COVENANTS Protecting Residents Inclusion in the Yaldhurst Subdivision – Review and Summary of Residents for Councillors (Staff have refused requests to meet with us)

CCC Staff Recommendation / Consent Holder Request - that Circumvents Our Covenants

1. **2002 – 2003** - Multiple People (**Residents**) Enter Agreements for Sale & Purchase (ASAP);
   - Residents each purchase 4 hectares of Rural Land;
   - 20 year "buy back" period for 80% of the land subject to the Vendor/Consent Holder/Developer/Noble Investments Ltd (Noble): -
     - attaining residential rezoning and Further Subdivision Consent; and
     - satisfying "***essential Further Terms***" of the ASAP including providing roading and services over the widened Access Lot 22 to enable the Residents remaining 20% of Land to be included in the Further Subdivision at the Vendor/Consent Holder/Developers cost within TWO YEARS of rezoning or the first stage of development whichever comes first;
   - Actual signed "***essential Further Term 15***": -

> 15. In the event a further subdivision is approved and work undertaken for residential subdivision by the Vendor on the adjoining development then the Vendor undertakes to provide full width roading to L1A zoning standard at it's cost, together with sewer, power, telephone, water and stormwater connection for this zone's standard to Lot 9. This work is to be completed within TWO YEARS of residential zoning being granted or when development of the Vendors adjoining land is undertaken, whichever comes first.

2. **2003 – COVENANTS Registered Over All Land to Protect the Residents Subdivisions**
   - The Covenant protects the essential Residents Widened Access Lot 22 road being included if the rezoning and Further Subdivision was approved (as it has been);
   - Copy of the relevant part of the Residents Covenant required for "***Extinguishment***", as per ***Covenant SCHEDULE C*** : - (**Council staff have not produced this Covenant**)

> **1. Term and Extinguishment of Covenants**
>
> **1.1.** All of the Covenants run with each Dominant Land and any part or share of it and each Servient Land and any part or share of it until extinguished in accordance with clauses 1.2 and 1.3 of this schedule.
>
> **1.3.** The Covenantor will, if so requested at that time by the Developer or any other Covenantee, sign any documents and plans which may be required:
>
> **1.3.2.** to vest or dedicate the part of the Servient Land included in the Access Lot or the Road Widening Area, as defined in the agreements for sale and purchase by which the Servient Land was sold by the Developer, as legal road, and to transfer or relinquish all estate or interest in those areas to the local authority for $1.00.
>
> **1.4.** The person making the request, unless otherwise agreed, will meet any legal fees and expenses incurred by the Covenantor which are necessary and reasonable for the purposes of clause 1.3 above, and for which the person making the request has given its prior written approval, which approval will not be unreasonably or arbitrarily withheld.

3. **The Residents 2003 COVENANTS Binds all Disparate Landowning Parties (including the Developer and Other Successors in Title) to the "*Widened Access Lot Roading*" Agreed in the 2002 – 2003 ASAP's, whether they want it *or not*, and whether they were original parties in 2002 – 2003 *or not*. The Covenant Protection stays with the land until "*Extinguished*" including as per 1.3.2 above;**

   - To "***extinguish"*** the ***Covenant*** requires the ***Access Lot*** to become ***a widened legal road***; and **so does** the Subdivision Consent and the RMA. For compliance with the Subdivision Consent, the RMA, and the Covenant, infrastructure on land now owned by the Developer / Consent Holder is required. The Developer and Council staff have always known this [see below].

   - However the Developer (Noble/Infinity Yaldhurst Ltd) continues to refuse to comply with the Subdivision Consent and the RMA; and Council staff continue to refuse to enforce compliance with the Consent and the RMA as the law requires the Council to do, and have worked together in secrecy to circumvent our Covenants, our inclusion in the subdivision consent, and compliance with the RMA.

   - Council staff have refused to correspond with the Resident landowners despite acknowledging in their **Report** [**at 6.5**] "***the landowners who have an interest are specifically affected by this option***" (to dedicate in lieu of normal compliance); and then report that "***Their views have been canvassed by the Developer***". Frankly that's absurd. The Developer has no cause to correctly represent our views and has not; he profits millions of dollars by cutting us out of the subdivision consent.

4. **2016 - Current - CCC Staff, their Lawyers and the Consent Holder are Misrepresenting the Residents Protective Covenants to Elected Members;**
   CCC staff and their Lawyers:-
   - misrepresented in their 13 June 2017 Hornby-Halswell-Riccarton Community Board Report, and to the Board Meeting, that the covenants were ONLY about pig farming, tree trimming, building materials and other irrelevant matters [**5.4 of their Report**] and that the Covenant was redundant;

   - refused to provide a copy of the Covenant when asked by the Community Board, and why a copy was not included in the report;

   - did not advise elected members of the critical **Covenant** "***Schedule C***" "***Term and Extinguishment of Covenants***" requirements (copied above) including Clause 1.3.2 specifically in relation to the Residents "***Access Lot***", "***Road Widening Area***", "***as defined in the*** (Residents) ***agreements for sale and purchase***" ("***and to relinquish all …to the local authority for $1.00***.") once provided by Noble or successor in title.

5. **2016 – Current – The Developer Turned Down a Signed Residents Group Offer to Remove Their Protective Covenants and That Also Gave the Developer Additional Benefits Required for the Subdivision Consent** [Open Offer can be provided];
   - **Residents open offer to Infinity Yaldhurst Ltd included to: -**
     - remove their protective Covenants;

- give up their sole Access Right to Yaldhurst Road (required for the Yaldhurst Road intersection to open);
- transfer additional land in their Access Lot to the Developer that is Consented for the Developers Supermarket;
- pay $hundreds of thousands and undertake Conditions that the Consent Holder/Developer is required to satisfy for compliance with the Consent;
- (and give their landowners consent required to effect the Subdivision);

- **The Residents Group only required in return** that Infinity provide for their inclusion in the Subdivision Consent **as is legally required by the Consent**, and to contribute a small portion towards the costs the Group was offering to undertake on behalf of Infinity as Consent Holder in recognition of additional land and other benefits the Residents were offering to Infinity, including land for their supermarket;
  - **Infinity refused this open offer** [available];
  - Infinity instead provided a Deed which they assured provided the same thing and which required the Residents to give up their Covenant protection, additional land and other benefits to the Developer years ahead of the Residents getting their "promised" benefits: -
  - However, after detailed legal analysis the Deed was found to **not** provide what was promised at all, it was sham, and continued to make the Residents ***parts*** of the Subdivision Consent impossible.

SOLUTION:

6. **If CCC Staff, or Councillors, Simply Require the Consent Holder to Comply With the Conditions of the Subdivision Consent** (something **the Law *requires*** of a Territorial Authority **and** a Consent Holder in any event): -
   - **the Covenant "issue" would not be an issue at all**;
   - all roading could be formed and vested in the ownership of the Council and the entire Subdivision completed inclusive of the Residents parts of it, all as is : -
     - ***legally required*** by the Subdivision Consent (Plans & Conditions 1-27);
     - ***legally required*** by the RMA;
     - ***legally required*** by the Covenant (Schedule C, Clause 1.3.2 as above).

   - **There is NO Risk to the Council in this SIMPLE SOLUTION:** [as identified at 7.11 of the Staff Report] "***Risks and Mitigations 7.11 The full risk is borne by the Developer***"

   - It became apparent however (from Community Board debate) that during a lengthy public excluded session the Council staff panel and lawyer had strongly forced the exact opposite advice, that there was "huge risk". Members advised this advice persuaded them toward staffs preference. Staffs preference circumvents our covenant protection and eliminates our parts of the subdivision consent the same as the staffs non-notified stormwater variations have, as evidenced following;

   - **The Covenants are not** "*stopping the subdivision from proceeding*" as staff report at 1.2; they are simply protecting that the Residents parts of the subdivision are included as per the Covenant clause 1.3.2. and ASAP Further Term 15 [above].

FURTHER BACKGROUND: After The Protective Covenants Were Registered in 2003: -

7. **2006 August – Residential Rezoning Attained in the Environment Court (Living G);**
   - The Rezoning Approval required all the Living G Yaldhurst Land (that being the Resident Landowners Land and adjoining Delamain and Enterprise Landowners Land) to be an integrated intensive subdivision with an integrated stormwater system.

8. **2007 June - Vendor/Developer/Applicant Makes Subdivision Consent Application Over the Resident Landowners Land, being RMA92009135;**

9. **At All Times - Council Staff, Council Lawyers, (& Infinity Yaldhurst Ltd (Infinity)) knew: -**
   - of the ***legal requirement*** for the Applicant/ Consent Holder/ Developer to provide the Resident Landowners Access Lot 22 roading and services to their House Lots for their ***parts of the further subdivision*** at the Consent Holders cost as "***part of the "buyback" agreement***" [*example Council email* **2008 April 10** *below*]; and that
   - the Residents retain ***legal interests*** over the Land after transferring it to the Developer/ Consent Holder (including successors in title such as Infinity); and that
   - the Residents ***interests*** in the land (now owned by Infinity) is ***protected by the Land Covenants*** that were registered in 2003 in reliance and protection of the ASAP; and
   - the Subdivision Consent and conditions attach to the Residents land and give them interests in all the land including that now owned by Infinity [***see* s134 RMA *below***];
   - **examples of Council Staff and their lawyers knowledge of the Residents' *legal interests* include: -**

– 2008 April 10 - Council Planner Sean Ward email to Council Lawyers Buddle Findlay: -

From: Ward, Sean M [mailto:Ward, Sean M]
Sent: Thursday, 10 April 2008 9:15 AM
To: 'Blake Cescon' <blake.cescon@buddlefindlay.com>
Subject: RE: Scheme plans - Noble (RMA92009135)

Yes Blake lot 22 will become road. The proposed layout of the road is that shown on the scheme plans (I can't see any reason to deviate now from that overall layout). No ability for council to force that before development of those sites that will utilise that road, but I understand it is part of the buyback agreement that the road is formed/vested and services brought along it to allow further subdivision of the house lots.

- **2009 March 16 - Council staff Roy Eastman debates with the Developer the Stormwater Conditions** that require lower lying land (under the power lines) to be protected with easements in favour of the Council to ensure viable stormwater land is available for the subdivision consent inclusive of the Residents parts of it and the Access Lot 22 widened roading: -

  - **The Developer via Richard Graham of Cardno to Council staff, argued :-**

We believe that there is ample reserve area available to provide SW storage and access and this condition is completely unacceptable. Condition 4.4 states that some additional capacity is available within the southern depression if required further confirming that additional land will not be required.

- **Council's Roy Eastman answered to the Developer: -**

> Good to see that there is confidence in the scheme as proposed. I have been involved in these situations many times in the past and know from experience that the 'Devil is always in the Detail'. Typically if things are found to be 'too tight' when final designs are completed, Council staff are told that the Lot layouts can't be altered as there are already 'sale and purchase contracts' over affected Lots. This Condition has been successfully used several times in the past, to avoid the difficulties which arise from such a situation. It has been accepted by developers to as a reasonable way to allow Scheme plan Apporval without the need for additional engineering design work to confirm the system will work. The Condition is not considered unreasonable or likely to cause undue hardship to the developer. It can easily be made redundant once final engineering approval is given. The restriction need only apply for a relatively short time and as such should not unduly impact on any marketing of Lots by the developer.

- **2007 – 2009 – The Developer and Council Staff Sent Updates of the Subdivision Application and Design over The Residents Land to The Residents;**
  - These included stormwater basins over land legally required for the Residents subdivision interests, and which would be transferred to the Consent Holder/ Developer "***as part of the "buy back" agreement***" [**which staff knew about**];

10. **2008 August – Residents Roading and Services Due – [FT15. Two Years Since Rezoning];**

11. **2008 – 2009 - Caveats Lodged by Some Residents for Additional Protection of Their Subdivision Inclusion Interests;** (this further alerted Council staff to the Residents ongoing legal interest in the land)

12. **2009 May 25 - Council Issue Subdivision Consent RMA92009135;**
    - **The Plans** require the Residents Lot 22 Access Lot, "*Road Lot 612 to Vest*";
    - **Condition 5** also requires *Road Lots 600 to 615 to vest in the Council* (as per the IDS);
    - **Condition 9** requires adequate stormwater provision be made on the Consent Holders lower lying land to ensure provision for all of the subdivision at final engineering stage (inclusive of the Residents ***parts*** of the subdivision);
    - **Condition 9.5** requires easements registered over the Consent Holders' lower lying lots under the power lines in favour of Council to **protect this land for stormwater** for all the Subdivision Consent (including the Residents ***parts*** of it):-

      9.5 To ensure that the scheme currently proposed will be feasible at the final engineering design phase, lots adjoining proposed Basins 2, 3A and 3B as identified as allotments 70, 73, 84, 101,102,103, 165 and 166 on Cardno TCB Plan C07001 Drawing No. PS-01 and PS-02 Revisions U and P Respectively, "Noble Village, Yaldhurst Road, Christchurch," are not to be marketed or sold by the developer until engineering approval confirms that the land is not required for the purpose of stormwater mitigation, or for public access along the Transmission Line Corridor. To ensure this requirement is met, the consent holder shall register on deposit of the plans for Stage One of this subdivision a drainage easement over Lots 70, 73, 84, 101,102,103, 165 and 166, in favour of the Council.

    - (**Condition 9.5 "*disappears*"** later without application or assessment [see below])

13. **s134 RMA - Gives Residents and Their Land LEGAL RIGHTS and INTERESTS in The Subdivision Consent, Including Over Land Now Owned by Infinity: -**

134 Land use and subdivision consents attach to land

(1) **Except as provided in subsection (2), a land use consent and a subdivision consent shall attach to the land to which each relates and accordingly may be enjoyed by the owners and occupiers of the land for the time being, unless the consent expressly provides otherwise.**

s134 RMA Example of Interests of a Resource Consent Attaching to Land: -

- A resource consent can give ***legal rights and interests*** to build your house through a recession plane off a neighbours boundary (say by a "mutually beneficial agreement" and consent). That right and interest attaches to your land. Equally the encumbrance of that interest in the resource consent attaches your consenting neighbours land;

- Your neighbour cannot renege on your resource consent ***legal interests*** (including after receiving any benefit like Noble here received 25 hectares of land), by passing ownership of their property to another (like the Noble Joint Venture passed the property to the Infinity Joint Venture).

- The encumbrance of the resource consent (or subdivision consent) remains on the encumbered land, as it does here with Noble/Infinity's land. Any new owner of land knows this. It shows in the Land Information (LIM) at the Council and in the Conditions of the consent. Equally the interests of the resource consent or subdivision consent remain on your land if you sell it, like if the Residents sold theirs.

- **s134 RMA** gives Residents here legal rights to enjoy the benefits of the subdivision consent attached to their land, which includes the terms, conditions and plans. This includes the infrastructure conditions which of both ***requirement of the consent*** and ***physical necessity*** are required over the land that the Noble Joint Venture passed to the Infinity Joint Venture (of which Delta Utility Services Ltd is a common partner).

- Infinity accepting this land and subdivision consent from Noble accepts both the ***legal interests*** of the subdivision consent and the ***legal obligations*** of the subdivision consent. This includes the condition that the Widened Access ***Lot 612 road must be formed and vested*** and for stormwater provision for it and the whole of the subdivision consent to be on this land that Infinity received from Noble.

- Infinity however, like Noble before it, have been in private negotiations with Council staff to make the Residents ***Legal Interests*** and their parts of the subdivision consent "***disappear***". This Infinity request and staff "*dedication*" recommendation circumvents our Covenant protection in this same vein; it's immoral if not corrupt.

14. **2009 – 2011 - Consent Holder/Developer Constructs the Subdivision at "own risk" to Non-comply Standards and Breaches Conditions of the Subdivision Consent; including:-**
    - 11.5m main carriageway in lieu of 19m, (cycle lanes and 4m median removed, shared traffic/cycle lanes reduced to 3.25m, roads bottleneck from adjoining subdivisions);
    - sites down to 85m2 where min 250m2 required;
    - **undersized and inadequate stormwater pipes and infrastructure;**
        - pipes under sealed roads require upsizing and basins made larger;
        - [see **Council staff confirmation of this below**].

15. **2009 December – Consent Holder / Developer Applies for Variation to Subdivision Consent but does not provide adequate information for assessment until July 2011** [that information was found by a Safety Audit to have been dangerously wrong];

16. **2009 to Present Day - Council Staff Continue to Refuse Residents Affected Party Rights Under the RMA and Refuse to meet with them;** and: -
    - continue to consent variations and permit physical works that make the Residents ***parts*** of the Subdivision Consent impossible; and
    - purport to "***give***" to the Developer the Residents valuable sole access rights to Yaldhurst Road while making the Residents parts of the Subdivision Consent impossible; and
    - permit the Developer to effect the Subdivision Consent without the necessary Residents landowners consent.

17. **2010 – Consent Holder/Developer Engages Lawyers Buddle Findlay & David Kirkpatrick to Advise in Relation to the Council**: -
    - how to attain consent and ownership for the non-complying roads and infrastructure (in lieu of vesting ownership in the Council) and collect rates for itself and Delta; and
    - how to get around this breach of the Subdivision Consent and the RMA;
        - Buddle Findlay now acting for the Council to recommend what Buddle Findlay was engaged by the Consent Holder to achieve, must be a conflict of interest.

18. **2011 – Council Staff and Developer/Consent Holder Instruct External Planner (Graham Taylor) to Provide Council Report to David Kirkpatrick and to Rewrite the Conditions of the Consent, which Included *Deleting* Stormwater Condition 9.5** [as above]**;**
    - Condition 9.5 protected lower lying land required for stormwater provision, including for the Lot 612 / 22 road and requirements for the Residents parts of the Subdivision Consent;

    - Condition 9.5 was removed without application, without assessment, without notification, and when Council staff and the Developer knew the land it protected was required to facilitate the Subdivision Consent requirements;
      [confirmation of Council staffs knowledge of this is above and below]

    - The Council report recommended retrospectively consenting the grossly non-complying roads (and sites as small as 85m2) non-notified, and thereby depriving the affected public and Residents their legal rights to have submissions and evidence of the dangers of the non-complying road design considered;

19. **2011 - Council Staff and Consent Holder/Developer Retain David Kirkpatrick;**
    - to retrospectively decide on the non-notified consent of the non-complying roads;
    - David Kirkpatrick was an ally of the Developer [as admitted by them and as above];
        - Mr Kirkpatrick deciding on non-notification and grossly non-complying roading that he had previously been engaged by the Consent Holder Noble to advise on, must have been a conflict of interest;

20. **Ongoing – Council Staff Consent Non-notified Variations Including to Stormwater that Make the Residents Parts of the Subdivision Consent Impossible;**
    - Council staff continue to deny Residents affected party status in the Subdivision Consent and variations to it, despite that: -
        - our lands are essential and required parts of the Subdivision Consent; and
        - we are hugely adversely affected by the variations, in that they make our parts of the Subdivision Consent impossible;

    - Council staff continue to solicit reports to deny Residents affected party status;
        - a proven example previously put before the Elected Council included two senior managers visiting an external traffic engineer and specifically instructing him to ***not*** review the narrow spine road if he wanted the job to review the road network; and then in a staff report advising the Commissioner David Kirkpatrick that the traffic engineer ***had*** specifically reviewed the spine road when he specifically had not;

STORMWATER PROVISIONS:

21. **Changed Stormwater Provisions Don't Comply With Subdivision Consent Conditions;**
    - Non-notified changes made make effecting the Subdivision Consent and compliance with it impossible, including that of the essential required Lot 612 Road over the Access Lot 22 and the Residents parts of the Subdivision which are **protected by the Residents Covenant's**. [Council confirmation of this follows].

      [Staffs recommendation to allow the "*not normal*" private ownership of roading (and services) and dedication, **circumvents the Residents Covenant's**.]

22. **Council Confirmation of Knowledge: of Stormwater Non-compliance, and That They Permitted the Non-complying Works to Proceed Without Acceptance Includes: -**

    - **2011 October 28 - email from Councils Bruce Craig to Developer**, cc including Councils Sean Ward; [relevant passages – emphasis to assist]: -: -

      Talking with Delta it appears that the roading will be progressing very shortly.The understanding with Ecan is that no sealing can take place until the stormwater facility is completed and has been issued with a compliance monitoring report.
      As the discharge consent being used on this site is a Council Consent, Council are very aware of the issues and have real concerns of being issued with non-compliances.
      These non-compliances then stay with the Consent and accumulate.
      This is then reflected in the annual data that is extracted and can reflect on the Council who in fact had nothing to do with the work or non-compliance.

      Note: Council could not have "*had nothing to do with the work* (&) *non-compliances*" given they are the authority permitting the works without proven overall design, and ahead of consents and acceptance of plans. It's not right that Residents parts of the subdivision consent are being made impossible due to Council failures to enforce the conditions of the consent and the Developers intent to not to comply with it.

- **2011 December 2 – email from Councils Bruce Craig to Developer**, cc including to Councils Brian Norton, Roy Eastman [relevant passages – emphasis to assist]: -

    - *Sorry to voice my frustrations at yesterdays meeting on the stormwater issues.*
    - *This development has caused a few hick-ups with the construction moving ahead of acceptance of plans.*

- **2011 December 9 – email from Councils Bruce Craig to Developer**, cc including to CCC's Brian Norton, Roy Eastman, Vil Vabulous [relevant passages – with emphasis]:-

    - *We still have grave concerns as the detail submitted for the overall concept is still very sparse.*
    - *Please supply information to give us confidence that the conditions of the discharge Consent are being meet.*
    - *Your plan DU-11.2 also does not show all the land contained in the consent RMA92009135/2A. Part of the land in stage 20 is not shown and all the land in stages 19 and 21 is not shown in the Ultimate stormwater catchment plan.*

Note: "***Stage 19, 20+***" are the Residents parts, and Access Lot 612/22 Road, required by the Subdivision Consent, and of which are **protected by their Covenant's**.

- *PS Justin Prain is pushing for the sealing of the Roads. This will not happen until the Stormwater is resolved and we have confidence in the design submitted. The discharge Consent with Ecan is the Councils Upper Heathcote Consent and any non - compliances will result in Council being issued with the notice in the first instance.*

Note: The Council ***did*** permit the sealing of the roads in 2012, yet the Stormwater issues are still not resolved in 2017. The works are not compliant so as to enable a s224 to issue; roads need digging up, and pipes and stormwater basins upsized, all as confirmed by Council staff and lawyer **2016 October 10** [see below].

- **2011 December 9 – email Councils Brian *Norton* stormwater engineer** adding to the above to the Developer:
    - *Your design report on Page 3 says: "...the system as a whole able to accommodate the 50-year event", however later on Page 7 it says: "During the 50 year storm event it is estimated that there will be overflows from the live storage basins of up to 75l/s" Where is this 75l/s going? It cannot be discharged into the waterway unless you undertake a scheme for utilising the waterway for storage...it must go to ground soakage on the site.*

Note: 5½ years later; Councils variation consents still don't resolve the above. The result being non-compliance with the Subdivision Consent; meaning no s224 certificate can issue. Despite this, staff are indicating they will illegally approve a s224 anyway. Further, the s223 certificate issued by Council does not conform with the subdivision consent [see more below on **s223** and **s224 RMA non-compliances**].

- **2012 February 16 – email Paul Lowe** (a fresh external engineer) advised Councils Sean Ward that *easements would be required over some of the Developers consented lots* to comply with stormwater needs and Conditions for a s224 certificate to issue for stage 1, including that: -
    - *I note that the original consent had a condition that specifically allowed this process to occur however it seems to have disappeared from the amended version."*

  Note: in relation to this "*disappearance*" of the stormwater Condition [9.5];
    - it is unexplained and should not have occurred;
    - the Developers lower lying land in Condition 9.5, ***is*** required for stormwater;
    - Council staff and the Developer are responsible for this "***disappearance***" and stormwater non-compliances of the subdivision consent, and for any loses to the Residents in relation to it and their ***legal interests*** and their ***parts*** of the subdivision consent (estimated to be combined around $15 million).

- **2012 February 22 – email Councils Sean Ward responding to Paul Lowe above:-**
    - *… we are not prepared to provide acceptance …* (of easements over the Developers lots in favour of the Council that ***are*** required for stormwater)

    - *I believe the original approval did include a provision requiring registration of an easement over consented lots to ensure their continued availability for stormmwater purposes should that be required but as you note that is not carried through into the current decision (Variation 2).*

  Note: This Council response makes no sense. This Developers land, that was protected by Condition 9.5 that was "***not carried through***", ***is*** required for compliance with the Subdivision Consent Conditions and for a s224 certificate to issue – why then are Council staff: -
    - ***refusing*** to require compliance with the Subdivision Consent?
    - ***refusing*** to reinstate known essential Conditions that "***disappeared***"?
        - see **s128 RMA** below which allows the Council to reinstate this;
    - planning on illegally issuing a s224 despite this non-compliance of not ensuring by engineering design that there is adequate stormwater provision?

  Note: Conditions of a consent **must** "***carry through***" in any variation unless there is an application to cancel them accompanied by an assessment of environmental effects (AEE), and affected parties notified;
    - **No** application or AEE was made or provided;
    - Residents gravely affected by this "***disappearance***" were **not** notified;
    - the "***disappearance***" of Condition 9.5 is akin to the "***disappearance***" of a consent condition that permitted you to build through the recession plane;
    - the "***disappearance***" was not lawful (or at best based on wrong information);
        - see **s128 RMA** below permitting the Council to remedy this problem;

- **2012 August 3 – Council's stormwater engineer Brian Norton email advising** :-
    - *The design of the system has been complicated by the depth of the stream culverts that Noble have installed without engineering*

approval. They went in deeper than we wanted and are round rather that box culverts, despite Council having provided our preferred design to the applicants and their consultants on multiple occasions. Because of this we are having to rehash our design. … Noble have left the problem to the Council to solve.

Five years later and ***Council has still not solved this problem*** *and* ***refuse to discuss it with the affected Residents***, Non-compliance continues so a s224 certificate cannot legally issue, albeit Council staff have flagged they are going to issue one anyway.

- **2016 October 10 – Council Concede They've Permitted Non-complying Works;** Vil Vabulous, John Higgins, Lawyer Brent Pizzey all concede Council erroneously permitted the Developer to install undersized stormwater infrastructure that does not comply with the Subdivision Consent. Councils 10/10/2016 minutes include: -
    - *"Vil said that for Stage 1 to be issued with Section 224 certification they would have to confirm that sufficient capacity was available in the built infrastructure … Vil said Noble are aware that upsizing of the pipe laid to Lot 22 (access lot) will have to occur."*

Note: The fact is NO pipe has been laid to Lot 22 and NO capacity has been made for the required Access Lot 22 roading and Residents parts of the subdivision consent. Council staff have since refused to meet Residents despite that they know what they have erroneously permitted to be constructed without engineering proof of design makes their parts of the subdivision impossible. Councils refusal to enforce the conditions of the consent (as required by law) will make their subdivisions impossible. Infinity's request and Council staffs' recommendation to Councillors to circumvents our Covenant protection by way of a "*not normal*" dedication process, that does not comply with the RMA and subdivision consent, is just another way to cheat us of our parts in the subdivision consent.

23. **s128 RMA Entitles/Requires Council to Review Consent Conditions** (emphasis added): -

128 Circumstances when consent conditions can be reviewed

(1) A consent authority may, in accordance with section 129, serve notice on a consent holder of its intention to review the conditions of a resource consent—

> (c) if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

Note: Its irrefutable that the applicant ***did*** provide inaccuracies to the consent authority, particularly in relation to there being adequate stormwater provision to satisfy the conditions of the consent when there clearly is ***not***. Under s128 (c) it is therefore "***necessary to apply more appropriate conditions***."

The applicant in relation to these wrong decisions was and is the Consent Holder, and which Infinity has ***chosen*** to become. Infinity has ***chosen*** to take the benefits of the subdivision consent and therefore also the ***burdens*** of it.

Infinity Yaldhurst Ltd Gripes and any Threats to the Christchurch City Council: -

24. Any gripes that Infinity has, or threats it makes in relation to these erroneous decisions and consents, cannot be aimed at the Council as **s128 RMA** *entitles and/or requires* the Council to "*review the conditions of a resource consent*" and "*to apply more appropriate conditions*" where "*information made available to the consent authority*" "*contained inaccuracies*" which clearly they did and through Infinity continue to do so.

25. Infinity instead needs to look into its own due diligence (albeit it did know these conditions and non-compliances existed when it accepted the subdivision) and/or look toward the Noble Joint Venture that passed the subdivision to the Infinity Joint Venture, and of which the common Joint Venture partner Delta is still the major shareholder of the subdivision.

26. Delta was in possession of the "Riley Stormwater Review" [available] that revealed these non-compliances well in advance of passing the subdivision to itself and Infinity in the new Joint Venture partnership. Delta (as 67.5% owner of the illegally split Noble first mortgage) misused mortgagee powers to defeat Residents protective caveats and to attempt to cheat them of their prior known 2002-2003 interests (to cheat a person of a known interest is fraud). Delta and its Noble Joint Venture mortgagee partner Gold Band Finance Ltd, did not act in good faith as required by law in passing the subdivision to the Infinity Joint Venture, in that it did not provide for or protect the prior known 2002-2003 interests in order of priority.

SPINE ROAD DEDICATION = GIANT CUL-DE-SAC;

27. The Council staff report and recommendation does not include the section of the Spine Road Lot that connects to Yaldhurst Road (State Highway); voting for the dedication as staff recommends results in a giant cul-de-sac;

28. Further, even if the Lot that connects the Spine Road to Yaldhurst Road was included in the staff report dedication recommendation, the result would still be a giant cul-de-sac.
    - NZTA advised [email 23 June] it will not allow the intersection to open where it is for a privately owned dedicated road with covenants on it (which is what it will remain);

29. **The Council Staff Report ASSUMES Infinity will be successful** in removing the Residents Covenants, however they have misrepresented what the covenants protect and what is required for them to be "***Extinguished***" [see **Covenant itself, 1.3.2**, highlighted above];

30. **The Staff Report Does NOT Consider the Scenario Where Infinity Fails in its bid to cheat the Residents of their Covenant Protection for their required Access Lot road**: -
    - a permanent giant cul-de-sac that the Elected Council would have voted for; and so may be liable, embarrassed, and compelled to remedy it at whatever cost??;

- Infinity could gradually sell its parts of the subdivision over time regardless that it connects only through the Enterprise and Delamain subdivisions and ends in a cul-de-sac within its own subdivision.
    - Noble had attempted this exact thing prior its JV passing it to the Infinity JV;
- The giant cul-de-sac allows Infinity to develop and sell its land, including that that was protected by the "***disappeared***" stormwater Condition 9.5 and which is required for the Residents parts of the subdivision including the Access Lot 22/612 road;
- Without this stormwater provision for the Access Lot 22/612 road, it cannot be formed and vested so as to trigger the "***terms of extinguishment***" of the Covenant;
- Without the Covenant removed, NZTA has advised it won't allow the cul-de-sac to open onto Yaldhurst Road, period;

31. **Further, for the Proposed Spine Road Intersection to Open - it Requires that the Residents Valuable Sole Access Right to Yaldhurst Road be Taken From Them and Given to the Developer.** (This is not mentioned in the staff report either).
    - The City Plan allows for the Spine Road to be in the same location as the Residents Access Lot (min. 600m from SH1). Residents have not agreed to what is proposed in relation to their land rights and would be foolish to do so in light of the Developers and Councils actions and inactions, and now recommendations to Councillors, that have or will make the Residents parts of the Subdivision Consent impossible.

    - Council interference with the Residents commercial and legal rights and interests, **and now our Covenant protection**, we Residents consider is morally if not criminally wrong; particularly when the Consent Holder the Council is proposing "***giving***" our valuable access and other rights to (Infinity) is: -

        - profiting hugely by not complying with the Subdivision Consent and making the residents part of the Subdivision Consent impossible;

        - refusing to comply with the conditions of the Subdivision Consent on which they are relying on to take the Residents sole access right; and where

        - the Council that has Consented this Spine Road, (and denied the Residents their legal rights as affected parties in relation to it) are not only intending taking the Residents valuable sole access and stormwater interests in the Subdivision Consent off them, but have ***failed*** and are ***refusing*** to enforce the Conditions of the Consent that requires the Residents parts of it to be included and provided for;

32. **The Residents Lands are Essential and Required Parts of the Subdivision Consent, but they have not given their essential landowners consent required for the Subdivision Consent to be effected;**
    - It is well recited in RMA terms that "*a Consent Holder can attain a Subdivision Consent that requires also other peoples land, but they cannot effect that Subdivision Consent without those landowners consents*";

- the Resident landowners under these circumstances would be foolish to give their landowners consent when their parts of the Subdivision Consent are knowingly and intentionally been made impossible by the Developer and Council staff, [as is irrefutably the case as shown herein and over the years, and in particular with stormwater design and construction non-compliances];

- As above, a Residents group made Infinity a generous offer that more than just removed their protective Covenants, but Infinity turned it down;

- It's not right that Infinity and Council staff have colluded to circumvent our protection and take interests from us, and of which Infinity has turned down generous and fair commercial offers for.

- It must also be wrong for Council staff to only seek Infinity's 2016 retrospective legal opinion about what the 2003 Covenants are for (as their 2 December 2016 memo revealed), and not request from the Residents what their legal advice is about what their 2003 Covenants were and are registered to protect. Surely the Local Government Act does not permit this one-sided bias?

33. **If the Council Interferes With and/or Circumvents Land Rights and/or our Covenant Protection of These Interests: -**
    - it would cost multiple owners the loss of around 32 family sized consented sections along the East West leg of the required Access Lot 612/22 road, plus the loss of the road and services, plus the loss of development profits from quality housing on these lost 32 sections;

    - this is estimated to be a combined loss to numerous private citizens of around $15 million, a loss of the wellbeing and enjoyment of life to their families, a loss of high quality sections and housing to Christchurch, and a loss of rates to the Council;

    - Council supporting Infinity to circumvent our Covenant protection is all the more unjust when considering this land was enticed off the Residents by the Developer (now named Infinity) in return for their inclusion in the Further Subdivision which the Developer had already designed, and then and now is constructing them out of.

34. **s223 RMA Certificate:- what Council Staff Appear to Have Approved Does Not Conform**

    223 Approval of survey plan by territorial authority

    (2) a territorial authority shall approve a survey plan submitted to it under subsection (1) if it is satisfied that,

    (a) where a subdivision consent has been obtained, the survey plan conforms with the subdivision consent;

    - However, the survey plan and purported s223 certificate Residents have attained does ***not*** conform with the subdivision consent;
        - large tracts of land, including the Residents part of the subdivision consent and other land consented for stormwater, is not on the survey plan;

- **Case Law**: *[Wilbow Corporation Ltd v North Shore City Council – Fisher J]* at[39] made clear "*conformity*" with the subdivision consent as "*viewed as a whole*" is required:-

    - *The role of the territorial authority under that provision (s223 (2)) is purely to make a comparison between the submitted survey plan and the original subdivision consent. There is no discretion. The territorial authority must approve the survey plan if it conforms but not otherwise. For this purpose the subdivision consent comprises the terms, conditions, and annexed scheme plan, viewed as a whole. If the submitted survey plan does not conform, the inconsistency can not be cured by an undertaking or bond pursuant to which the owner promises to carry out further activities in the future."*

35. **s224 RMA Certificate: what Council Staff Purport they Will Approve Does Not Comply**

    224 Restrictions upon deposit of survey plan

    No survey plan shall be deposited for the purposes of section 11(1)(a)(i) or (iii) unless—

    (c) there is lodged with the Registrar-General of Land a certificate signed by the chief executive or other authorised officer of the territorial authority stating that it has approved the survey plan under section 223 (which approval states the date of the approval), and all or any of the conditions of the subdivision consent have been complied with to the satisfaction of the territorial authority …"

- **Two major problems appear to rise here**:-
    - The purported s223 certificate and survey plan does not conform with the subdivision consent [as above],
        - therefore no s224 could, or should, issue in relation to it; and
    - conditions of the subdivision consent have not been complied with, including: -
        - engineering design to show adequate stormwater provision has been made;
        - stormwater pipes and basins are undersized and need upsizing
        - [all of which is known by Council staff, shown **2016 October 10** above]

36. **s223 and s224 RMA: Continuation of the Above Errors / Failures Abets the Developer and Council Staff to Eliminate the Residents Parts of the Subdivision Consent;**

- Council continuing with the above errors may cover up past Council mistakes and abet the developer with huge profits in not having to comply with the conditions of the subdivision consent and making the Residents parts of it impossible, however this cannot be legal and certainly not moral;

- where Council staff has erred as above, the Council should make it right, not continue with the errors to save face or threats from the developer/consent holder that has been the intentional instigator of the "errors"; particularly where not making it right and remedying the errors causes grave losses to the Residents whose only error was transferring their land to the developer in good faith ahead of the consideration of roading and services for their land, and in reliance on the Council to enforce the conditions of the Consent as it is required by law to do.

- The Residents legal interests in the subdivision consent is something that Council staff, Infinity, and Infinitys' Joint Venture associates, including Delta, have at all material times known of!

37. **Infinity Yaldhurst (2016) Ltd**
    - is no more an "innocent party" than its predecessor Noble Investments Ltd is in this Further Subdivision scam that has cost Residents life savings and years of their lives.

38. **All Residents are asking for**
    - is that Councillors and planning staff meet with us to resolve the known stormwater and related issues that make our parts of the Subdivision Consent impossible.
    - The Covenants that Council staffs' recommendation for private road dedication would circumvent, protect not only the Access Lot 22 roading but also the stormwater provision required for it. Simply put: -
        - the vesting of the Access Lot 22 Road requires stormwater basins and piping infrastructure on lower lying Infinity Land (always has). Residents have legal rights to this through the subdivision consent **s134 RMA** (and their 2002-2003 ASAP's);
        - Infinity has always known this, as did the Noble JV that passed the property to Infinity JV (of which JV partner Delta is still a major JV partner in);
        - Council staff since 2007 [as evidenced above] has known that the lower lying land that the Resident Landowners were to transfer to the Consent Holder/Developer in consideration for roading, services and stormwater provisions at the Developer/Consent Holders cost, was "***part of the buy back" agreement***";
        - evidence we have reveals; that the uphill basins Council staff consented by variation west of the Subdivision Consent are not possible; that staff and Infinity have known this; that stormwater conditions for compliance are required to be reinstated and provided over Infinitys' lower lying land;
        - yet, Council staff refuse to meet with us to resolve these issues.

Failing the meeting we are respectfully asking for, the Resident Lot 22 Landowner Stakeholders in the Subdivision Consent will be left with no other option than referring this matter to the Serious Fraud Office and pursuing damages for the Councils part in the loss of their estimated combined $15million subdivision developments.

[ends – 4 July 2017]

Review and Summary by Colin Stokes and on behalf of other affected Residents
021 2200622