

Submission on District Plan Change (Coastal Hazards).

Summary

We support the stated intent of the plan change. We have significant reservations about whether the changes will deliver the intended outcomes. There are two related issues:

Based on previous related situations where the stated intent(s) of a coastal hazard process were not delivered by the detail of the Plan content, we have concerns that with the current proposed policies and rules a similar unintended situation may eventuate. These unintended outcomes are further facilitated by a legal interpretation of The Council of the conditions leading to “avoid” within the NZCPS.

A third issue potentially relevant in the future concerns the impacts of these Plan Changes on social inequity (*i.e.* a “just transition”). Council may consider scenario modelling of the social impacts of the proposed Plan Changes should upcoming legislation fail to adequately address this area.

Submitter Context

For us, (BOEE), we are interested in how we adapt locally and nationally to climate change. This District Plan change is necessary as a pre-first step in that process for Christchurch. This change is to ensure that the District Plan for Christchurch’s coastal areas is consistent with, and gives effect to, the Coastal Policy Statement, (NZCPS) as well as necessary harmonization of the provisions in different parts of coastal Christchurch. After this has been completed, as part of the city-wide adaptation programme the adaptation conversations with the coastal communities can begin.

Christchurch is early ‘off the blocks’ with their adaptation process, so others will be watching. Therefore, how this adaptation process is run and what lessons can be learned from it (positive or negative), potentially has implications for the rest of the country as local governments nationwide think about their own adaptation plans and processes.

Consistent with its Charitable Purposes, BOEE is acting to extract the maximum learning from these pre-adaptation processes such that the overall process improvements.

Introduction

Our identification of the intent(s) of this plan change are:

- a. Consistency of the District Plan with the NZCPS and RPS.
- b. Management of Development in Coastal areas
- c. Enabling people and communities to provide for their social, economic, and cultural well-being.

Previously, stated intentions of Council in the Coastal Hazard areas led to unintended outcomes and effectively prevented almost all residential developments in some areas. This outcome did not support individual or community wellbeing. This led to an Independent Hearing Panel being convened which ultimately developed the Residential Unit Overlay (RUO) as a device to mitigate the issues in the affected Coastal Hazard Areas.

Talking to residents, this solution, (the RUO) seems to have worked for them, and by avoiding development or mitigating the effects of development in ways that seem to be consistent with the spirit of the NZCPS and to protect both well-being and safety of coastal residents as well as beginning the adaptation process. We understand that as part of the proposed Plan Changes, the RUO along with some other hazard zones in the area will be rescinded to give a 'clean slate' for adaptation planning.

This history may indicate that The Council's understanding and interpretation does not fully comprehend the nature of Natural Hazards in terms of the scale and timescale of evolving risk: *i.e.* the effects of a coastal hazards (*e.g.* sea-level rise), are not necessarily gradual, but instead in some cases they do not affect a property or community (at all) until the day when (abruptly) they do. Yet throughout the whole period before the property/community is directly affected, often many decades, restrictions in place hinder communities and adaptive actions that the property owners may wish to take.

To a degree, the current National Guidance resolves some of the temporal uncertainty issues around new development by the use of trigger-points, but currently these are not developed or agreed for existing developments.

Issues

We recognize that these Coastal Hazard Plan Change proposals raise several issues, one of the most significant being that coastal residents may have very different risk appetites to others. However, in this submission we will engage only two issues, both of which have the potential to undermine the realization of the intents of this plan change:

- a. The collision of *a priori* policies which effectively disable rules 'lower down the tree'
Policy 5.2.2.5.2 "*Avoid increasing risk from Coastal Hazards*" needs redrafting. It does not seem to sit easily with other policies (*e.g.* 5.2.1.2 which imply a balance "*managed to an acceptable level*"). As an overarching policy it is too broad and we suggest too complex. We can foresee that particularly (ii) "*there are no other reasonable alternatives available*" in probably any case a '*reasonable alternative*' could be identified away from a coastal hazard area.
- b. The interpretation of the NZCPS.

We appreciate the need of both The Council and the coastal residents to understand the situation in which they find themselves. We also understand the legal requirement on The Council *i.e.* that the Christchurch District Plan must give effect to the NZCPS, this means to positively implement it. This includes policy 25(b):

“...avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards...”

Hence even if for this reason only, the District Plan change is a good thing. However, there is a growing debate on interpretation of aspects of the NZCPS in terms of the King Salmon Supreme Court case¹ and changes post this case.

- i. The King Salmon Supreme Court case identified that under certain conditions, “avoid” can be taken to mean ‘not allow’ or ‘prevent’ in relation to things that would increase the risk of adverse events. This seems to be the way that CCC planners are interpreting their duty under the NZCPS, *e.g.* not allowing house extensions. The underlying assumption in these “avoid” (prevent) actions is of course that preventing (for example a house extension) is actually the lowest risk pathway and does not increase risk.
- ii. The next point uses real examples from a directly relevant situation: the way CCC planners have implemented the High Flood Hazard Management Area (HFHMA), where they are required to “avoid” (interpreted as prevent) any increase in risk. However, it is not hard to see examples where “avoid” (prevent) can increase (personal, hence) overall risk rather than decrease it. For example, in all of the following (real) examples...
 - a family extending their house to give a child their own room
 - a house-owner adding a bathroom down-stairs to save the resident grandmother having to go up-stairs, hence catering for her frailty and improving well-being.
 - a house-owner rebuilding an old and vulnerable house to make it safer or more resilient (*e.g.* raising floor levels or making it transportable)

...preventing these developments increases the personal stress on the people concerned, hence reduces their well-being (physical, emotional, and/or financial), and can increase inequity and risk. From a community perspective it can strangle the community by “avoiding” change or development, and hence reducing societal well-being, also increasing risk. (As an aside it is also worth noting under the LGA local government are required to support the wellbeing of their residents).

¹ Atkins, Majurey and Dawson () The King Salmon Decision (Supreme Court in Environmental Defence Society Inc v New Zealand King Salmon Company Limited [2014] NZSC 38) – a think piece for planners. New Zealand Planning Institute (NZPI). Available:

- Hence the first outcome is that a blanket “avoid” (prevent) is not necessarily the minimum risk pathway, “mitigate” or “remedy” may well present a lower overall risk
 - The definition of “avoid” meaning “prevent” hinges on the caveat in the King Salmon ruling that “avoidance” does not necessarily mean that all effects regardless of scale and time must be *avoided*, see below.
- iii. Coming back to the King Salmon case, “avoid” (meaning prevent) seems to be being used by CCC with regard to any and all risk, without reference to scale (or time), or particularly the caveat which essentially says that “avoidance” does not necessarily mean that all effects regardless of scale and time must be *avoided*.
 - iv. The nature of enhanced natural hazards as part of climate change is that the risk to property is zero or very minor often a long time into the future, until it is not. Hence having restrictions in place before they are needed is ineffective, needlessly burning value and strangling communities, see below under Process Scope and Focus.
 - v. Finally, after the King Salmon Supreme Court case, there was an RMA amendment which refers (6h) to the ...management of significant risks from natural hazards. This amendment post-dates the NZCPS and the Case, and therefore must add context to an interpretation of the degree of risk which is to be avoided.

c. Just Transition

A third issue not immediately relevant are the potential impacts of these changes on social inequity (*i.e.* a “just transition”). In the context of funding for adaptation to climate change we await the outcome of current law-making. However, should this not deliver the “just transition”, more responsibility may fall on Local Government. It might be prudent for Council to look at the social impacts of the proposed District Plan changes through a lens comprising this scenario.

In summary we believe that:

- The proposals as presented run a risk of not delivering the outcomes intended or stated.
- The CCC interpretation of “avoid” (prevent) from the King Salmon Supreme Court ruling is partial: it does not seem to capture the caveats to which the ruling is subject, the effects of the *post* King Salmon amendments.