

PROPOSED KĀPITI COAST DISTRICT PLAN 2012

CHAPTER 4 HEARING

SUPPLEMENTARY EVIDENCE AND SUBMISSIONS OF JOAN ALLIN

1. This document relates to the Chapter 4 hearing and is supplementary to my evidence and submissions (including supplementary evidence and submissions and the oral interpolations document) lodged at the beginning of the hearings process. Those documents include a number of comments relevant to Chapter 4 and I refer you to those documents.
2. I also refer the Panel to the following from my Chapter 3 supplementary evidence and submissions:
 - a. introductory remarks (paras 2-14);
 - b. Part 1 - Legal Issues; and
 - c. Part 3 - Some examples of problematic integration matters arising from the s 42A Coastal Overview report.
3. I generally do not repeat what I said in those Chapter 3 paras and Parts. Instead:
 - a. I adopt those paras and Parts from the Chapter 3 hearing as evidence and submissions in this Chapter 4 hearing; and
 - b. respectfully ask the Panel to refresh your memory as to what I said in those paras and Parts.

4. My situation for Chapter 4 remains the same as for Chapters 3 and 9 ie:
 - a. I remain overseas and at a significant disadvantage in terms of considering the relevant documentation and providing evidence and submissions;
 - b. KCDC's failure to provide relevant information and to comply with the Allan/Fowler report in terms of providing s 42A reports a reasonable time before the initial commencement of all the PDP hearings has disadvantaged all submitters, including myself;
 - c. I am not in a position to check this document so it seems inevitable that there will be errors, for which I apologise in advance; and
 - d. I have suggested specific wording for a number of provisions, but I do not have all of my source materials. I therefore reserve all of my rights, including the right to appeal, in relation to wording that I have suggested.

5. In this supplementary evidence, I first deal with matters under the following headings and sub-headings:
 - RMA requires district plan to give effect to the NZCPS and the RPS
 - Coastal Overview presentation day report - hearings should be stopped now
 - a Disservice to Allan/Fowler report and its authors, and the Panel
 - b The moveable feast of information has not stopped and it needs to stop now
 - c What the Panel should do now
 - Section 42A Coastal Overview report - disservice to the Panel
 - Locking in protection and the differences in the consenting outcome under the ODP vs the PDP
 - Chapter 4 presentation day report
 - a Categorisation of activity for Chapter 4 buildings, structures and earthworks in areas of high natural character
 - b River and stream mouth clearance
 - c No submissions on Rule 4A.3.1 and no scope to address cross-over?
 - d Wording about the ODP.

6. After that, I generally work my way chronologically through Chapter 4.

7. To assist the Panel to distinguish explanation from what I am asking the Panel to do or note, I have tried to highlight the latter in yellow highlight and italics at the end of each section in the rest of this document, except where otherwise noted.

RMA requires district plan to give effect to the NZCPS and the RPS

8. As noted in my Chapter 3 supplementary evidence and submissions, it is important that the Panel applies the correct legal framework (not that incorrectly asserted in the s 42A Coastal Overview report) and gives the appropriate weight and status to relevant documents.
9. *The PDP needs to:*
- a. *give effect to the NZCPS and the RPS;*
 - b. *not be inconsistent with an operative regional plan for any matter specified in s 30(1) of the RMA;*
 - c. *have regard to a proposed regional plan in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4 of the RMA. As the PNRP is at an early stage with submissions and further submissions having been lodged but no hearings or decisions issued, considerable care needs to be taken in having regard to PNRP provisions as they may change.*
10. *Having said that, the maps prepared for the presentation day help to demonstrate the inappropriateness of the areas of high natural character identified in the PDP and those recommended by the officers.*
11. *Ensure that the provisions give effect to the NZCPS and the RPS. In the event of conflict between the NZCPS and the RPS (as discussed below in relation to tsunami), the NZCPS should prevail.*
12. *Ensure that inappropriate weight is not given to regional plans and especially the PNRP where there are submissions opposing provisions.*

Coastal Overview presentation day report - hearings should be stopped now

13. I note the comments in paras 2.18-2.23 of the Coastal Overview presentation day report about incorporating the ODP provisions into the PDP. I deal with these under the following sub-headings:
- a Disservice to Allan/Fowler report and its authors, and the Panel; and
 - b The moveable feast of information has not stopped and it needs to stop now;
 - c What the Panel should do now. The yellow highlight and italics is in this section, rather than the previous sections.

a Disservice to Allan/Fowler report and its authors, and the Panel

14. In my opinion, in paras 2.18 -2.19 and 2.21 of the Coastal Overview presentation day report, the author does a disservice to the Allan/Fowler report and its authors¹, and indeed to the Panel.
15. At para 2.19, the report asserts:
- “... I agree that the Independent Review recommendation of a document sitting outside the plan may not be an ideal outcome in terms of usability.”
16. At para 2.21, the report asserts:
- “I agree with the Independent Review recommendation that a placeholder (or marginal annotation) is needed.”
17. The “placeholder” for the ODP provisions was to remain in place while a variation was prepared.
18. The reference to the placeholder in the Allan/Fowler report is in Section 6.4 “The Way Ahead” ie (page 51, underlining added):
- “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.”
19. The Allan/Fowler report:
- a. did not contemplate that the PDP would be progressed without incorporating the coastal hazard provisions; and
 - b. did not contemplate a “placeholder” to the ODP sitting inside the PDP when the PDP became operative.
20. Indeed, Section 6.4 of the Allan/Fowler report also said (pages 51-52, footnotes excluded, underlining added):
- “Continued work on coastal hazards should be considered to be a high priority and not “parked”. The current hazard lines in the operative District Plan are understood to largely date from the Kāpiti Borough District Scheme, which was made operative in 1981, with modifications around the Waikanae Estuary included at some time prior to 1995. While a necessary stop-gap, their extent is highly likely to be found to be inadequate as a basis for a variation to the PDP to meet national policy expectations and good practice.”

¹ For an explanation of the Allan/Fowler report recommendations see paras 37-64 of Appendix 1 to my Chapter 3 supplementary evidence and submissions.

b The moveable feast of information has not stopped and it needs to stop now

21. I turn now to the Coastal Overview presentation day report's references in paras 2.19-2.23 to the various alternatives for the ODP provisions.
22. In response to concerns of submitters appearing at the first hearing, the Panel directed that information be provided. I was grateful for the Panel's directions. I would *finally* be able to know exactly KCDC is proposing to do in relation to the ODP. But what was provided did not do that.
23. What was provided in response to the Panel's directions in the s 42A Coastal Overview report was a variety of different ways of describing what is to be dealt with in the ODP with an incomplete and inappropriate draft Appendix One which eg identified inappropriate rules to remain in force and no definitions. I dealt with these and other matters in my Chapter 3 evidence in Part 3 "Some examples of problematic integration matters arising from the s 42A Coastal Overview report".
24. So not only did the material provided in the s 42A Coastal Overview report not let me (and other submitters and the Panel) know exactly what KCDC is proposing to do in relation to the ODP, here in the "presentation" day material, instead of presenting the material in the s 42A report, are *further* thoughts.
25. Furthermore, it seems that the s 42A report authors have not had sufficient time to address the integration of the various chapters so there are problematic integration recommendations (see eg the discussion below under the heading "Notes under the heading Rule 4A.0. Applicability of Rules 4A.1 - 4A.5").
26. I do not intend to deal with the various thoughts about alternatives in the presentation day report, some of which are patently contrary to the RMA, other than to say that it is my opinion that it is not the role of the Panel to be recommending:
 - a. what ODP provisions should remain in force; or
 - b. how to link the PDP with the ODP.
27. The Panel needs to be aware that people such as myself consider that what KCDC is doing is not in accordance with the RMA and that is why the problems in this process are occurring².
28. Someone needs to have a good hard look at s 79 of the RMA and, in particular, s 79(3) and (7).

² I take back what I said in my original evidence and submissions about not appealing to the Environment Court. Matters are becoming worse, not better. It seems inevitable that the result will be an appeal to the Environment Court. That is a pity and could be avoided if KCDC were to comply with the RMA (and the recommendations in the Allan/Fowler report).

29. The ODP provisions that are not being altered need to be publicly notified, in my opinion. People could then make submissions on these provisions as the RMA contemplates. Any need for insertions in the PDP to make a link to the ODP provisions not being altered should at the same time be done by variation so people could make submissions on that.
30. Then the provisions would be able to mesh appropriately and there would be a fair process and one in accordance with the RMA.
31. In my Oral Interpolations document presented on the first day of PDP hearings on 4 April 2016 (ie more than 3 months ago), I said:
- “Putting submitters into the position of dealing with such a serious moveable feast is most unfair and unreasonable, in my submission. It has to stop.”
32. It has not stopped but it needs to stop now.
33. I want to make it clear that I am not criticising the s 42A report authors in this regard. It is not their fault that they have ended up in the situation in which they find themselves ie KCDC does not know what it is doing in relation to coastal hazards and the ODP or how to do it.
34. However, if they misrepresent things or make recommendations for changes to the PDP that do not flow from submissions, that is a different matter.

c What the Panel should do now

35. In my opinion:

- a. *the Panel needs to be, and be seen to be, independent;*
- b. *the Panel should be careful not to expose itself and its process to challenge by “helping” KCDC to get out of the situation in which it has put itself by making any recommendations that do not flow from submissions on the PDP;*
- c. *the s 42A authors should also not be making any recommendations that do not flow from submissions on the PDP;*
- d. *the Panel should maintain its proper role in the PDP process ie considering submissions on the PDP and making recommendations to the Council in relation to those submissions. That role presumably includes considering eg if the PDP and the extant provisions of the ODP give effect to the NZPCS and the RPS and are in accordance with the Council’s functions but does not extend to what is to remain in force in the ODP or how the PDP and the ODP should be linked;*
- e. *if the Panel takes on a role beyond considering submissions on the PDP and making recommendations on the PDP, in my opinion the Panel will be putting itself and its process at risk of challenge.*

36. In my opinion, leaving the ODP matters to the integration hearing at the end is not acceptable. The purpose of the ring-fenced coastal chapters was to address integration issues based on the information that the Panel helpfully

directed was to be provided. This continuing lack of information, and changing information, needs to stop.

37. *At this stage of the PDP process, it is most unfair for submitters not to have complete and accurate information as to what is being proposed by KCDC in relation to the ODP.*
38. *You should stop the ring-fenced coastal hearings now. They should not be reconvened (and Chapters 5 and 7 should be reconvened then too) until KCDC provides final and complete information as to what CRU and others have been asking for since last November and recorded in the Minutes of the February meeting with KCDC ie*
- a. what Operative Plan provisions will remain in force;*
 - b. what they say;*
 - c. what they apply to;*
 - d. how they relate to PDP provisions, and*
 - e. on what legal basis they are to remain in force.*
39. *In addition to that, the following should also be provided:*
- a. precise, final wording for any reference that is purported to be included in the PDP about the ODP;*
 - b. the legal basis for including such wording in the PDP when no submitter asked for it;*
 - c. who would have standing to appeal such wording;*
 - d. where, and in what form, does KCDC consider as a matter of law that ODP provisions remaining in force should occur; and*
 - e. why s 79(3) and/or (7) of the RMA have not been complied with in relation to ODP provisions that KCDC considers do not require alteration; and*
 - f. when KCDC intends to comply with s 79.*
40. *There should be legal advice provided in relation to all of the above matters so that the legal position, as seen by KCDC, is available to the Panel and submitters as well as the s 42A report authors who seem to have been, in my opinion unfairly, left without proper legal support.*
41. *After proper information and legal advice have been received and submitters are given appropriate time to consider that information (ie not just 10 working days for experts), the ring-fenced coastal hearings as well as the Chapters 5 and 7 hearings should be reconvened. That will enable everyone to participate in the hearings with the information that is needed for a fair process.*

Section 42A Coastal Overview report - disservice to the Panel

42. In my opinion, the s 42A Coastal Overview report does a disservice to the Panel by providing misleading information in para 97 and footnote 11.
43. At para 11, the s 42A Coastal Overview report says:
- “Although this is a Council Hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing my report and I agree to comply with it when I give any oral evidence.”
44. I assume that the author was intending to say that he would treat the duty to the Court as a duty to the Panel and that the s 42A report was prepared with that duty being complied with. Otherwise, expressing a duty to the Court is of no effect in front of the Panel - the duty is to the Court, not the Panel.
45. The Environment Court’s Practice Note, in relation to expert witnesses says:
- 7.2 Duty to the Court**
- (a) An expert witness has an overriding duty to impartially assist the Court on matters within the expert's area of expertise.
- (b) An expert witness is not, and must not behave as, an advocate for the party who engages the witness...
- 7.3 Evidence of an expert witness**
- (a) In any evidence given by an expert witness, that person must ...
- (vi) state that he or she has not omitted to consider material facts known to the witness that might alter or detract from the opinions expressed; ...
- (b) If an expert witness believes that his or her evidence, or any part of it, may be incomplete or inaccurate without some qualification, that qualification must be stated in the evidence.”
46. The Coastal Overview report says (at the end of para 97, italics original):
- “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”¹¹.*”
47. Please note that the quotation marks in the report begin after the reference to a plan change.
48. The reference given is in footnote 11. Footnote 11 says:
- “Recommendation 6, Officers Report to Council “Proposed District Plan Independent Reviews and Way Forward”, 24 July 2014. Adopted in Council minutes.”

49. What Recommendation 6 actually says is (underlining added):
- “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.”³
50. So, purportedly relying on Recommendation 6, the Coastal Overview report has:
- a. omitted the reference to a variation or variations to the PDP contained in Recommendation 6;
 - b. inserted instead a reference to a proposed change to the District Plan; and
 - c. used quotation marks after those changes.
51. In my opinion, those choices mean that what the report says in para 97 and footnote 11 is misleading.
52. Footnote 11 includes:
- “Adopted in Council minutes.”
53. For the record, the resolution that the Council passed is set out in the Part A s 42A report at pages 40-41. The relevant extract from the Part A s 42A report is at para 121 ie (underlining added):
- “At the Council meeting on 24 July 2014, Council made the following resolutions:
- KCDC 14/06/128*
- 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: ...*
 - 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 ...”.*

1. The report in which Recommendation 6 is contained is 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>.

54. *In my opinion, the s 42A Coastal Overview report does a disservice to the Panel by providing misleading information in paragraph 97 and footnote 11.*

Locking in protection and the differences in the consenting outcome under the ODP vs the PDP

55. Chapters 3 and 4 deal with various protection matters.
56. Para 145 of the s 42A Coastal Overview report says (underlining original):
- “Notwithstanding that solution, it is likely that the PDP high natural character and outstanding natural character provisions will trigger the need for consent in almost all locations along the coastline. The character overlays, of varying width, apply everywhere except for urban Paekākāriki. Other than Paekākāriki, ‘high natural character’ is the predominant overlay. ‘Outstanding natural character’ only applies around the Waikanae River mouth / estuary, and to Queen Elizabeth Park. Earthworks and vegetation clearance will be Restricted Discretionary in high natural character areas, and Discretionary in outstanding areas.”
57. The report is incorrect in saying that character overlays do not apply at Paekakariki. They do. See <http://www.kapiticoast.govt.nz/globalassets/sev-pdp-and-utv/chapter-4-coastal-environment/chapter-4-sn-42a-appendix-5-planning-maps.pdf> - Map 14.
58. So “protection” character overlays apply along the entire coast - with all of the consequences of such protection overlays in resource consent applications.
59. In addition, in asserting that earthworks and vegetation clearance will be restricted discretionary in high natural character areas, and discretionary in outstanding areas, the report seems to overlook:
- a. the relevant rules in Chapter 4 (RDA⁴ 4A.3.1 and NCA⁵ 4A.5.4 which is 4A.5.2 in the mark-up for areas of high natural character and DA⁶ 4A.4.4 for areas of outstanding natural character) do not mention vegetation clearance so vegetation clearance is not covered by those rules;
 - b. there are many earthworks activities that would not meet standard 3 in RDA Rule 4A.3.1 for example, stream mouth clearance of the Mangaone Stream for coastal erosion purposes;
 - c. if standards are not met for RDA Rule 4A.3.1, earthworks in an area of *high* natural character become a NCA under Rule 4A.5.4 (4A.5.2 in the mark-up);
 - d. earthworks in an area of *outstanding* natural character are a DA under Rule 4A.4.4 and never default to a NCA;

⁴ Restricted discretionary activity.

⁵ Non-complying activity.

⁶ Discretionary activity.

- e. so earthworks that cannot comply with the standards in Rule 4A.3.1 in an area of *high* natural character are treated more harshly than similar or much greater earthworks in an area of *outstanding* natural character.
60. In my opinion, the rules as recommended are illogical and inappropriate.
61. The s 42A Coastal Overview report says (para 147):
- “the consenting outcome will be similar to that which exists under the ODP. That is, consent will be required for both the structure and for associated earthworks / vegetation clearance.”
62. While consents may be required under each, it is difficult to accept that the consenting outcome will be similar to the ODP, given the introduction in the PDP of ecological sites, areas of high natural character and areas of outstanding natural character along the coastline - not to mention special amenity landscapes that also run along the coast.
63. Getting consent for something within 20 m of the coastal marine area which is (by recollection) what the s 42A report says is in the ODP is, in my opinion, significantly different from getting consent in an ecological site, an area of high natural character, or an area of outstanding natural character.
64. *The implications of the high natural character, outstanding natural character, and ecological site overlays need to be considered in relation to:*
- a. *soft engineering coastal hazard management activities that will be dealt with in the PDP (not related to buildings); and*
 - b. *other coastal hazard management activities (buildings) that will eventually be slotted into the PDP.*
65. *All of the protection overlays need to be reconsidered.*
66. *Areas of high natural character that have been identified are particularly inappropriate.*
67. *The Panel should ascertain whether there are any coastal hazard management activities now or foreseen for the future in the area that is proposed to be identified as an area of outstanding natural character. If so, that needs to be considered in the context of the appropriateness of identifying the area of outstanding character and where the area should apply or not apply.*

Chapter 4 presentation day report

68. There are a number of issues arising from the Chapter 4 presentation day report which I deal with under the following sub-headings:
- a Categorisation of activity for Chapter 4 buildings, structures and earthworks in areas of high natural character;
 - b River and stream mouth clearance;
 - c No submissions on Rule 4A.3.1 and no scope to address cross-over?; and
 - d Wording about the ODP.
- a Categorisation of activity for Chapter 4 buildings, structures and earthworks in areas of high natural character**
69. At para 3.6, the Chapter 4 presentation day report says that Rule 4A.3.1 classifies buildings (I note that the rule also deals with earthworks) on land in the coastal environment that is high natural character as being a restricted discretionary activity.
70. However, what that report and the Coastal Overview report do not say is that if one of the standards in Rule 4A.3.1 cannot be met, then non-complying activity Rule 4A.5.4 applies (4A.5.2 in the mark-up, but with no changes to the rule numbering shown).
71. The standards in Rule 4A.3.1:
- a. are likely to be problematic for coastal hazard mitigation “buildings” that will eventually be slotted into these rules; and
 - b. are problematic in terms of activities eg earthworks to be dealt with under the PDP now.
72. I deal with the standards sequentially.
73. Standard 1 says:
- “Building shall be ancillary to a permitted use in the zone (eg *habitable buildings* and *accessory buildings* in the residential zone).”
74. The references to “permitted use” and “residential zone” seem problematic as those terms are not used in the PDP but the s 42A report does not recommend changing those. The reference to “Building” rather than “A building” or “Buildings” also seems unfortunate.
75. Building needs to be *ancillary* to a permitted use in the zone.
76. That seems problematic in the Open Space (Conservation & Scenic) Zone if the recommendations of the s 42A reports are accepted.

77. Building needs to be *ancillary* to a permitted use so not a building permitted “use” itself ie not Rule 8.1.6, but some permitted use to which building is *ancillary*.
78. Rule 8.1.2 refers to “recreation, community and cultural activities”.
79. Whether a “seawall” would fit within these permitted “uses” seems questionable. One might argue that it is a community activity, but whether that interpretation in the context of Chapter 8 would succeed seems doubtful.
80. If hazard mitigation is a “use” to be permitted in the Open Space (Conservation & Scenic) Zone one would expect the rules to say so.
81. Rule 8.1.11 is:
- “Flood protection, erosion control, stormwater management and natural hazard mitigation works in the Open Space (Recreation), (Local Parks) and (Conservation & Scenic) Zones.”
82. So it seems that a hazard mitigation “building” may be ancillary to the permitted “uses” set out in Rule 8.1.11.
83. A problem is that the Chapter 4 s 42A report and the Coastal Overview report recommend that Rule 8.1.11 be deleted. So if that occurs, that permitted “use” cannot be relied upon.
84. As I have said in relation to previous hearings, and will say again in my Chapter 8 supplementary evidence and submissions, Rule 8.1.11 should not be deleted.
85. In summary, standard 1 in Rule 4A.3.1 is problematic for “buildings” to be slotted into the rule framework of the PDP in the future if Rule 8.1.11 is deleted.
86. The standard 2 yard requirements could be problematic for buildings.
87. Standard 3 *is* problematic for activities to be dealt with under the PDP now. For example, Mangaone Stream mouth clearance for coastal erosion would breach standard 3 and therefore be a non-complying activity under Rule 4A.5.4 (Rule 4A.5.2 in the mark-up).
88. I set out Rule 4A.5.4 from the PDP with the partial withdrawal shown:
- “4. Buildings, structures and earthworks on land in the coastal environment which has been identified as having *high natural character* in District Plan Maps ~~where they are not located in a CHMA~~ which do not comply with one or more of the permitted activity or restricted discretionary activity standards.”
89. It is clear that this rule as notified applied to areas of high natural character *other than* along the coast. It did *not* apply to areas of high natural character along the coast as they were in CHMAs. I deal with the inappropriateness of the partial withdrawal later in relation to the rules.

90. Furthermore, structures are not referred to in Rule 4A.3.1 but are caught by Rule 4A.5.4. So “seawalls”⁷ or, more correctly, “retaining walls”⁸ 1.5 m or less in areas of high natural character are automatically non-complying activities.
91. Indeed, any structures excluded from the definition of “Building” are a non-complying activity in areas of high natural character.
92. That is illogical but that is the effect of “structures” popping up for the first time in the rule cascade in Rule 4A.5.4 (4A.5.2 in the mark-up).
93. So, in my opinion, para 4.4 of the presentation day report is incorrect in saying:
- “Seawalls of under 1.5m will remain permitted activities as they do not meet the definition of building and so do not fall within Rules 4A.3.1 and 4A.4.4 of the PDP”
- as any structures excluded from the definition of “Building” would be caught by the reference to “structures” in Rule 4A.5.4 and would be non-complying activities in areas of *high* natural character (though, ironically, not in areas of *outstanding* natural character).
94. The continued references to “Seawalls” in the various s 42A reports, the s 42A Coastal Overview report’s purported Activity Tables, and in various Chapter mark-ups (including Chapter 5) are inappropriate, in my opinion.
95. Seawalls are not referred to in either the ODP or the PDP. There is no definition of seawall. Furthermore, the exemption from the definition of “Building” is not seawalls but retaining walls.
96. In my opinion:
- a. it is not at all clear that seawalls and retaining walls have the same meaning; and
 - b. if a Council officer or the Court or anyone else eventually decides that they do not have the same meaning, a number of people will have been misled by the assertions as to “seawalls” under⁹ 1.5 m (or, correctly, 1.5 m or less in height) being permitted.
97. The relevant points at this stage are that in areas of high natural character:
- a. coastal hazard mitigation activities caught by the PDP, and the activities dealt with under the ODP that will be slotted into the rule structure, are at risk of being non-complying activities as they are unlikely to meet the standards of Rule 4A.3.1 so default to Rule 4A.5.4;

⁷ To use, in my opinion, an inappropriate word being used in various s 42A reports.

⁸ To use what in my opinion is the legally-correct wording ie in the ODP and what was recommended in the SEV. Whatever is recommended now for the definition of “Building” does not seem to have been provided with the Chapter 4 materials.

⁹ The exemption under the definition of “Building” in the ODP and the SEV is not for retaining walls *under* 1.5 m but for *1.5 m or less* - so a retaining wall of 1.5 m is also exempted. The PDP as notified did not include the exemption but the SEV has included it.

- b. structures that are excluded from the definition of “Building”, including retaining walls 1.5 m or less in height¹⁰, are automatically a non-complying activity under Rule 4A.5.4.
98. Under the PDP as notified, buildings and earthworks in areas of high natural character along the coastline would have been discretionary activities under the default discretionary activity rule (4A.4.1, although the rule was poorly drafted), not non-complying activities.
99. Their becoming non-complying activities is the result of the partial withdrawal that offends against *West Coast Regional Council v Royal Forest and Bird Protection Society of New Zealand* [2007] NZRMA 32, discussed later.

100. **Be aware that:**

- a. a number of coastal hazard mitigation activities that are to be dealt with in the PDP now are likely to be non-complying activities in areas of high natural character under Rule 4A.5.4 (4A.5.2 in the mark-up) because of the standards in Rule 4A.3.1;
- b. by way of example, clearance of the Mangaone Stream mouth for coastal erosion purposes does not meet standard 3 in Rule 4A.3.1 so would be a non-complying activity;
- c. structures excluded from the definition of “Building” eg “retaining walls” 1.5 m or less (which s 42A report authors inappropriately, in my opinion, continually refer to as “seawalls”) so presumably being dealt with in the PDP now (as opposed to the ODP) will all be non-complying activities in areas of high natural character because of reference to structures popping up for the first time in Rule 4A.5.4;
- d. coastal hazard mitigation activities involving buildings to be dealt with in the ODP will eventually be slotted into the PDP with no ability for submitters to control what is or is not included in any plan change;
- e. there are other problems with Rule 4A.5.4, including an inappropriate partial withdrawal.

b River and stream mouth clearance

101. Para 3.9 of the Chapter 4 presentation day report deals with stream and river maintenance and says that where works are in an area of outstanding natural character or high natural character, the activities would be discretionary or restricted discretionary. However, the analysis has ignored the standards in Rule 4A.3.1 and the effect of Rule 4A.5.4.
102. In relation areas of *outstanding* natural character, Rule 4A.4.4 means that earthworks in areas of outstanding natural character would be discretionary activities at worst.

¹⁰ Assuming this exemption is recommended to be included in the PDP as it was not in the PDP as notified.

103. Ironically, however, in relation to areas of *high* natural character, the non-complying activity Rule 4A.5.4 (4A.5.2 in the mark-up) would apply to a number of coastal hazard mitigation activities because of the standards in Rule 4A.3.1. Stream mouth clearance at the Mangaone Stream does not meet standard 3 in Rule 4A.3.1 so would be a non-complying activity.

104. *River and stream clearance for coastal erosion purposes in areas of high natural character is a non-complying activity under Rule 4A.5.4 where the standards in Rule 4A.3.1 cannot be met (eg the Mangaone Stream). Ironically, the worst that it is in areas of outstanding natural character is discretionary activity.*

105. *All of the rules relating to high natural character should be deleted from the PDP for reasons referred to when I discuss the rules below. But if they are retained then appropriate exemptions need to be provided for relevant rules as noted in para 4.2 of the Chapter 4 presentation day report. However, Rule 8.1.11 also needs to be retained in Chapter 8 and included in the exemptions referred to. That is the only rule that permits river and stream clearance activities for coastal erosion purposes. The Chapter 9 rules relate only to flood hazards.*

106. *Rule 4A.5.4 should be deleted.*

c No submissions on Rule 4A.3.1 and no scope to address cross-over?

107. The presentation day report says at para 4.5:

“No submissions sought amendments to Rule 4A.3.1 and there is therefore no scope to address the cross-over for buildings in outstanding natural features and landscapes, and areas of high natural character.”

108. I don't know what the cross-over issue is, but it seems that the s 42A author has overlooked our second submission, which is concerning.

109. Pages 19-22 of our second submission, under the heading “4.3 Rules and standards”, addressed the Chapter 4 rules.

110. Here is an extract setting out what our second submission said about the rules and standards:

“4.3 Rules and standards

We oppose all the rules and related definitions, including because they are poorly drafted and confusing, with inconsistent terminology, gaps, oddities, and consequences that are presumably unintended.

...

There are numerous other problems with the rules, including:

...

In summary, the rules are inappropriate for a wide range of reasons, including (but not limited to):

...

- the rules are poorly drafted and confusing, with inconsistent terminology, gaps, oddities, and consequences that are presumably unintended;
- there has been no adequate consideration of a range of matters, including the provisions of the RMA and the appropriateness and effects (intended and unintended) of the rules;

...

Subject to the relief sought in relation to the objectives and policies, we seek a complete revision of the rules after a revised hazard assessment, and preferably after the regional hazard management strategy has been prepared by the Regional Council, including:

- taking into account all of the concerns that we have raised above and throughout our submissions;

...

- clarifying the ambiguous, incorrect or odd provisions;
- clarifying the relationship with rules in other chapters;

...

- ensuring that rules in Chapter 4 do not override permitted activities in other chapters where those other permitted activities should have priority (eg Rule 9B.1.6 and please see our comments in our first submission under the heading RIVERS AND STREAMS WHERE CLEARANCE, MOUTH STRAIGHTENING ETC OCCUR - ALL RELEVANT CHAPTERS AND RELEVANT MAPS OF THE PDP); ...”

111. *Our submission about the rules is extensive. The relief that we sought includes:*

a. *a complete revision of the rules after a revised hazard assessment. As no revised hazard assessment exists, KCDC has obviously not accepted that part of the relief that we sought, but the relief that we sought about complete revision of the rules remains (I have not checked to see if KCDC considers that this part of our submission has “fallen away” but it should not have);*

b. *clarifying the relationship with rules in other chapters.*

112. *I cannot understand why the s 42A author considers that there were no submissions seeking amendments to Rule 4A.3.1 and that there is no scope to fix the cross-over issues referred to.*

113. *Furthermore, it seems that our submission relating to oddities and unintended consequences in the rules has also been overlooked. Oddities and unintended consequences remain in the Chapter 4 rules.*

d Wording about the ODP

114. I see a different form of wording from that in the s 42A Coastal Overview report is set out in the Chapter 4 presentation day report - or kicked to touch for the integration hearing at the end.

115. So again new information is being introduced at the presentation day, rather than presenting what is in the Chapter 4 s 42A report.

116. Para 4.4 says:

“Rules 4A.3.1 and 4A.4.4 need to either be amended by including in the description of the activity words such as ‘Buildings, except as provided for by rules relating to the building restriction lines in the Kapiti Coast District Plan 1999, and earthworks...’, or addressed consistently for all chapters through the integration hearing scheduled for later this year.”

117. I notice that there is no reference to Rule 4A.5.4 which deals with buildings.

118. *I oppose the wording referred to. In my opinion, there is no scope to include it. In addition, in Part 3 of my Chapter 3 evidence I addressed the problems with the rules that are purportedly to remain in force in the ODP.*

119. *It seems to me that issues that the Panel needs to consider in relation to the suggested wording include:*

- a. *if the suggested wording is adopted then anything excluded from the definition of “Building” will be dealt with not in the ODP but in the PDP;*
- b. *therefore the Activity Tables in the s 42A Coastal Overview report are incorrect and misleading in relation to the purported references to “seawalls” “under”¹¹ 1.5 m being permitted activities;*
- c. *“seawalls” is a term not used in either the ODP or the PDP so referring to “seawalls” is not appropriate in the Activity Tables or in the PDP (see eg what has been recommended for Chapters 5 and 8);*
- d. *whatever is in the PDP will govern retaining walls 1.5 m or under (assuming the exemption is included in the PDP definition of “Building”) so for Living Zones it will be the Living Zone rules and in Chapter 4 it will be the non-complying activity Rule 4A.5.4 in the PDP (4A.5.2 in the mark-up) for areas of high natural character;*
- e. *submitters (who have now lost standing) opposed the no build and relocatable areas that were sought to be included in the PDP. Now KCDC considers that no build and relocatable areas in the ODP do not require alteration but KCDC has failed to publicly notify that under s 79 to enable the Schedule 1 process to occur;*
- f. *there is no legal basis for including such wording in the PDP as no submitter asked for it; and*

¹¹ As noted earlier, “under” is not correct.

g. any such wording needs to be dealt with by variation, which could occur at the same time as KCDC, under s 79 of the RMA, notifies the provisions in the ODP that are not being altered.

Section 4.1 Coastal Environment - Extent of coastal environment

120. The text in Section 4.1 under the heading “Extent of coastal environment” needs revision.
121. The lack of quality control in KCDC’s partial withdrawals from the PDP is perhaps best demonstrated by the second paragraph of this section.
122. As notified, the PDP accurately reflected Policy 1 of the NZCPS.
123. The result of the partial withdrawal in relation to Policy 1 is that it has omitted Policy 1(2)(d), which is inappropriate:
- “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.”
124. The marked-up copy of Chapter 4 omits what has been withdrawn from the PDP so no one can even see that there is a problem with the way in which Policy 1 is described, let alone fix it.
125. Our submission sought that the PDP give effect to the NZCPS. That would include accurately conveying Policy 1 of the NZCPS. Wording changes are needed to reflect Policy 1 accurately.
126. In terms of the third paragraph, it is inappropriate to refer to the proposed RPS. It has long since been superseded by the RPS.
127. Furthermore, the explanation in Section 4.1 is incorrect in saying that the Isthmus report identifies land subject to coastal processes and coastal landscapes consistent with the criteria in Policy 4 of the proposed WRPS. While the initial report did, subsequent Isthmus reports have not done that. They have also not given effect to the NZCPS or the RPS.
128. In any event, there is no reason to refer to Isthmus in the PDP.

129. For the reasons set out above, revise the text as follows:

“Policy 1 of the NZCPS 2010 states that the extent of the coastal environment varies from region to region **and locality to locality**. 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.

Policy 4 of Tthe proposed Wellington Regional Policy Statement (WRPS) requires that District Plans identify the landward extent of the coastal environment using criteria set out in policy 4. **The operative Wellington Regional Policy Statement does not specify that the extent of the coastal environment be defined. In order to define the extent of the coastal environment the Council commissioned The Isthmus Group to undertake a landscape and ecological study which identified land subject to coastal processes and coastal landscapes consistent with the criteria in Policy 4 of the proposed WRPS. The extent is shown on the District Plan Natural Features maps.”**

Section 4.1 Coastal Environment - Natural character in of the coastal environment

130. This section is yet another example where the PDP as notified failed to give the correct legal context, resulting in overly protection-oriented provisions and outcomes.
131. I support the change to the first sentence, which provides the correct legal context for s 6(a) of the RMA.
132. However, I suggest changes to the summaries of Policy 13 and Policy 14. In relation to Policy 13, especially, summarising the policy has lost the subtleties of meaning of the policy. In my opinion, it is preferable not to try to summarise Policy 13 other than to say what it deals with because of the difficulties of providing an appropriately-nuanced summary.
133. The final paragraph’s reference to “protection and restoration” does not convey the appropriate context of the relevant policies.

134. **To address the concerns discussed above, revise the text as follows:**

“The preservation of natural character in the *coastal environment* and its protection from inappropriate subdivision, use and development is a matter of national importance in (section 6(a) of the Resource Management Act 1991 (RMA)). Policy 13 of the NZCPS **requires provides guidance on** the preservation of areas of high natural character in the coastal environment **and its protection from inappropriate subdivision, use, and development including by the identification of areas of outstanding natural character and areas of high natural character**. Policy 14 of the NZCPS promotes the restoration or rehabilitation of natural character **of the coastal environment** including identifying areas for restoration, providing policies and methods in the District Plan and through imposing conditions on **resource consents and designations** subdivision and development proposals. The policy suggests possible restoration approaches for degraded areas.

These policies have been given effect to by identifying and mapping areas of outstanding natural character and areas of high natural character in the *coastal environment* which are shown on the Natural Environment Maps, to enable protection **from inappropriate subdivision, use, and development** and **promotion of** restoration to occur as part of future development of these areas.”

Section 4.1 Coastal Environment - Public access

135. This is another section where the NZCPS has not been accurately summarised as Policy 19 of the NZCPS relates to *walking* access.

136. **To convey Policy 19 more correctly, revise the text as follows:**

“The maintenance and enhancement of public access to and along the coastal marine area is a matter of national importance in the RMA. Policy 19 of the NZCPS requires that councils recognise the public expectation **of** and need for **walking** access to and along the coast and that Councils avoid, remedy or mitigate any loss of **public** walking access as a result of subdivision, use or development and **identify opportunities to** enhance or restore **public** walking access...”

Section 4.1 Coastal Environment - Land uses

137. I have a couple of suggested amendments to this section to clarify that it relates to Policy 6 of the NZCPS and to make the wording consistent with Policy 6.
138. We are particularly concerned that the reference to coastal yards will cause people to think that the only purpose of the coastal yards was for the natural character and amenity of the beach.
139. While the yards may help the beach, we sought coastal yards primarily for amenity reasons for the Living Zones.
140. It is important that the reasons for the coastal yard are not misinterpreted in the future so I have suggested a change to convey the purpose accurately.

141. To address the concerns discussed above, revise the text as follows:

“Policy 6 of the NZCPS recognises that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals, are activities important to the social, economic and cultural well-being of people and communities. The NZCPS **Policy 6 also** encourages consolidation of **existing coastal settlements and** urban development, in existing urban areas, within the *coastal environment*, outside of areas subject to coastal hazard risks, rather than allowing development to extend into areas which have high natural character, heritage or amenity values. This policy is given effect to in the living and infrastructure chapters of this District Plan. Coastal yards apply to Te Horo, Peka Peka and Waikanae Beaches **not only for the amenity of the Living Zones but also** to assist in retaining the natural character and amenity of the beach (see Chapter 5 Living Zones).”

Section 4.1 - Management Approach

142. There are errors in the references to what is mapped or not.

143. Revise the text as follows:

“... There are particular features which sit within this *coastal environment* which have also been mapped. These more detailed **sensitive natural features** include:

- areas of **outstanding natural character** or high natural character;
- ecological sites; and
- outstanding natural **landscapes** or **significant special amenity landscapes**;

Additional features which have been mapped are:

- ~~Ecological domains. This includes the salt zone ecological domain. The salt zone ecological domain covers the area of land where coastal processes presently predominate and includes all land within approximately 500 metres of the sea.~~
- ~~dominant ridgelines and dominant dunes are also mapped to prevent buildings locating on the dune ridges and to keep building heights below ridgelines. ...”.~~

New policy - enabling appropriate activities in the coastal environment

144. Our submission, and others, sought that appropriate activities should be enabled in the coastal environment.

145. Para 25 of the Chapter 4 s 42A report refers to the underlying zoning contained in other chapters of the PDP and says:

“It is generally through these other chapters of the PDP that the enabling activities are provided for, with the coastal environment policies and rules being largely concerned with natural character.”

146. However, there is no point in enabling activities in other chapters if the provisions of Chapter 4 (or Chapter 3) defeat those activities in any consent application.
147. There need to be appropriately-balanced objectives and policies in place in the PDP to enable decision-makers to make appropriate decisions based on all the facts of a case.
148. Regardless of the extent of the coastal environment, appropriate activities in the coastal environment need to be enabled.
149. Those activities include activities in the Living, Rural, Open Space (Conservation & Scenic) and River Corridor Zones.
150. The coastal environment policies are triggered in any consent application.
151. That could include activities as diverse as, for example:
 - a. our seeking consent for a new house in the Living Zone and needing to seek consent because of, for example, yard or height in relation to boundary (height envelope) restrictions applying to the property line between our two sections;
 - b. significant soft engineering solutions not covered by the ODP.
152. Currently, there is a focus on protection without considering all of the relevant RMA provisions, including s 5 and 6(a).
153. It is relevant to recall that the purpose of the RMA is to promote the sustainable management of natural and physical resources (s 5(1)).
154. Section 5(2) states that sustainable management means (*italics added*):

“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -

 - (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*
155. Often people focus on s 5(a) to (c) but not the introductory words of s 5(2).

156. It is important not to overlook the words that I have italicised at the beginning of s 5(2) ie:
- a. managing use, development, *and* protection;
 - b. in a way or at a rate;
 - c. which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety.
157. In terms of s 6(a) of the RMA, the PDP as notified focussed on the preservation and protection aspects but failed to consider that the protection is from *inappropriate* subdivision, use, and development.
158. In terms of the coastal environment, s 6(a) says that a matter of national importance is (italics added):
- “the preservation of the natural character of the coastal environment (including the coastal marine area) ... and the protection of [it] from *inappropriate* subdivision, use, and development”.
159. In relation to the NZCPS, there is currently also a focus on protection without considering all of the relevant NZCPS provisions.
160. Objective 6 of the NZCPS is:
- “To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:
- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits; ...”
161. Various policies in the NZCPS address subdivision, use or development in the coastal environment, including Policies 6, 7, 13, 15 and, for coastal hazards, Policies 24-27.
162. *In my opinion, the Panel needs to ensure that the PDP is appropriately balanced and that the PDP does not:*
- a. *advance the protection aspects from the RMA and the NZCPS; but*
 - b. *omit other aspects of the RMA and NZCPS that enable appropriate activities.*

163. To address the issues raised above, insert a new policy in Chapter 4 or in any combined Chapter 3/4:

“Policy XX - Enabling appropriate subdivision, use and development in the coastal environment

Enable people and communities to provide for their social, economic, and cultural well-being and their health and safety through appropriate subdivision, use, and development in the coastal environment while avoiding, remedying and mitigating adverse effects.”

Policy 4.1 - Identify Coastal Environment extent - and the maps

164. There are several issues with this Policy and the related maps.
165. I will start with what seems to be the most simple matter.
166. Given that explanations are recommended to be removed from other policies in the PDP, it is not clear to me why the extensive explanation remains in this policy. In my opinion, it is not necessary or appropriate, including in referring to the proposed WRPS and Isthmus. The explanation should be removed.
167. I turn now to address the extent of the coastal environment.
168. The extent of the coastal environment identified in the PDP and that recommended now are dramatically and inappropriately different.
169. As far as I am aware, there have been three different reports by Isthmus dealing with the extent of the coastal environment:
- a. *Coastal Environment Study* October 2012;
 - b. *Stakeholder Engagement Version Coastal Environment Background Report* June 2015 (second report); and
 - c. *Kapiti Coast District Council Landscape and Coastal Environment Addendum* May 2016 (third report).
170. In terms of the extent of the coastal environment and the related maps, I deal with:
- a. the fact that discussions among submitters, Isthmus, and Council staff leading to a revised “methodology” and further discussions about the extent of the coastal environment occurred without me;
 - b. concerns about the approach recommended now;
 - c. concerns about arbitrariness - is like treated as like?; and
 - d. a summary regarding Policy 4.1 and the extent of the coastal environment.

a Discussions occurred without me

171. I object strongly to the fact that the discussions among submitters, Isthmus and Council staff about the extent of the coastal environment occurred without me.
172. Rob and I were not invited to attend the pre-hearing meeting that discussed the extent of the coastal environment and were unaware of the existence of such a pre-hearing meeting until after it had occurred.
173. I received an apology for not having been invited.
174. On 1 July 2015, I was told “It is likely we will be holding a further pre-hearing meeting on this matter and I will ensure you are invited.”
175. At page 52, the third report refers to me and asserts that there were:
- “meetings with Council representatives through June to December 2015 to discuss the SEV CE line.”
- and then inaccurately summarises my concerns as relating to the salt zone.
176. I am overseas so cannot check my handwritten notes of meetings, but I have checked my diary.
177. I had one meeting with some chapter leads on 8 July 2015 and, among other things, raised concerns about the extent of the coastal environment in the SEV. The relevant chapter lead simply listened to what I said. I did not receive any feedback, no other submitters were present, and no one from Isthmus was present. There was no *discussion* of the issues.
178. There was a meeting with two KCDC people on 17 December 2015 but that was not to discuss the extent of the coastal environment and no relevant chapter leads (or any other relevant people) were in attendance. I may or may not have mentioned concerns about the extent of the coastal environment at that meeting but the meeting was not about that.
179. So, to the best of my knowledge, the asserted “meetings through June to December 2015 to discuss the SEV CE line” was one meeting that included the relevant chapter lead, no other relevant participants, and no *discussion* of the issues.
180. Along with representatives of CRU, I did attend a meeting with Council representatives that included a number of chapter leads in February 2016 to discuss the without prejudice documentation that had been provided by CRU and others in November 2015. Neither the third report nor the Chapter 4 s 42A report refers to that documentation or meeting.
181. Neither DOC, nor Isthmus, nor Frank or Vicki Boffa attended any of those meetings. At the February 2016 meeting, I recall asking if I could express the concerns directly to Isthmus but that was not allowed.

182. Para 70 of the Chapter 4 s 42A report says:

“A methodology for reconsidering and redefining the coastal environment line was then developed by Isthmus following a meeting with submitters and Council staff in November 2014 ... The SEV version of the coastal environment line was then subject to ongoing discussions with the Department of Conservation (Submitter 202) and Frank Boffa (Submitter 485) between June 2015 and the publication of the *Landscape and Coastal Environment Addendum* in May 2016.”

183. *I object strongly to the revised “methodology” being developed without my involvement.*

184. *I also object strongly to not having been included in the pre-hearing meeting and the “ongoing discussions” with DOC, Frank Boffa and Isthmus/Council officers.*

185. *In my opinion, the “methodology” that was developed, and the meetings and communications among the relevant submitters, Isthmus and Council staff and consultants, have failed to address the NZCPS and the RPS appropriately with the result that the coastal environment recommended does not give effect to the NZCPS or the RPS.*

b Concerns about the approach recommended now

186. We oppose the extent of the coastal environment that is recommended now.

187. As a matter of law, the District Plan must give effect to the NZCPS and the RPS. The area identified now does not give effect to either the NZCPS or the RPS.

188. It is also not in accordance with Policy 4.1 of the PDP.

189. The second report and third report seem to have been inappropriately influenced by cases that arise in a different context, concerns about the *King Salmon* decision, concerns of Council staff, and work done by identified consulting organisations, including in different regions with different regional policy statements.

190. Policy 1(2) of the NZCPS says that the coastal environment includes:

- “(c) areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;
- (d) areas at risk from coastal hazards;
- (e) coastal vegetation and the habitat of indigenous coastal species including migratory birds;
- (f) elements and features that contribute to the natural character, landscape, visual qualities or amenity values”.

191. Policy 4 of the RPS states (page 93 of the RPS, underlining added):
- “District plans shall include policies and/or rules to identify the landward extent of the coastal environment using the following criteria:
- (a) any area or landform dominated by coastal vegetation or habitat;
 - (b) any landform affected by active coastal processes, excluding tsunamis;
 - (c) any landscapes or features, including coastal escarpments, that contribute to the natural character, visual quality or amenity value of the coast; and
 - (d) any site, structure, place or area of historic heritage value adjacent to, or connected with, the coastal marine area, which derives its heritage value from a coastal location.” (underlining added)
192. The explanation to Policy 4 of the RPS includes the following statement about active coastal processes referred to in (b) above (page 93):
- “Active *coastal processes* include: storm surge, inundation, liquefaction, *aeolian* (the action of wind on coastal landforms and features, such as dunes), and the effects of sea level rise.” (underlining added)
193. KCDC already has material that can be used to assist in identifying the landward extent of the coastal environment in a way that gives effect to the NZCPS and the RPS.
194. This material includes:
- a. extent of the salt zone on the PDP Natural Features maps;
 - b. coastal hazard setbacks in the ODP (although those setbacks do not give effect to the NZCPS) and flood hazard maps in the PDP that identify coastal flood hazard areas; and
 - c. KCDC’s maps of areas of liquefaction. Liquefaction is specifically referred to in the explanation to Policy 4 of the RPS.
195. In relation to coastal vegetation, as the Panel is aware, the PDP maps various ecological domains that are relevant to vegetation matters. One of them is the salt zone that was relevant to Schedule 3.2 Key indigenous tree species by size and ecological domain.
196. While it is recommended that the ecological domains be deleted, the fact remains that the salt zone is indicative of coastal vegetation and habitat. The reason for deleting the ecological domains, according to the Chapter 3: Natural Environment (Ecological Site / Indigenous Vegetation Component) s 42A report is (page 70):
- “I am aware however from the Council planners that ecological advice has been received that the ‘Ecological Domains’ referred to in Schedule 3.2 should not be defined on the maps by fixed lines, as such lines do not occur in nature.”

197. While fixed lines may not occur in nature, they do exist in district plans.
198. Coastal vegetation and habitat occur well beyond the area currently being recommended as the extent of the coastal environment.
199. Chapter 4 includes the following statement about ecological domains (page 4-4 in the mark-up):

"Ecological domains. This includes the salt zone ecological domain. The salt zone ecological domain covers the area of land where coastal processes presently predominate and includes all land within approximately 500 metres of the sea."
200. The PDP defines "Ecological domain(s)" as:

"Ecological domain(s) means mapped areas of land which share broad vegetation types in the District, [sic] these are identified as being the salt zone, dunelands, lowland alluvial terraces, and lowland hills."
201. In the PDP as notified, the coastal environment includes the salt zone, which is appropriate and gives effect to Policy 1(2)(e) of the NZCPS and Policy 4(a) of the RPS.
202. What is recommended now does not.
203. In relation to Policy 1(2)(d) of the NZCPS and Policy 4(b) of the RPS and the explanation about active coastal processes, the coastal hazard setbacks and liquefaction maps that KCDC already has help to identify active coastal processes. They can be found at <http://www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/Natural-Hazards/Natural-Hazard-Maps/>. Alternatively, if you search for liquefaction maps on KCDC's website, these maps appear.
204. Those maps show that there are significant areas of the coast that should be included in the coastal environment based on Policy 4(b) of the RPS and Policy 1(2)(d) of the NZCPS in terms of liquefaction coastal hazards.
205. Leaving aside liquefaction in the PRS and the areas that KCDC has already identified, I turn to coastal hazards generally.
206. Policy 24 of the NZCPS deals with identification of coastal hazards.
207. While some coastal hazards are being addressed in the ODP, the extent of the coastal environment is being addressed in the PDP. That has not been left to be addressed later with the coastal hazard provisions
208. However, the Panel must give effect to the NZCPS and cannot ignore the issue of areas at risk from coastal hazards in determining the extent of the coastal environment.

209. The areas identified to remain in force in the ODP in relation to coastal hazards need to be included in the coastal environment in the PDP. The purported reason for including such areas is that they reflect coastal hazard areas. So they must be included in the extent of the coastal environment in the PDP.
210. It seems that the area recommended now does not include all of these areas. If it does not, it needs to.
211. The PDP also includes maps that identify flood hazard areas along the coast.
212. Furthermore, Policy 24 of the NZCPS effectively says¹² (*italics added*):
- (1) Identify areas in the coastal environment that are *potentially affected* by coastal hazards (*including tsunamis*), giving priority to the *identification of areas at high risk of being affected*. Hazard risks, over at least 100 years, are to be assessed having regard to [(a) to (h)] taking into account national guidance and the best available information on the *likely effects of climate change* on the region or district.”
213. So, areas of the coast with hazard risks that are likely to be affected by climate change over at least the next 100 years should be included in the coastal environment. If relevant areas are not included, Policies 24-27 of the NZCPS will not apply in such areas and, in my opinion, they should.
214. It is also relevant to note that the NZCPS *includes* reference to tsunamis. The coastal environment in the PDP as notified would have included the areas affected by tsunamis. The current recommendation does not.
215. In terms of the references to tsunamis, there is a conflict between:
- a. the NZCPS that includes tsunamis as a coastal hazard to be addressed; and
 - b. the RPS and Policy 4.1 of the PDP that exclude tsunamis.
216. It is my understanding that the RPS was notified before the NZCPS 2010 was issued. In any event, the NZCPS is the superior national document.
217. Section 62(3) of the RMA says:
- “A regional policy statement ... must give effect to a national policy statement or New Zealand coastal policy statement.”
218. So, in the event of conflict between the NZCPS and the RPS/PDP, the NZCPS should prevail.
219. The district plan must give effect to the NZCPS.

¹² I have seen Policy 24 misrepresented a number of times. What is set out here is how the Policy reads when taken as a whole.

220. The coastal environment needs to be sufficiently large that it covers all areas of significant existing development likely to be affected by coastal hazards, including areas further inland. Doing that means that landowners can point to Policy 27 of the NZCPS and seek action from the Council. As already noted, Policy 24 specifically includes tsunamis.
221. The current recommendation for the extent of the coastal environment has ignored the issue of coastal hazards and does not give effect to the NZCPS.
222. Isthmus seems to consider that coastal hazards are not a relevant consideration when determining the extent of the coastal environment.
223. Page 45 of the third report says (*italics original, underlining added*):
- “A follow up phone call was used to further clarify the planning map changes including the recommendation not to include DoC’s submission that ‘*areas at risk from coastal hazard*’ in the south of the District be included within the CE line. Council’s approach to the management of coastal hazards is independent of the CE line; with separate provisions.”
224. In my opinion, that is incorrect and an error of law.
225. Policy 1(2)(d) of the NZCPS specifies that the coastal environment includes areas at risk from coastal hazards. The PDP must give effect to the NZCPS.
226. Furthermore, Council’s management of coastal hazards is linked to the extent of the coastal environment. The NZCPS only applies in the coastal environment. So for areas that are not in the coastal environment, the Council has no responsibilities under Policies 24-27 of the NZCPS.
227. The current recommendations for the extent of the coastal environment fail to give effect to Policy 1(2)(d) of the NZCPS ie areas at risk from coastal hazards.
228. *In summary, while the third Isthmus report refers to provisions of the NZCPS and the RPS, it does not “give effect to” them.*
229. *The current recommendations for the extent of the coastal environment do not give effect to the NZCPS and the RPS, including in relation to:*
- a. coastal vegetation;*
 - b. liquefaction coastal hazards; and*
 - c. areas at risk from coastal hazards, including tsunamis.*

c Concerns about arbitrariness - is like treated as like?

230. The approach that has been adopted seems arbitrary in a number of respects and has resulted in like not being treated as like.
231. The third report states (pages 42-43):
- “Firstly, where there is a bold, or topographically strong, landscape backdrop (i.e. an escarpment) immediately adjacent to the coastal edge, then the inland boundary is set back to the first dominant ridgeline. This is determinative at the Paekakariki escarpment...
 - For the rest of the District, where the coastal plains or edge are deeper, the inland boundary is determined by a setback from the beach, however not in an arbitrary way ...”
232. In terms of the first bullet point, RPS Policy 4(c) refers to (underlining added):
- “any landscapes or features, including coastal escarpments, that contribute to the natural character, visual quality or amenity value of the coast”
- so using only an escarpment is not in accordance with the Policy.
233. NZCPS Policy 1(2)(f) refers to:
- “elements and features that contribute to the natural character, landscape, visual qualities or amenity values”.
234. The inland extent of the coastal environment at Paekakariki runs along Wellington Road (I assume this road is determined to be roughly atop the first dominant ridgeline immediately adjacent to the coastal edge). However, there are a number of similar dominant ridgelines elsewhere in the district (for example, Seaview Road at Paraparaumu) where this approach was not followed.
235. If it is considered that Living Zone properties contribute to the natural character, landscape, visual qualities or amenity values of the coast, then like should be treated as like.
236. In terms of the second bullet point, there is no indication of the distance of that setback from the beach (not even a band or range is given) and hence many subsequent mapping decisions appear arbitrary and inconsistent. See, for example, the setback distance at the intersection of Marine Parade and Wharemauku Roads (Map 11) versus the setback distance in the vicinity of Oliver Grove (Map 8).
237. The third report states (page 43):
- “In the urbanized areas the inland boundary is relatively narrow and includes coastal dunes, coastal edge reserves, roads and generally the first lines of houses.”

238. It continues (page 43):
- “While the urbanization of the land has reduced the coastal influences through earthworks, the removal of coastal vegetation and the introduction of built form, the front lines of properties and structures in close proximity to the coastal edge (e.g. where not separated by broader esplanade or open space areas) clearly have a physical and perceptual connection to the coast and the marine area.”
239. So despite the removal of coastal vegetation and introduction of the built form, “physical and perceptual connection” is seen to be relevant.
240. What the source in the NZCPS and the RPS is for this asserted “physical and perceptual connection” criterion is not apparent.
241. Although the report asserts that setbacks are not arbitrary, there seem to be arbitrary differences:
- a. in some places, houses with a physical and perceptual connection to the coast and the marine area ie houses that can see the coast, and can be seen from the coast, are *not* included in the coastal environment;
 - b. in some places, houses that cannot see the coast, and cannot be seen from the coast, *are* included;
 - c. in some places, *a number of lines* of houses (not the first lines) are included;
 - d. in some places, houses that are separated from the coastal edge by broader esplanade or open space areas *are* included.
242. If one leaves aside coastal vegetation and coastal hazards (including the ODP areas, liquefaction and tsunami) which one shouldn't but which is what the current recommendation does, it seems to me that there is no reason in the NZCPS or the RPS for including any properties in Living Zones in terms of the wording of NZCPS Policy 1(2)(f) or RPS Policy 4(c). Are Living Zone properties, to use the NZCPS words “elements and features that contribute to the natural character, landscape, visual qualities or amenity values”?
243. So if the Panel is inclined to accept the “revised methodology” (which you should not), then you should exclude all of the properties in the Living Zones. Physical and perceptual connection is not a criterion in the NZCPS or the RPS.
244. The third report says (page 44):
- “Where river mouths and estuaries retreat back into the land, so does the offset and the coastal environment boundary.”
245. However, there appears to be little or no offset from the river mouths and estuaries. In addition, as noted earlier, it seems that coastal areas shown on the flood hazard maps in the PDP have not been included in the coastal environment.

d Summary regarding Policy 4.1 - Identify coastal environment extent - and the maps

246. *In summary, we object strongly to not having been included in discussions about the extent of the coastal environment and the revised "methodology".*
247. *Remove the explanation from Policy 4.1.*
248. *To give effect to the NZCPS, revise Policy 4.1b by removing ", excluding tsunami".*
249. *Rob and I oppose the extent of the coastal environment that is currently recommended. An appropriate coastal environment in Kapiti would be more extensive than that currently recommended.*
250. *I suggest:*
- a. *adopting the extent of the coastal environment in the PDP as notified; or*
 - b. *developing the extent of the coastal environment that gives effect to the NZCPS and the RPS (with the NZCPS prevailing on the issue of tsunami) taking into account:*
 - i. *coastal vegetation identified by the salt zone in the PDP as notified ie 500 m inland;*
 - ii. *the areas of liquefaction on the maps at <http://www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/Natural-Hazards/Natural-Hazard-Maps/>;*
 - iii. *coastal hazard setbacks that are to remain in effect in the ODP; and*
 - iv. *areas at risk of tsunami at <http://www.kapiticoast.govt.nz/Our-District/cdem/Tsunami/Tsunami-Evacuation-Maps/>; or*
 - c. *if the Panel considers that the revised methodology gives effect to the items referred to above, then remove all of the properties in the Living Zones. Physical and perceptual connection is not a criterion in the NZCPS or the RPS.*

Policy 4.2 - Identify natural character and the maps

251. My evidence and submissions lodged at the beginning of the hearings process addressed in detail the problems caused by the inappropriate way in which areas of high natural character have been identified in the PDP (see eg para 285 and following paras as well as Appendix 1).

253. Most mitigation activities ended up being non-complying activities because of:
- a. areas of high natural character running along the coast; and
 - b. the standards in the relevant rules not being able to be met, which results in the non-complying activity rule (4A.5.4, 4A.5.2 in the mark-up) being the applicable rule in areas of high natural character.
254. Areas of high natural character have been inappropriately identified because the RPS has not been given effect to.
255. Policy 3 of the RPS identifies when a site should be determined as having high natural character (page 91, underlining added):
- “District and regional plans shall include policies, rules and/or methods to protect high natural character in the coastal environment from inappropriate subdivision, development and/or use. Natural character should be assessed considering the following matters, with a site determined as having high natural character when the landscape is slightly modified or unmodified, the land-cover is dominated by indigenous vegetation and/or the vegetation cover is natural and there are no apparent buildings, structures or infrastructure...”
256. The framework for what will be slotted into the PDP in due course in relation to coastal hazards “buildings” needs to be appropriate now in the PDP.
257. That includes relevant objectives, policies and rules as well as what is identified as areas of high natural character on the maps.
258. Because of the disjointed way in which KCDC is approaching matters, the provisions of the PDP will be “locked in” when the PDP becomes operative. People will have no control as to what KCDC decides to include (or not include) in any plan change. There will be no ability to challenge anything that is not included in the plan change.
259. So the objectives, policies and rules, and particularly the appropriate identification of areas of high natural character - and, importantly, what are *not* areas of high natural character - need to be done properly now.
260. In my evidence and submissions lodged at the beginning of the process, I addressed the details about how areas of high natural character should be identified under the heading of Chapter 3. In terms of areas of high natural character in the coastal environment, which is what I am concerned about, I should have used the heading Chapter 4.
261. Our submission asked for a definition of areas of high natural character. We also asked for the PDP to comply with the RMA and give effect to the NZCPS and the RPS as is required by the RMA.
262. The PDP inappropriately identifies areas of high natural character along the coastal edge when some of those areas are not of high natural character.

263. I refer, in particular, to:
- a. areas with existing seawalls or other coastal hazard mitigation measures;
 - b. areas from which buildings, structures or infrastructure are apparent; and
 - c. river and stream mouths from which buildings, structures or infrastructure are apparent.
264. As already noted, Rule 4A.5.4 in the PDP (Rule 4A.5.2 in the mark-up) purports to make buildings, structures and earthworks on coastal environment land in an area of high natural character which do not comply with one or more of the restricted discretionary activity standards in Rule 4A.3.1 a non-complying activity.
265. Ironically, as noted earlier:
- a. that rule in the mark-up does not include areas of *outstanding* natural character so activities there do not become non-complying activities; and
 - b. for the first time in the rule cascade, reference to “structures” appears.
266. So any structures that are excluded from the definition of “Building” are automatically non-complying activities under the rules in Chapter 4 ie Rule 4A.5.4 (or 4A.5.2 in the mark-up).
267. This is just a minor demonstration of the illogicality and inappropriateness of the Chapter 4 rules in the mark-up and the failure to take into account the many submissions challenging the Chapter 4 rules and indeed the entire Chapter 4.
268. As already explained under the sub-heading “Categorisation of activity for Chapter 4 buildings, structures and earthworks in areas of high natural character” above, Rule 4A.3.1 in the mark-up purports¹³ to make buildings and earthworks (there is no reference to structures) in areas of high natural character a restricted discretionary activity, at best, but with standards that mean that a number of coastal hazard mitigation activities will not come within that rule eg stream mouth clearance of the Mangaone Stream would breach standard 3.
269. If one of the standards is breached or (illogically but not remedied by any of the s 42A reports) if the activity is a structure exempted from the definition of “Building”, it is a non-complying activity under Rule 4A.5.4 (4A.5.2 in the mark-up).
270. So, the identification of areas of high natural character is particularly critical.

¹³ I say “purports” for reasons set out later in relation to the partial withdrawals from the rules.

271. But even leaving those purported rules to one side, the identification of areas of high natural character needs to be done in a way that gives effect to the NZCPS and the RPS.
272. As noted earlier, the s 42A Coastal Overview report is incorrect in saying that character overlays do not apply at Paekakariki. See Map 14 at <http://www.kapiticoast.govt.nz/globalassets/sev-pdp-and-utv/chapter-4-coastal-environment/chapter-4-sn-42a-appendix-5-planning-maps.pdf>.
273. Map 16D of the PDP has been prepared in such a way that the blue line showing areas of high natural character in Paekakariki is hidden by another line.
274. So “protection” character overlays apply along the entire coast - with all of the consequences of such protection overlays in resource consent applications.
275. In terms of a definition and identification of areas of high natural character, the RPS is instructive. Indeed, as a matter of law, it is more than instructive. The RMA requires district plans to *give effect to* the RPS.
276. Policy 3 of the RPS (pages 91-93) sets out a detailed framework for the assessment of natural character in the coastal environment, in order to identify areas of “high” natural character, and thereby protect these areas of high natural character from inappropriate subdivision, use or development.
277. As already noted, Policy 3 states (underlining added):
- “... Natural character should be assessed considering the following matters, with a site determined as having high natural character when the landscape is slightly modified or unmodified, the land-cover is dominated by indigenous vegetation and/or the vegetation cover is natural and there are no apparent buildings, structures or infrastructure ...”
278. The policy then sets out a range of matters to be considered under three main topics ie:
- a. the extent to which natural elements, patterns and processes occur;
 - b. the nature and extent of modifications to the place, site or area; and
 - c. social values.
279. The explanation to Policy 3 includes the following (pages 92-93, footnotes omitted, underlining added):
- “Case law ... has established that ‘natural character’ does not necessarily mean pristine or completely unmodified character. Natural character occurs on a continuum, from pristine to totally modified. Most of the coastal environment has some element of natural character and, conversely, some degree or element of modification.

Policy 3 requires district and regional plans to protect areas considered to have 'high' natural character from inappropriate subdivision, use and development...

When making a determination as to whether the degree of natural character is high in a particular location, an area of high natural character is likely to be dominated by natural elements rather than by the influence of human activities, and/or the natural elements will be out of the ordinary or otherwise regarded as important in terms of one or more of the factors outlined within policy [3(a) and (c)¹⁴]. Alternatively, an area of high natural character may be regarded as having qualities which are relatively uncompromised by human activities and influence, as specified within [3(b)¹⁵]."

280. The identification of areas of high natural character has failed to give effect to the RPS, resulting in inappropriate identification of areas of high natural character.
281. For example, it seems to me that a coastal edge consideration starting at the Marine Parade rock revetment in Paraparaumu and moving south through to the southernmost end of Ames Street, Paekakariki, except in the QE II Park area, would conclude that the degree of natural character is not "high", when considering Policy 3 of the RPS.
282. Furthermore, from a wider perspective, it is inappropriate for the coastal edge at the rural area along Sims Road, Te Horo Beach to be treated in the same way as Paekakariki or indeed the residential area at Rodney Ave, Te Horo Beach, but that is what the PDP does and what is recommended by the officers.
283. The coastal edges of those areas are dramatically different.
284. Coastal edges seaward of residential or commercial areas that have been developed should be treated differently from rural areas where there is no development, with areas seaward of those rural areas identified as being of high natural character and those seaward of residential or commercial areas not being so identified.
285. In addition, the coastal edge extending north and south of the residential and commercial areas also needs to be considered to determine where the "high natural character" area begins ie where buildings, structures and infrastructure from the developed areas are not apparent.
286. The areas of public land along the coastal edge (as well as most other public areas along the coastal edge) are also identified as special amenity landscapes (with some areas having other overlapping notations as well).

¹⁴ The RPS refers to 36(a) and (c) but this seems to me to be an error.

¹⁵ The RPS refers to 36(b) but this seems to me to be an error.

287. The outcome would be a coastal edge comprised of three identified areas:
- a. those of outstanding natural character;
 - b. those of high natural character ie to use the words from Policy 3 where “there are no apparent buildings, structures or infrastructure” so areas seaward of residential and commercial areas and then extending along the coast past those areas to get to the point, including on rivers and streams, from which buildings, structures or infrastructure are not apparent; and
 - c. those that are special amenity landscapes.
288. Finally, any maps that do identify areas of high natural character need to be checked to ensure that the area is shown clearly.
289. Para 103 of the Chapter 4 s 42A report says:
- “A number of areas of high natural character were omitted from the notified version of the PDP. These areas are now recommended for inclusion, as outlined in the maps contained in Appendix 5.”
290. It is not clear to me:
- a. which new areas have been added; and
 - b. what submissions are being relied upon for adding new areas that were omitted from the notified version of the PDP.
291. *Include reference in Policy 4.2 to areas of high natural character being areas where the landscape is slightly modified or unmodified, the land-cover is dominated by indigenous vegetation and/or the vegetation cover is natural and there are no apparent buildings, structures or infrastructure.*
292. *Remove areas of high natural character from:*
- a. *areas with existing seawalls or other coastal hazard mitigation measures;*
 - b. *areas from which buildings, structures or infrastructure are apparent, including seaward of all Living Zones and commercial areas; and*
 - c. *river and stream mouths from which buildings, structures or infrastructure are apparent, including the mouth of the Mangaone Stream.*
293. *Do not include new areas of high natural character that were omitted from the PDP as notified unless there is a submission requesting that the new area of high natural character be added and identify the submission(s) in any recommendations to include the area.*
294. *Ensure that any maps that do identify areas of high natural character show the area clearly.*

New recommended Policy 4.4

295. This significant new policy is purported to be included as consequential to the Boffa submission.
296. It is not consequential to that submission, in my opinion.
297. The new recommended policy does not only apply to areas of outstanding natural character, affects the entire coastal environment (including our property and house), and picks up only part of Policy 13 of the NZCPS, which in turn is only one policy in the NZCPS. So putting it into the PDP loses the context of the objectives and policies of the NZCPS.
298. Objective 6 of the NZCPS is “To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that ...”.
299. If such a new policy is to be included (especially if it is to extend beyond areas of outstanding natural character), it needs to be done by variation.
300. *Do not introduce the recommended new Policy 4.4. Any such new policy should be done by variation.*

Policy 4.3 (Policy 4.5 in the mark-up)

301. The mark-up deals with a number of the matters raised in our submission, but not all of our concerns.
302. The policy remains too extreme.
303. While we support inserting words about inappropriate subdivision, use and development, the matters referred to at a) to f) of the policy also need to be reconsidered and revised so that they do not remain as extreme as in the PDP as notified.
304. In my opinion, the policies should be worded so they convey reasonable concepts with which people can agree, strike an appropriate balance, and are not excessive.
305. For example, referring to “avoiding” in (c) is an absolute term. It is also inappropriate and is contrary to eg Policy 27 of the NZCPS. Permanent structures may be appropriate, especially in areas of significant existing development.
306. There is also an assumption that the PDP and rules will fix everything. For some of the matters referred to, non-regulatory methods are likely to be more effective, and better received by those affected, than rules. There should be reference to non-regulatory methods, which would help to make the policy less extreme.
307. A very long time ago, I said to KCDC chapter leads that references to eg “where possible” or “where practicable” (or whatever form of wording was used) needed to be made consistent. I have also reinforced the need for clear, consistent and appropriate language.

308. I see that within this one policy there is reference to both “where practicable” and “where possible”, which is disappointing.
309. I say again that the references need to be made consistent. “Practicable” or “reasonably practicable” should be used, not “possible”. As people say: “Anything is possible”.

310. *I suggest the following changes to Policy 4.3 (4.5 in the mark-up):*

“Policy 4.35 ~~Protection~~ Preservation of natural character

Areas of outstanding natural character and areas of high natural character in the *coastal environment*, significant natural coastal features and habitat will be protected from inappropriate subdivision, use and development by *a combination of regulatory and non-regulatory methods to address, where practicable [it may be preferable to include “where practicable” here and instead remove it from the items below, but for the time being I have also left it in the items in below]:*

- a) reinstating dunes which function as natural buffers *for as much of the coast as where* practicable;
- b) providing managed public access ways to *the beach* and foreshore and *avoiding limiting* damage to dunes from unmanaged access;
- c) *avoiding regulating* encroachment of permanent structures and private uses onto the *beach* or public land;
- d) removing existing unnecessary structures and associated waste materials from *the beach*;
- e) ~~preventing~~ *managing new* activities which have adverse effects on natural character values;
- f) retaining a natural *beach* and foreshore including a dry sand *beach* where *practicable possible*.

Policy 4.4 (Policy 4.6 in the mark-up)

311. While we support the reference to “where practicable”, the recommended changes to this policy do not adequately address the concerns in our second submission.
312. Furthermore, as we noted in our submission on the PDP, the intention seemed to be for the policy to be focussed on priority areas for restoration but the policy did not include that wording. The PDP with the partial withdrawal shown in green (as a priority areas for restoration withdrawal) is:

“Explanation

This policy gives effect to policy 13 and 14 of the NZCPS. The areas which have a high potential for restoration were identified in a study undertaken in 2010. ~~These areas are identified in the District Plan maps as priority areas for restoration.~~ The rules which implement this policy enable a greater level of development if large scale restoration or protection of natural areas is undertaken as part of subdivision or development.”

313. That raises the issue of scope for the policy to remain in the PDP as opposed to being dealt with by variation.
314. In any event, the policy should be “toned down” so that, as worded, it could reasonably apply everywhere.
315. As worded, the policy could be particularly problematic for people in Living Zones who need to get resource consent. For example, if the yard or height in relation to boundary provisions apply in the middle of our two sections, we would need consent to build a house and this policy would apply. So c) “rehabilitating dunes and other natural coastal features” would be applicable.
316. Much of this policy would be inappropriate to Living Zones. The policy needs to be focussed on areas of natural character and not eg on Living Zone properties, which are small with limited ability to carry out the matters in the policy without intruding unreasonably on private property rights.
317. In addition, as noted in our second submission, reference to “development” is inappropriate given the wide definition of “Development”. I do not know if the definition is to be amended or not.
318. Furthermore, Policy 14 of the NZCPS says to “Promote” restoration or rehabilitation, so the concept of “promoting” restoration is how the policy should be framed as well as referring to regulatory and non-regulatory methods as both should be used to promote restoration. The wording should also be more consistent with Policy 14 of the NZCPS.
319. *Amend the wording to say*

“Policy 4.46 - Restore natural character

~~Subdivision and development in the coastal environment will support~~
Promote restoration of ~~the~~ natural character ~~of the coastal~~
~~environment not in Living Zones~~ **values** through **a combination of**
~~regulatory and non-regulatory methods to address~~, where practicable:

- a) creating or enhancing indigenous habitats and ecosystems, using local genetic stock;
- b) encouraging natural regeneration of indigenous species, while effectively managing weed and animal pests;
- c) rehabilitating dunes and other natural coastal features or processes, including saline wetlands and intertidal saltmarshes;
- d) restoring and protecting riparian and intertidal margins;
- ~~or~~
- e) removing redundant coastal structures and materials that do not have heritage or amenity values; or
- f) redesign of structures that interfere with ecosystem processes.

Policy 4.5 (Policy 4.7 in the mark-up)

320. The mark-up recommends removing the reference to the coastal environment. That is not appropriate as all of the provisions in Chapter 4 apply only in the coastal environment. Reference to the coastal environment is particularly critical if the policy ends up in Chapter 3.
321. In addition, the reference to the dry beach is problematic for coastal protection “buildings” (which will eventually be slotted in the PDP framework) and should be qualified.
322. *Do not remove reference to the coastal environment. This is particularly critical if the policy ends up in Chapter 3.*
323. *Revise the wording as follows:*

~~“Subdivision and development in the coastal environment will~~
 maintain and enhance amenity values *in the coastal environment*,
 such as open space and scenic values, opportunities for recreation
 and the enjoyment of the coast, including enjoyment of a high tide dry
 beach *where practicable* by the public and public access to and along
 the coast, ~~while minimising any significant adverse effects on the
 public’s use and enjoyment of the coast.~~

Policy 4.6 (Policy 4.8 in the mark-up).

324. This policy does not refer to the coastal environment. As Chapter 4 relates to the coastal environment, the policy should only apply in the coastal environment.
325. One of the problems with the inappropriate recommended delineation of the coastal environment is that it probably does not include properties that would like to have the benefit of this policy but the properties are not in the coastal environment.
326. However, the policy needs to apply only in the coastal environment.
327. *Reconsider the extent of the coastal environment.*
328. *Include reference to the coastal environment. This is particularly critical if the policy ends up in Chapter 3.*

Policy 4.7 (Policy 4.9 in the mark-up)

329. The heading of the policy does not match the text and the text does not refer to the coastal environment.
330. This is another area where there are properties further inland that should be caught by this policy but the inappropriate recommended delineation of the coastal environment means that they are not.

331. I noticed, for example, that the explanation to Policy 3.23 which is recommended to be deleted says:
- “The Paraparaumu District Centre has relatively unmodified characteristic sand dune forms that are highly valued by the community.”
332. I do not know if these sand dune forms are covered by the revisions in Policy 3.23 or the related rules in Chapter 3.
333. I cannot understand why the reference to “as a buffer for coastal hazard effects” has been removed. I could not see any reasoning for this in the s 42A report, but perhaps I missed it. In any event, it should not be removed.
334. Furthermore, the other reasons for natural dune systems beyond coastal hazards should also be included.
335. The recommended wording of the policy now seems odd, in my opinion eg “natural dune function will be enabled”. In addition, the recommended wording gives no hint to the reader as to why the policy is in place.
336. *Do not remove the words “as a buffer for coastal hazard effects”.*

337. *Revise the wording as follows:*

“Policy 4.79 Natural dunes systems

Natural dune systems *in the coastal environment* will be protected and enhanced, *where practicable* through restoration *to enhance their function, for natural character and visual amenity purposes, and* as a buffer for coastal hazard effects ~~and natural dune function will be enabled to migrate inland in response to shoreline retreat~~ *where practicable.*”

Notes under the heading Rule 4A.0. Applicability of Rules 4A.1 - 4A.5

338. The statement under the above-noted heading says:
- “Rules 4A.1 to 4A.5 shall apply to all land within the coastal environment to activities in any Zones unless otherwise specified.”
339. But then under Notes is a recommended new note:
- “[2] Activities that are not in areas of outstanding natural character or areas of high natural character in the coastal environment are subject to the zone rules in other chapters of the District Plan.”
340. What does this Note mean?
341. Does Note [2] mean that activities that are not in areas of outstanding natural character are *not* subject to the rules in Chapter 4 at all? That is what it seems to mean as, without this statement, those zone rules would obviously apply without the need for any note.

342. If that is the case, then all of the rules in Chapter 4 that do not deal with areas of outstanding natural character or high natural character can be deleted.
343. But that does not make sense as there are rules in the Chapter 4 mark-up that apply in the coastal environment in areas that are not of outstanding natural character or high natural character.
344. On the other hand, does the recommended Note [2] mean that activities in areas of outstanding natural character or areas of high natural character in the coastal environment are *not* subject to the *zone* rules in the relevant chapter?
345. The effect of that would be that eg permitted activities in the Open Space (Conservation & Scenic) Zone would not be permitted in areas of outstanding natural character or high natural character.
346. So does Note [2] mean eg that, in areas of outstanding natural character and high natural character, recreation, community and cultural activities permitted by Rule 8.1.2 in Open Space zones are not permitted activities?
347. In my opinion, that does not make sense and would be inappropriate.
348. So, I am left wondering what exactly does the recommended new Note [2] mean.
349. It seems that the s 42A report authors are trying to turn the PDP into something that it is not. They are trying to assign “primacy” but it does not seem to be working and is leading to even more problems.
350. So, in my opinion, the Panel needs to consider carefully any recommended changes to insert “primacy” into the PDP that was not drafted with “primacy” in mind.
351. In addition, as I have noted elsewhere, regardless of what recommended new Note [2] means in relation to the rules, wherever consent is needed, the objectives and policies (and map overlays) will apply. So saying that certain rules do or do not apply does not assist when a resource consent is needed under a relevant rule. What will be critical then is what the objectives and policies, and the map overlays, say. That is especially important for non-complying activities but also important for all consent applications.
352. *It seems to me that the various s 42A authors have not had enough time to deal appropriately with integration matters of the various chapters that were developed in silos. They seem to be trying to turn the PDP into something that it is not. They are trying to assign “primacy” but it does not seem to be working and is leading to even more problems. It also seems that there has not been legal oversight of the various recommendations.*
353. *The Panel needs to consider carefully any recommended changes to insert “primacy” into the PDP that was not drafted with “primacy” in mind.*

354. *The meaning of the Note*

[2] Activities that are not in areas of outstanding natural character or areas of high natural character in the coastal environment are subject to the zone rules in other chapters of the District Plan.”

is unclear. Two possible meanings have occurred to me, both of which seem illogical. Its meaning needs to be clarified in a manner that results in appropriate outcomes or it needs to be removed.

355. *In my opinion:*

a. in trying to insert “primacy” into the PDP, the s 42A reports are creating new problems; so

b. the Panel needs to consider carefully any recommended changes to insert “primacy” into the PDP that was not drafted with “primacy” in mind to ensure that new problems are not created.

Rule 4A.1.1

356. There is a recommended new Rule 4A.1.1 for areas of outstanding natural character and high natural character.

357. I have had a quick look at the Chapter 8 mark-up Open Space rules to see if the activities proposed for Rule 4A.1.1 would also be permitted activities in the Open Space zone. If any of them is excluded from the definition of “Building” (eg a small-scale detached structure) it seems that they would not be permitted activities. Rule 8.1.1 is recommended to be deleted.

358. It seems to me that it would not make too much sense to permit the activities in Rule 4A.1.1 in areas of outstanding or high natural character and not permit them in the wider areas covered by Chapter 8 eg the Open Space (Conservation & Scenic) Zone running along the coast.

359. I see that reference is made to fences and gates “less than” 1.5 m. I note that a recommended exclusion from the definition of “Building” in the SEV is:

“Retaining walls of 1.5m or less in height”.

360. In contrast, recommended new Rule 4A.1.1 has the following standards that also refer to 1.5 m:

“d. Fencing of less than 1.5m of height above ground;
e. Gates of less than 1.5m in height.”

361. So, there is reference to:

a. 1.5m or less in height;

b. less than 1.5m of height above ground; and

c. less than 1.5m in height.

362. The references should be made consistent (and any other references throughout the PDP should also be made consistent).
363. Depending on whatever the definition of “Height” is to be in the PDP, referring to “above ground” may be inconsistent with the definition.
364. My ability to participate is hindered by the absence of the definition of “Height”. In my opinion, the definition should have been provided with the Chapter 4 materials to allow me to comment sensibly on the recommended new rule.

365. *All provisions throughout the PDP relating to 1.5 m should be made consistent. Either all of them should be:*

a. *1.5 m or less (so something exactly 1.5 m is permitted) which is what I suggest; or*

b. *less than 1.5 (so something exactly 1.5 m is not permitted).*

It is unhelpful for there to be differences.

366. *References to height (and whether or not the ground should be referred to) should be made consistent. I notice that the new recommended rule has a standard about bollards that refers to height but not height above ground as is recommended for fencing. The definition of “Height”, which has not been provided with the Chapter 4 materials, is relevant.*

367. *The Panel should check if the activities to be covered by Rule 4A.1.1 would also be permitted activities in areas that are not areas of outstanding or high natural character in Chapter 8 for the Open Space (Conservation & Scenic) Zone that runs along the coast. If not:*

a. *they should be; and*

b. *that would seem to reflect an issue with lack of integration across the chapters.*

Rules - general

368. There are partial withdrawals in Chapter 4 that significantly and inappropriately affect the applicability of the provision. See, for example, the following from the PDP version with withdrawals shown¹⁶:

Rule 4A.2.1

Earthworks and vegetation clearance on dunes undertaken for the purpose of dune restoration and the associated removal of non-native plant species ~~within the no-build rural CHMA.~~

¹⁶ The inconsistencies in italics (or not) for “coastal environment” is in the original.

Rule 4A.3.1

Buildings and earthworks on land in the coastal environment which has been identified as having *high natural character* in District Plan Maps ~~where they are not located in a CHMA.~~

Rule 4A.3.2

Subdivision of land in the *coastal environment* which includes areas of *high natural character* in District Plan Maps ~~where it is not located within a CHMA.~~

Rule 4A.3.3

Subdivision of land adjacent to the coast or a coastal esplanade ~~where it is not located within a CHMA.~~

Rule 4A.4.1

~~All activities in the CHMA which are not listed as restricted discretionary, non-complying or prohibited and~~ all other activities which do not comply with one or more of the permitted activity or controlled activity standards.

Rule 4A.5.4

Buildings, structures and earthworks on land in the coastal environment which has been identified as having *high natural character* in District Plan Maps ~~where they are not located in a CHMA~~ which do not comply with one or more of the permitted activity or restricted discretionary activity standards.

369. *The result of the partial withdrawals is that the provision changes from applying in a specific part of the district to a wider area.*
370. *That is contrary to West Coast Regional Council v Royal Forest and Bird Protection Society of New Zealand [2007] NZRMA 32.*
371. *The High Court in that case held that the power under clause 8D of Schedule 1 is a power to withdraw part(s) of a proposed plan. However, the Court constrained the power to withdraw part as follows:*

“[25] Assuming that there is power to withdraw part of a proposed plan it seems to us that it is implicit that the balance must be left as it was. For cl 8D only confers power to withdraw a plan. Anything new has to be notified and tested by a process in which the public can participate. If there is a power to withdraw part, that power cannot include a power to make a change to the meaning of the remainder of the policy statement or plan. Provided it is a withdrawal and not a variation by the back door, it does not matter whether the withdrawal is of a complete part, some few provisions, or a mix. But it must only be a withdrawal and not a variation.”

372. The partial withdrawals are, to use the words of the Court, “a variation by the back door” by changing the meaning of what remains in the PDP.

373. As a matter of law, all of the above rules (and the corresponding rules, discussed below) should be deleted from the PDP. If such rules are sought to be included in the PDP, in accordance with *West Coast Regional Council v Royal Forest and Bird Protection Society of New Zealand* that should be done by variation. People are entitled to the opportunity to make a submission on such provisions.

Rule 4A.4.2

374. The reference in the rule to Rule 4B.2.1 is incorrect in the PDP as notified. The incorrect reference remains in the Chapter 4 mark-up, which seems to indicate a lack of attention to detail given to these rules, despite submissions opposing all of the rules.

375. The correct rule reference is to Rule 4A.2.1, from which there has been a partial withdrawal.

376. As Rule 4A.4.2 relates to Rule 4A.2.1 and the partial withdrawal in Rule 4A.2.1 is contrary to *West Coast Regional Council v Royal Forest and Bird Protection Society of New Zealand* [2007] NZRMA 32, Rule 4A.4.2 should also be deleted. The alteration should be made by variation. People need to be given the opportunity to make a submission. As a matter of law, the rule should be deleted from the PDP.

377. Delete Rule 4A.4.2.

Rule 4A.5.1

378. As Rule 4A.5.1 relates to Rule 4A.3.2 and the partial withdrawal in Rule 4A.3.2 is contrary to *West Coast Regional Council v Royal Forest and Bird Protection Society of New Zealand* [2007] NZRMA 32, Rule 4A.5.1 should also be deleted. The alteration should be made by variation. People need to be given the opportunity to make a submission. As a matter of law, the rule should be deleted from the PDP.

379. Delete Rule 4A.5.1.

Joan Allin
25 July 2016