

**IN THE ENVIRONMENT COURT
AT WELLINGTON**

ENV-2018-WGN-0000

UNDER THE

Resource Management Act 1991 ("**Act**")

IN THE MATTER OF

An appeal under Schedule 1, Clause 14(1), of the
Act

BETWEEN

**SAVE OUR HILLS (UPPER HUTT)
INCORPORATED**

Appellant

AND

UPPER HUTT CITY COUNCIL

Respondent

**NOTICE OF APPEAL BY SAVE OUR HILLS INCORPORATED
AGAINST A DECISION ON A PROPOSED PLAN CHANGE**

24 MAY 2018

Counsel instructed:

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WELLINGTON

TO: The Registrar
Environment Court
WELLINGTON

AND TO: The Respondent

AND TO: Submitters

Notice of appeal

1. Save Our Hills (Upper Hutt) Incorporated ("**SOH**") appeals the following decision ("**Decision**"):

Decisions on the submissions and further submissions to proposed Plan Change 42 - Mangaroa and Pinehaven Flood Hazard Extents ("**PC42**").

2. SOH made a submission on PC42 8 May 2017, and further submissions on 8 June 2017.

No prohibited trade competition purposes

3. SOH was registered as an incorporated society on 24 March 2016. SOH's objectives are to:

... preserve and enhance Upper Hutt's rural environment, bird-life and bush-covered ridgelines and hillsides, and to promote the development of future urban growth around existing infrastructure, shopping centres, and public transport hubs (electric rail stations). [SOH] see this as the most sustainable way to provide for the future growth of Upper Hutt. [SOH's] aim is to preserve Upper Hutt's heritage, and the special character of our very accessible natural environment for its recreational, ecological, landscape and visual values.

4. Appropriate flood management is of concern to SOH, including if plan provisions enable developments to occur in the upper catchments without proper consideration of their potential effects on flooding in the lower catchments.
5. SOH is not a trade competitor for the purposes of Section 308D of the Act.

Decision

6. The Decision was made by the Upper Hutt City Council ("**Council**") on 27 March 2018.
7. SOH received notice of the Decision on 11 April 2018.

Submissions / further submissions

8. SOH in its submission sought:

That Council withdraw Plan Change 42; Until such time as residents' concerns about the flood maps have been properly addressed by Council.

9. Its further submissions:

- (a) SOH supported the submission by Forest & Bird seeking the same outcome as SOH. The Forest & Bird submission also noted that:

Our concerns relate to the quality of data provided and there should be more time allowed for residents concerns about the flood maps and potential flood impacts to be adequately considered and addressed. We would like considerations to be made concerning hydraulic neutrality in both Mangaroa and Pinehaven - especially relating to the proposed Guilford Timber Co land development. The use of riparian planting and retention of vegetation on hills to take up the water from rain fall is important, especially with the impact of Climate Change being more common. Use the flood maps recommended by GWRC audit in 2016. Separate the flood risk areas to better inform residents, environmental groups, insurers and other interested parties to provide accurate information to all parties.

- (b) SOH supported the submission by the Upper Hutt Town and Country Association, which also sought to “to withdraw Plan Change 42 and resolve the issues raised in this submission”, those issues including:

There are many versions of the flood maps and it is not at all clear which ones are the definitive ones. The DP maps attached to the consultation are only good for a rough indication that there may be flooding. Who drew these maps, are they accurate, how do we know? Other, more detailed, maps are available from GW but not referenced in the Plan Change. There is no indication just what maps will be used and how they will be interpreted. What other maps are there? This will leave the public in a difficult position when they are considering a change to their property. The flood maps do not demonstrate depth or speed of the water. At first glance they suggest a flat plane of water from edge to edge. However, it seems that for much of this extent the water is shallow and flowing down a slope to the lowest point. The maps really need to show what is actually happening on the ground. This is particularly important for the Pinehaven floodplain.

- (c) SOH opposed the submission by Ian Douglas Stewart, who sought approval of PC42.
- (d) SOH opposed the submission of the Greater Wellington Regional Council (“**GWRC**”), which sought approval of PC42.

Additional background / context

10. The purpose of PC42 has been stated as seeking to introduce new objectives, policies, rules and other methods to “address flood hazards within the Mangaroa River and Pinehaven Stream catchments”. This appears to be intended to address a perceived policy and rule gap relating to natural hazards, particularly flooding hazards. Particular goals of PC42 were to:

- (a) provide for the functioning of the Pinehaven Stream and Mangaroa River Floodplains;
- (b) avoid development in high hazard areas and incorporate mitigation measures into developments and subdivision in lower hazard areas to ensure that the impact of flood events on people and property within the identified Flood Hazard Extents are either mitigated or avoided; and
- (c) ensure development and activities within the Flood Hazard Extents do not exacerbate the impact of flood events on people and property.

11. Flooding risks have been a significant consideration for GWRC and the Council (or their predecessors) since at least 1976 when a major flood event occurred (“**1976 Flood**”). In the 1980s, following the 1976 Flood, substantial upgrades to the Pinehaven Stream stormwater drainage network occurred.
12. More recently, the Mangaroa River Flood Hazard Assessment (“**MRFHA**”) was undertaken, by SKM, for GWRC in 2006/7. The MRFHA’s stated purpose was to provide an analysis of the existing hazards associated with the Mangaroa River to assist in the preparation of planning and policy controls for the Mangaroa Valley. The MRFHA report produced two sets of maps, one with and the other without allowance for freeboard.
13. In 2012, the Council proposed Plan Change 15 to introduce planning provisions for the Mangaroa Flood Hazard Extent and to update the existing provisions relating to the Hutt River. However, after concerns were raised about the modelling and mapping, the Council resolved, in September 2013, to defer its decision on Plan Change 15 pending an independent review of the modelling underpinning the proposal.
14. The peer review, undertaken by Mr Christensen, was provided to the Council in April of 2014. Among other things, the review acknowledged that SKM applied an out dated approach to freeboard, which might be appropriate for the more confined sections of the river, but was excessively high for the remainder of the river.
15. The Council withdrew Plan Change 15 in March 2016.
16. In the meantime, the Council had also commissioned the creation of a draft flood model for the Pinehaven Catchment. A draft Pinehaven Stream Floodplain Management Plan (“**PFMP**”) was notified in October 2014. It was audited for the Council by Mr Law, who found, among other things:
 - (a) the model inadequately accounted for increased flood volumes under a *hypothetical* development scenario of in excess of 1,600 new houses in the upper Pinehaven catchment; and
 - (b) the use of the term “*hazard*” on the flood maps may be inappropriate given that the flood extent includes allowances for climate change, blockages and freeboard.
17. The final PFMP adopted in June 2016 included additional maps for “informative purposes”, and to “encourage” the adoption of hydraulic neutrality requirements for future subdivision and development in future plan change processes.
18. PC42, relying on the MRFHA and PFMP, was notified in February 2017.

Scope of SOH’s appeal

19. SOH appeals the entirety of the Decision.

Key issues / reasons for the appeal

20. SOH is particularly concerned that:

- (a) Both the Council and GWRC have not approached matters in an open and transparent way, including the provision of clear, accurate baselines, and that the reviews / audits have:
 - (i) not been truly independent (the reviewers in each case taking up employment by the Council) and/or their scope or terms of reference have not been appropriately set; and
 - (ii) identified issues that have not been resolved (such as the approach to freeboard, and the appropriate inclusion of potential development in the upper Pinehaven catchment of in excess of 1,600 new houses).
- (b) The flood hazard maps are inappropriate, including because they:
 - (i) do not adopt a standard methodology in respect of freeboard (refer **Schedule 1**, which illustrated the significant difference in approach);
 - (ii) do not reflect eye-witness accounts of the 1976 Flood; and
 - (iii) are significantly different to a number of specific detailed “case studies”, which illustrate the likely extent of the inaccuracies.
- (c) The consequences include:
 - (i) the “masking” of the effects of the 1,600+ lot development in the upper Pinehaven catchment – so the actual effects (born by the community and environment downstream) will not be assessed;
 - (ii) unnecessary consent requirements for those in the identified (enlarged) flood hazard areas; and
 - (iii) unnecessary impacts on property values for those in the identified (enlarged) flood hazard areas.

General reasons for the appeal

21. In addition to the reasons given above, the general reasons for this appeal are that the Decision:
- (a) fails to promote sustainable management of resources and will not achieve the section 5 purpose of the Act;
 - (b) goes excessively beyond what is necessary to manage significant risks from natural hazards (to be recognised and provided for in section 6(h)) for most of the community, but fails in respect of the 1,600+ lot development in the upper Pinehaven catchment as the effects of that development will be masked;
 - (c) in respect of:
 - (i) the first aspect of paragraph [21(b)] above, PC42 goes beyond what is necessary to give effect to the relevant

objectives and policies of the Regional Policy Statement;

- (ii) the latter aspect of paragraph [21(b)] above, PC42 fails to give effect to the relevant objectives and policies of the Regional Policy Statement;

and is therefore inappropriate; and

to the extent that the objectives and policies of the Regional Policy Statement, and settled the objectives and policies of the Operative Plan suggest that PC42, in its current form, is necessary to give effect to those instruments, they are invalid, incomplete and/or uncertain;

- (d) fails to achieve the functions of the Council under section 31 of integrated management of the effects of the use and development of land and physical resources; and
- (e) fails to meet the requirements of section 32.

Relief sought

22. SOH seeks:

- (a) PC42 be declined;
- (b) in the first alternative:
 - (i) appointment of an independent expert to review the basis and appropriateness of the PC42 flood mapping (and any supporting information);
 - (ii) that the modelling and mapping be re-run following that independent expert review to produce:
 - true flood hazard maps (depth and velocity of water, without freeboard, and excluding water 100mm deep or less); and
 - flood planning maps which include freeboard differentiated from floodwater.
 - (iii) if not part of the process identified in paragraph [22(i) or (ii)], provide an “existing situation” baseline (2008 hydrology) and adopt rules that require future development to be assessed against these known baselines to achieve stormwater neutrality.
- (c) in the second alternative, any modifications to PC42 to address the concerns raised in SOH’s appeal or otherwise raised in the SOH’s original submission or the submissions it supported or opposed (as relevant), including:
 - (i) changes to the objectives, policies, and rules;
 - (ii) amendments to the flood hazard maps; and

- (iii) explanation and guidance as to the effect of the maps and regulatory framework.
- (d) any other similar, consequential, or other relief as is necessary to address the issues raised in SOH's appeal or otherwise raised in the SOH's original submission or the submissions it supported or opposed (as relevant).
- (e) costs.

Alternative dispute resolution

23. SOH agrees to participate in mediation or other alternative dispute resolution of the proceeding.

Attachments

24. The following documents are **attached** to this notice.
- (a) a copy of the SOH's submission and further submissions;
 - (b) a copy of the relevant parts of the Decision;
 - (c) a list of names and addresses of persons to be served with a copy of this notice.

DATED 24 May 2018



J D K Gardner-Hopkins
Counsel for Save Our Hills (Upper Hutt) Incorporated

The appellant's address for service is at the offices of Bennion Law, First Floor, 181 Cuba Street, Wellington.

Documents for service on the appellant may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 25-433, Wellington; or
- (b) emailed to tom@bennion.co.nz, and copied to james@jghbarrister.com.

Advice to recipients of copy of notice of appeal***How to become a party to proceedings***

1. If you wish to be a party to the appeal, you must:
 - (a) lodge a notice in form 33 with the Environment Court within 15 working days after the period for lodging a notice of appeal ends; and
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
2. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).
3. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Documents

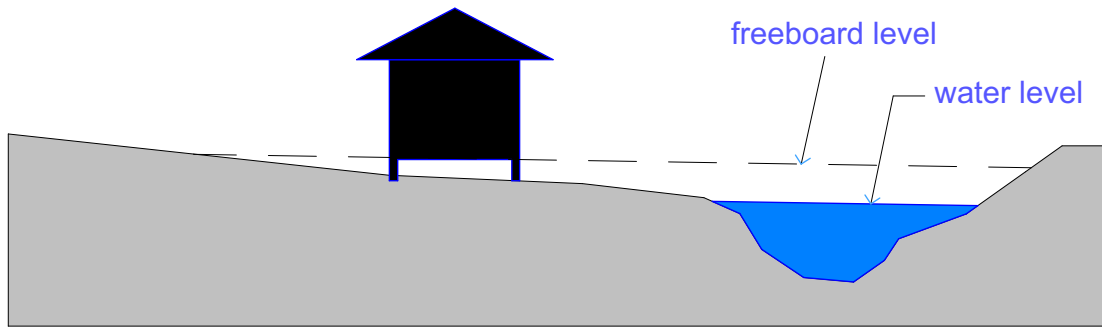
4. The copy of this notice served on you does not attach a copy of the appellant's submission and/or the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

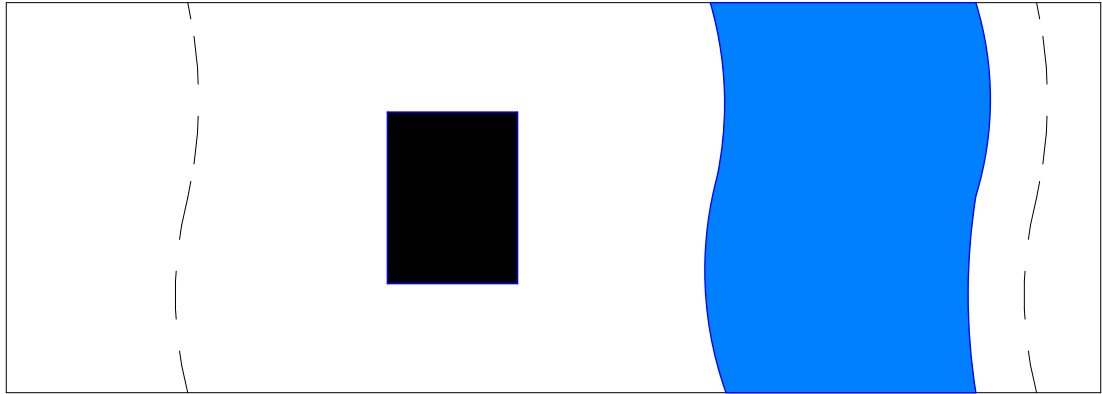
5. If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Schedule 1 – Standard v PC42 approach to flood mapping and freeboard

Standard Practice: 100 year Flood



Section View - NTS

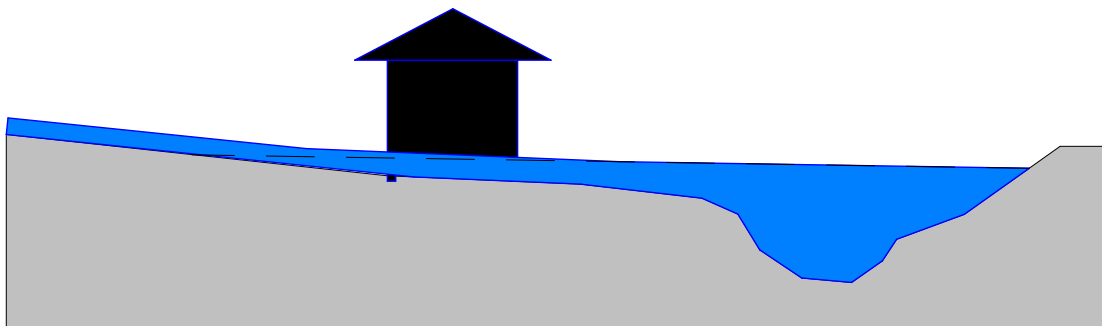


apply freeboard to 100-year water level
to find safe height for floor level

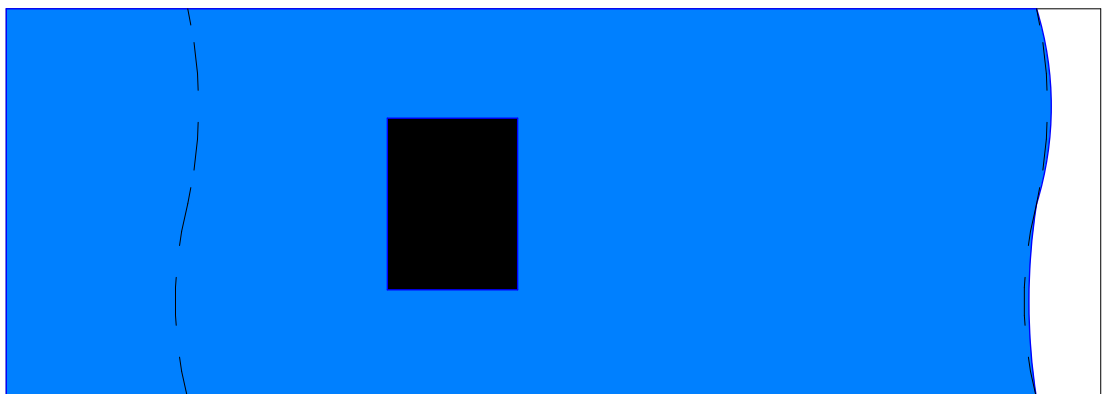
flood water extent

Plan View - NTS

The Non-Standard Practice underlying PC42



Section View - NTS



Plan View - NTS