TO: CODC Hearings administrator, Tarryn Lines, districtplan@codc.govt.nz

BEFORE HEARING COMMISSIONERS
IN CROMWELL / ALEXANDRA

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

MEMORANDUM SEEKING LEAVE TO ADDUCE EVIDENCE OUT OF TIME, IN RESPONSE TO "LATE" EVIDENCE PRODUCED BY COUNCIL OFFICERS

Chair: Deputy Mayor Gillespie

Commissioners: Councillors McPherson and Cooney

1. It is well settled that natural justice demands every party before a judicial or quasi-judicial authority should have a fair and reasonable opportunity to respond to evidence adverse to their case.[1]

2. The evidence which the Submitters (Sugarloaf and Topp Property) wish to respond to is the "Rationale report" produced by the CODC reporting officer as part of the Stage 2 s42A Report. That s42A Report was notified on 2 May 2023, but the Rationale report was dated 5 September 2022.

3. While the Rationale report was produced at that time in support of CODC's response to specific zoning requests intended to be the subject of the

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[1] See for example *Daganayasi v Minister for Immigration* [1980] 2 NZLR 130 (CA) at 143; and *White v New Zealand Stock Exchange (No 2)* [2002] NZAR 342 (CA) at [41].

Stage 2 hearings, it also has relevance for the Stage 1 hearings and the more general relief sought by the submitters.

4. The Rationale report post-dates the notification of PC19 (on July 2022) and so immediately has the appearance of being evidence to "backfill" a gap in the original PC19 s32 material. It is significant that even submitters entitled to participate in Stage 2 only had some 2-weeks to respond to it to meet the scheduled evidence exchange timetable.

5. Immediately on learning of the Rationale report, the submitters looked to find someone with appropriate expertise to respond to it. It was simply not possible to do so within the tight existing timeframe for evidence. The evidence from Ms Hampson (or Market Economics) was only obtained yesterday in draft, and finalised today (1 June 2023). It is understood that the hearing has not yet been closed, and Sugarloaf was, in fact, invited to provide some further material to the Panel, which has not yet been provided (but is also likely to be invited today). The reporting planner also suggested to the submitters' planner direct that some potential further wording would be provided for comment as well.

6. Accordingly, it is not "too late" for the evidence to be easily accepted, as the hearing has clearly not been closed.

7. The submitters accept, given the limitations identified by Ms Hampson in the Rational report and/ or the methodology behind it, that the authors of that report may need to respond. Ms Hampson is happy to confer with them (or even "conference" with them in accordance with the Expert Code of Conduct). The submitters consider that would materially assist the Panel, and would not oppose that course of action if Ms Hampson's evidence is to be accepted for consideration by the Panel.

8. If Ms Hampson's evidence is refused to be received, then the submitters will be left with a considerable sense of injustice – with that matter most likely then being a procedural ground to appeal (assuming their relief is not otherwise accepted, in any event).

9. If it would assist, I am happy to be heard by the Panel in respect of this request to have Ms Hampson's evidence accepted for consideration. Ms Hampson's evidence is attached to/ accompanies this memorandum, so

that the Panel can understand what is says – without giving it any weight, unless it were to formally receive it.

DATED 1 June 2023

J D K Gardner-Hopkins
Project Manager for the Submitters