

233 Taylors Mistake Road
Christchurch 8081

14 March 2011

White, Fox & Jones,
Barristers & Solicitors,
PO Box 1353
Christchurch 8140


Attention: Mr T Evatt

Env-2010-0262: O SNOEP V CHRISTCHURCH CITY COUNCIL and ORDS

Dear Sir,

Please receive a copy of the references as evidence in support of my affidavit
dated 24 February 2011.

Yours faithfully,



Otto Snoep

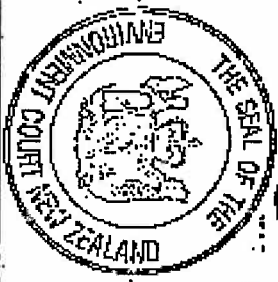
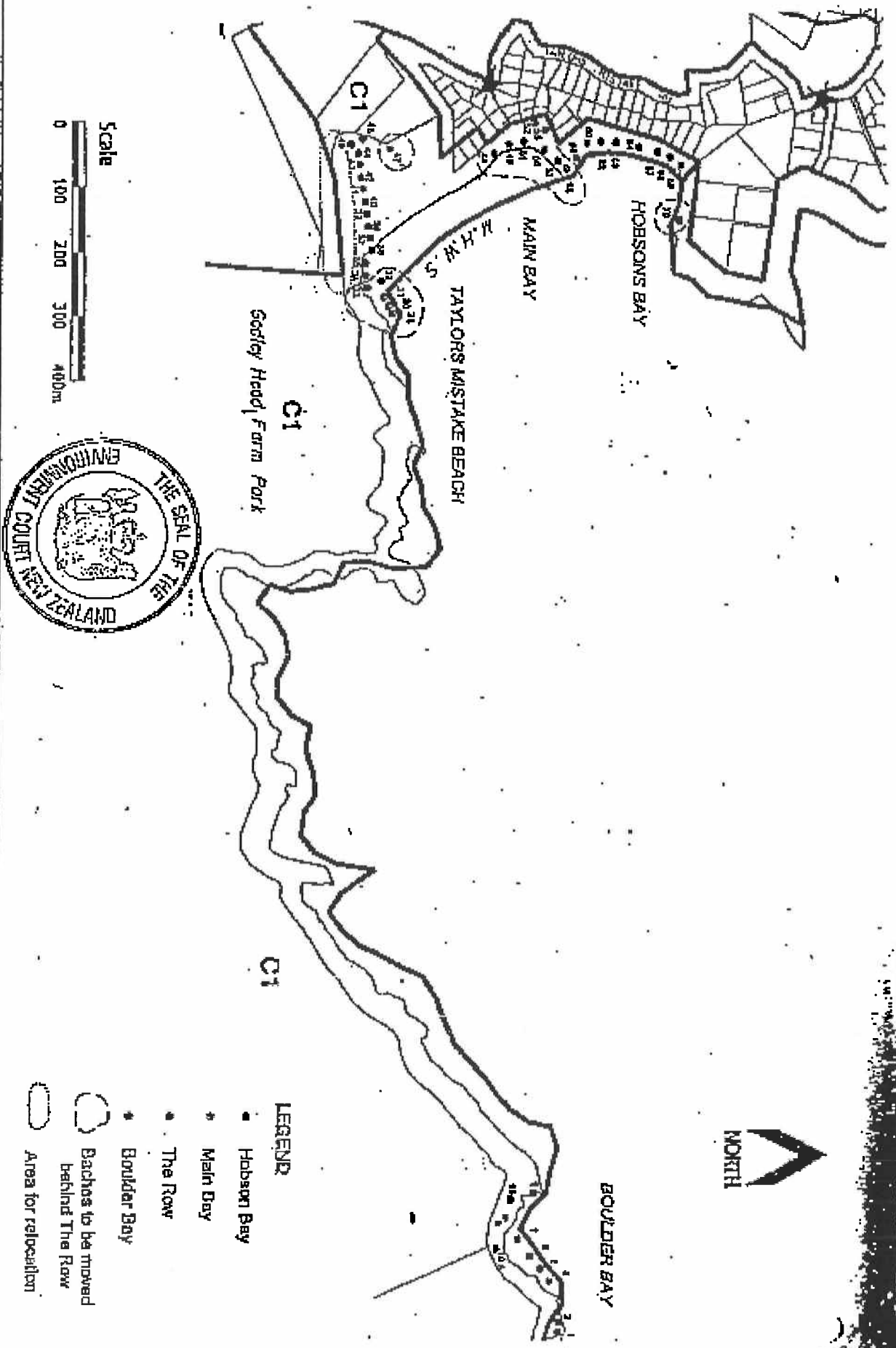
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21 MAR 2011
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BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH

APPLICATION FOR ENFORCEMENT ORDER

EVIDENCE IN SUPPORT OF AFFIDAVIT BY OTTO SNOEP

1. Copy of Planning Maps
2. Extract from TMA submission to the Council Meeting 22 April 2010, dated 31 March 2010.
3. Copy of agenda report to the Council Meeting 23 July 2010.
4. Notes taken of debate of the Council Meeting 23 July 2010.
5. Copy of Press report 24 July 2010.
6. Confirmation of the minutes to agenda item 26 of the 23 July 2010 Council Meeting.
7. History of correspondence with the Council.
8. Copy of letter from the Council to the TMA dated 22 October 2010.
9. Submission by Mr Turpin to the Council dated 20 August 2004.
10. Copy of letter to the council dated 27 October 2010.

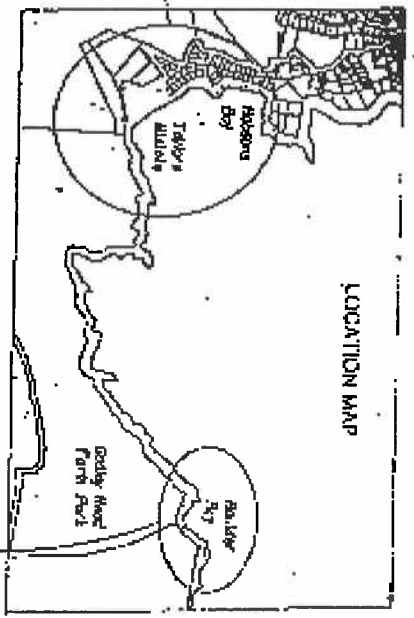
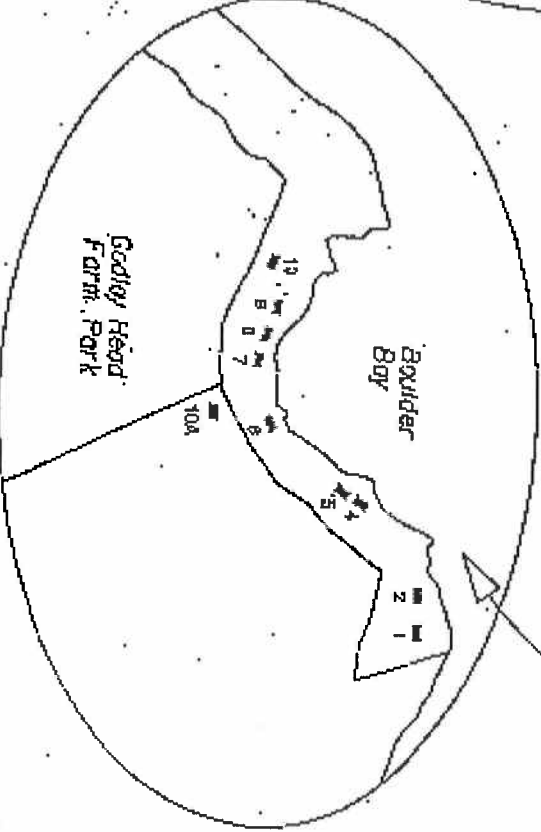
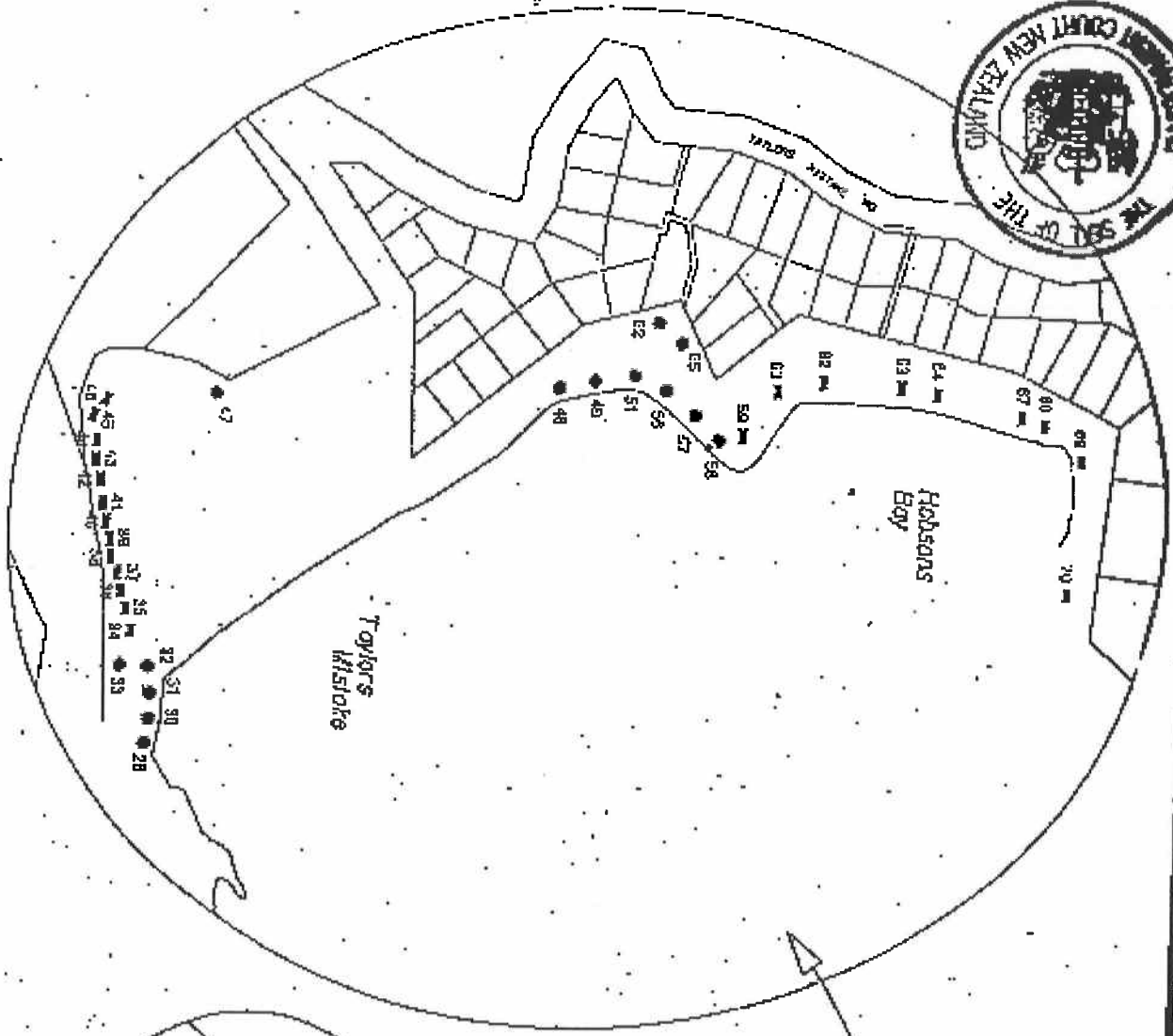


Scale
0 100 200 300 400m

- LEGEND
- Hobson Bay
 - Main Bay
 - The Row
 - Boulder Bay
 - Baches to be moved behind The Row
 - Area for relocation

TAYLORS MISTAKE - BACHES

PLAN 1.



Key

- Existing delineated beaches
- Beaches to be removed
- Scale 1:10,000

Annexure 1

31 March 2010

Taylors Mistake Association Inc

Discussion Paper for CCC on proposed Leases/Licences - March 2010

Notes for Community Board Meeting

1. Good afternoon.

I'm still Jim Turpin, President of the Taylors Mistake Association and with me today is Brent Gilpin, Secretary/Treasurer of the Association.

2. I would like to start by referring you to the pictorial brochure that we have prepared and I gave to you yesterday. As I said then, we hope this will add another dimension to your considerations. This document reminds you of the history of the baches, the mistake made by previous councils in destroying many of the cave baches, and on page 19, the connection to the Taylors Mistake Surf Life Saving Club, a particular passion for me. Don't ever underestimate the vital importance of bachholders to this valuable, voluntary Community Service.

Our Life Saving Club is not immune to the difficulties many Clubs now face in these changing socio/economic times and our bach community has and should remain as a positive factor for the Club's efficient delivery of its Life Guarding service.

3. The baches in question were first licensed almost a 100 years, and if you turn to page 6 you will see examples of building permits, and CCC Rate Demands issued to bachholders all of which give some substance to our claim that we have had very good reason over many years to believe we have had sanctioned occupation and have some rights

4. Now if you go to page 11 you will see the offer to gift a large chunk of our land, roughly 70ha, was made in 1991, at which point all baches were to be removed and instead we were to receive at least 48 freehold sites.

From the timing of this then it can be seen that the idea of the gift was not made with the aim or as a ploy, for want of a better word, to "buy", secure leasehold sites on public ground because at that time we were all going to relocate and have freehold sites

5. Next turn the page to see about the mediated solution and who was involved. An impressive cross section of the community. The Historic Places Trust also had input.

At this time the number of freehold sites has dropped to 27, with some of the baches staying where they are.

6. Now turn to the next page, Page 15, the 2010 Council Report, and while it doesn't say it in Option (d), you will know from the Legal Services papers that the number of freehold sites has now dropped to 14.

7. On the basis that we are going to end up with less than 30% of the freehold sites we thought we would get when we offered to gift the surplus land, I don't think it's unreasonable for us to expect a lease that contains a reasonable element of security of tenure.

It's not as if we withdrew the offer of the land to the City.

8. The Report you are considering today, gives you two main options
Option (b) grant licences to all scheduled and non-scheduled baches;
Option (d) give effect to the provisions of the City Plan

The Taylors Mistake Associations preferred option has always been, option (b), for all
baches stay where they are.

If the Board thinks it is a viable option, we are prepared to take the preliminary steps to test
option from potential objectors.

Whether options (b) or (d) are adopted, we need an acceptable license or lease for the
scheduled baches

9. We have had only a short time to study the Council Legal Services report, and Buddle
Finlay letter, but we have put together a list of the major issues and differences, particularly
with the proposed license. I will leave with you this list, but in the brief time I have to talk to
you, I will focus on just a few key points.

10. I suppose at the basic level the differences hinge on our contention that the Leases offered
to us are designed to get us out, something I note that Buddle Finlay and Council Legal
Services reject. But in our eyes the word of the proposed license speak very differently.

11. There are at least 14 actual clauses that give the Council the opportunity to at its sole,
absolute and uncontested discretion to terminate the leases

For example: 4 1(c), 4 1(d), 4 1(e), 4.3, 10 7, 16 4, 18 1(c & d) (to the extent that having heritage
commitments, baches may not be able to comply with current or future legislation), 18 1(f), 18 2(a), 18 2(b),
18 2(c), 18 2(d), and 18.3

Terminate it, not only at the end of the term, but theoretically, any day after the day we sign
them

12. And having terminated the lease the Council can at clause 18.6 then at it absolute
discretion demand that the now unoccupied bach be handed over to the Council for its own
use!

13. To add support to our contention our best starter is to refer you to the Councils City's Legal
Services own valuer who describes the Council version as "draconian".

This description was made in a letter from Simes Limited to CCC Legal Services dated
5/3/2009, which I have attached at the back of these notes the relevant portions.

See for yourselves

14 The 4 other issues I will cover today are the Term of the Lease, Annual fees, Penguin
colony and ability for transferable rights.

15. Clause 3, Buddle Finlay note 15. Term.

While we have put 10 years in our draft, we would really like this to be longer. A longer term
2

5. Since that meeting the Chief Executive has received a letter from solicitors acting for Save the Bay Limited, a party to the Environment Court proceedings that dealt with the bach issue in 2002-2003. The company has requested the Council to immediately take steps to remove the unscheduled baches to ensure compliance with the City Plan. The letter states that an application for enforcement orders in the Environment Court will be filed if a satisfactory response is not received.
4. After debating the matter the Council resolved instead that:
 - (a) All baches be retained whilst
 - (b) Council staff report back on planning procedures to effect (a).
3. The Board's recommendation was that the Council:
 - (i) prepare a planting concept plan for the TMB zone to the satisfaction of the Council
 - (ii) issue the fee simple and lease hold titles in the TMB zone in accordance with the provisions in the City Plan:
 - (iii) transfer the land contained in the CT35B/158 and that land contained in CT35B/160 to the east and south of the TMB zone up to and in line with the edge of the western boundary of the TMB zone to the Council for no further consideration, to be vested in the Council as recreation reserve under the Reserves Act 1977.
 - (iv) confirm the Association's undertaking on behalf of affected bach owners that immediately upon fulfillment of the conditions in (a)(i) to (iii) above, all unscheduled baches will be removed.
 - (v) Authorise the General Manager, Corporate Services to negotiate and to enter into licences to occupy with the owners of the baches scheduled to remain at Taylors Mistake and Boulder Bay, recognising the Council's responsibility to consult with Ngāi Tahu. If the matter is to be reported back to the Community Board and the Council for a further decision.
 - (c) Note that the Council's decision to grant licences in respect of baches at Taylors Mistake and Boulders Bay is not an indication that such licences will automatically be granted in other situations where unauthorised structures have been built on land vested in the Council as legal road.
2. At its meeting on 22 April 2010 the Council considered a report from the chairperson of the Hagley/Ferrymead Community Board. A copy of the report is attached (**Attachment 1**).

EXECUTIVE SUMMARY

1. The purpose of this report is to seek a decision on the future of the baches at Taylors Mistake and Boulder Bay.

PURPOSE OF REPORT

General Manager responsible:	General Manager, Regulation and Democracy Services, DD 941-8462
Officer responsible:	Legal Services Unit Manager
Author:	Ian Thomson and Brent Pizzey, Solicitors, Legal Services Unit

6. Included in this report is information about planning procedures in response to the Council's resolution of 22 April 2010.
7. Staff believe that the Council now has sufficient information for it to make a decision in this matter. It is recommended that the Council resolve that immediate steps be taken to ensure compliance with the City Plan. Authority is also sought for staff to negotiate with each owners licences to occupy the land on which the baches scheduled to remain are situated.
- PLANNING PROCEDURES TO EFFECT THE RETENTION OF ALL BACHES AT TAYLORS MISTAKE, (INCLUDING HOBSONS BAY) AND BOULDER BAY**
8. There are four parts to a consideration of the procedures available to the Council. These are:
- (a) The plan change process undertaken by the Council from 1993 to 2003.
 - (b) The practical effect of a plan change.
 - (c) The need to balance competing interests; and
 - (d) Statutory requirements.
9. If the Council wishes to start a plan change investigation, the steps are:
- (a) A resolution that officers are to prepare advice to the Council on the appropriateness of that Plan Change.
 - (b) Providing that advice would be likely to require workshops and a report that addresses all of the matters that were considered by the Environment Court in 2003. The officers preparing that report would be required to identify what changes have occurred which would justify the Council taking an approach which departs from that identified by the Court, the Council and the Taylors Mistake Association as being appropriate in 2003.
 - (c) An assessment of the appropriateness of recommending the Plan Change.
 - (d) If the Council then resolved to prepare a Plan Change, officers would draft a proposed Plan Change to be further reported back to the Council.
 - (e) Consultation would be required on the proposed Plan Change.
 - (f) The draft Plan Change and consultation report would be put before the Council for a decision on notification.
 - (g) The proposed Plan Change would be notified for submissions. Enforcement action seeking their removal would be ineffective after that date. Following the close of submissions, a summary of submissions will be notified and further submissions invited.
 - (h) A hearing would be held.
 - (i) Any appeals to the Environment Court would be lodged following the decision on submissions.
 - (j) The Environment Court would then decide on the appropriate provisions for the City Plan, as constrained by the scope of the Plan Change notified, and the submissions on which parties have appealed.
10. The possible result and implications of the Council taking this approach are:
- (a) The process is likely to take about 3-4 years before conclusion in the Environment Court, and could cost the Council \$300-\$400,000.

13. Seeking the retention of all baches would require reconsideration of all of those factors and interests.
- (d) Open space and recreation.
 - (c) Peripheral urban development avoiding, remedying or mitigating adverse impacts on water, amenity values and natural resources;
 - (b) The overall identity of the City, with elements of form, amenity and heritage to be maintained and enhanced.
 - (a) The objective and policies for the Natural Environment. These encompass natural features and habitats, natural hazards, the coastal environment, and the promotion of recreation activities in the natural environment.
12. The Court also assessed and weighed up the objectives and policies throughout the City Plan, including:
- (g) Health and safety, including rockfall, storm event or sea rise, sewage and hygiene, and building and structural issues.
 - (f) Competing uses (including the interests of the bach owners, and the penguin parade in Boulder Bay).
 - (e) The quality of the environment.
 - (d) Visual amenity.
 - (c) Public access.
 - (b) Heritage and cultural values.
 - (a) The existing environment/ natural character.
11. Assessing the appropriateness of a plan change would involve the weighing up of a large number of considerations. These are the same matters that were assessed by the Environment Court in 2003. The Court considered these under the broad topics of:
- (e) Any person could take enforcement action seeking removal of the prohibited baches before the public notification of the proposed Plan Change.
 - (d) The rules for retention of the baches in the proposed Plan Change would have legal effect from the date of notification because they are for protection of historic heritage. There could be no enforcement action taken by others past that date.
 - (c) Anyone is entitled to ask the Council to accept a private Plan Change request. This could happen whilst the Council is preparing its own proposed Plan Change. There may be a concern by people opposed to the presence of the baches that the Council is preparing its own Plan Change for their retention. However the Council has the ability to reject a private plan request.
 - (i) To affirm the current provisions of the City Plan; or
 - (ii) That the City Plan is changed to permit all baches to remain.
- (b) The Court's decision following that process may be:

