



Background

Further to the Public meeting held September 2018, CCRU were mandated by a motion passed, that they represent the community in the effort to develop appropriate Terms of Reference (TOR) for an independent inquiry. The primary purpose being of the said TOR was to investigate how the 'Ruth Evans' draft policy did not find its way into the final text of the IHP Decision, or in the words of the meeting, investigating the circumstance surrounding the "policy omission" and subsequent outfall. Accordingly, CCRU has sought the views of the community in preparing this document. A draft of an earlier version of this CCRU TOR document has been shared with residents Associations (SSRA, SBRA¹) and other coastal residents, and the feedback and comments received incorporated into this document. Over and above the previous district plan process, CCRU view that future approaches need to be more focused on ensuring the disadvantageous position of the community in these types of proceedings is considered and mitigated.

Some things have changed since the initial community meeting, for example since the meeting CCC asked Peter Skelton to undertake an informal audit of the document trail and interview some of those associated with the decision. CCRU were also interviewed for this audit and were told that this would contribute to some of the TOR for the enquiry. CCRU requested to see the resulting TOR or alternatively how and when the TOR were to be set. Although the community do not feel that the Skelton audit forms part of the independent enquiry, it is a useful reference and has shed light on parts of the process.

This enquiry is focused on Decision #53 and its outcome as described, however, the elephant in the room is the way in which the Natural Hazards issue was initially addressed *i.e.* in different stages. It would probably not be wrong to say that this approach meant that the community was significantly disadvantaged: in the sense that very few people were aware of the potential impact of the implications of the methodology followed by the Council until the second stage of the hearings. By which time it was effectively too late, and the only thing submitters (including CCRU) could do was to try and limit the damage. It seems to us that this situation was (or should have been) evident to the Council Planning and Strategy team(s), and that the flooding issue would represent the most significant change (in terms of added restrictions) for the community over and above the previous City Plan.

So, beyond this enquiry, and into the future Natural Hazards chapter processes, particularly in the light of the new guidance on adaptation, a similar closed and staged process as employed last time is unlikely to be acceptable to either the Communities, Council or Government, and hence CCRU make the public offer to CCC of assisting and working with Council to design the processes to be employed.

¹ SBRA provided no response of support or opposition

Terms of Reference Document for Decision 53 policy omission inquiry



Purpose/need for enquiry- Mission statement

- To clarify the Omission issue
- To recognise the sensitivity and importance of the issue to the community
- For CCC to follow through on the undertaking for an independent enquiry
- To restore community faith

Objective- Problem statement

- Broad powers to investigate, clarify and understand the processes and events resulting in the omission of a reference in the District Plan (that many expected to be incorporated in the document) and the subsequent responses to the situation.
- To provide recommendations as to how similar occurrences can be avoided in the future.

Who

- Independent suitably qualified person agreed upon by all parties i.e. CCRU, CCC, Councillor, Community Board members.

Responsibilities/ Accountability

- To CCRU (on behalf of community), CCC, Councillor, Community Board members.

How to be conducted

- Methodology - may need to be defined
- For all parties to determine with the Investigator the questions they want answered
- Looking through the 'lens of reasonableness'
- Timeframes identified
- Who to be consulted (identify specific individuals?) but not limited to.
- Communication - face to face where possible

Scope-Overarching questions

- What led to the original policy not being included in the final decision?
- Why was it not realised pre and post decision?
- What can we learn from this?
- What would need to be changed to prevent this happening in the future
- Do guidelines or a code of conduct need to be established for IHP process where general public are participating in a court like process often against professionals
- How can this independent process be improved for participating parties?

Resources

- Access to all parties, documents, recordings etc. and as determined by the investigator.
- \$ adequate to include face to face meetings

Desired Outcome

- Written public report
 - Findings- Highlighting a problem; improving a process or a system; making a change, creating a new system.
 - Learnings
 - Recommendations

Findings

While any inquiry should not necessarily be limited to these Suggested Specific Questions, these are the issues the community has identified as they see as being most necessary to address.

- What was the expectation of the panel when giving CCC legal counsel instructions re “Maps and Rule” “It could be together with any revision to the rules package the Council wanted to volunteer as well” in both the transcript of IHP and in the 7th of July Minute?
- Was the Panel of one mind when it gave CCC legal counsel instructions re “Maps and Rule”?
 - If so, what was the expectation of the panel when giving CCC legal counsel these instructions “It could be together with any revision to the rules package the Council wanted to volunteer as well” (transcript of IHP and in the 7th of July Minute)
 - If of one mind, what was reasonable for the panel to expect that CCC would include the required policy given “It could be together with any revision to the rules package the Council wanted to volunteer as well” (transcript of IHP and in the 7th of July Minute)
 - What happened within the IHP process between the times after the Memorandum of July 15th was supplied and the CCC closing submissions (final position) were received and the final decision (53) published?
- Given Ruth Evans testimony and the suggested policy why was that policy not included in the requested CCC Memorandum of Counsel on behalf of the CCC in response to the panels minute dated 7 July 2016. Regarding the HFHMA mapping rules and package back to the panel.
 - CCC is a large organisation with planning groups and strategy groups. What was the detailed process of replying to the IHP and who controlled the decision tree?
 - Was the non-inclusion an oversight (if so by whom?)
 - or was a specific decision made to not include the policy (by whom)? What led to the decision?
 - If no specific decisions seemed to have been made, is the explanation in the culture of the officers involved?
- Did the CCC have a legal view on whether the policy suggested by Ruth Evans was necessary for the rule to function prior to the memorandum on the 15th of July?
 - Was this discussed?
 - Is there any communication between CCC staff and legal counsel about this? (if so what between whom and when)?
 - What legal advice did the CCC get (if any) prior to the memorandum that led them to not include the policy but keep the rules and maps?
 - Was there any legal advice supplied to the council pre or post decision that discussed the requirement or not of the policy?

- Where any parts of CCC aware of the effect of the policy absence? Did these people communicate their concerns either to CCC colleagues or legal advisors? (correspondence details please)
 - If so, why did they not alert the IHP to this specifically?
 - Why was the disconnect between the policy and the rule not picked up before publishing? (what was the process?)
 - Was it recognised but not disclosed? (details)
 - Why did the CCC not alert the panel to the fact that the policy as published could not be applied as instructed by the IHP in decision 53.

- Where there any Consents granted in the HFHMA prior to the Simpson Grierson opinion that did not have existing usage rights
 - What properties were these for
 - What led or triggered the CCC to obtain a legal opinion post decision 53 from simpson Grierson 10th October 2017

- The CCC were alerted to this issue many months prior to the section 71 repair.
 - Which parts of CCC were aware of this issue when?
 - Why did it take so long to acknowledge/ investigate the issue?
 - Why did the CCC continue to allow residents to apply and spend large sums of money on getting building consents for buildings they knew would likely not get resource consent?
 - Why weren't people warned?
 - What processes exist within the appropriate areas of CCC to correct a policy they had been informed was not functioning either correctly or as intended?