

**North Otaki Beach Residents
Group Incorporated**

Applicant

Kapiti Coast District Council

Respondent

I, **Katharine Josephine Moody**, of Palmerston North, Senior Tutor, SWEAR:

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. I have been asked by counsel for Coastal Ratepayers United Inc. (CRU) to make this affidavit which draws in part on evidence that I have lodged¹ with the Hearings Panel for the Kapiti Coast District Council (hereafter referred to as the "Council") proposed District Plan (PDP) hearings. I will be addressing that evidence at the hearing on 4 April 2016.
3. For the avoidance of doubt, 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 decisions of the Hearings Panel on the PDP or the decisions of the Court.
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 Proposed Natural Resources Plan. I also assisted them in preparing written feedback to the Submitter Engagement Version (SEV) of the PDP (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 staff in that regard. The SEV was released in Jun 2015 ie after the PDP.

¹ My evidence in full is available online at <http://www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/proposed-district-plan-hearings-2016/generalplan-wide-hearing/> It consists of the evidence document (in MS Word) plus two appendices (.pdf files).

5. I was a resident of the Kapiti Coast from 1978 to 2008, and a beachfront homeowner from 1991 to 2007. In 2009, I moved to Palmerston North. I therefore have not only planning expertise but also knowledge about, and experience with, Kapiti coastal matters over a number of years.
6. Where I have used links in this affidavit (appearing in footnotes), they are for the purposes of providing the Court with direction to source documents or to other, further information that might be useful to the Court. The affidavit has been prepared as sufficient to stand alone without reference to the additional material unless the Court so wishes.
7. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court of New Zealand Practice Note 2014. I complied with that Code of Conduct when preparing my brief of evidence for the Council hearings on the PDP and I have complied with it in the preparation of this affidavit. 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.

What I will cover

8. Although I am familiar with a great deal of the explanatory content and provisions of the PDP, my focus of attention in this affidavit relates to the broader issue which I will refer to as 'problems of process'.
9. Given my experience to date as an external advisor to, and as an expert planning witness for CRU, I am of the view that these 'problems of process' have serious implications that prejudice CRU's ability to participate effectively as a submitter to the PDP on provisions associated with the management of Kapiti's coastal environment, and in particular those PDP provisions associated with coastal hazard management and mitigation in the District.
10. The issue of concern covered in this affidavit are grouped under the following headings:
 - Problems of process: Notification and submissions
 - Problems of process: What happened to CAG
 - Problems of process: Nature and scope of the provisions withdrawn from the PDP
 - Problems of process: The 'composite' plan approach
 - Problems of process: Conclusions

Problems of process: notification and submissions

11. The PDP was publicly notified on 29 November 2012. That notification (first paragraph) reads (emphasis mine):

“Pursuant to Clause 5 of Schedule 1 of the Resource Management Act 1991, the Kāpiti Coast District Council gives public notice of its Proposed District Plan. The Proposed District Plan is a result of a District Plan Review which commenced in 2009 under Section 79 of the Resource Management Act 1991. It amends, and when made operative will replace, the objectives, policies, rules and standards, maps and appendices of the operative 1999 District Plan.”
12. 777 submissions were received in total (s 42A report Part A, para. 84)².
13. Of those, 415 submitters submitted on Chapter 4 – Coastal Hazards, and 9 submitters submitted on Chapter 4 – General. Of the 415 submitters who made submissions on Chapter 4 – Coastal Hazards, 186 specifically sought the relief sought in the CRU submission as part of their submission. 27 further submissions were received on the CRU submission: 1 oppose; 1 support and oppose in part; and 26 expressed support for the entire CRU submission.³
14. In 2013, Council convened an independent Coastal Experts Panel to review the science behind the coastal hazard mapping used for the PDP. The Panel found that the hazard lines proposed by Coastal Systems Limited were “not sufficiently robust for incorporation into the Proposed District Plan”.⁴
15. Also in 2013, responding to public concern about more general aspects of the PDP, the Council commissioned an Independent Review of the PDP by Sylvia Allan and Richard Fowler, QC (hereafter referred to as the Allan/Fowler report).⁵
16. That report recognised a number of difficulties with the PDP and recommended a modified plan review process (referred to as Option 4), and if Option 4 was unable to be appropriately resourced, then it recommended that the PDP be withdrawn (referred to as Option 3).

² Volume 2 Tab 9 of the NOBRG materials provides the link.

³ Proposed Kapiti Coast District Plan 2012 - Summary of Submissions and Further Submissions, Chapter 4 – Coastal Hazards and Chapter 4 – General available online <http://www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/Proposed-District-Plan/Submission-Summaries/> Counted by me manually, and therefore not verified in an official manner, but rather my best endeavours were used..

⁴ Volume 1 Tab 1 of the documents provided by NORBG to the Court. *Coastal Erosion Hazard Assessment for the Kāpiti Coast: Review of the Science and Assessments Undertaken for the Proposed Kāpiti Coast District Plan 2012* (June 2014), p. 53.

⁵ Volume 1 tab 2 of the documents provided by NOBRG to the Court. *Independent Review of the Kāpiti Coast Proposed District Plan* (June 2014).

17. The Council considered both of these independent reports in the same Council meeting on 24 July 2014 and made a number of decisions under the heading: KCDC 14/06/128 PROPOSED DISTRICT PLAN INDEPENDENT REVIEWS AND WAY FORWARD (SP-14-1253)⁶
18. Decisions on the modified plan review process (referred to as Option 4) are contained in resolutions (a) and (b)(1-6) and (c) collectively (i.e., as a complete suite of recommendations):

That the Council, in relation to the report “Independent Review of the Kapiti Coast Proposed District Plan” (Attachment 2 to Report SP-14-1253):

(a) endorse the Independent report; and

(b) adopt its recommendations 1 to 6 being:

1. The Council proceed with the PDP on the basis of a modified process of hearing and making decisions which includes all elements set out in section 5.5 of this report.

2. A detailed implementation plan including resourcing and timetable is developed to progress the PDP in accordance with recommendation 1. A communications plan to keep the community informed would be a necessary part of the implementation.

3. The Council undertake a detailed review of the rules of the PDP having legal effect and clarify these provisions as soon as possible.

4. The Council resolve to withdraw from the PDP the coastal hazard management areas on the plan maps along with the associated policy section and rules, and clarify the parts of the operative district plan which provide stop-gap coverage relating to coastal hazards.

5. The Council develop an implementation plan to progress work on the coastal erosion hazard assessment, and other aspects of coastal hazard management. The implementation should build on the work already done and incorporate adequate and appropriate communication and consultation provisions, including a role for an advisory group as described in section 6.4 of this report.

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

⁶ The minute of the Council meeting 24 July 2014 is available online at <http://www.kapiticoast.govt.nz/contentassets/fa4306d86d704b6eb55ecea81c26d5c2/24-july-2014/council-minutes-24-july-2014.pdf>

(c) adopt Option 4 (continuation of the Proposed District Plan process) but reserve the ability to invoke Option 3 (withdraw the PDP) once further analysis of all submissions have been completed in November 2014.”

19. And, with respect to the implementation of Option 4, specifically with respect to resolution (b)5, the following further resolutions are of critical import:

“That the Council endorse the formulation of a Coastal Advisory Group (CAG) with membership from key statutory agencies, neighbouring councils, submitters, coastal land owners and community representatives with an independent chair.

That staff develop a draft terms of reference for the Coastal Advisory Group and identify the skills / attributes of potential group members for Council consideration.”

20. A ‘Draft Indicative Option 4 Timeline’ was attached⁷ to the officers report (SP-14-1253)⁸ for that 24 July 2014 meeting. It depicts the Coastal Advisory Group (CAG) work stream (as per the resolutions detailed in paragraph 19, immediately above) as running concurrently with the rest of the modified plan review process. I attach this timeline as Annexure A.

21. The timeline refers to “Proposed Coastal Plan Change As Per Schedule One Process (2 Year Process)”. I assume that the person preparing the timeline for the attachment did not appreciate the distinction between a variation and a change.

22. Either that, or a decision had already been made by someone not to progress a variation, despite both the officers report recommending and the Council resolving that:

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

23. In accordance with that timeline:

- CAG was to be formulated in August 2014;
- the evidence base for coastal hazard determinations was to be completed in July 2015;
- Coastal Hazard Management Options (s 32 work) was to be completed in January 2016;

⁷ The full suite of appendices are available online at <http://www.kapiticoast.govt.nz/contentassets/fa4306d86d704b6eb55ecea81c26d5c2/24-july-2014/1316-13-kcdc-app-1-6-sp-14-1253.pdf>. The Draft Indicative Option 4 Timeline is found on page 173 of 173 (i.e., the final page).

⁸ The officers report is online, available at <http://www.kapiticoast.govt.nz/contentassets/fa4306d86d704b6eb55ecea81c26d5c2/24-july-2014/1316-13-kcdc-or-proposed-district-plan-independent-reviews-and-way-forward-sp-14-1253.pdf>

- consultation on Coastal Management Options should have begun in February 2016; and
- Draft Coastal Provisions would have been available during the course of the PDP hearings.

24. None of this has been achieved. CAG has not been formulated.

25. It is also important to note that the Allan/Fowler report stated (p.44, emphasis mine);

“If Option 4 is to be followed, there will be an urgent need to develop a detailed implementation plan, including an indicative timetable, and to ensure adequate resourcing. The implementation plan must be realistic, as it will be of significance to all the submitters. Methods for ongoing communication with the wider community over the process, as well as submitters, will be needed.”

26. The above reference to “all the submitters” of course included those 415 submitters on Chapter 4 – Coastal Hazards, whose submissions are “no longer relevant”⁹, whether in whole or in part.

Problems of process: what happened to CAG

27. The CAG work stream as depicted in the ‘Draft Indicative Option 4 Timeline’ was reported to the Regulatory Management Committee (RMC) in a number of PDP updates to the Committee up until April 2015¹⁰. The April 2015 ‘PDP Implementation Plan’ is attached as Annexure B.

28. In May 2015, (first reported to the RMC in July 2015)¹¹, the CAG work stream was dropped from the PDP Implementation Plan. The ‘PDP Implementation Plan (May 2015)’ is attached as Annexure C. Note that this diagram also has no reference to a plan change or a variation associated with coastal provisions.

29. A draft Terms of Reference for CAG was progressed by council officers in August 2014.

30. CRU was invited to comment on that draft.

⁹ “No longer relevant” is the wording used in the PDP Summary of submissions. The Council website FAQs refer to the submissions as having “fallen away”. S 42A report authors indicate that there will be “no further discussion” on submission points made on matters/provisions/text that has been withdrawn.

¹⁰ The officers report of 23 April 2015 with PDP Implementation Plan graphic on page 6 of 6 is available online at <http://www.kapiticoast.govt.nz/contentassets/4b1d15bc9b1e4a2db84b6647d0b36cd9/23-april-2015/1316-09-rmc-or-april-2015-update-on-the-proposed-district-plan-sp-15-1545.pdf>

¹¹ The officers report of 23 July 2015 with PDP Implementation Plan (May 2015) on page 5 of 5 is available online at <http://www.kapiticoast.govt.nz/contentassets/4b1d15bc9b1e4a2db84b6647d0b36cd9/23-july-2015/sp-15-1615-july-2015-update-on-the-proposed-district-plan.pdf>

Note: there was no May meeting of the RMC (and hence no update on the PDP) and the update provided to the Committee in June had no PDP Implementation Plan attached.

31. In light of various concerns, CRU developed a framework for CAG and submitted it as a proposal to Council staff in December 2014. That proposal titled, “Strategy for identifying coastal erosion hazards on the Kapiti Coast and developing PDP provisions to manage them: Submission from CRU” is attached as Annexure D (18 pages).
32. The CRU proposal for CAG¹² is more than a draft Terms of Reference. It is a framework, based on the governing statutes, and structured in the form of a detailed scope of work and implementation plan for the work of CAG - as was required in the Council resolution (b)5 quoted above.
33. 415 submitters on Chapter 4 – Coastal Hazards were already identified as being interested and motivated to contribute. Their submissions to the PDP are “no longer relevant”¹³. They are essentially ‘locked out’ in terms of participation. The Council FAQs¹⁴ on the plan review process informs these submitters that;

“What happens if I made a submission (or further submission) on one of these topics that has been withdrawn?”

These points of submission (and in some cases the full submission) will effectively fall away as the provisions to which they relate have been withdrawn. Further submissions on these matters will also be affected.”

34. And in response to when they will next be given the opportunity to participate in addressing these matters, the Council’s FAQs explain this (emphasis mine);

“Will there eventually be updated coastal hazard provisions in the future District Plan?”

Yes, but the nature of those provisions will not be decided until the research programme has been completed. It is too early to say what such provisions could look like.

Council is forming a Coastal Advisory Group (CAG) comprised of statutory agencies and community representatives to guide Council's future work programme decisions on coastal hazard issues and to facilitate Community engagement.

Consultation will be undertaken as part of this process.

Any decision to use updated District Plan provisions (or non-regulatory methods or both) to deal with coastal erosion hazards will only be made after the new research has been completed and all of the management options have been assessed through the CAG.

For these reasons, any revised coastal provisions are not expected to be notified until 2019.”

¹² I had no input in the drafting of the CRU submission to Council on CAG.

¹³ “No longer relevant” is the wording used in the PDP Summary of submissions. The Council website FAQs refer to the submissions as having “fallen away”. S 42A report authors indicate that there will be “no further discussion” on submission points made on provisions or text that has been withdrawn.

¹⁴ <http://www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/DPR-FAQs/#topics>

35. Based on the 'Draft Indicative Option 4 Timeline', notification of a proposed plan change addressing provisions for coastal hazard management and mitigation in the Kapiti Coast District has slipped by a further year. PDP 2012, has become Plan Change 2019 (as per the answer to the FAQ above) — despite the Council resolving in 2014 to progress a variation to the PDP.

Problems of process: Nature and scope of the provisions withdrawn from the PDP

36. The procedural approach taken to the implementation of Council resolution (b)4 in withdrawing from the PDP the “coastal hazard management areas on the plan maps along with the associated policy section and rules” appears to have been to use MS Word searches in a (near) blanket strike through when searching for “coastal erosion” and “coastal hazard(s)”.
37. Regardless of the procedural approach, the implementation has in my view, gone further than the wording of the Council resolution, as not only has the Council withdrawn specific provisions associated with “coastal hazard management areas”, but it has effectively withdrawn all provisions for the management and mitigation of coastal erosion hazards, including any substantive recognition that such hazards even exist.
38. In my view a number of these withdrawals are inappropriate, in that in many cases text was withdrawn that should not have been withdrawn, and in other cases text that should have been amended (as opposed to withdrawn) was not.
39. To provide the Court with an understanding of how absent the PDP is with respect to coastal hazard management and mitigation, below is a table prepared when analyzing this matter. The table indicates the number of times the terms “coastal erosion” and “coastal hazard(s)” appear in the PDP on a chapter by chapter basis (PDP as notified but after notification and withdrawal of provisions, i.e., the PDP strike through version that the Hearings Panel is working to). The link provided by NOBRG to the Court is Volume 1 Tab 7. The document is under the heading Proposed District Plan 2012 Volume 1: Plan. The coastal provisions withdrawn are shown in red):

Search term	coastal hazard	coastal erosion
Chapter 1 - Introduction and Interpretation	0	0
Chapter 2 - Objectives	1	0
Chapter 3 - Natural Environment	0	0
Chapter 3, Schedule 3.4 - Outstanding Natural Landscapes	4	11
Chapter 4 - Coastal Environment	2	2
Chapter 5 - Living Environment	0	0
Chapter 6 - Working Environment	0	0
Chapter 7 - Rural Environment	0	0
Chapter 8 - Open Space	0	0
Chapter 9 - Hazards	0	0
Chapter 10 - Historic Heritage	0	0
Chapter 11 - Infrastructure, services and associated resource use	0	0
Chapter 12 - General Districtwide provisions	0	0

40. Note in particular the total absence of either of the search terms “coastal hazard” or “coastal erosion” in the Natural Environment (not including its Schedule 3.4 descriptions of Outstanding Natural Landscapes), Open Space and Hazards chapters.
41. The single reference to “coastal hazard” in Chapter 2 – Objectives is contained within explanatory text associated with Objective 2.4 – Coastal environment. This explanatory text provides a useful summary of the LGA strategy document, *Kapiti Coast: Choosing Futures Coastal Strategy* (2006)¹⁵. This strategy was developed under a well-planned and executed collaborative process¹⁶. The s 42A Part A report (para. 17, p. 10) references this strategy (emphasis mine):
- “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.”
42. In the s 42A report Part B for Chapter 2¹⁷ (p. 184), there is a recommendation to delete the entire passage of explanatory text on the Coastal Strategy under Objective 2.4 – Coastal environment. The objectives chapter would then be absent any mention of coastal erosion or

¹⁵ The document can be accessed from the Council’s website here: <http://www.kapiticoast.govt.nz/Your-Council/Planning/Sustainability/Coastal-Management/>

¹⁶ While living in the District I attended most of the sessions as a participant and contributed comments to the draft document.

¹⁷ Volume 2 Tab 11 provides the link to this document.

coastal hazards in the District. The deletion is also in my view a lost opportunity to summarise the community's aspirations for the District's coastal environment.

43. I next provide two examples of text that was withdrawn (see strike throughs) that, in my view, should not have been withdrawn.

44. In PDP Chapter 2 – Objectives, Objective 2.4 – Coastal environment (as notified but after notification and withdrawal of provisions) reads (PDP, pages 2-11 and 2-12):

“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”~~

45. In PDP Chapter 4 – Coastal Environment, explanation of the extent of the coastal environment (NZCPS Policy 1) reads (PDP, pages 4-1 and 4-2):

“Policy 1 of the NZCPS 2010 states that the extent of the coastal environment varies from region to region. The coastal environment includes the coastal marine area and islands within the coastal marine area, as well as areas where coastal processes, influences or qualities are significant, ~~areas which are at risk from coastal hazards~~, inter-related coastal marine and terrestrial systems, including the intertidal zone, physical resources and built facilities, including infrastructure, that have modified the coastal environment and places containing:

- coastal vegetation and the habitat of indigenous coastal species including migratory birds;
- elements and features that contribute to the natural character, landscape, visual qualities or amenity values; and
- items of cultural and historic heritage in the coastal marine area or on the coast.”

46. The withdrawal (strike through) of the text, “areas which are at risk from coastal hazards” refers to NZCPS Policy 1(2)(d).

47. The above are only two examples of the withdrawal of text that in my view is inappropriate as these aspects of coastal hazard management and mitigation should be addressed.

48. There are other examples where whole provisions have been withdrawn without any amendment or replacement signaled in the Submitter Engagement Version (SEV) of the PDP. As s 42A reports are only being released 20 days prior to the commencement of hearings, I have no idea whether any amendments or replacements are to be proposed.
49. Examples in this category include, in PDP Chapter 4 – Coastal environment, the entire Policy 4.8 - Coastal hazard risk management, and the entire Policy 4.15 – Adaptation, are withdrawn. In PDP Chapter 1 – Introduction and Interpretation, the definitions for “coastal hazards”, “coastal protection structure” and “hard protection structure” have been withdrawn¹⁸.
50. Provisions for coastal hazard management and mitigation are required under NZCPS and RMA s 31(1). Such provisions would include matters relating to the on-going management of existing hard protection structures and activity categorisations for hard (and soft) engineering approaches for consideration under the Plan. In the absence of specific provisions for coastal hazard management and mitigation, these activities remain ‘grey areas’ in the more general PDP chapter provisions.
51. As submissions on the withdrawn Chapter 4 provisions are “no longer relevant”¹⁹, many submitters (including CRU) have effectively been shut out from submission across other chapters of the PDP (such as Chapter 8 – Open Space) that they did not submit on, as they did not know that those provisions would become relevant to their interests over the course of the plan review.
52. Other chapters and other general provisions are now critical to these submitters interests – following the nature and scope of the withdrawal of coastal hazard provisions, in combination with decisions taken as part of the modified plan review process not to progress CAG (as was agreed in Council resolution (b)5) and not to progress a variation (as was agreed in Council resolution (b)6).

¹⁸ At the time of the meeting with council officers in relation to feedback by CRU and others on the SEV, the officers could not tell us whether a seawall would come within the definition of building or one of the exceptions to the definition. The implication in the s42A report, Part B for Chapter 8 – Open Space zone is that a seawall is a fence (in the Open Space zone) and rules associated with this type of fence in the OSZ will be dealt with in Chapter 9 – Hazards (even though the Hazards chapter does not deal with coastal hazards, as pointed out in the table above).

¹⁹ “No longer relevant” is the wording used in the PDP Summary of submissions. The Council website FAQs refer to the submissions as having “fallen away”. S 42A report Chapter 2 author indicates that there will be “no further discussion” on submission points made on matters/provisions/text that has been withdrawn.

Problems of process: The 'composite' plan approach

53. The s 42A report Part A²⁰ (para. 135-136, p.43) explains certain aspects of the modified plan review process that relate to s 79 matters:

“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 therefore there will be no regulatory gap.

Once the PDP is made operative, it will not displace all of the provisions of the Operative District plan, especially areas that are not covered by the PDP as a result of the withdrawal. While there may have been a 'full district plan review' commenced initially, due to the withdrawals the Council is now not advancing a full replacement plan notified all at once as the coastal hazard provisions are being progressed on a later programme and timeframes.”

54. I am particularly concerned with matters relating to the following passages of text above (emphasis mine):

- The Council overall remains in a full review of the Operative District Plan...
- While there may have been a 'full district plan review'...; and
- The RMA contemplates that district plans can be a 'composite' plan...

55. The wording is 'loose' in its use of single quotation marks; appears to contradict itself; and uses non-RMA terminology. Generally, it is unclear in respect of plan change process.

56. The Council commenced a “full review” (RMA words) of its operative District Plan under s 79(4) as evidenced in the notification of the PDP in 2012 (emphasis mine):

“Pursuant to Clause 5 of Schedule 1 of the Resource Management Act 1991, the Kāpiti Coast District Council gives public notice of its Proposed District Plan. The Proposed District Plan is a result of a District Plan Review which commenced in 2009 under Section 79 of the Resource Management Act 1991. It amends, and when made operative will replace, the objectives, policies, rules and standards, maps and appendices of the operative 1999 District Plan.”

57. The Council appears to now be advancing a partial review of its operative District Plan under a combination of s 79(2) and s 79(3). Although this situation is far from clear, as it appears that the Council intends to have two operative plans, one in whole and one in part, to be

²⁰ Volume 2 tab 9.

operative under s 83 at the same time. I assume that this is their meaning of 'composite' plan.

58. The current process of plan review does not in my view fit the description of what is commonly understood as a "rolling review" under sections 79(1)-(3) given that provisions for coastal hazard management and mitigation in the operative District Plan are not set out neatly within a single chapter of that plan.
59. Instead the provisions for coastal hazard management and mitigation are spread over a number of chapters and a number of provisions (but not all provisions) within those chapters. Whereas "rolling reviews" are normally undertaken on an operative district plan by complete sections or by complete chapters.
60. I would refer to the Council's plan review process as being 'piecemeal' and not in accordance with s 79 and s 73(1).
61. I disagree with the s 42A report author (as quoted above in paragraph 53) that "there will be no regulatory gap" arising from this plan review process. In my view, the 'piecemeal' nature of the plan review process does create regulatory gaps (although perhaps my use of the word has a different meaning from the s 42A report author's use of the word).
62. For example, s 42A report Part A states (para.128, p. 42);

"The enduring coastal provisions of the operative District Plan are discussed in more detail in the Section 42A report Part B addressing the coastal provisions of the PDP."
63. If no information is provided before that, submitters and submitters' experts will have 10 working days from the date of publication of the s 42A report in which to assess the implications, and prepare and submit expert evidence.
64. The s 42A report Part A also states that two provisions for Yards in the Residential Zone in the operative District Plan "are the key mechanism in the Operative District Plan for managing buildings in the coastal environment" (para. 130, p. 42).
65. However, the report does not specifically state that these provisions in their exact form are to remain in force when the PDP becomes operative, nor does the report state whether these provisions (and a similar provision for the Rural Zone) are the only operative District Plan rules that will remain in force once the PDP becomes operative.
66. I also assume that the s 42A report author's use of the term "coastal environment" in the sentence (quoted above at paragraph 64) does not have the meaning of "coastal environment" under NZCPS (Policy 1) and as a defined term in the PDP — as the rules referred to in the operative District Plan do not apply to all buildings in the "coastal environment" in the PDP.

67. These are the small but significant meanings and interpretations that working with this idea of a 'composite' plan pose, particularly for users of the 'composite' plan.
68. The s 42A report Part A also states:
- “Section C9 of the Operative District Plan contains objectives and policies regarding the coast and addresses issues such as coastal amenity, natural character and hazards. Only the policies relevant to the management of coastal hazards will be retained while the coastal hazard approach is revised.”
69. This requires me (or anyone else) to make a judgement as to what policies are relevant to the management of coastal hazards. I could take an 'educated guess' but this is a legal review under section 79 of the RMA and it is not appropriate to guess.
70. Some policies refer to terms (e.g., coastal protection works, hard engineering works) without definition in either the PDP or the operative District Plan.
71. These are just some of the “regulatory gaps” that I have identified associated with this modified plan change process.
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.
73. According to the FAQ on the Council website²¹, it will be 2019 before the update of coastal hazard management and mitigation provisions are notified under this modified plan review process (the current provisions will have been operative for a period of 20 years).
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.
75. Specific NZCPS provisions of concern relating to the potential outcomes of the modified plan review approach (i.e., Option 4 as it is currently being progressed) are:
- failure to adequately address coastal hazard management and mitigation (NZCPS Policies 24-27); and

²¹ See response to the question, “Will there eventually be updated coastal hazard provisions in the future District Plan?” available online at <http://www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/DPR-FAQs/#future>

- failure to achieve the integrated management of natural and physical resources in the coastal environment (NZCPS Policy 4 and related Policies 5, 6, 7 and 28 as set out in NZCPS Guidance Note Policy 4: Integration).

76. Additionally, it is unclear how this 'composite' approach will work, given that s 73(1) provides for "1 district plan".

Problems of process: conclusions

77. All of these 'problems of process' could have been avoided. On 24 July 2014, the Council resolved that:

(c) adopt Option 4 (continuation of the Proposed District Plan process) but reserve the ability to invoke Option 3 (withdraw the PDP) once further analysis of all submissions have been completed in November 2014."

78. In hindsight, for the submitters who submitted on coastal hazard provisions, Option 3 might have been preferable, as their submissions under the implementation of Option 4 have "fallen away", are "no longer relevant" and will give rise to "no further discussion" through the rest of this modified plan change process. And CAG was a concept depicted on paper only.

79. For the balance of those 415 coastal hazard provision submitters, who have scope on other chapters of the PDP, and who are still attempting to participate in the democratic process of plan change under the RMA — these 'problems of process' have serious implications that prejudice them, and their experts, to participate effectively.

Katharine Josephine Moody

SWORN at Palmerston North this day of April 2016 before me:

A solicitor of the High Court of New Zealand/Registrar of the High Court/Justice of the Peace