

**IN THE ENVIRONMENT COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**ENV-2016-WLG-000028**

**UNDER** the Resource Management Act 1991

**AND**

**IN THE MATTER OF** an application for declarations under section 311 in  
relation to the coastal provisions of the Kapiti Coast  
Proposed District Plan

**BETWEEN** **COASTAL RATEPAYERS UNITED INCORPORATED**  
Applicant

**AND** **KAPITI COAST DISTRICT COUNCIL**  
Respondent

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**AFFIDAVIT OF BRYCE MICHAEL TOM JULYAN**

25 October 2016

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I, **BRYCE MICHAEL TOM JULYAN** of AUCKLAND, Planner, solemnly and sincerely swear

1. I am a senior Technical Director - Planning at Beca Ltd (*Beca*), a position I have held for the past 14 years.
2. I have the following qualifications:
  - (a) Bachelor Of Town Planning from the University of Auckland (1985);
  - (b) Full member (MNZPI) of the New Zealand Planning Institute (*NZPI*) (since 1991); and
  - (c) Accredited Independent Hearings Commissioner, Ministry for the Environment (since 2006).
3. I currently hold the positions of Chair of the NZPI (since 2012) and Vice President (Australasia-Pacific) of the Commonwealth Association of Planners (since 2014). In these roles I facilitate the professional development, ethical behaviour and professional standards for planners in New Zealand, and promote the exchange of knowledge and planning best practice nationally and internationally. I participate and contribute to the development of legislation, policy and guidance on the profession and planning practice.
4. I have over thirty years' experience in planning and resource management including:
  - (a) Providing strategic planning, statutory and policy advice (including expert evidence) on plan changes and plan reviews, most recently in relation to the following:
    - (i) Proposed Auckland Unitary Plan (2013-2016) – on behalf of the NZ Transport Agency in relation to Regional Policy Statement, coastal and infrastructure provisions;
    - (ii) Proposed Auckland Unitary Plan (2013-16) – on behalf of Hobsonville Land Company in relation to objectives, policies and methods for The Landing Mixed Use coastal precinct;
    - (iii) Plan Change under the Housing Accords and Special Housing Areas Act (2015-2016) for The Landing Mixed Use Coastal precinct on behalf of Hobsonville Land Company;



- (b) Providing planning assessment and expert evidence on major infrastructure and development proposals including the designation of the City Rail Link and Stations, for Auckland Transport (2010-2015); Transmission Gully Peer Review, Wellington (2010-2012); Victoria Park Tunnel, Auckland (2002-2006) and the State Highway 1 upgrade Paremata and Pukerua Bay, Wellington (1996-2002);
  - (c) Managing consents and compliance for the Alliance constructing Waterview Connection including twin tunnels, Auckland (2011-13); and
  - (d) During my career I have led private plan change proposals for several clients and acted as an independent hearing commissioner on a private plan change request.
5. I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's practice note. I have complied with the practice note when preparing my written statement of evidence, and will do so if required to give oral evidence before the Court.

#### **Scope of evidence**

6. I have been asked to peer review the analysis provided in the affidavit of Emily Thomson as to the nine examples, cited by the Coastal Ratepayers United ("CRU"), of partially withdrawn provisions in the KCDC Proposed District Plan ("PDP").
7. I have also peer reviewed Ms Thomson's analysis as to the potential consequences, in practical terms, should any of the nine examples be found to have been unlawfully withdrawn.

#### **Withdrawn Provisions**

8. In my review of Ms Thomson's affidavit I concur with her categorisation of the nine provisions as set out in her evidence. In particular, I agree with Ms Thomson that it is inevitable that there is a change to the provisions as a result of the withdrawal of coastal hazards matters. The categories she has identified help explain the degree of change and importantly determine whether this change has a material, or 'knock on', effect on the remaining provisions.
9. The categorisation Ms Thomson uses is a practical and logical approach to examining the effect on the remaining provisions as a result of the

withdrawal. I consider Ms Thomson's approach sound in that she groups the changes in relation to the nature of the effect of the withdrawal of provisions:

- (a) Category 1 relates to provisions that relate in part to the coastal hazards and partially to other planning matters – the withdrawal means that these provisions would still apply to the other planning matters but no longer to coastal hazards;
- (b) Category 2 relates to the identification of CHMAs and the general provisions that did not apply in these identified areas – the withdrawal resulted in the exempted areas now being subject to the general provisions; and
- (c) Category 3 refers to those provisions that applied specifically to identified areas (such as the CHMA) - the result of the withdrawal is that these would apply to a broader area

10. At this point I would observe that the nature of withdrawals on a proposed plan are such that change is an inevitable consequence. There is a measure of practicality or common sense that is needed and applied in practice. The key issues to consider are in my opinion:

- (a) Are the provisions still relevant and coherent?
- (b) Would the withdrawal substantially change the reading or application of the plan (such that a party may be prejudiced by the change)?

11. For ease I have referred to the provisions as they appear in Ms Thomson's affidavit rather than reiterate the provisions in their entirety.

#### **Provision one – Objective 2.4 - Coastal Environment**

12. The changes as a result of the withdrawal of coastal hazard provisions proposes to remove item (d) below from the objective:

*“(d) communities are not exposed to increased risks from coastal hazards”*

13. I concur with Ms Thomson in her allocation of this change as a category 1. I also concur with her analysis that whilst the objective remains intact overall the removal of (d) diminishes the weight that particular objective gives to considering coastal hazards. However, the change still leaves a coherent objective that applies to all other matters listed, and sits comfortably in the context of all the other relevant objectives of the PDP.



Noting also that there are relevant ODP provisions that the Council intends to retain until the review of the coastal hazards provisions is complete.

14. In particular, Ms Thomson draws attention to Objective 2.5 of the PDP which refers to the safety and resilience of people and communities in relation to risk from hazards. Given this, and noting that an objective is by its nature a goal that is sought to be achieved through the policies of the plan, I concur with Ms Thomson that any assessment of an activity would, in having regard to the relevant objectives, read these together (not in isolation). Consequently safety and resilience of communities would still be considered and avoiding increased exposure to risk is still an objective.
15. Though the weight given to coastal hazards is diminished as an inevitable consequence of the withdrawal, I agree with Ms Thomson in concluding the impact on the balance of the plan (as a result of the removal of this part of the provision) is minor, particularly as the scope to consider the risk to communities is still adequately covered.
16. Furthermore, it is clear that under the PDP process currently underway the provisions are all subject to change, within the scope of submissions. The change as a result of the withdrawal of this part of the objective is not critical to the plan's cohesion and (even if the withdrawal was found by the Court to be unlawful) a revised objective is being contemplated under the PDP process.

#### **Provision Two - Policy 3.14 - Restoration**

17. I agree with Ms Thomson that the changes to this policy fall into her category 3. That is the policy related to specified sites but following the change is not limited to those sites.
18. The policy was proposed while the 'priority areas for restoration' were identified. If the reference to restoration or remediation being "required" on these sites is removed, the policy is more generic in its application but rather benign in that it acknowledges the biodiversity benefits of active restoration or remediation but doesn't require it. In my view the policy is probably no longer appropriate and Ms Thomson notes it is proposed for deletion under the PDP process. Ms Thomson also notes it duplicates other policies that are not site specific, which still apply. I therefore concur with Ms Thomson that any flow-on effects of the withdrawal are not



significant and in any case the policy's relationship to the rest of the plan will be addressed through the PDP process.

### **Provision Three - Policy 4.6 – Natural Coastal Processes**

19. I concur with Ms Thomson's categorisation of the policy as a Category 1 – in that the withdrawal simply removes some of the management options listed.
20. The policy remains largely intact (just less explicit in relation to coastal hazards). I concur with Ms Thomson's comments where she states: "*The policy still enables the consideration of a range of 'coastal management options' including 'engineering measures' which could potentially include 'coastal protection structures'.*"
21. The policy sits coherently in the context of the PDP (notwithstanding the withdrawal of the references to coastal hazards). The ODP provisions will apply until such time as further changes are implemented to any future plan. Ms Thomson concludes and I concur that "knock- on" effects of this withdrawal are not significant, and in particular, noting Ms Thomson's comments above, the application of the policy is still open to best practice management options.

### **Provision Four – Rule 4A.2.1 (Controlled activity)**

22. The rule fits Category 3 as it applied within the CHMA which is now removed and therefore the rule applies broadly. However, it relates specifically to dune restoration and while no longer restricted to a defined area, it is still restricted to an activity that can only take place where a particular environment exists.
23. I agree with Ms Thomson's analysis and conclusions, in particular noting that the PDP process is likely to result in a revision of this rule in any case. I concur with Ms Thomson in that there is no effect on the coherence or relevance of the policy in relation to the PDP and the application of the rule is still quite specific to dune areas with clearly identifiable characteristics such that the withdrawal can be considered minor.

**Provision Five - Rule 4A.3.1 (restricted discretionary activity)**

24. I concur with Ms Thomson's categorisation (Category 2) as the original rule applied outside those areas that were affected by CHMA. With the withdrawal the CHMA areas are now affected by the rule.
25. Critically Ms Thomson has identified where areas of high natural character were overlapped by the withdrawn CHMA (being the areas affected). Ms Thomson notes the original rule was highly restrictive in the areas affected (prohibiting the development in question). Furthermore, based on Ms Thomson's analysis, these areas exhibit characteristics that make them unable or at least unlikely to sustain development.
26. The restricted discretionary (RD) activity status for building and earthworks is, in my view, clearly more enabling than the original rule (even with the high natural character status). The practical effect is a relatively more lenient rule. Given the physical conditions of the land affected, in my view, this may not withstand a future revision of the Plan in terms of coastal hazards and while the coherence of the PDP remains, post-withdrawal, there is a change in the application of the rule,.
27. The effect of this change is that development that was prohibited in the areas affected is now able to be applied for and assessed as RD. Whilst it could be argued that, potentially, neighbouring properties could be affected by development that was otherwise prohibited, based on Ms Thomson's analysis the reality is these areas occur on beach potentially within or straddling MHWS and would remain subject to ODP rules and the revisions of the PDP process. The significance of the effect of the withdrawal may therefore be considered quite low as buildings and earthworks in these areas would still require a resource consent, potentially allowing any affected parties to participate in the process.
28. I concur with Ms Thomson's potential remedies, if the withdrawal was found by the Court to be unlawful. In particular if the Court considers that further opportunity to submit on this provision this could be practicably addressed through the PDP process, involving the affected properties (including any neighbouring properties).



**Provision Six - Rule 4A.3.2 (restricted discretionary activity)**

29. I concur with Ms Thomson's categorisation (Category 2) as the rule applied in areas outside the CHMA. With the withdrawal these areas are now affected by the amended rule.
30. Critically Ms Thomson has identified where areas of high natural character were overlapped by the withdrawn CHMA (being the areas affected). Ms Thomson notes the original rule was highly restrictive in the areas affected (prohibiting the development in question). Furthermore, based on Ms Thomson's analysis, these areas exhibit characteristics that make them unable or at least unlikely to sustain development.
31. The restricted discretionary (RD) activity status for subdivision is, in my view, significantly more enabling than the original rule (even with the high natural character status), although I note Ms Thomson's observation that the status is the same for nearly all subdivision in the district. Any owner affected by the change is significantly less restricted - the practical effect is actually a more lenient rule.
32. The effect of this change is that subdivision that was prohibited in the areas affected is now able to be applied for and assessed as RD. While the coherence of the plan is unaffected, the application of the rule has changed. Whilst it could be argued that potentially neighbouring properties could be affected by subdivision that was otherwise prohibited, based on Ms Thomson's analysis the reality is these areas occur on limited properties, (that she identifies in Appendix A to her affidavit), and the affected area of high natural character is actually beach, that may even be within or straddle MHWS. The areas would remain subject to ODP rules (and any further revisions that occur through the PDP process).
33. The significance of the effect of the withdrawal is low, but may give rise to uncertainty and so I agree with Ms Thomson that if the Court finds that the withdrawal is unlawful, removing the provision would leave no subdivision rules covering the former CHMA land. If the Court considers that property owners that are affected by the change should have an opportunity to submit on this provision, then the practicable approach is to address this through the PDP process, involving the potentially affected properties (including any neighbouring properties).



### **Provision Seven - Rule 4A.3.2 (restricted discretionary activity)**

34. I concur with Ms Thomson's categorisation (Category 2) as the rule applied in areas that were not affected by CHMA. With the withdrawal these areas are now affected by the rule.
35. Critically Ms Thomson has identified where areas were previously affected by the withdrawn CHMA. Ms Thomson notes the original rule was highly restrictive in the CHMA areas affected (prohibiting the subdivision).
36. The restricted discretionary (RD) activity status for subdivision is, in my view, clearly more enabling than the original rule. Although I note Ms Thomson's observation that the status is the same for subdivision in nearly all areas of the district. Any land owner affected by the change is significantly less restricted - the practical effect is actually a relatively lenient rule.
37. The effect of this change is that subdivision that was prohibited in the areas affected is now able to be applied for and assessed as RD. While the coherence of the plan is unaffected, the application of the rule has changed.
38. Whilst it could be argued that potentially neighbouring properties could be affected by subdivision that was otherwise prohibited, based on Ms Thomson's analysis the reality is these areas occur on limited land areas and would remain subject to ODP rules and any subsequent revisions through the PDP process.
39. The significance of the effect of the withdrawal is low, but may give rise to uncertainty for those properties identified by Ms Thomson. I agree with Ms Thomson that if the Court finds that the withdrawal is unlawful, then removing the provision would leave no subdivision rules covering the former CHMA land. If the Court considers that property owners that are affected by the change should have an opportunity to submit on this provision the practicable approach is to address this through the PDP process involving the potentially affected properties (including any neighbouring properties).

### **Provision Eight - Rule 4A.4.1 (discretionary activity)**

40. I concur with Ms Thomson that the rule is a 'catch-all' that lists activities to which it applies and was set out in two parts. As the provision partially relates to coastal hazards the change aligns with Ms Thomson's Category 1.

41. The withdrawal of coastal hazard provisions necessitates the removal of the first section, relating solely to activities in the CHMA. The remainder of the rule is unchanged and so has no impact on the coherence of the plan. The effect of the changed rule is to default all other activities, not otherwise specified, to discretionary where they “...do not comply with one or more of the permitted activity or controlled activity standards”.
42. Ms Thomson notes the PDP process and the s42A recommendations propose the rule is removed to avoid unnecessary repetition and “double up” provisions. I agree this can be addressed under the PDP process.

**Provision Nine - Rule 4A.5.4 (non-complying activity)**

43. I agree with Ms Thomson in the categorisation of this provision as Category 2. The original rule applied outside those areas that were affected by CHMA. With the withdrawal the previous CHMA areas are now affected by the rule.
44. Buildings and structures were prohibited in the relevant CHMA. With the changes such activities could be applied for and assessed as a non-complying activity. While the coherence of the plan is unaffected, the application of the rule has changed.
45. The land affected is identified as high natural character that corresponds with the withdrawn CHMA. Whilst it could be argued that potentially neighbouring properties could be affected by development that was otherwise prohibited, based on Ms Thomson’s analysis the reality is this will only occur in limited areas (identified by Ms Thomson). Furthermore these would remain subject to ODP rules (and any subsequent revisions through the PDP process).
46. The significance of the effect of the withdrawal is low, but may give rise to uncertainty for those properties identified by Ms Thomson. I agree with Ms Thomson’s remedies, if the Court finds that the withdrawal is unlawful, removing the provision would leave no relevant rules covering these activities in the former CHMA land. If the Court considers that property owners that are affected by the change should have an opportunity to submit on this provision the practicable approach is to address this through the PDP process involving the potentially affected properties (including any neighbouring properties).

**Conclusion**

47. Overall, having reviewed the affidavit and analysis provided by Ms Thomson on the nine provisions identified, I concur that the provisions (amended as a result of the withdrawal of coastal hazard provisions) remain coherent in relation to the plan and have no significant 'knock-on' effects. Ms Thomson has identified where the rules have limited effect (provisions 5-9) and, if the Court considers that parties that are affected by the change should have an opportunity to submit on this provision, I concur that these should be addressed practicably through the PDP process involving the landowners and neighbouring property owners.

SWORN at Auckland this 25<sup>th</sup> day of )  
October 2016 )

  
Bryce Michael Tom Julyan

before me:



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A Solicitor of the High Court of New Zealand

Elizabeth Mary Oliver  
Solicitor  
Auckland

