1 March 2013

Detailed Responses by Dr Bryce Wilkinson, 65 Manly Street, to the KCDC's Proposed District Pan

Chapter 2 Plan Objectives

Objective 2.1 – *Tangata whenua*

Objective 2.1 is unnecessarily and undesirably one-sided. No principle in the Treaty of Waitangi specifies that the council should not work in partnership with others in the District.

Remedy sought

In particular, I submit that the objective be amended so as to provide that all groups in the District get the same protections as *tangata whenua* in respect of:

- the duty to act reasonably and in good faith (page 2-2);
- active protection for privately-owned resources and other treasured property "to the fullest extent possible" (page 2-2);
- protection from "restrictions imposed by legislation, plan or policy which prevent or limit" all ratepayers from "using their land and resources according to their cultural preferences" (page 2-2);
- the principle of self-regulation which recognises that all property owners "can retain responsibility and control of the management and allocation of resources over which they wish to retain control" (page 2-2);
- a "genuine invitation to all ratepayers to give advice and genuine consideration of advice given";
- "the provision of sufficient information so as to allow" all ratepayers to make informed decisions; and
- "the obligation to be willing to change plans or proposals, if that is the result of consultation".

Objective 2.2 – Ecology and biodiversity

I submit that this is inconsistent with purpose 5(2) of the Resource Management Act (RMA). This purpose requires inter alia that resources be managed "in a way, or at a rate which enables people and their communities to provide for their social, economic, and cultural well-being and for their health and safety".

The over-riding problem is that the discussion in support of this objective in pages 2-5 and 2-6 is divorced from any consideration of the value to the community of an evolving landscape that blends indigenous *and* introduced vegetation and is moulded by natural human habitat processes into a pleasing environment. The Norfolk pines along Manly Street illustrate how exotics do enhance the natural environment.

The broad definition of the environment in the RMA clearly encompasses exotics and allows for their contribution to amenity values. The RMA's definition of natural and physical resources explicitly includes exotics:

> *natural and physical resources* includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures

Remedy sought

Objective 2.2 should be amended so as to explicitly exclude private property from its scope. This would be consistent with the above principles of self-regulation and protection from legislation, plans and policies. The amended 2.2 could explicitly state that a system of well-secured private property rights is the only one capable of controlling the adverse environmental outcomes associated with the tragedies of the commons and the anti-commons.

Objective 2.3 – Development management

Objective 2.3 wrongly presumes that the RMA requires the KCDC to *manage* development, as distinct from over-seeing self-management.

Parliament's intention in passing the RMA in 1991 was that property owners would be managers of their own properties, subject to complying with the three conditions attached to clause 5(2). Objective 2.1 acknowledges this in relation to one section of the community, and would acknowledge it in full when amended as suggested above and as natural justice requires.

Remedy sought

I submit that objective 2.2 be amended to clarify that resilient communities are those in which private property rights are respected and members enjoy a large degree of freedom to pursue goals of their own choosing, while respecting the like rights of others.

Objective 2.4 – Coastal environment

This objective statement posits that humans are not part of nature. In so doing it could be used to prevent members of the community from improving the 'natural character' of their residential landscape for the better peaceful enjoyment of their properties.

Remedy sought

I submit that this objective be amended so as to clarify that the Council's prime coastal responsibilities relate to the foreshore, public roads, the supply of essential services such as water, sewage and storm water, where they cannot be better privately delivered, and respecting the rights of private landowners. A fundamental local government responsibility is to facilitate collective action in respect of protective works relating to inundation where public good issues relating to hold out and free riders might otherwise arise. This is easily justified under section 5(2) of the RMA.

Objective 2.5 – Natural hazards

This objective repeats the mistake of positing that humans are not part of nature.

A particular concern is that this objective opposes the assumption of private risk in relation to natural hazards. Another concern is that it sets an undesirable and unachievable task for the Council – that of ensuring the safety of people and communities. Ensuring security in one's person and property from assault and theft is one thing, ensuring safety is a bridge too far. Houses in New Zealand are typically built either on hills subject to slips or on flatter areas subject to flooding. No council can ensure the safety of people from natural hazards. Moreover, homeowners can insure their properties and it is not obvious why councils would seek to insure the safety of insurers. Nor are natural hazards a major source of risk to wellbeing compared to illness and disease. The safety threat of something as slow acting as sea-level rise is insignificant in comparison to real and present dangers.

A revised section could acknowledge that voluntary processes contribute greatly to the 'safety and resilience' of people and communities by spreading the risks globally, as the Christchurch earthquake situation has demonstrated.

Remedy sought

I submit that this objective should be restated so as to acknowledge that the prime role of the Council is to manage risks in relation to council assets, whereas the management of risks in relation to private assets is in general best done by the owners of those assets.

Objective 2.6 – Rural productivity

This objective aims to prevent rural landowners from using their land to meet the housing needs of the community, asserting that preserving rural land "is important for the ability of the rural community to sustainably meet the needs of future generations". However, such Malthusian fears have proven to be fanciful given productivity gains in agriculture and the slowdown in population growth as countries become wealthier. It is utterly implausible that 'preserving' a few more hectares of rural land in Otaki is going to materially affect global food prices in 100 years. Nor is New Zealand's small population is going to run out of arable land.

In short, the proposed objective represents an ineffectual response to an imaginary fear. What could cause famine in New Zealand is disrespect for private property rights, on a Mugabean scale. But even then preserving rural land in Otaki would not help.

Remedy sought

I submit that Objective 2.6 be deleted entirely.

Objective 2.7 – Historic heritage

In my opinion this objective does not satisfy section 5(2) of the RMA. This is because it does not consider the well-being of people and communities in the form of amenity values and it does not respect property rights. By turning historic heritage sites into private legal liabilities rather than private assets it could create an incentive to destroy them.

In general, disputes over the maintenance, modification or destruction of historic sites are best resolved by buying the asset through voluntary processes, or acknowledging that the current owner has determined what the best use is of that property, by default.

Remedy sought

I submit that objective 2.6 be replaced with the objective of preserving private property rights as the best means of allocating scarce resources, while providing that a council may buy properties with exceptional heritage values in order to preserve them.

I also submit that the KCDC adapt section 83 of the rescinded Town and Country Planning Act in order to provide mechanism by which an injuriously affected landowner can require the KCDC to purchase his or her property at an unimpaired valuation if the KCDC does not remove the provision from a plan that is inflicting this injury. (Such a provision is necessary in order to remove the negative externality that arise when those who take or impair property are not confronted with the cost to the community of the forgone use.)

Objective 2.8 – Strong communities

No community can be strong unless its members are secure in their persons and property.

Remedy sought

I submit that the prime responsibility of the council to protect members of the community in their persons and property should be written into Objective 2.8

Objective 2.9 – Landscapes

In my view this objective does not comply with the requirement in s5(2)(a) of the RMA to allow the community to provide for its wellbeing while meeting the reasonably foreseeable needs of future generations. Mother nature in a violent mood is not sensitive to an existing landscape's character and values; nor may future generations be sensitive in terms of specific locations. If

they really were, downtown Manhattan would still be a rural landscape and no outdoor sculptures would exist.

Remedy sought

I submit that this objective be rewritten to specify that where the council identifies landscape features that it deems worthy of preservation it would seek to buy the affected properties in order to achieve that objective. (Note that fiscal illusion is not a valid counter-argument to this point, particularly given that the RMA's focus on community wellbeing rather than a council's financial accounts.)

Objective 2.11 – Character and amenity values

This objective, like so many of the others, does not identify the problem with voluntary arrangements that its pursuit seeks to overcome. It has a prescriptive, anti-development bias. This is a potential threat to property rights and housing affordability. As such it is at odds with the RMA's purpose of enabling people and their communities to provide for their wellbeing. For example, the 'unique' character of Queenstown has changed enormously in a single lifetime from a quiet rural town to a pulsating tourist mecca. Who is to say that preserving the existing character of Kapiti is serving the interests of future generations, and why should their views prevail at the expense of property rights?

Remedy sought

I submit that objective 2.11 be replaced by one that acknowledges that much of the future development of character and amenity values for the benefit of future generations will depend on the flexibility of spontaneous responses to changing needs and situations. Plans that unduly limit change and non-conformity are inimical to flexibility.

A better objective statement would ensure that members of the community enjoy a large degree of freedom of action in responding to changing circumstances.

Objective 2.14 – Access and transport

This objective statement does not mention of the need to ensure that the benefits would exceed the costs. Inefficiencies in this regard would be inconsistent with sections 5(2) and 22 of the RMA that are concerned to improve the economic well-being of the community.

Remedy sought

I submit that this objective be amended by including the need to ensure that the benefits, as likely to be experienced by members of the community, are plausibly likely to be greater than the costs.

Objective 2.15 – Incentives

In my opinion this objective is inconsistent with section 5(2) of the RMA at least in so far as it fails to facilitate subdivision that would make housing more affordable, thereby improving community wellbeing.

Remedy sought

I submit that this objective be amended to read: "To facilitate development (including subdivision) that enables people and communities to provide for their social, economic and cultural well-being by improving the amenity value of the environment."

Objective 2.16 – Economic vitality

Remedy sought

I submit that this objective be amended to record that the economic vitality depends on security in private property and in the freedom to respond quickly to changes in demand and supply

conditions. Otherwise insecurity in property rights will undermine the achievement of the RMA's purpose.

Objective 2.17 – Centres

Remedy sought

I submit that this objective be amended to include the observation that the vitality of centres depends on security in private property and in the freedom of private landowners to respond quickly to changes in community demand and preferences. Otherwise insecurity in property rights will undermine the achievement of the RMA's purpose.

Objective 2.18 – Open spaces / active communities

Remedy sought

I submit that this objective be amended to include the observation that land for open spaces should be secured in a manner that acknowledges and respects private property rights. Otherwise insecurity in property rights will undermine the achievement of the RMA's purpose.

Objective 2.19 – Urban design

In my view this statement does not comply with s5(2) of the RMA as it favours resource allocation by planners rather than by the members of the community who are better placed to use them to provide for their wellbeing.

Remedy sought

I submit that this objective be revised to include respect for private property rights as a necessary condition for its achievement. This means that provisions impairing property rights must be demonstrated to be necessary in the public interest and that the question of compensation must be addressed.

Objective 2.20 – Renewable energy, energy efficiency and conservation

In my opinion the goal of reducing carbon emissions is inconsistent with a key assumption behind the policies in chapter 4 of the PDP – that the world's efforts at mitigation will make no difference to projected emissions and therefore to projected sea level rise.

Remedy sought

Given that the RMA does require regard to be given to energy efficiency, climate change and renewable energy I submit that objective 2.20 should be rewritten to read:

> "Increase the development and use of energy from renewable sources and efficiency and conservation of energy use to the degree that is consistent with the RMA's purpose 5(2), with particular emphasis on the natural environment and amenity values."

Summing up my responses to Chapter 2

A common problem with these objectives is that they fail to comply with the wellbeing purpose of the RMA as set out in s5. This is because they do not identify what the problem is with private arrangements that the pursuit of each objective is intended to achieve. After all, directing natural and physical resources into the pursuit of any one of the 20 objectives above eliminates the community's ability to use them in the pursuit of any other objective.

Who is to say which objective should be preferred? Certainly not anyone who is not confronted with the costs of the forgone alternative.

Resource allocation decisions under the PDP are inherently arbitrary when they represent an arbitrary balance between competing considerations. Such a situation makes purposeful management impossible. Change the manager and you may change the decision. This

undermines property rights and the rule of law. It also weakens investment incentives and the ability of the community to improve well-being in all its dimensions.

There is a strong anti-subdivision bias running through chapter two. It is reflected in the lack of respect for property rights.

The common remedy sought in this submission is for KCDC to amend these objectives so as to acknowledge the importance of decentralised voluntary processes based on well-protected private property rights so as to better align them to the RMA's purpose.

The rescinded Town and Country Planning Act 1977 respected property rights through tests of the standing of objectors and of necessity for an intrusive provision. It also provided mechanisms for compensation for injurious affection (see also the existing Public Works Act) including for requiring a local authority to purchase an injuriously affected property at an unimpaired price.

It is within the power of the KCDC to contract to provide for such compensation mechanisms and it is a strong recommendation of this submission that it does this in order to improve environmental outcomes under the RMA. It would do so by internalising the serious externality costs that the PDP would impose on the community.

Chapter 3 Natural Environment

Policies opposed

I oppose policies 3.1, 3.3, 3.5, 3.7, 3.8, 3.12, 3.13, 3.14, 3.17, 3.18, 3.19, 3.21, 3.22, 3.23, 3.24, 3.25and 3.26 on the grounds that they fail to comply with the RMA. This is because they reflect the failings in the relevant over-riding policy objectives in chapter 2. In particular they variously:

- fail to reflect the presumption in favour of security in private property rights that is necessary if the problems associated with the tragedy of the anti-commons are to be avoided and if the purpose of s(5) of the RMA is thereby to be achieved;
- fail to adequately protect the right of landowners to develop their land in accordance with their cultural preferences;
- pay inadequate regard to the principle of self-regulation in chapter 2;
- embody a strong presumption against the right to build;
- impose unreasonable compliance costs;
- fail to consider the wellbeing of members of the community in general;
- fail to protect housing affordability by failing to balance costs and benefits from the perspective of the future owners;
- undesirably impair the balance between native and exotic plantings at the expense of the former to the extent that undue restrictions tend to make natives a landowner liability rather than a landowner asset;
- use fuzzy language to obfuscate, particularly the word 'inappropriate'; and
- fail to internalise externality problems by confronting those who would benefit from a policy with the costs to the community of providing those benefits.

Rules opposed

I oppose all rules enumerated in chapter 3 that have 65 Manly Street categorised as anything other than permitted.

Remedies sought

The remedy sought is the reworking of these policies following the reworking of the relevant governing principles in chapter 2. The bias against property rights in indigenous species should be removed. Consequential reworking of the rules implementing the revised policies would also be required.

An important remedy sought is a rule that establishes a right for injuriously affected landowners to be compensated so that they are not taxed unfairly for a measure that benefits all. I am inclined to favour a rule that requires the KCDC to purchase injuriously-affected properties subject to a process that screens out most if not all insincere and opportunistic cases, as in the Town and Country Planning Act 1977 provisions mentioned at the end of chapter 2.

Chapter 4 Coastal Environment

Policies opposed

I oppose policies 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14 and 4.15 on the grounds that they fail to comply with the RMA in that they variously:

- inconsistently propose that anthropomorphic sea-level rise should be accommodated as 'natural', while opposing important natural human adaptive responses to that rise;
- put undue weight on protecting indigenous species and habitats when the RMA is concerned with all species and habitats;
- fail to respect private property rights;
- fail to acknowledge the KCDC's public good role of improving the well-being of members of the community by helping co-ordinate public works that would protect properties from inundation;
- fail to give adequate weight to the importance for community wellbeing of the assumption of risk by private parties;
- put undue impediments in the way of landowners' ability to protect themselves from risks;
- fail to assess whether conjectured risks are real and present dangers, or distant and remote likelihoods;
- fail to determine the *likely* level of sea-level rise - a natural hazard risk
- fail to provide a recognisable risk analysis in respect of sea-level rise. (The precautionary approach is not a guide to optimal decision making under uncertainty);
- fail to address the option of a 'wait and see' approach until hard statistical evidence is available that sea level rise is accelerating. It thereby fails to apply a precautionary approach to restrictions on liberty, and
- put the amenity value of the landscape at risk by undermining landowners' ability to invest in order to preserve and enhance that value.

Rules opposed

I oppose all rules enumerated in chapter 4 that have 65 Manly Street categorised as anything other than permitted. In particular, I strongly oppose the relocatable classification for the eastern part of the property and what looks like a no-build classification for the eastern side. Both these restrictions are bound to reduce the amenity value of the property in time and impair the environment by thwarting improvements to it.

Hazard lines opposed

I particularly oppose the coastal hazard lines shown on the planning maps and the associated provisions and restrictions contained in the PDP.

I make the following points in this context:

1. No official agency is certifying that they know where the shoreline is likely to be in 50 or 100 years

The projected local rise in the sea-level is derived as a local adjustment to global projections. Its accuracy as a forecast is only as good as the accuracy of the global projections and the local adjustment.

The UN-based IPCC is the most influential provider of global projections for sea-level rise in a climate change context. The IPCC clearly states that its scenario-based 'what if' *projections* are not unconditional *predictions*. It does not take a position on which of its many scenarios are the most realistic and in particular it does not predict the extent to which humans will actually respond to the strident 'the time for debate is over' calls from the IPCC milieu for urgent and far-reaching mitigating actions by nations.

Nevertheless, the IPCC's multitudinous 'what-if' global projections for sea-level rise have been non-transparently converted by NIWA and the Ministry for the Environment into recommended sea-level rise projections for New Zealand. This non-transparent process may have entirely overlooked the need to take likely global mitigation into account.

Correspondence by the writer to date with NIWA, the Ministry for the Environment, and the Department of Conservation has failed to identify any person or institution who is prepared both to certify that the officially recommended sea-level rise assumptions use by local authorities in preparing plans are plausible representations of where the unmanaged shorelines are likely to be in 50 and 100 years, including providing quantified probabilistic calculations in support of this certification that are capable of being professionally evaluated by an independent observer.

Nor have I even been able to uncover any information from NIWA and the Ministry for the Environment about what they consider to be the most likely rate of growth in greenhouse gas emissions in the next 100 years, taking likely technological change in respect of energy technologies and mitigating human action into account.

The Shand report does not certify the accuracy of all its input assumptions and subsequent adjustments, despite its misleading labelling of its projected shorelines as 'predicted' shorelines. Correspondence with Roger Shand has not elicited a clear statement of which key input assumptions are his responsibility and which ones he merely takes as 'givens', the accuracy of which is the responsibility of some other party.

The reason why I have been unable to find any reputable scientist or agency to certify as to the unconditional accuracy of either the officially recommended sea-level rise assumptions for New Zealand or the mis-labelled shoreline 'prediction lines' in the Shane report is both understandable and laudable. The laws of physics can't predict the outcomes of the politics of climate change. Nor can they predict the future economic growth rate of India or China or whether future technological innovations will favour fossil fuels or renewables.

Those in the IPCC milieu who believe human behaviour has a seriously significant influence on the global climate have to be in the business of predicting human behaviour if they want to predict where the sea-level is likely to be in 100 years. Scientists are not in this business, at least not in their capacity as scientists. Most scientists understand this.

2. The KCDC did not understand the Shand report when it amended ratepayers' LIMs

The KCDC did not understand this. What correspondence has revealed is that last August the KCDC badly misinterpreted the Shand report and misrepresented it to ratepayers and potential purchasers of land when it told the world that the Shand lines predicted where the shoreline was likely to be, and the KCDC amended the LIMs accordingly.

3. The KCDC's amended version - that the Shand lines are a worst case - is also wrong

The KCDC has more recently variously referred to the Shand lines as a 'worse case' or as a 'worst case'. The former description, merely begs the question "worse than what?" The second description is also demonstrably wrong. Advocacy scientists from the IPCC milieu are publicly speculating about the possibility much greater 'what-if' projections for global sea level rise in the next century than those posited by the IPCC in its most recent assessment. Many more neutral scientists are also taking this seriously, but again it appears that they are all talking about 'what-if' projections as distinct from 'most likely' projected outcomes, that take human action into account.

4. The chief executive of the KCDC was wrong to tell a public meeting that the location of the Shand lines is purely a scientific matter

It follows that the chief executive of the KCDC was misinformed when he told a public meeting in the writer's hearing that the location of the misleadingly-labelled 'prediction lines' in the Shand report was scientifically determined, to such an extent that their accuracy could only be debated between scientific experts.

5. Since no one really knows the likely rise in the sea level in the next century, no one really knows whether the Shand report's inland shift of the lines to allow for risk is realistic

(See the discussion in point 6 below.)

6. The KCDC has failed to comply with its own policy of assessing the probability of a hazard.

Policy 9.2 in the PDP commits the KCDC to assessing "the probability of the hazard and risk of loss of life or property consequence of allowing development in areas prone to hazard risk". This has not been done.

7. Shifting a projected shoreline inland to reflect risk is inconsistent with achieving the s(5) purpose of the RMA

Rational risk-averse decision-makers do not react to an increased perceived risk by shooting themselves in the foot, financially speaking. Shifting a projected shoreline inwards to reflect uncertainty and using the adjusted shoreline to reduce the amenity value of the environment by creating wider no-build and relocatable zones imposes immediate and avoidable costs on the community for no obvious benefits to anyone.

Rational risk averse individuals react to uncertainty instead by shifting risk to other parties more willing to bear it. For example, they might buy insurance or sell-down their exposure to risky assets. If the latter process reduced the value of those assets this would reduce the degree to the community's wealth was exposed to this risk, without the need for any PDP measures.

No spontaneous options of this type would involve any reduction in the flexibility of use of an existing asset. Nor would they stop anyone from building a new asset in an 'at-risk' location. Of course, increased fears about the risk of a seriously adverse event could well affect the *design* of the new asset, but not *necessarily* its location. Another (complementary) option for a rational investor in either a new or an existing asset would be to invest in protective walls to a greater degree than they would if the uncertainty were lower. Government action to facilitate such

collective action (ideally funded by those who benefit) is a venerable flood control public good function for local authorities.

It is only in the last of these respects that a case is created for any need for government action, and it is action to *help* construct protective works where it is economic do so. This action is in the opposite direction to the 'managed retreat' option that the PDP tends to highlight.

More generally, investors in equities, shares land, or risky assets of any kind do not need a district plan to tell them how to best manage the risks associated with their investments. They assume the risks for themselves and manage them for themselves.

The PDP does not (yet) insist that local business operators budget on the basis that customer demand will be x percent lower than their assessment of likely demand growth in order to allow for risk. Nor does it impose restrictions for business risk reasons on the degree to which they are permitted expand the floor capacity of their business in order to cope with an expected increase in demand. For a district plan to do so would be an unnecessary and undesirable infringement in business operations. Yet this is what the PDP would do with respect to investment in residential dwellings.

The author's correspondence to date with official agencies in New Zealand to date has failed to discover any basis in accepted theories of optimal investment under uncertainty for using the precautionary words in section 32 of the RMA to justify shifting projected 'what-if' shorelines inwards. This indicates that the procedure in the Shand report and in the PDP does not comply with either the community wellbeing provisions of s(5) of the RMA or, for that matter, with the requirement in s32(4) of the RMA to establish that the benefits exceed the costs compared to options that are more demonstrably consistent with rational risk averse behaviour.

8. The PDP is misleading the community because it has an alarmist bias in respect of sea level rise projections

The most concrete, objectively verifiable, observation in relation to sea-level rise is NIWA's observation that there is no statistically significant acceleration in sea-level rise yet observable in the historical global or domestic record. The KCDC's annotations to the LIMs and its PDP is seriously biased in an alarmist direction in failing to advise landowners and potential buyers of the fact that the Shand report's 'what-if' projections of a massive acceleration in sea-level rise have yet to be validated statistically.

Another sign of the bias is the failure to produce a hazard assessment that uses the 'base case' recommended projection in the Ministry for the Environment's 2008 Guidelines.

Nor does the PDP give prominence to the significance of accretion with respect to its projection lines.

With regard to my interest in the property at 65 Manly Street, if anything the shoreline has retreated rather than advanced in the 10-15 years that I have been monitoring it. Furthermore the shoreline has unfailingly been many tens of metres away from the boundary of this property throughout this period. While buying that property meant accepting the risk of damage from a calamitous natural event, few if any properties in New Zealand are immune from this risk as the Christchurch earthquakes have demonstrated.

In my view the 100-year projection lines in the Shand report and in the PDP are too tenuous to provide a reliable basis for imposing land use restrictions ahead of solid statistical evidence in the observed record of a major acceleration in sea-level rise. Amending LIMs, as has been done, to give one-sided prominence to 'what-if' projections of uncertified reliability is unfair and misleading. In contrast, publishing the Shand report and independent professional evaluations of it would better inform policy debate and the real estate market.

Note that none of the eight concerns listed to this point relate invoke the technicalities of the science of coastal erosion and wave mechanics. I leave those aspects to those who are qualified to discuss them.

9. The failure to allow time for professional evaluation of the Shand report

Note that all of the above eight points are concerns that apply independently of the concern about neglect of accretion and the lack of time for the wider professional community to scrutinise and and evaluate the Shand report. This is much more than a lack of truly independent and anonymous peer review *prior* to publication. Peer review is merely a test of 'fit for publication'. The real test of the scientific robustness is whether a paper withstands subsequent years of post-publication assessment in the professional literature. The widely-accepted current practice of asserting that 'peer review' prior to publication is proof of scientific robustness justifying its publication being accompanied by a media press release whose message is that 'the time for debate is over' is nothing short of conman's scam.

I am aware of the obstacles the Coastal Ratepayers Union (CRU) has encountered in getting access to the data and calculations used in the Shand report, an essential prelude to getting it independently assessed. It should hardly need to be said that costly policies to respond to a distant threat should not be implemented prior to an independent assessment or Dr Shand's report.

I am aware of CRU's submission on these matters and endorse its observations and recommendations.

In conclusion, I am concerned that the rules in the PDP that relate to natural hazards are likely to unduly reduce the amenity value of the coastal environment and impair the well-beings enumerated in section 5. Moreover they would do so without any provision for remedying or mitigating the seriously adverse environmental harm that would result from an unnecessarily ill-kept, unsightly and progressively derelict coastal environment, that epitomises the tragedy of the anti-commons.

Specifically I submit that the provisions in the PDP in respect of sea-level rise are contrary to the purpose of the RMA, the New Zealand Coastal Policy Statement 2010, including specifically the precautionary approach and Policy 24, and to the Resource Management Act 1991 and in particular the sustainable management purpose.

If the KCDC has a legal responsibility to annotate LIMs with respect to coastal hazards I suggest it would be deliberately misleading for it to fail to provide balancing information relating to such factors as:

- the failure of any person in authority to certify the unconditional accuracy of the lines in the PDP;
- the scientific uncertainties still surrounding feed-back factors in relation to climate sensitivity, particularly convection processes;
- the uncertainty about the evolution of energy technologies and thereby the growth in greenhouse gas emissions;
- the failure to adjust projections for likely global mitigation in a transparent and accountable manner;
- local accretion; and
- the likely evolution of future protective structures.

Section 32 analysis fails to comply with the RMA's requirements

I have read the section 32 analysis in respect of chapter 4 and scanned the section 32 analyses that apply to some of the other chapters.

I submit that the PDP's section 32 analysis fails to adequately examine:

- whether each objective is the most appropriate way of achieving the purpose of the Act as required by s32(3)(a)
- whether the policies, rules and other methods are the most appropriate way of achieving the objectives as required by s32(3)(b)
- with sufficient rigour the alternative of respecting private property rights in relation to assumption of risk in respect of private assets
- with sufficient rigour whether the Shand report properly responded to the lack of statistically significant observational evidence of an acceleration in sea-level rise;
- with sufficient rigour the options of the full range of coastal hazard management techniques, or
- quantify the *likely* costs and benefits of the alternatives relative to each other and the status quo.

The failure of the objectives in the PDP to comply with the purpose of the RMA has already been assessed. The objective of providing reliable and unbiased information to the real estate market needs to be considered.

It is particularly concerning that there is virtually no meaningful discussion and quantification of the value of the properties in the affected zones or of the amount that owners would rationally spend on protective works to protect these investments. Nor is there even the most basic quantification of the costs per kilometre of alternative protective structures. No calculations are made of the benefits of delay – allowing owners to continue to enjoy and enhance the full amenity values achievable from their properties until, at the very least, it becomes clear statistically that the hypothesised massive acceleration in sea level rise is underway.

Remedies sought

The first remedy sought is that the KCDC comply with its policy 9.2 that requires it to assess the likelihood of natural hazard risk.

The second remedy sought is the reworking of the policies in this chapter following this risk analysis and the reworking of the relevant governing objectives in chapter 2. Consequential reworking of the rules implementing the revised policies is sought.

The third remedy that I seeks is for the KCDC to provide much more accurate and balanced information about hazards available to those operating in the local real estate market. Ignoring objective scientific evidence in the form of the absence to date of any statistically significant acceleration in the historical observational record shows unacceptable bias. Accurate information about the KCDC's willingness to facilitate community initiatives to construct protection works would also help.

The fourth remedy I seek is the complete removal from the PDP of all the coastal hazard lines shown on the planning maps and the associated provisions and restrictions.

In particular, I seek the remedy of removing the no-build and relocatable classifications that appear to apply to 65 Manly Street.

I also seek a section 32 evaluation of the costs and benefits of this policy *as they are likely to be valued by the members of the community who experience those costs and benefits*. This evaluation should follow the New Zealand Treasury's guidelines for how central government agencies must assess the costs and benefits of central government regulations. There is no justification for local government to be using a different methodology from central government to evaluate laws, rules and regulations. This analysis should be undertaken and provided for public discussion and genuine consultation before any decisions are taken.

This remedy for the failure of the section 32 analyses to assess costs and benefits from the perspective members of the community is also sought for the analyses attached to chapters 3 and 5-12.

The PDP should also include a clear policy statement that no measures that limit private property rights will be undertaken unless it is first clearly demonstrated that it is necessary to do so in the public interest, that the benefits to members of the community would exceed the costs relative to the next best alternative course of action, and that the question of compensation has been addressed.

An important remedy sought is a rule that establishes a right for injuriously affected landowners to be compensated perhaps in the manner indicated at the end of my comments on the PDP's chapter 3.

Chapter 5 Living Environment

Policies opposed

I oppose policies 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.10, 5.11, 5.14, 5.15, 5.16, 5.19, 5.20, 5.21, 5.22, 5.23, 5.24, 5.26, 5.27, 5.30, 5.32, 5.33 on the grounds variously of:

- fuzzy language;
- pursuit of conflicting considerations with no guidance as to trade-offs;
- inadequate consideration of the different needs of different segments of the population;
- failure to provide a mechanism for confronting those imposing costs on the community with those costs; or
- the effect of these shortcomings is to undermine the rule of law and to fail to achieve the purpose of the RMA.

Remedies sought

The remedy sought is to adopt objectives, policies and rules that better promote the well-being purpose of the RMA by respecting private property rights and the need to relative community facilities to willingness to pay by the eventual occupiers.

An important remedy sought is a rule that establishes a right for injuriously affected landowners to be compensated perhaps in the manner indicated at the end of my comments on the PDP's chapter 3.

Chapter 8 Open space

Policies opposed

I oppose policies 8.1, 8.2, 8.3, 8.4, 8.5, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, for the same reasons as I oppose the enumerated policies in chapter 3.

Remedies sought

The remedy sought is the reworking of these policies following the reworking of the relevant governing principles in chapter 2. Consequential reworking of the rules implementing the revised policies is also sought.

An important remedy sought is a rule that establishes a right for injuriously affected landowners to be compensated perhaps in the manner indicated at the end of my comments on the PDP's chapter 3.

Chapter 9 Hazards

Policies opposed

I oppose policies 9.3, 9.4 and 9.5 on the grounds that they are inconsistent with the wellbeing purpose of the RMA and its section 32 requirement to evaluate costs and benefits.

Remedies sought

The remedy sought is that these objectives be written so as to permit subdivision and other activities that provide net benefits to members of the community and only to protect something to the extent that doing so provides net benefits.

Consequential changes to the rules in this chapter should be made.

An important remedy sought is a rule that establishes a right for injuriously affected landowners to be compensated perhaps in the manner indicated at the end of my comments on the PDP's chapter 3.

Chapter 10 Historic Heritage

Policies opposed

I oppose policies 10.5, 10.6, 10.7, 10.8, 10.9, and 10.10 on the grounds that the fail to provide for community wellbeing as required by the RMA and its section 32 requirement to evaluate costs and benefits. Objective 10.9 also undermines the rule of law and investment certainty by using fuzzy language "inappropriate subdivision".

Remedy sought

The remedy sought is that these objectives be written so as to permit activities that provide net benefits to members of the community and only to protect something to the extent that doing so provides net benefits. Fuzzy language should be replaced by language that minimises the scope for arbitrary decision making.

An important remedy sought is a rule that establishes a right for injuriously affected landowners to be compensated perhaps in the manner indicated at the end of my comments on the PDP's chapter 3.

Consequential changes to the rules in this chapter should be made.

Chapter 11 Infrastructure services

Policy 11.1 does not recognise that the infrastructure of privately-provided commercial facilities, such as supermarkets and shops, are more vital to the community than 'green' infrastucture such as the odd swamp, cycleway or migrating birds.

The definition of net benefit on page 11-4 does not comply with the wellbeing focus of the RMA because it fails to assess the value members of the community put on those outcomes, relative to the costs of achieving them.

Policy 11.2 does not comply with the wellbeing focus of the RMA because it does not recognise that subdivision, land use and development should proceed even if it is at a cost to the existing infrastructure – as long as the benefits the community derive exceed the cost.

Policies 11.3, 11.4, 11.7, 11.8, 11.9 do not comply with the wellbeing focus of the RMA because they do not permit adverse environmental or other effects that are associated with an overall improvement in wellbeing.

Policy 11.11 "Efficient Resource Use" does not comply with the wellbeing focus of the RMA because its provisions would use resources wastefully, particularly in respect of energy. The error is to confuse energy efficiency with the efficient use of energy. (The efficient use of energy is that which provide members of the community with benefits that are valued more highly than the costs of producing that energy. This is not the same thing as energy efficiency.) Similarly, conservation measures are only valuable to the community if their benefits to members of the community exceed the costs.

Remedies sought

Include in policy 11.1 recognition of the importance of security in private property rights in respect of the provision of commercial infrastructure and the peaceful enjoyment of residential properties.

Amend page 11-14 so as to state that the net benefit derived from services and facilities is the value members of the community put on them net of the costs to members of the community of providing them.

Revise policies 11.2, 11.3, 11.4, 11.7, 11.8, 11.9 so as to permit activities that provide net benefits - as redefined.

Policy 11.11 should be focused on the efficient provision of energy.

In addition, rules in chapter 11 should be rewritten so as to accord with the rewritten policies.

An important remedy sought is a rule that establishes a right for injuriously affected landowners to be compensated perhaps in the manner indicated at the end of my comments on the PDP's chapter 3. However, if a taking or impairment occurs under the Public Works Act, this remedy would not be necessary.

Chapter 12 General District wide Provisions

Development and financial contributions have a valid potential role to play, but if undisciplined can add to the anti-development/anti-subdivision biases in the PDP that have been identified in the comments above on the earlier chapters of the PDP.

To the extent that the KCDC is both a regulator and a provider of infrastructure it has a conflict between its duty to regulate impartially and its incentive to gold-plate or feather bed its provider vehicle or to use it as a cash-cow, all at a non-transparent cost to the community.

Remedies sought

Where feasible the KCDC could reduce this conflict of interest by separating out the provider function from the regulator function.

To the extent that this is not feasible, it should set up an appeal/arbitration/mediation procedure that guards against the divisive perception and reality of the undue exploitation of the conflict in setting levels for financial and development contributions.

I also seek any other decision that would appropriately address the concerns in this submission.

Signed by

Dr B D Wilkinson

Dated

1 March 2013