Court case summaries relevant to coastal hazards and planning

In the 2017 Ministry for the Environment (MfE) coastal guidance for local government, Appendix A outlines the statutory framework for managing hazard risk in coastal environments. Appendix B lists links to relevant court cases that may be of interest to users of the coastal guidance. Summaries of these court cases are provided below.

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The following sections summarise key cases relating to the management of coastal hazards, application of the NZ Coastal Policy Statement 2010 and the effects of climate change (listed in Table 1).

During revision of the 2017 MfE coastal guidance, more recent case summaries (10 onwards in Table 1) were added by Sylvia Allan (Allan Planning and Research Ltd.) to those from the 2004 and 2008 MfE guidance editions (1–9 in Table 1).

Table 1: Case summaries (15) listed in Appendix B (2017 MfE coastal guidance)

Section	Case	Issues under consideration
1	*Judges Bay Residents Association v Auckland Regional Council and Auckland City Council A 72/98*	Hazard protection measures and port development
2	*Auckland City Council v Auckland Regional Council A 28/99*	Relevance of climate change information
3	*Kotuku Parks Ltd v Kāpiti Coast District Council A 73/00*	RMA Section 106 and catastrophic events.
4	*Lowry Bay Residents Association v Eastern Bays Little Blue Penguin Foundation Inc W45/01*	Relationship between Building Act 1991 and RMA in avoiding coastal hazards
5	*Save the Bay v Canterbury Regional Council C6/2001*	Hazard zone provisions within regional coastal environmental plan
6	*McKinlay v Timaru District Council C 24/2001*	Existing use rights and the role of rules in regional and district plans
7	*Bay of Plenty Regional Council v Western Bay of Plenty District Council A 27/02*	Principles of hazard avoidance. Relationship between resource and building consents
8	*Skinner v Tauranga District Council A 163/02*	Reasonable timeframe for coastal planning, use of precautionary approach for managing uncertainties
9	*ForeWorld Developments Ltd v Napier City Council W029/06*	Climate change information and use of the precautionary approach to account for uncertainties
10	*Application by Tasman District Council – W047/2011*	Immediate legal effect of rule in hazard areas.
11	*Environmental Defence Society v NZ King Salmon, Sustain our Sounds Inc Marlborough District Council and Minister of Conservation SC82/2013*	Interpretation of NZCPS policies, and importance of strategic planning in giving effect to NZCPS.
12	*M and V Weir v Kāpiti Coast District Council, NZHC 3522/13*	Information on LIMs.
13	*Carter Holt Harvey HBU Ltd v Tasman District Council W025/2013*	RMA section 106, importance of adequate access, and meaning of “avoidance” of risk in relation to new development.
14	*Mahanga E Tu Inc v Hawke’s Bay Regional Council and Wairoa District Council W083/2014*	Relevance of existing zoning and mitigation requirements.
15	*D and C Gallagher v Tasman District Council W245/2014*	Coastal hazard investigations, timescale for planning, and application of NZCPS policies.

1 Judges Bay Residents Association v Auckland Regional Council and Auckland City Council A 72/98

Environment Court, Judge Sheppard presiding.

Resource consents had been granted by the Auckland Regional Council and Auckland City Council for extension of the Fergusson Container Terminal the Ports of Auckland. Five parties appealed the decisions.

The Proposed Auckland Regional Policy Statement contained provisions regarding natural hazards – identified as including erosion, inundation of low-lying areas, land instability, rising sea levels and tsunami. Policy 11.4.1(10) stated that location and design of new subdivision, use or development should be such that the need for hazard protection measures is avoided. Policy 11.4.1(12) required a 'precautionary approach' to be used in avoiding, remedying or mitigating the adverse effects of natural hazards on development.

Expert evidence presented at the hearing addressed matters of extreme events such as sea-level rise and tsunamis. The witness for Auckland Regional Council gave the opinion that the proposed wharf level would be adequate for extreme events. The extension was proposed to have the same levels as the existing built port environment, and therefore the same protection from natural hazards.

The opinion was given that the standard design (particularly in regard to possible sea-level rise) was appropriate and that inundation and erosion were not relevant risks to a built port environment. The Court found that the proposal would not cause any adverse wave effects or any other adverse effects in extreme events.

2 Auckland City Council v Auckland Regional Council A 28/99

Environment Court, Judge Sheppard presiding.

This case involved appeals against refusal of resource consents required for the proposed Britomart underground transport and parking centre in central Auckland.

The proposed five-level underground development involves construction below groundwater level and thus consent for diversion of groundwater was required. The appeals opposed the consents for earthworks and the diversion of groundwater, based on potential damage to land and buildings in the vicinity from ground movement resulting from excavation and groundwater diversion.

A submitter urged that consideration be given to the possibility of tsunamis and storm surges causing the water of the harbour to overtop seawalls and flood the Quay Street underpass, although acknowledging that it would be unlikely that seawater would enter the Britomart transport centre itself. The Court held that sea-level and climate change issues were relevant only to the extent that the bases for ground water modelling had been properly prepared, having regard to contingencies.

The key witness explained that effects on groundwater levels would fully manifest themselves within 10 years of the start of construction, which is a relatively short period within the context of sea-level rise. Sea-level rise due to climate change would have no effect on the validity of the groundwater model predictions.

3 Kotuku Parks Ltd v Kāpiti Coast District Council A 73/00

Environment Court, Judge Sheppard presiding.

This was an application for consents for subdivision and earthworks and involved an appeal against some of the conditions imposed by Kāpiti Coast District Council. Ultimately, the consents were declined by the Court on grounds that included failing to protect significant habitat or indigenous fauna, adverse visual effects and impairment to kaitiakitanga.

It was argued by the Waikanae Estuary Guardians that the land proposed to be subdivided would be likely to be subject to material damage by subsidence as a result of earthquake, and by inundation and erosion from the sea in conditions of storm surge, tsunami, and sea-level rise. This was relevant for consideration under section 106 of the RMA.

The Court found that although a major event causing extensive inundation or erosion could occur on this coast at any time, it was not standard practice to design for such extreme events as those described by witnesses for the Waikanae Estuary Guardians. The evidence about catastrophic events had been in relation to the next hundreds of years, and would have effects along the entire Kāpiti Coast. Another witness gave evidence of catastrophic events having a return period of at least every 250 years, and of larger saltwater inundation events occurring once every 400 years.

Sufficient provision to avoid or mitigate the likelihood of damage was made by the building platform levels that had been set by the Council. This building platform level had been based on a:

- river flooding event of 1% probability combined with a storm sea-surge event of 5% probability; or
- storm sea-surge event of 1% probability with a similar allowance for future sea-level rise.

This was considered to be sufficiently conservative to avoid or mitigate the likelihood of damage.

4 Lowry Bay Residents Association v Eastern Bays Little Blue Penguin Foundation Inc W45/01

Environment Court, Judge Kenderdine presiding.

This case involved appeals against consents to establish a facility for the reception, recovery and rehabilitation of wild birds for release back into the wild. The Court said:

> *It was the Association's case that the applicants and respondents appear to have studiously ignored the fact that the proposed buildings will be located in an area having an obvious natural hazard. It is not sufficient to say that buildings will be built in accordance with the Building Code. The evidence of the witnesses for the Association demonstrate that location of any buildings on the site proposed is unwise and courting disaster.*

The Hutt City Council's witness said that any reference to the potential for the proposed facility to be affected by severe storms, salt deposits and spray drift was not relevant to the consideration of the grant of the consent sought, because the design and construction of the buildings was a matter to be considered under the Building Act 1991.

The Court said:

> *We do not understand how a dwelling house (large enough to hold small children), an educational facility (which will include small children), and a cafe for 54 visitors could be approved for this site ...*

We concluded that the location of all aspects of the proposal and the activities it imports, is not commensurate with the principles of sustainable management. The last word on natural hazard goes to Mr Churchman who submitted it is impossible to say that siting this proposal in an area demonstrably subject to coastal hazards is in accordance with the plan or commonsense – a submission we endorse.

5 Save the Bay v Canterbury Regional Council C6/2001

Environment Court, Judge Jackson presiding.

5.1 Overview

The reference related to provisions of the Proposed Regional Coastal Environment Plan (PRCEP) dealing with coastal hazards as they relate to Taylor's Mistake and Hobson's Bay (Banks Peninsula). The plan contained:

- Hazard Zone 1 – land at risk from coastal erosion within 50 years (its boundary, the 'hazard line', runs approximately parallel to the shoreline)
- Hazard Zone 2 – inland from Hazard Zone 1; land at risk from coastal erosion within 50 to 100 years.

These zones were defined only by reference to coastal erosion. Other natural hazards were not dealt with by the rules but were to be the subject of further plan reviews. These included tsunami events and the possible effects of global warming (on sea level, coastal sediment supply and storm generation).

The plan stated:

There is a need to undertake more investigation on the magnitudes frequencies and possible effects of these events. The results are to be used in future reviews of coastal hazard management policies and methods. In the absence of consensus as to the precise effects of global climate change, the wisest course is to adopt a precautionary approach when considering developments in the coastal area.

Save the Bay was concerned about storm damage by wave action and rockfall.

5.2 Court's decision

The Court was concerned that the objectives and policies in the plan related only to coastal erosion and inundation and not to other natural hazards and, for inundation, the objectives and policies were not followed through with rules (because the hazard zones related only to coastal erosion risk). Outside the natural hazard zones, the reconstruction of those buildings damaged by the sea was not controlled by the plan at all.

The Court considered that there was totally inadequate recognition of catastrophic natural events. Ninety percent of damage to the environment caused by natural hazards occurs in 10 percent or less of events.

If resource management has a significant function in relation to natural hazards – and it seems important enough to Parliament to give functions in respect of natural hazards to the regional and territorial authorities – then surely authorities should recognise that inverse relationship in the preparation and wording of their plans.

The Court heard evidence about the location of the hazard line and said:

In our view drafting a hazard line is not as scientific as ascertaining where the MHWS is (although that too is fraught with difficulty). The task is to draw a line as an administrative boundary which is conveniently ascertainable.

The boundary line for Hazard Zone 1 at Taylor's Mistake was amended.

5.3 Conclusions on the case

This case provides guidance on the interpretation and administration of sections 30 and 31 of the RMA:

- regional and territorial authorities need to recognise the significant function of resource management in relation to natural hazards in the preparation and working of their plans
- councils need to recognise serious, but infrequent, events when planning
- dealing with only one coastal hazard in the plan rules is not an integrated management approach.

6 McKinlay v Timaru District Council C 24/2001

Environment Court, Judge Jackson presiding.

The Canterbury Regional Council sought to manage the use of land in relation to natural hazards through its regional policy statement. In relation to the site in question, neither the regional policy statement nor the proposed regional coastal plan contained any rules relating to natural hazards. However, there were rules governing natural hazards at the site in the proposed Timaru District Plan. Under those rules, construction of a residential building was prohibited at the site (because it was within the 'Coastal Inundation Line').

The Court was asked to decide what would happen if an existing residence at the site was destroyed by a natural hazard such as a flood, and whether reconstruction would be prohibited by the proposed district plan. This relates to 'existing use rights' (sections 10 and 20 of the RMA). The Court said that the property owner would have existing use rights to rebuild provided that the dwelling rebuilt was the same or similar in character, intensity and scale as the present building (section 10). However, if there had been regional rules governing the reconstruction, then the situation would be different (sections 10(4) and 20(2)(c)). So, although regional rules can 'override' existing use rights, district rules do not.

7 Bay of Plenty Regional Council v Western Bay of Plenty District Council A 27/02

Environment Court, Judge Bollard presiding.

7.1 Overview

This reference related to provisions of Variation No. 1 to the Western Bay of Plenty District Council's proposed plan – development controls affecting coastline areas at Waihi and Pukehina beaches. The referrers were the Regional Council and the Waihi Beach Protection Society.

The plan contained a 'Coastal Protection Area' line, based on a 1993 study. (The Regional Plan also contained an 'Areas Sensitive to Coastal Hazards' line, which was compatible but not identical to the coastal protection area line).

The coastal protection area was split into 'high risk' and 'low risk' areas. Within the 'high-risk' areas, new buildings and alterations were a discretionary activity. In 'low-risk' areas, such activities were permitted, subject to conditions. Subdivision was discretionary in both areas. The Regional Council sought discretionary activity status for buildings in both areas. The Society sought permitted activity status for buildings in both the areas.

The District Council pointed out that, for permitted activity status, further conditions on buildings could be imposed under the Building Act 1991.

The plan variation was supposed to be an interim solution, providing adequate protection until 'future options for coastal management are known'. These include coastal protection works, but the Council did not want to proceed with those until other options had been investigated.

7.2 Court's decision

The Court considered that the planning instruments had properly recognised coastal erosion, inundation, dune stability and sea-level rise issues.

The Court considered that the Regional Council's approach should be accepted. It was sound to plan for a 100-year predicted risk period. The District Council argued that only a 50-year risk period should be planned for, but this was rejected, particularly considering the principles in the New Zealand Coastal Policy Statement. The areas should be categorised as 'primary' and 'secondary' areas of risk rather than 'high' and 'low', as both areas carry significant risk. Potential adverse effects through changed climate conditions and sea-level rise were accepted as existing. In secondary risk areas, buildings and extensions should be a limited discretionary activity.

The argument from the Society was rejected as follows:

> *... it was argued that the voluntary assumption of risk by private property owners does not abrogate the Council's responsibility of controlling the use of 'at risk' land for the purpose of avoiding or mitigating natural hazards. We accept that submission … Failure to manage known actual and potential effects of natural hazards at Waihi and Pukehina Beaches under the Act's regime would not, in our view, be consistent with the legislative purpose of sustainability.*

The Court commented on the evidence and the uncertainty inherent in this area of planning. These, together with the New Zealand Coastal Policy Statement, pointed to a precautionary approach to planning.

It commented on the interface with the Building Act:

> *... the respective means of control under the RMA and the Building Act should not be narrowly construed as merely amounting to alternatives available to a Council to achieve the same ends. Rather they should be viewed in a broader light, both individually and in combination, of assisting to serve the public good. Were the contrary contention sound, Parliament's recognition of the two separate Acts' frameworks of authority and control might be seen as unnecessarily repetitious. Each in fact serves its particular purpose – that under the RMA of promoting the sustainable management of resources in the context of the wide environmental perspective that the Act embraces; and that under the Building Act by focussing on the integrity and safety of buildings wherever they are located. Logically, any relevant controlling provisions that govern a development proposal under the holistic management regime of the RMA will generally fall to be invoked initially, with the application of controls under the Building Act following as appropriate in terms of that Act.*

7.3 Conclusions on the case

- Given the uncertainties in this area of planning, a precautionary approach should be taken.
- The Building Act should not be relied on completely – the RMA's purpose of sustainable management should still be fulfilled.

(Note: The final plan provisions for this case were resolved in *Bay of Plenty Regional Council v Western Bay of Plenty District Council* A 141/02.)

8 Skinner v Tauranga District Council A 163/02

Environment Court, Judge Bollard presiding.

8.1 Overview

The reference related to provisions of the Tauranga District Council's proposed plan – development controls affecting coastline areas at Papamoa Beach. The referrers were residents represented by a Mr Skinner.

The plan contained a 'Coastal Hazard Erosion Policy Area' (the Area). Within the Area were the following hazard risk zones:

- an extreme risk erosion zone (the area immediately susceptible to notable adverse effects from coastal hazards) – any development a prohibited activity
- a high-risk erosion zone (erosion predicted 2050–2100, taking into account global warming predictions) – development is limited discretionary
- a moderate-risk erosion zone (erosion predicted 2050–2100, taking into account global warming predictions) – development is limited discretionary
- a buffer zone – (an 'at risk' area should parameters used to arrive at the other zones should be too low) – has an in-built safety factor of 30%.

The Area had been identified by a coastal hazards expert, Mr Gibb. Mr Skinner (resident) sought the Area to be relocated seaward of the residences on the basis of a report commissioned from another coastal expert, Mr Smith. In response, the Council had asked a Mr Reinen-Hamill and an expert at the Auckland Regional Council (Mr Brookes) to review the Smith report and the Gibb report – concluding that the Gibb report should be preferred.

There was much expert evidence on the assessment of coastal hazard risk. The Tauranga District Council called as witness Mr Gibb, Mr Reinen-Hamill, and Mr Brookes, supported by Dr Bell (NIWA) and Dr de Lange (Waikato University). Some of these witnesses applied the 'Bruun rule'.

Mr Skinner called evidence from Mr Smith (NIWA), supported by Dr Abbott, Dr T Lustig and Mr Oldham (NIWA). Mr Smith considered it unlikely that cutback from a one in 100-year storm would cause sufficient damage to endanger beachfront houses, even allowing for future climatic uncertainties and sea-level rise. The use of the 'Bruun rule' was rejected by these witnesses.

8.2 Court's decision

The Court concluded that the beach was susceptible to erosive cutback when major storm events occur, and to continual dune line change. The 100-year period was deemed reasonable for coastal planning. Predictions were difficult but a lack of field data meant that the Area should not be moved as Mr Skinner wanted:

> *In the absence of such data, it would not be prudent to adopt an approach that postulates that the future dynamics of the beach profile will carry no hazard risk to seaward-facing parts of properties immediately proximate to the beach during the next 100 years.*

Also:

> *Of major import in arriving at a determination in this instance in the face of the conflicting evidence, is the lack of certainty as to future climate change and how such change will affect the various 'drivers' that lead to shoreline movement.*

In relation to sea-level rise, the Court noted the 'most likely' mid-range predicted by the IPCC.

Bearing in mind the precautionary element in the New Zealand Coastal Policy Statement, the Court found in favour of the witnesses who considered the 'Bruun rule', which applies to 'closed systems' –

> *we find that the notion of an 'ample cushion' of sediment supply cannot be endorsed with [any] degree of confidence.....*

Economic evidence was put forward on development potential and on the decrease in property values of beachfront properties. However, the evidence was not sufficient to override the need for the Council to plan ahead for coastal hazard risk.

The Area was upheld, with the extreme, high and moderate risk zones in it, but the Court considered the safety buffer zone could be removed as it was ultra-cautious.

> *The effect is to place a zone restriction on the properties affected beyond the extent necessary to ensure sufficient and appropriate recognition of coastal hazard risk to those properties during the 100-year forecasting period.*

However, the Council was directed to monitor trends so that the plan could be refined based on continuing experience and additional data.

8.3 Conclusions on the case

- The District Council had appropriately fulfilled its function in relation to natural hazards.
- It was correct to take a precautionary approach, given the uncertainties involved.
- The IPCC predictions on sea-level rise were endorsed.

9 ForeWorld Developments Ltd v Napier City Council W 029/06

Environment Court, Judge Thompson presiding.

9.1 Overview

In this case, the appellants sought to have land rezoned to *Main Residential* to enable subdivision, despite the possibility of coastal erosion damaging the land and structures erected on it.

The Court acknowledged that sea-level rise would result in wave action occurring at a higher elevation on shore and thus cause coastal erosion. However, the Court also acknowledged that the process of erosion would be incremental, and it would not reach its full extent immediately.

9.2 Court's decision

In its overall assessment, the Court stated that climate change aspects such as increased storminess require the consideration of an additional buffer allowance. This was explained as follows:

> *It is not a situation where it is necessary to be overly cautious but it would be prudent to provide for a buffer in addition to the estimated extent of the coastal erosion to make some sort of allowance for the factors that have not been estimated and included. ... That buffer should be in the order of 25% of the sum of the estimated distance.*[1]

Having said that, the Court also noted that the kind and degree of precaution to be taken depends on the level of knowledge of the risk, its likelihood of occurrence, and its consequences. Noting "we do not live in a risk-free world and the RMA does not require the avoidance of all risks."[2]

[1] *ForeWorld Developments & Anor v Napier City Council* at [84]
[2] *ForeWorld Developments & Anor v Napier City Council* W 029/06 at [31]

The decision further described the inland extent of the coastal hazard zone based on the information before it and the buffer area.

9.3 Conclusions on the case

- A 100-year timeframe is appropriate for considering coastal issues.
- The 'Bruun rule' was accepted as an adequate method for assessing the effects of sea-level rise on coastal retreat.
- A graduated coastal hazard zone was not favoured in this case owing to difficulties of application and enforcement with a relatively small overall width of land.
- Adoption of a precautionary approach, based on weighted consideration of the level of knowledge of the risk, its likelihood of occurrence and the consequences, was accepted.

10 Application by Tasman District Council – W047/2011

Environment Court, Judge Dwyer sitting alone

10.1 Overview

Tasman District Council (the Council) sought an order under section 86D of the RMA relating to specified rules which were to be introduced through proposed Plan Change 22 to the Tasman Resource Management Plan for Mapua /Ruby Bay. The order sought was to give legal effect, from the date on which Plan Change 22 was publicly notified, to amendments to Rules for subdivision and development in identified zones (described as the Residential and Rural 1 Closed Zones, and the Rural 1 Coastal Zone). The specific Rules applied to land which is likely to be affected by future coastal erosion and coastal and freshwater inundation.

The Council, through an affidavit from its policy manager, expressed concern about a *"potential rush on applications in* [the affected] *coastal areas to subdivide or develop,"*[3] which would potentially undermine the outcome intended by the Council. The Rules sought to be implemented were in response to an identified susceptibility of low lying areas to erosion, flood, water inundation and sea water inundation and the likely progressive increase through time of those risks, particularly as a result of projected climate change influences and extreme weather event conditions. The proposed amendments affected some 350 property owners and were acknowledged by the Council to represent a substantial change to the status quo. The rules reduced, and in some cases would eventually prohibit, some subdivision and development opportunities presently attached to the land.

10.2 Court's Decision

The order sought was granted. The Court noted that, subject to limited exceptions, it was Parliament's intention that rules in proposed plans would generally only have legal effect when parties who might be affected by these rules had the opportunity to be heard and determined by the local authority. However, the Court considered that the possibility that applications under the existing rules might be made, of itself, was not necessarily a determinative factor in deciding an application under 86D, and there were a number of relevant factors be considered in the specific circumstances including:

1. The plan change, of which the rules were part, applies to a specific highly vulnerable area, and seeks to protect people and land from the effects of coastal erosion and coastal and freshwater inundation.

[3] *Re Tasman District Council W 047/2011* at [5]

2. Allowing the rules to have immediate legal effect represents a precautionary approach, appropriate given the potential effects and in accordance with Policy 3(2)(a) of the NZCPS.

3. Allowing the rules to have immediate legal effect is also in accordance with the requirement that the Court have particular regard to the effects of climate change under section (7)(i) of the RMA.

4. Allowing the rules to have immediate legal effect also assists the council to give effect to NZCPS Policies 7, 24 and 25.

5. The plan change, of which the rules are a part, arise from a comprehensive planning process which has progressed over some 10 years, with considerable public consultation.[4]

As the decision was issued two days after the notification of the relevant plan change, the rules were to have immediate effect and the Council was required to publicly notify the Court's order.

10.3 Conclusions on the case

- In limited circumstances it is appropriate for new restrictive rules to have immediate effect in order to limit development opportunities being taken up during the process of the plan becoming operative, which would undermine the purpose of the plan change.
- In this case those circumstances included exposure to coastal erosion and coastal and freshwater inundation.
- The decision would assist the Council to give effect to a number of NZCPS policies in its plan.
- The lengthy and deliberate planning process, including public consultation, was relevant to the decision.

11 Environmental Defence Society v NZ King Salmon, Sustain our Sounds Inc Marlborough District Council and Minister of Conservation SC82/2013

Supreme Court, Justices Elias, McGrath, Young, Glazebrook and Arnold

11.1 Overview

This very significant decision arose from an appeal by Environmental Defence Society against a plan change and resource consents decision allowing a marine farm in an area of outstanding natural character and landscape. Although relating to marine farming, the judgment interpreted aspects of the NZCPS 2010 which are pertinent to managing hazards in the coastal environment.

At the heart of the judgment lay issues over whether, and how, the NZCPS must be given effect to "as a whole", and how a situation which was in accordance with some policies but not others should be dealt with: in other words, how determinative are the individual policy provisions in the development of plans which must give effect to the NZCPS?

11.2 Court's Decision

In short, the Supreme Court found that approval of the plan change by the Board of Inquiry on the basis of an "overall broad judgment" assessment under Part 2 of the Act was incorrect. The judgment provided several key principles and interpretative guidance on the NZCPS and the RMA as summarised below.

The Court found that, given that the NZCPS gives substance to Part 2 of the RMA within the coastal environment, there is no need to refer back to Part 2 unless the NZCPS is invalid or does not "cover the

[4] at [16].

field". The requirement to give effect to the NZCPS in policy and plans is intended to constrain decision-makers.

The Court noted the importance of Policy 7, Strategic Planning, and confirmed the need to take a whole of region view when deciding what is, or may be, "inappropriate" in terms of subdivision, use and development when formulating a regional policy statement or plan. It also noted the requirement to consider adverse cumulative effects. With this in mind, the Court emphasised the role of the regional policy statement in identifying issues and setting direction, and the regional coastal plan in establishing rules to implement the national and regional policy.

The Court then turned its mind to the different expressions used in the various objectives and policies in the NZCPS, noting that they deliberately vary and the differences do matter. The distinctions between the expressions are likely to be minimised if an "overall judgement" is taken. When dealing with a plan change, a decision-maker must identify the relevant policies and pay careful attention to how they are expressed. Those expressed in directive terms will carry greater weight than those expressed less directly – for example "avoid" is a stronger direction than "take account of". The Court anticipated that by undertaking such careful analysis, in any circumstance most apparent conflicts between policies would disappear because of the language used. The analysis should be undertaken directly under the NZCPS, albeit informed by section 5 of the RMA.

The Court found that the requirement "to give effect" is a strong direction, and should be interpreted as to "implement." The Court found that "inappropriateness" in sections 6(a) and (b) of the RMA should be assessed by reference to what it is that is sought to be protected. In relation to NZCPS Objective 6 and related policies, a decision-maker must make an evaluation of whether a particular development is, in all the circumstances, "appropriate" or "inappropriate".

The Court expressed its concern about the use of an "overall judgement" approach when spot zoning was being considered, as it would tend to lose the context of strategic broad-scale planning that the NZCPS requires. The Court pointed to the wording of Policies 13(1)(a) and 15(a) (both of which direct local authorities to "avoid adverse effects") as being clear and squarely within the concept of sustainable management. The Court went on to find that the word "avoid" was at one end of a continuum in RMA section 5(2)(c) and it has its ordinary meaning of "not allowing" or "preventing the occurrence of."

In the particular case in front of it, the majority determined that the Board had erred. Having found that there would be significant adverse effects on an area of outstanding natural character and landscape, the Board exercised an overall judgement to allow the plan change for salmon farming. In doing so, the Board had failed to give effect to the "avoid" directions of NZCPS Policies 13(1)(a) and 15(a) as is required under the RMA.

11.3 Conclusions on the case

- The case is a significant one, as it emphasises the need to carefully apply the wording of the various objectives and policies in the NZCPS when giving effect to that national policy in regional and district RMA policy and plans.
- It also emphasised the importance of strategic planning, Policy 7, for the coastal environment in terms of the NZCPS's approach, and confirmed the usefulness of prohibited activity categories in some circumstances as part of the spectrum of activity statuses in plans.
- It gave weight to the evaluation of "appropriateness" in any specific circumstance.
- Because of the similarity of the language used in the policies relevant in this case to those applying to managing natural hazards and climate change through the NZCPS, the case has particular relevance in terms of the application of these provisions.

12 M and V Weir v Kāpiti Coast District Council, NZHC 3522/13 (interim), NZHC 43/15 (final)

High Court, Justice J Williams

12.1 Overview

This judicial review concerns a council's responsibilities to place information about natural hazards, specifically coastal hazards, on a Land Information Memorandum (LIM) in relation to a land title under the Local Government Official Information and Meetings Act 1987 (LGOIMA).

In this case, Mr and Mrs Weir challenged Kāpiti Coast District Council's right to attach information on land title about coastal erosion sourced from two reports comprising an erosion assessment, commissioned by the Council. The reports had identified two "hazard prediction lines", a "managed line" which assumed the Regional Council's existing coastal protection structures would be maintained by that Council at current levels; and an "unmanaged line", predicted on the Regional Council allowing current structures to fail over time without repairing or replacing them, or where there are no such structures. The lines predicted the possible extent of coastal erosion at 50 years (including both "managed" and "unmanaged" lines) and 100 years ("unmanaged" line only) from the present day. The hazard lines were not probabilistic, rather they were deterministic. They were based on a precautionary approach and identified "worst case" scenarios in that they did not allow for any accretion over the period.

The Council had applied the lines in its proposed district plan. The Council considered the information was also caught by section 44A(2)(a) of the LGOIMA, being information about potential erosion "known to the territorial authority" but not apparent in the district plan (as the definition of district plan in the RMA does not cover a proposed district plan) and therefore was to be included on LIMs issued by the Council. The Council had provided the information on some 1800 properties in the district, by showing a line (or lines) of *"eye catching simplicity"* across the title representing the hazard line(s), along with a "dense" five pages of written explanatory material.

12.2 Court's Decision

There were a number of issues of both interpretation and practical application before the Court. Key findings were:

1. LIMs are intended to provide access to information to owners and potential purchasers which could affect suitability, price or saleability. They must be provided by councils on request. The requirement under section 44A(2)(a) relating to natural hazards requires a judgement call as to whether the potential erosion (among other things) is a special feature of the land in question. This distinguishes paragraph (a) from the other elements of s 44A(2).

2. Any responsibility to place such hazard-related material on a title only remains until the information is included in some form in a district plan - a process by which its reliability will be tested by the affected community. The provision of such information is on the basis of public interest, and privacy and private interests are not raised. The legislation requires a "good reason" to withhold such information.

3. The Court asked itself three questions: whether the information related to potential erosion; whether the information related to a feature or characteristic of the land, and is the information "known" to the Council. It heard legal argument on all matters.

4. In relation to "potential" erosion, the Court found that the reports the Council had relied on did raise *"reasonable possibilities objectively determined"* and therefore the information came within scope. Potential needs to be distinguished from "likely", which is applied in other contexts.

5. In relation to the land, in response to arguments that information must be site-specific, the Court found that information *"can relate to a special feature or characteristic of the land without a site-by-site analysis being undertaken"*, and *"it would be inconsistent with the purpose of section 44 if that could not be done because a far more expensive site-by-site analysis is required but unaffordable"*.

6. The information was known to the Council by virtue of it being commissioned and received. It is not necessary for it to be "correct" beyond its own terms and within stated limitations, tests which were met by the expert's report.

7. The Court pointed out, however, that a council has a broad discretion as to how it presents the information known to it. The Court was critical of the contrast between the lines that had been placed on the plans and the lack of qualification (such as *"worst case scenario at 100 years"*) and the difficulty of understanding the accompanying dense report. The Court suggested a refitting of the material, which would provide for clarity, fairness and balance.

12.3 Conclusions on the case

- The case demonstrates the relatively low threshold which applies to natural hazards information which must make its way into LIMs (i.e. as long as information is clear in terms of its assumptions and limitations and a council has received it, it must be available on a LIM).
- The focus then becomes on how the information should be presented on a LIM. The Court was concerned that in this case the material was presented in a way that did not make clear all the limitations behind it.

Note: Subsequent to this case, and as a result of a review of the reports as part of the district plan process, the Council removed the initial coastal hazard lines from its proposed district plan and new LIMs. The Court then confirmed its interim decision as its final decision.

13 Carter Holt Harvey HBU Ltd v Tasman District Council W025/2013

Environment Court, Judge Dwyer presiding

13.1 Overview

The applicant sought consent to develop eight lots (by the time of the hearing reduced to six) with dwellings, and a number of reserve lots on Kina Peninsula, accessed off an existing public road, Kina Peninsula Road. The land was zoned Rural 2 and was in the identified Coastal Environment Area in the Tasman Resource Management Plan.

Caucusing by the coastal experts (four coastal engineers and a coastal scientist) had concluded that the proposed lots and building platforms would be subject to hazard risk from coastal erosion and inundation due to climate change effects within the NZCPS Policy 24 100 year assessment period. There were also agreed setbacks for any buildings behind the proposed esplanade reserve area (which would be eroded within 50 years) and within the lot boundaries, and agreement on monitoring. Relocatable buildings, a trigger distance from mean high water springs which would activate relocation, and a prohibition of land protection structures were proposed by the applicant.

Kina Peninsula Road was described as a *"causeway"* and parts were described by the Court as *"highly vulnerable to coastal processes"*. Engineering witnesses said that the road was overtopped in extreme circumstances. Although it was subject to rock protection, this was subject to wave attack and already costly to maintain. The Council was likely to stop maintaining the road when it considered it *"unaffordable and unsustainable"*. Resource consents for further maintenance work would be needed. The Court was clearly concerned about the lack of long-term access and the applicant's casual approach to the Council's concern (beyond suggesting long-term beach or sea access).

13.2 Court's Decision

The Court upheld the Council's decision to decline the application on a number of grounds. The Court found:

In its application of section 106 of the RMA, the Court considered that the land was clearly subject to material damage and the proposed esplanade reserve would not be available for its intended use within 50 years due to erosion and inundation. There was also a probable loss of half or more of the residential lots' land within 100 years. The Court found that these circumstances met the "material damage" test of section 106(1)(a).

The Court then turned its mind to the conditions proposed by the applicant, and considered that none of those appeared to avoid, remedy or mitigate effects of erosion or inundation on the land of the subdivided lots. The Court had concerns about access in relation to section 106(1) (c). It noted that the applicant had offered a cash contribution to upgrade the road, and this may place the Council in a very difficult position in the future as it would create an expectation on the part of future lot owners that the Council would continue to *"maintain the road and keep it open even if it makes no economic sense to do so"*. The Court was not satisfied that *"sufficient provision for legal and physical access to the subdivided allotments ..... now or in the future"* had been made.

The Court also expressed concern about the practicality of a bond as proposed by the applicant to remove structures once the beach tidal interface is within 20 metres of them, particularly when the security might relate to a parcel of land which is being consumed by the sea. It considered that not enough certainty had been provided for such a possibility to be entertained.

The Court worked through the relevant NZCPS provisions and found that:

- Achievement of Objective 4 would not be permanent because of the erosion of the proposed esplanade reserve.
- The proposal was for new development, and the managed retreat component would place it at odds with Objective 5 (where managed retreat is intended to apply to existing development).
- The proposal was not in accordance with Objective 6, as it was not in an appropriate place or form, or within appropriate limits.
- In respect of the precautionary approach incorporated in Policy 3(2) the Court was not satisfied that *"signalling to prospective owners ... that they will be required to remove* [their homes] *in due course necessarily avoids social and economic loss and harm"* despite them having made an informed decision.
- While the proposal included the provision of public open space, the reduced access over time and the effects of coastal processes on the esplanade reserve diminished its alignment with Policy 18.
- The proposal fails to achieve Policy 25's requirement to *avoid* the risks of social, environment and economic harm, or an increased risk of adverse effects from coastal hazards.

The Court also examined the provisions of the district's operative and proposed Plan, and found numerous inconsistencies between the stated policy and the proposal. This included natural character, coastal process, amenity, and natural hazards provisions.

In respect of a nearby coastal development (a single dwelling) and the question of precedent, the Court said: *"Even if we accept for the purposes of this decision that the decision in respect of* [the other property] *shows a disregard for the issues of coastal hazard and protection of the character and amenity of the Kina Peninsula ... we do not consider that this justifies this Court in showing similar disregard ...* [to do so] *would be a prime example of one questionable decision giving rise to another"*.

13.3 Conclusions on the case

- The Court clarified the importance of section 106 as comprising *"discrete determinative issues for consideration irrespective of other Part 2 issues"* in relation to coastal hazards. In this case, the subdivision application would have been declined solely on the basis of section 106.
- The decision emphasised the importance of "avoiding" increasing risk of social, environmental and economic harm when considering a change of land use (in this case new development) in relation to NZCPS Policy 25, while not ruling out the possibility of innovative solutions which would adequately address risk but which were missing in this case.
- The decision linked NZCPS policy for coastal access and natural character to changes over time due to climate change, and found that the proposal provided inadequately for them due to the rates of coastal retreat.

Note: In a subsequent decision on costs (W077/2013) both the council and the section 274 Party (Friends of Nelson Haven and Tasman Bay) were awarded approximately 50% of their costs. The Judge sitting alone said that *"the hurdles in front of CHH (particularly in respect of s106) were so substantial as to make the prospect of the appeal succeeding, questionable from the outset"*.[5]

14 Mahanga E Tu Inc v Hawke's Bay Regional Council and Wairoa District Council W083/2014

Environment Court, Judge Thompson presiding.

14.1 Overview

The decision allowed a 5-lot residential subdivision of a 0.8ha lot in the small coastal settlement of Mahanga on the Mahia Peninsula, to accommodate an existing dwelling on one lot and two new relocatable dwellings on two others. Consents for buildings on the remaining two lots would need to be sought later.

The land was within a long-established Settlement Zone under the operative Wairoa District Plan and was to be zoned Residential (Mahia) under a proposed change to the Plan. The lots and the access road were within coastal hazard zones in the proposed Regional Coastal Environment Plan. One lot was within the area at risk of inundation in a one in 50 years combined tide and storm surge event and the remaining four lots were within areas subject to the same inundation risk, but also potentially at risk of erosion before the year 2100. The Court hearing was the outcome of a lengthy process involving mediation and expert conferencing. Prior to and during the course of the processes, the applicant had agreed to the following:

- The proposal to build a revetment on the frontage of the property had been dropped.
- Parts of the land were to be raised 1.6 m to provide for building platform above flood heights from the nearby stream.
- Removal of the dwellings was to be triggered when the toe of the foredunes reached a point 7 m from the house. Wastewater systems were to be capped and removed. Bonds were to be lodged to cover this work.
- Long-term access to the new lots of sufficient width for removal of the houses could not be guaranteed along the present road, as it would be subject to erosion earlier than the lots. Rather than leave such issues to be dealt with when the need arises, the applicant accepted that access should be dealt with now (as conditions precedent) by providing easements across the

[5] *Carter Holt Harvey HBU Ltd v Tasman District Council* [2013] NZEnvC 77.

new lots within the subdivision area, and the applicant would also arrange an easement across adjoining land to the south.

14.2 Court's Decision

The Court's decision granted consent (noting that the application before it, particularly with the removal of the revetment, was different from that considered by the councils and had removed any suggestion of risk to other properties) but expanded on a number of aspects as follows:

1. While the three coastal experts had reached agreement on several key aspects of coastal erosion and inundation of the lots, they disagreed on the mechanisms and rate erosion and the extent of such erosion hazard and risk at the site. Much of the disagreement related to expectations about the influences of a headland, stream and spit in the area. Earlier (2005 and 2007) predictions of rates of erosion had not occurred, leading to the assumption that processes other than those accounted for in the earlier investigations were influencing rates of erosion.

2. There was also disagreement about a "factor of safety" which two of the three coastal scientists had factored into their estimates. The Court commented that:

   > *"the preparation of accurate long-term predictions for the behaviour of complex natural systems at a very small site is fraught with difficulty"*

   It did not reject the more conservative approaches, but chose to accept a retreat rate of around -0.4 m/yr. It calculated that, at that rate, there would be at least a 20 year period before the "trigger line" was reached during which applicants (and any future owners) could enjoy the developed property and this was considered to be a *"a reasonable timeframe in determining that the proposal is appropriate in this context"*.

3. The Court was concerned about the extent of the bond and how to keep it abreast of inflation so that *"the Council and its ratepayers would not be out of pocket if the then owners failed to perform their obligations"*. It settled for a $35,000 bond with an annual compounding 5% increase, and also noted that the council would become the owner if they had to remove any structures (which was implied to be a benefit).

4. At the heart of the matter was the voluntary acceptance of risk by the property owners in the face of *"virtual certainty of the occurrence"* of coastal erosion, and the acceptance of short-term benefit against long-term cost. The Court was satisfied that there would be no increase in either the risk to, or severity of, effects of natural hazards on other properties and people as a result of the development proposed. The Court considered that a minimum of 20 years of enjoyment by the owners of their properties was, in this case, acceptable.

5. The Court considered a number of relevant NZCPS 2010 policies and acknowledged, in relation to Objective 5, that the development could not be located away from risk-prone areas. It commented: *"While not ideal in the purist sense, in the circumstances we consider it viable"*.

6. In terms of the precautionary approach incorporated in Policy 3 NZCPS 2010, the proposed development would not change the rate of risk exposure to the wider environment or settlement, and the new residents in the approved development would have express knowledge of the risk and choose to accept it.

7. In terms of section 106, the use of the land would not accelerate or worsen the impending erosion it is subject to, or affect any other land. The proposed mitigation conditions (including access) would address section 106 issues.

14.3 Conclusions on the case

- The long-established and recently-confirmed urban zoning of the site was influential in the decision.
- The proposal (as modified) would not increase hazard or risk to any other property.
- The Court went to considerable lengths to put in place mitigation conditions to ensure that new structures and infrastructure would be removed prior to becoming subject to direct effects, at no cost to the community.

15 D and C Gallagher v Tasman District Council W245/2014

Environment court, Judge Dwyer presiding

15.1 Overview

The appeal related to a specific property approximately 3.2 ha in extent, but within the wider context of proposed Plan Change 22 (PC 22) to the Tasman Resource Management Plan. The Tasman District Council (the Council) had already provided for this lot to be subdivided into two through a site specific rule and had granted consent. Further subdivision would be prohibited. The appellant sought development rights for 13 residential lots with dwellings on raised platforms.

PC 22 applied to an area of some six square kilometres and sought to provide for the growth of Mapua and Ruby Bay settlements away from areas prone to natural hazards, including areas that were predicted to become subject to natural hazards over time due to climate change effects. The approach was to impose controls on subdivision and development in the identified hazard-prone areas and allow for further development on more elevated areas. The appellants land was to be subject to the proposed controls and they had filed a submission in opposition to PC22. The Council substantially disallowed the submission, giving rise to the appeal.

The appellants did not challenge the overall approach, but sought to create a "scheduled site" allowing for residential development that would otherwise be precluded by the rules.

Counsel set out for the Court the following determinative issues:

- Whether the relevant context was simply the appellant's site or the wider mid-Ruby Bay coastal plain area.
- The nature and extent of present and future hazard risk exposure which applies to the mid-Ruby Bay coastal plain and the appellants' property as a result of coastal erosional forces, seawater inundation and stormwater inundation.
- The appropriateness of the Plan amendments in PC22 to manage the hazard risk for the wider area and the property itself, taking into account the 100-year planning framework (which the Council contends is a minimum planning framework), and the relevant statutory framework including the NZCPS 2010 and relevant provisions of the RMA.
- Whether the relief sought ("scheduled site") by the appellant was appropriate in the physical and temporal context without undermining PC 22.

15.2 Court's Decision

In summary, the Court determined that the proposal to amend PC22 advanced by the appellants should be declined. The Court determined that it could not consider the site-specific issues without also considering the broader context. It proceeded to examine the other determinative aspects:

1. In response to the appellant's arguments that the inundation risk was not such that it should be subject to the prohibition on subdivision the Court heard considerable evidence from stormwater and coastal experts.

2. In stormwater terms, the experts reached much agreement on key matters including: the adoption of 100-year planning horizon for modelling; current industry best practice for rainfall parameters provided by the MfE climate change guidance; acknowledgement of the influence of groundwater levels in inundation but acceptance that there was inadequate information on that matter; acceptance that the coastal overtopping of the revetment would dominate adverse effects with stormwater having a minor influence only, and that future sea level rise (SLR) would impede the outlet capacity of stormwater culverts. The storm water experts agreed that any development on the appellant's property would require elevated building platforms, detailed consideration of adaptation and potential relocation, safe egress and flood pathways.

3. In terms of coastal inundation, under various critical combinations of wave heights and storm tide elevation, seawater would overtop and pass through the Ruby Bay revetment above its impermeable core, to flood the properties behind the revetment. This would in some circumstances reach the appellant's property. The four coastal experts agreed that the planning horizon should be 2115, SLR allowance should be 0.45 m in 2065 and 1.0 m in 2115, and agreed on four scenarios that should be used for wave and water levels as the basis for modelling of the effects of overtopping. The experts agreed that SLR would significantly increase overtopping rates from present-day levels, that adopting a conservative approach in modelling hazard risk from coastal inundation would be precautionary (because of recognised inadequacies in the models), and that the present day scenario applied in the modelling represented well the recent recorded flooding events (such as cyclone *Drena*). They also agreed that coastal erosion of the appellant's property was unlikely by 2115, even if the revetment was removed when its consent expired.

4. There was disagreement amongst the coastal experts about the most likely scenario and the detailed components of the assumptions and outcomes in relation to overtopping rates. This is discussed at length in the decision. The Court adopted Mr Reinen-Hamill's 242 L/s/m overtopping rate as "best fit," and considered it a realistic possibility. However an alternative scenario from the appellant's expert was also considered. These were applied to the appellant's proposed subdivision and development layout, considering changes over a tidal cycle and maximum flooding depths, including the increasing effects of sea-level rise over time. The Court was interested in the mitigation provisions not only on site (building platform levels, floor levels and ground shaping to contain flood water) but also the effect these provisions may have on flood levels on nearby sites. Due to lack of information on groundwater levels, the Court was not able to reach a conclusion on such potential exacerbation.

5. The Court discounted coastal erosion as a hazard in this situation. Stormwater inundation alone could be extensive in 2115, up to double the 2014 situation in depth (to 1 m) and considerably greater in extent. The real concern was seawater inundation, where there could be depths of up to 2 m with extensive areas of 1–1.25 m depths persisting for considerable periods (beyond the 8 hrs when drainage associated with tides would start). The Court found that:

   > *"the predicted extent and depth of flooding, the rapid rate at which this flooding could develop, the extended periods over which the water will remain on-site before starting to drain away and the difficulties with egress all combine to create a high level of hazard for those who might reside on or be visiting the site during a 2115 1% AEP coastal overtopping event."*[6]

[6] *Gallagher v Tasman District Council [2014] NZEnvC 245* at [120]

6. The Court noted it had examined a single modelled storm event with 1 m of SLR in 2115, but flooding would not be a one-off event. From time to time, from the present, there could be expected to be other large coastal storm events resulting in significant flooding of the area including the appellant's property.

7. The Court determined that the amendments to the Plan for the wider Ruby Bay area were appropriate, having reviewed the section 32 documentation and the evidence. It noted that all relevant witnesses had agreed on a planning timeframe up to the year 2115. The Court indicated that in reaching this determination, it had had regard to the hazard risk exposure of the area now and over the period to 2115. This included areas exposed to coastal erosion hazard near to the appellant's property.

8. The Court found that "*the present hazard risk exposure of the Gallagher property is such that the feasibility or wisdom of any more intensive residential development is highly questionable. We are far from convinced that the development ... represents appropriate or sustainable development as at the present time*".[7]

9. The Court went on to examine further whether the relief was "appropriate" in terms of the NZCPS 2010, and noted that if the proposal was consistent with the NZCPS, it would also achieve the purpose of the RMA. There was no dispute that the Plan must "give effect to" the NZCPS (note that the decision followed the King Salmon decision described in 1.15 above).

10. The Court found that NZCPS 2010 Objectives 5 and 6, and Policies 3, 6, 7, 24 and 25 were relevant, but that the focus of the case was on Objectives 5 and 6 and Policy 25. It noted that Plan Change 22 was consistent with Policy 7 in a general sense, and that the council had identified coastal hazards in accordance with Policy 24.

11. In considering legal argument to the contrary, the Court determined that the word *"ensure"* in Objective 5 is highly directive and means *"secure"*, *"guarantee"*, *"make certain"*, and *"protect"*. It acknowledged that Objective 5 of the NZCPS 2010 seeks to manage coastal hazards risk by locating new development away from areas prone to such risks, and that Policies 25(a) and (b) which seek to avoid increasing risk are consistent with Objective 5. It is necessary to identify the level of existing risk from coastal hazards and then to look at the extent to which any proposal increases the risk.

12. In carrying out the exercise for the appellant's property, the Court found that it would increase the number of persons and residential buildings at risk than is presently the case, resulting in increased consequences for any coastal overtopping event. Therefore it would increase the risk of social, environmental and economic harm from coastal hazards, which is to be avoided under Policies 25(a) and (b).

13. The Court was not satisfied that the mitigation proposed by the appellant would avoid the risk as there were significant uncertainties around:
    - The long-term presence of the revetment
    - Actual and future overtopping rates (acknowledging uncertainty about the Antarctic ice cap melting effects within the 100 year timeframe).
    - Groundwater levels and their connection with coastal water levels.

    The Court did not agree with legal submissions that Plan Change 22 could only be justified on a precautionary basis. They considered Mr Reinen-Hamill's risk scenario to be a sufficiently realistic possibility to justify the controls, even recognising uncertainty.

[7] *Gallagher v Tasman District Council* [2014] NZEnvC 245 at [138].

14. In terms of the King Salmon tests of the precautionary principal and prohibition where there is uncertain or inadequate information, the Court found that the extent of risk is one of a high level of hazard and that the gravity of consequences to people and property is high. Additionally, the activity was not of wide community importance as the plan change had already made allowance for people to live in the Mapua/Ruby Bay area. Accordingly, the Court found that in the circumstances, prohibition was the correct response, even taking into account the residual uncertainty. The inclusion of the relief sought in the appeal to PC 22 would not give effect to NZCPS 2010 and would be directly contrary to Objective 5 and Policy 25.1.

15. The decision also expresses the Court's view of the relationship between NZCPS 2010 Objective 5 and Objective 6 (specifically the first two bullet-points). It found the first bullet-point is directed at protecting coastal values from development, and not development from coastal hazards. In this case, the appeal area was not an *"appropriate place"* for development due to the increased exposure to coastal hazard risk it would bring. There was no dependency in terms of the second bullet-point. The Court also found that Objective 5 does not override Objective 6, and there is no conflict between them as they deal with difficult issues, and in any case could be resolved by Part 2 RMA.

16. The Court found that precedent issues were not relevant in this case, and that other coastal cases which had been referred to it (including cases 1.17 and 1.18 above) were of limited assistance due to the different requirements of a plan change to "give effect" to the NZCPS, and a consent applicant to "have regard" to it. The third case mentioned predated NZCPS 2010 and was of little assistance.

17. In undertaking a section 32 analysis as required, the Court addressed the various tests and found the appellant's proposal was not efficient or reasonably practicable. The benefits were economic only and lay with the appellant who would sell the land. The costs would accrue to a larger group of purchasers and successors in ownership of the land, who would be subject to the risks, together with adjacent owners and successors who might potentially be affected by development on the subject property.

15.3 Conclusions on the case

- The 100-year timeframe for plan changes is appropriate.
- A range of scenarios needs to be taken into account when examining future risk. The Court acknowledged that the RMA is not a "no risk" statute, but in this case that nature of the risk was such that the Council's response was appropriate.
- Local circumstances require careful consideration including over time. However, these cannot necessarily be restricted to a single small area as the implications may extend further.
- In accordance with King Salmon, the NZCPS must be given effect to in plan changes, and this requires careful consideration of its provisions in the light of the specific circumstances. Objective 5 has considerable force when interpreting Policy 25.
- This is a very significant case in terms of the application of the NZCPS, the integration of climate change information into coastal management decisions, and the approach to risks in planning for hazard management in the coastal environment.

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