ATTACHMENT TO THE SECOND SUBMISSION OF ROB CROZIER AND JOAN ALLIN

INTRODUCTION

This is our second submission on the Proposed Kapiti Coast District Plan 2012 (PDP). This submission needs to be read in conjunction with our earlier submission, as they form one complete submission in terms of our reasons and the relief sought. The artificiality of having to separate our thoughts into two submissions has occurred because the extension of the submission deadline applied only to certain parts of the PDP and we needed that time to deal with our concerns about Chapters 4 and 9 (and related matters) and relevant Chapter 3 policies.

In our earlier submission lodged on 1 March 2013, we dealt with a number of matters that are also relevant to this submission, including:

- opposition and relief sought in relation to the whole PDP;
- definitions, including notations on the maps and terms defined in various places in the text that should be defined in Chapter 1;
- objectives, including Objectives 2.4 and 2.5;
- zoning of rivers and streams and relevant activities;
- rivers and streams where clearance, mouth straightening, etc occur;
- ecological sites;
- priority areas for restoration;
- landscape character areas;
- northern beaches significant amenity landscape; and
- deficiencies in the residential objectives, policies and rules in relation to coastal issues, including the omission of long-standing coastal yards that are in the operative District Plan and, according to the Council, have been in place since 1979.

We are not climate change deniers. When we received the letter dated 25 August 2012 from the Council about likely coastal hazards and the coastal erosion hazard lines being including in Land Information Memoranda, we thought “So be it”. We are not badly affected, with our house landward of the 100-year line and our deck seaward of the house in the 100-year relocatable area. No part of our land is in the 50-year no-build area. So, we were not particularly concerned for ourselves, although we were concerned for friends and others who were more badly affected.

Because of the developing controversy, Joan decided to read the Coastal Systems Limited report Kapiti Coast Erosion Hazard Assessment 2012 Update to satisfy us that it was a valid basis for the lines that were drawn in relation to our property. (During her career, she has read many scientific and technical reports and evidence, and evaluated their validity.) We expected to discover that the report was a satisfactory basis for the lines and that concerns being expressed by some local people were misguided.

We did not find that. Indeed, the more we looked into “peer review” comments and the 2008 reports and other material, the more our concerns increased. And with the PDP and the Council’s approach to various matters, our concerns intensified further.

POLICIES 3.22 AND 3.23, COASTAL ENVIRONMENT AND HAZARDS - CHAPTERS 4 AND 9, DEFINITIONS AND MAPS - GENERAL

Except to the extent that we indicate support, we oppose Policies 3.22 and 3.23, all of Chapter 4 Coastal Environment and Chapter 9 Hazards, relevant definitions and maps, including because they:

- are contrary to the Resource Management Act 1991 (RMA), New Zealand Coastal Policy Statement 2010 (NZCPS), Regional Policy Statement (RPS) and Proposed Regional Policy Statement (Proposed RPS);
- do not give appropriate recognition to a number of provisions of the RMA, including the purpose of the RMA and enabling people and communities to provide for their social, economic and cultural well-being;
- do not give effect to the NZCPS or the RPS;

- do not have adequate regard to the Proposed RPS:
- inappropriately provide selective references to various documents, including the RMA, NZCPS, RPS and Proposed RPS;
- have not been subject to appropriate section 32 evaluations;
- include terms that are defined in Chapter 1 that have not been italicised and the appropriateness of the use of those terms in the relevant provisions is unclear; and
- include italicised terms where no definition has been provided in Chapter 1 and the appropriateness of the definition is therefore not apparent.

We set out an extract from our first submission in relation to the whole PDP as it also relates to the matters that we raise in this submission.

> "**WHOLE PLAN**
>
> We acknowledge that a lot of work has been involved in preparing the PDP. However, we are of the view that the Council has let itself, the officers and submitters down by publicly notifying a PDP that was not ready for notification. Having to submit on the PDP in its current state has made it unnecessarily difficult to make submissions.
>
> Asking Council officers what the PDP means is not, in our view, a satisfactory approach as it is the words in the PDP that matter, not what an officer says they mean. We acknowledge that we may have misinterpreted provisions and made mistakes; to the extent that we have done that, we apologise in advance.
>
> We regret that we find ourselves opposing the whole PDP, with the exception of the specific areas and provisions for which we express support.
>
> The PDP:
> - identifies defined terms with italics (which we support) but has numerous defined terms that are not identified;
> - identifies terms in italics that are not defined terms;
> - does not use defined terms consistently;
> - uses defined terms in situations where the defined term is not appropriate;
> - includes basic errors, inconsistencies, gaps and oddities;
> - is poorly drafted and confusing and uses imprecise, inconsistent terminology;
> - includes provisions that are legally invalid;
> - includes provisions that are ill-considered and that seem to have unintended consequences. The more we look at the provisions, the more fish-hooks we seem to discover;
> - includes provisions that are contrary to, or not in accordance with, the Resource Management Act 1991 (RMA) and relevant documents referred to in the RMA, including the New Zealand Coastal Policy Statement (NZCPS), the Regional Policy Statement and the Proposed Regional Policy Statement;
> - includes default permitted activity rules which may have unintended consequences;
> - includes default discretionary activity rules which do have unintended consequences (eg Rule 4A.4.1);
> - is unnecessarily complex and not user-friendly; and
> - does not appropriately cross-reference relevant provisions.
>
> The fact that section 32 summary reports have supported the provisions despite these deficiencies is a strong indication that proper section 32 evaluations have not been carried out and there has been a failure to consider properly the implications of a range of matters included in the PDP.
>
> To the extent that the PDP requires property owners or occupiers in residential areas to rely on section 10 RMA existing use rights for residential activities (including houses and other buildings and structures), we oppose those provisions. It can be difficult, if not impossible, to prove that the activity was lawfully established and the restrictions in section 10 render the use limited. The 12-month limitation can effectively extinguish existing use rights.

> Appropriate activities, subject to appropriate standards, should be allowed as permitted activities, without forcing people to rely on existing use rights..."

In terms of Policies 3.22 and 3.23, Chapters 4 and 9 and the relevant definitions and maps that we address in this second submission, we repeat the reasons referred to above.

The relief we seek is that, in addition to the relief set out elsewhere:

- all defined terms be identified by italics;
- appropriate terms should be defined;
- the PDP is considered carefully to ensure that the defined term is used consistently and appropriately in each case;
- where defined terms are not appropriate, other terms are used;
- where terms need to be defined that have not been defined in the PDP, then those terms should be notified in a variation to give people an opportunity to submit on them;
- there be (at least) a legal and a planning audit by experienced resource management practitioners, taking into account the submissions lodged;
- provisions are revised so they 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 RPS and the Proposed RPS;
- the resulting rules do not force property owners or occupiers to rely on section 10 RMA existing use rights, unless the use is clearly inappropriate for the area;
- cross-references are included to try to make the PDP more user-friendly;
- unnecessary overlapping of zoning and notations on the maps, which result in the need to look at numerous provisions in various chapters to determine if something is permitted or not, are removed; and
- further section 32 evaluations occur to evaluate the appropriateness of the provisions.

The more specific submissions that we make under the following headings are in addition to, and subject to, our general opposition to the PDP and Policies 3.22 and 3.23, Chapters 4 and 9, the relevant definitions and the maps and the relief that we seek in relation to this general opposition. Please note that where we make specific requests or suggestions with regard to wording, they are made in an attempt to be helpful and are made without limiting the generality of the relief that we seek.

Where we ask for specific relief under the following headings, we also seek such other relief as would address our concerns and such consequential relief, including changes to other objectives, policies and rules, including in different chapters of the PDP from where we raise an issue, as may be necessary or appropriate.

POLICY 3.22 - EARTHWORKS AND POLICY 3.23 - EARTHWORKS - NATURAL LANDFORMS

We oppose and seek amendment to Policies 3.22 and 3.23.

Chapter 4 (page 4-9) says:

> "Greater Wellington Regional Council (GWRC) controls the natural tendency of river and stream mouths to migrate up and down the coast through dredging and/or training walls, and in doing so limits the extent of shoreline fluctuation in these areas."

The explanation to Policy 4.6 says:

> "In these areas [inlets (stream and river mouths)] mechanical excavation and river training works can be used to maintain a natural function."

In addition, weed-clearing activities occur in the Mangaone Stream further inland from time to time.

Policies 3.22 and 3.23, and the resulting rules, inappropriately limit the ability to carry out these activities. Policy 3.23, in particular, has a number of statements that are inappropriate, in light of the importance and appropriateness of river and stream mouth clearance, and other activities in rivers and streams eg weed clearance further inland from the mouth.

Please also see our comments in our first submission under the heading RIVERS AND STREAMS WHERE CLEARANCE, MOUTH STRAIGHTENING ETC OCCUR - ALL RELEVANT CHAPTERS AND RELEVANT MAPS OF THE PDP.

The relief we seek is to:
- amend Policies 3.22 and 3.23 to deal with our concerns and to recognise the importance of earthworks (a defined term) at river and stream mouths for eg mouth straightening, and also in rivers and streams further inland from the mouths for eg weed clearance, and so as not to restrict such activities and with rules that do not restrict these activities;
- delete the last sentence in the explanation to Policy 3.22;
- amend the first sentence in Policy 3.23 to deal with our concerns, and in particular, qualify the references to retaining natural landforms, around water bodies and in riparian margins;
- either remove (from the maps and in any other place where these are identified) all sensitive natural features from rivers and streams, including their mouths, or revise Policy 3.23 a) eg to exclude rivers and streams or to qualify it;
- either delete Policy 3.23 c) or exclude activities carried out in rivers and streams or qualify it in some appropriate way to address our concerns;
- revise the explanations to recognise the importance of earthworks at river and stream mouths, and in rivers and streams further inland from the mouths; and
- please also see the comments and relief sought in our first submission under the heading RIVERS AND STREAMS WHERE CLEARANCE, MOUTH STRAIGHTENING ETC OCCUR - ALL RELEVANT CHAPTERS AND RELEVANT MAPS OF THE PDP.

COASTAL ENVIRONMENT - INTRODUCTION, 4.1 COASTAL ENVIRONMENT AND 4.1.1 COASTAL ENVIRONMENT - GENERAL POLICIES

Introduction and 4.1 Coastal Environment

We oppose the Introduction and section 4.1 Coastal Environment, including because:
- there is poor linkage between Chapter 4 and the Living Environment provisions in Chapter 5, with the Living Environment chapter omitting relevant provisions relating to the coastal environment (eg long-standing coastal yard requirements including at Te Horo Beach which are omitted from Chapter 5 but which are referred to in the explanation to Policy 4.6);
- "*areas of high natural character*" is italicised but there is no definition;
- there is a range of inappropriate terminology;
- there are incorrect or selective references to documents, including the RMA and the NZCPS;
- the provisions here and elsewhere in the PDP about priority areas for restoration are confused and inappropriate, and what is stated here is not consistent with what is stated elsewhere in the PDP in relation to priority areas for restoration;
- some references are too extreme, including terms such as "ensure";
- there is reference to the term "development", which is a defined term and the appropriateness of its use in each case is unclear;
- there is inadequate consideration of the section 5 purpose of the RMA and inadequate reference to enabling appropriate activities in the coastal environment, including subdivision, development and land use;
- there is inadequate reference to property owners being able to continue to enjoy their properties;
- the reference to "outside of areas subject to coastal hazard risks" is inappropriate and the coastal hazard management areas (CHMAs) are inappropriate.

The relief we seek is substantial revision of the Introduction and section 4.1, to deal with our concerns expressed above, including to:
- include reference and appropriate linkage to the Living Environment provisions, including reference to the long-standing coastal yard requirements for amenity purposes for properties that adjoin the coast at Te Horo Beach (as well as Waikanae and Peka Peka);

- include reference to enabling appropriate activities in the coastal environment, including subdivision, development and land use;
- provide an appropriate definition of “Areas of high natural character”;
- revise inappropriate terminology and provide accurate references, including to the NZCPS eg re Policy 13;
- refer to “the natural character of the coastal environment” (not “natural character in”) to convey correctly the wording of section 6(a) of the RMA and include reference to the second part of section 6(a) ie protection from *inappropriate* subdivision, use and development;
- remove the references to “development” in relation to coastal hazards;
- either qualify the references to coastal hazards as being areas at high risk of coastal hazards or, preferably, change the definition of “Coastal hazards” to remove the reference to “the potential” and refer, by way of example, to “a high risk of”. This relief also is sought throughout the PDP wherever there is reference to coastal hazards;
- remove the reference to “development” in relation to priority areas for restoration and correct the references to priority areas for restoration once the various conflicting, confusing and inappropriate provisions relating to priority areas for restoration in the PDP have been clarified;
- remove the reference to “outside of areas subject to coastal hazard risks”;
- include reference to property owners being able to continue to enjoy their properties; and
- delete or revise the CHMAs.

Policy 4.2 - Identify natural character

We oppose this policy, including because “*Areas of high natural character*”, though italicised, is not defined and it is not clear what “natural coastal features” are and whether they include priority areas for restoration. Policy 3 of the Proposed RPS refers to “high natural character”, which is not encapsulated in the term “natural coastal features”.

The lack of clarity about areas of high natural character is further complicated because they are referred to in the definition of “Sensitive natural features and Sensitive natural areas”. That definition is too wide because it says that it “includes” certain areas.

We seek:
- deletion of this policy, or its revision to clarify its meaning, to clarify what is meant by “natural coastal features” (and how that relates to “significant natural coastal features and habitat” referred to in Policy 4.3), and to deal only with high natural character and omit priority areas for restoration; and
- amendment of the definition “Sensitive natural features and Sensitive natural areas” so that it is clear that it means only the items listed that are identified on the maps or schedules and clear that it does not include priority areas for restoration.

Policy 4.3 - Protection of natural character

We oppose this policy, including because:
- the policy is confusing, too extreme, not adequately qualified and not adequately focussed;
- the policy is not in accordance with Policy 3 of the Proposed RPS, including because it refers to protecting high natural character from *inappropriate* subdivision, development or use;
- it is not clear what “significant natural coastal features and habitat” means, whether these are limited to areas that have been mapped or whether they extend over other areas, whether they include priority areas for restoration, and how they relate to “natural coastal features” referred to in Policy 4.2;
- the references to structures are not appropriate as they could prevent appropriate structures, eg bollards at Te Horo Beach to keep vehicles off the areas that should be protected;
- in relation to structures, b) and c) are potentially in conflict;
- the reference to “new” activities is not sufficiently clear;
- the policy does not enable appropriate activities; and
- the explanation is unclear and inappropriate including in its references to structures and to private land.

We seek deletion of Policy 4.3 or substantial rewording of it to deal with our concerns referred to above. In particular, any rewording should:

- clarify what "significant natural coastal features and habitat" means, that they are limited to areas that have been mapped (we oppose their extending over other areas), whether they include priority areas for restoration (which we oppose in relation to Rodney Ave and nearby streets), and how they relate to "natural coastal features" referred to in Policy 4.2;
- delete, or qualify, the references to structures in c) and the explanation;
- either delete e) or clarify the reference to "new" activities and qualify the provision;
- make the policy less extreme and more qualified and focussed;
- delete or qualify words such as "avoiding" and "preventing";
- enable appropriate activities; and
- revise the explanation by deleting the reference to structures being seen from the beach (or qualifying it), by qualifying the reference to long-term erosion occurring (eg by adding words such as "in areas subject to long-term erosion), and by deleting the last sentence, with its reference to private land.

In addition, we seek:

- rules that allow appropriate structures as permitted activities (eg bollards at Te Horo Beach to keep vehicles off areas that should be protected).

Policy 4.4 - Restore natural character

We oppose this policy, including because:

- given the size of the coastal environment, the policy has the potential inappropriately to restrict activities on private land;
- it is confusing, in that the policy makes no reference to priority areas for restoration, but the explanation seems to indicate that the policy relates to these areas;
- the provisions for priority areas for restoration in the PDP are inappropriate, confusing and conflicting;
- the policy should not refer to development, particularly given the wide definition of "Development";
- the policy is too extreme and not appropriately focussed or qualified;
- the maps do not identify appropriate priority areas for restoration;
- e) and f) are too extreme in relation to structures;
- the policy does not give effect to the NZCPS; and
- the explanation does not correctly explain the effect of the rules.

We seek deletion of Policy 4.4 or substantial rewording of it to deal with our concerns referred to above. Any rewording should:

- remove reference to development, particularly given the wide definition of "Development" and statements by Council staff that priority areas for restoration apply to subdivision;
- make the policy less extreme and more appropriately focussed or qualified;
- given the size of the coastal environment, make appropriate reference to enabling activities in the coastal environment and not inappropriately restricting activities on private land;
- be based on the provisions for priority areas for restoration in the PDP including only appropriate land areas and being revised so they are not inappropriate, confusing and conflicting. The district plan maps need to identify appropriate priority areas for restoration and in particular, should remove the areas along Rodney Ave and nearby streets as sought in our first submission;
- make e) and f) less extreme in relation to structures;
- give effect to the NZCPS and the RMA; and
- revise the explanation once the relevant provisions have been confirmed so the explanation is accurate.

Policy 4.5 - Amenity and public access

We oppose this policy, including because:
- it is confusing and insufficiently focussed;
- the policy should not refer to development, particularly given the wide definition of "Development";
- it has significant potential to unreasonably restrict activities on private land; and
- the explanation does not accurately reflect the RMA.

We seek deletion of Policy 4.5 or substantial rewording of it to deal with our concerns referred to above. This should include that:
- the policy needs to be more focussed, less confusing and all-encompassing, and should not refer to "development";
- it should enable appropriate activities on private land and not unreasonably restrict such activities;
- in the explanation, "Pedestrian" should be changed to "Public".

Policy 4.6 - Natural coastal processes

We support the general concept of using a range of best practice coastal management options but there should be reference to appropriateness or some other similar qualification.

We support the recognition that there are large sections of the coast, including Te Horo, that have a natural dune system adjacent to the beach. We note that the coastal hazard provisions in the PDP fail to distinguish appropriately between areas that have this natural dune system and areas that are at real risk of coastal erosion.

In relation to the Te Horo Residential area, we strongly support the statement in the explanation: "In addition in rural areas, Peka Peka and Te Horo Residential Zones restrictive development setbacks are also applied to retain the natural character of the beach." In relation to the Te Horo Residential zone, those are effectively long-standing coastal yard requirements that, we are advised by the Council, have been in place since 1979. They are for amenity purposes. However, the coastal yards from the operative District Plan have not been kept in the relevant Residential zone provisions in Chapter 5 (and we have opposed those provisions). We are of the view that the reference to the development setbacks or coastal yard requirements should be in a different policy as those setbacks do not relate to natural coastal processes, but rather to amenity issues.

Subject to those matters of support, we oppose this policy, including because it is too extreme, it does not distinguish between areas where development has already occurred and other areas, it will not always be appropriate to accommodate natural shoreline movement, and we oppose the CHMAs. We also oppose the explanation because it, too, is too extreme including, in particular, the sentence "In all areas ... can be accommodated."

We seek:
- that reference be retained to the Kapiti Coast including large sections of coast, including urban areas in Otaki, Te Horo, Peka Peka and Waikanae which have a natural dune system adjacent to the beach;
- that the policy and the explanation be revised to address the concerns raised above, including that they be less extreme, include reference to appropriateness or some other qualification, and distinguish between areas where development has already occurred and other areas;
- deletion of the sentence "In all areas the control of additional development in close proximity to the coast will ensure that natural shoreline movements can be accommodated.";
- ensure that there are permitted activities in the PDP (not overridden by conflicting provisions) to permit mechanical excavation and river training works for stream and river mouths referred to in the explanation; and
- a new policy (discussed below) to enable appropriate activities in the coastal environment and to deal with development setbacks, ie coastal yard requirements, that should remain in place to retain the natural character of the beach (referred to in the explanation) as well as to maintain amenity for beachfront property owners.

Policy 4.7 - Natural dunes

We oppose this policy, including because it has the potential to restrict appropriate land use activities and it will not always be appropriate to enable dunes to migrate inland.

We ask that the policy be qualified to enable appropriate activities and reconsidered once the policy about managed retreat has been decided.

New policy to enable appropriate activities in the coastal environment

We oppose the lack of a policy that deals with enabling appropriate subdivision, development and land use activities in the coastal environment.

As noted above, we strongly support the reference in the explanation to Policy 4.6 that there are development setbacks in the Te Horo Residential zone (effectively long-standing coastal yard requirements) to retain the natural character of the beach. However, that has not occurred in relation to the relevant Residential zone provisions (and we have opposed those provisions). We are of the view that the reference to the development setbacks or coastal yard requirements should be in a different policy from Policy 4.6 as those setbacks do not relate to natural coastal processes, but rather to amenity issues.

We opposed some policies in Chapter 5 on the basis that:
- the residential provisions should be expanded to deal with the coast where properties adjoin the coast; or
- another policy either in Chapter 5 or Chapter 4 (in the coastal environment section, not the coastal hazards section) should be developed to set the policy framework for coastal yards in the areas where there have been long-standing coastal yards, which we have asked to be reinstated.

According to the Council (letter dated 14 December 2012, page 3), the setback lines/coastal yards that we seek, including for Te Horo Beach, have been in place since 1979 (Horowhenua County District Scheme).

We also strongly opposed the failure to include a coastal yard requirement in the Chapter 5 Living Environment provisions. Rule 5A.1.8 standard 13 yard requirements fail to consider the adverse effects on views for residents in beachfront properties which directly adjoin the coast, or the amenity benefits of coastal yards, including from the coast. There does not seem to have been any adequate evaluation of the effects of removing the coastal yard provisions that are in the operative District Plan. It is not appropriate to treat the coastal yard the same as any back yard in the district where there have been long-standing coastal yards. A pattern of development has occurred in light of those requirements and there are amenity and other implications of not including them in the PDP which have not been adequately considered.

Indeed, as we noted in our first submission (page 35), in the side and rear yard provisions, there are references to setback “from adjoining *sites*” which would seem not to include the site boundary with the coast, given the definition of “Site” in the PDP. The effect of that seems to be that there is no rear yard or coastal yard at all for properties that adjoin the coast.

We seek a new policy that sets out the policy framework for enabling appropriate subdivision, development and land use activities in the coastal environment and that sets the policy framework for the retention of coastal yards for amenity (rather that natural coastal processes) reasons.

To implement the policy, we also seek that the following be included in Chapter 5:
- coastal yard requirements as in the operative District Plan of 7.5 m from the seaward title boundary for Te Horo Beach and Waikanae and 70 m from the seaward edge of the existing Esplanade Reserve for Peka Peka;
- the provision should include restrictions on what can occur in a coastal yard which should include (but not be limited to) aspects such as:
  - no building (including an accessory building);

- no structure identified as exclusion #4 in the definition of “Building” or above-ground water tank (exclusion # 5 in the definition of “Building”); and
- no outdoor storage associated with non-residential activities (if this remains a permitted activity).

COASTAL HAZARD MANAGEMENT AREAS AND HAZARDS - CHAPTERS 4 AND 9, DEFINITIONS AND MAPS

We begin by setting out some of our concerns about the Coastal Systems Limited erosion hazard assessment and the provisions in the PDP and then deal with the coastal hazards and hazards provisions of the PDP in Chapters 4 and 9 under various headings.

Coastal Systems Limited erosion hazard assessment and the provisions in the PDP

General concerns - reasons

We have a wide range of concerns relating to the Coastal Systems Limited erosion hazard assessment (Kapiti Coast Erosion Hazard Assessment 2012 Update; Kapiti Coast Erosion Hazard Assessment Part 1: Open Coast (2008); Kapiti Coast Erosion Hazard Assessment Part 2: Inlets (2008); Kapiti Coast Erosion Hazard Assessment Part 3: Data-Base (2008)). We refer to these reports as the “hazard assessment”.

In short, the hazard assessment is fundamentally and fatally flawed, including from a legal perspective, and does not provide a valid basis for the objectives, policies, rules and CHMAs in the PDP.

All of the documents, not just the 2012 Update, need to be considered to understand the hazard assessment. By way of example, the 2008 Part 2: Inlets document conveys quite a different message from the 2012 Update in relation to the Mangaone Inlet at least, which is troubling.

It is unacceptable that the 2012 Update is not complete in that the 2012 Updated Data Base (or Data-Base) explained in section 5 of the 2012 Update has not been provided. Section 5.1 says that the Data-Base is presented as two spreadsheets, one for measurement-site information and the other for component derivations. Section 5.2 says that a separate sheet is assigned for each measurement site within the spreadsheet. Section 5.3 says that a separate sheet is assigned for the derivation of each component. But none of that has been provided.

The hazard assessment has been used by the Council to identify CHMAs and to develop the coastal hazards provisions in the PDP, but the hazard assessment and the resulting PDP provisions:
- do not comply with the RMA or the NZCPS, and in particular Policy 24 of the NZCPS in relation to the hazard assessment;
- do not identify “areas at high risk of being affected”, taking into account the “likely” effects of climate change as set out in Policy 24 of the NZCPS;
- do not identify the “likely” impact of future sea level rise, as claimed on page 4-9 of the PDP; and
- do not identify “areas at high risk from natural hazards” as set out in Policy 28 of the Proposed RPS.

In terms of the RMA, inadequate attention has been given to relevant RMA provisions that provide the context for the hazard assessment and the PDP provisions. There has been little or no recognition of the section 5 purpose of the RMA. The overriding factor in the RMA is the section 5 purpose of the Act. The overriding factor is not a precautionary approach (or in relation to the PDP from a wider perspective, the various factors singled out from sections 6 to 8).

There has been inadequate attention to a number of other RMA matters, including:

- the range of sections in the RMA that bring the decision-maker back to the purpose of the RMA, including New Zealand coastal policy statements (s 56), functions of territorial authorities (s 31), purpose of district plans (s 72), matters to be considered in preparing district plans (s 74), evaluation of alternatives, benefits and costs (s 32), matters of national importance (s 6), other matters (s 7) and Treaty of Waitangi (s 8);
- the wide definition of environment (s 2), which includes people and communities, natural and physical resources, and certain social, economic, aesthetic and cultural conditions;
- the efficient use and development of natural and physical resources (s 7(b)); and
- the definition of natural and physical resources (s 2), which includes all structures, and therefore includes people's houses and other buildings and structures.

In terms of the NZCPS, the 2012 Update of the hazard assessment, based on the 2008 hazard assessments, failed to take appropriate account of the NZCPS which took effect in 2010. In particular, it failed to take proper account of a new policy (Policy 24) dealing specifically with identification of coastal hazards. There was no similar provision in the previous NZCPS 1994. So, the NZCPS in 2010 established a new policy setting out the approach to identification of coastal hazards. Simply carrying on with the approach adopted in 2008 is not appropriate and the hazard assessment is not in accordance with the NZCPS, and in particular Policy 24.

It is notable that Policy 24, which deals with the identification of coastal hazards, does not refer to adopting a precautionary approach. Policy 3, which does, is focussed on actions to be taken by the Council, not the coastal scientist.

The references to "likely" and "risk" in various policies in the NZCPS and the definition of "risk" in the NZCPS (which includes the consequences and the likelihood of occurrence) have not been appropriately considered in the hazard assessment or the PDP.

The PDP says that the policy requirements of Policies 3 and 24 of the NZCPS were met by using a figure of 0.9 m for sea level rise by 2110 and a worst case scenario in relation to storm activity (page 4-8 of the PDP). That is a serious misstatement about what assumptions underpin the hazard assessment, and omits to mention the numerous other precautionary and conservative assumptions upon which the hazard assessment is based.

The hazard assessment:

- incorrectly treats the precautionary approach as if it is the most important legal factor upon which it should be based (eg "precautionarity (required by statute)", page 4, 2012 Update), which it is not;
- adds precautionary assumption, to precautionary assumption, to precautionary assumption when making the assumptions for the model; with the result that
- the cumulative effect is an assessment that is well beyond any reasonable application of any precautionary approach (to the extent that a precautionary approach is required, which we dispute).

Some of these precautionary assumptions then also have a margin of error attached to them (used in the combined uncertainty formula), making the precautionary assumption even more precautionary.

By way of example, the hazard assessment fails to take into account long-term accretion in the northern parts of the Kapiti coast (including Te Horo Beach) where it has been occurring for thousands of years (see eg, the Evolution of the Kapiti Coast section of the operative District Plan pages C15-2 to C15-3). For long-term natural dynamic fluctuations of accretion (Policy 24(1)(b) and (h)(i) of the NZCPS), the model assumes LT=0 in parts of the coast that have longer-term accretion or progradation. That assumption occurs even where the hazard assessment says that progradation is *expected* (page 22, 2012 Update).

But, to add insult to injury, there is then a margin of error of 3.7 m landward for 50 years and 7.4 m landward for 100 years (page 23, 2012 Update) as input to the combined uncertainty equation, so the effective result for the accreting northern Kapiti coast is not 0 at all, but a negative, landward figure.

The assessment also makes a number of precautionary assumptions where the margin of error is unquantifiable and therefore not included in the combined uncertainty formula, so one cannot just look at the combined uncertainty figure to ascertain the margin of error in the modelling.

In relation to the 2008 report (see pages 19-20, "Summary of Peer Reviewer comments on the KCDC Open Coast Erosion Hazard Report" (2007)), in comments to a person who "did not carry out a full peer review, but made some general comments" and who queried why the 2008 report dealt with only 50 years, not 100 years, Dr Shand said:

> "Given the conservative manner in which all the components have been derived, coupled with the extrapolation uncertainty noted above, it is recommended that the 50 yr values be used be adopted [sic], with an understanding that they are can [sic] be applied to a 50 to 100 yr period if a hazard review is undertaken at 10 yr intervals."

Dr Shand then recommended that a footnote be added to the 2008 report to say "... The resulting hazard widths are expected to apply for the next 50 to 100 years."

One of the many conservative or precautionary assumptions relates to not taking into account long-term accretion. Different explanations have been given in the hazard assessment (in 2012 and 2008) as to why long-term accretion is not included and why LT=0.

The reasons given in the 2012 Update for putting long-term accretion at 0 are:

> "Where positive rates occur, LT is set at zero, this being a precautionary measure used by the industry in recognition of the uncertainly [sic] inherent in predicting sustained seaward shoreline migration over prolonged periods of time where the underlying process is not well understood." (pages 16-17, 2012 Update).

The reasons given in the 2008 report for putting long-term accretion at 0 are different:

> "Of particular note is that for all areas subject to a positive (seaward) shoreline trend, the rate was set to zero. This approach is common when assessing hazards for accreting coasts as it removes the assumption of continued accretion, provides [sic] an increased safety margin." (page 24, Part 1: Open Coast)

And the original reason for putting long-term accretion at zero?

In "Summary of Peer Reviewer comments on the KCDC Open Coast Erosion Hazard Report" (2007), as well as saying that this approach is becoming more common in hazard assessment, Dr Shand says to Dr Gibb:

> "In an effort to simplify the computation method - thereby *facilitating hazard update by future council staff*, ... [a]ll positive (acretionary) [sic] long-term rates of change have been set to 0." (emphasis added, page 23)

While simplifying the method to facilitate hazard update by future Council staff might be an acceptable approach when there is not much at stake, it is an unacceptable approach in the context of the use of the hazard assessment in the PDP.

In any event, Policy 24 of the NZCPS which took effect in 2010 deals with identification of coastal hazards. It refers to identifying areas in the coastal environment that are potentially affected by coastal hazards, giving priority to the identification of areas at high risk (a defined term) of being affected. Policy 24(1)(b) states that hazard risks are to be assessed having regard to:

> "short-term and *long-term* natural dynamic fluctuations of erosion and *accretion*" (emphasis added).

Policy 24(1)(h) then refers to the effects of climate change on several matters, including matters (a) to (g).

The concluding words of Policy 24 refer to the *likely* effects of climate change.

Policy 24 does not refer to adopting a precautionary approach to identifying coastal hazards.

In summary, the hazard assessment and the PDP provisions:
- are based on a hazard assessment that is fundamentally and fatally flawed, including from a legal perspective;
- are inappropriately precautionary and conservative and overstate the areas likely to be subject to coastal erosion;
- do not take into account either the likelihood of occurrence or the consequences (discussed in more detail below);
- do not comply with the RMA or the NZCPS, and in particular Policy 24 of the NZCPS in relation to the hazard assessment;
- do not identify "areas at high risk of being affected", taking into account the "likely" effects of climate change as set out in Policy 24 of the NZCPS;
- do not identify the "likely" impact of future sea level rise, as claimed on page 4-9 of the PDP; and
- do not identify "areas at high risk from natural hazards" as set out in Policy 28 of the Proposed RPS.

Inadequate peer review - reasons

The hazard assessment has not been subject to a proper independent peer review. In addition, the 2012 Update would seem to be somewhat misleading as to what peer review has occurred in relation to the "novel" inlets assessment approach.

The 2012 Update says "... the CSL erosion hazard assessments have been peer reviewed, either in part or in full, by several experts (see Acknowledgements), and reviewer Dr Mike Shepherd's overview comments on the present Update Assessment are included as the final appendix (H)." (page 4) The comments of some of the coastal consultants or scientists referred to in the Acknowledgements appear in "Summary of Peer Reviewer comments on the KCDC *Open Coast* Erosion Hazard Report" (2007, emphasis added - those comments relate to the open coast evaluation, not the inlets).

It seems that, apart from the one-page overview comments by Dr Shepherd in Appendix H to the 2012 Update, the peer review of the Inlets assessment is 3 pages prepared by Dr Shepherd in Appendix A to the Part 2: Inlets (2008) report.

We note that Dr Shepherd is an associate of Dr Shand's (see http://www.coastalsystems.co.nz/who_we_are.html). We also note that the Council has not provided names of associates of Dr Shand's as people who we could contact to use as experts. We presume that is because of the potential for conflict of interest, either perceived or real. The same applies to a reviewer. The person should be independent of the author.

We consider that it is unreasonable for there not to have been a thorough peer review by an independent reviewer, with access to all the data, the calculations and the model.

That peer reviewer (and indeed the person carrying out the initial hazard assessment) should have been fully briefed on the legal framework within which the assessment and the review should occur, especially in light of the NZCPS that took effect in 2010, which included a new policy about identification of coastal hazards. The wording of that new policy, Policy 24, required the careful attention of both the person carrying out the assessment as well as any reviewer, not to mention the Council. As noted before, simply carrying on with the approach adopted in 2008 is not satisfactory.

In addition, briefing on the policy framework for the PDP would have assisted in identifying:
- "areas at high risk of being affected", taking into account the "likely" effects of climate change as set out in Policy 24 of the NZCPS;
- "areas at high risk from natural hazards" as set out in Policy 28 of the Proposed RPS;
- "highly hazard prone areas" as set out in Policy 9.3 of the PDP; as well as
- the "likely" impact of future sea level rise, as claimed on page 4-9 of the PDP.

Given that $1.6 billion of property is affected by the open coast and the "novel" inlets evaluations (and that the inlets evaluations are also affected by most of the precautionary assumptions in the open coast evaluation as well as those in the inlets evaluation), a proper, independent peer review, based on the facts and the law, would seem to be the least that we could have expected that the Council would require.

Dr Shand's letter dated 18 December 2012 to the Council declining to provide various information is all the more reason for an independent, thorough peer review to occur.

It seems that none of the people who "peer reviewed" or commented on the hazard assessment had access to all of the data, calculations and modelling. That material has not been made available to submitters either. That is unacceptable.

Unless and until that material has been made available to submitters, the hazard assessment cannot be relied upon by the Council.

Te Horo Beach and Mangaone Inlet issues - reasons

We have a range of more specific concerns about the way in which the hazard assessment has dealt with Te Horo Beach and the Mangaone Inlet.

Te Horo Beach is part of the Kapiti coast where there is long-term accretion or progradation. It is inappropriate that the hazard assessment ignores that in its assumptions and predictions.

The PDP (pages 4-8 to 4-9) correctly notes that the Regional Council straightens the channel at the mouth of the Mangaone Stream but incorrectly says that the hazard assessment conducted a managed scenario and an unmanaged scenario (page 4-8). Clearing the mouth is all that needs to occur and there are no structures involved. It is a straightforward, low-cost exercise with a digger; we are advised by the Regional Council that straightening the Mangaone Stream mouth happens about once a year. Inappropriately, the hazard assessment failed to include a managed scenario for the Mangaone Inlet.

The beach at Te Horo is a unique sand and gravel beach with gravel dunes. A report commissioned by the Council and written by Wildlands - Assessment of Four Potential Ecological Sites or Extensions, Kapiti Coast District - identifies the 4.5 km Te Horo gravel beach at Rodney Ave and Sims Road. The hazard assessment has not taken proper account of the unique sand/ gravel nature of the Te Horo beach and Mangaone Inlet and the gravel dunes.

There has not been a local assessment at Te Horo Beach which, in urban areas, would be every few hundred metres. Measurement site C26.58 is to the south of the village and measurement site C27.63 is to the north, a gap of 1.05 kilometres (see page 30 of the 2008 Part 2: Inlets report). There is no measurement point within the village, despite the reference in Part 3: Data-Base (2008) to Horizons profile BM26 which is 294 m north of C26.58 and KCDC profile 420 which is 432 m north of C26.58.

This situation seems to be further compounded because the assessment seems to smooth the line from the Mangaone Inlet to reference point C26.58, rather than to either of the 2 reference points that lie within the boundaries of our village area. That seems to disadvantage property owners further away from the Mangaone Inlet.

We are also concerned by what we consider to be a biased instruction given to Dr Shand for the 2012 Update. He was asked to "*9) Include geomorphological evidence in the vicinity of inlets which indicates the potential for greater erosion than presently assessed.*" (page 8, 2012 Update). In our view, an unbiased instruction would be to identify evidence that indicates the potential for *greater or lesser* erosion than presently assessed.

The result of that instruction was the inclusion of purple lines in the 2012 Update ("Earlier shorelines from LIDAR and aerial photo stereo analysis") and a statement that these lines "indicate erosion has occurred in the vicinity and landward of the 100 yr natural IEPL, thus suggesting the predictions may be under-estimated." (see pages 36-37, 2012 Update) We may be mistaken, but it is our understanding that these purple lines are actually an indication of a systematically prograding coast. In any event, the difference in tone and conclusions between the 2008 and 2012 reports in relation to the Mangaone Inlet as a result of the instruction is troubling.

The hazard assessment and the PDP fail to take proper account of "risk", which we discuss in the next section and the hazard assessment and the PDP adopt a "one size fits all" approach to no-build areas and relocatable areas, regardless of the likelihood of the hazard or the consequences in the circumstances.

In particular, in relation to Te Horo Beach and the Mangone Inlet, the hazard assessment and the PDP fail to take proper account of the fact that they are in an area of long-term accretion and there are substantial dune areas between the sea and property boundaries.

Given the facts at Te Horo Beach and the Mangaone Inlet, including the sand/gravel beach, the gravel dunes, the extent of the dunes, and the low-cost, uncontroversial approach of the Regional Council clearing the Mangaone Stream mouth about once a year, any risk of coastal erosion is low and there will be plenty of advance notice of any issues occurring. There is no risk to people or property that needs to be addressed by the Council.

Evaluation of risk - reasons

The NZCPS, Proposed RPS and the PDP all refer to, and define, risk. Although the PDP does not italicise the term "risk", it is a defined term in the PDP, although the definition should be revised because the second sentence of the definition does not reflect the first sentence.

All of the definitions incorporate the concept of likelihood or probability of the occurrence and the consequences.

Policy 28 of the Proposed RPS is also particularly relevant in stating that district plans shall identify areas "at high risk" from natural hazards and avoid <u>inappropriate</u> development in those areas.

The hazard assessment and the resulting PDP provisions assess neither the likelihood or probability of the occurrence nor the consequences. They also do not identify the areas at high risk and do not deal properly with what is inappropriate development in those areas.

In short, the hazard assessment and PDP provisions lack any proper evaluation of the concept of "risk", including the likelihood or probability of the occurrence and the consequences. In relation to Te Horo Beach, relevant matters should have included:

- the long-term accreting nature of the coast;
- the sand/gravel beach and gravel dunes;
- considerable dune systems adjacent to the beach (referred to in Policy 4.6 of the PDP), with property boundaries being a long distance from the sea and houses being even further away than that;
- straightforward stream mouth clearance that keeps the stream mouth from migrating (although, as already noted, the hazard assessment did not conduct a managed scenario);
- no erosion hazards and no coastal protection structures, and no need for any;
- no risk to roads or services or to property or safety of people; and because of all of these factors
- plenty of time to address any issues of sea level rise, should any of the above factors change over time to alter the current low risk from coastal hazards at Te Horo Beach.

Relief sought

Unless the CHMAs are removed, and in particular removed from Te Horo Beach (both to the north and south of the Mangaone Stream), we seek a revised hazard assessment and PDP provisions that address all of the concerns that we have referred to above and elsewhere in our submissions.

In particular, we seek:
- a revised hazard assessment that is in accordance with the RMA and the NZCPS (including Policy 24) and that is not inappropriately precautionary or conservative;
- a revised hazard assessment that is not based on any biased instructions;
- a revised hazard assessment and PDP provisions that identify "areas at high risk of being affected", taking into account the "likely" effects of climate change as set out in Policy 24 of the NZCPS; "areas at high risk from natural hazards" as set out in Policy 28 of the Proposed RPS; "highly hazard prone areas" as set out in Policy 9.3 of the PDP; as well as the "likely" impact of future sea level rise, as set out on page 4-9 of the PDP;
- a revised hazard assessment and PDP provisions that take into account the likelihood or probability of the hazard and the consequences, including risk of loss of property or life and that distinguishes between areas that are at high risk and areas where any risk would be low, slow and long-term, with plenty of advance notice of any potential issues arising;
- an independent peer review of the revised hazard assessment, including for the inlets evaluation and the open coast evaluation, by a peer reviewer who is not an associate of Dr Shand's, who has access to all of the data, calculations and model used in the hazard assessment and who is fully briefed on the correct approach to adopt in conducting the hazard assessment; and
- availability of all relevant information relating to the hazard assessment, including data, databases, spreadsheets, calculations, equations, methodology, and any model to enable easy and efficient review by submitters and/or their experts and that this be made available immediately to submitters, including us, to enable us to prepare properly for the Council hearing.

In addition, in relation to Te Horo Beach and the Mangaone Inlet (unless the CHMAs are removed), we seek a revised hazard assessment that:
- addresses all of the items referred to in the preceding paragraph;
- takes into account the long-term accreting nature of the northern part of the Kapiti coast;
- takes into account the size of the dune area between the sea and affected properties;
- includes assessment of the unique sand/gravel nature of the beach at Te Horo and the gravel dunes;
- includes more appropriate reference points that lie within the Te Horo village;
- identifies where the effect of the Mangone Inlet evaluation ends in relation to properties further away from the Mangaone Stream; and
- includes a managed scenario for the Mangaone Inlet.

We also seek PDP provisions that take into account that Te Horo Beach is part of an accreting coast, with a sand/gravel beach, substantial gravel dunes between the sea and beachfront property boundaries, no road or services at risk, no erosion hazards, no coastal protection structures or need for any, and no risk to people or property.

Finally, we seek revision of the definition of "Risk" so that the second sentence accurately reflects the first sentence by, for example, changing "hazard" to "probability" in the second sentence.

Section 4.2 - Coastal Hazard Management Areas

We oppose all of section 4.2, including because it:
- is based on an inappropriate hazard assessment;
- is based on an inappropriate definition in the PDP of coastal hazards;
- contains incorrect statements;
- fails to identify that no managed scenario was carried out for the Mangaone Inlet despite stating that the Regional Council undertakes stream mouth clearance of the Mangaone Stream;
- does not convey a balanced assessment and description of coastal hazard issues and potential climate change impacts;
- includes selective and misleading references to relevant provisions, including the NZCPS;

- fails to include appropriate reference to enabling people and communities to provide for their social, economic and cultural well-being and to the reasonable rights of property owners; and
- includes reference to CHMAs and we oppose those CHMAs.

We note the statement in the last paragraph on page 4-9 that the hazard assessment considered the "likely impact" of future sea level rise.

Council's letter dated 25 August 2012 to property owners about information to be included in Land Information Memoranda confirms the Council's understanding that the hazard assessment was predicting "likely" effects. That letter says that the coastal hazard assessment:

> "... predicts where the shoreline *is likely to be* along [Kapiti] Coast within 50 and 100 years." (emphasis added)
>
> "Around 1,800 properties - including most beachfront properties in the district - *are at likely risk* of *significant erosion or inundation* (flooding) within 100 years. Up to 1,000 of these may be affected within 50 years." (emphasis added)
>
> "How to manage the effect of increased sea level and storm intensity on [Kapiti's] low lying [sic] coast ... *is becoming more urgent*." (emphasis added)
>
> "... under the Resource Management Act, councils must try to avoid new buildings and developments occurring *in areas of high risk* from natural hazards." (emphasis added)

But now, it transpires that the letter from the Council was not correct.

The Council's letter dated 18 January 2012 (in its Attachment One, Note 2 on the first page) to property owners says that the hazard assessment is:

> "... based on a worst case scenario".

This is a very significant change.

As already noted, the PDP refers to Policies 3 and 24 of the NZCPS and says that these policies were met by using 0.9 m for sea level rise by 2110 and a worst case scenario in relation to storm activity (page 4-8 of the PDP), but the hazard assessment adopts a precautionary or conservative approach for many assumptions other than those.

Under the heading "Coastal hazards identified", the PDP says:

> "The work undertaken considered the *likely impact* of future sea level rise, as an effect of climate change, on [Kapiti] Coast beaches, and estimated recession of typically 10-17 m in 50 years, and 40-60 m over a 100 year timeframe." (emphasis added, page 4-9 of the PDP, last para)

That one sentence seems to identify the underlying problem to the whole PDP approach to coastal hazards. It seems that the PDP was prepared on the basis that the hazard assessment shows "the likely impact". That might explain the draconian provisions - if all this were likely to occur.

But the assessment does not show the likely impact, or even the impact of a reasonable precautionary approach. It shows a worst case scenario. That is not what is contemplated by the RMA or the NZCPS. That is especially the case in a place like Te Horo Beach, on an accreting coast, with a sand/gravel beach, substantial gravel dunes between the sea and beachfront property boundaries, no road or services at risk, no erosion hazards, no coastal protection structures or need for any, and no risk to people or property.

The Council has effectively delegated to Dr Shand the decision to include lines in the PDP throughout Kapiti based on a worst case scenario. That is inappropriate on many levels.

In addition to the many precautionary assumptions in the modelling, those lines have been imposed without taking account of likelihood/probability of the occurrrence, or that parts of the Kapiti coast are accreting over the longer term, or what are the "areas at high risk of being affected"(Policy 24 NZCPS) or "areas at high risk" (Policy 28 Proposed RPS), with the definitions of risk including consideration of likelihood or probability of the occurrence and the consequences. Neither likelihood/probability of occurrence nor the potential consequences in the facts of each area along the Kapiti coast has been considered properly.

Finally, in terms of section 4.2 of the PDP, we note the explanation on page 4-10 of the PDP under the heading "Managing development in response to coastal erosion hazard" about the relationship between the CHMA development controls and the more general zone requirements and that where CHMA provisions conflict with the zone provisions, the CHMA provisions prevail. The (presumably unanticipated) effect of Rule 4A.4.1 would seem to be that anything not referred to in the Chapter 4 rules is a discretionary activity, thereby overriding most, if not all, of the general zone requirements and turning what would otherwise be permitted activities into discretionary activities.

We seek the complete rewriting of this section following a revised hazard assessment. This section should, among other things, include:

- revision of the references to "coastal hazards", preferably by changing the definition of "Coastal hazards" to remove the reference to "the potential" and to refer, by way of example, to "a high risk of";
- the Evolution of the Kapiti Coast section of the operative District Plan (pages C15-2 to C15-3);
- deletion of the sentence "There is, however, uncertainty whether this accretion is a long term (geological) feature or a human induced short term (100 years) effect and, if it is human induced, it is unclear whether it will be overtaken by sea level rise over time.";
- an accurate, balanced description of the varying nature of any coastal erosion hazards along the coast and of the areas at highest risk of coastal erosion hazard;
- a balanced description of climate change, and the potential outcomes, including that climate change may result in increased deposition and therefore increased accretion or progradation in areas where long-term accretion has been occurring;
- reference to enabling people to provide for their social, economic and cultural well-being;
- recognition of the legitimate rights of property owners wanting to continue to use and enjoy their properties;
- a statement that inappropriately precautionary approaches can impose avoidable social and economic loss and harm to communities and individuals; and
- accurate references to relevant provisions, including the NZCPS.

4.2.1 Policies

We oppose all of the policies in section 4.2.1 including because they:

- are based on objectives that do not achieve the purpose of the RMA;
- are not in accordance with the RMA, NZCPS, RPS and the Proposed RPS;
- are too extreme and restrictive;
- use black-and-white terms such as avoiding, ensuring etc which are not appropriate and need to be used with care; and
- have been developed based on an inappropriate hazard assessment.

In addition:

- there has not been adequate consideration of their appropriateness and their effects (including on the reasonable rights of property owners); and
- there has been a failure to consider that inappropriately precautionary and restrictive policies have adverse effects, including imposing avoidable social and economic loss and harm to individuals and communities.

In particular, we oppose:

- Policy 4.8, including because it seeks to restrict the location of buildings and infrastructure in what are inappropriate CHMAs and the definition of “Coastal hazards” is too all-encompassing;
- Policy 4.9, including because it is too extreme, references to “avoiding” are not appropriate, the meaning of “new” “development” (a defined term) is unclear, the definition of “Coastal Protection Structure” is confusing, and how it relates to hard protection structure (a defined term) is also confusing;
- Policy 4.10, including because the CHMAs are inappropriate (and are referred to using inconsistent terminology in the maps and in the PDP, and even within this policy), the relocatable build urban CHMA referred to in b) is not appropriate as predicting to 100 years is too uncertain, and the CHMAs have not been developed in accordance with the NZCPS as asserted in the explanation (or indeed in accordance with the RMA or the Proposed RPS). Reference to “avoid” is inappropriate. The reference to the difference between managed and unmanaged inlet lines is misleading as the hazard assessment inappropriately did not include a managed scenario for the Mangaone Inlet. Basing inlet lines on a risk that the Regional Council might not continue with straightforward, low-cost and uncontroversial river and stream mouth clearance (eg as occurs at the Mangaone Stream) is unwarranted and unreasonable. Finally, the explanation is confusing;
- Policy 4.11, including because it is based on inappropriate CHMAs, is too extreme and fails to deal appropriately with the reasonable rights of property owners. The references to “development” (a defined term) are inappropriate and too extreme and the reference to “new built” is confusing. The reference to “existing development” does not seem to make sense, given the definitions of those two terms. There may be occasions where hard protection structures are appropriate. The explanation does not address the accreting part of the coast and the work referred to in the explanation in relation to options should precede the provisions in the PDP;
- Policy 4.12, including because it is based on inappropriate CHMAs, is too extreme, and does not adequately recognise the reasonable rights of property owners. The explanation incorrectly asserts that the area is at risk from coastal erosion within the next 50 years. The explanation seems to be incorrect in referring to the managed scenario and the reference to the “dune restoration buffer of 15 metres, landward of the area identified as at risk” would seem to be incorrect - it seems that the Council is not sure exactly what the no-build urban CHMA is based on, which is troubling, given the significance of the consequences for landowners. The reference to prohibiting new buildings (a defined term) is inappropriate;
- Policy 4.13, including because it is based on inappropriate CHMAs, the policy is too extreme, it does not adequately recognise the reasonable rights of property owners, predicting what might happen in 100 years is inappropriately uncertain, the explanation incorrectly asserts that the assessment is consistent with the NZCPS, the definition of “Coastal hazards” is too all-encompassing, and the explanation does not correctly explain the effect of the rules;
- Policy 4.14, including because it is based on inappropriate CHMAs, the policy is too extreme, the definition of “Coastal hazards” is too all-encompassing, the reference to “new built” “development” (a defined term”) is unclear, the reference to existing development is too extreme (and does not seem to make sense in terms of the definitions of “Existing” and “Development”) and the explanation incorrectly asserts that the assessment is consistent with the NZCPS. In addition, and importantly, the failure to include both a relocatable and a no-build rural area unfairly disadvantages properties with buildings in the no-build rural area that would otherwise be in a relocatable area. The reference in the explanation to there being “very few buildings currently in these areas” is cavalier in relation to those affected and there has been no adequate evaluation of how to address the people and properties caught in this situation. There is one rural property in Te Horo Beach (23 Sims Road) where the house is directly adversely affected by this inappropriate policy and the resulting rules and we strongly oppose the provisions; and
- Policy 4.15, including because the provisions for adaptation strategies are unclear, and the resulting rules are ultra vires. Strategies should be preceding provisions in the PDP.

We seek a complete revision of these policies, including additional section 32 evaluation of the revised policies (and the objectives, which we addressed in our first submission). In summary, the objectives and policies should reflect the following:

- detailed provisions will await the completion of the regional hazard management strategy being prepared by Greater Wellington Regional Council;
- areas at real risk of coastal erosion will be identified, using appropriate methods and in consultation with those affected and the community;

- options for dealing with that risk will be evaluated, including detailed cost-benefit evaluations, and there will be consultation with those affected and the community;
- a decision-making process will be developed for progressing the options;
- areas at lower risk will be watched;
- appropriate activities will be enabled in all areas;
- either qualify the references to coastal hazards as being areas at high risk of coastal hazards or, preferably, change the definition of "Coastal hazards" to remove the reference to "the potential" and refer, by way of example, to "a high risk of";
- if detailed provisions are progressed without waiting for the regional hazard management strategy, then, after a revised hazard assessment:
  - provide for a revised 50-year area;
  - not have a revised 100-year area because of the high level of uncertainty associated with what might be happening between 50 and 100 years;
  - address appropriately all of the issues and concerns that we have raised above in relation to the specific policies and the objectives and other matters that we dealt with in our first submission;
  - delete Policy 4.10 b) and Policy 4.13 and the associated notations on the maps;
  - give particular consideration to properties where buildings in existence are inappropriately caught by Policy 4.14 and the resulting rules (where the buildings would otherwise be in a relocatable area). By way of example, this could include providing both relocatable and no-build rural areas (if relocatable areas are retained) or revising the rules to recognise appropriately buildings that are already in existence by, for example, making the buildings in existence, alterations, additions and new buildings permitted activities without any restrictions other than those in the general zone;
  - provide explicit recognition that inappropriately restrictive provisions can impose unreasonable and avoidable costs on the community and on individuals;
  - have a legal and a planning audit of all of the provisions by experienced resource management practitioners, taking into account the submissions lodged; and
  - have a revised section 32 evaluation.

4.3 Rules and standards

We oppose all the rules and related definitions, including because they are poorly drafted and confusing, with inconsistent terminology, gaps, oddities, and consequences that are presumably unintended.

To the extent that the PDP requires property owners or occupiers to rely on section 10 RMA existing use rights, we oppose those provisions. It can be difficult, if not impossible, to prove that the activity was lawfully established and the restrictions in section 10 render the use limited. The 12-month limitation can effectively extinguish existing use rights. Appropriate uses and activities, subject to appropriate standards, should be allowed as permitted activities, without forcing people to rely on existing use rights unless the uses or activities are clearly inappropriate.

The rules are inappropriately restrictive, resulting from an inappropriately precautionary and conservative hazard assessment. There has been no adequate consideration of a range of matters, including the provisions of the RMA and the appropriateness and effects (intended and unintended) of the rules. There has not been adequate consideration of the reasonable rights of property owners; the rules inappropriately interfere with the reasonable rights of property owners to use and develop their properties.

There seems to have been no proper evaluation of the costs and benefits of requiring relocatable buildings as extensively as is proposed and no proper evaluation of why consent should be required for any relocatable building. The definition of "Relocatable building" needs revision and the definition of "Relocatable area" is wrong; please see our first submission.

We believe that various statements that the Council has made on the Council's website and in newspapers about the effect of the rules are incorrect. It is troubling that the Council has one interpretation of the rules and we have different ones. The rules should be clear as to their meaning.

There are numerous other problems with the rules, including:

- the terminology is inconsistent and confusing and there are numerous defined terms that are not italicised (as with the PDP as a whole);
- the rules do not make it clear that they apply only to that part of the land or building that is within each CHMA. This is particularly important where land, or a building, straddles a no-build/ relocatable boundary or a relocatable/no restriction boundary (if the relocatable areas remain);
- the references to "existing" are inappropriate, given the definition of "Existing" (please see our first submission in relation to the definition "Existing");
- while it is not intended, it seems that the effect of the rules (in particular Rule 4A.4.1) is to make eg alterations to buildings in the relocatable area or minor work to buildings in the no-build areas, a discretionary activity - or at least the situation is ambiguous;
- the reference to "Minor" in Rule 4A.1.1 seems incorrect in relation to relocatable buildings;
- in terms of Rule 4A.1.3, the definition of "Alteration" is not sufficiently wide (please see our first submission in relation to the definition "Alteration");
- Rule 4A.2.2 seems particularly confusing and it is not apparent why any consent should be required for a relocatable building;
- Rule 4A.3.4 is confusing, the reference to "Minor" additions seems to be an error as standard 1 refers to additions greater than 10 m2 or 10% (minor additions to non-relocatable buildings having been dealt with in Rule 4A.1.1 standard 2), and the matters over which Council will restrict discretion extend inappropriately beyond coastal hazard issues;
- the effect of the default discretionary rule 4A.4.1 makes anything not referred to a discretionary activity, thereby effectively overriding eg any permitted or controlled activities in other chapters, leading to results that are inappropriate and that presumably have not been anticipated (eg overriding permitted activities in the Residential zone, overriding permitted activities in Rule 9B. 1.6 in terms of river and stream mouth clearance). Please see our comments in our first submission under the heading RIVERS AND STREAMS WHERE CLEARANCE, MOUTH STRAIGHTENING ETC OCCUR - ALL RELEVANT CHAPTERS AND RELEVANT MAPS OF THE PDP;
- Rules 4A.4.3 and 4A.5.2 are legally invalid in referring to adaptation strategies that do not exist and which sit outside the District Plan process. In addition, the references to the adaptation strategies are confusing. Rule 4A.4.3 refers to "an adaptation strategy for that property". Rule 4A.5.2 refers to an "agreed" adaptation strategy. Policy 4.15 says: "An adaptation strategy will be developed by Council..." There is no definition of adaptation strategy;
- ironically, minor additions to buildings in the no-build urban CHMA would be a non-complying activity currently under Rule 4A.5.2 (as there are no adaptation strategies), but major additions to buildings in the no-build urban CHMA would seem to be a discretionary activity under Rule 4A. 4.1 (as there seems to be no rule referring to major additions in the no-build areas);
- Rule 4A.5.3 making coastal protection structures a non-complying activity in the no-build areas and Rule 4A.6.1 making new coastal protection structures a prohibited activity in the no-build areas are confusing;
- the definition of "Coastal Protection Structure" is confusing and its relationship with the defined term "Building" is also confusing (please also see our first submission in relation to these defined terms, although it does not address the relationship between the terms);
- making new buildings a prohibited activity, given the wide definition of "Building", leads to inappropriate and presumably unanticipated results. By way of example, in terms of permitted activity structures referred to in Rule 9B.1.6, Chapter 4 rules would restrict them in the no-build areas because of the definition of "Building" (which means any structure, unless it comes within one of the exclusions, but none of them seems applicable) and perhaps the definition of "Coastal Protection Structure". Under Rule 4A.6.1, the erection of any new building (or coastal protection structure) is a prohibited activity, thereby directly contradicting and indeed preventing even obtaining a consent for the structures that would otherwise be permitted activities in Rule 9B.1.6.

In summary, the rules are inappropriate for a wide range of reasons, including (but not limited to):

- the rules are inappropriately restrictive, resulting from an inappropriately precautionary and conservative hazard assessment, inappropriately restrictive rules, and the meaning of defined terms;
- the rules are poorly drafted and confusing, with inconsistent terminology, gaps, oddities, and consequences that are presumably unintended;
- the rules inappropriately require property owners or occupiers to rely on section 10 RMA existing use rights;

- there has been no adequate consideration of a range of matters, including the provisions of the RMA and the appropriateness and effects (intended and unintended) of the rules;
- there has not been adequate consideration of the reasonable rights of property owners and the rules inappropriately interfere with the reasonable rights of property owners to develop their properties; and
- prohibited activities are inappropriate.

Subject to the relief sought in relation to the objectives and policies, we seek a complete revision of the rules after a revised hazard assessment, and preferably after the regional hazard management strategy has been prepared by the Regional Council, including:

- taking into account all of the concerns that we have raised above and throughout our submissions;
- using consistent terminology;
- identifying defined terms in italics and ensuring that the defined terms used are appropriate and do not lead to unintended or inappropriate consequences;
- not using the defined term “Existing”;
- making clear that the rules apply only to that part of the land or building that is within each CHMA;
- clarifying the ambiguous, incorrect or odd provisions;
- clarifying the relationship with rules in other chapters;
- deleting all Chapter 4 rules that apply in the relocatable area;
- deleting Rule 4A.4.1;
- deleting Rules 4A.4.3 and 4A.5.2;
- ensuring that rules in Chapter 4 do not override permitted activities in other chapters where those other permitted activities should have priority (eg Rule 9B.1.6 and please see our comments in our first submission under the heading RIVERS AND STREAMS WHERE CLEARANCE, MOUTH STRAIGHTENING ETC OCCUR - ALL RELEVANT CHAPTERS AND RELEVANT MAPS OF THE PDP);
- in a revised 50-year area, permitting alterations and additions etc and new accessory buildings without restriction other than the requirements of the relevant general zone and making new buildings a permitted activity if they are relocatable (but taking care with terminology to ensure that no structures are accidentally caught by the rules, and taking care to clarify how an alteration or addition is distinguishable from a new building);
- either not having a revised 100-year area because of the high uncertainty associated with it or, in a revised 100-year area, permitting all activities that are in accordance with the provisions in the relevant general zone, without any additional restrictions;
- giving particular consideration to properties where buildings in existence are inappropriately caught by Policy 4.14 and the resulting rules (where the buildings would otherwise be in a relocatable area), if such provisions remain. By way of example, this could include providing both relocatable and no-build rural areas (if relocatable areas are retained) or revising the rules to recognise appropriately buildings that are already in existence by, for example, making the buildings in existence, alterations, additions and new buildings permitted activities without any restrictions other than those in the general zone;
- no rules that specify that activities are prohibited activities;
- a legal and a planning audit of all of the rules, and the associated defined terms, by experienced resource management practitioners, taking into account the submissions lodged; and
- revised section 32 evaluations of the rules.

In terms of relief regarding the definitions:

- the definition of “Existing” needs to be addressed; please see our first submission;
- the definition of “Relocatable building” needs revision and the definition of “Relocatable area” is wrong; please see our first submission;
- the definition of “Alteration” is not sufficiently wide; please see our first submission;
- the definition of “Coastal Protection Structure” needs clarification and its relationship with the defined term “Building” also needs clarification (please also see our first submission in relation to these defined terms as well as our comments in that submission about the lack of a definition for “Structure”). The relationship between the definition of “Coastal Protection Structure” and “Building”, and of both terms with the term “Structure”, if it is to be defined, should be considered carefully. The definition of “Coastal Protection Structure” should, among other things, refer to the area “landward” of the Coastal Marine Area or the shoreline (or whatever the measuring point is

to be, which needs to be identified with precision and needs to be within the Council's jurisdiction) and needs to clarify the other parts of the currently confusing definition. Its relationship with the defined term "Hard protection structure" also should be clarified.

Chapter 9 - Hazards

For similar reasons to those noted elsewhere in our submission, including that the provisions are not in accordance with the RMA, NZCPS and Proposed RPS, we also oppose:

- the introduction and section 9.1.1, because the wording is inappropriate and misleading, including the reference to a precautionary and risk-based approach to hazard management, the statements under the heading Coastal Hazards, and the references to "coastal hazards" (and variations thereof here and elsewhere in Chapter 9) which are inappropriate in light of the definition of "Coastal hazards";
- Policy 9.1 including because it is too expansive and unqualified. To overstate areas at risk is not appropriate. The CHMAs that have been identified on the maps are inappropriate and the approach to identifying the coastal erosion hazards (to use terminology from Policy 9.1) was also inappropriate. The explanation seems somewhat disingenuous in relation to its assertion that the identification is to "provide certainty to property owners";
- Policy 9.2, including because what the Council has done in relation to coastal hazards demonstrates its inappropriateness. What is stated in this policy and the explanation has not in fact occurred properly in relation to the hazard assessment. While the uses may differ, appropriate uses should be allowed in all areas, not just in lower-risk areas. There should be recognition that property owners may wish to accept certain risks and that that may be appropriate. There should be recognition that inappropriately restrictive provisions can impose unreasonable costs on the community and on individuals;
- Policy 9.3 (and while we generally support the concept of identifying highly hazard-prone areas, which is consistent with the Proposed RPS), we oppose the policy and the explanation, including because they are too extreme in a number of respects. The maps identify a number of areas that are not highly hazard-prone areas or indeed hazard-prone at all. Reliance on modelling is not satisfactory as that is only one element in identifying hazard-prone areas and the approach that has been adopted in relation to coastal hazards has been most inappropriate. The reference to "New" is ambiguous and potentially misleading. The rules include inappropriate restrictions in areas that are already developed. There should be a distinction drawn between areas that have already been developed and areas where development has not occurred. Reference to a 1 in 500 year tsunami risk should be deleted as it is not appropriate for a number of reasons and we are not aware of information that has been provided to enable us to ascertain what areas would allegedly be affected. There should be recognition that inappropriately restrictive provisions can impose unreasonable costs on the community and on individuals;
- Policy 9.4 including because it is not in accordance with the RMA, the RPS, the Proposed RPS and the NZCPS and it is too blunt an approach. In addition, we have no confidence in the Council's judgement as to what is an appropriate precautionary approach in light of the events surrounding the hazard assessment, so including a policy with this terminology is inappropriate and unacceptable. An overly-precautionary approach is not appropriate and is not sanctioned by the RMA or the documents referred to in it. The RMA is not a no-risk statute. Inappropriately restrictive provisions can impose inappropriate costs on the community and on individuals; and
- Policy 9.5 because it is too absolute, the reference to "new" is unclear and the policy does not distinguish between areas where there is already development in existence and other areas and the reference in the explanation to coastal erosion is not appropriate.

We seek:

- revision of the references to terms such as "coastal hazard[s]", "coastal erosion" and "coastal erosion hazard" (or variations thereof) to use consistent terminology, to refer to areas at high risk, or to use relevant defined terms to refer to areas at high risk;
- revision of the introduction and 9.1.1 to address our concerns;
- deletion of Policy 9.1;
- revision of Policy 9.2 to address a range of issues including after a revised hazard assessment has been prepared and the areas at real risk of coastal hazards have been properly identified, to provide that appropriate uses should be allowed in all areas, not just in lower-risk areas; recognition that property owners may wish to accept certain risks and that that may be

appropriate; recognition that inappropriately restrictive provisions can impose unreasonable costs on the community and on individuals;
- revision of Policy 9.3 after a revised hazard assessment has been prepared and the highly hazard-prone areas have been properly identified, including to provide wording that is less extreme; clarify the reference to “New” and draw a distinction between areas that are already developed and areas where development has not occurred; provide recognition that inappropriately restrictive provisions can impose unreasonable costs on the community and on individuals; delete reference to a 1 in 500 year tsunami risk;
- deletion of Policy 9.4; and
- revision of Policy 9.5 to clarify what is meant by “new”, to include a concept of eg reasonableness, and to distinguish between areas that are already developed and areas where development has not occurred

Policy development and section 32 evaluation

The coastal hazard and hazard provisions are so far off the mark in terms of compliance with the RMA, NZCPS, RPS and Proposed RPS as well as in terms of appropriate objectives, policies, rules and CHMAs that it is difficult to make constructive submissions. The approach that the Council has adopted has resulted in significant prejudice to property owners and submitters.

The Council’s Discussion Document, Natural Hazards & Managed Retreat, which was not notified to the 1800 affected property owners (and which we, and many others, were not aware of until recently - and which we would not have anticipated applying to us in any event), said that the next step would be (page 3):

> “Production of the Draft District Plan for consultation, based on community feedback”.

That did not happen and the Council went straight to the next step that was identified in that Discussion Document, ie notification of the PDP provisions for formal public submissions.

If the Council had followed the approach identified in the Discussion Document and had consulted effectively and openly with affected property owners, many of the problems with the coastal hazard provisions (and indeed many other problems in the PDP) might well have been resolved before notification of the PDP. The section 32 evaluation of the PDP provisions would have been based on better information than is evident in the evaluation.

That there has been a positive section 32 evaluation, in light of all of the problems and issues related to the coastal hazard provisions, is a powerful demonstration of the inadequacy of the evaluation. The flip-flop over the buffer added landward of the relocatable area is also a powerful indication of a poor section 32 evaluation at the time the Council resolved to notify the PDP (subject to correcting minor edits). Given that $1.6 billion of property is affected, one would expect a rigorous, high-quality section 32 evaluation and that has not occurred.

The objectives are not the most appropriate way to achieve the purpose of the RMA and have been developed based on errors of fact and law. Scant attention has been paid in the coastal hazard and hazard provisions to the purpose of the RMA, including enabling people and communities to provide for their social, economic and cultural well-being.

The policies and rules, having regard to their efficiency and effectiveness (or more relevantly, their lack thereof) are not the most appropriate for achieving the objectives and have been developed based on inappropriate objectives as well as errors of fact and law.

There has been inadequate evaluation of the benefits and costs of the provisions and inadequate evaluation of the risk of acting or not acting in relation to coastal hazards.

The “one size fits all” approach to areas that are at risk in eroding areas along the southern part of the Kapiti coast and the accreting northern parts of the Kapiti coast (including Te Horo Beach) with substantial dune areas between the sea and property boundaries is most inappropriate.

It seems that no “common sense” filter has been applied in treating eroding areas and areas with little space between the sea and properties the same as accreting areas and areas with extensive dune areas between the sea and properties.

We are aware that the Regional Council is progressing work on a regional hazard management strategy and believe that it would be constructive to await that strategy so that appropriate provisions could be developed within that context.

In addition, the policy work that Alison Lash is doing with groups in the community in identifying the options for dealing with coastal hazards should precede, not follow, provisions in the PDP. Once the areas at real risk of hazards are identified, and the options for dealing with those hazards are identified, the PDP would be in a position to set out relevant CHMAs, objectives, policies and rules.

Because the coastal hazard and hazard provisions are so far off the mark of what is acceptable and submitters are therefore at a significant disadvantage in terms of making constructive submissions, a variation is the most efficient, effective, cost-effective and fair way to progress the coastal hazard provisions. That should incorporate waiting until the Regional Council’s regional hazard management strategy is in place.

Engaging independent commissioners to try to get the coastal hazard and hazard provisions back on track, in light of the issues with the hazard assessment and the resulting CHMAs, objectives, policies, and rules is likely to be an extremely costly, frustrating and inefficient way forward.

We believe that if the Council and submitters work together constructively, with open minds and communication, then considerable progress should be able to be made in achieving an appropriate outcome. We are saddened by the fact that this has not already occurred and that so much unnecessary anguish has been caused by the coastal hazard and hazard provisions, when so much progress could have been made by working constructively together. The Council, in telling people to make a submission and hire their own coastal experts, rather than engaging in constructive discussions, has done a disservice to itself, the community and submitters. That has also been the case when the Council has refused to answer legitimate questions about the hazard assessment, and instead provided official information letters that were not responsive to the questions asked. Not making Dr Shand available for discussions with submitters is a disappointing position for the Council to have taken.

In terms of relief that we seek, we urge the Council to remedy the coastal hazard and hazard provisions by way of a variation under clause 16A of Schedule 1 to the RMA, taking into account all of the matters raised in the submissions and after discussions and mediation with submitters. The variation should include all relevant provisions including Chapter 4, the objectives in Chapter 2, the introductory provisions and policies in Chapter 9, the relevant definitions in Chapter 1 and the maps. Submitters would then be able to consider the precise wording of the revised provisions and make focussed submissions on the notified variation. The submission and hearing process would be more focussed and constructive and would result in a better outcome for the PDP.

Natural Hazards maps - CHMAs

We oppose the Natural Hazards maps and, in particular, the inclusion of CHMAs (Rural No Build, Urban Relocatable Build, and Urban No Build are the terms used on the maps, in contrast to miscellaneous other terms in the text of the PDP).

We seek removal of the CHMAs (Rural No Build, Urban Relocatable Build, and Urban No Build) from the Natural Hazards maps and in particular from the northern parts of the Kapiti Coast, including Te Horo Beach, both to the north and the south of the Mangaone Stream.

OTHER RELIEF

Finally, as noted at the beginning of this submission, we seek such other relief as would address our concerns and such consequential relief, including in different chapters of the PDP from where we raise an issue, as may be necessary or appropriate.

We also ask the Council to facilitate pre-hearing meetings and mediation. We wish to participate in such meetings and mediation.