

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

**BEFORE HEARING COMMISSIONERS
IN CROMWELL**

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

**MEMORANDUM ON BEHALF OF THE ABOVE-NAMED SUBMITTERS:
ATTACHING THE RECENT AUTHORITY ON THE NPS-UD**

Chair: Deputy Mayor Gillespie

Commissioners: Councillors McPherson and Cooney

1. I indicated at the Stage 1 hearing, on behalf of all the above Submitters, that I was going to provide the Panel with a copy of a recent High Court decision relevant to the applicability of the NPS-UD.
2. The case was *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948, delivered by Campbell J (**attached**).
3. The case does not resolve the question as to whether CODC is making a decision about an urban environment and/or is a tier 3 local authority. However, it does emphasise, if the NPS-UD were to apply:

- (a) then you would have an obligation to implement it to the extent practicable when considering plan change 19, at [93];
- (b) the language used in it would need to be interpreted in the context of the NPS-UD as a whole, at [107] (this would include the meaning of the phrase “strongly encouraged”, in terms of how directive it is); and
- (c) that the interpretation of any similar terms in other contexts (including other NPSs) would not be determinative of the interpretation under the NPS-UD, at [122].

DATED 1 June 2023

A handwritten signature in blue ink, appearing to read "J D K Gardner-Hopkins", is positioned above a horizontal line.

J D K Gardner-Hopkins
Project Manager for the Submitters