Audit Report for the Christchurch City Council

By

Professor Peter Skelton CNZM; D.Nat.Res (Hon); LLB; FEIANZ

Introduction

By Letter dated 27 September 2018 (a copy of which is attached to this report as Appendix 1) I have been engaged by Dr Karleen Edwards the Chief Executive of the Christchurch City Council to complete an independent audit of the process leading to Decision 53 by the Independent Hearings Panel with respect to the Christchurch City District Plan Review.

I am currently an appointed Councillor on the Canterbury Regional Council and in that capacity I have an in depth knowledge of the Christchurch City Plan review processes including those of the Independent Hearings Panel. I was involved in the drafting of the Order-in Council that established the Panel.

However, for the purposes of this report I make it clear that I am undertaking this audit in my private capacity and not as a Regional Councillor.

As indicated in the Chief Executive's letter of engagement I have had free access to all relevant information including a large number of documents. I have also had the complete co-operation of the Christchurch City Council staff and I am

confident I have been able to make all the necessary inquiries to enable me to complete this audit.

Attached to this report as Appendix 2 is a list of the people I have interviewed either in person or by telephone for the purposes of compiling this report.

A draft of this report was sent to the people listed in Appendix 2 on 24 October 2018 and when finalising the report have taken into account all the comments on it that have been received by me.

Background

In the Land Use Recovery Plan established under the Canterbury Earthquakes Recovery Act 2011 Action 42 required the Christchurch City Council to carry out a review of its pre-earthquake district plan to assist recovery from the effects of the earthquakes in Christchurch City.

To facilitate this plan review the Government promulgated an Order- in- Council (OIC) on 7 July 2014. This modified the normal Resource Management Act statutory plan making processes and established a Hearings Panel whose members were to be appointed by The Minister for Earthquake Recovery and the Minister for the Environment acting jointly and after consultation with the City Council. The exception to this was the Chair of the Panel who was appointed by Clause 8(3) of the OIC. The first and in fact the only Chair was named in the OIC as The Honourable Sir John Hansen a retired High Court Judge. In due course the Deputy Chair appointed was

His Honour Judge John Hassan a Judge of the Environment Court.

The OIC also provided for the Panel's processes to hear submissions and further submissions on the proposed review and importantly to make final decisions on those submissions subject only to an appeal to the High Court on questions of law.

Three observations about the Panel processes relevant to my audit are now made.

The first is that although the City Council shared all the costs of the Panel, including the administration costs of its secretarial with the Crown, the Panel itself, was completely independent of the City Council for all purposes including the exercise of its final decision-making powers. Accordingly, it became known generally as the Independent Hearings Panel or IHP and that is how I will refer to it from now on in this report.

The second point is that Schedule 4 to the OIC contained a Statement of Expectations of the two Ministers referred to earlier, about what the replacement plan should articulate and achieve. This was an unusual provision and I note that expectation (h) reads "*set a clear direction on the use and development of land for the purpose of avoiding or mitigating natural hazards*"

The third point is that the OIC provided for the two Ministers to provide comments to the City Council BEFORE it notified plan review proposals for public submission.

The Panel's Decision 53

On 3 November 2016 the IHP (Chaired for this particular matter by Judge Hassan) issued decision 53 which addressed a number of issues relating to Chapter 5 of the replacement Plan and in particular residential land uses in natural hazards areas.

The Panel also included Ms Sarah Dawson (a planner) Mr John Illingsworth (a civil engineer) and Ms Jane Huria (a lawyer and Tangata Whenua representative).

Amongst other matters this decision addressed the question whether sea-level rise and other effects of climate change should be inputs into the High Flood Hazard Management Area (HFHMA) identified in Chapter 5 of the replacement Plan. It also addressed, as a follow on from this, whether the restrictions on the use, subdivision and development of residential land in the HFHMA were too onerous.

The first of these matters had been addressed earlier by the IHP in Decision 6 in more general terms but in this later stage 3 hearing there were challenges to the inclusion of sea-level rise as an input, from several submitters particularly those with interests in the eastern coastal parts of Christchurch City.

In particular the submitters were challenging the Council's proposal to include sea- level rise in the plan at a projected 1 metre increase over the next 100 years.

In the end the IHP found there was no need to revisit the conclusions it had reached about this matter in Decision 6 which meant that sea level rise at a predicted level of 1 metre over the next 100 years was affirmed as an input into the HFHMA.

In addressing the second issue the IHP considered, in particular, the restrictions the rules proposed by the City Council would have on residential areas in New Brighton, South Shore and Redcliffs. The rules for residential activities in these areas proposed by the City Council would have required those wishing to build new houses to obtain resource consent as a non- complying activity which, while not impossible, is usually quite difficult to obtain.

In a Minute issued by the IHP on 25 February 2016 it advised the parties to the Decision 53 hearing that it was considering alternatives to the non-complying activity rule regime particularly for areas potentially affected by the projected sea-level rise, with a view to distinguishing between the hazard that this might provide and the more immediate hazard that might follow from a more conventional flood situation with its attendant water velocity flow impacts.

The IHP made it very clear that it had not reached any conclusions about this matter but to assist it to do so it asked the City Council to provide it with a policy and rule package that could provide for a more enabling regime in an area it was considering identifying in the HFHMA by way of an overlay, as the Residential Unit Overlay (RUO). In a

subsequent Minute it also sought some mapping for the RUO.

In short, the IHP was signalling, without deciding, that it saw merit in the submissions of the coastal community and wanted to test that as an alternative to the stricter non-complying activity regime for the purposes of section 32AA of the RMA.

In making this request the IHP also expressly recognised that the tentative views it was expressing about an RUO were not accepted by the City Council and that in providing the policy and rule package and later the mapping, the City Council was doing so as a drafting service only and not as part of its own case.

The City Council planning witness who had given evidence in this matter already, provided the drafting for a policy change and a restricted discretionary activity rule, in supplementary evidence provided to the IHP and dated 20 May 2016.

The expert witness, Ms Ruth Evans, referred first to a series of RDA provisions contained in an attachment to her evidence that included changes to earlier draft RDA rules **AND** the new RDA rule for the RUO.

She then advised that the existing policy framework in Chapter 5, and in particular Policy 5.2.2.1(b), would require amendment to support the new RDA rule (see para 4.3 of her supplementary evidence).

She drafted an amendment to the policy that read as follows:

> In High Flood Hazard Management areas:
>
> (a) 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
>
> (b) In all other cases avoid subdivision, use or development where it will increase the potential risk to people's safety, well-being and property.

The wording outlined in red above shows the amendment that Ms Evans drafted although the word "avoid" was in the original Policy 5.2.2.1(b) as the opening word of that Policy.

This becomes important in what followed after Decision 53 was issued.

I note too at this point that in Decision 53, Policy 5.2.2.1(b) is renumbered as Policy 5.3.2.1(b) and is worded as above, but without the red amendment of the words "in all other cases" which precede "avoid".

In a second Minute (referred to above) and issued on 7 July 2016, following the conclusion of a reconvened hearing relating to Decision 53, the IHP directed the City Council to provide the mapping for the RUO; an update of the RDA rule to account for "concessions" Ms Evans had made during cross-examination and questioning at the resumed hearing; and a form of limited notification targeting those people Ms Evans indicated to be relevant should the IHP determine such a rule was appropriate. It had already indicated that

applications pursuant to this Rule should not have to be publicly notified.

A timetable was set for this to be done and for submitters and the City Council to provide closing submissions.

In a Memorandum of Counsel dated 15 July 2016 Mr James Winchester lead counsel for the City Council provided the required mapping and the further amended RDA Rule which was RD2 in the Restricted Discretionary activities Rule 5.4.6.3.

No reference was made in this memorandum to Policy 5.2.2.1(b) (later 5.3.2.1(b)).

But this is not surprising because the second Minute of the IHP did not seek any further advice on the amended Policy.

I note too at this point that the final Rule 5.4.6.3 (RD2), (which became Rule 5.5.6.2 (RD2)), provided for in Decision 53, further amendments have been made by the IHP which are in my view immaterial for present purposes and the provision for limited notification was deleted. The IHP decided that applications for resource consent pursuant to the RDA Rule should not be either publicly or limited notified.

In a further Memorandum of Counsel dated 19 July 2016 Mr Winchester provided the IHP with the City Council's final position on the proposed provisions for the Natural Hazard (stage3) hearing in an attached Appendix A. In paragraph 2 of this memorandum Mr Winchester stated:

"*The Council notes that the draft restricted discretionary activity rule that the Panel previously directed the Council to*

provide is not included in Appendix A. ***In addition the amendments to Policy 5.2.2.1 (b) in support of the draft discretionary rule*** *and references to it in Rule 5.4.6.4 NC2 and NC4 which was included in the revised proposal filed on 20 May 2016 are also not included. This is because the rule does not reflect the Council's final position on the Natural Hazards (stage3) proposal".*

I have added the emphasis myself to highlight that even at that late stage in the process the City Council made specific reference to the then Policy 5.2.2.1(b) AND its amendments making it clear that it was NOT part of the Council's case.

This would not have come as surprise to the IHP because it had at all times expressly allowed the City Council to reserve its position on the proposed policy and rule package for the RUO noting that it did not represent the City Council's position. But the important point is that once again the amended policy was drawn to the IHP's attention.

Finally, in his closing written submissions dated 27 July 2016 Mr Winchester said this at para5.10

" In addition while the Council provided a drafting service at the request of the Panel regarding a possible restricted discretionary rule framework for HFHMA areas the Council does not support a restricted discretionary rule for the construction of any new or replacement dwelling or addition to a dwelling on residentially zoned land in the HFHMA. In that respect the Council relies on the evidence of Ms Evans as to why a non -complying activity status remains the most appropriate approach"

In Decision 53 issued on 3 November 2016 the IHP made specific provision for the RUO and for an RDA Rule to apply to it in the form of Rule 5.5.6.2 RD2 already referred to. BUT it did not make any amendment to Policy 5.2.2.1(b) other than to renumber it as Policy 5.3.2.1(b). Indeed nowhere in Decision 53 is the policy even mentioned except in the Schedule attached to the decision under a heading:

5.3.2 Policy for managing risk of flooding

where it appears in its original form as an avoidance policy.

The IHP commences its discussion of this matter at para 93 on page 29 of the decision under a heading:

Whether the restrictions on the use, subdivision and development of residential land under the HFHMA is too onerous

Reference is made to the opposition to the notified provisions coming from the residents of New Brighton, Southshore, and Redcliffs being the people I have earlier referred to in this report as the coastal community.

Then on at para 102 on page 33 the IHP concludes that the characteristics of the risk for coastal communities such as those just mentioned, differ from those for other inland parts of the HFHMA which are also susceptible to velocity water risk. In my view this was a critical finding by the IHP.

The IHP then embarked on a lengthy discussion about how it had tested an RUO and RDA rule proposal as described earlier in this report and concluded that an RDA rule would be appropriate only for the RUO areas of New Brighton,

Southshore and Redcliffs. For the remaining parts of the HFHMA it confirmed the City Council's proposed non-complying activity status.

Then followed a further lengthy discussion about the appropriateness of the RDA rule in the context of the New Zealand Coastal Policy Statement and the Canterbury Regional Policy Statement (described as "Higher Order Documents") and the IHP concluded that there was nothing in these instruments standing in the way of adopting the RDA rule for the RUO areas.

In coming to this conclusion the IHP referred specifically to Ms Evans rule drafting concluding it was generally consistent with other RDA rules. It later concluded that there would be no need for any notification of applications for RDA consent and with what it described as "minor amendments" it determined that provision should be made for the Rule. This was duly provided for in the Schedule as Rule 5.5.6.2 RD2 as earlier referred to.

In Paragraph 122 on page 38 of its decision the IHP concluded its discussion of this particular matter in this way:

For those reasons being satisfied that it is the most appropriate for responding to the Higher Order Documents ***and achieving related objectives****, we have included in the Decision Version the modifications we have described to these rules of the Revised Version. Accompanying these, we have directed the Council to provide to us a related Appendix that depicts, in a map, the Residential Unit(y) sic Overlay to*

which the additional RDA rule (including non-notification) applies.

The emphasis above has been added by me. In my view those words demonstrate that the IHP was mindful of the planning "policy "context in which it was making this decision.

At the end of its decision on page 47 the IHP concluded in this way:

*The Council and any other party seeking that we make any minor corrections to this decision must file a memorandum for those purposes within **5 working days of the date of the decision.***

*We direct that the Council file **within 10 working days of the date of this decision:***

(a) An updated set of plan and overlay maps, reflecting this decision and for the purposes of our approval for inclusion in the CRDP; and

(b) An appendix to show by way of a plan, the Residential Unit Overlay area to which the related rule we have determined applies.

These requirements were fulfilled by the City Council. There were no requests for minor amendments and there were no appeals to the High Court on questions of law from this decision. Thus the provisions for the RUO and the RDA rule became operative parts of the Replacement District Plan

This brings me to the sequel to Decision 53 but before embarking upon that I repeat that nowhere in Decision 53 is there any reference to amending Policy 5.3.2.1(b) in consequence of providing for the RUO and the RDA rule. This, despite the specific references to it in Counsel's memorandum explaining the changes made to Ms Evans final evidence and its own specific reference to Ms Evans drafting evidence.

The Sequel to Decision 53

After Decision 53 was issued it fell to the City Council planners to start administering this part of the Plan as it was then written.

Without going into too much detail about this (because I do not think that is necessary for the present purpose), it became apparent to many of the residents in the RUO who were expecting to be able to obtain an RDA consent quite easily to build a new or replacement house on vacant land that the City Council's planning staff were taking a different view.

This view was that because the RDA rule did not have any policy support except in the form of an un-amended Policy 5.3.2.1(b), in considering that part of the RDA rule that refers to reducing the risk to people's safety, well-being and property the un-amended Policy meant that such developments should be avoided.

Thus the staff were placed in a dilemma and this was explained to me by Nathan O'Connell the Council's Planning Team Leader in the Resource Consent Unit.

Mr O'Connell told me that after this part of the Replacement Plan became operative in 2016 there were a number of applications for rebuilds in the RUO relating to pre earthquake houses. Some, so it seems, had existing use rights at least in part and some had earlier consents and in many of these cases the need for consent arose because of relatively minor non-compliances with plan provisions.

For these cases there was really no need to examine the plan's policies in any depth and the consents were granted without difficulty. Brendan Anstiss, General Manager Strategy and Transformation, had earlier told me that of 31 applications processed early on, 3 were processed before the planning staff had an adequate understanding of the policy issue; 28 were as Nathan O'Connell later described, applications involving existing use rights or earlier consents; and one application involving a subdivision was refused.

Mr O'Connell went on to say that there were also vacant sites that did not have existing use rights or earlier consents and did not fit within the permitted activity rules in 2016 when the Replacement Plan became operative. Once these started coming through the system closer attention was paid by staff to policy matters and the issue of avoidance was raised with the Council's internal legal team and an opinion was sought from Mr James Winchester.

Despite the fact that section 104C of the RMA provides quite clearly that only those matters reserved for the Council's discretion in an RDA rule can be considered when dealing with an application for restricted activity consent, Mr O'Connell told me that the Council's internal legal advisers were of the view that where one of those matters such as people's safety was also the subject of a policy then the policy should also be considered as well in reliance on section 104 of the RMA. I understand this is a commonly held view amongst RMA practitioners as to how the two sections work together.

In his advice on this matter Mr Winchester advised that policy 5.3.2.1(b) was to be read strictly in accordance with its wording and the word "avoid" meant just that.

In early 2018 Mr Winchester was asked again, to provide advice to the City Council on this matter. The context was some planning advice from the applicant's consultant planner that the Council's planning staff had seen in relation to an application for consent to an RDA for a new residential unit on a property at 153 Main Road Redcliffs (in the RUO). In essence, this planning advice was that the omission of an amended policy from Decision 53 was an error by the IHP and therefore the RDA rule could be treated more leniently in the context of the un-amended policy that required avoidance.

As Mr Winchester had earlier advised he did not agree with this advice and nor did he agree that the omission of an amended policy was an error. On the contrary, his advice was

that it must be seen as a deliberate decision by the IHP on the basis that such a policy was unnecessary and that the RUO achieved the relevant policy framework in the same way as the non-complying status does elsewhere in the HFHMA.

On 26 July 2018 an Independent Hearing Panel chaired by an experienced RMA lawyer, Mr David Caldwell, issued a decision on the application relating to 153 Main Road Redcliffs. This Panel concluded that the RDA rule must be seen as modifying the un-amended policy otherwise the RUO and its RDA rule could not work. Consequently, it took a more lenient view of the policy in the same way as the planner had advised earlier (indeed the planner gave evidence in the case) and granted consent to the application with conditions.

The City Council planners took further legal advice on receipt of this decision from Brookfields, another well- known RMA specialist law firm who, in effect, came to much the same conclusions as those of Mr Winchester. This advice was critical of the decision in the Main Road Redcliffs case and concluded that there was no justification for reading down the plain words of the un-amended policy.

Continuing this narrative about the sequel to Decision 53, I record that on 23 August 2018 Sir John Hansen the Chair of the now former IHP wrote a letter to Councillor David East in which he responded to the Councillors inquiries of him as Chair about what had happened to bring about the dilemma that I referred to earlier that was facing the Council's planners in administering Chapter 5 of the Replacement Plan

and in particular that part of it containing the RUO as settled by Decision 53.

In this letter Sir John first pointed out that he had not sat on the IHP that made Decision 53. He then referred in some detail to the Minute issued by the IHP on 26 February 2016 (referred to earlier in this report) and went on to refer to relevant parts of Decision 53.

Sir John then said, in this letter, that it was his understanding that while the RDA rule was included in the plan the amended policy, "… *was at some stage omitted from the planning provisions that accompanied and formed part of Decision 53"*

He went on to say that had the omission been brought to the attention of the IHP during the final appeal period when a large number of minor corrections were being made to the plan the missing policy would have been included in the plan.

He then expressed some views about the section 71 process under the Greater Christchurch Regeneration Act indicating his support for its use to deal with the so called missing policy problem in this case.

This letter from Sir John Hansen to Councillor East was said by Sir John to be written to the Councillor on a personal and confidential basis but it came into the public arena in a way that I will describe shortly.

In a subsequent email to Ms Karleen Edwards on 29 September 2018, Sir John expressed the view that the

omission of the amended policy was an oversight by the panel that heard Decision 53.

One other document now needs to be referred to for completion of the narrative about what happened post Decision 53.

In an undated letter to Councillor East written by Ms Kim Money, Chairperson of the Coastal Burwood Community Board, Ms Money states that at a joint meeting between the Coastal Burwood Community Board and the Linwood-Central Heathcote Community Boards and City Council staff to discuss the resource consenting issue earlier referred to City Council staff, "…*admitted that they had not advised the Independent Hearings Panel that they had deleted the RUO provisions 5.2.2.1(a) from the final draft of the District Plan. CCC staff reported this was because they did not support its inclusion in the District Plan and neither did the Independent Hearings Panel."*

Although this letter is undated it must have been written after the letter written by Sir John Hansen because Ms Money refers to that letter in her own letter

I should also record here that by this time the Council planners' approach to dealing with RDA resource consent applications in the RUO had reached a point where there was significant public criticism and concern.

This became exacerbated when Councillor East began making public statements about the alleged misdeeds of the City Council's planning staff based on what he interpreted was

being said by Sir John Hansen in his letter to him and more particularly by Ms Money in her letter just referred to.

I have interviewed Ms Karina Hay a member of the Christchurch Coastal Residents United group who was a submitter at the hearing that lead to Decision 53. She told me that her Group could not understand why the Council planners were, as the Group saw it, making things difficult for applicants seeking RDA consent and so far as she was concerned still were at the time I interviewed her.

She also said however, that the Group accepted that Council Staff had not been responsible for any policy deletion. It had always been the Group's view that the 'missing policy' had been an omission by the IHP.

She went on to explain to me that the real concern her group still had was that Council planning staff were still, as she put it, "*encouraging people to apply"* only to be told at the pre-application stage that it would be a difficult process. Consequently, Group members did not pursue their applications.

[Note from Council – please see Council's additional note attached.]

Discussion and Conclusions

Arising out of the foregoing narrative there are two issues that I consider I need to address in this report on process.

The first relates to what I will now refer to for ease of expression as, “the missing policy issue”

The second is what I will describe as, “the post Decision 53 administration issue”

The “Missing Policy” Issue

There are conflicting views amongst the people I interviewed about this matter but these relate more to what might have been done about it rather than whether there was in fact a missing policy.

I have carefully considered all the material I have been able to assemble about this in the time available to me and I have paid particular regard to the interview I had with Judge Hassan on 19 October 2018.

I have come to the clear conclusion that as a matter of fact there never was a missing policy.

For that conclusion I rely first and foremost on a plain reading of the Decision of the IHP issued on 3 November 2016.

This makes it abundantly clear that no such policy was ever included in that decision and consequently no such policy found its way into the operative Replacement Plan.

The so called missing policy never became anything more than a draft provided by Ms Evans at the request of the IHP for comparing alternatives under section 32AA of the RMA.

After it was provided by Ms Evans it was never considered by the IHP again. Both Sarah Dawson and Judge Hassan affirmed this to me in separate interviews.

By contrast the RUO and the RDA rule that Ms Evans also provided by way of a drafting service only, did become front and centre for the IHP and was dealt with at some length in Decision 53.

Judge Hassan explained to me at interview that it was his recollection that the IHP saw no need for any amendments to Policy 5.3.2.1(b) when making provision for the RUO and the accompanying RDA Rule and he drew my attention to para 122 of the IHP decision in support of that.

The Judge's recollection is also supported by the earlier opinions provided by the Council's Counsel James Winchester, who also concluded that the IHP decision was complete in itself and the lack of a redrafted policy must be seen as a deliberate decision by the IHP.

This conclusion is, of course, on its face, at odds with the advice given by Sir John Hansen in his letter to Councillor East about the reason for the lack of an amended policy.

However I do not need to attempt to resolve this apparent difference for the purposes of this part of my report.

This is because the focus of this part of my report is on whether the Council planning staff deleted the policy as alleged by Councillor East.

My conclusion that there never was such a policy must lead logically to the conclusion that the Council staff could not

have acted as Councillor East alleged because there was nothing for them to delete and I so conclude.

Why there was nothing to delete is, for the present purpose, immaterial but I record for completeness that the best evidence about that must be seen as coming from the Chair of the Panel responsible for Decision 53.

Again, for completeness the reference in Ms Money's letter to Councillor East about what the planning staff said at a meeting, is of course quite inconsistent with the conclusion I have just reached.

This is the only reference to "deletion" that I can find in any of the material I have looked at and in any of the conversations I have conducted.

I add that I have not interviewed Councillor East or Community Board members, Ms Money, Mr Latham or Mr Sintes. Then, for the sake of transparency, I have not interviewed Ms Money either about her letter to Mr East. In the result, while the letter must speak for itself such an interview has not proved to be necessary.

The IHP process leading to Decision 53 was from beginning to end an entirely appropriate process conducted with the utmost professionalism by all concerned. Here I record that

both Judge Hassan and Ms Dawson were fulsome in their praise for the way the City Council staff and its legal advisers conducted themselves thoughout these proceedings. This is, of course, reinforced by the way Ms Evans conducted herself when asked to provide the drafting service to the IHP not-withstanding her own professional opinion that a different outcome was the more appropriate one. That is thoroughly professional.

The formulation of RMA plans is a form of subordinate law drafting. As such it is often an iterative process as decision-makers seek the "best" solutions for the issues identified, informed by the statutory requirements.

This was the case with Decision 53 as the various Minutes and responding Memoranda make abundantly clear. As a former Judge of the Environment Court I can affirm that this is a very normal process and there was nothing unusual about the processes that lead to Decision 53.

I turn now to the second issue identified earlier.

The Post Decision 53 Issue

I begin by again referring to my former professional life as an Environment Court Judge and then by drawing on my recent experience as a regional councillor.

At the judicial or quasi -judicial stage of plan formulation decision-makers are seeking to find the "best solutions" as I said earlier without necessarily looking at what they might mean at an individual property level except in a most general way. To try to do otherwise is virtually impossible.

This is why the resource consent process is provided for by the legislation. The resource consent process and the exercise of the discretions involved in it can often “smooth out” the wrinkles that arise when applying rules to specific property situations.

This is what the Hearing Panel was doing in the 153 Main Road Redcliffs case. I say nothing about the correctness of that decision. I am simply using the case as an example.

So, once the plan decision makers have settled the provisions of a plan the planning authorities have to administer it as I said elsewhere in this report.

At this stage it is not uncommon for those charged with administering the plan to find that unforeseen difficulties and issues can arise. I have experienced this several times in my recent work as a Regional Councillor. It is not a new phenomenon.

In many instances, as I have already said, these difficulties can be accommodated through the resource consent process. But that is not always the case and in the end the deficiency (if there is one) may need to be remedied by a plan change. In some instances where interpretation of the rules is in issue parties might seek a declaration from the Environment Court. But one limitation on that process is that the facts must not be in issue.

From all my inquiries into this matter it is my conclusion that the situation I have described in a general way above was the one facing the City Council’s planning staff following Decision

53. I have not been able to inquire into every occasion when staff were involved with applicants or would be applicants for resource consent and such a task would take quite a long time. Consequently, what I now say must be understood with that limitation in mind.

Nevertheless, the very fact that staff sought legal advice both internally and more importantly externally from well-known expert sources militates against the notion that they were being arbitrary or obstructive in the advice they were giving members of the coastal community looking to obtain RDA consents.

I was also impressed by the open way in which Brendan Anstiss, John Higgins Head of the Resource Consent Team and Nathan O'Connell offered their advice to me and answered my quite searching questions. They had nothing to hide.

I think the true position is that they found themselves in that unenviable position that I have described earlier of having a plan that, **as they saw it**, rightly or wrongly, presented them with administrative problems AND importantly they sought expert advice to try to resolve the issue.

This is hardly consistent with the actions of staff seeking to be obstructive or worse still seeking to cancel out the effect of Decision 53 because they did not agree with the outcome as some people have asserted. I have no evidence to support either of those assertions.

I end my consideration of this second issue with two further observations.

The first is that because it was Mr Winchester's view that there was no basis on the face of the IHP decision for the 'missing policy' issue to be raised by the Council, nobody at the City Council saw the need to seek the introduction of a policy as a minor amendment within the 5 working days stipulated in the decision.

Whether such an approach would have been successful is now, of course, an academic question. My only observation is that given the wording of Clause 16 of Schedule 3 in the OIC that provides for this process, there must be, at the very least, some doubt as to whether the insertion of a new policy would fit the parameters of that clause.

The second observation is that, as I understand it, the City Council has now resolved to try to put this whole matter to rest by seeking some amendments to the District Plan through the Minister for Greater Christchurch Regeneration exercising her function to amend statutory instruments under section 71 of the Greater Christchurch Regeneration Act 2016.

Because the Canterbury Regional Council is a strategic partner under the Regeneration Act and is currently being consulted on this proposal I will make no comment at all about this section 71 process.

But I will say that the fact that the City Council has seen fit to take this action does not mean that the IHP was wrong in

Decision 53. It should be readily apparent from this report that the formulation of RMA plans is a complex business and one where legitimately held differing views can arise about the “correct” approach. Again, in my capacity as both a Judge and now a regional councillor I have experienced this and the differing views expressed by experienced RMA lawyers in this case reinforce that. It should not be overlooked either that before the IHP the City Council’s consistent position was that the restrictive approach to residential development in the HFHMA was the right one.

This concludes my report.

Dated at Christchurch this 31st day of October 2018

Professor Peter Skelton

Appendix 1
Letter of Engagement

Christchurch City Council

27 September 2018

Professor Peter Skelton
Email: peter.skelton@ecan.govt.nz

Dear Professor Skelton,

Further to our brief telephone discussion yesterday I would like to formally engage you to complete an independent audit of the process of decision 53 by the Independent Hearings Panel with respect to our District Plan Review.

I would be happy to make any information and staff available for your process and will arrange for members of the Independent Hearings Panel and the secretariat to be available for your audit. This independent audit will provide Council with clear information to decide the full parameters of an independent review of the process which we agreed would occur as a result of the public discourse around the matter.

There is some urgency in completing this audit and I would be happy to meet with you at your earliest convenience to progress this work. It would be very useful if you reached out to the CCRU to discuss the issue, as some of their members participated fully in the hearings in front of the IHP.

Thank you again for offering your expertise and assistance in this complex issue.

Yours sincerely

Karleen Edwards
CHIEF EXECUTIVE

Appendix 2

The list of interviewees

Lianne Dalziel	Mayor of Christchurch City
Karleen Edwards	Chief Executive of Christchurch City Council
Brendan Anstiss	General Manager, Strategy & Transformation for the Christchurch City Council
James Winchester	Lead Counsel for the Christchurch City Council before the IHP (by telephone)
Sarah Scott	Assistant Counsel for the Christchurch City Council before the IHP
Ms Karina Hay	member of the Christchurch Coastal Residents Union
Sir John Hansen	(by telephone and face to face interview) Chair of the Independent Hearings Panel
John Higgins	Christchurch City Council Head of the Resource Consents Team
Nathan O'Connell	Christchurch City Council Planning Team Leader in the Resource Consent Unit
Sarah Dawson	planning consultant and member of the Independent Hearings Panel (by telephone)
His Honour Judge Hassan	Environment Court Judge and Deputy Chair of the Independent Hearings Panel

Audit Report for the Christchurch City Council from Professor Peter Skelton

Additional note from Council

Following the completion of Professor Skelton's report, Council has agreed to publish requested comments from Karina Hay as follows:

[Note: For clarification, Karina Hay has asked Council that her additional comments be recorded as follows: My comments were in relation to the number of resource consents issued or declined. My comment was that so few were declined because many simply did not move forward to make an application. Hence the reference to CCC being seen to be encouraging residents to apply, only to have a pre-application meeting that would indicate the development must pass the "policy test " (ie avoid development) and that CCC would therefore be unlikely to be able to support a RC application for residential activity. The resident would therefore choose not to apply which would incur additional expense – essentially putting them in limbo.]