

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

Under	The Resource Management Act 1991 (the Act)
In the Matter	of an application for subdivision and land use consents to undertake a two-lot subdivision around existing buildings
Between	MARK GERARD SUGRUE, IMOGENE GRACE SUGRUE and DUNMORE TRUSTEES LIMITED Applicant
And	CENTRAL OTAGO DISTRICT COUNCIL Local Authority

SUBMISSIONS OF COUNSEL ON BEHALF OF THE APPLICANT

DATED 2 JULY 2026



GALLAWAY COOK ALLAN LAWYERS

Phil Page/Hannah Perkin

phil.page@gallowaycookallan.co.nz

hannah.perkin@gallowaycookallan.co.nz

PO Box 143

Dunedin 9054

Ph: (03) 477 7312

Fax: (03) 477 5564

SUBMISSIONS OF COUNSEL

May it please the Panel:

1. These submissions explain why you need not be concerned about plan integrity or precedent, should you be minded to grant consent.
2. The proposal is straightforward. There are two existing lawful dwellings already present on the Site, one is utilised as a residential activity and the other is consented for use as visitor accommodation. The application seeks to divide those activities into separate titles and to use the dwelling on Lot 2 for a residential activity.
3. The residential use and the subdivision are entirely independent proposals. Consent is sought for the second residential activity even if the subdivision is declined.
4. The subdivision application is assessed as a non-complying activity because it does not meet the 2ha averaging requirement in Rule 4.7.5(iii) in the Central Otago District Plan (**Plan**).
5. The residential activity is a discretionary activity if the subdivision is not granted (rules 4.7.2(b) and 4.7.4(i)).
6. Although it does not matter¹, I agree with the 42A report at page 9 that the two applications maintain their separate activity status because the two can be assessed separately and their effects do not overlap.

¹ Because it is agreed that the section 104D effects gateway is passed- see the 42A report at [85].

Scope of control

7. Because neither application is restricted in the available discretion, the full scope of potential adverse effects is within the Hearing Panel's power to control by way of conditions. Section 108AA says:

108AA Requirements for conditions of resource consents

(1) A consent authority must not include a condition in a resource consent for an activity unless—

(a) the applicant for the resource consent agrees to the condition; or

(b) the condition is directly connected to 1 or more of the following:

(i) an adverse effect of the activity on the environment:

(ii) an applicable district or regional rule, or a national environmental standard:

(iii) a wastewater environmental performance standard made under section 138 of the Water Services Act 2021:

(iv) a stormwater environmental performance standard made under section 139A of the Water Services Act 2021:

(v) an infrastructure design solution; or

(c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

8. For so long as you are satisfied that a condition is directly connected to an adverse effect of the activity on the environment, then you can impose a condition dealing with that effect.

9. One frustration with the 42A report is that it raises concerns about the grant of consent enabling future activities that could have an adverse effect, but then fails to recommend a condition dealing with that problem. The planner can't have it both ways. If the adverse effect is directly connected, then it can be controlled. If it is not directly connected, then it is not a reason to decline consent.
10. Mr Woodward has offered conditions to resolve the concerns about the potential for future activities.

Plan integrity

11. The case law in relation to plan integrity is well settled. In *Dye v Auckland Regional Council* the Court of Appeal confirmed that there is no true concept of precedent in resource management law in the strict sense.² A consent authority is not bound by a previous decision of the same or another authority.
12. The Court held that the precedent effect of granting a resource consent (in the sense of like cases being treated alike) is a relevant factor for a consent authority to take into account when considering an application for a non-complying activity.³
13. The idea that a consent decision may be a precedent for later decisions is not inherently positive or negative. It simply recognises that like cases should be treated alike. A precedent may be entirely positive. Raising a precedent objection to granting a consent is usually raised in the context that a flood of decisions relying on a precedent will undermine the integrity of the District Plan. That is important because under section 84, the Council must observe its own Plan. A grant of a resource consent is not inherently contrary to that obligation because that is what the Plan provides for.

² CA86/01, 11 September 2001 at [32].

³ At [49].

14. Taking precedent plan integrity effects into account may be a relevant consideration under s 104(1)(c). It is not mandatory for the Panel to consider such effects.
15. In *Beacham v Hastings District Council*, Judge Thompson applied *Rodney District Council v Gould* for assessing if the plan integrity will be imperilled so as to necessitate the application be refused. The two key considerations are:
 - (a) The proposal irreconcilably clashes with important provisions of a district plan, and
 - (b) It is likely that further applications will follow, with are both materially indistinguishable and equally incompatible with the plan.⁴
16. These considerations have been consistently endorsed by the Courts. The Court has emphasised that plan integrity arguments are somewhat overused and need to be treated with some reserve.⁵ Each proposal must be considered on its own merits.

Irreconcilable clash

17. The s 42A report treats the breach of the 2 hectare averaging requirement as determinative, characterising the proposal as a “significant departure” from what is anticipated by the Rural Resource Area (**RRA**) zone.⁶ That is incorrect, given the RRA chapter does not provide a minimum site size. That approach elevates a method of implementation above the Plan’s underlying objectives and policies.

⁴ ENC Wellington W075/09, 5 October 2009 at [25], also in *Blueskin Bay Forest Heights Ltd v Dunedin City Council* [2010] NZEnvC 177 at [48].

⁵ *Blueskin Bay Forest Heights Ltd v Dunedin City Council* at [45].

⁶ At [23].

18. As Mr Woodward's evidence explains, the 2 Ha average rule is a tool that triggers the need for an affects assessment, it is not an end unto itself.
19. Cases such as *Rodney District Council v Gould* show that it is not necessary for a site to be unique before plan integrity ceases to be an important factor.⁷ Nevertheless a decision should look to see if there are factors which take the proposal outside of the generality of cases. As Mr Woodford's evidence explains, the second consented dwelling on the site mark this case out as unusual.

Assessment of Plan provisions

20. The s 42A report accepts that the overall adverse effects of the application are minor. This finding is important when considering if the proposal results in conflicts with the outcomes sought by the Plan.
21. Perhaps due to its vintage, the Plan is not a model of clarity about what policy outcome the Rural Residential RA is trying to achieve relative to the Rural Resource Area. The objectives and policies are the same.
22. Objective 4.3.3 is to "maintain...rural amenity values...of the District's rural environment", and yet that objective does not recognise that the Rural Resource Area and the Rural Residential Area may have very different amenity values. What does that objective require of the Rural Residential Area compared with the RRA? It does not say.
23. Policy 4.4.2 is slightly more helpful.

To manage the effects of land use activities and subdivision to ensure that adverse effects on the open space, landscape, natural character and amenity values of the rural environment are avoided, remedied or mitigated through:

⁷ Referred to in *Beacham v Hastings District Council* at [25].

(a)The design and location of structures and works, particularly in respect of the open natural character of hills and ranges, skylines, prominent places and natural features,

(b)Development which is compatible with the surrounding environment including the amenity values of adjoining properties,

(c)The ability to adequately dispose of effluent on site,

(d)Controlling the generation of noise in back country areas,

(e)The location of tree planting, particularly in respect of landscape values, natural features and ecological values,

(f)Controlling the spread of wilding trees.

(g)Encouraging the location and design of buildings to maintain the open natural character of hills and ranges without compromising the landscape and amenity values of prominent hillsides and terraces.

(h)Strongly discouraging buildings in the Rural Resource Area of the Wooing Tree Overlay Area to ensure a vineyard or treed park-like character with an absence of built form.

24. Policy 4.4.2(a) and (g) are not relevant here, and are probably not relevant in any Rural Residential Area. But (b) is relevant and requires a contextual analysis of amenity values. It does not direct any specific environmental outcome independent of surroundings. It is a factual enquiry about amenity compatibility with neighbours. It is a policy that enables very flexible outcomes based on the immediate context of a proposal.
25. When seen in the context of 4.4.2(b), the flexibility inherent in the averaging rule makes sense. It is just a trigger for analysis that allows contextual decisions to be made about neighbourhood amenity compatibility within the Rural Residential Zone. Some locations will

suit smaller lots better than others. That is a factual enquiry that does not give rise to questions of Plan integrity.

26. That contextual effects-based thinking is also reflected in policy 4.4.10(c), as Mr Woodward's evidence has explained.
27. Circling back to the *Gould* test, it is submitted that the proposal does not give rise to an irreconcilable clash with the Plan provisions. Firstly, because the Plan does not direct any particular rural amenity outcome in the Rural Residential Area. Secondly, in the factual context that already exists, the Site is already developed with two buildings that look like dwellings and is not used for a productive rural purpose. The proposed subdivision does not change that character so no amenity compatibility issues arise.
28. The s 42A report acknowledges the surrounding environment already includes a number of allotments below 2ha. The officer goes on to acknowledge that "smaller lot sizes can be anticipated within an averaging rule framework".⁸ There is nothing wrong with that. Smaller lot sizes are allowed and anticipated by the Plan. But it must be considered as part of the local amenity context.
29. The 42A officer's conclusion that the subdivision would be a "significant departure from that anticipated by the district plan"⁹ is factually incorrect. The immediate environment contains 8 lots between 8000m² and 1.2Ha. The proposal is consistent with the existing pattern of development.
30. If precedent effects are relevant, then the precedent already exists.

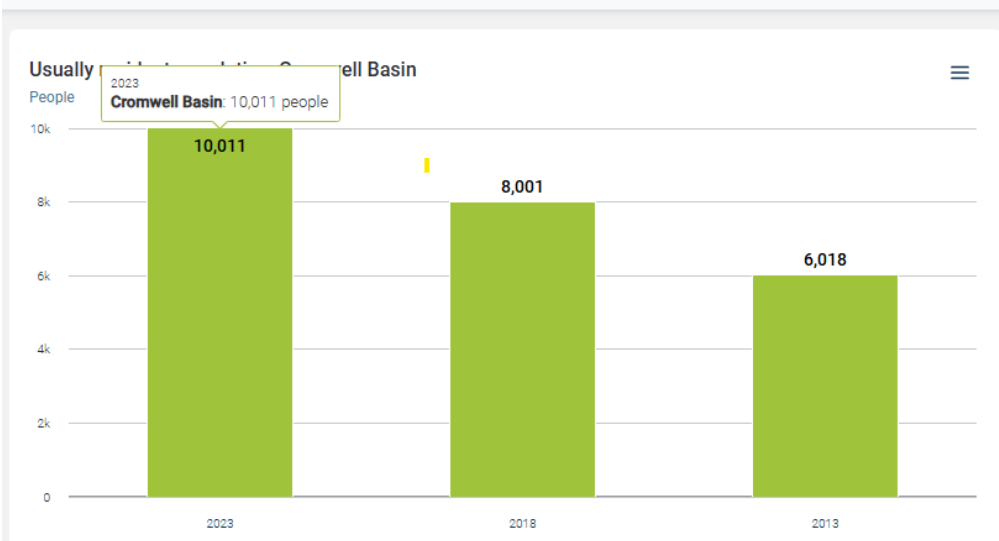
⁸ At [26].

⁹ At 28.

31. It is also important context that the District Plan provisions are elderly. The Council has signalled that it has interest in reviewing the chapter.¹⁰ In *Ahuareka Trustees (No 2) Ltd v Auckland Council* the Court held that integrity considerations for “newly minted plans” may hold greater importance because the plan provisions have not become dated or overtaken by other circumstances.¹¹ The Rural Resource Area provisions are old and overdue for review. Cromwell is a very different place from when the Plan was made operative on 1 April 2008. Maintaining the integrity of the RRA provisions is not as important as if the Plan had recently been through the First Schedule process.
32. There is one very important way in which the planning context has changed since 2008. Housing availability and affordability are now matters of national importance. The data from the 2023 census shows this:¹²

Usually resident population

Census area: Cromwell Basin ▾ Total counts: Usually resident population ▾ Compare areas: ▾ New Zealand



¹⁰ Central Otago District Council *District Plan review moves to stage 2*
<https://www.codc.govt.nz/your-council/news?item=id:2szopfhs817q9sqi4yj2>

¹¹ [2017] NZEnvC 205 at [116].

¹² <https://regions.infometrics.co.nz/cromwell-basin/census/total-counts/population>

33. That degree of population was not anticipated by the Plan, or anyone else for that matter. That will not be news to the Hearing Panel. And that is also why we now have the National Policy Statement for Urban Development 2022. Housing has its own NPS, travellers' accommodation does not. The Council should be giving permanent residential dwellings higher priority.
34. Strictly speaking, the proposal is not urban development. But it is worthwhile noting that the subdivision will contribute to the housing capacity within the Cromwell Basin. The proposal is consistent with Policy 2 of the NPS because it will contribute to improving housing affordability by supporting a competitive land market.
35. We don't make too much of this point because it is only one more residential activity added to the supply. But it goes to explain why the Hearing Panel should not be too concerned about Plan integrity when deciding whether to allow a visitor accommodation unit to be converted to a residential activity.

Precedent effect

36. Because the first limb from *Gould* is not engaged, there is no need to consider the second limb. Nevertheless, the second limb is also not met. Granting subdivision consent would not set a precedent that required the Council to grant other subdivision consents.
37. The existing consented buildings distinguish it from the majority of rural sites within the district. Certainly the 4 Ha lot to the east (160 Pearson Road) does not have the same history or features. The present application could not be used as a reason to breach the 2 Ha average rule because there are no existing buildings that establish the amenity values of the site.

38. It is also notable that subdivision consents have been granted within the RRA that depart from strict averaging requirements.¹³ To the extent precedent is relevant, the Plan has already been applied flexibly in appropriate circumstances. That is how it has been designed to work.

Conditions

39. As indicated above, none of the hypothetical future effects concerns raised by the 42A officer are incapable of being controlled. No conditions are proposed by the 42A report to address her concerns. Mr Woodward has attempted to address them. The applicant invites the Panel to indicate if there are any matters arising from the proposal that are not already addressed through Mr Woodward's conditions that remain a barrier to consent so that further conditions can be proposed.



Dated 2 July 2026

Phil Page / Hannah Perkin

Counsel for the Applicant

¹³ RC250257