IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CIV-2026-412-30
[2026] NZHC 2654

UNDER	the Property Law Act 2007
IN THE MATTER	of an application under s 317 of the Act
BETWEEN	GLENOIR LP Applicant
AND	MARY LYNETTE ANDREWS AND NEIL ROBERT ANDREWS First Respondents
AND	DOUGLAS RUSSELL STANLEY, EMMA JANE STANLEY AND RACHAEL LOUISE TAYLOR Second Respondents
AND	CRAIG VAUGHN DAVIS AND TANIA MAREE DAVIS Third Respondents

(Continued over …)

Hearing: On the papers

Appearances: B B Gresson and E M A Downey for Applicant

Judgment: 2 September 2026

JUDGMENT OF EATON J

This judgment was delivered by me on …….. at ……
pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date:

AND	NIGEL JAMES MCCLYMONT AND RAEWYN JENNIFER MCCLYMONT Fourth Respondents
AND	GREGORY MARK DAVIS, SHIRLEY BRENDA DAVIS AND TARBERT TRUSTEES (2015) LIMITED Fifth Respondents
AND	AIDAN PAUL HELM, PHILIPPA JANE HELM AND MCC NOMINEES 2015 LIMITED Sixth Respondents
AND	CENTRAL OTAGO DISTRICT COUNCIL Seventh Respondent

[1] Glenoir LP (Glenoir) seeks an order under s 317 of the Property Law Act 2007 (the Act) to modify a covenant on its property at 155 Dunstan Road, Alexandra so as to remove it from burdening their property.

[2] The application proceeds by way of originating application with leave.[1]

[3] On receipt of the application, the Court directed that it be served on all seven respondents.[2] The respondents did not file notices of opposition or appearances within the 10 working days provided for under r 7.24(1)(a) of the High Court Rules 2016.

[4] The proceeding was then set down to be heard on 2 September 2026, or otherwise dealt with on the papers. Having reviewed the submissions filed by Mr Gresson and Ms Downey for Glenoir, I confirmed I was content to determine the application on the papers. I am satisfied the application should be granted for the following reasons.

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1 *Glenoir LP v Andrews* HC Dunedin CIV-2026-412-30, 14 May 2026 [minute of Lester AJ].
2 *Glenoir LP v Andrews* HC Dunedin CIV-2026-412-30, 9 June 2026 [minute of Gambrill AJ].

The Covenant

[5] Covenant 7946756.9 was registered on 22 August 2008 (the Covenant). The grantors were Douglas Russell Stanley and Mary-Anne Stanley (the Stanleys). At that time zoning permitted rural residential development at a low density. Subdivision was limited to an average allotment size of two hectares. In 2022, the zoning was changed to allow for low density suburban residential development at a density of one allotment per 1,500 square metres.

[6] The Covenant burdens the properties at 124, 127, 129 and 130 Gilligans Gully Road and 149A, 149B and 155 Dunstan Road Alexandra, with the following conditions:

(a) No dwelling greater than 10 square metres can be built out of second-hand materials without the permission of the Stanleys, as trustees of the Gilligans Terrace Trust.

(b) Dwellings shall not protrude onto the skyline when viewed from the road or public place.

(c) The roofs and exteriors of buildings are to be in a non-reflective colour in the range of browns, greens and greys.

(d) No temporary residential accommodation is to be placed on lots without consent from the Stanleys and the construction of any dwelling and issuance of a code and compliance certificate must be completed within 24 months of commencement.

(e) The Stanleys do not have to contribute towards the erection or repair of boundary fences.

(f) Lot owners cannot lodge any submission against a planning proposal by the Stanleys (this is provided any changes to current platforms maintain a minimum separation of 50 metres from each other and a

minimum separation distance from any dwelling or boundary fence of 10 metres).

(g) At the time a dwelling is erected, domestic water and firefighting storage is to be provided by a standard 30,000 litre tank on each lot. Of this total capacity a minimum of 20,000 litres shall be maintained at all times as a static firefighting reserve. Alternatively, an 11,000-litre firefighting reserve is to be made available for each dwelling in association with a domestic sprinkler system installed in each dwelling to an approved standard. A firefighting connection is to be located within 90 metres of any proposed building on the site. Connections are to be compatible with Fire and Emergency New Zealand (FENZ).

(h) FENZ can grant permission for alternatives to the firefighting water provisions.

(i) Water tanks on the Stanleys' property are not to be within 50 metres of their rear neighbour.

(j) Wastewater systems must be compliant.

(k) A copy of the design and designer producer statements are to be supplied to the Chief Executive of the Central Otago District Council (Council) before work on dwellings can begin.

(l) The designer of the on-site wastewater disposal system shall supervise the installation and construction of the system and shall provide a construction producer statement to the Chief Executive of the Council.

(m) An operations and maintenance manual for the on-site system is also to be supplied to the Chief Executive of the Council.

(n) Disposal areas shall be located such that the minimum separation is, in all instances, greater than 50 metres from any watercourse or water supply.

(o) Upon completion of construction of a dwelling, the Stanleys are to be advised in writing that conditions at (j), (k), (l), (m) and (n) have been adhered to.

Application

[7] Glenoir, a land development entity, seeks an order to modify the covenant so as to remove it from burdening 155 Dunstan Road.

[8] The Covenant controls development on the properties it burdens and Glenoir says that it ought to be changed in line with the character of the neighbourhood. Since the Covenant was registered there has been considerable residential development in the area and building and development restrictions and regulations relating to the property have been changed including allowing smaller lot sizes and connecting it to reticulated Council services. Glenoir says the Covenant ought to be modified to allow the land to be used in a different, reasonable way which is currently prohibited. Finally, Glenoir says the proposed modification or extinguishment will not substantially injure any person entitled.

[9] The application is supported by an affidavit from Douglas Stanley in which he deposes that he does not consider there to be any detriment to him or his property if the Covenant is removed. It is also supported by planner Craig Alan Barr who deposes that, from a planning perspective, the removal of the Covenant from 155 Dunstan Road would have no material effects on the other parties to the Covenant.

[10] The application originally sought costs. On the basis that the seventh respondent does not oppose the application, Glenoir agreed to bear its own costs in the proceeding.

Legal principles

[11] The two-stage approach to applications under s 317 of the Act is well settled.[3] The first question is whether the statutory grounds for modification or extinguishment

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[3] *Synlait Milk Limited v New Zealand Industrial Park Limited* [2020] NZSC 157, [2020] 1 NZLR 657 [*Synlait Milk*] at [67] and [90].

are satisfied.[4] It is only if one or more of the grounds are made out that there is jurisdiction to make the order. These are disjunctive grounds; only one ground must be made out to establish jurisdiction. The burden lies on the applicants to show that reason exists for any orders sought. It is not for the benefiting property owners to show a need for continuation of the Covenant.

[12] The second stage is to determine whether the Court should exercise its discretion to grant the modification or extinguish the covenant.[5] This requires consideration of all relevant factors, including the power to award compensation under s 317(2).[6] If the Court finds one or more of the grounds in s 317(1)(a) is engaged, it will have found that the covenant ought to be modified or extinguished (wholly or in part). This means that there is an overlap in the considerations that might apply at the second stage when the Court is considering whether to exercise its discretion in favour of the applicant.[7]

[13] The particular statutory grounds advanced by Glenoir are:

> **317 Court may modify or extinguish easement or covenant**
>
> (1) …
>
> (a) the easement or covenant ought to be modified or extinguished (wholly or in part) because of a change since its creation in all or any of the following:
>
> (i) the nature or extent of the use being made of the benefited land, the burdened land, or both:
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> (ii) the character of the neighbourhood:
>
> (iii) any other circumstance the court considers relevant;
>
> or
>
> (b) the continuation in force of the easement or covenant in its existing form would impede the reasonable use of the burdened land in a different way, or to a different extent, from that which could reasonably have been foreseen by the original parties to the easement or covenant at the time of its creation; or

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4 At [90].
5 At [90].
6 At [90].
7 *Reynolds v Parklands Properties Ltd* [2021] NZCA 394, (2021) 22 NZCPR 516 at [29] per Venning J citing *Synlait Milk* at [67].

…

(d) the proposed modification or extinguishment will not substantially injure any person entitled; or

…

Analysis

Has there been a change to the character of the neighbourhood?

[14] When considering changes to the neighbourhood, the focus is not on the fact of the change but rather on its impact on the benefit or burden flowing from the covenant.[8] Planning changes are a relevant, but not decisive factor in this consideration.[9]

[15] At the time the Covenant was created, 2008, all the burdened properties were zoned as rural residential under the Council's Operative District Plan. This zoning permitted rural residential development at a low density. Subdivision was limited to an average allotment size of two hectares.

[16] In 2022, the Council changed its Operative District Plan and 155 Dunstan Road was rezoned to a Large Lot Residential Zone. That zoning allows for low density suburban residential development at a density of one allotment per 1,500 square metres.

[17] In 2025, resource consent was granted to subdivide Glenoir's property into 28 residential lots. Mr Barr's evidence is that from a planning perspective, that consent now forms part of the environment within which development on the property may occur.

[18] Taken together, these developments represent a change in the character of the neighbourhood. It is one that increases the burden on the burdened land, because despite it now not being land intended for rural residential use, it is still restricted by conditions aimed at that use. The Covenant's restrictions would impede Glenoir's

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8 *Aztek Projects Ltd v Matthews* [2024] NZHC 1293 at [27], citing *Synlait Milk*, above n 3, at [168].
9 *Synlait Milk*, above n 3, at [151].

development of its property in accordance with the planning environment and its resource consent. The continued application of the Covenant and its restrictions would therefore impede the reasonable use of Glenoir's property.

[19] I am satisfied the threshold ground under s 317(1)(a)(ii) is made out and jurisdiction is established. For completeness, I consider the remaining grounds contended for in the application.

Will the Covenant impede the reasonable use of the burdened land?

[20] The Supreme Court in *Synlait Milk Ltd v New Zealand Industrial Park Ltd* held that changes to the reasonable use of the land is a relevant factor in assessing the nature and extent of the impediment.[10] A change in zoning may be relevant in assessing the change in the nature or extent of the impediment.[11] Here, the zoning has changed and the Covenant now impedes the reasonable use of the land in a way, and to an extent that could not reasonably have been foreseen when the Covenant was created, for largely the same reasons as why the character of the neighbourhood has changed.

Will there be no substantial injury to the benefiting owners if the Covenant is modified?

[21] The inquiry under s 317(1)(d) focuses on whether the extinguishment or modification of the Covenant will "substantially injure" the owner or owners of the benefited land. The Court must be satisfied that it will not do so.[12] To assess substantial injury the Court must compare the position of the owner of the benefited land with the covenant in place with the position if the covenant is modified or extinguished.[13]

[22] I am satisfied that there will be no substantial injury to the benefitting owners if the Covenant is modified. Mr Barr's expert evidence is that removal of the Covenant from Glenoir's property would have no material effect on the other parties to the Covenant. I accept that evidence. Further, some of the conditions of the Covenant are personal to the Stanleys, for instance, the Stanleys do not have to pay for the

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10 *Synlait Milk*, above n 2, at [161].
11 At [161].
12 At [103].
13 At [106].

maintenance of boundary fences, Douglas Stanley has sworn an affidavit supporting the application and affirming that neither he nor his property will suffer any detriment.

Stage two—should discretion be exercised?

[23] In considering whether to exercise the discretion to make the order sought I observe that I am satisfied that Glenoir has comfortably established grounds for the application. Further, I am mindful that the application is unopposed, indeed supported by a grantor of the Covenant.

Result

[24] The application is granted.

[25] I make the following order:

(a) Land covenant instrument number 7946756.9, dated 22 August 2008, is removed from the title of 155 Dunstan Road, being Lot 100 Deposited Plan 619917 contained in record of title 1254901.

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Eaton J

Solicitors:
Todd Walker, Queenstown