

27 Feb

ATTACHMENT TO THE SUBMISSION BY COASTAL RATEPAYERS UNITED INC. ON PROPOSED KAPITI COAST DISTRICT PLAN 2012 (PDP)

1. Introduction to Coastal Ratepayers United Incorporated (CRU)

CRU was established in September 2012 after 1800 Kapiti beachfront and other property owners and occupiers received a letter from Kapiti Coast District Council (the Council) advising that their properties were subject to a coastal erosion hazard and that 50 and 100 year hazard lines would henceforth be placed on any Land Information Memorandums for those properties.

CRU established from an early stage that the coastal hazard assessment was inaccurate, unreliable and overly conservative. As a result, CRU was established to represent landowners and ratepayers affected by this issue and other wider issues.

CRU has a focus of interest in the beauty and uniqueness of the Kapiti coastal area, including the dunes, and a desire to preserve and protect those features. In addition, it is recognised that there could be a range of other issues affecting people in a variety of ways where it would be useful to join together.

CRU became an Incorporated Society in November 2012. The Objectives of CRU are stated as:

- *Take whatever steps are necessary to have reviewed the imposition of hazard lines on LIMs or any other documents;*
- *Make representations to Councils concerning the coastline, including the rights and interests of property owners along or near the coastline;*
- *Undertake scientific, engineering, legal and other research relating to the coastline and provisions to govern activities along or near the coastline;*
- *Make representations, gather evidence and make submissions and appeals concerning any consultative or statutory document, including any Regional/District Plan or draft or proposed Regional/District Plan.*

CRU has over 600 members from all areas on the Coast including Paekakariki, Raumati South, Raumati, Paraparaumu, Waikanae, Peka Peka, Te Horo and Otaki.

Some members will also be making their own submissions which will include locality-specific concerns.

2. CRU's Primary Concerns

The Kapiti Coast Erosion Hazard Assessment 2012 Update (and the 2008 hazard assessments upon which it is based) is fundamentally flawed in a number of aspects and therefore does not provide a correct basis for the development of PDP policies and rules.

The effect of the flawed nature of the hazard assessment is to overstate in many areas, the areas of land that are likely to be subject to coastal erosion.

As a result, and for additional reasons, the objectives, policies and rules relating to development in the coastal environment are overly restrictive and do not adequately take into account the effects, including effects on the social and economic fabric of existing communities.

There has been inadequate assessment in terms of section 32 of the Resource Management Act 1991 (RMA) and, in particular, inadequate consideration of the social and economic effects on owners and occupiers of existing properties within the proposed hazard zones.

The PDP is contrary to the RMA in a number of respects, including in that it does not give effect to the purpose of the RMA.

In particular, it does not enable people and communities to provide for their social, economic and cultural well-being and for their health and safety (section 5(2)) and also does not provide for the efficient use and development of natural and physical resources (section 7(b)).

The PDP fails to give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS) and the Regional Policy Statement and fails to have sufficient regard to the Proposed Regional Policy Statement.

Some of the provisions of the PDP are invalid and many are confusing and poorly drafted including errors, gaps and inconsistencies.

CRU also considers that the overall form and structure of the PDP is unwieldy and cumbersome and very difficult to comprehend and identify all provisions relevant to a site or location.

CRU also has wide-ranging concerns in relation Chapter 5 Living Environment and provisions in various sections affecting the management, maintenance and clearance of streams.

CRU considers that the hazard assessment should not have been used as the basis for LIM notations unless and until the position of the lines has been properly reviewed and/or finalised via the PDP process. While this is not directly

a matter for the PDP process, the consequence is that LIMs present an overly alarmist message to potential purchasers. This has the potential to cause financial loss or loss of sales for landowners which will in turn expose the Council to potential liability if it has been negligent in accepting the hazard assessment predictions.

3. The Coastal Hazard Assessment by Coastal Systems Ltd

CRU has wide-ranging concerns about the hazard assessment. These include but are not limited to:

- The assessment does not correctly apply the NZCPS, in particular Policy 24.
- The assessment is not in accordance with current Ministry for the Environment Guidelines.
- The assessment fails to have regard to the requirements of the Proposed Wellington Regional Policy Statement which requires the identification of areas at **high** risk from natural hazards.
- The assessment adopts a number of overly conservative assumptions and therefore exaggerates the extent of land likely to be affected by coastal hazards.
- For some assumptions, the assessment includes a margin of error in the combined uncertainty equation, making the results even more conservative.
- The assessment does not quantitatively address all the uncertainties and is uncritical in its adoption of some values. In particular, it assumes erosion will be the coastal response to sea level rise.
- These assumptions are combined with a flawed methodology that amplifies their influence.
- The assessment ignores or deals inappropriately with current areas of accretion.
- The assessment provides no analysis of the reliability of the assessments or the levels of risk in each area.
- The hazard lines do not indicate areas “likely” to be affected by erosion within 50 or 100 years. Rather they reflect a worst case assessment of

what is possible. The predicted lines reflect a high degree of uncertainty and conservatism.

- Whilst the reliability of the “predictions” is unknown for all lines, there is necessarily an increased unreliability and indeed a high degree of speculation involved in predicting the 100 year lines.
- The assessment has been inadequately peer reviewed.

4. Application of the Hazard Assessment Lines to the PDP

The hazard assessment lines have been relied on by the PDP to accurately reflect likely future shorelines and have been used to define hazard zones.

In preparing the PDP, the Council appears to have assumed that it will, in the future, adopt a policy of not managing erosion except in some limited areas. As a consequence, it has based the proposed relocatable area on the (highly speculative) 100 year unmanaged line and in places has based the no-build area on an unmanaged 50 year line.

Highly restrictive policies and rules have been applied without consideration of their effects on private assets within the community and on community well-being (including both the social and economic impacts of the controls).

The coastal hazard provisions have been created based on fundamental errors of fact and an incorrect application of the RMA and the NZCPS.

There has been inadequate analysis and testing of alternative mitigation and management strategies and instead an acceptance of a policy preference for managed retreat.

The hazard lines fail to take into account existing public and private infrastructure and management actions. The hazard lines also fail to take into account Regional Council commitments to stream mouth management even though this is stated in the PDP.

Given the significance of these provisions, and their onerous restrictions on private development, there has been woeful lack of consultation with the community.

The Coastal Chapter is premature and should await the preparation of a regional hazard management strategy by Greater Wellington Regional Council.

5. Proposed Objectives

CRU opposes Objective 2.4 Coastal environment. In particular, part (d) should be subject to review and further analysis as sought in this submission. This includes an appropriately-based hazard assessment and economic assessment.

In the meantime part (d) should be deleted.

The Explanation should also be reviewed and updated to be more accurate once this analysis has been completed. This should include, but not be limited to, accurate explanation of the varying nature of any hazard along the coastline, and an accurate explanation of the NZCPS and the 2006 Coastal Strategy.

CRU opposes Objective 2.5 Natural hazards for the same reasons as above. This Objective should be reworded after more detailed analysis and assessment. The Explanation will similarly require amendment.

There has been a failure to evaluate properly the extent to which the objectives are the most appropriate way to achieve the purpose of the RMA.

6. Proposed Coastal Environment and Hazards Policies

CRU opposes sections 4.1.1 and 4.2 of the PDP.

Highly restrictive policies have been applied in the CHMAs without adequate consideration of their appropriateness, the effects on public and private assets within the community, the effects on owners of property, the reasonable property rights of owners of properties, and the provisions of the RMA.

In particular, CRU opposes the following policies in Section 4.1.1:

Policy 4.4 in that it implies removal of all coastal structures irrespective of their merits or value.

Policy 4.5 in that it could be seen to be setting the stage for managed retreat in southern areas which has not been justified and is not yet the subject of any policy decision by the Council.

Policy 4.6 in that it is not appropriate to accommodate natural shoreline movement in all cases.

Policy 4.7 in that it refers to shoreline retreat and is part of a suite of provisions in the PDP focussing on managed retreat, when neither the community nor the Council has found that to be an appropriate response. Dunes should not be

enabled to migrate inland where this will have unreasonable effects on existing communities and where there are other options available.

CRU opposes all of Section 4.2, and in particular:

The introductory Section 4.2, in that it includes selective references from the NZCPS and fails to refer to the reasonable rights of property owners in relation to their properties.

Policy 4.8 in that it gives inappropriate emphasis to managed retreat over other potential management options.

Policy 4.9 in that it gives undue emphasis to discouraging coastal protection structures. This includes:

- (a) which is overly restrictive by referring to “avoiding”;
- (b) which gives undue emphasis to elimination of existing hard protection structures;
- (c) which is overly restrictive in terms of existing developed residential areas; and
- (c) and (d), which do not reflect existing commitments to maintain existing structures and do not consider matters such as willingness by property owners to pay for maintaining and, where necessary, upgrading structures.

Policy 4.10 in that the extent of the CHMAs is overly conservative and requires extensive review. In addition, CRU is opposed to the terms “no build” and “relocatable build”. If these remain, they should be referred to as the 50 year CHMA and 100 year CHMA.

Policy 4.11 in that it is overly restrictive for areas of existing residential development given the uncertainties and consequences for existing landowners.

Policy 4.12 in that it is overly restrictive for existing residential development.

Policy 4.13 in that it is overly restrictive for areas of existing residential development and gives undue weight to managed retreat as the preferred long-term option.

Policy 4.14 in that the reference to “new built development” is not clear and it is overly restrictive in relation existing developed areas.

Policy 4.15 in that this policy should focus on locations and properties at highest risk. The level of risk is not currently evident from the hazard assessment and the process for, and content of, adaptation strategies is unknown, accordingly the policy and related rules are uncertain and invalid.

CRU also opposes the parts of Chapter 9 that relate to the issues above.

7. Policy Development Process and Section 32

CRU has seen the section 32 Summary Report Coastal Environment as well as the report District Plan Review Coastal Hazard Provisions August 2011 and a memorandum dated 30 October 2012 which provide supporting information for the section 32 report for the coastal hazard provisions.

CRU considers the section 32 assessment to be inadequate, including in that it fails to adequately take into account the social and economic loss and harm associated with the objectives, policies and rules proposed.

CRU considers that the assessment lacks any robust economic analysis. In particular:

- There has been no estimate of the cost to the community of the provisions and restrictions in the CHMAs.
- There has been no adequate consideration of potential options for dealing with areas at risk of coastal erosion.
- There has been no proper consideration of erosion management options, such as fore dune rehabilitation, beach renourishment, maintenance and enhancement of existing hard protection structures and other options.
- There has been no consideration of people's willingness to pay or to bear risks.

There has been a lack of consultation with affected parties which would have better informed the overall assessment and policy development process.

In summary, the Council has failed to evaluate properly the efficiency and effectiveness of the provisions, and has not adequately evaluated the extent to which the proposed policies and resulting rules are the most appropriate means of achieving the specified objectives and the purpose of the RMA.

There has been reliance on inappropriate objectives when developing policies and rules to serve those objectives.

The Council has not properly evaluated the benefits and costs of the proposed policies and rules.

The Council has not properly evaluated the risk of acting or not acting in the context of a high level of uncertainty as to the extent of coastal hazards.

In particular, it has not properly evaluated resource management options within the relocatable area and the No-build Rural CHMA (where there are buildings that would otherwise be in a relocatable area). These relate to the predicted shoreline under an unmanaged scenario in 100 years time. There is no justification for the policies and rules which are proposed given the high level of uncertainty of the 100 year predictions relied upon and the assumption of managed retreat.

8. Proposed Rules and Related Definitions

CRU is opposed to the rules and definitions relating to Coastal Hazard Management Areas which includes rules 4A.1.1, 4A.1.2, 4A.1.3, 4A.1.4, 4A.2.2, 4A.3.4, 4A.4.1, 4A4.3, 4A5.2, 4A.5.3, 4A.6.1 and 4A.6.2.

Highly restrictive rules have been proposed in the CHMAs without adequate consideration of their appropriateness, the effects on public and private assets within the community, the effects on owners of property, the reasonable property rights of owners of properties, and the provisions of the RMA.

There has been no consultation with the community regarding the very restrictive provisions proposed.

There is a significant element of the rules trying to avoid increasing the value of existing development within hazard areas. This amounts to the Council trying to make decisions on behalf of private owners as to acceptable levels of private risk.

The rules should be directed at avoiding or mitigating adverse effects on the environment rather than dictating the acceptable level of development on hazard-prone land.

Whilst CRU accepts that there need to be some restrictions around subdivision and entirely new buildings (not accessory buildings) in areas at high risk, it does not accept that restrictions on extensions and alterations are appropriate or sustainable.

The rules are overly restrictive given the uncertainties and long time frames associated with the potential hazard.

In addition, the decision to include only a No-build Rural CHMA, rather than a relocatable and a no-build area, unreasonably imposes restrictions on existing rural buildings and properties that would otherwise be in a relocatable area.

The use of prohibited activities is considered particularly inappropriate and has not been subject to adequate section 32 assessment.

In addition, the rules are poorly-drafted and confusing in a number of respects, including but not limited to the following:

- The relationship with the Living Environment rules is unclear.
- There are oddities and gaps in the rules.
- The reference to “existing” in the rules is inappropriate, given the definition of “existing”.
- The definition of “alteration” is not sufficiently wide.
- The rules do not make it clear that they apply only to that part of the land or building that is within each relevant CHMA; this is particularly important where a building straddles a no-build/relocatable boundary or a relocatable/no restriction boundary.
- Rules 4A.4.3 and 4A.5.2 are uncertain and invalid because they refer to strategies which do not yet exist and which sit outside the District Plan process.

9. Relief Sought

CRU seeks that the coastal hazard provisions, including Chapters 4, 2 and 9, the definitions and the maps of the PDP be withdrawn and replaced with a variation to the PDP with revised hazard lines, that identify high hazard-prone areas, objectives, policies and rules.

The relief sought therefore includes:

- Deferral of these provisions until after a regional hazard management strategy has been prepared by Greater Wellington Regional Council.
- An independent review of the Coastal Hazard Assessment that reviews all the data and modelling used in the assessment and takes into account the matters raised in this submission and is based on a proper understanding of the RMA and NZCPS.
- Investigation of alternative coastal management methods along the coast.

- An independent legal and planning audit by experienced resource management practitioners.
- Revised objectives, policies and rules after a careful economic, social and environmental analysis of mitigation strategies for each part of the coast where hazard is identified in the revised assessment above.

In the alternative or additionally an objective, policy and rule regime that in revised hazard areas:

- Enables a wider scope of alterations and extensions to existing buildings in a 50 year zone, subject to compliance with Living Environment permitted activity standards.
- Enables new dwellings and accessory buildings within a 50 year zone if they are relocatable.
- Has a presumption against further subdivision to provide additional dwelling lots in a 50 year zone.
- Requires assessment of subdivision landward of a 50 year zone based on a 100 year most likely shoreline but with no additional rules on any other activities, such as buildings.
- Excludes any prohibited activities.
- Alternatively the creation of a new much narrower buffer zone landward of a 50 year zone with appropriate policies and rules.

CRU submits that the unreliability of predictions of the 100 year shoreline does not justify the high level of restrictions within that area.

10. Chapter 5 Living Environment

CRU has wide-ranging concerns in relation to the policies and particularly the rules for the Living Environment. These include but are not limited to:

- The lack of express provision for residential activities.
- The use of a catch-all permitted activity in 5A.1.1.
- The consistency of the use of the terms lot and site.

- The enabling of bee keeping subject only to a nuisance standard which is void for uncertainty.
- The enabling of industrial, commercial and retail activities in addition to home occupations.
- The definition of home occupation which includes any activity which could detract from the amenities of the adjoining landowner. This is void for uncertainty.
- The plot ratio standard and yard standard for the Beach Residential zone.
- Strengthening of Policy 5.23 to incorporate low density character of Beach Residential.
- The failure to include long-standing coastal yards at Te Horo, Waikanae and Peka Peka.

11. Relief Sought

CRU seeks that the above rules and definitions be deleted or amended and Policy 5.23 be amended to reflect the submission above. In addition, coastal building line restriction yard requirements as in the operative District Plan, which are 7.5 m from the seaward title boundary for Waikanae and Te Horo Beach and 70 m from the seaward edge of the existing Esplanade Reserve for Peka Peka should be provided.

12. Rivers and Streams

Flood protection, erosion control and natural hazard mitigation measures are stated to be a permitted activity under Rule 9B.1.6.

However there are a number of overlapping zoning and notations and other rules in other chapters that affect the status of this activity and require clarification.

This includes rules in Chapters 3 and 4 including earthworks rules and sensitive natural features and areas rules.

The rules should also expressly provide for stream mouth clearance and straightening where this falls under the jurisdiction of the District Plan.

13. Relief Sought

CRU seeks that:

- The rules are amended to provide clarity and certainty that river and stream clearance, including mouth straightening and other maintenance activities, when undertaken by the relevant authorities, is a permitted activity.
- This requires express exemption from, or other amendment to, rules, zoning and notation that override permitted activity Rule 9B.1.6.

14. Hearing of Submissions

CRU does wish to be heard and will present expert evidence on the matters raised in the submission.

There are complex legal, technical and planning matters that need to be addressed. CRU requests that all panel members be independent commissioners, with the hearing panel comprising the range of appropriate expertise.

CRU requests that the Council hold pre-hearing meetings and associated mediation pursuant to clause 8AA of the First Schedule to the RMA on the matters in this submission ahead of the hearing, with a view to attempting to narrow the issues in dispute, leading to a more efficient and cost-effective hearing process.