



3 October 2018

Chief Executive  
Christchurch City Council  
PO Box 73016  
Christchurch, 8154

Dear Dr Edwards

**Amendment to Christchurch District Plan Policy 5.2.2.2.1 – in relation to the Residential Unit Overlay of the High Flood Hazard Management Area**

You have asked Judge Hassan and me to provide advice on an amendment being proposed by the Council to the Christchurch District Plan (CDP) regarding an additional policy relating to the Restricted Discretionary Activity rule (Rule 5.4.6.2 RD2) within the Residential Unit Overlay (RUO) of the High Flood Hazard Management Area (HFHMA). In preparing this letter, I have conferred with Judge Hassan. However, given his judicial office, he is not in a position to offer any views on the merits of the Council's proposed policy addition, or its fit or otherwise with the CDP, and he does not do so. The analysis of these matters is my own.

As you say in your letter of 1 October, the Council is not in a position to relitigate Decision 53 of the Independent Hearings Panel and the provisions it contained, which are final and complete. Having been a member of the Independent Hearing Panel for Decision 53, I am similarly constrained. As a result, my advice will not fully address all the matters you have set out in the bullet points within your letter. That is, of course, not to say that additional policy cannot be included, and it is this that I address in my advice.

In considering the Council's proposed amended policy, I have taken as my starting point the following draft wording set out in the Council's letter to its Strategic Partners of 28 September 2018 (amended wording shown as bold and strike-through):

*5.2.2.2.1 Policy – Flooding*

1. ...
2. ***In High Flood Hazard Management areas:***
  1. ***provide for development for a residential unit on residentially zoned land where appropriate mitigation can be provided that protects people's safety, well-being and property; and***
  2. ***in all other cases, a***~~Avoid subdivision, use or development in the High Flood Hazard Management Area where it will increase the potential risk to people's safety, well-being and property.~~
3. ...

I provide my advice as follows:

- a. how such a policy amendment would sit with the relevant provisions of the higher-order planning documents and operative CDP. Judge Hassan has no opinion to express on this, for the reasons I have stated above;
- b. consistency with the Panel's reasoning set out in Decision 53. Judge Hassan's view on this is recorded below;
- c. whether alternative wording should be considered for the policy amendment, in order to provide greater coherence with the CRPS and CDP provisions and better reflect the Panel's reasoning in Decision 53. Again, Judge Hassan has no opinion to express on my suggested alterations to the policy wording.

In asking for our advice, you have explained that the Council is intending to instigate a s71 process under the Greater Christchurch Regeneration Act 2016, in order to facilitate an amendment to Policy 5.2.2.2.1. I expressly state that I have no view on the use of this process (and Judge Hassan has asked me to convey that is also his view).

### ***The higher-order planning documents and operative CDP***

Subject to my comments on the specific wording below, I understand that the Council's suggested amendments to Policy 5.2.2.2.1 are intended to provide additional direction in relation to Rule 5.4.6.2 RD2 inserted into the CDP by way of Decision 53. The intent of RD2 and the Council's policy amendment are closely aligned. In the specific circumstances of the RUO, both the amended policy and the rule allow for an approach of considering mitigation of risk through a focussed consent application process. To a limited extent, the policy amendment would be relatively more enabling than the provisions decided through Decision 53, however, I do not consider this difference to be significant in terms of the approach provided for.

The higher-order planning documents of relevance are the New Zealand Coastal Policy Statement (NZCPS) and the Canterbury Regional Policy Statement (CRPS).

Objective 5 and Policy 25 of the NZCPS address risks from coastal hazards, which in this case is limited to the risk of flooding in the HFHMA predominantly as a result of sea level rise. Relevantly, these provisions state:

#### ***Objective 5***

*To ensure that coastal hazard risks taking account of climate change, are managed by:*

- *locating new development away from areas prone to such risks;*
- *...*

#### ***Policy 25 Subdivision, use, and development in areas of coastal hazard risk***

*In areas potentially affected by coastal hazards over at least the next 100 years:*

- (a) *Avoid increasing the risk of social, environmental and economic harm from coastal hazards;*
- (b) *Avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;*
- (c) *...*

In the CRPS, relevant Objectives 6.2.1(8) and 11.2.1 and Policy 11.3.1 (as changed in 2015) state:

#### ***Objective 6.2.1 – Recovery framework***

*Recovery, rebuilding and development are enabled within Greater Christchurch through a land use and infrastructure framework that:*

*...*

(8) protects people from unacceptable risk from natural hazards and the effects of sea-level rise;

...

**Objective 11.2.1 – Avoid new subdivision, use and development of land that increases risks associated with natural hazards**

*New subdivision, use and development of land which increases the risk of natural hazards to people, property and infrastructure is avoided or, where avoidance is not possible, mitigation measures minimise such risk.*

**Policy 11.3.1 – Avoidance of inappropriate development in high hazard areas**

*To avoid new subdivision, use and development (except as provided for in Policy 11.3.4) of land in high hazard areas, unless the subdivision, use or development:*

- is below the various thresholds of risk specified in clauses (1)-(4) of the policy: or

(5) ..., or

(6) Within greater Christchurch, is proposed to be located in an area zoned in a district plan for urban residential, industrial or commercial use, or identified as a “Greenfield Priority Area” on Map A of Chapter 6, both at the date the Land Use Recovery Plan was notified in the Gazette, in which case the effects of the natural hazard must be avoided or appropriately mitigated; or

(7) ...

Decision 53 found nothing in the ‘Higher Order Documents’ that dictates the Panel must adopt the approach of the Revised Version<sup>1</sup> (i.e. a non-complying activity approach), and the Panel was satisfied that Rule 5.4.6.2 RD2 was the most appropriate for responding to the Higher Order Documents<sup>2</sup>. In relation to the CRPS, Decision 53 found that the CRPS does not dictate that the Panel must specify non-complying activity status for new buildings in high hazard areas<sup>3</sup>, and that it allows for an approach of mitigation of risk<sup>4</sup>. As I stated above, the amendment to Policy 5.2.2.2.1 is closely aligned with Rule 5.4.6.2 RD2 introduced by Decision 53, both allowing for an approach of considering mitigation of risk on a case by case basis, within the particular circumstances of the RUO. Accordingly, I consider the policy amendment, alongside Rule 5.4.6.2 RD2, will continue to give effect to these provisions of the higher-order planning documents (subject to my comments on the specific wording of the policy below).

The relevant objectives and policies of the CDP are Objective 3.3.6 (also the objective for Chapter 5, Natural Hazards) and Policies 5.2.2.1.1, 5.2.2.1.2, 5.2.2.1.4 & 5.2.2.1.8. These state:

**3.3.6 Objective – Natural Hazards**

1. *New subdivision, use and development (other than new critical infrastructure or strategic infrastructure to which paragraph b. applies):*
  1. *is to be avoided in areas where the risks from natural hazards to people, property and infrastructure are assessed as being unacceptable; and*
  2. *in all other areas, is undertaken in a manner that ensure the risks of natural hazards to people, property and infrastructure are appropriately mitigated.*
2. ...

**5.2.2.1.1 Policy – Avoid new development where there is unacceptable risk**

1. *Avoid new subdivision, use and development, including new urban zonings, where the risk from a natural hazard is assessed as being unacceptable.*

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<sup>1</sup> Decision 53, at [114]

<sup>2</sup> Decision 53, at [122]

<sup>3</sup> And nor does the NZCPS, Decision 53, at [115]

<sup>4</sup> Decision 53, at [115]

**5.2.2.1.2 Policy – Manage activities to address natural hazard risks**

1. *Manage activities in all areas subject to natural hazards in a manner that is commensurate with the likelihood and consequences of a natural hazard event on life and property.*

**5.2.2.1.4 Policy – No transferring of natural hazard risk**

1. *Ensure that subdivision, use and development (including proposals for hazard mitigation works or hazard removal) do not transfer or create unacceptable natural hazard risk to other people, property, infrastructure or the natural environment.*

**5.2.2.1.8 Policy – Assessment of Hazards**

1. *Ensure that the level of assessment undertaken for plan changes, subdivision or development reflects the potential scale and significance of the hazard; and the nature and scale of the rezoning, subdivision or development and its susceptibility to those hazards.*

Decision 53 found that Rule 5.4.6.2 RD2 was more appropriate than the alternatives put before the Panel for achieving the related objectives of the CDP<sup>5</sup>.

The Decision states that Objective 3.3.6 relevantly specifies that “*New subdivision, use and development ... is to be avoided where the risks from natural hazards to people, property and infrastructure are assessed as being unacceptable*”<sup>6</sup>. The Panel found that further subdivision in the HFHMA would give rise to unacceptable additional long term risks to people, property and infrastructure<sup>7</sup>, as would various other activities put before the Panel as non-complying activities in the Council’s Revised Version<sup>8</sup>. However, the Panel found that the replacement and repair of buildings would be appropriate for achieving Objective 3.3.6 and would assist in achieving other Strategic Objectives relating to recovery, housing capacity and prosperity<sup>9</sup>. In addition, in the specific circumstances of the RUO where the flooding risk faced is predominantly from sea level rise (by contrast to inland areas of the HFHMA), the Panel found that appropriate mitigation of flood risks is possible<sup>10</sup> (as required by Objective 3.3.6). Decision 53 states that, having assessed the costs and benefits the Panel found Rule 5.4.6.2 RD2 to be the superior option, and not materially different to the Council’s option in terms of enabling the natural hazard risks at issue to be appropriate addressed<sup>11</sup>.

As I have previously stated, the amendment to Policy 5.2.2.2.1 is closely aligned with Rule 5.4.6.2 RD2 introduced by Decision 53, both allowing consideration of the acceptability (or otherwise) of the risks involved and the potential for appropriate mitigation of risk, within the particular circumstances of the RUO. Subject to my comments on the specific wording of the policy below, I consider the policy amendment, alongside Rule 5.4.6.2 RD2, continues to be appropriate for achieving Objective 3.3.6. I also consider, with the amendments to the policy, they would remain consistent with the integrated approach to managing natural hazard risks specified through the other policies I have set out above, enabling consideration of the potential scale and significance of the hazard; the nature and scale of the residential development; the likelihood and consequences for life and property; and the potential for transference of risk.

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<sup>5</sup> Decision 53, at [122].

<sup>6</sup> Decision 53, at [107]

<sup>7</sup> Decision 53, at [107]

<sup>8</sup> Decision 53, at [109]

<sup>9</sup> Decision 53, at [111]

<sup>10</sup> Decision 53, at [113]

<sup>11</sup> Decision 53, at [119]

### ***Consistency with the reasoning set out in Decision 53***

I have referred to the reasoning set out in Decision 53 in my consideration of the higher-order planning documents and the relevant operative CDP provisions. As expressed above, I am satisfied that the proposed policy amendment, alongside Rule 5.4.6.2 RD2, accords with the reasoning set out in the Panel's Decision 53 (subject to my comments on the specific wording of the policy below).

The Panel found that Restricted Discretionary Activity classification for new and replacement residential units (and additions) would give relatively greater certainty and confidence to both the landowners and the community<sup>12</sup>, and would not add additional planning burdens to those which the landowners already bear<sup>13</sup>. To the extent that the Council considers the amendments to Policy 5.2.2.2.1 provide some additional direction and clarity for Rule 5.4.6.2 RD2, then I consider the policy amendment is consistent with the Panel's reasoning in Decision 53 (subject to my comments on wording below).

Judge Hassan is also satisfied that there is no material incompatibility with that reasoning. I understand that he will write separately to you to confirm that position.

### ***Alternative wording for the Policy amendment***

In making the following suggestions for alternative policy wording I have focussed on giving more specific effect to the provisions of the CRPS, consistency with the relevant provisions of the CDP, and better reflecting the Panel's reasoning in Decision 53. The question of whether a more enabling policy is proposed and how far it goes in terms of enabling the activities provided for by Rule 5.4.6.2 RD2 is up to the Council.

Using the Council's draft wording as my starting point, my suggested alterations to the policy wording are as follows (my amended wording shown as bold and strike-through), with my reasons outlined below:

#### *5.2.2.2.1 Policy – Flooding*

1. ...
2. ***In the High Flood Hazard Management Areas:***
  1. *provide for development ~~for~~ of a residential unit on residentially zoned land **where the flooding risk is predominantly influenced by sea-level rise and where appropriate mitigation can be provided that protects people's safety, well-being and property from unacceptable risk**; and*
  2. *in all other cases, avoid subdivision, use or development where it will increase the potential risk to people's safety, well-being and property.*
3. ...

I consider the Council's draft wording ("on residentially zoned land") goes beyond those areas of New Brighton, Southshore and Redcliffs where the evidence accepted by the Panel was that the flooding risk is predominantly influenced by sea level rise (by contrast to inland areas of the HFHMA which are also susceptible to water velocity risks)<sup>14</sup>. Decision 53 specifically distinguishes those areas as the only locations where the Panel considered it would be appropriate to provide a greater degree of leniency for the building of new residential units<sup>15</sup>. This is the area mapped by the Council, at the Panel's request, and named the 'Residential Unit Overlay'. This is the only area

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<sup>12</sup> Decision 53, at [119]

<sup>13</sup> Decision 53, at [121]

<sup>14</sup> Decision 53, at [102], [104] & [113]

<sup>15</sup> Decision 53, at [112] – [113]

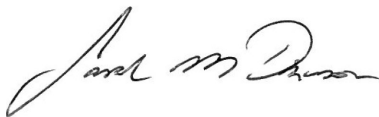
of residential zoning where Rule 5.4.6.2 RD2 applies. It is my opinion that the addition of the words “*where the flooding risk is predominantly influenced by sea-level rise*” to clause 2.1 of Policy 5.2.2.2.1 would provide greater consistency with the reasoning set out in Decision 53.

In order to give more specific effect to the provisions of the CRPS and provide greater consistency with the relevant provisions of the CDP, I consider the Council’s draft wording of “*appropriate mitigation can be provided that protects people’s safety, well-being and property*” would benefit from some further qualification. In addition to requiring “*appropriate mitigation*”, several of the CRPS and CDP objectives and policies require people, property and infrastructure to be protected from “*unacceptable*” natural hazard risks (in particular, CRPS Objective 6.2.1(8) and CDP Objective 3.3.6 and Policy 5.2.21.1). In my opinion, this is the purpose of the “*appropriate mitigation*”, and the addition of the words “*from unacceptable risk*” to clause 2.1 of Policy 5.2.2.2.1 would provide greater coherence with the relevant provisions of the higher-order planning documents and operative CDP.

I have also suggested some minor wording changes, purely for consistency with other wording used in Chapter 5.

I trust that my advice is of assistance to the Council. I am happy to discuss the amended policy wording with Council staff, as required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sarah Dawson', written in a cursive style.

Sarah Dawson