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29 February 2016

Redcliffs School Board of Trustees

Attention: Mark Robberds

Email: board@redcliffs.school.nz

Dear Mark

### Possible Protection Bund - Resource Consent Requirements

1. You have asked us to assist Redcliffs School (**School**) in understanding what, if any, resource consents would be required for construction of a protective bund and associated access road on the Main Road site. We understand any such bund would be contained wholly within the property boundaries of the School.

#### Statutory planning context

2. At present, activities within Christchurch City are governed by the provisions of the operative Christchurch City Plan and the proposed Christchurch Replacement District Plan. We **attach** for your reference the relevant planning map from each.
3. Chapter 10 of the Replacement Plan (relating to designations) is operative. Therefore the provisions of that Chapter (i.e. the designations within it) are operative. We also **attach** the operative designation for the School.
4. The maps from both Plans illustrate the boundaries of the School, which have remained unchanged. Under the operative Plan, the School is zoned "Cultural 3". Under the Replacement Plan the School is zoned "Specific Purpose School". These zonings are no different from those borne by other schools.
5. As an aside, we note the land either side of the School is zoned for residential purposes. The Replacement Plan continues this with the yellow "RS" (Residential Suburban) zoning.
6. The Replacement Plan shows the School as "L82" on Stage 1 of the Replacement Plan maps. Designation L82 is confirmed in (the now operative) Chapter 10 of the Replacement Plan as being for the purpose of a primary school. The boundaries of the Specific Purpose zone coincide with the extent of the designation.

#### Education Report

7. We have reviewed the Education Report dated 9 November 2015. Paragraph 50 of the Report raises concern as to whether *consent to build the bund would be obtained*. The Report writer relies on comments from Dr Wright to this effect.
8. We understand Dr Wright to be a technical expert with qualifications and experience in the field of geotechnical engineering. We do not understand him to have planning or legal qualifications and

experience. To this extent we are surprised he commented on the need for resource consent and further that his comments were relied upon by the author(s) of the Report.

9. In any event, and for the reasons explained below, we disagree with his views.

#### **Need for resource consent**

10. The School site is subject to both a designation and an underlying zoning. The zone rules only apply, and the need for resource consent only arises, if the activity proposed is not within the scope of the designation<sup>1</sup>. In our view, protecting the School through construction of a bund and associated access road would be in accordance with the designated purpose.
11. Where land is to be used for the designated purpose, resource consent is not required. At most, all that is required is submission (to the Christchurch City Council in this case) of an Outline Plan showing the *public work, project or work to be constructed* on the designated land<sup>2</sup>. We have not considered in detail whether construction of a protective bund would require an Outline Plan. It may not, in which case it can be done within recourse to Council at all.
12. Assuming an Outline Plan is required (the most conservative assumption in this scenario), the Council can request changes to the Outline Plan (for example, the landscaping proposed) but cannot decline the Outline Plan<sup>3</sup>. There are no notification requirements and therefore no rights of appeal to any persons other than the designating authority (in this case, the Minister of Education).
13. As to the assertion *consent cannot be gained pre-emptively* (paragraph 50 of the Education Report), we note:
- Consent is not required but even if it was, there is no reason why it could not be applied for now. Respectfully, we do not understand the concern being expressed here. Consent is often sought pre-emptively – for example, as a pre-condition to property purchase;
  - Changes to an Outline Plan (if required at all) can be sought at any time just as resource consent can be.

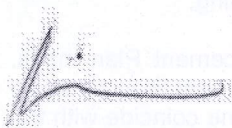
#### **Christchurch City Council position**

14. At the School's request we attended a meeting with Nathan O'Connell (Planning Team Leader) at Christchurch City Council last year. Mr O'Connell confirmed our view that resource consent would not be required to establish a protective bund on the School site.

We trust this is of assistance.

Yours faithfully

**Tavendale and Partners**



**Alanya Limmer**

Partner

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<sup>1</sup> Resource Management Act 1991, section 176(2)

<sup>2</sup> Resource Management Act 1991, section 176A(1)

<sup>3</sup> *Waitakere CC v Minister of Defence* [2006] NZRMA 253 (EnvC)