

HEARINGS PANEL REPORT AND RECOMMENDATIONS
ON THE
PROPOSED KĀPITI COAST DISTRICT PLAN 2012

Chapter 1 Introduction and Interpretation
(including Plan Wide)

Report 1 of 16

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**Recommendation of the Hearings Panel pursuant to s34A of
the Resource Management Act 1991**

on the

**Proposed Kāpiti Coast District Plan 2012: Chapter 1:
Introduction and Interpretation (including Plan Wide)**

Report 1 of 16

Panel Members:

Alistair Aburn (Independent Commissioner and Chair)

David McMahon (Independent Commissioner)

Miria Pomare (Independent Commissioner)

Diane Ammundsen (Commissioner)

Mike Cardiff (Commissioner)

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Hearings Panel Recommendations

Chapter 1: Introduction and Interpretation (including Plan Wide)

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PART A – INTRODUCTION AND OVERVIEW

1 Introduction

Report Purpose

- 1.1 At its meeting on 24 July 2014 the Kapiti Coast District Council (the Council or KCDC) resolved to appoint, pursuant to section 34A(1) of the Resource Management Act 1991 (RMA or the Act), a Hearings Panel comprising five accredited commissioners to hear the submissions and further submissions on the Proposed District Plan (PDP). The Council subsequently confirmed a Hearings Panel comprising three independent commissioners and two KCDC councillor commissioners:
- (a) Alistair Aburn (Independent Commissioner and Chair)
 - (b) Miria Pomare (Independent Commissioner)
 - (c) David McMahon (Independent Commissioner)
 - (d) Diane Ammundsen (Commissioner)
 - (e) Mike Cardiff (Commissioner)
- 1.2 The Hearings Panel was delegated¹ the responsibility for hearing the submissions and further submissions on the PDP and to consider and make recommendations to the Council on the provisions and matters raised.²
- 1.3 This report sets out our recommendations to the Council in respect to all submissions lodged to Chapter 1 of the PDP dealing with Introduction and Interpretation matters.
- 1.4 The PDP was initially drafted as a complete review of the Kapiti Coast Operative District Plan in accordance with Section 79 of the RMA. The PDP was publicly notified on 29 November 2012 in accordance with Clause 5 of Schedule 1 of the RMA. There were subsequent changes to the PDP including:
- (a) corrections under Clause 16 of Schedule 1 of the RMA on the 6 December 2012;
 - (b) the withdrawal of objectives, policies, rules, and map layers publicly notified on the 30 October 2014 for Coastal Hazard Management Areas, hazardous substances and facilities, and Priority Areas for Restoration; and
 - (c) the withdrawal of one policy (Chapter 3) and seven rules (Chapter 4) on 3 May 2017 in response to an Environment Court declaration application.

¹ Minute KCDC 14/06/128, 24 July 2014.

² Pursuant to Schedule 1, Clause 10(1) of the RMA.

- 1.5 The PDP has an extensive background which we will canvas in due course. All Chapters have had Section 32 (of the RMA) evaluations undertaken, along with public consultation, and public notification and hearings; culminating in a series of decision reports containing our recommendations to the Council. This Report is one of sixteen decision reports with each report generally aligning with a Chapter of the PDP. Where a given report contains provisions that have relevance to other Chapters of the PDP, we have endeavoured to make the appropriate cross references. Further commentary of the structure of each decision report is contained later in this section and also in Section 5 of this report.
- 1.6 Before setting out the details of the PDP, the submissions and our substantive evaluations, there are some procedural matters that we will address, beginning with our role as a Hearings Panel.

Role of the Hearings Panel

- 1.7 As noted above, our role is to make recommendations to the Council on the PDP. The final decision-making power rests with the Council; and in the event that the Council adopts our recommendations, then this report (and all sixteen decision reports) will become the Council Decision.
- 1.8 It is not our role for us to introduce our own evidence, and we have not done so - rather, our role has been to:
- (a) establish that all relevant evidence is before us (or where it is not, consider whether we should commission additional reports or information);³ and
 - (b) test the evidence of others, and to determine the most appropriate outcome based on the views we consider best achieve sustainable management.
- 1.9 Council's decision-making power for the PDP is set out in Clause 10(1) of Schedule 1 of the RMA. Under this clause, the Council must give a decision on the provisions and matters raised in submissions. The Council must give reasons for the decision it reaches. Whilst we are 'recommenders' and not 'decision-makers' in this case, we have followed this structure so that our recommendations are valid, should they be adopted by Council.
- 1.10 In conducting this exercise, we have familiarised ourselves with the PDP and its associated background material, read all the submissions, read the Section 42A reports and any further assessments accompanying this, conducted the hearings, and undertaken many site and locality visits - both at the request of submitters and also to assist our understanding of various issues raised by submitters and officers. Having undertaken all these tasks, we hereby record our recommendations.

³ Section 41C(4) of the Act.

Report Outline

1.11 Our report is generally organised into four broad parts:

Part A

This section is factually based with no evaluation. It outlines procedural matters as well as acknowledging the RMA statutory requirements that direct and guide our subsequent evaluation. For contextual reasons, it outlines the role of the PDP Chapter which this report covers; summarising the content and purpose of the Chapter. Essentially this background section provides a factual context for our consideration of the issues raised in submissions (Part B of this report). This section also contains a summary of the submissions and records and acknowledges the submitters that prepared evidence and presented to us. We provide a brief account of the hearing process itself and our subsequent deliberations. Where relevant, procedural matters such as minutes, directions, conferencing and caucusing are also referenced in this part of the report.

Part B

The second part of our report is structured around the main issues raised in submissions, and where relevant, summarises the evidence / statements presented at the hearing. This part of the report is evaluative and records the results of our deliberations on substantive matters.

Part C

This part of the report acknowledges the statutory requirements and records our evaluation of the PDP provisions against the relevant sections of the RMA, as well as all other relevant documents prepared under the RMA, in reaching our recommendations. Where there is other relevant legislation that we must have regard to, such as the Heritage New Zealand Pouhere Taonga Act 2014, any discussions of the relevant legislation will also be contained in this part of the report.

Part D

We conclude with a summary of our recommendations, having had regard to the necessary statutory considerations that underpin our evaluation.

Submitter Engagement Version

1.12 Following the close of submissions, and during 2013 -2015, Council officers undertook formal engagement with various submitters in an endeavour for the parties to fully understand the Plan provisions and the submissions on them. The basis for this exercise was the production of a Submitter Engagement Version (SEV) of the PDP dated 15 June 2015.

1.13 The purpose of the SEV was for reporting officers to consider all the submissions and make preliminary changes in response to those submitters where they considered amendments were appropriate. The SEV showed the preliminary changes recommended by the planners to the

PDP in response to the submissions received and formed the base for engagement with submitters leading up to the hearing. The main purpose of the SEV was to facilitate discussions, and various methods were used to engage with submitters including newsletters, workshops, one-on-one meetings and formal pre-hearing meetings under Clause 8AA to Schedule 1 of the RMA.

- 1.14 While all meetings were recorded and minutes produced, all the pre-hearing meetings were documented with reports prepared under Clause 8AA(5) to Schedule 1 of the RMA. These were appended to the relevant Section 42A reports.
- 1.15 Although our baseline document for consideration of submissions is the notified version of the PDP (minus those provisions withdrawn subsequently by Council), we acknowledge the value of the SEV. We recognise however that the SEV was for discussion purposes only and has no statutory status. This has proved a highly useful method for engaging further with submitters, and testing some of the preliminary thinking of the reporting planners. We also note that many of the altered provisions in the SEV made their way into the recommended changes in the Section 42A reports and have subsequently been adopted by the Hearings Panel.

Approach to Hearings

- 1.16 The RMA sets out a number of requirements for conducting hearings including holding them in public, determining appropriate procedures and who may be heard at hearings.
- 1.17 To this end, prior to the commencement of the hearings, we issued several minutes to the parties to achieve various purposes. All minutes issued throughout the pre-hearing, hearing and post-hearing process are contained on the Council web page and files.
- 1.18 Our introductory Minute (dated 14 December 2015) introduced the Panel, outlined the background to the process and provided a draft hearing schedule. It also included a draft set of procedures for the hearings. In advance of the first hearing scheduled for Monday 4 April 2016, the Hearings Panel convened a one-day meeting to hear from submitters or their representatives on any 'procedural' points regarding the proposed hearing process, as outlined in Minute 1. That meeting was Wednesday 17 February 2016 in the Council Chamber, Rimu Road, Paraparaumu.
- 1.19 The procedural meeting was extremely useful and resulted in some agreed changes to the hearing procedures to reflect suggestions from submitters who attended that procedural meeting. We set out our revised hearing procedures in Minute 3 issued on 10 March 2016, including a direction to require expert evidence to be pre-circulated in advance of the particular hearing(s) to which it relates. Whilst it was not mandatory for non-expert / lay submitters to pre-circulate their evidence, we appreciated those who did.

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- 1.20 We approached the hearing schedule on a topic-by-topic⁴ basis to allow us to hear all evidence relative to a given topic in one sitting⁵ as opposed to having such evidence scattered throughout a multitude of hearings. We have structured our reports in a similar manner and there are sixteen reports outlining our recommendations:
- (a) Report 1: Chapter 1 - Introduction and Interpretation (including Plan Wide)
 - (b) Report 2: Chapter 2 - Objectives
 - (c) Report 3: Chapter 3 - Natural Environment: Landscape and Earthworks
 - (d) Report 4: Chapter 3 - Natural Environment: Ecology and Vegetation
 - (e) Report 5: Chapter 4 - Coastal Environment
 - (f) Report 6: Chapter 5 - Living Environment
 - (g) Report 7: Chapter 6 - Working Environment
 - (h) Report 8: Chapter 7 - Rural Environment
 - (i) Report 9: Rural Re-zoning Requests
 - (j) Report 10: Chapter 8 - Open Space
 - (k) Report 11: Chapter 9 - Hazards
 - (l) Report 12: Chapter 10 - Historic Heritage
 - (m) Report 13: Chapter 11 - Infrastructure, Services and Associated Resources Use: Network Utilities and Services
 - (n) Report 14: Chapter 11 - Infrastructure, Services and Associated Resources Use: Access and Transport
 - (o) Report 15: Chapter 11 - Infrastructure, Services and Associated Resources Use: Community Facilities
 - (p) Report 16: Chapter 12 - General District-wide Provisions (including Amateur Radio)
- 1.21 Each report takes a lead from the Objectives recommended in the Chapter 2 report. Other than that, each report is largely self-contained on all matters relevant to the Chapter it is reporting on. In some instances, however, cross references to relevant content in other reports are provided where necessary; for example, to illustrate a point about how a rule gives effect to a particular policy or to reference a particular point about the rationale for consistency in provisions across the Plan as a whole.

Comments on the Assistance Given to Us

- 1.22 In advance of setting out the PDP context, we would like to record our appreciation of all the organisations and individuals involved throughout the PDP process, but in particular those who took part in the hearing. We would like to acknowledge the following:
- (a) the constructive and helpful input provided by all the submitters appearing before us;

⁴ In most instances, each topic is synonymous with a single Chapter of the PDP.

⁵ Some sittings were confined to a single day whereas others extended over several days.

- (b) the helpfulness of Council's Hearings Administrator, Leanne Taylor in coordinating the scheduling of parties and general administrative assistance;
- (c) the assistance of Council's Hearings Panel Support, Sally Matich for ensuring we had access to evidence as soon as it was lodged with Council;
- (d) the reporting and planning input from the various Council planners and consultants who prepared the Section 42A reports;
- (e) the advice provided by other experts appearing for the Council, including both internal and external advisors; and
- (f) Koro Don the Council's kaumatua, assisted by Monica Fraser, Council's Iwi Relationship Manager, who assisted in opening and closing the hearings.

1.23 We are grateful for the efforts of the submitters, experts, and other witnesses for doing their very best to respond constructively to the challenges presented by the Act's processes. We also wish to acknowledge the effort that has been put in by some submitters who have spent hours and hours reading and discussing the PDP and reports so that they were in a position to present knowledgeably to us about their concerns at the various hearings. We appreciate the conduct of the participants which allowed us to have a focused hearing process. This greatly assisted us in assessing and determining the issues, and delivering our recommendations.

2 Chapter 1: Introduction, Interpretation and General / Plan Wide Issues

Context

- 2.1 This report is in two parts. It is our evaluation of and recommendations on all submission and further submission points which either raised issues with:
- (a) all defined terms and information on how to use the Plan across all Zones and all topic areas. A brief explanation of each Chapter 1 topic covered in this report is provided below; and/or
 - (b) matters that are either relevant to the entire Plan or were too general in nature to be attributed to any particular Plan Chapter.
- 2.2 Before canvassing those submissions, it is useful to provide a brief explanation of each Chapter 1 topic covered in this report.

Role and Summary of Chapter 1 Introduction and Interpretation

- 2.3 Chapter 1 contains information on the following topics:
-

- (a) all defined terms;
 - (b) Plan user's guide;
 - (c) information requirements for resource consent applications;
 - (d) cross boundary issues; and
 - (e) monitoring.
- 2.4 As Chapter 1 includes all defined terms and information on how to use the Plan, it assists, in an administrative sense, in implementing the Plan objectives.
- 2.5 Chapter 1 content applies across all Zones and all topic areas as follows:
- (a) Section 1.1 comprises the user's guide to the PDP, explaining the structure of the chapters of the Plan and how they interact with each other. The three Plan volumes are also described (provisions, appendices, and maps). This section of the Plan also includes guidance material on the following topics:
 - (i) an explanation of the status of activities under the RMA; and
 - (ii) guidance on how to determine whether resource consent is required;
 - (b) Section 1.2 contains guidance for Plan users on the resource consent process;
 - (c) Section 1.3 details the information requirements for applications for land use and subdivision resource consents;
 - (d) Section 1.4 contains all defined terms used throughout the Plan;
 - (e) Section 1.5 discusses cross-boundary issues; and
 - (f) Section 1.6 outlines the monitoring and reporting activities the Council is required to carry out under the RMA. These requirements include compliance and state of the environment monitoring, review of the efficiency and effectiveness of the Plan, and reporting of the findings.
- 2.6 The above framework represents the high level statutory organisational context for our consideration of the submissions and further submissions lodged on the PDP. It is the statutory 'lens' that we have kept foremost in our mind when considering whether, under section 32 of the Act, a particular provision of the PDP that has been submitted on is in this instance, the most appropriate way to achieve the objectives if it is a policy, rule or method.
- 2.7 We return to these matters later in Section 19 of this report when we outline the statutory requirements of the RMA.

General/Plan Wide Matters

- 2.8 This report also contains our evaluation and recommendations on all submission and further submission points which raised matters that are either relevant to the entire PDP or were too

general in nature to be attributed to any particular Plan Chapter. Examples of matters addressed in this report include:

- (a) matters beyond the scope of the PDP and/or the RMA;
- (b) withdrawing the PDP and opposition to the entire PDP;
- (c) the structure and organisation of the PDP;
- (d) the PDP process including consultation and Section 32 analysis; and
- (e) PDP Maps.

- 2.9 In essence, the above matters represent the 'big ticket' items from the submission process and are focussed in the Plan in its entirety.

3 Submissions

Chapter 1: Introduction and Interpretation

- 3.1 As noted in the Section 42A report,⁶ there were 69 submissions received on the Chapter 1 Introduction and Interpretation provisions.
- 3.2 We provide a summary of the submissions received in Appendix 2, including our recommendations on the relief sought by each submitter.
- 3.3 Sixty-four submissions sought changes to defined terms, while the remaining five submissions made more general points regarding the user's guide and monitoring requirements.
- 3.4 Where submissions related to a defined term but were addressed in other Chapters, we do not specifically revisit those defined terms in this report.

General/Plan Wide Matters

- 3.5 As noted in the Section 42A report,⁷ there were 93 submissions and numerous further submissions received which raised general and/or Plan-wide issues.
- 3.6 We provide a summary of the submissions received in Appendix 2, including our recommendations on the relief sought by each submitter.
- 3.7 We discuss the submissions and associated issues in greater detail under our evaluation in Part B below.

⁶ s42A Report: Part B - Chapter 1 Introduction, Interpretation and Integration.

⁷ s42A Report: Part B - General / Plan-Wide.

4 The Hearing

Chapter 1: Introduction and Interpretation

- 4.1 We were not presented with any agreements under Clause 8AA of Schedule 1 of the RMA as a result of any formal pre-hearing meetings on Chapter 1 Introduction and Interpretation provisions.
- 4.2 The hearing of submissions on Chapter 1 was held on two days, being Tuesday 13 and Wednesday 14 December 2016 at Kapiti Coast District Council.
- 4.3 There were no procedural issues for the Hearings Panel to address in respect of this Chapter and the hearing was generally focused on the presentation of evidence and submissions from the various parties present.
- 4.4 We received a Section 42A report regarding Chapter 1 from the following report writers:
- (a) Ms Sherilyn Hinton;
 - (b) Mr Matthew Muspratt;
 - (c) Ms Emily Thomson;
 - (d) Ms Suzanne Rushmere; and
 - (e) Ms Gina Sweetman.
- 4.5 This was circulated to submitters on this Chapter and made available on Council's website the same day. The hearing commenced with an overview of the Section 42A report from Mr Muspratt, summarising the key issues for consideration by the Hearings Panel.
- 4.6 We received written pre-circulated evidence from the following submitters for the Chapter 1 Introduction and Interpretation hearing:
- (a) Rob Crozier and Joan Allin [451];
 - (b) Sarah Shand on behalf of Transpower New Zealand Ltd [208 & FS64];
 - (c) Mark Laurenson on behalf of The Oil Companies [512];
 - (d) Chris Hansen on behalf of Coastlands Shoppingtown Ltd [218 & FS55];
 - (e) Chris Hansen on behalf of Maypole Environmental Ltd [263 & FS125]; and
 - (f) Egon Guttke [100 & FS09].
- 4.7 We received correspondence prior to the hearing, and evidence tabled during the hearing from the following submitters:
- a) NZ Fire Service Commission [404 & FS174]; and
 - b) Marian Smith & Phil Stroud for Waa Rata [327 & FS167].

General/Plan Wide Matters

- 4.8 We were not presented with any agreements under Clause 8AA of Schedule 1 of the RMA as a result of any formal pre-hearing meetings on General / Plan Wide matters.
- 4.9 The hearing of submissions on General / Plan-Wide matters was the first of the PDP hearings, and was held over three days being Monday 4, Tuesday 5, and Friday 8 April 2016.
- 4.10 There were no other procedural issues for the Hearings Panel to address in respect of the matters addressed within the Section 42A report, and the hearing was generally focused on the presentation of evidence and submissions from the various parties present.
- 4.11 We received a Section 42A report regarding General / Plan-Wide matters from Ms Suzanne Rushmere. This was circulated to the relevant submitters and made available on Council's website. The hearing commenced with an overview of the Section 42A report from Ms Rushmere, summarising the key issues for consideration by the Hearings Panel.
- 4.12 We also received written pre-circulated evidence from the following submitters for the General / Plan-Wide hearing:
- (a) Rob Crozier & Joan Allin [451 & FS29] - evidence for all hearings, 26 February 2016;
 - (b) Joan Allin - supplementary evidence and submissions, 21 March 2016;
 - (c) Chris Hansen on behalf of Coastlands Shoppingtown Ltd [218 & FS55], 17 March 2016;
 - (d) Mark Georgeson on behalf of Coastlands Shoppingtown Ltd [218 & FS55], 17 March 2016;
 - (e) Michael Copeland on behalf of Coastlands Shoppingtown Ltd [218 & FS55], 17 March 2016;
 - (f) Katharine Moody on behalf of Coastal Ratepayers United Inc. [378 & FS88], 21 March 2016;
 - (g) Mark Southcombe [473], 23 March 2016;
 - (h) Chris Hansen on behalf of Maypole Environmental Ltd [263 & FS125], 22 March 2016; and
 - (i) Richard Jessup [115], 29 February 2016.
- 4.13 We received correspondence, evidence and written statements prior to the hearing from the following submitters:
- a) Joan Allin [451 & FS29];
 - b) Coastal Ratepayers United Inc [378 & FS88];
 - c) Federated Farmers of New Zealand [250 & FS63];
 - d) Southcombe Architects [473];
 - e) Ian Jensen [275 & FS41];
 - f) Lyndon Enterprises [271 & FS93];

- g) Friends of Te Haupa Dunes and Wetlands [341];
- h) Mari Housiaux [511 & FS172];
- i) North Otaki Beach Residents Group [38 & FS194];
- j) Coastlands Shoppingtown Ltd [218 & FS55];
- k) Maypole Environmental Ltd [263 & FS125];
- l) Egon Guttke [100 & FS9]; and
- m) Allan Smith [443 & FS139].

4.14 The following parties presented to us over the three days of the hearing:

Monday 4 April 2016:

- (a) Ms Joan Allin [451 & FS29];
- (b) Ms Katherine Moody for Coastal Ratepayers United [378 & FS227];
- (c) Ms Kristy McGregor on behalf of Federated Farmers of New Zealand [250 & FS63];
- (d) Mr Max Lutz for Lutz Brothers Ltd [425 & FS180];
- (e) Mr Richard Jessup [115];
- (f) Mr Richard Swan [231 & FS54];
- (g) Mr Mark Southcombe for Southcombe Architects [473];
- (h) Mr Owen Cox [243]; and
- (i) Dr Gerald Rys [85].

Tuesday 5 April 2016

- (a) Ms Mari Housiaux [511 & FS172];
- (b) Ms Mari Housiaux on behalf of Friends of Te Hapua Dunes and Wetlands [341];
- (c) Mr John Gibson for Friends of Te Hapua Dunes and Wetlands [341];
- (d) Mr Ian Jensen [275 & FS41];
- (e) Mr Martin Warriner [143];
- (f) Mr Don Wallace on behalf of Lyndon Enterprises [271 & FS93];
- (g) Mr John Massen on behalf of North Otaki Beach Residents Group Inc [38 & FS194];
- (h) Mr Allan Smith [443 & FS139]; and
- (i) Ms Marian Smith for Waa Rata [327 & FS167].

Friday 8 April 2016

- (a) Mr Lynn Sleath, Mr John Baldwin & Ms Lin Mikelson for Kapiti Cycling Incorporated [52];
 - (b) Mr Egon Guttke [100 & FS9];
 - (c) Mr McClelland for Coastlands Shoppingtown Ltd [218 & FS55];
 - (d) Mr Richard Mansell for Coastlands Shoppingtown Ltd [218 & FS55];
 - (e) Mr Mark Georgeson for Coastlands Shoppingtown Ltd [218 & FS55];
 - (f) Mr Michael Copeland for Coastlands Shoppingtown Ltd [218 & FS55];
 - (g) Mr Chris Hansen for Coastlands Shoppingtown Ltd [218 & FS55];
 - (h) Mr Robert Makgill for Maypole Environmental Ltd [263 & FS125];
 - (i) Mr Jonathan Smith for Maypole Environmental Ltd [263 & FS125]; and
 - (j) Mr Chris Hansen for Maypole Environmental Ltd [263 & FS125].
- 4.15 Following the hearing Ms Rushmere prepared a closing statement which was supplied to us on 26 April 2016 and published on the Council's website.
- 4.16 Whilst there were no formal procedural issues raised by any party in respect to this Chapter, there was an issue as to whether the chapter-by-chapter approach was the most effective process with regards to integrated management and consistency through the Plan. As a result, the Hearings Panel convened a 'whole of plan integration' hearing at the end of the hearing sequence in order to canvas these matters at the end of the hearing process.
- 4.17 In addition, and not specific to just Chapter 1, there was an issue as to whether the chapter-by-chapter approach embodied in the PDP (and also adopted for the purpose of hearing submissions), represented the most effective process with regards to coastal management and coastal planning. In response to these concerns, we directed two sets of integration hearings as follows:
- (a) **Coastal Integration Hearing** - the purpose of this hearing was to consider the interrelationship between Chapters 3, 4, 8 and 9 (and also with relevant objectives in Chapter 2). This hearing was discussed and directed by way of Minute 5 dated 7 April 2016 and was in part response to concerns expressed by some submitters (Rob Crozier and Joan Allin [451], Coastal Ratepayers United [378] and North Otaki Beach Residents Group [38]) that the hearing schedule did not enable effective consideration of (and thus ultimately integration of) management of the coastal resource by any party (including submitters, Section 42A report writers or the Hearings Panel). The Coastal Integration hearing schedule was established by way of Minute 11 dated 22 June 2016. The actual Coastal Integration hearing was conducted on 16 July 2016. Full details on this hearing and the background to it are contained in our Report on Chapter 4 Coastal Environment (at Section 4).

(b) **Whole of Plan Integration Hearing** - this was our initiative and was first signalled in Minute 5 dated 7 April 2016. Subsequent Minutes (Minute 15 dated 6 September 2016 and Minute 16 dated 18 October 2016) outlined the procedures and programming for this hearing. The purpose of the Whole of Plan Integration Hearing was to identify and consider cross-chapter linkages in an integrated manner given that previous hearings originated and were conducted on a chapter-by-chapter basis. It transpired that we required four separate sittings to complete the Whole of Plan Integration Hearing. The first sitting was held over two days, being 13-14 December, followed by two days on the 3 and 15 March 2016, and the last sitting was conducted on 5 April 2017.

4.18 For all parties who presented to us, we took the opportunity to ask questions at the proceedings. Having reviewed all of the above material, we are satisfied that the responses and information supplied to us was complete and answered our questions.

PART B – EVALUATION OF ISSUES

5 Evaluation

Chapter 1: Introduction and Interpretation

- 5.1 As in the Section 42A report, we have grouped our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the matters⁸ to which they relate, rather than assessing each individual submission. We have adopted this approach to avoid unnecessary duplication with our focus being on the key themes and issues which underpin our recommendations.
- 5.2 Where we do not refer to a specific submission or further submission topic or recommended amendment to Chapter 1 it is because we concur with the analysis and recommendations contained within the Section 42A reports and the closing statements provided to us by the report writers.
- 5.3 For those submitters who are interested in a particular matter as it pertains to their submission(s), reference can be made to the submitter-by-submitter summary of decisions requested in Appendix 2, which includes our recommendation on each relief point sought. Those specific decisions have been derived from our issues assessment below. Therefore, our recommendations on all Chapter 1 provisions and our recommendations on all Chapter 1 submissions and further submissions, are contained in Appendix 1 and Appendix 2 respectively.
- 5.4 This approach is not to downplay the importance of the input from submitters - we acknowledge the invaluable input of submitters in shaping our grouping of issues and our consideration of those matters. We considered it would be helpful for submitters as well as our own thinking to focus on the key issues.
- 5.5 For those submitters who are interested in a particular matter as it pertains to their submission(s), reference can be made to the submitter-by-submitter summary of decisions requested in Appendix 2, which includes our recommendation on each relief point sought. Those specific decisions have been derived from our issues assessment below.
- 5.6 We accept having adopted this approach means that not every submission is specifically referenced in the discussions in this report. To have done so would have resulted in the reports being significantly longer as a result of simply listing out submitters for no purposeful end. Hence, we have adopted the approach of grouping issues / matters in the report as a basis for deriving decisions on individual submissions.

⁸ Clause 10(2)(a) of Schedule 1, RMA sets out that a Plan change decision may address submissions by grouping them according to either the provisions of the Plan change to which they relate, or to the matters to which they relate.

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- 5.7 On 18 October 2016, we issued Minute 16 detailing the purpose and process for the Chapter 1 Introduction, Interpretation and Integration hearing. As we are mindful of fair process to all submitters the minute stressed the hearing was not an opportunity for submitters to revisit submission points which had already been considered by us during other hearings.
- 5.8 We have organised our discussion of Introduction and Interpretation issues as follows:
- Issue 1:** Section 1.1 - Plan user's guide
 - Issue 2:** Section 1.2 - Guidance on the resource consent process
 - Issue 3:** Section 1.3 - Information requirement for resource consent applications
 - Issue 4:** Section 1.3A - Structure plans
 - Issue 5:** Section 1.4 - Interpretation (defined terms)
 - Issue 6:** Section 1.6 - Monitoring and reporting

General/Plan Wide Matters

- 5.9 As above, for General/Plan Wide Matters we have again grouped our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the matters⁹ to which they relate, rather than assessing each individual submission.
- 5.10 Again, for those submitters who are interested in a particular matter as it pertains to their submission(s), reference can be made to the submitter-by-submitter summary of decisions requested in Appendix 2, which includes our recommendation on each relief point sought. Those specific decisions have been derived from our issues assessment below.
- 5.11 We have organised our discussion of issues as follows:
- Issue 1:** Matters beyond the scope of the PDP and/or the RMA
 - Issue 2:** Withdrawing the PDP and opposition to the entire PDP
 - Issue 3:** PDP content
 - Issue 4:** The structure and organisation of the PDP
 - Issue 5:** The PDP process including consultation and Section 32 analysis
 - Issue 6:** PDP maps
 - Issue 7:** Default rules and activity cascade

⁹ Clause 10(2)(a) of Schedule 1, RMA sets out that a Plan change decision may address submissions by grouping them according to either the provisions of the Plan change to which they relate, or to the matters to which they relate.

Evaluation Preamble – Statutory Framework

Context

- 5.12 Before formally recording our consideration of the issues, we summarise here the relevant statutory matters that frame our evaluation. This summary is organised into three parts as follows:
- (a) firstly, we set out the mandatory requirements of the RMA that frame our decision-making;
 - (b) secondly, we clarify which ‘version’ of Section 32 (RMA) is applicable as part of our decision-making; and
 - (c) finally, we provide clarification about the force of certain higher order documents that we must have regard to as part of our evaluation.
- 5.13 What follows represents just an initial factual commentary on these matters governing our evaluation. The specific statutory evaluation of the challenged provisions in this Chapter of the Plan are covered in greater detail later in this report. Specifically, the principal Section 32 consideration is provided in Section B of this report under the heading “Evidence and Evaluation” for each of the Issues (referred to in the Act as “matters”) that are canvassed for this Chapter; and ultimately the overall Section 32 evaluation is summarised and concluded in Part C of this report.

Mandatory Requirements

- 5.14 The Environment Court gave a comprehensive summary of the mandatory requirements for the preparation of district plans in *Long Bay-Okura v North Shore City Council*.¹⁰ Subsequent cases have updated the ‘Long Bay’ summary following amendments to the Act in 2005 and 2009, with the most comprehensive and recent of which provided in *Colonial Vineyard Ltd v Marlborough District Council*.¹¹
- 5.15 The framework established by the Court sets out the relevant decision-making framework as follows:

General requirements

- a. the Plan should be designed to accord with,¹² and assist Council to carry out its functions¹³ so as to achieve the purpose of the Act;¹⁴
- b. when preparing/changing the Plan, Council must:

¹⁰ Decision No. A 078/2008.

¹¹ Decision No. [2014] NZEnvC 55.

¹² s74(1), RMA.

¹³ s31, RMA.

¹⁴ ss 72, 74(1), RMA.

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- i. give effect to any NPS¹⁵, the NZCPS¹⁶ or any RPS;¹⁷¹⁸
 - ii. have regard to any *proposed* RPS;¹⁹
 - iii. have regard to any management plans and strategies under any other Acts and to any relevant entry on the NZ Heritage List and to various fisheries regulations (to the extent relevant), and to consistency with plans and proposed plans of adjacent authorities;²⁰
 - iv. take into account any relevant planning document recognised by an iwi authority;²¹
 - v. not have regard to trade competition or the effects of trade competition;²²
 - vi. be in accordance with any regulation;²³
- c. in relation to regional plans:
- i. the Plan must not be inconsistent with an operative regional plan for any matter specified in s30(1) or any water conservation order;²⁴ and
 - ii. shall have regard to any proposed regional plan on any matter of regional significance;²⁵
- d. the Plan must also state its objectives, policies and the rules (if any) and may state other matters;²⁶

Objectives

- e. the objectives of the Plan are to be evaluated to the extent which they are the most appropriate way to achieve the Act's purpose;²⁷

Provisions (policies, rules and methods)

- f. the policies are to implement the objectives, and the rules are to implement the policies;²⁸
- g. each provision is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives²⁹ of the Plan, taking into account:
 - i. the benefits and costs of the proposed policies and methods;
 - ii. the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions;³⁰ and
 - iii. if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.³¹

¹⁵ National Policy Statement.

¹⁶ New Zealand Coastal Policy Statement.

¹⁷ Wellington Regional Policy Statement.

¹⁸ s75(3)(a)-(c), RMA.

¹⁹ s74(2), RMA.

²⁰ s74(2)(b)-(c), RMA.

²¹ s74(2A), RMA.

²² s74(3), RMA.

²³ s74(1), RMA.

²⁴ s75(4), RMA.

²⁵ s74(2)(f), RMA.

²⁶ s75(1)-(2), RMA.

²⁷ s74(1) and s32(3)(a), RMA.

²⁸ s75(1), RMA.

²⁹ s32(3)(b), RMA.

³⁰ s32(4), RMA.

Rules

- h. in making a rule, Council shall have regard to the actual or potential effect of activities on the environment;³²
- i. rules have the force of regulations;³³
- j. rules may be made for the protection of property from the effects of surface water, and these may be more restrictive than those under the Building Act 2004;³⁴
- k. there are special provisions for rules about contaminated land;³⁵
- l. there must be no blanket rules about felling of trees³⁶ in any urban environment;³⁷ and

Other Statutes

- m. Council may be required to comply with other statutes

- 5.16 The above Court established decision-making framework is adopted in our evaluation of challenged provisions for all Plan Chapters. The way we approach this is explained in more detail in Part C of this report. Suffice to say however, that the approach is adopted consistently across all our reports on the Plan Chapters. Whilst this may at first glance appear to be formulaic and/or repetitive, it does nonetheless ensure (importantly) that we have undertaken and recorded our evaluation in terms of the relevant statutory tests prescribed in the Act.
- 5.17 The unchallenged advice before us is that our evaluation of issues is to be structured to satisfy the requirements of Section 32 as it applied when the PDP was publicly notified in November 2012³⁸ as opposed to the version of Section 32 as it currently sits.
- 5.18 That (now former) Section 32 requires the Council to carry out an evaluation at the following stages:
- (a) before a proposed plan is publicly notified; and
 - (b) before making a decision on provisions and matters raised in submissions for the proposed plan under clause 10 of Schedule 1 to the Act.
- 5.19 We record that the Council already completed the Section 32 evaluation referred to in (a) above, prior to the PDP being notified on 29 November 2012, and therefore we do not need to repeat this evaluation further in this report.
- 5.20 The next juncture when an evaluation is required by the Act is before making the Decision referred to in (b) above.

³¹ s32(3A), RMA

³² s76(3), RMA.

³³ s76(2), RMA.

³⁴ s76(2A), RMA.

³⁵ s76(5), RMA.

³⁶ s76(4A), RMA.

³⁷ s76(4B), RMA.

³⁸ The version of Section 32 of the RMA that was in force between 1 October 2011 and 2 December 2013 applies to the current PDP process, despite Section 32 having since been amended in the Resource Management Amendment Act 2013.

- 5.21 Given that we have delegated authority to hear submissions and make a recommendation to the Council about what the Decision should be, the onus of making that further evaluation rests with us.
- 5.22 In this respect, we note that while Section 32(5) requires a report to be prepared summarising and giving reasons for the initial Section 32(1) evaluation prior to notification of a proposed plan, there is no equivalent provision requiring a Section 32 report to be prepared for the further evaluation required under Section 32(2). Nor is there an express requirement in the applicable version of Clause 10 of Schedule 1 of the Act for the Decision to address Section 32 matters.
- 5.23 This position differs from Clause 10 as it is currently worded in the Act (post-2013 Amendment Act), which expressly requires the Decision to include a further evaluation of the proposed plan in accordance with Section 32AA, and for the Council to have particular regard to that evaluation in making its decision.
- 5.24 Despite the absence of an express requirement to that effect in the Section 32 framework applicable to our report, we consider it essential for the Decision to address Section 32 matters. In practice, the requirement in Clause 10(2)(a) for the Decision to include reasons for accepting or rejecting submissions should relate directly to the Section 32 matters and other statutory requirements that are applicable.
- 5.25 Notwithstanding that Section 32AA(1)(d)(ii) under the post-2013 Amendment Act version of the RMA is also not applicable to our evaluation, we find some utility in applying the scope of that Clause as it enables our Section 32(2) evaluation of the alterations we are recommending to be incorporated into this report as part of the decision-making record.
- 5.26 In adopting the above pragmatic approach, this means that in those instances where we have recommended an alteration to the notified PDP within our report, we have deliberately assessed the appropriateness of that alteration in the wider context of Section 32 (in specific detail in Part B and in summary form in Part C of this report).

Status of Higher Order Documents

- 5.27 Against the context established above, we acknowledge there is an obligation for the Plan to give effect to the higher order planning documents identified; however, we note our ability to achieve this through amendments is limited to instances where there is scope provided by submissions to do so.
- 5.28 We record here that five national policy statements (NPS) have been gazetted to date, being:
- (a) NPS on Electricity Transmission (2008);
 - (b) New Zealand Coastal Policy Statement (2010);
 - (c) NPS for Renewable Electricity Generation (2011);
 - (d) NPS for Freshwater Management (2014); and
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- (e) NPS for Urban Development Capacity (2016).³⁹
- 5.29 The NPS on Electricity Transmission, the New Zealand Coastal Policy Statement, and the NPS for Renewable Electricity Generation are all relevant and represented in the Objectives. The NPS for Urban Development Capacity is of particular relevance to Objectives on Living and Working Zones and we have picked up those matters where relevant in Chapters 5 and 6, but again within the scope of submissions.
- 5.30 We note that a National Environmental Standard for Plantation Forestry was in a draft form at the time of the hearing, but has now been gazetted and comes into force on 1 May 2018. Consequently, during our deliberations we did not give it any weight, other than be aware of the matters it was intending to cover.⁴⁰
- 5.31 When the PDP was first notified, the (then) *Proposed* Wellington Regional Policy Statement 2009 was still the subject of appeals to the Environment Court. In line with the general requirements outlined above, the PDP was required at that point to give effect to the *Operative* Regional Policy Statement 1999 by Section 75(3)(c) of the Act. The provisions of the *Proposed* Wellington Regional Policy were required to be given regard to by Section 74(2)(a)(i).
- 5.32 The *Proposed* Regional Policy Statement for the Wellington Region became the *Operative* Regional Policy Statement (RPS) on 24 April 2013. To the extent enabled by the scope of submissions, we have adopted recommendations to ensure the Plan gives effect to the now *Operative* RPS.
- 5.33 We have also endeavoured to ensure any proposed amendments are not inconsistent with the operative regional plans for the Wellington Region, and we have had regard to the *Proposed* Natural Resources Plan for the Wellington Region (notified May 2015).
- 5.34 We also have taken into account the relevant planning documents recognised by iwi authorities and lodged with KCDC, to the extent that their content has a bearing on the resource management issues of the District. We understand two documents have been prepared and lodged with the Council - the Ngati Raukawa Ōtaki River and Catchment Iwi Management Plan 2000, and Nga Korero Kaupapa mo Te Taiao Policy Statements Manual for Kapakapanui Te Runanga o Ati Awa 1999-2000.
- 5.35 With these contextual matters established, we now turn to our evaluation of issues, followed by our summary evaluation of the above statutory requirements.

³⁹ The NPSUDC came into force on 1 December 2016, which was after our Hearings had been largely concluded but prior to our deliberations concluding.

⁴⁰ Local authorities have until 1 May 2018 to identify any Plan rules that duplicate or conflict with the NES, or which deal with the same effects. As soon as practicable after 1 May 2018, those rules must be removed from the Plan without using Schedule 1 of the RMA.

CHAPTER 1: INTRODUCTION AND INTERPRETATION

6 Issue 1: General Issues and Section 1.1 – Plan User’s Guide

General Submissions and Recommended Amendments

- 6.1 As signalled in Section 5 of this report, we do not revisit all submissions, topics or recommended amendments to the PDP addressed within the Section 42A reports for Chapter 1 and integration matters. To avoid unnecessary duplication, we have focused our discussion on the key themes and issues which underpin our recommendations.
- 6.2 Where we do not refer to a specific submission, topic or recommended amendment to the PDP in this report, it is because we concur with the analysis and recommendations contained within the Section 42A reports and closing statements provided to us by the report writers.
- 6.3 Our recommendations on all Chapter 1 submissions, and our complete recommendations on all relevant PDP provisions, are attached to this report as Appendix 2 and Appendix 1 respectively.

Findings

- 6.4 We recommend all submissions relevant to Chapter 1 (Introduction and Interpretation) are accepted, accepted in part or rejected as shown in Appendix 2.
- 6.5 We recommend all Plan provisions relevant to Chapter 1 as shown in Appendix 1.

Section 1.1: Plan User’s Guide

- 6.6 Although we did not hear from any specific submitters at the hearing regarding Section 1.1 - Plan User’s Guide, we note a number of submitters requested numerous improvements to the PDP which we recommend are applied to Section 1.1. The main points raised in the submissions include:
- (a) make the Plan less complex and more user-friendly (DF and AE Partnership and others [39.2]);
 - (b) ensure consistency across the Plan (Allan Darragh [68], Allan Smith [139], Valerie Ballinger [142], and Further Submissions Egon Guttke [9], Irena Guttke [100]);
 - (c) reduce the length and complexity of the Plan (New Zealand Wind Energy Association [136.1] supported by further submission Allan Darragh [68] and others);
 - (d) information contained within Figure 1.3 can be obtained from MfE website (Kapiti Coast District Council [440.7]); and

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- (e) PDP is unwieldy, repetitive, full of jargon and at times difficult to understand (Norm Antcliff [581.1] and further submission Allan Darragh [68])

Evidence and Evaluation

- 6.7 Having considered the evidence provided within the Chapter 1 Section 42A report, opening statement and final closing statement, we agree the requested changes summarised above will provide relief to the abovementioned submissions and improve the usability of the Plan.

Findings

- 6.8 We agree with the recommended amendments in response to these submissions as outlined within the Section 42A report and the final closing statement for Chapter 1.
- 6.9 We recommend Section 1.1 - Plan User's Guide, is amended as shown in Appendix 1 to this report.
- 6.10 We recommend the abovementioned submissions (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, accepted in part or rejected as outlined in Appendix 2.

7 Issue 2: Section 1.2 - Guidance on the Resource Consent Process

Description of the Issue

- 7.1 This section of the PDP contains information on the resource consent process which applied at the time the PDP was notified. The Section 42A report noted that the information on the resource consent process has changed since the PDP was notified, and may change again over the life of the Plan.
- 7.2 The Section 42A report recommended that this section is deleted and replaced with a note within Section 1.1 referring Plan users to the Ministry for the Environment's website to ensure the most up-to-date resource consent process information is used.

Evidence and Evaluation

- 7.3 We agree the information contained within Section 1.2 is now out of date following amendments to the RMA which have occurred since the PDP was notified. We also agree additional changes to the resource consent process may occur over the life of the Plan, making any amendments we may make out of date once again.
- 7.4 We note the RMA has been amended twice since the PDP was notified (2013 and 2017). Both these amendments have altered the resource consent process from that shown in section 1.2 of
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the PDP. As an aside, we note Figure 1.3 incorrectly shows the plan change process rather than the resource consent process, and therefore does not serve its intended purpose.

- 7.5 We note district plans are not required to contain this guidance information, and we agree it would be more efficient and effective to guide Plan users to the most up to date information contained on the Ministry for the Environment's website, or for the Council to provide non-statutory guidance information outside of the Plan rather than attempt to update the Plan in response to amendments to the RMA.

Findings

- 7.6 We recommend Section 1.2 Resource Consent Process is deleted in its entirety as recommended within the Section 42A report for Chapter 1.
- 7.7 We recommend the submissions identified within Appendix 2 which provide scope for this amendment (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, accepted in part or rejected as outlined in Appendix 2.

8 Issue 3: Section 1.3 – Information Requirement for Resource Consent Applications

Description of the Issue

- 8.1 Section 1.3 contains the information requirements for resource consent applications. This Section 42A report for Chapter 1 recommends numerous amendments to this section citing scope provided by the following submissions:
- (a) PDP is unwieldy, repetitive, full of jargon and at times difficult to understand (Norm Antcliff [581.1] and further submission Allan Darragh [68]);
 - (b) defined terms to be italicised (Kapiti Coast District Council [440.1]; and
 - (c) make the Plan less complex and more user friendly, consistent use of defined terms (DF and AE Partnership and others [9.2]).

Evidence and Evaluation

- 8.2 We agree with the requested changes summarised above and as shown within the Section 42A report and the closing statement. Those amendments will make the Plan less complex, more user friendly, and will ensure consistent and appropriate use of defined terms.

Findings

- 8.3 We agree with the recommended amendments in response to these submissions as outlined within the Section 42A report and the final closing statement for Chapter 1.
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- 8.4 We recommend Section 1.3 - Information to be submitted with an application for resource consent, is amended as shown in Appendix 1 to this report.
- 8.5 We recommend the abovementioned submissions (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, accepted in part or rejected as outlined in Appendix 2.

9 Issue 4: Section 1.3A – Structure Plans

Description of the Issue

- 9.1 Section 1.3A - Structure Plans, is a recommended new section of Chapter 1, much of which has been relocated from the definition of *structure plan*. This is in response to the following matters raised by submitters:
- (a) retention of the definition for structure plan while addressing its concerns about the intent, content and process of preparing the structure plan (Coastlands Shoppingtown Ltd [218.7]);
 - (b) opposition to the definition of *structure plan* as the description is better placed within the section of the Plan that addresses growth management (NZ Transport Agency [457.2]);
 - (c) amendment to the definition for structure plan so it is moved to the explanation to Objective 2.3 or the explanation to Policy 5.2 (NZ Transport Agency [457.7]);
 - (d) requests that the Plan less complex and more user friendly (DF and AE Partnership and others [39.2]); and
 - (e) concerns that the PDP is unwieldy, repetitive, full of jargon and at times difficult to understand (Norm Antcliff [581.1] and further submission Allan Darragh [68]).

Evidence and Evaluation

- 9.2 We agree with the Section 42A report that much of the content of the definition for *structure plan* contains information which is about the process for creating structure plans, and therefore the definition includes information which goes beyond that of a definition.
- 9.3 Taking into account the relief sought by the submitters identified above, we consider the amended definition, which removes the content relating to process, and the introduction of the new Section 1.3 addresses the collective concerns raised by these submitters.

Findings

- 9.4 We recommend amendments to the definition for *structure plan*, and the introduction of new Section 1.3A - Structure Plans as outlined in Appendix 1.

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- 9.5 We recommend the submissions relating to *structure plans* (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, rejected or accepted in part as outlined in Appendix 2.

10 Issue 5: Section 1.4 – Interpretation (Defined Terms)

Description of the Issue

- 10.1 The majority of submissions on Chapter 1 related to specific defined terms. Submissions ranged from supporting defined terms as notified to requesting amendments, to complete deletion. We have addressed a number of definitions in our reports on the Chapters to which those definitions relate. Our discussion here relates mainly to those definitions which apply to a number of Chapters, or apply throughout the Plan.
- 10.2 We received comprehensive written evidence from Joan Allin [451 & FS29], which was provided for all hearings. Amongst other matters, the evidence raised concerns regarding the consistent use of defined terms, and the difficulties for Plan users in understanding when a defined term is used or not. The evidence requested that defined terms throughout the Plan are identified in italics. Other concerns raised in Ms Allin’s evidence with regard to defined terms included:
- (a) potential unintended consequences arising from the use of defined terms;
 - (b) overlap between definitions; and
 - (c) lack of clarity regarding what is included and what is excluded from definitions.
- 10.3 As mentioned previously, many submissions on defined terms have already been addressed within our reports on other Chapters, as it was more appropriate to consider the submissions on those definitions alongside the specific provisions that they relate to in the Chapters. In this report, we do not revisit our analysis or recommendations on those defined terms. However, all amendments we recommend to the defined terms, including those made within other reports, are shown in our final recommended amendments to Chapter 1 (in Appendix 1 to this report).
- 10.4 We received a tabled letter dated 30 November 2016 from Sarah Shand on behalf of Transpower New Zealand Limited [208 & FS64]. In that letter, Transpower supported the recommendations contained within the Section 42A report with respect to amendments to the definitions for *building*, *reverse sensitivity*, and *sensitive activities*.
- 10.5 We also received a tabled letter dated 5 December 2016 from Mark Laurenson for The Oil Companies [512 & FS131]. In that letter, The Oil Companies sought that earthworks required for the removal of underground fuel storage tanks be excluded from the definition for *earthworks*, or from the earthworks rules.

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- 10.6 We heard from Mr Chris Hansen on behalf of Coastlands Shoppingtown Ltd [218 & FS55]. Mr Hansen's evidence included references to a number of definitions.
- 10.7 We heard from Mr Egon Guttke [100 & FS9], who provided a written statement dated 10 December 2016. Mr Guttke raised issues relevant to section 1.4 - Interpretation, regarding the definitions for:
- (a) development;
 - (b) farm tracks;
 - (c) land disturbance;
 - (d) plantation forestry;
 - (e) significant indigenous vegetation; and
 - (f) significant indigenous fauna.

Evidence and Evaluation

- 10.8 Some of the issues raised by submitters who presented evidence and statements to us during the Chapter 1 hearing raised matters which they considered to be integration issues, but the matters did not relate to points raised in their original submissions or further submissions. In accordance with our Minute 16, although we have considered the integration matters raised by submitters for our own benefit in recommending a final version of the Plan, we have not considered any evidence which revisits or re-litigates matters which have already been heard by us during other hearings.
- 10.9 Regarding Mr Hansen's evidence on behalf of Coastlands Shoppingtown Ltd [218], we were unable to identify any submission points of Coastlands Shoppingtown Ltd relevant to definitions which we have not already considered through other hearings for other Chapters. Coastlands Shoppingtown Ltd's submission referred to the following defined terms (and requested new defined terms), which we have addressed under Chapters 6 and 11:
- (a) Submission 218.1 - "*approved concept plan*";
 - (b) Submission 218.2 - "*Ihakara Street East/Ihakara Street West*";
 - (c) Submission 218.3 - "*large format retail*";
 - (d) Submission 218.4 - "*major traffic activities*";
 - (e) Submission 218.5 - "*retail floor space*";
 - (f) Submission 218.6 - "*small scale convenience retail*";
 - (g) Submission 218.8 - "*supermarket*";
 - (h) Submission 218.9 - "*Western Link Road*";
 - (i) Submission 218.10 - requested new definitions for "*boulevard*", and "*business activity*";
- 10.10 Mr Hansen's Chapter 1 and Integration evidence provided his opinion on recommendations before us regarding definitions for "*business activity(ies)*", "*major traffic activity*", "*vehicle movement*", and "*vehicle movements per day*". Notwithstanding the procedural constraint of not re-litigating matters we have already considered, we have considered Mr Hansen's evidence as
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part of our integration work, but we do not address his evidence further in this report which is limited to submission points on Chapter 1.

- 10.11 The written statement of Mark Laurenson for The Oil Companies [512 & FS131] sought the removal of underground fuel storage tanks be excluded either from the definition for “*earthworks*”, or from the earthworks rules. This request is consistent with submission 512.1, which was not recommended to be accepted in the Chapter 1 Section 42A report.
- 10.12 We note the report authors reconsidered this requested amendment following the hearing and provided us with recommended amendments to achieve the requested exclusion to the definition within their closing statement for Chapter 1.
- 10.13 We agree with The Oil Companies and the report authors that earthworks carried out to remove or upgrade underground fuel storage tanks requires consent under the NES to protect human health from contaminants in soil, and therefore, taking in to account the likely less than minor environmental effects that would arise from this activity (as opposed to the installation of a new underground fuel tank), we consider it is appropriate to exclude this activity from the definition for “*earthworks*”. We consider this to be the most efficient and efficient method to achieve the objectives of the Plan and the purpose of the RMA.
- 10.14 Accordingly, we recommend the definition for *earthworks* is amended as follows:

Earthworks means any alteration to the land contour or disturbance of land including the deposition of cleanfill and the excavation and backfilling or recompaction of existing natural ground,

~~but excludes~~ Earthworks does not include any of the following:

1. Cultivation of soil for the establishment of crops and pasture and
2. The harvesting of crops
3. Domestic gardening
4. Extractive industries.
5. The removal or replacement of underground fuel storage tanks.

Unless otherwise stated in the Plan, the limits on earthworks in the standards apply to any earthworks within any 5 year period except in relation to overflow paths, ponding areas and the River Corridor.

Note 1: Earthworks on land within the Coastal Marine Area and the beds of lakes and rivers is the responsibility of the Greater Wellington Regional Council and is not covered in this District Plan.

Note 2: The resource consent requirements for the removal or replacement of underground fuel storage tanks falls under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, and the relevant regional plans.

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- 10.15 We acknowledge the support provided by Transpower New Zealand Limited [208] for the recommendations contained within the Section 42A report to the definitions for “*building*”, “*reverse sensitivity*”, and “*sensitive activities*”. We agree those amendments are appropriate and we recommend they are made as shown in Appendix 1 to this report.
- 10.16 The evidence provided by Ms Allin has been considered for all hearings. The evidence draws on submission points raised in Ms Allin’s submissions and further submissions. Ms Allin’s hearing evidence raised Chapter 1 issues which we have summarised as falling into one of the three categories:
- (a) potential unintended consequences arising from the use of defined terms;
 - (b) overlapping between definitions; and
 - (c) lack of clarity regarding what is included and what is excluded from definitions.
- 10.17 Over the course of the hearings, and particularly in the Chapter 1 hearing, the use of defined terms has been checked in each instance, and recommendations made within the Section 42A report and the final closing statement provided by the report authors. We recommend the following amendments as shown within Appendix 1 to this report:
- (a) the use of all defined terms within the Plan are italicised;
 - (b) overlapping and potential conflict between defined terms has been addressed (e.g. “*earthworks*” versus “*ground disturbance*”);
 - (c) numerous amendments to definitions in response to submissions to include or exclude particular activities or development (e.g. definitions for “*earthworks*” and “*buildings*”); and
 - (d) the consistent use of defined terms.
- 10.18 We consider these amendments provide significantly greater clarity for Plan users, and address the concerns regarding defined terms as raised in the evidence provided by Ms Allin.
- 10.19 Mr Guttke’s submission on the PDP requested amendments to the definition for “*dominant ridgelines*” and “*dominant dunes*”. Mr Guttke’s further submission supported his original submission, which stated “*Given this complexity, I may provide further detail on issues relating to the Natural Environment and Rural Chapters in the further submission process*”. Mr Guttke’s further submission then introduced new submission points and requested additional amendments to the definitions for:
- (a) sensitive natural features and sensitive natural areas;
 - (b) development;
 - (c) land disturbance; and
 - (d) significant indigenous vegetation.
- 10.20 We consider the ‘placeholder’ statement within Mr Guttke’s original submission cannot provide an avenue to introduce new matters through the further submission process. Such an approach would prevent other submitters from considering the newly raised matters and make a further submission on them, which would be contrary to the principles of natural justice and fair process.
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10.21 Notwithstanding this procedural constraint, we note amendments are recommended to the definitions of concern to Mr Guttke in response to other submissions and as part of the plan-wide integration work carried out by the section 42A report writers. We consider these additional amendments (as identified in Appendix 1), although largely attributed to other submission points, improve the Plan's clarity and may thereby address the majority of Mr Guttke's concerns.

Findings

10.22 We recommend the definitions within Section 1.4 - Interpretation, are amended as shown in Appendix 1.

10.23 The submissions on Section 1.4 - Interpretation (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, rejected or accepted in part as outlined in Appendix 2.

11 Issue 6: Section 1.6 - Monitoring

Description of the Issue

11.1 There was one specific submission on section 1.6 Monitoring. Joanna Richmond [426.2] suggested the Council has no inclination or ability to monitor and ensure compliance with the existing District Plan rules, and that the monitoring provisions of the Plan should be redrafted to reflect monitoring guidelines agreed by the community.

Evidence and Evaluation

11.2 We agree in part with the concerns raised by Ms Richmond, insofar as Section 1.6 - Monitoring, contains monitoring commitments which go beyond the monitoring requirements of the RMA.

11.3 We agree with the report authors that some of the commitments within Section 1.6 would be problematic for the Council to implement and report on. For example, in preparing monitoring reports, we note Section 1.4 includes commitments to include:

- *“An assessment of the issues and objectives in light of feedback from community boards, interest groups, the media and the community.”; and*
- *“An assessment of the degree to which the Plan has guided decision making on individual resource consent applications and the degree to which they have been accepted by the community.”*

11.4 Therefore, we recommend numerous amendments to Section 1.6 to simplify the monitoring commitments to ensure the Council's monitoring appropriately aligns with that required by the RMA and does not place an unrealistic monitoring burden on the Council. Should the Council wish to carry out the monitoring activities which we are recommending are deleted, we consider

they should take place outside of the District Plan. This could be achieved through the production of a monitoring strategy.

- 11.5 In making our recommendations to Section 1.6 as shown in Appendix 1 we have chiefly used Clause 16(2) of Schedule 1 to the RMA, as we consider the amendments are of minor effect and correct minor errors. We note scope for our recommended amendments is also provided by submission 39.2 DF and AE Partnership and others, which sought that the Plan is made less complex and more user friendly.

Findings

- 11.6 We recommend the Section 1.6 - Monitoring provisions contained within Chapter are amended as outlined in Appendix 1.
- 11.7 We recommend the submissions and further submissions relevant to Section 1.6 (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, rejected or accepted in part as outlined in Appendix 2.

CHAPTER 1 - GENERAL/PLAN WIDE MATTERS

12 Issue 1: Matters Beyond the Scope of the PDP and/or the RMA

Description of the Issue

- 12.1 Thirty-four submissions and ten further submissions were made raising matters which fall outside of the Resource Management Act and the Plan.
- 12.2 The non-RMA matters raised by these submitters included:
- (a) speed limits, road and public space design, parking issues;
 - (b) waterways and water supply;
 - (c) waahi tapu funding;
 - (d) rates and other financial matters;
 - (e) bylaws; and
 - (f) miscellaneous issues such as bilingual Otaki, regional local government structure, and Council financial transparency.

Evidence and Evaluation

- 12.3 We did not hear from any of these submitters or further submitters with respect to the abovementioned matters, and we received no relevant evidence or statements either prior to or during the hearing. Notwithstanding, the absence of evidence we had a clear understanding of the issues being raised in the submissions.
- 12.4 We agree with the recommendations within the Section 42A report that these submission points raise matters which fall outside of the ambit of the RMA and district plans. Therefore, we agree it is necessary to reject these submissions and further submissions.
- 12.5 We note paragraph 55 of the Section 42A report identifies those submission points that were forwarded to other teams within the Council for consideration through other non-RMA processes and methods.

Findings

- 12.6 We recommend the submissions and further submissions which raise matters which fall outside of the RMA and district plans (including those submissions not specifically referred to above but which are relevant to this issue) are rejected as outlined in Appendix 2.

13 Issue 2: Withdrawing the PDP and Opposition to the Entire PDP

Description of the Issue

- 13.1 Twenty-four submissions and three further submitters sought the withdrawal of specific coastal provisions from the PDP, however many submissions also requested the entire PDP be withdrawn so it could be treated as a draft for further consultation.
- 13.2 Four submissions and one further submission opposed the entire PDP, without providing reasons for opposition, but did not request it be withdrawn.

Evidence and Evaluation

- 13.3 We received a written statement from Mr Richard Jessup [115] on 29 February 2016. Mr Jessup's written statement raised concerns with the size and content of the PDP, but it did not refer to his submission which sought the withdrawal of the PDP.
- 13.4 We heard from Mr Owen Cox [243] who spoke to his submission and reiterated his opinion the PDP should be withdrawn due to structural and content deficiencies and the resulting unintended consequences.
- 13.5 As highlighted within the Section 42A report, in response to concerns about aspects of the PDP expressed in submissions and pre-hearings, the Council commissioned an Independent Review of the PDP in October 2013 prepared by Richard Fowler QC and Sylvia Allan. The recommendation from this review was that the Council continue with a modified PDP process which addressed the Plan as a whole using the "*basket of tools*" available to Council. The Council resolved to accept the recommendation.
- 13.6 This Council resolution resulted in the withdrawal of objectives, policies, rules, and map layers for:
- (a) Coastal Hazard Management Areas,
 - (b) Hazardous Substances and Facilities, and
 - (c) Priority Areas for Restoration.
- 13.7 Those provisions were formally withdrawn in October 2014.
- 13.8 Another outcome of the independent review recommendations and the resulting Council resolution was the creation of the Submitter Engagement Version (SEV) of the PDP as the basis for additional discussions with submitters outside of the formal Schedule 1 RMA process. The SEV was prepared in June 2015, and showed the possible amendments to the PDP in response to submissions. Engagement on the SEV was carried out over a six month period from June

2015 until December 2015. Many submitters we heard from commended the SEV process and acknowledged the way in which many of the SEV themes had been carried through into the Section 42A reporting.

- 13.9 Ms Allin, in her *“Supplementary Evidence and Submissions of Joan Allin”* provided for the General / Plan-Wide hearing referred to withdrawing the PDP and treating it as a draft on the basis of the Council’s decision on how to best progress the PDP in light of the independent review recommendations, noting the Council had not yet addressed coastal hazards. In Ms Allin’s view the lack of progress on addressing coastal hazards conflicts with the review recommendations and subsequent Council decisions.
- 13.10 We have not identified any scope within Ms Allin’s submission or further submission seeking the PDP be withdrawn.
- 13.11 We note it is not our role to decide or advise on how the Council should address the issue of coastal hazards moving forward. Our role is restricted to considering the PDP provisions in light of the scope provided by submissions, and to make recommendations to the Council on what we consider are the best Plan provisions available within the scope provided by submissions.
- 13.12 We do not consider or comment on withdrawn provisions or any submissions which were made on the withdrawn provisions.
- 13.13 The Council has resolved not to withdraw the PDP and we do not discuss this decision further. Therefore, as the PDP is not to be withdrawn we recommend the relevant submissions and further submissions opposing the entire PDP or requesting it is withdrawn and treated as a draft for further consultation be rejected as shown Appendix 2.
- 13.14 Notwithstanding the above, we record here that we have taken a liberal approach to giving effect to this group of submissions. This includes a number of recommended administrative changes to the Plan which, whilst not changing the direction or outcome the Plan objectives, policies and rules, will nevertheless result in the Plan being less complex, more user friendly, and will ensure consistent and appropriate use of its provisions. This has resulted in a number of recommended alterations to the Plan which we believe will improve its usability. This includes, amongst several changes, the following principal alterations:
- (a) reducing the number of Objectives (from 20 to 18);
 - (b) significantly reducing and reorganising the number of Policies in each Chapter and regrouping some District-wide Policies into a new Chapter 2A;
 - (c) simplifying the applicability rules and tables at the beginning of each Chapter in association to changes to Section 1.1 in Chapter 1; and
 - (d) correcting unintended errors in relation to the default rule for permitted activities and simplifying the default rule for non-compliance with standards so that it cascades logically from activity status to activity status.

- 13.15 Most of these matters are canvassed in the respective Chapter reports. We further discuss item (d) in Section 18 of this report.

Findings

- 13.16 We recommend the submissions opposing the entire PDP or requesting the entire PDP (including those submissions not specifically referred to above but which are relevant to this issue) be withdrawn be rejected as outlined in Appendix 2.

14 Issue 3: PDP Content

Description of the Issue

- 14.1 Twenty-five submissions and twenty-one further submissions were made raising matters relevant to the content of the PDP. These submissions contained a wide range of matters including:
- (a) the PDP inadequately takes into account all relevant RMA and NZCPS provisions;
 - (b) the PDP needs innovative and flexible planning regulations in relation to the growth of the area;
 - (c) numbering, bullet points and formatting consistency;
 - (d) defined terms are italicised;
 - (e) cross-referencing between provisions;
 - (f) consistent use of terms;
 - (g) appropriate terms should be defined and used appropriately in each case;
 - (h) provisions are drafted using clear and consistent language, appropriate provisions are included, ill-considered provisions are removed, default rules are appropriate, provisions are drafted so that unintended consequences will not occur, and provisions are legally valid and in accordance with the RMA and relevant documents referred to in the RMA, including the NZCPS, the Regional Policy Statement and the Proposed Regional Policy Statement;
 - (i) definitions for map notations and other terms used in the PDP should be provided;
 - (j) include translation of Māori words into English; and
 - (k) some of the provisions in the PDP are invalid, and that many are confusing and poorly drafted, with errors, gaps and inconsistencies.

Evidence and Evaluation

- 14.2 Many of these submissions raised important and very helpful points which have been used in recommendations made to us throughout the majority of the PDP hearings. In particular, the final hearing being Chapter 1 - Introduction, Interpretation and Integration, addressed many of the issues raised within these submissions.

- 14.3 We consider the recommendations made to us by the Section 42A report authors in response to the issues raised within these submissions will result in a less complex, more consistent and user-friendly Plan compared to the notified PDP version. Examples of the recommendations made to us in light of the matters raised by these submitters include:
- (a) consistency of numbering and formatting;
 - (b) italicising of defined terms;
 - (c) greater use of cross-referencing;
 - (d) consistent use of defined terms;
 - (e) default rules have been reviewed;
 - (f) unintended consequences have been removed;
 - (g) provisions are legally valid; and
 - (h) errors, gaps and inconsistencies are addressed.
- 14.4 We agree with the recommended amendments as shown within the various Section 42A reports and the closing statements, and in particular those shown in the final recommended version of the Plan provided to us as part of the Chapter 1 Introduction, Interpretation & Integration closing statement.

Findings

- 14.5 We recommend the PDP is amended in response to these submissions as shown in Appendix 1 to this report.
- 14.6 We recommend the submissions which raise PDP content matters as generally described above (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, accepted in part or rejected as outlined in Appendix 2.

15 Issue 4: the Structure and Organisation of the PDP

Description of the Issue

- 15.1 Eighteen submissions and thirty-four further submissions requested numerous amendments seeking improvements to the structure and organisation of the Plan. The majority of these submissions related to:
- (a) PDP complexity;
 - (b) the need for cross referencing;
 - (c) deleting explanatory text and providing explanatory text as a non-statutory document;
 - (d) make the plan more user-friendly;
 - (e) removal of unnecessary overlapping of zoning and notations on maps; and
 - (f) include an index system and numerical system to improve navigation.
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- 15.2 Many submitters who took the opportunity to present to us over the course of the PDP hearings raised concerns regarding the complexity of the PDP and in particular how many provisions from different parts of the PDP may apply to a property. Submitters highlighted the need for cross-referencing and the removal of unnecessary overlapping zoning and map notations to improve navigation for plan users.

Evidence and Evaluation

- 15.3 The issues raised by submitters with regard to the structure and organisation of the PDP and the resulting complexity of the PDP for Plan users are a matter which was consistently raised over numerous PDP hearings.
- 15.4 In making recommendations to us, reporting officers put forward many amendments with the intent of addressing the concerns of submitters regarding the structure and organisation of the PDP.
- 15.5 We agree the numerous recommendations contained within multiple Section 42A reports will reduce the Plan's complexity and make it more user-friendly in response to the relevant submissions.

Findings

- 15.6 We recommend amendments in response to submitters who raised concerns regarding the structure and organisation PDP as outlined in Appendix 1.
- 15.7 We recommend the submissions relating to the structure and organisation of the PDP (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, rejected or accepted in part as outlined in Appendix 2.

16 Issue 5: PDP Process including Consultation and Section 32 Analysis

Description of the Issue

- 16.1 There were a wide variety of submissions which specifically raised PDP process matters including consultation and Section 32 Analysis. We agree with the Section 42A report which organised and discussed these submissions under seven headings comprising:
- (a) hearing commissioners;
 - (b) hearing of submissions;
 - (c) consultation process;
 - (d) requests for pre-hearing meetings;

- (e) review panel and audit group;
- (f) general / miscellaneous process issues; and
- (g) adequacy of Section 32 analysis.

16.2 We address each of these topics in turn below.

Hearing Commissioners

16.3 Twelve submissions and fifty-six further submissions were made requesting the appointment of independent hearing commissioners to hear and make decisions on submissions lodged on the PDP.

Hearing of Submissions

16.4 Two submissions requested a specific amount of time to be made available to present their submissions to the hearings panel. These submissions were supported by five further submissions.

16.5 The submission from Waa Rata Estate [327.3] sought an extended period of time for making their submissions, while Mari Housiaux [511] requested a specified timeframe.

Consultation Process

16.6 Thirty-four submissions and seventy-five further submissions were made with respect to the PDP consultation process. We have summarised the matters raised within these submissions as including:

- (a) request the withdrawal of rules with immediate legal effect until after affected landowners have been consulted;
- (b) support for the consultation process with iwi;
- (c) support for the establishment of the Tangata Whenua Working Party and parallel review of the PDP;
- (d) lack of public participation in developing the PDP;
- (e) concern at the timeframes available for making submissions;
- (f) lack of specific consultation for landowners affected by specific natural features affecting their land;
- (g) transparency of the process in identifying waahi tapu sites and features; and
- (h) the method used to communicate with the public.

Requests for Pre-Hearing Meetings

16.7 Four submissions, supported by twenty-seven further submissions, were made requesting formal pre-hearing meetings.

Review Panel and Audit Group

- 16.8 Twenty-one submissions and thirty-six further submissions requested a review of the PDP. We have summarised the requested relief as falling in to one of the following three options for the review of the PDP:
- (a) a review panel with Wellington Regional Council, experienced planners, architects, designers and surveyors to simplify the rules;
 - (b) undertake an independent design peer review of the PDP from a panel drawn from the local architectural, construction and planning community; and
 - (c) a legal and planning audit of the PDP by experienced resource management practitioners, taking into account the submissions lodged.

General / Miscellaneous Process Issues

- 16.9 Six submissions raised matters which we consider can be best described as general or miscellaneous process issues.
- 16.10 Gerald Rys [85.1, 85.2, 85.3 and 85.5] considered the PDP should be accompanied by a monitoring review document to aid decision making, and the PDP should be based on clear principles including:
- (a) sustainability;
 - (b) polluter pays;
 - (c) equity;
 - (d) precautionary principle; and
 - (e) human rights and participation.
- 16.11 Richard Jessup [115.1] considered the approach of having local outcomes statements to advise the District Plan was flawed, and commented that the submitter considers the Council has a bad reputation for the way it administers resource consents.

Adequacy of Section 32 Analysis

- 16.12 Twenty-eight submissions and fifty-eight further submissions raised concerns regarding the adequacy of the Section 32 analysis underpinning the PDP provisions. Concerns raised by submitters included:
- (a) Section 32 analysis does not meet RMA requirements;
 - (b) further Section 32 evaluations should occur to evaluate the appropriateness of the PDP provisions;
 - (c) the baseline data and analysis used to underpin the maps and provisions is inadequate; and
 - (d) additional information should be incorporated into the Section 32 analysis.

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- 16.13 We heard from Ms Joan Allin [451 & FS29] who presented her views on procedural issues regarding the PDP process in light of the recommendations from the Fowler and Allan independent review, Council resolutions, the withdrawal of coastal hazard provisions, and the production of chapter-by-chapter Section 42A reports with accompanying PDP Chapters as recommended by report writers as opposed to a complete PDP to enable submitters to understand all implications from recommended amendments.
- 16.14 We also heard from Ms Katherine Moody on behalf of Coastal Ratepayers United Inc [478 and FS227], who presented planning evidence regarding the impact on activities in the absence of the coastal hazard provisions from the PDP. Ms Moody presented her professional opinion on a number of other matters which we have summarised as:
- (a) the requirements of the Fowler and Allan independent review and the Council resolutions which followed;
 - (b) her support for Coastal Ratepayers United Inc's view on the best way forward for the Council to address coastal hazards in association with a Coastal Advisory Group;
 - (c) timeframes and requirements of Council resolutions for the formation of a Coastal Advisory Group and the notification of a variation to the PDP;
 - (d) how the Operative District Plan provisions relevant to coastal hazards would work in conjunction with the PDP once operative (regarding the concept of a composite plan);
 - (e) the concept of adaptive management approaches within second generation district plans to manage natural hazard risks;
 - (f) concerns on the extent of coastal hazard provisions withdrawn from the PDP and the impact on the meaning of the remaining PDP provisions; and
 - (g) the fairness of the PDP hearings process and timeframes.
- 16.15 We received planning evidence prepared by Mr Chris Hansen on behalf of Coastlands Shoppingtown Ltd [218 and FS55]. Mr Hansen noted no amendments were recommended to the PDP within the General / Plan-Side section 42A report in response to submissions that raised concerns about the adequacy of the Section 32 analysis that accompanied the PDP.

Evidence and Evaluation

- 16.16 We note many of the matters regarding PDP process including consultation and Section 32 analysis are not matters which require a recommendation by us as the PDP Hearings Panel. Notwithstanding this, and with respect to Section 32, we record that Part B of each of our Chapter reports contains an assessment of the tests of Section 32 in respect of the provisions being challenged. Furthermore, Part C of each Chapter report provides a further high level summation of the Section 32 tests in respect to the changes we have recommended.
- 16.17 Section 32 aside, the majority of the matters raised related to PDP processes rather than seeking specific amendments to the PDP. In this respect, many submissions referred to procedural matters which occurred prior to the appointment of us as the Hearings Panel.
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Therefore, we agree with the recommendations within the Section 42A report with regard to the above submissions grouped under the following topics:

- (a) appointment of hearing commissioners;
- (b) timeframes for hearing of submissions;
- (c) consultation process;
- (d) requests for pre-hearing meetings;
- (e) review panel and audit group; and
- (f) general / miscellaneous process issues.

16.18 In our opinion, many of the above matters had already been addressed by either the Council or us prior to hearings commencing, specifically:

- (a) the appointment of the Hearings Panel comprising three independent Hearing Commissioners (including one iwi commissioner) and two elected commissioners was made by Council resolution in December 2014;
- (b) hearing processes including timeframes for presenting to the Hearings Panel is addressed within our Minute 1, dated 14 December 2015;
- (c) consultation processes were carried out by the Council in accordance with the requirements of the RMA, and therefore fall beyond our responsibilities to hear and make recommendations on any relevant submissions;
- (d) multiple pre-hearing meetings occurred between Council officers and submitters during the Submitter Engagement Process prior to hearings commencing. We have been supplied with all pre-hearing meeting minutes as attachments to the relevant Section 42A reports; and
- (e) the independent review of the PDP was commissioned by the Council in October 2013. The recommendation of the review chosen by the Council was to continue with the PDP process which addressed the PDP as a whole using the “*basket of tools*” available to the Council. This included the production of the Submitter Engagement Version of the PDP and on-going (non-Schedule 1 RMA) consultation with submitters, including pre-hearing meetings. Coastal hazard provisions were also formally withdrawn from the PDP to be picked up as a specific future piece of work to be completed by the Council working with the community.

16.19 In addition to Section 32 requirements canvassed above, and as we highlight in the Part A of this report, Section 32AA(1)(d)(ii) enables our further evaluation reporting to be incorporated into this report as part of the decision-making record. To this end, and to the extent that s32AA is relevant,⁴¹ our evaluation of issues has been structured to satisfy the evaluation report requirements of that section of the Act. Essentially this means that in those instances where we

⁴¹ The Urban Tree Variation was notified after the amendment to the RMA which introduced Section 32AA evaluation reports. We have had regard to this obligation in our consideration of the Urban Tree Variation provisions.

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- have recommended an alteration to the notified PDP, we have explicitly assessed the appropriateness of that alteration in terms of Section 32AA - within the report.
- 16.20 We do not comment further on the above matters in this report however we respond below to some matters presented to us by submitters during the hearing.
- 16.21 We particularly acknowledge the submissions and evidence of Ms Allin [451 & FS29] who presented her views on procedural issues regarding the PDP process in light of the following:
- (a) recommendations from the Fowler and Allan independent review;
 - (b) Council resolutions;
 - (c) the withdrawal of coastal hazard provisions; and
 - (d) the production of chapter-by-chapter section 42A reports with accompanying PDP Chapters as opposed to a complete PDP.
- 16.22 As we discussed with Ms Allin at the hearing, we consider it is not uncommon for PDP hearings to be carried out via the production of chapter-by-chapter Section 42A reports and accompanying PDP Chapters as opposed to a complete PDP. Although we appreciate the benefits the production of a complete PDP reporting approach would have for submitters as opposed to the chapter-by-chapter approach, we consider such an approach would be extremely time consuming and inefficient.
- 16.23 We were advised the Section 42A report writers were in communication with each other during the preparation of their hearing reports regarding any integration or cross-chapter matters to ensure a holistic view was taken of the PDP's content. We also note the final version of the PDP provided to us with the closing statement following the Chapter 1 Introduction, Interpretation and Integration hearing was the result a Plan-Wide review by Council officers to identify and make recommendations to us to address cross-chapter consistency and integration issues.
- 16.24 In response to the matters raised at the hearing by Ms Moody on behalf of Coastal Ratepayers United Inc [478 & FS227], Joan Allin [451 & FS29] and other submitters, we issued Hearings Panel Minute 5 on 7 April 2016, which amended the hearings schedule to delay hearing submissions on Chapters 3, 4, 8 and 9, and to bring forward several of the other Chapters to an earlier start point.
- 16.25 Minute 5 also directed the preparation of an additional Section 42A report to address 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. This required the report writers for Chapters 3, 4, 8, and 9 to ensure their respective reports presented an overall 'whole of coast' approach to address any integration matters.
- 16.26 We also note the Operative District Plan provisions, which are to remain in force until they are replaced by the Council, were publicly notified on 26 October 2016.
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- 16.27 We trust the amended hearing schedule to enable the hearing of all coastal hazard related chapters as a group, including the production of the Coastal Overview report, and the notification of the Operative District Plan provisions which will remain in force, addressed some if not all the uncertainty Ms Moody referred to in her presentation to us.
- 16.28 Given the above, we do not recommend any amendments to the PDP in response to any of these submissions.

Findings

- 16.29 We recommend the submissions on PDP process including consultation and Section 32 analysis (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, accepted in part or rejected as outlined in Appendix 2.

17 Issue 6: Maps

Description of the Issue

- 17.1 Twenty-one submissions and thirty-six further submissions raised concerns with respect to the structure and complexity of the PDP maps. Matters raised included:
- (a) amending the maps index;
 - (b) halve the number of maps to reduce PDP complexity;
 - (c) too much information shown on maps / too many layers;
 - (d) request for specific separate maps;
 - (e) requests to delete various overlays from specific properties;
 - (f) include map notations as defined terms; and
 - (g) support for the maps.

Evidence and Evaluation

- 17.2 We note since the close of submissions on the PDP, that the Council has formally withdrawn the following District Plan Map layers:
- (a) Coastal hazard management areas (Chapter 4); and
 - (b) Priority areas for restoration (Chapter 3).
- 17.3 We also recommend within other Chapter recommendation reports to Council that the following District Plan Map layers are deleted in response to other submissions:
- (a) Ecological Domains (Chapter 3);
 - (b) Archaeological Alert layer; (Chapter 10) and
 - (c) Sensitive Natural Features (Chapter 3).

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- 17.4 We are also recommending deleting the Erosion Susceptibility layer (in Chapter 9) and any associated provisions from the Plan as the underpinning evidence base is at a higher level than that required to apply the layer on a property-by-property basis.
- 17.5 We recommend a number of other amendments to the District Plan Maps to correct errors, improve accuracy and reduce complexity including:
- (a) reviewing the extent of the Coastal Environment (Chapter 4); and
 - (b) alterations to the boundaries of ecological sites (Chapter 3) and waahi tapu sites (Chapter 10).
- 17.6 We consider these recommended amendments will provide further relief for all submitters who raised concerns with respect to the complexity and ease of use of the District Plan Maps.

Findings

- 17.7 We recommend the District Plan Maps are amended as outlined in Appendix 1.
- 17.8 We recommend the submissions and further submissions relevant to the PDP maps (including those submissions not specifically referred to above but which are relevant to this issue) are accepted, accepted in part or rejected as outlined in Appendix 2.

18 Issue 7: Default Rules and Activity Cascade

- 18.1 As mentioned earlier, we have taken a liberal approach to giving effect to a number of submissions which suggested that the Plan was 'broken' and needs repair. This includes correcting unintended errors in relation to the default rule for permitted activities and simplifying the default rule for non-compliance with standards so that it cascades logically from activity status to activity status in each activity class.
- 18.2 On the issue of default activity status, it was drawn to our attention by several submitters and by reporting officers during the integration hearing, that in several of the Chapters whilst it is clear what happens to a permitted, controlled, restricted discretion or discretionary activity that does not comply with standards, it is not clear what the activity status is for those permitted activities not listed as permitted activities (and which comply with standards) but not necessarily covered by other activity status. Under questioning, we were told by officers that activities not specifically listed but could comply with all the permitted standards should be classed as permitted activities. We understand from the officers that this is the approach embodied in the Operative District Plan and was the intention for the PDP.
- 18.3 We have given this matter a lot of consideration for all rule-based Chapters and within the scope provided by these submissions, we have developed a cascade of activity status that we have recommended be implemented throughout all Chapters (zones and overlays) of the Plan. We

are aware the Operative District Plan (ODP) takes a permitted activity stance for activities that are not specifically listed, but can comply with all the permitted activity standards. After seeking clarification from the Council Section 42A writers that this approach in the ODP has not caused any unintended consequences, we have recommended adopting this same approach. Accordingly, if an activity is not specifically listed, and it can comply with all the permitted activity standards, then we recommend it is a permitted activity.

18.4 The above issue also gave us cause to reconsider the other status for specified activities that cannot comply with one or more of their standards whether permitted, controlled, restricted discretionary, or discretionary. We heard from submitters that the proposed approach which differentiates currently between non-compliance with one standard and non-compliance with two or more standards to be artificial and confusing. We also consider that a jump from permitted/controlled to full discretionary just because two or more standards are breached does not achieve any greater protection for the environment than would the traditional cascade to restricted discretionary status. Under a restricted discretionary activity status, the actual and potential effects of the matters not complied with can be readily assessed and the Council still retains the ability to decline applications if it is shown that the effects cannot be appropriately avoided remedied or mitigated.

18.5 We therefore recommend the following approach:

- (a) a permitted or controlled activity that cannot comply with one or more of its associated standards will be a restricted discretionary activity;
- (b) an activity not specifically listed that cannot comply with one or more of the permitted standards will be a restricted discretionary activity;
- (c) a restricted discretionary activity than cannot comply with one or more of its associated standards will be a discretionary activity;
- (d) for discretionary activities that have standards, the inability to comply with one or more of the standards will be a non-complying activity.

18.6 We accept that this approach may not be appropriate in all circumstances but we have endeavoured to use this standard approach across the Chapters where it is appropriate and make other necessary amendments for any exceptions. Overall, we believe this to be the most effective and efficient way to implement the policies of the Plan.

PART C – STATUTORY EVALUATION**19 Statutory Evaluation**

19.1 This part of our report addresses the mandatory requirements as summarised in Part A of this report, and draws on our detailed evaluation of the issues in Part B. In this respect, most of our substantive evaluation of the matters below has already been addressed above.

19.2 We acknowledge the analysis at notification and further analysis as part of the Section 42A reports in relation to the matters in Sections 32 and 32AA for provisions notified after 2014. To avoid unnecessary duplication, we have therefore adopted a thematic approach to our evaluation here, and we have omitted from considering the general requirements which are not relevant.

Is the PDP designed to accord with, and assist KCDC to carry out its functions so as to achieve the Act's purpose?

19.3 The PDP contains policies, rules and other methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources in the District. Likewise, the PDP adopts measures to control actual and potential environment effects. Chapter 1 of the PDP is largely an administrative guide to the workings of the Plan. It does not contain any policies or rules *per se* (in the strict sense of those terms). Rather, it contains a 'road map' of how to use the Plan and includes definitions of key terms used throughout the Plan. In this respect, the key alterations we have recommended to Chapter 1 are:

- (a) Section 1.1 - updating and simplifying the Plan User's Guide;
- (b) Section 1.2 - altering the guidance on the resource consent process to bring in into date with current legislation;
- (c) Section 1.3 - updating the information requirements for resource consent applications;
- (d) Section 1.3A - adding a new section on Structure Plans to avoid cumbersome definitions and to provide clear guidance to those Zones (particularly in Chapter 5) which rely on such plans;
- (e) Section 1.4 - numerous changes to the Interpretation Section (defined terms) including not only revisions to notified terms, but also the addition of some new terms; and.
- (f) Section 1.6 - updating the monitoring and reporting requirements.

19.4 We find that the PDP, including the amendments that we have made to the provisions of Chapter 1, whilst not having any direct objective or policy 'value', will nevertheless have an indirect effect on the way in which objectives, policies and methods are interpreted, and therefore those provisions will assist the Council to carry out its functions so as to achieve the sustainable management purposes of the RMA.

Does the PDP give effect to any NPS or the NZCPS?

- 19.5 The PDP was designed to give effect to the NPSs and NZCPS in effect at the time of notification. Since that time, the NPS on Urban Development Capacity has been gazetted.⁴²
- 19.6 A number of amendments have been applied to Chapters 2 - 12 (including a new Chapter 2A) in order to enable the notified policies, rules and other methods in the PDP to better implement these higher order documents, where enabled by submissions. Whilst not directly relevant, the provisions of Chapter 2 (as recommended for amendment) will play an important role (particularly through the use of terms and definitions) in ensuring that the amended PDP gives effect to the various NPSs and the NZCPS. The relevance of the NPSs varies for each PDP Chapter.

Does the PDP give effect to the RPS?

- 19.7 As noted above, the current RPS was made operative after the PDP was notified. To the extent that we have scope to make amendments through the relief of submissions received, we have amended the PDP in order to give effect to the RPS. As with the NPS provisions, the recommended changes to the terms and definitions in Chapter 1 will assist in making the PDP consistent with the RPS.

In relation to Regional Plans, is the PDP consistent with the operative Regional Plans, and has regard been given to the proposed Natural Resources Regional Plan?

- 19.8 In our evaluation, the PDP is not inconsistent with any Regional Plan. We have also had regard to the proposed Natural Resources Regional Plan, and do not consider any amendments to the PDP are necessary as a result.

Does the PDP satisfy the necessary requirements in relation to relevant plans and strategies under other acts, including the Heritage New Zealand Pouhere Taonga Act 2014, plans of adjacent territorial authorities and plans of iwi authorities?

- 19.9 We have applied appropriate consideration of these matters in amending the policies, rules and other methods in the other Chapters of the PDP, including (for example) in relation to Chapter 10 historic heritage and matters of significance to iwi. Other than in respect to certain definitions, there is no requirement to specifically alter Chapter 1 in relation to relevant plans and strategies under other Acts, including the Heritage New Zealand Pouhere Taonga Act 2014, plans of adjacent territorial authorities or plans of iwi authorities.
- 19.10 In all respects, we consider these requirements of external planning documents are met by the PDP.

⁴² We also note that Council has an obligation to continue to monitor housing needs and demands against supply - particularly given the NPS-UDC requirements - and is able to review and update the district plan provisions as appropriate through future RMA Schedule 1 processes.

Does the PDP state objectives, policies, rules and other methods?

- 19.11 This test is not relevant for Chapter 1 of the PDP. Nevertheless, we are satisfied that this general requirement has been satisfied in Chapters 2 -12 of the notified PDP and as amended by our evaluation and recommendations.

Is each objective the most appropriate way to achieve the purpose of the RMA?

- 19.12 No objectives are considered as part of this decision. We have found in our Decision Report 2 that the PDP objectives, as amended by our recommendations, are the most appropriate to achieve the purpose of the Act.

Do the policies implement the objectives, do the rules implement the policies, and are the policies and rules the most appropriate for achieving the objectives?

- 19.13 This has been the primary focus of our various reports on Chapters 2 to 12 inclusive. In considering how the policies implement the objectives and in how the methods implement the policies, we were greatly assisted by the cascade and logic tables prepared by Council Officers. Those tables - which were presented at the integration hearings - were an invaluable resource and assisted us in confirming the appropriateness of various amendments we made through our deliberations, and highlighted areas where additional refinement was required.
- 19.14 Each of the amendments to the policies and methods we have proposed in Chapters 2 to 12 has been assessed in terms of its efficiency and effectiveness of implementing the higher order provision(s) to which they relate. For the reasons we have provided above, we consider that the proposed policies are the most appropriate for implementing the objectives and the rules are the most appropriate for implementing the policies.
- 19.15 In term of some of the key Plan-wide issues that we have considered in this Chapter, the main matters we have evaluated were submissions which raised issues in respect to:
- (a) withdrawing the PDP and opposition to the entire PDP;
 - (b) PDP content;
 - (c) the structure and organisation of the PDP;
 - (d) the PDP process including consultation and Section 32 analysis;
 - (e) PDP maps; and
 - (f) default rules and activity cascade.
- 19.16 Our reasons for not withdrawing the PDP, and altering PDP structure and content, and our evaluation of the consultation undertaken and the Section 32 process, are well documented in Part B of this Report. What we can say here is that in addressing items (a) to (f) above we have been very mindful of the tests of Section 32, and, in particular, the efficiency and effectiveness of the amendments to the provisions we have proposed in Chapters 2 to 12.

19.17 Of particular note are our recommendations in relation to the default rule for permitted activities and simplifying the default rule for non-compliance with standards so that it cascades logically from activity status to activity status in each activity class. We gave this matter a lot of consideration for all rule-based Chapters and, within the scope provided by the submissions, we have developed a cascade of activity status that we have recommended be implemented throughout all Chapters (Zones and overlays) of the Plan.

19.18 We have endeavoured to use this standard approach across the Chapters where it is appropriate and make other necessary amendments for any exceptions. Overall, we believe this to be the most effective and efficient way to implement the policies of the Plan.

Do the PDP rules have sufficient regard to actual and potential environmental effects?

19.19 This is an additional consideration which has factored heavily in our evaluation of the issues under Part B. As per our conclusion in relation to the efficiency and effectiveness of the proposed policies, rules and methods, we find that these provisions will appropriately manage any actual and potential adverse effects.

19.20 This will be through the establishment of appropriate limits for permitted activities, the revised default rules and activity cascade described above, and through the consideration of future resource consent applications.

PART D - RECOMMENDATIONS

20 Recommendations

20.1 Based on our consideration of all the material before us, including the Kapiti Coast Proposed District Plan 2012 (PDP) as notified including the Section 32 reports, the submissions and further submissions, Section 42A report from the Council advisors, evidence and submissions presented at the hearing, and following consideration of the requirements of Clause 10(2)(a) and Section 32 and of other relevant statutory matters, we make the following statutory recommendations:

- (a) That Council adopt the recommendations of the Hearings Panel in respect of Chapter 1 (Introduction and Interpretation) of the PDP as outlined in the Hearings Panel Report dated 11 September 2017.
- (b) That Council approve Chapter 1 (Introduction and Interpretation) of the PDP as amended in Appendix 1 and for the reasons stated in the report and that accordingly all submissions and further submissions on PDP Chapter 1 (Introduction and Interpretation) be accepted, accepted in part or rejected to the extent set out above and summarised in Appendix 2.
- (c) That pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991 Council give public notice of its decision on submissions and further submissions on PDP Chapter 2 (Introduction and Interpretation).



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Alistair Aburn (Commissioner and Chair)
for and on behalf of the Kapiti Coast Proposed District Plan Hearings Panel

Commissioner Alistair Aburn
Commissioner Diane Amundsen
Commissioner Miria Pomare
Commissioner David McMahon
Commissioner Mike Cardiff

11 September 2017

Appendix 1

Volume 1 - Plan

Volume 2 - Appendices

Volume 3 - Maps

Appendix 2

Recommendations on Submissions and Further Submissions to Chapter 1 (Introduction and Interpretation)

