

Before the Independent Hearings Panel
At Central Otago District Council

Under the	Resource Management Act 1991 (RMA or Act)
In the matter of	an application for subdivision and land use consent to establish another 44 residential allotments in the rural resource area at 112 & 144 Ripponvale Road, Cromwell (RC250155)
And	New Zealand Cherry Corp (Leyser) LP Applicant

Reply Legal Submissions on behalf of the Applicant

25 September 2026

Applicant's solicitor:

Sarah Eveleigh / Tallulah Parker
Anderson Lloyd
Floor 2, The Regent Building, 33 Cathedral Square, Christchurch 8011
PO Box 13831, Christchurch 8141
DX Box WX10009 Christchurch
p +64 27 204 1479 / +64 21 703 767
sarah.eveleigh@al.nz / tallulah.parker@al.nz

**anderson
lloyd.**

Introduction

- 1 These legal submissions are provided on behalf of New Zealand Cherry Corp (Leyser) LP (**Applicant**) in relation to an application to the Central Otago District Council (**CODC** or **Council**) for subdivision consent and land use consent (RC250155) to establish an additional 44 residential allotments in the Rural Resource Area (5) (**RRA(5)**) at 112 & 144 Ripponvale Road, Cromwell (**Site**).¹
- 2 A concurrent application under section 127 of the RMA seeks to vary RC220396, as previously varied, to update the approved subdivision scheme plan, staging and associated conditions so that the proposed intensified layout can be implemented as part of the wider Shannon Farm subdivision (together, the **Application**).
- 3 The Application was heard by the Hearing Panel on 7 August 2026. Following the hearing, the Panel directed the Applicant to provide further information on a number of matters raised during the hearing.² The Applicant has since provided that information and Council has provided its response.³ These submissions address the issues raised through the hearing process and the subsequent information requests.
- 4 At its core, the remaining issue for the Panel is a relatively narrow one. There is substantial agreement between Council and the Applicant regarding servicing, transport, productive land, ecology, heritage, natural hazards and infrastructure matters. The primary areas of disagreement concern the assessment of landscape, rural character and development pattern effects associated with the proposed intensification, particularly within RLA6.
- 5 The Applicant submits that the further information requested by the Panel reinforces rather than alters the conclusions reached in the Applicant's original evidence. The evidence before the Panel demonstrates that the Proposal can proceed without unacceptable environmental effects,

¹ Legal Description(s): Section 54 Block III Cromwell Survey District, Section 26, 100 Block III Cromwell Survey District, Section 27-28, 96, 99, 102 Block III Cromwell Survey District, Lot 2 Deposited Plan 330709 and Section 4, 11, 98, 101, 103 Block III Cromwell Survey District and Part Section 5, 25 Block III Cromwell Survey District and Part Run 1201R.

² Minute 2: Central Otago District Council Application for Resource Consent RC250155 & RC220396V3 New Zealand Cherry Corp (Leyser) LP 112 & 144 Ripponvale Road, Cromwell dated 10 August 2026; Minute 3: Central Otago District Council Application for Resource Consent RC250155 & RC220396V3 New Zealand Cherry Corp (Leyser) LP 112 & 144 Ripponvale Road, Cromwell dated 13 August 2026.

³ Central Otago District Council Applications RC250155 & RC220396V3: S 42A Officer's Response to Minute 5 dated 11 September 2026.

remains consistent with the overall intent of the RRA(5) framework, and should be approved subject to conditions.

Scope of Submissions

- 6 These submissions address the following matters to assist the Commissioners in their consideration of the Application:
- (a) The legal framework and the evidence before the Panel;
 - (b) Relevance of no submissions;
 - (c) Consenting pathway for future dwellings in RLA6;
 - (d) Landscape and visual effects;
 - (e) Rural character effects;
 - (f) Policy framework and development pattern;
 - (g) Housing choice, competitive markets and the NPS-UD;
 - (h) Design controls and ongoing mitigation measures;
 - (i) Sight distance requirements and proposed conditions;
 - (j) Development contributions; and
 - (k) Severability and relief available to the Panel.

Legal Framework and Evidence before the Panel

- 7 The Applicants opening submissions address the relevant statutory framework, including the requirements of s104 and s104D, while our supplementary submissions particularly address the s104D gateway of 'not contrary to the objectives and policies of the plan'. The Council raises no new legal issue, and the s42A Officer accepts that the objectives and policies must be fairly appraised in context and as a whole.⁴

Relevance of no submissions

- 8 The Applicant disagrees with s42A Officer's view that the Panel can ascribe little weight to the fact that no submissions were received in relation to landscape and rural character effects.

⁴ s42A Officer Response to Minute 5 at [29].

- 9 Public notification of the Application afforded all members of the public the opportunity to make a submission. They have not done so, and the only conclusions that can be reached are either that members of the public were not aware of the Application; supported the Application but were not motivated to make a submission; or were not sufficiently concerned about the effects of the Proposal to make a submission.
- 10 In our submission, the Panel can give weight to the fact that no submissions (other than the FENZ submission) were received. That is particularly appropriate in the context of an Application where the effects of most relevance are landscape and rural character effects, largely assessed in terms of how the proposed development will be experienced by the public both within and beyond the Site.

Consenting pathway for future dwellings in RLA6

- 11 There remains disagreement between **Mr Woodward** and the s42A Officer as to whether consent for future dwellings in RLA6 is required as a controlled activity (Rule 4.7.2(ib)(b))⁵ or a discretionary activity (Rule 4.7.4(ix)),⁶ should this Application for subdivision, including residential building platforms, in RLA6 be approved.
- 12 It is submitted that the Panel does not need to resolve this point, as it is not determining an application for consent for dwellings. Rather, it is sufficient to note that all future dwellings will require resource consent. If consent is required as a controlled activity as outlined in **Mr Woodward's** evidence, a number of standards must be met (including provision of a landscape plan) and the matters of control are sufficiently broad to manage all relevant effects. If consent is required as a discretionary activity as assumed by **Mr Montule-McIntosh**, it is common practice for the application to address the matters of control in other rules managing the same activity (i.e. for dwellings in RRA(5)), and the Council has full discretion to consider and manage all relevant effects.
- 13 Accordingly, the Panel can be satisfied that the effects of future dwellings, and associated fencing and landscaping, in RLA6 can be appropriately considered and managed through subsequent consent processes.
- 14 Irrespective of the specific class of consent required for future dwellings, the Panel can take comfort that the evidence submitted for this Application, namely that of **Mr Milne**, provides sufficient information in

⁵ Supplementary Evidence of Jake Woodward at [19]-[34].

⁶ s42A Officer Response to Minute 5 at [3]-[13].

which to determine the appropriateness of residential development in the RLA6.

Landscape and Visual Effects

- 15 In respect of the proposed lots in RLA 3 and 4, the evidence of **Mr Milne** and **Ms Harshey** is that the landscape and visual effects are no more than minor.⁷ **Ms Harshey** confirmed her opinion that, from a landscape and visual effects perspective, consent could be granted in respect of development in RLA3 and 4.⁸
- 16 In respect of the proposed lots in RLA6, there is agreement that the visual effects will be low to low-moderate (corresponding to less than minor), and that the ONL will be protected. The focus of the disagreement between **Mr Milne** and **Ms Harshey** is the degree of effects on the openness, coherence and legibility of the SAL.
- 17 **Mr Milne** concludes that the values of the SAL will be maintained and effects will be no more than minor,⁹ noting that:
 - (a) Development is confined to the lower, less sensitive slopes. The domestic edge will extend by no more than approximately 45m beyond the existing road and retain 36 ha of the RLA6 area within the balance lot, equivalent to approximately 13.8% of RLA6 being subdivided.
 - (b) The lot layout ensures that the upper slopes remain as a single allotment, supporting the consistent land management and the retention of the openness, visual coherence and legibility of this area.
 - (c) The effects are appropriately managed by controls on building design and appearance, fencing, naturalised planting requirements, and the retention of the upper slopes.
- 18 Although **Ms Harshey** agrees with **Mr Milne** that visual effects of development in RLA6 will be less than minor, she considers this development will reduce the perceived openness and legibility of the foothills and produce more than minor effects. It is submitted that the

⁷ Landscape Peer Review, at [7.11], [7.12], [8.8], [8.15].

⁸ Ms Harshey, in response to Panel questions.

⁹ Evidence of Tony Milne at [67]-[68] and in response to questions from the Panel.

evidence of **Mr Milne** as to the effects on the perceived openness and legibility of the foothills should be preferred.

- 19 **Mr Milne** has undertaken assessment of the SAL over a period of 9 years and has engaged with and considered the views of three landscape experts engaged by CODC over that time. **Mr Milne's** evidence was that it has been agreed by all landscape architects involved with the Site that the primary landscape values of the eastern basin are associated with the upper slopes of the central ridge.
- 20 In presenting his evidence, **Mr Milne** demonstrated his detailed knowledge and consideration of the SAL, including its capacity to accommodate further development and the manner in which the proposed subdivision has been integrated within the Site's folded landform. In his opinion, the key landscape values associated with the upper slopes of the and central ridge are retained, as those areas are not proposed to be subdivided. Instead, development has been confined to the folded landscape at the toe of the slopes, where the landform has a greater capacity to absorb change. This was illustrated at the hearing by reference to the red overlay shown at pages 24 - 25 of **Mr Milne's** Graphic Attachment and discussion regarding the location of building poles, which demonstrated the limited extent of visibility, with not all proposed building platforms capable of being viewed from any single viewpoint.
- 21 Accordingly, the Applicant's position is that the landscape effects of proposed development in RLA6 are less than minor.

Rural character effects

- 22 **Mr Milne's** evidence is that rural character depends on open space, buildings, vegetation, fencing and curtilage, not lot size alone. He finds that rural character will be maintained, noting that with the open-space network, productive areas, No Build Area and upper slopes remaining unchanged. He also finds that, notwithstanding the intensification proposed by this Application, lot sizes will remain within the range anticipated in Shannon Farm and will continue to support a development form that enables rural character, for example being of sufficient size to enable establishment of large trees.¹⁰ **Mr Woodward** has confirmed that he also assesses effects on rural character to be less than minor.

¹⁰ Mr Milne, in response to Panel questions.

Policy Framework and Development Pattern

- 23 Policy 4.4.18 includes an "avoid" policy in relation to subdivision in RLA6 outside of the No Build Area. It also contains directive policies that require subdivision and development to occur in general accordance with the Structure Plan and that minimum and average allotment sizes are adhered to. Although case law has focussed on the application of avoidance policies, in our submission a similar approach to application of other directive policies should be applied.
- 24 As detailed in our supplementary legal submissions:¹¹
- (a) Avoidance policies are to be interpreted in light of what is sought to be protected.
 - (b) When assessing whether "avoid" policies are met, decision makers must be satisfied that there is no material harm, or that conditions can be imposed so that harm will be avoided, mitigated or remedied to a point that it is not material.
 - (c) A zero effects threshold would be too stringent.
- 25 In applying this direction, the effects assessment is integral to the assessment of avoidance policies.
- 26 The evidence before the Panel clearly demonstrates that effects associated with the proposed development in the RLA 3 and 4 areas maintain the values the policies are directed to, and do not result in material harm. Accordingly, this part of the Proposal satisfies the directive policies and can be approved.
- 27 In respect of proposed development in RLA6, as set out above, **Mr Milne** finds that the values of the SAL will be retained and effects will be no more than minor. While the RLA6 proposal has a degree of inconsistency with the policies on their face, in our submission the Proposal will satisfy the requirement for no material harm and maintain the values that the policies are directed to. Additionally, as stated by **Mr Milne**¹² and **Mr Woodward**¹³ the Applicants consider the Proposal achieves the overall intent of Objective 4.3.10.

¹¹ Supplementary Legal Submissions in response to Minute 2 at [6]–[20].

¹² Evidence of Tony Milne at [145].

¹³ Evidence of Jake Woodward at [17]–[18] and Appendix [D].

- 28 A non-complying activity is unlikely to find full support in the objectives and policies of the plan.¹⁴ That does not mean that such applications are contrary to the objective and policies of the plan as a whole or cannot be granted. In this case, the Proposal sufficiently achieves the intent of the directive policies having regard to the values that the policy framework seeks to maintain and the materiality of the adverse effects.

Housing Choice, Competitive Markets and the NPS-UD

- 29 While the s42A Officer accepts that the Proposal will provide additional housing choice and that material adverse effects on the functioning of urban or Large Lot Residential (**LLR**) zones have not been demonstrated, he nevertheless raises concerns in relation to Policy 4.4.18(p).¹⁵ The Applicant disagrees with the s42A Officer's conclusion that the Proposal is inconsistent with Policy 4.4.18(p).
- 30 **Mr Colegrave** concludes that the Proposal complements rather than competes with urban areas and LLR zones, and will have no material implications for their functioning or economic role.¹⁶
- 31 The overlap in allotment sizes identified is not new and does not mean that Policy 4.4.18(p) is not complied with. PC14 anticipated that approximately 70% of Shannon Farm's capacity would comprise lots within the same broad size range as existing large lot residential areas, meaning the Proposal does not alter the essential role or character of Shannon Farm as a rural-living development.¹⁷
- 32 As explained by **Mr Croft**, the Proposal has been developed in response to the Applicant's experience implementing Shannon Farm and a demonstrated market preference for smaller rural lifestyle allotments.¹⁸
- 33 The Proposal will increase housing choice, support a thinly supplied market segment, and provide additional development capacity without removing zoning capacity, servicing infrastructure, or development opportunities elsewhere in the District.¹⁹

¹⁴ *Arrigato Investments Ltd v Auckland RC* [2001] NZRMA 481 (CA); *Wilson v Whangarei DC* EnvC W020/07

¹⁵ s42A Officer Response to Minute 5 at [26].

¹⁶ Supplementary Evidence of Fraser Colegrave at [45]-[47].

¹⁷ Supplementary Evidence of Fraser Colegrave at [24]-[25].

¹⁸ Evidence of Paul Croft at [18].

¹⁹ Supplementary Evidence of Fraser Colegrave at [37]-[47].

- 34 Since PC14 was approved, the planning framework has evolved through the introduction of the NPS-UD, which promotes housing choice, development capacity, competitive land markets and planning decisions that are responsive to growth and demand.²⁰
- 35 The Applicant's evidence is that Shannon Farm forms part of the wider Cromwell growth environment and contributes positively to the NPS-UD's objectives by increasing housing choice, supporting competitive land markets and making efficient use of existing infrastructure.
- 36 Our opening submissions contained detailed analysis of the applicability of the NPS-UD. There is no contrary assessment before the Panel.
- 37 The s42A Officer's conclusion regarding the applicability of the NPS-UD appears to rely on direction from Council policy planners,²¹ without independent assessment or reference to the NPS-UD provisions. In those circumstances, the Applicant submits that the Panel should place greater weight on the independent expert evidence before it, namely that of **Mr Woodward** and **Mr Colegrave**, both of whom conclude that the Proposal is consistent with, and supported by, the higher order policy directives contained within the NPS-UD.

Sight Distances

- 38 The Applicant does not support the imposition of conditions restricting the location of future vehicle crossings on Lots 110, 111, 151, 152, 160 and 161. **Mr Carr's** evidence confirms that all six lots contain frontage areas from which the required 40m sight distance can be achieved, and therefore all lots are capable of complying with Rule 12.7.1ii.²²
- 39 While the s42A Officer accepts that a compliant crossing is achievable on each lot, and so the Panel is not being asked to consent a subdivision which necessitates a breach of the sight line rule. The Applicant considers that the proposed restrictions are unnecessary. The District Plan does not require crossing locations to be fixed at the subdivision stage, and any future crossing will still be required to comply with the applicable District Plan standards at the time it is established. Requiring a consent notice and dimensioned plan would therefore impose an additional and unnecessary constraint on future lot development without any corresponding transportation benefit. It would also create duplication of

²⁰ Legal Submissions (RC250155) at [61]-[62]; Legal Submissions (RC250155) - Appendix A at [4]-[10].

²¹ Mr Monthule-McIntosh, in response to questions from the Panel.

²² Evidence in Reply of Andrew David Carr – Transportation dated 2 September 2026 at [11].

controls between the District Plan and the consent notice, resulting in planning inefficiency and potentially, in time, inconsistency.

Design Guidelines

- 40 The Applicant acknowledges the s42A Officer's concerns regarding reliance on Design Guidelines and private covenant mechanisms. However, the Proposal does not rely on those measures in isolation. The relevant question is whether an appropriate suite of controls exists to manage the identified effects.
- 41 The Proposal is subject to a comprehensive framework comprising consent conditions, consent notices, landscape controls, building platform restrictions, fencing controls, open space obligations and covenants. Together, these mechanisms provide a robust and integrated framework for managing the effects of future development. The Design Guidelines are only one component of that broader framework.
- 42 Additionally, while the Design Guidelines may be amended by the developer, there is a strong commercial incentive to maintain them. The Guidelines are intended to preserve the established character and amenity of Shannon Farm, which in turn underpins purchaser expectations, lot values and the overall quality of the development. Any material weakening of those standards would risk undermining the very attributes that make the development attractive.

Development Contributions

- 43 During the hearing, the s42A Officer commented that at the time the s42A Report was circulated the Council's Development Engineer had not yet completed a revised development contributions assessment, and that should consent be granted then conditions would also need to be updated to include the revised DC assessment.
- 44 The Applicant notes that in alignment with the s198(2A) of the Local Government Act 2002 (**LGA 2002**) the Council's Development and Financial Contributions Policy provides that development contributions are to be assessed under the policy in force at the time a resource consent application is submitted with all required information.²³ The Application was lodged on 10 June 2025, prior to the July 2025 Development and Financial Contributions Policy coming into effect.

²³ Ka Aka Whakamua "Framing our Future" Long-term Plan (2021-2031); Development and Financial Contributions Policy at [24]; Development and Financial Contributions Policy (July 2025) (2419343) at [24].

- 45 Accordingly, any assessment of development contributions falls to be undertaken under the *Ka Aka Whakamua "Framing our Future" Long-term Plan (2021-2031) Development and Financial Contributions Policy*, being the policy in force at the time the Application was lodged. That position has been confirmed by Council (see **Appendix 1**). As such, all development contributions to be levied on this Application should be calculated on the basis of the policy applying at the time of lodgement, being 10 June 2025 and prior to Council's increase.

Relief Available to the Panel in Respect of RLA6

- 46 The case for the Applicant is that the full extent of development in RLA6 can be approved. However, our supplementary submissions have confirmed that the RLA6 portion of the Proposal is severable if the Panel consider that this part of the Proposal cannot be approved. Further, the Applicant considers that the Panel could approve some, but not all, of the RLA6 lots, if it was satisfied that some lesser extent of development would be appropriate.

Conclusion

- 47 The Application seeks consent for 44 additional rural lifestyle allotments within the Shannon Farm development. It will provide rural living opportunities in response to demonstrated market demand and within the evolving Cromwell context. Importantly, the Proposal provides for that demand within an established master-planned development, where the lots can be efficiently serviced by existing infrastructure and where development will occur in accordance with a comprehensive framework of design, landscape and management controls.
- 48 The effects of the Proposal are generally agreed to be acceptable. The only effects in contention are landscape effects in RLA6 and effects on rural character. Despite the Application being subject to full public notification there are no submitters in opposition, and the only reasonable conclusion is that the landscape and rural character effects of the Proposal are not of concern to the public.
- 49 The Applicant's evidence is that, when assessed against the values of the SAL, landscape effects are no more than minor. Rural character will be maintained through the revised lot layout and retention of built form and landscaping controls. That evidence is comprehensive, credible and should be preferred. This provides a clear pathway to consent.
- 50 Generally, an assessment of relevant objectives and policies requires "a fair appraisal of the objectives and policies read as a whole", although it

will be appropriate to place greater weight on the RRA(5) specific objective and policy. The Proposal accords with the RRA(5) Objective 4.3.10 and the majority of the RRA(5) Policy 4.4.18. Assessment against 'avoid' policies should be undertaken in accordance with established case law, as detailed in our supplementary legal submissions. While the Proposal has a degree of inconsistency with a limited number of directive policies on their face, in our submission the Proposal will satisfy the requirement for no material harm and will maintain the values that the policies are directed to. The Application is properly assessed as largely consistent with, and not-contrary to, the objectives and policies of the District Plan.

- 51 Accordingly, the Application passes through both gateways of s104D and can be approved under s104. Conditions of consent are agreed, as proposed through the Applicant's evidence.

Dated this 25 September 2026

A handwritten signature in black ink, appearing to read 'SEveleigh', written over a horizontal line.

Sarah Eveleigh / Tallulah Parker

Counsel for New Zealand Cherry Corp (Leyser) LP

Appendix One: Council Confirmation of Applicable Development Contributions Policy

From: [Sarah Eveleigh](#)
To: [Tallulah Parker](#)
Subject: FW: RC250155 & RC220396V3 New Zealand Cherry Corp (Leyser) LP
Date: Friday, 25 September 2026 1:14:55 PM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image009.png](#)
[image010.jpg](#)
[image011.jpg](#)

From: Oli McIntosh <oli.mcintosh@codc.govt.nz>
Sent: Tuesday, 24 June 2025 6:11 pm
To: Jake Woodward <jake@jakewoodward.co.nz>
Subject: RE: RC250155 & RC220396V3 New Zealand Cherry Corp (Leyser) LP

Received, thanks Jake.

I can confirm that the DC's will be assessed under the current rate. Any application received by Council >1 July will be received under the new rates.

As far as I'm aware their most recent application for the 9 lots is still 'payment pending' and not yet officially received by Council... Might be worth mentioning to your clients that it's in their interest to get this payment sorted ASAP.

Regards,

Oli McIntosh
Planning Consultant



- ☐
- ☐ oli.mcintosh@codc.govt.nz
- ☐ 1 Dunorling Street, Alexandra 9320
- ☐ www.codc.govt.nz

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From: Jake Woodward <jake@jakewoodward.co.nz>
Sent: Tuesday, 24 June 2025 4:23 pm
To: Oli McIntosh <oli.mcintosh@codc.govt.nz>
Subject: RE: RC250155 & RC220396V3 New Zealand Cherry Corp (Leyser) LP

Hi Oli

I have received confirmation from the applicant that they are happy to endorse the s37 extension. Our key rush was the DCN increase – assuming we have been successful in locking in the current rates, the applicant is not concerned with the s37. If you could touch base with the DCN team to confirm we are locked in to be considered under the current rate, this is all that we really need to know.

Regards

Jake Woodward

Resource Management Planner

E: jake@jakewoodward.co.nz | P: 022 315 8370



Visit our website: www.jakewoodward.co.nz

From: Oli McIntosh <oli.mcintosh@codc.govt.nz>

Sent: Tuesday, 24 June 2025 10:56 am

To: Jake Woodward <jake@jakewoodward.co.nz>

Subject: RC250155 & RC220396V3 New Zealand Cherry Corp (Leyser) LP

Kia ora Jake,

Given the scale and complexity of these applications, alongside current workload pressures within Council's Planning and Engineering teams, I need to be upfront that processing this application within the usual statutory timeframes is not realistic. To enable a thorough and informed assessment, I'd like to request the applicant's agreement to a Section 37 extension to double the standard processing timeframes for a notification decision to be made.

Separately, I will be in Central Otago at the end of this week and would like to arrange a site visit. I am currently planning for either **Friday 27 June** or **Monday 1 July**. I'll be cramming a lot into those days, but if you can suggest a couple of preferred times to meet on site, I'll do my best to accommodate those.

Ngā mihi,

Oli McIntosh

Planning Consultant



☐ oli.mcintosh@codc.govt.nz



☐ 1 Dunorling Street, Alexandra 9320



☐ www.codc.govt.nz

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