IN THE MATTER OF THE RESOURCE MANAGEMENT ACT 1991

STATEMENT BEFORE THE HEARING ON PLAN CHANGE 13 by OTTO SNOEP

Reg No 596.1

I propose to present this Statement in **opposition** to Plan Change 13 in two Parts. The first Part is in the order of the formal submission of 20 April 2023 at paragraphs 1 to 15 represented in italics. The second Part at paragraph 16 is my rebuttal of the Statement of Significance (Appendix 6) that accompanied the public notification of Plan Change 13.

Part 1

1. Foremost I have identified fourteen baches, being numbers 28, 30, 31, 32, 33, 47, 48, 49, 51, 52, 54, 56, 57 and 58, are the subject of an on-going dispute over a contract agreement struck in the Environment Court in 2002 for their unconditional removal, that has yet to materialise. I am a party to that contract and have not agreed to its annulment. There is a place reserved for them at Taylors Mistake, behind Rotten Row, on private land. Listing of these baches as heritage items is at best premature if not a deliberate strike by council to deny due process to take its natural course. The doctrine of equitable estoppel applies.

2. I acknowledge I made a mistake under paragraph 1 of the submission to council lodged on 20 April 2023 and agree that in accordance with s.194 the proposal to listing of baches as Heritage Items and the land as Heritage Settings came into effect on 17 March 2023 and remains in place or otherwise until after the hearing of submission.

3. *The public notice of the Declaration made by council in Plan Change 13 of heritage listing for the baches however is not made with open-mind in my view. The listing of the baches as items and setting is the result of a predetermined political decision by council under Resolution CNCL/2019/00073 that attempts to give effect to that decision by embedding a Heritage Order as an imperative condition in the Deed of Licence Agreements with bach owners.*

(i) I consider that this Decision is not in the best interest of the residential community in Taylors Mistake or that of the visiting public and is contrary to an Environment Court decision in 2003 (EnvC58/2003).

(ii) For the record, there exists in the Deed of Licence Agreement in the Background section of the Licence at **C,** a reference to heritage value in the baches that is supposedly desired by the public. This so stated strong public desire for their heritage preservation is not evident in this notified Plan Change. Three submissions were received in total with two submitters against the inclusion of the baches and one in support, being the Council Ward of the area in which the baches are located. These numbers are not convincing as there being great support now by that public referred to in the Licence. As will be revealed on examination of the submissions received in 2018 on the notified proposal to retain the baches for their heritage values in a licence, those submitters were predominantly the bach owners and their supporters who have a self-interest and should not be counted as the general public. By that self-interest they have no standing whether a bach can be placed on legal road under legislation.

(iii) More on point: It has to be noted that Plan Change 13 was concurrently notified along-side Plan Change 14 for a good reason. The Heritage Settings listed in Plan Change 13, besides the baches, could be affected by the intensification of the City required by central government under Plan Change 14 if not protected by a heritage listing. It appears the council has taken advantage of the pre-occupation of citizens over the intensification directive where it matters by opportunistically sneaking in the Taylors Mistake baches. The baches however are not affected by the intensification requirement under Plan Change 14. East of Ferrymead ; Sumner suburb including Taylors Mistake, are exempt from intensification due to traffic constraints besides being outside the urban housing area of the city. Their inclusion hereby in Plan Change 13 is inappropriate in the circumstance. Nonetheless, it is an established fact that the baches are at Taylors Mistake and have been nominated for heritage listing as Items and thereby require to be considered accordingly in Plan Change 13.

4. *Opposition to Plan Change13 with respect the listing of the baches triggers a resource consent process and potential referral to the Environment Court.*

5. *Plan Change 13 in my opinion, does not accord matters at law under the Resource Management Act (RMA) or general law or Parliament's instruction where the location of the baches offend the function and purpose of a public road recorded in prevailing Statutes.*

I do have a problem with the Heritage Setting at Taylors Mistake as I shall explain as follows:

(i) I request the listing of the Heritage Setting as notified in Plan Change 13 to be withdrawn in accordance with s.191 (2) (b). Failure to reach agreement on this would set in motion an appeal to the Environment Court under s.198 (1) (c).

(ii) The reason for this request is that the heritage listing is totally dependent on Council's ability to issue licences for the baches to be on legal road. This ability is not at all assured and presently is contested. Council wants it both ways: To keep ownership of the road and the baches as heritage Items in a Setting at the same time under a licence, which is an impossible proposition in my view as I explain as follows:

(iii) My interest in the land that is proposed to be listed as a Heritage Setting is as an adjoining property owner of legal road on which the baches are located[1]. With the Heritage Setting in place the effect of the Order is that it appears I will be denied lawful access and use of the road under s.193 subject to s.195. By the listing of the Heritage Setting announced in Plan Change 13 at Taylors Mistake, it is my contention that the Public Notice has failed to make clear the implications of the blanket the Council has thrown over every square centimetre of land under the land's status as legal road, determined by the Chief Surveyor in the District.[2]

(iv) The restriction now placed over the use or potential future use of the road by the listing appears in deed or effect to amount to a road stopping. A publicly notified road stopping procedure under the 10th Schedule of the Local Government Act 1974 has not occurred and is unlikely to occur. The reason for this is that the ownership of the land is not proposed to be changed by the Heritage Order. Council has not determined that the road is no longer required and can be disposed of in accordance with s.345(1) LGA 1974 Part 21 and s. 345(3).

[1] RMA Section 191 (2) (b)
[2] Planning Maps

(v) The actual failure by council that needs to be considered here is that without necessary explicit legislation the use of the road is unlawfully restricted by the Setting. As Items, an express bylaw has to be in place for the licensing of the baches to be on the road. This process had not occurred. Even if council had the power to make such a bylaw it requires a special resolution in council to implement the bylaw that permits a licence under bylaw provision and attendant public consultation process. By extension of that requirement, no heritage order is possible for the baches as Items or a need for the Setting if there are no baches.

(vi) In reality council cannot restrict the use of the land as road by the public as it has by this Order. I say, the listing of a Heritage Setting over the road at Taylors Mistake is undesirable and in any case unnecessary, even if the listing of the baches as Heritage Items were to be confirmed as legitimate and of merit and then only when the Items are held in council's ownership and not used as dwellings. The absurdity of the Setting is that part of the unformed road on the sea side is sand. Kids are wont to build sand castles and dig holes that would offend s. 193 and what will become apparent later on in this submission to be recreation domain in the District Plan. Secondly, under s.193 no utility services can be placed under the surface of the road. Access for maintenance of these services, or new services would require digging up the road surface. Each and every disturbance to the road requires specific resource consent. These services are required for the adjoining properties bounding the Setting. Equally, the use or potential use of the space occupied by the footprint of the Item and the surround in Settings over the road denies the public to pass and repass under common law. The listing is not a temporary obstruction of the road.

(vii) There is a final consideration I have not examined in detail but may require to be considered. In the circumstance where a road is notionally decommissioned for the purpose as a road for that to become a heritage setting including items in the form of baches, thereby changing the purpose of a road without observance of s.345(1) LGA 1974.

(viii) The ownership of the land in the road, now authorised to be occupied by a bach as a heritage item in a setting covers the whole of the road. This plan change is made without the necessary authorised licence to be on the road at Taylors Mistake. The status of the road as road is not affected by council's intention not to dispose of the land. The proposed new use of the land in the road that has effectively been stopped for its purpose by the plan change must however effectively

becomes Esplanade Reserve by virtue where the stopped road is located on the foreshore to the sea (RMA s.230). The Reserves Act would not provide for licensing of privately occupied dwellings if that were to occur.

(ix) The physical location of the bach in the arbitrary Setting on the effectively stopped road determines an interest by adjoining property owners affected by the change in status of the land from road to esplanade reserve. As I understand the legislation, my interest in the road continuous to extends to the mid-point of the width of the road.

(x) The effect of the plan change on my personal interest remains unresolved to my satisfaction by this plan change. In my case the solution would be that baches 48 and 49 in front of my property, be denied heritage status as items, including their setting where they are located. A hypothetical esplanade reserve by and large performs a similar function as that of an unobstructed road in terms of access and ability to pass and repass over the reserve to and along the sea including my recreational prospects but could affect vehicle access to my property boundary which I would contest.

(xi) This situation is of course a circular argument. Provision for heritage listing effectively would stop the road. In such circumstance the bach location on the foreshore requires consideration of the esplanade reserve obligations at (vii) as a consequence of the Heritage Order and requires the removal of the baches and the Setting as discussed at (viii). With no bach in place no road stopping occurs. In turn the esplanade reserve will not come into play and the land retains its former vesting under s.316 LGA 1974 for the intended purpose and function as road.

(xii) Whatever the situation, there is a process by which the land in a road must be disposed off, if that were at all possible which it is not at Taylors Mistake, where the baches are located on a public road.

(xiii) That what is proposed cannot be done under legislation seems to be the deciding factor in this situation.

The following observation under paragraphs 6 to 14 consider further impediment attributed to the baches as Heritage Items:

6. *The provision in Plan Change 13 for protection of the baches as Heritage Items is an inappropriate land use of public land in the coastal environment identified for its recreation value.*

7. *The history of the baches at Taylors Mistake has been thoroughly canvassed up to 2002 by various commissioners and in the Environment Court in 2002. There is nothing new in Plan Change 13 what has not already been considered in detail by experts in their advice on the matter to commissioners and court.*

8 *That history has recently been reviewed by the Independent Hearings Panel in 2016 in Decision 52 of the proposed district plan of 2015 and is now incorporated in the operative plan as determined.*

9. *That the occupation of designated public recreation land in council ownership, on the coast line by these baches, for private use, constitutes a significant issue that is of national importance, recognised under s. 6 according to the Independent Hearing Panel at paragraphs 48 and 53. As stated by the Panel, this is to meet the resources management under s. 72 of the RMA; the functions imposed on authorities under s.31 (1) (a) and (b) that need to have regard to; the evaluation of the proposal under s.32; and duties imposed under s.75 (3) that must be given effect to under the Act.*

There has been no change of significance in this since 2016. It is my belief the Council should conduct its business with open mind and undertake its authority with honesty (paragraph 3). It would be a breach of s.6 not to provide for matters of national importance relevant to Taylors Mistake.

10. *Section 6 (d) – public access and section 6 (f) – heritage protection, are not mutually inclusive with the physical presence of the baches located on public land and their interference with public access a matter of fact. The Independent Hearing Panel has determined, on the established evidence (paragraph 61), that it is more important to have regard to public access under s. 6 (d) rather than heritage protection under s.6 (f) in the weighing process. The Panel did not specifically consider the history of the baches as being of importance as heritage items in its Decision.*

This history of “access” and “heritage” has not materially changed since 2016 to conclude differently.

11. Plan Change 13 is contrary to and in direct conflict with Policy 18.2.2.9[3] of the district plan that remains in force. The plan change does not indicate that there is an intention by council to remove Policy 18.2.2.9. The Independent Hearing Panel considered Policy 18.2.2.9 better recognises and provide for s 6 (d) of the RMA being the maintenance and enhancement of public access to and along the coastal marine area than having mere regard to. The Policy also better gives effect to Policies 18 and 19 of the NZ Coastal Policy Statement which requires to be observed and refers to restore public access (paragraph 61 Decision 52).

12. Policy 18.2.2.9 explicitly requires some baches, referred to in paragraph 1, to be removed to give effect to the contract agreement that was endorsed by the Court in 2002 and continues to be in place this day[4]. It seems some baches are required to be removed at the directive of the Independent Hearing Panel in 2016 under Policy 18.2.2.9 in spite of an existing use right. I will say more about this in paragraph 14. In any event it appears that residential dwellings of any kind are expressly excluded from within the Coastal Zone under Chapter 18 of the District Plan. That would include all 45 baches.

13. The baches and land occupied by baches is not available for equal opportunity of use, as of right, by the general population of Christchurch.

14. (i) Baches with s.175A Existing Use Certificates (EUR) referred to in paragraph 1 require to be removed regardless of their Certificates.

(ii) The EURs are not absolute I would argue because council as will be seen, owns the land and controls the road as it must manage under s.84(1), on which the baches are located.

(iii) In general: Existing use rights makes it a requirement for any of the other 31 owners to own the land, which they do not; require to possess a lease over the land they occupy, which they have not; or been issued with a licence to occupy for the Certificates to be effective. The licences to occupy have wrongfully been issued by council under section 6 (d). It is my understanding that

[3] Policy 18.2.2.9 states: Provide for a new bach area at Taylors Mistake to enable the relocation and/or replacement of existing baches that are removed from their existing location for reasons that may include risk from hazards; impact on or to improve recreational public access; or to restore the natural character values of the coastline.
[4] RMA 84(1): Local Authority shall observe and, to extent of its authority, enforce the observance of the policy statement.

this Hearing must take into account the terms and conditions of the licence as it is the tool required and the only tool available to manage the baches by council under the RMA due to their existing use rights (s.75(2)). The Local Government Act 1974 under s.341 (3) does not permit any licence to be issued over the surface of the road under s. 357 (1) other than temporary on which the validity of the licence depends. It would also require an express bylaw under licensing legislation.

(iv) There is a further complication with the EURs, attained by all baches in 1957, to be considered under the proposed Plan Change 13. The complication arises out of s.10 (1) (a) of the RMA. There is no question about the lawfulness of the existing 31 baches with EURs. Neither are the baches with EUR Certificates restricted by s.10 (1) (a) (ii) in the future from altering, enlargement or replacement of the original structure provided the effects of the use is the same or similar in character etc., as they have extensively done over the years of their existence in the past, even to the extent of replacement altogether since 1957. This surely must bear on the proposal to list these baches as heritage items in Plan Change 13 for their supposed uniqueness in form and shape as representative of their original establishment in simple construction methods and use of materials available at the time of their erections for them to be recognised as of heritage value for preservation. It has to be accepted that none of the baches have ever been under planning controls; they were all established before 1957. This is the date when the council first introduced the equivalent of a district plan. It seems their EURs will see to it that they never will. This does not mean council has no control over the baches with their EURs. Council maintains control over the baches by nature of their placement on a road which council does control through the Local Government Act 1974, Part 21 (LGA1974). Control will be achieved by licence, if permitted, under the bylaw provisions in the LGA 2002 at s.155. This permission under s.155 should be declined by observance of Policy 18.2.2.9 under s. 84(1).

(v) I wish to expand further on the history of the legality of that occupation and the effect of the EURs for context of the situation as follows: A prohibited status of the 14 baches to be removed is recorded in Env C58/2003 as a rule under the RMA that was initiated by the owners of these baches in 1997 and confirmed by signed undertakings presented to the Court by the owners of the baches identified in Court proceedings (paragraph 1).

(vi) What has become evident from Paragraph 1, these bach owners have since successfully argued their case in being an existing use lawfully established in 1957 in planning terms, in a finding by Commissioner Kirkpatrick on behalf of council in 2011. However, these same bach owners who had voluntarily agreed by individual signature in 2002 that they will remove their structures from the road on which they are located, on the understanding that some rural land they own would be zoned as a special bach zone for a maximum 18 units on land that otherwise would not be available for sub-division under the NZ Coastal Policy Statement. This arrangement was made in 2002 under what could be described as contract law to give certainty to their desire to remain in the environment. At the same time this arrangement was to overcome the probability, that even with a EUR continued occupation on the road would remain vulnerable, notwithstanding the EUR. This is because of their lack of rights to the land they presently occupy as I traversed earlier on in 14 (iii). The land is owned by council in the form of a road and attendant legislation under s.316 LGA1974 which makes that occupation by the baches unlawful for the purpose the land was vested. There were no bylaws in place under what is now s.146(b)(vi) of the LGA2002 to support their provision in1957. They occupied the road up to 1976 on the basis of a yearly licence. The annual licence does not seem to indicate that this establishes lawful use of the land under other applicable legislation.

(vii) Viewed in that light, the EUR is not an absolute protection for the bach owners. Council is not only entitled to that land being unencumbered from baches for the purpose as road, it must administer the land in accordance with its obligation under s.84(1) and Policy 18.2.2.9 as determined by the Independent Hearing Panel in Decision 52, 2016 in full knowledge of and in spite of the EUR the owners had confirmed in 2011 by Commissioner Kirkpatrick with the unhelpful proviso of their limitations under general law.

(viii) The fact is that the baches are real and present under a EUR. In accordance with the RMA legislation the determinant issue it seems to me in this instance is to what predominant use may the land lawfully be put as to its legal status and function as road owned by council is defined. Under that scenario the EUR cannot survive by my reckoning. Commissioner Kirkpatrick in 2011 seemed to agree in his final summation with what the Independent Hearing Panel in 2016 has concurred as a non-conforming use by inserting Policy 18.2.2.9 in the District Plan. This makes the

road as used by the baches not a lawful purpose even though the baches achieved EUR status in 1957 because hitherto there never was a plan in existence to manage the baches, as council must. Clearly the EUR directs the onus to manage the land squarely on council as owner and regulator for its designated purpose as road.

(ix) So, while the bach owners have a EUR under planning law, they do not have the EUR under general law. The Independent Hearing Panel in 2016 determined that in this instance Policy 18.2.2.9 over-rides in planning terms the nominal protection of a EUR. As such council is the controlling authority and thereby must observe s84 (1). It was held in the Planning Tribunal C17/79 B2564 in Cotter v CCC; as a general proposition all planning consents are subject to the general law. It was further said: a planning consent does not by itself make lawful a land use which by general law or other statutory provision may be unlawful. This becomes a matter of public interest. Because of their EUR, the baches before 1957 and to this day are managed by necessity under the LGA1974. Therefore it is imperative the management of the baches going forward as a requirement of s.84 (1) is subservient to the LGA1974 in conjunction with bylaw provision in the 2002 Act which bylaw appear to be non-existent in this instance or lifetime, for the occupation to continue as is proposed with a licence. It is obvious the bach owners never in their existence acquired an interest in the land. At best it can be said the bach owners had a right to occupation on a yearly basis under a licence that was not properly consummated by council in a bylaw then and since 1957.

(x) The upshot is: Fundamentally I cannot agree why there is a debate over the baches as Items necessary. The structures cannot be entertained as they are not necessary towards the amenity of a road whatsoever (s.315 LGA 1974). For the listing to succeed parts of the road requires to be stopped. The previous paragraphs 14 (vii) to 14 (ix) apply and shows why this is not possible. This indicates the listing cannot lead to a lawful outcome.

(xi) On reflection and in particular paragraph 14(iv), I ask this hearing to consider why I am not been misled by council over the proposed heritage protection of baches at Taylors Mistake. As traversed before, the EUR have determined that the bach owners are not subject to any rule in the district plan in the past, present or in the future. That situation now includes the rule for a heritage protection Order. The bach owners may well go along with the proposal as it is in their interest to

have it established. As for observing the restrictions that come with the Order they are immune by their EUR. They can alter, replace or enlarge the baches at will under s.10 (1) (a) (ii), which seems to defeat the purpose of the Order in maintaining authenticity of the Item. The only remedy apparent for council is to remove the baches as it must, as custodians of the road for the use by the public.

(xii) In summation: I have an existing legally acquired right to the use of the public land for recreation that is presently occupied by baches located on road. Through a Consent Memorandum issued by a Court in 2003 (C58/2003), as a contractual condition, I alongside two other public oriented bodies acquired that right. On the other side of the Consent Memorandum stand the bach owners who while having existing use rights, signed away those rights in the Memorandum for other opportunities that otherwise would not been available to them. Council as the fifths party to the Memorandum has failed their obligations under the Memorandum by issuing licences to bach owners involved in 2021 without observing obligations to the public as trustees over the use of the land in the status as a road for which it was vested without having a right to do so. As for myself: The injustice by council's action extends well beyond the Consent Memorandum. My family made a decision in 1978 to acquire a freehold property bordering the road on which the baches are located on the rightful understanding that the bach owners licenses of 1976 would be terminated in 1986. We hereby have become an aggrieved party as a member of the public, to become a victim in being deprived in the use of that public land for recreation which made the proposition of the purchase attractive and was a determinative factor in the purchase. Whether in fact I will make use of the road occupied by the baches is not the issue. The relevant issue is that I am denied to exercise that right by Council. I am of the view that the Consent Memorandum issued by the Court in 2003 is a legal right acquired that has been violated by council that was under order by the Court to perform a statutory function in the Memorandum[5].

15. As a separate matter, all baches are to various degrees directly affected by natural hazards in the coastal environment; others are affected by land instability issues or both. These are disqualifying conditions that need to be considered in the listing if the Hearing is persuaded to do

[5] Interpretations Act 1999, section 17

so. Baches 48, 49 and 51 are most vulnerable to eminent storm surge and sea level rise (s.31). Vulnerabilities that would not be economic to protect by man-made structures and so as not to be intrusive on the natural environment (s.6). Artificial structures for protection would defeat one of the important purposes of heritage preservation of the baches; that is to recognise the precarious nature of the elements that makes up the environment at the time of their establishment and their vulnerability.

Part 2

Statement of Significance (Appendix 6):

16. I have read the Section 32 evaluation on the provisions for the baches listed as heritage items (Appendix 6 – Statement of Significance). The Statement of Significance describes a cultural identity specific to the bach community and protection thereof. I find that assessment of use an antithesis to the meaning of a public recreation setting in what amounts to the privatisation of a public road. In my assessment it falls short of the qualifying standards as I shall explain at this hearing as follows:

16.1 I am not a heritage architect or other such expert and am cautious in offering judgement in that respect. I note from the credits attached to the assessment for each bach, the persons relied on appear little better qualified as heritage experts as I am. All the same, I consider myself reasonably well qualified about the history of the development at Taylors Mistake through my seventy odd years of association with the Bay and its' environment.

In my opinion the assessments offered through s.32 for heritage listing by their owners or proxies I find to be self-serving, as one would expect.

My first observation from reading the Statement is that heritage protection of the baches confuses the wealth of memory a few of the bach owners undoubtedly have or others have acquired of the past earliest establishments through inheritance of that past of fixed objects in a setting owned by council, vested for the public as road. Heritage and memory are not one of the same. Memory can be preserved long after the heritage object is physically destroyed for whatever reason, assuming the heritage object meets the criteria for listing in the first place, which I contest is not met, as will become apparent in this submission. A memory of the baches I too have experienced and still share for good or bad. I must add that Memory though is not full-proof either as the real thing can be romanticised or distorted for nefarious intend unless independently recorded by photographic evidence throughout its history or such alternative means. I think memory belongs to a museum and may be marked on site with an obelisk or even bach 34 as a reminder of the past. If I may expand on this thought process a little further: Heritage and memory are in common; universally.

But do not necessarily have universal values in common. Human evolution by definition is steeped in heritage acquired over the ages, however the past universally differs from the present. That past in general is impossible to represent adequately either mystically or physically in the present. The present physical baches fail in their representation of their past and fail their heritage importance under that difference accordingly. Placing them in the heritage register is not going to alter that fact in their present form. If I may add; Heritage can be for the good or it could represent the bad and would best be forgotten, as will become clear in my analysis at paragraph 16.12.

16.2 Through my personal association I can however appreciate the interest in the report regarding each bach that has been listed as of historic and of social significance by their owners and supporters. A matter I personally do not support as ground for listing. That said, I am very familiar with the baches as a group or individually through my personal relationship with the bach community that spans over a considerable period of time. I think my lack of support to the listing is a risk worth taking to make a presentation from purely a public perspective about alienating public land for private use, no matter their history or my personal association.

16.3 It is noted there has been very little reaction from the public or bach owners for that matter, in submissions received on Plan Change13 with respect the listing of those baches (3 in number and none from the bach owners or supporters that I am aware of). In the absence of a meaningful public interest on heritage listing I have taken it on myself to provide a counterbalance to the proposal that concerns public recreation space at Taylors Mistake in which I personally have such interest as a resident from the on-set.

It is useful to bear in mind that this is not a private plan change request made by bach owners but one that is entirely initiated by council as Plan Change 13 to the District Plan of 2015 with extensive bach owner in-put as the Statement of Significance indicates.

16.4 Reliance on Historic and Social Significance for the baches is a nebulous concept in my mind. It is common ground that the bach sites possess a lot of history. I consider this history does not reflect directly on the baches themselves. With no visual evidence of this history physically or readily on display in the external appearance of the current baches to the visiting public as described in the Statement, this history is entirely lost on the public not directly associated with the bach community. The listing will not change that loss. Most have been extensively enlarged and

modified over time or entirely replaced as they are permitted to do under their existing use rights (refer paragraph 14). As I allude this history does not translate into heritage values and certainly not their protection. In other words: Heritage is subjective in nature which is distinctively different from History and cannot be measured in terms of time and effect. History of course can be retained in memory for ever by the person expose to it in the past or learned in the present from the past, anecdotally through recordings, without a physical presence of the past. A past I suggest, which is not what it seems in their present form.

16.5 For a start, the bach owners are by and large not poor people who deserve public or council support for their location on the foreshore road held in public ownership.

16.6 I happen to own a freehold property bounding the heritage setting in Pan Change 13. The development of my property, of about the same vintage as that of many of the baches; followed a similar path as that of any of the earliest baches at Taylors Mistake. It is much in the same vein as described in the Statement of Significance for the listed baches. The improvement was small in size at the beginning and appeared from photographic evidence before my time, to provide shelter only marginal better than a tent measured by amenity value. It was crafted together with minimal structural material in piece meal fashion, without building consents and with no approved sanitary service; a matter that prevails with the current baches on the road this day. There are many others besides our property of similar vintage that started out as primitive baches located nearby on freehold land at Taylors Mistake unlike the baches located on public land, the subject of Plan Change 13. In other words the baches to be listed are not unique in terms of heritage in the area. A statement I can safely make, that is supported by photographic evidence held in the Canterbury Museum. Besides, I venture to say the process I refer to of development and in improvements on the land at Taylors Mistake that is singled out in Plan Change 13 for the protection of baches are widely evident throughout the built environment of the city as a whole subjected to constant change.

16.7 The difference that now exists in appearance of development between the freehold properties and that of the baches, is the baches are constraint in further improvement of their substance and use by strictures imposed in the road, in terms of space remaining for further expansion, on which they are located.

16.8 In my view from a public perspective, another recurring topic in the Statement of Cultural Significance and dominantly emphasized, is about the importance attached to the association of members of the bach community with the surf club in its formative origin, to save lives. Notably as this may be, I believe this is overstated as a qualifying attribute for the baches to be listed. The suggested association or dependency between the baches as heritage items and the surf club is irrelevant, if it exits at all. One can exist without the other. The surf club can function without the listed baches. The majority of members of the surf club do not own a bach. There are also people not associated with the club in any way that have saved lives, who never or no longer belong to the club. Without a doubt I agree, the late Mr Len Moorhouse and some others who are specifically singled out worthy for significant heritage recognition that owned or own a bach, as members of the club, were excellent in their respective sports. This does not make them eligible to own or occupy a bach on public land while they were or are still about and in perpetuity thereafter. Champions have their day. They come and go at a regular rate and inevitably fade away in significance when new champions emerge to take their place. I speak from experience here. The listing of these people as items of heritage significance, confuses great people with famous people – the ones where there is only one of a kind or having been the first in achieving things like Sir Edmund Hillary an explorer for example or Ernest Rutherford for science or Jean Batten as renowned aviator.

16.9 To put paragraph 16.6 in a different language, the point I make is that attributes attached to the history of the baches described in the Statement of Significance do exits universally in the earliest establishment of the housing fabric of the city and its settlement. The origins of the baches at Taylors Mistake in that respect are not unique, evident throughout New Zealand, including on public land in times past. Baches No 1 and 2 could possibly rate as an exception due to their local use of rocks and stones as building material but are affected by land instability issues (ref. paragraph 15) and provided their more recent extensions are removed. The visual evidence of their scope in humble beginning as I said before, mostly in barricaded off cave fronts, are now totally lost on the public in their pursuit as a recreation resource in the natural environment at Taylors Mistake. The word cave is a romantic description and misnomer. They actually are shallow depressions in the rock face that have been boarded over to form a narrow and low shelter. Neither is their construction, use of material in general or other such aspects remarkable. They

were first erected foremost for shelter and possession of this public land for their sole use by their occupants without the knowledge of council. Such endeavours in the wider community are not listed in the heritage register under s.6 (f) unless rare and exceptionally renowned, an attribute necessary for s.6 (f) and of course lawfully established. I believe the baches at Taylors Mistake fail to meet that test besides their controversial occupation of public land.

I would imagine the City's heritage register sets very high standards over value or thresholds on the integrity of listings. I do not consider the baches to meet such integrity.

This Plan Chance starts out with the assumption that all baches are the original product or in the least are worthy of protection from further change to their present state in the future. The salient point I come back to here is that none of the structures representing the bach are the original. They have either been replaced altogether or much enlarged from their humble beginnings as referred to in the Statements of Significance. This surely must be the starting point in determining their heritage values and protection under Plan Change 13. This brings me back to paragraph 14 on whether the protection of the uniqueness of the baches sought in Plan Change 13 is possible under their existing use rights and that change in appearance will continue in the future irrespective of the listing, which seems to defeat the purpose of the listing.

16.10 Another measure of importance claimed in the Statement of Significance is the families that have been in possession of the public bach site throughout their history. I believe whether the possession has been for one year or 100 years is totally in-material. What is relevant how the owners of the baches came to be in possession of the site in the first place and how the controlling authorities have allowed this to occur and now have decided that the baches are treasures that need to be protected as heritage items for eternity, held in those family ownerships with a licence to occupy. Significantly the Statement overstates the current bach owners association with the beginning of their establishments as far as I can determine from the records that are available. I can only identify two families at Rotten Row out of 19 baches that can trace their association to the origins of each bach. None of the 8 baches at the north end of Taylors Mistake beach qualify, three out of nine in Hobson Bay (all in derelict condition) do and none at Boulder Bay.

Time has a habit of creating havoc with history. The baches started out as illegal structures at their time of establishment on legal road and have now become at a stroke of a Plan Change, a protected structure. Hereby the baches and owners have become “Untouchables” (paragraph14).

16.11 I do acknowledge the use of the land is not affected by land ownership under the RMA. Nevertheless it is appropriate to repeat the distinction I make on the effect that the baches have on their occupation of public land that is of great significance under s. 6 (d) for protection, a matter of interest to the RMA. I contend that landownership and its use for baches in this instance, has a material negative effect on the use of that public land in the Open Space Zone of the District Plan (paragraphs 11 & 12)..

16.12 I say the presence of the baches are caused by failure in leadership of successive councils to manage the land from incept of the first recorded bach community in 1911, for its vested public purpose as road and what that entails. This heritage listing can be seen in bad light as no other than a celebration of confiscation of public land by the bach owning community with council’s consent. The confiscation is not unlike what took place by some of the earliest settlers from their home country in the colonisation of their new land in the eighteen forties, engaged in squatting upon arrival on tribal land, the cause of grievance in society that continues this day to bubble in the background. The outcome of this plan change, suggested to be of national importance, is for the wrong reason. Without doubt in my mind I predict the heritage listing of the baches at Taylors Mistake by the publicity it affords and precedent it sets, if confirmed, will create future conflict in other places in the country in similar circumstance where occupation for private use of public land is involved alike Taylors Mistake, no matter their origin.

16.13 My other observation is the notoriety of the bach owners and tenacity in their defiance against eviction from public land, assisted by council, is not a noteworthy attribute for protection under a heritage listing.

16.14 I further observe that Taylors Mistake and its Bays are a special resource to the city with its relatively easy accessibility by its population and variety of outdoor pursuits it offers to the public in its own distinctive environment of national importance under s. 6 (d) that should be protected for equal use and enjoyment by the whole of its population. The distinctive environment and sense of isolation is an asset that was recognised early and exploited by the bach community through

neglect by the controlling authorities. I do not agree that the heritage items and settings in relation to the baches provides a significant contribution to the quality of that environment as a public resource to the extent it justifies protection under s.6 (f) or indeed their preservation in any form.

16.15 The evidence now presented in the public notice of 17 March 2023, the Statement of Significance to support heritage protection under s.6 (f), has not persuaded me to change what was not already considered in 2002 and 2016 at the expense of protection of the environment and public access under s. 6 (d).

16.16 A glaring omission in the s.32 analysis is the failure to give consideration to the public space occupied by the baches in terms of access and recreation for the visiting public.

16.17 No cost benefit analysis under s 32 has been prepared in the Statement of Significance to distinguish between the public use of the resource and the benefit, if any, in the heritage listing of the baches that denies the public the use of that space. The District Plan is quite emphatic how the Open Space recorded in Chapter 18 is to be used in the Introduction at 18.1, the Objective at 18.2.1 and the Policies at 18.2.2 (refer paragraphs 10-13). The caveat is: It requires that the Open Space Coastal Zone is to be managed, enhanced, protected and where necessary restored. Heritage listing of the baches does not achieve that objective or policy at Taylors Mistake. The coastal zone in the Plan does not provide for residential dwellings at all which would or should include the baches to be listed. The baches are there as a matter of fact under their EURs which are not set in stone as seen in paragraph 14.

16.18 Based on the escalation in value of my property since I purchased the property in 1978 the utility value of the land occupied by the baches is now up to 40 times greater than when they were first erected. This is a benefit to the bach owners foregone to the public in the use of that land. I suspect the escalation in value, while affected by general cost inflation over time, the majority of the increase in valuation in the land is caused by popular public demand of its attributes in desirability of the resource and its scarcity in supply. Seen in a different way: The framers of the Local Government Act 1974 at s.357(1)(j) places an equivalent value on the land occupied by baches on the road as a benefit to the bach owners or at a cost to the community served by that road at a staggering $821250 per year. Or, forty times this figure for the length of time these baches have occupied that public land. It is to be noted that council is permitting this cost to fall on ratepayers under the term and conditions of the licence agreement and a continued cost by way of penalty foregone of 28 million dollars or as a benefit to the licence holders until 2054 at termination of the licence. These costs should have been considered under section 32 of the RMA (paragraph 9).

16.19 Then there are the actual cost of policing compliance with the conditions of the licence and maintenance and servicing of the Items that is borne by the rate-paying public. In case of default of the conditions of the licence by the licence holders the cost of demolition or future preservation of the Items inevitably befalls the ratepayers.

16.20 From my perspective the Section 32 evaluation of the heritage listing of baches at Taylors Mistake and support by council is a contentious, if not fraudulent in conception or at least a pretentious proposition, inadequately researched by proponents of the listing. By fraudulent I mean the uninvited participation by members of the public in the distribution of ground licences without a competitive process. That the public were not invited is of course the right decision but so should the bach owners have been denied a licence.

16.21 In considering the Statement of Significance I am acutely aware in the assessment of s.32 the council foremost and in any case must defer to its obligation under s.75 to comply with s.6 of the RMA as noted in paragraphs 9 to 12. It is further noted in the Statement of Significance in total, no attention has been given to these paragraphs in relation to public use of and access to the road on which these baches are located or the recreation opportunities the location provides to the visiting public.

16.22 I believe the assessment under Section 32 fails adequately to take into account council's obligation under section 74 in its support of the heritage listing, as noted in paragraphs 9 and 14 and the obligations under Policy 18.2.2.9 in paragraphs 11 and 12. These obligations the council cannot avoid.

16.23 The question I put for consideration: In whose interest is the council acting. Is the council acting on behalf of the bach owners; the interest of the public; or council's self-interest to dispose of the problem with the baches it has created, in perpetuity. As it stands, the use of the land occupied by the now heritage listed baches and owners is exclusively reserved for a few in a recognised recreation area set aside for the many in the district plan. In my view the s.32 analysis provided in the plan change proposal does not meet the purpose of the Act.

16.24 I suggest the heritage listing by council is a cynical means to extract itself from the harm it has created by its mismanagement of the resource over many years with the occupation of baches by lack of political will to remove them as is evident in council's Resolution CNCL/2019/00073 (paragraphs 1 & 3). That what I am asked to consider in this public notification of Plan Change 13 is not a solution. I contend the solution lies in the Consent Memorandum, exhaustively argued, in the Environment Court Decision of 2002. That solution was at best a compromise as it could not consider whether licensing of some baches as part of that solution met the purpose of a road on which they are located under the RMA. It cannot be said that in 2002 I sought the dislodgement of the whole of the bach community. I sought the relocation of some of the baches into the area on private land reserved for them as a compromise solution, so that they may remain as part of their

community at Taylors Mistake. That consensus did not require any heritage listing. Neither does it now if the 2002 agreement was adhered to. This remains my position.

16.25 For these reasons I do not support the heritage listing of any bach as items and setting as set out in Appendix 6 – Statement of Significance in the s.32 evaluation. In conclusion I come to an understanding that Plan Change 13 has been made by council in desperation to validate its position in Resolution CNCL/2019/00073 where councillors were advised not to dwell on the District Plan in that decision but render all baches a heritage item. It would be more honest if the council, together with the bach owners, had set an example where they vacate public land occupied by the baches rather than make these a heritage item for their owner's exclusive benefit. It seems to me that the council had to stoop to heritage protection in order to preserve its self-interest, with no limits for success as the means to keep the baches. I believe it to be my civil duty to present this submission in opposition to the listing accordingly. It meets the test of reasonableness.

17. To summarize: The reason why I challenge Plan Change 13 is because I find the location of baches on the surface of legal road at Taylors Mistake fundamentally wrong in every respect from their earliest beginnings in 1911 onwards. No amount of tinkering by Council around the edges is going to alter the integrity of that principle. While the baches as heritage items are totally dependent on the legitimacy of a licence to occupy the surface of the road (paragraph 5), the licence however is not dependent on heritage listing whatsoever as the condition in the licence seems to indicate (ref. paragraph 3). Equally, the public in the Plan Change notification cannot determine the legitimacy of the licences. That must remain the providence of Council in accordance with their obligations towards legislation. In general am of the opinion that it is not within the Hearing Commissioner's discretion that sits under the RMA jurisdiction to be influenced by the licensing process. However licensing is the only tool available to manage the baches in the District Plan as is required under the RMA because of the existing use rights (paragraph 14).

This concludes my submission.

Otto Snoep

17 June 2025