

Wednesday, September 12, 2012

Councillors knew too late

The expression "between a rock and a hard place" is a very useful reference to keep in mind while this week's column unfolds.

A lot of the decisions elected members make come under the ambit of the Resource Management Act. In making these decisions we are required to make balanced judgments. One of the defining tenets in making balanced decisions is the notion of natural justice. The idea of natural justice itself has evolved into a concept of legal rights. For instance, if you are party to a proceeding you must be given adequate notice and an opportunity to present a case. The case itself must be decided fairly and this includes the right to an opportunity to respond.

On Monday, last week, council staff had unilaterally included the coastal hazards assessment reports and the predicted 50-year and 100-year shoreline scenarios into the Land Information Memorandum (LIM) reports for coastal properties. This information went into the LIMs of 1800 individual properties. It was known that this act will have a significant, and immediate, negative effect on property values. The staff position is that under section 44A(2) (a) of the Local Government Official Information and Meetings Act (LOGIMA) council has no discretion but to include this information into the relevant LIMs reports.

The net effect of this obligation under LOGIMA is that the property owners adversely affected by this information were not notified that this new information would be going into their LIMs. They had no opportunity to present their case to counter the validity of the coastal hazard information. They had no right to respond. Any right to such response and challenge was only available to them after the

Notes from a corner dairy



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inclusion of the information into their LIMs, and, therefore, only after the damage to their property values. It would seem reasonable to conclude they were denied natural justice.

In a democracy we have the notion of the separation of powers where even the government of the day is subject to the rule of law. The judiciary is a powerful counter-balance to the power of parliament which makes the law. We also have the right to seek help from the court to stop the imposition or exercise of the law on you by seeking an injunction. It seems a reasonable conclusion that the way the LOGIMA was used had denied the 1800 property owners the opportunity to even seek an injunction.

The issue at stake is not the science behind the climate change. It is about natural justice and the process used to manage its predicted impacts. People have an inalienable right to challenge the impact of the law before it is introduced. Given council's responsibility under LOGIMA and the right of affected property owners to natural justice I would have thought a balanced political judgment was needed. This would have been for council to publicly announce the exact day and time it was going to receive the hazard information from its consultants and exactly when, under section 44A of LOGIMA it was required to include it into the LIMs reports. This would have given the affected parties the opportunity to seek an injunction and pose the question of their right to natural justice before the court. Unfortunately, elected representatives were kept out of considering these ramifications until it was time for us to rubber stamp the staff decision.