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25 August 2016

Councillor David East
North Beach
Christchurch 8083

Dear David

This letter is a response to your approach to me in my former role as Chair of the Independent Hearings Panel (IHP) that delivered the new District Plan for Christchurch under the relevant legislation. As I understand it, you have approached me in your capacity as a councillor, personally, and on behalf of a group of concerned citizens, some of whom have banded together in an organisation known as the Christchurch Coastal Residents United.

The matter arose in the course of the Stage 3 hearings of the IHP into Chapter 5: Natural Hazards. It specifically arose during the Panel's consideration of the High Flood Hazard Management Areas (HFHMA) and whether the restrictions on the use, subdivision and development of residential land under the HFHMA were too onerous. It is dealt with by the panel at paragraph 93 of their decision and following. [1]

Generally the land that you and those you are speaking for are concerned with surrounds the estuary in Brighton and Redcliffs. It falls within an area shown on the planning maps as the Residential Unit Overlay (RUO).

I make it clear that I did not chair or sit on the panel that dealt with this matter. It was chaired by my deputy, Environment Court Judge Hassan. I have discussed this matter with Judge Hassan, and the views I express in this letter are also his.

The matter was raised in a minute of Judge Hassan dated 25 February 2016. [2] This was a minute giving directions for supplementary information sought by the Panel in the context of the HFHMA. The relevant part of the minute reads:

> **Mapping of further sea level rise scenarios and additional rule drafting**
>
> [3] These matters pertain to our consideration of the ml)st appropriate provisions within High Flooding Hazard Management reasonable ('HFHMA'). That is in view of the associated proposed restrictions on the subdivision, use and development of land within the HFHMA. The Notified Proposal provides for only non-complying activity classification within the HFHMA (under proposed rule 5.8.8.2) for the following:

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1 Decision 53-Chapter 5: Natural Hazards-Stage 3, 3 November 2016.
2 Minute re further mapping in regard to sea level rise flood ponding management areas pennitted activities in rural areas.

(a) Any subdivision which creates an additional vacant allotment or allotments within a HFHMA (NC I); and

(b) New buildings within a HFHMA (NC2).

[4] The reach of those restrictions is significant. In addition to impacting potential for intensification and development, it would also impose significant constraint on capacity to build houses on vacant lots, or even replacement houses for earthquake-damaged ones (for which existing use rights could also have expired where a house has been demolished some years ago). The uncontested evidence from the Council's economist, Mr Butcher, identifies significant cost consequences for impacted landowners. We have also heard several representations, and some evidence, from or on behalf of impacted landowners.

[5] Sections 32 and 32AA, RMA direct that we consider alternative planning approaches on a basis that assesses benefits and costs and also "the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions". Our evaluation of those matters needs to take careful and due account of any relevant directions given by objectives and policies of the NZCPS and CRPS in regard to natural hazard risks (including, in this context, the influence of climate change including sea level rise). That is, for instance, in the sense that we must give effect to the NZCPS (in regard to the coastal environment) and to the CRPS.

[6] Therefore, we intend to make directions to require from the Council the following:

(a) A new set of HFHMA overlay maps showing the different HFHMA boundaries that would result from each of the following assumptions concerning sea level rise by 2115:

(i) A sea level rise of I metre (i.e. as is presently assumed for the Notified Proposars overlay maps);

(ii) A sea level rise of0.5 metres (adjusted as required to 2115); and

(iii) A sea level rise of0 metres;

(b) A set of draft provisions such as to apply to the construction of any new or replacement dwelling or addition to a dwelling on residentially zoned land within the HFHMA to the effect of:

(i) Classifying the activity as a restricted discretionary activity;

(ii) Specifying appropriate assessment matters (taking into consideration what we set out below);

(iii) Specifying any necessary associated policy provIsIon for this activity class, i.e. to the extent that there is not already sufficient policy provision.

[7] We make clear that we ask for this information simply to help our consideration of alternative options. In that regard, we arc simply calling on the Council to provide us with a mapping and drft ing service. In the supplementary evidence or memorandum of counsel that the Council files in providing this information, it can express any riders it wishes to concerning its position on the information provided (and we will assume the Council's position is unchanged, unless otherwise stated).

[8] By way of brief explanation for why we seek this information, we make the following preliminary observations (subject to what we may further consider, in light of closing submissions):

(a) the Higher Order Documents, and particularly the NZCPS and CRPS, would not appear to dictate an approach of avoidance for all new buildings in HFHMA, but rather to also allow for risk mitigation (depending, of course, on what is adjudged proportionate and the most appropriate

response, in terms of the matters in ss 32 and 32AA). In particular, we refer to CRPS Policy 11.3.1 (as recently amended).

(b) We consider caution is needed when applying the CRPS Policy I 1.3.1 concerning "high hazard areas", especially where there are a range of different sources of potential hazard being accounted for with varying degrees of "risk to life", including potentially no material risk. For instance if the only or predominant risk is that arising from sea level rise over the next 100 years, actual risk to life could be relatively minimal, depending on the extent of sea level rise and associated inundation (as opposed to where there is also a 0.5% or higher AEP flood event risk). The various stated exceptions to Policy 11.3.1 would appear to make it relevant to try to account for those variability, particularly where we find that the single or predominant risk source is not of a characters would likely result in loss of life or serious injury in the Herald period to 2115. Related to that, the definition of "high hazard areas", for the purpose of Policy 11.3.1, does not assume that any degree of sea level rise through climate change or other influences is significant. Rather, the definition is of "land subject to sea water inundation (excluding tsunami) over the next 100 years". What constitutes "inundation" is not defined. Does it connote a degree of flooding such as land being covered, or something less (e.g. that stormwater and drain infrastructure would fail or require upgrading over time)? Also related, while we must "take into account" projections on the effects or climate change (including sea level rise) when determining high hazard areas, that duty allows us discretionary judgment on the weight we give to those projects, including, for the purposes of our consideration of alternatives under 32 and 32AA.

(c) Relevant to these matters, we note that the explanation to CRPS Policy 11.3. I includes the following statements:

'Development of land for most residential, industrial or commercial purposes is not sustainable in high hazard areas where natural events are most likely to occur. However, the policy acknowledges that, while potentially still adversely affected by natural hazard events, there may be some development that is appropriate in high hazard areas. Development that meets the criteria (I) to (4) will generally be low-intensity use such as forestry, farming, or recreational parks. These uses are less likely to suffer significant damage, loss of life or require significant public expenditure on infrastructure remediation due to damage from a natural hazard event.

... The policy acknowledges that within greater Christchurch significant investment and resources may exist within high hazard areas together with a greater consequence to life and property from the adverse effects of natural hazards. Climate change including Sea Level Rise is likely to exacerbate these adverse effects over time. Whether it is appropriate to avoid further development in high hazard areas including associated infrastructure and services will be guided by a number of factors. The policy also recognises the provisions of the New Zealand Coastal Policy Statement 20 IO.'

(d) Our request for mapping on the assumption of a 0.5m sea level rise is made in light of the reference in the explanatory text to Issue 11.1.5 of the CRPS to a planning for the effects of this level of sea level rise (and assessing effects of a 0.8m rise). We acknowledge that it states "to the year 2100", whereas the direction in Policy 11.3.1 refers to "over the next I00 years". As such, we consider adjustment to 2115 itself appropriate. our request is also made in view of similar observations in the most recent Ministry for the Environment ('MfE') guideline (Exhibit C) and a November 2015 report by the parliamentary Commissioner for the Environment ('PCE') (Exhibit B). However, we appreciate that neither the MfE guideline nor the PCE report constitutes policy or other statutory direction.

(e) It is important for us to know if the sole or predominant determiner of land being within the 1-IFHMA is the assumption, based on projections, that it would be inundated by sea level rise. For that land, it is also important that we understand which proportion would be affected if the assumption was

for a 0.5m rise (adjusted as required) to 2115, as opposed to an assumption of a 0.8 metre rise (adjusted to Im) by 2115. That is in the sense that there a're relative likelihoods or probabilities in each assumption (being in mind, also, that the RMA defines "effect" to encompass low probability but high potential impact potential effects). Therefore, the infonnation we seek pertains to matters we must determine:

(i) the geographic extent of the HFHMA; and

(ii) the restrictions on the subdivision, use and development of land to be applied within HFHMA.

(t) Our request does not seek or imply that we wish to revisit findings in our previous decisions, nor that we seek any further expert evidence on the matter of climate change, including sea level rise. Rather, as we have emphasised, within the directions given by the Higher Order Documents, we are simply concerned to ensure we can evaluate available planning responses in regard to the HFHMA regime before us at this stage.

[9] We appreciate that we have not asked for the drafting to extend to other classes of new building construction or to subdivision. That does not imply we have reached any view that it should not also extend to a wider range of activities. Whether or not that is appropriate will be a matter we will consider in due course, following closing submissions. However, parties should note that the natural hazard risks for people and communities of Christchurch, and other resource management issues, could well differ for different activities. For instance, we refer to the transcript for discussion on matters concerning intensification and, in relation to that, subdivision. We also refer to the findings on these matters in our Stage I decisions on the natural hazards and residential chapters.

Following a request for an extension of time CCC provided this information. The matter then proceeded to hearing, and whilst reserving its position, it is clear the responsible Council planning officer, Ms Ruth Evans, provided drafting and mapping assistance in her amended brief of evidence.

In relation to policy, Ms Evans suggested amended wording as follows:

In High Flood Hazard Management Areas:

(a) Provide for development for a residential unit on residentially zoned land where appropriate mitigation can be provided that protects people's safety, wellbeing and property; and

(b) In all other cases, avoid subdivision, use or development where it will increase the potential risk to people's safety, wellbeing and property.

It is unnecessary to set it out in detail here, but there was also an appropriate Restricted Discretionary Activity (RDA) rule giving effect to that policy. That rule became part of the final plan.

It is unnecessary to set out in full the Panel's Decision 53 - Chapter 5: Natural Hazards. It is sufficient to set out paragraphs 119 to 122 as follows:

[119] Assessing costs and benefits, on our evidential findings, we find that the Revised Version is unduly onerous. Specifically, in terms of the natural hazard risk in issue, we find no material difference between it and the option of a restricted discretionary activity classification for residential units subject to the matters of discretion that Ms Evans has offered. We find RDA classification would give relatively greater certainty and confidence to both the landowner and the community. Hence, we find it superior on our assessment of costs and benefits.

> [120] On the evidence, we find that the natural hazard matters in issue are all readily capable of being addressed by the Council on a non-notified application basis. As such, we find no material cost to the community, and significant benefit for applicants, in providing for non-notification in the RDA rule. We have modified the rule proposed by Ms Evans to provide for this. We have also made minor drafting consistency changes.
>
> [121] It is important to bear in mind that further subdivision and additional development would still be classified as non-complying, to limit the extent to which new uses might increase the level of risk. But given all the other constraints on these areas, we do not think it is appropriate to add additional planning burdens to those which the landowners already bear.
>
> [122] For those reasons, being satisfied that it is the most appropriate for responding to the Higher Order Documents and achieving related objectives, we have included in the Decision Version the modifications we have described to these rules of the Revised Version. Accompanying these, we have directed the Council to provide to us a related Appendix that depicts, in a map, the Residential Unity Overlay to which the additional RDA rule (including non-notification) applies.

What this section makes clear, confirmed by my discussions with Judge Hassan, is that the Panel concluded that the Revised Version was too onerous on landowners within the RUO. The relief granted was to ensure that the owners of residentially zoned land were given the right to apply to build new residential dwellings subject to meeting the requirements of the relevant RDA. This was to be done on a non-notified basis.

My understanding is that while the RDA rule is included in the plan, the policy, as set out above, was at some stage omitted from the planning provisions that accompanied, and formed part of Decision 53. A number of corrections to these provisions were sought and the panel approved these. No mention was made that the necessary policy was absent from those provisions. Nor was it ever raised by CCC in the numerous minor correction applications made by CCC, and submitters, after the hearings concluded but before the appeal periods expired.

My understanding is that Council staff have taken the view that they have no legal basis to apply the RDA rule within the RUO in the absence of such policy. I find that somewhat surprising given the extremely clear findings of the Panel in Decision 53 as set about above. Such a course has denied land owners within the RUO the relief the IHP clearly granted them. Decision 53 would leave nobody in any doubt as to what the outcome of the hearing into this matter was.

I understand one application has been referred to Independent Commissioners, who interpreted the plan in accordance with Decision 53 and applied the RDA rule referred to. That, of course, is only of assistance to the specific properties involved in the application, and not the wider relief that you seek on behalf of all of those within the RUO.

The jurisdiction of the IHP extended until the final appeal period had run. In that time, at the request of CCC and other parties, the IHP made a large number of minor corrections to the plan. If this matter had been brought to our attention, we would certainly have added the policy back into the plan as a minor correction. I am not sure of the exact timing, but it would appear that the omission of the Policy was known before our jurisdiction ceased.

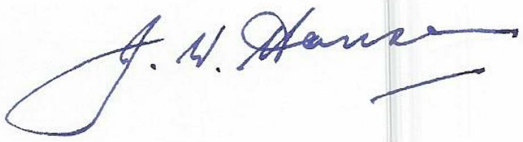
I am aware of the provisions of s 71 of the Greater Christchurch Regeneration Act 2016. It would seem to me that the situation that has arisen in relation to residential

land within the RUO is matter that would fall specifically within the purview of s 71. Given the IHP no longer has any jurisdiction, or even exists; I would strongly support the use of s 71 to reintroduce the policy into the relevant portion of the District Plan. It would correct an obvious oversight.

I do not think s 71 is intended to address small site-specific concerns, but an error of this sort, whatever the cause of it, that affects numerous people, is exactly the type of correction I would envisage the Act being used for. My comments are of course limited to this one specific matter.

If I can be of any further assistance, do not hesitate to contact me. I would also be happy to talk to Minister Wood if it would be of assistance.

Yours sincerely



The Honourable Sir John Hansen, KNZM