

## **Section 42A Coastal issues overview:**

### **CHAPTER 9 Hazards**

#### **1.0 Introduction**

- 1.1 This report considers the coastal issues related to the provisions of Chapter 9 Hazards. The section 42A report for Chapter 9 relates to submissions received on Chapter 9 matters, including key related definitions in Chapter 1, and hazard features as shown in the plan maps.
- 1.2 Chapter 9 addresses Hazards within the District, both natural hazards and contaminated land. The main natural hazards addressed in Chapter 9 are floods and earthquakes. There are also provisions to address contaminated land and fire.
- 1.3 Chapter 9 does not address Coastal Hazards. Coastal Hazards were addressed through Chapter 4 when the PDP was notified. These provisions were withdrawn by the Council in 2014. The Council has indicated that specific ODP coastal hazard management provisions will continue in force even when the PDP becomes operative.

#### **2.0 Major themes**

- 2.1 The main themes in Chapter 9 that relate to coastal issues are Policy 9.4 Precautionary approach, provisions relating to stream and river clearance and river mouth cutting, the issue of which rules or chapters have primacy when there are overlaps, and gravel extraction.

##### **Policy 9.4 Precautionary approach**

- 2.2 Policy 9.4 Precautionary approach and the use of the precautionary principle throughout the PDP attracted a large number of submissions.
- 2.3 Many of the submissions received on this issue were at least partially in reference to the withdrawn Coastal Hazards provisions. Much of the concern relating to the precautionary approach and this policy relates to the use of the approach when drawing the coastal hazards line and/or preparing the coastal hazard provisions within the PDP as notified. As noted above Chapter 9 is not intended to relate to Coastal hazards.
- 2.4 A large number of these submissions also request that the policy be deleted and the precautionary approach not be used. There are several planning documents that relate to the precautionary approach and how it should be applied. These are the New Zealand Coastal Policy Statement, the Wellington Regional Policy Statement, the Wellington Regional Fresh Water Plan, the Wellington Regional Coastal Plan and the Proposed

Natural Resources Plan for the Wellington Region (PNRP). All of these documents reference this approach and in some cases how it should be applied. Therefore, the submissions that state that the precautionary approach should not be used within the PDP cannot be supported.

2.5 As noted in my s42A report I do however agree with a number of the submitters, such as 202.UU Department of Conservation (DoC) and 340.Q Bryce Moller, that the policy as notified does not represent the precautionary approach correctly. The precautionary approach should only be applied to situations where:

- risk is being managed (not assessed);
- there is uncertainty;
- there is a high probability of the risk occurring; and
- the risks will potentially cause significantly adverse effects.

2.6 I recommend in my report that the word “management” be added to the policy in relation to risks, as I consider that this shows that the policy relates to risk management not assessment. I agree with 202.UU DoC that the word “significant” needs to be added when referring to effects. I also consider that the last sentence of the policy is unnecessary and complicates the message of the policy.

2.7 Therefore, I recommend in my report that the policy be amended to read:

#### Policy 9.4 – Precautionary approach

**A precautionary approach will be taken to the management of risks from hazards that may impact on subdivision and development, where there is uncertainty about the potential effects and where the effects are potentially significantly adverse ~~of a hazard until further detailed information on the extent and nature of the hazard becomes available.~~**

#### **Stream and River Clearance**

2.8 Several submitters raised the issue of stream and river clearance. Submissions 229.6,7 & 8 Gordon and Sylvia Moller, 314.4 & 5 Warwick Wyatt, 378.5 & G Costal Ratepayers Union (CRU), 451.112 & 114 Rob Crozier and Joan Allin and 631.8 Michael Alexander all request that the rules be amended to provide clarity and certainty that river and stream clearance, including mouth straightening and other maintenance activities, when undertaken by the relevant authorities, is a permitted activity.

2.9 Two submitters (229 G & S Moller and 451.113 R Crozier & J Allin) also seek that any zoning or notation which interferes with the above should be removed from the maps, or the relevant rules amended to ensure that there is no restriction on river or stream

clearance (including mouth straightening and other mitigation activities), and that the rules permitting such activities apply notwithstanding any other provisions of the PDP.

- 2.10 I consider that the majority of the issues of concern raised by submitters in regard to stream and river clearance, relate to activities that fall within the jurisdiction of the Wellington Regional Council (Greater Wellington) as these activities most often occur within the waters or bed of a waterway. These activities are covered by Regional Fresh Water Plan Rule 36 Clearance of flood debris from rivers and lakes (Rule 119 in the PNRP) and Rule 40 Removal of vegetation (Rule 122: in the PNRP). The cutting of river and stream mouths is also an issue within the jurisdiction of Greater Wellington. This is covered by the Regional Coastal plan Rule 30 (Rule 192: in the PNRP).
- 2.11 Notwithstanding these jurisdiction issues, I do consider that the plan as notified is unclear about jurisdictional boundaries. As notified, some plan users may assume from the rules that KCDC has total jurisdiction over these matters. Therefore, I recommend adding notes to the appropriate rules within this chapter that state that approval from Greater Wellington may be required for some of the activities, especially if they are carried out within the bed or water of a water body.
- 2.12 Although the majority of the issues raised in submissions relate to Greater Wellington's jurisdiction there are some works associated with these hazard mitigation activities that may occur within KCDC's jurisdiction. With regard to these activities it is important that the rules of the plan are clear as to what is and is not permitted. As pointed out by a number of submitters it is currently unclear if PDP rule 9B.1.6 for flood protection, erosion control and hazard mitigation measures is still subject to Rule 9B.1.4 for earthworks. I consider it is important to clarify that the activities in 9B.1.6 are exempt from the earthworks rule. Therefore, I propose an amendment to 9B.1.4 to exempt activities covered by rule 9B.1.6. This will make it clear that hazard mitigation measures in rule 9B.1.4 are not subject to the earthworks rules and that such activities are clearly permitted and the Regional Council, KCDC and Department of Conservation will not require a district plan resource consent to carry out the hazard mitigation works under Rule 9B.1.4.

### **Gravel Extraction**

- 2.13 The issue of gravel extraction is discussed at length in the s42A report for Chapter 9. Gravel extraction within rivers and streams is used as a flood mitigation measure, however it can also have effects on the coast.
- 2.14 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.

### **Primacy of provisions**

- 2.15 I consider that the issue of overall primacy of provisions/Chapters is not currently clearly addressed by the PDP. I consider that the provisions of Chapter 9 that mitigate hazards should over ride some rules within other chapters, or allow consideration side by side in the context of a consent application. As the PDP stands, hazard mitigation measures that are intended to be permitted under Chapter 9 such as gravel extraction may require consent under other rules within other chapters. This includes general earthworks rules and vegetation clearance rules. There are two ways that greater clarity could be achieved. Either through statements at the beginning of the rules and standards of the relevant chapters, stating the primacy of the Chapter 9 rules, or by adding specific exclusions for specific activities under the relevant rules throughout the plan. As an example, rules for earthworks in ecological sites should exclude the provisions from applying to works permitted by Rule 9B.1.6 for flood hazard mitigation.

### **3.0 Cross-over issues**

- 3.1 As noted previously submitters highlighted the issue of the overlap of zonings and notations. Submitters noted that these overlaps may lead to activities that are intended to be permitted under Chapter 9 requiring consent under other chapter's rules.
- 3.2 Managing the risks posed by some hazards can have potential effects on resources identified in Chapter 3: Natural Environment. For instance, gravel extraction or stream mouth cutting may impact on significant vegetation or habitats identified in that chapter. Other than the Ōtaki and Waikanae river mouths, much of the coastal strip is zoned Open Space. The activity of stream mouth cutting is therefore also relevant to Chapter 8.
- 3.3 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. As noted above some submitters are concerned that the ability of the councils or the Department of Conservation to carry out those works may be hampered by protective earthworks and vegetation provisions in Chapter 3.
- 3.4 The notified Chapter 8 Rule 8.1.11 permits flood protection, erosion control, stormwater management and natural hazard mitigation works. Although the rule is consistent with the general management of natural hazards by Chapter 9 it is an unnecessary duplication which could create confusion.
- 3.5 The general intention of the PDP in regard to the primacy of provisions is also an issue. As noted previously there are a number of areas of overlap between Chapter 9 Hazard provisions and Chapter 3 provisions to protect the natural environment. As notified the plan does not point to which rules or chapter has primacy. This is an issue because

activities that are intended to be permitted such as gravel extraction and flood mitigation may require a consent under other chapters of the plan.

- 3.6 The Coastal Overview report recommends that Rule D.7.1.3 (ii) be retained. This rule is relevant to new buildings within the River Corridor, and is intended to manage the erection of seawalls. The retention of this rule may lead to confusion as new buildings in the River Corridor are proposed to be a Non-Complying activity under Rule 9B.5.4 of Chapter 9 of the PDP.

#### **4.0 Resolution of issues**

- 4.1 Changes are recommended to Chapter 3 Natural and Coastal Environment to ensure that works carried out under 9B.1.6 are exempt from the appropriate rules regarding earthworks and buildings and development within 5 metres of an ecological site. The Chapter 3 report recommends a new Permitted Activity provision (Rule 3A.1.9) to permit earthworks associated with the activities permitted under Chapter 9: Hazards rules 9B.1.4, 9B.1.6 and 9B.1.8. This would mean that stream mouth cutting or gravel extraction is permitted within a stream / river corridor if it is associated with flood mitigation works carried out by the Regional Council, District Council, or Department of Conservation.
- 4.2 Under the PNRP more than minor gravel extraction (i.e. any commercial extraction) requires Discretionary Activity consent from the regional council this is the same as the requirement in the existing Regional Freshwater Plan. Stream mouth cutting in specific locations is a Permitted Activity under the PNRP. The recommended amendments to Chapter 3 and Chapter 9 should ensure that gravel extraction for flood mitigation purposes does not require a consent from both the regional and district Councils. In the case of stream mouth cutting, the recommended amendments will mean a consent from KCDC is not required when one is not needed from the regional council. In the case of gravel extraction, any potential impacts on natural resources identified by the PDP will be able to be assessed as part of the Discretionary Activity consent process administered by the regional council. That assessment will occur, as Greater Wellington must have regard to the PDP under Section 104 of the Act.
- 4.3 As recommended in the Coastal Resource Overview s42A report, integration of the retained ODP coastal hazard provisions with the PDP will be achieved by the PDP clearly stating how and where the integration occurs. This change is not covered by my s42A report, but it may be a matter for further consideration by the integration hearing proposed for late 2016.
- 4.4 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.

- 4.5 Changes are recommended to Chapter 3 Natural Environment to ensure that works carried out under 9B.1.6 are exempt from the appropriate rules regarding earthworks and buildings and development within 5 metres of an ecological site. These changes have been covered in the Chapter 3 s42A report.
- 4.6 I also agree with the recommendation from the Coastal Resource Overview s42A that Rule 9B.1.8 for gravel extraction should still be referenced in other chapters
- 4.7 As noted in my s42A report I consider it appropriate that the provisions that apply to natural hazard mitigation activities be principally managed by Chapter 9: Hazards, other than coastal hazards managed under the retained ODP provisions. Therefore, I recommend that consideration be given to amending Chapters 3 and 4 to clearly exclude natural hazard mitigation by adding a note similar to that recommended to be added to Chapter 8. Again I consider that this change may be more appropriately addressed by the proposed integration hearing to ensure that the appropriate wording is used and that the note is placed in the appropriate chapters.
- 4.8 The issue of the possible retention of Rule D.7.1.3 (ii) of the ODP that refers to buildings within the River Corridor and its cross over with Rule 9B.5.4 of Chapter 9 can be solved by adding some explanatory text to Rule D.7.1.3 (ii) noting that this rule only applies to seawalls, not all buildings. If this rule is retained it may also be appropriate to add reference to it in Rule 9B.5.4 stating that seawalls within the river corridor are covered by Rule D.7.1.3 (ii) of the ODP. This change may be best covered by the integration hearing.

## **5.0 Implications for other chapters**

- 5.1 The issue of the degree of primacy of Chapter 9 is also relevant to other Chapters within the plan. I consider that the Chapter 9 provisions should in most cases override the provisions within other chapters. There may be cases such as waahi tapu sites where the effects of the activity on specific features need to be considered in more depth. As noted above this is a matter that needs more work to assess where the relative primacy is appropriate and I consider that this issue is most appropriate to be considered at the integration stage when the recommendations for more chapters are available. If Chapter 9 is to have primacy, I consider that one way to achieve this could be through amending the introduction to the rules in the appropriate chapters, as is recommended for Chapter 8, to clearly exclude natural hazard mitigation works for the rules of the chapter.
- 5.2 I note that Chapter 7: Rural Environment Rule 7A.3.4, treats some “extractive activity” as Restricted Discretionary. Gravel extraction (including for flood mitigation measures) is included within the definition of extractive activity, this would mean that gravel extraction for flood mitigation purposes would be Restricted Discretionary Activity under rule 7A.3.4, not permitted as intended by Chapter 9. This is one example of a rule that may need to

be amended for consistency, if an overall amendment to the introduction of Chapter 7 is not recommended.

- 5.3 I consider that there are no provisions within Chapter 9 that should be moved to the Proposed New Chapter 2A. I also do not consider that there are any issues in regards to the coastal issues within Chapter 9 that would require an amendment to Chapter 2: Objectives.
- 5.4 At this stage I am not recommending any further changes to my report, however I will maintain an open mind as I hear submissions during the course of the Chapter 9 hearing.
- 7.5 Thank you Mr Chair and members of the Panel.

Rebecca Lloyd

13 July 2016