BEFORE THE HEARINGS PANEL

IN THE MATTER	of the Proposed Kapiti Coast District Plan 2012
AND	Submissions by **Coastal Ratepayers United Inc.**
	Submitter No. 378 and Further Submitter No. 88

BRIEF OF EVIDENCE OF KATHARINE JOSEPHINE MOODY
(PLANNING)
ON BEHALF OF COASTAL RATEPAYERS UNITED INC

24 JULY 2016

BRIEF OF EVIDENCE OF KATHARINE JOSEPHINE MOODY
ON BEHALF OF COASTAL RATEPAYERS UNITED INC

Introduction

1. My name is Katharine Josephine Moody. I am a Senior Tutor at Massey University, teaching part time in the Planning Programme (School of People, Environment & Planning) and in the College of Sciences. My qualifications are a Bachelor of Science from Lewis University (IL, USA) and a Postgraduate Diploma in Planning from Massey University. I have been teaching at Massey in the Planning Programme since 2006 and in the College of Sciences since 2010.

2. Prior to my employment with Massey, I held the position of Manager, Radio Spectrum Management Group in the Ministry of Commerce and subsequent to a name change, within the Ministry of Economic Development (now MBIE). In that role I was delegated all of the powers of the Secretary under the Radiocommunications Act 1989 and Radiocommunications Regulations 2001.

3. I provide the following statement of evidence in relation to the submissions (#378 and #FS88) lodged by Coastal Ratepayers United (CRU) to the Proposed Kapiti Coast District Plan 2012 (PDP).

4. I have worked with CRU in an external advisory capacity since 2012. I assisted them in the preparation of their further submission to the PDP and in their submission to the Greater Wellington Regional Council (GWRC) Proposed Natural Resources Plan (PNRP). I also assisted them in preparing written feedback to the Submitter Engagement Version (SEV) (a line-by-line strike through of SEV chapters 1, 2, 2A, 3, 5, 8 and 9 as well as other written materials) and I attended the CRU meeting with council officers in that regard.

5. I am not a member of CRU, nor do I or any of my family have any residential assets or other financial interest that might be affected by the outcome of hearings on the PDP.

6. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court of New Zealand Practice Note (December 2014), and I agree to comply with it. My qualifications and experience as an expert are set out above. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise. I will treat the duty to the Court as a duty to the Panel.

Coastal Ratepayers United Inc

7. CRU was formed in September 2012 and became an Incorporated Society in November 2012. The objectives of CRU are:

• Take whatever steps are necessary to have reviewed the imposition of hazard lines on LIMs or any other documents;

• Make representations to Councils concerning the coastline, including the rights and interests of property owners along or near the coastline;

• Undertake scientific, engineering, legal and other research relating to the coastline and provisions to govern activities along or near the coastline;

• Make representations, gather evidence and make submissions and appeals concerning any consultative or statutory document, including any Regional/District Plan or draft or proposed Regional/District Plan.

Introduction

8. This evidence addresses integration matters as discussed in s42A report: Coastal Overview (the "s42A report") as well as the section 42A report overview, as presented on 13 July 2016 to the Panel ("the presentation day report").

9. In this evidence, I refer to the PDP provisions, in combination with the provisions of the Operative Kapiti Coast District Plan 1999 (ODP) to remain in force once the PDP is made operative, as "the 'composite' plan" [1].

10. I have structured my evidence under the following headings:

- The ODP provisions to remain in force
- Linking users of the PDP to the ODP provisions to remain in force
- Indecision and uncertainty
- Are the legislative requirements met?

The ODP provisions to remain in force

11. With respect to the ODP provisions to remain in force, the s42A report states:

[1] Wording as per s42A Report: Part A - Background and process, p. 43, para. 135

> "101. The Council's decision to withdraw the PDP coastal hazard provisions also saw it resolve to keep relevant provisions in the ODP. To clarify which provisions will remain in force, I have prepared a summary for the Commissioners, attached as Appendix One to this report. The summary is worded as a draft guidance document, to assist the public and Council officers to understand which provisions are retained."

12. With the subsequent release of the s42A report, I have been able to further consider the 'composite' plan as the s42A report in Appendix One, sets out a "draft" set of ODP provisions that are to remain in force.

13. For clarity, by "draft", I believe the word has the intended meaning of an *indicative*[2] set of ODP provisions that are to remain in force, and indicative is the context under which it is used hereafter. In my view, the ODP provisions, when presented in 'standalone' (i.e., as the provisions text only) are a very disjointed set of provisions that are difficult to make sense of or to interpret 'collectively' in consideration of a coastal hazard management and/or mitigation proposal. In my view the rules in particular would be unintelligible by a non-planner member of the general public.

14. The complexity of the PDP has been acknowledged throughout this hearings process. That complexity is magnified when interfacing with the ODP elements of this 'composite' plan. The integration solutions the s42A report recommends, for example, propose that coastal hazard mitigation of a "hard" protection nature is managed under the retained provisions of the ODP, whereas those of a "soft" protection nature are managed under the PDP. All hazard mitigation proposals are likely to be subject to the character provisions of the PDP creating regulatory uncertainty and leaving decisions open to inequitable resolution between different proposals for similar activities. Earthworks and vegetation clearance are managed under the PDP. "Buildings" in some parts of the coastal environment are managed under the ODP, and in other parts under the PDP. These examples of activities that are contemplated under the RMA and NZCPS are not an exhaustive list and when required to assess an application for consent the level of both complexity and uncertainty (of interpretation) will be high.

15. As a result, "a draft guidance document, to assist the public and Council officers to understand which provisions are retained" (s42A report: Coastal Overview, para. 101), titled Appendix One, is included in the s42A report. This document goes much further than simply stating the provisions of the ODP that are to be retained. It contains a large amount of planning/legal interpretation associated with the retained provisions.

16. For example, explanatory "Notes" referencing both PDP and ODP matters have been inserted within the retained provisions. One "Note" refers to ODP provisions that do not remain in force but are "provided for contextual purposes only" – a very curious treatment. It is unclear whether these "Notes" are to have regulatory status under the 'composite' plan.

[2] So as not to be confused with draft plan provisions subject to amendment under a Schedule 1 process

17. No definitions from the ODP have been included among the provisions to be retained, yet many provisions are reliant on definitions in respect of the asserted interpretative commentary.

18. In my view an independent legal audit of the Appendix One document should be undertaken and made available to all submitters. The audit should also consider whether the 'composite' plan is in accordance with the RMA and gives effect to the New Zealand Coastal Policy Statement 2010 (NZCPS) and the Regional Policy Statement (RPS) for the Wellington region.

19. On this latter matter, I comment further under the heading, "Are the legislative requirements met?" below.

20. Finally, in relation to the retained provisions of the ODP, there is the matter of fairness, and the question of whether the 'composite' plan approach (arising from failure of the Council to implement its resolutions of 24 July 2014[3]) is a *just* process. In my professional view, it is not.

21. As the Panel will be aware, many submissions (including CRU) on Chapter 4 provisions did not support provisions that had been carried over (i.e., transferred or duplicated whether in whole or in part form or in whole or in part substance) from the ODP to the PDP (eg no build and relocatable setbacks). Their submissions on those provisions are now non-justiciable. Submitters have not been given the opportunity to (re)submit on those ODP provisions that are to remain operative. KCDC has not notified (under s 79(3) or (7) of the RMA) the ODP provisions that it considers do not require alteration so people have had no opportunity to make submissions.

Linking users of the PDP to the ODP provisions to remain in force

22. This section of evidence relates to material in the presentation day report under the heading, "Incorporating the ODP into the PDP".

23. I am a bit uneasy with the report's use of the term "incorporating" as adopted in the presentation day report, as "incorporation [of material] by reference" has meaning under the RMA, and what is being discussed here is a very different matter.

24. In my earlier evidence, I referred to this integration issue using the terms "link" and "alert" with reference to linking or alerting users to signal the need to 'toggle' between two operative plans. This issue is a matter in law. In other words, I framed my concerns in terms of questioning the mechanism of 'how' to do that in a lawful manner under RMA statute.

[3] Council resolution – KCDC 14/06/128

25. A discussion of the lawfulness of the recommendations being proposed in the s42A reports is glaringly absent. The focus of the s42A report is on the 'what' (is intended to be linked), rather than the 'how' (in law that linking is to be achieved). I have earlier in this evidence discussed a legal audit of certain aspects of the 'composite' plan, and this too is a matter that would benefit from such a consideration.

26. The presentation day report explains that the recommended resolution to this integration issue follows advice from page 51 of the "Independent Review of the Kāpiti Coast Proposed District Plan, June 2014" (hereafter referred to as the "Allan/Fowler report"). The presentation day report states:

> "2.18 The 2014 Independent Review recommended a "placeholder" in the district plan to explain that the ODP provisions will remain in place until a variation is prepared, and direct the reader to (I assume) a separate document that would "sit outside" the plan. In line with that recommendation, Appendix One of the Section 42A coastal overview report is a first draft attempt at such a document."

27. It is worth reviewing the advice on page 51 of the Allan/Fowler report in full context. The relevant passages reads:

> "On the basis of the findings of the coastal erosion hazard assessment review we consider that the Council should withdraw the coastal hazard management areas shown as the Map Series C of the PDP, along with the whole of the text under the heading 4.2 "Coastal Hazard Management Areas" including explanatory material and policies, as well as all rules which relate specifically to the mapped coastal hazard management areas. We propose this because, while the rules do not yet have legal effect, the policy does.
>
> An explanatory "placeholder" needs to be inserted instead which clarifies which provisions of the operative District Plan will remain in place while a variation is prepared and processed to operative status to address the requirements of the NZCPS and the RPS. This would include natural hazards policy provisions (to the extent that they address coastal hazards management) and a range of mapped coastal and other building line restrictions and some of the operative District Plan's rules such as rural setbacks and existing relocatable and related rules.
>
> This should be done at an early stage in the implementation plan for progressing with the PDP…"

28. And there is a footnote (footnote number 109) referenced at the conclusion of the second paragraph quoted above (i.e., after the word "rules"). The footnote reads:

> "This clarification can be done without change or variation and can sit outside the actual PDP content."

29. Once again, the presentation report summarises the Allan/Fowler advice as (emphasis mine):

> "2.18 The 2014 Independent Review recommended a "placeholder" in the district plan to explain that the ODP provisions will remain in place until a variation is prepared, and direct the reader to (I assume) a separate document that would "sit outside" the plan. In line with that recommendation, Appendix One of the Section 42A coastal overview report is a first draft attempt at such a document."

30. Looking at each of the above underlined points separately, my interpretation of the "placeholder" referred to in the Allan/Fowler report was that it:

- was not to be in the district plan (as the presentation report states) but rather in the PDP;
- was not to "sit outside" the plan (as the presentation report states) but rather it was to "sit outside the actual PDP content" (as the Allan/Fowler report states); and
- would not "remain in place until a variation is prepared" (as the presentation report states) but rather it would "remain in place *while* a variation is prepared and processed to operative status" (as the Allan/Fowler report states, italics mine). I also note the difference between a variation to the PDP (as recommended by the Allan/Fowler report) and a change to the PDP once operative (which KCDC now intends to advance).

31. The presentation report has assumed that the "placeholder" referred to by the consultants is likened to "a separate document", and that this was envisaged by the Allan/Fowler report authors. I would not necessarily view a "placeholder" in this context as a separate document. And I would have enquired with the authors to clarify their meaning directly with them.

32. It is most disappointing to see the author's insertion of an "(I assume)" in the presentation day report text at para. 2.18.

33. With that point made, I will however now provide my interpretation (i.e., assumption) of what the Allan/Fowler report meant with respect to "placeholder", but I wish to reiterate to the Panel that in practice as a council officer this is not what I would recommend. I would recommend the council officer enquire with the person writing the report that he/she intended to use to model a planning recommendation on. Assumptions of this nature have no place in an s42A report. That said, my analysis follows.

34. The Allan/Fowler report refers to the "placeholder" in the associated footnote stating:

> "This clarification can be done without change or variation and can sit outside the actual PDP content."

35. I interpret "clarification" as implying a brief amount of text, perhaps a margin notation, not an insertion into the "actual PDP content" (as that would require a variation to the PDP) but rather, to be used as a "placeholder" that was a function of the document formatting – not the "actual PDP content" or provision text. This might have taken the form of a "comment" field in the Chapter 4 PDP document file.

36. Such a "placeholder" would have been located in the PDP post-withdrawals document. Thereby, the "placeholder" would have been visibly located adjacent to the withdrawn (i.e., struck-through) PDP provisions. This then would have thereby given clear and certain context to a user of the proposed plan text. The comment notation would likely have referred to the relevant alphanumeric provisions in the ODP that would apply in the interim while a variation to the PDP was prepared and progressed.

37. Regardless of the form of the "placeholder", it must be understood to have been a recommendation made in relation to *an interim solution* while a variation to the PDP was being prepared and progressed via the PDP statutory process. It was never "thought through" by the consultants in respect of the manner to which it is now being proposed to be applied in law under the RMA.

38. In my view, the Allan/Fowler report was the wrong basis on which to consider and then justify this action in respect of this 'composite' plan. The form of the 'composite' plan is likely setting legal precedents under the RMA, as KCDC when asked previously could provide no case authority for such a plan[4].

39. Appendix One which the presentation day report recommends as the "placeholder" mechanism is a document of 17 pages plus a separate map set. It is unclear whether this "placeholder" is to have legal status under the RMA, or whether it is a non-regulatory guidance document. The mechanism and form of this linking requirement needs to be developed as the former, not the latter in my opinion.

Indecision and uncertainty

40. In my earlier evidence to the General/Plan-Wide hearing under the heading 'Definitions' (p. 18, para. 93), I referred to the 'composite' plan as "the whole Plan", and noted:

> "93. The question arising for the Commissioners is whether the Hearings Panel will consider and rule on the whole Plan, in the context of considering the appropriateness of what is in the PDP. And if so, will the Commissioners also consider the whole of the operative District Plan to ensure that the provisions within it that are to remain operative, do not rely on any other provisions in it that are not intended to be part of the whole Plan."

[4] See Moody – Evidence, General/Plan-Wide hearing, pp. 6-7, para. 28

41. The s42A author's presentation day report raised related questions, for example:

> "…I am unsure whether it is within the mandate of the Panel to recommend which ODP provisions should remain in force." (para. 2.22);
>
> "…it does seem likely that the Panel should concern itself with how the retained ODP provisions mesh with the PDP." (para. 2.22)

42. Additionally, at para. 2.19, the presentation day report refers to one of the integration issues raised by me in my General/Plan-Wide evidence. That (i.e., my evidence point) being:

> "…what is not explained (in the s 42A report, or in the PDP/SEV or on the Council's website FAQs) is how users of the whole Plan will be alerted to the fact that coastal hazards are mapped for the district in the operative District Plan, and how users will be linked between the relevant information if contained in multiple plans and/or maps."

43. With respect to the above matter, the presentation day report discussed a number of "alternatives" to address the matter with respect to plan maps (paras. 2.19-2.21), but there is no discussion of the related issue also raised in my General/Plan-Wide hearing evidence at paras. 119-121, that (i.e., my evidence point) being:

> "119. For example, in PDP Chapter 1 - Introduction and Interpretation, under the heading, "Determining whether resource consent is required" (PDP page 1-5), "Step 1 – Check District Plan Maps" reads (PDP as amended but without strike through, in other words this is how the 'clean' text would read to a plan user):
>
> > ".. [D] Check the Natural Hazard Maps to confirm if the land is affected by any identified natural hazard. The Natural Hazard Maps illustrate fault avoidance zones, liquefaction susceptibility, slope stability and flood hazard zones. .."
>
> 120. Note the lack of reference to any mapping of coastal hazards for the District.
>
> 121. In the pre-withdrawal of coastal hazard provisions version of the PDP, the list above also refers to "coastal hazard zones". "

44. Given the PDP provisions relating to "coastal hazard zones" have been withdrawn under clause 8D of Schedule 1, a consideration must be made as to whether the user instruction on "Determining whether resource consent is required" is to be remedied in the 'composite' plan. This must consider issues of scope.

45. The question of scope aside, I also noted in my General/Plan-Wide evidence at para. 131:

> "…And in the operative District Plan, the language used in the "enduring" provisions refers to "coastal building line restriction" and "relocatable area". Those definitions do not exist in the PDP."

46. Definitions also appear to be an integration issue requiring further attention. The draft ODP provisions to remain in force as contained in Appendix One of the s42A report, indicate that no definitions are to be retained. This matter needs to be addressed.

47. I have counted 26 terms in the draft ODP provisions that have a definition either in the PDP, or the ODP, or both. Ten of these being defined in both the PDP and the ODP, with different definitions in each plan. And I have not looked at any of the s42A mark-ups where recommendations for amendments may have been made.

48. I reiterate, this matter of definitions needs to be addressed.

49. Returning to the presentation day report, it concludes its findings under this heading, "Incorporating ODP provisions into the PDP" with a bulleted 'to do' list:

> "2.23 In summary, I recommend that the Council's policy team:
>
> - Confirm and potentially refine the ODP provisions that should remain in force, once the hearings for Chapters 3, 4, 8 and 9 have concluded; and
> - Seek a Council resolution that these are the provisions which will remain in force in the interim; and
> - At the integration hearing, recommend to the Panel any amendments to PDP policies or rules that may be needed to improve integration with the retained ODP provisions; and
> - At the integration hearing, recommend to the Panel how or whether the retained ODP provisions should be physically integrated with the PDP."

50. Clearly, there are many questions to be answered and many outstanding matters to be addressed. Not just those above in the bulleted list, but additionally those raised in my evidence and in the submission and evidence of others.

51. With all due respect to the Panel and to the formal regulatory proceeding we are participating in, it is my opinion that this list reads like a 'make-it-up-as-we-go' approach to plan change. I find myself unable to describe this in a more professionally appropriate manner, in other words, I am lost for words.

52. If it is intended that the outstanding matters raised in the s42A coastal overview reports, as well as those raised in evidence and submissions in earlier hearings, and in this and subsequent hearings, are to be addressed in a 'wash up' of the 'composite' plan during the "Whole PDP Integration Hearing" — it might be useful for submitters to be provided with

public access to the Panel's record (i.e., list) of outstanding matters the Commissioners have identified during the course of the hearings which cannot or are not able to be resolved during the course of the chapter hearings, that are scheduled to be addressed at the 'wash up' hearing.

53. This would reassure submitters that the Panel acknowledged and understood that their outstanding issues had not fallen away, or been lost in the process but instead were recognised, documented and carried forward by the Panel.

54. In this regard, CRU had prepared a set of questions intending to seek clarification at the 'presentation day' on a number of points relating to the s42A Coastal Overview report, however the opportunity for their members in attendance to put these questions via the Panel to the s42A report author for oral answer did not present itself on the day.

55. I understand that hardcopy of these questions was left with some of the s42A authors, however for assurance, these are resubmitted below and I have re-worded some and deleted others that I believe have since been answered. The outstanding matters from CRU's questions are:

> 1. Is "Appendix One" of Section 42A Report Part B: Coastal Overview to have legal standing as part of the 'composite' plan?
>
> 2. How will 'composite' plan users be given certainty with respect to the interpretations given to the ODP provisions remaining in force as documented in the "Activity Table" in "Appendix One"? In particular, we refer to the interpretation that seawalls under 1.5m in height are Permitted Activities given their exclusion in the definition of "Building" in the ODP[5]. How do you propose to indicate the retention of this (and other relevant) definitions in the ODP? Additionally, as these seawalls are a Permitted Activity in the ODP, how does that integrate with other provisions in the PDP? In other words, what legal mechanism will ensure that the ODP Permitted Activity status has primacy over any other PDP considerations, for example, the character provisions of the PDP?
>
> 3. The report includes "Notes" (pages 2, 9, 13, 16, 17) in "Appendix One" inserted within the provisions of the ODP to be retained. Are these "Notes" intended to be incorporated, or referred to in the remaining provisions of the ODP and/or in the 'composite' plan? If not, how are such "Notes" to be communicated to users of the 'composite' plan?
>
> 4. The "Activity Table" in "Appendix One" indicates that buildings in the Residential Zone located within the *relocatable area* (a defined term in the ODP, but not the PDP) are a Permitted Activity, subject to being a *relocatable building. Relocatable building* is a defined term in both the ODP and PDP where the definitions are different. Which definition for *relocatable building* will apply and how that will be communicated to users of the 'composite' plan?

[5] A number of CRU members have built such seawalls in recent years based on this Permitted Activity categorisation.

5. We have identified further issues with definitions where terms used in the ODP provisions are defined terms in either the PDP or the ODP or in both.
    a. What work is intended on resolving these integration issues?
    b. Where both the PDP and the ODP define the same term but use different wording, which of the two definitions will apply? And how will this be communicated to users of the 'composite' plan?
    c. With respect to the use of the term 'existing' in the ODP provisions, does 'existing' relate to timings relative to the ODP or the PDP? And how will this be communicated to users of the 'composite' plan?

56. I note however the above list should not be relied on as a complete list from CRU, as I have not fully reviewed the earlier evidence and submissions by CRU to identify all of the integration matters as have been raised in hearings by them as a submitter. And of course, the matters raised in this evidence should also be added to that list.

Are the legislative requirements met?

57. In my evidence to the General/Plan-Wide hearing, I discuss the s42A report: Part A statement from council, citing this s42A report passage of text (emphasis mine):

> "135. The Council overall remains in a full review of the Operative District Plan, and until new coastal hazard and hazardous substances and facilities provisions become operative, the Operative District Plan provisions relating to those topics will remain in force. The RMA contemplates that district plans can be a 'composite' plan made up of sections that are approved at different times and through successive planning processes, and <u>therefore there will be no regulatory gap</u>."

58. I interpreted this reference to "no regulatory gap" in the above statement to mean that the 'composite' plan would fulfill the requirements of the RMA, the NZCPS and the RPS.

59. In April 2016, based on the information provided in s42A report: Part A, I provided an analysis and a view on the 'composite' plan approach in an affidavit to the Environment Court (Appendix 1, paras. 53-76)[6].

60. My view at that time was as follows:

> "74. I am of the view that, if the 'composite' approach as outlined by Council in the s 42A report, Part A is pursued, then other more serious "regulatory gaps" will become apparent. The collective provisions for coastal hazard management and mitigation will not achieve a holistic and integrated coastal management planning approach as embodied in the NZCPS."

[6] This is the unsworn version of my affidavit for the declaration proceedings in the Environment Court, not including the Annexures referred to within the affidavit. The sworn version, a scanned document with Annexures, is too large to send via email attachment. The wording of the attached document is identical to the sworn affidavit.

61. With the benefit of further information as contained in the s42A report and presentation day report on coastal overview matters, it is worth reviewing the treatment of these legislative requirement matters by the s42A report author.

62. The s42A report moderates a number of the positive assertions that the legislative requirements are met using qualifiers such as "broadly consistent" (para. 69), "generally achieved" (para. 63), "to the extent possible" (para. 42), "may not be totally consistent" (para. 70) to this effect.

63. Some of these identified shortcomings of the 'composite' plan are coupled with statements such as:

> "I understand that this is something which the review process initiated by the Council will address." (para. 62)
>
> "However, I expect that a much greater degree of consistency and integration will be achieved via the review process which the Council has signalled – especially in relation to selecting management options that strategically respond to a long term view of coastal risk." (para. 70)

64. In respect of the "review process" referred to above, the s42A report also acknowledges that (emphasis mine):

> "There will be subsequent development of new district plan provisions, <u>subject to a timeframe yet to be determined</u>." (para. 24)

65. Similar qualifiers are used in the presentation day report, for example;

> "…today's presentation is therefore only one stage of working to resolve integration issues" (para. 1.7).
>
> "The ODP became operative in 1999, five years after the first NZCPS was published. I have to assume that the district plan was considered consistent with the NZCPS at that time, even though some of the ODP provisions (such as building restriction lines) may have been carried forward from the pre-NZCPS period." (para. 2.8)
>
> "I reach the conclusion that the ODP provisions are broadly consistent, but I also state that they are lacking in terms of giving effect to the strategic approach required by the 2010 NZCPS." (para. 2.9)
>
> "I understand that this is the Council's intention; to work towards a strategy based on an evaluation of costs and benefits." (para. 2.11)

66. In my opinion it appears that the view I formed in April 2016 based on a review of the ODP provisions for coastal hazard management (without knowing exactly which provisions might be retained) is supported further, now that those provisions are known.

67. This is not surprising. As I stated in my affidavit to the Environment Court (attached as Appendix 1, p.14, para. 72):

> "72. I also note that none of the policies contained within Section C9 of the operative District Plan have been amended since the Plan became operative in 1999. And therefore review of these coastal hazard provisions has potentially failed to meet the requirements of s 79(1), if not in law, in intent, as a read of the provisions demonstrates their age."

68. It remains my view that the collective provisions as provided for under the 'composite' plan for coastal hazard management and mitigation will not achieve a holistic and integrated coastal management planning approach as embodied in the NZCPS.

69. In acknowledging this regulatory shortcoming, the s42A report makes a statement of particular concern to me. It is repeated here in full (s42A report: Coastal Overview, p. 23, para. 97, italics in the original):

> "97. It is not a question of whether the District Plan should address the matter of coastal hazards. That cannot be in contention, as the NZCPS requires the matter to be addressed. Rather, it is a question of *how and when* the District Plan addresses the matter. With that in mind, the Council has signalled that it will ultimately prepare a proposed change to the District Plan *"to address the district's coastal hazards in accordance with the NZCPS, the RPS and best practice"*."

70. This text includes a footnoted reference at the conclusion of the above paragraph (i.e., after the word "practice"). That footnote reads: "Recommendation 6, Officers Report to Council "Proposed District Plan Independent Reviews and Way Forward", 24 July 2014. Adopted in Council minutes".

71. That Officers Report is attached as Appendix 2.

72. Recommendation 6 repeats a recommendation from the Allan/Fowler report. Recommendation 6 states (emphasis mine):

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

73. The s 42A report omits reference to "variation (or variations)" replacing it with "a proposed change to the District Plan". A change to the plan did not form part of Recommendation 6.

74. The exact same text from Recommendation 6 of the Officers Report was adopted under the Local Government Act 2002 as resolution b(6) in Council resolution – KCDC 14/06/128.

75. The Allan/Fowler report and its recommendations as adopted by Council did not envisage a 'composite' plan, nor did it envisage a "proposed change to the District Plan" to address the matter of coastal hazards as the s42A report asserts.

76. The Allan/Fowler report recommendation and the resolution adopted by Council "to address the district's coastal hazards in accordance with the NZCPS, the RPS and best practice" was for a variation (or variations), not a plan change.

77. Moreover, the Allan/Fowler report stated:

> "Continued work on coastal hazards should be considered to be a high priority and not "parked". " (p. 51)

78. I believe we need to reflect carefully as professionals in resource and environmental planning on the fact that the s42A report's assertion associated with the identified shortcomings of the PDP in respect of giving effect to the NZCPS have been described as being:

> "…a question of *how and when* the District Plan addresses the matter."

79. The fact of the matter is that the question of "*how*" was answered through the recommendation for a variation (or variations) to the PDP, and the question of "*when*" was to acknowledge and accept that further work on coastal hazards was to be considered to be a high priority, and not to be "parked". This was the language used in the Allan/Fowler report. This report was also endorsed without alteration or caveat by the full Council. As were the resolutions adopted that flowed from it.

80. I would like to reiterate what I stated earlier in this evidence (para. 20, emphasis in the original):

> "…there is the matter of fairness, and the question of whether the 'composite' plan approach (arising from failure of the Council to implement its resolutions of 24 July 2014[7]) is a *just* process. In my professional view, it is not."

81. In teaching planning theory, an academic is challenged with communicating to students their personal pick of a 'best definition' in answer to the question of 'What is planning?'

82. Faced with this requirement myself, I chose Professor Heather Campbell's simple concluding explanation as expressed in her inaugural lecture at the University of Sheffield in 2002, that:

[7] Council resolution – KCDC 14/06/128

> "Planning is fundamentally about ethical judgement, with and for others, made through *just* institutions — it is about *an idea of value*."

83. The premise espoused by the s42A report at paragraph 97, effectively implies that giving effect to legislation that promotes the sustainable management of coastal resources in the Kapiti District is confined to a question of how and when — to paraphrase the intent as I read it: we can do it anytime we like, as long as we get around to it eventually, regardless what we have resolved to do previously under a statutory process.

84. The tenor of this to me is surprising and disappointing. Unnecessary and unreasonable delay in the progress of good quality environmental management decision-making in New Zealand is more important than that. At this juncture in the development of second generation plans under the RMA, it is my opinion that compromise of the governing statute should not be taken lightly. Environmental planning under the RMA has matured. Deliberative, democratic decision-making under the RMA has matured. Bad planning practice should be recognised and corrected, by the governing institutions. This function is fundamental to achieving the purpose of the RMA.