

**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 SARAH JANE STEVENSON

21 October 2016

I, **SARAH JANE STEVENSON** of Wellington, Research, Policy and Planning Manager, solemnly and sincerely affirm:

1. I am employed by the Kapiti Coast District Council ("**the Council**"), and I am authorised to affirm this affidavit.
2. I have the following qualifications and experience:
 - (a) 1998 Bachelor of Planning (Honours), The University of Auckland;
 - (b) 2002-current Full Member New Zealand Planning Institute; and
 - (c) 18 years' experience with local and central government including:
 - (i) significant experience in urban growth studies and subsequent plan changes;
 - (ii) providing advice on regional and district plan preparation;
 - (iii) providing training to regional and district councils on the implementation of the Resource Management Act 1991 ("**RMA**") including resource consent and plan preparation/change processes; and
 - (iv) drafting policy and then implementation guidance for the Resource Management (Simplifying and Streamlining) Amendment Bill 2009.
3. Substantial parts of my affidavit are factual. However, I do comment on and express views about planning matters. To the extent that I make those comments and express those views, I do so based on my experience working with regional and district plans under the RMA, including whilst in my role at the Council as Manager, Research Policy and Planning.
4. To the extent that I express expert opinion, 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, and will do so if required to give oral evidence before the Court. I recognise my overriding obligation to the Court in presenting my evidence and 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. The purpose of this affidavit is to:
 - (a) provide a short background to this proceeding;
 - (b) provide an update on the PDP process; and
 - (c) explain, in my view, the practical consequences should the Court grant the declarations sought.

Background

6. The Council initiated its district plan review in September 2008, which included an extensive community consultation process and multi-staged series of discussion papers.
7. The Proposed District Plan ("**PDP**") was notified in November 2012 and 777 submissions were subsequently received. When the PDP was originally notified, significant concerns were raised by the community in relation to the coastal hazard provisions in the PDP.
8. The Council subsequently commissioned two expert reports and, on the basis of recommendations in those expert reports, the Council withdrew the coastal hazard (and certain other) provisions from the PDP under clause 8D of Schedule 1 of the RMA on 2 October 2014.
9. In making that decision, the Council's position was that while removal of the provisions and maps relating to coastal hazards would leave a gap in the PDP, those areas were still covered by underlying PDP zones such as 'beach residential', and coastal hazards will continue to be addressed by the operative district plan while the coastal hazards review process progressed.

PDP process

10. The hearings on the PDP commenced on 4 April 2016 in Paraparaumu. Since then, the hearings panel has heard from more than 200 submitters on 22 hearing days. Eighteen hearings, covering all twelve chapters of the PDP have now been completed. The one remaining hearing covering matters of PDP Integration (such as definitions, consistency, plan complexity) will be held in December 2016.



11. Of particular relevance to this proceeding, hearings on the Coastal Chapter of the PDP commenced on 8 August 2016. The Hearings Panel heard from submitters on those aspects of the Coastal Chapter that were not withdrawn, including those provisions cited by Coastal Ratepayers United ("**CRU**") in this proceeding as being problematic. CRU was among the submitters heard by the Hearings Panel. The Hearings Panel is well aware of the concerns raised by CRU in terms of the withdrawal of coastal hazards provisions.
12. The Hearings Panel has confirmed it is considering the PDP as notified, less withdrawn provisions. That is, the withdrawn provisions are not relevant to their consideration and deliberations, only the remaining provisions, and their meaning, are relevant.
13. The hearings process is planned to continue until 15 December 2016. The Panel is expected to deliberate through the remainder of December, January and February, providing recommendations to Council in March or April 2017. Council will then consider the recommendations and is expected to issue its decision on submissions in May 2017.
14. Since 2013/14, shortly after the PDP was publicly notified, the Council has spent more than \$5.9 million on the PDP process, not to mention the countless hours and resources devoted to the process by submitters.

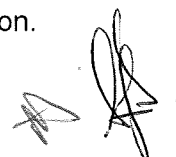
Future coastal hazards work

15. The Council's intention, communicated consistently and clearly since July 2014, is to undertake further coastal hazard work and, at the appropriate time, introduce a plan change to deal with those matters.
16. One recommendation from the expert reports was to establish a coastal advisory group ("**CAG**") for the purpose of helping the Council progress both the science advice, the problem definition and the policy development (including the consideration of alternative responses to the problems identified from the science advice).
17. The Council commenced the process of establishing CAG, including through a number of discussions with the statutory agencies, CRU, and others on a draft terms of reference for that group.
18. Notwithstanding the Council's intention to progress CAG, there are a number of other matters at play currently that have an influence on how and



when it is appropriate to commence that coastal hazards process. These include:

- (a) The Greater Wellington Regional Council ("GWRC") Natural Resources Plan was notified for consultation in September 2014, and then formally in July 2015. The Council made a submission on the plan and requested that GWRC amend one of its methods so that it would work with city and district councils and the community to identify significant hazards, develop and implement a hazard management strategy and produce maps of areas of significant natural hazards and other instruments by the end of 2017 for inclusion in the Plan by change or variation.
- (b) The Ministry for the Environment is leading the revision of the Coastal Hazards and Climate Change Guidance (2008), which will be revised by late 2016 to address, among other things:
 - (i) the NZ Coastal Policy Statement 2010;
 - (ii) the latest Intergovernmental Panel on Climate Change reports; and
 - (iii) the Parliamentary Commissioner for the Environment's November 2015 Report "*Preparing New Zealand for rising seas, certainty and uncertainty*" ("**PCE Report**").
- (c) The Ministry for the Environment is developing a National Policy Statement on Natural Hazards (including coastal hazards), with an issues document to be released for consultation some time in 2017.
- (d) The Resource Legislation Amendment Bill 2015 proposes to introduce into section 6, as a matter of national importance to be recognised and provided for, "the management of significant risks from natural hazards". The intended meaning of the terms "management" and "significant risks" are not yet clear.
- (e) GWRC recently notified a draft Regional Natural Hazards Management Strategy for consultation, with submissions closing in November 2016. The draft Strategy includes an action plan setting out collaborative, regionally consistent approaches to risk based planning, data, science and community engagement on coastal hazards. The Council will be making a submission.



- (f) On 12 October 2015, in the middle of their replacement district plan review process, the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 was amended to withdraw certain coastal hazards provisions from the Proposed Christchurch Replacement District Plan.
 - (g) In November 2015, the PCE Report was released. In this report the PCE concluded that better direction and guidance was required from central government on scientific assessment of the impact of rising sea on coastal hazards, the process of engaging with the community and the planning and management decisions that follow.
19. The Council's view is that it would be premature to commence the coastal hazards work until there is clarity in terms of how, for example, central government and GWRC intend to address coastal hazards at a more strategic level. For the reasons outlined above the Council does not intend to introduce a variation to the current PDP to address coastal hazards. It is also relevant to note:
- (a) The Council intends to undertake that coastal hazard work, but it is a matter of timing. That is an appropriate response in the circumstances, and integrated management will be achieved in a staged manner. In my opinion, the comments of Dr Jan Wright, in the PCE Report, are directly relevant to the Council's current situation. Dr Wright stated that some time is needed to develop good policy and planning for sea level rise and that the focus should be on preparing well rather than rushing.
 - (b) In the meantime, there will be integrated management in relation to coastal matters in Kapiti District, through a combination of PDP and ODP provisions. I also note that a similar issue has arisen in the current Christchurch Replacement District Plan process, in which the coastal hazards provisions have also been withdrawn from the proposed district plan.
 - (c) In announcing the plans to decouple coastal hazards from the Proposed Christchurch Replacement District Plan process, on 29 September 2015 Environment Minister Dr Nick Smith stated, *"We are proposing both legislative change and national policy guidance on such hazards as part of our Resource Management Act reform*



programme....It makes sense for the timing of this work to be aligned with national policy".¹

20. In my opinion as a practicing planner, in taking a holistic (central, regional and local government) integrated approach to planning for the management of coastal hazards it would not be good practice for Council to progress its own approach at this time given the previous history, and in the midst of so much uncertainty in the higher order policy and legislation.
21. The Council has already experienced the significant cost and difficulty associated with a small local authority seeking to undertake coastal hazard planning on its own, without support from regional or central government.
22. As the Parliamentary Commissioner for the Environment has noted, climate change adaptation should not be progressed in haste. Dr Wright stated in her November 2015 report, *"The Kapiti experience is instructive in a number of ways. Importantly, the process was hasty"* (p.65).
23. The Council is committed to this process but as noted, the issue is not if, but when. It is a matter of timing and with so much uncertainty, it is prudent to wait.
24. For these reasons, over the next four years, Council intends to follow an Implementation Plan for engaging with the community via the Coastal Advisory Group ("CAG"), and establishing a Technical Advisory Group ("TAG") to progress the review of the coastal hazards provisions.

Ongoing application of the ODP provisions

25. The Council's position is that, given the withdrawal of the coastal hazard provisions from the PDP, the relevant provisions in the ODP will continue to apply until a plan change is introduced and made operative.
26. The withdrawal of coastal hazard provisions and the effect on ODP provisions has also been an issue for the Christchurch Replacement District Plan process.
27. In respect of Christchurch, Clause 5A(2) of the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (as amended in October 2015) states:

¹ See <https://www.beehive.govt.nz/release/coastal-hazard-issue-be-uncoupled-fast-track-earthquake-recovery-plan-process>.



"(2) As soon as is reasonably practicable after the commencement of this clause, the council must—

- (a) amend the Natural Hazards (part) Stage 3 proposal accordingly (without applying the process in this order); and*
- (b) identify, by written notice to the hearings panel,—*
 - (i) the parts of the existing district plans that the Natural Hazards (part) Stage 3 proposal will no longer replace as a consequence of the amendment (the existing coastal hazards provisions); and*
 - (ii) any parts of the existing district plans that are necessary to enable the existing coastal hazards provisions to operate; and*
- (c) give public notice of the fact that the existing coastal hazards provisions will continue to apply and identifying those existing coastal hazards provisions; and*
- (d) commence, under section 79 and Schedule 1 of the RMA, a review of the existing coastal hazards provisions."*

28. The Council has taken guidance from the approach set out in the Order, and in the week commencing 24 October will give public notice of the provisions of the ODP that Council considers continue to apply. A copy of this notice is attached to the affidavit of Ms Emily Thomson.

29. As I explain above, the Council's intention, communicated consistently and clearly since July 2014, is to undertake further coastal hazard work and, at the appropriate time, introduce a plan change to deal with those matters. However, for a range of reasons, but in particular the ongoing policy development in central and regional government, it is prudent for the Council to take a patient approach.

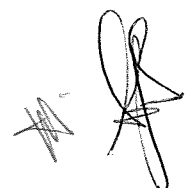
Nine examples cited by CRU

30. I have read the Affidavit of Ms Emily Thomson and, as a practising planner, I agree with her conclusion that the withdrawal process was appropriate and that any flow-on effects on the balance of the plan are minor, and not so significant that they should have been dealt with by way of a variation.

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Practical consequences should the declarations be granted

31. In her affidavit, Ms Emily Thomson concludes that the withdrawal process was appropriate, and any flow-on effects from the withdrawal of 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.
32. However, Ms Thomson also describes, from a technical perspective, potential remedies if the Court is minded to grant the declarations as sought. In summary, these are:
- (a) that, where there is scope through submissions, certain provisions could be deleted through the PDP process;
 - (b) if a provision cannot be deleted through the PDP process, then the Council could withdraw that provision under clause 8D of Schedule 1 to the Resource Management Act 1991 ("**RMA**"); and/or
 - (c) where the Court considers that affected parties should be able to submit and be heard on a particular change due to a withdrawn provision, then the Council could accommodate that through the PDP process.
33. I agree with Ms Thomson's assessment and her suggested remedies.
34. In terms of (a), as Ms Thomson notes, a number of the provisions cited by CRU are already recommended for deletion in the section 42A report.
35. In terms of (c), if necessary, the Council could notify affected parties and allow late submissions on these provisions. A special hearing could then be held, if any submitters wish to be heard on those submissions. Based on my experience through the current hearings process I would expect that this would take two months from notification to hearing, with the hearing itself taking one day.
36. At the last Council meeting of the triennium on 29 September 2016, Council extended the PDP Hearings Panel delegations and appointments to 30 April 2017. This provides ample time to resolve issues through the current PDP hearings process.

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37. If there are changes to the PDP resulting from this process, the Council would also need to consider whether these changes would cause any integration issues with the rest of the PDP. I am confident that any such issues could be dealt with by the Hearings Panel, just as they will do through the upcoming integration hearing on 13 December 2016.

SWORN at

this 25th day of October 2016

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Sarah Jane Stevenson

before me:



A Solicitor of the High Court of New Zealand
Nicola Coulston
Solicitor
Paraparaumu