

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

ENV-2016-WLG-000028

UNDER the Resource Management Act 1991

AND

IN THE MATTER OF an application for declarations under section 311 in
relation to the coastal provisions of the Kapiti Coast
Proposed District Plan

BETWEEN **COASTAL RATEPAYERS UNITED
INCORPORATED**

Applicant

AND **KAPITI COAST DISTRICT COUNCIL**

Respondent

**AFFIDAVIT OF EMILY JANE INGLIS THOMSON ON BEHALF OF
KĀPITI COAST DISTRICT COUNCIL**

Sworn on 25 October 2016

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^{Jane Inglis}
I, Emily Thomson of Te Horo, Senior Policy Planner, swear:

Introduction

1. I am a senior policy planner at the Kāpiti Coast District Council ("KCDC"), a position I have held for 12 years.
2. My qualifications include a Bachelor of Science in Biology, Bachelor of Landscape Architecture with honours and a Post-Graduate Diploma in Resource and Environmental Planning. I am a full member of the New Zealand Planning Institute.
3. I am authorised to swear this affidavit on behalf of KCDC.
4. I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's practice note. I have complied with the practice note when preparing my written statement of evidence. The Council and I recognise my overriding obligation to the Court. I confirm that the Council has agreed to me giving evidence on its behalf in accordance with my duties under the Code of Conduct.

Scope of evidence

5. As I was involved in determining which provisions or parts of provisions were to be withdrawn from the KCDC Proposed District Plan ("PDP") in 2014, I have been asked to outline the process followed in withdrawing the provisions.
6. I have also been asked to consider the nine examples, cited by the Coastal Ratepayers United ("CRU"), of partially withdrawn provisions in the PDP. I have considered whether or not the withdrawals cited have had the effect of changing the content of the balance of the plan, and whether any change on the balance of the plan was to such an extent that a variation should have been initiated.
7. In addition, I have also considered the potential consequences, in practical terms, should any of the nine examples be found to have been unlawfully withdrawn. I have also noted any relevant s42A recommendations from the PDP process in respect of those provisions.

PART A - WITHDRAWAL PROCESS

8. The withdrawal of provisions followed the Council resolution of 24 July 2014, which stated:

"That the Council, in relation to the report "Independent Review of the Kapiti Coast Proposed District Plan" (Attachment 2 to Report SP-14-1253):

(a) endorse the Independent report; and

(b) adopt its recommendations 1 to 6 being:

...

Handwritten initials/signature in blue ink.

4. The Council resolve to withdraw from the PDP the coastal hazard management areas on the plan maps along with the associated policy section and rules, and clarify the parts of the operative district plan which provide stop-gap coverage relating to coastal hazards."

9. The Independent Review of the Kapiti Coast Proposed District Plan, referred to in the resolution above, also included recommendations to withdraw the "hazardous facilities" and "priority areas for restoration" provisions from the plan.
10. The initial step was to identify all potentially relevant provisions within the plan and then to consider whether each of those provisions should be withdrawn in whole or part to achieve the outcome sought by the Council. In undertaking this assessment, I carefully considered the meaning of the remaining provisions as a whole, which was particularly important when considering the partial withdrawal of provisions.
11. In undertaking this process, I was aware of the findings of the High Court in *West Coast Regional Council v Royal Forest and Bird Protection Society of New Zealand* [2007] NZRMA 32. This case was cited in the Independent Review of the Kapiti Coast Proposed District Plan.
12. The objectives and policies were given particular scrutiny in this process as the plan has only 20 objectives covering a wide range of issues and the withdrawal was to relate specifically to "coastal hazard" provisions, not other natural hazards or coastal issues such as natural character.
13. The analysis undertaken was then peer reviewed by other planning staff and considered by the Council's legal advisors.
14. The withdrawal of provisions was carefully considered in terms of complying with the resolution without resulting in changes to the meaning of the remaining provisions. This assessment required consideration of the provisions as a whole and the implications of the withdrawal of the specific provisions and parts of provisions.

PART B – WITHDRAWN PROVISIONS

15. Below I assess each of the examples cited by CRU. In order to determine whether any particular withdrawal changes the balance of the plan, I have considered the provision both on its face and in the context of other objectives, policies and rules in the PDP.
16. In my view, the examples cited by CRU fall into three different categories:
 - (a) **Category one:** This category of examples relates to provisions which, when notified, partially related to coastal hazards and partially related to other planning matters (often in the form of a list). In partially withdrawing these provisions, the intent was to remove those aspects relating to coastal hazards, while leaving the other aspects of the



provision intact. Inevitably, this means the provision is changed, as it no longer applies to coastal hazards, but still relates to other matters. This does mean that, taken as a whole, the PDP gives less weight to coastal hazards – this is a natural consequence of the withdrawal. I do not consider this to be an issue, as the relevant provisions of the ODP are intended to remain in force, such that there is still weight to be given to coastal hazards. Overall, I consider that such withdrawal examples have had a minimal effect on the balance of the plan.

- (b) **Category two:** The second category of examples cited by CRU relates to general provisions that, in the notified PDP, were not to apply to Coastal Hazard Management Areas ("CHMAs"). CHMAs had other specific plan provisions for the relevant activities. When CHMAs were deleted through the withdrawal, the more general provisions then applied to former-CHMAs. In my view, this is a necessary consequence of the withdrawal, as otherwise no rules would apply for certain activities in the former-CHMAs. In each of these examples, the general rules are less restrictive. Overall, I consider that such withdrawal examples have had a minimal effect on the balance of the plan.
- (c) **Category three:** A third category of examples relates to provisions that were previously specific to certain areas (such as CHMAs), but, as a consequence of the partial withdrawal, would now affect a broader area. I acknowledge that these examples did have an effect on the balance of the plan, but as I explain below, this is only a minimal effect. These provisions have been marked for deletion or significant amendment through the PDP process. I consider there is scope to deal with any issues with such provisions through the PDP process, or through a further withdrawal, should that be necessary.

17. I now consider each of the nine provisions cited by CRU.

Provision One - Objective 2.4 – Coastal Environment

To have a coastal environment where:

- a) natural character, natural systems, natural landforms and natural processes, are protected, and restored where degraded;*
- b) appropriate public access to and along the coast is improved;*
- c) development does not result in further loss of coastal dunes; and*
- ~~d) communities are not exposed to increased risks from coastal hazards.~~*

18. CRU contends that:

"The significant alteration to Objective 2.4 (withdrawal shown in red below) is one of balance: to the extent that the achievement of (d) requires coastal management works then the strongly directive aspects of (a) to (c) are balanced by that protective objective. Without (d) activities such as protective walls may well be regarded as contrary to Objective 2.4"

Analysis

19. I consider this example fits into category one noted above. That is, because only clause 9d) related to coastal hazards, this was the only clause withdrawn. This means that the balance of the provision no longer relates to coastal hazards, but does relate to other planning matters.
20. While, as a consequence, this provision and the PDP as a whole now gives less weight to coastal hazards, this is an inevitable consequence of the withdrawal. In any case, other provisions in the PDP, such as Objective 2.5, do give weight to such matters. Objective 2.5 - Natural Hazards states:
"To ensure the safety and resilience of people and communities by avoiding exposure to increased levels of risk from hazards, while recognizing the importance of natural processes and systems,"
21. In addition, the objectives and policies in the ODP relating to coastal hazards are intended to continue to apply. These are set out in **Appendix B** attached to this affidavit.¹ Therefore, coastal hazards are given weight elsewhere in the planning framework.
22. When a decision maker has regard to the relevant provisions of a plan under s104, or considers whether a proposal is contrary to objectives and policies under s104D,² they will not undertake this analysis only in relation to a single provision of the plan. Rather this involves an assessment across all the relevant objectives and policies, including Objective 2.5 and those objectives and policies that remain in force in the ODP.³
23. In particular, in respect of CRU's concerns, I consider that any assessment in relation to objectives and policies for a 'protective wall' (or any other relevant activity) using these provisions would not result in a determination that it is contrary to, or inconsistent with, the objectives and policies.
24. In my opinion any flow-on effects from the withdrawal of this provision on the balance of the plan are of a minor nature and not of such significance that the withdrawal should have been dealt with by a variation.

Section 42A Recommendations

25. Objective 2.4 is currently recommended for significant change in the Section 42A reports as follows:

To have a *coastal environment* where:

- a) areas of outstanding natural character and high natural character, natural systems, natural landforms and natural processes, outstanding natural landscapes, areas of significant indigenous

¹ As noted in the affidavit of Sarah Jane Stevenson, these provisions will be the subject of a public notice in the week of 24 October 2016.

² For example, for a subdivision where minimum (restricted discretionary activity rule 4A.3.2) standards are not met, which would be a non-complying activity under rule 4A.5.1

³ These will include C.9.1 Policy 2 and Policy 4 and C.15.1 Objective 1.0 and Policies 4, 7 and 8.

vegetation and significant habitats of indigenous fauna are identified, protected, and restored where degraded;

- b) inappropriate subdivision, use and development is avoided, remedied, or mitigated; and
- c) appropriate public access to and along the coast is improved to facilitate active and passive recreational use is maintained and enhanced while managing inappropriate vehicle access; and
- d) ~~development does not result in further loss of coastal dunes~~

26. Objective 2.5 is currently recommended in the Section 42A to remain unchanged.

Potential remedies, if required

27. If the Court finds that this provision was unlawfully withdrawn, this could be addressed through the current PDP hearing process. However, reinstating that clause would make little sense given the PDP is not currently intended to address coastal hazards. Nor would it be appropriate to delete the provision in its entirety, given that it also relates to other planning matters. Further, in the meantime there has been significant amendment proposed to this provision through the PDP process.

Provision Two - Policy 3.14 – Restoration

When considering applications for subdivision, land use or development, active restoration or remediation will ~~be required on sites identified as priority areas for restoration, to~~ achieve the following biodiversity benefits:

- a) *resilient riparian buffers and margins which provide benefits in terms of sediment and erosion control and increased biodiversity values; and*
- b) *expanded ecological sites and habitat enhancement which provide greater benefits to biodiversity values through the planting of locally indigenous vegetation surrounding and linking fragmented remnant ecological sites.*

28. CRU contends that:

"The PDP's Policy 3.14 on restoration applied only to sites 'identified as priority areas for restoration'. It now plainly applies to all land."

Analysis

29. I consider this example fits into category three noted above. That is, the provision was previously specific to 'sites identified for restoration', but now is no longer limited to such sites.

30. I note that part of the withdrawal involved removing the 'priority areas for restoration' from the District Plan maps therefore any wording relating to 'priority areas for restoration' was also considered for removal from the Plan.

31. I explain further below that this Policy is now proposed for deletion in its entirety.
32. However, in any case, I consider this change has only minor consequences for the balance of the plan. This is because the policy effectively duplicates other policies in Chapter 3, including Policies 3.12 and 3.13 (which are not specific to any part of the District). I consider that these policies already achieve similar outcomes to Policy 3.14.⁴ I note that Policy 3.14 focuses on 'active restoration and remediation' whereas the Policies 3.12 and 3.13 are more general in nature.
33. Therefore, I consider any flow-on effects from the withdrawal of this provision on the balance of the plan are minor and are not of such significance that the withdrawal should have been dealt with by a variation.

Section 42A Recommendations

34. I note that this policy is currently recommended to be deleted in the officer's section 42A report as the result of consideration of submissions on Chapter 3.

Potential remedies, if required

35. If the Court finds that this provision was unlawfully withdrawn, the provision could either be deleted through the current PDP hearing process, or through a subsequent withdrawal by the Council.

Provision Three - Policy 4.6 – Natural Coastal Processes

Natural shoreline movement will be accommodated and the resilience of coastal communities will be increased by using the best practice coastal management options, including some or a combination of the following:

- a) dune management;*
- b) inlet management;*
- c) engineering measures;*
- ~~d) managed retreat;~~*
- ~~e) building and development controls; and~~*
- ~~f) Coastal Hazard Management Areas~~*

36. CRU contends that:

"Policy 4.6 below has been altered by the removal (shown in red) of half of the listed matters. As with Objective 2.4 above the issue is whether the matters removed are intended to be addressed in some other way, presumably by means of remnant ODP provisions, and if so, to what extent."

⁴ Policy 3.12 addresses subdivision and development impacts on biodiversity values and includes "maintaining appropriate buffer zones around...aquatic ecosystems" and clause a) of Policy 3.12 seeks that subdivision and development "avoid the removal or significant modification of any significant locally indigenous vegetation". Policy 3.13 requires enhancement of "the ecological site or rare and threatened vegetation species" where subdivision or development occurs on land with such vegetation.

Analysis

37. I consider this example fits category one noted above. That is, because only clauses d) - f) related solely to coastal hazards, these were the only clauses withdrawn. This means that the balance of the provision no longer explicitly relates to coastal hazards, but does still relate to other planning matters.
38. The removed matters related to specific rules for coastal hazard management and CHMAs which have been withdrawn. As the cascade of provisions requires rules to implement the policies they relate to, the inclusion of matters in a policy that are not implemented by rules is of no value. The policy still enables the consideration of a range of 'coastal management options' including 'engineering measures' which could potentially include 'coastal protection structures'.
39. Further, the policies should implement the corresponding objectives and this policy is intended to implement Objective 2.4 (which no longer relates to coastal hazards due to the withdrawal, as explained above). Therefore it is appropriate to also withdraw the references to coastal hazards implementation in this policy.
40. While, as a consequence, this provision and the PDP as a whole now gives less weight to coastal hazards, this is a natural consequence of the withdrawal.
41. In any case, the objectives and policies in the ODP relating to coastal hazards are intended to continue to apply. Therefore, coastal hazards are given weight elsewhere in the planning framework.
42. In my opinion any flow-on effects from the withdrawal of this provision on the balance of the plan are minor and are not of such significance that the withdrawal should have been dealt with by a variation.

Section 42A recommendation

43. I note that this policy is currently recommended to be amended in the officer's section 42A report as the result of consideration of submissions on Chapter 4 as follows:

Policy 4.8 (now 3.34) Natural coastal processes

Natural shoreline movement will be ~~accommodated~~ addressed and the resilience of coastal communities will be increased by using the best practice coastal management options, including ~~some~~ a strategic approach involving one or a combination of the following:

- a) dune management;
- b) inlet management;
- c) engineering measures.

Potential remedies, if required

44. If the Court finds that this provision was unlawfully withdrawn, this can be addressed through current PDP hearing process. However, reinstating

clauses d) - f) would make little sense given the PDP is not currently intended to address coastal hazards. This would also create an implementation gap within the PDP as there are no methods or rules proposed to implement these parts of the policy. Nor would it be appropriate to delete the provision in its entirety, given that it also relates to other planning matters.

Provision Four - Rule 4A.2.1 (controlled activity)

1. Earthworks and vegetation clearance on dunes undertaken for the purpose of dune restoration and the associated removal of non native plant species ~~within the no build rural CHMA~~

Note: in some instances a consent may also be required from the Wellington Regional Council.

45. CRU contends that:

"The application of the Rule is no longer restricted to a defined area."

Analysis

46. I consider this provision fits into category three noted above. That is, this rule previously only applied to CHMAs, but the effect of the withdrawal has been that this rule now applies to all dune restoration.
47. The effect of the withdrawal has been to change the effect of the balance of the provision, but only in a minor way. This is because the rule still has very specific application, relating to "earthworks and vegetation clearance" for "dune restoration", which can only be undertaken in the foredunes adjacent to the beach.
48. I note that significant amendments have been recommended to this provision through the PDP process, as explained further below.
49. I consider any flow-on effects from the withdrawal of this provision on the balance of the plan are minor and are not of such significance that the withdrawal should have been dealt with by a variation.

Section 42A recommendation

50. The section 42A report for the Coastal Environment provisions has recommended significant amendments to rule 4A.2.1 as a result of submissions. This rule is recommended to read as follows:

"Earthworks and ~~vegetation clearance~~ modification of indigenous vegetation in the coastal environment on dunes undertaken for the purpose of dune restoration and the associated removal of non-native plant species"

51. In my view, the recommendations are so extensive that this is essentially now a different rule.

Potential remedies, if required

52. If the Court finds that this provision was unlawfully withdrawn, the provision can either be deleted through the current PDP hearing process, or through a subsequent withdrawal by the Council. I note again though, the rule is effectively already evolving into a different rule through the PDP process.
53. If this rule is deleted in its entirety, I note that other rules relating to earthworks and vegetation clearance are provided for in Chapter 3, so a deletion would not result in a gap in the plan.

Provision Five - Rule 4A.3.1 (restricted discretionary activity)

1. Buildings and earthworks on land in the coastal environment which has been identified as having high natural character in District Plan Maps ~~where they are not located in a CHMA.~~

54. CRU contends that:

“this Rule will now apply to many coastal sites which were previously in the CHMA. While the Rule may be regarded as more lenient than the withdrawn rule which did apply within the CHMA, it is nevertheless restrictive, and persons who will now (following the withdrawal) be affected by it should have had the opportunity to submit on it. In other words, those people who were within the former CHMA would have submitted on rules for CHMA, and not considered how they might be affected by rules for land outside CHMA, rightly believing those rules were not relevant to their situation.”

Analysis

55. This example fits into category two noted above. That is, the withdrawal of the 'carve-out' in this provision means that it now applies to areas that were previously in a CHMA. Prior to the withdrawal, this rule applied to land outside the CHMA in 'areas of high natural character', while new buildings and coastal protection structures within the CHMA were prohibited, and earthworks in the CHMA were subject to earthworks rules in chapter 3 (shown above) and buildings in the relocatable zone were controlled.
56. As CHMAs no longer exist, it is necessary for this rule to apply, as otherwise there would be no rules relating to new buildings in the former CHMAs.
57. There were some instances in the notified plan where CHMAs and areas of high natural character overlapped. This rule as notified meant that the CHMA rule would apply to such areas, rather than the high natural character rule. Following the withdrawal, the high natural character rule would apply to such areas.
58. I have compared the maps for the CHMA with the maps showing the high natural character areas and have identified that there are some properties where persons will now (following the withdrawal) be affected by this rule

where they were not previously. The rules are, however, less restrictive than those applied under the CHMA.

59. My analysis of the maps identified 42 properties in Raumati and Paekakariki where a small portion of the sites, previously identified in the CHMA were also included in the Area of High Natural Character (as notified). A full list of the legal descriptions and areas impacted for these properties are set out in **Appendix A**.
60. The areas of high natural character on all of these properties relate to areas of active beach. Due to current uncertainty about the location of mean high water springs along the coast, some of these areas may actually fall within the coastal marine area.
61. The inclusion of these areas as areas of high natural character makes no practical difference to the management of these properties. The areas identified as high natural character are not areas where buildings or earthworks could take place even if the area was not identified as being of high natural character. This is because the area of high natural character occurs on beach areas which fall within the foreshore on these sites. The affected properties are properties where erosion has occurred since the title was established.
62. In my opinion any flow-on effects from the withdrawal of this provision on the balance of the plan are minor and are not of such significance that the withdrawal should have been dealt with by a variation. Extending the application of this rule to former-CHMAs was necessary, as otherwise no relevant rules would apply to these areas.

Potential remedies, if required

63. If the Court finds that this provision was unlawfully withdrawn, it is not practical to amend or delete the rule as it appropriately applies to areas of land that were not in the CHMA. As the CHMA is no longer drawn on any maps it would be of no value to reinstate the words 'where they are not located in a CHMA'.
64. If the Court considers that property owners that are affected by the change should have an opportunity to submit on this provision (though the change in effect is only minor as explained above), the Council could potentially provide that opportunity through the PDP process.

Provision Six - Rule 4A.3.2 (restricted discretionary activity)

2. Subdivision of land in the coastal environment which includes areas of high natural character in District Plan Maps ~~where it is not located within a CHMA.~~

65. CRU contends that:

“this Rule will now apply to many coastal sites which were previously in the CHMA. While the Rule may be regarded as more lenient than the withdrawn rule which did apply within the CHMA, it is nevertheless restrictive, and persons who will now (following the withdrawal) be affected by it should have had the opportunity to submit on it. In other words, those people who were within the former CHMA would have submitted on rules for CHMA, and not considered how they might be affected by rules for land outside CHMA, rightly believing those rules were not relevant to their situation.”

Analysis

66. I consider this example fits into category two noted above. That is, the withdrawal of the 'carve-out' in this provision means that it now applies to areas that were previously in a CHMA. Subdivision of land within a CHMA prior to the withdrawal was a prohibited activity.
67. As CHMAs no longer exist, it is necessary for this rule to apply, as otherwise there would be no rules relating to subdivision in the former CHMAs. In effect, the activity status in these areas for subdivision has become more permissive – changing from prohibited to restricted discretionary. This activity status is the same as for nearly all land in the district for subdivision.⁵
68. The properties identified in **Appendix A** are the only properties affected by this withdrawal.
69. In my opinion any flow-on effects from the withdrawal of this provision on the balance of the plan are minor and are not of such significance that the withdrawal should have been dealt with by a variation.

Section 42A recommendations

70. This rule and associated standards have been recommended to be retained with only minor amendments for consistency with other chapters.

Potential remedies, if required

71. As above, if the Court finds that this provision was unlawfully withdrawn, it is not practical to amend or delete the rule. If the Court considers that property owners that are affected by the change should have an opportunity to submit on this provision (though the change in effect is only minor as explained above), the Council could potentially provide that opportunity through the PDP process.

Provision Seven - Rule 4A.3.2 (restricted discretionary activity)

3. Subdivision of land adjacent to the coast or a coastal esplanade ~~where it is not located within a CHMA.~~

72. CRU contends that:

⁵ I note that a new controlled activity rule for subdivision in the residential zone is recommended in the chapter 5 section 42A report.

"this Rule will now apply to many coastal sites which were previously in the CHMA. While the Rule may be regarded as more lenient than the withdrawn rule which did apply within the CHMA, it is nevertheless restrictive, and persons who will now (following the withdrawal) be affected by it should have had the opportunity to submit on it. In other words, those people who were within the former CHMA would have submitted on rules for CHMA, and not considered how they might be affected by rules for land outside CHMA, rightly believing those rules were not relevant to their situation."

Analysis

73. I consider this example fits into category two noted above. That is, the withdrawal of the 'carve-out' in this provision means that it now applies to areas that were previously in a CHMA. Subdivision of land within a CHMA prior to the withdrawal was a prohibited activity.
74. Again, as CHMAs no longer exist, it is necessary for this rule to apply, as otherwise there would be no rules relating to subdivision in the former CHMAs. The activity status for subdivision in these areas has become more permissive – changing from prohibited to restricted discretionary. This activity status is the same as for nearly all land in the district, with the only difference from other restricted discretionary rules being a specific standard relating to the provision of access to the coast.
75. This change will affect those properties that were previously within a CHMA and which are adjacent to the coast or a coastal esplanade (although, practically speaking, the features of a number of those properties are such that they are not capable of subdivision).
76. The retention of the ODP coastal hazard provisions (see **Appendix B**) will mean that the change in this provision will have a limited impact on properties in Paraparaumu, Raumati or Paekakariki because subdivision and development of properties in these areas will be constrained by the retained ODP coastal hazard rules.⁶ These rules require buildings on properties to be setback behind the 20 coastal yard and be relocatable if within the further 30m yard to be a permitted activity. If this standard is not met buildings are a discretionary activity.
77. However in Waikanae and Peka Peka there will be some properties that will be able to subdivide as a result of the withdrawal of the CHMA. This is limited to a small number of properties, that are capable of subdivision under both the ODP and PDP rules (due to ability to meet lot size, shape and access standards) as either a controlled or restricted discretionary

⁶ The ODP Rule D.1.2.1 Yard standards for coastal building line restrictions currently also apply to Waikanae, Peka Peka and Te Horo. However, these provisions will not be retained as the restrictions do not relate to coastal hazards. In Paraparaumu, Raumati and Paekakariki the "coastal building line" standards are being retained as they do relate to coastal hazards.

activity. These are sites that are well established with existing dwellings, and are set back a minimum of 7.5m from the seaward property boundary.⁷

78. All other standards under this rule rely on the underlying zone provisions and provisions for esplanade reserves and access strips in chapter 8.
79. In my opinion any flow-on effects from the withdrawal of this provision on the balance of the plan are minor and are not of such significance that the withdrawal should have been dealt with by a variation.

Section 42A recommendations

80. This rule and associated standards has been recommended to be retained with only minor amendments for consistency with other chapters.

Potential remedies, if required

81. If the Court finds that this provision was unlawfully withdrawn, it is not practical to amend or delete the rule as it appropriately applies to areas of land that were not in the CHMA. As the CHMA is no longer drawn on any maps it would be of no value to reinstate the words 'where they are not located in a CHMA'.
82. If the Court considers that property owners that are affected by the change should have an opportunity to submit on this provision (though the change in effect is only minor as explained above), the Council could potentially provide that opportunity through the PDP process.

Provision Eight - Rule 4A.4.1 (discretionary activity)

1. ~~All activities in the CHMA which are not listed as restricted discretionary, non-complying or prohibited and~~ all other activities which do not comply with one or more of the permitted activity or controlled activity standards.
83. CRU contends that:
- "These rules are a significant direct alteration to the classification of activities such as stream channel maintenance which was discretionary under Rule 4A.4.1 above (for example in the Mangaone Stream mouth at Te Horo as the river and/or stream mouth cutting took place in a CHMA) but following the withdrawal such maintenance is a non-complying activity. Again, it is unlikely that was the Council's intent."*

Analysis

84. I consider this example fits category one noted above. That is, because the first clause related solely to coastal hazards, this was the only clauses withdrawn. This means that the balance of the provision no longer explicitly relates to coastal hazards, but does still relate to other planning matters.

⁷ ODP rules:D.1.1.2 (iv) Subdivision and PDP rules 5A.3.2, and new rule 5A.2. 4 (recommended in section 42A report).

85. This is a discretionary activity 'catch-all' rule, which lists the types of activities to which it applies. Only the first part of the list (that is, the part relating to activities in the CHMA) was withdrawn, while the other parts remain intact.
86. This withdrawal does not affect the balance of the plan and, in any case, is recommended for deletion.

Section 42A recommendations

87. All chapter 4 provisions have been recommended to be integrated into Chapter 3 (natural environment chapter) as they relate to natural character, earthworks and vegetation rules and when hazard rules are returned to the Plan (via a future plan change) these can be integrated into Chapter 9 (hazards chapter). Chapter 3 already has a discretionary "catch all rule" and therefore rule 4A.4.1 has been recommended to be deleted to prevent a double up of rules.

Provision Nine - Rule 4A.5.4 (non-complying activity)

4. Buildings, structures and earthworks on land in the coastal environment which has been identified as having high natural character in District Plan Maps ~~where they are not located in a CHMA~~ which do not comply with one or more of the permitted activity or restricted discretionary activity standards.

88. CRU contends that:

"These rules are a significant direct alteration to the classification of activities such as stream channel maintenance which was discretionary under Rule 4A.4.1 above (for example in the Mangaone Stream mouth at Te Horo as the river and/or stream mouth cutting took place in a CHMA) but following the withdrawal such maintenance is a non-complying activity. Again, it is unlikely that was the Council's intent."

Analysis

89. I consider this example fits into category two noted above. That is, the withdrawal of the 'carve-out' in this provision means that it now applies to areas that were previously in a CHMA. New buildings and structures within the CHMA were previously prohibited, and earthworks in the CHMA were subject to earthworks rules in Chapter 3.
90. As CHMAs no longer exist, it is necessary for this rule to apply (alongside the other rules above), as otherwise there would be no rules relating to new buildings and earthworks in the former CHMAs. The activity statuses for the relevant activities in these areas have become more permissive.
91. This non-complying activity rule will only be utilised if standards for either rule 4A.1.1 or rule 4A.3.1 are not complied with. In practice,⁸ this non-

⁸ The permitted activities in rule 4A.1.1 for areas of high natural character include "public access and amenity structures" which the standards specify as including "rubbish bins, public seating, bollards, fencing and gates" with specific size limits. The standards for 4A.3.1 relate to enabling buildings which are "ancillary to as permitted use", and "accessory buildings" as permitted activities with other standards referring to the underlying zone and

complying activity rule would be triggered by larger scale earthworks or buildings which were for a commercial or industrial activity in a residential or rural zone.

92. This will not relate to "stream channel maintenance" or "stream mouth cutting", as cited by CRU, as these are not activities carried out under the District Plan. The Council has no jurisdiction relating to this activity in the bed of a waterway nor the stream mouth cutting carried out in the coastal marine area. The CHMAs were never extended beyond the Council's jurisdiction of the mean high water springs or into the beds of lakes or rivers, as this is a regional planning jurisdiction.⁹
93. The change in effect of this rule only relates to the properties identified in Appendix 1.
94. In my opinion any flow-on effects from the withdrawal of this provision on the balance of the plan are minor and are not of such significance that the withdrawal should have been dealt with by a variation.

Section 42A recommendations

95. The closing statement for Chapter 4 provisions has not yet been presented to the panel. This rule has been retained unchanged in the recommendations to the panel at the time of writing this affidavit.

Potential remedies, if required

96. If the Court finds that this provision was unlawfully withdrawn, it is not practical to amend or delete the rule as it appropriately applies to areas of land that were not in the CHMA.
97. If the Court considers that property owners that are affected by the change should have an opportunity to submit on this provision (though the change in effect is only minor as explained above), the Council could potentially provide that opportunity through the PDP process.

Conclusion

98. Overall, in my opinion the withdrawal process was appropriate, and any flow-on effects from the withdrawn provisions on the balance of the plan are minor and are not of such significance that the withdrawals should have been dealt with by a variation. If, however, the Court is minded that any particular provision should be remedied, there are pragmatic solutions available.

"earthworks" which "do not exceed 20m³ or alter the ground by a vertical distance of more than 1 metre". The discretion is restricted to consideration of "scale, location and design of buildings or structures and/or earthworks" and "effects on natural character values and/or natural coastal processes".

⁹ Although the mapping of the seaward boundary is difficult as mean high water springs is not a fixed point or line on a sandy coastline. The Council is working with Greater Wellington Regional Council to better define the location of this boundary for practical purposes with the work to be completed in 2017.

SWORN at
this 25th day of October 2016
before me:

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Quonson



A solicitor of the High Court of New
Zealand

Nicola Coulston
Solicitor
Paraparaumu



Appendix A: Properties previously part of the CHMA that are also within an Area of High Natural Character (as notified)

- 15 Arawa Street (Lot 1 DP 35319) (area of active beach or CMA up to 5m into property) (existing house)
- 14 Kirk Way (Lot 2 DP392819) (area of active beach or CMA up to 8m into property)
- 12 Kirk Way (Lot 27 DP2397) (area of active beach or CMA up to 8.5m into property)
- 10 Kirk Way (Lot 28 Blk I DP2397) (area of active beach or CMA up to 8.5m into property)
- 8 Kirk Way (Lot 29 DP2397) (area of active beach or CMA up to 8.5m into property)
- 6 Kirk Way (Lot 30 DP2397) (area of active beach or CMA up to 8.5m into property)
- 4 Kirk Way (Lot 31 DP2397) (area of active beach or CMA up to 8.5m into property)
- 2 Kirk Way (Lot 32 DP2397) (area of active beach or CMA up to 11m into property)
- 23 Tainui Street (Pt Lot 43 Blk I DP 2397) (area of active beach or CMA up to 16m into property)
- 21A Tainui Street (Lot 1 DP 91216) (area of active beach or CMA up to 14m into property)
- 61 Matatua Road (Lot 44 Blk I DP 2397) (area of active beach or CMA up to 14m into property)
- 75 Matatua Road (Lot 45-47 DP 2397) (area of active beach or CMA up to 12m into property)
- 6A Willow Grove (Lot 48 Blk I DP 2397) (area of active beach or CMA up to 10m into property)
- 103 Rosetta Road (Lot 1 DP 450101) (area of active beach or CMA up to 0.5m into property)
- 61 Rosetta Road (Lot 1 DP 12149) (area of active beach or CMA up to 1.7m into property)
- 59 Rosetta Road (Lot 2 DP 45757) (area of active beach or CMA up to 3m into property)
- 55 Rosetta Road (Lot 2 DP 18774) (area of active beach or CMA up to 2.5m into property)
- 53 Rosetta Road (Lot 1 DP 18774) (area of active beach or CMA up to 2m into property)



- 51 Rosetta Road (Pt Lot 16 DP 5853) (area of active beach or CMA up to 2m into property)
- 47 Rosetta Road (Pt Lot 17 DP 5853) (area of active beach or CMA up to 2m into property)
- 41 Rosetta Road (Lot 1 DP 12172) (area of active beach or possibly CMA up to 0.5m into property)
- 20 Ames St (Pt Lot 3 DP 1728) (area of active beach or CMA up to 0.9m into property)
- 26 Ames St (Pt Lot 3 DP 1728) (area of active beach or CMA up to 3.5m into property)
- 28 Ames St (Pt Lot 4 DP 1728) (area of active beach or CMA up to 6m into property)
- 32 Ames St (Pt Lot 4 DP 1728) (a strip of active beach or CMA approximately 9m wide within the property)
- 36 Ames St (Pt Lot 5 DP 1728) a strip of active beach or CMA approximately 14m wide within the property)
- 40 Ames St (Pt Lot 5 DP 1728) (a strip of active beach or CMA approximately 7m wide within the property)
- 50 Ames St (Pt Lot 6 DP 1728) (a strip of active beach or CMA approximately 8m wide within the property)
- 52 Ames St (Lot 1 DP 9295) (area of active beach or CMA up to 2m into property)
- 54 Ames St (Lot 2 DP 9295) (area of active beach or CMA up to 2m into property)
- 56 Ames St (Lot 3 DP 9295) (area of active beach or CMA up to 1m into property)
- 58 Ames St (Lot 4 DP 9295) (area of active beach or CMA up to 0.5m into property)
- 66 Ames St (Lot 4 DP 8581) (area of active beach or CMA up to 0.5m into property)
- 68 Ames St (Lot 5 DP 8581) (area of active beach or CMA up to 0.7m into property)
- 70 Ames St (Lot 6 DP 8581) (area of active beach or CMA up to 0.7m into property)
- 72 Ames St (Lot 8 DP 8581) (area of active beach or CMA up to 0.5m into property)
- 80-82 Ames St (Lots 1 & 2 DP 19116) (area of active beach or CMA up to 1m into property)

- 82 Ames St (Lot 2 DP 19116) (area of active beach or CMA up to 1.5m into property)
- 84 Ames St (Lot 14 DP 8581) (area of active beach or CMA up to 3m into property)
- 86 Ames St (Lot 15 DP 8581) (area of active beach or CMA up to 4.5m into property)
- 88 Ames St (Lot 16 DP 8581) (area of active beach or CMA up to 5.5m into property)
- 90 Ames Street (Lot 16 DP 8581) (area of active beach or CMA up to 6.5m into property)



Appendix B – Relevant ODP provisions

Kapiti Coast District Council Operative District Plan 1999:

Coastal Hazard Provisions

The ODP provisions which are relevant to coastal hazards are:

PART C OBJECTIVES AND POLICIES

C.9 Coastal Environment

C.9.1 Objectives and Policies

Policy 2

Discourage the development of buildings and other significant assets in areas which may be prone to Coastal erosion or the effects of sea level rise, unless such structures:

- Have a significant community benefit and need to be located in the coastal environment; and
- Do not adversely affect the natural character of the coastal environment; and
- Are relocatable.

Policy 3

In respect of residential buildings, control the location of buildings within areas subject to coastal erosion.

Policy 4

Discourage coastal protection works on the Coastal Marine Area interface where they are not already present and encourage management options such as managed retreat and coastal renourishment rather than hard engineering works when protection works are sought.

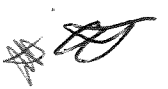
C.15 Natural Hazards

C.15.1 Objective and Policies

OBJECTIVE 1.0

TO MANAGE ACTIVITIES AND DEVELOPMENT WITHIN NATURAL HAZARD PRONE AREAS SO AS TO AVOID OR MITIGATE THE ADVERSE EFFECTS OF NATURAL HAZARDS.

Policy 4



Ensure there are flood and erosion free building sites within newly created allotments.

Policy 7

Avoid and/or mitigate the potential adverse effects of flooding and erosion from major rivers and the sea on:

- human life, health and safety,
- private or community property,
- flood mitigation works, and
- other natural and physical resources

when planning for and making decisions on new subdivision, use and ; within river corridors and adjacent to the sea.

Policy 8

Recognise the ability of natural features (such as sand dunes and river berms) to buffer development from natural hazards through performance standards including minimum setbacks for new and relocatable buildings.

PART D – RULES AND STANDARDS

D.1.1.1 – Permitted Activities

The following are permitted activities:

- (xviii) All other activities, excluding retailing, which are not listed as CONTROLLED, DISCRETIONARY, NON-COMPLYING or PROHIBITED and which comply with all the permitted activity standards.

D.1.1.3 Discretionary Activities

(B) The following are **Discretionary Activities**:

- (i) All activities which are not listed as NON-COMPLYING or PROHIBITED and all other activities which do not comply with one or more of the permitted activity or controlled activity standards.

D.1.2 Residential Zone Rules and Standards

D.1.2.1 Permitted Activity Standards

Yards

(iii) Coastal Building Line Restriction

- Paraparaumu, Raumati, Paekakariki - 20 metres as shown on Districtwide and Urban Zones and Features Maps 8, 11, 14 and 16.

(iv) Relocatable Buildings

Buildings within the relocatable area, as defined in Part Q of this Plan and shown on Districtwide and Urban Zones and Features Maps 11, 14, 16, and 19, between 20 metres and 50 metres, shall be relocatable. Section 36 of the Building Act 2004 may be implemented for new and relocated buildings in areas subject to coastal erosion or flooding to indemnify Council against possible damages.

PART Q DEFINITIONS

Allotment shall have the same meaning as in the Resource Management Act 1991.

Boundary means the perimeter of an area of land capable of being disposed of separately, including a legal or cross lease boundary.

Building includes any dwelling (see definition for dwelling), structure or part of a structure, whether temporary or permanent, movable or immovable, but does not include:

- Fences of 2 metres or less in height, and tennis court fences of any height, where the fence is not used for advertising or for any purpose other than a fence or a wall.
- A fence for the containment of stock.
- Retaining walls that are 1.5m or less in height
- Residential chimneys and television aerials associated with a dwelling house.
- Detached structures (including temporary structures) less than 2.4 metres in height and less than 8m² in floor area where they are located at least 1 metre from any adjoining property boundary. Water tanks are classed as detached structures.
- Patios and decks (including their handrails) with a finished floor level of less than 1 metre in height and at least 1 metre from any adjoining property boundary.
- Any vehicle, trailer, tent, caravan or boat, whether fixed or movable which is not occupied.
- Sealed surfaces
- Domestic swimming pools less than 1 metre above existing ground level.
- Fire hose drying towers with a maximum height of 15m on New Zealand Fire Service property.

Development means the construction or alteration of buildings; the erection of structures; excavation of land; any land disturbance or land filling or reclamation of land or the construction of earth retaining structures; and any construction of artificial surfaces or platforms.

Dwelling means a building, part of a building, or residence whether temporary or permanent, including a mobile home (e.g. caravan, motor home, house truck and camper) that is capable of, or is, being used as one household unit for the purposes of residential activities, and which includes kitchen and bathroom facilities. Note: For further clarification refer to the definitions of household unit and residential activity.

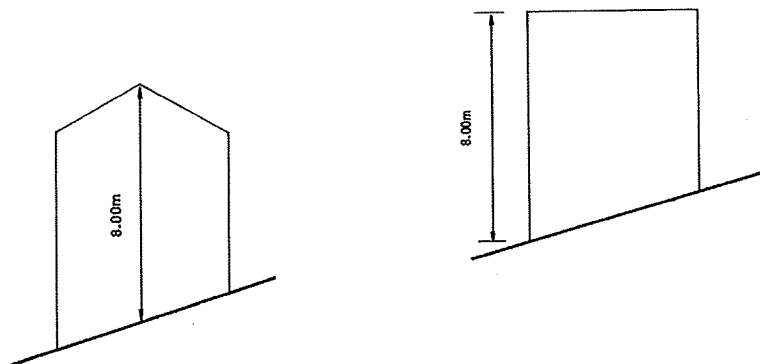
Existing - in relation to buildings and uses means lawfully in existence:

- Before the rule became operative or the Plan was notified.
- The effects of the use are the same or similar in character, intensity and scale to those which existed before the rule became operative or the Plan was notified,
or
- The use was lawfully established by way of a designation, and
- The effects of the use are the same or similar in character, intensity and scale to those that existed before the designation was removed.

Height in relation to any building means the vertical distance between the highest point of the building and the ground level immediately below that point.

The ground level for this purpose shall be the level prior to any excavation of a building platform or earthworks, except that where earthworks have been completed and approved as part of a prior landuse or subdivision consent that approved ground level shall become the ground level.

In the measurement of height, the following shall be excluded: chimneys, ventilator shafts, water tanks, stairways or elevators, aerials, telecommunication antennas, steeples, turrets and such other finials and similar parts of the building as constitute only decorative fixtures, provided that the maximum dimension thereof parallel to any boundary of the site shall not exceed 3 metres.



Household includes every household unit whether of one or more persons.

Household Unit means a unit of residential activity which is self contained. For the purposes of this definition:

- a building used for emergency or refuge accommodation shall be deemed to be one household unit;

- one household unit has one kitchen and at least one bathroom. If two kitchens and more than one bathroom are present (except if in a family flat), there will be two household units; and
- a household unit may include one, but no more than one, family flat.

Kitchen means a room or part of a room that contains fixed cooking and food preparation facilities, including a sink unit, which is used for food preparation and cooking.

Natural Hazard means any atmospheric, or earth, or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment.

Relocatable Area means that area between the Coastal Yard and the line parallel to and 30 metres eastward of the Coastal Yard and extending from the intersection of Wharemauku Road and Marine Parade at Paraparaumu Beach to the southern boundary of the District, more particularly delineated on Districtwide and Urban Zones and Features Maps 11, 14, 16 and 19 and shown thereon as "30m Relocatable Area".

Relocatable Building means any building, generally of timber framing, but excludes any structures that have cast in situ concrete walls, concrete block walls, brick and stone walls (including brick veneer). Provided that such structures will be permitted if certified by a qualified structural engineer to be of a specific design which would enable at least the greater part of the building to be relocated if required.

Residential Activity means the use of premises for any domestic or related residential purpose by persons living in the premises alone or in family or non-family groups, including emergency and refuge accommodation (whether any person is subject to care, supervision or not), but does not include work from home, hotels, motels, camping grounds, motor camps or other premises where residential accommodation for six or more travellers is offered at a daily tariff or similarly specified time.

Residential Building is any building or part of a building used or intended to be used for residential purposes.

Site means an area of land capable of being disposed of separately.

Subdivision shall have the same meaning as in the Resource Management Act 1991 and includes boundary adjustments.

Yard means a part of a site which is required by this Plan to be unoccupied and unobstructed by buildings from the ground upwards, except as otherwise provided by this Plan.

- **Coastal Yard** means a yard between the seaward title boundary or the toe of the foredune, seaward edge of the vegetation line or

foreshore protection works where these are within the title and a line parallel thereto extending across the full width of the site.

- **Front Yard** means a yard between the street line and a line parallel thereto and extending across the full width of the site.
- **Rear Yard** means a yard between the rear boundary of the site and a line extending parallel thereto extending across the full width of the site.
- **Side Yard** means a yard between a side boundary of the site and a line parallel thereto, extending:
 - (i) From the front yard to the rear yard.
 - (ii) If there is no front yard, from the front boundary of the site to the rear yard.
 - (iii) If there is no rear yard, from the front yard or boundary as the case may be to the rear boundary of the site.

