

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 29 February and 1 March 2016

Date of decision: 21 October 2016

Hearing Panel: Sir John Hansen (Chair), Mr Stephen Daysh, Mr Alec Neill, Mr Gerard Willis

DECISION 52

**Coastal Environment and Open Space Coastal Zone
(and relevant definitions and associated planning maps)**

Outcomes: **Proposals changed as per Schedule 1 in relation to Sub-chapter 9.6 and Definitions, and Schedule 2 of Decision 51: Ngāi Tahu Values in relation to the Open Space Coastal Zone**

COUNSEL APPEARANCES

Mr J Winchester and Ms S Meares	Christchurch City Council
Mr C Carranceja and Ms E Moore	Crown
Mr D van Mierlo	Te Rūnanga o Ngāi Tahu and Ngā Rūnanga
Ms G Hamilton	Taylors Mistake Association Taylors Mistake Association Land Company Limited M Slemint/Taylor Mistake Bach Owners D Hill

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INTRODUCTION

[1] This decision ('decision') continues the series of decisions made by the Independent Hearings Panel ('Hearings Panel'/'Panel') concerning the formulation of a replacement district plan for Christchurch City (including Banks Peninsula) ('Replacement Plan'/'Plan'). It concerns our hearing of the Coastal Environment proposal, along with the proposed Residential Bach Zone, which was deferred from the Residential Stage 2 hearings.¹

[2] We have held back the issue of this decision due to its reliance on matters contained in the Natural and Cultural Heritage chapter (of which this decision will form a part), and the Open Space chapter.

[3] In this decision, the phrase 'Notified Version' describes the version notified by the Christchurch City Council ('the Council'/'CCC') and to which, subsequent to consideration of submissions and conferencing, a number of changes were made. This was then ultimately produced in closing by the CCC as a red-line version ('Revised Version').²

[4] Where we refer to 'Decision Version', it is our redrafting of the Revised Version, as set out in Schedule 1 in relation to Sub-chapter 9.6 Coastal Environment and related Definitions, and in relation to the Open Space Coastal Zone, as contained in Schedule 2 of Decision 51: Ngāi Tahu Values. We note that while matter of discretion 9.6.3.1(h) is attached to this decision, it is not within the scope of this decision, but in the scope of Decision 51: Ngāi Tahu Values.

[5] This decision follows our hearing of submissions and evidence. Further background on the review process, pursuant to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('the OIC'/'the Order') is set out in the introduction to Decision 1, concerning Strategic Directions and Strategic Outcomes (and relevant definitions) ('Strategic Directions decision').³

[6] The form of these provisions as proposed in both mediation and in closing by the Council change substantially from what was notified, with the provisions of Chapter 19 being re-

¹ Council's pre-hearing meeting memorandum, 3 August 2015, at paragraph 2.5 and granted at the Residential (Stage 2) pre-hearing meeting (see transcript, page 36).

² Attachment A to closing legal submissions of Council, 14 September 2015.

³ Strategic directions and strategic outcomes (and relevant definitions), 26 February 2015.

distributed into other chapters of the Plan, and the Residential Bach Zone becoming Open Space Coastal Zone with a Residential Bach Overlay. A revised map showing the Open Space Coastal Zone and Coastal Bach Overlay was submitted to us along with the revised chapters in December 2015. This was reflected in the Revised Version that the Council submitted in closing. However the essence of the provisions remains. There has been broad agreement between the parties on many of the matters before us which significantly assists us with making our decision.

Effect of decision and rights of appeal

[7] Our procedure and the rights of appeal are set out in our earlier decisions.⁴ We concur in those.

Identification of parts of existing district plans to be replaced

[8] The OIC requires that our decision also identifies the parts of the existing district plans that are to be replaced by the Chapter. In this respect, we replace all of the Planning Map zones in the existing Banks Peninsula District Plan and existing Christchurch City Plan that are impacted by our decision (as they relate to the proposed Open Space Coastal Zone).

[9] As a matter of precaution, we do not propose to replace the existing provisions (i.e. objectives, policies or rules) in the operative plans until such time as we are sure that those provisions are no longer required. We note that sites within the Open Space Coastal Zone will no longer be zoned in the existing plans, as the planning maps will have been replaced by this decision.

PRELIMINARY MATTERS

Conflicts of interest

[10] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.⁵ In the course of the hearing, it was identified on various occasions that

⁴ Strategic Directions decision at [5]–[9].

⁵ The website address is www.chchplan.ihp.govt.nz.

submitters were known to members of the Panel either through previous business associations or through current or former personal associations. Those disclosures (and, on some matters, member recusals) were recorded in the transcript, which was again available daily on the Hearings Panel’s website. No submitter raised any issue in relation to this.

REASONS

STATUTORY FRAMEWORK

[11] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.⁶ Our Stage 1 Natural Hazards decision set out the relevant statutory framework and our obligations with regard to statutory documents, which also applies to this decision.⁷ In addition to the documents on the list provided in that decision, the National Policy Statement for Freshwater Management is a relevant document to which we must give effect through the provisions.⁸ Further we must not be inconsistent with the Lyttelton Port Recovery Plan.

[12] As stated in the evidence of Ms Ferguson, agreement was reached in mediation that, subject to appropriate drafting, a revised proposal would achieve the relevant statutory tests. Any outstanding matters were matters of detail which we address below, and for the remainder of the provisions, in the absence of any opposition, we accept Ms Ferguson’s evidence and the opening legal submission of the Christchurch City Council,⁹ that the remainder of the provisions appropriately implement the Higher Order Documents.

The required “s 32” and “s 32AA” RMA evaluation

[13] Again, this is a matter referred to in earlier decisions. We adopt and endorse [48]–[54] of our Natural Hazards decision. In the course of addressing matters where there is still disagreement between the parties, we note our evaluation below addresses the requirements of

⁶ OIC, cl 12(1).

⁷ At [38].

⁸ As noted in the evidence in chief of Ms Shirley Ferguson, planner for the Christchurch City Council, 5 February 2015 at para 7.7, in response to a submission of Te Rūnanga o Ngāi Tahu.

⁹ Opening submissions for the Council, 28 February 2016, at para 4.2.

s 32AA at a level that is appropriate and corresponds to the scale and significance of the changes sought. Notwithstanding that, we are satisfied, due to the degree of agreement reached between the parties, that the changes agreed to by the parties to the Notified Version accord with the requirements of s 32AA, and that the evaluation has been addressed through the evidence we have heard.

[14] Where we have undertaken changes to the drafting of the provisions, we have set out the reasons for doing so and evaluated those changes in accordance with our duties.

Issues raised by submissions

[15] We have considered all submissions and further submissions received in relation to the Coastal Environment and Residential Bach Zone. Schedule 2 lists the witnesses who gave evidence for various parties, and submitter representatives.

[16] We have been assisted in making our decision by mediation that was undertaken prior to the hearing. We have also considered the accept/reject recommendations of the Council witnesses, and this has assisted us with preparing the Decision Version of the district plan text provided at Schedule 1.

[17] As we note earlier in this decision, the form of the Council's Revised Version differs from what was notified. Importantly, the parties generally agreed that the Coastal Environment Chapter should be integrated with other chapters in the Replacement Plan (principally the Natural and Cultural Heritage chapter as a new Sub-chapter 9.6 Coastal Environment), and that the Coastal Zone and the Residential Bach Zone should be incorporated into an Open Space Coastal Zone with a Coastal Bach Overlay. This was based on the Crown's submission and as this was not contested, we accept the submission.

[18] By the time of hearing, the matters between the parties had significantly reduced. The remaining matters for determination arising from submissions and the Council's closing submissions include:

- (a) amendments to Policy 9.6.2.3 regarding the extent of the coastal environment, including site specific matters;

- (b) wording related to Objective 9.6.1.2 relating to access;
- (c) possible addition of a new Strategic Objective 3.3.16 (noting that this is now proposed as Strategic Objective 3.3.17 as part of Decision 51: Ngāi Tahu Values) relating to water/wai quality;
- (d) notification requirements in relation to Ngāi Tahu in coastal areas;
- (e) management of baches at Taylors Mistake, Hobsons Bay and Boulder Bay and the use of prohibited status in relation to the number allowed; and
- (f) access considerations as part of Policy 18.1.10(a).

[19] We accept the evidence that supported the Council's position in relation to submissions from parties that did not attend the hearing. In addition, unless expanded on to the contrary below, we accept the evidence of the Council in relation to its position on the following submissions from submitters who appeared at the hearing:

- (a) The Crown (3721)
- (b) Te Rūnanga o Ngāi Tahu (3772/5059)
- (c) South Brighton Residents Association and Empowered Christchurch (3945/8296)
- (d) Mr Edward Aitken (FS5021)
- (e) Ms Karina Hay (3281/8158)
- (f) Mr Otto Snoep (2067/7278)
- (g) Taylors Mistake Association (2192/3525)
- (h) Taylors Mistake Association Land Company (2128/2134)
- (i) Ms Melanda Slemint/Taylors Mistake Bach Owners (2134/9094)

(j) Ms Sue Carbines (9091)

(k) Ms Jan Burney (7916)

Extent of the Open Space Coastal Zone

[20] By the time of the hearing, the Council had reached full agreement with submitters on the extent of the Open Space Coastal Zone. This included amendments at Southshore in relation to submissions to rezone areas from Open Space Coastal Zone to Residential Suburban Zone.¹⁰ Given the agreement reached on this matter, we find that the zoning proposed is the most appropriate for implementing the objectives and policies of the Plan.

Extent of the Coastal Environment

[21] A number of parties gave evidence or presented submissions in relation to the extent of the Coastal Environment. The Notified Version included delineation of the coastal environment on the planning maps, but with no guidance as to how that area was to be determined. This matter has now been addressed through additional wording in the introduction to the chapter.

[22] The Crown submitted to us that definition of ‘the coastal environment’ was difficult, noting case law discussing “grey areas and blurred edges”,¹¹ and that in the case of the Meridian Wind Farm in Wellington “the theoretical extent of the coastal environment was somewhat academic”.¹² It proposed an additional policy that sought recognition of the dynamic nature of the coastal environment. It contended that a decision-maker could, as a matter of fact, find on enquiry that an area that was outside of the delineated coastal environment area maps was in ‘the coastal environment’.

[23] The Council’s position is that it recognises that activities outside of the coastal environment have the potential to impact on the coastal environment. It is concerned that the drafting proposed by the Crown supports a “blurry line” argument, but that this is not helpful to plan users or the public generally. Rather it prefers not that the line gets “moved”, but that

¹⁰ Opening submissions for the Council at para 5.17; submissions of Karina Hay (3281), Linwood 2000 Limited (8158), and Linwood Investments Limited (8159); Rebuttal evidence of Shirley Ferguson at paras 6.1–6.5.

¹¹ *Kaupokonui Beach Society Inc v South Taranaki District Council* [2008] NZEnvC 145 at [46].

¹² *Meridian Energy Limited v Wellington City Council* [2011] NZEnvC 232 at [144].

activities outside of the delineated coastal environment line might be seen as having an impact on values within the coastal environment. In this respect, it prefers amendment of Policy 9.6.2.1 by widening the application of that policy to all areas that may impact on the values of the coastal environment, rather than confining it as drafted to just those areas in the coastal environment.

[24] We heard from a number of submitters who were concerned that they were identified as being within the coastal environment. Those submitters perceived that being within the coastal environment restricted what they could do.¹³ We record that the New Zealand Coastal Policy Statement 2010 (‘NZCPS’) requires that councils manage a range of activities in the coastal environment (Policy 6). In order to do so, the Council has delineated these areas. In terms of policies and rules and its duty to manage activities, the response by the Council could best be described as a “light touch” — no specific rules apply to activities in the coastal environment area delineated in the planning maps over and above what is provided in the general zone provisions and the assessment matter for restricted discretionary activities, or specific provisions related to Lyttelton Port.

[25] We note Policy 1 of the NZCPS recognises that the extent and characteristics of the coastal environment varies from region to region and locality to locality, and that it provides a list of what the coastal environment includes, but is not exhaustive. The Council has identified in its Section 32 report the use of a multi-criteria analysis to determine the landward extent of the coastal environment,¹⁴ which was further addressed in evidence. This was not challenged by any expert, and it was accepted by Mr Rough, expert landscape architect for the Crown, that “[t]he maps show a generally pragmatic line in regard to the coastal environment’s inland extent and, furthermore, the coastal environment as delineated encapsulates the importance attached to areas close to the sea/land interface”.¹⁵

[26] We further received, in closing submissions from the Council, a further assessment for two areas that were re-considered following submissions at the hearing, in relation to Mr Edward Aitken and Ms Jan Burney.¹⁶

¹³ Mr Edward Aitken (FS5021) and Ms Jan Burney (7916).

¹⁴ Section 32 Chapter 19 Coastal Environment, Page 6 at 1.3.3

¹⁵ Third statement of evidence of Peter Rough on behalf of the Crown, Stage 3: Coastal Environment, 15 February 2016.

¹⁶ Above, n 13.

[27] Mr Aitken presented his submission to us in relation to his property at Holmes Bay, which sits within the wider Pigeon Bay. Mr Aitken sought to have the area delineated as coastal environment reduced, primarily in relation to his house in Holmes Bay. Prior to the hearing, Ms Yvonne Pflüger, a landscape architect for the Council, agreed that some of the line could be adjusted to exclude cropping areas within the site. Mr Aitken discussed his previous experience seeking consent for marine farms in Pigeon Bay. He remained concerned that the identification of the coastal environment line could potentially cause an extra barrier in future applications for consent.¹⁷

[28] In relation to Mr Aitken's rural property, we are satisfied that the Council has taken an objective and consistent approach in relation to its analysis of what it considers to be the coastal environment for the purpose of giving effect to the NZCPS. We accept Mr Aitken's request in part, to the extent that the amendment of the coastal environment line has been agreed with the Council. We have no expert evidence that challenges the Council's revised position, and on the balance of the evidence we accept that those areas so delineated are the most appropriate for implementing the objectives of the plan, and the higher order planning documents.

[29] The sites Ms Burney submitted on, at 3 and 5 Beacon Street, Brooklands, are located in the Specific Purpose (Flat Land Recovery) Zone. Ms Burney did not put forward any expert evidence, however, she expressed to us her concern in relation to potential impact of the coastal environment line on reinstatement of the two properties, and consenting and provision of infrastructure.¹⁸ In Decision 21, the Hearings Panel on that matter has provided for continued residential use in the Specific Purpose (Flat Land Recovery) Zone, generally in accordance with existing zoning (with the decision noting some key differences).¹⁹

[30] As part of the Council's closing legal submissions, we received a memorandum setting out a multi-criteria assessment for Brooklands, in response to Ms Burney's submission, which concluded that the line as drafted be retained.²⁰

[31] We acknowledge Ms Burney's request, and that for a lay person the construct of a district plan, and how some of the matters are arrived at, can be a difficult matter to navigate. However,

¹⁷ Transcript, page 73.

¹⁸ Transcript, pages 167–169.

¹⁹ Specific Purpose (Flat Land Recovery) Zone — Stage 3 at [27].

²⁰ Closing submissions for the Council, 22 March 2016, Attachment D.

we are satisfied that the delineation of the coastal environment for Ms Burney's sites is consistent with other sites in Brooklands, and along the Pegasus Bay coastline. We do not consider it appropriate to delineate the coastal environment on a site-by-site basis, particularly when the area is an 'environment' rather than a zone. As such, we decline the relief sought by Ms Burney to amend the coastal environment line at Brooklands.

[32] For Ms Burney's benefit, we note that there is no cross-reference to the coastal environment matters of discretion for restricted discretionary activities in the Specific Purpose (Flat Land Recovery) Zone. Reference should also be made to those activities that are provided for as permitted activities in Rule 21.11.2.2.1 in Decision 21.

[33] Turning to the provisions, we accept the submission of the Crown that it is appropriate to include a policy that recognises that the extent of the coastal environment varies according to the dynamic nature of the values, processes and qualities present. This is evident in the delineation of the coastal environment line boundary and the evidence before us. It also gives effect to Policy 1 of the NZCPS, which states:

Policy 1 Extent and characteristics of the coastal environment

- (1) Recognise that the extent and characteristics of the coastal environment vary from region to region and locality to locality; and the issues that arise may have different effects in different localities.

[34] While useful for providing certainty for the application of the restricted discretionary assessment criteria, we do consider that, on enquiry and after an application has been received, a proposal may be found to either have effects on coastal environment values, or following proper consideration may be found to be located within the coastal environment.

[35] Notwithstanding our agreement with the Crown's arguments, we prefer the drafting proposed by the Council in closing. The Council proposed that the first part of the Crown's draft policy be retained as follows:²¹

9.6.2.3 Extent of the Coastal Environment

- a. Recognise that the landward extent of the coastal environment varies according to the dynamic nature of the values, processes and qualities present.

²¹ Closing submissions for the Council, 22 March 2016

[36] The Council then proposed amending Policy 9.6.2.1 so that the policy relates to effects on the coastal environment, not just effects of activities within the coastal environment, as set out below:

9.6.2.1 Effects of aActivities ~~in~~ on the Coastal Environment

- a. Ensure that subdivision, use and development ~~within the coastal environment~~ is of a scale and located to maintain and protect the values of the coastal environment, including:

...

[37] We prefer that approach because the policy is appropriately widened: it provides guidance to a decision-maker that even if a proposal is located outside of the coastal environment as delineated in the Plan, scale and location are important; and that it is the values of the coastal environment that are to be maintained and protected. This provides better guidance than simply stating that activities may have effects on coastal values. It also better gives effect to the NZCPS, which states:

Policy 4 Integration

Provide for the integrated management of natural and physical resources **in** the coastal environment, **and activities that affect the coastal environment**. [our emphasis]

[38] By providing that guidance, we consider that the drafting proposed by the Council is the most appropriate means of achieving Objective 9.6.1.1 which seeks to enable social, cultural and economic wellbeing and health and safety, while maintaining and protecting the values of the coastal environment.

[39] We find the provisions, as amended by our decision, and delineation of the coastal environment to be appropriate for implementing the objectives and policies of the Plan and that they properly give effect to the higher order planning documents.

Access

[40] Mr Tim Ensor, planner for the Crown, sought in his evidence a change to Objective 9.6.1.2 (previously Objective 9.4.1.2). Objective 9.6.1.2 seeks the outcome of providing access in places or forms which are compatible with public safety and the sensitivity of the receiving

environment. In effect, Mr Ensor sought that “provide” be augmented with “maintained or enhanced”.

[41] Ms Ferguson responded in her rebuttal evidence that the wording was discussed at mediation and it was agreed that the wording in the Te Rūnanga o Ngāi Tahu/Ngā Rūnanga (‘Ngāi Tahu’) submission should be included.²² Mr Winchester in closing confirmed that, while the Council accepted the merits of the submission, there may be submitters that did not make submissions on the objective at the hearing. The Crown also responded in its closing that it had not agreed to any specific wording, and submitted that the Panel is entitled to formulate its own view, having regard to the Higher Order Documents and evidence.²³

[42] We do not think that the change, while important, is of great significance, but we do agree with Mr Ensor, whose evidence was available to all parties prior to the hearing, that the proposed changes better reflect Part 2 of the RMA, the NZCPS and the Canterbury Regional Policy Statement (‘CRPS’). We understand the concern of the Council that it does not wish to step back from a mediated outcome, but we are also conscious of our duty under s 32 to ensure that objectives are the most appropriate way to achieve the purpose of the RMA, and that we must give effect to both the NZCPS and the CRPS. We do not consider there are any issues as to process nor that any party would be prejudiced, given all of the evidence was available to all parties prior to the hearing.

[43] As such, we agree to the changes sought by the Crown and this is reflected in the Decision Version.

Strategic objectives

[44] Ngāi Tahu raised in its opening legal submissions²⁴ that there have been ongoing discussions between Ngāi Tahu, the Crown and the Council regarding an additional strategic direction for water quality that would expressly refer to the coastal environment, to be inserted as Objective 3.3.16. The Council advised in closing that those discussions were continuing, and that in the interim, placeholders have been inserted into the text of the Revised Version of the coastal provisions so that further changes can be inserted once agreement has been reached

²² Rebuttal evidence of Shirley Ferguson on behalf of Christchurch City Council, 22 February 2016, at para 4.11.

²³ Closing submissions for the Crown for the Coastal Environment Hearing, 15 March 2016, at para 3.3.

²⁴ Opening legal submission on behalf of Te Rūnanga o Ngāi Tahu and Ngā Rūnanga, 26 February 2016, at para 21.

as part of the Natural and Cultural Heritage proposal. We address this matter in our Decision 51: Ngāi Tahu Values.

Notification of coastal matters to Ngāi Tahu

[45] Ms Yvonne Legarth raised the matter of notification in her evidence.²⁵ Ms Legarth concluded that where a plan includes a restricted discretionary activity rule and a matter of discretion includes consideration of cultural values, a requirement to notify the relevant rūnanga could be included in the rule to ensure relevant information is provided that assists with decisions on consents.

[46] Both Mr van Mierlo and Mr Winchester recorded that these matters would be resolved as part of further work being undertaken as part of the Natural and Cultural Heritage proposal, and Te Rūnanga o Ngāi Tahu's proposal for an additional section 9.5 to that chapter.²⁶

[47] No changes are made in relation to this decision.

Management of baches

[48] The management of the baches at Taylors Mistake and Boulder Bay have a long history, spanning a number of Environment Court and other decisions. In part, a significant issue has been the fact that they constitute a private use of Council-owned land. None of the baches has a licence to occupy this public land, however, the Council has been in the process of reviewing this arrangement. This is a matter that is outside our jurisdiction and our decision should not be seen as determinative as to the appropriateness or otherwise of licensing the baches.

[49] A comprehensive history up until 2002 is set out in an earlier Environment Court decision,²⁷ which resulted in the scheduling and retention of a number of baches, and removal of the balance. The baches to be retained were always subject to appropriate licensing being granted, and the Environment Court was careful not to make any judgement on the licensing arrangement or existing use rights. Ms Oliver elaborates on some of the matters occurring since that decision, including ongoing negotiation with the Council with regard to licences to

²⁵ Evidence in chief of Yvonne Legarth, 15 February 2016, at paras 44–55.

²⁶ Closing submissions for Te Rūnanga o Ngāi Tahu, 16 March 2016, at paras 13–14; closing submissions for the Council, 22 March 2016, at para 4.15.

²⁷ *Save the Bay Limited v Christchurch City Council* [2002] NZEnvC 159 at [21]–[56].

occupy the road reserve, and the issue of 14 Existing Use Rights Certificates on 15 November 2011 in relation to those baches that were to be removed.²⁸

[50] The Council had largely reached agreement to a framework with the Taylors Mistake bach owners,²⁹ except in relation to Policy 18.1.10, which we address below.

[51] Mr Snoep, a submitter who appeared before us, has been party to a number of proceedings in relation to the Taylors Mistake baches. He owns a house at Taylors Mistake behind baches 48 and 49. The Council summarised in its closing that “Mr Snoep accepted at the Hearing that management of the Baches and their environmental effects is **required** in the pRDP” (our emphasis).³⁰ This is perhaps not an entirely fair representation, and the following excerpt is set out from the transcript:

MR WINCHESTER: So, then in principle you have got no issue with putting in place a planning framework that deals with the fact and the reality of these baches and their environmental effects. Is that correct?

MR SNOEP: That would be acceptable, yes.

[52] Mr Snoep accepted that he had no issue with the inclusion of a framework, but not that it is required.

[53] Notwithstanding the above, we consider that a management framework in the district plan is appropriate to deal with the management of the open space resource and the impact of activities that occur within it, on the environment. We do so, because the purpose of a district plan under s 72 RMA is to assist territorial authorities to carry out their functions to achieve the purpose of the Act, and the functions under s 31(1)(a) and (b) include the establishment of objectives, policies and methods to achieve integrated management of the effects of use, development or protection of land and associated natural and physical resources of the district, and the control of actual or potential effects of the use, development, or protection of land.

[54] Given this, we turn to the provisions. We consider that a prohibited status, tied to the total number of baches, is appropriate. We agree with the submissions made by Mr Winchester that this provides greater certainty of outcome. No resource consent can be sought to exceed

²⁸ Evidence in chief of Sarah Oliver, 5 February 2016, at 4.1–4.11.

²⁹ Taylors Mistake Association, Taylors Mistake Association Land Company Limited, M Slemint/Taylors Mistake Bach Owners and D Hill (submissions 2128, 2134, 2192, 3525, 9094 and 9095).

³⁰ At para 6.6.

the limitation. This position was supported by the Taylors Mistake bach owners.³¹ With regard to the draft wording, we have amended it to ensure that it addresses an activity, which is the construction of an additional bach.

[55] In relation to the Council’s proposed restructuring of its RD4 and RD5 activities in Table 18.7A.2.3 of the Revised Proposal, and given that new baches are provided for as a controlled activity, we concur that the structure in the Council’s Revised Version is clearer for users of the Plan and consistent with the approach in the remainder of the Plan. The amendments made to Table 18.7A.2.3 better implement Strategic Objective 3.3.2 of the Plan. Those changes are reflected in our Decision Version.

[56] The last remaining matter of contention for the Taylors Mistake bach owners is in relation to Policy 18.1.10. Policy 18.1.10 provides 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. In the policy, the reasons that they are removed are specified as potentially including risk from hazards; that they impact on, or to otherwise improve recreational public access; or to restore the natural character values of the coastline. The Taylors Mistake bach owners seek deletion of the reference to “impact on or to improve recreational public access”, which was reconfirmed in their closing legal submissions.³² They do so on the basis that Mr Rodney Chambers and Ms Oliver recorded in their evidence that none of the existing baches impede general access in and around the Taylors Mistake Bay.

[57] Mr Bruce Hill appeared as a witness for the Taylors Mistake bach owners. While his initial evidence held that he was an expert planning witness, he acknowledged that he was conflicted by his parents’ ownership of a bach, and that he was representing his brother, a submitter. However, Mr Hill was helpful in his answers to counsel and the Panel. He acknowledged that if the policy was modified to remove the reference to removal of a bach because of its impact on, or to improve public access, that it could make it more difficult for an existing bach owner to relocate to the bach overlay.³³ Mr Hill also agreed that while access was not currently a problem, which we acknowledge is in the evidence of Ms Oliver and Mr

³¹ Closing legal submissions on behalf of Taylors Mistake Association, Taylors Mistake Association Land Company Limited, M Slemint/Taylors Mistake Bach Owners and D Hill, 14 March 2016, at para 9.

³² Ibid at para 6.

³³ Transcript, page 149, line 33.

Chambers, he also agreed that this could become an issue in the future, as set out in the following exchange with Mr Daysh:

MR DAYSH: Is that like a flat road, could that be formed or is that one of these paper roads that is - - -

MR HILL: I am not an engineer but I would assume that where the road is that is flat. I consider the remainder and a few over in front of Otto Snoep's bach are on flat terrain, the rest of it is they are at the base of cliffs and it could not be formed.

MR DAYSH: Could be formed?

MR HILL: I would say those ones under the base of the cliff could not be formed.

MR DAYSH: So as part of a licence agreement or future negotiation is that area which the paper road could be formed or used for public access?

MR HILL: It is flat terrain so I assume it could be, yes.

MR DAYSH: So therefore do you not agree that the impact on improvement of public access is a relevant policy consideration?

MR HILL: Yes, on consideration I do, yes.

[58] We also note that Ms Oliver, in response to questions from Mr Neill and Mr Daysh, supported retaining the reference to access in Policy 18.1.10.³⁴

[59] Having considered all of the evidence, we agree that the reference should be retained. Deleting it would have no impact on the function of the policy, which is to provide for a new bach area at Taylors Mistake to enable the relocation and/or replacement of existing baches. The reasons for relocation or replacement is an inclusive list, not exclusive. So even if the wording was removed, it would not inhibit the Council, in the future as part of its licensing arrangement, considering whether access was a relevant issue for consideration as part of issuing a licence to occupy. There may be circumstances that change in the future, such as erosion and sea level rise, and the purpose of that second part of 18.1.10 is to acknowledge what those factors *may* encompass.

[60] In terms of our evaluation of the policy, it is appropriate to recognise access in light of the amendment proposed to Objective 18.1.1a(viii) which was accepted by all parties and seeks the following outcome:

³⁴ Transcript, pages 127–128.

18.1.1 Objective 1 – Provision of open space and recreation facilities

a. A network of open spaces and recreation facilities that:

...

(viii) maintains and enhances public access to and along the Coast.

[61] Even taking into account Policy 18.1.9 which directly addresses access, we consider the reference in Policy 18.1.10 also better recognises and provides for s 6 (d) of the RMA, being the maintenance and enhancement of public access to and along the coastal marine area. Similarly, we find that it also better gives effect to Policies 18 and 19 of the NZCPS which both refer to future planning and identifying opportunities to maintain, enhance or restore public walking access. We decline the change sought by the Taylors Mistake bach owners to delete the reference to recreational public access in Policy 18.1.10.

Amendments to previous decisions

[62] The restructuring of the proposal has resulted in a number of changes to references in other chapters for which we have already issued a decision. The Council provided a table in its closing legal submissions,³⁵ noting references it had identified in other chapters that refer to coastal provisions. These amendments have been made as part of the chapters included with Decision 51: Ngāi Tahu Values at Schedule 2 in accordance with our powers under cl 13(5) and (6) of the Order.

General drafting matters

[63] There are a number of minor drafting amendments that we have made to ensure that the proposal and its provisions are consistent with decisions on other chapters, and implements Strategic Objective 3.3.2.

[64] These include the following changes:

(a) amendments to the introduction sections for Chapter 18 and Chapter 9;

³⁵ Provided as Attachment C and noted in para 3.3 as examples of required amendments

- (b) deletion of placeholders in the policies and assessment matters in relation to Strategic Objective 3.3.16, for which no amendments have been proposed;
- (c) amendment to note that the Ngāi Tahu Claims Settlement Act 1998 Statutory Acknowledgement Area ‘Te Tai o Mahaanui’ applies to the coastal marine area, rather than the coastline;
- (d) recognition in the introduction for Chapter 9 that discretionary or non-complying activities within, or affecting, the coastal environment will be assessed against the coastal environment objectives and policies, consistent with Policy 9.6.2.1;
- (e) formatting change to Objective 9.6.1.1 so that it is phrased as an outcome;
- (f) deletion of the advice note that was proposed after 9.6.2.1;
- (g) deletion of Policy 18.1.12 b., which referred to a policy in subchapter 9.2 which was deleted by Decision 38;
- (h) amendment to the introductory sections for the activity status tables and how to use the rules section to make consistent with the remainder of the plan;
- (i) provision for the relocation of a bach to the Coastal Bach Overlay as a controlled activity;
- (j) deletion of non-complying activities that were duplicated elsewhere in the non-complying activity provisions;
- (k) general formatting to allow for additional controlled and permitted activity statuses in the Open Space Coastal Zone;
- (l) amendment to the phrasing of the prohibited activities in the Open Space Coastal Zone so that the provisions apply to a use of land;
- (m) clarification that Rule 18.6A.2.1 applies only to the Coastal Bach Overlay in Appendix 18.8.4;

- (n) deletion of proposed assessment matter d. and e. in relation to baches within Taylors Mistake, Hobsons Bay and Boulder Bay, as they were not referenced in the Revised Version; and
- (o) integration of the Open Space Coastal Zone into Chapter 18.

[65] We are satisfied that the changes we have made are appropriate for reasons of consistency and clarity, and are of minor effect or less.

Definitions

[66] In its closing legal submissions,³⁶ the Council included six definitions in its marked up and clean versions as follows:

- (a) Bach;
- (b) Coastal recreation activities;
- (c) Coastal recreation facilities;
- (d) Recreation facility;
- (e) Customary harvesting; and
- (f) Marine structures.

[67] These were not contentious and were not identified by the Council as being outstanding matters. However, we are cognisant that the Panel who heard the Stage 2 and 3 Definitions proposal has requested further information in relation to recreation based activities.³⁷ As a matter of precaution, we do not make any decision on ‘coastal recreation activities’, ‘coastal recreation facilities’ or ‘recreation facility’ at this time.

³⁶ Closing legal submissions for the Council, 22 March 2016.

³⁷ Minute – Directions following the hearing of the Stage 2 and 3 Definitions Proposal, 20 April 2016, at para 15.

[68] As the marked up version records, the matter of ‘customary harvesting’ was addressed in the Open Space hearing. We do not address that definition in this decision.

[69] Given their non-contentious nature, we accept the changes to ‘bach’ and ‘marine structures’ and include those definitions in our Decision Version, and have taken into account amendments arising from the Council’s supplementary closing submissions on the Definitions proposal.³⁸

OVERALL EVALUATION AND CONCLUSIONS

[70] In reaching our decision, we have considered all submissions and further submissions made on the Notified Version, and had regard to the Council’s recommended acceptance or rejection of those submissions, as filed. Except to the extent that those recommendations have been modified by this decision, we accept the Council’s ‘Accept/Accept in Part/Reject Table’. Based on our evidential findings, we are satisfied that the Decision Version, as amended from the Revised Version, is the most appropriate for achieving the purpose of the RMA and implementing the Higher Order Documents. It is also best suited to enable recovery and meet the long-term requirements of greater Christchurch.

[71] As a result, we record that the Notified Version is amended by our Decision Version, as set out in Schedule 1 to this decision in relation to Sub-chapter 9.6 Coastal Environment, and Schedule 2 of Decision 51: Ngāi Tahu Values in relation to the Open Space Coastal Zone. The placeholder for the references to the Residential Bach Zone in Chapter 14 are deleted.


[72] We direct the Council to file planning maps with the revised coastal environment line, the Open Space Coastal Zone, and Appendix 18.8.5 as amended by our decision, within 10 working days of the release of this decision. Any party seeking minor corrections to this decision are directed to make an application for corrections within 10 working days. A second decision will then issue attaching the planning maps and Appendix 18.8.5, and addressing any minor corrections sought.

³⁸ Supplementary closing legal submissions for the Council for Chapter 2 Definitions and application for Panel to use clause 13(6)(a) of the Order in Council to revisit earlier decisions, 2 September 2016.

For the Hearings Panel:



Hon Sir John Hansen
Chair



Mr Stephen Daysh
Panel Member



Mr Alec Neill
Panel Member



Mr Gerard Willis
Panel Member

SCHEDULE 1

Changes our decision makes to the following chapters.

Chapter 9 Natural and Cultural Heritage

 9.6 The Coastal Environment

Chapter 18 Open Space Coastal Zone (refer to Schedule 2 of Decision 51)

Chapter 19 The Coastal Environment – DELETED

Chapter 2 Definitions

Chapter 9

The notified proposal is amended by our decision as follows.

Text in red indicates decision text arising from Decision 51: Ngāi Tahu Values.

9.6 Coastal Environment

9.6.0 Introduction

This introduction is to assist the lay reader to understand how this chapter works and what it applies to. It is not an aid to in to interpretation in a legal sense

The coastal environment is a continuous, uninterrupted area that adjoins the coastal marine area boundary and covers urban and natural environments. The landward extent of the coastal environment along the district's coastline is identified on the planning maps.

The coastal environment has been identified though multi-criteria analysis assessing the following:

- a. natural coastal character;
- b. coastal landscape and ecology;
- c. coastal natural hazards;
- d. interaction with Coastal Marine Area;
- e. public access and recreation;
- f. heritage values; and
- g. practical and reasonable approach.

The coastal marine area around the Christchurch District is acknowledged in the Ngāi Tahu Claims Settlement Act as a Statutory Acknowledgement Area 'Te Tai o Mahaanui'. The coastal environment is highly valued by Ngāi Tahu mana whenua and has traditionally, and continues to, provide for settlement and mahinga kai. Landuse activities can impact the quality of the coastal environment, which is expressed in the whakataukī 'ki uta ki tai', 'from mountains to the sea' — all things are connected.

Access to mahinga kai and other areas of significance to Ngāi Tahu mana whenua is of fundamental importance to exercising kaitiakitanga. Due to historical occupation and the abundance of resources along the coastline, there is a depth of connection for Māori with the coastal environment.

The purpose of this section is to provide the overarching direction and balance between enabling people and communities to provide for their social, economic and cultural wellbeing and their health and safety while maintaining and protecting the values of the coastal environment. It includes objectives, policies and matters of discretion but no activity status rules. The matters of discretion are referenced by rules in other chapters.

Activities located within, or affecting, the coastal environment and requiring discretionary or non-complying resource consent approval under zone or district-wide rules applying across the district, will be assessed against the coastal environment objectives and policies. Restricted discretionary resource consents, where appropriate, cross-reference to the matters of discretion for the coastal environment.

The Lyttelton Port Recovery Plan inserted the Specific Purpose (Lyttelton Port) Zone into the district plan, and was developed to give effect to the New Zealand Coastal Policy Statement 2010. The coastal environment objectives, policies or matters of discretion do not apply to the Specific Purpose (Lyttelton Port) Zone.

The provisions in this chapter give effect to the Chapter 3 Strategic Directions Objectives.

9.6.1 Objectives

9.6.1.1 Objective – The coastal environment

- a. People and communities are able to provide for their social, economic and cultural wellbeing and their health and safety, while maintaining and protecting the values of the coastal environment, including:
 - i. indigenous biodiversity and the maintenance of the ecological function and habitats;
 - ii. natural features and landscapes;
 - iii. natural character;
 - iv. historic heritage;
 - v. Ngāi Tahu cultural values;
 - vi. visual quality and amenity; and
 - vii. recreation values.

9.6.1.2 Objective – Access to and along the coast

- a. Public access to and along the coastal marine area is maintained and enhanced by providing access in places and in forms which is compatible with public health and safety, sensitivity of the receiving environment and protecting the natural, historic and Ngāi Tahu cultural values of the coastal environment.

9.6.2 Policies

9.6.2.1 Policy - Effects of activities on the coastal environment

- a. Ensure that subdivision, use and development is of a scale, and located, to maintain and protect the values of the coastal environment, including:

- i. indigenous biodiversity and the dynamic, complex and interdependent processes of ecosystems;
 - ii. natural features and landscapes;
 - iii. natural character, including the natural integrity and functioning of contributing and associated coastal processes;
 - iv. historic heritage, recognising that historic heritage may span the line of mean high water springs;
 - v. Ngāi Tahu cultural values;
 - vi. visual quality and amenity values; and
 - vii. recreation values.
- b. Recognise and provide for the operation, maintenance, upgrade and development of strategic infrastructure and utilities that have a technical, locational or functional need to be located in the coastal environment.

9.6.2.2 Policy - Access to and along the coast

- a. Maintain existing public access to the coastal marine area and provide additional public access where:
- i. there is demand for public access;
 - ii. there is an acceptably low risk of danger to public health or safety;
 - iii. public access does not compromise the safe and efficient operation of jetty facilities at Lyttelton, Akaroa and Diamond Harbour; and
 - iv. public access is in a form and at a level compatible with the sensitivity of the receiving environment, including farming operations and any sites of particular ecological or cultural sensitivity.
- b. Facilitate access by Ngāi Tahu mana whenua to and along the coastal marine area for mahinga kai and other customary uses.

9.6.2.3 Policy - Extent of the coastal environment

- a. Recognise that the landward extent of the coastal environment varies according to the dynamic nature of the values, processes and qualities present.

9.6.3 Rules - Matters of discretion

9.6.3.1 Effects of activities on the coastal environment

- a. The location, scale and intensity of the activity and/or buildings and the extent to which the proposal will adversely affect the values of the coastal environment, including:

- i. indigenous biodiversity and ecosystems;
 - ii. natural character, natural landscapes and features, visual qualities and amenity values;
 - iii. historic heritage; and
 - iv. Ngāi Tahu – mana whenua cultural and traditional associations, ‘Te Tai o Mahaanui’ statutory acknowledgement area and identified Sites of Ngāi Tahu Cultural Significance.
- b. Whether the proposal will maintain or enhance public access to and along the coast, including:
- i. the potential for use and development to adversely affect existing customary access or public access to and along the coast; and
 - ii. whether the location of public access has the potential to adversely affect public health and safety, Ngāi Tahu mana whenua, cultural values, including effects on sites of Ngāi Tahu cultural significance, mahinga kai, riparian vegetation, water quality and connections between fresh water resources, amenity values associated with freshwater, the coastal environment and their margins.
- c. Whether any mitigation measures are proposed, including planting and restoration of natural character.
- d. Extent to which the proposed subdivision, use or development is likely to result adverse cumulative effects on the values of the coastal environment.
- e. Whether the proposal is susceptible to the effects of coastal hazards.
- f. Whether the proposal supports coastal recreation activities and/or facilities.
- g. The contribution the proposed subdivision, use or development activity makes to the social, cultural and economic wellbeing of people and communities.
- h. Within a Site of Ngāi Tahu Cultural Significance identified in Appendix 9.5.6, the matters set out in Rule 9.5.5 as relevant to the site classification:
- i. 9.5.5.1 – Wāhi Tapu/Wāhi Taonga, Mahaanui Iwi Management Plan Silent Files and Kaitorete Spit;
 - ii. 9.5.5.2 – Ngā Tūranga Tūpuna; and
 - iii. 9.5.5.3 – Ngā Wai.

Advice Note:

1. With respect to Ngā Wai Te Tai o Mahaanui reference should be made to Objectives 9.5.2.1 – 9.5.2.3 in Sub-chapter 9 Ngāi Tahu values and the natural environment, and Policy 9.5.2.6 Ngā Wai.

Chapter 2 Definitions

Include the following definitions:

Bach

in relation to the Open Space Chapter, means a building used for temporary residential occupation where the residents or the principal resident has an alternative permanent place of fixed abode.

Marine structures

in relation to the Open Space Coastal Zone, means structures in coastal areas owned and maintained by the Council for public recreation and commercial purposes. It includes New Brighton Pier, boat ramps and jetties.

SCHEDULE 2**Table of submitters**

This list has been prepared from the index of appearances recorded in the Transcript, and from the evidence and submitter statements shown on the Independent Hearing Panel's website.

Submitter Name	Nº	Person	Expertise or Role if Witness	Filed/ Appeared
Christchurch City Council	3723	Shirley Ferguson	Planner	Filed/appeared
		Sarah Oliver	Planner	Filed/appeared
		Andrew Craig	Landscape architect	Filed/appeared
		David Hutt	Building advisor	Filed
		Don Macfarlane	Engineering geologist	Filed
		Fiona Wykes	Conservation architect	Filed
		Dr Ian Wright	Geotechnical engineer	Filed
		Rodney Chambers	Park Ranger (access)	Filed
Crown	3721	Tim Ensor	Planner	Filed/appeared
		Peter Rough	Landscape architect	Filed/appeared
Te Rūnanga o Ngāi Tahu	3722, FS5059	Yvonne Legarth	Planner	Filed/appeared
South Brighton Residents Association, Empowered Christchurch	3945, 8296	Hugo Kristinsson		Filed/appeared
Otto Snoep	2067, 7278	Otto Snoep		Filed/appeared
Transpower NZ Limited	3494	Ainsley McLeod	Planner	Filed
Karina Hay	3281, 8158	Karina Hay		Filed/appeared
Taylors Mistake Association, Taylors Mistake Association Land Company, M Slemint/Taylors Mistake Bach Owners, D Hill	2192, 3525, 2128, 2134, 9094, 9095	Bruce Hill		Filed/appeared
		Jim Turpin		Filed/appeared
Edward Aitken	FS5021	Edward Aitken		Appeared
Sue Carbines	9091	Sue Carbines		Appeared
Jan Burney	7916	Jan Burney		Appeared