

**Mayor and Councillors**  
COUNCIL

13 APRIL 2017

Meeting Status: **Public Excluded**

Purpose of Report: For Decision

**WITHDRAWAL OF POLICY 3.14 AND SOME RULES IN CHAPTER 4 OF THE PROPOSED DISTRICT PLAN**

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Grounds under Section 48(1) for the passing of this resolution
Withdrawal of Policy 3.14 and some Rules in Chapter 4 of the Proposed District Plan (SP-17-166)	Section 7(2)(f)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or two members or officers or employees of any local authority .. in the course of their duty.	Section 48(1)(a) - that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

**PURPOSE OF REPORT**

1. This report provides an update on the Environment Court declaratory proceedings taken by Coastal Ratepayers United (CRU) and recommends the withdrawal of eight provisions from the Kapiti Coast Proposed District Plan (**PDP**).

**DELEGATION**

2. Only Council has the authority to consider this matter.

**BACKGROUND**

3. In July 2016 Coastal Ratepayers United (CRU) filed an application for declarations in the Environment Court in relation to the 2014 withdrawal of coastal hazard provisions from the Proposed District Plan. This application followed a previous proceeding filed by the North Otaki Beach Residents Group ('**NOBRG**') which was resolved by a settlement agreement between the Council and NOBRG.
4. CRU sought the following two declarations from the Environment Court:

***Declaration 1***

*The Council, having notified a full review of the District Plan, cannot change the ambit of that review under section 79 without first notifying the provisions which are no longer subject to the review, and/or notifying the existing provisions which it intends to remain 'operative' after the proposed plan is completed.*

**Declaration 2**

*In withdrawing the coastal hazard and other provisions under clause 8D of Schedule 1 of the RMA, the Council changed the meaning of the remainder of the PDP.*

5. By way of explanation:
  - When the coastal hazard provisions were withdrawn from the PDP in 2014, the Council's position was that the current operative district plan provisions would remain in force until new coastal hazard provisions were developed and approved. Declaration 1 was asking the Court to declare that those operative district plan provisions had to be notified for public submission and hearing.
  - Declaration 2 was asking the Court to declare that the actual withdrawal of the coastal hazard provisions was not undertaken lawfully in accordance with the RMA. In particular, the assertion was that the Council was required to undertake a 'variation' to the PDP rather than withdraw the coastal hazard provisions. The Council and the Court requested that CRU itemise which particular PDP provisions were involved, and CRU identified 9 specific provisions.
6. The Council opposed the making of both declarations and retained Paul Beverley of Buddle Findlay to act on the Council's behalf in these proceedings.
7. The Environment Court hearing took place on 23 November 2016 in Wellington, and the Environment Court issued an 'Interim Decision' on 3 March 2017.
8. In that Interim Decision, the Environment Court:
  - Declined to make declaration 1.
  - Declined to make declaration 2 in respect of three provisions, but indicated that it may consider making the declaration in respect of the 2014 withdrawal process for the other six provisions.
9. The reason that the Court issued an 'Interim Decision' was that it was hesitant to put the Council to the expense of a further PDP variation process. The Court suggested that the legal issues with the 6 provisions may have resulted from inadvertent changes that reflect the detail in the PDP. The Court also suggested that this could potentially be addressed as an 'alteration of minor effect' or a 'correction of minor errors' under Clause 16(2) of Schedule 1 to the RMA. The Court asked the parties to make further submissions on that approach.
10. The Council filed its submissions on 24 March 2017. The Council stated that a more appropriate approach would be for the Council to withdraw those six specific provisions from the PDP, and that this option would be put to the Council for a decision on 13 April 2017. On that basis the Council submitted that the CRU issues would be dealt with and there would be no need to make declaration 2. It was requested that the Court await the Council's decision on the withdrawal of these six provisions before issuing a Final Decision.
11. The table below sets out each provision and the implications of withdrawing it from the PDP. Appendix 2 to this report clarifies the meaning and implications of activity status.

Provision	Effect of provision	Effect of withdrawing that provision
Policy 3.14	Policy seeking consideration of restoration of biodiversity on land outside of ecological sites as part of subdivision and development consents.	These issues would not be specifically considered as part of subdivision or development consents. However other biodiversity policies remain relating to enhancement of biodiversity and off setting of environmental effects.
Rule 4A.2.1	Earthworks and vegetation clearance on dunes undertaken for the purpose of dune restoration and the associated removal of non-native plant species are a controlled activity.	These activities would be a discretionary activity if they are not identified as a permitted activity in the relevant zone.
Rule 4A.3.1	Buildings and earthworks on land in the coastal environment which has been identified as having <i>high natural character</i> are a restricted discretionary activity.	There would be no specific rules in chapter 4 relating to areas of high natural character making this activity either permitted or fully discretionary. There are however many rules relating to natural character in other chapters of the Plan (see Appendix 3).
Rule 4A.3.2	Subdivision of land in the <i>coastal environment</i> which includes areas of <i>high natural character</i> is a discretionary activity.	There would be no specific rules in chapter 4 relating to areas of high natural character making this activity either permitted or fully discretionary. There are however many rules relating to natural character in other chapters of the Plan (see Appendix 3).
Rule 4A.3.3	Subdivision of land adjacent to the coast or a coastal esplanade to provide for public accesses is a discretionary activity.	There would be no explicit rule relating to providing increased public access to the coast as part of subdivision. Public access would be provided for through conditions of subdivision consent.
Rule 4A.5.4	Buildings, structures and earthworks on land in the coastal environment which has been identified as having <i>high natural character</i> which do not comply with one or more of the permitted activity or restricted discretionary activity standards are a non-complying activity.	There would be no specific rules in Chapter 4 relating to areas of high natural character making this activity either permitted or fully discretionary. There are however many rules relating to natural character in other chapters of the Plan (see Appendix 3).

12. Council officers consider that the withdrawal of these six provisions is appropriate and will result on no adverse flow-on consequences for the PDP. The withdrawal of the provisions will not impact on the ability of the PDP Hearings Panel to undertake its delegated function of considering and making recommendations on submissions on the PDP as notified less withdrawn submissions.

13. The withdrawal of two further rules is necessary as a consequence of the withdrawal of these rules. The consequential withdrawals are required as the remaining rules refer to rules recommended to be withdrawn above. These are:
- Rule 4A.4.2 – Discretionary Activity rule for earthworks and vegetation clearance on dunes which do not meet conditions in rule 4A.2.1
  - Rule 4A.5.1 - Subdivision of land which has an area of high natural character where the subdivision exceeds one or more of the restricted discretionary standards in Rule 4A.3.2.

## OPTIONS

### Option 1

14. Withdrawal of the provisions identified above in chapters 3 and 4 of the Proposed Kapiti Coast District Plan.
- This will resolve the question of the legality of the October 2014 withdrawal of parts of rules and policies in the Proposed District Plan. The further withdrawals will be of entire policies and rules and will result in the majority of the rules in chapter 4 (Coastal Environment) being withdrawn which leaves coastal issues to be considered holistically as a package when the coastal hazard work has been completed.
  - This option will require the Council to prepare a public notice to advise of these withdrawals and advise all submitters who made submissions on these provisions that the provisions have been withdrawn and therefore any submission points on these provisions are no longer valid. This will mean that some submitters will no longer have the ability to appeal Council decisions on those provisions (as the provisions are withdrawn).
15. This is the recommended option as it will remove the provisions which are in contention for this declaration as efficiently as possible and ensures the remaining provisions in the Proposed District Plan can proceed through the current hearings process.
16. Paul Beverley of Buddle Findlay recommends this approach and will be in attendance at the Council meeting considering this report.

### Option 2

17. Retaining the provisions within the Proposed Plan to be considered by the hearing panel.
- This will not resolve the question of the legality of the October 2014 withdrawal of parts of rules and policies in the Proposed District Plan and will leave the council at legal risk in relation to these provisions. It is also highly likely that the Court would declare that a variation to the PDP should be undertaken, and a variation process could be costly and time consuming for Council.

## CONSIDERATIONS

### Policy considerations

18. The changes are proposed to the Proposed District Plan. These withdrawals will result in fewer rules in relation to the coastal Environment in the Proposed Plan. This withdrawal does not alter the Operative District Plan.

### Legal considerations

19. The withdrawal of Proposed Plan provisions is undertaken under Clause 8D of Schedule 1 of the Resource Management Act 1991. This clause states:

***8D Withdrawal of proposed policy statements and plans***

*(1) Where a local authority has initiated the preparation of a policy statement or plan, the local authority may withdraw its proposal to prepare, change, or vary the policy statement or plan at any time—*

*(a) if an appeal has not been made to the Environment Court under clause 14, or the appeal has been withdrawn, before the policy statement or plan is approved by the local authority; or*

*(b) if an appeal has been made to the Environment Court, before the Environment Court hearing commences.*

*(2) The local authority shall give public notice of any withdrawal under subclause (1), including the reasons for the withdrawal.*

20. The Council is able to make this withdrawal at this time as decisions have not been made on the Proposed District Plan and therefore there have been no appeals on these provisions.
21. The withdrawal of entire policies and rules is consistent with the Court's commentary regarding the effect of the 2014 withdrawals, and should address the concerns the Court had with the 2014 withdrawals.

### Financial considerations

22. The cost of implementing the withdrawals can be met within the existing District Plan review budgets.

### Tāngata whenua considerations

23. The Proposed District Plan is of significance to tāngata whenua including the provisions relating to natural character in the coastal environment.
24. It is important to note that when these provisions are reconsidered as part of a comprehensive plan change for the Coastal environment provisions tāngata whenua will be involved as partners in developing the provisions relating to issues of concern to them.

## SIGNIFICANCE AND ENGAGEMENT

### Degree of significance

25. This matter has a moderate degree of significance, under the Council policy as it relates to Proposed District Plan provisions. However the Resource Management Act, which

requires consultation be undertaken on many decisions does not provide for consultation to occur in relation to the withdrawal of provisions under clause 8D of Schedule 1.

### Consultation already undertaken

26. North Otaki Beach Residents Group has been consulted regarding the withdrawal of these provisions and is in broad agreement with the approach set out in Option 1. There has been no further consultation on the withdrawal of the provisions.

### Engagement planning

27. An engagement plan is not needed to implement this decision. The Resource Management Act specifies that a public notice must advise the community of the provisions to be withdrawn. In addition it is proposed to advise submitters on the Proposed District Plan that these provisions have been withdrawn.

### Publicity

28. There will be a public notice to inform the community of the decision to withdraw provisions.

## RECOMMENDATIONS

29. That the Council approves the withdrawal of the provisions of the Proposed District Plan as set out in Appendix 1 of SP-17-166 in accordance with the process specified in Clause 8D of the Resource Management Act 1991.
30. That Council approves the release of the report and recommendations from Public Excluded.

<b>Report prepared by</b>	<b>Approved for submission</b>	<b>Approved for submission</b>
Emily Thomson	Kevin Currie	Sarah Stevenson
<b>Senior Policy Planner</b>	<b>Group Manager Regulatory Services</b>	<b>Group Manager Strategy and Planning</b>

## ATTACHMENTS

- Appendix 1: Provisions recommended for withdrawal from Chapters 3 and 4  
 Appendix 2: Activity status implications  
 Appendix 3: Proposed District Plan rules related to natural character

## Appendix 1: Provisions recommended for withdrawal from chapters 3 and 4

The provisions are shown in relation to the notified Proposed District Plan provisions. There are new provisions and amendments to provisions which have been requested by submissions which are being considered by the hearing panel which are not shown below as they do not have any legal weight until a decision is made on them.

Provisions recommended to be withdrawn are shown in ~~red-strikethrough~~ below with provisions withdrawn in 2014 shown in ~~black-strikethrough~~.

### 3 Natural Environment

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#### 3.2 Ecology and biodiversity

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##### 3.2.1 Policies

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###### ~~Policy 3-14—Restoration~~

~~When considering applications for subdivision, land use or development, active restoration or remediation will be required on sites identified as *priority areas for restoration*, to achieve the following biodiversity benefits:~~

- ~~a) resilient riparian buffers and margins which provide benefits in terms of sediment and erosion control and increased biodiversity values; and~~
- ~~b) expanded *ecological sites* and habitat enhancement which provide greater benefits to biodiversity values through the planting of *locally indigenous vegetation* surrounding and linking fragmented remnant *ecological sites*.~~

###### Reference

Objectives  
2.1, 2.2,  
2.7 & 2.9

###### **Explanation**

~~The vast majority of *indigenous vegetation* and *habitats of indigenous fauna* are not in their natural state, and are generally degraded. It is therefore important to restore degraded environments to improve biodiversity and ecological resilience.~~

~~*Priority areas for restoration* have been identified and have been mapped in the District Plan. These areas link fragmented ecosystems to create ecological corridors and the benefit or restoration in these areas strengthen the biodiversity of the district.~~

~~Restoration may include stock exclusion, pest management and restoration planting (ie. using *locally indigenous plants*).~~

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## 4 Coastal Environment

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### 4.3 Rules and Standards

Rules and Standards Table (general)

#### Rule 4A.0. Applicability of Rules 4A.1 – 4A.5

Rules 4A.1 to 4A.5 shall apply to all land within the coastal environment to activities in any Zones unless otherwise specified.

- Notes:** [1] Notwithstanding the activity category defined by Rules 4A.1 to 4A.5 for any activity, attention is also drawn to the rules:
- [a] in Chapters 5, 6, 7 and 8 that apply to specific land use Zones in the District – for example the Rural Plains Zone and the Open Space (Recreation) Zone; and
  - [b] in Chapters 3, 4, 9, 10 and 11 that apply to special features identified on the Planning Maps – for example listed Historic Heritage items.

The rules in these chapters may identify the activity as (or result in the activity being) a different activity category than expressed below. Additional clarity on activity category determination is provided in Chapter 1 (Section 1.1)

#### Rule 4A.1. Permitted Activities

The following activities are **permitted** activities, provided that they comply with all corresponding permitted standards (unless otherwise specified).

Permitted Activities	Standards	Reference
<del>1. Minor additions to existing Buildings (prior to November 2012) and structures which are in the <i>relocatable build urban CHMA</i>.</del>	<del>1. <i>Building</i> bulk and location shall comply with the permitted activity standards for the underlying zone.</del> <del>2. Additions not exceeding 10m<sup>2</sup> or 10% of the gross floor area, whichever is lesser, to existing (Prior to November 2012) non-relocatable <i>buildings</i>.</del>	<del>Policies 4.8, 4.10, 4.11 &amp; 4.13</del>
<del>2. Within the <i>no build rural</i> and <i>urban CHMA</i>:                      a) Safety signage/structures                      b) Fencing for dune planting protection                      c) Public access structures that connect to public</del>	<del>1. Signs shall not exceed the permitted activity standards for signs in the open space conservation and scenic zone.</del> <del>2. Planting and fencing shall not prevent use of public accessways.</del>	<del>Policies 4.8, 4.10, 4.11, 4.12 &amp; 4.14</del>



**Rule 4A.1. Permitted Activities**

The following activities are **permitted** activities, provided that they comply with all corresponding permitted standards (unless otherwise specified).

Permitted Activities	Standards	Reference
<p>land</p> <p><del>d) Planting of locally indigenous species</del></p> <p><del>e) Planting of exotic garden and lawn plants</del></p> <p><del>f) Maintenance of existing stormwater and stream control structures (i.e. existing as of November 2012)</del></p> <p><del>g) Garden edging, steps and access structures with a total height less than 0.8 metres with a maximum horizontal dimension of 5 metres.</del></p>	<p><del>3. Public accessway structures shall be designed and constructed in accordance with the requirements of the open space zones and health and safety requirements in NZS4404.</del></p> <p><del>4. Any fencing adjacent to pedestrian accessways shall allow unobstructed views of the pedestrian accessway from adjacent areas and shall not exceed the permitted activity standards for fencing adjacent to open spaces.</del></p> <p><del>5. Planting of garden plants which are not locally indigenous vegetation is limited to land which is a minimum of 20 metres from the coastal marine area at the time of planting.</del></p>	
<p><del>3. Alteration of buildings in the no-build urban and no-build rural CHMA.</del></p>	<p><del>1. Building bulk and location shall comply with the permitted activities for the underlying zone.</del></p> <p><del>2. The footprint of the building and gross floor area shall not increase as a result of the alterations.</del></p>	<p><del>Policies 4.12 &amp; 4.14</del></p>
<p><del>4. The removal of buildings and structures in the no-build urban and no-build rural CHMA.</del></p>	<p><del>1. Building removal shall comply with the hours of operation and noise standards of the underlying zone.</del></p> <p><del><b>Note:</b> Work may require a building consent for demolition.</del></p>	<p><del>Policies 4.7 &amp; 4.15</del></p>

## 4A.2 Controlled Activities

The following activities are **controlled** activities, provided that they comply with all corresponding controlled standards (unless otherwise specified).

Controlled Activities	Standards	Matters over which Council reserves control	Reference
<p><del>1.—Earthworks and vegetation clearance on dunes undertaken for the purpose of dune restoration and the associated removal of non-native plant species within the <i>no-build rural CHMA</i>.</del></p> <p><b>Note:</b> in some instances a consent may also be required from the Wellington Regional Council.</p>	<p><del>1.—The finished foredune slope shall be no greater than 15 degrees.</del></p> <p><del>2.—Only non-indigenous species shall be permanently removed from the site.</del></p> <p><del>3.—Indigenous plants shall be relocated and replanted within 20 metres of their original location prior to earthworks being undertaken.</del></p> <p><del>4.—A maximum of 100m<sup>3</sup> of earthworks can be undertaken in any 12 month period.</del></p> <p><del>5.—No open earthwork areas shall emit dust.</del></p> <p><del>6.—Public access to and along <i>the beach</i> shall be maintained.</del></p>	<p><del>1.—Method and timing of dune works.</del></p> <p><del>2.—Extent of any impact on immediately neighbouring areas.</del></p> <p><del>3.—Timing of replanting and species to be used.</del></p> <p><del>4.—Visual and amenity effects.</del></p> <p><del>5.—Dust control measures.</del></p> <p><del>6.—Ecological effects.</del></p> <p><del>7.—Public safety.</del></p>	<p><del>Policies 3.3, 4.3, 4.4 &amp; 4.12</del></p>
<p><del>2.—Relocatable Buildings</del> Buildings within the <i>relocatable build urban CHMA</i>, which are capable of relocation.</p> <p><b>Note:</b> Section 72 of the Building Act 2004 may be applied for new and relocated buildings in areas subject to coastal erosion or flooding to indemnify Council against possible damages.</p>	<p><del>1.—Building bulk and location shall comply with permitted activities for the underlying zone.</del></p> <p><del>2.—No part of the proposed buildings shall extend into the <i>no-build urban CHMA</i>.</del></p> <p><del>3.—Additions greater than 10m<sup>2</sup> or 10% of the gross floor area to existing (Prior to November 2012) non-relocatable buildings where the addition is relocatable.</del></p> <p><del>4.—Relocation plan</del></p>	<p><del>1.—Consistency with permitted activity standards for the zone.</del></p> <p><del>2.—Ability to relocate the building safely and quickly and adequacy of relocation design features.</del></p> <p><del>3.—Access route for relocation.</del></p> <p><del>4.—Building floor levels.</del></p> <p><del>5.—Public safety.</del></p>	<p><del>Policies 4.10, 4.11 &amp; 4.13</del></p>

**4A.2 Controlled Activities**

The following activities are **controlled** activities, provided that they comply with all corresponding controlled standards (unless otherwise specified).

Controlled Activities	Standards	Matters over which Council reserves control	Reference
	<p><del>certified by a suitably qualified person shall be provided and shall include a route and method for relocating the building.</del></p>		
<p><del>3. New and replacement infrastructure and network utilities within the relocatable Build CHMA.</del></p> <p><b>Note:</b> Coastal protection structures are not included in this rule.</p>	<p><del>1. The infrastructure shall be located as far landward as possible.</del></p> <p><del>2. All new infrastructure (including public roads) and network utilities shall be installed perpendicular to the coast line.</del></p>	<p><del>1. Design and location of infrastructure and ability to withstand potential coastal hazards.</del></p> <p><del>2. Necessity for the infrastructure</del></p> <p><del>3. Public safety.</del></p> <p><del>4. Natural hazard risk.</del></p>	<p>Policies 4.8, 4.10, 4.11 &amp; 4.13</p>

### 4A.3 Restricted Discretionary Activities

The following activities are **restricted discretionary** activities, provided that they comply with all corresponding restricted discretionary standards (unless otherwise specified).

Restricted Discretionary Activities	Standards	Matters over which Council will restrict its discretion	Reference
<p><del>1. Buildings and earthworks on land in the coastal environment which has been identified as having high natural character in District Plan Maps where they are not located in a CHMA.</del></p>	<p><del>1. Building shall be ancillary to a permitted use in the zone (eg habitable buildings and accessory buildings in the residential zone).</del></p> <p><del>2. Height and yard requirements for each zone apply.</del></p> <p><del>3. Earthworks shall not exceed 20m<sup>3</sup> or alter the ground by a vertical distance of more than 1 metre.</del></p>	<p><del>1. Scale, location and design of buildings or structures and/or earthworks.</del></p> <p><del>2. Effects on natural character values and/or natural coastal processes.</del></p> <p><del>3. Visual and amenity effects.</del></p> <p><del>4. Extent of earthworks.</del></p> <p><del>5. Ecological and natural character effects.</del></p> <p><del>6. Visibility of activities from the beach.</del></p> <p><del>7. Effects on and of natural hazard risks.</del></p>	<p><del>Policies 4.1, 4.2, 4.3, 4.4 &amp; 4.6</del></p>
<p><del>2. Subdivision of land in the coastal environment which includes areas of high natural character in District Plan Maps where it is not located within a CHMA.</del></p>	<p><del>1. No lots shall be created wholly on land identified as having high natural character.</del></p> <p><del>2. No build and no earthworks buffer with a minimum width of 5 metres around the area of high natural character.</del></p> <p><del>3. All zone lot areas and other subdivision requirements are met.</del></p>	<p><del>1. The design and layout of the subdivision including earthworks.</del></p> <p><del>2. The degree of compliance with the Kāpiti Coast District Council Subdivision and Development Principles and Requirements 2012.</del></p> <p><del>3. The imposition of financial contributions in accordance with Chapter 12 of this Plan.</del></p> <p><del>4. The imposition of conditions in accordance with sections 108 and 220 of the Resource Management Act 1991.</del></p> <p><del>5. Vehicle access points onto legal road including the State Highway Network and any effects on the transport network.</del></p>	<p><del>Policies 4.1, 4.2, 4.3, 4.4 &amp; 4.6</del></p>

### 4A.3 Restricted Discretionary Activities

The following activities are **restricted discretionary** activities, provided that they comply with all corresponding restricted discretionary standards (unless otherwise specified).

Restricted Discretionary Activities	Standards	Matters over which Council will restrict its discretion	Reference
		<p><del>6.—The location of any building site relative to the natural hazards, heritage features and sensitive natural features.</del></p> <p><del>7.—Adequacy of protection and restoration of natural features and areas.</del></p>	
<p><del>3.—Subdivision of land adjacent to the coast or a coastal esplanade where it is not located within a CHMA.</del></p>	<p><del>1.—Layout shall provide public access from a legal road to the beach or esplanade unless there is a public road or pedestrian accessway to the beach within 50 metres of the site in urban areas or 100 metres in rural (non-urban areas).</del></p> <p><del>2.—All minimum lot areas and other subdivision requirements of the underlying zone are met.</del></p>	<p><del>1.—The design and of the subdivision and earthworks.</del></p> <p><del>2.—The degree of compliance with the Kāpiti Coast District Council Subdivision and Development Principles and Requirements 2012.</del></p> <p><del>3.—The imposition of financial contributions in accordance with Chapter 12 of this Plan.</del></p> <p><del>4.—The imposition of conditions in accordance with sections 108 and 220 of the Resource Management Act.</del></p> <p><del>5.—Vehicle access points onto legal road including the State Highway Network and any effects on the transport network.</del></p> <p><del>6.—The location of any building site relative to the natural hazards, heritage features and sensitive natural features.</del></p> <p><del>7.—Adequacy of protection and restoration of natural features and areas.</del></p>	<p><del>Policies 4.1, 4.2, 4.3, 4.4 &amp; 4.6</del></p>

**4A.3 Restricted Discretionary Activities**

The following activities are **restricted discretionary** activities, provided that they comply with all corresponding restricted discretionary standards (unless otherwise specified).

Restricted Discretionary Activities	Standards	Matters over which Council will restrict its discretion	Reference
		<p><del>8.—Esplanade reserves.</del></p> <p><del>9.—Public access to and along the coast.</del></p>	
<p><del>4.—Minor additions to existing non-relocatable buildings (built prior to November 2012) buildings which are not designed to be relocatable in the relocatable build urban CHMA.</del></p>	<p><del>1.—Additions greater than 10m<sup>2</sup> or 10% of the gross floor area to existing (prior to November 2012) non-relocatable buildings where the addition is not designed to be relocatable.</del></p>	<p><del>1.—Coastal hazard risks.</del></p> <p><del>2.—Public safety.</del></p> <p><del>3.—Design and location of new building works.</del></p> <p><del>4.—Effects on natural character.</del></p> <p><del>5.—Visual effects.</del></p>	<p>Policies 4.8 to 4.11 &amp; 4.13</p>

#### 4A.4 Discretionary Activities

The following activities are **discretionary** activities

Discretionary Activities	Assessment Criteria	Reference
<p>1. All activities in the CHMA which are not listed as <i>restricted discretionary, non-complying or prohibited</i> and all other activities which do not comply with one or more of the permitted activity or controlled activity standards.</p>	<p>1. Consistency with the relevant Plan policies, including (but not limited to):</p> <ul style="list-style-type: none"> <li>a) Coastal Environment Policies 4.3, 4.4, 4.5 4.6 and 4.7;</li> <li>b) Natural Environment Policies 3.2 , 3.7, 3.8, 3.10, 3.18 and 3.23;</li> <li>c) Hazards Policies 9.2 and 9.4.</li> </ul>	<p>Policies 3.2 , 3.7, 3.8, 3.10, 3.18, 3.23, 4.3, 4.4, 4.5 4.6, 4.7, 9.2 &amp; 9.4</p>
<p><del>2. Earthworks and vegetation disturbance or clearance on dunes that does not meet the conditions of the above controlled Rule 4B.2.1.</del></p> <p><del><b>Note:</b> in some instances a consent may also be required from the Wellington Regional Council.</del></p>	<p><del>1. Consistency with the relevant Plan policies, including (but not limited to) Policies 4.3, 4.5, 4.6 and 4.7.</del></p> <p><del>2. Consideration of the following issues:</del></p> <ul style="list-style-type: none"> <li><del>a) Reason for the works proposed;</del></li> <li><del>b) Method and timing of dune earthworks;</del></li> <li><del>c) Extent of any impact on immediately neighbouring areas;</del></li> <li><del>d) The timing of replanting;</del></li> <li><del>e) Whether species proposed to be used will enhance or restore natural character;</del></li> <li><del>f) Whether the final shape and slope of the dune is natural in appearance.</del></li> </ul>	<p><del>Policies 4.3, 4.5, 4.6 &amp; 4.7</del></p>
<p><del>3. Minor Additions to buildings not exceeding 10m<sup>2</sup> or 5% increase in gross floor area) to buildings in the <i>no-build urban CHMA</i> where there is an adaptation strategy for that property.</del></p>	<p><del>1. Consistency with the relevant Plan policies, including (but not limited to) :</del></p> <ul style="list-style-type: none"> <li><del>a) Coastal Environment Policies 4.8, 4.13 and 4.14</del></li> <li><del>b) Hazards Policies 9.2, 9.3 and 9.4.</del></li> </ul>	<p><del>Policies 4.8, 4.13, 4.14, 9.2, 9.3 &amp; 9.4</del></p>
<p><del>4. New and replacement infrastructure and network utilities within the <i>no-build urban and rural CHMA</i>.</del></p> <p><del><b>Note:</b> Coastal protection structures are not included in this</del></p>	<p><del>1. Consistency with the relevant Plan Policies, including (but not limited to):</del></p> <ul style="list-style-type: none"> <li><del>a) Hazards Policies 9.2, 9.3 and 9.4</del></li> <li><del>b) Infrastructure, Services and Associated Resource Use Policies 11.9.</del></li> </ul> <p><del>2. Consideration of the following issues:</del></p> <ul style="list-style-type: none"> <li><del>a) The location of the infrastructure including being as far landward as possible and being installed perpendicular to the coast line;</del></li> <li><del>b) Design and location of infrastructure and ability to</del></li> </ul>	<p><del>Policies 9.2, 9.3 &amp; 9.4</del></p>

#### 4A.4 Discretionary Activities

The following activities are **discretionary** activities

Discretionary Activities	Assessment Criteria	Reference
rule.	withstand potential coastal hazards; e) Necessity for the infrastructure.	

#### 4A.5 Non Complying Activities

The following activities are **non complying** activities.

Non Complying Activities	Reference
<del>1. Subdivision of land which has an area of high natural character where the subdivision exceeds one or more of the restricted discretionary standards in Rule 4A.3.2.</del>	Policy 4.3
<del>2. Minor additions to buildings (not exceeding 10m<sup>2</sup> or 5% increase in gross floor area) to buildings in the no build urban CHMA where there is not an agreed adaptation strategy.</del>	Policy 4.12
<del>3. Coastal protection structures in the no build urban and no build rural CHMA.</del> <b>Note:</b> Garden edging, steps and access structures with a height less than 0.8 metres with a maximum horizontal dimension of 5 metres are excluded from this rule (see Rule 4B.1.2.g).	Policies 4.12 & 4.14
<del>4. Buildings, structures and earthworks on land in the coastal environment which has been identified as having high natural character in District Plan Maps where they are not located in a CHMA which do not comply with one or more of the permitted activity or restricted discretionary activity standards.</del>	Policies 4.3 & 4.4



## Appendix 2: Activity Status Implications

### **Permitted activity: Resource consent not required**

A permitted activity can be carried out without resource consent so long as it complies with any requirements, conditions and permissions specified in the Resource Management Act 1991, in any regulations, and in any applicable plans or proposed plans. A building permit will usually still be required if the activity is a building.

### **Controlled activity: Resource consent required, must be granted**

A controlled activity requires a resource consent before it can be carried out. The consent authority must grant consent for a controlled activity, unless:

- The activity is likely to have adverse effects that are more than minor on the exercise of a protected customary right and no exception applies
- The consent relates to a subdivision on land which is likely to suffer material damage from erosion, falling debris, subsidence, slippage, or inundation from any source, or if there is insufficient legal and physical access to each proposed allotment to be created by a subdivision.
- The consent authority can impose conditions on the consent, but only for those matters over which the council has reserved control in the relevant plan or over which control is reserved in national environmental standards. The activity must also comply with any requirements, conditions and permissions specified in the Resource Management Act, regulations or relevant plan.

### **Restricted discretionary activity: Resource consent required**

A restricted discretionary activity requires a resource consent before it can be carried out. The consent authority can exercise discretion as to whether or not to grant consent, and to impose conditions, but only in respect of those matters over which it has restricted its discretion in the plan or over which discretion is restricted in national environmental standards or other regulations. The activity must also comply with any requirements, conditions and permissions specified in the Resource Management Act, regulations or relevant plan. Discretionary activity – resource consent required, Council may grant or decline resource consent and if granting can impose conditions related to any matter it considers relevant.

### **Discretionary activity: Resource consent required**

A discretionary activity requires a resource consent before it can be carried out. The consent authority can exercise full discretion as to whether or not to grant consent and as to what conditions to impose on the consent if granted. A discretionary activity must also comply with any requirements, conditions and permissions specified in the Resource Management Act, regulations or relevant plan.

**Non-complying activities: Resource consent required**

A non-complying activity requires resource consent which the council may decline or grant with impose conditions relating to any matter considered relevant. RMA s104D places particular restrictions on the granting of consent for non-complying activities; consent can only be granted if council is satisfied that either the adverse effects of the activity on the environment will be minor (s104D(1)(a)), or the application is for an activity that will not be contrary to the objectives and policies of the district plan (s104D(1)(b)).

## Appendix 3: Proposed District Plan Rules relating to Natural Character

- Permitted activity rule 3A.1.7 for earthworks excludes earthworks in areas of outstanding or high natural character;
- Restricted discretionary rule 3A.3.1 for trimming of vegetation includes “effects on the natural character of the coastal environment” as a matter of discretion;
- Discretionary activity rule 3A.4 .9 Planting of plantation forestry including within areas of outstanding or high natural character, except replanting within 2 years of harvesting Plan;
- Controlled activity rule 5A.2.3 for boundary adjustment subdivisions includes “the location of any associated building site relative to any identified...area of high natural character ” as a matter of control;
- Controlled activity rule 5A.2.4 subdivision of land within the Residential Zone includes “the location of any associated building site relative to any identified ... area of high natural character ” as a matter of control;
- Restricted Discretionary activity rule 5A.3.1 Subdivision of land in the Focused Infill Precinct includes “the location of any associated building site relative to any identified ... area of high natural character ” as a matter of discretion;
- Restricted discretionary activity rule 5A.3.5 Development, including subdivision, which is undertaken in accordance with the Development Incentives Guidelines includes “effects on natural character values” as a matter of discretion;
- Restricted discretionary activity rule 6B.3.3 Development in accordance with the Development Incentives Guidelines includes “effects on natural character values” as a matter of discretion;
- Restricted discretionary activity rule 6C.3.5 Development in accordance with the Development Incentives Guidelines includes “effects on natural character values” as a matter of discretion;
- Restricted discretionary activity rule 6D.3.6 Development in accordance with the Development Incentives Guidelines includes “effects on natural character values” as a matter of discretion;
- Restricted discretionary activity rule 6E.3.3 Development in accordance with the Development Incentives Guidelines includes “effects on natural character values” as a matter of discretion;