

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

CIV:

IN THE MATTER OF

Canterbury Earthquake Recovery Act 2011,
the Canterbury Earthquake (Christchurch
Replacement District Plan) Order 2014, and
the Resource Management Act 1991

AND

IN THE MATTER

of an appeal under clause 19 of the Order in
relation the Natural Hazards chapter
decision of the Independent Hearings Panel
on the Proposed Christchurch Replacement
District Plan

BETWEEN

K I COMMERCIAL LIMITED

Appellant

AND

CHRISTCHURCH CITY COUNCIL a local
authority constituted under the Local
Government Act 2002

Respondent

NOTICE OF APPEAL ON BEHALF OF KI COMMERCIAL LIMITED

24 August 2015

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To: The Registrar of the High Court at Christchurch

And to: Christchurch City Council

TAKE NOTICE that K I Commercial Limited (**the Appellant**) hereby appeals against the decision of the Independent Hearings Panel (**the Panel**) on behalf of the Christchurch City Council (**the Council**) on the Natural Hazards Chapter (part) of the Proposed Christchurch Replacement District Plan (**the Plan**), notified by the Council on the 27th July 2015 (**the Decision**).

The Appellant lodged a submission in respect of the Plan relating to matters with which this appeal is concerned.

DECISION APPEALED AGAINST

- 1 The Appellant appeals against those parts of the Decision that relate to the certification process for rock fall hazards and cliff collapse areas, including:
 - (a) Policy 5.2.4.1 — This sets out the risk basis for considering site-specific exceptions from the mapping;
 - (b) Policy 5.2.4.2 — Site-specific risk assessment in areas potentially affected by rock fall;
 - (c) Policy 5.2.4.3c — Control of hazard mitigation and hazard removal works;
 - (d) Rule 5.5.1.2 — Exceptions to Rule 5.5.1.1 — Rock fall AIFR Certificate.
 - (e) Planning maps illustrating the location of these hazard areas.

ERRORS OF LAW

- 2 The Panel erred in law by excluding Cliff Collapse Management Areas (**CCMAs**) from the certification process that was adopted for rock fall hazards. This certification process provides the ability to receive an Annual Individual Fatality Risk certificate based on a site specific risk assessment that alleviates the effect of the associated rules.

- 3 More particularly, the Panel:
- (a) failed have regard to the evidence of expert conferencing within the Slope Instability Experts' Joint Statement, which concluded that the opportunity for site specific risk assessments for all slope stability hazards must be provided for in the Plan; and
 - (b) incorrectly concluded that the only adjustments to slope instability hazard mapping boundaries recommended by the Council's experts were within rock fall management areas.
 - (c) failed to take into account that there were in fact several properties where the expert evidence (accepted by the Panel) supported the removal of CCMA's based on site specific assessments for those properties.
- 4 These error of law materially affected the Panel's decision to not extend the AIFR certification regime to include CCMA's.

QUESTIONS OF LAW

- 5 The Appellant alleges these errors give rise to the following questions of law:
- (a) Whether the Panel gave appropriate regard to matters which it should have taken into account when making the Decision, including:
 - (i) the Slope Instability Experts' Joint Statement; and
 - (ii) expert evidence that recommended that the removal of CCMA's from certain properties based on site specific assessment
 - (b) Whether the Panel came to a conclusion that was not available to it or which it could not reasonably have come to on the evidence / submissions provided.

GROUNDS OF APPEAL

- 6 The Appellant lodged a submission on the Plan relating to two separate properties affected by CCMA's, being 51 Heberden Avenue, Sumner and 2 Cannon Hill Crescent, Mount Pleasant. The submission opposed the identification of CCMA's on these properties and sought amendment to the

proposed rules to reduce the proposed restrictions and provide opportunities for such hazard areas to be removed in the future.

- 7 The Appellant subsequently commissioned site specific assessments for each of the above properties to evaluate the nature of the hazard that existed and the risk it presented. This resulted in a statement of evidence from a geotechnical engineer Mr Charters, dated 20 February 2015.
- 8 For 51 Heberden Avenue, Mr Charters completed a site specific risk assessment in accordance with the methodology established by Geological and Nuclear Science (**GNS**). This assessment concluded that the Annual Individual Fatality Risk (**AIFR**) for this property was approximately one and a half orders of magnitude lower than the Council's definition of the CCMA and that the property should therefore be removed from this hazard area.
- 9 This assessment was reviewed by Dr Ian Wright on behalf of the Council, who agreed with Mr Charters that the property should be removed from the CCMA. This evidence and recommendation was accepted by the Panel, with Schedule 7 of the Decision recording that CCMA2 should be removed from 51 Heberden Ave. There are several other properties where the Decision also records that CCMA's should be removed based on the site specific expert evidence provided to the Panel.
- 10 In relation to 2 Cannon Hill Crescent, the evidence at the time of the hearing did not support removal of the CCMA from this property. The Appellant therefore sought the introduction of a certification process similar to what has been adopted for rock fall hazards so that the restrictions could be removed in the future if an expert assessment demonstrated that the AIFR was below an acceptable threshold.
- 11 This relief sought was consistent with the Slope Instability Experts' Joint Statement, which contains the following recommendation at paragraph 3:

We acknowledge that the area-wide mapping and modelling is not always sufficient to determine risk on a site- specific basis. The opportunity to undertake individual site assessment must be provided for in the plan"

- 12 Paragraphs 240 and 241 of the Decision specifically refers to the above statement and accepts that it applies to all categories of slope instability hazard, including CCMA's. However, the Decision then immediately states

that it is appropriate to implement a certification for rock fall management areas, but not for CCMA's.

- 13 As justification for this distinction, the Decision states at paragraph 242 that *"the only adjustments to slope instability hazard mapping boundaries ("hazard map boundaries") for specific submitter properties that the Council experts recommended, were within the rock fall management areas"*. This is not correct, as there are several examples (including the Appellant's property at 51 Heberden Ave) where Council experts recommended removal of CCMA's. The Panel failed to take this into account and proceeded on an erroneous assumption that it was not appropriate to apply the same or similar certification process for CCMA's as was adopted for rock fall hazards.
- 14 At paragraph 86 of the Decision, the Panel provided a further brief reason for not extending the certification regime to CCMA's, being that *"we do not have a sound basis for doing so on the expert evidence we have considered"*. Again this is not correct and fails to have regard to the Slope Instability Experts' Joint Statement and the accepted site specific evidence which applies a risk based assessment to remove CCMA's from particular properties.
- 15 These errors of law have materially affected the Panel's decision to not extend the certification regime to include CCMA's. If the Panel had proper regard to the above matters, it could not have reasonably come to the same conclusion to exclude CCMA's from the certification process.
- 16 The Decision has a significant impact on affected property owners within the CCMA, including the Appellant, as no mechanism is provided within the Plan to allow for their properties to be assessed for risk of cliff collapse on a site specific basis and to apply for an AIFR certificate that would relieve the property from land use restrictions.

RELIEF SOUGHT

- 17 The Appellant seeks the following relief:
- (a) that the appeal is allowed;
 - (b) that the High Court correct the Decision and amend the provisions of the Plan to provide for a certification process for CCMA's that is the same or similar to that applying to rock fall hazards, with all necessary modifications;

- (c) as an alternative to (b), that the matter be referred back to the Council for reconsideration in light of the findings arising out of resolution of this appeal;
- (d) such further and other relief as may be appropriate to address the Appellant's concerns, including (but not limited to) the removal of CCMA2 from the Appellant's property at 2 Cannon Hill Crescent.;
and
- (e) the costs of and incidental to these proceedings.

Dated this 24th August 2014



David Pedley
Counsel for the K I Commercial Limited

This document is filed by **David Owen Pedley**, solicitor for the Appellant of the firm Adderley Head. The address for service of the Appellant is the offices of Adderley Head at 15 Worcester Boulevard, Christchurch.

Documents for service may be left at that address for service or may be:

- posted to the solicitor at PO Box 16, Christchurch 8140; or
- emailed to the solicitor at david.pedley@adderley head.co.nz