

**DECISION OF HEARING COMMISSIONERS DAVID CALDWELL,
TIM SCANDRETT AND DAVID MCMAHON**

Application Number: RMA/2017/1413
Applicant: Wendy Virginia Gilchrist
Site address: 153 Main Road, Redcliffs, Christchurch
Legal Description: Lot 90 DP1178
Proposal: New Residential Unit with Attached Garage and Associated decking, fences and earthworks

Applicant:

Mr Tom Evatt, Counsel

Ms Wendy Gilchrist, Applicant

Ms Patricia Harte, Planner

S42A Reporting Officers:

Ms Hermione Blair, Consents Planner, Christchurch City Council

Ms Sheryl Keenan, Surface Water Planning Engineer, Christchurch City Council

Mr Andrew Milne, Transport Planner, Christchurch City Council

INTRODUCTION

Context

1. This is the decision of Independent Hearing Commissioners Mr David Caldwell (Chair), Mr David McMahon and Councillor Tim Scandrett. We were appointed by Christchurch City Council (**CCC**) to hear and decide an application to CCC by Wendy Gilchrist (**the applicant**) to construct a dwelling at 153 Main Road, Redcliffs.

Background

2. The application was lodged in July 2017. A further information request was made by CCC in August 2017. At the applicant's request, the application was put on hold until December 2017. Further information was provided on 19 March 2018. The application was again put on hold on 10 April 2018 to enable the applicant to seek updated written approvals. These were provided on 17 April 2018. The time period for making the s95 notification decision was extended under s37 of the Act. The time period for convening the hearing of the s104 substantive decision was also extended under s37.
3. Previously, in 2017, the applicant obtained consent to reconstruct a jetty which had been damaged in the 2010/11 earthquakes. The jetty is located in the coastal marine area adjacent to the "Deeds" land that joins the site. This consent was RMA/2017/994. Consent was also granted by the Canterbury Regional Council (**CRC**) under CRC173794.

4. We requested, and were provided with, copies of the CCC and CRC consents. Both consents enabled the reconstruction, repair and replacement of a jetty structure; and the reconstruction and the repair of a hard stand area adjacent to the jetty structure. In addition, the CRC consent also enabled the occupation of the coastal marine area by both the hard stand area and jetty structure.
5. Both the CCC and CRC consents were processed on a non-notified basis. The approved consents have a variety of conditions, including landscaping conditions.

THE APPLICATION

The Proposal

6. The applicant seeks consent to construct a new residential unit which will have an attached double garage on what is presently a vacant site at 153 Main Road, Christchurch. The proposed building is two-storey at the Main Road end of the site, with a single level living area towards the Estuary end of the site. The applicant proposes to fill the majority of the site to a ground height of approximately 700mm above the existing ground level. The house will be an additional 700mm above that fill so as to achieve the minimum floor levels specified in the Christchurch District Plan (**District Plan**). The garage, to be located at the front of the site, is to have a lower floor level.
7. Large areas of decking are proposed, both between the residential unit and the two side boundaries, and off the living area between the residential unit and the Deeds land.

Existing Environment

8. The application site is located in Redcliffs. It is situated on a strip of land between Main Road and the Estuary. It is separated from the Estuary by a strip of Deeds land. The ownership of that land was described by the CCC Reporting Officer as uncertain and complex. She also advised that there is a separate stopped road owned by CCC which is largely under water in this location.
9. Within the Deeds land, the area to the southeast is, we understand, maintained by CCC. It is grassed and is accessible to the public. To the north of the site, the Deeds land contains a mixture of lawn and garden areas, together with concrete and what was described as rubble.
10. The site was previously occupied by the Sea Scouts and has not been used for residential purposes for a considerable period. The Sea Scouts building was demolished following the Christchurch earthquakes.
11. The strip of land between Main Road and the estuary, within which the site sits, is generally occupied by residential dwellings, although there are a small number of vacant sites. Ms Blair advised that a number of the residential units within the strip had resource consents granted under the City Plan for various bulk and location non-compliances. All of those consents included site coverage breaches ranging from 37.7-39.9%. The District Plan has a maximum site coverage of 35% for all residential units.
12. Opposite the site and across Main Road are residential units and Barnett Park. To the northwest of the site is the Redcliffs commercial centre. Main Road is a minor arterial connecting Sumner, Redcliffs and the adjacent hill suburbs to the City.

THE EVIDENCE

The Hearing

13. The hearing was held on the afternoon of 21 May 2018 in Committee Room One of the CCC offices. It was attended by the representatives and witnesses of the CCC and the applicant as well as several interested parties. The interested parties did not participate in the hearing but were simply there to observe.
14. **Mr Tom Evatt** – as counsel - introduced the application, the witnesses, their evidence and statutory considerations, before addressing the potential effects, precedent, and the relevant objectives and policies.
15. **Ms Wendy Gilchrist** provided evidence outlining her concerns with the consenting process, the purchase of the site, the efforts made to develop an appropriate house plan and what had driven that development. She addressed the Deeds land and its relevance and helpfully provided some photographs of the site and surrounds.
16. **Ms Patricia Harte** addressed the background to the application, the hazard provisions in the Christchurch District Plan, flooding, mitigation and risk. She then went on to provide an assessment against the relevant objectives and policies of both the City Plan and the District Plan. She considered the fact the proposed new house was within the High Flood Hazard Management Area (**HFHMA**) and also had a specific Residential Unit Overlay (**RUO**) to be a key consideration. She addressed the decisions of the Independent Hearing Panel (**IHP**) in relation to those matters. She considered the District Plan is incomplete as it does not contain a cohesive approach to coastal hazard issues. She also noted that additionally, there is no specific policy direction for the RUO. She considered this was an oversight and it was therefore appropriate to consider the development in terms of Part 2. She concluded that the application could and should be granted.

S42A Report

17. **Ms Hermione Blair**, a CCC Senior planner, provided a comprehensive s42A Report, which included memos from a number of relevant CCC staff. We will address her report in more detail throughout this decision. At the hearing Ms Blair also provided supplementary evidence addressing the permitted baseline, matters arising from the removal of the coastal hazard provisions in the District Plan, sea water barrier mitigation, access of rescue vehicles, the HFHMA and effects on health, wellbeing and safety in addition to those relating directly to the property.
18. **Ms Sheryl Keenan**, a CCC Planning Engineer - provided and spoke to a Memorandum dated 21 May 2018 responding to a number of matters raised by Ms Harte, including solid foundation and flood displacement, tidal flooding consideration under the FMA and HFHMA Rules, mapping of the HFHMA and the mitigation options.
19. **Mr Andrew Milne**, a CCC Transport Planner, provided and spoke to a memorandum addressing the transport-related effects of the proposal. In particular, he focused on the potential effects associated with the reversing of vehicles from the site onto the arterial route that is Main Road.

Further Information

20. At the conclusion of the hearing day, we requested the provision of further information. A Minute was issued recording the information sought but for completeness we record this additional information largely related to the provision of maps to allow the Panel to better understand the delineation of the HHFMA and the RUO in the east of the City. There was also a request for copies of CCC decisions on other applications for buildings in the HFHMA/RUO. We directed that CCC provide the information no later than 4pm on Friday 1 June 2018.
21. Following the hearing, Ms Blair raised a query in relation to her response to a question by Commissioner McMahon regarding the relevant flooding policies in the District Plan and the s104 gateway test. She requested the opportunity to provide a further statement about that matter. A further Minute was issued requesting the applicant's position on that response. Mr Evatt helpfully provided his consent, on the basis that Ms Harte could provide a response to Ms Blair's material.

Applicant's Written Reply

22. Mr Evatt provided a written reply on 8 June 2018. This included a response from Ms Harte to Ms Blair's supplementary post hearing response. Mr Evatt identified that the key issues for determination are the interpretation and application of Policy 5.2.2.2.1(b), and the issue of precedent.
23. Mr Evatt addressed the application of *King Salmon*, addressed the HFHMA and submitted that the Planning Officer's concerns in relation to precedent are "*overstated*". He also addressed the response given in Ms Harte's additional evidence and identified changes to the proposal, which essentially provided an alteration to the landscape design to further facilitate boat access in an extreme flood event.

Further Procedural Matters

24. Following the closing of the hearing and the commencement of our deliberations, we reached the view that our deliberations would be better informed if we were provided with a set of proposed conditions.
25. With the consent of the applicant, we took the somewhat unusual step of requesting a full set of proposed conditions, and asked Ms Harte and Ms Blair to discuss and provide the same.
26. This necessitated an extension to the period for the delivery of this decision. That extension was consented to by the applicant and a Minute was issued recording the same, together with further directions, on 12 July 2018.
27. We thank Ms Blair and Ms Harte for their efforts in preparing the same. We found them very useful in concluding our deliberations.

STATUTORY CONSIDERATIONS

Activity Status

28. The activity status for this application is somewhat complex. That arises from the fact that there are two relevant District Plans still in play. In addition to the recently operative District Plan, the former City Plan

remains operative in relation to coastal hazards, as set out in a public notice given by CCC on 23 November 2015.

The City Plan

29. The relevant City Plan rules were identified by Ms Blair in paragraph 17 of her s42A Report. She identified the relevant rules as: Part 9 General Rules: 5.2 Rules: filling, excavation and building adjacent to waterways and the coastline; Rule 5.2.4(a) in relation to the setback from MWHS only, and Rule 5.2.4(b) in relation to matters of discretion. The application of the rules is limited to flood management matters only. Under the relevant rules in the City Plan, the activity requires a restricted discretionary consent.

The District Plan

30. Under the District Plan the residential rules apply. Pursuant to Rule 14.4.1.5 NC4, activities and buildings which do not meet the permitted site coverage (35%) provisions and exceed 40% are a non-complying activity. In relation to all other relevant rules in Chapter 14, the proposal requires restricted discretionary consent.
31. The natural hazard rules in this Plan provide restricted discretionary activity for new buildings not meeting the required minimum floor level (Rule 5.4.1.5 RD1). This applies because the proposed garage exceeds 40m² in area and does not meet the 12.36m RL minimum floor level. The dwelling itself complies with the required minimum floor level.
32. It is also a restricted discretionary consent pursuant to Rule 5.4.1.5 RD2 as the filling exceeds that required to achieve the minimum floor levels and extends beyond the residential building platform.
33. Pursuant to Rule 5.4.6.2 RD2 – a new residential unit in the RUO overlay of the HFHMA is a restricted discretionary activity.
34. For completeness, the proposal does not meet Rule 7.4.2.3 RD1 as it does not meet the manoeuvring requirements of parking and loading areas, and the vehicle access design width is greater than that permitted.
35. Finally, it also exceeds the permitted earthworks limits in the Residential Suburban Zone and requires restricted discretionary activity consent pursuant to Rule 8.9.2.3 RD1.
36. As can be seen from the above, under the District Plan the proposal is not a non-complying activity due to flood related rules and issues; rather it is non-complying because of its exceedance of the site coverage provisions only.

Bundling

37. While the issue of bundling was not addressed either by the Reporting Officer, Ms Harte or Mr Evatt, the issue clearly arises here given the restricted discretionary activity status under the City Plan, and the non-complying status under the District Plan.
38. The matters which may be taken into account under the City Plan are limited. Given those provisions are operative, and limited, we do not consider a strict bundling approach is appropriate. Nevertheless, we confirm that we have assessed the overall proposal as a non-complying activity.

Statutory Framework

S104B, s104C and s104D RMA

39. S104(1) RMA sets out the matters which we must have regard to in our consideration of the application. The relevant matters are as follows:

- “(a) any actual and potential effects on the environment of allowing the activity; and*
- (b) any relevant provisions of –*
 - (i) a national environmental standard;*
 - (ii) other regulations;*
 - (iii) a national policy statement;*
 - (iv) a New Zealand coastal policy statement;*
 - (v) a regional policy statement or proposed regional policy statement;*
 - (vi) a plan or proposed plan; and*
- (c) any other matter the consent authority considers relevant or reasonably necessary to determine the application.”*

40. S104(1) RMA provides the matters listed are subject to Part 2, which includes ss5 through to 8. We address Part 2 RMA matters, and the approach taken to that analysis, subsequently.

41. For non-complying activities, in addition to the s104(1) matters listed above, s104D RMA contains particular restrictions – the gateway test.

42. In summary, we may grant a resource consent for non-complying activity only if we are satisfied that either:

- “(a) adverse effects of the activity on the environment ... will be minor; or*
- (b) the application is for an activity that will not be contrary to the objectives and policies of –*
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is a plan and a proposed plan in respect of the activity.”*

43. The issue of whether an effect will be, or will not be minor, is one which is to be made considering the adverse effects as a whole. “Minor” means lesser or comparatively smaller in overall size or importance.

44. In relation to the second part of the threshold test, the word “contrary” means: opposed to in nature, different to or opposite.

45. Pursuant to s104B, if one limb of the gateway test is met, we may grant or decline consent. S104B does not draw any distinction between an application for a discretionary activity and an application for a non-complying activity. The decision whether to exercise discretion and grant or refuse consent entails a judgment that is informed having regard to the matters under s104.

46. S104C provides for restricted discretionary activities where a consent authority must only consider matters over which the discretion is restricted.

47. Pursuant to s108 if we grant the application, we may impose conditions.

Part 2 RMA

48. The application of the words “subject to Part 2” in a s104 context has been addressed by the Environment Court in AJ Davidson Family Trust v Marlborough District Council [2016] NZEnvC 81. The Environment Court noted that “subject to Part 2” does not give a specific direction to apply Part 2 in all cases but only in certain circumstances. The Court found, in addition to where there is a conflict between provisions, Part 2 may be relevant where there is invalidity, incomplete coverage or uncertainty of meaning in the relevant planning documents. The Environment Court’s approach was confirmed by the High Court in RJ Davidson Family Trust v Marlborough District Council [2017] NZHC 52.
49. Mr Evatt submitted that the s104 considerations are subject to Part 2, in particular where there is invalidity, incomplete coverage, or uncertainty of meaning within the planning documents. In essence, Mr Evatt identified the key exceptions in the RJ Davidson¹ decision.
50. Ms Harte was of the opinion that the District Plan is incomplete as it does not contain a cohesive approach to coastal hazards issues, which in her view, resulted from there being no policy or methods addressing coastal inundation and erosion and other coastal risks. She stated further, that there is no specific policy direction for the RUO. Accordingly, in her opinion, it is appropriate to consider the development in terms of Part 2 of the RMA.²
51. Ms Blair considered that the District Plan gives effect to the higher order documents for all matters other than coastal hazards. It is therefore necessary in her opinion to have regard to higher order documents as the District Plan did not as yet contain provisions addressing the coastal hazard and the City Plan was prepared prior to some of the relevant documents coming into effect.
52. This issue was recently discussed by the Environment Court in Yaldhurst Joint Action Group v Christchurch City Council [2017] NZEnvC 165. The Court there referred back to the earlier Environment Court decision in Blue Skin Energy Limited v Dunedin City Council [2017] NZEnvC. The Court in Yaldhurst³ stated:

[29] It appears, following the High Court decision of RJ Davidson, that s104(1) provides for the consideration of Part 2 in a particular way. The consent authority may have recourse to Part 2 when considering the application and submissions under s104(1); but not afterwards as a separate exercise as per the ‘overall judgment approach’. We suggest [an] inherent risk under the overall judgment approach is that the decision-maker may take into account an irrelevant matter – or more likely fail to take into account a relevant matter ...

[30] The circumstances where there may be recourse to Part 2 is where there is invalidity, incomplete coverage or uncertainty of meaning within the planning instruments. There is no need for recourse under Part 2 directly where that policy direction is provided in the higher order documents ...”

¹ R J Davidson Family Trust v Marlborough District Council [2016] NZEnvC 81

² BOE Patricia Harte at para [53]

³ Yaldhurst Joint Action Group v Christchurch City Council [2017] NZEnvC 165

53. On the above basis, we consider it is appropriate for us to have regard to the higher order documents, particularly the Canterbury Regional Policy Statement (**CRPS**), and address such in our subsequent evaluation. It is our view that we need go no further as the higher order documents are, in our view, complete.

ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT (S104(1)(A))

Context

54. There was little dispute as to the relevant effects on the environment. In addition to positive effects, the key effects were identified by Ms Blair in paragraph 42 of her s42A Report and we adopt her list in addressing the effects:
55. Given the absence of any material divergence between the applicant and the reporting officers on the assessment of effects, we do not intend to repeat all of the evidence presented to us. Rather, we have focused on the two categories of effect which are the most relevant – being flooding and transportation – and have canvassed the material facts before delivering our evaluation in both instances. For the remaining handful of effects, we have been in a position to readily adopt the view of the Reporting Officer on the basis that the applicant is in agreement and those effects are either largely negligible or at least not material to our findings. We record that the extent of our evaluation is commensurate with the level of effect likely.
56. Before addressing the actual and potential effects, we confirm that we have considered s104(2) as to whether there is any relevant permitted baseline. We have considered Ms Blair's report and Ms Harte's evidence on this issue. Ms Harte confirmed that any activity to which this could be compared would be constrained by the HFHMA Overlay. Overall, we consider that there is no relevant permitted baseline.
57. In addition, we also record that written approval has been provided by the owners and occupiers of the adjacent properties, being 151 and 155 Main Road. The owners and occupiers of the property at 3/205 Main Road, which is across the Main Road from the site, have also provided their written approval.
58. Pursuant to s104(3)(a)(ii), we can have no regard as to the effect on those persons whom have given written approval. This is relevant to all effect categories but is particularly relevant regarding potential effects on the residential amenity, traffic safety and flooding of those properties as a result of this application and its attendant non-compliances.

Positive Effects

59. These were addressed by Ms Blair in paragraph 46 of her s42A Report and also discussed by Ms Harte in her pre-circulated brief of evidence. Ms Gilchrist also spoke to these in her capacity as the applicant and potential recipient of such benefits.
60. Overall, we agree there are positive effects. These arise from the use of what is at present a vacant site with little amenity. The proposed dwelling would enable the applicant to meet her aspirations and would also address what is presently an unkempt site. It will improve residential coherence of the immediate area, particularly for the adjoining residential properties. The written approvals of the two directly

adjacent site owners and that of the property across the road at 3/205 Main Road (which has views across the application site) would tend to reinforce this.

Residential Amenity

61. As mentioned earlier, we can have no regard as to the effect on those persons who have provided written approval to the application; namely the owners and occupiers of the adjacent properties, being 151 and 155 Main Road and the property across the road at 3/205 Main Road.
62. We have carefully considered the contents of the s42A Report and Ms Harte's evidence on this issue. We have also considered the documents provided with the application. Overall, and based on the evidence of both the Reporting Officer and the applicant, it is our view that the residential amenity effects arising from breaches such as site coverage, recession plans and building height are no more than minor. On an overall basis, we consider this proposal in fact improves residential amenity in the neighbourhood.

Flood Hazard

The Evidence

63. The application site is within a Flood Management Area (**FMA**), which has a fixed floor level overlay. It is also partly within the HFHMA and RUO. The HFHMA and RUO apply to only part of the site; that part of the site nearest to Main Road.
64. Ms Sheryl Keenan, a Surface Water Planning Engineer employed by CCC, provided specialist input into the s42A Report and attended the hearing. Ms Keenan noted that the minimum Finished Floor Level (**FFL**) required for the site under the FMFLO is 12.36m and that the proposed dwelling complies with that level. She noted that the garage is 48m² in area and is proposed to be at a lower FFL of 11.66m, some 700mm below the FMFLO FFL.
65. Her memorandum provided as part of the s42A Report noted that, in addition to tidal flooding, the Moncks Bay area is susceptible to flooding from rainfall events in the surrounding catchment, especially where these coincide with high tides or extreme tides, restricting the ability of this water to discharge by gravity to the estuary.
66. She stated the flooding duration in this area is very likely linked to tidal cycles (i.e. a period of hours), but noted that when extreme ponding occurs, there is generally a period of days around this time when significantly elevated high tides will continue to occur, which may result in the property being surrounded by flood water for multiple days, or there being limited periods following low tides when ingress and egress is able to occur safely.
67. In terms of the localised ponding flood risk, Ms Keenan noted that the Moncks Bay area has proven vulnerable in the past to flooding to discrete volumes of flood water, primarily from rainfall runoff unable to discharge from the suburb to the estuary.
68. Ms Keenan gave an example of an event in March 2014 when the flood water was surveyed at a level of 11.24m in two locations near to the site, and flood waters were reported as entering several dwellings in the area. She provided photographs showing the ponding in that event. She noted that previous flood events had caused ponding in the suburb and they included events in 2000, 1994, 1992 and 1968. In her memorandum she recorded that the frequency of the ponding events would be expected to increase

in future with sea level rise as both the ability for the upstream catchment to discharge by gravity to the estuary reduces, and the frequency of discrete volumes of tidal water entering the suburb due to wave action and/or short periods of ponding increases.

69. Ms Keenan carried out an assessment of effects against the District Plan, taking guidance in assessing the effects of the 48m² garage under Rule 5.4.1.5 RD1. She considered that, given the present day extreme event, the garage could potentially be inundated in a 1 in 200 year or 1 in 500 year tidal event.
70. Ms Keenan considered that it was appropriate that structures, linings, fixtures, fittings and services are durable to saline inundation up to at least the FMFLO FFL of 12.36m. She noted this was typically quite simple to achieve with reasonably standard garage construction materials. In terms of the contents of the garage, she considered a condition requiring the storage of non-durable contents be a minimum 700mm above the FFL would be appropriate.
71. Ms Keenan considered there would be, during certain flood events, difficulties with site access. Overall, it was her view that the area surrounding the site is subject to a significant flood hazard, especially in future extreme tides following sea level rise and the placement of a new dwelling in this area will result in additional risk to life, safety, wellbeing and property. She recommended aspects that could be considered for conditions. In her evidence, she agreed with Ms Harte that the risk in the areas outside the HFHMA did not, due to the reasonably flat nature of the terrain in this local area, necessarily differ significantly to those in the HFHMA. The difference in flood depth could theoretically be as little as a few millimetres.
72. Ms Blair addressed the flooding issue in paragraphs 56-66 of her s42A Report. In terms of risk to the garage and contents stored, her understanding was that such effect would be less than minor. In terms of displacement effects, she noted they were likely to be minor on neighbouring properties, but that such effects needed to be disregarded given the written approvals.
73. Ms Blair addressed cumulative effects of flooding. She recorded her understanding that cumulative effects (being what has already taken place in the catchment, when combined with this application) are not yet at a point where other properties would be affected by displaced water in any way more than insignificantly.
74. She identified that in terms of flood hazard, the main effects of concern are effects on the assets on the site and the occupiers. She considered, on the basis of the information provided by Ms Keenan, the site is currently flood prone and that is likely to worsen over time from anticipated effects of climate change, including sea level rise. She noted that, although the building itself was proposed to be constructed with floor levels above flood levels (other than the garage), the access to the site and the surrounding neighbourhood and roads would be all under water, possibly for days at a time when tide levels prevented drainage. She considered this would adversely affect the occupants of the proposed dwelling who may put their safety at risk to exit the site at times of flooding or may be isolated for days at a time if they chose to stay. She noted that such situations cause stress with associated impacts on wellbeing.
75. She accepted that those effects would not be isolated to the site and the rest of the suburb would experience similar disruption, but that the site was currently vacant, and has not been used for residential purposes since at least the 1950s, so the hazard to the site is presently negligible. She considered that

the construction and occupation of the residential unit will significantly increase the hazard to the site and, while the applicant is aware of the risks, and is prepared to accept them, there are wider policy implications to development of this site. She considered that the present-day flood hazard to the proposed building on the site can be mitigated through the requirement for the floor levels to be set above flood levels as calculated from the District Plan, but such events would become more frequent over the life of the building. She noted that no mitigation had been offered in this respect and no time limit was specified in the application. The consent sought would allow residential occupation of the site in perpetuity. In terms of site access, she proposed a condition of consent requiring removal of features in the front of the property to enable better access.

76. Ms Harte addressed this effect in paragraphs 13-28 and paragraph 58 of her Brief of Evidence. She discussed what she considered to be inaccuracies in the identification of this site as being within the HFHMA, before addressing mitigation.

Evaluation

77. We accept the expert evidence of Ms Keenan that there are two sources of flooding relevant to this property; general flooding from the catchment and the future potential flooding from sea level rise (tidal).
78. In terms of the current catchment flooding effects, we accept the views of Ms Blair and Ms Harte that these can (and will) be appropriately mitigated by the floor level of the dwelling. We consider that the garage being below the FFL is not a significant issue. We agree that can be addressed by conditions.
79. In terms of any cumulative effects from the catchment flooding of this site, we accept the expert advice that these are negligible.
80. In terms of the future potential flooding from sea level rise, the situation is also reasonably clear. This is a future effect (i.e. 50 years plus) when the outcome of sea level rise could cause tidal flooding in extreme events. This could result in a depth of flood waters exceeding 1m above ground levels of 10.95m. In terms of life risk and safe access under that scenario, we consider that the future risk can be addressed by appropriate conditions. Given the nature of the potential flooding, we understand any flooding would be of low velocity and would develop slowly rather than catastrophically.
81. As with catchment flooding, we consider future property effects can be appropriately mitigated, particularly by the dwelling being constructed in accordance with the minimum floor levels, as well as the filling proposed. On the basis of the evidence, and the information available to us, we consider the effects on the dwelling to be less than minor. The effects on the garage could be regarded as minor.
82. Notwithstanding these findings on flooding effects, we consider the issue of flooding is one that also needs to be considered in addressing the relevant objectives and policies of the District Plan. We therefore return to this matter at that juncture.

Transport

The Evidence

83. Mr Andrew Milne, a CCC Transport Planner, provided a memorandum which was included in Ms Blair's s42A Report. Mr Milne also attended the hearing and answered questions of the Panel.

84. Essentially there are two issues. The first issue relates to the width of the proposed access. Mr Milne acknowledged it would be over-width but agreed that is acceptable and in fact may assist with the second issue; namely visibility associated with vehicles exiting the site.
85. The second issue relates to vehicles reversing from the site and creating a potential conflict with cycleway and pedestrians. Mr Milne suggested this could be mitigated by an alteration to the orientation of the garage such that it is positioned parallel, rather than perpendicular to, the road (and thus facilitating a forward exit for vehicles from the site). The applicant was not amenable to such change, as we understand that would cause real issues with the overall design. It may also, in our view, impact on the written approvals provided, and would raise issues of scope.
86. We requested information regarding the Coastal Pathway shared pedestrian / cycle route in front of the property. This was provided in an email from the Project Manager of the Coastal Pathway Programme, Ms Mahoney. This confirmed that the Coastal Pathway runs alongside Main Road in front of this property. The key users of the Coastal Pathway are pedestrians and recreational cyclists. On road cycle lanes are provided for the more serious cyclists.
87. At the date of that email, a report was being prepared to CCC requesting the shared pathway be legalised and, once that is completed, shared pathway symbols and signage are to be installed to indicate its legal status.

Evaluation

88. On our site visit, it became apparent a number of other vehicles in the area of development do reverse from their site. There is an existing effect. The question for us is to what extent this property adds to the existing effect; is there a potential cumulative effect in light of the use of the cycleway and the Coastal Pathway.
89. We consider that the reversing from the site is not ideal. However, we do not consider it is such as to be determinative to outcome. We consider this effect can be mitigated by warning signals or similar (to be enforced by a condition of consent). Overall, we accept Ms Blair's conclusion that the effects on road, footpath and cycleway users will be no more than minor in terms of safety. In reaching a conclusion on that effect, we have taken into account that the on road cycle lanes for the more serious cyclists will remain.

Other Effects

Construction Effects

90. Construction effects were addressed in paragraph 81 of Ms Blair's report. We accept and adopt her reasoning on those effects. They can be appropriately managed through a condition requiring preparation, certification and adherence to a Construction Management Plan (**CMP**) which embodies controls on such matters as sediment and erosion and temporary traffic arrangements.

Effects on Estuarine Coast

91. The site is located beside the Avon-Heathcote Estuary, an area identified as an outstanding natural landscape/feature, an area of at least high natural character in the coastal environment and a site of ecological significance. It is also a Statutory Acknowledgement Area.
92. Ms Blair addressed these effects in paragraphs 82-86 of her s42A Report. Informed by a memorandum from Ms Emily Treddinick, she considered the effects of the proposal on the coastal environment will be minor, but more consideration to enhancement through additional planting of indigenous species would better align with the Plan's aspirations for the coastal environment.
93. Ms Harte addressed this matter in paragraphs 61-62 of her evidence. Ms Harte also addressed Ms Blair's position. She did not agree that it was necessary for the building to be set back or screened to avoid impacting on people's enjoyment of the space. Her view was that it was now considered good design to enable interaction and visibility between street users and residents and she saw no reason why this approach should not apply to recreational areas. Overall, she agreed with Ms Blair's conclusion that the effects of the proposal were no more than minor.
94. Whilst not dismissive of Ms Blair's position on this matter, we do not consider it necessary for the proposed dwelling to be set back or screened. As we understand it, there is no requirement in the District Plan to treat/landscape these setbacks in any particular way. We do not consider, in this particular environment, there is a need for further setback or screening as such.
95. The environment here is one where the majority of the dwellings are built close to the Deeds land. This proposal is not out of keeping in that sense.
96. Notwithstanding the District Plan contains no requirement for landscaping in any particular way, we considered it appropriate for an overall landscape plan to be provided and implemented. This can be addressed by way of condition. Overall, we are satisfied that the effects on the coast and users of the Deeds land will be less than minor.

Coastal Hazard

97. Ms Blair addressed this issue in paragraphs 87-92 of her s42A Report.
98. Ms Blair noted that, as the activity is non-complying under the District Plan, consideration of the coastal hazard is relevant, notwithstanding the lack of any rules relating to coastal hazards in that Plan. For the purpose of the consent required under the City Plan, she noted consideration of the coastal hazard related effects is restricted to matters identified as:
- (d) the likely effects of proposed excavation or building on the functioning of the waterway during flood periods, including any likelihood of work undertaken exacerbating inundation, erosion, alluvium or avulsion whether upstream or downstream of the site;*
- (e) where relevant, any adverse effect likely on land as a result of tidal influences during flood periods, including the potential for exacerbation of those effects with potential sea level rise; and*
- (f) the potential risk of damage to buildings proposed to be erected in the setback."*

99. Ms Blair then noted that the Coastal Hazard Assessment for Christchurch and Banks Peninsula (2017) prepared by Tonkin & Taylor for CCC represents the latest technical understanding of the hazard. She acknowledged that it was regional in scope and not a substitute for a site specific investigation, but that it identifies the site and surrounds as being subject to inundation in the 100 year / 1% AEP event in all scenarios (a 50 year and 100 year plan timeframe for the 4 IPCC climate change scenarios).
100. She understood that the proposal would not affect the function of the estuary in terms of flooding. In terms of coastal erosion, there may be some benefits in terms of resistance to coastal erosion through the gravel raft foundation. She considered that there is a minor risk to the proposed residential unit from coastal erosion in the longer term and this could be avoided or mitigated by siting the building further from the eastern (rear) boundary. She identified that the risk from coastal inundation is apparent in the shorter term, but in terms of the matters of discretion for the City Plan consent this risk would be mitigated by the proposed floor levels. As to the wider assessment available under the non-complying activity status in the District Plan, Ms Blair noted this was discussed in the hazard section of her report. She also addressed, for the sake of completeness, tsunami modelling.
101. Ms Harte addressed this issue largely through a questioning of the identification of the site and through her policy assessment.
102. In terms of the assessment of the effects from the coastal hazard, informed by the matters of discretion for the consent required under the City Plan, and noting the written approvals, we find that the effects are very much limited to the site itself. In terms of inundation, we consider that is properly mitigated by the proposed floor level of the residential unit. We note that in the long term the site may be affected by coastal erosion. The risk of damage is at present low, but may increase over time.
103. We note there are already significant coastal works in this location, with CCC, we understand, currently maintaining the sea wall. Of course, there is no guarantee that will continue, but present works appear to provide a significant level of protection.
104. The acceptability or otherwise of that risk is a matter we address in our evaluation of the objectives and policies of the relevant Plans. While we have referenced the RDA matters, we confirm we have assessed the proposal overall as a non-complying activity.

Ngai Tahu Values

105. As addressed by Ms Blair in paragraphs 69-71 of her s42A Report, CCC consulted with Maanui Kurataiao Limited (MKT). The advice received from MKT was that, provided an Accidental Discovery Protocol is in place for the proposed earthworks, and locally sourced indigenous vegetation was used in any landscaping, they had no concerns with the proposal. The applicant has confirmed they accept MKT's recommended conditions.
106. Overall, Ms Blair considered the proposal would not adversely affect those values that are important to Ngai Tahu, provided the recommended conditions were included. We agree.

Earthworks

107. Again, Ms Blair addressed this in paragraphs 72-73 of her s42A Report. We agree that, given the written approvals provided and mitigation measures proposed (including the CMP), the nuisance and traffic related effects of the earthworks will be less than minor. Any potential amenity effects will be limited to those who own and occupy the immediately adjacent properties, and their written approval has been given.

Overall Conclusion on Effects

108. Ms Blair concluded the effects of the proposal would be no more than minor; noting they do raise policy implications.
109. Ms Harte concluded, as part of her s104D assessment, that the only effects of relevance are the effects of floodwaters on the application site and the effects of floodwater displacement on the general area, excluding those persons which have given written approval. She considered that assessing the effects on the house and property is not a simple proposition given that these are not expected to occur in the short to medium term, and may be able to be mitigated in the long term. As such, she considered the timescale of effects is logically a relevant factor. She noted that it would only be very extreme events now being modelled which may cause minor flooding of the house and, after taking those matters into account, she considered the effects on the environment were minor.
110. Having considered all of the evidence given and the submissions made in relation to effects, we agree with Ms Blair and Ms Harte that, with the exception of transportation and flooding, the effects are less than minor. For transportation and flooding, the effects are minor. In our opinion, the short and medium term effects are readily mitigated by the floor level of the dwelling. Regarding the longer term effects, based on the evidence before us, we consider the effects are largely mitigated again by the floor level of the dwelling being at the specified floor level.
111. On the evidence, any adverse effects will be on the dwelling and its occupiers only. There are no floodwater displacement issues identified as more than negligible, either based on this application alone, or on the basis of its cumulative effect.
112. On the above basis, we conclude that the first limb of the s104D gateway test is satisfied in that we find that the actual or potential adverse effects of the activity on the environment will be minor.
113. Whilst we may grant consent for a non-complying activity if we are satisfied that either of the limbs in the gateway test are met, in our view it would be inappropriate not to consider the second limb relating to whether the application is for an activity that will not be contrary to the objectives and policies of the relevant plan(s). We note that getting through the gateway itself, whilst a precursor to assessing whether or not to grant consent, is not in itself a reason to grant consent.
114. In this sense, the alignment (or otherwise) of the proposal with the relevant policies and objectives is of relevance and, as all parties agreed, is potentially determinative.

RELEVANT OBJECTIVES, POLICIES AND OTHER PROVISIONS OF A PLAN OR PROPOSED PLAN (S104(1)(b))

Context

115. The relevant objectives and policies were the subject of most of the evidence during the hearing, and of the legal submissions.
116. Ms Blair undertook a detailed analysis of the relevant objectives and policies of both the City Plan and the District Plan. As Ms Harte's evidence largely responded to and commented on Ms Blair's report, we approach this matter by addressing Ms Blair's evidence, and then Ms Harte's.

Christchurch City Plan

Overview

117. Ms Blair usefully provided an annexure containing the relevant objectives and policies of both the City Plan and District Plan. In relation to the City Plan, she confirmed that it is only the objectives and policies relevant to consideration of coastal hazards which still have legal effect. She also noted that those provisions are further narrowed by the matters of discretion for activities within the 20m setback from the MHWS.
118. She advised the City Plan objectives and policies seek to avoid an increased risk of adverse effects on property, wellbeing and safety from natural hazards. This is largely achieved by limiting the scale and density of development in areas subject to moderate or high risk of damage.
119. She noted that in relation to sea level rise, the policy position in the City Plan is that higher density forms of built development and adverse effects from inundation are to be avoided in areas that will be subject to increased flood levels as a result of sea level rise. In relation to coastal erosion and flooding in the coastal environment, the adverse effects are to be avoided or mitigated.
120. At paragraph 99 of her s42A Report, Ms Blair noted the language used in the City Plan is directive, but when considered alongside the matters of discretion, it appears that in the 20m setback from MHWS the only "adverse effects" of relevance for the purpose of the objectives and policies are those on land and buildings as offsite effects do not appear to be relevant.
121. The operative policies of the City Plan are Policy 2.5.2 – Limitations on environment; Policy 2.5.4 – Sea level rise; Policy 2.5.9 – Works; Policy 2.6.3 – Coastal development; and Policy 6.3A.6 – Hazards.

Policy 2.6.3

122. In terms of Policy 2.6.3, Ms Blair considered the location of the kitchen/lounge area partially within the Coastal Erosion Zone is not entirely consistent as that policy seeks the adverse effects be avoided or mitigated. She did note however, that the effects are over the longer 100-year timeframe and the proposed building foundation, along with the rubble reclaimed area that forms the Deeds land, may be a barrier to erosion for a period. In her view, the proposal is not entirely consistent with Policy 2.6.3, given the scale of the development on the site, but the mitigation goes some way to addressing the policy focus

on mitigation of damage to property. It was due to the uncertainties about the long term effectiveness of that mitigation that she did not conclude it was contrary to that policy.

123. Ms Harte did not address that policy in particular, nor did she comment on Ms Blair's conclusion

124. It is clear to us that Policy 2.6.3 is effects-based. It requires avoidance or mitigation of adverse effects of erosion and flooding in the coastal environment. It therefore follows, given our findings on effects, that the proposal is largely consistent with that policy.

Policy 2.5.2

125. In terms of Policy 2.5.2, which provides for the avoidance of any increased risk of adverse effects on property, wellbeing and safety from natural hazards by limiting the scale and density of development, that was again addressed by Ms Blair. She considered, given the matters to which the discretion is restricted under the City Plan, the proposal could not be said to be contrary to Policy 2.5.2. The effects relevant to the restricted discretion do not include wellbeing and safety.

Policy 2.5.4

126. As to Policy 2.5.4 – Sea level rise. This policy seeks to avoid higher density forms of built development and adverse effects from inundation in areas that are projected to be subject to increased flood levels as a result of accelerated sea level rise. Ms Blair expressed some uncertainty as to what is meant by higher density forms of built development in this policy context. Informed by the explanation to the policy, she noted it seems to apply to an area-wide assessment rather than an individual urban site surrounded by development, such as the present.

127. Ms Harte considered the reference to higher density forms of built development meant multi-unit type development.

128. We agree with both propositions. In our view, a single dwelling in an area surrounded by residential development is not the target of Policy 2.5.4.

Policy 2.5.9 – Works

129. Policy 2.5.9 is relevant to natural hazards. However, it relates to the undertaking of works to avoid or mitigate the adverse effects of natural hazards as a supplementary measure to regulation of activities, and the provision of information. It is not particularly relevant to this dwelling application. We mention it solely for the sake of completeness.

Policy 6.3A.6 – Hazards

130. Policy 6.3A.6 of the City Plan is:

“To ensure that development is avoided, or limited in scale or density in areas subject to natural and other hazards, particularly flooding, erosion, and potential sea level rise, unless those hazards can be adequately remedied or mitigated.”

131. This was not addressed by either of the planning witnesses, nor in Mr Evatt's submissions. It is, in our view, relevant. We note that the avoidance or limitation on scale is subject to the proviso unless these hazards can be adequately remedied or mitigated.

132. For the reasons we have given in relation to the flood hazard effects of this development, we consider the proposal is not inconsistent with that policy.

Christchurch District Plan

Context

133. Ms Blair identified the relevant objectives and policies as addressing natural hazards, transport earthwork, indigenous biodiversity, landscapes and natural character, Ngai Tahu values in the natural environment, and residential development. She helpfully reproduced the relevant objectives and policies in full.
134. We approach this topic by initially identifying and addressing the objectives and policies where there was little, if any, disagreement between Ms Blair and Ms Harte. We then turn to the more controversial objectives and policies; in essence those related to natural hazards and flooding in particular.

Transport

135. Ms Blair identified and assessed Objective 7.2.1 and Policy 7.2.1.3 – Vehicle access and manoeuvring.
136. On the basis of Mr Milne’s evidence, Ms Blair acknowledged that there was a potential for reversing vehicles to affect other vehicles on the road as well as pedestrians and cyclists, but they were not at such a level as to act as a deterrent to cycleway users. She also noted the potential for cumulative effects but did not consider any cumulative effects were significant. In her view, the proposal is inconsistent with Policy 7.2.1.3 as it did not “ensure” safety.⁴
137. Ms Harte agreed with Ms Blair’s conclusion in relation to the relevant transport policy. She agreed it was inconsistent with Policy 7.2.1.3 as it did not “ensure” safety.⁵
138. On the basis of the evidence, and reflecting our previous finding on effects on this issue, we agree the development is not entirely consistent with the relevant transport policy. With appropriate conditions, we do not consider it is necessarily inconsistent with that policy.

Earthworks

139. Again, this was not an issue of any dispute between Ms Harte and Ms Blair. Ms Blair recorded at paragraph 123 of her s42A Report that with appropriate conditions of consent to manage effects, including those offered by the applicant around erosion and sediment control, the proposal is consistent with the earthworks policies. Ms Harte, at paragraph 67 of her brief of evidence agreed.
140. We accept that evidence and agree.

Natural and Cultural Heritage

141. This was addressed by Ms Blair in paragraphs 125-127 of her s42A Report.
142. She considered the objectives and policies relating to indigenous biodiversity would be met. In terms of the natural character and coastal environment objectives and policies, Ms Blair accepted the assessment

⁴ S42A Report at para 123

⁵ BOE Patricia Harte at para [66]

of Ms Treddinick that the site of the proposed building does not provide an appropriate setback from the coastal margin, which makes it difficult to provide for any mitigation of the visual effects of the bulk of the building in the form of landscaping. On that basis, she concluded the proposal is inconsistent with Policy 9.2.2.7.

143. Ms Harte generally agreed, but did not consider that the matter of the building setback had been realistically assessed. She considered the setback distances from the coast and the public area provides a very well-designed interface with the coast and Deeds land and that there would be no particular advantage in moving the dwelling further back. Indeed, in her opinion setting back the dwelling a greater distance could compromise the feel of the area. The building location and the planting proposed are in her opinion in keeping with the character of the area, but with the added feature of planting spilling into the area used by the public. She considered this is a positive element and in the context of this area she considered the proposal is not inconsistent with Policy 9.2.2.2.7.⁶
144. Informed by our site and locality visit, we agree with Ms Harte's opinion on the policies relating to this issue. The setbacks are in our view appropriate in this particular location. With appropriate landscaping, we consider the proposal will contribute positively to the locality and will not be inconsistent with Policy 9.2.2.2.7.

Ngai Tahu Values

145. This issue was addressed very briefly by both Ms Blair and Ms Harte. Both agreed the Chapter 9.5 objectives and policies are met by this proposal. We agree. We note the MKT position.

Residential

146. Ms Blair addressed the residential objectives and policies in paragraphs 129-135 of her s42A Report.
147. Her summary of what the residential objectives and policies are seeking, was provided in paragraphs 129 of her s42A Report. We adopt that summary and we found it useful in our consideration of this topic.
148. Ms Blair considered that the site provides adequate amenity for its occupants. She considered the scale of the built form will be greater than anticipated in the neighbourhood given the small and narrow site. Notwithstanding the affected neighbours who indicated their acceptance, from a policy perspective the development will not, in her view, fully achieve the environmental outcomes sought for low density, low scale residential suburban zone. She did note, however, that Policy 14.2.4.1 is facilitative rather than prescriptive so that, while the proposal may not be fully consistent with it, it is not contrary to it. We agree.
149. Ms Blair considered the application was contrary to Policy 14.2.4.4A.i. This provides:
- “low density residential areas are characterised by a low scale open residential environment with predominantly one or two storey detached or semi-detached housing, and significant opportunities for landscaping and good access to sunlight and privacy are maintained; ...”.*

⁶ BOE Patricia Harte at para [68]

150. Ms Blair's concern was that the proposal does not ensure significant opportunities for landscaping due to the high site coverage, and that good access to sunlight and privacy will not be maintained for the neighbouring properties due to the bulk of the building and the height of the decks and fences.⁷
151. In Ms Harte's view, the provision of open space by way of decks is appropriate, given ground levels are much lower than the living areas. Ms Harte's evidence was that considerable thought had been put into the options in relation to the deck heights and sizes. In the circumstances, she considered the proposal is inconsistent with the policy in relation to ground level landscaping opportunities, but not so in relation to good access to sunlight and privacy.
152. We have considered these issues quite carefully. In considering this particular "neighbourhood", we note that the area to the seaward side of Main Road, opposite Whakatu Avenue, through to the commercial area of Redcliffs, is one that is characterised by smaller sites, many with large residential dwellings. As such, we consider, if not necessarily reflecting what is anticipated by the Plan, the proposal before us is entirely in keeping with the context, character and scale which exists in this neighbourhood.
153. Overall, and taking into account the particular character of the neighbourhood, while we consider the proposal is not entirely consistent with the policy, it is not contrary to it. From an overall amenity perspective, we consider the proposal is appropriate.

Natural Hazards

154. This was the principal area of dispute between Ms Harte and Ms Blair.
155. Ms Blair addressed this issue primarily in her paragraphs 106-122 of her s42A Report. Ms Blair, with our leave, also provided a further response regarding applications for restricted discretionary activities pursuant to Rule RD2 given Objective 3.3.6 and Policy 5.2.2.1.b.
156. Ms Harte addressed this primarily in paragraphs 29-57 of her evidence and like Ms Blair, also responded to our question as to how a restricted discretionary activity in the High Flood Area Hazard Management Areas could pass the policy hurdle.
157. Mr Evatt addressed the relevant objectives and policies on this issue in paragraphs 36-70 of his opening legal submissions and again in paragraphs 1-16 of his written reply, identifying the key issue for determination as the interpretation and application of Policy 5.2.2.2.1.b. That aligns with our view also.
158. We were also provided with two memoranda from Simpson Grierson. The first of these, dated 10 October 2017, addressed the question as to whether Policy 5.2.2.2.1.b allows for a new dwelling in the High Flood Hazard Management Area. The second, dated 21 February 2018, addressed a memorandum that Ms Harte had prepared which set out a chronological assessment of the development of the HFHMA provisions in the District Plan. Very much in summary, it was Ms Harte's opinion that the omission of the amendments to the policy which had been proposed were, insofar as it relates to the RUO, an oversight by the Independent Hearings Panel (**IHP**). We comment on the Simpson Grierson memoranda later in this section.

⁷ S42A Report, para [132]

159. While we will address the objective and each of the policies individually below, we have considered them as a whole.

Strategic Objective 3.3.6 – Natural hazards

160. There is one objective in the District Plan addressing natural hazards. This provides:
- “a. *New subdivision, use and development (other than new critical infrastructure or strategic infrastructure to which paragraph b. applies):*
- i. *is to be avoided in areas where the risks from natural hazards to people, property and infrastructure are assessed as being unacceptable;*
 - ii. *in all other areas, is undertaken in a manner that ensures the risks of natural hazards to people, property and infrastructure are appropriately mitigated ...”*
161. The Natural Hazards chapter states, in 5.2.1.1, that the Objective for this chapter is Objective 3.3.6 in Chapter 3 Strategic directions.
162. Chapter 5 commences with an introduction. It notes that the introduction is to assist the lay reader to understand how this chapter works and what it applies to. Whilst It is not an aid to interpretation in a legal sense, it is nevertheless informative.
163. The introductory words identify that the primary approach to managing natural hazards in the Plan is to take a “risk-based” approach, which considers various scales of a particular natural hazard event, together with the likelihood of that particular natural hazard occurring and the effects it would cause, particularly on people and property.
164. The introductory words in Chapter 5 also note that the level of control over activities is related to the consequence of the various natural hazards and whether such risks are considered to be acceptable or not. It notes that there is a category in between where, following proper assessment, risk may be able to be managed such that the risk is reduced to acceptable levels. The introduction to Chapter 5 also gives a strong indication of areas where the risk from natural hazards is considered to be unacceptable and cannot practicably be reduced. This includes areas such as the Cliff Collapse Management Area 1, the Cliff Collapse Management Area 2 and the Rockfall Management Area 1, and includes adjacent areas where risk cannot be adequately remedied or mitigated. Although the list of areas is non-exclusive, we consider it is relevant that the list does not include the HFHMA/RUO.
165. Where risk is able to be managed to acceptable levels, CCC may require assessment and mitigation in relation to potential effects in order to reduce risk to a level that is deemed acceptable in the circumstances. Examples given of this include the Flood Management Area. Where risk is considered to be acceptable without any intervention, as it is similar to the levels of many everyday risks, there is no intervention required by the District Plan.
166. In our view, the application site is located in an area which requires assessment to consider whether the risk could be reduced to a level, to use the words of the objective, that is not unacceptable. In other words, the question for us is whether the development is capable of being undertaken in a manner that ensures the risks of natural hazards to people, property and infrastructure are appropriately mitigated in the circumstances such that the risk to people and property in particular, is acceptable.

167. For the reasons outlined above, and from an objectives perspective, we do not consider the proposal to be contrary to the aforementioned objective.

Policies

The Evidence

168. The general natural hazards policies are addressed under Policy 5.2.2.1. These include, relevantly, the following:

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

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

5.2.2.1.2 Policy – Manage activities to address natural hazard risks

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

5.2.2.1.3 Policy – Infrastructure

5.2.2.1.4 Policy – No transferring of natural hazard risk

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

169. Other general policies were also brought to our attention. These relate to matters such as natural features which provide hazard resilience, and the awareness of natural hazards including through the provision of information on land information memoranda and hazard mapping. Another example is Policy 5.2.2.1.8:

“5.2.2.1.8 Policy – Assessment of hazards

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

170. The policies for flooding are addressed under **Policy 5.2.2.2** - Policy for managing risk from flooding.

171. This is the key policy of relevance to this proposal. There are six – four of which are relevant. Policy 5.2.2.1a. relates to the mapping of hazard risk for the Flood Management Area. The mapping in the District Plan is based on a modelled AEP, together with an allowance for 1m of sea level rise and an increase in rainfall intensity by 16% through to 2115 as a result of climate change.

172. Policy 5.2.2.2.1.b., which as we shall see is the policy considered and addressed most carefully by the participants in this hearing, provides:

“Avoid subdivision, use or development in the High Flood Hazard Management Area where it will increase the potential risk to people’s safety, well-being and property.”

173. Policy 5.2.2.2.1.e. provides:
- “Except for filling required to meet minimum floor levels, ensure that filling in urban areas at risk of flooding in a major flood event does not transfer flooding risk to other people, property, infrastructure or the natural environment.”*
174. Policy 5.2.2.2.f. provides:
- “Reduce potential flood damage by ensuring floor levels for new buildings or additions to buildings, except those unlikely to suffer material damage, are above flooding predicted to occur in a major flood event, including an allowance for appropriate freeboard.”*
175. Ms Blair provided what, in our view, is a useful summary of how the policies and rules in the District Plan, and the identification of hazard-prone areas on the planning maps, are related.
176. She explained, in relation to the flood hazard, that areas subject to flooding are identified as flood management areas and ponding areas. Within these flood management areas are the HFHMA. Those management areas are then further distinguished by the RUO that applies to developed coastal areas at New Brighton, Southshore and Redcliffs. As noted by Ms Blair, and also by Ms Harte, there is no specific policy explanation or direction in the District Plan for the RUO; rather the rules of this overlay set a lower activity category status for new residential units.
177. In this respect, within the RUO, new or replacement residential units are to be assessed as restricted discretionary activities. The discretion is restricted to floor levels, building design, flood effect mitigation, level of intensification, safe ingress and egress and reducing the risk to people’s safety, wellbeing and property.
178. In contrast, a change of use of a site that increases the occupancy of the site in the general HFHMA is non-complying. Significantly, that high level activity status does not apply to residential units in the RUO.
179. We consider Ms Blair’s comment on this in paragraph 110 of her s42A Report was helpful. We quote that in full:
- “It can therefore be seen that the HFHMA is potentially an area where the risks from natural hazards to people, property and infrastructure are assessed as being unacceptable, given the non-complying status of subdivision and more intensive development in this area. However, the RUO may be an area where development can be contemplated in accordance with Objective 3.3.6a.ii, subject to appropriate mitigation, in the same manner as the FMA but with more matters required to be considered.” (emphasis added).*
180. As referenced earlier, the lack of policy distinction between the RUO and the remainder of the HFHMA led CCC to seek legal advice from Simpson Grierson on the interpretation of Policy 5.2.2.2.1.b., albeit in the context of a different application. We were provided with a copy of that opinion.⁸
181. In summary, that legal opinion from Simpson Grierson concluded that Policy 5.2.2.2.1.b. applies to the HFHMA and the RUO, such that any subdivision, use or development that will increase the potential risk to people’s safety, well-being and property must be avoided. It records the IHP noted that those part of

⁸ Opinion Simpson Grierson 10 October 2017

the HFHMA within the RUO have a different type of risk than the remainder of the HFHMA, such that those areas are justified in having a different activity status. In this respect, the legal opinion noted that the IHP, in settling the provision of the HFHMA/RUO, determined that it was possible to avoid the potential increase in risk associated with the relevant hazard in this area with appropriate mitigation measures. The legal opinion records the view that the application of this policy is such that when CCC receives resource consent applications, it needs to assess whether or not the proposed mitigation is such that there is no increased risk.

182. Ms Blair addressed this opinion in her paragraph 113, and her interpretation of it at paragraphs 114-115.

183. She identified that on a vacant site, with no existing use right to rebuild, any activity will increase the potential risk. She distinguished this from a site where an existing dwelling is to be reconstructed, but the density of the development is not increased – the risk from flooding will be the same, in terms of safety and wellbeing of occupants, and in terms of the risk to the building itself, which can be mitigated by higher floor levels.⁹

184. Ms Blair provided her interpretation of the RUO provisions as:

*“I consider that the RUO provisions are most appropriately interpreted to allow for the replacement of existing buildings (noting that further legal advice is clarified that ‘existing’ means existing at the time the rules came into legal effect), giving effect to Objective 3.3.6a.ii. However, Policy 5.2.2.2.1b. does not contemplate (inter alia) the development of vacant sites where the potential risk will only increase. In fact, it requires the avoidance of such activities. In terms of this proposal the proposed residential unit on a site that was vacant at the time the rules came into legal effect (November 2016) will significantly increase the potential risk from flooding to safety, well-being and property. It will not avoid such risk and is therefore contrary to this limb of the policy. Moreover, this risk will continue to increase over time as a result of the proposal.”*¹⁰

185. Ms Harte considered the policy should be read down or be given less weight that it otherwise would as:

- (a) It is inconsistent with the relevant natural hazard objectives and policies which do not adopt such a strict approach; rather they contain an element of determining whether the risks involved are unacceptable. Neither does this policy envisage mitigation.
- (b) A number of factors indicate the identification of the HFHMAs associated with estuary flooding are arbitrary and not an appropriate basis for provisions which require all development to be avoided in these areas.
- (c) There is no acknowledgement that the area is in fact in the Residential Unit Overlay Area and that any policy assessment needs to acknowledge this.
- (d) It does not take into account the very high cost to applicants who have purchased land for the specific purpose of building a house, prior to the severe natural hazard rules coming into effect.

⁹ S42A Report at para 114

¹⁰ S42A Report at para 115

186. After quoting excerpts from the IHP decision, Ms Harte considered there is a strong indication that the risks are generally acceptable in the RUO. In her opinion, when all matters are considered, the lack of a policy addressing this is accidental rather than intended.
187. Mr Evatt addressed this issue in a number of ways. He submitted that, on the basis the site would not be in an HFHMA (as defined) following development, the policy did not apply, or at the very least should be given no weight. This was on the basis that the filling of the site would bring the floor levels to such that they were not susceptible to the 1m coverage. We do not accept the argument that filling of the site would in essence remove it from the HFHMA. Filling is simply a method of avoiding and mitigating risk.
188. Mr Evatt clarified Ms Harte's interpretation was one that there should be some caution exercised in applying the policy in light of the concerns raised by the IHP. He submitted the policy should be given less weight in the RUO, which clearly anticipates new development which is reflected in the activity status for dwellings. He further submitted that a strict application of the policy is inconsistent with the objectives for natural hazards and flood hazard.

Evaluation

189. The absence of any particular policy guidance in relation to the RUO is unfortunate. We do not however consider it can be seen as an error or oversight; at least not on the basis of the information we have before us. The issues affecting the residentially zoned coastal areas within the RUO were clearly identified by the IHP and, in our view, addressed by the restricted discretionary activity status for dwellings on vacant lots regardless of whether they are a replacement dwelling or not.
190. We do not consider it would be appropriate for us, on what is an application for a single dwelling within the RUO, to conclude that the IHP not including a specific policy was mistaken, or that such was unintended. Without wishing to state the obvious, the matter before us is not a declaration. It is a resource consent application.
191. As noted earlier in this decision, Ms Blair was asked during the hearing how a restricted discretionary activity in the HFHMA could pass the policy hurdle. Ms Blair sought to provide a written response. By Minute dated 28 May we advised our preliminary view that it would be appropriate to receive Ms Blair's written response and for the applicant to be able to address that in its written reply. Mr Evatt confirmed that was appropriate.
192. Ms Blair's written response identified some interesting issues. We are grateful for her efforts but to avoid unnecessarily lengthening this decision, we will not repeat it here.
193. As we understood Ms Blair's additional response, her view was, that dwellings could only be consented in the RUO if that was for a limited period of time and, to be removed when the average annual tide level is 1m higher than the identified current day level, or some other appropriate trigger.
194. We note that consent duration is not a specific matter to which CCC's discretion is restricted under Rule 5.4.6.2 D2. We accept that it could conceivably come within reducing the risk to peoples' safety, wellbeing and property resulting from the development.

195. Ms Harte's response focused more on the lack of policy guidance and its significance. In her opinion, the District Plan is not complete as it does not provide decisionmakers with an integrated approach to consideration of restricted discretionary activities in the RUO as intended by the IHP.
196. She considered the status of restricted discretionary activity for new and replacement residential units to be significant. She considered this was as a result of a deliberate decision of the IHP to overcome the problem of sites within existing communities which are now vacant as a result of buildings being demolished due to earthquake damage.
197. Ms Harte considered that, because the District Plan is incomplete, it is appropriate to take other policies into account and this includes consideration of the other hazard policies in the District Plan and in the relevant higher order document; in this case, the CRPS. On that basis, she suggested that that the policy hurdle could be passed if the development satisfies those other policies. Ms Harte also noted that, while Ms Blair in her recent response had listed many of the relevant policies that would apply to development in a flood area, she did not apply any of those.

Our Approach

198. In interpreting the Plan, we have both considered the IHP's reasoning, and applied the Court of Appeal's approach in Powell v Dunedin City Council (2005) 11 ELRNZ 144 where it found that the broader objectives, policies and rules found in the District Plan should be used in ascertaining the meaning or intent of the provision, where there is any uncertainty.¹¹
199. We are also conscious of the subsequent Environment Court decisions, including Queenstown River Surfing Limited v Central Otago District Council [2006] NZRMA 1 where the relevant factors to be considered were summarised as:
- (a) the text and purpose of the relevant provisions [in its immediate context];
 - (b) the purpose of the provisions;
 - (c) the context and scheme of the plan and any other indications in it;
 - (d) the history of the plan;
 - (e) the purpose and scheme of the RMA: and
 - (f) any other permissible guides to its meaning.¹²
200. We have also considered the High Court decision in North Canterbury Clay Target Association Inc v Waimakariri District Council [2014] NZHC 3021 where the Court again confirmed the approach outlined above, and the need to adopt an interpretation that avoids absurdity or anomalous outcomes.
201. In terms of context, in our view it is important to note the District Plan makes a distinction based on the nature and level of risk in the RUO by having a more permissive activity status.
202. In terms of the above context, when interpreting Policy 5.2.2.2.1.b, we must consider the objective to which it gives effect; namely Objective 3.3.6. That objective was quoted earlier, but by way of summary

¹¹ Powell v Dunedin City Council (2005) 11 ELRNZ 144 at [35]

¹² Queenstown River Surfing Limited v Central Otago District Council [2006] NZRMA 1 at [7] – [8]

it is to avoid new subdivision, use and development where the risks from a natural hazard to people and property is assessed as being unacceptable, and in other areas is to ensure such development is undertaken in a manner that ensures the risks of hazards are appropriately mitigated.

203. We consider this raises two questions:

(a) will there be an increase in risk to people and property? and

(b) if so, is that risk unacceptable?

204. Relevant to these two issues is another matter; the source of the risk. Where the risk is one which could occur suddenly, such as a breach of a river or similar, clearly the risk to life and people is greater. Conversely, where the source is more gradual, as is the case here, the risk is primarily to property. The issues impacting on the properties and communities in residentially zoned land which may be affected by sea level rise were clearly identified and addressed by the IHP. The IHP considered there was nothing in the CRPS which warranted non-complying activity status and accordingly introduced the restricted discretionary activity status to limited activities in the RUO.

205. In our view, the risk here is one to property, not to people. We accept that wellbeing can be affected by flooding, even if safety is not.

What is the risk; is it increased?

206. The source of the risk here, largely, is sea level rise and tidal inundation onto residential land. This is recognised by the definition of “high hazard”. The high hazard area is mapped as the HFHMA in the District Plan and that is predicted to have a 1m flood water risk (above 10.95m) under sea level rise predictions.

207. The risk is, in our view, largely a future risk, although we acknowledge that flooding can occur in this location and has done in the past.

208. In terms of an increase in risk to the property, at present there is no risk. The site is vacant. The construction of any dwelling necessarily increases risk.

209. Again, in terms of risk to people and wellbeing, presently there is no risk. The addition of occupants necessarily increases that risk.

Can the risk be made acceptable?

210. Bearing in mind that this is a future risk largely, we asked ourselves whether the risk can be made acceptable. At present we consider it is acceptable; it can be appropriately addressed through the FFL in respect of the dwelling. Whilst we note this is not so for the garage (as that is below the minimum floor level of the dwelling), we further note that if the garage was some 18m² smaller, it would not be an issue for us. We consider the risk in relation to the garage and property stored within can be appropriately addressed through conditions.

211. We have also considered Policy 5.2.2.2.1.f. in relation to minimum floor levels. We consider that is relevant in that it informs us that the risk to property (under Policy 5.2.2.2.1.b.) can (in this instance) be made acceptable through the achievement of the prescribed minimum floor levels.

212. We acknowledge this is a non-complying activity as a result of the breach of the site coverage rule. Notwithstanding the policy gap, the RUO is mapped and residential dwellings are provided for by Rule 5.4.6. Of course, restricted discretionary activity does not mean the application must be granted and it does not, in our view, create an expectation of such. We do, however, consider the RUO must, if it is to have any purpose, be seen as a subset of the HFHMA where dwellings can be contemplated, whether they are new or replacement, provided they reach the three assessment criteria in the rule, when assessed as to matters of discretion. We consider the strict application of “avoid”, in the *King Salmon* sense to the RUO, would render the RUO redundant. Realistically, any new (and indeed many replacement), dwellings will increase potential risk. In our view, the application of a strict avoidance would result in an absurdity and would move perilously close to a prohibition.
213. We do not accept Ms Blair’s interpretation that the RUO provisions are most appropriately interpreted to allow only for the replacement of existing buildings and that Policy 5.2.2.2.1b does not contemplate (inter alia) the development of vacant sites where the potential risk will only increase.
214. In our view, a dwelling in the RUO can meet Policy 5.2.2.2.1.b if there is no increase in potential risk to people’s safety, wellbeing and property, or, based on and informed by the wording of Objective 3.3.6 and Policy 5.2.2.1.1, where the risk from the flooding hazard is assessed as acceptable
215. In this instance we consider there is an increase in potential risk from this proposal. However, in our view, the risk here can be made acceptable.

Finding on s104(D)

216. On the basis of the above, we conclude that the second limb of the s104D gateway test is satisfied in that we find this proposal will not be contrary to the objectives and policies of the District Plan.
217. Given our findings on effects, the application also passes through the first limb of the gateway.

Other Relevant Statutory Documents (S104(1)(b))

New Zealand Coastal Policy Statement

218. Ms Blair referred to the New Zealand Coastal Policy Statement (**NZCPS**) and attached the relevant provisions as Appendix A to her s42A Report. In our view, we are not required to assess this proposal against the provisions of the NZCPS. It is not a matter of whether this application gives effect to the NZCPS. Rather, in our view, it is the CRPS 2013 which is the key higher order document for us to consider, in the circumstances where there has been an identified incompleteness, or uncertainty in the relevant District Plan.

Regional Coastal Environment Plan

219. Again, this plan was mentioned by Ms Blair in her s42A Report. We agree with her commentary on the relevance of that plan; namely that - even if we did consider it was necessary for us to consider the provisions of that Plan, any weight to be given to it is limited.

Canterbury Regional Policy Statement 2013

220. The relevance of the CRPS was addressed by Ms Blair in paragraphs 142-144 of her s42A Report. Ms Blair addressed Chapter 11 of the CRPS. She noted that land subject to sea water inundation or likely to be subject to coastal over the next 100 years is identified as “high hazard”. She identified Objective 11.2.5, being to avoid new subdivision, use and development that increases risks associated with natural hazards, or where avoidance is not possible, mitigation measures to minimise such risks. Again, Ms Blair identified Objective 11.2.2, being to avoid or mitigate adverse effects resulting from mitigation measures (such as raised floor levels). We do not consider that objective is relevant for the present application given the written approval provided, and that there is no evidence that the raised floor levels have any effects which are more than negligible.
221. Objective 11.2.3 of the CRPS was also identified by Ms Blair. That objective seeks to recognise and provide for effects of climate change, its influence on sea levels and the frequency and severity of natural hazards. In our view, again the District Plans, in combination, provide for that recognition.
222. At the policy level in the CRPS, Ms Blair identified Policy 11.3.1 as being relevant. She summarised the thrust of the policy as being to avoid new subdivision, use and development of land within high hazard areas, unless for sites within greater Christchurch zoned (inter alia) residential where the effects of the natural hazard must be avoided or appropriately mitigated. She identified the explanation to the policy and interpreted it as being analogous to the District Plan HFHMA policy assessment she had undertaken earlier in her report, where the replacement of an existing house may be acceptable with appropriate mitigation, but that development of a vacant site would not. She considered the proposal was contrary to the coastal hazard provisions of the CRPS.
223. Ms Harte addressed the NZCPS and the CRPS in paragraphs 50-52 of her evidence. Ms Harte disagreed with Ms Blair’s assessment of the proposal in terms of the policies contained in the NZCPS. Ms Harte referred to the IHP assessment undertaken, which specifically addressed the NZCPS and the CRPS in relation to the areas which were modelled as high hazard areas due primarily to sea level rise. In her opinion, and on the basis of the avoidance policies contained in the higher level documents, the IHP had determined that, as subdivision was an entry point for development, and further intensification, a more permissive regime for that activity was one which could give rise to additional long term risks.
224. In her opinion, the IHP gave express consideration to the issue of new residential units on existing residentially zoned land and addressed this by way of an exception to non-complying status of buildings in the HFHMA, and found that such development is appropriate within areas of New Brighton, Southshore and Redcliffs where the flooding risk is predominantly from sea level rise. Such areas were defined by the IHP as the RUO.
225. Ms Harte noted the IHP’s finding that “peppered” through the residential communities in the RUO area, there were empty sections where once there were families and other members of the once vibrant communities. She stated the IHP noted that in a number of cases sections remained vacant and their existing use rights may have lapsed. The IHP stated that, for those properties, the evidence satisfied them that appropriate mitigation of flood risks is possible and there was nothing in the higher order documents that dictated a non-complying activity status.

Evaluation

226. We have carefully considered the respective positions of Ms Blair and Ms Harte in relation to this this particular issue. We acknowledge that both have given a considerable amount of thought to this issue, and the relevance of the higher order documents.
227. We have considered that evidence, and the matters referred to earlier in our discussion of Policy 5.2.2.2.1. In this respect, we find:
- a. The most relevant higher order document is the CRPS and whilst it directs avoidance of new subdivision, use and development that increases risks associated with natural hazards, it qualifies this in situations (such as in existing residentially zoned areas of the District Plan) where avoidance is not possible, by enabling a consideration of mitigation measures to minimise such risks; and
 - b. The HFHMA/RUO is the District Plan's manifestation of that higher order provision and it is significant that the RDA rule does not differentiate between vacant sites and those which previously had dwellings on them.
228. For the above reasons we generally prefer the interpretation of Ms Harte in respect to the relevance of the CRPS to the District Plan. We do not accept the IHP found new residential units in the RUO to be appropriate per se. Rather, we consider the IHP, through its decision, was signalling that such development may be appropriate and that is to be assessed on an application by application basis against the matters of discretion and assessment criteria it introduced. Accordingly, and overall, we do not consider this proposal is contrary, or even inconsistent with, the relevant higher order documents. It is on residentially zoned land within the RUO. In our findings on effects, we have concluded that the effects can be avoided in the short term and mitigated in the medium to long term.

Relevant Other Matters (S104(1)(c))

Precedent Effects / Plan Integrity

229. Before carrying out our analysis on this issue, we reiterate that our decision relates to this particular proposal, in this particular location. It is not, and does not purport to be, a decision of any wider application.
230. As this precedent issue had been raised, we sought information relating to details of vacant sites within the HFHMA and RUO in the Redcliffs and Southshore areas, which did not hold consents for the establishment of residential dwellings.
231. The information provided by CCC on 30 May 2018, and very much summarised, identified 2,365 sites in the HFHMA overlay, of which 233 were vacant. A number of sites with more than 0.5% were within the overlay, the vacant sites numbered 191. Within the total RUO, 74 vacant sites were identified, again being sites with more than 0.5% in the RUO.
232. That information was further broken down. In Southshore, the number of vacant sites in the RUO was 33. In Redcliffs, as represented by the Moncks Bay unit, there were 23 vacant sites within the RUO, the majority of which do not have resource consent. Five within the Redcliffs area do.

233. In the Moncks Bay / Redcliffs area, we understand, excluding the land currently owned by LINZ, the number is approximately 13. In this particular strip, which we consider is the appropriate grain for us to assess precedent, we understand there are four.

Evidence / Submissions

234. For the applicant, this issue was primarily addressed by Mr Evatt in his written reply. He submitted the Planning Officer's concerns were overstated and that the proposal and planning framework were sufficiently complex and unique, including affected party approvals and agreement that the adverse effects are not more than minor, that it would not set a precedent. In his submission, there are unlikely to be similar cases to which a precedent might be applied.¹³

235. He submitted that precedent effects were not relevant considerations in determination of a restricted discretionary activity application. While acknowledging the application was for a non-complying activity, he submitted that little, if any, weight should be given to the potential precedent effects of granting consent for those activities which are discretionary activities in considering the overall precedent effect.¹⁴

236. Mr Evatt submitted that in any event there was no evidence as to the precedent effect of granting consent and that the Planning Officer had conflated the concept of precedent and cumulative effects. Mr Evatt submitted that the information provided highlights how dispersed the vacant sites are, including as between Moncks Bay / Redcliffs and Brighton. He identified there were likely to be any number of distinguishing features which set one site apart from another and certainly one application from another application, including (but not limited to) the relative elevation above sea level, area of the site affected by the HFHMA, effect on neighbouring properties, and the likelihood of flood protection works irrespective of the site.¹⁵

237. In the worst case scenario, in his submission the information suggested that if a precedent is set it might result in new development on approximately 50 sites across Moncks Bay / Redcliffs and Brighton which would not otherwise be developed. That was assuming the adverse effects associated with each new development are no more than minor.¹⁶

238. Ms Blair considered that the application could set a precedent for extensive filling within an FMA / HFHMA, for lack of onsite manoeuvring on a site adjacent to an arterial road with a major cycleway and in terms of high levels of site coverage and amenity values in residential zones. It would also, in her opinion, set a significant precedent in terms of development of a vacant site within the HFHMA.¹⁷

239. Ms Blair identified that other landowners in the FMAs and HFHMAs often seek to fill large areas of their site to avoid hazard notices under the Building Act and this has the potential to lead to cumulative effects that will transfer the flood risk to others. She considered there were no unique characteristics to this application that give rise to the extensive filling proposed.¹⁸ She considered that a precedent may be set should this consent be approved for lack of provision of on-site manoeuvring for sites adjacent to arterial roads. She noted that not all MCRs are on arterial roads and therefore these would not be protected

¹³ Reply on Behalf of Nigel & Wendy Gilchrist dated 8 June 2018 at para 19

¹⁴ Supra at para 25

¹⁵ Supra at para 32

¹⁶ Supra at para 33

¹⁷ S42A Report at para [147]

¹⁸ Supra at para [148]

where on-site manoeuvring is not required by the Plan. Overall on this aspect of precedent, she concluded that the precedent is probably limited only to shared path MCRs such as the coastal pathway. She expressed concern in relation to multiple proposals which do not provide for on-site manoeuvring.¹⁹

240. She also considered that the granting of the consent would set a precedent in terms of the Residential Suburban Zone and Policy 14.2.4.4 that seeks to ensure a low scale open residential environment and significant opportunities for landscaping and good access to sunlight and privacy are maintained. She considered there were no unique features of the site that made it distinguishable from any other RS zoned site in an FMA.²⁰
241. She expressed a concern that the decision on this application would signal to other landowners and interested parties whether the Plan's direction to avoid potential increased risk in the HFHMA will be given effect to. In her view, disregarding this important, very directive policy, based on an alleged oversight would create significant precedent.²¹

Evaluation

242. We record our view that the granting of a resource consent has no precedent effect in a strict legal sense. While it is necessary and appropriate to have consistency in the application of legal principles, in factual terms no two applications are ever likely to be the same, albeit one may be similar to another.²²
243. It is not necessary for a proposal being considered for a non-complying activity to be truly unique before Plan integrity ceases to be a potentially important factor.²³
244. We consider that there are a number of matters relating to this proposal in this particular location which distinguish it from the generality of other applications within the RUO. These include:
- a. the applicant holds consent for, and has constructed, a jetty which provides, in the event of an emergency, a potential alternative means of escape.
 - b. Written approval has been obtained from all affected parties. This was accepted by the Court in Gould as a potentially distinguishing feature.
 - c. The history of the site is such that, while it has not been used for residential purposes for some considerable time, it contained, previous to its demolition, a substantial building occupied by the Sea Scouts.
 - d. It sits in an area of substantial dwellings between the Deeds land and Main Road which provides access to Sumner and other seaside and hill suburbs, including Taylors Mistake.
245. Our decision on this application is very much based on this particular proposal in this particular location. We note that the site is only partly covered by the HFHMA and RUO; in our estimate approximately half. It sits in a very discrete location; discrete here having the meaning that it is within a very particular area delineated quite clearly by Main Road and the Deeds land. It sits within a neighbourhood which contains

¹⁹ Supra at para [149]

²⁰ Supra at para [150]

²¹ Supra at para [151]

²² Dye v Auckland RC [2002] 1 NZLR 337

²³ Rodney DC v Gould [2006] NZRMA 217

many residential properties of high value and high site coverage. It is one of very few properties in that particular location which has an HFHMA and RUO overlay. Most of the properties in this particular strip do not. We note there are a number within the wider Moncks Bay area that do, but we consider that this location is quite different from the remainder of the properties in Moncks Bay, which are generally landward of Main Road.

246. Overall, we consider the location and characteristics of this site are such that, if not unique, are very unusual. It is very different from most of the areas within the RUO, including South Brighton. We consider this proposal on this particular site is such that it can be viewed as a genuine exception at the very least. Each of the areas within the RUO are different.
247. For all the forgoing reasons , we find that the granting of this consent cannot in any way create a planning precedent for applications on sites in other parts of the RUO.

Overall Consideration

248. As part of our overall consideration, we have considered the implications of approval and of decline.
249. If we are to decline the application, the existing property zoned Residential Suburban will have little or no use. We acknowledge that a much smaller building on a raised floor level, could be approved subject to restricted discretionary activity consent.
250. Given the nature of this particular strip of land, in our view the construction of this dwelling will not in any way impact on decisions which may need to be made in the future in relation to retreat, or mitigation.
251. There must be some purpose in having the RUO. It removes the non-complying activity status for new dwellings in an area which is residentially zoned, and where the risk is a future risk from sea level rise.
252. We note the RDA rule does not differentiate between vacant sites and redevelopment. In our view, that is of particular moment. That differentiates it from the remainder of the HFHMA. In our view, the RDA does indicate a consent pathway is available, with of course no guarantee of grant, for approval where it meets the three assessment criteria by reference to the six matters of discretion.
253. We of course acknowledge that this is not an application for restricted discretionary activity under the District Plan. We have assessed it as a non-complying activity.
254. We have endeavoured to find a workable interpretation of Policy 5.2.2.2.1b insofar as it relates to the RUO. We consider it is important that the RDA status applies to new residential units within the RUO. Any new dwelling will, by its very nature, increase potential risk. We consider that a strict interpretation of “avoidance” would result in an absurdity.
255. We are satisfied that the potential risk to this particular property in this particular location, as mitigated to the degree that it is, is acceptable.
256. Overall, we consider that the purpose of the Act as expressed in the City Plan, the District Plan, and the CRPS, is met by the grant of consent.

Conditions

257. As referred to earlier in this decision, we requested Ms Blair and Ms Harte provide a set of what they considered to be appropriate conditions, in the event consent was granted.
258. The conditions provided by Ms Blair and Ms Harte are in our view appropriate. Those conditions and the amended plans address the matters of concern in relation to vehicles leaving the site, the need for an appropriate landscape plan, the protection of the garage and its contents, and providing for emergency access.

Decision

259. Having considered all of the above matters and carefully considered the evidence, submissions, application documents and Plan provisions, for all of the reasons set out above, we consider the granting of consent is appropriate. Consent is therefore granted pursuant to s104, s104B, s104C, s104D of the Resource Management Act 1991 and under both the City Plan and the District Plan, subject to the attached conditions.



David Caldwell
Chair
Date: 26 July 2018



David McMahon
Commissioner
Date: 26 July 2018



Tim Scandrett
Councillor
Date: 26 July 2018

Conditions:

1. The development shall proceed in accordance with the information and plans submitted with the application as per the March 2018 revised proposal and the additional information received on (5 April 2018 (traffic management and construction noise), 9 April 2018 (noise mitigation), 21 May 2018 (evidence of Patricia Harte), 8 June 2018 (removal of wall) and 20 July 2018 (revised plans), except where modified by any other conditions of this consent. The Approved Consent Documentation has been entered into Council records as RMA/2017/1413 (69 pages).

Landscaping

2. (a) Landscaping shall be established in the area at the rear of the residential unit as shown on the Site Plan (page 61 of Approved Consent document) and shall consist of locally sourced indigenous vegetation of species suitable for the coastal environment. Such species include, but are not limited to: *Apodasmia similis*, *Juncus kraussii*, *Plagianthus divaricatus*, *Dodonea viscosa*, *Myoporum laetum*, *Coprosma propinqua*. The purpose of the landscaping shall be for softening, rather than screening and to integrate with the adjacent Deeds land.

(b) Landscaping shall be established in the front yard area that is limited in species, positioning and maintenance to ensure visibility to and from vehicles exiting the site and to ensure emergency access in accordance with Condition 13 is maintained at all times.

(c) The consent holder shall submit a landscape plan for certification detailing the landscaping required in 2(a) and (b) to the Head of Resource Consents (via rcmon@ccc.govt.nz) prior to the occupation of the residential unit.

NOTE: The Resource Consents Manager (or their nominee) will either certify, or refuse to certify, the Landscape Plan within 10 working days of receipt. Should the Resource Consents Manager (or their nominee) refuse to certify the Landscape Plan, then they will provide a letter outlining why certification is refused based on the parameters contained in this condition.

3. Should the Resource Consents Manager (or their nominee) refuse to certify the Landscape Plan, the consent holder shall submit a revised Landscape Plan to the Resource Consents Manager for certification. The certification process shall follow the same procedure and requirements as outlined in condition 2.
4. All required landscaping shall be established on site within the first planting season (between 1 April and 30 September) following the final, passed building inspection, and shall be maintained in perpetuity. Any dead, diseased, or damaged landscaping shall be replaced by the consent holder within the next planting season with plants/trees of a similar species.

Construction Management Plan

5. All proposed works shall to be carried out in accordance with an approved Construction Management Plan (CMP). The purpose of the CMP is to ensure that any potential effects arising from construction activities on the site is effectively managed. The CMP shall be prepared by a suitably qualified and experienced practitioner.
6. The CMP shall include, but not be limited to the following:
 - a) Site description, topography, vegetation, soils and other reference information;
 - b) Details of proposed works;
 - c) Roles and responsibilities, including contact details for the site manager appointed by the Consent Holder;
 - d) Site establishment;
 - e) Timing of works (including any staging required);
 - f) An Erosion and Soil Control Plan (ESCP), including drawings, specifications and locations of mitigation measures as necessary;
 - g) Construction noise management measures;
 - h) Site access and Traffic Management measures;
 - i) Storage of fuel and/or lubricants and any handling procedures;
 - j) Contingency plans (including use of spill kits);
 - k) Protocols for the discovery of archaeological material;
 - l) Construction traffic management measures, including measures to be adopted in accordance with the NZTA Code of Practice for Temporary Traffic Management;
 - m) On-site parking areas for construction staff;
 - n) Measures for identification and remediation of contaminated soil; and
 - o) Environmental compliance monitoring and reporting.
7. The consent holder shall submit this CMP to Council, Attention: Resource Consents Manager for certification via email to rcmon@ccc.govt.nz at least 20 working days prior to the commencement of construction work associated with this consent. This CMP is to be certified by the Manager as meeting the requirements of Conditions 5 and 6 prior to the commencement of any construction work and, once certified, the CMP will thereafter form part of the Approved Consent Document.

NOTE: The Resource Consents Manager (or their nominee) will either certify, or refuse to certify, the CMP within 10 working days of receipt. Should the Resource Consents Manager (or their nominee) refuse to certify the CMP, then they will provide a letter outlining why certification is refused based on the parameters contained in this condition.

8. Should the Resource Consents Manager (or their nominee) refuse to certify the CMP, the consent holder shall submit a revised CMP to the Resource Consents Manager for certification. The certification process shall follow the same procedure and requirements as outlined in conditions 4-6.
9. The CMP may be amended at any time by the Consent Holder. Any amendments to the CMP shall be submitted by the Consent Holder to the Council for certification. Any amendments to the CMP shall be:
 - a) for the purposes of improving the measures outlined in the CMP for achieving the CMP purpose (see condition 4), and;
 - b) consistent with the conditions of this resource consent.If the amended CMP is certified, then it becomes the certified CMP

Flood Hazard Management

10. All electrical outlets within the garage shall be located above 12.36m RL Christchurch City Datum.
11. Any structural elements within the garage, which are located below 12.36m RL Christchurch City Datum), shall be designed to withstand the impact of inundation through durable/water resistant finishes.
12. Provision shall be made for storage of non-durable items a minimum of 700mm above the finished floor level of the garage.
13. A clear evacuation route of 3m in width shall be maintained at all times for an inflatable rescue boat to safely navigate to the front entrance of the residential unit within the site. This is to enable the safe evacuation of occupiers during extreme flood events, and shall be achieved by ensuring that this route is not obstructed by structures such as fences, gates or landscaping features.

Acoustic Insulation

14. The residential unit shall be designed and constructed in a manner that achieves a minimum external to internal noise reduction of $30 \text{ dB } D_{\text{tr},2\text{m},\text{nT},\text{w}} + C_{\text{tr}}$ to any habitable space (as defined in the Christchurch District Plan as at 21/5/2018); or be designed and constructed to meet with the following indoor design sound levels: Road traffic noise inside all habitable spaces – $40 \text{ dB } L_{\text{Aeq}}$ (24hr).
15. The consent holder shall provide the Head of Resource Consents (via email to rcmon@ccc.govt) with a design report (prior to the issue of a building consent for the proposal) and a design certificate (at least 3 weeks prior to occupation of the residential unit) prepared by a suitably qualified acoustics specialist stating the design proposed and constructed is capable of meeting condition 14.

Pedestrian and traffic safety

16. No fence, wall or other structure or vegetation that exceeds 1m in height shall be established/erected within the visibility splay located to the south of the proposed access. This visibility splay shall measure 1.5m in width from the side of the formed access and extend for a length of 2m into the site from the road boundary.
17. Prior to the occupation of the residential unit the consent holder shall install and thereafter maintain an audio visual warning device for the purpose of alerting pedestrians and cyclists to vehicles exiting the site that is visible to pedestrians and cyclists within the public footpath outside the site and on the adjacent carriageway. The warning device shall only operate between the hours of 0700-2000 hours.
Note: This device shall be contained within the boundaries of the site and not protrude into legal road.

Cultural impact

18. The consent holder shall ensure that a member of Te Ngāi Tūāhuriri Rūnanga, trained in the recognition of archaeological deposits, is advised at least 10 working days prior to any earthworks being undertaken, to allow them the opportunity to be onsite to assist and offer cultural insights/ advice during all excavations.
19. In the event of the discovery/disturbance of any archaeological material or sites, including taonga (treasured artefacts) and koiwi tangata (human remains), the consent holder shall immediately:
 - a) Cease earthmoving operations in the affected area of the site; and
 - b) Advise the Council of the disturbance via email to rcmon@ccc.govt.nz
 - c) Advise appropriate agencies, including Heritage New Zealand Pouhere Taonga and the local Mana Whenua (Ngāi Tūāhuriri Rūnanga) of the disturbance.

Advice Notes:

- The Council will require payment of its administrative charges in relation to monitoring of conditions, as authorised by the provisions of section 36 of the Resource Management Act 1991. The current monitoring charges are:
 - A monitoring fee of \$218.80 to cover the cost of setting up a monitoring programme and carrying out one site inspection to ensure compliance with the conditions of this consent; and
 - Time charged at an hourly rate if more than one inspection, certification of conditions, or additional monitoring activities (including those relating to non-compliance with conditions), are required.

The monitoring programme administration fee and initial inspection fee will be charged to the applicant with the consent processing costs. Any additional monitoring time will be invoiced to the consent holder when the monitoring is carried out, at the hourly rate specified in the applicable Annual Plan Schedule of Fees and Charges.

- In relation to Condition 6, the term 'construction work' relies on the definition contained in NZS 6803:1999.
- This resource consent has been processed under the Resource Management Act 1991 and relates to planning matters only.
- This site may be an archaeological site as declared by Heritage New Zealand Pouhere Taonga. Under Section 43 of the Heritage New Zealand Pouhere Taonga Act 2014, an archaeological site may be any place that was associated with human activity in or after 1900, and provides or may be able to provide, through investigation by archaeological methods, significant evidence relating to the historical and cultural heritage of New Zealand. Please contact Heritage New Zealand Pouhere Taonga on infosouthern@heritage.org.nz or (03) 357 9629 before commencing work on the land.
- The consent holder is also directed to the Accidental Discovery Protocol set out in Appendix 3 of the Mahaanui Iwi Management Plan: <http://mkt.co.nz/mahaanui-iwi-management-plan/>