

**BEFORE THE ENVIRONMENT COURT
WELLINGTON**

ENV-2016-WLG-

UNDER	Section 311 of the Resource Management Act 1991
AND	
IN THE MATTER	of an application for declarations
BETWEEN	Coastal Ratepayers United Inc Applicant
AND	The Kapiti Coast District Council Respondent

Affidavit of Joan Edra Sterling Allin

Sworn 12 April 2016

Solicitor on the record: Chris Mitchell
PO Box 499 Waikanae

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I, **JOAN EDRA STERLING ALLIN**, of Te Horo Beach, Retired, ~~AFFIRM~~ ^{Solemnly swear:}



Introduction

1. My full name is Joan Edra Sterling Allin.
2. I have been:
 - a. a senior lecturer in law at Victoria University of Wellington;
 - b. a resource management partner at Chapman Tripp;
 - c. an independent hearings commissioner; and
 - d. a judge of the Environment Court - Principal Environment Judge and then an alternate Environment Judge.
3. I am retired now.
4. My degrees are BA (Hon), LLB and LLM. My LLM thesis was on public participation in the environmental assessment process.
5. I was the lawyer on the four-person Core Group that directed the Resource Management Law Reform (RMLR) process and reported to the then Minister for the Environment, Geoffrey Palmer (now Sir Geoffrey). The RMLR process resulted in the Resource Management Bill first being introduced into Parliament. The Core Group was given a New Zealand Planning Institute award for its work.
6. In summary, I have decades of resource management experience and expertise.

Matters that I address

7. To provide the Court with the context within which the declarations occur, I provide a history of what has occurred in relation to the Proposed Kapiti Coast District Plan 2012 (PDP) and then deal with more recent facts. I do not address the declarations sought individually.
8. Links to more detailed information are provided so that the Court and others can access that information if they so wish. Accessing that information is not necessary to understand what I say in this affidavit.
9. In the afternoon of 7 April 2016, I received Minute 5 from the Hearings Panel¹ hearing submissions on the PDP when most of this affidavit had already been drafted. I therefore deal with Minute 5 as a separate matter near the end of the affidavit.

¹ The chairperson is Alistair Aburn. Independent Commissioners are David McMahon and Miria Pomare. Councillors sitting as Commissioners are Diane Amundsen and Mike Cardiff.



10. I deal with matters under the following headings (and paragraphs):

Further personal information, my links with CRU and my duty to the Court (paras 11-26)

Some background information about the PDP (paras 27-36)

The Allan/Fowler report (paras 37-64)

The Council's resolutions of 24 July 2014 - what was expected and what occurred (paras 65-74)

The Council's resolutions of 24 July 2014 include inconsistent resolutions (paras 75-76)

Inconsistent Council resolutions of 24 July 2014 as to what provisions of the PDP should be withdrawn (paras 77-117)

Inconsistent Council resolutions of 24 July 2014 as to whether a variation or a plan change was to be advanced (paras 118-126)

Coastal Advisory Group (CAG) is yet to be formed (paras 127-143)

Council officers' position that there is to be no variation (paras 144-186)

PDP Update Keeping you informed on progress - no announcement that there would be no variation (paras 187-194)

How the SEV deals with coastal hazard mitigation activities (paras 195-206)

River and stream mouth cutting provisions - withdrawn provisions have changed the effect of provisions in the PDP (paras 207-211)

Extent of the coastal environment and the related maps (paras 212-216)

What is happening to submitters (paras 217-243)

The 24 July 2014 Council resolutions based on the Allan/Fowler recommendations vs what has happened (paras 244-247)

Hearings Panel Minute 5 (paras 248-257)

Conclusion (para 258).

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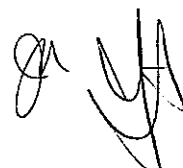
Further personal information, my links with CRU and my duty to the Court

11. I have been asked by counsel for Coastal Ratepayers United Incorporated (CRU) to provide this affidavit. I am providing this affidavit on a voluntary, unpaid basis.
12. For the past 27 years, my partner, Rob Crozier, and I (or our family trusts) have owned various Kapiti properties on an almost continuous basis. For the past 17 years, we have lived part-time (5 years) and then full-time (12 years) at Te Horo Beach. Our current property comprises two beachfront sections.
13. When we received a letter dated 25 August 2012 from the Kapiti Coast District Council (KCDC or Council) about a coastal hazards report having been done and coastal hazard information going on LIMs, we were not personally concerned as our property was not badly affected.
14. Rob and I lodged two submissions on the PDP, the first dealing with most of the PDP matters and the second dealing with coastal matters. We and the Allin Family Trust and the Crozier Family Trust also lodged a number of further submissions.
15. We sought wide-ranging general and specific relief in our submissions. Our submissions said:

"The more we look at the provisions, the more fish-hooks we seem to discover".
16. Our submissions did not seek that the PDP be withdrawn. I deal with this further under the next heading "Some background information about the PDP".
17. Paragraph 20 of the Evidence and Submissions that I have lodged with KCDC for all of the PDP hearings (Evidence and Submissions) says:

"In this document, I deal not only with matters that affect us personally but also with matters that do not affect us. Indeed, most of what I address doesn't affect us personally at all."
18. Most of my involvement with the PDP has been of a public service nature. From a practical perspective, there is little in the PDP that would adversely affect us personally. Because of my background and experience, I have felt a heavy self-imposed burden to:
 - a. try to help KCDC to get a good plan. I have tried to help Council staff in a number of ways²; and
 - b. help people in the community affected by a variety of matters.
19. I turn now to address my links with CRU.

² Paragraphs 33-46 of my Evidence and Submissions explain some.



20. Rob and I are members of CRU. Neither of us is on the CRU decision-making committee but I have attended meetings when I had relevant knowledge about a topic. CRU's motto of "Good science, good planning & good law" is consistent with our approach. I would also add "good process".
21. When I first heard, and read, about the outcry from Kapiti coastal people in relation to the Kapiti Coast Erosion Hazard Assessments done by Dr Roger D Shand of Coastal Systems Limited (CSL), I assumed that people were over-reacting. When I finally read the reports, I realised that they were not.
22. The CSL reports were not, in my opinion, prepared in accordance with the law. As a result, I offered to help CRU on a voluntary basis. Usually, my help was in the background and I did not always agree with what CRU did. I have made it clear to CRU that I do not and cannot provide legal advice.
23. I have provided varying levels of help to CRU on a range of matters including evaluating the appropriateness of the CSL reports; CRU's submission and further submission on the PDP; LIM³ and Building Act⁴ matters; meetings with Council staff; preparing for the independent Coastal Panel that considered the adequacy of the CSL reports; dealing with the terms of reference for the Coastal Advisory Group that was to be formed; and commenting on the Submitter Engagement Version, a non-statutory document released 2½ years after the PDP that included changes to the PDP that the Council officers were suggesting at that stage.
24. I have sought to make it clear in my dealings with Council officers and others that, unless stated otherwise, I do not speak on behalf of CRU or represent its position. I speak for myself and provide what my own opinion is, regardless of whether it happens to agree with what CRU or members of CRU say or wish to advance.
25. I confirm that I have read the Code of Conduct for Expert Witnesses and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.
26. Having said that, in light of the Court's expertise in legal matters, I have tended to avoid expressing an opinion and generally have worded the affidavit using different language. I hope that is acceptable to the Court. Nevertheless, I wish to confirm that I have completed this affidavit on the basis of an overriding duty to assist the Court impartially.

³ Mike and Veronica Weir sought judicial review in the High Court. CRU participated in the hearing. I was not closely involved with the High Court actions. Eventually, the Council stopped referring to the hazard lines on LIMs.

⁴ KCDC was using the CSL reports to put notices on titles under the Building Act. The Council eventually stopped doing that and reviewed all notices that had been put on titles and removed any that had been put on titles inappropriately.

Some background information about the PDP

27. The PDP and the process surrounding it have been fraught with difficulty from before the PDP was even notified.
28. I attended the 22 November 2012 Regulatory Management Committee meeting where the decision to notify the PDP was made. Having had a short opportunity to look at the draft on the website⁵, in my 3 minutes of public speaking time, I begged the Committee not to notify the PDP. My comments included the following:

"Please do not publicly notify this draft plan. Correcting errors and making changes are much more difficult once one is into the statutory process. Why not use this draft plan as a basis for consultation with the community, get some informal feedback, iron out the errors, get a handle on how likely it is that Dr Shand's lines could potentially occur in real life, get some legal advice about whether as a matter of law the precautionary principle has been given too much emphasis in the modelling, get some focus among the experts and affected people (many of whom are experts in their own right) and then have a publicly notified plan that will not get the Council mired in years of court battles? ...

Battling it out in court hardly seems productive or cost-effective. If ever there was a time for cups of tea and cool heads, now is the time. Otherwise, ratepayers are likely to be faced with yet another budget blowout from a project that started out as a district plan review and has now turned into a full-blown proposed district plan, seemingly with battle lines being formed and errors in the plan already identified. That is not constructive."
29. The more I looked at the detail of the PDP, the worse it became. I continued to discover more and more fish-hooks.
30. On 26 September 2013, in relation to what was going to be Hearing 1 for the PDP, I emailed KCDC attaching 121 pages of my detailed without prejudice draft evidence dated 25 September 2013⁶.
31. The text of my email was lengthy and set out a range of concerns about the PDP and the process that had been established at that stage for hearings. It included that:
 - a. the PDP was the worst plan that I had seen in my career - by a considerable margin;
 - b. there were so many things that needed to be fixed in the PDP that it seemed to me that it would be better to be dealing with them outside the legal process; and

⁵ Despite the fact that the PDP is a full review and a significant, and problematic, re-write of the operative District Plan, no draft was released seeking public comments. The draft was put on the website a short time before the decision was made to publicly notify the PDP.

⁶ I also emailed marked-up provisions of parts of Chapter 1 definitions, Chapter 2 objectives, Chapter 5 Living Environment, and various other provisions to certain Council officers.

- c. I had reached the conclusion that the PDP should be withdrawn and that the Council should act under clause 8D of Schedule 1 to the Resource Management Act 1991 (RMA) and withdraw the PDP.

- 32. I also forwarded the email to a number of other submitters.
- 33. The draft evidence was a trigger⁷ for a number of people to go to the Council meeting of 3 October 2013 and say that the PDP should be withdrawn.
- 34. One eventual outcome was that the Council appointed three coastal experts⁸ and a statistician (Coastal Panel) to review the science and assessments done by CSL. Their final report was issued in June 2014⁹. The Coastal Panel concluded that¹⁰:

"the hazard lines recommended by CSL are not sufficiently robust to be incorporated into the Proposed District Plan".
- 35. Another outcome was that Sylvia Allan and Richard Fowler QC were appointed to do an independent review of the PDP. Their report took into account the Coastal Panel's work and the final report *Independent Review of the Kapiti Coast Proposed District Plan* (Allan/Fowler report) was issued in June 2014¹¹.
- 36. Both processes included significant opportunities for submitters and others to participate. The Coastal Panel provided an opportunity for people to provide input in public to the Coastal Panel during a process that was similar to a Council hearing. Submitters and others could meet with one or both of the authors of the Allan/Fowler report. The coastal expert that CRU had engaged¹² participated in an experts' group as part of the Coastal Panel's process. The reports record the participation of a range of people, including myself¹³ and Christopher Ruthe, who is the chairperson of CRU.

The Allan/Fowler report

- 37. I discuss the Allan/Fowler report in some detail because understanding that report is critical to understanding the problems relating to the PDP that have arisen subsequent to the Allan/Fowler report, including:
 - a. inconsistent Council resolutions as to what coastal hazard provisions were to be withdrawn from the PDP;
 - b. the coastal hazard provisions that have been withdrawn from the PDP;
 - c. inconsistent Council resolutions as to whether a variation or a plan change is to be advanced; and

⁷ Not the only trigger.

⁸ Including two international experts.

⁹ Volume 1, tab 1.

¹⁰ Section ES.1 in the Executive Summary, not paginated.

¹¹ Volume 1, tab 2.

¹² Dr Willem de Lange.

¹³ In relation to the Allan/Fowler report, at the request of the authors.

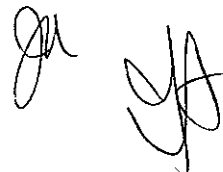
- d. Council officers' position that a variation to the PDP should now not be advanced.
38. There is reference in the Allan/Fowler report to coastal hazard management areas (CHMAs). To explain what CHMAs are:
- a. the C series maps in the PDP identified "Rural No Build", "Urban Relocatable Build" and "Urban No Build" areas as CHMAs;
 - b. Chapter 4 Coastal Environment had a section 4.2 headed "Coastal Hazard Management Areas"; and
 - c. Chapter 4 rules included, among other things, rules relating to the CHMAs.
39. The Allan/Fowler report records that Council's objective in commissioning their review was¹⁴:
- "to determine whether the plan should continue to be progressed through the hearings process, significantly changed, be withdrawn or some other process followed in order to best achieve the [stated] goal"*
- and the Council's stated goal was:
- "to have a District Plan that represents good practice, is comprehensible for users, is easily accessible and this is achieved fairly in the most cost effective [sic] way."*
40. The Allan/Fowler report considered a number of options.
41. Option 3 was to withdraw the PDP and recommence the review (i.e. regard the PDP as a draft)¹⁵.
42. Option 4 was to continue the PDP process, but modified so that the process efficiently addresses the plan as a whole, and drawing on the "basket of tools" available to the Council where improvements are needed that are beyond the scope of submissions.¹⁶
43. Their conclusion was¹⁷:
- "We have concluded that Option 4 ... is the preferred option, although by a relatively narrow margin over Option 3."*

¹⁴ Pages i and 1.

¹⁵ Page iii, see also page 40.

¹⁶ Page iii, see also pages 41-42.

¹⁷ Page 42.



44. The recommendations of the Allan/Fowler report are¹⁸:

- "1. The Council proceed with the PDP on the basis of a modified process of hearing and making decisions which includes all elements set out in section 5.5 of this report.
2. A detailed implementation plan including resourcing and timetable is developed to progress the PDP in accordance with recommendation 1. A communications plan to keep the community informed would be a necessary part of the implementation.
3. The Council undertake a detailed review of the rules of the PDP having legal effect and clarify these provisions as soon as possible.
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.
5. The Council develop an implementation plan to progress work on the coastal erosion hazard assessment, and other aspects of coastal hazard management. The implementation should build on the work already done and incorporate adequate and appropriate communications and consultations provisions, including a role for an advisory group as described in section 6.4 of this report.
6. At an appropriate time (or times) the Council proceeds with a variation (or variations) to include suitable and relevant policy, methods and rules in the PDP to address the district's coastal hazards in accordance with the NZCPS, the RPS and best practice.
7. The Council only withdraw the whole of the PDP if it is unable to resource the methods we recommend for proceeding through Option 4, or if it considers the residual risks ... are too high."

45. I deal with some aspects of their recommendations next and I address them more fully in later sections of the affidavit.

46. Recommendation 1 refers to section 5.5 of their report, which includes¹⁹:

"We envisage Option 4 being undertaken on the basis of a tightly-managed process with the following elements:

- a small tight, appropriately skilled and experienced, technical team...
- all Section 42A reports and a tracked changed officer's recommended version of the complete PDP should be available to all a reasonable time (say six weeks) prior to commencement of hearings.

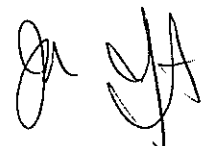
¹⁸ Page 54.

¹⁹ Pages 43-44.

- further use of alternative resolution methods (prehearings, negotiations) following release of Section 42A reports, as appropriate.
 - careful organisation of the hearing process around topics, ...".
47. Recommendation 2 refers to a detailed implementation plan and timetable as well as a communications plan to keep the community informed.
 48. In terms of timetable, Annexures A, B and C to Katharine Moody's affidavit are three timelines included in officers' reports to either the Council (Annexure A) or the Regulatory Management Committee (Annexures B and C).
 49. In terms of communications, 12 editions of *PDP Update Keeping you informed on progress* newsletters have been issued.
 50. Recommendation 3 is not relevant to coastal hazard matters.
 51. Recommendation 4 refers to the Council resolving 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".
 52. At page 51, the Allan/Fowler report said (footnotes omitted, emphases added):

"On the basis of the findings of the coastal erosion hazard assessment review we consider that the *Council should withdraw the coastal hazard management areas shown as the Map Series C of the PDP, along with the whole of the text under the heading 4.2 "Coastal Hazard Management Areas" including explanatory material and policies, as well as all rules which relate specifically to the mapped coastal hazard management areas. We propose this because, while the rules do not yet have legal effect, the policy does.*

An explanatory "placeholder" needs to be inserted instead which clarifies which provisions of the operative District Plan will remain in place *while a variation is prepared and processed to operative status to address the requirements of the NZCPS and the RPS...*".
 53. In summary, the Allan/Fowler report identified that the parts of the PDP that should be withdrawn were:
 - a. the coastal hazard management areas shown on the Map Series C of the PDP;
 - b. the whole of the text under the heading 4.2 "Coastal Hazard Management Areas" including explanatory material and policies; and
 - c. all rules which relate specifically to the mapped coastal hazard management areas.



54. Apart from the maps, all of that information is in Chapter 4 Coastal Environment.
55. The explanatory place-holder about the operative District Plan was a "stop-gap" measure only until a variation to the PDP was prepared and processed to operative status to address the requirements of the New Zealand Coastal Policy Statement 2010 (NZCPS) and the Regional Policy Statement for the Wellington Region (RPS).
56. On page 52, the Allan/Fowler report says (emphases added):
- "The provisions in the operative District Plan that manage coastal hazards need to be identified and endorsed as the Council's current statutory planning framework for the coastal area until a variation is developed and notified.*
- However, this is insufficient to meet national and regional policy requirements, and will be based on seriously outdated science, so the Council must proceed with work towards a variation while other work on the PDP is progressed.*
- A framework, timetable and budgetary allocation will be necessary. We strongly recommend the involvement of an advisory group in all steps of investigations, community engagement, and the development of policy and replacement plan provisions."
57. Recommendation 5 is to develop an implementation plan to progress work on the coastal erosion hazard assessment and other aspects of coastal hazard management. The implementation plan should:
- a. build on the work already done; and
 - b. incorporate adequate and appropriate communications and consultation provisions, including a role for an advisory group as described in section 6.4 of the Allan/Fowler report.
58. Section 6.4 includes (footnotes omitted, emphases added)²⁰:
- "This should be done at an early stage in the implementation plan for progressing with the PDP. We consider that the Council should establish an advisory group to help it progress both the science advice, the problem definition and the policy development, including the consideration of alternative responses to the problems identified from the continued science advice. The advisory group should include representation of local people and businesses as well as agencies such as DoC and GWRC. The advisory group should work closely with the Council on all aspects, including advising on methods for engagement with affected people and other stakeholders at various stages of the processes.*
- Continued work on coastal hazards should be considered to be a high priority and not "parked". The current hazard lines in the operative*

²⁰ Page 51.

District Plan are understood to largely date from the Kāpiti Borough District Scheme, which was made operative in 1981, with modifications around the Waikanae Estuary included at some time prior to 1995. While a necessary stop-gap, their extent is highly likely to be found to be inadequate as a basis for a variation to the PDP to meet national policy expectations and good practice. The default provision of setback lines elsewhere in the operative District Plan may prove sufficient in other areas, but require testing, and their purpose (which may be a multiple purpose) clarified."

59. In summary, that section of the report says that:
- a. at an early stage, Council should establish an advisory group, including local people;
 - b. continued work on coastal hazards should be considered to be a high priority and not "parked";
 - c. current hazard lines in the operative District Plan are understood to largely date from a document that was made operative in 1981 with some modifications around the Waikanae estuary some time prior to 1995; and
 - d. the lines are highly likely to be found to be inadequate as a basis for a variation to the PDP to meet national policy expectations and good practice.
60. Recommendation 6 is straightforward i.e. proceed with a variation (or variations) to deal with coastal hazards. There is no reference to a plan change.
61. The variation is to include suitable and relevant policy, methods and rules in the PDP to address the district's coastal hazards in accordance with the NZCPS, the RPS and best practice.
62. Recommendation 7 deals with Option 3 vs Option 4. The Council should only withdraw the whole of the PDP (Option 3) if it:
- a. is unable to resource the methods they recommend for proceeding through Option 4 (i.e. all of the previous recommendations); or
 - b. considers the residual risks²¹ are too high.
63. The recommendation to proceed with Option 4 rather than Option 3 was based on all of the recommendations above being fulfilled.
64. The Council's decision to continue with the PDP rather than withdraw it was based on the Allan/Fowler report's recommendations.

²¹ Identified in section 5.6 of the Allan/Fowler report.

The Council's resolutions of 24 July 2014 - what was expected and what occurred

65. In general, I consider that submitters:
- a. expected that the Council would adopt the recommendations of the experts that it had engaged; and
 - b. were generally content with that.
66. The lack of protest in relation to the Council's resolutions is a demonstration of that. The Allan/Fowler report for Option 4 was a package of recommendations that needed to be implemented for Option 4 to work. Otherwise, Option 3 should be adopted. The officers had four months to consider submissions, and the officers' ability to achieve the suite of recommendations, before a Go/No Go decision on Options 3 or 4 was to occur in November 2014.
67. From my perspective, having said that the PDP should be withdrawn, I felt that the Council had done the right thing by engaging senior experts to address the issue. While I remained of the view that Option 3 was the preferable option, I respect those experts and their opinions. They had come up with a suite of recommendations for the Council to follow and I did not say anything further publicly about it.
68. All KCDC had to do was to follow the Allan/Fowler report's recommendations.
69. Council's resolutions of 24 July 2014²² endorsed the Allan/Fowler report and the Coastal Panel's report and adopted the reports' recommendations.
70. The first resolution relates to the Allan/Fowler report:
- "That the Council, in relation to the report "Independent Review of the Kapiti Coast Proposed District Plan" [the Allan/Fowler report] (Attachment 2 to Report SP-14-1253):
- (a) endorse the Independent report; and
 - (b) adopt its recommendations 1 to 6 being:
 1. The Council proceed with the PDP on the basis of a modified process of hearing and making decisions which includes all elements set out in section 5.5 of this report.
 2. A detailed implementation plan including resourcing and timetable is developed to progress the PDP in accordance with recommendation 1. A communications plan to keep the community informed would be a necessary part of the implementation.

²² The relevant resolutions are under the heading "KCDC 14/06/128 PROPOSED DISTRICT PLAN INDEPENDENT REVIEWS AND WAY FORWARD (SP-14-1253)" available at <http://www.kapiticoast.govt.nz/contentassets/fa4306d86d704b6eb55ecea81c26d5c2/24-july-2014/council-minutes-24-july-2014.pdf>.



3. The Council undertake a detailed review of the rules of the PDP having legal effect and clarify these provisions as soon as possible.
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.
5. The Council develop an implementation plan to progress work on the coastal erosion hazard assessment, and other aspects of coastal hazard management. The implementation should build on the work already done and incorporate adequate and appropriate communication and consultation provisions, including a role for an advisory group as described in section 6.4 of this report.
6. At an appropriate time (or times) the Council proceeds with a variation (or variations) to include suitable and relevant policy, methods and rules in the PDP to address the district's coastal hazards in accordance with the NZCPS, the RPS and best practice"; and

(c) adopt Option 4 (continuation of the Proposed District Plan process) but reserve the ability to invoke Option 3 (withdraw the PDP) once further analysis of all submissions have [sic] been completed in November 2014."

71. The next resolution related to the Coastal Panel's report:

"That the Council, in relation to the report "Coastal Erosion Hazard Assessment for the Kapiti Coast: review of the science and assessment undertaken for the Proposed Kapiti Coast District Plan" (Attachment 1 to Report SP-14-1253):

- (a) endorse the Coastal report; and
- (b) adopt the report's recommendations in full."



72. The third resolution is not stated to be linked to either report but it is apparent that it is related to the Allan/Fowler report²³ and resolution (b) 5 above in relation to the Allan/Fowler report:

"That the Council endorse the formulation of a Coastal Advisory Group (CAG) with membership from key statutory agencies, neighbouring councils, submitters, coastal land owners and community representatives with an independent chair.

That staff develop a draft terms of reference for the Coastal Advisory Group and identify the skills / attributes of potential group members for Council consideration."

73. All of these resolutions were carried.
74. At paras 244-247, I return to the Council's 24 July 2014 resolutions that were based on the Allan/Fowler report's recommendations and address how well the resolutions have been implemented.

The Council's resolutions of 24 July 2014 include inconsistent resolutions

75. I have only discovered within the last week or so (and after Katharine Moody's affidavit was sworn) that there are inconsistent resolutions resulting from the 24 July 2014 Council meeting both as to:
- a. what provisions of the PDP should be withdrawn; and
 - b. whether a variation or a plan change was to be advanced.

76. I deal with the relevance of these in the following two sections, respectively.

Inconsistent Council resolutions of 24 July 2014 as to what provisions of the PDP should be withdrawn

77. The relevant parts of the inconsistent resolutions of the Council are:

"MOVED (Gaylor/Cardiff)

That the Council, in relation to the [Allan/Fowler report]:

...

(b) adopt its recommendations 1 to 6 being: ...

- 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...

CARRIED"²⁴

²³ The Coastal Panel's report had not made any such recommendations but section 6.4 of the Allan/Fowler report did at page 51.

²⁴ Pages 6-7.

and

"MOVED (Gurunathan/Elliott)

That Council

a) agree to formally withdraw the following provisions of the Proposed District Plan, including all related objectives, policies, rules, map layers, definitions and references:

- Coastal Hazards
- Hazardous Facilities
- Priority Areas for Restoration. ...

CARRIED²⁵.

78. Removing all objectives, policies, rules, map layers, definitions and references to coastal hazards was not what the Allan/Fowler report recommended.
79. But it is what has happened.
80. It seems that Council officers misunderstood the recommendations of the Allan/Fowler report as the resolutions passed by the Council were included in the officer's report to the Council. I return to this after explaining why the error regarding what was withdrawn from the PDP was not immediately apparent.
81. In June 2015, the Council released a non-statutory document "Submitter Engagement Version" (SEV) for discussion purposes. It showed the officers' then thinking as to what changes should be made to the PDP in strike through and underlining in terms of responses to submissions or minor corrections (not withdrawals).
82. The SEV did not show the withdrawn provisions by strike through. Instead, the withdrawn provisions were omitted completely from the SEV. So, one would only be able to discover any problem relating to the withdrawn provisions by looking at the PDP, but for practical purposes the SEV was the document that everyone was focussed on, not the PDP.
83. Until I read the draft evidence of Katharine Moody that she had prepared for the General/Plan-wide hearing that started on 4 April 2016, I had not realised that the Council had withdrawn provisions beyond those recommended in the Allan/Fowler report i.e.:
 - a. the coastal hazard management areas shown on the Map Series C of the PDP (so the CHMAs on identified maps);
 - b. the whole of the text under the heading 4.2 "Coastal Hazard Management Areas" including explanatory material and policies (in Chapter 4); and

²⁵ Page 9.

- c. all rules which relate specifically to the mapped coastal hazard management areas (also in Chapter 4).

84. A letter dated 30 October 2014 from KCDC to Rob and me says:

"The purpose of this letter is to advise you, as a submitter to the Proposed District Plan (PDP), that the Council has withdrawn parts of the PDP relating to

- Coastal Hazard Management Areas
- Hazardous substances and facilities
- Priority areas for restoration.

The withdrawals affect some objectives, policies, rules and map layers...

Background to withdrawal

The withdrawals have been undertaken as a direct result of the two independent reviews the Council commissioned of the PDP..."

85. There was nothing in that letter to cause any concern in terms of any deviation from Option 4 and the Allan/Fowler report's recommendations.
86. I discovered in February this year that, in various Chapter 4 rules²⁶, KCDC has withdrawn reference to the CHMAs to which the rule applied but otherwise left the rule intact.
87. The result is that those rules in the PDP as notified that only applied in certain CHMAs (or outside certain CHMAs) now purport to apply in different, or wider, areas.
88. That was done by withdrawal, not by a variation, so people had no opportunity to submit on such an alteration to the PDP as notified.
89. There seems to have been no consideration by KCDC when withdrawing only the references to the CHMAs in those rules in Chapter 4 as to what areas the rule originally applied to and whether there was scope for such a rule to apply to a different area.
90. In addition, it seems that virtually all references to coastal hazards or coastal erosion have been withdrawn from the PDP. Katharine Moody's affidavit deals with this at paras 36-52.

²⁶ Rules 4A.2.1, 4A.3.1, 4A.3.2, 4A.3.3, 4A.4.1, 4A.5.4.

91. The withdrawal of provisions has even extended to misrepresenting Policy 1 of the NZCPS. Section 4.1 Coastal Environment of the PDP now states (pages 4-1 - 4-2):

"Policy 1 of the NZCPS 2010 states that the extent of the *coastal environment* varies from region to region. The *coastal environment* includes the coastal marine area and islands within the coastal marine area, as well as areas where coastal processes, influences or qualities are significant, ~~areas which are at risk from coastal hazards,~~ inter-related coastal marine and terrestrial systems ...".

92. Policy 1(2) of the NZCPS states that the coastal environment includes:

"(d) areas at risk from coastal hazards".

93. Having now come to realise that the withdrawals from the PDP extended well beyond what was recommended in the Allan/Fowler report, I have gone back over at least some of the relevant officers' reports to Council and the Regulatory Management Committee and resolutions that were passed to try to understand how things could have gone so badly wrong.
94. The problem seems to have arisen in the officer's report²⁷ to the 24 July 2014 Council meeting. The officer's report was prepared by Darryl Lew, Environmental Planning Manager at KCDC²⁸.
95. Mr Lew joined KCDC in April 2014 after having worked for several years in the Middle East²⁹.
96. So he had not been at KCDC while the PDP was prepared or during the previous 2 years while all the controversy about the CHMAs had been occurring.
97. The officer's report refers to the two independent reports and says³⁰:

"3 ... the contents of this report represents [sic] critical decisions for this Council and the Community, ...

7 Staff have undertaken a thorough review of both reports and as a result have drafted this report to enable Council to make key decisions on the way forward for the PDP process."

²⁷ Available at

<http://www.kapiticoast.govt.nz/contentassets/fa4306d86d704b6eb55ecea81c26d5c2/24-july-2014/1316-13-kcdc-or-proposed-district-plan-independent-reviews-and-way-forward-sp-14-1253.pdf>. I explain the relevance of Attachment 6 to the report in the next section of my affidavit. The attachments are at

<http://www.kapiticoast.govt.nz/contentassets/fa4306d86d704b6eb55ecea81c26d5c2/24-july-2014/1316-13-kcdc-app-1-6-sp-14-1253.pdf>.

²⁸ The report was approved for submission by Stephen McArthur, Group Manager Strategy & Partnerships and Sharon Foss, Acting Group Manager Regulatory Services.

²⁹ PDP Update Keeping you informed on progress Edition 1 explains Mr Lew's background.

³⁰ Page 1.

98. The officer's report says (*italics and underlining of the heading original, underlining of the text added*)³¹:

"Coastal Hazard Provisions"

- 8 The key finding of the Independent Coastal Hazard Review Panel at Page 51 of the final Coastal report is as follows:

"The opinion of the Panel based on its review is that the existing recommended hazard lines are not sufficiently robust for incorporation into the Proposed District Plan..."

- 10 As a result of this Coastal report Council staff recommend the formal withdrawal of the coastal hazard provisions of the PDP.

- 12 Given that the full withdrawal of all coastal hazard provisions will result in a new RMA Schedule One [sic] process in respect of these provisions, staff support the recommendation of the Independent Panel to formulate a "Coastal Advisory Group" (CAG) comprised of ...".

99. It seems that the reference to the "full withdrawal of all coastal hazard provisions" might have been the beginning of the misunderstanding as to what provisions should be withdrawn.
100. The recommendations in the report included the two conflicting resolutions that the Council ultimately passed.
101. Later, the 2 October 2014 meeting of the Regulatory Management Committee dealt with matters relevant to the PDP including withdrawal of provisions and maps.
102. The Minutes³² record that Environmental Planning Manager Darryl Lew introduced new planner Katherine Dorofaeff³³. She also had not been at KCDC during preparation of the PDP or during the controversy.³⁴
103. Ms Dorofaeff had prepared a report Proposed District Plan Withdrawal of Provisions and Maps³⁵.

³¹ Pages 1-2.

³² Available at

<http://www.kapiticoast.govt.nz/contentassets/fa7a612c966e4fe99d0ace10d78705a3/2-october/rmc-minutes-2-oct-2014.pdf>.

³³ Page 4.

³⁴ *PDP Update Keeping you informed on progress Edition 1*, released in August 2014, said that she "is joining the council as a Principal Planner to work on the PDP." She is no longer the chapter lead for the chapters she was working on in the PDP and is no longer at KCDC.

³⁵ Available at

<http://www.kapiticoast.govt.nz/contentassets/fa7a612c966e4fe99d0ace10d78705a3/2-october/1316-06-rmc-or-proposed-district-plan-withdrawal-of-provisions-and-maps-sp-14-1327.pdf>. Approved for submission by Stephen McArthur, Group Manager, Strategy and Partnerships.

104. There are contradictions in the report and its attachment as to what is occurring in relation to withdrawal of coastal hazard provisions.

105. The report says (italics added)³⁶:

"Coastal Hazard Management Areas

- 9 Recommendation 4 of the [Allan/Fowler report] advised that 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 ...*
- 11 Council staff and their planning consultants *have reviewed in detail the entire PDP and have identified all the provisions associated with Coastal Hazards. A summary of the sections of the PDP affected is contained in Attachment 1.*"

106. The recommendation in the officer's report was³⁷:

"That, in accordance with Clause 8 of Schedule 1 of the RMA, and as generally outlined in Attachment 1, the Committee resolve to withdraw from the Proposed District Plan those parts of the maps, objectives, policies, and rules relating to:

- Coastal Hazard Management Areas
- Hazardous substances and facilities
- Priority Areas for Restoration".

107. The Minutes record³⁸:

"Darryl Lew introduced this paper and spoke of its significance as a key milestone in the Proposed District Plan process. Mr Lew referred to attachment one of the paper, confirming that this was not an extensive list, but a summary of the withdrawn provisions and there has been detailed work on the strike through provisions which will appear as a public notice ...".

108. The Minutes also record that the following discussion points were raised³⁹:


- "A lot of work has been done to ensure that "all" objectives, policies, rules and map layers for withdrawal have been identified. If any have been inadvertently missed, it will be addressed.
...
- The areas to be withdrawn have come from the independent review...".

³⁶ Page 2.

³⁷ Page 6.

³⁸ Page 4.

³⁹ Page 5.



109. From my knowledge of the Allan/Fowler report, the withdrawals summarised in Attachment 1 to the officer's report extend well beyond the recommendations of the Allan/Fowler report. The Allan/Fowler report recommendations relate only to certain provisions of Chapter 4 and the Series C maps.
110. However, the Attachment 1 summary for "COASTAL HAZARDS" refers to substantive withdrawals in Chapters 1, 2, 4 (beyond what the Allan/Fowler report recommended for Chapter 4), 9, and 11. The Allan/Fowler report did not recommend any of those withdrawals.
111. The resolution passed by the Regulatory Management Committee on 2 October 2014 was⁴⁰:
- "That, in accordance with Clause 8 of Schedule 1 of the RMA, and as generally outlined in Attachment 1, the Committee resolve to withdraw from the Proposed District Plan those parts of the maps, objectives, policies and rules relating to:
- Coastal Hazard Management Areas
 - Hazardous substances and facilities
 - Priority Areas for Restoration."
112. Consequently, relying on that Attachment 1, almost all references to coastal hazards or coastal erosion were withdrawn from the PDP, allegedly based on the Allan/Fowler report recommendations.
113. While the recommendation on page 54 of the Allan/Fowler report was worded in general terms, the report had earlier stated in more detail on page 51 of Section 6.4 "The Way Ahead" that:
- "... the Council should withdraw the coastal hazard management areas shown as the Map Series C of the PDP, along with the whole of the text under the heading 4.2 "Coastal Hazard Management Areas" including explanatory material and policies, as well as all rules which relate specifically to the mapped coastal hazard management areas."
114. I am not aware of any consultation with coastal submitters about the Council withdrawing much more than the Allan/Fowler report recommended. No one has consulted me.
115. The withdrawals deprive submitters of scope to address coastal hazard matters in relation to the withdrawn provisions.
116. But the approach taken by KCDC leaves in place other general provisions of the PDP that continue to address relevant matters in terms of hazard mitigation activities such as Chapter 3 Natural Environment provisions about landscape, natural character, ecological sites, and earthworks rules, Chapter 8 Open Space and Chapter 9 Hazards.

⁴⁰ Page 5.



117. Many coastal submitters are unlikely to have standing to address or appeal some or all of the relevant matters in those chapters, especially in relation to Chapter 8, the zone chapter for the Open Space (Conservation & Scenic) Zone that runs along the coast. The focus of many coastal submitters was on Chapter 4 which addressed coastal hazard matters, not the wider general provisions of the PDP which did not.

Inconsistent Council resolutions of 24 July 2014 as to whether a variation or a plan change was to be advanced

118. The inconsistent Council resolutions as to whether a variation or a plan change was to be advanced are:

"MOVED (Gaylor/Cardiff)

That the Council, in relation to the [Allan/Fowler report]:

...

(b) adopt its recommendations 1 to 6 being: ...

6. At an appropriate time (or times) the Council proceeds with a variation (or variations) to include suitable and relevant policy, methods and rules in the PDP to address the district's coastal hazards in accordance with the NZCPS, the RPS and best practice; ...

CARRIED⁴¹

and

"MOVED (Ammundsen/Bell)

That the Council endorse the Option 4 Implementation Plan (Attachment 6 to Report SP-14-1253) ...

CARRIED⁴².

119. Attachment 6 to Report SP-14-1253 is Annexure A to Katharine Moody's affidavit. It refers to "Proposed Coastal Plan Change as Per Schedule One Process (2 Year Process)".
120. As the Court is aware, there is a critical difference in meaning in the RMA between "variation" and "change"⁴³.
121. One can only speculate as to why the officer's attachment, and ultimately in effect the Council's resolution, referred to "... Plan Change ...".
122. Whatever the reason, it is clear in the context that the reference to "... Plan Change ..." is erroneous. It seems that the erroneous reference to "... Plan Change ..." has developed a life of its own by being provided in officers' reports to the Regulatory Management Committee.

⁴¹ Pages 6-7.

⁴² Page 9.

⁴³ Ss 2 and 43AA define both terms.

123. There is nothing in any of the KCDC documents that I have read where officers have advised the Council or the Regulatory Management Committee that the officers had erroneously referred to "... Plan Change ..." as being in accordance with the Allan/Fowler report.
124. A plan change is not in accordance with the Allan/Fowler report's recommendations or progressing Option 4. The Allan/Fowler report was clear that a variation to the PDP is what they recommended.
125. Furthermore, Sylvia Allan's letter dated 28 May 2015 to KCDC stated (emphasis added)⁴⁴:

"As far as I am aware, no additional aspects have been identified where variations will be needed beyond those identified in our original report (referring to coastal hazards ...) ...".

126. Her letter demonstrates that her view as to a variation to the PDP to deal with coastal hazards had not changed.

Coastal Advisory Group (CAG) is yet to be formed

127. As already discussed at paras 44 and 57-59, recommendation 5 of the Allan/Fowler report referred to progressing work on coastal erosion hazard assessments and a role for an advisory group as described in section 6.4 of the Allan/Fowler report.

128. Section 6.4 included (emphasis added)⁴⁵:

"This should be done at an early stage in the implementation plan for progressing with the PDP. We consider that the Council should establish an advisory group ...

Continued work on coastal hazards should be considered to be a high priority and not "parked"."

129. The Council's 24 July 2014 resolution that was passed stated⁴⁶:

"That the Council endorse the formulation of a Coastal Advisory Group (CAG) with membership from key statutory agencies, neighbouring councils, submitters, coastal land owners and community representatives with an independent chair.

That staff develop a draft terms of reference for the Coastal Advisory Group and identify the skills / attributes of potential group members for Council consideration."

130. Draft terms of reference were developed by Council officers.

⁴⁴ Volume 3, tab 5.

⁴⁵ Page 51.

⁴⁶ Page 8.

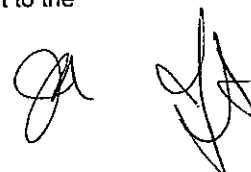


131. On 10 October 2014, Darryl Lew emailed me a copy for my comments. I responded on 13 October 2014 with a range of concerns about the draft.
132. On 6 December 2014, there was a meeting with some CRU members and another person to discuss an alternative approach to that in the KCDC terms of reference.
133. I was given the task of contacting Darryl Lew to explain our 4-stage approach and to seek feedback from him. On 8 December 2014, I rang him and he was enthusiastic.
134. Later that day, I sent an email reporting back to the group. I copied Mr Lew into the email "to ensure that I have correctly conveyed our conversation."
135. The email included:

"I said to Darryl that we were revising our earlier draft and that once we've sent it to him, we would like the opportunity to sit down and discuss it with Stephen and him. Darryl agrees with that approach.

Darryl asked me to convey that he is 100% on the same page on the direction we discussed, with perhaps a few nuances around the edges (and I think we would also agree that there are some nuances that remain to be addressed). He said that he is excited that we are heading in this direction."
136. Mr Lew never disagreed with the email.
137. CRU sent to KCDC a document dated 13 December 2014 "Strategy for identifying coastal erosion hazards on the Kapiti Coast and developing PDP provisions to manage them". That document is Annexure D to Katharine Moody's affidavit.
138. The document sought to provide a more cost-effective, efficient and focussed approach to identifying the areas at risk from coastal hazards. It would enable the work to be carried out in a shorter timeframe and at less cost than the KCDC approach.
139. There was a meeting on 9 February 2015 between the small group and Darryl Lew and Stephen McArthur, who was Mr Lew's superior.
140. Based on my recollection and my record of meetings with Mr Lew and Stephen Daysh (a consultant who, at that time, was helping to manage the PDP process), in May 2015 I said to Mr Lew that he needed to progress CAG.
141. I suggested that, if he was too busy, someone else eg a consultant could take over that piece of work⁴⁷. My recollection is that he said that the work was important so he should keep control of it.
142. Mr Lew resigned in August 2015 and left KCDC in September 2015.

⁴⁷ A consultant, Robert Schofield, had been engaged by KCDC to deal with the Coastal Panel's work. There are numerous consultants engaged in various matters relevant to the PDP, and the PDP itself. My suggestion was not novel.



143. No final terms of reference have been developed, no CAG has been established, no relevant coastal work has been commissioned, and now Council officers have taken the position that no variation to the PDP is to be advanced.

Council officers' position that there is to be no variation

144. It was not until the Hearing Panel's Minute 3 (dated 10 March 2016), that I finally knew with certainty that Council officers had no intention of notifying a variation to the PDP to deal with coastal hazard matters.
145. Attachment 2 to the Panel's Minute 3 states:

"Question

Has the Hearings Panel been advised of any variations to the PDP?

Answer

Yes, the Urban Tree Variation which was notified on 4 September 2015. The Hearings Panel will hear the submissions/further submissions on this Variation. The hearing schedule incorporates the necessary time.

Question

How many variations have been signaled to the Hearings Panel?

Answer

Aside from the Urban Tree Variation, there are no other Variations that the Hearings Panel is aware of. The understanding is that no other Variations are proposed at this time."

146. Much earlier, I had become aware that Council officers had in mind that the PDP could become operative and that provisions from the current operative District Plan could also remain in place. I considered that what they were considering was fraught and thought that they would eventually realise that too.
147. Furthermore, I was not aware of any Council resolution to abandon its 24 July 2014 resolution to progress a variation. I have since looked for such a resolution and have been unable to find one.
148. Katharine Moody's affidavit (paras 20-23 and Annexure A, para 27 and Annexure B, and para 28 and Annexure C) deals with the timelines provided in officers' report to the Council or the Regulatory Management Committee.
149. The PDP Implementation Plans provided to the Regulatory Management Committee up to April 2015 include the erroneous reference to "... Plan Change ...".



150. After that, the reference to CAG and "... Plan Change ..." disappeared.
151. I have looked at the officers' reports to the Regulatory Management Committee around that time to determine whether the Committee was told about any significant change in approach away from a variation.
152. There was no May 2015 meeting of the Committee.
153. The officer's report⁴⁸ for the 11 June 2015 Regulatory Management Committee meeting says that the report is for information purposes and does not seek a decision. The report refers to the Council having (on 24 July 2014) chosen Option 4 which is "to continue with a modified PDP process which addresses the Plan as whole using the 'basket of tools' available to the Council."
154. "Basket of tools" is the term used in the Allan/Fowler report to include withdrawals, minor corrections and variations⁴⁹.
155. There was no timeline attached to that officer's report.
156. That officer's report states:
- "13 The PDP is now in the statutory phase between close of submissions and commencement of hearings. As the PDP process has already been adopted by Council this report has a low degree of significance."
157. The officer's report⁵⁰ for the 23 July 2015 Regulatory Management Committee meeting included Annexure C of Katharine Moody's affidavit. That PDP Implementation Plan does not include reference to "... Plan Change ..." or CAG.
158. Like the earlier report, the 23 July 2015 officer's report says that the report is for information purposes and does not seek a decision. It also refers to the Council having, on 24 July 2014, chosen Option 4, the modified PDP process which addresses the Plan as a whole and the basket of tools.
159. It states:
- "12 The PDP is now in the statutory phase between the close of submissions and commencement of hearings. As the PDP process has already been adopted by the Council this report has a low degree of significance."
160. So while CAG and the reference to "... Plan Change ..." had been removed from the PDP Implementation Plan, the officer's report did not draw anything to the Committee's attention.

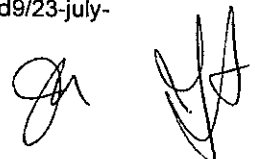
⁴⁸ Available at

<http://www.kapiti.coast.govt.nz/contentassets/4b1d15bc9b1e4a2db84b6647d0b36cd9/11-june-2015/1316-rmc-or-june-update-on-the-proposed-district-plan-sp-15-1587.pdf>.

⁴⁹ Pages iii, 35-36.

⁵⁰ Available at

<http://www.kapiti.coast.govt.nz/contentassets/4b1d15bc9b1e4a2db84b6647d0b36cd9/23-july-2015/sp-15-1615-july-2015-update-on-the-proposed-district-plan.pdf>.



161. The Minutes⁵¹ of that 23 July 2015 meeting record that Christine Foster was introduced to the committee:

"to clarify coastal hazards Section 32 which she confirmed they have been receiving feedback on. This will be analysed, with issues collated, then a Section 32 completed."

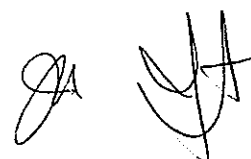
162. While the Minutes were confirmed at the next meeting, it is apparent that the Minutes are incorrect. I had dealings with Christine Foster at that time and it was the urban trees variation, not coastal hazards, that she was working on. The quote appears following references to discussion about the urban trees variation, but just before a reference to an advertisement that had been placed by CRU in the local paper. The advertisement by CRU was about the urban trees variation, not coastal hazards.
163. So there is no record of anything being brought to the Regulatory Management Committee's attention at that stage in relation to not advancing CAG or a variation, except if the Committee noticed the change in the PDP Implementation Plan.
164. An officer's report dealing with the PDP's readiness for hearing was prepared by Sue Powell, PDP Programme Director, for the 10 December 2015 Council meeting.
165. In the context of the quote set out in the next paragraph about Option 4 from that officer's report, it is relevant to recall the Allan/Fowler report's description of Option 4 in terms of continuing with a modified PDP process which addresses the plan as a whole (emphases added)⁵²:

"Option 4: continue the PDP process, but modified so that the process efficiently addresses the plan as a whole, and drawing on the "basket of tools" available to the Council where improvements are needed that are beyond the scope of submissions."

⁵¹ Available at

<http://www.kapiticoast.govt.nz/contentassets/4b1d15bc9b1e4a2db84b6647d0b36cd9/23-july-2015/rmc-minutes-23-july-2015.pdf>.

⁵² At page iii of the Allan/Fowler report.



166. The report⁵³ to the 10 December 2015 Council meeting states (emphases added)⁵⁴:

"BACKGROUND

- 3 On 24 July 2014, the Council chose Option 4 recommended by the [Allan/Fowler report]. This option *continues with a modified PDP process which addresses the Plan as a whole using the 'basket of tools' available to the Council.*

CONSIDERATIONS

Hearings Readiness

...

- 10 Officers have assessed the state of "readiness" in order to commence hearings. *The recommendations outlined in the independent review report [the Allan/Fowler report] have either been addressed, or are in the process of being addressed.* Officers see no impediment at this stage to commencing substantive hearings in April 2016.

...

- 12 *The formation of the Coastal Advisory Group (CAG) and further coastal hazard investigation work has not progressed, with the focus being on advancing the live aspects of the PDP through the hearings process. Also, with work occurring at central government and Greater Wellington Regional Council levels, further Kāpiti Coast District Council work should await the outcome of decisions that are yet to be made."*

167. In that report to Council, there is:

- a. no reference to coastal variation(s) not being advanced in accordance with the Council's 24 July 2014 resolutions;
- b. no recognition or explanation of the range of adverse consequences of not advancing CAG or variation(s); and
- c. reference to work occurring at central government and Greater Wellington Regional Council levels and that future KCDC work should await the outcome of decisions that are yet to be made. Further delays in CAG or a variation or plan change seem to be foreshadowed.

⁵³ Available at

<http://www.kapiticoast.govt.nz/contentassets/cf01c654cc79432b893c9abde77ef71d/10-december-2015/sp-15-1744-proposed-district-plan-pdp-readiness-report-for-hearings.pdf>.

Approved for submission by Kevin Currie, Group Manager, Regulatory Services and Stephen McArthur, Group Manager, Strategy & Partnerships.

⁵⁴ Pages 1-2.

168. Under Policy Considerations, that report states⁵⁵:

"16 The District Plan is the most significant RMA planning document for the Kapiti community and it is essential that a robust and fair hearings process is followed."

169. As I said earlier, I had become aware that Council officers had in mind that the PDP could become operative and that provisions from the current operative District Plan could also remain in place.

170. I had asked about what provisions of the operative District Plan the officers were referring to. It did not seem to me that the RMA provided for what they seemed to be contemplating.

171. On 29 January 2016 I sent a follow-up email to KCDC asking (among other things):

"Finally, if it is anticipated that the operative Plan provisions will continue to apply in relation to coastal hazards and mitigation activities once the PDP is operative, could you please let us know at your earliest convenience what precisely are those provisions (objectives, policies and rules)."

172. The response was:

"With regards to the Operative Plan provisions that continue to apply, information can be found at:

<http://www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/DPR-FAQs/#apply>".

173. The provisions from the operative District Plan relate to:

- a. unspecified Section C9 objectives and policies regarding the coast that the FAQs say address issues such as coastal amenity, natural character and hazards;
- b. yard setbacks - in the Residential Zone standards;
- c. relocatable buildings - in the Residential Zone standards with the areas shown on certain maps; and
- d. coastal yard setbacks - in the Rural Zone standards.

174. I noticed that no rules are to remain in place. There is also no reference to hazard mitigation activities that would occur in the Residential or Rural Zones and the Open Space Zone is not mentioned at all.

175. The FAQs say "Coastal hazards will continue to be addressed by the Operative District Plan while the coastal hazards research continues" but that conveys the impression that the PDP does not deal with coastal hazards, which is incorrect.

⁵⁵ Page 2.

176. There are chapters of the PDP as worded after the withdrawals that are relevant to coastal hazards although without mentioning coastal hazards, eg Chapter 2 Objectives, Chapter 3 Natural Environment (eg ecological sites, areas of high natural character, landscape, earthworks), Chapter 8 Open Space zone provisions, and Chapter 9 Hazards.
177. In the absence of Chapter 4 provisions which have been withdrawn, Chapter 8 Open Space zone provisions become critical for coastal hazard mitigation activities eg hard and soft engineering activities but the rules do not appropriately address those activities. The overlay provisions in Chapter 3 Natural Environment are also problematic for hazard mitigation activities.
178. KCDC seems to be contemplating having one District Plan (ie when the PDP becomes operative) plus some bits from the previous operative District Plan.
179. The notification of the PDP said that it "amends, and when made operative will replace, the objectives, policies, rules and standards, maps and appendices of the operative 1999 District Plan". So, when eg the Living Environment rules of the PDP become operative, they will replace the Residential Zone rules of the current operative District Plan. There will be no remaining Residential Zone rules in the current operative District Plan.
180. There will be no rules to which the setbacks or relocatable buildings standards⁵⁶ can be linked.
181. If rules are somehow retained, it does not seem that they will be compatible with those in the PDP. The operative District Plan refers to dwellings and family flats⁵⁷. The PDP refers to buildings, household units, primary residential buildings and minor flats⁵⁸, with the SEV recommending changes to the provisions and definitions. The definitions are not the same. Family flats in the operative District Plan are defined differently from minor flats in the PDP.
182. Katharine Moody's affidavit addresses the "composite" plan approach at paras 53-76 of her affidavit.
183. I cannot understand what exactly Council officers are purporting to do with this "composite" plan approach and, as a matter of law, how they are purporting to do it.
184. The s 42A Report: Part B - Objectives, relating to the Chapter 2 Objectives hearing and published on 11 March 2016 on the KCDC website, says⁵⁹ (emphasis added):

"... In the meantime Council is currently considering its position on which provisions contained in the ODP relating to Coastal Hazards will remain in force until they are replaced through a future piece of work on coastal hazards, and the district plan review process is completed.

⁵⁶ Both are both in the Standards section of the operative District Plan.

⁵⁷ Rule D.1.1.1(i).

⁵⁸ Rule 5A.1.8.

⁵⁹ Paragraph 289.

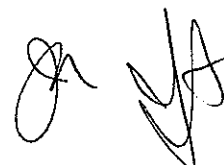
185. It is apparent that the KCDC officers themselves do not know what is happening.
186. I am not aware of any consultation with the coastal community about this significant change in approach.

PDP Update Keeping you informed on progress - no announcement that there would be no variation

187. In the 12 editions of the *PDP Update Keeping you informed on progress* newsletter, there is no announcement that there is not to be a variation.
188. With the knowledge that I now have, there are what I would call subtle hints as to what they were thinking that one could ascertain if one considered the material carefully, although it would be difficult to know if the wording was intentional or just a casual use of terminology.
189. I set out some examples below.
190. In *PDP Update Keeping you informed - Edition No 6, March 2015* there is a PDP Implementation Plan timeline. It is the first one provided in the PDP Updates. There is reference to "Proposed Coastal Plan Change As Per Schedule One Process (2 Year Process)."
191. If I had considered the timeline carefully, I would have:
 - a. probably assumed that the reference to "... Plan Change ..." was a mistake of the person preparing the timeline;
 - b. I would have noticed that the timetable for the "... Plan Change ..." extends beyond both the hearings and decisions of the Hearings Panel and the one-year time contingency.
192. In *PDP Update Keeping you informed - Edition No 7, May 2015* there is a different PDP Implementation Plan timeline. The reference to "... Plan Change ..." has disappeared completely from the PDP implementation process and there is no indication at all as to when such a Plan Change might occur in the future. The CAG process has disappeared.
193. *PDP Update Keeping you informed - Edition No 8, June 2015* refers to a two-to-three year CAG process and then says:

"In due course, the Council will be consulting on, and then notifying, new provisions to replace the proposed provisions that were withdrawn on 30 October 2014.

Until those new provisions are operative, the Operative District Plan's provisions relating to coastal hazards ... will continue to apply."
194. If I had considered the wording carefully, I would have taken that reference to be a reference to the stop-gap that was to apply until a variation was advanced.



How the SEV deals with coastal hazard mitigation activities

195. The Submitter Engagement Version released in June 2015 was prepared by KCDC officers following KCDC's withdrawal of the coastal hazard (and other) provisions. The SEV version has the withdrawn provisions omitted completely ie not shown as strike through and includes the officers' then current views as to appropriate changes to the PDP. SEV Chapter 4⁶⁰ is shown as blank with a note that provisions have been moved to SEV Chapter 3 to be renamed "Natural and Coastal Environment".
196. On 19 November 2015, after helping CRU and others (on a voluntary basis) with the SEV, I emailed KCDC marked-up copies of Chapters 1⁶¹, 2⁶², 2A⁶³, 3⁶⁴, 5⁶⁵, 8⁶⁶ and 9⁶⁷ as well as a separate document addressing the extent of the coastal environment and areas of high natural character in the coastal environment, setting out feedback on the SEV from CRU and others.
197. A meeting between CRU and others (including me) and a number of KCDC chapter leads and others was later scheduled for 4 February 2016.
198. Material that had been sought from KCDC in terms of what provisions enabled soft or hard engineering coastal hazard mitigation activities and what the categorisation of such activities would be in the SEV was not forthcoming.
199. So, the night before the 4 February 2016 meeting with KCDC, I sat down with the SEV and tried to figure out the answers to the matters of concern.
200. I spent only one evening, so I said that I did not claim that what I found is necessarily full or perfect or precisely correct. In my view, it did not need to be full or perfect or precisely correct - it just needed to be close enough to indicate if there is a potential problem for certain activities or not.
201. There is not only a potential problem. There are actual problems - for all types of coastal hazard mitigation activities (and for riparian planting along rivers and streams as well).
202. As set out in my Evidence and Submissions in note form, the outcome of my evening's work of considering the categorisation of the following activities in the SEV was:
 - a. new seawalls = NCA⁶⁸ if in area of outstanding natural character or high natural character that run along almost the entire coast;
 - b. depositing rocks, rip rap or anything not fixed to land = NCA in area of outstanding natural character or high natural character;

⁶⁰ Coastal Environment.

⁶¹ Introduction and Interpretation, which includes the definitions.

⁶² Objectives.

⁶³ A recommended new chapter District-wide Policies.

⁶⁴ Natural and Coastal Environment.

⁶⁵ Living Zones.

⁶⁶ Open Space and Private Recreation Zones.

⁶⁷ Hazards.

⁶⁸ Non-complying activity.

- c. seawall maintenance = PA⁶⁹ if very minor work (but any ancillary activities possibly problematic); NCA in areas of outstanding natural character or high natural character; if not in area of outstanding natural character or high natural character DA⁷⁰ or NCA?;
 - d. buildings/structures in rivers/streams for coastal hazard mitigation purposes = not a PA. Didn't bother to check to what rule it cascades⁷¹;
 - e. river and stream mouth cutting = NCA;
 - f. dune restoration activities = depends on area but in "ordinary" areas dune restoration not a PA unless slope 28 degrees or less and if more than 28 degrees dune restoration is a RDA. In specified areas (including the coastal environment), dune restoration is not a PA and could be a CA⁷², RDA⁷³, DA or NCA depending on the area and the facts. In addition, the earthworks rules seem very complicated;
 - g. beach renourishment activities (it was getting late in the evening and I was running out of steam by now) = NCA in area of outstanding natural character or high natural character.
203. My Evidence and Submissions included an Appendix 1 where I set out in note form the issues I encountered when considering the categorisation of these activities in the SEV.
204. I said in my Evidence and Submissions that I did not address the objectives and policies but if consent is to be required for certain activities the Hearings Panel needs to ensure that there are appropriate objectives and policies that would enable the decision-maker to grant consent in appropriate cases.
205. I should also add here⁷⁴ that I did not address wider Chapter 3 issues eg ecological sites or landscape matters in that Appendix 1 but focussed on areas of outstanding natural character and high natural character which run along almost the entire coast.
206. In summary, there are serious problems in the SEV (and the PDP) regarding the categorisation of coastal hazard mitigation activities.

⁶⁹ Permitted activity.

⁷⁰ Discretionary activity.

⁷¹ Normally, when an activity is not covered by rule x as eg a condition is not met, I would say that it defaults to rule y. However, I dealt with default rules in my Evidence and Submissions and I wanted to avoid confusion with my concerns about the default rules. So when an activity is not covered by rule x and is instead covered by rule y, I have used the term "cascades" rather than defaults.

⁷² Controlled activity.

⁷³ Restricted discretionary activity.

⁷⁴ Which I did not make clear in my Evidence and Submissions.

Handwritten signature and initials, possibly 'JA' and 'YA', in the bottom right corner of the page.

River and stream mouth cutting provisions - withdrawn provisions have changed the effect of provisions in the PDP

207. The Regional Council cuts (straightens) the Mangaone Stream mouth at Te Horo Beach about once a year when triggers in the Regional Coastal Plan are met. There are separate triggers for flooding and erosion.
208. The cutting occurs both in the coastal marine area and landward of the coastal marine area.
209. When I first looked at the PDP when preparing our submissions, I found that overlapping rules had defeated what was intended. River and stream mouth cutting would not be a permitted activity, though it seems apparent that the intention is to make it a permitted activity.
210. Instead:
 - a. river and stream mouth cutting would be a discretionary activity⁷⁵ in the PDP; but
 - b. a non-complying activity⁷⁶ in the PDP with the provisions withdrawn (in each case, landward of the coastal marine area).
211. Withdrawing the provisions has worsened the categorisation of river and stream mouth cutting from the PDP as notified.

Extent of the coastal environment and the related maps

212. While coastal hazard and coastal erosion references have been withdrawn from the PDP, the extent of the coastal environment is continuing to be addressed in the PDP.
213. My Evidence and Submissions deals with the extent of the coastal environment, says that the significantly smaller coastal environment in the SEV does not give effect to the NZCPS or the RPS, and explains why.
214. The relevance of the coastal environment is that the NZCPS only applies in the coastal environment.
215. As already noted, Policy 1(2)(d) of the NZCPS identifies "areas at risk from coastal hazards" as something that the coastal environment includes.
216. I expect that, to give effect to the NZCPS and the RPS, the extent of the coastal environment emanating from the Hearings Panel will probably be somewhere between what is shown on the PDP and the SEV maps.

⁷⁵ Eg Rules 3A.4.4, 4A.4.1. I also noticed Rule 3A.4.5 dealing with "*Buildings* and development in ... an *ecological site*" in light of the wide definition of "Development" and the Mangaone Stream being in an ecological site.

⁷⁶ Rule 4A.5.4 because the words "where they are not located in a CHMA" have been withdrawn from the rule but the rule otherwise remains in place. So the effect of the withdrawal is that the rule now applies in areas where it did not apply in the PDP as notified eg the Mangaone Stream which was located in a CHMA.

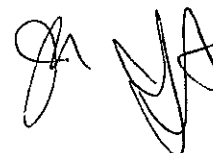
What is happening to submitters

217. Dealing with the PDP and the SEV has been difficult and has been a continuing moveable feast.
218. PDP Chapter 4 Coastal Environment was where coastal hazard matters were addressed but relevant parts have now been withdrawn.
219. With PDP Chapter 4 provisions mainly removed, the PDP/SEV Chapter 8 Open Space general zone provisions became important.
220. Most submitters on PDP Chapter 4 made no submission on PDP Chapter 8. Submissions on coastal hazard or coastal erosion provisions that have been withdrawn are now non-justiciable⁷⁷. Most submitters would not have standing to identify overlap issues between Chapter 4 and Chapter 8 or address or appeal any Chapter 8 matters. Everyone assumed that Chapter 4 was the important chapter, not Chapter 8.
221. Our submissions opposed the whole PDP but we said nothing specific about Chapter 8.
222. The relevant zone for the coastline where coastal hazard mitigation activities occur and would occur in the future is the Open Space (Conservation & Scenic) Zone.
223. The PDP Chapter 8 description of that zone⁷⁸ does not mention the coast. One would not know from reading Chapter 8 Open Space that there were any coastal hazards or any seawalls or other coastal hazard mitigation measures along the Kapiti coast.
224. There are also overlay chapters that are relevant i.e. Chapter 3 Natural Environment and Chapter 9 Hazards. While PDP Chapter 9 policies did (prior to the withdrawal of provisions) apply to coastal erosion, there are flood hazard rules and erosion relating to flood hazard rules but no coastal erosion or coastal hazard rules in Chapter 9.
225. While the Allan/Fowler report did not recommend any Chapter 9 withdrawals, withdrawals have occurred. Section 9.1.2 General Natural Hazard Policies following the withdrawals reads:

"These policies apply to all natural hazards, including coastal erosion in addition to more specific policies in this chapter and the Coastal Environment Chapter."

⁷⁷ *West Coast Regional Council v Royal Forest & Bird Protection Society* (2006) 12 ELRNZ 269.

⁷⁸ PDP page 8-8.



226. The intent of the withdrawal is presumably to say that coastal erosion is not dealt with in Chapter 9. But as the provision is worded after the withdrawal, it says that the policies apply to all natural hazards. Once the PDP is operative and the strike through removed, readers would presumably assume that the policies apply to coastal hazards or the issue would at least be unclear⁷⁹.
227. There were a number of other significant withdrawals in Chapter 9.
228. It remains unclear to me whether, from a coastal hazards perspective, other submitters and I should be addressing Chapter 9 policies at the PDP hearings or whether the policies have nothing to do with coastal hazards.
229. I have spent a lot of time considering the Chapter 8 rules and how they apply to coastal hazard mitigation activities, raising the issues with KCDC officers, and putting the issues in writing for the Hearings Panel.
230. Subsequent to that, s 42A report: Part B - Chapter 8 Open Space⁸⁰ has been released. There is a separate document with a mark-up of the relevant provisions⁸¹.
231. The mark-up of Chapter 8 says in the notes in underlining at the beginning of the *rules* but not at the beginning of the *chapter* or *policies* that:
- "Notes:** [1A] The provisions in Chapter 8 do not apply to ... natural hazard mitigation unless specifically noted in the relevant rule... For rules relating to natural hazards refer to Chapter 9 Hazards..."
232. I note however that there is no similar statement in the policies.
233. So the Open Space policies would apply to any application for consent for coastal hazard mitigation activities along the coastline where rules in Chapter 8 or elsewhere require consent.
234. Having considered Chapter 4 before the provisions were withdrawn, and then having considered Chapter 8 rules as the provisions that would apply in the absence of Chapter 4, I am now told to go to Chapter 9 Hazards for the rules.
235. I explained to the Hearings Panel when I appeared on 4 April 2016 that the Chapter 9 s 42A report with the accompanying provisions is not yet available so I do not know what the officers will recommend as to Chapter 9 wording. There are rules about flood hazards but no coastal hazard rules in Chapter 9 of the PDP.

⁷⁹ As there are no rules relating to coastal hazards, someone might seek to argue that the policies do not apply to coastal hazards.

⁸⁰ Available at <http://www.kapiticoast.govt.nz/globalassets/sev-pdp-and-utv/chapter-8-open-space/s42a-part-b-chapter-8-v2.0---18-march-2016-for-web.pdf>.

⁸¹ Available at <http://www.kapiticoast.govt.nz/globalassets/sev-pdp-and-utv/chapter-8-open-space/chapter-8-and-2a-open-space-s42a-version---for-web-18-march-2016.pdf>.

236. There is also a Note in underlining in the mark-up of Rule 8.1.1A.1 - .3 that says:

"Note: For the avoidance of doubt, the standards for fences and walls do not apply to seawalls that are constructed for natural hazard mitigation purposes. Rules relating to seawalls for natural hazard mitigation purposes are contained in Chapter 9 - Hazards."

237. Given that there are currently no coastal hazard rules in Chapter 9 and that the s 42A report is not available, I do not know what they are to be.
238. However, when the reporting officer for the s 42A reports for the General/Plan-wide hearing presented her reports, she referred orally to a definition of seawall being included for Chapter 4, not Chapter 9.
239. There is currently no definition of seawall. What scope there is for the officers to include it or for any submitter to comment or appeal against it given the withdrawal of all of the coastal hazard provisions from the PDP is unclear to me.
240. I also told the Hearings Panel that I do not know how Chapter 3 is addressing its overlapping provisions as the Chapter 3 s 42A report is not available.
241. Without knowledge of Chapter 9 and Chapter 3, it is not possible to know whether what is recommended for Chapter 8 is acceptable or not. But the hearings for Chapter 8 would be finished before s 42A reports for those other chapters were available.
242. And, at the same time, people are being told that bits from the operative District Plan are to deal with coastal hazard matters in a "composite" plan, not the PDP.
243. It also remains unclear, and will remain unclear into the future until any plan change eventuates, what any plan change to the "operative PDP" would include.

The 24 July 2014 Council resolutions based on the Allan/Fowler recommendations vs what has happened

244. I now return to the 24 July 2014 Council resolutions (paras 70-73) that were based on the Allan/Fowler recommendations (para 44).
245. To see how well the Council's resolutions that were based on the recommendations of the Allan/Fowler report have been carried out, I compare the relevant 24 July 2014 resolutions (set out in *italics*) with what has happened in relation to them.

"1. The Council proceed with the PDP on the basis of a modified process of hearing and making decisions which includes all elements set out in section 5.5 of this report."

The elements of section 5.5 of the Allan/Fowler report that I set out at para 46 are also in italics.

"a small tight, appropriately skilled and experienced, technical team..."

From my perspective, there has not been a small, tight, appropriately-skilled and experienced, technical team of the type that I consider was needed for Option 4 to succeed.

Newly-arrived staff have prepared reports at critical stages and have made crucial mistakes.

There has been turnover of KCDC-employed managers (or a gap where someone else has filled in) responsible for the PDP.

The work has been done in silos by a number of different chapter leads including consultants from different firms with no "overall plan" chapter lead(s) or leads. The internal and external review work has been conducted in silos⁸².

Throughout the process, I have continued to say to Council officers that there needs to be focus not just on the separate silos or some interactions between some individual silos or parts of silos, but focus across related provisions and the whole plan. The managers have been managing the whole plan process, but there has not been a whole plan person or persons dealing with content across the PDP in a way that is, in my opinion, effective.

"all Section 42A reports and a tracked changed officer's recommended version of the complete PDP should be available to all a reasonable time (say six weeks) prior to commencement of hearings".

That has not occurred. It seems that the June 2015 SEV is a replacement, but it has not been drafted to consider hazard mitigation activities so whatever is to be proposed remains unclear and submitters will be taken by surprise.

⁸² In SEV Frequently Asked Questions on KCDC's website is this information **"Other than Council planners, has anyone else reviewed the Submitter Engagement Version to see whether it is an improvement on the original PDP?"**

Yes. As each chapter has been completed (there are 12 in total), it has gone through a series of reviews – internally by our consents team, externally by Council's legal advisers and also by Sylvia Allan, who headed the independent review of the PDP. All have endorsed the new Draft, and have highlighted areas to be worked on throughout the engagement period."

Available at <http://www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/xxx/sev-frequently-asked-questions/>.

What is more problematic is whether submitters will have standing to address or appeal what is proposed, in light of the coastal hazard provisions being withdrawn and the submissions that have become non-justiciable, and in light of whatever submissions they have made on other provisions that have become relevant.

"further use of alternative resolution methods (prehearings, negotiations) following release of Section 42A reports, as appropriate..."

The hearings schedule generally provides for 10 working days between release of the s 42A reports until the time that expert evidence needs to be lodged, and then a further 10 working days until the commencement of the hearing, giving little time for alternative dispute resolution methods.

"careful organisation of the hearing process around topics, ..."


The hearing process was scheduled by chapter. I told the Hearings Panel on 4 April 2016 that all relevant information is not available to enable me, or other submitters, to participate effectively in the hearings.

"2. A detailed implementation plan including resourcing and timetable is developed to progress the PDP in accordance with recommendation 1. A communications plan to keep the community informed would be a necessary part of the implementation."

An implementation plan was prepared but progressing the PDP in accordance with recommendation 1 has not been achieved.

The timeline that was part of the report to Council for the 24 July 2014 meeting refers to plan change not a variation, despite the recommendations of Council staff and the resolution at that meeting referring to a variation.

PDP Updates have been issued but the community has not been informed that many of the recommendations of the Allan/Fowler report were not being advanced. In contrast to the consultation that accompanied the Coastal Panel and the Allan/Fowler report, I am not aware of any community consultation dealing with moving away from the Allan/Fowler report's recommendations and the relevant Council resolutions.



"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."

The Council did withdraw from the PDP the coastal hazard management areas on the plan maps and associated policy section and rules, except that for some rules relating to CHMAs only certain words were removed (thereby changing the area to which the rule applies).

However, Council staff misunderstood the Allan/Fowler report's recommendations and virtually all mention of coastal hazard matters has been withdrawn from the PDP.

The withdrawals extend well beyond what was recommended in the Allan/Fowler report.

The parts of the operative District Plan were to provide "stop-gap" coverage until a variation was advanced but now the position of the Council officers is that there is to be no variation.

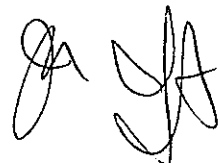
There is to be a "composite" plan but no one, including Council officers, knows what from the operative District Plan is to be preserved, how this composite plan is to work from a practical perspective, how appropriate coastal hazard mitigation activities are to be provided for, and how integrated management is to occur.

"5. The Council develop an implementation plan to progress work on the coastal erosion hazard assessment, and other aspects of coastal hazard management. The implementation should build on the work already done and incorporate adequate and appropriate communication and consultation provisions, including a role for an advisory group as described in section 6.4 of this report."

That has not occurred.

"6. At an appropriate time (or times) the Council proceeds with a variation (or variations) to include suitable and relevant policy, methods and rules in the PDP to address the district's coastal hazards in accordance with the NZCPS, the RPS and best practice ...".

That has not been done.

A handwritten signature in black ink, appearing to be 'JA' or similar, located in the bottom right corner of the page.

The timeframe and the extent of matters to be included in any future plan change remains unclear.

"(c) adopt Option 4 (continuation of the Proposed District Plan process) but reserve the ability to invoke Option 3 (withdraw the PDP) once further analysis of all submissions have [sic] been completed in November 2014."

Option 4 was adopted and confirmed in November 2014.

"That the Council endorse the formulation of a Coastal Advisory Group (CAG) with membership from key statutory agencies, neighbouring councils, submitters, coastal land owners and community representatives with an independent chair."

No CAG has been formed.

"That staff develop a draft terms of reference for the Coastal Advisory Group and identify the skills / attributes of potential group members for Council consideration."

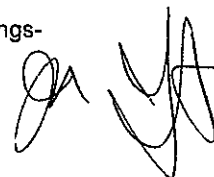
Draft terms of reference were prepared and circulated to some people, including myself, for comment. I expressed concerns about the draft. CRU developed an alternative proposal that Council staff liked, except for some details. CRU's proposal would have meant that the work could be done more efficiently, cost-effectively and quickly. No final terms of reference were prepared.

246. In summary, most of the 24 July 2014 Council resolutions for advancing Option 4 based on the Allan/Fowler report have not been carried out.
247. PDP Updates have been issued but there was no announcement about the various ways in which the Council's resolutions based on the Allan/Fowler report's recommendations were not being advanced. There has been no consultation with those affected. It seems that Council officers have not considered the implications of what they are seeking to do.

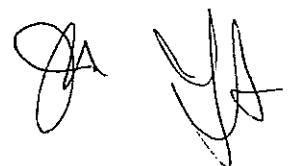
Hearings Panel Minute 5

248. Hearings Panel Minute 5⁸³ has been issued. It is annexed hereto and marked "A".
249. The Minute records that the Hearings Panel is not addressing "coastal hazard management" but is intending to proceed with hearings on Chapters 3, 4, 8, and 9 later in the hearings schedule.
250. My initial reaction is that it is not clear to me how the Hearings Panel can do one without the other.

⁸³ Available at <http://www.kapiticoast.govt.nz/globalassets/sev-pdp-and-utv/pdp-hearings-minutes/minute-5.pdf>.



251. The Minute gives directions to:
- a. urgently review the hearings schedule to reschedule Chapters 3, 4, 8 and 9 to the second half of the hearings schedule;
 - b. prepare a s 42A report that addresses how the PDP provisions relating to the 'coastal resource' fit together, including the relationship of those provisions with the "extant Operative District Plan provisions relating to coastal hazard management"; and
 - c. the s 42A report writers for Chapters 3, 4, 8 and 9 to confer and ensure that their respective reports present an overall 'whole of coast' approach to address any integration matters.
252. I have some further initial reactions.
253. While that may buy time and provide useful information for some, it does not address issues such as standing to participate and appeal, given that submissions on coastal hazard matters have become non-justiciable.
254. In addition, if there are provisions in the PDP that are sufficiently general to relate to coastal hazard management eg the earthworks provisions in Chapter 3, and if those provisions come into effect without it being clear that nothing in the PDP applies to coastal hazard management and exactly what coastal hazard management means, those provisions will apply.
255. It also seems to mean that the provisions in those PDP chapters will be addressed without considering coastal hazard management matters except it seems in relation to the operative District Plan. The provisions in the PDP chapters will become "locked in" (to use a colloquial term). Given standing issues, the ability of coastal people to influence them or appeal against them seems problematic.
256. The inability of coastal submitters to control whether the "locked-in" provisions would be included in any future plan change also seems problematic.
257. In light of the comments in the Allan/Fowler report about the state of the operative District Plan, how the "composite" plan can be seen to give effect to the NZCPS remains a mystery.



Conclusion

258. If I thought that the processes being adopted by KCDC and the Hearings Panel could fix the problems of the PDP, I would not be making this affidavit.



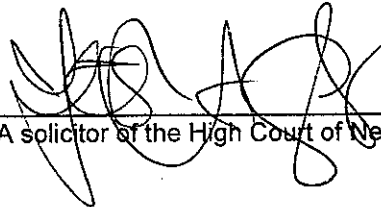
Joan Edra Sterling Allin



Sworn

~~AFFIRMED~~

at Waikanae this 12th day of April 2016 before me:



A solicitor of the High Court of New Zealand

Patricia Penny Amor-Davy
Solicitor.
Waikanae



"A"

KAPITI COAST DISTRICT COUNCIL
PROPOSED KAPITI COAST DISTRICT PLAN
HEARINGS PANEL MINUTE 5

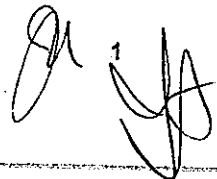
7 APRIL 2016

INTRODUCTION

1. In accordance with s34A(1) of the Resource Management Act 1991 (the Act) the Kapiti Coast District Council (the Council) has appointed a five-member Hearings Panel (the Hearings Panel) which comprises three independent commissioners and two councillor commissioners to hear all submissions and further submissions on the Proposed Kapiti Coast District Plan (the PDP) and prepare reports (with recommendations) on the submissions and further submissions for the Council's consideration and adoption.
2. This is the Hearings Panel's fifth Minute. Its purpose is to record some important procedural issues that have been raised by some submitters during the course of the first two days of Hearing 1 dealing with *General/Plan-Wide Issues*, particularly the presentations (legal submissions and evidence) of the following submitters (in order of appearance):
 - Submitter 451: Rob Crozier and Joan Allin
 - Submitter 378: Coastal Ratepayers United (CRU)
 - Submitter 38: North Otaki Beach Residents Group Inc (NOBRG)
3. After discussing the procedural issues as presented, we have concluded that the Hearings Panel should provide some directions to the parties in terms of the Hearings Schedule for the remainder of the PDP chapters, and particularly in respect to Hearing 2 set down for *Chapter 2 Objectives* commencing on Tuesday 12 April 2016.
4. Before attending to the above, we wish to record three matters:
 - (a) firstly, to record our appreciation of the professional, clear and non-emotive manner in which the procedural issues we are about to canvass have been placed in front of us. We particularly wish to acknowledge the clarity provided by Mr Maassen in respect to the issue from his client's (NOBRG's) perspective. His Memorandum dated 5 April 2016 has been instrumental in arriving at this Minute;
 - (b) secondly, to make it clear that we have not received any formal presentation from Council staff/report writers on this issue, other than what is publicly available in the section 42A Part B Report on *General/Plan-Wide Issues* published on the Council web site on 4 March 2016; and
 - (c) thirdly, we are aware that NOBRG has made an Application for Declaration to the Environment Court pursuant to s312 of the Act in relation to various procedural matters concerning the PDP process to date. This Minute does not seek to undermine that application and is not a response to nor intended to have any bearing on that application.
5. As per previous Minutes issued on behalf of the Hearings Panel, it is highly likely that other directions in the form of subsequent Minutes will be issued from time to time during the course of the hearings.

THE ISSUE

6. The issue addressed in this Minute concerns 'coastal management' in the broadest sense; both the natural values associated with the coastal resource and the associated management of natural hazards associated with that very resource. The way in which decision-making may or may not be integrated in considering those matters is pivotal to that issue.



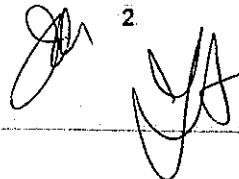
Annexed hereto is the document dated 12th
April 2016 marked "A" now produced and
shown to Joan Edrasterling Allin
and referred to in her Affidavit sworn at Waikanae
on 12th April 2016 before me:


Solicitor of the High Court of New Zealand

Patricia Peppy Amor-Davy
Solicitor
Waikanae

7. In this respect there have been concerns expressed, particularly by the aforementioned submitters, that none of the parties - the submitters, the s42A Report writers or the Hearings Panel - are in a position to address the integrated management of the coastal resource.
8. Although each of the aforementioned submitters raised the issue, it was brought into sharp focus in the Memorandum tabled on behalf of NOBRG by Mr Maassen.
9. Mr Maassen requested that we address six questions, adding that the questions:
"... should be addressed by the Panel by Minute before hearing submissions on Chapter 2. The answers to these questions, or the failure to answer, may be referred to in the declaratory proceeding".
10. The six questions were:
 - Question 1: *Is the Panel addressing coastal hazard management despite the withdrawal of all references of coastal hazard in objectives and provisions by public notice by KCDC in April 2014?**
** For the purpose of this question coastal hazard management means management of all coastal resources including those not in private ownership for the purpose of the statutory function of avoidance and mitigation of hazards.*
 - Question 2: *If the answer to Question 1 is yes, in what respects is coastal management being addressed. In other words, what is the scope of that topic and does it cover objectives and provisions?*
 - Question 3: *If the answer to Question 1 is yes. Then is the Panel going to hear submissions from those submitters (in excess of 400) who addressed the topic of coastal hazards by addressing the provisions in the PDP on that topic, and if so, what steps have been taken to inform those submitters that the topic of coastal hazards is being addressed?*
 - Question 4: *If the answer to Question 1 is yes, then what technical evidence is the Panel expecting to receive on that topic in light of the resolution to adopt Option 4 by the Council in July 2014, and no further technical expert assessments or consultation have occurred?*
 - Question 5: *If the answer to Question 1 is no, then does the Panel consider it is in a position to address the statutory functions of the Council under s31, s74 and s75, including the obligation of giving effect to NZCP?*
 - Question 6: *If there are operative provisions that will be relied on to address hazard management, what are they and how do they relate to the PDP?*
11. In relation to Question 1 our answer is "no". The Hearings Panel is not addressing "coastal hazard management", as those provisions were withdrawn from the PDP by public notice on 31 October 2014.
12. Given that our answer to Question 1 is "no", we then moved directly to Question 5.
13. We accept that a function of Council is to establish objectives, policies and methods to *"achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district" [s31(1)(a)],* including for the purpose of, inter alia, *"the avoidance or mitigation of natural hazards".*
14. Given that the coastal hazard management provisions were withdrawn and are not provisions we are tasked with addressing, we are not therefore in a position to address the above cited statutory function at this point in time.
15. Following our careful consideration of Mr Maassen's submissions we have identified three potential options to deal with the position described above. These options are:

2



Option 1: that we advise Council to discontinue hearing submissions on the PDP until such time as a variation/plan change addressing coastal hazard management is prepared and notified.

We are not prepared to adopt this option as we consider it would materially disadvantage a large number of submitters who wish to see matters resolved without any further delay, whether they be matters relating to the living environment, working environment, rural environment, heritage protection, or the numerous other matters not related to coastal hazard management.

Option 2: that we continue to hear submissions on the various chapters of the PDP as per the current Hearings Schedule.

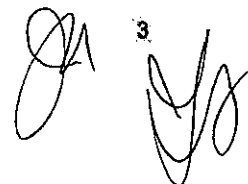
For the reasons we outline below in relation to Option 3, we do not intend to continue to hear the PDP submissions and further submissions as per the Hearings Schedule dated 29 March 2016, which, we note, was *"subject to change"*.

Option 3: that we amend the Hearings Schedule to delay hearing submissions on Chapter 3 (Natural Environment), Chapter 4 (Coastal Environment), Chapter 8 (Open Space) and Chapter 9 (Hazards), and bring forward several of the other chapters to an earlier start point.

16. Adoption of Option 3 will provide an opportunity, and at a later stage, for all relevant issues concerning coastal hazard management to be clarified, including, for example, how the 'continuing in force' provisions of the Operative District Plan will have a role to play pending the preparation and notification of coastal hazard management provisions through a Schedule 1 process, which we understand remains the Council's firm intention.
17. Adoption of Option 3 is also an acknowledgement that we are not disbarred from continuing to hear submissions and further submissions on the PDP. We consider it is a practical and pragmatic response to the issues raised by the aforementioned submitters.
18. We would be assisted if any of the aforementioned submitters had a view on whether any other provisions (outside of Chapters 3, 4, 8 and 9) may impinge on coastal management and should therefore also be excluded from any hearing prior to that foreshadowed under Option 3. We would be pleased if any response(s) could be provided without delay. Essentially, to use Mr Maassen's words, we are seeking an agreement now on what PDP provisions should be 'ring-fenced' to a later hearing date given our intention to implement Option 3.
19. Because submitters' appearances have already been confirmed for Chapter 2 (Objectives) we still intend to commence hearing those submissions on Tuesday 12 April 2016. However, we note that if any submitter whose primary interest is coastal management wishes to delay presenting on what they consider to be relevant Chapter 2 objectives until submissions on Chapters 3, 4, 8 and 9 are heard, that opportunity will be provided.

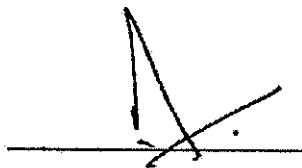
DIRECTIONS

20. Given our intention to adopt Option 3, we make the following directions:
 - (a) That the Hearings Administrator urgently review the Hearings Schedule, in conjunction with the Chair of the Hearings Panel, to 'reschedule' Chapter 3 (Natural Environment), Chapter 4 (Coastal Environment), Chapter 8 (Open Space) and Chapter 9 (Hazards) to the second half of the Hearings Schedule.
 - (b) That the Group Manager, Strategy and Planning instruct officers to prepare a s42A Report that addresses how the PDP provisions relating to the 'coastal resource' fit together, including the relationship of those provisions with the extant Operative District Plan provisions relating to coastal hazard management. The Hearings Panel envisages that this report will be separate from the individual chapter reports.
 - (c) That the s42A report writers for Chapters 3, 4, 8 and 9 confer and ensure that their respective reports present an overall 'whole of coast' approach to address any integration matters.

The block contains two handwritten signatures in black ink. To the right of the first signature is the number '3'. The second signature is written below and to the right of the first.

CONCLUDING COMMENT

21. The Hearings Panel accepts that rescheduling the 'chapter by chapter' hearings as now proposed (Option 3) may potentially cause some inconvenience for some submitters and their witnesses. However, having reflected on the matters raised by the aforementioned submitters, on balance, and in seeking to achieve fairness for all submitters, and not just the submitters whose primary interest is coastal hazard management; while, at the same time, providing an opportunity to seek clarification around the wider coastal management issue, we consider that Option 3 is in the best interests of a fair hearings process.
22. We encourage all parties to regularly check the web page on the hearings for regular updates on the hearings and any alterations to the hearings schedule. As a reminder, that can be found at: <http://www.kapiti.coast.govt.nz/Your-Council/Planning/District-Plan-Review>. Also, I will ensure that when a revised Hearings Schedule is available, which is anticipated to be no later than Friday 15 April 2016, submitters are immediately advised.
23. In the meantime we can confirm that the Chapter 8 (Open Space) Hearing 3 scheduled to commence on 20 April 2016 will now not proceed, but will be rescheduled to a later time (to be confirmed).
24. Finally, we can also advise that it is the Hearings Panel's intention to make provision for an additional (final) hearing at the end of the Hearings Schedule, which we will refer to as a 'whole-of-plan integration' hearing. We consider that this opportunity to consider the overall PDP is important as we are not proposing to issue any recommendation reports to Council on a 'chapter by chapter' basis. Rather, a single report will be made to Council at the conclusion of the hearings process.



Alistair Aburn
Chairperson

for and on behalf of
Proposed Kapiti Coast District Plan Hearings Panel

7 April 2016

