

**BEFORE COMMISSIONERS ON BEHALF OF  
THE CENTRAL OTAGO DISTRICT COUNCIL**

**IN THE MATTER**

of an Proposed Private Plan  
Change 13 to the Central Otago  
District Plan

**BY**

**RIVER TERRACES  
DEVELOPMENTS LIMITED**

**Proponent**

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**SUPPLEMENTARY SUBMISSIONS OF COUNSEL ON BEHALF OF  
HIGHLANDS MOTORSPORT PARK (SUBMITTER 144) AND CENTRAL  
SPEEDWAY CLUB CROMWELL INC (SUBMITTER 45)**

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## INTRODUCTION

1. These submissions address some aspects of the Third Supplementary Statement of Evidence of Mr Brown filed by the Proponent on 15 July 2019. The supplementary evidence of Mr Brown raises some legal matters that Counsel considered it important to draw to the Commissioners attention.
2. Accompanying these submissions is a Further Supplementary Brief of Evidence from Ms Scott that specifically addresses planning matters relevant to the Motorsport Interests.

### Section 32(3)

3. Unfortunately the assessment provided by Mr Brown in the Third Supplementary Statement remains deficient due to the failure to assess PC13 (and the other options) against the existing provisions in the Central Otago District ODP.
4. Section 32AA is clear. It states:
  - (1) *A further evaluation required under this Act*
  - ...
  - (b) *must be undertaken in accordance with section 32(1) – (4)*
5. The lack of consideration given to the existing provisions of the ODP has been a consistent criticism by experts on behalf of the Motorsport Interests. The failure continues to taint the assessment in Mr Brown's Third Supplementary Statement. It is also particularly curious in this most recent Statement given that the Objectives of PC13 would not be applicable to Option B and C. Therefore the assessment of the 3 options against the existing provisions becomes more critical in assessing whether PC13 is:
  - a. The most appropriate way to achieve the purpose of the Act; and
  - b. The provisions are the most appropriate way to achieve the Objectives (which by virtue of section 32(3) includes the existing Objectives of the ODP).

6. These, and related matters were traversed in detail by Counsel for CODC<sup>1</sup> and Counsel for Residents for Responsible Development<sup>2</sup> such that it is only necessary to refer the Commissioners back to those submissions rather than traversing the same ground again. In light of Mr Brown's Third Supplementary Brief those submissions continue to be highly germane.

**Proposed Objective 20.3.10**

7. Mr Brown is somewhat dismissive of the costs associated with the no-complaints covenant, in that he suggests that there are existing mechanisms in place (presumably at Highlands and Orchards) to respond to complaints. There are at least two issues that arise from this:
- a. It transfers the cost from the Proponent to the surrounding landowners and occupiers. This is one of the externalities identified by Mr Copeland. This evidence is not acknowledged by Mr Brown.
  - b. It appears to ignore the evidence presented on behalf of the Motorsport (and Horticulture) Interests about the significantly increased costs and complexities of applying these existing mechanisms when there are thousands of residents and visitors to the PC13 site, compared with the existing few.
8. Mr Brown's position is also prefaced on legal advice that the no-complaints covenants will address reverse sensitivity effects.
9. On this topic I wish to draw the Commissioners attention back to opening submissions given on behalf of the Motorsport Interests which extensively traversed the law on no-complaints covenants and their likely efficacy, particularly in circumstances where the adverse effects they apply to are significant<sup>3</sup>.
10. I also addressed the Commission further during the resumed hearing in relation to the effect of Plan Change 13 on the

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<sup>1</sup> Legal Submissions of Counsel for Central Otago District Council (Further Submitter #506) and Greg and Vivienne Wilkinson (Submitter #396) at [71]-[115]

<sup>2</sup> Legal Submissions For Residents for Responsible Development Cromwell Society Incorporated at [7]-[22]

<sup>3</sup> Submissions of Counsel on behalf of Highlands Motorsport Park (Submitter 144) and Central Speedway Club Cromwell Inc (Submitter 45) at [32]-[55]. See also Submission on behalf of the McKay Family Trust (Submitter 228) and 45 South Group of Companies (Submitter 123) at [32]-[57].

'environment' for the purposes of Section 16 and the potential trigger for a review under the Highlands resource consent<sup>4</sup>. Neither of those issues were addressed by Mr Brown in his assessment. Nor does his assessment assist you if your conclusion on the legal position is consistent with the legal submissions referred to above<sup>5</sup>. In that circumstance the Proponent is without the lynch pin of its entire plan change. In that circumstance it is submitted that PC13 must be refused.

### **Conclusion**

11. As was identified by Commissioner Rae at the commencement and conclusion of the hearing, the key issue in this case is whether the site is appropriate for residential development. If the conclusion to that is 'no', no amount of tinkering with the proposed provisions can provide a cure.

**Dated this 24<sup>th</sup> day of July 2019**



B Irving

Legal Counsel for Highlands Motorsport Park Ltd and Central Speedway  
Club Cromwell Inc

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<sup>4</sup> This matter was set out in greater detail in the Hearing Statement of Ms Scott at [2.12]-[2.20].

<sup>5</sup> Refer also n 2 above at [53]-[56] and n1 above at [167]-[172].