

## **Section 42A report overview:**

### **Coastal Resource**

#### **1. Background to the Section 42A Report**

##### **The coastal overview report**

- 1.1 I have prepared a Section 42A report titled “Coastal Overview”. The report does not relate to a single chapter of the PDP. Instead it concerns four chapters central to how the PDP manages the ‘coastal resource’. The chapters identified by the Panel are Chapter 3 (Natural Environment), Chapter 4 (Coastal Environment), Chapter 8 (Open Space) and Chapter 9 (Hazards).
- 1.2 The Section 42A report writers for each of those chapters will provide a short presentation today. They will outline the major themes covered by their reports; ‘cross-over’ issues between the reports; how they have recommended those issues be resolved; and implications for chapters of the PDP – other than chapters 3, 4, 8 and 9. Given that they address cross over issues, you may hear a degree of repetition – with the same matter being approached from different perspectives.
- 1.3 The need for a coastal overview report was identified in the Panel’s Minute No. 5 (7 April 2016). In doing so, the Panel stated that:

*The issue addressed in this Minute concerns 'coastal management' in the broadest sense; both the natural values associated with the coastal resource and the associated management of natural hazards associated with that very resource. The way in which decision-making may or may not be integrated in considering those matters is pivotal to that issue. [emphasis in original]*
- 1.4 The Panel therefore directed the preparation of “a Section 42A Report that addresses how the PDP provisions relating to the ‘coastal resource’ fit together, including the relationship of those provisions with the extant Operative District Plan provisions relating to coastal hazard management”.
- 1.5 The coastal overview report is the Council’s response to that Minute. However, it must be considered as only one part of the reporting on the coastal resource. The other parts are the Section 42A reports on chapters 3, 4, 8 and 9 that will be considered in individual chapter hearings – scheduled for late July through to mid-August.

##### **The integration process**

- 1.6 Today is a presentation to inform the Panel about integration issues identified by the report writers. As such, its purpose does not include a full discussion of points raised by submitters, although some submissions may be referred to for illustrative purposes. Future individual hearing days have been set aside for each chapter, at which time each report writer will provide an opening statement to the Panel. It is possible that those opening statements may respond to some matters raised by the Panel today.
- 1.7 After the individual chapter hearings, there will be a final Whole PDP Integration hearing, with the specific intention of addressing issues of integration, interpretation, definitions, and incentives. At that time, integration matters arising from the individual hearings will be addressed in a report or reports presented to the Panel. The report writers for chapters 3, 4, 8 and 9 understand that today’s presentation is therefore only one stage of working to resolve integration issues.

- 1.8 To assist the Panel, the Council has prepared a series of maps that overlays mapping information from different maps in the notified PDP. This includes zoning from the “A” series of maps; flood hazard information from the “B” series; and character areas from the “C” series. It also includes the building restriction lines that I consider should remain in force from the ODP. These mapped features have been brought together to help highlight the geographic location of issues.
- 1.9 Another series of maps has also been prepared. This shows information from the regional Proposed Natural Resources Plan (PNRP). They show the extent of ‘sites of significance’ scheduled by the PRNP. This has relevance to consent activity status under the PNRP, as I will set out later in my statement. The PNRP information is relevant, as the degree of integration across the jurisdictional boundary between KCDC and GWRC is a matter that needs to be considered.

## **2. Major Themes and Issues**

### **Plan complexity**

- 2.1 The structure of the PDP is complex. There are zones (such as Open Space or Living Environment) that apply to land defined by title boundaries. There are specific overlays, such as ecological areas, that apply to defined non-cadastral features within zones. There are broad brush overlays, such as the Coastal Environment provisions, that lie over zones and features. And there are also district-wide provisions such as infrastructure.
- 2.2 Because the coastal environment, and the coastline in particular, is a hot point for overlapping management issues, the complexity is very evident. It is a complex matter for a professional planner to understand, and doubly difficult for an average member of the public.
- 2.3 This degree of complexity is not unusual in what is commonly referred to as ‘second generation’ plans. It can be a necessary evil, used as a means of addressing individual issues in a contained way. The alternative is endless repetition of issue specific provisions within each zone of the plan. However, the risk is that issues are addressed as individual ‘silos’, leading to unintentional conflict between different parts of the plan. The need for careful integration is therefore clear.

### **Integration**

- 2.4 Integrated management is one of the significant functions of territorial authorities under the Resource Management Act. Section 31 of the Act directs the Council to prepare objectives, policies and methods (which includes rules) to achieve the integrated management of effects.
- 2.5 Integration is therefore an internal necessity for a district plan. The provisions *within* each chapter of the PDP must be an integrated suite which addresses the particular issues covered by the chapter. The provisions must also be integrated *between* chapters, ensuring that duplication and inconsistency is avoided or minimised. However, I make the point that it is not necessary, or even desirable, to avoid every element of tension between provisions. There are inherent tensions in the Act, and these are naturally reflected in district plans.
- 2.6 This tension is best demonstrated in Section 5 of the Act (Purpose) which seeks to enable development but also to sustain resources and avoid, remedy or mitigate effects. If there are appropriate objectives and policies and rules, the resource consent process allows those tensions to be explored and choices made in any individual case.

- 2.7 A district plan does not exist in isolation. It must have regard to policies and plans prepared at the national and regional level. The aim of integration therefore needs to either have regard to or give effect to particular planning instruments, depending on the direction provided by the Act. Of particular relevance to the coastal resource are the New Zealand Coastal Policy Statement, the Regional Policy Statement, and provisions of various regional plans – especially the regional coastal plan and the proposed natural resources plan (PNRP). The report writers have taken these instruments into account when considering integration issues.

### **New Zealand Coastal Policy Statement**

- 2.8 The ODP became operative in 1999, five years after the first NZCPS was published. I have to assume that the district plan was considered consistent with the NZCPS at that time, even though some of the ODP provisions (such as building restriction lines) may have been carried forward from the pre-NZCPS period.
- 2.9 My Section 42A report includes a section on the 2010 NZCPS. Among other matters, I provide some analysis of whether the retained ODP provisions are consistent with that current version of the NZCPS. I reach the conclusion that the ODP provisions are broadly consistent, but I also state that they are lacking in terms of giving effect to the strategic approach required by the 2010 NZCPS. To assist the Panel in comparing the 1994 and 2010 versions of the NZCPS, and the retained ODP provisions, I have prepared a summary table. The table (attached to this statement) was not included as part of the Section 42A report.
- 2.10 The table sets 1994 NZCPS provisions alongside comparable 2010 NZCPS provisions, and links those relevant provisions in the ODP. There are no exact matches between the two NZCPS in terms of wording, but there are matches in terms of themes. The 2010 NZCPS tends to take 1994 themes and expand on them, thereby directing the reader to consider the issues in more detail. One important area where there is no match at all is Policy 27 of the 2010 NZCPS which requires the Council to examine strategic options for reducing coastal hazard risk. In particular, it requires the Council to look at risk over a 100-year time frame and evaluate the costs and benefits of risk reduction options.
- 2.11 I understand that this is the Council's intention; to work towards a strategy based on an evaluation of costs and benefits. Where relevant, parts of that strategy would be put in place via the district plan. This process will of course require a base of scientific, social and economic analysis, and will require non-statutory and statutory discussion with the community. It would also likely require the Council to monitor the performance of its strategy on an ongoing basis, and make adjustments over time if necessary.

### **ODP provisions remaining in force**

- 2.12 As noted earlier, the Panel's Minute No. 5 requested that the coastal overview report address the existing ODP provisions related to coastal hazard management. The Council's decision to retain some ODP provisions was set out in a resolution dated 24 July 2014. It reads:

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

- 2.13 The withdrawn parts of the PDP were notified to the public but, as far as I am aware, no attempt was made in 2014 to define the ODP provisions which would remain in

force. In March 2016 the Council prepared an internal draft of the likely provisions. I used this as a starting point for my own review which is now attached as Appendix One of the Section 42A coastal overview report.

- 2.14 In considering which provisions should potentially remain in force, I have included only those which clearly relate to coastal hazard management. Any rules which do not clearly ‘flow down’ from coastal hazard policies have not been included. As an example, I considered but excluded ODP earthworks and vegetation clearance rules that focus on the coastal environment. They were excluded because there was nothing in the ODP to suggest that they give effect to coastal hazard policies.
- 2.15 Other than the specific provisions which should potentially be retained, my review provides an activity status table which summarises how buildings or hard coastal protection (seawalls) are treated by the ODP.
- 2.16 In my view the ODP provisions which remain in force in the interim and can do so without creating conflict with the PDP provisions, the NZCPS, or regional planning documents. To a greater or lesser extent, and depending on geographic location, the ODP and PDP provisions can allow combinations of the options referred to by the Carley report<sup>1</sup>. That is:
- No action;
  - Retreat and relocation;
  - Accommodation (optimising the coexistence of the built environment and natural processes); and
  - Protection through:
    - Soft engineering (such as beach nourishment);
    - Hard engineering (such as seawalls).
- 2.17 The real problem is that individual actions, whether private or public, taken within that set of options, will not be part of the well-developed strategic approach required by Policy 27 of the 2010 NZCPS.

### **Incorporating the ODP provisions into the PDP**

- 2.18 The 2014 Independent Review recommended a “placeholder”<sup>2</sup> in the district plan to explain that the ODP provisions will remain in place until a variation is prepared, and direct the reader to (I assume) a separate document that would “sit outside”<sup>3</sup> the plan. In line with that recommendation, Appendix One of the Section 42A coastal overview report is a first draft attempt at such a document.
- 2.19 The evidence of Katherine Moody<sup>4</sup> in March 2016 asked how users of the (new) district plan will be alerted to the fact that coastal hazards are mapped for the district in the ODP. I agree that the Independent Review recommendation of a document sitting outside the plan may not be an ideal outcome in terms of usability. However, it does have the advantage of clearly showing the specific suite of provisions remaining in force for the present.

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<sup>1</sup> *Coastal Erosion Hazard Assessment for the Kāpiti Coast: Review of the Science and Assessments Undertaken for the Proposed Kāpiti Coast District Plan 2012*, J T Carley, P D Komar, P S Kench and R B Davies, June 2104

<sup>2</sup> Page 51

<sup>3</sup> Footnote 109, page 51

<sup>4</sup> Paragraph 124, presented at the General / Plan-wide hearing

- 2.20 An alternative could be to keep the ODP text in a separate document, while adding the coastal building line restrictions to planning maps. I say this because the district plan maps are often the first place that a member of the public (or a professional planner) will turn to. Another alternative could be to incorporate the ODP provisions into Chapter 9: Hazards, and again add the restrictions to the planning maps.
- 2.21 For all alternatives, I agree with the Independent Review recommendation that a placeholder (or marginal annotation) is needed. I suggest it should indicate that the provisions 'are under active review and will be subject to a future publicly notified plan process to either replace, alter or retain' them.
- 2.22 But before any of those alternatives is put in place, I recommend that the draft suite of retained ODP provisions should be subject to some form of confirmation by the Council, even though this would not be a statutory RMA process. I am unsure whether it is within the mandate of the Panel to recommend which ODP provisions should remain in force. For the moment, I have assumed it is not. However, it does seem likely that the Panel should concern itself with how the retained ODP provisions mesh with the PDP. For that reason, I think the Panel should ultimately recommend one of the alternatives I have referred to, or some other means of integrating them into the final plan.
- 2.23 In summary, I recommend that the Council's policy team:
- Confirm and potentially refine the ODP provisions that should remain in force, once the hearings for Chapters 3, 4, 8 and 9 have concluded; and
  - Seek a Council resolution that these are the provisions which will remain in force in the interim; and
  - At the integration hearing, recommend to the Panel any amendments to PDP policies or rules that may be needed to improve integration with the retained ODP provisions; and
  - At the integration hearing, recommend to the Panel how or whether the retained ODP provisions should be physically integrated with the PDP.

### Chapter relationships

- 2.24 The overview report commences by graphically<sup>5</sup> setting out my own view of the relationships between the chapters of the PDP. Including Chapter 12: District-wide, which lies above the other chapters, the first row shows chapters of the PDP that apply throughout the District. The lower row comprises chapters that focus on defined geographic areas.
- 2.25 I must stress that this is my own interpretation and should not be considered to display all the linkages. However, it does serve a useful purpose in showing the nexus of issues that exist between chapters 3, 4, 8 and 9. It also shows that Chapter 7: Rural Environment and Chapter 5: Living Environment are subject to a similar confluence of issues. I have therefore recommended that reporting for the future integration hearing take those links into account.
- 2.26 The report notes that Chapter 4: Coastal Environment is effectively a subset of Chapter 3: Natural Environment. I have recommended combining those two chapters for the sake of better integration and clarity. I noted that a future plan change addressing coastal hazards might sit within Chapter 9: Hazards, or it might be appropriate at that time to again split out Coastal Environment and merge it with the

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<sup>5</sup> Figure 1 on page 8

future coastal hazard provisions. However, that is something for the future and I do not think it should be of concern to the Panel.

- 2.27 My recommendation (paragraph 164 of the Section 42A report) is relevant however, what I did not say in the report, is that a future plan change would be an opportunity to address related aspects of coastal management that are not solely focused on hazard management. I understand that the need for this wider perspective was raised by Mr Maassen (for NOBRG) in his submissions on the District-wide PDP provisions. I endorse the need for that to occur.

### **Hazards management vs. natural environment**

- 2.28 At paragraph 35 of my report I give my opinion that Chapter 9: Hazards and Chapter 3: Natural Environment are functionally on a par. I think that this is consistent with a tension that already exists in the overriding purpose of the Act. That is, enabling the community's health and safety, while sustaining and safeguarding natural resources. 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.
- 2.29 I appreciate that Section 6 of the Act highlights specific natural environment matters as being of national importance, and that this might be argued as overriding natural hazard provisions. However, I also note that the Resource Management Amendment Bill 2015 introduces the management of significant risks from natural hazards as a new Section 6 matter. The Bill has progressed to the Select Committee stage and the Committee's report is due for release in early September. While the outcome is by no means certain, the fact that natural hazards has been proposed as a Section 6 matter is a specific expression of the tension I referred to earlier – between public health and safety, and sustaining natural resources.
- 2.30 Tensions such as this do not always need to be fully resolved or integrated in a planning document. Resolving those tensions on a case by case basis, having regard to the particular circumstances, is often best left to the resource consent process. I consider that this is consistent with the Section 31(1)(a) requirement to achieve "integrated management" as that section of the Act envisages the use of "methods" (which includes rules). Appropriate rules can lead to a resource consent process where competing concerns can be integrated to the extent possible. The district plan's role should be to ensure that the right consent triggers exist, and that the relevant environmental and policy considerations can be brought into play.
- 2.31 That said, it is more efficient if the district plan resolves major areas of potential tension in advance. As an example, stream mouth cutting is a means of avoiding erosion risk and is an accepted management tool employed by the regional council. The regional Proposed Natural Resources Plan treats cutting as a permitted activity, once specific trigger events have occurred. The act of cutting a new mouth to the sea does have an effect on natural resources, but experience has shown that it is a necessary consequence of minimising risk. It therefore makes sense for the PDP to support such actions, notwithstanding the existence of any mapped ecological or landscape overlays.

### **Specific activities**

- 2.32 There are some specific activities that can be highlighted as contributing to management of coastal risks. These include both 'soft' and 'hard' management options. As examples, those activities could include: seawalls (and seawall

- maintenance); deposition of rocks etc; river and stream mouth cutting; gravel extraction; and dune restoration.
- 2.33 Most of these have the potential to either be fully within the regional council’s statutory management, or under shared management between the district and regional councils. Any particular case will depend on the location of the works relative to the coastal marine area boundary, or the whether the works are considered to be within the bed of a river.
- 2.34 In terms of integration, I have proposed that the retained ODP provisions would manage built structures (such as seawalls) where they fall under KCDC control. In contrast, softer options (such as stream mouth cutting and dune restoration) would be managed by PDP provisions – again depending on whether the location is under KCDC control.
- 2.35 The following table refers to the regional Proposed Natural Resources Plan. All of the rules in the PNRP have had legal effect from 31 July 2015. The hearings have yet to take place, being timetabled to commence in February 2017. The PNRP rules will continue to have legal effect until at least August 2017 when decisions arising from the PNRP hearings are released.
- 2.36 Where these activities fall in locations under dual regional and district council control, their status is as follows. The reference to “scheduled” and “unscheduled” areas under the PNRP is to being within or outside of sites of significance, which are defined by various schedules to that plan. The reference to character areas under the PDP is to outstanding or high natural character.
- 2.37 In conjunction with the table, the Panel should review the maps presented at this hearing. One set of maps indicates the locations of the PNRP scheduled areas. The other set indicates where PDP character areas lie. Locations near some of the District’s various stream inlets show a significant overlap of regional and district concerns that may need to be reconciled, depending on the particular activity proposed.

Table 1 - Comparison of regional and district provisions

<u>Seawalls (new)</u>	
PNRP: <i>Unscheduled Areas</i> : Discretionary	<i>Scheduled Areas</i> : Non-complying
ODP: <i>Open Space Zone</i> : Permitted	<i>Other Zones</i> : P (< 1.5m); D (> 1.5m)
PDP: Withdrawn	
<u>Seawalls (maintenance)</u>	
PNRP: Controlled	
ODP: <i>Open Space Zone</i> : Permitted	<i>Other Zones</i> : P (< 1.5m); D (> 1.5m).
PDP: Withdrawn	
<u>Deposition for erosion protection</u>	
PNRP: <i>Unscheduled Areas</i> : Discretionary	<i>Scheduled Areas</i> : Non-complying
ODP: Not covered	
PDP: <i>Notified</i> : Discretionary	<i>Recommended</i> : Exempt (Permitted) for hazard works
<u>Stream mouth cutting</u>	
PNRP: Permitted	
ODP: Not covered	
PDP: <i>Notified</i> : RD (high natural character)	<i>Recommended</i> : Exempt (Permitted) for GWRC

Dredging for flood protection (more than minor gravel extraction)

PNRP: <i>Unscheduled Areas:</i> Controlled	<i>Scheduled Areas:</i> Discretionary
ODP: Not covered	
PDP: <i>Notified:</i> Permitted (Chpt 9)	<i>Recommended:</i> Permitted (Chpt 9)
<i>Notified:</i> RD (ecology)	<i>Recommended:</i> Permitted (Rural only)

Dune restoration / beach recontouring

PNRP: Controlled	
ODP: Not covered	
PDP: <i>Notified:</i> Controlled	<i>Recommended:</i> Controlled
<i>Notified:</i> RD (ecology)	<i>Recommended:</i> Permitted (Rural only)

- 2.38 I think this comparison is useful, as it shows that regional consents are required for most types of work related to coastal hazard management. The major exception is stream mouth cutting which the PNRP treats as Permitted. This fact has led to the chapter report writers reconsidering PDP rules (such as earthworks) that might impact on the ability to respond to the need for cutting. As a result, the chapter report writers have recommended that hazard mitigation works carried out by GWRC, KCDC or the Department of Conservation should be an exemption (Permitted) from any restrictive rules that might otherwise apply.
- 2.39 With regard to other activities, I do not think that regional and district rules need to be 'back to back'. In other words, a regional discretionary status does not need to be matched by a district discretionary status. I say this because the regional and district provisions have been developed for different reasons, taking different resource management considerations into account. In any event, where an activity crosses the regional / district jurisdictional boundary – and consent is required from both authorities – Section 104 of the Act requires that each has regard to the provisions of the other's plan.
- 2.40 With particular regard to seawalls, it seems likely that most of these have been or will be constructed within the coastal marine area – given that their purpose is to protect land from coastal water. The regional rules, which are stricter than the retained ODP provisions, are therefore the controlling factor in the ability of any party to obtain consent.
- 2.41 For the Panel's information, I provide the following information about hazard management works along the coastline. Based on GIS records of historic and existing consents, the regional council has issued 16 consents for hard coastal protection (seawalls) along the Kapiti coastline. Most of these are in Paekākāriki or Raumati. There are also 4 consents related to erosion related works at stream inlets (Paekākāriki and Raumati), and 7 consents related to beach / dune nourishment (Raumati and Paraparaumu).
- 2.42 In terms of seawalls consented by KCDC, 4 are on record as having been granted to private parties. They date from 2002, 2008, 2011, and 2013. There are also 5 public seawall consents held by the Council, having been granted in 2002, 2008 (3 consents) and 2010. All of those 5 Council held consents were for maintenance or extension of existing seawalls. I am informed by KCDC officers that there are no seawall applications currently being processed, and there are none that have been refused consent. Out of the 9 private and public seawall consents, 4 are in Raumati and 5 are in Paekākāriki.
- 2.43 With regard to stream mouth cutting, this is a fairly frequent occurrence – but highly variable depending on the particular watercourse. GWRC records indicate that between 2000 and the present, cutting has occurred at the mouths of the Ōtaki,

Waikanae, Waimeha, Waitohu, and Mangaone. The Waikanae River mouth has only been cut once in that period, whereas the Waimeha (Waikanae Beach) has been cut 27 times.

### **3. Cross over and resolution of issues**

- 3.1 My Section 42A report looks at each of the chapters (3, 4, 8 and 9) and identifies issues shared with one or more of the other chapters. The shared issues identified are: flood hazard mitigation; gravel extraction; coastal hazard mitigation (hard protection); coastal hazard mitigation (natural character); dune vegetation; plantation forestry; and adaptive management.
- 3.2 I consider this list of issues to be a ‘first cut’ and expect that it will be subject to refinement as we progress through the individual chapter hearings and finally the integration hearing. The chapter reporting writers have conferred on these issues and are recommending various amendments to improve integration.

### **4. Implications for other chapters**

- 4.1 The chapter Section 42A report writers have given consideration to implications for other PDP chapters, including the objectives of Chapter 2 and the district-wide policies Chapter 2A which was proposed during an earlier hearing. They will alert the Panel to those implications (if any) today, and expand on those matters in their opening statements at the individual chapter hearings scheduled over the coming weeks.
- 4.2 My own Section 42A report refers to the need to be mindful of how integration solutions link to the Rural and Living Environment chapters. Both of these zones have strong links to coastal management issues. This is a matter that will need to be addressed moving forward to the final integration hearing.

### **5. Conclusion**

- 5.1 Although I have considered a range of issues in preparing my Section 42A report, there is still a need to consider material presented at the individual chapter hearings before final recommendations can be made.
- 5.2 At this stage I am not recommending any further changes to my report, other than those I have referred to in this statement. However, I will of course listen objectively to questions and comments made by the Panel in this hearing and as a result I may alter my position on some matters. If I do so, I will make that clear in the written reply that I anticipate will be required after today.

Mark Ashby  
Independent reporting officer  
4Sight Consulting Limited  
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