ORIGINAL

BEFORE THE ENVIRONMENT COURT

Decision No. [2010] NZEnvC 284

IN THE MATTER of an application for a declaration under S311 of the Resource Management Act 1991

BETWEEN ENVIRONMENTAL DEFENCE SOCIETY
(ENV-2009-AKL-000512)

Applicant

AND KAIPARA DISTRICT COUNCIL

Respondent

Court: Environment Judge L J Newhook sitting alone pursuant to S279 of the Act (Decision made on the papers)

Counsel: G Milne-White for Applicant
A Green and M Dickey for Respondent

JUDGMENT OF THE ENVIRONMENT COURT ON APPLICATION FOR DECLARATION

A. Application adjourned for further consideration.

B. Costs Reserved.

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Reasons.

[1] On 23 December 2009 the applicant lodged proceedings seeking declarations in circumstances where the respondent had promulgated a Proposed District Plan ("PDP"), allegedly on the basis that it had deliberately omitted a chapter providing for the recognition and protection of outstanding natural features and landscapes from inappropriate subdivision, use and development. That is, that it was in breach of section 6(b) of the Act.

[2] Declarations were also sought as follows: that the PDP does not give effect to the New Zealand Coastal Policy Statement ("NZCPS") as required by section 74(2) and 75(3) of the Act; that it does not give effect of the Northland Regional Policy Statement ("NRPS") as required by section 74(2) and 74(3) of the Act; and has not been prepared in accordance with the Kaipara District Council's functions under section 31, the provisions of Part 2, and its duty under section 32 as required by section 74(1) of the Act.

[3] The application also sought a declaration that in light of the above, KDC has a duty under the Act to notify a proposed plan or a variation to the PDP that recognises and provides for the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development, and gives effect to the NZCPS and NRPS (including identification of outstanding natural features and landscapes in the district).

[4] The parties each arranged for a planner to make an affidavit. Subsequently, rebuttal affidavits were filed by each of those planners. Two features of this process are worthy of note. First, that despite the sheer volume of affidavit evidence, there was a relatively high measure of agreement between the two experts on matters of fact (an important requirement in declaration proceedings), and despite the sheer volume of evidence lodged, it has been possible to distil the essential features of the case down to first principles.

[5] Where the planners differed was more in the area of interpretation of certain documents, including resolutions passed by KDC, and other council documentation. Those interpretations are in any event probably more the province of counsel, and ultimate interpretation by the Court. Nevertheless I have considered those parts of the affidavits as carefully as I have all the other materials placed before me.

The Factual Background

[6] Each of the witnesses referred to documentation created during the preparatory process for the promulgation of the PDP, commencing as long ago as 2005. They also referred to the relevant provisions of the PDP itself, as well as to relevant provisions of the operative plan.

[7] A useful starting point will be the PDP. On the contents page, reference is made to a "Chapter 18", but on turning to that, the reader is greeted by the advice "this chapter is intentionally blank". This is the issue at the heart of the proceedings.

[8] Notably, the council had commissioned a landscape study by a consultancy Littoralis Landscape Architecture in 2006, which resulted in the identification of a number "outstanding" and "amenity" landscapes within the district.

[9] The experienced planning expert called by the applicant, Mr P D Reaburn, opined that he would have expected a landscape chapter to include objectives, policies, methods and rules relating to outstanding landscapes, as well as a list and map of the Outstanding Landscape Units ("OLUs") advised by Littoralis. The PDP does not contain such provisions, although it does offer other provisions and maps of matters of "environmental benefit" that I shall describe shortly.

[10] Also at the heart of the proceedings was a resolution of KDC on 26 November 2008, based on recommendations made to it by its planning officers at a workshop held on 29 October 2008. The resolution read:

> ...that Council takes no further action on the identification of, and consultation on, Outstanding Landscapes in the Review of the Kaipara District Plan

[11] The reasons recorded for the recommendation were as follows:

> ...Council needs to concentrate on key strategic elements of the District Plan including the promotion of economic growth and environmental wellbeing. Council considers the resources of managing the outstanding landscape process outweighs the benefit to the rate payer and the community. Council notes the issue is likely to be dealt with in the public and Environment Court processes of the District Plan Review.

[12] The planning report for the council meeting on 26 November 2008 also contained the following information under the heading "Landscape Direction":

> ...Council is of the opinion that the stakeholders opposing the identification of outstanding landscapes are holding entrenched positions and are not prepared to enter into free and frank discussions with council with the intention of resolving the differences. Council is also concerned that these stakeholders are not addressing the planning process and legal facts of the matter and Council is not prepared to commit resources to a process that is unlikely to result in an outcome that enables the District Plan Review to progress. Council is aware that the changing direction is not avoiding the statutory requirement to protect outstanding landscape, merely delaying it to a later time in the process of adopting a reviewed District Plan.

[13] In the course of preparation of the PDP, KDC, as required by law, undertook processes under s32 RMA. The s32 Evaluation Report Summary in relation to the landscape chapter 18, included the following commentary:

> District Plan Development Process
>
> Throughout the District Plan development process, which commenced in 2005, Council has held workshops and undertaken consultation with the community on the issues, environmental outcomes sought and possible method options for valued landscapes in the District.
>
> In 2006, the Council commissioned a landscape study by Littoralis Landscape Architecture, which resulted in the identification of a number of 'outstanding and amenity landscapes' within the District. In August 2006, the Council adopted the following Environmental Outcomes for consultation. These outcomes were consulted on with the wider community in October 2006:
>
> - Outstanding landscapes mapped and protected from inappropriate subdivision, use and development; and
>
> - The maintenance and enhancement of those values that contribute to amenity landscapes'.
>
> In March 2007, the Council consulted with the community on the broad method options for landscapes. Through workshops held during 2007 and 2008, the Council further developed direction towards developing District Plan methods for Outstanding Landscapes. In August 2008, Council began the process of consulting with directly affected landowners and held a Focus Group session in September 2008.
>
> Based on the feedback received from its 2008 consultation, at its Council Meeting on 26 November 2008, Council passed the following resolution. "That Council takes no further action on the identification of, and consultation on, Outstanding Landscapes in the Review of the Kaipara District Plan."...

> No detailed work was undertaken on the development of District Plan methods by the Project Team, as a result of this Council decision. Unlike other Chapters of the Draft District Plan, the Landscape Chapter was not developed beyond an early draft version which was presented to Council at their workshop on 7 April 2009 on the 'Working Draft: March 09 District Plan'.
>
> No Landscape Chapter was included in Final Draft District Plan (July 09) for consideration by Council at their 12 August 2009 workshop. The following Section 32 summary is on the draft version of the Landscape Chapter. A copy of this Draft Chapter is attached to this Chapter Summary.

[14] The statements in that excerpt are important in the context of the current application for declarations.

[15] The report then records that there were 3 options considered by Council's consultant project team relating to chapter 18:

[a] Retaining the Operative Plan Policies and Rules is a means of achieving objectives (i.e. maintaining status quo);

[b] Use of more restrictive policies and rules as a method of achieving objectives; and

[c] Use of a combination of policies, performance standards, rules, incentive mechanisms and regulatory methods to achieve the objectives.

The consultants recommended the last of those for development of the draft landscape chapter, however the plan as notified pursued a further option, to have no landscape chapter in terms of the resolution quoted above and its reasons.

[16] The two planners referred to some other provisions of the PDP which they considered started to address issues of outstanding landscape in some respects, but which Mr Reaburn considered fell well short. The PDP includes plans identifying areas of "environmental benefit/valued landscapes", which happen to identify all of the Littoralis report's OLUs, but do not specify that they are such. Mr Reaburn also noted that these plans do not form the basis of any particular restrictions or controls in accompanying rules, albeit that there is provision for possible extra lots on subdivision if these areas are legally protected (Rule 12.13.1).

[17] "Overlay Maps" are utilised in the PDP, identifying sensitive environments where addition resource management methods are needed to ensure activities on or adjoining sensitive receiving environments are managed, so as to enhance natural character and amenity values, to maintain and improve access to along the coast and other waterways, to avoid sporadic rural-residential subdivision within catchments, and improve management of land uses in order to maintain water quality. There are restrictions on subdivision and development in these areas, and the earthworks and vegetation clearance allowances vary as amongst the different overlays. Mr Reaburn expressed concern that when the "environmental benefit/valued landscapes" maps are compared with the overlay maps, there are identified items amongst the former not covered by any overlay.

[18] Chapter 6 of the PDP recognises that the Kaipara District contains extensive areas of indigenous forest, shrubland and remnant wetlands, which have important ecological values. The PDP records that most of the major ones are in Crown ownership and held for conservation purposes, although there is recognition that there are others. Further information is awaited from the Department of Conservation pursuant to a programme it is undertaking. Apparently the only ecological mapping in the PDP is of Kiwi habitat in the Northern part of the district. Mr Raeburn was of the view that Chapter 6 offered limited controls over landowners operating pursuant to relevant performance standards in the plan.

[19] The PDP's Rural Zone applies to most of its land area. "Rural Issues" identified by Mr Raeburn as being potentially relevant to OLUs, include the following:

> 12.4.2 The impact of uncontrolled subdivision and land use has the potential to adversely affect rural character and amenity of the District.
>
> The form and density of subdivision and land use activities are key elements of rural character and amenity. They contribute to the sense of open space, maintaining lower levels of built form and the potential for retaining natural landforms and vegetation.
>
> 12.4.3 Growth, development and land use change create an opportunity for improved maintenance, protection and enhancement of the District's significant natural and cultural environment.
>
> The District has seen a loss over time of natural and cultural values. Resource consents under the District Plan provide an opportunity to provide improved maintenance, protection and enhancement of:

- outstanding natural features and landscapes;
- historic heritage;
- significant indigenous vegetation and habitats of indigenous fauna;
- public access to the coastal marine area, lakes and rivers;
- the relationship of Maori with their ancestral lands, water, sites, waahi tapu and other taonga

12.4.4 There are potential adverse effects on amenity and the natural environment from rural activities including land disturbance and vegetation clearance.

Land modification activities can result in the creation of areas of bare earth and can alter the shape and appearance of natural landforms. This can adversely affect the natural character and visual amenity values of the area where they are undertaken.

12.4.9 The bulk and location of buildings (particularly in sensitive locations) has the potential to adversely affect rural amenity.

The unmanaged development of natural landforms can lead to a scale and pattern of built form which is not compatible with the landscape and visual characteristics of certain areas e.g. ridgelines and areas of natural character along the coast.

12.4.11 Potential adverse impacts on visual amenity from poorly maintained sites and buildings, including relocated buildings, during development.

Sites under development need to ensure that construction and land modification activities being undertaken, while often temporary in nature, do not lead to adverse visual amenity affects on the surrounding environment.

[20] As Mr Raeburn points out, the only provision above that contains direct reference to outstanding landscapes as 12.4.3, referring to past losses in the District. Other paragraphs do not specifically refer to OLUs but do refer to the potential for adverse effects that may be particularly relevant to such.

[21] I was referred extensively to Rural Policies and Objectives that follow in Section 12.6 of the PDP, where there is but one passing reference to outstanding landscapes (Policy 12.6.3, noting that the district has a varied landscape, of which parts are of outstanding quality).

[22] Section 12.7 on Methods and Section 12.8 on Rural Outcomes, follow, containing general references to requirements for information to be provided concerning matters of landscape, ecological sites, heritage, and the like. References to landscape are somewhat

generic, and in the Outcomes, appear to concentrate on amenity landscapes rather than outstanding ones, the former of course being of a lower order in statutory terms.[1]

[23] Section 12.10 contains rules relating to land use activities, an examination of which suggests greater controls in "Overlay" areas compared to non-overlay areas, but no separate control in relation to OLUs. A similar pattern appears in Section 12.11 which contains subdivision rules.

[24] In some contrast, the Operative District Plan contained maps identifying outstanding and significant landscape features and units in the District, assessed pursuant to a study conducted for the Northland Regional Council ("NRC"). A statement accompanying the plans indicated that identification of areas was indicative only, in the nature of a work in progress, and would require further work and consultation to be undertaken to pursuant to s32 RMA in the future.

[25] The witnesses made reference to extracts from the Regional Coastal Plan for Northland, inclusive of policies relating to outstanding landscape values, and identifying a list of areas that should be subject to same, including 3 that are within the Kaipara District.

[26] A 1999 landscape assessment of the Kaipara District conducted by a landscape consultancy for NRC identified 16 outstanding landscape units or features in the District.

[27] The Littoralis report previously referred to identified 23 in the District. There was essentially no dispute between the witnesses that outstanding landscapes exist in the district.

[28] The planning evidence for KDC was provided by Ms A Linzey, also an experienced planner. As foreshadowed, she concurred with much of the factual background set out by Mr Reaburn in his affidavit. She referred the Court to some additional provisions within the PDP, in particular from Sections 12.6 and 12.10, albeit that these appear to fall within the more generic class of provisions I have already described.

[1] Section 7 RMA as opposed to section 6

[29] In addition, both witnesses referred the Court to provisions of the New Zealand Coastal Policy Statement, and agreed that they are relevant. Each, as I have already recorded, referred quite extensively to the s32 report, ultimately offering differing interpretations of what they found in it.

[30] Ms Linzey provided the Court with an in depth background to the preparation work commenced in 2005, in which KDC was advised and assisted by her firm and by Littoralis. In can be recorded, and the witnesses generally agreed, that the Council undertook considerable work on the subject of outstanding landscapes through to late 2008 when, as Mr Reaburn would have it, Council "downed tools". Ms Linzey's view of this was that there was merely an interruption to a work in progress.

[31] In this regard, Mr Reaburn was inclined to point to early decisions of the Council, particularly in 2002, as to its intention to undertake a full review, whereas in contrast the reasoning behind the November 2008 resolution is to the effect that outstanding landscapes can be dealt with during succeeding submission and appeal processes.

[32] Mr Reaburn's concern about this is that KDC has fallen short of meeting its statutory function under s31(a) of the Act, namely the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land in associated natural and physical resources of the District. He considers that without an outstanding landscape chapter in the PDP, integrated management is not achieved, and notes ironically that that was the opinion of the authors of council's own s32 report. His concern about the issue seems heightened by the self-acknowledged deficiencies of the Operative District Plan in this area, resulting in a significant gap overall in KDC's planning for matters under s6(b) RMA, also sections 74 and 75 and the NZCPS and NRPS.

Legal Submissions

[33] During the course of the legal submission process, the shape of the declarations sought by EDS changed more than once. This was in response to submissions made on behalf of the respondent, and some of Ms Linzey's evidence. In my view these changes reflected a responsible and constructive approach being taken to the issues, rather than any significant weakness in the applicant's case.

[34] One of the central themes was as to whether there was any significance in the respondent recently passing a resolution, on 28 April 2010, as follows:

> That Council, following its hearing of submissions on the proposed Kaipara District Plan addressing outstanding landscapes, will proceed to finalise and notify a Variation on the subject by the end of September 2010.

[35] The respondent no doubt hoped that the passing of such resolution would be the end of the dispute, but that was not to be. EDS lodged detailed submissions as to why declarations were still necessary, and expressed a view that other parties around the country, particularly Councils, might gain guidance from the making of the declarations. That produced a protest from the respondent (supported by case law) to the effect that declarations under the RMA should not be sought in the nature of advisory opinions. I consider that to be a correct statement of the law, and it was probably not surprising that the applicant then resiled somewhat from that position, seeking to focus once again on the situation in Kaipara.

[36] At the heart of the applicant's submissions was its counsel's analysis of the decision of the Environment Court in ***Wakatipu Environmental Society Inc and Ors v Queenstown-Lakes District Council***[2]. That case involved appeals arising from QLDC's issuing of decisions on submissions on a proposed District Plan, deleting references to areas of landscape importance, including maps of them.

[37] The Court determined (and this seems to be common ground between the parties in the present case) that there are three substantive stages in deciding the contents of a District Plan, identification of facts and significant issues for the District [although "significant issues" is now optional under the 2009 RMA amendment], then sequentially the other contents of the District Plan such as objectives, policies, and rules if any. At paragraph 97, the Court asked:

> If the areas of outstanding natural landscape cannot be identified then how can objectives and policies be properly stated for them?

[38] In submissions, the applicant expresses concern that the content of the proposed Variation foreshadowed in the April 2010 resolution, does not indicate what the content of it will be. Counsel points out that there have been two landscape assessments, and that

[2] [2000] NZRMA 59

subsequent to the most recent of them (2006) there are considered to be 23 outstanding landscapes in the District. It is common ground between the parties that there are at least some outstanding landscapes in the District.

[39] The submissions on behalf of each party, developed at considerable length, debate whether the Act requires mapping in district plans. It was ultimately conceded by the applicant that any declaration to be made by the Court could not, as a matter of law, constrain the physical means by which the Council should set about its task of identifying outstanding landscapes. That was a proper concession, and I do not therefore need to analyse the extensive argument provided. The concession produced further modifications to the draft declarations being sought.

[40] The next quite trenchant legal debate concerned the issue of whether or not the council was undertaking some sort of staged or rolling District Plan review or not, and if it was, whether that was lawful. Counsel provided me with a rather fine analysis of pre 2009 provisions and post, with the submission being made on behalf of the council that given that the PDP was promulgated after 1 October 2009, the amended provisions of the Act prevail. S 79(1) RMA, post 1 October 2009, provides:

> ...commence a review of a provision of any of the following documents it has, if the provision has not been a subject of a proposed policy statement or plan, a review, or a change by the local authority during the previous 10 years...

[41] The applicant argued that because the council resolved to review its District Plan back in 2005, the earlier provisions of the Act somehow prevailed. I hold however that given that the promulgation of the PDP occurred after 1 October 2009, the new provision prevails. Further, a staged or rolling review of district plans now seems open to councils as a matter of law, given that the obligation to conduct periodic review now relates to individual provisions rather than an entire plan.

[42] The factual situation here however requires closer analysis. As already noted, there is a large measure of agreement about matters of fact between the two parties, but differing interpretations about wording of key documents. While the applicant argues that KDC's 2006 resolution is unambiguous on its face, the respondent argues that the background report of the Council's senior planning officer can be used to assist to interpret it, and that that casts a totally different light upon it. I consider that the debate is

quite easily resolved, because although the resolution (and background report if available as an interpretive tool), did suggest that the resolution to "**stop**" the process was somewhat qualified in the sense of it being a deferral, the references to deferral are to the public submission and appeal processes that could follow in the Review, and not to council initiatives by way of Variation or similar. I hold that it would be wrong to infer otherwise, as such inference would be inconsistent with the clear decision that council would take no further action, apparently because persons interested in the issue were espousing entrenched views.

[43] I consider that a submission by the applicant that "*the decision of Council in this case stretches the concept of integrated management to "breaking point" in that it omits important chapter of the plan...*", is if anything little generous. I consider the decision of the Council in 2008 took matters beyond breaking point. A deliberate hiatus was created.

[44] Hence, leaving aside for the moment the later April 2010 resolution, it seems that the Council embarked on a course of action that fails to include provisions that recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development contrary to section 6(b) of the Act.

[45] It is also possible that the omissions of KDC have been in breach of s31 RMA, where a core function of territorial authorities is the establishment, implementation and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land in associated natural and physical resources of the District; noting also that by section 32 RMA the purpose of the preparation of the district plan is to assist the Council to carry out its functions in order to achieve the purpose of the Act. It seems reasonable to argue that any staging of the District Plan should not undermine the essential function of the territorial authority which is to establish objectives, policies and methods to achieve integrated management of the effects of land uses and associated natural and physical resources.

[46] I note a submission on behalf of the applicant that while the Act envisages the possibility of staging of plans, it does not explicitly recognise staging for non-planning considerations. In response to this, the respondent quoted from a decision of the

Environment Court in ***Malory Corporation Limited v Rodney District Council***[3] as follows:

> We conclude that the question of sound resource management in practice goes well beyond questions of planning merit to include fundamental issues as to appropriate process, timing, and the like. It can include non-planning matters such as engineering, cultural and other issues.

[47] I consider that the respondent has taken the above quote out of context. What is meant by "non-planning matters" of the types mentioned, is simply a reference to the breadth of matters that come within the purview of Part 2 of the Act, the definitions of the "environment" and "natural and physical resources", and other relevant aspects of the Act. It cannot in my view be extended to the point where sound resource management practice could be said to include that a council considers that members of the community are wasting its time and financial resources by "espousing entrenched views".

[48] Respondent's counsel criticised the draft declarations referring to the NZCPS and the NRPS. They said first, that s74(2) is irrelevant because that provision does not refer to the NZCPS or an operative RPS. Further, while s75(3)(b) does refer to the NZCPS, it requires that a "district plan" must give effect to the NZCPS; and that s43 AA of the RMA provides that any reference in the RMA to a district plan means an operative plan. Hence the reference is not to a proposed plan which they noted is separately defined in s43 AAC of the RMA. Likewise in connection with regional policy statements.

[49] Counsel for the application provided what I consider to be an accurate answer to those submissions. He submitted that the analysis ignored the opening words of s74(2) RMA which are:

> "in addition to the requirement of section 75(3)(4) when preparing or changing a district plan, a territorial authority shall have regard to ...

He submitted, correctly in my view, that those introductory words refer back to s75(3), which provides the district plan must give effect to any national policy statement, any New Zealand policy statement, and any regional policy statement. Hence, in preparing or changing a district plan under s74(2), a territorial authority must comply with the

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[3] (2009) 15ELRNZ 307 at para 60 (appeal to the High Court but not disturbed in relation to this issue)

requirements of s75(3), and in addition have regard to a proposed regional policy statement or proposed regional plan and the other matters set out in s74(2)((b) and (c).

[50] Counsel for the respondent submitted that previous decisions of this and other Courts have acknowledged that there are many differences amongst New Zealand landscapes from district to district, and indeed place to place, [and should be dealt with accordingly in plans]. That must indeed be trite. I have placed that submission alongside another they make that authorities such as ***Estate Homes Limited v Waitakerei City Council***[4], are to the effect that courts will seek to avoid interfering in the policy-making role of councils, or usurping of their functions. Similarly, the respondent submits that courts will refuse to adopt a "procrustean" approach. My dictionary [5] tells me that "procrustean" means seeking to enforce uniformity by forceful or ruthless methods (*Prokrustes* was said to be a mythological or legendary robber who fitted his victims to a bed by stretching them or cutting off parts of them). I refute any analogy here, but agree that the Court will refrain from being directory except where authorised, such as in appeal proceedings on district plan provisions or resource consent applications.

[51] These submissions encouraged the applicant to offer modifications to the form of the draft declarations by, for instance removing any wording that would suggest that the council was being told precisely how to go about carrying out its functions. The applicantacknowledges for instance, that while the authorities logically record that mapping of such things as outstanding landscapes is a logical way to record fact-finding and identify the spatial impact of objectives, policies, rules and other methods, it might not be the only approach.

[52] Finally, the Court will be careful in declaratory proceedings to avoid making declarations which would have no utility, or concern matters that are trite and self explanatory, or academic.[6] Again, in answer to this submission, the applicant has offered modifications to ensure that the Court would not be seen to be indulging in such decision-making, purporting to offer an advisory opinion, or dictate matters to territorial authorities across New Zealand who have not been represented in these proceedings.

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[4] [2006]NZRMA308 at para 198 (CA)
[5] Concise Oxford dictionary
[6] See for instance ***re Far North District Council*** Decision no A073/2004

[53] I have attached as Appendix A the draft final amended declarations lodged on behalf of the applicant. I do not do so for the purposes of making declarations at this time, for reasons I will come to. Rather, the draft may be seen as part of the trail to this point, and a reference point for any future necessary decision-making.

[54] Before finishing, it is pertinent to record one further feature. Not only, as a matter of fact, did the council resolve to down tools on the PDP's landscape chapter, it has to be acknowledged that the operative plan is also very incomplete on the topic. These factors suggest that integrated management of resources is not being undertaken in this area. Even if it were possible to argue that the topic is the subject of an extremely lengthy work in progress, the evidence is that the Council has not yet got to the point of meeting its obligations under s6(b), s31, and to give effect to relevant policies in the NZCPS and objectives in policies in the NRPS.

[55] It is no answer to say, as expressed or at least inferred in the council's resolution, that parties can lodge submissions with a view to filling the gaps. There is no basis under the RMA for arguing that the present applicant or any other party for that matter should do the council's work for it and create a landscape chapter. There is a right of participation by such parties, but no obligation on anyone other than the council.

[56] What then of the council's most recent resolution? Perhaps this is evidence at last of a continuing work in progress. I put aside the thought that it has been brought about by the present proceedings. At the same time I acknowledge the submission of the applicant that the resolution only foreshadows that **something** will be done in a few weeks time, with no detail offered as to what that will be.

[57] I reiterate that Courts will not make declarations that have no utility. It is possible that if a Variation is promulgated, the Council may then be seen to some extent or another, to be meeting its obligations and carrying out its functions. The proper course is for these proceedings to be adjourned to await the foreshadowed step. Leave is reserved to resume the proceedings if necessary should the step not be taken or the need otherwise arise.

[58] Costs are reserved.

DATED at Auckland this 23 day of August 2010

L J Newhook
Environment Judge

Appendix A – Final Amended Declaration

1.1 That the Proposed Kaipara District Plan as notified ("the Proposed Plan") Contravenes the requirements of the Resource Management Act 1991 ("the Act") in that it:

a) fails to include provisions that recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development contrary to section 6(b) of the Act;

b) does not give effect to policies 1.1.1, 1.1.3, 3.1.2 in the New Zealand Coastal Policy Statement ("NZCPS") as required by sections 74(2) and 75(3) of the Act;

c) does not give effect to objectives 19.3.1 – 3, policies 19.4.1 – 19.4.6 and methods 19.4.1(a) and (e) and 19.4.3 in the Northland Regional Policy Statement ("NRPS") as required by sections 74(2) and 75(3) of the Act;

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d) has not been prepared in accordance with Kaipara District Council's functions under section 31, the provisions of Part 2 and its duty under section 32 as required by section 74(1) of the Act.

1.2 That in light of the declarations at paragraph 1.1 above, Kaipara District Council has a duty under the Act to notify a proposed plan or a variation to the proposed plan that recognizes and provides for the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development and gives effect to the NZCPS and NRPS by identifying those features and landscapes and specifying objectives, policies and rules to protect those identified areas.