

CRU submission to the Hearings Commission on Chapter 2: Objectives

11 April 2016

Abbreviations

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| CRU | = | Coastal Ratepayers United |
| APDP | = | Amended Proposed District Plan (30 October 2014) |
| KCDC | = | Kapiti Coast District Council |
| PDP | = | Proposed District Plan (29 November 2012) |
| S42A(A) | = | Section 42A Report – Part A |
| S42A(B) | = | Section 42A Report – Part B |
| SEV | = | Stakeholder Evaluation Variation, June 2015 |

Introduction

The Panel has already heard from CRU so no further introduction is required.

The Panel has made it clear that its only concern is with the PDP as notified in 2012. However, CRU fully supports the 4 April 2016 submissions by Kathy Moody on behalf of CRU and by Joan Allin. The entire process is now so incomprehensible as to markedly disenfranchise those who are not full time professionals working on PDPs and the RMA.

We have taken on board your directions that the SEV is not of legal consequence. However it is part of the material you will undoubtedly give some consideration to, hence these submissions.

You will have familiarised yourself with the full CRU submission concerning Chapter 2. CRU's first submission on the PDP is number 378 and its further submission is number 88.

Objective 2.4 – Coastal Environment

Background

The APDP's statement for Objective 2.4 reads:

Objective 2.4 – Coastal environment

To have a coastal environment where:

- a) natural character, natural systems, natural landforms and natural processes, are protected, and restored where degraded;
- b) appropriate public access to and along the coast is improved;
- c) development does not result in further loss of coastal dunes; and
- d) ~~communities are not exposed to increased risks from coastal hazards~~

The SEV's statement reads:

Objective 2.4 – Coastal environment

To have a coastal environment where:

- a) ~~areas of outstanding natural character and high natural character, natural systems, natural landforms and natural processes, outstanding natural landscapes, areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified, protected, and restored where degraded;~~
- b) ~~inappropriate subdivision, use and development is avoided, remedied, or mitigated; and~~
- c) ~~appropriate public access to and along the coast is improved to facilitate active and passive recreational use is maintained and enhanced while managing inappropriate vehicle access.;~~
- d) ~~development does not result in further loss of coastal dunes~~

The S42A(B) report's recommended objective statement is the same as the SEV statement.

CRU's submissions on the SEV statement recommended amending (blue font) it to read as follows:

Objective 2.4 – Coastal environment

To have a coastal environment where:

- a) areas of outstanding natural character and high natural character, outstanding natural landscapes, areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified, protected, and restored where degraded;
- b) inappropriate subdivision, use and development is avoided, remedied, or mitigated **and appropriate subdivision, use and development is enabled**; and
- c) public access to and along the coast to facilitate active and passive recreational use is maintained and enhanced while managing inappropriate vehicle access.

In the support of this recommendation, CRU notes that the Taranaki Regional Policy Statement 2010, section 8.1 incorporates this more balanced perspective:

Objectives

CNC OBJECTIVE 1

To protect the natural character of the coastal environment in the Taranaki region from inappropriate subdivision, use, development and occupation by avoiding, remedying or mitigating the adverse effects of subdivision, use and development in the coastal environment.

CNC OBJECTIVE 2

To provide for appropriate, subdivision, use, development and occupation of the coastal environment in the Taranaki Region.

CRU's Recommendations to the Hearing Panel

Statement of the objective

CRU's recommended change (above) to the SEV statement of objective 2.4 is also its recommended change to the (same) version in S42A(B).

CRU's reasons for this recommended change

CRU's reasons for commending this change have not changed. The coastal environment is heavily residential landward of the coastal dunes and community resilience and wellbeing stand to be markedly impaired if land use cannot be adapted to respond to changing residential needs. Any objective statement that fails to acknowledge this need risks creating a costly and undue bias against subdivision, use and development. We note that the promotion of community well-being lies at the heart of section 5 of the Resource Management Act. We also note that the number of housing units affected depends on how narrowly or broadly the "coastal environment" is defined. This point is more important for wellbeing the broader the definition.

Changes proposed in S42A(B) to the Explanatory Text

- A) CRU strongly opposes the S42A(B)'s proposed deletion (see pages 183 and 184) of the following text from the explanatory note:

"To guide the management of the coastal environment, the Council developed a Coastal Strategy in 2006 which determines the management of coastal activities, access, recreation, harvesting, the natural and built environments and coastal hazards. The Coastal Strategy summarises the outcomes desired by the community as follows:

- the coast is recognised as a dynamic natural system that accretes and retreats as part of the geological cycle and processes. Long term solutions which protect coastal processes and systems are sought for the benefit of current and future generations;
- there is a need to think about the coastal strip in its context within a coastal plain back to the base of the hills;
- public land is clearly identifiable, recognised as important public open space, and is as natural as possible with native plants. Restoration planting has been a priority on the foredune and has formed a natural erosion buffer. The community is well informed about dune restoration and enhancement and beach management practices. There is interpretive signage at public beach access points explaining the fragility of coastal ecology;
- any structures within the coastal reserve (protection and access structures) are part of the built character and must be well designed and multipurpose where possible. All access to the beach across the foredunes is via a public accessway as these are suitable for all users and protect the environment;
- outstanding natural areas and fragile communities are identified and protected by clustering buildings and parking away from them and limiting access where appropriate. Harvesting of materials from the beach is managed to protect habitats, areas of cultural significance and prevent erosion;
- the beach is safe and welcoming for all to use and has the flexibility to accommodate existing and new sports and activities. All users will need to work together to achieve a harmonious beach experience;
- the individual character of settlements is clear with the beach providing a linking element between them. The distinct settlements are linked together but separated by areas of open space. "

CRU strongly recommends that all this text should be retained in full in an amended version of the APDP.

CRU's reasons for recommending the retention of this text in full

This text is useful and necessary in summarising the community's wishes with respect to coastal strategy. It does not appear anywhere else in the PDP, in full or in all its parts. The KCDC must have regard to it when preparing a PDP plan, and its provisions are substantial. Indeed, its importance was foreshadowed in paragraph 17 of the S42A(A) report:

17. The PDP was guided by several strategies prepared by the Council under the Local Government Act 2002 (LGA) e.g. the Development Management Strategy, the Coastal Strategy, the Open Space Strategy, and the Sustainable Transport Strategy. Community Outcomes and Local Outcome Statements, also prepared under the LGA similarly guided the PDP. While consultation on these documents did not explicitly link them to the District Plan, the Council is required to have regard to them, and has considered the community input that shaped them.

The S42A(B) report did not put forward any balanced reason for deleting this text. It did not even address these or other reasons for the statement being in the PDP in the first place. It made no case that the community's desired outcomes as represented in this text would be acknowledged elsewhere in any thus-amended PDP, let alone expressed in such an accessible manner. To argue that the text is not necessary for the PDP would be akin to arguing that it is not necessary for a PDP to reflect acknowledged community's wishes. We suggest that this is not an impression that the advocates of the PDP should be conveying. To the contrary, a PDP must be seen to be responding to the community's wishes if its advocates wish to see it accepted by the community. This text should not be deleted.

B) Other CRU recommendations on the explanatory text in S42A(B)

CRU recommended several modifications to the proposed explanatory text in the SEV, none of which have been adopted in S42A(B)'s recommended text. CRU reaffirms all its recommended changes to the SEV text. In particular we reaffirm our recommendations to:

- insert the word **residential** into the text in following sentence: "The coastal environment is highly valued by both the local and the wider community, in terms of its aesthetic, natural, productive, **residential**, recreational and historical values.";
- replace this sentence "Subdivision and development can be inappropriate in the coastal environment, given the fragility of ecologically sensitive areas such as dunes." by this sentence: "**Future subdivision and development can be appropriate in the coastal environment, provided the fragility of ecologically sensitive areas is protected.**"

CRU's reasons for recommending changes to the S42A(B)'s explanatory text

CRU's reasons are unchanged from its submission on the SEV. A PDP must balance contending considerations. Residential uses are a major activity and investment along the coastline. Not to acknowledge this and the need for appropriate subdivision and residential while emphasising the need to guard against inappropriate subdivision is unbalanced.

CRU's response to the statement of evidence on behalf of the Department of Conservation dated 29 March 2016.

Mr Rendall's statement of evidence of 29 March 2016 on behalf of the Director-General of Conservation opines that the proposed statement does not give effect to Policies 13 (preservation of natural character) and 15 (natural features and natural landscapes) of the NCPS or address s6(a) matters. The statement considers that the statement does not give sufficient clarity and/or direction.

With respect, CRU observes that NZCPS policies 13 and 15 themselves give no guidance or clarity concerning what constitutes inappropriate (or appropriate) subdivision, use and development, yet KCDC must make determinations about such matters. The KCDC must take into account local community preferences and willingness to pay in deciding how best to meet the requirements of NZCPS 2010 and other laws and regulatory requirements.

In particular the PDP must give greater consideration to the over-riding [section 5](#) of the Resource Management Act that addresses itself to enabling people and communities to provide for their social, economic, and cultural well-being as well as for their health and safety.

Objective 2.5 – Natural Hazards

Background

The APDP's statement for Objective 2.5 reads:

Objective 2.5 – Natural hazards

To ensure the safety and resilience of people and communities by avoiding exposure to increased levels of risk from natural hazards, while recognising the importance of natural processes and systems.

The SEV and the S42A(B) versions proposed no changes to this APDP statement.

CRU's submission on the SEV proposed the changes marked up in blue below:

Objective 2.5 – Natural hazards

To ensure enhance the safety and resilience of people and communities by avoiding minimising exposure to increased-unacceptable levels of risk from natural hazards, while recognising the importance of natural processes and systems and of enabling appropriate subdivision, use and development.

CRU's Recommendations

CRU reaffirms its recommended changes to objective 2.5.

CRU's reasons for recommending these changes

CRU's reasons are unchanged from those in its submission on the SEV. The APDP's objective, is incapable of being achieved even in principle as stated, and is extremist in ignoring the need put costs and contending considerations into the balance.

Concluding observations

CRU submits that it makes no sense to finalise policy objectives prior to knowing the cost and benefit implications of the pursuit of those objectives in terms of community well-being. The RMA's section 32 requires cost-benefit assessments. It is nonsensical to take policy decisions prior to undertaking the required cost-benefit analysis. Ratepayers need to see those analyses before they are asked to respond to PDP proposals. To fail to produce them in a timely manner is to undermine the democratic process. To undertake them after decisions have been taken likely turns them into a farcical attempt to justify a decision that has already been taken. Analyses that are available too late to alter a decision make a mockery of the requirement.

Part of that analysis involves giving due consideration to unintended consequences including the undermining of property rights. We can find no evidence of any meaningful attention being given to those considerations in the S42A(B) report

Nor does it make sense to set objectives in a legalistic 'compliance' manner regardless of community preferences and well-being considerations. This is not of course to advocate objective statements that violate statutory requirements.

In an earlier submission on the PDP we commented that there appeared to be a general failure to evaluate whether the proposed objective statements were the most appropriate way to achieve the overall purpose of the Resource Management Act 1991. It is accepted that, trade-offs have to be between conflicting considerations. Purposeful management is formally impossible if those trade-offs are arbitrary. We do not see that the S42R(B) report has addressed this problem .

The lack of clarity as to how those making decisions should make those tradeoffs almost guarantees unpredictable instability in administrative decisions through time as personnel and short-term exigencies and pressures change. Such imprecision potentially undermines the rule of law and makes it harder for members of the community to plan for the future. This has adverse implications for their wellbeing. CRU suggest that such unpredictability of management decisions is counter to the RMA's key purpose.