

## **Officer's Reply**

### **Coastal overview**

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#### **1. Background**

- 1.1 The coastal resource presentation day took place on 13 July 2016.
- 1.2 I presented a statement which summarised issues related to an overview of coastal issues, and how these have been integrated into the PDP to date. I also presented a statement that summarised coastal integration issues from the perspective of Chapter 8: Open Space.
- 1.3 My written reply responds to several questions asked by the Commissioners.

#### **2. Questions**

- 2.1 Questioning from the Panel left four matters unanswered, which I undertook to review and provide a response to in my written reply. The related questions were:
  1. *Are the retained ODP provisions solely directed at seawalls, or is part of the reason for the existence of those rules related to issues of character / amenity?*
  2. *How focussed or deliberate are the ODP rules which control the erection of seawalls?*
  3. *What scope exists for any amendments to the PDP that may be necessary to integrate the retained ODP provisions?*
  4. *What scope exists for amending Objective 2.18, as set out in paragraph 5.3 of my statement on Chapter 8: Open Space?*
- 2.2 Answers to those questions are set out below.

#### **3. ODP amenity and hazard provisions**

- 3.1 In Appendix One to the Section 42A coastal overview report, I set out provisions from the ODP that could be potentially considered to remain in force. In my statement at the hearing on 13 July, I qualified my position by saying that those provisions should be subject to review by the Council's policy team and some form of ratification by the Council.
- 3.2 With regard to amenity issues, this appears to be an interwoven component of the reasons for the coastal building line restrictions. To assist the Panel, the table below sets out building line policy linkages<sup>1</sup> noted in Part D (Rules) of the ODP, and whether the referenced policy relates to hazard or amenity matters.

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<sup>1</sup> Shown by marginal annotations in the ODP

<b>ODP Provision</b>	<b>Policy X-Ref</b>	<b>Subject of Policy</b>
D.2 - Rural Zone – rules and standards		
<u>D.2.1.5</u> Prohibited Activities Buildings within 100m of the coast  <i>(see page D2-14)</i>	C.9.1 policy 1 C.9.1 policy 2 C.9.1 policy 3	environment hazards hazards
<u>D.2.2.1</u> Siting of Buildings (Permitted Activity Standard) (i) Prohibition on building within 100m of the coast (iv) Cross-refers to Yards standards (see below)  <i>(see pages D2-25 and D2-26)</i>	C.9.1 policy 5 C.9.1 policy 6 C.9.1 policy 7 C.9.1 policy 8 C.10.1 policy 1 C.10.1 policy 2 C.10.1 policy 4 C.15.1 policy 8	amenity environment amenity amenity / environment amenity amenity amenity / environment hazards
<u>D.2.2.1</u> Yards – (iii) Coastal Yard (Permitted Activity Standard) Required 100m setback from coast  <i>(see page D2-28)</i>	C.9.1 policy 3 C.9.1 policy 5 C.9.1 policy 7 C.9.1 policy 8 C.15.1 policy 8	hazards amenity amenity amenity / environment hazards
D.1 - Residential zone – standards		
<u>D.1.2.1</u> Yards – (iii) Coastal building line restrictions (various) (iv) Relocatable buildings  <i>(see pages D1-31 and D1-32)</i>	C.1.1 policy 1 C.15.1 policy 3 C.15.1 policy 7 C.15.1 policy 8	amenity hazards hazards hazards

- 3.13 In my opinion, in the Rural zone there is no strong inference to be drawn from these policies about whether the reason for the building line restrictions predominantly relates to either hazards or amenity / environment concerns. However, in the Residential zone, the policy focus is more clearly on hazards – although not exclusively.
- 3.14 There is nothing in the ODP to suggest that the reason for a building line restriction in any particular location is limited to solely amenity or coastal erosion risk. This is contrary to the understanding of some submitters, who (I infer) say the lines at Waikanae, Te Horo and Peka Peka are in place only for amenity reasons.
- 3.15 Not all of the policies referenced above have been included in the draft of potentially retained ODP provisions. Policies which are in the table above, but not in the draft are: C.10.1 policies 1, 2 and 4; C.9.1 policies 5 to 8; and C.1.1 policy 1. They were excluded because none of them refers in any way to coastal hazards. However, their inclusion may need to be reconsidered, given the specific cross-reference to them from the coastal building line restriction rules.
- 3.16 Please also note that the policies listed in the table are not the only policies listed in the draft of retained ODP provisions. Policies not in the table above, but which are in the draft of ODP provisions, are: C.9.1 policy 4; and C.15.1 policies 1 and 4. Those three policies are purely focussed on natural hazards, although only C.9.1 policy 4 refers specifically to coastal matters. They are not included in the table above because the rules do not identify specific links to those policies.

- 3.17 The Independent Review acknowledged that some of the building restriction lines may have a multiple purpose<sup>2</sup> - presumably recognising that amenity and hazard purposes may be intertwined. The reviewers stated that the purpose of the lines should be clarified, but offered no guidance on the implications of that for deciding which ODP provisions to carry forward as a 'stop gap' measure. My own view is that, to the extent possible, the retained ODP provisions should focus on hazard management. If any retained provision could be interpreted as also having an amenity aspect, then it would need to be made clear that the amenity aspect has been superseded by the PDP.
- 3.18 In two places, the draft of retained ODP provisions include standards related to height, and height in relation to boundary. These are under D.1.2.1 (Residential zone) and D.6.2.1 (Open Space zone). In each case, the cross-referenced policy is limited to amenity matters. It would therefore be easy to exclude these provisions from being retained, if the ODP provisions remaining in force are to be focussed solely on hazard matters. I included the height provisions in the first draft because it seemed reasonable to be clear about how the scale of a hard protection structure would affect activity status.

#### **4. ODP seawall provisions**

- 4.1 If a seawall is in the Residential zone, the removal of the height standards I refer to above will make no difference as any seawall 1.5m or less is a discretionary activity. However, if a seawall is in the Open Space zone (which covers a large part of the coastline), height and height in relation to boundary are the only potentially applicable standards. Without them, a seawall of any height would be a permitted activity. In practice this is unlikely to create a problem, as almost all Open Space zoned land adjoining the coast is in public ownership. The one exception is an allotment north of Te Horo, where there is no history of coastal erosion.
- 4.2 Note that the term "seawall" is not defined by the ODP or PDP. The term is used in the NZCPS and the proposed regional Natural Resources Plan. The PNRP does not provide a definition, but the NZCPS includes seawalls and other structures<sup>3</sup> within the defined term "hard protection structure"<sup>4</sup>. These structures are defined not by size or type, but by their "primary purpose or effect of protecting an activity from a coastal hazard, including erosion"<sup>4</sup>. I have used the term "seawall" generically in the draft of retained ODP provisions as it is a familiar term to the public, and it should be taken to mean any built hard protection structure that is intended to provide protection from coastal hazards.
- 4.3 Seawalls ("coastal protection works") are referred to by Part C of the ODP, in the discussion which precedes the objectives and policies, and are also referred to in C.9.1 policy 4. That policy reads:
- Discourage coastal protection works on the Coastal Marine Area interface where they are not already present and encourage management options such as managed retreat and coastal re-nourishment rather than hard engineering works when protection works are sought.*
- 4.4 In my opinion, this policy can be seen as a foundation for generally treating seawalls as having discretionary activity status, which is how I have interpreted the ODP rules applying to the Residential zone. The policy has no statutory relevance in relation to

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<sup>2</sup> Final paragraph of section 6.4

<sup>3</sup> Including rock revetments, groynes, breakwaters, stop banks, retaining walls, and modification of land

<sup>4</sup> NZCPS 2010, Glossary, hard protection structure

seawalls in the Open Space zone if they are judged to be a permitted activity but, as noted above, this is unlikely to be an issue.

- 4.5 Despite the policy reference (C.9.1 policy 4), the ODP rules make no specific mention of seawalls or other coastal protection structures. This lack of reference is not an issue, as I consider that seawalls fall under the definition of “building”. That definition, plus the existence of the coastal building line restrictions, has shaped my opinion about the activity status of seawalls. At least in the Residential zone, my opinion is also supported by C.9.1 policy 4 noted above. My interpretation aligns with how I understand the Council has administered resource consent applications for seawalls – that is, treating them as buildings as defined by the ODP.
- 4.6 The ODP definition of “building” is similar in many respects to the PDP definition. Under the definitions in both plans, a building is also said to include a “structure” – subject to listed exclusions. Neither plan defines “structure”. The PDP as notified did include a definition of “coastal protection structure”, but it was withdrawn along with other coastal hazard provisions in 2014. The undefined term “structure” therefore seems interchangeable with the definition of “building”, except for the specific exclusion of “detached structures” such as water tanks.
- 4.7 The ODP definition of building specifically excludes “retaining walls” of less than 1.5m in height. The inference being that a retaining wall over that height is a building and would therefore be relevant to any ODP rule that controls buildings. This is consistent with the Building Act<sup>5</sup> which exempts retaining walls 1.5m or less from the need to obtain building consent. In contrast, the PDP excludes walls under 2m high from being considered a building. The definition of building is an important element in assessing any future applications for resource consent, so the difference between the ODP and PDP definitions will need to be resolved as part of integrating the ODP and PDP provisions.
- 4.8 In summary, in my review of the ODP, I have made the assumption that the logical classification of a seawall is as a building because:
- A seawall, in terms of its intent, is a wall that retains land against erosion from the sea.
  - Under the definition of building, walls 1.5m or less are exempted from being defined as buildings, which implies that walls over that height are buildings.
  - This is consistent with the Building Act distinction between walls that are or are not buildings for the purposes of that Act.
- 4.9 I have therefore taken any reference to “building” in the ODP to be potentially relevant to coastal hazard protection structures (including seawalls) where that structure is over 1.5m high.

## **5. Integration of the ODP into the PDP**

- 5.1 In my statement I outlined the issue of how the retained ODP provisions might be integrated into the PDP. I presented the Panel with steps that could be followed by the Council’s policy team. Those steps were:
1. Confirm and potentially refine the ODP provisions that should remain in force, once the hearings for Chapters 3, 4, 8 and 9 have concluded; and

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<sup>5</sup> Schedule 1, Part 1, Clause 20. Note that there are several determinations made under the Building Act (by MBIE) that regard seawalls over 1.5m high as buildings.

2. Seek a Council resolution that these are the provisions which will remain in force in the interim; and
  3. At the integration hearing, recommend to the Panel any amendments to PDP policies or rules that may be needed to improve integration with the retained ODP provisions; and
  4. At the integration hearing, recommend to the Panel how or whether the retained ODP provisions should be physically integrated with the PDP.
- 5.2 The Panel has asked what scope would exist to give effect to the 3<sup>rd</sup> point? That is, what scope is there to amend PDP provisions to improve integration with the retained ODP provisions.
- 5.3 With respect, in some ways that is an impossible question to fully answer without first knowing what amendments might be considered desirable to improve integration. However, any potential amendment would naturally fall under one of two themes.
- 5.4 One of the themes is structural changes, which I referred to under the 4<sup>th</sup> point – “how or whether the retained ODP provisions should be physically integrated with the PDP”. I consider that the Panel is able to recommend any such changes, via Schedule 1 Clause 16, provided that they do not affect the meaning of the retained ODP provisions or the PDP provisions – with any changes being limited to those of “minor effect”.
- 5.5 Although the Council appears able to carry forward any provisions from the ODP, it is worth noting that some submissions on the PDP provide specific support for that action. These include:
- Submissions 34 (Jobson), 37 (Garriock), 111 (Jefferies), 204 (Quayle), 349 (Davies), 354 (Borgers), 374 (26 Limited), 598 (Boyd), 671 (Hunn), 712 (Edmond), 719 (Hay), 723 (Callister/Galtry), 730 (Nolan), 737 (McIntyre), 749 (Gordon), 752 (Short) and 770 (McIntyre) which all seek that the notified PDP hazard lines and associated provisions throughout the Proposed District Plan are deleted, and that the Council revert to the Operative District Plan provisions as an interim measure.
  - Submitter 223 (Steele) seeks that all building lines return to the position they occupy in the operative district plan.
  - Other submitters, including Coastal Ratepayers United, seek (variously) the inclusion of the existing coastal yards at Te Horo, Waikanae, Peka Peka or Paekākāriki – although not necessarily for the management of coastal risks.
- 5.6 I consider that these submissions, and the Act, would allow the Panel to recommend how or whether the retained ODP provisions should be physically integrated with the PDP. In my opening statement I noted that there are multiple ways that could be achieved. This is something that the Council’s policy team will need to explore and recommend to the Panel as part of the integration hearing. Whatever option is chosen, I consider that the outcome needs to be clear and simple for both staff and the public.
- 5.7 The other theme is any ODP or PDP wording changes that might be desirable, to improve integration. In a very general sense, Submission 451 (Crozier/Allin) might allow this occur. The submission seeks that:
- The PDP is revised so that provisions are drafted using clear and consistent language, appropriate provisions are included, ill-considered provisions are removed, default rules are appropriate, provisions are drafted so that unintended

consequences will not occur, and provisions are legally valid and in accordance with the RMA and relevant documents referred to in the RMA, including the NZCPS, the Regional Policy Statement and the Proposed Regional Policy Statement.

- 5.8 In particular, the request that ‘unintended consequences’ are avoided rightly points to the need for a close examination of how retained ODP provisions and PDP provisions would work together. If this submission point (or any similar such points) cannot be legally relied on as justification for amendments, then the Panel / Council would again be constrained by Schedule 1 Clause 16 – with most changes being the limited to those that have “minor effect”. One exception would be changes intended to meet the requirements of the NZCPS, as allowed by Clause 16(1). To that extent, some potential ‘improvements’ could be made but they should only be regarded as interim and would be no substitute for the review of coastal hazard management which the Council has committed to in its settlement with the North Ōtaki Beach Residents Group.
- 5.9 Another exception would be any changes that can reasonably be linked to a submission point. As noted above, the Council has not yet reached a position on what changes might be desirable – so I am not in position to judge whether submissions provide scope for individual changes.

## **6. Amendment of Objective 2.18**

- 6.1 In my Chapter 8: Open Space statement (related to coastal resource integration issues) I included the following paragraph:

*5.3 I have also considered Objective 2.18 in Chapter 2, which sets out the role of open space land. A possible addition to this objective is to recognise the potential value that Open Space zoned land plays in hosting coastal hazard mitigation works, and as the site of natural buffers against coastal erosion. Making such an amendment could be seen as consistent with NZCPS Policy 25(b) which is to “avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards”.*

- 6.2 My reasons for identifying this particular NZCPS policy are that:

- Open Space zoned land exists as a strip of varying width along the vast majority of the District’s coastline; and
- Open Space zoned land hosts natural features (such as dunes) which are natural defences against coastal hazard risk; and
- Open Space zoned land therefore acts as a de-facto buffer against coastal erosion and sea level rise;
- Because of its location, Open Space land may be the only practical location for hard protection structures; and
- Changing the zoning of the land from Open Space to some other zone would raise the potential for more intensive built development, thereby “increasing the risk of adverse effects from coastal hazards” [wording from Policy 25(b)].

- 6.3 In light of the above, recognising (via Objective 2.18) that Open Space land has value in responding to coastal hazard risks would help to give effect to NZCPS Policy 25(b). Doing so would also help give effect to NZCPS Objective 5 (especially bullet 3), which is:

### NZCPS Objective 5

*To ensure that coastal hazard risks taking account of climate change, are managed by:*

- *locating new development away from areas prone to such risks;*

- *considering responses, including managed retreat, for existing development in this situation; and*
- *protecting or restoring natural defences to coastal hazards.*

- 6.4 I have checked the Council's summary of submissions, and some specific submissions, but can find nothing that would provide clear scope for the amendment I suggested in paragraph 5.3. In particular, I have reviewed submissions lodged by Coastal Ratepayers United, North Ōtaki Beach Residents Group, and Rob Crozier / Joan Allin.
- 6.5 I have also reviewed the Section 42A report on Chapter 2. It did not recommend any amendments to Objective 2.18, and it did not dismiss any submissions that would have had a similar outcome to the matter I raised in my statement.
- 6.6 Notwithstanding the lack of submissions on this particular point, I consider that there may be scope under RMA Schedule 1 Clause 16 to make the amendment I have proposed. Clause 16(1) states that a local authority must make an amendment to its proposed plan that is required by Section 55(2) of the Act. Section 55(2)(a) states that a local authority must amend a document if a national policy statement directs, "so that objectives and policies specified in the document give effect to objectives and policies specified in the statement".
- 6.7 In line with Clause 16 and Section 55, the NZCPS states that: *"local authorities must amend regional policy statements, proposed regional policy statements, plans, proposed plans, and variations to give effect to NZCPS provisions that affect these documents as soon as practicable"*.
- 6.8 If the Panel agrees, the specific wording amendment that I recommend is:
- Objective 2.18 – Open spaces / active communities*  
*To have a rich and diverse network of open spaces that:*
- a) is developed, used and maintained in a manner that does not give rise to significant adverse effects on the natural and physical environment;*
  - b) protects the District's cultural, ecological and amenity values, while allowing for the enhancement of the quality of open space areas;*
  - c) supports the identity, health, cohesion and resilience of the District's communities;*
  - d) contributes to buffering against coastal hazard risks, and hosts the protection or restoration of natural defences to coastal hazards;*
  - e) may be the most practical location for hard protection against coastal hazard risks; and*
  - f) ensures that the present and future recreational and open space needs of the District are met.*

- 6.9 Point (d) above would give effect to NZCPS Objective 5 and Policy 25(b). Point (e) above has regard to NZCPS Policy 27(c) and (d).
- 6.10 Even though these changes would help give effect to the NZCPS, I appreciate that it may be better to consider them as part of a wider suite of future amendments. That is, amendments like this could form part of an integrated Council plan change addressing coastal hazards.

## **7. Paekākāriki seawall**

- 7.1 As part of my statement, at paragraphs 2.41 and 2.42, I provided the Panel with some summary information about regional and district resource consents granted in relation to seawalls. One of the regional consents included consent granted to KCDC in May 2016 for the renewal of the 960 metre public seawall along the Paekākāriki foreshore.

For the Panel's further information, the Council has recently (on 14 July) called for tenders from contractors to give effect to the consent.

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