relevant consideration in this hearing.

Infrastructure related costs

156. PC13 does not raise any issues relating to the provision of necessary infrastructure to service PC13 development. I emphasise this point because there are statements or suggestions to that effect in some of the submissions and evidence which has been presented. There has been no evidence presented which would support any such contention. Mr Whitney acknowledged in both his

[31] Legal Submissions of Jan Caunter dated 2 July 2019, at paragraph 58 on page 14.
[32] *I & E Armstrong & Ors v CODC* Decision No. C131/2008.

s42A Report and in his Response (verbally) that he is not aware of any adverse effect issues relating to provision of infrastructure (subject of course to the Proponent having to meet the costs of certain infrastructure upgrades which have been identified).

157. However there were a number of concerns expressed about the potential for PC13 to result in costs incurred by the wider community and/or the general ratepayer base. Mr Copeland made a number of generic statements to the effect that that could be a possible outcome (without providing any evidence relating to any specific such outcome). In addition there were some questions from the Commission around the theme of potential frustration on the part of the Council if the Council provides infrastructure in one area and a new development occurs in another area where the Council has not provided infrastructure. This section of these submissions addresses the potential for adverse effects to arise under this heading.

158. My primary submission is that there has been no evidence presented which specifically identifies any potential adverse effect of this nature. It is very easy to make generic statements about the possibility of adverse effects arising. What is required however is specific evidence to establish that an adverse effect will arise. No such evidence has been presented.

159. This issue depends entirely upon the relevant factual context. By way of example, a proposition for a plan change to enable a significant area of urban development on the outskirts of Auckland could give rise to a range of considerations such as the need for a motorway extension or a railway extension or a significant wastewater treatment upgrade, none of which might feature in the Auckland Council's current Long Term Community Plan. PC13 has an entirely different factual context. Any submission alleging adverse cost effects to be incurred by the wider community must be established on the facts. No such facts have been established in this case.

160. The same point applies to the 'Council frustration' point. Just because the Council may have provided infrastructure in one area, and then a developer comes along and provides (at the developer's cost) infrastructure in another area, does not necessarily mean there will be a resultant adverse effect on the overall Council infrastructure networks. There has been no evidence presented to establish that the necessary extensions to the Council infrastructure networks (potable water supply and wastewater – to be funded by the developer) will have any adverse effect on any other part of the Council's infrastructure networks.

161. None of the submissions and evidence presented in relation to this issue, particularly including Mr Copeland's evidence, takes into account the benefit to Council of the rates that will be payable in respect of the proposed 900 new

residential lots. Those rates will more than cover any additional operating costs (such as power costs to run pumps, etc). The PC13 infrastructure will be new and will therefore have minimal maintenance costs in the early years. That will very likely contrast with the older parts of the Council's infrastructure networks which are likely to have greater maintenance costs and will probably generate earlier replacement costs. As the likes of potable water supply and wastewater networks are usually funded through rates applicable to a single broad supply catchment (in a town the size of Cromwell) the 900 new ratepayers are likely to effectively subsidise existing ratepayers because maintenance and replacement costs are generally spread across each entire network catchment area.

162. Development levies are also a part of this equation. The point was made, for example, that Bannockburn Road may need to be upgraded at some point in the future, and that approval of PC13 might bring forward that potential upgrade. Any upgrade of Bannockburn Road will be as a result of a number of traffic related factors, of which PC13 will be only one. It is therefore reasonable that the PC13 development pay its appropriate share of any such upgrade, but it is not reasonable that the PC13 development pay the entire cost of any such upgrade. Development levies payable in respect of the PC13 development can be expected to include an appropriate contribution towards any such future Bannockburn Road upgrade in accordance with the Council's Annual Plan and Long Term Community Plan calculations. It is precisely the purpose of development levies to ensure that the costs of future infrastructure upgrades are appropriately shared by the users of that infrastructure.

163. I submit that consideration of all relevant factors under this heading does not and cannot result in any conclusion adverse to PC13.

Comments on Mr Whitney's Response

164. The significant issues raised in Mr Whitney's Response dated 5 July 2019 have been addressed above. That leaves a few remaining matters which warrant some comment.

Residential building design controls

165. Mr Whitney addresses the issue of design controls at paragraphs 104-107. PC13 as notified did not include design control provisions relating to residential buildings (excluding retirement buildings). In response to questions from the Commission during the first week of the hearing, design controls were introduced in the Fourth Version PC13 plan provisions. Mr Whitney supports the original PC13 position to deal with such design controls through a private covenant rather than through the District Plan.

166. Mr Whitney's position is not surprising as, in Counsel's experience of plan changes of this nature, Councils usually prefer to leave this issue to the private sector and to avoid having to deal with it through District Plan provisions. The Proponent's preference would be to agree with Mr Whitney and leave the matter to be dealt with by way of private covenant. Given the concerns expressed by the Commission, no amendment on this issue has been made in the Fifth Version PC13 plan provisions. Should the Commissioner agree with Mr Whitney, appropriate amendments are recommended in Mr Whitney's paragraph 106.

Cromwell Golf Course

167. Mr Whitney addresses the Cromwell Golf Course issue at paragraphs 114-120 and further at paragraphs 128-130. Mr Whitney's comments can reasonably be said to generally support the proposition adopted in the Spatial Plan, supported by the evidence of Ms Brown, that the golf course can be rezoned (where required) for residential development, that reserve designations and classifications under the relevant Acts can be uplifted, that the Cromwell Golf Club can be persuaded to move, and that the expectation that all of that can be achieved is of sufficient likelihood to be relied upon when determining future growth options for Cromwell.

168. I do not intend to readdress factual matters relating to this issue which have been fully canvassed during the hearing. I merely add one point, and the implications of that point.

169. Towards the end of the presentation of his Response Mr Whitney produced Record of Title 77782, being the title to the golf course land owned by the Council. That Record of Title discloses registered Lease 8017105.1. **Attachment 4** contains a copy Record of Title 77782, with Lease 8017105.1 highlighted, together with a search copy of that registered lease. The Commission's attention is drawn to clause 25 on page 5 of the registered lease.

170. Clause 25 records that the Council must renew the lease, on request, unless the Council requires the land for some other recreational purpose (not residential). The renewed lease is on the same terms and conditions, including the renewal clause. This is what is known as a 'perpetually renewable lease'.

171. The first implication of the above facts is that the Cromwell Golf Club owns about half of the golf course land in its own freehold title (23.93ha) and appears to have a perpetually renewable lease of the balance of the golf course land owned by CODC (22.27ha). As a consequence the Cromwell Golf Club appears to have complete control over the future of the Cromwell Golf Course.

172. This second implication is that, despite various references in evidence relating to the CMP and the Spatial Plan to consultation with 'key stakeholders', there is no

evidentiary record of formal consultation between the Council and the Golf Club and, in particular, there is no evidentiary record of the Golf Club having agreed to the Spatial Plan proposition. There have been some references to some conversations but nothing more, and no indication of the outcome of those conversations. Given the significance of the proposed residential development of the golf course land in the various Tables and predictions presented by Council in respect of the Spatial Plan, this is at least surprising.

173. Given the above circumstances I submit that no weight can be placed on the potential future availability of the golf course land for residential development.

Number of submissions lodged

174. At paragraph 124 Mr Whitney places significant weight on the number of submissions lodged to PC13 and the percentage lodged in opposition. Similar weight has been placed on that issue in submissions by various opposing Counsel. It is a well accepted principle that it is the content and merit of submissions which is important, not the number lodged. I submit that this is particularly the case when a social media campaign, targeted at the public generally and specifically at the Highlands Motorsports Park membership base, has been waged against PC13 and where there has been extensive misunderstanding about the efficacy of restrictive no-complaint covenants to address reverse sensitivity issues.

Traffic

175. In paragraphs 141-152 Mr Whitney purports to provide reasonably detailed traffic evidence. I submit those paragraphs should be treated with caution as Mr Whitney is not a transportation expert. In particular I note that:

a. None of those issues were raised in NZTA's submission to PC13.

b. None of the issues were raised in the Joint Witness Statement of the transportation experts.

c. Mr Whitney states at paragraph 149 that Mr Shaw of NZTA agreed with Mr Whitney that the use of SH6 for local traffic is an adverse effect of PC13. That comment from Mr Shaw came in response to a question from the Commission. Mr Whitney did not record that the Commission put the identical question to Mr Gatenby, NZTA's expert witness, and Mr Gatenby responded by saying that the use of SH6 for local traffic was not a concern to NZTA. Putting to one side the direct conflict between the two NZTA witnesses on that point, and the fact that the technical expert (Mr Gatenby) usually overrides the planning expert (Mr Shaw), I submit that Mr Whitney's paragraph 149 is another example of the extent to which both his s42A

Report and his Response overweights considerations adverse to PC13 and underweights considerations favourable to PC13.

d. Mr Whitney references a comment by Mr Gatenby that, if PC13 proceeded, NZTA would probably carry out a speed review of what Mr Whitney estimates as being an approximate 6km length of SH6. Mr Whitney assumes that review would result in a speed reduction, and further assumes that any speed reduction consequential upon a roundabout would require a speed reduction along the entire 6km length of SH6. Neither of those conclusions flow from Mr Gatenby's comments, particularly the latter conclusion.

e. Mr Whitney then identifies that reduction in speed is an adverse effect arising from PC13. Yet in his earlier paragraph 148, where he refers to a roundabout on SH8B required as a consequence of the Wooing Tree Plan Change 12, he makes no reference to an equivalent adverse effect of a reduction in speed of traffic arising in that location (given that installation of a roundabout will inevitably result in a speed reduction just to transition the roundabout, regardless of the surrounding speed limit).

Restrictive Covenants

176. At paragraphs 153-191 Mr Whitney addresses restrictive no-complaint covenants. I have already identified the legal error which underpins much of that analysis so I will not take that issue any further other than to point out that there is no factual basis to Mr Whitney's contentions that the relevant rules will not be effective and because of that, and the legal error previously referred to, his conclusion that Objective 20.3.10 and Policy 20.4.12 will not be achieved does not withstand scrutiny.

177. In his paragraph 173 Mr Whitney contends that, because the restrictive no-complaint covenants are to be applied through a District Plan rule (and not imposed by developer via a private covenant) Council staff and elected members will be criticised. Again no factual basis for the assertion of potential criticism is presented. More importantly however, the proposed restrictive no-complaint covenants are not imposed via a rule. Development is enabled via a rule. Assuming the primary (preferred) option is adopted, and restrictive no-complaints covenants are registered, they remain private covenants. The Council is not a party.

178. I acknowledge that the alternative method (Consent Notice condition) would be imposed by a rule. If that causes Council a concern, and if the Commission agreed with that concern, the second option could be deleted and the position could revert to the position as notified (being that the reverse sensitivity rules only apply if the neighbouring activities allow registration of private covenants, and if

they do not they accept the reverse sensitivity risk). However the Proponent's position remains that what is now proposed is the preferable course of action.

179. For the record I note that the Proponent is not advocating the approval of PC13 without reverse sensitivity issues being addressed through one or other of those courses of action.

180. At some point Mr Whitney made the point that, unlike the Queenstown Lakes District Plan, the CODC District Plan does not include 'Special Zones' of the nature of PC13. Ms Caunter made the same point in her legal submissions[33]. For the record I note that Plan Change 1 to the CODC District Plan, which created the McArthur Ridge Resource Area, created a 'Special Zone' very similar to the PC13 River Terrace zone (in fact PC13 is largely modelled on PC1). PC1 is therefore an example of a 'Special Zone' within the CODC District Plan (although it has since been removed).

Sundry issues

Interruption of air flow

181. Mr Michael Jones, giving evidence on behalf of Suncrest Orchard, expressed a concern that the proposed 3m fence would not allow cold air to drain out of the Suncrest Orchard property on cold nights[34]. Ms Wharfe expressed the same concern on behalf of Horticulture New Zealand[35]. In response I submit:

   a. This evidence was introduced following the close of the case for the Proponent, so the Proponent was unable to present evidence in response on that issue.

   b. Those statements were not supported by any scientific or evidentiary analysis to establish whether that effect would arise, the extent of that effect if it did arise, and the consequences of that effect if it did arise.

   c. As a 2m high fence along the boundary is a permitted activity, any relevant effect could only relate to the extra metre. No evidence has been led to establish what the effect of that extra metre would be in relation to this issue.

Critique of 'affordability/availability' rules

182. The rules designed to achieve committed sales at specified price points within a specified period attracted a degree of criticism. One point was valid and has been responded to. Other points seem to be a result of a misunderstanding of

---

[33] Legal Submissions of Jan Caunter dated 2 July 2019, at paragraph 108 on page 26.
[34] Evidence of Michael Jones at paragraph 3.2.
[35] Hearing Statement of Evidence of Lynette Wharfe dated 2 July 2019 at paragraph 12.5 on page 18.

how the rules would actually work and have not been responded to. There is one point I do wish to respond further to.

183. Rule 20.7.6(ii) is the 'prohibited activity' rule which requires specified sales to be completed within a three year period, failing which prohibited activity status will apply. The three year period can be extended in a number of situations, most of which should be self-explanatory. Subclause (c) allows an extension to enable a breach of the rule to be remedied. Having carefully considered this part of that rule further I remain of the view that it is appropriate, and I think it has been misunderstood. I comment:

   a. The primary requirement is to achieve the specified sales at the specified prices, within the specified period, as Stage One of the PC13 development. That clearly creates an incentive for the developer to comply with this requirement as soon as possible, firstly because that is necessary to then be able to carry out subsequent stages and secondly because of the prohibited activity 'threat'. There is no reason for the developer to seek to extend the three year period, absent a very unexpected event.

   b. There is always the possibility of an unexpected event. If war were to break out in the Middle East, that might have a significant effect on international tourism which might have significant adverse effects on Queenstown which in turn might significantly adversely affect residential growth in Cromwell. Everything may go on hold for a year or two. Economic downturns do happen. Subclause (c) anticipates that possibility, and enables the developer to apply for any consent necessary to remedy a breach of the rule.

   c. The intention is that any such consent can only be applied for to enable a breach of the rule to be remedied, which means to enable whatever proportion or component of the required sales has yet to be completed, to be completed. A slight amendment to subclause (c) has been made to clarify that point.

   d. Subject to the amendment referred to in the previous subparagraph, I submit that the rule will achieve its intended outcome.

184. Submissions have been made to the effect that compliance with these rules will impose a significant compliance cost on the Council. No explanation on how such a compliance cost would arise has been presented. Costs incurred in respect of any consent application are payable by the consent applicant. I submit that there is no factual basis for this contention.

Section 32

185. The Commission posed a question which Counsel recorded as follows:

"What happens if the Commission decides under s32(1)(a) that the objectives of the proposal are not the most appropriate way to achieve the purpose of the Act? Is that the end of the enquiry, or should the Commission go on to carry out the evaluation under s32(1)(b)?"

186. I submit that the correct response is that the Commission is required to carry out an evaluation under s32(1)(a) and under s32(1)(b), regardless of the outcome of the former. I advance the following reasons for that response:

    a. The plain wording of s32(1) does not support an interpretation of a two step process, of which only one step might have to be undertaken. If that had been the intention of the legislature, s32 would have said so.

    b. It is possible that the answers to these two limbs of s32(1) are interrelated, in the sense that it may be necessary to carry out both evaluations in order to arrive at the appropriate determination under each evaluation.

    c. From a practical point of view, a lot of evidence has been led which must be considered under s32(1). There is always the possibility of an appeal against the ultimate decision. An appeal can be expected to challenge those parts of the decision considered susceptible to challenge. If the decision found against the Proponent under s31(1)(a) (and therefore did not include an evaluation under s31(1)(b)), and that determination was successfully challenged on appeal, the Environment Court would be left having to carry out the s32(1)(b) evaluation without the benefit of being able to consider the equivalent evaluation carried out by the Council. That would arguably limit the application of s290A, and would be unlikely to be well received by the Environment Court.

187. The only other aspect of s32 which I intend to address is s32(2)(c) in relation to housing affordability and availability, which is an essential component of the case for PC13. If the Commission accepts the evidence for the Proponent on those issues, the Commission may determine that there is no 'uncertain or insufficient information' and therefore that s32(2)(c) is not triggered. Should the alternative be the case (thereby triggering s32(2)(c)) the following submissions apply.

188. I submit that the risks of acting (ie: approving PC13) are:

    a. A slight increase in administrative requirements for orchards notifying adjoining neighbours (within 25m-30m) of proposed spraying activities;

    b. A slight increase in administrative requirements for Highlands Motorsport Park if complaints are made despite the restrictive covenants (given the Highlands existing consent obligation to keep a register of complaints);

c. The possible need for adjacent orchards to obtain resource consent for audible bird deterrent devices and/or frost fans, depending on the existing facts and depending upon the relevance of existing use rights, noting that effects on River Terrace of such activities cannot be taken into account on any such consent application, and also noting that Rural Residential development of the PC13 lower terrace may have that consequence anyway;

d. The likely need for a future upgrade of the Sandflat Road/SH6 intersection with consequential effects on the speed of traffic flows;

e. The fact that River Terrace residents will live in an environment which is noisy at some times (but noting that that is their choice);

f. The possibility that proposed urban densification of central Cromwell may occur over a longer period of time (depending on whether, and the extent to which, PC13 would attract residents who would otherwise choose central Cromwell – both of which are debatable).

189. In my Opening Submissions I posed the question "*What is the downside of approving PC13?*". The previous paragraph effectively contains the answer to that question.

190. The risks of not acting are:

a. A failure to achieve 200 house and land packages plus 200 residential sections immediately;

b. A failure to achieve 900 residential homes (including retirement units as residential homes) in Cromwell;

c. An almost certain failure to achieve new residential product in Cromwell within the price ranges proposed by PC13 (or the achievement of that outcome to a much lesser extent);

d. The likelihood that some people, who could have afforded to purchase a River Terrace residential property, end up not being able to purchase a suitable residential property in the Queenstown Lakes and Central Otago areas.

Conclusion

191. At the outset of the hearing the Commission posed seven broad issues or questions. Six of them have been canvassed extensively and will not be addressed further. The seventh was the question "*Is this a suitable site?*".

192. On the basis of all of the evidence presented I answer that question by saying that, assuming the Commission is prepared to enable people seeking residential accommodation to make their own choices about the nature of the environment they wish to live in, PC13 is a suitable site for the proposed River Terrace development, for all of the reasons advanced by the Proponent.

193. I express a word of caution about the level of emotion generated during the hearing. I do not question the sincerity of the submissions and evidence presented, particularly by the lay submitters who attended and regularly applauded. However I record that:

    a. They were a relatively small number, considering the size of Cromwell;

    b. Almost without exception (and possibly without exception) they were well established people already owning their own homes;

    c. Almost without exception, they would not be adversely affected by PC13 being approved.

194. I remind the Commission that there was another audience who were not present. That audience is the potential PC13 purchasers who would buy the PC13 residential product, who almost without exception would not be aware of the PC13 process, and who will all be directly and adversely affected if PC13 is not approved.

Dated 29 July 2019

Warwick Goldsmith
Counsel for River Terrace Developments Limited

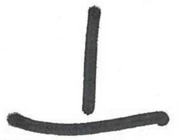
Attachments

Attachment 1 – Email confirmation from NZTA

Attachment 2 – Newspaper article dated 4 October 2017 concerning the establishment of the Central Otago Community Housing Trust

Attachment 3 – Copy Record of Title 2295 to the Rex Edgar property plus copy Land Covenant 7849017.1

Attachment 4 – Copy Record of Title 77782 to the Cromwell Golf Course leasehold portion owned by CODC together with copy registered Lease 8017105.1



Warwick Goldsmith

From: Richard Shaw <Richard.Shaw@nzta.govt.nz>
Sent: Monday, 15 July 2019 7:54 AM
To: Warwick Goldsmith
Subject: RE: [id=2011] PC13 - NZTA related rules

Hello Warwick,

I can confirm that the Transport Agency is satisfied that the proposed Rules as detailed below provide an acceptable mechanism to ensure that any potential safety and efficiency impacts on the operation of the State Highway are identified and mitigated at the appropriate stage of the development.

Regards Richard

Richard Shaw
Principal Planner – Consenting and Community
System Design and Delivery
DDI 03 964 2809
M 64 21 910 745
E richard.shaw@nzta.govt.nz / w nzta.govt.nz

From: Warwick Goldsmith <warwickgoldsmith@gmail.com>
Sent: Sunday, 14 July 2019 9:10 PM
To: Richard Shaw <Richard.Shaw@nzta.govt.nz>
Subject: [id=2011] PC13 - NZTA related rules

Richard

The purpose of this email is to generate an email exchange which can be attached to my Closing Legal Submissions to be lodged with the PC13 Commission.

Please confirm by return that the position detailed below is now the agreed position between the Proponent and NZTA, following further consultation since the adjournment of the hearing.

The concerns expressed by NZTA relating to safety issues at the Sandflat Road/SH6 intersection are addressed to NZTA's satisfaction by inclusion of new Rule 20.7.7(ii)(c) Transportation Assessment, together with existing Rule 20.7.3(viii)(m) Stage Two Development Works – both as detailed below:

> **Rule 20.7.7(ii)(c) Transportation Assessment**
> *"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. "*
>
> **Rule 20.7.3(viii)(m) Stage Two Development Works**

"Stage 2 of the subdivision of the Resource Area (being the stage which enables the 401st residential lot to be created) shall include provision for an area of land at the SH6/Sandflat Road intersection to be vested in or transferred to the NZ Transport Agency. The area of land shall be located and dimensioned as agreed with the NZ Transport Agency as being sufficient and appropriate to enable the intersection improvement (if any) as determined by the Transportation Assessment (Rule 20.7.7(ii)(c) to be constructed at the SH6/Sandflat Road intersection."

Please confirm by return email.

Yours faithfully

Warwick Goldsmith
Barrister
warwickgoldsmith@gmail.com
021 220 8824

If this email was not meant for you, please delete it.

Find the latest transport news, information, and advice on our website:
www.nzta.govt.nz

This email is only intended to be read by the named recipient. It may contain information which is confidential, proprietary or the subject of legal privilege. If you are not the intended recipient you must delete this email and may not use any information contained in it. Legal privilege is not waived because you have read this email.

2

New affordable housing trust formed

4 October 2017

Statement from Central Otago Mayor Tim Cadogan:

"During the local body election campaign last year, a strong call was made by the public that the Council and the Mayor do something about a perceived lack of affordable housing in Central Otago. This was a call made particularly loudly in Cromwell where house, section and rental prices have continued to greatly increase since that time. Other areas such as Clyde and Alexandra have also seen similar issues.

I established a working group comprising myself, Neil Gillespie, Nigel McKinlay (District Councillors and Cromwell Community Board Members), Werner Murray (Cromwell Community Board Member) and Glen Christiansen (former Cromwell Community Board Member) to decide on the best response.

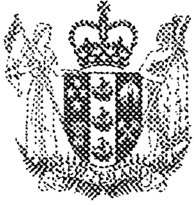
As a result of that, four people have put their hands up to be inaugural Trustees of an Affordable Housing Trust for Central Otago. These people are Glen Christiansen, Kate Scott (Executive Director Landpro), Mary Flannery (Solicitor AWS Legal) and Stephen Brent (Partner Cavell Leitch Lawyers and a current Trustee of the Queenstown Lakes Community Housing Trust). These people bring a wealth of experience and commitment to what will be a significant role.

The purpose of the Trust is to find ways to work with Council and developers to ensure that there is an affordability component to developments in the area. How they do that will be in the hands of the Trustees as it is now time for the Mayor, Council and Community Boards in the district to step back and allow the Trust to find its own way forward.

Having a strong voice outside of Council applying pressure, devising solutions and managing what eventuates has proven very effective in making inroads into the housing affordability issue in other areas and I look forward to seeing what this group will bring to Council in time to come."

Central Otago Mayor Tim Cadogan with the Central Otago Housing Trust trustees, from left Mary Flannery, Stephen Brent, Glen Christiansen and Kate Scott. Photo: Marielle Craighead, The Central App.

3



RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy

R.W. Muir
Registrar-General
of Land

Identifier	**2295**
Land Registration District	**Otago**
Date Issued	13 October 2000

Prior References
OTB1/1431

Estate	Fee Simple
Area	2.0234 hectares more or less
Legal Description	Lot 1 Deposited Plan 10449

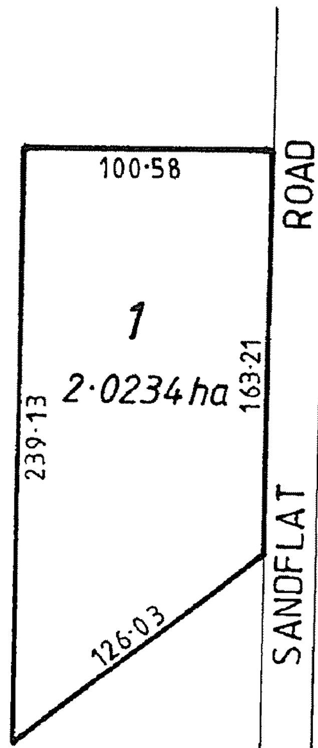
Registered Owners
Rex David Edgar and Theresa Jayne Edgar

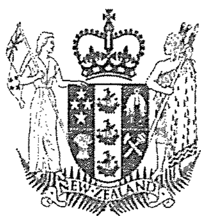
Interests

Land Covenant in Easement Instrument 7849017.1 - 17.6.2008 at 9:00 am

7837446.3 Mortgage to ANZ National Bank Limited - 27.2.2009 at 2:44 pm

TITLE DIAGRAM DIAGRAM
DocID: 110104869


100·58
ROAD
1
2·0234 ha
163·21
239·13
SANDFLAT
126·03



RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Historical Search Copy

R.W. Muir
Registrar-General
of Land

Constituted as a Record of Title pursuant to Sections 7 and 12 of the Land Transfer Act 2017 - 12 November 2018

Identifier	**2295**
Land Registration District	**Otago**
Date Issued	13 October 2000

Prior References
OTB1/1431

Estate	Fee Simple
Area	2.0234 hectares more or less
Legal Description	Lot 1 Deposited Plan 10449

Original Registered Owners
David Christopher Geddis and Edith Geddis

Interests

Exploration Permit embodied in Register OT9D/601- 12.1.1998 at 1.15 pm

5008079.2 Transfer to David Christopher Geddis, Edith Geddis and Keith Alexander Gilmore -produced 29.8.2000 at 2:58 pm and entered 13.10.2000 at 9.00 am

5524614.1 Expiry of Exploration Permit 941995.1 - 19.3.2003 at 9:00 am

6570490.1 Transfer to Edith Geddis and Downie Stewart Trustee Limited - 13.9.2005 at 9:00 am

7576349.1 Transfer to Cromwell Motorsport Park Trust Limited - 1.11.2007 at 10:30 am

7576349.2 Mortgage to ANZ National Bank Limited - 1.11.2007 at 10:30 am

Land Covenant in Easement Instrument 7849017.1 - 17.6.2008 at 9:00 am

7837446.1 Discharge of Mortgage 7576349.2 - 27.2.2009 at 2:44 pm

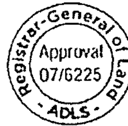
7837446.2 Transfer to Rex David Edgar and Theresa Jayne Edgar - 27.2.2009 at 2:44 pm

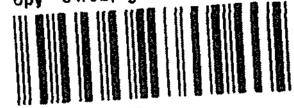
7837446.3 Mortgage to ANZ National Bank Limited - 27.2.2009 at 2:44 pm

Approved by Registrar-General of Land under No. 2007/6225

Easement instrument to grant easement or *profit à prendre*, or create land covenant

Sections 90A and 90F, Land Transfer Act 1952





Land registration district

OTAGO

Grantor *Surname(s) must be*

CROMWELL MOTORSPORT PARK TRUST LIMITED

Grantee *Surname(s) must be underlined or in CAPITALS.*

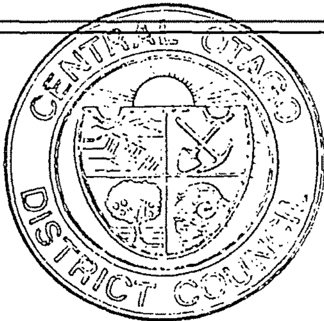
CENTRAL OTAGO DISTRICT COUNCIL

Grant* of easement or *profit à prendre* or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** ~~(and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A~~, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this 15th day of April 2008

Attestation

[signature] Director **Signature [common seal] of Grantor**	**Signed in my presence by the Grantor** [signature] *Signature of witness* *Witness to complete in BLOCK letters (unless legibly printed)* **Witness name** Craig Antony Paddon **Occupation** Solicitor **Address** Dunedin
 **Signature [common seal] of Grantee**	**Signed in my presence by the Grantee** [signature] ~~*Signature of witness*~~ ~~*Witness to complete in BLOCK letters (unless legibly printed)*~~ ~~**Witness name**~~ ~~**Occupation**~~ ~~**Address**~~

Certified correct for the purposes of the Land Transfer Act 1952.

[signature]

~~[Solicitor for]~~ the Grantee

*If the consent of any person is required for the grant, the specified consent form must be used.

REF: 7003 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2007/6225

Annexure Schedule 1

Easement instrument Dated [ ] Page [ ] of [ ] pages

Schedule A *(Continue in additional Annexure Schedule if required.)*

Purpose (nature and extent) of easement, *profit*, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT *or* in gross)
Land Covenant		**2295** **Deposited Plan 10449**	**29018** **Deposited Plan 307492**

Easements or *profits à prendre* rights and powers (including terms, covenants, and conditions)

Delete phrases in [ ] and insert memorandum number as required.
Continue in additional Annexure Schedule if required.

~~Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.~~

~~The implied rights and powers are **[varied] [negatived] [added to]** or **[substituted]** by~~:

~~[Memorandum number ____________, registered under section 155A of the Land Transfer Act 1952].~~

~~[the provisions set out in Annexure Schedule 2].~~

Covenant provisions

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 155A of the Land Transfer Act 1952]~~

~~[Annexure Schedule 2].~~

All signing parties and either their witnesses or solicitors must sign or initial in this box

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule

Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Easement Instrument	Dated		Page		of		pages

(Continue in additional Annexure Schedule, if required.)

Continuation of "Estate or Interest or Easement to be Created"

It is the Grantor's intention to create the land covenants set out in Schedule B (below) over the land in Certificate of Title 2295 set out in Schedule A (overleaf) "the land" together with and including any subsequent new lot or lots created as a result of the subdivision of the land ("the subsequent lots") all referred to herein as the "servient tenement" to the intent that the servient tenement shall be bound in perpetuity by the stipulations and restrictions set out in Schedule B.

SCHEDULE B

The owners and occupiers for the time being together with their successors, assigns, personal representatives and successors in title of the servient tenement and all subsequent lots if any SHALL NOT:

1. Object nor procure, permit nor suffer any agent or servant or other person or representative of them to obtain nor support any objection or submission to any present or future applications for any resource consents, variations to the zoning or District Plan changes relating to the land contained in Certificate of Title 29018 (Otago Registry) being Lot 2 Deposited Plan 307492 ("the land") made by the Grantee or on its behalf or supported in part or in full by the Grantee or any changes to the relevant Central Otago District Council (or its successors) District Plan introduced by the territorial authority having jurisdiction or introduced at the request of the Grantee or any other person.

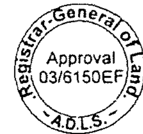
2. Neither object nor procure, permit nor suffer any agent or servant or other person or representatives of them to object to or make submissions to the appropriate authorities in relation to, nor support any such objection or submission made by any other entity in relation to the lawful undertaking, either by the Grantee or the lawful occupier of the land for the time being, of any activity lawfully established on the land.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

Approved by Registrar-General of Land under No. 2003/6150

Annexure Schedule - Consent Form

Land Transfer Act 1952 section 238(2)



Insert type of instrument
"Caveat", "Mortgage" etc

Easement Instrument

Page 1 of 1 pages

Consentor *Surname must be underlined or in CAPITALS*	**Capacity and Interest of Consentor** *(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)*
ANZ National Bank Limited	**Mortgagee under Mortgage Number 7576349.2**

Consent

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.
Delete words in [ ] if inconsistent with the consent.
State full details of the matter for which consent is required.

Pursuant to [section 238(2) of the Land Transfer Act 1952]

~~[section of the Act]~~

[Without prejudice to the rights and powers existing under the interest of the Consentor]

~~the Consentor hereby consents to:~~

including the rights and powers of the Consentor to object to any current or proposed use of the land by the Grantor while the consentor has an interest in the land referred to in Schedule "A" herein pursuant to its Mortgage No. 7576349.2 the Consentor hereby consents to registration of the attached Easement Instrument to create Land Covenant

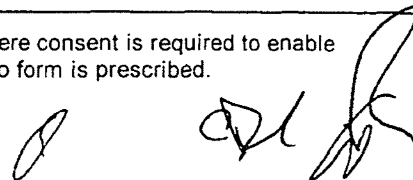
Dated this 15th day of April 2008

Attestation

ANZ National Bank Limited by its Attorney Vanita Patel	**Signed in my presence by the Consentor** **Signature of Witness** *Witness to complete in BLOCK letters (unless legibly printed)* **Witness name** FRANA MORGAN-COAKLE **Occupation** BANK OFFICER **Address** AUCKLAND
Signature of Consentor	

An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

REF: 7029 – AUCKLAND DISTRICT LAW SOCIETY



4

COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952

R.W. Muir
Registrar-General
of Land

Identifier 77782
Land Registration District Otago
Date Issued 28 February 2003

Prior References
OT18C/1263

Estate Fee Simple
Area 10.6390 hectares more or less
Legal Description Lot 1 Deposited Plan 315494

Proprietors
Central Otago District Council

Estate Fee Simple
Area 22.2780 hectares more or less
Legal Description Section 4 Block XCII Town of Cromwell
Purpose Recreation Reserve

Proprietors
Central Otago District Council

Interests

612213 Gazette Notice (1984 p35) classifying Section 4 Block XCII Town of Cromwell as a Recreation Reserve and shall be known as Golf Park - 26.3.1984 at 1.50 pm

Subject to Section 241(2) Resource Management Act 1991 (affects DP 314532)

Subject to a right of way over part Section 4 marked A DP 315130 created by Easement Instrument 5564255.8 - 24.4.2003 at 9:00 am

Subject to a right to convey electricity in gross over part Section 4 marked A DP 315130 to Dunedin Electricity Limited created by Transfer 5564255.9 - 24.4.2003 at 9:00 am

The easements created by Transfer 5564255.9 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right to convey telecommunications in gross over part Section 4 marked A DP 315130 to Telecom New Zealand Limited created by Transfer 5564255.12 - 24.4.2003 at 9:00 am

The easements created by Transfer 5564255.12 are subject to Section 243 (a) Resource Management Act 1991

* 8017105.1 Lease in renewal of Lease 643791.2 of Section 4 Block XCII Town of Cromwell Term 21 years from 1.11.2002 (Renewal Clause) Leasehold CT 446729 issued - 4.12.2008 at 9:00 am *

NEW CT REFERENCE ALLOCATED : 60941 for Lot 1 hereon and Section 4, Block XCII, Town of Cromwell.

N

201·60
645·02
663·15
Sec 4
22·2780 ha
623·79
NEPLUSULTRA
221·63
STREET
261·63
ANTRIM ST.
ACHIL ST.
BLYTH ST.
ALPHA STREET
201·06
201·66
LOT 1
10·6390 ha
239·20

NEW PARCEL	FORMER DESCRIPTION	FORMER CT. REF.
Lot 1	Part Lot 1 DP 27589	OT18C/1263

TOTAL AREA : 10.6390 ha (Lot 1 hereon)

APPROVED FOR CT DIAGRAM PURPOSES ONLY
Approving Surveyor

Deposited by Land Information NZ on 28.12.03

LAND DISTRICT OTAGO Survey Blk. & Dist. XCII Tn of Cromwell NZMS 260 Sheet: G41	PLAN OF LOT 1 FOR CT DIAGRAM PURPOSES	TERRITORIAL AUTHORITY : Central Otago District Prepared by TL Survey Services Limited Scale 1 : 4000 Date : November 2002	Prepared by: Lodged 1/11/02 Checked by:	DP 315494

APPROVAL SURVEYOR GENERAL, LAND INFORMATION NEW ZEALAND

Approved by Registrar-General of Land under No. 2002/3048

Lease instrument

Section 115, Land Transfer Act 1952

L 8017105.1 Lease
Cpy - 01/03,Pgs - 008,03/12/08,11:55
DocID: 212299565

Land registration district

OTAGO

Unique identifier(s) or C/T(s)	All/part	Area/description of part or stratum
77782	~~All~~ Part	Section 4 Block XCII Town of Cromwell (22.2790ha)

Lessor *Surname(s) must be underlined or in CAPITALS*

CENTRAL OTAGO DISTRICT COUNCIL

Lessee *Surname(s) must be underlined or in CAPITALS*

CROMWELL GOLF CLUB INCORPORATED

Estate or interest* *Insert "fee simple", "leasehold in lease number", etc*

In fee simple

Lease memorandum number

Term

Twenty-one (21) years from 1st November 2002

Rental

See Annexure Schedule

Operative clause *If required, set out the terms of lease in Annexure Schedule(s).*

The Lessor leases to the Lessee and the Lessee accepts the lease of the above estate or interest in the land in the above certificate(s) of title or computer register(s) for the term and at the rental and on the terms of lease set out in the above lease memorandum or in the Annexure Schedule(s) (if any).

Dated this 22 day of September 2008

Attestation

	Signed in my presence by the Lessor
	Refer to Annexure Schedule
	Signature of witness
	Witness to complete in BLOCK letters (unless legibly printed)
	Witness name
	Occupation
Signature [common seal] of Lessor	**Address**

	Signed in my presence by the Lessee
	Refer to Annexure Scedule
	Signature of witness
	Witness to complete in BLOCK letters (unless legibly printed)
	Witness name
	Occupation
Signature [common seal] of Lessee	**Address**

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Lessee

*The specified consent form must be used for the consent of any mortgagee of the estate or interest to be leased

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule

Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Lease	Dated	22-09-08	Page 1 of 6 Pages

(Continue in additional Annexure Schedule, if required.)

Continuation of "Operative Clause"

Covenants, Conditions and Restrictions

1.1 The rental payable hereunder shall be a yearly rental of TEN DOLLARS ($10.00) plus GST per registered member of the Lessee on the 30th day of September in each year during the first seven years of the said term and a yearly rent fixed in manner hereinafter appearing for each successive period of seven years of the said term and so in proportion for any less period than a year payable in advance by one payment on the 31st day of October in every year.

1.2 The Lessee will during the said term pay the rent for the time being payable hereunder on the abovementioned days at the office of the Lessor in Alexandra free of exchange or any other deduction.

2. The Lessee will pay and discharge all rates taxes charges assessments impositions and outgoings whatsoever which now are or which during the said term shall be rated taxed charged assessed or imposed on the said land or on the landlord or tenant in respect thereof and all charges in respect of water, gas, electric light and power used on the said land and will bear and perform all other duties in any other way incumbent on the owner or occupier thereof including the cost of erecting and maintaining all party boundary and dividing fences.

3. The Lessee will throughout the said term keep all gates fences and drains on or under the said land in good repair order and condition.

4. The Lessee will not remove obstruct or otherwise interfere with any pipes drains or sewers now laid or at any time hereafter laid constructed or being in under or upon the said land or any part thereof other than drains used solely for the purposes of the Lessee.

5. The Lessee will not without the previous consent in writing of the Lessor make any excavation in or alter the level of the said land and will on having obtained such consent as aforesaid make every such excavation or alteration under the supervision and control and to the satisfaction in all respects of an officer to be appointed by the Lessor and in no case shall such excavation or alteration be made for mining or quarrying purposes or for the purposes of sale of the excavated material.

6. (a) The Lessee will not make any structural alterations to the buildings already standing on the said land and will not erect or make any further buildings structures or improvements on the said land without the consent in writing of the Lessor and the Minister of Lands first had and obtained.

(b) The Lessee will keep all buildings and structures now or hereafter on the said land in good repair order and condition fair wear and tear and damage by fire flood

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

earthquake and other inevitable accident excepted and will keep the same and the whole of the said land in a clean and tidy condition.

7. (a) The Lessee will use that part of the said land other than the parts thereof shown on the plan attached hereto as clubhouse and carpark solely as a Golf Course for the sport of golf.

   (b) The Lessee will use that part of the said land shown on the said plan as clubhouse solely for the purpose of clubrooms for the Lessee and rooms for meetings and social functions with or without catering Provided However that the letting of part or parts of the clubhouse for functions and the charging for the use of facilities shall not be deemed a breach of this subclause.

   (c) The Lessee will use that part of the said land shown on the said plan as carpark solely as a carpark for persons using the said Golf Course and clubhouse.

   (d) If at any time the Lessor is of the opinion that any part of the said land is not being sufficiently used for the purpose for which that part is leased the Lessor after making such enquiries as the Lessor thinks fit and giving the Lessee an opportunity of explaining the usage of that part and if satisfied that that part is not being used or is not being sufficiently used for the purpose for which that part is leased may terminate this Lease of that part on such terms as the Minister of Conservation ("the Minister") approves.

8. The Lessee may close all or part of the said land as a golf course during such period as may be necessary for the purpose of planting cultivating or improving the same.

9. The Lessee will allow in accordance with the rules and regulations of the Lessee the use of the said land and clubhouse in connection with the playing of golf by non-members on payment of reasonable fees on any occasions when playing facilities are open for play and the Lessee is not exercising any right of exclusive use of the land.

10. The Lessee will not assign this Lease nor sublet or part with the possession of the said land or any part thereof and will not without the consent of the Lessor encumber the said Lease.

11. The Lessee shall be entitled to exclude the public from admission to the said land and to have exclusive use thereof on not more than 40 days in any year and for not more than six (6) consecutively at any time and during such day or days of exclusive use thereof to make reasonable charges for admission thereto fixed in accordance with clause 12 hereof. On days other than those on which the Lessee shall have exclusive use of the said land the Lessee shall make the same available for use by the public in accordance with rules and regulations and upon payment of reasonable charges fixed in accordance with clause 12 hereof.

12. (a) The Lessee will not make any rules or regulations or fix any charges for admission to or for use of the said land or make any alteration to such rules, regulations or charges without first having obtained the written approval of the Lessor to such rules,

regulations or charges or such alteration thereto. The Lessee shall obtain the written consent of the Minister to the charges and any alteration thereto referred to in the first sentence of clause 11 hereof.

(b) The Lessee shall make only such charges for admission to and use of the carpark as the Minister may from time to time approve.

13. The Lessee will not do or suffer to be done in or upon the said land any act or thing which may be or become a nuisance or annoyance to the Lessor or to the users of the Neplusultra Reserve or to the owners or occupiers of neighbouring premises.

14. The Lessee will permit the Lessor or the agent of the Lessor with or without workmen and others at all reasonable times to enter upon the said land for the purpose of viewing the condition and state of repair of the said building and at the Lessee's expense to make good all defects which the Lessee is hereby required to make good and remaining therein after one calendar month's notice in writing requiring the Lessee to remedy such defects as aforesaid shall have been given to the Lessee.

15. The Lessee will comply strictly with the terms and conditions of any ancillary liquor licence which may be granted to the Lessee by the Licensing Control Commission pursuant to the Sale of Liquor Act 1989. The Lessee will notify the Lessor of its intention to apply for such licence prior to making application therefore and the Lessee will comply strictly with the terms and conditions upon which the consent of the Lessor to the grant of the licence may be given. The Lessor reserves the right to cancel any consent given to the grant of the licence or to add to, vary or delete any of the terms and conditions upon which consent may have been given.

16. The Lessee shall have no right of acquiring or purchasing the fee simple of the said land or any part thereof.

17. The Lessee will at all times and from time to time during the said term keep clear the said lands from all noxious weeds rabbits and vermin and will in particular duly and faithfully comply in all respects concerning the said land with the provisions of the Biosecurity Act 1993 and all amendments thereto and all notices or demands lawfully given or made by any person in pursuance thereof.

18. The Lessee will not cause or suffer any damage or injury to any trees on the said land and the Lessee will at all times during the said term use all reasonable means to preserve and protect all trees thereon and the Lessee will not cut down any trees growing within 10 metres of the boundary line of the said land without the consent in writing of the Lessor first had and obtained but shall be entitled to top off overhanging branches without such consent but not so as to permanently injure any tree or trees. The property in all trees cut down on the said land shall at all times remain with the Lessor. For every tree cut down the Lessee shall plant one in replacement thereof. The provisions of this clause shall not apply to poplars or willows growing on the said land.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule

Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Lease	Dated	22-09-08	Page 4 of 6 Pages

(Continue in additional Annexure Schedule, if required.)

19. The Lessee will comply in all respects with the requirements of any proposed or operative District Scheme under the Resource Management Act 1991 in respect of the said land and any buildings thereon.

AND IT IS HEREBY AGREED AND DECLARED:-

20. The Lessor shall have full and free liberty at any time or times during the said term to enter upon the said land and all parts thereof with all necessary contractors workmen and others and vehicles machinery and equipment to remain there for any reasonable time and to lay inspect cleanse repair maintain and renew any water pipes or mains drains and sewers now or hereafter in through or under the said land and to open the soil of the said land to such extent as may be necessary and reasonable in that regard Provided However that except in the case of emergency the Lessor will give to the Lessee not less than thirty days notice in writing of any entry involving opening the soil and shall cause as little disturbance as possible to the surface of the said land and shall restore the surface as nearly as possible to its former condition and repair any damage done by reason of the said works.

21. For the purposes of computing the rental payable hereunder the membership of the Lessee shall be that number of members appearing on the roll thereof as at the 30th day of September in each and every year during the continuance of the said lease or such other date as may be fixed from time to time by mutual agreement between the Lessor and the Lessee and for this purpose a proper register of members of the Lessee shall be compiled and shall be open to inspection by the Lessor at all reasonable times.

22. If the Lessee shall at any time fail or neglect to perform or observe any of the covenants conditions or agreements herein contained or implied and on its part to be performed or observed or if the Lessee shall be wound up or shall cease to operate as a sporting club in the same or substantially the same manner as at present or if any lender of moneys to the Lessee shall call upon the Lessor under any guarantee given by the Lessor to such lender in respect of such loan moneys then and in any such case it shall be lawful for the Lessor or any person or persons authorised by it in that behalf to re-enter the said land peaceably to hold and enjoy thenceforth as if these presents had not been made with without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants conditions reservations or restrictions by the Lessee hereinbefore contained.

23. Upon termination of this Lease by re-entry as provided in the last preceding clause, effluxion of time, surrender, breach of conditions or otherwise the said land together with all improvements thereon shall revert to the Lessor without compensation payable by the Lessor to the Lessee for improvements or otherwise.

24. Notwithstanding anything herein contained if at the time of the renewal of the said term or any review of the rent the Lessor shall determine that the said rent shall continue to be computed on the number of registered members of the Lessee then the amount per member for the ensuing period shall be such sum as shall be agreed upon between the Lessor and the Lessee and clauses 25 and 26 hereof shall apply as if the sum so agreed was a rent fixed by valuation under such clauses but if the Lessor shall not so determine or if the parties shall fail to agree on an amount per member within two months after the

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule

Insert type of Instrument
"Mortgage", "Transfer", "Lease" etc

Lease	Dated	22.09-08	Page 5 of 6 Pages

(Continue in additional Annexure Schedule, if required.)

Lessor has proposed an amount then the rent for the ensuing period shall be fixed by valuation in accordance with the said clauses 25 and 26.

25. That if the Lessee shall during the term hereby granted pay the rent hereby reserved and observe and perform the covenants conditions agreements and restrictions on the part of the Lessee herein contained and implied up to the expiration of the said term to the satisfaction of the Lessor and if the Lessor is satisfied in respect of those parts of the said land not shown as carpark that there is sufficient need for the sports games or other recreational activities specified in this Lease and that in the public interest some other sport game or recreational activities should not have priority and if the Lessor is satisfied in respect of that part of the said land shown as carpark that the carpark has been properly constructed developed and maintained and controlled and that there is sufficient need for it and that some other recreational use should not have priority in the public interest and if the Lessee shall have given notice in writing to the Lessor at least three calendar months before the expiration of the said term of its desire to take a renewed lease of the said land hereby demised then the Lessor will at the cost of the Lessee grant to the Lessee a renewed lease of the said land for a further period of twenty-one years and upon and subject to such covenants conditions agreements and restrictions as the Lessor specifies including this present covenant for renewal Provided However that the rent for the first period of seven years of each renewal shall be assessed in the manner prescribed in clause 26 hereof.

26. The rent during each succeeding seven years of the said term shall be such annual rent as shall whether before or after the expiration of the last preceding seven years of the said term be agreed upon between the Lessor and the Lessee or failing agreement within one month after the expiration of such seven yearly period as shall be determined by a valuation to be made by a single valuer if the parties so agree or failing agreement by two valuers one to be appointed by the Lessor and the other by the Lessee or their referee to be appointed by such valuers before entering upon their valuation and so that such valuation shall be deemed to be a submission to arbitration under the Arbitration Act 1996 or any Act passed in amendment thereof or in substitution therefore save and except that such valuers shall and their referee shall act as experts and not as arbitrators.

27. In making any assessment of rent under clause 26 hereof account shall be taken of the amount of the rental paid during the preceding seven year period the current and projected state of membership of the Lessee, the current and projected financial circumstances of the Lessee, the views of the Lessor and the Lessee as to an appropriate rental and such other matters as the person or persons making the assessment think relevant to the assessment of a fair annual rent of the said land for the purposes for which the same is leased.

28. The covenants and provisions implied in leases by the Property Law Act 1952 or any statutory modification or amendment thereof shall be negatived or modified in respect of this Lease insofar as the same are or may be inconsistent with the modifications hereby made or the covenants and provisions herein expressed.

29. If any dispute or difference shall arise concerning the construction meaning or effect of anything herein contained or implied meaning or effect of anything herein contained or

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule

Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Lease	Dated	22·09-08	Page	6	of	6	Pages

(Continue in additional Annexure Schedule, if required.)

implied or anything to be done hereunder such difference or dispute shall be referred to arbitration in accordance with the provisions relating to arbitration contained in the Arbitration Act 1996 and any amendments thereto and any award lawfully obtained pursuant to such a reference shall be conclusive and binding on all parties thereto.

30. The Lessee shall bear the costs of this Lease and the copies thereof and the stamp duty thereon.

THE LESSEE the said **CROMWELL GOLF CLUB INCORPORATED** does hereby accept this Lease of the above described lands to be held by it as tenant and subject to the conditions restrictions reservations and covenants above set forth and requests the District Land Registrar to note in his Memorial that this Lease is in renewal of Lease No. 643791.2.

Continuation Attestation

Signed in my presence by the Lessor

The COMMON SEAL of CENTRAL OTAGO DISTRICT COUNCIL was hereto affixed in the presence of:

Mayor ____________________

Chief Executive ____________________

Signed in my presence by the Lessee

The COMMON SEAL of the CROMWELL GOLF CLUB INCORPORATED was hereto affixed in the presence of:

____

____

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.