

Before the Environment Court

ENV 2011 WLG

Under the Resource Management Act 1991

In the Matter of an application by **Tasman District Council** under section 86D of the Act concerning proposed Plan Change 22 to the Tasman Resource Management Plan

**Affidavit of Geoffrey Stephen Markham in support of application by
Tasman District Council pursuant to section 86D for a rule to have legal
effect on public notification of a proposed plan change**

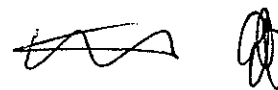
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I **GEOFFREY STEPHEN MARKHAM** of Richmond, Local Government Officer swear:

1. I am the Policy Manager at Tasman District Council. I have held this position since 1992.
2. This affidavit accompanies an application by the Council under section 86D of the Resource Management Act 1991 (**RMA**) concerning a set of amendments to rules within Chapters 16, 17 and 18 (sections 16.3, 18.5 and 18.9) of the Tasman Resource Management Plan (the Plan), that are to be publicly notified by the Council as part of proposed Plan Change 22: Mapua and Ruby Bay Development. The application is that the amendments to the rules shall take effect on public notification of the plan change, programmed for 26 February 2011.
3. The proposed Plan Change 22 amendments are to introduce a comprehensive urban development strategy for the area described as Mapua and Ruby Bay, on the coastal Tasman Bay area in the Tasman District. The plan change proposes urban development in appropriate locations in areas away from coastal margins and low lying locations.
4. Plan Change 22 has been introduced following a comprehensive planning process, which has included extensive consultation and involvement with the Mapua and Ruby Bay communities. The following table sets out the key planning activity in relation to Mapua and Ruby Bay leading to Plan Change 22:

Mapua Plan Change Planning Context	
Date	Planning Activity
December 2000	Publication of the Coastal Tasman Area Strategic Development Review, which set the scene for further detailed studies in Mapua and Ruby Bay, and the coastal Tasman area that includes the Rural 3 Zone.
December 2003	Establishment of a Rural 3 zone, some of which serves as hinterland to Mapua and Ruby Bay
April 2004	Publication of the Mapua Ruby Bay Development Study
June 2006	Council resolves to prepare a Structure Plan for Mapua-Ruby Bay
June 2007	Council adopts recommendations of a Climate Change Risks and Briefing Paper



April 2008	Draft Mapua Structure Plan released for public comment
June 2008	Council agrees to amended Structure Plan as the basis for preparing a draft plan change.
July 2008	MFE Coastal Hazards and Climate Change Guidance instructs councils to plan for an 0.8m sea level rise by 2090
June 2009	LTCCP becomes operative – includes Mapua network services Projects
May 2010	Mapua/Ruby Bay Draft Plan Change released for public consultation
January 2011	Proposed Plan Change 22 adopted by Council for notification.

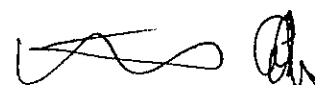
5. Proposed Plan Change 22 addresses as a significant issue, the need to respond to the combined risks of two coastal hazards, coastal erosion and sea flooding, and also to the risk of freshwater flooding from Seaton Valley Stream. The combined area exposed to these hazard risks covers all low lying land adjacent to the coastal marine area and on floodplain areas of Seaton Valley Stream. There is estimated to be a significant future increase in the level of these risks when they are combined under both climate change processes, and extreme weather event conditions. Some of the area exposed is directly protected to an extent from coastal erosion by barrier structures along much of Ruby Bay. However the area of rural and urban land that is exposed to increasing hazard risk, would require significant expansion of any structural protection, together with significant increases in the standard of protection over time.

6. A preliminary technical assessment of future erosion and inundation risk in a “no structural protection” scenario has been undertaken by Council to support the proposed plan change. This assessment has used long term historical erosion trends and land level contours at 0.5m intervals derived from high resolution LiDAR data, and has accounted for future hazard event probabilities under nationally provided climate change assumptions, including for rainfall, sea storm and sea level rise effects acting together. This preliminary assessment has been peer reviewed. The report concludes that, as climate change effects on existing coastal hazards increase with sea level rise, the ability for present day hazard mitigation measures to provide ongoing hazard risk mitigation significantly decreases. It also finds that mitigation measures of future erosion and inundation risk would have enormous and




persistent practical and financial implications for both Council managed and privately owned land. A copy of the (peer reviewed) preliminary assessment is attached to this affidavit as **Appendix 1**.

7. At present, the balance of the Mapua shoreline has very modest to no coastal hazard protection at all. Allowing new development or intensification of existing developments in this area would increase the risk of exposure to floodwater and seawater inundation hazard risks. These are risks for community health, wellbeing, and safety. It would also impose significant risks and potential costs for Council in terms of its responsibilities for protecting against such hazard risks. Council considers that it is necessary and appropriate to change its Plan, in the context of the urban development strategy for Mapua and Ruby Bay, to address these risks.
8. The Council approved the release of a draft plan change on Mapua and Ruby Bay development for consultation at its meeting on 20 May 2010. The draft plan change related to updating the existing zoning pattern and development controls in Mapua and Ruby Bay, while also providing for future growth opportunities in Mapua/Ruby Bay. The draft plan change included proposals for management of the major coastal hazards of sea erosion and inundation. The consultation provided for public submissions, and included a presentation to the Mapua and Districts Community Association on 14 June 2010, and an open day at the Mapua Bowling Club on 16 June 2010. Letters were sent out to all landowners in the area affected by the plan change giving advice about the draft plan change and details about the open day and public meeting. The letters also noted that the Mapua Structure Plan, the coastal hazard report and the Council's section 32 assessment were also available on the Council's website as background to the draft planning proposals. The draft plan change and supporting documentation was advertised on the Council website. A copy of the draft plan change and letters sent to all landowners is attached as Appendix 2. There were nine responses to the Mapua draft plan change that asked the Council to reconsider the proposal for Rural 1 Closed zoning. As a result, the Council asked staff to consider other options than a Rural 1 Closed Zone, which made extremely limited provision for further subdivision.
9. A further Status Report: 'Mapua-Ruby Bay Proposed Change 22: Rural 1 Management Options Assessment – Rep 10-12-05' –was prepared for the Council meeting on 16 December 2010. The purpose of the report was to provide Council with further options for the management of subdivision in the Rural 1 Zone other than



a Rural 1 Closed Zone. The Report considered options ranging from a conservative precautionary approach to approaches that allowed a certain amount of development on the larger lots, to a considerable amount of development. The report concluded that all the options that yielded additional lots would exacerbate the consequences of any extreme hazard event because more residents and their building assets would be placed at risk than in the current situation. The report recommended that the Council adopt Option 5 to retain the Rural 1 Closed Zone on the Mapua sand plain area and on the lower Seaton Valley in the draft plan change. The Council adopted Option 4 which was to provide for a limited scale of subdivision in the Mapua sand plain area (3.5ha minimum allotment area) with a prohibition for all subdivision below that scale. A copy of the Staff Report is attached as Appendix 3.

10. Council's Plan Change 22 proposes a hazard risk avoidance strategy on low lying land in the Mapua and Ruby Bay settlement area. This strategy relies on the finding that there is no expectation of effective structural protection of coastal and low lying parts of the settlement area into the next 100 years. The reasons for adopting this planning strategy in relation to this finding, are:
- a) The future increasing standard of protection by structures that would be required,
 - b) the need for extension of barriers around other parts of the present settlement area with no structural protection,
 - c) the need to manage these structures as a single system, and
 - d) the funding and implementation difficulties associated with relying on barrier protection.

Council has concluded that it is increasingly difficult to rely on effective structural protection, even for the present built development in the areas exposed to hazard risk. Council wishes to restrict the growth of built areas and assets resulting from private development (and consequent network services) by adopting a regulatory regime that discourages residential development on the land that would be increasingly exposed to hazard risk.

11. The particular amendments to rules for which an order for immediate legal effect is sought, are:

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- 1 All amendments to the Coastal Hazard Area rules in Section 18.9, viz. 18.9.2.1 conditions (d) and (e), 18.9.2.2 condition (a) and matters (1), (1A), (1B), 18.9.2.3 and 18.9.2.4. These amendments require any permitted building to be relocatable and not a habitable building, nor a coastal protection structure. They also require that habitable buildings are a non-complying activity and that coastal protection structures are a restricted discretionary activity.

- 2 Amendments to subdivision and land use rules in Rules 16.3.5.1, 16.3.5.3 and 16.3.5.4 to create a variant of the Rural 1 Zone (the Rural 1 Coastal Zone) applying over the very low-lying coastal sand plain bordering Ruby Bay, in which:
 - a. Subdivision has a controlled activity minimum allotment area of 3.5 hectares (rather than 12 ha)
 - b. Subdivision below that minimum is prohibited except as exempted for boundary relocations or adjustments. But when first taking legal effect these amendments would operate as discretionary activity rules and then prohibited rules, following the proposed rules' passage through Schedule 1 process (under section 87B RMA).
 - c. The Rural 1 zone land use rules at 17.5.1 continue to apply (but as the Coastal Hazard Area also applies over this location, the amendments as described in 1 above would apply over this zone location)

- 3 Amendments to prohibited subdivision rules:
 - a. to apply the Residential Closed Zone to an area of Ruby Bay and to parts of Tahi and Iwa Streets at Mapua, and
 - b. to apply the Rural 1 Closed Zone to the low-lying land in the Seaton Valley.
 - c. The amendments are to Rule 16.3.3.6 and to Rules 16.3.5.1, 16.3.5.3, and 16.3.5.4. The amendments are to prohibit subdivision except as exempted for boundary relocations or adjustments. But when first taking legal effect these amendments would operate as discretionary activity



rules and then prohibited rules, following the proposed rules' passage through Schedule 1 process (under section 87B RMA).

- 4 Amendments to Residential zone building rules in Rules 17.1.3.2 and 17.1.3.4 to make any second dwelling on a site a non-complying activity in the Residential Closed Zone within the areas of Ruby Bay and parts of Tahī and Iwa Streets at Mapua.
12. The proposed amendments to the Plan referred to in paragraph 11 above are listed in the schedule of amendments of Change 22 attached as Appendix 4.
13. The spatial extent of the amendments to the rules for which an order for immediate legal effect is sought, is:
 - a) The Coastal Hazard Area
 - b) The Residential Closed Zone
 - c) The Rural 1 Closed Zone
 - d) The Rural 1 Coastal Zone.

The extent of these areas are shown on the proposed amendment maps for Change 22 attached as Appendix 5.

14. The relevant current rules are:
 - a) The Coastal Hazard Area at 18.9. These rules do not restrict subdivision and require a locational restriction only for dwellings.
 - b) The Rural 1 Zone subdivision and land use rules at Rules 16.3.5.1, 16.3.5.3 and 16.3.5.4, and Rule 17.5.1, that do not distinguish an area of land that is Rural 1 zone on the very low-lying sand plain at Ruby Bay.
 - c) The Residential Closed Zone subdivision and building rules at 16.3.3, 17.1.3, and 17.1.4 that do not refer to the Mapua and Ruby Bay locations proposed in Change 22. These rules require the relevant consents for subdivision or buildings but do not currently account for hazard risks, and would not prohibit applications. The rules do not require consent for coastal protection structures.



- d) The Rural 1 Closed Zone subdivision rules at 16.3.5, that do not refer to the Mapua and Ruby Bay locations proposed in Change 22. These rules require the relevant consents for subdivision but do not currently account for hazard risks, and would not prohibit applications.
15. The issue with the current rules and maps is that there is a substantial area of largely undeveloped very low-lying coastal land adjacent to the urban areas of Mapua and Ruby Bay, under demand for continuing subdivision and development, but also currently exposed to potentially catastrophic hazard risks that are exacerbated by the consequences of climate change processes.
16. The need for the amendments to the relevant rules and maps is that the current Plan rules do not effectively deal with the current and increasingly significant future exposure of built development in the Mapua-Ruby Bay coastal and lowland areas to the coastal hazard risks. As set out in the preliminary technical assessment at Appendix 1, those risks are expected to be exacerbated through the effects of climate change.
17. The Council's view is that the amendments in proposed Plan Change 22, referred to in clause 11, are the most appropriate resource management response to the information available to the Council concerning current and future risk of hazard events arising from coastal and flooding processes in the Mapua and Ruby Bay area. The proposed amendments also address the exacerbation of these hazard risks by climate change influences over the useful life of present and any future built development. Council has considered the options as required by section 32 and has adopted the draft assessment of alternatives as shown in the report on assessment of alternatives for Change 22 attached as Appendix 6.
18. The Council has adopted as Proposed Change 22 the amendments referred to in clause 11 and contained in Appendix 4, with its report on assessment of alternatives, on 27 January 2011. The Council will notify Change 22 as part of Update 38 to the Tasman Resource Management Plan on 26 February 2011.
19. The scope of affected persons is shown in the extent of the Coastal Hazard Area, the Residential Closed Zone, the Rural 1 Closed Zone and the Rural 1 Coastal Zone referred to in paragraph 8 above. Lists of property-owners affected by these amendments are attached as Appendix 7.

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20. The benefits of an order are that the demand for development within the areas exposed to hazard risk can be controlled, leading to a lessening of the damaging consequences of future hazard events for built development in the Mapua and Ruby Bay area into the future. The remainder of the Plan Change includes provision for future growth of Mapua and Ruby Bay on to hill land to the north west of Mapua township.
21. The Council considers that, if the order is not granted once Plan Change 22 is notified, there is likely to be a rush on applications in these coastal areas to subdivide or develop. This would be generated by public knowledge of the rule amendments before they might otherwise take legal effect, leading to a series of resource consent applications. This potentially undermines the outcome intended by Council.
22. The costs of an order are that:
- a) from the date of legal effect of the amendments set out in the order, the landowners within the areas restricted by the relevant rules, each become subject to the requirement to apply for and hold relevant resource consents for subdivision or buildings or other structures, where the application has a more restrictive status, and where additional considerations are applicable in making decisions for those consents concerning hazard risks
 - b) on the prohibited subdivision rules becoming operative, no person may subdivide land in the closed zone areas or the Rural 1 Coastal Zone below the minimum site area, except as exempted for boundary relocations or adjustments.
23. The Council is seeking to implement its responsibilities under the Resource Management Act relating to natural hazard mitigation. It considers that the Change 22 amendments are the most appropriate means of dealing with the hazard risk situation at Mapua and Ruby Bay, and that the order for early legal effect is necessary to avoid inappropriate subdivision and development that Plan Change 22 is intending to address.
24. The approach taken is also consistent with the updated New Zealand Coastal Policy Statement, which took effect from 3 December 2010. Policies 3, 7, 18, 24, 25 and 27 are very relevant at Mapua/Ruby Bay. These policies are attached as Appendix 8. They can be summarised as:

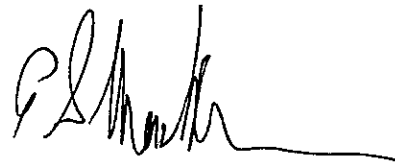


- Precautionary approach to apply
- Identify hazards, assess risk over 100 years, consider climate change
- Identify in plans where particular activities and forms of development and subdivision are or might be inappropriate
- Maintain/enhance public walking access to and along the coast, consider specified effects and needs
- Strategies for protecting significant existing development from coastal hazard risk.

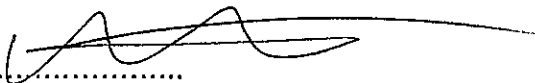
25. Section 55 of the RMA requires the Council to give effect to the objectives and policies specified in the New Zealand Coastal Policy Statement if it is making plan changes in the coastal environment.

26. The Council on 27 January 2011 has adopted proposed Change 22 and proposes to notify the plan change on 26 February 2011. The Council has prepared Change 22 as if the order applied for has not been made, as it appreciates that there is no certainty that the order may be granted before that intended date of notification.

SWORN at RICHMOND this 4th day of)
February 2011 before me:)



.....
Geoffrey Stephen Markham



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A Solicitor of the High Court of New Zealand

ROBERT DAVID WHITTLE
SOLICITOR
RICHMOND