

**BEFORE THE ENVIRONMENT COURT
WELLINGTON**

ENV-2016-WLG-

UNDER	Section 311 of the Resource Management Act 1991
AND	
IN THE MATTER	of an application for declarations
BETWEEN	Coastal Ratepayers United Inc Applicant
AND	The Kapiti Coast District Council Respondent

Application for declarations by Coastal Ratepayers United Incorporated
5 July 2016

Solicitor on the record: Chris Mitchell
PO Box 499 Waikanae

04 293 3646, email: chris@mitchelllaw.co.nz

TO: The Registrar, Environment Court at Wellington

Coastal Ratepayers United Incorporated applies for the following declarations

Declaration 1

The Council, having notified a full review of the District Plan, cannot change the ambit of that review under section 79 without first notifying the provisions which are no longer subject to the review, and/or notifying the existing provisions which it intends to remain 'operative' after the proposed plan is completed.

Declaration 2

In withdrawing the coastal hazard and other provisions under clause 8D of Schedule 1 of the RMA, the Council changed the meaning of the remainder of the PDP.

The grounds for the application are:

In respect of Declaration 1

1. In November 2012 the Council notified a proposed district plan as a full review of its operative district plan under section 79(4). Consequently section 79(5) applied to that review.
2. Submissions on the proposed district plan closed in March/April 2013.
3. In June 2014 the Council notified a withdrawal of a number of provisions and parts of provisions contained in the proposed district plan.
4. In June 2014 the Council did not notify (or otherwise explain):
 - a) which provisions of the operative district plan were (consequent on the withdrawals) no longer subject to review, so that the ambit of the review after June 2014, for the purposes of section 79, is not defined; or
 - b) identify which provisions of the operative district plan (if any) are intended to remain in force when the PDP is made operative.
5. If section 79 authorises the Council to change the ambit of a review, then subs(2) and (3) apply and have not been complied with.
6. Since June 2014 to the date of this application both the matters in 4(a) and (b) above remain unclear.
7. Consequently the provisions of section 79 and Schedule 1 have not been complied with.

In respect of declaration 2

1. In November 2012 the Council notified a proposed district plan as a full review of its operative district plan under section 79(4).
2. In June 2014 the Council notified a withdrawal of a number of provisions and parts of provisions contained in the proposed district plan. The provisions of

the PDP affected by these withdrawals included those relating to coastal hazards.

3. Schedule 1 Clause 8D authorises the Council to withdraw a proposed district plan, but does not expressly authorise the withdrawal of parts of a proposed district plan.
4. However the High Court, in *West Coast Regional Council v Royal Forest and Bird Protection Society of New Zealand* [2007] NZRMA32, has held that the power under Clause 8D is a power to withdraw part(s) of a proposed plan. The Court constrained the power to withdraw part as follows:

[25] Assuming that there is power to withdraw part of a proposed plan it seems to us that it is implicit that the balance must be left as it was. For cl 8D only confers power to withdraw a plan. Anything new has to be notified and tested by a process in which the public can participate. If there is a power to withdraw part, that power cannot include a power to make a change to the meaning of the remainder of the policy statement or plan. Provided it is a withdrawal and not a variation by the back door, it does not matter whether the withdrawal is of a complete part, some few provisions, or a mix. But it must only be a withdrawal and not a variation.
5. The withdrawal of parts of some provisions has changed not only the meaning of those provisions but also their effect within the proposed plan. Thus, for example, the withdrawal of words such as 'coastal', 'coastal hazard' or specified CHMAs (Coastal Hazard Management Areas) from provisions has the effect, in some instances, that the ambit of that provision changes from a specific part of the environment to a wider one.
6. The withdrawal in June 2014 accordingly 'changed the meaning of the remainder of the plan'. The withdrawal, at least to that extent, could only be validly effected by variation to the proposed plan.
7. Consequently Schedule 1 Clause 8D has not been complied with.

In respect of both declarations 1 and 2

The affidavits of **Katharine Moody and Joan Allin** filed in support of this application;

List of persons to be served with this application:

The Kapiti Coast District Council, Private Bag 60601 Paraparaumu 5254
(contact: Tim Power, Senior Legal Counsel, tim.power@kapiticoast.govt.nz)

Dated 5 July 2016



PC Mitchell
Counsel for Coastal Ratepayers United Inc.

Address for service: Mitchell Law, PO Box 499 Waikanae

Contact person: Chris Mitchell (04) 293 3646, chris@mitchelllaw.co.nz