

# **SUBMISSION of PHILIP and DOROTHY TORTELL on the PROPOSED KAPITI COAST DISTRICT PLAN 2012**

## **Section 1 - BACKGROUND**

### **1.1 Who we are**

We are Philip and Dorothy Tortell and we have lived at 52 Ames Street in Paekakariki for the past 19 years. Our telephone number is 04-292 8506 and our email addresses are [tortell@attglobal.net](mailto:tortell@attglobal.net) and [dostor@attglobal.net](mailto:dostor@attglobal.net).

We came to live in Paekakariki with plans for retiring here and then leaving the property to our children and grandchildren. In other words, this is our home.

According to available records, the property had been subdivided in 1941 and approved by the then Local Authority (Hutt County Council). Since we purchased the property in 1994 we have carried out numerous improvements including renovations of the existing house (in 1994), a relocatable upper storey (in 2000), a new access drive which goes over the Paekakariki Stream (in 2004) and a new timber seawall (2008) to replace a damaged and unsightly concrete wall. All works have been carried out with full Council approvals, according to engineering design and by professional tradesmen.

When we bought our property on the beachfront in Ames Street we knew that there were risks – risks from the occasional flood events on the Paekakariki Stream and risks from the wave action and changing climate on the coastal frontage. We acknowledged those risks and set about managing them to the best of our ability, with Council approval and, until now, with Council support.

While our submission stands on its own merit and we wish to be heard in person in support of our submission, we also support the submission of Coastal Ratepayers United.

### **1.2 The process applied by the Council**

We find the Proposed District Plan aggressive and threatening in its consideration of the coastal environment. One of us is a Social Worker and the other an Environmental Consultant, both with long experience in community involvement and public participation; and we are appalled by the lack of meaningful involvement, by the Council, of residents and ratepayers affected by many of the coastal provisions in the Proposed District Plan.

From our experience, serious public consultation and involvement, which is a two-way traffic, works effectively towards better ownership, higher harmony and ultimately a better product or result. But this does not come about by simply providing information to the public; the public need to be invited to contribute and their contributions must be given due consideration and accounted for. Serious public consultation and involvement is a dialogue that comes before decisions are made and it should help to shape the decisions.

It is arrogant to assume that because these are technical matters, the general public will not understand. From our experience, we wish to make two observations – firstly, some of the most pertinent and useful observations and submissions come from local people – they are much closer to the real issues and problems than any expert. Secondly, among the general public are many professionals – scientists, managers, planners, engineers and others who, if consulted and invited to participate, would provide their opinions and wisdom freely to the Council.

Rather than adopting a participatory approach to this shared problem, the Council opted for retreat in the face of the risk posed by climate change on the basis of a technical investigation which has been seriously questioned. It has pre-empted other options and placed affected ratepayers on the defensive, rather than a collaborative search for consensus on how Kapiti can manage this risk. In fact, ratepayers are not on the defensive against the rising sea level but against the Council's proposal to deny them the right to manage the risk.

It is ironic that after publishing its Proposed District Plan, the Council launched its Climate Change Impacts Project "*to explore with the community the range of possible options for responding to climate change impacts*". If Council was serious in its wish to consult and involve the public, this project would have come first, maybe a year or more ago. Through it, affected residents would have explored various options that might be available for their community and come to a consensus on which they felt were the best. These options could have then been presented to experts in coastal dynamics, socio-economics, engineering, etc. Options which were not realistic would have been set aside, with explanation; while those with merit would have been investigated further. In other words, the experts would have been engaged to identify those options that are technically and economically feasible and socially acceptable. It is these conclusions and this advice that should have been reflected in the Proposed District Plan. The Plan could have also carried a pledge from the Council to assist coastal ratepayers with feasible and realistic options for managing the risk and protecting a key feature of the District – namely, the coastal residential properties.

Because the Council did not employ a participatory approach, and because it relied exclusively on technical expertise, the social aspects and the human side of this dilemma have not been taken into account at all.

The approach of the KCDC is in stark contrast with the approach that was proposed by Wellington City Council staff to their Strategy and Policy Committee on 7 February 2013 on the Effects of Sea Level Rise in Wellington<sup>1</sup>. Among the salient phrases and sentiments in the report, the following are worth bringing to the attention of the KCDC and staff (our emphasis) –

- ... a comprehensive programme of communications **and community engagement**
- While some Councils are already moving to introduce coastal hazard zones in their District Plans, we propose following **a more considered, staged approach** that will enable in-depth planning and **bring a more informed and engaged public with us**.
- ... capturing ideas and energy from **our smart, creative and innovative community**
- ... **genuine dialogue with communities and key stakeholders** (such as businesses and insurance providers) about the city's strategic response options
- ... allow for **proactive engagement and meaningful dialogue with the community** and stakeholders, using innovative and up-to-date approaches, **seeking their input and developing preferred response options**. Actual implementation of these responses for **Wellington City will come much later**
- ... a comprehensive programme of communication and **community and stakeholder engagement** on adaptation to sea level rise in early 2013, noting that this will require an ongoing commitment **over several years** utilising **a wide range of approaches**

The WCC officials talk of dialogue – which is a two-way flow – and not just providing information. They talk of engagement – the District Plan submissions process is not engagement, or if it is, it is adversarial and gladiatorial engagement. They recognize the value of the community in working towards consensual strategies – rather than the arrogant attitude portrayed by some KCDC officials on 01 November meeting whereby they stated that this is a technical matter and it is beyond the capability of the public to be consulted. They see a long term engagement, no panic overnight drawing of hazard lines on LIMs. They acknowledge that there is a wide range of options. They do not mention "managed retreat" or any retreat for that matter. All this well before any consideration of District Plan provisions which become set in stone.

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<sup>1</sup> See attachment 1

## Section 2 - OBJECTIONS

### 2.1 Introduction

For reasons discussed below, **we object to Chapter 4** of the Proposed District Plan and we wish it to be **withdrawn in its entirety** together with all other references to coastal hazard risks, lines, etc, in other sections of the PDP.

### 2.2 Objections to section 4.1.1: General Policies

**We object to Policy 4.4** which is applicable to new subdivision and development and wish it to be **deleted** unless it could state explicitly that it does not apply to existing subdivisions and developments where the option of natural character does not exist any more.

**We support Policy 4.5** but wish to point out that KCDC has contravened this policy in building the rock revetment along Marine Parade in Paekakariki because, as a result of the work, there is now no dry beach at high tide for the public to enjoy.

**We object to Policy 4.6** and it should be **deleted** because there is no recognition that people actually live along the coastal strip (which gives Kapiti its distinctive character), in subdivisions and developments approved by previous Councils. It is also contrary to NZCPS 2010 which, under Objective 6, states “*To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development ...*” and under Policy 6 (f) states “*consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable*”. If Policy 4.6 is not deleted it must be balanced with a new policy to protect, to the extent possible, the built environment along the coast, thus safeguarding people’s lifetime investments, and outlining a list of the options proposed by the KCDC to assist and support affected ratepayers with managing the risk associated with coastal living.

**We object to Policy 4.7** and suggest it should be **deleted** unless it also recognized that in Paekakariki at least, the natural dune option is not available any more as a result of development decisions made by previous Councils<sup>2</sup>.

### 2.3 Objections to Section 4.2: Coastal Hazard Management Areas

**We object to the wording in section 4.2** regarding CHMAs and wish it to be **deleted** unless it states explicitly that this does not apply to existing activities, but only to proposed activities

Also in section 4.2, **we object to the distinction made between the “two scenarios”**. In particular, we object to the label “*unmanaged*” to private protection structures, built according to sound engineering advice, according to Council constraints and with Council approvals on private land at private cost.

**We object to the Coastal Hazards identified by lines** which must be **deleted** because they are based on conjecture. The recession from the present coastline to around 80m inland and around 10m vertically in Ames Street in 50 years and close to 100m inland over 100 years is without any scientific basis or consensus and the data on which it is based have not been made available for

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<sup>2</sup> This Council must accept responsibility for decisions made by its predecessor Councils especially those decisions which led to subdivisions and developments which have been taken up by ratepayers in good faith.

review and scrutiny. The two parallel lines are simplistic to the extreme in the way they totally ignore topography and elevation.

The basis for the lines is a single report, by one scientist, with no independent review and with acknowledged limitations. The report is based purely on assumptions and the science is flawed.

For example –

- Dr Shand states that the Report is the result of a “*generic approach*”, which was limited by the “*available time and funding*”, and “*inevitably leads to some apparently inconsistent results*” (p.4, Executive Summary, third para from the end).
- The Report does not indicate the specific survey points/transect stations from which the lines were extrapolated by joining the dots and producing two simplistic parallel lines. This is particularly relevant since according to Dr Shand “*significant variation between the points could still occur*” (p.63).
- Dr Shand has given all accretion a value of 0 in his equations and he admits that this “*has effectively doubled the hazard distances along the north coast*” (his emphasis) (page 23).

The above is not good science on the part of Dr Shand and his track record is also questionable, for example -

The Environment Court (2010, NZEnvC216) in *Hemi v Waikato District Council* stated: “*Both experts [Dr Roger Shand and Mr Dahm] have concluded that there were a number of material errors in Dr Shand’s original assessment ... the mean sea level was over-estimated by approximately 0.8m. Part of the Sea level rise (SLR) value adopted, was effectively double-counted*”

Dr Shand is obviously not the best source of advice for the Council (especially if it is the only source of advice) and with such a faulty methodology and such a questionable track record, and given that \$1.6 billion of property is at issue, KCDC should have at least subjected Dr Shand’s work to a thorough independent review to check its veracity. It is incumbent on KCDC to ascertain the integrity and reliability of what they purchased at ratepayers’ expense.

The Council has been rash and precipitous in adopting Dr Shand’s flawed report as the basis for placing precise lines on a map where a few millimetres could make all the difference for an individual property owner. KCDC should have explored the implications with its constituent ratepayers to whom it has displayed a callous and dismissive stance.

**We object to the statement** under Climate Change Impacts that “*some of these changes, if they eventuate, would increase erosion rates and further extend the area at risk from coastal erosion*” because it is incomplete. It should be balanced with a further statement that “*some of these changes will lead to accretion and reduce the risk from coastal erosion*”. Sea level rise is an imprecise science as the attached paper by the Royal Society of New Zealand<sup>3</sup> shows, and this uncertainty must be reflected in any consideration of SLR by the Council.

**We object to the section** headed “*Managing development in response to coastal erosion hazard*” Since it is very selective in how it quotes section 27 of the NZCPS 2010. It should be **deleted** unless it also brings into the discussion section 1 (c) which states that KCDC should be “*recognising that hard protection structures may be the only practical means to protect existing infrastructure of national or regional importance, to sustain the potential of built physical resources to meet the reasonably foreseeable needs of future generations*” and extend these sentiments to private residential coastal properties which have existed for a number of years, give Kapiti its unique character and meet the foreseeable needs of our future generations.

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<sup>3</sup> Sea Level Rise: Emerging Issues. Paper by the Royal Society of New Zealand. September 2010. See Attachment 2.

In addition, under subsection (c), KCDC must also “*evaluate the likely costs and benefits of any proposed coastal hazard risk reduction options*” – there has been no attempt by KCDC to determine the financial and economic repercussions of their retreat strategy (which will be greater than the simple loss in market value of the affected homes because in Paekakariki at least it will remove half the population); neither have the benefits been assessed financially.

The purpose of the RMA is to promote the sustainable management of natural and physical resources (s 5(1)) and Section 5(2) states that sustainable management “means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which *enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety.*” (our emphasis)

The PDP makes no explicit attempt to provide for the well-being or safety of people and communities who live on the coast. Instead, it is putting in place a regime of slow eviction. The classification of land as “no-build” and “relocateable” to existing buildings, is nothing less than an effort to try and make us abandon our home and we object strongly to this.

**We object to the section headed** “Managing effects on coastal processes” and wish it to be **deleted** unless it is made clear that this refers only to new developments and that existing subdivisions and development must be protected according to Objective 6 of the NZCPS 2010 - “... *enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development ...*”.

The statement “*Effect has been given to Policy 26 by providing for a dune buffer in coastal development setbacks and making coastal protection structures a non-complying activity*” is a nonsense when applied to The Parade and Ames Street in Paekakariki, and this view must be shared by KCDC because they have invested ratepayers funds in a very hard structure (the rock revetment) which they plan to extend.

## 2.4 Objections to section 4.2.1: Policies

**We object to Policy 4.8** because it needs to specify that these provisions are only applicable to the Council. The risk to private residential properties is borne by the owners and its management is at their discretion. The Council has no mandate to eliminate risk, certainly not our risk. The RMA talks about managing risk not eliminating it. If our protection structures fail, we will repair them, over and over again, for as long as possible.

**We object to Policy 4.9** and wish to have it **deleted** unless it states explicitly that in parts of Paekakariki hard structures are the only option as evidenced by the Council’s own rock revetment; and unless there is added the following – “ensure that the costs and benefits are taken into account of denying maintenance of private protection structures, which are according to engineering design and approved by Council”.

**We object to Policy 4.10** and wish to see it **deleted**. This is because the lines are based on assumptions, ultra-conservative worst case scenarios and flawed science. Where development already exists, the no-build is a nonsense – how does extending an existing home in a no-build zone (for example by putting a second level) increase the risk? How does denying the building of a hard protection structure decrease the risk? What is the logic of relocatable and how realistic is it? Relocating where to and at whose cost?

This policy should be replaced with one which, while acknowledging the risk, aims to leave as many options open as possible for as long as possible and puts in place a strategy for managing the risk within a shorter timeframe, such a rolling 5-8 year horizon, and which will respond to the challenge of risks rather than retreating from them. The new policy should also note that the responsibility for

managing the risk lies with the respective owners and that the Council will assist affected landowners to manage the risk.

**We object to Policy 4.11** because it misinterprets the meaning of risk and it should be **deleted**. Increasing the scale of an existing house does not increase the risk – it might increase the impact of the risk should it come to pass, but the risk remains the same. On the other hand, reliance on hard structures, which is the only option for Paekakariki, does reduce the risk because it controls erosion, even if only for a time.

Contrary to the “Explanation” (para 1), there is “a lot” of uncertainty and not just “some”, and it is precisely because of this uncertainty that as many options as possible should be left open.

Also contrary to the “Explanation” (para 2) Council is not “*working with the community to adapt*” – it may in the future, but by that time the provisions under Chapter 4 of the PDP would have pre-empted most options.

According to the NZCPS 2010, risk is defined as follows: “*Risk is often expressed in terms of a combination of the consequences of an event (including changes in circumstances) and the associated likelihood of occurrence (AS/NZS ISO 31000:2009 Risk management - Principles and guidelines, November 2009).*” In other words, a risk is not a risk if it is not likely. Council withdrew specifically any consideration of likelihood from the LIM annotations and replaced it with an ultra-precautionary approach which adopted the absolute worst case scenario. By definition, the worst case is not likely, in fact it is highly unlikely.

NZCPS Policy 25 (a) states: “*avoid increasing the risk of social, environmental and economic harm from coastal hazards*” it does not say eliminate risk.

And the Environment Court, in *Fore World Developments v Napier City Council* (Decision W 029/2006) at paras [29] and [31] commented as follows on risk, likelihood and consequences (emphasis added):

*“In essence, this issue requires the assessment of the **likelihood of the coastline eroding** to any given point over the selected time horizon, and the **likely consequences** of that erosion if it does occur [referring to the *Francks v Canterbury Regional Council* case]... The kind and degree of precaution to be taken depends on **the level of knowledge of the risk, its likelihood of occurrence, and its consequences**. **We do not live in a risk-free world and the RMA does not require the avoidance of all risk.**”*

We know there is a risk associated with living on the coast, we knew this when we purchased the property on Ames Street, and we have taken the necessary steps to reduce this risk such as by strengthening our protective seawall in 2008 with good engineering advice, according to KCDC approvals. All we ask is for the KCDC to allow us (if not support us) to continue to manage this risk.

In fact, KCDC Policy 27 identifies a responsibility for the Council in this regard –  
“(1) *In areas of significant existing development likely to be affected by coastal hazards, the range of options for reducing coastal hazard risk that should be assessed includes ...*”

Similar sentiments have been expressed by the Environment Court when it referred to the High Court case of *Falkner v Gisborne District Council* [1995] 3 NZLR 622 and the statement of Barker J (at page 633):

*“I expressed concern at the hearing that a seemingly insensitive application of a “managed retreat” policy, as advocated by the respondents’ officials, ignored the fact that the discontinuance of protection works would seriously affect the viability in the long term and the marketability in the short term of the appellants’ properties. Many of the appellants have invested their life savings in a Wainui beach property”*

**We object to Policy 4.12** and wish to see it **deleted** because as noted above, additions to existing buildings do not increase the risk; seawalls certainly do not increase the risk, therefore there is no justification for the proposed constraints.

**We object to Policy 4.13** and wish to see it **deleted** because relocatable additions to existing buildings are a nonsense if the main building (which would have been built in good faith in a zone where Council had earlier determined that it did not need to be relocatable) is not relocatable. In any case, to make it a requirement that a building is relocatable, Council, needs to make space for it to be relocated to and cover the costs of relocation.

**We object to Policy 4.15** and wish to see it **deleted** because it is flawed. The fact that a building has had a no-build zone placed around it, does not place it in a riskier situation than what it was before the new designation – the risk is still the same. If the Council wishes to obtain all coastal properties it considers at risk, then this policy must provide for KCDC to purchase all properties and pay compensation; as well as provide locations for relocation, and cover the costs.

Affected property owners need to more than “*have significant involvement in the development of the strategies*” – they need to be joint owners of these strategies with the Council. This is a shared problem and the solutions must also be shared. Council’s record on public consultation and involvement leaves us in grave doubt whether this is ever likely to happen.

## 2.5 Objection to the Rules

The Rules arise from the Policies and are based on them. We have objected to all the Policies, with the exception of Policies 4.1, 4.2, 4.3, and asked for their deletion or replacement. As a result, **we object to all the Rules** as in the Rules and Standards Table (general) and ask that they be **deleted and replaced** with new Rules arising from new or amended Policies.

## Section 3 - RELIEF SOUGHT

Each Objection and each argument in the preceding Section 2 has concluded with the Relief which we seek. In conclusion we wish to reiterate the key and salient remedies that would satisfy our objections:

**Withdraw** Chapter 4 of the Proposed District Plan and start again with a more robust scientific basis, a serious and meaningful public involvement process, and one which leaves as many options as possible for as long as possible.

**Accept** that this is a shared problem and therefore the solutions must also be shared not imposed.

**Recognize**, explicitly, that people actually live along the coastal strip (which gives Kapiti its distinctive character), in subdivisions and developments approved by previous Councils and aim to protect, to the extent possible, the built environment along the coast, thus safeguarding people’s lifetime investments, and assisting and supporting affected ratepayers with managing the risk associated with coastal living.

**Recognize**, that in Paekakariki at least, the natural dune option is not available any more as a result of development decisions made by previous Councils and acknowledge that hard protection structures are the only practical means to protect existing homes and infrastructure.

