

**Chairperson and Committee Members**  
STRATEGY AND POLICY

21 MARCH 2019

Meeting Status: **Public**

Purpose of Report: For Decision

**PUBLIC NOTIFICATION OF VARIATION 2 TO THE PROPOSED  
KAPITI COAST DISTRICT PLAN**

**PURPOSE OF REPORT**

- 1 This report seeks approval to publicly notify Variation 2 to the Proposed Kāpiti Coast District Plan (the PDP) as contained in Appendix 1. The variation has two parts comprising:
  - a) rezoning of part of Waikanae Beach (known as the 'Olde Beach' area) from Residential Zone to Beach Residential Zone, and introduction of amended Beach Residential Zone provisions for subdivision and development within the rezoned area; and
  - b) deletion of the *beach character setback margin* front yard provisions which apply to properties in the Beach Residential Zone, replacing these with a minimum 4.5 metre front yard setback standard for all buildings (the same as the operative district plan).

**DELEGATION**

- 2 The Strategy and Policy Committee has delegated authority to make this decision as set out in Section B.1 of the Governance Structure and Delegations for the 2016-2019 triennium. The relevant parts of this delegation are:

*This Committee will deal with all strategy and policy decision-making that is not the responsibility of the Council. Key responsibilities will include:*

- ...
- *Development and/or review of strategies, plans, policies and bylaws*
- *Preparation of District Plan and Plan Changes...*

**POWERS**

- (i) *All powers necessary to perform the committee's responsibilities except powers that the Council cannot delegate or has retained to itself.*

**BACKGROUND**

- 3 The background to the two parts of Variation 2 are discussed below:

**Waikanae Beach Rezoning**

- 4 The proposed change of zoning of the 'Olde Beach' area from Residential Zone to Beach Residential Zone is consistent with the community vision for Waikanae

Beach expressed in the document *Our Future Waikanae Beach – Community vision and action plan for Waikanae Beach 2017*<sup>1</sup>.

- 5 The document *Our Future Waikanae Beach Community vision and action plan for Waikanae Beach* was developed by the Waikanae Beach community between 2015 and 2017 with the involvement of Council staff, the Waikanae Community Board and Iwi.
- 6 The document was endorsed by the Waikanae Community Board in March 2017 and noted and acknowledged by the Strategy and Policy Committee on 17 May 2017.
- 7 The document expresses a community desire to protect the relaxed beach character of the settlement and maintain a low density, low rise built form. In its endorsement statement within the document<sup>2</sup> the Waikanae Community Board states:
 

*It is intended that this document has a long life, and it will be used as a springboard for actions. It will be used to develop a detailed character assessment of Waikanae Beach and then support a draft plan change for Waikanae Beach.*
- 8 This variation follows through on some of the Waikanae Beach community and the Community Board's aspirations for Waikanae as expressed in the *Our Future Waikanae Beach* document.
- 9 In addition, an appeal on the PDP by S Cunningham and Others (ENV-2018-WGL-011) sought the rezoning of the 'Olde Beach' area as Beach Residential Zone.
- 10 A character assessment of Waikanae Beach (referred to in the Community Board's endorsement in 7 above) was prepared in October 2017 by Urban Perspective's Limited. The assessment identified the key natural and physical elements which form the special character of Waikanae Beach<sup>3</sup>. The assessment also identified the mapped extent of the 'Olde Beach' area. The character assessment has provided the evidential basis for the spatial extent of the area to be rezoned, and the amendments to the Waikanae Beach Zone provisions that are important to retaining the area's special character.

#### Previous Consultation

- 11 At its public excluded meeting of 14 June 2018 the Strategy and Policy Committee authorised staff to consult affected property owners, statutory parties and iwi on draft provisions, and to make an application to the Environment Court seeking immediate legal effect for the variation from the date of public notification (reference Committee report SP-18-515 and minute SPC 18/16/113).
- 12 Consultation material was sent, in June 2018, to statutory agencies, Te Ati Awa ki Whakarongotai, Ngati Raukawa and Ngati Toa Rangitira and to 440 potentially affected property owners.

<sup>1</sup> <https://www.kapiticoast.govt.nz/globalassets/our-district/our-community/beaches/wb-our-vision-booklet-web-version---march-2017.pdf>

<sup>2</sup> Page 19, second paragraph.

<sup>3</sup> <https://www.kapiticoast.govt.nz/globalassets/our-district/our-community/kcdc-waikanae-beach-character-study-october--2017.pdf>

- 13 Affected property owners were invited to attend a Waikanae Beach drop-in session on Saturday 14 July 2018. Approximately 60 people attended and asked questions and provided feedback. Written feedback was provided by 56 potentially affected property owners. Feedback was also received from Te Ati Awa ki Whakarongotai seeking the inclusion of a Waikanae Beach-specific policy recognising the cultural and historic values of the area.
- 14 Discussions were also held with Ngati Raukawa and Ngati Toa Rangitira on the draft variation provisions in July 2018. No concerns were raised.
- 15 All feedback has been considered in the preparation of Variation 2 and some amendments are proposed to the earlier draft Variation 2 provisions to respond to the feedback received. Amendments to the provisions and the actions taken in response to the feedback comprise:
- a) Fence heights were increased from .8m to 1.2m if not 50% visually permeable;
  - b) Site coverage was increased from 30% to 35% to provide greater flexibility and to be consistent with other Beach Residential areas;
  - c) The inclusion of a new policy to recognise cultural heritage in the Beach Residential Zone at Waikanae Beach as requested by Te Ati Awa ki Whakarongotai;
  - d) Additional areas suggested to be included in the rezoned area were considered by Urban Perspectives. Following the review, no amendments to include other areas were recommended.
- 16 All affected property owners and Iwi were sent a letter on 28 February 2019 to inform them of the amendments made to the provisions following the consultation on the draft, and to inform them of the next steps and likely timeframe for public notification of the variation and the opportunity for lodging submissions.
- 17 In accordance with the Committee's 14 June 2018 resolution, an application pursuant to Section 86D of the RMA was lodged with the Environment Court on 21 February 2019 requesting that the Variation 2 provisions have immediate legal effect from the date of public notification. This is currently under consideration by the Environment Court.

### **Beach Character Setback Margin Provisions**

- 18 The *beach character setback margin* provisions (shown as struck-through text in Appendix 1) set the front yard setback from the legal road for the *primary residential building*<sup>4</sup> on a property within the Beach Residential Zone. All other building on properties within the Beach Residential Zone must be set back at least 4.5 metres from the road boundary.
- 19 The provisions came into effect in November 2017 when the Council released its decisions on submissions and further submissions on the PDP. This replaced the 4.5 metre front yard setback of the Operative District Plan 1999.

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<sup>4</sup> This means the largest building on a property where people can live e.g. a house, minor flat, mobile home etc. The PDP definition for Primary Residential Building is:

**Primary Residential Building** means the largest residential building on a property.  
Note: For further clarification refer to the definition of *residential building*.

- 20 The provisions are intended to recognise that a variety of frontage setbacks helps contribute to the character of the Beach Residential Zone. The provisions require that the *beach character setback margin* is determined for individual sites on a case-by-case basis.
- 21 Experience in implementing the *beach character setback margin* provisions, in reviewing building consent applications and discussions with customers at pre-application meetings about individual building proposals, has identified significant technical difficulties with the provisions. These can be summarised as:
- a) The provisions do not anticipate all scenarios, meaning in some cases it is not possible to achieve the *beach character setback margin* as directed by the definition. For example:
    - (i) Additions to existing dwellings which are not within the *beach character setback margin* e.g. a dwelling positioned toward the rear of a property, where the neighbouring dwellings are positioned closer to the front boundary (and vice versa);
    - (ii) Proposed new dwellings which are proposed to be positioned toward the rear of a property, where the neighbouring dwellings are positioned closer to the front boundary (and vice versa);
    - (iii) Properties which have frontage to two roads will have two *beach character setback margins* to comply with, however the definition does not anticipate such situations (no alternative yard setback is provided);

In these situations, resource consents are required even though the proposed building or building additions would achieve a generous setback from the front boundary, in keeping with the established character of the area.
  - b) Calculating the *beach character setback margin* will, in many instances, require access to neighbouring properties to take measurements. There are practical and legal challenges associated with such an approach. If permission is not obtained from the neighbouring properties it may not be possible to demonstrate compliance with the setback standard.
- 22 To eliminate these difficulties, Variation 2 proposes to delete the *beach character setback margin* provisions in their entirety and replace them with a simple 4.5 metre front yard setback for all buildings. For properties within the Beach Residential Zone this will reinstate the front yard setback from the Operative District Plan 1999.

#### Previous Consultation

- 23 Consultation with the 1,890 potentially affected property owners on the draft changes to the *beach character setback margin* was carried out at the same time as consultation on the Waikanae Beach Rezoning proposal. Six written responses were received, with most of those (four out of six) not in support of the changes. However, approximately 20 phone calls were also received and the majority of callers expressed support for the proposed changes.
- 24 All affected property owners were sent a letter on 28 February 2019 to inform them of the amendments made to the provisions following the consultation on

the draft, and to inform them of the next steps and timeframe for public notification of the variation and the opportunity for lodging submissions.

## ISSUES AND OPTIONS

### Issues

#### Immediate legal effect

- 25 An application has been made to the Environment Court under Section 86D of the Resource Management Act 1991 (the RMA) requesting that the provisions have immediate legal effect from the date of public notification of the variation. If the application is not granted, the provisions will not have legal effect until the Council releases decisions on submissions following the hearing process.
- 26 If the application to the Court for immediate legal effect is unsuccessful, it may result in subdivision and development occurring in the time period between public notification and the release of decisions (9 months to 1 year) which may be contrary to the intent of the variation, which is to help preserve the special character of the 'Olde Beach' area.
- 27 It would also mean the problematic beach character setback margin provisions will continue to apply until decisions are released on submissions following the hearing process.

#### Whether or not to proceed with the variation

- 28 Should the Strategy and Policy Committee decide not to proceed with the variation to notification, the appeal on the PDP by S Cunningham and Others will remain live and it will likely proceed to an Environment Court hearing to be resolved.

#### Options, costs and benefits

- 29 Section 32 of the RMA requires that all proposed changes and variations to district plans are supported by an evaluation report which (in summary):
  - a) Examines whether the proposed provisions are the most appropriate way to achieve the objectives of the plan (the PDP) by reference to the other reasonably practicable options and the efficiency and effectiveness of the proposed provisions in achieving the PDP objectives.
  - b) Identifies and assesses the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from implementation of the provisions.
- 30 The Section 32 evaluation is to contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects are anticipated from the implementation of the variation. Staff have completed an evaluation of Variation 2 which concludes that proceeding with the Variation is the best option. The section 32 evaluation report, which must accompany the variation at the time of notification, is attached as Appendix 2.

### Option 1 – Proceed with public notification of Variation 2

- 31 Proceeding with the public notification of Variation 2 has the following advantages:

- i. it will address the problematic *beach character setback margin* provisions.
  - ii. it addresses concerns raised in the PDP appeal of S Cunningham & Others;
  - iii. the Council will deliver some of the community actions identified within the *Our Future Waikanae Beach* vision and action plan; and
  - iv. it will help maintain the special character of the 'Olde Beach' area of Waikanae Beach much earlier than waiting to initiate a plan change after the PDP is made operative.
- 32 Disadvantages include the financial costs associated with processing a variation to the PDP, however these costs are likely to be equal to or less than those under Option 2 below, provided there are no appeals to any subsequent decision on the variation. If the process is drawn out, it could result in delays to the PDP being made operative.

## Option 2 – Do not proceed with public notification of Variation 2

- 33 Under this option the appeal will recommence and move to a formal Environment Court hearing with the associated financial costs. These costs are likely to exceed those under Option 1.
- 34 If in considering the appeal the Court upholds the Council's decision, it is likely the Council will still need to initiate a plan change in the future after the PDP becomes operative to achieve the same outcomes sought by the *Our Future Waikanae Beach* vision and action plan.
- 35 If the Court rejects the Council's decision, the scope of the possible changes available under appeal is narrower than what is proposed by Variation 2. This means the Waikanae Beach-specific provisions proposed under Variation 2 cannot be delivered through the Court's decision. These include:
- the new policy requested by Te Ati Awa ki Whakarongotai;
  - the fence height permitted activity standard;
  - the maximum access width; and
  - the minimum lot size for subdivision.
- 36 Under this option the problematic *beach character setback margin* provisions will continue to apply until the Council proceeds with a future variation or plan change.
- 37 For the above reasons, Option 1 is preferred.

## CONSIDERATIONS

### Policy considerations

- 38 The policy documents of particular relevance to Variation 2 are the PDP and the Long Term Plan. The consistency of Variation 2 with these key documents is discussed below:

### The Proposed District Plan 2012

- 39 The variation falls within the existing policy context of the PDP. The PDP already zones specific parts of the District as Beach Residential Zone, and also manages the setback of buildings from front boundaries. Variation 2 is consistent with the existing objectives of the PDP, meaning the objectives do not need to be changed to accommodate the changes proposed under the variation.

### Long Term Plan 2018 - 38

- 40 The variation is consistent with the following aspirations and outcomes of the community's Long Term Plan:
- a) The vision from tāngata whenua:
    - Principle three: Kotahitanga – through unity, tāngata whenua and communities have strength. Working together we can ensure that our district's heritage, cultural development, health, education and economy flourish.
    - Principle four: Tino Rangatiratanga
      - That tāngata whenua play a strong/central role in district planning, particularly around the capacity of resources, water use, and the quality and nature of settlements;
      - That there is a strong and effective partnership between tāngata whenua, the Kāpiti Coast District Council and Greater Wellington Regional Council; and
      - That tāngata whenua tangible and spiritual connection to/association with the land, waahi tapu and natural and physical resources is represented, understood and respected.
  - b) District-wide planning – ngā kaupapa takiwa:
    - Contribution to outcomes: We efficiently and effectively develop policies and plans to encourage economic development and preserve the unique character and natural environment of our district.
- 41 There are no known implications from, or associations with, any other existing or future Council policies or strategies. Consistency with the *Our Future Waikanae Beach* document has already been discussed in paragraphs 4-8.

### Legal considerations

- 42 As the variation relates directly to an appeal on the PDP, its preparation has been closely reviewed by the Council's resource management legal advisors at Simpson Grierson.
- 43 As discussed at paragraph 25 an application has been made to the Environment Court pursuant to Section 86D of the RMA to give the provisions of Variation 2 immediate legal effect. The decision of the Court is not known at the time of preparing this report, however a verbal update will be given to the Strategy and Policy Committee if a decision is released.
- 44 The public notification of Variation 2 will follow the procedure set out in Schedule 1 of the RMA.

- 45 Proceeding with the variation addresses concerns raised in the appeal by S Cunningham and Others on the PDP.
- 46 A full statutory evaluation of the variation is contained in section 3 of the Section 32 evaluation (Appendix 2).

### Financial considerations

- 47 The next steps in progressing the variation can be completed primarily using in-house resources.

### Tāngata whenua considerations

- 48 The variation affects areas from Paekakariki to Otaki Beach, therefore all three local Iwi were contacted to share the draft variation provisions with them for their input.
- 49 Te Ati Awa ki Whakarongotai provided specific policy wording which they would like to see included for the Waikanae Beach rezoning and which is included in the proposed variation:

**Policy 5.5A – Waikanae Beach**

Subdivision, use and development in the Beach Residential Zone at Waikanae Beach will be undertaken in a manner that respects and recognises the cultural context and history of the area, including through:

- a) limiting subdivision, use and development that affects the dune system in the area;
- b) limiting the density of subdivision in the area; and
- c) maintaining the natural character of vegetation in the area.

### 50 Strategic considerations

- 51 The variation contributes to two of the 10-year outcomes of the Long Term Plan as follows:
- i. 3-year focus: *A positive response to our distinct district identity.*
  - ii. 10-year outcome: A community better supported to lead initiatives in response to agreed community priorities.
- 52 The variation delivers a positive response to maintaining the distinct identity of the 'Olde Beach' area of Waikanae Beach, and delivers on part of the *Our Future Waikanae Beach* document which records agreed community priorities.

## **SIGNIFICANCE AND ENGAGEMENT**

### Significance policy

- 53 The variation does not affect any strategic asset and will not incur any capital expenditure for the Council. This matter has a moderate level of significance under Council's Significance and Engagement Policy, but the process for consultation is described in the RMA.

## Consultation already undertaken

- 54 The consultation carried out on draft Variation 2 is discussed in detail above in the Background section of this report (paragraphs 3-24).

## Engagement planning

- 55 Consultation on changes and variations to district plans is managed under the RMA and therefore sits outside the special consultative procedure of the Local Government Act 2002 (LGA). Notwithstanding this the principles of consultation as specified by Section 82 of the LGA have been followed in the consultation undertaken to date.
- 56 There is a legislative requirement to engage with directly affected property owners, the community, statutory parties and Iwi under the notification requirements of Schedule 1 of the RMA.

## Publicity

- 57 This variation will require the formal notification procedures directed under the RMA to be met.
- 58 Public notification of the variation includes a notice in the local newspaper and the Council's website, and directly affected parties being notified, and invited to make a submission.

## RECOMMENDATIONS

- 59 That the Strategy and Policy Committee approves Option 1 to publicly notify Variation 2 to the Kapiti Coast Proposed District Plan 2012 (as contained in Appendix 1 to this report) pursuant to Schedule 1 of the Resource Management Act 1991.

<b>Report prepared by</b>	<b>Approved for submission</b>	<b>Approved for submission</b>
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## ATTACHMENTS

- 1 Appendix 1 – Variation 2
- 2 Appendix 2 – Section 32 evaluation report