STAFF REPORT

TO: Environment & Planning Committee

FROM: D C Bush-King, Environment & Planning Manager

REFERENCE: S611

SUBJECT: **MANAGER'S REPORT– REPORT EP09/01/07 -** Report Prepared for Meeting of 20 January 2009

---

1. AQUACULTURE DECISION

Council has now received the decision of the Chief Executive of the Ministry of Fisheries concerning our interim Aquaculture Management Areas (AMAs) see Attachment 1. The result has seen an 850 ha increase in the area available for marine farming but there are still areas which are subject to a reservation. We will discuss the implications of the decision at the meeting but need to see if any appeals are lodged before expending too much effort in moving to the next steps. Annex 2 contains a media release from the Mayor.

2. BUILDING ACT ACCREDITATION

The Department of Building and Housing has released a briefing on the next phase of the accreditation process as outlined in Annex 3. The briefing refers to an independent review of phase 1 and Tasman was selected as one the 15 authorities actually visited by the reviewer. This provided a useful opportunity to exchange our views even though the review is not looking at the actual need for, or justification of, accreditation.

3. NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT

We will circulate a proposed Council submission prior to the meeting for endorsement.

Recommendation
That the Committee endorse the submission on the proposed National Policy Statement on freshwater Management.

4. MAPUA CLEANUP

Just prior to Christmas Ministry for the Environment released a copy of the Site Validation Report which represents an independent analysis of test results of the almost 2500 soil samples taken during the clean-up at the former Fruitgrowers Chemical Company (FCC) site at Mapua, near Nelson. The report indicates whether the clean-up met targets specified in the project's resource consents.

This report has received some media attention, not all of which was correct, but it now remains for the Site Auditor to decide whether the site is fit for its intended purposes. Along with reports of results from the monitoring of groundwater and sediments, the Site Auditor will use information in the Site Validation Report in drawing to their overall conclusion and will also decide what future monitoring or management is needed.

5. NEW STAFF

I will take the opportunity to introduce Councillors to Gary Tipler our new Building Control Co-Ordinator. Unfortunately Phil Doole our new Resource Consents Manager starts after the meeting but I am sure Councillors will get to meet him before the next meeting.

6. RECOMMENDATION

It is recommended that this report be received.

D C Bush-King
Environment & Planning Manager

Confidential Page Removed

ANNEX 1

17 December 2008

Rec. 17/12/2008

Dennis Bush-King
Environment and Planning Manager
Tasman District Council
Private Bag 4
Richmond 7031

Dear Dennis

FINAL AQUACULTURE DECISION – TASMAN INTERIM AQUACULTURE MANAGEMENT AREAS

I am writing to inform you of the Ministry's final aquaculture decision in response to your request for an aquaculture decision on the Tasman Interim Aquaculture Management Areas.

The final decision is:

Interim AMA1 (Waikato), Northwest Golden Bay

i) In subzone (a) and (b) of interim AMA1— a **reservation** for 108 ha because of effects on fisheries resources and commercial scallop fishing in SCA7 (a fish stock managed under the quota management system); a **reservation** for 97 ha because of effects on commercial scallop fishing in SCA7 (a fish stock managed under the quota management system); and a **determination** for 200 ha.

ii) In subzones (c) and (d) of interim AMA1—a **reservation** because of effects on commercial scallop fishing in quota management area SCA7 (a fish stock managed under the quota management system).

Interim AMA2 (Puramakau), South Golden Bay

i) In subzones (l) and (m) of interim AMA2—a **reservation** because of effects on commercial scallop fishing in quota management area SCA7 (a fish stock managed under the quota management system).

ii) In subzones (n) and (o) of interim AMA2—a **determination**.

Interim AMA3 (Te Kumara), Tasman Bay

i) In subzone (l) of interim AMA3—a **determination**.

Subzone	Area (ha)			
	Approve (Determination)	UAE on SCA7 (Reservation)	Decline - UAE on fisheries resources (Reservation)	Total
Subzone (a) & (b) interim AMA1	200	97 (*excludes108 ha declined on SCA7 and fisheries resources*)	108	405
Subzone (c) interim AMA1		257		257
Subzone (d) interim AMA1		297		297
Subzone (l) interim AMA2		250		250
Subzone (m) interim AMA2		250		250
Subzone (n) interim AMA2	250			250
Subzone (o) interim AMA2	250			250
Subzone (l) interim AMA3	150			150
Total	***850***	***1151***	***108***	***2109***

Maps of the decision and the relevant coordinates defining the reservations and determinations are attached. A copy of the final evaluation report (CD) will be provided to you by Friday 19 December.

The Ministry will publicly notify the final aquaculture decision through a public notice in the Nelson Mail on Thursday 18 December 2008 and Saturday 20 December 2008.

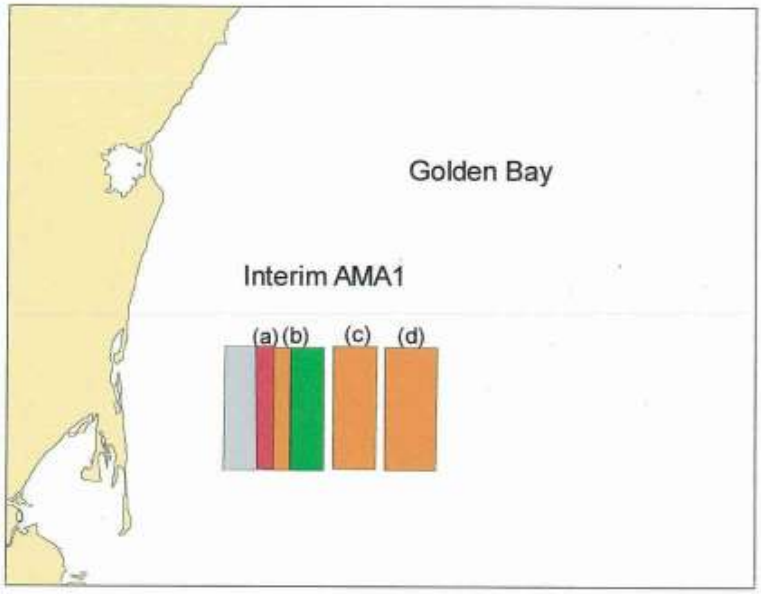
If you have any questions or require clarification of any matters discussed in this letter or in the enclosed report, please feel free to contact me at our office in Wellington or Dan Lees at our office in Nelson.

Yours sincerely

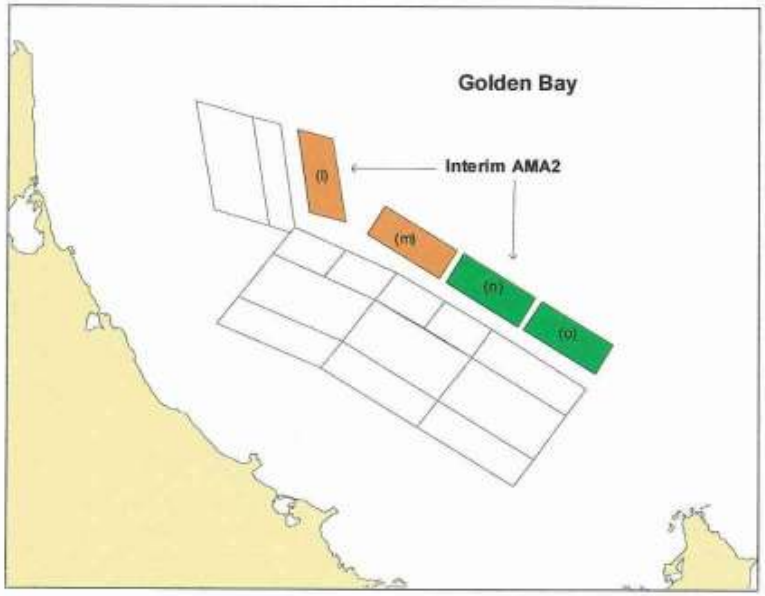
Russell Burnard
Manager Regulatory and Information
Ministry of Fisheries

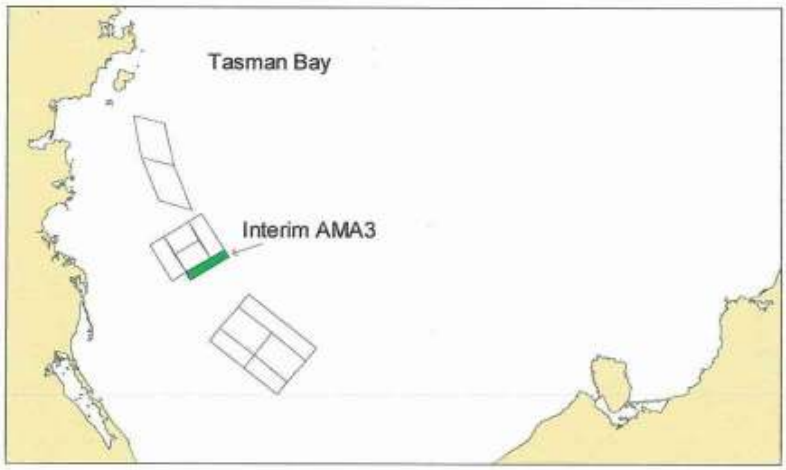
Encl

Maps of the Final Decision



Note: The map above does not show the reservation for subzone (a) of interim AMA1 due to effects on commercial scallop fishing in SCA7.





Determination (approved)

Reservation (declined) on commercial SCA7 fishing (subject to an aquaculture agreement)

Existing marine farms in subzone (a) of AMA1

Reservation (declined) dues to effects on fisheries resources

Other proposed and existing aquaculture areas

Definition of Areas that are subject to the decision

Area	Point	Co-ordinates – NZGD DDM
Subzone (a) of interim AMA1 – definition of existing farms	1	40°37.531'S and 172°42.374'E
	2	40°37.533'S and 172°42.869'E
	3	40°38.992'S and 172°42.868'E
	4	40°38.990'S and 172°42.368'E
Subzone (a) of interim AMA1 – definition of reservation area for UAE on fisheries resources (108 ha)	1	40°37.533'S and 172°42.869'E
	2	40°37.533'S and 172°43.154'E
	3	40°38.991'S and 172°43.148'E
	4	40°38.992'S and 172°42.868'E
Subzone (b) of interim AMA1 – definition of reservation area for UAE on SCA7 (97 ha)	1	40°37.533'S and 172°43.154'E
	2	40°37.534'S and 172°43.402'E
	3	40°38.993'S and 172°43.407'E
	4	40°38.991'S and 172°43.148'E
Subzone (b) of interim AMA1 – definition of determination area (200 ha)	1	40°37.534'S and 172°43.402'E
	2	40°37.535'S and 172°43.934'E
	3	40°38.993'S and 172°43.928'E
	4	40°38.993'S and 172°43.407'E
Subzone (c) of interim AMA1 – definition of reservation area for UAE on SCA7 (257 ha)	1	40°37.535'S and 172°44.076'E
	2	40°37.536'S and 172°44.750'E
	3	40°38.995'S and 172°44.745'E
	4	40°38.994'S and 172°44.070'E
Subzone (d) of interim AMA1 – definition of reservation area for UAE on SCA7 (297 ha)	1	40°37.537'S and 172°44.892'E
	2	40°37.538'S and 172°45.672'E
	3	40°38.997'S and 172°45.667'E
	4	40°38.995'S and 172°44.886'E
Subzone (l) of interim AMA2 – definition of reservation area for UAE on SCA7 (250 ha)	1	40°41.997'S and 172°46.796'E
	2	40°42.153'S and 172°47.546'E
	3	40°43.488'S and 172°47.815'E
	4	40°43.332'S and 172°47.065'E
Subzone (m) of interim AMA2 – definition of reservation area for UAE on SCA7 (250 ha)	1	40°43.220'S and 172°48.641'E
	2	40°43.925'S and 172°50.155'E
	3	40°44.386'S and 172°49.784'E
	4	40°43.681'S and 172°48.270'E
Subzone (n) of interim AMA2 – definition of determination area (250 ha)	1	40°43.981'S and 172°50.276'E
	2	40°44.686'S and 172°51.791'E
	3	40°45.147'S and 172°51.421'E
	4	40°44.442'S and 172°49.906'E
Subzone (o) of interim AMA2 – definition of determination area (250 ha)	1	40°44.742'S and 172°51.913'E
	2	40°45.447'S and 172°53.428'E
	3	40°45.908'S and 172°53.057'E
	4	40°45.203'S and 172°51.541'E
Subzone (l) of interim AMA3 – definition of determination area (150 ha)	1	41°4.652'S and 173°8.225'E
	2	41°4.939'S and 173°7.619'E
	3	41°5.421'S and 173°6.513'E
	4	41°5.674'S and 173°6.721'E
	5	41°4.904'S and 173°8.435'E

Media Statement

18 December 2008

TASMAN'S AQUACULTURE FUTURE – ANOTHER STEP FORWARD

Tasman District Council's Mayor Richard Kempthorne welcomed the release today of the Ministry of Fisheries latest decision on the long running enquiry into the future of aquaculture in Golden and Tasman Bays. The decision follows application by the Council in January 2005 asking the Chief Executive of Ministry of Fisheries to approve the aquaculture management areas which themselves followed a decision by the Environment Court designating areas in the coastal area for aquaculture, a case which started in November 1999,

"While there has been frustration over the time it has taken to get to this point, I am pleased that we can move on to the next phase in what is an exciting economic opportunity for Tasman."

The extra 850 hectares of confirmed space for marine farming is a welcome addition to the area which Council has already approved by way of resource consent and even the 1151 hectares which are subject to negotiation with fishery quota holders represents another significant opportunity. I would certainly encourage the parties to negotiate once we have worked out the allocation of space to Maori." Said mayor Kempthorne

Mayor Kempthorne said the Council is committed to keeping things going and hoped everyone could move on to the next step.

"We've spent too much time in Court and the parties need to work on giving effect to the new opportunities that are opening up" Mayor Kempthorne said.

Ends

For Further information, please contact

Richard Kempthorne 03 544 8082
0272234000

Dennis Bush-King 03 544 3430
0274 310317

Department of Building and Housing
Te Tari Kaupapa Whare

Briefing for chief executives of territorial and regional authorities

Phase 2 of the Building Act's building consent authority (BCA) accreditation scheme

December 2008

CEO

WHAT'S INSIDE?

This briefing:

- alerts you to phase 2 of the BCA accreditation scheme under the Building Act 2004 and its implications for your organisation (including statutory obligations)
- highlights the opportunities that phase 2 brings for your organisation to build on achievements from phase 1
- summarises what is required during phase 2
- describes some of the initiatives the Department is undertaking to assist organisations during phase 2.

KEY DATES

- **November/December 2008** – national training course for councils on phase 2 accreditation requirements scheduled.
- **December 2008** – phase 2 accreditation assessments for organisations to start.
- **31 March 2009** – all BCAs to have achieved accreditation against phase 1 requirements.
- **1 December 2010** – all BCAs to have achieved accreditation against phase 2 requirements.

PURPOSE

This briefing is to inform chief executives and senior management of territorial authorities and regional councils about **phase 2** of the implementation of the building consent authority (BCA) accreditation scheme, under the Building Act 2004.

While phase 2 has important implications for your organisation, it also provides an opportunity to fully realise the benefits of work progressed by your council during phase 1. Potential benefits include:

- streamlining, refining and further improving your building control business systems
- strengthening quality assurance systems and improving risk management
- improving customer services
- helping the building control unit to work more efficiently and cost effectively
- creating efficiencies and assisting your building control staff to work 'smarter, not harder'
- fostering greater collaboration and standardisation with your neighbouring councils who undertake the same regulatory building control functions.

THE BCA ACCREDITATION SCHEME

Under the Building Act 2004, all territorial authorities and regional councils have a statutory obligation to get accredited and then registered as a BCA in order to undertake certain building consenting, inspecting and approval functions.[1]

The BCA scheme essentially involves all organisations being assessed against, and having to meet, a set of standards set out in regulations made under the Building Act 2004.[2] The assessments are conducted by an independent body, International Accreditation New Zealand (IANZ).

1 While territorial authorities are responsible for performing this work for most buildings in their areas, regional councils are only responsible for such building control functions in relation to dams.
2 The Building (Accreditation of Building Consent Authorities) Regulations 2006 contain the standards.

Phase 1: work to date

The implementation of the BCA scheme is occurring in three phases, across six years. Organisations have until 31 March 2009 to get accredited and registered as BCAs to complete phase 1. During phase 1, your organisation was assessed against a set of standards, which broadly covered capacity issues, technical capability, work allocation, consenting and inspecting systems and processes used, resourcing, facilities and equipment, staff training, how contractors are selected and used, and other core organisational and administrative components needed for effective building control functions.

By 30 November 2008:

- sixty nine territorial authorities have been accredited and registered as BCAs
- two regional councils have been accredited and registered as BCAs, with the others having made arrangements to transfer their functions to another regional council.

Those organisations not yet accredited are working hard to achieve accreditation before the end of this year.

Phase 2: assuring quality

Phase 1 of the BCA scheme is now nearing completion and phase 2 is about to begin. While phase 2 has implications for your organisation, it also brings considerable opportunities.

Phase 2 requires all BCAs to be assessed against and meet standards relating to their building control quality assurance systems by 1 December 2010, while also maintaining their accreditation status against the phase 1 standards.

Such quality assurance systems need to broadly include: procedures for continuous improvement; managing human resources and ensuring staff and contractors comply with the quality assurance system; how internal peer reviews/audits are conducted; how potential conflicts of interest are identified and managed; along with various administrative standards covering document control, contact management and record-keeping etc.

Further information about the BCA scheme and the specific phase 2 requirements is contained in Appendix 1 to this briefing.

OPPORTUNITIES AND BENEFITS FOR YOUR COUNCIL

The Department is engaging with all BCAs to emphasise the opportunity that phase 2 accreditation brings.

Our key message is that this is the phase of implementation where real value-added gains can be realised from the platform established during phase 1. And significant streamlining, refinement and business efficiencies, and their associated cost savings, can be achieved.

The BCA accreditation scheme broke new ground in setting challenging, but realistic performance standards for building control units around the country. Councils play an absolutely critical role in our building sector as they provide the independent checks and balances on building work and help ensure that such work complies with the minimum performance standards of the Building Code. This ensures the health and safety of people and amenity and sustainability of our country's building stock.

The standards set by the BCA accreditation scheme have been designed specifically for the New Zealand building control environment.

- They represent the things that all professional and well functioning organisations need to do well to fulfil their statutory regulatory responsibilities, and achieve their performance objectives and outcomes.
- They make a meaningful contribution to ensuring buildings in their communities are built well, last, are fit for purpose, and are safe to the people that use them.

All councils around the country have undertaken considerable work to review and improve their existing building control systems, processes, and resources during phase 1 of the accreditation scheme. This has taken an investment of time, effort and resources, but the results are worth it. The Department has seen many cases of short-term improvements even at this early stage of implementation, and realistic longer-term improvements will continue to follow.

Phase 2 of the process focuses on assuring quality performance and managing risk. The aim of implementing the system is to provide a mechanism for managing and continuously improving BCAs' core building control systems and processes to maximise customer service at the lowest overall cost to the organisation. This will also achieve more timely, cost-effective and high-quality decision-making in your Council's consent processing, inspection and approval functions. If a sound, 'lean' and effective quality assurance system is implemented this will also help organisations to manage the risk of adverse outcomes such as non-compliant buildings being approved in their cities or districts, which can bring health and safety risks to the people who use them and also the potential for legal liabilities.

Organisations have a choice when developing and implementing an accredited quality assurance system – treat it as a bureaucratic 'tick the box' function or use it to identify and manage improvement, efficiency and effectiveness opportunities across the BCA's operations. The first option is an absolute overhead and risks wasting time and resources. The latter seeks to optimise performance, resources and productivity and develop a culture of continuous improvement. This in turn can make a direct contribution to both the statutory and financial performance of the organisation.

Evidence from the phase 1 assessments of councils indicates that there are considerable opportunities to streamline existing building control systems and processes. This will make them easier to operate effectively and keep up to date. In addition, feedback from council building control managers suggests that there are significant opportunities to further improve their core processes, which should lead to further performance optimisation and efficiency gains.

Preparing for and achieving BCA accreditation is also about working 'smarter, not harder' and there have been a number of good examples of this. Some BCAs, for instance, actively participate in regional cluster groups of councils. This has seen the joint development of new business systems and processes, including templates and forms, and sharing of scarce resources and technical expertise for the benefit of all.

ONGOING ASSISTANCE FROM THE DEPARTMENT

As with phase 1, the Department is committed to providing ongoing support and assistance to BCAs during phase 2. This includes:

- regularly publishing guidance about the phase 2 quality assurance requirements so councils have a clear understanding about what they entail and how to go about meeting them
- providing a training course for BCAs on the phase 2 quality assurance requirements
- ongoing Case Advisors to work with BCAs to provide further BCA-specific support and assistance. Case advisors have been attending regional BCA cluster meetings around the country and interacting with BCAs about the quality assurance requirements
- investigating options to assist BCAs to further streamline their processes and maximise efficiencies, such as electronic consent processing, regional shared service opportunities, and other sector education initiatives, including supporting the ongoing development of national qualifications for building officials.

INDEPENDENT REVIEW OF IMPLEMENTATION OF BCA ACCREDITATION – PHASE 1

The Department has engaged PricewaterhouseCoopers (PWC) to undertake a review on the implementation of phase 1 of the BCA accreditation process. The aim of the review is to identify the successes of the phase 1 implementation and how best to carry these successes through into phases 2 and 3, and opportunities for improvement in subsequent phases where phase 1 learnings indicate that a particular approach or activity was not as effective. The review will examine the roles and effectiveness of the Department, IANZ and councils in the BCA accreditation process and the impacts of the process on those organisations.

As part of the review, PWC intend:

- reviewing files and reports prepared by the Department and others in the course of implementing the BCA accreditation scheme

- conducting an on-line survey of all councils
- visiting up to 15 councils and discussing their experience with accreditation with key staff
- interviewing key staff within the Department, IANZ, Local Government NZ, BOINZ, NZIA, RMBF and other key sector stakeholders.

The aim is for a report to be completed by early February. The Department encourages all councils to take the opportunity to provide feedback to PWC so that the learnings can be applied to phase 2 of the accreditation process. Please expect to be contacted soon.

PHASE 2 ACCREDITATION: THE PROCESS FROM HERE

All territorial authorities and regional councils received letters in August about phase 2 of the BCA scheme from IANZ. By now these should have been considered and all organisations should have responded to confirm the timing for their phase 2 assessments.

In developing the phase 2 assessment programme, IANZ has attempted to balance a number of factors such as:

- completing the remaining phase 1 accreditations before the end of 2008
- learning from the experiences gained during the phase 1 accreditation assessments and the variable performances of each organisation
- giving councils as much advance notice and preparation time as possible of the likely timing of assessment visits
- giving councils enough time after their assessments to address their corrective actions before the statutory deadline
- reducing the costs of accreditation assessments.

Under the Building Act 2004, every BCA has to have an accreditation assessment at least every two years to ensure they continue to meet the requirements of the BCA scheme. Therefore, there is the potential for a timing overlap for many BCAs' first biennial reassessment with the new quality assurance requirements that have to be met before 1 December 2010. Where practical, IANZ is endeavouring to combine the statutory biennial accreditation assessments and the assessments around the new phase 2 quality assurance requirements.

This will avoid having to undertake two separate assessments and the resulting fees that BCAs would be charged for this.

To this end, IANZ is developing an 18-month assessment programme that will run from December 2008 to May 2010. This leaves a few months for councils that are assessed towards the end of that period to address any corrective actions before the November 2010 deadline. If your council has any concerns about the dates that have been proposed by IANZ, please contact IANZ directly as soon as possible to seek alternative arrangements.

Contact for further advice

Adrienne Woollard
Programme Manager, Inspection Body Accreditation
International Accreditation New Zealand
Email: awoolard@ianz.govt.nz
Ph (09) 525 6655

Steve Garner
Project Manager, BCA Assistance
Department of Building and Housing
Email: steve.garner@dbh.govt.nz
Ph (04) 470 1017

FEEDBACK FROM COUNCILS WHO ARE NOW ACCREDITED AS BCAS

The Department has received some positive feedback from councils that have been accredited and registered as BCAs. Some examples are noted below.

We have found accreditation very beneficial in that it has introduced more structure and discipline into our building control activities. The external IANZ audit has given us, our councillors and our customers confidence that we are operating to a high standard. We now have independently proven and appropriate competency systems. The framework for becoming accredited was developed by our own staff, who benefited hugely from working through the process. The knowledge is now held in-house. ***Alison Geddes, General Manager Environmental Services, North Shore City Council***

We found the accreditation process very enlightening. Well-documented systems developed to meet the regulations have brought a far greater consistency to our building control processes. We are still working to streamline processes and have learned a lot from having to meet all the detail of the regulations, our knowledge and application of the Act has been enhanced throughout the entire process. We have excellent buy-in from staff and this has enabled us to implement, embrace and improve processes. Checklists developed for processing had an impact on processing times initially, but a meeting with the designers to outline documentation requirements has resulted in shortened time frames. ***Darrell Holder, Manager Building Services, Rotorua District Council***

The accreditation process was a huge learning curve and that learning curve will continue, especially as we develop our quality management systems. The benefits for both staff and customers is immense. We now have systems, checklists and procedures in place, allowing us to record how all our decisions have been made and the reasons for those decisions. ***Steve Hull, Manager Building and Environmental Health, Papakura District Council***

Developing systems and processes that had meaning and could be successfully applied took some effort. Over time our learning reached a plateau where the value of having mechanisms to deal with the full range of our activities, and that could be adapted to changing circumstances, became apparent. We now have a framework that prevents ad hoc approaches to issues and allows us to assess the professional skill sets required to give both us and our customers confidence in our work. We are bedding in these processes and the internal reviews we undertake as part of their application allow us to integrate improvements into our quality management system. We expect this to be a continual process of adaptation and improvement. ***Peter Scantlebury, Manager Building, New Plymouth District Council***

We certainly found that the process has assisted our unit with the development of robust policies and procedures to standardise processing and effectively manage risk. The emphasis on training has been a positive addition to the building consent area and provides greater opportunities for the professional development of our staff. In addition, the focus on providing an appropriate resource and competency mix through the resource model means we are able to manage work more effectively. ***Michael Campbell, Group Manager Consent Services, Waitakere City Council***

Accreditation has given us the framework to ensure the right people with the right skills are checking and approving building work. While it involved a lot of hours in developing the required processes and assessing the competency of staff, the ongoing administration of the systems is not as taxing as first thought. Accreditation means the city can have confidence that the council can carry out all aspects of building control work to ensure compliance with the Building Code and Building Act. Our systems and processes have been independently audited and are determined to have reached an acceptable level based on nationally defined standards. ***Peter Eathorne, General Manager City Contact, Palmerston North City Council***

Regulatory staff at Carterton District Council found the accreditation process very beneficial, particularly as it necessitated the organisation to review its procedures and processes to produce an optimum system. Admittedly, staff members were a little apprehensive, and intimidated, by the thought that outsiders would be coming in to critique their methods, but the IANZ accreditation team put them at ease and the process went off without stress. Staff were appreciative of the assistance given by IANZ and the Department of Building and Housing during this significant process. ***Milan Hautler, Planning and Regulatory Manager, Carterton District Council***

The immediate advantages have been a more productive, efficient building control unit. Staff are more confident in their decision-making as they have clear, consistent guidelines to follow. The accreditation process was embraced by all staff from the outset, which enabled us to progress in a positive manner. The benefit of involving our staff throughout the process was that we developed manuals that reflect our existing work practices and procedures.

As a result, operational changes were kept to a minimum, enabling manageable disruption to our ongoing workload. The end result is an effective, quality system achieved under budget and without the need for staff increases, consent fees increases, or processing times exceeding 20 working days. Accreditation has been a positive and necessary initiative to ensuring we provide a quality service to our ratepayers and the industry. ***Ray Applegarth, District Inspector, Clutha District Council***

APPENDIX 1: MORE INFORMATION ABOUT THE BCA ACCREDITATION SCHEME

Objectives of accreditation

The BCA accreditation scheme was introduced to:

- help improve the technical capabilities and improve resourcing of the building control sector
- help assure the public of the quality of building controls
- help promote consistent, standardised and ongoing good-quality practice in building controls
- help identify good building control practice and provide mechanisms for sharing this information throughout the sector and with other interested parties
- help foster continuous improvement in building controls at national and local level
- provide an impetus for much closer and more formal relationships among BCAs, and between BCAs and technical consultants/contractors
- provide incentives for improving performance and raising standards in building control
- improve the quality of New Zealand's building stock.

Requirements of the BCA accreditation scheme

A summary of the key accreditation requirements and the timings by which BCAs have to meet these requirements is provided below. The focus of this briefing are the standards in phase 2 (shaded green).

PHASE	SUMMARY OF KEY ACCREDITATION STANDARDS	TIMING
Phase 1	Standards to ensure BCAs: • have sound policies, procedures and systems underpinning their BCA's building control functions • have improved building control capacity and technical capability and the systems to assess capacity and competency and ensure work is allocated to those competent to undertake it • have sound training systems and can identify and enable technical leaders • have sound contract management systems • provide the necessary technical and administrative information, facilities, and equipment to effectively perform their building control functions • keep appropriate organisational records and operate robust record-keeping systems.	Councils to be accredited and registered as BCAs by **31 March 2009**
Phase 2	Standards regarding BCAs' quality assurance systems, including: • management review • continuous improvement systems • the management of human and technical resources, facilities and equipment • internal audits and reviews • management of conflicts of interest • document and record control • contract management • adherence to quality assurance systems by staff and contractors	Councils to be accredited against these standards by **1 December 2010**
Phase 3	Standards regarding the qualifications of BCAs' technical building control staff.	1 December 2013

New Zealand Government

ANNEX 4

58 Kilmore Street, PO Box 345, Christchurch
General enquiries: 03 365 3828
Fax: 03 365 3194
Email: ecinfo@ecan.govt.nz
Customer services: 03 353 9007
or: 0800 EC INFO (0800 324 636)
Website: www.ecan.govt.nz

16 December 2008

Mr Paul Wylie
Chief Executive
Tasman District Council
Private Bag 4
RICHMOND 7050

Dear Paul

APPLICATION FOR DECLARATORY JUDGMENT CANTERBURY REGIONAL COUNCIL

I am writing to let you know that Canterbury Regional Council (CRC) has brought proceedings in the High Court under the Declaratory Judgments Act 1908. These proceedings seek to establish the right of local authorities to appoint councillors to hear submissions on plans and policy statements under the RMA, against the background of consultation and collaboration with other local authorities under the Local Government Act 2002.

This action has been taken following the notification by Canterbury Regional Council of proposed change 1 (PC1) to our Regional Policy Statement (RPS). This change to the RPS is required to partially implement the Greater Christchurch Urban Development Strategy (UDS) which will provide for urban growth and development in the Greater Christchurch area over the next 35 years by methods such as the inclusion of urban limits. The UDS, developed through processes that sit outside of the RMA, was initiated by the local authorities in the Greater Christchurch area (CRC, Christchurch City Council, Selwyn District Council and Waimakariri District Council) and Transit NZ, in consultation with other interested parties and the wider public.

PC1 was publicly notified last year. Submissions were lodged, and Canterbury Regional Council appointed a hearing panel comprised of councillors to hear and recommend decisions on those submissions. Since that time, judicial review proceedings have been brought by a submitter, National Investment Trust Limited (NITL).

NITL state that, by participating in the process which resulted in the UDS, CRC effectively replaced the statutory process for determining the content of the RPS and unlawfully predetermined what the outcome of the statutory procedures for amendment to the RPS will be. They also challenged the ability of CRC to appoint councillors to the hearing panel, on the basis that, with them in place, the outcome of the hearings process was predetermined. NITL sought a direction that the CRC should appoint independent hearing commissioners to the panel instead of councillors.

The issue of whether or not councillors may be appointed is of significant importance to CRC and other councils. It is our view that hearing submissions on planning documents is a core part of councillors' functions. It is a fundamental aspect of local government and resource management law that the Council proposes planning documents and then hears and decides the submissions on those documents.

Our Ref: PE4C
Your Ref:
Contact: Dr Bryan Jenkins

Our defence of the judicial review proceedings was supported by Local Government New Zealand, who confirmed that local authorities would be very concerned about a ruling that prevented councillors from sitting on planning document hearing panels by virtue of the council consulting and collaborating with interested parties including other local authorities. Our defence was also supported by expert opinion which confirmed that our decision to appoint councillors to the hearing panel was legally correct and justified. That opinion is available on our website at www.ecan.govt.nz/rpsChange1.

Despite this, as a matter of timing and practicality, we have made the decision that taking the defence of the proceedings through a defended hearing and then potentially to appeal is not an option. It will cause delays to the process which will have significant ramifications on the effectiveness of PC1.

As a result we have settled the judicial review proceedings by agreeing to appoint independent commissioners to the hearing panel instead of councillors. Having made that decision we still assert that our earlier decision to appoint councillors to the hearing panel was legally correct and justified. We will now seek confirmation of that position through the Declaratory Judgment proceedings which are about to be issued. A copy of the declaration is attached.

This is an important process that will have ramifications for all councils. It is essential to establish the correct interpretation so that, in the future, CRC and other councils will not be put in the position of being forced to appoint independent commissioners.

In bringing these proceedings, CRC has sought an order from the Court as to which other persons should be served with a copy of the action. It is our view at this time that all local authorities in New Zealand should be served. This will not require any other local authority to be involved in the proceedings, but if the orders we are seeking are made, then other local authorities will be entitled to be involved.

CRC is happy for any other local authority who has a view on this matter similar to CRC's, and who wishes to join the proceedings, to be represented by our legal team of Dr Gerard McCoy QC and Professor Philip Joseph. CRC will continue to bear the cost of their services (except to the extent that their attendances are materially increased by representing other parties).

We recognise that you may choose not to join proceedings but may still be prepared to send a letter of support for our position or alternatively pass a motion of support at a council meeting. This would certainly be helpful in ensuring understanding of the potential impact this decision will have on local body decision making and we would welcome that support. If you choose to do that it would be required by 28 February 2009.

If you wish to discuss this matter further, please do not hesitate to contact me (telephone: 03 372 7223 or email: bryan.jenkins@ecan.govt.nz).

Yours sincerely

Dr Bryan Jenkins
CHIEF EXECUTIVE

Encs

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV

UNDER	the Declaratory Judgments Act 1908
BETWEEN	**CANTERBURY REGIONAL COUNCIL** a Local Authority established under the Local Government Act 2002 having its office at 58 Kilmore Street, Christchurch
	Applicant
AND	**THE ATTORNEY-GENERAL OF NEW ZEALAND** being the officer to be served on behalf of the Crown, C/- Solicitor-General, Crown Law Office, Unisys House, 56 The Terrace, Wellington
	Respondent

STATEMENT OF CLAIM
Friday the 28th day of November 2008

Next Event Date:
Judicial Officer:

WYNN WILLIAMS & CO
SOLICITORS
CHRISTCHURCH

Solicitor: Margo Perpick

Level 7, BNZ House, 129
Hereford Street,
P O Box 4341, DX WP21518,
CHRISTCHURCH
Tel 0064 3 3797622
Fax 0064 3 3792467

MP-101442-608-1242-V1

decision of the High Court, "an appeal to the Court of Appeal may become relevant" (para 11). It followed that, in view of the length of time plainly required for the Courts to hear and determine the proceedings and appeals (and possibly a further appeal to the Supreme Court), that the Applicant would be unable to meet its statutory obligation to issue a decision on submissions within 2 years of notifying the change to the Regional Policy Statement ("RPS") – such change having been notified on 28 July 2007 (submissions closing 31 October 2007 and further submissions 18 April 2008) with variations notified 23 August 2008 (submissions closing 19 September 2008 and further submissions closing 19 November 2008).

6. The Applicant had no realistic option but to compromise the judicial review by agreeing to appoint independent commissioners. The Applicant further could not delay the proposed changes to the RPS without jeopardising the integrity of the long term growth strategy that the Applicant had proposed in consultation with the regional stakeholders. Another consequence of the timing of the judicial review was that privately proposed changes to the Christchurch District Plan had been lodged, and if accepted, would have enabled several hundred hectares of urban growth outside the Urban Limits identified in PC1.

7. Local Government New Zealand (the representative body of all local regional and territorial authorities in New Zealand), viewed NITL's challenge as a test case. Its challenge went to the heart of a regional or territorial authority's statutory functions and democratic mandate. NITL claimed that councillors must stand aside in local government planning matters and appoint independent hearing commissioners to hear submissions on or objections to their planning proposals. The decision forced on the Applicant to capitulate to the challenge is capable of being seen as establishing an unfortunate precedent that must be addressed in the interests of local government throughout New Zealand.

8. Other local government authorities across New Zealand are using the same broad model as the Applicant. Therefore, the legality of their local planning processes too are equally in issue.

9. The Applicant itself is, as required by the RMA, currently engaged in a review of the entire RPS utilising the same broad model that was

THE APPLICANT by its Solicitor says:

Applicant

1. The Applicant is a regional council established by the Local Government (Canterbury Region) Reorganisation Order 1989, and Schedule 2 of the Local Government Act 2002 ("the LGA"). It has statutory duties as defined by that Act, and by other Acts including the Resource Management Act 1991 ("the RMA"), for the Canterbury Region.

Defendant

2. The Defendant is the Attorney-General of New Zealand against whom these proceedings are brought on behalf of the Minister of Local Government and the Minister for the Environment.

Need for declarations

3. These proceedings for declarations are a direct consequence of proceedings initiated against the Applicant and four of its councillors (who had been appointed to a hearing panel) in an application under the Judicature Amendment Act 1972 for judicial review. The application for review was filed in the High Court at Christchurch on 17 June 2008 (*National Investment Trust Ltd v Canterbury Regional Council*, CIV 2008-409-1280).

4. National Investment Trust Ltd ("NITL") challenged the steps the Applicant had taken to implement changes to the Canterbury Regional Policy Statement ("the RPS"). The changes proposed to the RPS were in the exercise of the Applicant's statutory functions under the LGA and RMA, and were undertaken in consultation with the stakeholders in the Christchurch region, including: the Christchurch City Council, the Selwyn District Council, the Waimakariri District Council, and Transit New Zealand (now the New Zealand Transport Agency).

5. The Applicant instructed its solicitors to oppose the application for judicial review. However, it was advised that, through litigation delays, stays and timing issues, it could not simultaneously defend the application *and* properly and efficiently discharge its statutory functions under the LGA and RMA. In a Memorandum to the High Court dated 18 September 2008, counsel for NITL had addressed the Applicant's application for a Full Court hearing and advised that, whatever the

decision of the High Court, "an appeal to the Court of Appeal may become relevant" (para 11). It followed that, in view of the length of time plainly required for the Courts to hear and determine the proceedings and appeals (and possibly a further appeal to the Supreme Court), that the Applicant would be unable to meet its statutory obligation to issue a decision on submissions within 2 years of notifying the change to the Regional Policy Statement ("RPS") – such change having been notified on 28 July 2007 (submissions closing 31 October 2007 and further submissions 18 April 2008) with variations notified 23 August 2008 (submissions closing 19 September 2008 and further submissions closing 19 November 2008).

6. The Applicant had no realistic option but to compromise the judicial review by agreeing to appoint independent commissioners. The Applicant further could not delay the proposed changes to the RPS without jeopardising the integrity of the long term growth strategy that the Applicant had proposed in consultation with the regional stakeholders. Another consequence of the timing of the judicial review was that privately proposed changes to the Christchurch District Plan had been lodged, and if accepted, would have enabled several hundred hectares of urban growth outside the Urban Limits identified in PC1.

7. Local Government New Zealand (the representative body of all local regional and territorial authorities in New Zealand), viewed NITL's challenge as a test case. Its challenge went to the heart of a regional or territorial authority's statutory functions and democratic mandate. NITL claimed that councillors must stand aside in local government planning matters and appoint independent hearing commissioners to hear submissions on or objections to their planning proposals. The decision forced on the Applicant to capitulate to the challenge is capable of being seen as establishing an unfortunate precedent that must be addressed in the interests of local government throughout New Zealand.

8. Other local government authorities across New Zealand are using the same broad model as the Applicant. Therefore, the legality of their local planning processes too are equally in issue.

9. The Applicant itself is, as required by the RMA, currently engaged in a review of the entire RPS utilising the same broad model that was

challenged in the judicial review. This raises a real issue as to the lawfulness of the Applicant's review of its RPS.

10. These proceedings for declarations under the Declaratory Judgment Act 1908 seek to allay the uncertainties resulting from NITL's challenge. The Applicant settled under protest without resiling from its position and now seeks a decision of the High Court as to the legitimacy of its approach to its statutory roles under the LGA and RMA.

Applicant's Involvement in Greater Christchurch Urban Development Strategy

11. Commencing in July 2003, the Applicant together with other regional stakeholders, including the Christchurch City Council, the Selwyn District Council, the Waimakariri District Council and Transit New Zealand (collectively known as "the UDS Partners"), entered into a process which produced a document known as the Greater Christchurch Urban Development Strategy ("the UDS").

12. The purpose of the UDS is to provide a clear direction for the urban development of the Greater Christchurch region over the next 35 years, including:

- where new housing is to be located,
- where social and retail centres of activity are to be developed or enhanced,
- where areas of new employment are to be located, and
- how transport networks are to be integrated to service these areas.

13. The Strategy also provides guidelines for how the Strategic Partners, communities, business, central government and non-government agencies can work collaboratively to manage growth of the Greater Christchurch area in a way that conserves or enhances resources and environments, while allowing growth to build vibrant and prosperous towns and suburbs that help support a healthy city.

14. A Draft UDS was prepared and notified for public submission in November/December 2006.

15. Submissions on the Draft UDS were heard before a Joint Committee of the Canterbury Regional Council, the Christchurch City Council, the

Selwyn District Council and the Waimakariri District Council in February 2007.

16. Following those hearing, the Draft UDS was modified, finalised and adopted by the UDS Partners.

Memorandum of Agreement

17. Contained within the UDS is a Memorandum of Agreement ("the MoA") between the UDS Partners, which establishes the broad principles and approach to the implementation of the UDS.

18. The MoA formally acknowledges the co-operative and collaborative manner in which the UDS Partners had worked together to produce the UDS and expresses a commitment to see that approach continue throughout implementation of the UDS.

UDS Implementation Committee

19. The UDS also set up a UDS Implementation Committee ("the UDSIC") as a joint committee of the Councils.

20. On the UDSIC, each Council is represented by its mayor/chair and two representatives, which to date have been councillors.

21. The purpose of UDSIC is to co-ordinate and progress, at a political level, the implementation of the UDS by the UDS Partners and provide political leadership and advocacy.

22. The UDSIC has powers to make recommendations to and advise the UDS Partners but it does not take over or assume the statutory role of any Partner Council. It operates as a discussion forum and source of knowledge of potential agreement or disagreement on issues between the UDS Partners.

Proposed Change 1 to the Canterbury Regional Policy Statement

23. Under sections 60, 64, 65, 73 and Schedule 1 of the RMA, the Applicant is required to establish a Regional Policy Statement with the purpose of establishing policies to achieve the sustainable management of natural and physical resources in the Canterbury Region.

24. The Canterbury Regional Policy Statement ("the RPS") was notified on 1 October 1993 and became operative in June 1998.

25. It is envisaged by the UDS Partners that the principal method by which the UDS will be implemented is by way of a change to the RPS.

26. In July 2006 a Scoping Paper was prepared by officers of the Applicant on a proposed change to the RPS to implement part of the UDS. The contents of the Scoping Paper was discussed with officers of the UDS Partners, after which initial drafts of the proposed change were produced by the Applicant.

27. The aim of those discussions was for the Applicant to consult with and obtain from the other UDS Partners the information which only they could provide. This information included those areas the Councils were planning, funding and actively providing urban services for (including water, sewer, storm water treatment and disposal, and transport), and those areas that the UDS Partners were seeking for urban development which were to be considered by the Applicant.

28. One issue that was the subject of considerable discussion at officer level was the use of maps within Proposed Change 1 ("PC1") for implementing the proposed UDS, and whether the UDS Partners should use urban limits at cadastral scale showing new greenfields areas for the next 35 years. In the end, this was the approach adopted.

29. Proposed Change 1 ("PC1") to the RPS was publicly notified by the Applicant on 28 July 2007. It contains objectives, policies and methods to provide for and manage urban development and growth in the Greater Christchurch area over the next 35 years.

30. PC1 includes the following:

    a. Urban Limits providing for 35 years of residential and business growth, outside which urban development may not occur. The Urban Limits are set with regard to key constraints such as floodplains, the Port Hills, the aquifer recharge zone for Christchurch's water supply, and the Ldn 50 dBA noise contour surrounding Christchurch International Airport;

    b. Areas within central Christchurch where Intensification is to occur;

    c. Policies which provide for sequencing of development, showing which land is to be open for development within specified ten year periods;

d. Policies on achieving increased densities within new greenfield developments and improved urban design;

e. Policies on Outline Development Plans, recording how densities are to be achieved, and the provision of key infrastructure and improved urban design leading to Changes in District Plans for new greenfield areas;

f. Identification of Key Activity Centres (nodes of commerce, employment and transport intersections) such as Riccarton, Northlands, Rolleston and Rangiora;

g. Policies relating to altered circumstances and review of the provisions of PC1.

Memorandum of Understanding No 1

31. By mid-2007 prior to notification of PC1, the towns of Kaiapoi and Woodend were still engaged in local community planning processes. In addition, an Environment Court case concerning the noise contours for Christchurch International Airport had a significant impact on the development of the town of Rolleston. For these reasons, Urban Limits were not shown for these three towns when PC1 was notified. The UDS Partners anticipated that a variation to PC1 would follow to provide for Urban Limits for these towns.

32. The UDS Partners entered into Memorandum of Understanding No 1 ("MoU No 1") to ensure that Waimakariri and Selwyn District Councils would, in due course, provide the Applicant with the information required for PC1, recording the Urban Limits for Rolleston, Kaiapoi and Woodend. Under section 5 of the MoU No 1, the memorandum is to run only until the public notification of the variations to define Urban Limits for Kaiapoi, Woodend and Rolleston.

Memorandum of Understanding No 2

33. The effect of aircraft noise produced at the Christchurch International Airport ("the Airport") is one of the issues to be dealt with in providing for urban growth in the Greater Christchurch area.

34. The process of locating the Urban Limits contained in PC1 took into account the effects of aircraft noise by endeavouring to locate new noise sensitive activities (such as residential use of land) in places outside of the projected Ldn 50 dBA noise contour for the Airport.

35. Prior to notification of PC1, the Airport Noise Contours available to the Applicant were the contours contained in the Christchurch City Plan ("the old contours").

36. The old contours had been modelled and produced in 1994, and had been criticised by a number of interested persons as not incorporating the most recent data and assumptions relating to the modelling of airport noise contours.

37. At the time PC1 was notified, a more up-to-date set of noise contours ("the remodelled contours") was in the process of being finalised. This was in the context of Environment Court proceedings regarding urban growth in the town of Rolleston.

38. The UDS Partners considered it likely that, when the remodelled contours became available, it would be more appropriate to locate the Urban Limits having regard to the remodelled contours in preference to the old contours.

39. For that reason, a memorandum titled, "Achieving an Integrated Policy and Planning Response to Remodelled Airport Noise Contours" ("Memorandum No 2"), was drafted and circulated among the UDS Partners. However, Memorandum No 2 was never finalised or executed.

Variations 1 - 4

40. On 23 August 2008, the Applicant notified Variations 1 to 4 to PC1. These variations provided for:

    a. Urban Limits and New Total Household Projection for the town of Rolleston (Variation 1);

    b. Urban Limits for the town of Kaiapoi (Variation 2);

    c. Urban Limits for the town of Woodend (Variation 3);

    d. Revised LdN 50 dBA Air Noise Contour for Christchurch International Airport, Deletion of Greenfield Outline Development Plan Areas - Residential in North and Western Christchurch and Identification of a New Greenfields Outline Development Plan Area - Residential in Southwest Christchurch (Variation 4).

Relationship between UDS and PC1

41. PC1 provides for the urban development of Greater Christchurch over the next 35 years. It seeks to implement an overall land use pattern for residential and business land in the Greater Christchurch area, and the manner in which that land is to be developed. These are important objectives of the UDS, although they are not its only objectives.

42. The UDS is essentially an information source to assist in effecting the changes to the RPS. In utilising the information it contained, the Applicant is not: (a) predetermining or closing its mind to submissions received on PC1; (b) passing or delegating any powers to the UDS Partners; (c) abdicating its statutory functions and/or decision-making under the LGA or RMA; or (d) derogating from RMA procedures for changing the RPS. Rather, it is seeking to obtain an appropriately comprehensive and engaged input from the City and District Councils and other regional stakeholders and interested persons.

43. The UDS provides a rational starting point for the RMA decision-making process in relation to PC1. PC1 must represent a land use pattern that can be serviced by infrastructure in order that land use and development achieves sustainable management of resources.

Composition of Hearing Panel for Hearing Submissions on PC1

44. The RMA provides that a local authority which has notified a proposed plan or policy statement, or a proposed change to such a document, must call for submissions on the proposed document, hear those submissions, and make decisions on them.

45. On 7 February 2008, the Applicant resolved:

> "That pursuant to Section 34A of the Resource Management Act 1991 that COuncillors Kane, Neill (Chairperson), Sage and Sutherland be appointed to hear and recommend decisions on submissions to Proposed Change No 1 to the Regional Policy Statement".

46. Pursuant to that resolution the final decision on submissions received remained with the Applicant.

47. The hearing of submissions was scheduled to begin in July 2008, and to continue throughout July and August 2008.

48. On 17 June 2008, judicial review proceedings were lodged by National Investment Trust Limited ("NITL") against the Applicant and the four councillors who had been appointed to the Hearing Panel.

49. The judicial review proceedings alleged that, as a consequence of the agreements reached by the Applicant and the UDS Partners (being the MoA and the MoU No 1), the Applicant:

    a. had effectively and unlawfully replaced the statutory process for determining the content of the RPS by the steps taken to establish the agreements; and

    b. had unlawfully predetermined the outcome of the statutory procedures for amendment to the RPS; and

    c. had appointed the councillors as the Hearing Panel in order to give effect to the agreements.

50. The judicial review proceedings sought:

    a. a declaration that the Applicant's decision to enter into the agreements was unlawful; and

    b. an order setting aside the Applicant's decision to appoint its own councillors as the Hearing Panel; and

    c. a direction that the Applicant should appoint to the Hearing Panel independent hearing commissioners.

51. Interim orders were also sought to prevent the commencement of the hearing of submissions before the Hearing Panel comprised of councillors.

52. The Applicant denied the allegations contained in the Statement of Claim in the judicial review proceedings, and resisted the making of the orders that were sought.

53. However, the Applicant subsequently resolved that the delays which would be incurred in defending the judicial review proceedings and dealing with any appeals would cause unacceptable delays with irremediable consequences in the commencement of the hearing of submissions on PC1.

54. The Applicant considered that, in order to provide for and manage urban growth and development in the Greater Christchurch area over

the next 35 years, it was vital that PC1 became operative as soon as possible.

55. The Applicant resolved to appoint independent commissioners rather than councillors to the Hearing Panel, so that the hearing of submissions on PC1 could commence without the unacceptable delay that would be involved in awaiting a final determination of the judicial review proceedings.

56. The Applicant's involvement in the UDS, and the way in which PC1 has been and continues to be developed (including the Applicant's entering into the MoA and MoU No 1), do not create any reason why the Applicant (including any committee comprising two or more members of the Applicant) may not hear and decide upon submissions on PC1.

Statutory Scheme

57. The statutory scheme for the development and adoption of PC1 dovetails procedures from the LGA and RMA. Under the RMA, the Council must formulate any changes to its regional policy statement, call for and consider submissions on its proposal, and make decisions on the submissions received.

58. A regional council may from time to time change its regional policy statement in the manner set out in Schedule 1 of the RMA, in accordance with the requirements of section 32 and Part 2 ("Purposes and principles") of the RMA. Councils must carry out an "evaluation", which entails examining the most appropriate means of achieving the Act's purposes (see sections 5-8) and undertaking cost-benefit assessments of proposed policies.

59. Schedule 1 of the Act governs the hearing process entailed in changing a regional policy statement. Schedule 1 establishes a prescriptive process for ensuring due consultation through incorporation of the provisions of section 82 of the LGA. This provision requires local authorities to engage in meaningful consultations with "persons who will or may be affected by, or have an interest in, the decision or matter". Section 78 augments the duty of consultation by identifying the appropriate stage at which consultation must occur.

60. Section 82(1)(e) identifies the standard that applies to consultation under the RMA. This establishes that local authorities must receive

submissions with an "open mind" and give submissions "due consideration".

61. A regional council that proposes to change its policy statement must publicly notify it and call for submissions (RMA, Schedule 1). The council must also publicly notify a summary of all decisions requested by persons making submissions on changes to a policy statement (including notification of where the submissions can be inspected), and invite further submissions on the submissions.

62. A regional council must hold hearings into the submissions it receives by giving not less than 10 working days notice of the hearing (RMA, Schedule 1). Every submitter who requests to be heard has a right to a hearing.

63. Clause 10 of Schedule 1 confers a local authority's power of decision on a policy statement or proposed changes to such statement. An authority's decision may include consequential alterations arising out of submissions received and must include reasons for accepting or rejecting submissions (grouped by subject-matter or individually). Under subclause (3), a local authority has a maximum period of two years to issue its decision, running from the time that it publicly notified its proposed policy statement or changes to such statement. The policy statement (or changes thereto) take effect from the date of public notification of the authority's decision.

64. Local authorities enjoy wide powers of delegation. They may delegate any of their statutory functions, powers or duties to "any committee of the local authority established under the [LGA]" (RMA, section 34). A council committee appointed under section 34 is the council's alter ego. It stands in the shoes of the council and exercises such powers and functions as council delegates as though it were council so acting. Under section 34, a committee may "exercise or perform the function, power, or duty in like manner and with the same effect as the local authority could itself have exercised or performed it" (section 34(8)).

65. Section 34A confers a lesser power of delegation. A local authority may delegate any of its functions, powers or duties to an employee, a hearings commissioner or "any other person", including the power to decide on submissions, but it may not delegate the "approval of a policy statement or plan" (section 34A(1)(a). Section 34, in contrast,

authorises delegation of inter alia the power of decision on submissions and approval of a policy statement or changes to it.

Declarations

66. As a matter of discretion, there is no impediment to the Court issuing the declarations sought. The declarations do not seek to: answer hypothetical questions, interpret statutory powers in the abstract, or grant relief that would serve no useful purpose. The issues that these proceedings seek to clarify: arise out of actual judicial proceedings instituted against the Applicant; affect the statutory and democratic functions of local government throughout New Zealand; and are of utmost importance to the integrity of democratic decision-making in local government.

67. The public interest commends the removal of the uncertainties raised by the proceedings brought by NITL.

WHEREFORE the Applicant seeks the following declarations:

a. On a proper construction of the consultation provisions of the LGA, the Applicant or a committee of its members may validly hear submissions under the RMA on Proposed Change 1 to the Canterbury Regional Policy Statement and make decisions thereon;

b. That the Applicant may validly appoint two or more of its members as a Hearing Panel under the RMA to hear submissions on PC1 and make decisions on behalf of or recommendations to the Applicant;

c. That two or more members of the Applicant, having been appointed as a Hearing Panel under the RMA to hear submissions on PC1 and make recommendations to the Applicant, are not disqualified from subsequently participating in the Applicant's decision(s) thereon;

d. That the Applicant bears no legal obligation or expectation under the RMA to appoint independent commissioners to the Hearing Panel for hearing submissions on PC1 and making recommendations thereon to the Applicant;

THIS Statement of Claim is filed by **MARGO PERPICK** of Wynn Williams & Co as solicitor for the above named Applicant. Its address for service is at the

MP-101442-608-1216-V1:JCS

offices of Wynn Williams & Co, 7th Floor, BNZ House, 129 Hereford Street, Christchurch. Documents for service may be:

a. Left at that address; or

b. Posted to the solicitor at PO Box 4341, Christchurch; or

c. Left for the solicitor at a Document Exchange for direction to WP21518, Christchurch.

MP-101442-608-1216-V1:JCS