

## **PROPOSED KĀPITI COAST DISTRICT PLAN 2012**

### **CHAPTER 9 HEARING**

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#### **SUPPLEMENTARY EVIDENCE AND SUBMISSIONS OF JOAN ALLIN**

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1. This document relates to the Chapter 9 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 process.
2. I 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 paras and Parts<sup>1</sup>. Instead:
  - a. I adopt those paras and Parts from the Chapter 3 hearing as evidence and submissions in this Chapter 9 hearing; and
  - b. respectfully ask the Panel to refresh your memory as to what I said in those paras and Parts.

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<sup>1</sup> I am concerned that continuing to repeat the same things in each of the ring-fenced coastal chapter hearings would become irritating for the Panel so I hope that my approach is in accordance with what the Panel prefers.

4. My situation for Chapter 9 remains the same as for Chapter 3 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. As with Chapter 3, 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.

#### **Legal issue - beds of rivers and lakes**

6. As misunderstanding the law relating to the beds of rivers and lakes is particularly relevant to inappropriate recommended changes in the Chapter 9 mark-up, I repeat what I said in relation to the Chapter 3 hearing.
7. It seems that at least some s 42A authors<sup>2</sup> may be under the impression that only the Regional Council has jurisdiction over beds of rivers and lakes and that the PDP does not apply to that land.
8. Section 13(4) of the RMA states:
 

“(4) Nothing in this section limits section 9.”
9. Section 9 deals with restrictions on the use of land.
10. Land is defined in s 2 of the RMA as including land covered by water:
 

“land—  
 (a) includes land covered by water and the airspace above land;  
 ...”.
11. Consequently, both the district council and the regional council have jurisdiction over land that is also the bed of a river or lake.
12. *My opinion is that land in the beds of rivers and lakes is covered not only by s 13 but also by s 9 of the RMA and therefore the PDP.*

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<sup>2</sup> See especially the notes recommended to be added to various rules in the Chapter 9 mark-up as well as the recommended change to Rule 9B.1.8 but also see para 74 of the Coastal Overview report.

13. *The various recommended Notes and the recommended change to Rule 9B.1.8 are based on a misunderstanding of the law (and a misuse of cl 16(2), discussed later) and should not be adopted.*

#### **Presentation day - coastal overview report**

14. At para 2.28, the coastal overview presentation refers to para 35 of the Coastal Overview report and the author's opinion that functionally Chapters 9 and 3 are on a par. The presentation then says:

“In making decisions on submissions, I think it is important to ensure that the provisions of either of those chapters do not override the other. I did not include that as one of my recommendations, but do so now.”

15. I agree with that (and it also applies to Chapter 4, in my opinion).

16. *I also agree with the statements further down in the presentation that resolving tensions on a case-by-case basis, having regard to the particular circumstances, is often best left to the resource consent process.*

17. *That means that there need to be appropriate objectives and policies (and map overlays) of the PDP to enable that to occur. The framework of the PDP needs to enable the tensions to be addressed appropriately in all of the circumstances of the case - not prevented from being considered by unwise objectives or policies.*

18. *Currently there is a focus on “protection” and not much going the other way in terms of enabling appropriate activities.*

#### **Presentation day - Chapter 9 report**

19. I note that at paras 3.6 and 4.8, the author identifies an issue with the s 42A Coastal Overview report's recommendation that Rule D.7.1.3(ii) remain in force in the ODP.
20. At para 4.8, the author refers to adding some explanatory text to Rule D.7.1.3(ii).
21. In my opinion, it is not appropriate to be adding notes to an operative district plan with no ability for anyone to make a submission on such notes. If notes are sought to be added to the ODP, the provision should be notified as a plan change.
22. At para 4.8, the author also refers to adding reference to Rule D.7.1.3(ii) of the ODP in Rule 9B.5.4 of the PDP.
23. Again, in my opinion, there is no legal basis for such a reference to be made to a rule in the PDP. No submitter sought such a change. If such reference is to be made in the PDP, it should be done by variation.
24. In addition, I notice the suggested reference to “seawall” which is a term not used either in the ODP or in the PDP with provisions withdrawn, so in my opinion the suggestion is inappropriate on that basis also.

25. In my opinion, there is no legal basis for adding any such notes.
26. *It seems to me that s 42A report authors are being put in a very difficult position of trying to come up with solutions to the problems caused by KCDC's approach which, when one gets down to the details, does not work.*
27. *Contrary to the Council resolutions implementing the Allan/Fowler report<sup>3</sup>, it appears that:*
- a. a general concept was advanced by someone at the Council ie the ODP can deal with coastal hazards (which now turns out not to be correct in any event as only buildings (or structures) are to be dealt with in the ODP);*
  - b. details as to how that would be achieved were not addressed and still have not been addressed;*
  - c. s 79 and Part 1 of Schedule 1 of the RMA and the obligation to publicly notify both:
 
    - i. what in a district plan requires alteration; and*
    - ii. what in a district plan does not require alteration;**was not considered and still has not been complied with; and**
  - d. how something could both:
 
    - i. require alteration and therefore be dealt with in the PDP; and*
    - ii. not require alteration and therefore remain in force in the ODP**was also not considered<sup>4</sup>.**
28. *In trying to help KCDC in the difficult situation into which it has put itself, the s 42A report authors and the Panel need to remember the provisions of the RMA and the Schedule 1 process for making district plans - what is allowed and what is not.*
29. *In my opinion, it will not help the situation (and indeed will make it worse) if s 42A report authors or the Panel recommend changes to the PDP that do not flow from submissions on the PDP.*
30. *In my opinion, neither of the suggestions in para 4.8 is sanctioned by the RMA.*

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<sup>3</sup> If details are sought, please see my affidavit which is Appendix 2 to my Chapter 3 supplementary evidence and submissions.

<sup>4</sup> For example Rule D.1.1.1(i) which is the rule in the ODP that deals with houses and the definition of Building, both of which are the subject of review but which also should remain in force in the ODP.

### Does Chapter 9 cover coastal hazards or not?

31. The Chapter 9 s 42A report asserts (para 72):

“Chapter 9 was never intended to apply to coastal hazards.”

32. That is incorrect.

33. In fact, section 9.1.1 of the PDP as notified had a heading “Coastal Hazards”.

34. Section 9.1.1 of the PDP as notified said (underlining added):

**“Coastal Hazards**

There are significant areas of the coast which are affected by coastal erosion hazard risks. The policies in the general section of this chapter are relevant to coastal hazards...”

35. Section 9.1.2 of the PDP as notified said (underlining added):

“These policies apply to all natural hazards, including coastal erosion in addition to more specific policies in this chapter and the Coastal Environment Chapter.”

36. Contrary to the assertion in the s 42A report, it is clear that the identified policies in Chapter 9 as notified were intended to apply to coastal hazards.

37. One of the many problematic partial withdrawals from the PDP has occurred in relation to section 9.1.2 ie:

“These policies apply to all natural hazards, ~~including coastal erosion~~ in addition to more specific policies in this chapter ~~and the Coastal Environment Chapter.~~”<sup>5</sup>

38. The intention of the withdrawal seems to be that the policies in Chapter 9 should not apply to coastal erosion, but removing the words does not achieve that intention.

39. With the words removed, section 9.1.2 says:

“These policies apply to all natural hazards in addition to more specific policies in this chapter.”

40. The recommended wording in the Chapter 9 mark-up is (italics original):

“These policies apply to all *natural hazards* in addition to more specific policies in this chapter.”

41. The recommendation in the Chapter 9 s 42A report is that the definition of natural hazards be that in the RMA. That would include coastal hazards.

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<sup>5</sup> Red strikethrough in the PDP with provisions withdrawn version indicates a coastal hazard strikethrough.

42. So, as worded, it seems impossible to interpret the provision as not applying to coastal hazards, although that appears to be the intention of the withdrawal.
43. The s 42A Coastal Overview report is another s 42A report that, in my opinion, provides incorrect information.
44. That s 42A report says, for example (underlining added - and please see my comments in the footnotes):

“Coastal erosion is not the only natural hazard within the coastal environment. Although references to coastal erosion have been removed from Chapter 4: Coastal Environment, Chapter 9: Hazards covers other natural hazards such as flood, earthquake, fire, slope instability, and (non-coastal) erosion.” (para 116);

“Chapters 3 and 9 are relevant to hazard mitigation works (excluding coastal hazards, which are subject to the retained ODP provisions<sup>[6]</sup>). Relevant activities include the cutting of stream mouths to mitigate flood risk, and river bed maintenance through the extraction of gravel, both of which may have effects on the natural environment. Chapter 9, Rule 9B.1.6, permits flood protection, erosion control and natural hazard mitigation measures in the Open Space zone and flood mitigation works in the River Corridor Zone. Some submitters are concerned that the ability of the councils to carry out those works may be hampered by protective earthworks and vegetation provisions in Chapter 3.<sup>[7]</sup>”(para 127)

“Chapter 9: Hazards covers natural hazards (excluding hazards affecting the coastline), and anthropogenic hazards such as contaminated land.” (para 157)

45. The s 42A Coastal Overview report has interpreted the words:

“These policies apply to all *natural hazards* ...”

as not referring to coastal hazards, despite the provision saying that it applies to *all* natural hazards.

46. It is crucial that officers and the Panel appreciate that what counts is what the words say.
47. When we are all mercifully released from this tortured and tortuous PDP process, what will remain are the words in the PDP (and the words in the ODP).
48. It is not appropriate to assert a general concept eg coastal hazards are dealt with in the ODP and then run with that.

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<sup>6</sup> The s 42A Coastal Overview report does not recommend that all coastal hazards be dealt with in the ODP. It seems that those unrelated to buildings (or structures) are to be dealt with in the PDP eg soft engineering involving earthworks or vegetation clearance.

<sup>7</sup> The s 42A Coastal Overview report does not address the fact that river and stream mouth cutting occurs not only for flooding but also for coastal erosion purposes.

49. As it turns out, the general concept is not correct in any event.
50. Coastal hazard activities unrelated to buildings (or structures) are apparently not to be dealt with in the ODP. See eg the purported Activity Tables on page 6 of Appendix One to the s 42A Coastal Overview report.
51. The s 42A Coastal Overview report says that earthworks and vegetation clearance are to be dealt with in the PDP.
52. The consequence is that coastal hazard mitigation activities not involving buildings (or structures) would be dealt with in the PDP, not the ODP. That would include coastal hazard mitigation activities covered by the earthworks or vegetation clearance provisions as well as river and stream mouth clearance for coastal erosion purposes (as no buildings (or structures) are involved).
53. The words recommended for Section 9.1.2 in the mark-up are:
- “These policies apply to all *natural hazards* in addition to more specific policies in this chapter.”
54. Attention to detail is essential. The words are clear. As worded, those policies apply to coastal hazards.
55. *If the policies are not to apply to coastal hazards, the words need to say something along the following lines if there is scope for such a change, which I have not considered:*
- “These policies apply to all *natural hazards* **except coastal hazards**<sup>8</sup> in addition to more specific policies in this chapter.”
56. *Regardless of how Chapter 9 is amended to refer to coastal hazards or not, all of the Chapter 9 wording including the policies needs to be appropriately worded in relation to coastal hazards. People will have no control over what provisions are or are not included in any plan change. Coastal hazards may be slotted into Chapter 9 and whatever wording is “locked in” in Chapter 9. If the locked-in provisions are not included in a plan change, there will be no opportunity for submitters to challenge the locked-in wording.*

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<sup>8</sup> Whatever that might be interpreted to mean.

### Linkage with Rule 8.1.11 and Chapter 8 - river and stream mouth clearance for coastal erosion purposes

57. Para 154 of the s 42A Coastal Overview report says:

“To give primacy to the Chapter 9 Hazard provisions, the Chapter 8 Section 42A report recommends deleting Rule 8.1.11, and adding an explanation at the beginning of the rules – stating that all natural hazards are managed under Chapter 9. This solution is appropriate where Open Space land is subject to hazards other than coastal erosion, but fails to recognise the role of the retained ODP provisions. For that reason, the explanation should be extended so that it also refers to the ODP provisions that remain in force (with regard to coastal hazards).”

58. There are numerous issues with this paragraph, including:

- a. referring to “primacy”;
- b. referring to adding an explanation before the *rules* in Chapter 8 that Chapter 9 applies but not before the *policies* or at the *beginning* of Chapter 8;
- c. approving the recommendation to delete Rule 8.1.11 without addressing the importance of Rule 8.1.11 in permitting river and stream clearance for coastal erosion purposes;
- d. asserting that the Chapter 8 explanation that all natural hazards are managed under Chapter 9 is an appropriate solution “where Open Space land is subject to hazards other than coastal erosion”;
- e. asserting that the Chapter 8 explanation “should be extended so that it also refers to the ODP provisions that remain in force (with regard to coastal hazards)”, one of a variety of different ways in which the s 42A Coastal Overview report refers to what ODP provisions are to remain in force and without addressing the fact that there is no scope for such an addition referring to the ODP.

59. In relation to the problematic reference to “primacy”, it is my opinion that the analysis in para 34 of the s 42A Coastal Overview report as to what chapters should be “subservient” to others and what are “higher order” chapters is also problematic. In my opinion, the references are not helpful.

60. Given that the approach of the PDP is that all of the chapters and rules of the PDP are relevant, all of the chapters need to mesh appropriately.

61. In terms of the recommended reference before the Chapter 8 *rules* that Chapter 9 applies, there is no equivalent reference in the *policies* of Chapter 8 or at the beginning of Chapter 8.

62. So the policies of Chapter 8 would apply to any consent application and Chapter 9 is not in fact given “primacy” to use the words of the s 42A Coastal Overview report.



63. The absence of reference in Chapter 8 to hazard mitigation seems to be a problem, and inappropriate, given that the Open Space (Conservation and Scenic) Zone is the zone that runs along the coast. The absence of reference seems to reflect a lack of appropriate meshing of Chapters 8 and 9. I will address this again in relation to Chapter 8 but it is relevant to what exactly Chapter 9 is or is not dealing with.
64. The Chapter 8 s 42A report recommends that Rule 8.1.11 be deleted and the Coastal Overview report supports that but without any discussion as to the importance of Rule 8.1.11.
65. Rule 8.1.11 is the rule that permits river and stream mouth clearance *for coastal erosion purposes*.
66. Chapter 9 rules cover river and stream clearance for *flood hazards*, not for coastal erosion.
67. As already explained to the Panel when I appeared at the first hearing, the regional plan has separate triggers for river and stream mouth cutting for flooding and coastal erosion purposes.
68. Finally, I deal with the last two items referred to above ie:
- a. asserting that the Chapter 8 explanation that all natural hazards are managed under Chapter 9 is an appropriate solution “where Open Space land is subject to hazards other than coastal erosion”; and
  - b. asserting that the Chapter 8 explanation “should be extended so that it also refers to the ODP provisions that remain in force (with regard to coastal hazards)”.
69. The s 42A Coastal Overview report does not recommend that earthworks rules, vegetation clearance or other rules not related to buildings (or structures) are to remain in force in the ODP for coastal erosion or coastal hazards.
70. My understanding of that report is that it recommends that rules that remain in force relate only to buildings (or structures).
71. So saying that:
- all natural hazards are managed under Chapter 9 is an appropriate solution “where Open Space land is subject to hazards other than coastal erosion”; or
- the Chapter 8 explanation “should be extended so that it also refers to the ODP provisions that remain in force (with regard to coastal hazards)”
- is not correct.

72. According to the provisions:
- a. to remain in force in the ODP ie buildings (or structures); and
  - b. not to remain in force in the ODP (eg earthworks, vegetation clearance)
- coastal erosion and coastal hazards are dealt with in the PDP where mitigation activities involve only eg earthworks, vegetation clearance or soft engineering solutions that do not involve buildings (or structures).
73. Furthermore, as river and stream mouth clearance activities do not involve buildings (or structures), they also would be dealt with in the PDP for coastal erosion purposes, not the ODP.
74. In addition, there is no scope to include reference to the ODP in the PDP as no submitter sought such a reference.
75. Finally, I note that the Chapter 9 presentation day report also refers to “primacy” issues in relation to Chapter 9. There is reference in para 5.1 to an option of including in the introduction to the rules in the appropriate chapters reference to excluding natural hazard mitigation works for the rules of the chapter.
76. However, what does this mean in relation to the *policies* of the chapter?
77. *If consent is required eg under another chapter of the PDP, it is the objectives and policies (including map overlays) in all relevant chapters that will be important in determining whether consent can be granted - especially for a non-complying activity.*
78. *So providing an exemption from the rules leaves the policies intact.*
79. *If the policies of all of the chapters are to remain relevant for resource consent applications, then it is crucial that the policies are worded in such a way as to enable a decision-maker to make a decision that is appropriate in all the circumstances of a case.*
80. *It seems to me that the Chapter 8 policies (as well as those in Chapters 3 and 4) are problematic in relation to natural hazards.*
81. *In terms of appropriate integration of PDP provisions, it is important not only to consider the rules of the relevant chapters, but also to consider the implications of the policies of the relevant chapters and the objectives in Chapter 2.*
82. *I will address these matters again in relation to Chapter 8.*
83. *Do not delete Rule 8.1.11 from Chapter 8.*
84. *Carefully consider whatever wording is recommended to be added to Chapter 8 and where any such wording should occur eg before the rules or at the beginning of the chapter.*

85. Carefully consider the extent to which Chapter 8 policies (and indeed other chapter policies) can adversely affect the ability to obtain consent.
86. Recognise that the wording recommended in the s 42A Coastal Overview report does not reflect what ODP provisions are apparently to remain in force and that there is no scope to include references to the ODP in the PDP.
87. Consider carefully how all of this relates to Chapter 9, whatever Chapter 9 does or does not to cover in relation to coastal hazards, and the words used in Chapter 9 provisions.

#### Inappropriate use of cl 16(2)

88. I note that numerous recommended changes on the Chapter 9 mark-up are based on cl 16(2) of Schedule 1 to the RMA.
89. Clause 16(2) says:
- “A local authority may make an amendment, without using the process in this schedule, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.”
90. In my opinion, the report and the mark-up use cl 16(2) of the RMA in a highly inappropriate manner.
91. For example, the mark-up changes “*risk*” to “*hazard*” in Section 9.1.1, relying on cl 16(2). That is not an alteration of minor effect or correcting a minor error. The words have different meanings. It is changing the meaning of the provision.
92. Table 9.1 raises the same issue of changing risk to hazard relying on cl 16(2).
93. Policy 9.5 is another example. Cl 16(2) is relied upon to change “*buffering development from natural hazards*” to “*buffering development from the effects of natural hazards*”. Those inserted words may change the meaning of the provision. In any event, it is not an appropriate use of cl 16(2).
94. The mark-up purports to rely on cl 16(2) to add a Note to various rules:
- “Note: Any works carried out within the bed of lakes and rivers are within the jurisdiction of Wellington Regional Council and are not covered in this District Plan.”
95. The Note is not “an alteration ... of minor effect” and does not “correct any minor errors”, to use the words of cl 16(2), so is inappropriate on that basis alone.
96. In addition, it is my opinion that the recommended Note is legally incorrect.
97. As noted earlier under the heading “Legal issue - beds of rivers and lakes” both the district council and the regional council have jurisdiction over land that is also the bed of a river or lake. The PDP therefore does cover the beds of rivers and lakes.

98. In any event, the Note is not an alteration of minor effect or correcting a minor error. It is a purported interpretation of the RMA, changes the meaning of the provisions, and is an inappropriate use of cl 16(2).
99. I do not intend to deal with all of the inappropriately-recommended changes that rely on cl 16(2).
100. It is the Panel's responsibility to ensure that changes are supported by submissions and that cl 16(2) is used only where such an alteration is of minor effect or where it corrects any minor errors.
101. *Check all of the recommended changes that rely on cl 16(2) not only in this mark-up but in all mark-ups in all chapters and only allow those that come within cl 16(2).*

### Section 9.1.1

102. As already noted, changing "risk" to "hazard" is not an appropriate use of cl 16(2).
103. Section 9.1.1 refers to avoiding development in areas subject to high risk.
104. "Development" is widely defined in the PDP, although any revision to the PDP definition has not been provided in the materials for this hearing.
105. Not all development should be avoided in areas subject to high risk.
106. Coastal hazard mitigation activities would come within the definition of "Development" but are contemplated by the NZCPS (Policies 24 to 27) and the district plan needs to give effect to the NZCPS. Such activities do not need to be avoided.
107. Based on Appendix One to the s 42A Coastal Overview report, the ODP deals with buildings (or structures).
108. The result is that the PDP will be covering:
- a. coastal hazard mitigation activities that involve eg earthworks and vegetation clearance but do not involve buildings (or structures); and
  - b. river and stream mouth clearance for coastal erosion purposes, as buildings or structures are not involved.
109. The focus should be on avoiding *inappropriate* development.
110. The wording of provisions needs to enable decision-makers to make a decision that is appropriate in all of the circumstances of a case.
111. *Change the wording to:*

"The approach includes avoiding *inappropriate* new development in areas subject to high risk from hazards ...".

### Section 9.1.2

112. Please see the discussion above under the heading “Does Chapter 9 cover coastal hazards or not?”

113. If the policies are not to apply to coastal hazards, the words need to say something along the following lines if there is scope for such a change, which I have not considered:

“These policies apply to all *natural hazards* except coastal hazards<sup>9</sup> in addition to more specific policies in this chapter.”

114. Regardless of how Chapter 9 is amended to refer to coastal hazards or not, all of the Chapter 9 wording including the policies needs to be appropriately worded in relation to coastal hazards. People will have no control over what provisions are or are not included in any plan change. Coastal hazards may be slotted into Chapter 9 and whatever wording is “locked in” in Chapter 9. If the locked-in provisions are not included in a plan change, there will be no opportunity for submitters to challenge the locked-in wording.

### Policy 9.3

115. The s 42A report recommends rewording the policy to start with:

“In areas identified on the District Plan Maps ...”

but that results in uncertainty as to what areas.

116. Rob and I do not want people misunderstanding eg the extent of the coastal environment and purporting to interpret that as an area “identified on the District Plan Maps”. The reference to the areas on the maps should be linked to those identified under Policy 9.1.

117. There are other problems with the policy, including:

- a. the policy is too extreme;
- b. the RMA is not a no-risk statute; and
- c. the added wording (using our submission) relies on a general relief submission point and does not give effect to the relief that we sought in relation to this policy. While the mark-up does not refer to relying on our submission, the text does.

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<sup>9</sup> As noted earlier, whatever that might be interpreted to mean.

118. Among other things, our submission on Policy 9.3 sought:
- a. wording that is less extreme;
  - b. clarification of “new” and a distinction between areas that are already developed and areas where development has not occurred; and
  - c. recognition that inappropriately restrictive provisions can impose unreasonable costs on the community and on individuals.
119. The mark-up shows that extensive changes are made based on GWRC and Telecom and Chorus but those submissions do not support the extensive changes made.
120. Para 146 of the s 42A report deals with GWRC’s submission:
- “441.TT from GWRC requests that Policy 9.3 be amended. They consider that there needs to be consistent terminology in Policy 9.3. GWRC note that the PDP Maps do not identify “highly hazard prone areas”, these maps identify natural hazards. In their submission GWRC suggests the following rewording.
- “New subdivision, ~~and~~ land use and development activities will be located to avoid ~~high hazard prone areas~~ natural hazards, identified on the District Plan Maps.”
121. In relation to GWRC’s suggested wording and not changing the word “avoid”, it is not necessary to “avoid” subdivision, use and development in areas that are not highly hazard-prone areas.
122. GWRC is correct that the maps do not in fact identify highly hazard-prone areas. The maps identify a range of areas that are not highly hazard-prone. So the policy needs to be appropriately worded for such areas.
123. Even in highly hazard-prone areas, use and development (as widely defined in the PDP) should not be avoided see eg Policies 24-27 of NZCPS. Indeed, certain activities *should* occur in highly hazard-prone areas, especially in areas of significant existing development (see eg Policy 27 of the NZCPS).
124. Para 149 of the s 42A report summarises the Chorus and Telecom submissions as:
- “In 442.27 Chorus New Zealand Ltd (Chrous) [sic] and 444.14 Telecom New Zealand Ltd (Telecom) suggest an amendment to Policy 9.3 to add the word inappropriate before land use. Chorus and Telecom consider that the policy should be amended to read “new subdivision and inappropriate land use...”. They consider that the policy does not recognise that some land use activities can take place in risk hazard prone areas.”

125. At para 156, the s 42A report says:

“I partially agree with Chrous [sic] and Telecom’s submissions 442.27 and 441.14. The wording of the policy could be made clearer to note that some development may be appropriate in hazard prone areas, however I do not consider their suggested wording is appropriate as this issue is covered in the later part of the policy.”

126. Instead, at para 158, the s 42A report relies on Rob’s and my submission 451.5 for the changes to the latter part of the policy:

“I recommend that the wording of the second sentence of the policy be amended to be made clearer. I recommend that the policy state *“Subdivision, development and the specified activities will be allowed only where it can be shown that any potential increase in risk exposure on or beyond the land itself has been avoided, remedied or mitigated”*. As opposed to as notified which stated “Where a modelled risk can be removed, through mitigation, to allow development on part of a site, any mitigation must demonstrate the activities and development do not exacerbate the adverse effects of natural hazards for other people and properties including residual risks”. I recommend that change under submission 451.5 where Rob Crozier and Joan Allin seek that the PDP is revised so that provisions are drafted using clear and consistent language.”

127. Those recommended changes do not appropriately address our submissions about Policy 9.3 and the relief sought.
128. It is not clear from the mark-up what submission is relied upon to remove reference to “land use”. In my opinion, a change in land use is relevant in the identified areas so reference to “use” should remain in the policy.
129. The s 42A report refers to new definitions which have not been provided in relation to Chapter 9. Para 47 says:

“Other consequential changes have been made in this chapter in response to amendments to other chapters of the plan or changes to definitions. One example is the changes to the definition of “site”, and the introduction of new defined terms for “property” and “lot”. These changes will be addressed in the appropriate chapter’s s42A report.”

130. *Without relevant defined terms, I am unable to participate effectively. I have therefore put “properties” in square brackets in the recommended wording below.*

131. *Instead of what is recommended in the s 42A mark-up, I suggest the following:*

*“Inappropriate ~~A~~ new subdivision, and land use and development<sup>10</sup> activities will be located to avoid limit those activities in highly hazard prone areas, identified on the District Plan Maps in accordance with Policy 9.1. Where a modelled risk can be removed, through mitigation, ~~to allow Subdivision, use or development on part of a site, may be allowed where risk can be mitigated, and any mitigation must demonstrate the activities and development do will not exacerbate the adverse effects of natural hazards for other people and [properties] including residual risks.~~”*

#### **Policy 9.4**

132. I support the recommended inclusion of reference to “significantly adverse”. A precautionary approach is not needed or appropriate where there are not significant adverse effects or indeed when the risk is not significant.
133. However, the references to “potential effects” and “potentially” significantly adverse in the recommended wording for Policy 9.4 are likely to encourage inappropriately precautionary approaches as has already occurred in relation to coastal hazards in Kapiti.
134. What has happened in Kapiti needs to be avoided in the future. This policy is a key component in helping to stop the problem from occurring yet again
135. In addition, the recommended additional wording:
- “A precautionary approach will be taken to the management of risks from hazards ...”
- is not sufficiently clear and is likely to be misinterpreted.
136. A coastal scientist or Council staff could read that wording and indeed the wording of the entire policy and make exactly the same mistakes that have been made in relation to coastal hazards in the PDP process.
137. They would think that a precautionary approach to the management of risks from hazards would mean a *precautionary* scientific report - and thinking about everything that could *potentially* occur, regardless of how likely or unlikely - resulting in information that is (to use the belated words on the Coastal System Limited’s website relating to the Kapiti assessment) “very unlikely”.
138. In fact, the potential for confusion is even greater. In the Kapiti case, the scientist applied various precautionary assumptions and adjustments. In the NZCPS, it is clear that Policy 3 (Precautionary approach) applies only to the decision-maker.

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<sup>10</sup> A consistent approach should be adopted across the PDP in terms of referring to subdivision, land use and development. Whatever approach is to be adopted across the PDP should be adopted here (as well as in Policy 9.2 and anywhere else the form of wording occurs across the PDP). I suggest “subdivision, use and development”.



139. However, wording in the PDP loses that clarity.
140. The “NZCPS 2010 Guidance note Policy 3: Precautionary approach” says (at page 6):
- “The application of the precautionary approach is a risk management approach rather than a risk assessment approach.”
141. Para 60 of the s 42A Coastal Overview report says (*italics added*):
- “Submissions were received on how the PDP refers to the precautionary approach. The Chapter 9 Section 42A report author agrees with various submitters that the precautionary approach is appropriate, but that the way it is expressed in the District Plan should be amended. *The main reason for doing so is to distinguish that the precautionary approach relates to risk management, rather than risk assessment.*”
142. However, the recommended wording does not distinguish between risk management and risk assessment.
143. The policy needs to distinguish between:
- a. hazard identification and risk assessment, which involve an objective approach (not a precautionary approach), and with the uncertainties reported (not hidden by precautionary adjustments); and
  - b. risk management where decision-makers make judgements based on the information provided as to what, if any, precautionary approach is to be applied.
144. The policy also needs to incorporate the concept of uncertainty.
145. The RMA requires a district plan to give effect to the NZCPS.
146. The definition of “risk” in the NZCPS refers to the joint Australian and New Zealand International Standard on risk management, AS/NZS ISO 31000:2009 *Risk management - Principles and guidelines*.
147. AS/NZS ISO 31000:2009 specifically addresses risk management and uncertainty and sets out a number of helpful principles.
148. Some of the principles are:
- “d) **Risk management explicitly addresses uncertainty.**
- Risk management explicitly takes account of uncertainty, the nature of that uncertainty, and how it can be addressed.
- ...
- f) **Risk management is based on the best available information.**
- The inputs to the process of managing risk are based on information sources such as historical data, experience, stakeholder feedback, observation, forecasts and expert judgement. However, decision

makers should inform themselves of, and should take into account, any limitations of the data or modelling used or the possibility of divergence among experts.

...

h) **Risk management takes human and cultural factors into account.**

Risk management recognizes the capabilities, perceptions and intentions of external and internal people that can facilitate or hinder achievement of the organization's [organization is a wide-ranging term] objectives.

i) **Risk management is transparent and inclusive.**

Appropriate and timely involvement of stakeholders ... ensures that risk management remains relevant and up-to-date. Involvement also allows stakeholders to be properly represented and to have their views taken into account in determining risk criteria."

149. A policy dealing with the precautionary approach needs to:

- a. assess the costs and benefits of such an approach (so as not to be unreasonably precautionary or not precautionary enough); and
- b. recognise that the consequences of a hazard that is random in occurrence are greater than one that unfolds gradually. An event that is eg 100 years away is of less consequence (and hence lower risk) than the same event tomorrow. There is time to adapt, avoid, mitigate ie adaptive management.

150. There should be reference to adaptive management Policy 9.4. Adaptive management is referred to in the "NZCPS 2010 Guidance note Policy 3: Precautionary approach".

151. *We never again want to see an unreasonable and unwarranted precautionary approach adopted in relation to any natural hazard in Kapiti - coastal or otherwise. Policy 9.4 needs to be worded to ensure that such a thing never happens again.*

152. *I suggest the following wording for Policy 9.4:*

*Hazard identification and risk assessment will be undertaken using an objective (not a precautionary) approach, with the uncertainties and effects reported.*

*If uncertainty is material to the management of significant hazard risks with significant adverse effects, decision-makers will adopt a A precautionary approach will be taken to management of such risks with respect to subdivision, [use] and development where there is uncertainty about the potential effects of a hazard until further detailed information on the extent and nature of the hazard becomes available. The benefits and costs will be taken into account and, where appropriate, adaptive management will be adopted.*

153. *In the recommended wording, I have referred to “subdivision, [use] and development” as “use” was not in the policy as notified. A change in land use is something that is relevant in an area with significant risks and significant adverse effects. In my opinion, the policy should apply to all three but I have not checked for scope to include “use”.*

### Section 9.2.3 headings

154. The mark-up recommends deleting the heading “**Rules and Standards – Flood hazards**”, relying on cl 16(2).
155. If that occurs, it will be inconsistent with the format for earthquakes in section 9.3.3.
156. Removing it also leaves some room for ambiguity in relation to standards. Retaining the heading retains clarity and consistency.

157. *Do not remove the heading “Rules and Standards – Flood hazards”.*

### Mark-up Rule 9B.1A.1 - PDP Rule 9B.1.2 - rule about separation from water bodies for any building or structure in any zone

158. Moving Rule 9B.1.2 to Rule 9B.1A.1 and changing the formatting has resulted in significant changes to the rule that no submitter sought.
159. I addressed this issue in my evidence and submissions lodged at the beginning of the process<sup>11</sup>. My references there to the SEV are equally applicable to the current Chapter 9 mark-up and I refer you to that discussion which I do not repeat here.
160. The standard includes a setback for structures, but structures are permitted under Rule 9B.1.6. Rule 9B.1A.1 would defeat the ability to use structures under Rule 9B.1.6.
161. One of the standards doesn’t say to what it applies - buildings or structures.
162. *The formatting of Rule 9B.1.2 in the PDP needs to be retained in Rule 9B.1A.1. The reformatting has changed the meaning of the rule.*
163. *Exempt activities under Rule 9B.1.6 not only for standard 1 but also for standards 2 and 3.*

### Rule 9B.1.4

164. The recommended additional wording:

“iii flood mitigation works in the River Corridor complying with rule 9B.1.6”

does not address the concerns about river and stream clearance activities raised by our submissions or the Mollers.

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<sup>11</sup> Under the Chapter 9 - Hazards heading and the sub-heading “Chapter 9 rule about separation from water bodies for any building or structure in any zone - PDP Rule 9B.1.2”.

165. The reasons include:
- a. river and stream clearance activities occur in a number of rivers and streams, not just in the River Corridor; and
  - b. the reference to the River Corridor inappropriately limits Rule 9B.1.6.
166. An additional reason that cannot be addressed in this section of the PDP which deals with flood hazards is that the exemption does not cover river and stream clearance for coastal erosion purposes.
167. There are a variety of different ways and places (eg in the permitted activities column vs in the standards column), and differences in wording, used to identify exemptions in different rules across the chapters of the PDP. A consistent format and language should be developed and used consistently across the PDP for all exemptions.
168. *In Rule 9B.1.4, wording should simply exclude activities permitted by Rule 9B.1.6, using whatever terminology is consistent with that used elsewhere in the PDP. Rule 3A.1.9 in the Chapter 3 mark-up uses the following:*
- “activities permitted under Rule 9B.1.6”*
- which seems to be suitable terminology.*
169. *Develop a consistent format and terminology and use it consistently across the PDP for all exemptions.*
170. *Do not adopt the recommended wording of iii in the mark-up ie “flood mitigation works in the River Corridor complying with rule 9B.1.6”.*
171. *Do not add the recommended Note.*

### **Rule 9B.1.6**

172. There are a number of recommended changes to Rule 9B.1.6 in the mark-up that are not supported by either our submissions or the Moller submission - or any other submission.
173. Inclusion of the Stream Corridor is acceptable if that makes sense in the context of the two rivers mentioned (which the report recommends deleting but which should remain) but all of the other recommended changes do not flow from our submissions.
174. There was no request to change the reference to the Open Space (Conservation & Scenic) Zone. That is the Open Space zone that covers river and stream mouth clearance activities so there is no need to refer to other Open Space zones. If the author wishes the rule to apply to other Open Space Zones, that should be done by variation.

175. There was also no request to change:
- a. the references relating to the Waikanae and Otaki River; or
  - b. the distinction between “structures” referred to in the first part of the provision and the lack of reference to “structures” in the latter part of the provision.

176. *All changes recommended on the mark-up with the exception of the reference to the Stream Corridor should not be made. If the reference to Stream Corridor does not make sense in relation to the Waikanae and Otaki Rivers then that change should not be made either.*

177. *Do not add the recommended Note.*

### **Rule 9B.1.8**

178. The mark-up of Rule 9B.1.8 purports to make a significant change to the rule ie adding:

“on land outside of the beds of any lake or river”

based on cl 16(2).

179. The recommended change is inappropriate because:
- a. it is an inappropriate use of cl 16(2);
  - b. it changes the meaning of the provision;
  - c. it seems to be based on a misunderstanding of the law in relation to beds of lakes and rivers; and
  - d. the rule should simply apply in the River Corridor without any further qualification.
180. On a different topic, the s 42A Coastal Overview report refers to Rule 9B.1.8 and says at para 159:

“Rule 9B.1.8 permits gravel extraction, provided it is carried out by the Regional Council, District Council, or Department of Conservation. Although the intention of this rule may be that the gravel extraction should be related [sic] flood hazard mitigation works, the wording is not definitive on that point.”

181. At para 161, that report continues:

“Regarding Rule 9B.1.8, it should ideally be reworded to clarify that permitted gravel extraction is only for the purpose of flood hazard mitigation. However, there are no submissions that request this outcome so there is a potential issue of scope. If there is no scope for this particular outcome, the rule (without an amendment to specify its link to flood hazard mitigation) should still be referenced in other chapters – see the first bullet point below.”

182. The meaning of the rule would be considered in its context. When the context of the rules is considered, it seems to me that it is clear that Rule 9B.1.8 applies only for flood hazard purposes as do all of the rules that begin with "9B".

183. The heading and text that relates to all of the 9B rules states:

**"9.2.3 Flood Hazards Rules and Standards**

The following rules for flood hazards apply to all zones."

184. However, when drafting our submission, I originally thought that Rule 9B.1.6 would cover river and stream clearance activities for all purposes ie coastal erosion purposes and flooding as I had overlooked the heading to the rules ie only flood hazards. Our submission sought clarification that Rule 9B.1.6 would cover river and stream clearance activities.

185. So I was initially confused by the applicability of Rule 9B.1.6.

186. Similarly, it appears that the s 42A Coastal Overview report author is uncertain as to the applicability of Rule 9B.1.8, perhaps not appreciating the importance of the heading.

187. Even the Chapter 9 s 42A author herself says in para 2.14 in her presentation day report:

"Rule 9B.1.8 permits gravel extraction, provided it is carried out by the Regional Council, District Council, or Department of Conservation. Although the intention of this rule may be that the gravel extraction should be related to flood hazard mitigation works, the wording is not definitive on that point and there are no submissions that would allow this clarification. I consider that the issue is unlikely to have significant effects as this rule only allows work to be carried out by the Regional Council, KCDC, Department of Conservation or one of their contractors."

188. It seems to me clear that all of the rules beginning 9B relate only to flood hazards. However, it is undesirable for provisions to be worded so they are capable of being misunderstood if one does not carefully scrutinise the entire section of rules, including a heading some distance away from the actual rule.

189. Given that the heading of the rules is "**9.2.3 Flood Hazards Rules and Standards**" and the potential for people to misinterpret rules that are detached from the heading, perhaps a note to the heading should be included for all of the rules, and not just Rule 9B.1.8, or some other solution should be used to identify that all of the 9B rules relate only to flood hazards.

190. *Do not make the recommended change to the rule in the mark-up and do not include the recommended Note.*

191. *Consider adding a note to the "**9.2.3 Flood Hazards Rules and Standards**" heading for all of the rules, not just Rule 9B.1.8, or provide some other solution for rules that occur some distance from the heading to identify that all of the rules in that section (not just the permitted activity rules) relate only to flood hazards.*

**Rules 9B.5.2 and 9B.5.4**

192. These non-complying activity rules apply to buildings.
193. The definition of "Building" has not been provided with the Chapter 9 materials. In the PDP, the definition means structures, except for those excluded from the definition.
194. Rule 9B.1.6 permits certain structures.
195. *Rule 9B.1.6 should be exempted from Rules 9B.5.2 and 9B.5.4.*

Joan Allin  
18 July 2016