

**HEARINGS PANEL REPORT AND RECOMMENDATIONS**  
**ON THE**  
**PROPOSED KĀPITI COAST DISTRICT PLAN 2012**

**Chapter 8 Open Space**

Report 10 of 16

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# **Report and Recommendations of the Hearings Panel Pursuant to s34A of the Resource Management Act 1991**

**on the**

**Proposed Kāpiti Coast District Plan 2012: Chapter 8 Open  
Space**

**Report 10 of 16**

## **Panel Members:**

Alistair Aburn (Independent Commissioner and Chair)

David McMahon (Independent Commissioner)

Miria Pomare (Independent Commissioner)

Diane Ammundsen (Commissioner)

Mike Cardiff (Commissioner)

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# Hearings Panel Report and Recommendations

## Chapter 8 Open Space

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## PART A – INTRODUCTION AND OVERVIEW

### 1 Introduction

#### Report Purpose

- 1.1 At its meeting on 24 July 2014 the Kapiti Coast District Council (the Council or KCDC) resolved to appoint, pursuant to section 34A(1) of the Resource Management Act 1991 (RMA or the Act), a Hearings Panel comprising five accredited commissioners to hear the submissions and further submissions on the Proposed District Plan (PDP). The Council subsequently confirmed a Hearings Panel comprising three independent commissioners and two KCDC councillor commissioners:
- (a) Alistair Aburn (Independent Commissioner and Chair)
  - (b) Miria Pomare (Independent Commissioner)
  - (c) David McMahon (Independent Commissioner)
  - (d) Diane Ammundsen (Commissioner)
  - (e) Mike Cardiff (Commissioner)
- 1.2 The Hearings Panel was delegated<sup>1</sup> the responsibility for hearing the submissions and further submissions on the PDP and to consider and make recommendations to the Council on the provisions and matters raised.<sup>2</sup>
- 1.3 This report sets out our recommendations to the Council in respect to all submissions lodged to Chapter 8 of the PDP dealing with Open Space.
- 1.4 The PDP was initially drafted as a complete review of the Kapiti Coast Operative District Plan in accordance with Section 79 of the RMA. The PDP was publicly notified on 29 November 2012 in accordance with Clause 5 of Schedule 1 of the RMA. There were subsequent changes to the PDP including:
- (a) corrections under Clause 16 of Schedule 1 of the RMA on the 6 December 2012;
  - (b) the withdrawal of objectives, policies, rules and map layers publicly notified on the 30 October 2014 for Coastal Hazard Management Areas, hazardous substances and facilities, and Priority Areas for Restoration; and
  - (c) the withdrawal of one policy (Chapter 3) and seven rules (Chapter 4) on 3 May 2017 in response to an Environment Court declaration application.

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<sup>1</sup> Minute KCDC 14/06/128, 24 July 2014.

<sup>2</sup> Pursuant to Schedule 1, Clause 10(1) of the RMA.

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1.5 The PDP has an extensive background which we will canvas in due course. All Chapters have had Section 32 (of the RMA) evaluations undertaken, along with public consultation, and public notification and hearings; culminating in a series of decision reports containing our recommendations to the Council. This Report is one of sixteen decision reports with each report generally aligning with a Chapter of the PDP. Where a given report contains provisions that have relevance to other Chapters of the PDP, we have endeavoured to make the appropriate cross references. Further commentary on the structure of each decision report is contained later in this section and also in Section 5.

1.6 Before setting out the details of the PDP, the submissions and our substantive evaluations, there are some procedural matters that we will address, beginning with our role as a Hearings Panel.

### **Role of the Hearings Panel**

1.7 As noted above, our role is to make recommendations to the Council on the PDP. The final decision-making power rests with the Council; and in the event that the Council adopts our recommendations, then this report (and all sixteen decision reports) will become the Council Decision.

1.8 It is not our role for us to introduce our own evidence, and we have not done so - rather, our role has been to:

- (a) establish that all relevant evidence is before us (or where it is not, consider whether we should commission additional reports or information);<sup>3</sup> and
- (b) test the evidence of others, and to determine the most appropriate outcome based on the views we consider best achieve sustainable management.

1.9 Council's decision-making power for the PDP is set out in Clause 10(1) of Schedule 1 of the RMA. Under this clause, the Council must give a decision on the provisions and matters raised in submissions. The Council must give reasons for the decision it reaches. Although we are 'recommenders' and not 'decision-makers' in this case, we have followed this structure so that our recommendations are valid, should they be adopted by Council.

1.10 In conducting this exercise we have familiarised ourselves with the PDP and its associated background material, read all the submissions, read the Section 42A reports and any further assessments accompanying this, conducted the hearings, and undertaken many site and locality visits - both at the request of submitters and also to assist our understanding of various issues raised by submitters and officers. Having undertaken all these tasks, we hereby record our recommendations.

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<sup>3</sup> Section 41C(4) of the Act.

## Report Outline

- 1.11 Our report is generally organised into four broad parts:

### **Part A**

This section is factually based with no evaluation. It outlines procedural matters as well as acknowledging the RMA statutory requirements that direct and guide our subsequent evaluation. For contextual reasons, it outlines the role of the PDP Chapter which this report covers; summarising the content and purpose of the Chapter. Essentially this background section provides a factual context for our consideration of the issues raised in submissions (Part B of this report). This section also contains a summary of the submissions and records and acknowledges the submitters that prepared evidence and presented to us. We provide a brief account of the hearing process itself and our subsequent deliberations. Where relevant, procedural matters such as minutes, directions, conferencing and caucusing are also referenced in this part of the report.

### **Part B**

The second part of our report is structured around the main issues raised in submissions, and, where relevant, summarises the evidence / statements presented at the hearing. This part of the report is evaluative and records the results of our deliberations on substantive matters.

### **Part C**

This part of the report acknowledges the statutory requirements and records our evaluation of the PDP provisions against the relevant sections of the RMA, as well as all other relevant documents prepared under the RMA, in reaching our recommendations. Where there is other relevant legislation that we must have regard to, such as the Heritage New Zealand Pouhere Taonga Act 2014, any discussions of this relevant legislation will also be contained in this part of the report.

### **Part D**

We conclude with a summary of our recommendations, having had regard to the necessary statutory considerations that underpin our evaluation.

## Submitter Engagement Version

- 1.12 Following the close of submissions, and during 2013 -2015, Council officers undertook formal engagement with various submitters in an endeavour for the parties to fully understand the Plan provisions and the submissions on them. The basis for this exercise was the production of a Submitter Engagement Version (SEV) of the PDP dated 15 June 2015.
- 1.13 The purpose of the SEV was for reporting officers to consider all the submissions and make preliminary changes in response to those submissions where they considered amendments were appropriate. The SEV showed the preliminary changes recommended by the planners to the PDP in response to the submissions received and formed the base for engagement with submitters
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leading up to the hearings. The main purpose of the SEV was to facilitate discussions, and various methods were used to engage with submitters including newsletters, workshops, one-on-one meetings, and formal pre-hearing meetings under Clause 8AA to Schedule 1 of the RMA.

- 1.14 While all meetings were recorded and minutes produced, all the pre-hearing meetings were documented with reports prepared under Clause 8AA(5) to Schedule 1 of the RMA. These were appended to the relevant Section 42A reports.
- 1.15 Although our baseline document for consideration of submissions is the notified version of the PDP (minus those provisions withdrawn subsequently by Council), we acknowledge the value of the SEV. We recognise however that the SEV was for discussion purposes only and has no statutory status. This has proved a highly useful method for engaging further with submitters, and testing some of the preliminary thinking of the reporting planners. We also note that many of the altered provisions in the SEV made their way into the recommended changes in the Section 42A reports and have subsequently been adopted by the Hearings Panel.

### **Approach to Hearings**

- 1.16 The RMA sets out a number of requirements for conducting hearings including holding them in public, determining appropriate procedures and who may be heard at hearings.
- 1.17 To this end, prior to the commencement of the hearings, we issued several minutes to the parties to achieve various purposes. All minutes issued throughout the pre-hearing, hearing and post-hearing process are contained on the Council web page and files.
- 1.18 Our introductory Minute (dated 14 December 2015) introduced the Hearings Panel, outlined the background to the process and provided a draft hearing schedule. It also included a draft set of procedures for the hearings. In advance of the first hearing scheduled for Monday 4 April 2016, the Hearings Panel convened a one-day meeting to hear from submitters or their representatives on any 'procedural' points regarding the proposed hearing process, as outlined in Minute 1. That meeting was held on Wednesday 17 February 2016 in the Council Chamber, Rimu Road, Paraparaumu.
- 1.19 The procedural meeting was extremely useful and resulted in some agreed changes to the hearing procedures to reflect suggestions from submitters who attended the meeting.
- 1.20 We set out our revised hearing procedures in Minute 3 issued on 10 March 2016, including a direction to require expert evidence to be pre-circulated in advance of the particular hearing(s) to which it relates. Whilst it was not mandatory for non-expert / lay submitters to pre-circulate their evidence, we appreciated those who did.

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- 1.21 We approached the hearing schedule on a topic-by-topic<sup>4</sup> basis to allow us to hear all evidence relative to a given topic in one sitting<sup>5</sup> as opposed to having such evidence scattered throughout a multitude of hearings. We have structured our reports in a similar manner and there are sixteen reports outlining our recommendations:
- (a) Report 1: Chapter 1 - Introduction and Interpretation (including Plan Wide)
  - (b) Report 2: Chapter 2 - Objectives
  - (c) Report 3: Chapter 3 - Natural Environment: Landscape and Earthworks
  - (d) Report 4: Chapter 3 - Natural Environment: Ecology and Vegetation
  - (e) Report 5: Chapter 4 - Coastal Environment
  - (f) Report 6: Chapter 5 - Living Environment
  - (g) Report 7: Chapter 6 - Working Environment
  - (h) Report 8: Chapter 7 - Rural Environment
  - (i) Report 9: Rural Re-zoning Requests
  - (j) Report 10: Chapter 8 - Open Space
  - (k) Report 11: Chapter 9 - Hazards
  - (l) Report 12: Chapter 10 - Historic Heritage
  - (m) Report 13: Chapter 11 - Infrastructure, Services and Associated Resources Use: Network Utilities and Services
  - (n) Report 14: Chapter 11 - Infrastructure, Services and Associated Resources Use: Access and Transport
  - (o) Report 15: Chapter 11 - Infrastructure, Services and Associated Resources Use: Community Facilities
  - (p) Report 16: Chapter 12 - General District-wide Provisions (including Amateur Radio)
- 1.22 Each report takes a lead from the Objectives recommended in the Chapter 2 Report. Other than that, each report is largely self-contained on all matters relevant to the Chapter it is reporting on. In some instances, however, cross references to relevant content in other reports are provided where necessary; for example, to illustrate a point about how a rule gives effect to a particular policy or to reference a particular point about the rationale for consistency in provisions across the Plan as a whole.

## **Comments on the Assistance Given to Us**

- 1.23 In advance of setting out the PDP context, we would like to record our appreciation of all the organisations and individuals involved throughout the PDP process, but in particular those who took part in the hearings. We would like to acknowledge the following:
- (a) the constructive and helpful input provided by all the submitters appearing before us;

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<sup>4</sup> In most instances, each topic is synonymous with a single Chapter of the PDP.

<sup>5</sup> Some sittings were confined to a single day whereas others extended over several days.

- (b) the helpfulness of Council's Hearings Administrator, Leanne Taylor in coordinating the scheduling of parties and general administrative assistance;
- (c) the assistance of Council's Hearings Panel Support, Sally Matich for ensuring we had access to evidence as soon as it was lodged with Council;
- (d) the reporting and planning input from the various Council planners and consultants who prepared the Section 42A reports;
- (e) the advice provided by other experts appearing for the Council, including both internal and external advisors; and
- (f) Koro Don the Council's kaumatua, assisted by Monica Fraser, Council's Iwi Relationship Manager, who assisted in opening and closing the hearings.

1.24 We are grateful for the efforts of the submitters, experts, and other witnesses for doing their very best to respond constructively to the challenges presented by the Act's processes. We also wish to acknowledge the effort that has been put in by some submitters who have spent hours and hours reading and discussing the PDP and reports so that they were in a position to present knowledgeably to us about their concerns at the various hearings. We appreciate the conduct of the participants which allowed us to have a focused hearing process. This greatly assisted us in assessing and determining the issues, and delivering our recommendations.

## **2 Open Space**

### **Role of Chapter**

2.1 Chapter 8 contains the provisions for managing activities and development in the Open Space land in the District. It contains policies and rules for the following four zones:

- (a) Open Space (Recreation) Zone;
- (b) Open Space (Local Parks) Zone;
- (c) Open Space (Conservation and Scenic) Zone; and
- (d) Private Recreation and Leisure Zone.

2.2 Some open space areas serve multiple purposes, but the general character of all open space land is defined by the relatively minor presence of buildings and structures and by the presence of areas that facilitate either passive or active recreation.

2.3 The spatial distribution of the four zones is as follows:

- (a) the Recreation Zone comprises the District's sportsgrounds and destination parks. These areas are relatively large and serve people from a wide area;

- 
- (b) the Local Parks Zone contains local neighbourhood parks, cemeteries and some active transport corridors which primarily serve local, day-today open space, cultural and recreational needs;
  - (c) the Conservation and Scenic Zone comprises land which is generally in a natural state, and includes very large areas of land such as Kāpiti Island and Tararua Forest Park. Landscape and conservation values are of particular importance for the zone. This Zone also includes some areas of land areas of land used for production forestry; and
  - (d) the Private Recreation and Leisure Zone. This Zone covers the District's golf courses and may also include other privately-owned facilities which contribute to the District's overall open space and recreation resource,
- 2.4 The Chapter primarily implements five Objectives:
- (a) 2.2 Ecology and Biodiversity;
  - (b) 2.8 Strong Communities;
  - (c) 2.9 Landscape;
  - (d) 2.11 Character and Amenity Values; and
  - (e) 2.18 Open Spaces / Active Communities.
- 2.5 The higher order planning documents all guide the development of provisions, including:
- (a) the RMA, particularly Part 2 matters;
  - (b) National Policy Statements, including the New Zealand Coastal Policy Statement; and
  - (c) the Wellington Regional Policy Statement.
- 2.6 As open space matters traverse the wider Wellington Region, including the Coastal Environment, we acknowledge that both the Wellington Regional Policy Statement (RPS) and the New Zealand Coastal Policy Statement (NZCPS) respectively have been prepared to give effect to Part 2 of the Act generally. Accordingly, we also acknowledge that the PDP is required to give effect to those higher order statutes and documents.
- 2.7 We note that since the PDP was notified, the following the higher order documents have been gazetted:
- (a) NPS for Freshwater Management (2014); and
  - (b) NPS for Urban Development Capacity (2016).
- 2.8 The RPS was made operative on 24 April 2013. We understand the most relevant provisions in the RPS include those that relate to amenity, natural character and recreation values, including:
- (a) Objective 3, Policy 4, Policy 35 - coastal environment;
  - (b) Policy 19, Policy 43 - rivers and lakes;
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- (c) Policy 21 - historic heritage;
- (d) Policy 23 - indigenous ecosystems;
- (e) Policy 25 - outstanding natural features and landscapes;
- (f) Policy 27 - special amenity landscapes;
- (g) Policy 36 - areas with high natural character
- (h) Policy 53 - public access;
- (i) Policy 56 - management of development in rural areas; and
- (j) Policy 57 - integration of land use and transportation.

- 2.9 Policy 67 of the RPS recognises that open space management is part of achieving a compact, well designed and sustainable regional form. It notes that: *“The region’s open space network has helped define the region’s existing urban form and is a fundamental element of quality of life for residents.....Policy 67 seeks to enhance the role of the region’s open space network in supporting the region’s compact form. This will require authorities to work together and identify gaps and opportunities”*. We understand *“authorities”* in the context of this policy include Greater Wellington Regional Council, the Department of Conservation, and Kapiti Coast District Council.
- 2.10 The above framework represents the high level statutory context for our consideration of the submissions and further submissions lodged on the PDP. It is the statutory ‘lens’ that we have kept foremost in our mind when considering whether, under Section 32 of the Act, a particular provision of the PDP that has been submitted on:
- (a) is the most appropriate way to achieve the purpose of the Act if it is an objective; and
  - (b) is the most appropriate way to achieve the objectives if it is a policy, rule or method.
- 2.11 We return to these matters in Section 11 of this report when we outline the statutory requirements of the RMA.

## Summary of Open Space Provisions

- 2.12 Chapter 8 of the PDP addresses the four Open Space Zones, as well as containing policies which are more focused on achieving good open space outcomes through subdivision. The focus of Chapter 8 is not only on managing activities and structures in the Open Space Zones, but also ensuring that new development is serviced by appropriately sized and located recreation areas.
- 2.13 The initial section of the Chapter contains a description of the Open Space Policies and the importance of the provision, development and maintenance of these open space resources. Of the fifteen policies in total, there are seven policies which do not pertain to land zoned as Open Space, but are more focused on the provision of open space through development and ensuring new development has access to open space.

- 2.14 The second section of the Chapter contains a description of each of the zones, and the key policies focused on the use and development of land zoned as Open Space.
- 2.15 Section 8.2.2 of the Chapter contains the rules and standards for all activities within the Open Space Zones. Overlays may be applied to Open Space zoned land by other Chapters, and Rule 8.0 sets out an expectation that where there is a conflict between any rule or standard in this Chapter and any other Chapter, the more stringent rule or standard shall apply.
- 2.16 The specific activities addressed by the rules in Chapter 8 include:
- (a) recreation, community and cultural activities;
  - (b) transport-related structures such as roading, accessways and cycleways;
  - (c) earthworks and landscaping;
  - (d) lighting;
  - (e) construction of buildings and additions;
  - (f) activities on Kāpiti Island;
  - (g) demolition of buildings and structures;
  - (h) recreational and leisure activities;
  - (i) species protection and conservation management;
  - (j) flood protection, erosion control, stormwater management and natural hazard mitigation works;
  - (k) community / mara kai gardens;
  - (l) fences;
  - (m) subdivision including boundary adjustments;
  - (n) plantation forestry activities;
  - (o) residential activities;
  - (p) industrial, commercial and retailing activities;
  - (q) factory farming; and
  - (r) parking of vehicles for sale.
- 2.17 Chapter 8 has one schedule being Schedule 8.1 Esplanade Reserves / Strips which sets out the requirements for these that are considered at the time of subdivision, including the criteria for area, length, fencing and reductions and waivers.

### 3 Submissions

- 3.1 As noted in the Section 42A Report,<sup>6</sup> there were 52 submissions received from 23 different submitters, and 12 further submissions on Chapter 8. Chapter 8 is also subject to a number of consequential amendments arising from submissions to the whole PDP and other Chapters.
- 3.2 We provide a summary of the submissions received in Appendix 2, including our recommendations on the relief sought by each submitter and further submitter.
- 3.3 Submissions received sought a range of outcomes, with many submissions seeking amendments to the Chapter 8 provisions.
- 3.4 The key themes emerging from the submissions received include:
- (a) private property rights, compensation and wellbeing;
  - (b) connectivity of the open space network, including through provisions for esplanade reserves, cycleways, walkways and bridleways;
  - (c) the appropriateness of buildings and structures in Open Space Zones, including those that are subject to National Policy Statements;
  - (d) the default status for activities not specifically referred to in the Open Space and Private Recreation Zone rules.
  - (e) provisions related to plantation forestry on land zoned Open Space, including the ecological values of those areas and setbacks from waterbodies;
  - (f) the application of Open Space and Private Recreation and Leisure zoning to specific areas of the District; and
  - (g) the intensity of development allowed on golf courses.
- 3.5 We discuss the submissions and associated issues in greater detail under our evaluation in Part B Evaluation below.

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<sup>6</sup> s42A Report: Part B - Chapter 8, Open Space, Kirsty Austin.

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## 4 The Hearing

4.1 The hearing for open space matters was essentially held in two phases. Whilst there were no formal procedural issues raised by any party in respect to this Chapter, there was an issue as to whether the chapter-by-chapter approach was the most effective process with regards to coastal management and coastal planning. As a result, the Hearings Panel convened the coastal integration hearing to canvas this matter. Accordingly, the hearing for coastal matters was held in two phases:

- (a) Coastal Integration Hearing; and
- (b) Chapter 4 Coastal Environment.

4.2 The first phase was as a result of our directions contained in Minute 5 (dated 7 April 2016) which requested that the Group Manager, Strategy and Planning instruct officers to prepare a Section 42A report that addresses how the PDP provisions relating to the 'coastal resource' fit together, including the relationship of these provisions with the extant operative District Plan provisions relating to coastal hazard management.<sup>7</sup> This was in part response to concerns expressed by some submitters (Rob Crozier and Joan Allin [451], Coastal Ratepayers United [378] and North Otaki Beach Residents Group [38]) that the hearing schedule did not enable effective consideration of (and thus ultimately integration of) management of the coastal resource by any party (including submitters, Section 42A report writers or the Hearings Panel). We also requested that the Section 42A report writers for Chapters 3, 4, 8 and 9 confer and ensure that their respective reports present an overall 'whole of coast' approach to address any integration issues (and also with relevant objectives in Chapter 2).<sup>8</sup> The coastal integration hearing schedule was established by way of Minute 11 dated 22 June 2016. The actual coastal integration hearing was conducted on 16 July 2016.

4.3 The Panel directed two sets of integration hearings as follows:

- (a) **Coastal Integration Hearing** (as discussed above); and
- (b) **Whole of Plan Integration Hearing** - this was our initiative and was first signalled in Minute 5 dated 7 April 2016. Subsequent Minutes (Minute 15 dated 6 September 2016 and Minute 16 dated 18 October 2016) outlined the procedures and programming for this hearing. The purpose of the Whole of Plan Integration Hearing was to identify and consider cross-chapter linkages in an integrated manner given that previous hearings originated and were conducted on a chapter-by-chapter basis. It transpired that we required four separate sittings to complete the Whole of Plan Integration Hearing. The first sitting was held over two days,

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<sup>7</sup> Paragraph 20(b), Hearings Panel Minute 5 (7 April 2016).

<sup>8</sup> Paragraph 20(c), Hearings Panel Minute 5 (7 April 2016).

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being 13-14 December, followed by two days on the 3 and 15 March 2016, and the last sitting was conducted on 5 April 2017.

- 4.4 In terms of the Coastal Integration Hearing, we received a Section 42A report from Mr Mark Ashby on 18 June 2016, and a closing statement from Mr Ashby on 8 August 2016. These were circulated to submitters and made available on Council's website.
- 4.5 The hearing for the coastal overview was held on 13 July 2016 at Kapiti Coast District Council. As the Coastal Integration Hearing was for the purpose of reporting officers to provide us with a presentation of how the coastal provisions spanned various PDP Chapters, submitters were not invited to speak although were welcome to attend. We heard from the following Section 42A authors with regards to the following Chapters:
- (a) Mr Mark Ashby (Chapter 8 Open Space);
  - (b) Ms Rebecca Lloyd (Chapter 9 Hazards);
  - (c) Ms Janeen Kidd-Smith (Chapter 3 Natural Environment);
  - (d) Ms Frances Lojkine (Chapter 4 Coastal Environment); and
  - (e) Mr Philip McKay (Chapter 3 Natural Environment - Ecology).
- 4.6 The second phase of the hearing for open space matters was held on 11 August 2016 at Kapiti Coast District Council. The focus of the second phase was on the full extent of the open space provisions, not just those open space zones located near the coast.
- 4.7 There were no procedural issues raised by any party. Accordingly, the hearing was generally focused on the presentation of evidence and submissions from the various parties present.
- 4.8 We received the Section 42A report for Chapter 8 initially from Ms Kirsty Austin on 18 March 2016. This was made available on Council's website on 15 June 2016. Mr Ashby explained in his opening statement that although the Section 42A report for Chapter 8 was prepared by Ms Austin and lodged on the KCDC website in advance of the Chapter hearing (which was originally scheduled to take place in late April), Ms Austin had since taken up a position with another employer. For that reason, Mr Ashby took over the role as the reporting officer and presented the recommendations contained in the Section 42A report.
- 4.9 We received written evidence from the following submitters:
- (a) Rob Crozier and Joan Allin [451];
  - (b) Transpower New Zealand Ltd [208];
  - (c) Paraparaumu Beach Golf Club [94]; and
  - (d) Chorus New Zealand Limited and Spark New Zealand Trading Limited [441 and 442].
- 4.10 In addition to the Council advisor Mr Mark Ashby, the following people attended the hearing and presented evidence / material in support of their submission:
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- (a) Ms Anna Carter and Mr Leo Barber on behalf of Paraparaumu Beach Golf Club [94];
- (b) Ms Salima Padamsey [358];
- (c) Ms Ferial Falconer [135];
- (d) Ms Tina Pope [547]; and
- (e) Mr Frank Boffa [485].

- 4.11 Following completion of the hearing on Chapter 8 Open Space, Mr Ashby drafted a closing statement on 18 August 2016 which was made public on the Council's website. For all parties who presented to us, we took the opportunity to ask questions at the proceedings. In most instances our questions were promptly and readily addressed on the spot. However, there were matters we raised with Council advisors at the integration hearings which required further consideration and response. We are satisfied that both the Coastal Integration and Whole of Plan Integration reports and hearings satisfied any outstanding matters on Chapter 8 Open Space.
- 4.12 Having reviewed all of the above material, we are satisfied that the responses were complete and answered our questions.
- 4.13 We also record here that we undertook two site visits; one to the Paraparaumu Beach Golf Club and the other to Kapiti coastal edge generally, including the Waikanae River Estuary, to better understand the matters raised by submitters.

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## PART B – EVALUATION OF ISSUES

### 5 Evaluation

#### Overview

- 5.1 As in the Section 42A report, we have grouped our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the matters<sup>9</sup> to which they relate, rather than assessing each individual submission. We have adopted this approach to avoid unnecessary duplication with our focus being on the key themes and issues which underpin our recommendations.
- 5.2 Where we do not refer to a specific submission or further submission topic or recommended amendment to Chapter 8 it is because we concur with the analysis and recommendations contained within the Section 42A report and the closing statements provided to us by the report writer.
- 5.3 For those submitters who are interested in a particular matter as it pertains to their submission(s), reference can be made to the submitter-by-submitter summary of decisions requested in Appendix 2, which includes our recommendation on each relief point sought. Those specific decisions have been derived from our issues assessment below. Therefore, our recommendations on all Chapter 8 provisions, and our recommendations on all Chapter 8 submissions and further submissions, are contained in Appendix 1 and Appendix 2 respectively.
- 5.4 This approach is not to downplay the importance of the input from submitters - we acknowledge the invaluable input of submitters in shaping our grouping of issues and our consideration of those matters. We considered it would be helpful for submitters as well as our own thinking to focus on the key issues.
- 5.5 We accept that having adopted this approach means that not every submission is specifically referenced in the discussions in this report. To have done so would have resulted in the reports being significantly longer as a result of simply listing out submitters and further submitters for no purposeful end. Accordingly, we have adopted the approach of grouping issues/matters in the reports as a basis for delivering decisions on individual submissions.
- 5.6 For those submitters who are interested in a particular matter as it pertains to their submission(s), reference can be made to the submitter-by-submitter summary of decisions requested in Appendix 2, which includes our recommendation on each relief point sought. Those specific decisions have been derived from our issues assessment below.

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<sup>9</sup> Clause 10(2)(a) of Schedule 1, RMA sets out that a Plan change decision may address submissions by grouping them according to either the provisions of the Plan change to which they relate, or to the matters to which they relate.

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5.7 We have organised our discussion of issues as follows:

**Issue 1:** General open space matters

**Issue 2:** Policies

**Issue 3:** Site specific amendments / re-zoning

**Issue 4:** Private Recreation and Leisure Zone

**Issue 5:** Rules

## Evaluation Preamble - Statutory Framework

5.8 Before formally recording our consideration of the issues, we summarise here the relevant statutory matters that frame our evaluation. This summary is organised into three parts as follows:

- (a) firstly, we set out the mandatory requirements of the Act that frame our decision-making;
- (b) secondly, we clarify which 'version' of Section 32 (RMA) is applicable as part of our decision-making; and
- (c) finally, we provide clarification about the force of certain higher order documents that we must have regard to as part of our evaluation.

5.9 What follows represents just an initial factual commentary on these matters governing our evaluation. The specific statutory evaluation of the challenged provisions in this Chapter of the PDP are covered in greater detail later in this report. Specifically, the principal s32 consideration is provided in Section B of this report under the heading "Evidence and Evaluation" for each of the Issues (referred to in the Act as "matters") that are canvassed for this Chapter; and ultimately the overall section 32 evaluation is summarised and concluded in Part C of this report.

### Mandatory Requirements

5.10 The Environment Court gave a comprehensive summary of the mandatory requirements for the preparation of district plans in *Long Bay-Okura v North Shore City Council*.<sup>10</sup> Subsequent cases have updated the 'Long Bay' summary following amendments to the Act in 2005 and 2009, with the most comprehensive and recent of which was provided in *Colonial Vineyard Ltd v Marlborough District Council*.<sup>11</sup>

5.11 The framework established by the Court sets out the relevant decision-making framework as follows:

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<sup>10</sup> Decision No. A 078/2008.

<sup>11</sup> Decision No. [2014] NZEnvC 55.

**General requirements**

- a. the Plan should be designed to accord with,<sup>12</sup> and assist Council to carry out its functions<sup>13</sup> so as to achieve the purpose of the Act;<sup>14</sup>
- b. when preparing/changing the Plan, Council must:
  - i. give effect to any NPS<sup>15</sup>, the NZCPS<sup>16</sup> or any RPS;<sup>17 18</sup>
  - ii. have regard to any *proposed* RPS;<sup>19</sup>
  - iii. have regard to any management plans and strategies under any other Acts and to any relevant entry on the NZ Heritage List and to various fisheries regulations (to the extent relevant), and to consistency with plans and proposed plans of adjacent authorities;<sup>20</sup>
  - iv. take into account any relevant planning document recognised by an iwi authority;<sup>21</sup>
  - v. not have regard to trade competition or the effects of trade competition;<sup>22</sup>
  - vi. be in accordance with any regulation;<sup>23</sup>
- c. in relation to regional plans:
  - i. the Plan must not be inconsistent with an operative regional plan for any matter specified in s30(1) or any water conservation order;<sup>24</sup> and
  - ii. shall have regard to any proposed regional plan on any matter of regional significance;<sup>25</sup>
- d. the Plan must also state its objectives, policies and the rules (if any) and may state other matters;<sup>26</sup>

**Objectives**

- e. the objectives of the Plan are to be evaluated to the extent which they are the most appropriate way to achieve the Act's purpose;<sup>27</sup>

**Provisions (policies, rules and methods)**

- f. the policies are to implement the objectives, and the rules are to implement the policies;<sup>28</sup>

<sup>12</sup> s74(1), RMA.<sup>13</sup> s31, RMA.<sup>14</sup> s72, 74(1), RMA.<sup>15</sup> National Policy Statement.<sup>16</sup> New Zealand Coastal Policy Statement.<sup>17</sup> Regional Policy Statement for the Wellington Region.<sup>18</sup> s75(3)(a)-(c), RMA.<sup>19</sup> s74(2), RMA.<sup>20</sup> s74(2)(b)-(c), RMA.<sup>21</sup> s74(2A), RMA.<sup>22</sup> s74(3), RMA.<sup>23</sup> s74(1), RMA.<sup>24</sup> s75(4), RMA.<sup>25</sup> s74(2)(f), RMA.<sup>26</sup> s75(1)-(2), RMA.<sup>27</sup> s74(1) and s32(3)(a), RMA.<sup>28</sup> s75(1), RMA.

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- g. each provision is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives<sup>29</sup> of the Plan, taking into account:
- i. the benefits and costs of the proposed policies and methods;
  - ii. the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions;<sup>30</sup> and
  - iii. if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.<sup>31</sup>

**Rules**

- h. in making a rule, Council shall have regard to the actual or potential effect of activities on the environment;<sup>32</sup>
- i. rules have the force of regulations;<sup>33</sup>
- j. rules may be made for the protection of property from the effects of surface water, and these may be more restrictive than those under the Building Act 2004;<sup>34</sup>
- k. there are special provisions for rules about contaminated land;<sup>35</sup>
- l. there must be no blanket rules about felling of trees<sup>36</sup> in any urban environment;<sup>37</sup> and

**Other Statutes**

- m. Council may be required to comply with other statutes.

5.12 The above Court-established decision-making framework is adopted in our evaluation of challenged provisions for all Plan Chapters. The way we approach this is explained in more detail in Part C of this report. Suffice to say however, that the approach is adopted consistently across all our reports on the Plan Chapters. Whilst this may at first glance appear to be formulaic and/or repetitive, it does nonetheless ensure (importantly) that we have undertaken and recorded our evaluation in terms of the relevant statutory tests prescribed in the Act.

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<sup>29</sup> s32(3)(b), RMA.

<sup>30</sup> s32(4), RMA.

<sup>31</sup> s32(3A), RMA.

<sup>32</sup> s76(3), RMA.

<sup>33</sup> s76(2), RMA.

<sup>34</sup> s76(2A), RMA.

<sup>35</sup> s76(6), RMA.

<sup>36</sup> s76(4A), RMA.

<sup>37</sup> s76(4B), RMA.

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## The Applicable Section 32 Framework

- 5.13 The unchallenged advice before us is that our evaluation of issues is to be structured to satisfy the requirements of Section 32 as it applied when the PDP was publicly notified in November 2012,<sup>38</sup> as opposed to the version of Section 32 as it currently sits.
- 5.14 That (now former) Section 32 requires the Council to carry out an evaluation at the following stages:
- (a) before a proposed plan is publicly notified; and
  - (b) before making a decision on provisions and matters raised in submissions for the proposed plan under clause 10 of schedule 1 to the RMA.
- 5.15 We record that the Council had already completed the Section 32 evaluation referred to in (a) above, prior to the PDP being notified on 29 November 2012, and therefore we do not need to repeat this evaluation further in this report.
- 5.16 The next juncture when an evaluation is required by the RMA is before making the Decision referred to in (b) above.
- 5.17 Given that we have delegated authority to hear submissions and make a recommendation to the Council about what the Decision should be, the onus of making that further evaluation rests with us.
- 5.18 In this respect, we note that while Section 32(5) requires a report to be prepared summarising and giving reasons for the initial Section 32(1) evaluation prior to notification of a proposed plan, there is no equivalent provision requiring a Section 32 report to be prepared for the further evaluation required under Section 32(2). Nor is there an express requirement in the applicable version of Clause 10 of Schedule 1 of the RMA for the Decision to address Section 32 matters.
- 5.19 This position differs from Clause 10 as it is currently worded in the RMA (post-2013 Amendment Act), which expressly requires the Decision to include a further evaluation of the proposed plan in accordance with Section 32AA, and for the Council to have particular regard to that evaluation in making its decision.
- 5.20 Despite the absence of an express requirement to that effect in the Section 32 framework applicable to our report, we consider it essential for the Decision to address Section 32 matters. In practice, the requirement in Clause 10(2)(a) for the Decision to include reasons for accepting or rejecting submissions should relate directly to the Section 32 matters and other statutory requirements that are applicable.

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<sup>38</sup> The version of Section 32 of the RMA that was in force between 1 October 2011 and 2 December 2013 applies to the current PDP process, despite Section 32 having since been amended in the Resource Management Amendment Act 2013.

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- 5.21 Notwithstanding that Section 32AA(1)(d)(ii) under the post-2013 Amendment Act version of the RMA is also not applicable to our evaluation, we find some utility in applying the scope of that Clause as it enables our Section 32(2) evaluation of the alterations we are recommending to be incorporated into this report as part of the decision-making record.
- 5.22 In adopting the above pragmatic approach, this means that in those instances where we have recommended an alteration to the notified PDP within our report we have deliberately assessed the appropriateness of that alteration in the wider context of Section 32 (in specific detail in Part B and in summary form in Part C of this report).

### **Status of Higher Order Documents**

- 5.23 Against the context established above, we acknowledge there is an obligation for the Plan to give effect to the higher order planning documents identified; however, we note our ability to achieve this through amendments is limited to instances where there is scope provided by submissions to do so.
- 5.24 We record here that five national policy statements (NPS) have been gazetted to date, being:
- (a) NPS on Electricity Transmission (2008);
  - (b) New Zealand Coastal Policy Statement (2010);
  - (c) NPS for Renewable Electricity Generation (2011);
  - (d) NPS for Freshwater Management (2014); and
  - (e) NPS for Urban Development Capacity (2016).<sup>39</sup>
- 5.25 The NPS on Electricity Transmission, the New Zealand Coastal Policy Statement, and the NPS for Renewable Electricity Generation are all relevant and represented in the Objectives. The NPS for Urban Development Capacity is of particular relevance to Objectives on Living and Working Zones and we have picked up those matters where relevant in Chapters 5 and 6, but again within the scope of submissions.
- 5.26 We note that a National Environmental Standard for Plantation Forestry was in a draft form at the time of the hearing, but has now been gazetted and comes into force on 1 May 2018. Consequently, during our deliberations we did not give it any weight, other than be aware of the matters it was intending to cover.<sup>40</sup>
- 5.27 When the PDP was first notified, the (then) *Proposed* Wellington Regional Policy Statement 2009 was still the subject of appeals to the Environment Court. In line with the general requirements outlined above, the PDP was required at that point to give effect to the *Operative* Regional Policy

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<sup>39</sup> The NPSUDC came into force on 1 December 2016, which was after our Hearings had been largely concluded but prior to our deliberations concluding.

<sup>40</sup> Local authorities have until 1 May 2018 to identify any Plan rules that duplicate or conflict with the NES, or which deal with the same effects. As soon as practicable after 1 May 2018, those rules must be removed from the Plan without using Schedule 1 of the RMA.

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Statement 1999 by Section 75(3)(c) of the RMA. The provisions of the *Proposed Wellington Regional Policy* were required to be given regard to by Section 74(2)(a)(i).

- 5.28 The Proposed Regional Policy Statement for the Wellington Region became the Operative Regional Policy Statement (RPS) on 24 April 2013. To the extent enabled by the scope of submissions, we have adopted recommendations to ensure the Plan gives effect to the Operative RPS.
- 5.29 We have also endeavoured to ensure any proposed amendments are not inconsistent with the operative regional plans for the Wellington Region, and we have had regard to the Proposed Natural Resources Plan for the Wellington Region (notified May 2015).
- 5.30 We also have taken into account the relevant planning documents recognised by iwi authorities and lodged with KCDC, to the extent that their content has a bearing on the resource management issues of the District. We understand two documents have been prepared and lodged with the Council - the Ngati Raukawa Ōtaki River and Catchment Iwi Management Plan 2000, and Nga Korero Kaupapa mo Te Taiao Policy Statements Manual for Kapakapanui Te Runanga o Ati Awa 1999-2000.
- 5.31 With these contextual matters established, we now turn to our evaluation of issues, followed by our summary evaluation of the above statutory requirements.

## **6 Issue 1: General Open Space Matters**

### **General Submissions and Recommended Amendments**

- 6.1 As signalled in Section 5 of this report, we do not revisit all submissions, topics or recommended amendments to the PDP addressed within the Section 42A reports for Chapter 8 and integration matters. To avoid unnecessary duplication, we have focused our discussion on the key themes and issues which underpin our recommendations.
- 6.2 Where we do not refer to a specific submission, topic or recommended amendment to the PDP in this report, it is because we concur with the analysis and recommendations contained within the Section 42A reports and closing statements provided to us by the report writers.
- 6.3 Our recommendations on all Chapter 8 submissions, and our complete recommendations on all relevant PDP provisions, are attached to this report as Appendix 2 and Appendix 1 respectively.

### **Description of the Issue**

- 6.4 There were a number of submissions which addressed open space matters generally, and in many cases they were not specific to any particular provision. The general matters addressed by the submissions included:

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- (a) support for Chapter 8 provisions (six submitters);
  - (b) opposition to a range of Chapter 8 policies because of the effect on private property rights, compensation and wellbeing (nine submitters); and
  - (c) changes to correct minor errors (three submitters).

6.5 This section also highlights the main consequential changes that affect Chapter 8 as a result of submissions made to both the PDP as a whole and to other Chapters of the PDP. Such consequential changes fall into the domain of giving effect to submissions seeking a simplification of, and enabling approach towards, Plan provisions.

## Evidence and Evaluation

6.6 Raumati South Residents Association [139.15], Kapiti Coast Grey Power Association Inc [480.39], Ngā Hapū O Ōtaki [232.22], Richard Heerdegen & Johanna Rosier [172.6] and Waitohu Stream Care Group [458.6] all generally supported Chapter 8. We acknowledge the support for the open space provisions by those five submitters and accept the support, subject to changes to provisions made in response to other submissions.

6.7 Five submitters opposed Policies 8.1 - 8.5 and 8.8 - 8.15 on the grounds that the policies do not comply with the RMA. In particular, these submissions state that the policies:

- (a) fail to reflect the presumption in favour of security in private property rights;
- (b) fail to adequately protect the right of landowners to develop their land in accordance with their cultural preferences;
- (c) impose unreasonable compliance costs; and
- (d) fail to consider the wellbeing of members of the community.

6.8 In considering these submission points, we note the evidence from the Section 42A Report that the majority of the land zoned Open Space is in public ownership. The only privately owned land affected by the Open Space zoning is all covered by the Private Recreation and Leisure Zone, which only applies to the District's golf courses. A small amount of Open Space (Conservation and Scenic) Zoned land is used for production forestry, but the land is owned by the Council and leased to operators. We therefore consider the question of private property rights to have little if any relevance to the consideration of Open Space Zone provisions.

6.9 To more accurately reflect the purpose of the Chapter, we recommend expanding the title to read "*Open Space and Private Recreation and Leisure Zones*".

6.10 We note that Section 85 of the RMA establishes that compensation is not payable (by a council) in respect of the controls which it places on land. Restrictive zoning provisions can be challenged by any party (via submission and to the Environment Court), on the basis that the planning provision renders their land incapable of reasonable use, and places an unfair and unreasonable

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burden on them. For the two privately owned Open Space zoned areas, we do not consider that the provisions of the Open Space Zone would render land incapable of reasonable use, or would place an unfair or unreasonable burden on the submitter (or any other person).

- 6.11 We note any future rezoning of land to any type of Open Space Zone would need to proceed via a Schedule 1 process such as a publicly notified plan change or variation, which would require a detailed assessment (as required by Section 32 of the RMA) of whether the alteration is the most appropriate way to achieve the objectives (including Objective 2.18 as notified which is of most relevance to open space). We therefore do not recommend any such alterations to the Chapter 8 provisions in response to these submissions.
- 6.12 Raumati South Residents Association [139.19] sought an endorsement for the open spaces affected by the Kapiti Expressway that the Council will carry out all conditions that may be required of the Council in the findings and subsequent report from the Board of Inquiry into the Mackays to Peka Peka Expressway. As the Council is already legally obligated to fulfil any conditions required of it, as set by the Board of Inquiry, we consider there is no need to include any such endorsement in the PDP. We therefore do not recommend any amendments in response to this submission.
- 6.13 Three submissions drew our attention to minor errors in Chapter 8. We agree with the amendments as recommended in the Section 42A report and recommend correcting formatting errors in Schedule 8.1. In addition, where minor errors are not specific to a particular submission, we have taken the opportunity to correct them in accordance with Clause 16(2), Schedule 1, of the RMA. As a consequence of addressing submissions in other parts of the Plan, we recommend the following consequential changes are made to Chapter 8:
- (a) the creation of a new chapter (Chapter 2A) that contains all the District-wide policies which includes former Open Space Policies 8.1, 8.2, 8.4, 8.5, 8.6 and 8.7;
  - (b) relocation of the Introduction to Chapter 2A;
  - (c) general deletion of the explanatory text for policies;
  - (d) provisions applying to network utilities will be managed in a standalone chapter (Chapter 11) rather than occurring in both Chapter 11 and the zone-based Chapters;
  - (e) provisions applying to natural hazard mitigation activities will principally be managed in Chapter 9 (Hazards), resulting in deletion of Rule 8.1.11 which duplicates a rule in Chapter 9, and to clarify that seawalls are excluded from Rule 8.1.1A (fences);
  - (f) references are changed from “*Open Space Environment*” to “*Open Space Zones*”;
  - (g) references to Objective 2.19 are deleted from the introductory text;
  - (h) the Chapter title is amended to “*Open Space and Private Recreation and Leisure Zones*”;
  - (i) the introductory text is rationalised with the deletion of unnecessary text;

- (j) defined terms are italicised.

## Findings

- 6.14 We recommend amendments are made to Chapter 8 as shown in Appendix 1, including the following:
- (a) the creation of a new chapter (Chapter 2A) that contains all the District-wide policies which includes Open Space Policies 8.1, 8.2, 8.4, 8.5, 8.6 and 8.7;
  - (b) relocation of the Introduction to Chapter 2A;
  - (c) general deletion of the explanatory text for policies;
  - (d) provisions applying to network utilities will be managed in a standalone chapter (Chapter 11) rather than occurring in both Chapter 11 and the zone-based Chapters;
  - (e) provisions applying to natural hazard mitigation activities will principally be managed in Chapter 9 (Hazards), resulting in deletion of Rule 8.1.11 which duplicates a rule in Chapter 9, and to clarify that seawalls are excluded from Rule 8.1.1A (fences);
  - (f) references are changed from “*Open Space Environment*” to “*Open Space Zones*”;
  - (g) references to Objective 2.19 are deleted from the introductory text;
  - (h) the Chapter title is amended to “*Open Space and Private Recreation and Leisure Zones*”;
  - (i) the introductory text is rationalised with the deletion of unnecessary text; and
  - (j) defined terms are italicised.
- 6.15 For the reasons discussed above in Evidence and Evaluation, those submissions relating to general open space matters (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

## 7 Issue 2: Policies

### Description of the Issue

- 7.1 A number of issues were raised in submissions pertaining to the Open Space Policies, all differing in their approach. While some submissions and evidence addressed Policies in a broad manner, there were others seeking very specific amendments to particular Policies. We have addressed each of the Policies below in our evaluation. As Policies 8.3, 8.7, 8.8, and 8.9 were not addressed in the Section 42A report we have assumed there were no submissions specifically on them, other than touched on by general submissions (which we have addressed above). We also record that there was a submission to Policy 8.15 in respect to Paraparaumu

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Beach Golf Club and the Private Recreation and Leisure Zone. We consider this submission and Policy 8.15 in Issue 4 below.

## Evidence and Evaluation

### Policy 8.1 Accessibility

- 7.2 Only one submission was received on Policy 8.1 from Raumati South Residents Association [139.15] which supported the Policy. We acknowledge the support and recommend no changes to Policy 8.1, other than to italicise defined terms. We do however recommend Policy 8.1 is re-located into Chapter 2A District-wide policies, as its application is broader than just the Open Space Zones.

### Policy 8.2 Parks and New Development

- 7.3 One submission was received from Regional Public Health [252.15] which sought a requirement for new parks and open space development to be smoke free. While we agree this is highly desirable goal, we consider this matter is more appropriately managed through a Council bylaw than via a policy in the PDP. We do not recommend any amendments in response to this submission; however we do recommend “*existing*” is deleted from Clause B of Policy 8.2 as a consequence of deleting the defined term “*existing*” from Chapter 1 Definitions. We recommend replacing “*neighbourhood parks*” with “*local parks*” for consistency with other terminology used in the District Plan. We also recommend Policy 8.2 is re-located into Chapter 2A District-wide policies, as its application is broader than just the Open Space Zones.

### Policy 8.4 Esplanades

- 7.4 The Director-General of Conservation [202.47] supported Policy 8.4 on the basis that it seeks to protect conservation values through the provision of esplanade reserves and strips as required in Section 229 of the RMA to achieve the purpose and principles of Part 2 of the RMA. Jan Nisbet [133.11] and Ferial Falconer [135.1] supported Policy 8.4 in terms of the ability for the Council to insist on the creation of linkages for the cycleway, walkway and bridleway network. While we acknowledge the support for Policy 8.4, we recommend minor amendments to the Policy. The basis for the amendments is because Policy 8.4 is closely linked to Schedule 8.1 which outlines the requirements for Esplanade Reserves/Strips. We recommend adding the following sentence at the end of Policy 8.4 to more closely link the Policy and Schedule:

Esplanade reserves will be provided in accordance with the criteria of Schedule 8.1 in Chapter 8.

We also recommend changing “*protects*” to “*maintains or enhances*” to be more consistent with the approach throughout the PDP. “*Protects*” is a very strong word and we consider that “*maintains or enhances*” better aligns with the rule framework in Chapter 8.

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## Policy 8.5 Active Transport and Connectivity

7.5 Five submissions supported Policy 8.5 for the reasons that specific reference to ensuring cycleways, walkways and bridleways are provided, and active transport through removal of physical and environmental barriers is enabled. Kapiti Cycling Inc. [52.3 and 4] sought amendments to include references to other relevant Council documents outside the PDP and show a commitment to known deficiencies in the cycleway, walkway and bridleway network. We agree and recommend including a reference to the strategies in the Introduction to the District-wide policies, which are proposed to be located in the new Chapter 2A as follows:

Relevant Council strategies will also be used to determine the future development of open spaces and the cycleway, walkway and bridleway network.

7.6 We consider the need for accessible public open space and cycleways, walkways and bridleways is adequately addressed in Policies 8.1 and 8.5 in that:

- (a) Policy 8.1 indicates that public open space will be located within 400 metres of urban residences; and
- (b) Policy 8.5 *“ensures the continued development and maintenance of a public cycleway, walkway and bridleway network as part of the wider open space network... linking residential areas with open space, schools, commercial and community facilities, public transport nodes and important natural areas”*.

7.7 For the above reasons, we consider these policies are appropriate to indicate the importance of keeping communities connected to their open spaces through walkways, cycleways and roads. We do however recommend amending the title of the Policy 8.5 to be *“Cycleway, Walkway and Bridleway Network”* as this better reflects the focus of the Policy. We also recommend Policy 8.5 is re-located into Chapter 2A District-wide policies, as its application is broader than just the Open Space Zones.

## Policy 8.6 Amenity Values

7.8 Submissions were received from Raumati South Residents Association [139.15] and the Director-General of Conservation [202.47] which both supported the Policy. We acknowledge the support and recommend no substantial changes to Policy 8.6. We recommend however that defined terms are italicised and *“intrinsic”* is deleted from both Clauses A and B for clarity. We also recommend Policy 8.6 is re-located into Chapter 2A District-wide policies, as its application is broader than the Open Space Zones.

## Policy 8.10 Buildings and Structures

7.9 Three submissions were received on Policy 8.10, all of which requested additions as follows:

- (a) request for an additional assessment criterion for Policy 8.10 to address any effects on coastal conservation values, sites of significant indigenous biological diversity and areas

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where coastal restoration planting has been carried out (Waitohu Stream Care Group [458.5] and Richard Heerdegen & Johanna Rosier [172.8]); and

(b) recognition of the constraints imposed by the technical and operational requirements of the National Grid (Transpower NZ Ltd [208.43]).

7.10 The Section 42A report initially recommended inserting a new Clause g) which recognised the constraints imposed by the technical and operational requirements of the National Grid, in response to the submission from Transpower New Zealand Ltd. We note the written evidence from Transpower NZ Ltd accepting the amendments as recommended in the Section 42A report; including retaining Clause e) and the insertion of a new Clause g). Upon reflection (and as a Plan-wide recommendation), we consider that all matters relating to the National Grid and infrastructure matters should be consolidated into Chapter 11. This was a matter raised by a number of submitters including NZ Wind Energy Association [136-1 & 2], B Coe [138-1], A Darragh [446-1], M Cox [548-1], Norm Antcliff [581-1] and Sharif Family Trust [715-5] who sought amendments to reduce complexity and duplication with Chapter 11. We consider that the Policies in Chapter 11 pertaining to the National Grid more appropriately cover the matter raised by Transpower New Zealand Ltd in their submission relating to Chapter 8. We therefore recommend deleting Clauses e) and f), as well as Clause g) as proposed in the Section 42A report.

7.11 Waitohu Stream Care Group [458.5] and Richard Heerdegen & Johanna Rosier [172.8] noted that the Section 32 report on Open Space did not refer to NZCPS Policy 6, in particular Policy 6(h), (i) and (j). The two submissions sought an additional matter for the Council to consider to Policy 8.10, being: *“(vi) Whether or not the activity would adversely affect coastal conservation values, sites of significant indigenous biological diversity and areas where coastal restoration planting has been carried out”*.

7.12 Having looked closely at Policy 6 of the NZCPS, we consider Clauses (a) and (b) of Policy 8.10 addresses the “*appropriateness*” of a new building and the extent to which it would contribute to or detract from various values. Those values include appearance, recreational and open space amenity, cultural, ecological and landscape values. As such, we consider that each of the matters under NZCPS Policy 6(h), (i) and (j) are already encompassed by Policy 8.10.

7.13 We note also that there may be additional controls imposed by Chapters 3 and 4 of the PDP if buildings are proposed to be located in Areas of Outstanding Natural Character, Areas of High Natural Character, Areas of Outstanding Features and Landscapes, or ecological sites. We therefore do not consider any amendments are necessary in response to these submissions.

### **Policy 8.11 Subdivision**

7.14 Transpower NZ Ltd [208.44] supported Policy 8.11 and requested that it is retained as notified, particularly Clause e), as it recognises the necessity of the electricity transmission network at the time of subdivision. We note the written evidence from Transpower NZ Ltd supporting the retention of Policy 8.11. In addition, we record that Chorus NZ Ltd [442.24] sought that all

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relevant provisions for telecommunications and radiocommunications are contained within Chapter 11.

- 7.15 Although we acknowledge support for Clause e) by Transpower New Zealand Ltd, we agree with Chorus NZ Ltd that it is more efficient to contain all provisions relating to telecommunications and radiocommunications (and indeed all infrastructure provisions) in Chapter 11. As outlined above, this was a matter raised by a number of submitters who sought amendments to reduce complexity and duplication with Chapter 11. We consider that the Policies in Chapter 11 relating to the subdivision for the purpose of network utilities appropriately cover the matters contained in Clause e) of Policy 8.11. For these reasons, we recommend deleting Clause e). We also recommend minor amendments to the Policy to use defined terms where possible.

### **Policy 8.12 Safety**

- 7.16 One submission was received from Raumati South Residents Association [139.15] supporting this Policy. We acknowledge the support and recommend no significant changes to Policy 8.12 in response to this submission. We do however recommend the Policy is amended to be more focused by deleting the words *“be designed and developed in a manner that”* and other minor wording changes to improve clarity.

### **Policy 8.13 Indigenous Vegetation**

- 7.17 Submissions were received from the Director-General of Conservation [202.47] and Te Rūnanga o Toa Rangātira Inc [150.10] supporting the Policy. We acknowledge the support and recommend no changes to Policy 8.13 other than the italicising of defined terms.

### **Policy 8.14 Food Production and Renewable Energy**

- 7.18 Submissions were received from Ngā Hapū O Ōtaki [232.21] and Te Rūnanga o Toa Rangātira Inc [150.10] supporting the Policy. We acknowledge the support and recommend no changes to Policy 8.14. We do not agree with Further Submission 229 Ken Moselen that Policy 8.14 does not allow for existing property rights and development which are permitted under the RMA and NZCPS, and agree that the Council has a duty under the RMA to provide access to public open space. We consider the combination of Policy 8.14 with other policies in Chapter 8 establish the appropriate uses of open spaces to meet the overall Objective for open space (Objective 2.18).
- 7.19 While we do not recommend any changes in response to these submissions, we recommend the references to *“community scale renewable energy generation facilities”* be deleted. As outlined above, this was a matter raised by a number of submitters who sought amendments to reduce complexity and duplication with Chapter 11. We consider that the Policies in Chapter 11 relating to community-scale renewable energy generation facilities appropriately cover the matters contained in Policy 8.14.

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## Findings

- 7.20 We recommend the amendments as set out in Appendix 1, including the following:
- (a) the creation of a new chapter (Chapter 2A) that contains Open Space Policies 8.1, 8.2, 8.4, 8.5, 8.6 and 8.7 to be renumbered as Policies DW10-15;
  - (b) re-numbering of all the Policies remaining in Chapter 8;
  - (c) substitute “*local parks*” for “*neighbourhood parks*” in Policy 8.2;
  - (d) include references in Policy 8.4 to esplanade reserves being in accordance with Schedule 8.1 in Chapter 8;
  - (e) the title of Policy 8.5 is amended to relate to “*Cycleway, Walkway and Bridleway Network*”;
  - (f) Policy 8.6 is amended to delete references to “*intrinsic*” amenity values;
  - (g) delete Clauses e), f) and g) from Policy 8.10;
  - (h) delete Clause e) from Policy 8.11;
  - (i) delete the words “*be designed and developed in a manner that*” from Policy 8.12 and other minor wording changes to improve clarity;
  - (j) deletion of “*community scale renewable energy generation facilities*” from Policy 8.14;
  - (k) deletion of Explanations except where particular reference to higher order strategic planning documents is required;
  - (l) minor wording changes to improve readability; and
  - (m) italicising all defined terms.
- 7.21 For the reasons discussed above in Evidence and Evaluation, those submissions relating to Open Space policies (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

## 8 Issue 3: Site Specific Amendments / Rezoning

### Description of the Issue

- 8.1 Four submissions requested a specific site be rezoned for open space purposes, or rules amended or clarified for a specific site. The sites to which submissions related were:
- (a) Leinster Avenue Playground be classified as a recreation reserve (Hope Centre Church [134.18]);

- (b) Tilley Road Area (Sec 1 SO 36522) be rezoned or designated a Neighbourhood Park (Tina Pope [547.9]);
- (c) land subject to Plan Change 81 (Riverbank Orchards and Kennott Trust [498.6]); and
- (d) Precinct 3 of the Waikanae North Development Zone (Waikane North Limited [286.33]).

## Evidence and Evaluation

- 8.2 We understand the **Leinster Avenue Playground** is owned by Council for roading purposes, although the site is currently used as a playground, containing play equipment, a picnic table and grassed area and is zoned as Residential Zone. Given that Council advises it may be used to enable access to the sites zoned Rural Dunes behind the existing residential properties, we consider rezoning as Open Space Zone would set an expectation by the community that it would be publicly accessible for recreation use in the future, which may not be the case. We therefore recommend it retains its Residential Zoning. Once the future use of the site is finalised the Council can consider the most appropriate zoning based on the prevailing circumstances via a Schedule 1 process.
- 8.3 We heard from Ms Pope with regards to the **Tilley Road Area**. As this site is managed by the New Zealand Transport Agency for use in connection with a road, we consider that for the reasons advanced above, the site should retain its existing Rural Dunes Zones to avoid setting an unrealistic expectation to the community that it can be used for recreation purposes.
- 8.4 With respect to the open space areas of the Otaki South Precinct, we understand the Operative District Plan contained permitted and restricted discretionary rules specifically for this area (Map 03). We note that the PDP includes a restricted discretionary rule for Otaki South Precinct (Rule 8.3.2), but did not adopt the permitted activity rule from the Operative District Plan. We cannot see any reason why the permitted activity rule should not be carried over into the PDP and therefore agree that a new permitted activity rule is required specific to the Open Space (Local Parks) Zone within the Otaki South Precinct to rectify the oversight. We recommend a new rule be inserted in Rule Table 8.1 as follows:

4. In the Open Space (Local Parks) Zone within Ōtaki South Precinct, any activity listed below that is ancillary to a permitted or consented activity in the Otaki South Precinct is a permitted activity:

- a) roading, walkways and cycleways;
- b) parking, loading and access;
- c) street furniture;
- d) landscaping; and
- e) earthworks.

Standards:

1. Activities ancillary to a permitted or consented activity in the Otaki South Precinct shall comply with the permitted activity rules applying to development within an overflow or residual overflow path as set out in Chapter 9 Hazards.

- 8.5 With regards to the **Waikanae North Development Zone**, we consider that the clarification sought by the submission is already provided in the rules that apply to the Waikanae North Development Zone, which are contained in Chapter 5 (Living Zones). We note Rule 5B.1.4 states that *"In Precinct Area 3, the rules and standards of the Open Space (Local Parks) Zone shall apply. Refer Chapter 8"*. We therefore consider additional text is not required in Chapter 8 for the Waikanae North Development Zone, but do acknowledge that there could be greater clarity in Chapter 5 about which rules apply for the open space areas of the Waikanae North Development Zone. For this reason, we recommend the introduction to Section 5.2 of Chapter 5 be amended to clarify which of the precincts are covered by the Chapter 5 rules. The details of this amendment will be addressed in our report regarding Chapter 5.

## Findings

- 8.6 For the reasons set out in the Section 42A and above, we recommend that the zoning of the four sites listed above remain as notified in the PDP.
- 8.7 We recommend that a new Rule be inserted into Rule 8A.1 as outlined in Appendix 1 to identify permitted activities relating to Otaki South Precinct.
- 8.8 For the reasons discussed above in Evidence and Evaluation, those submissions relating to Open Space zoning (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

## 9 Issue 4: Private Recreation and Leisure Zone

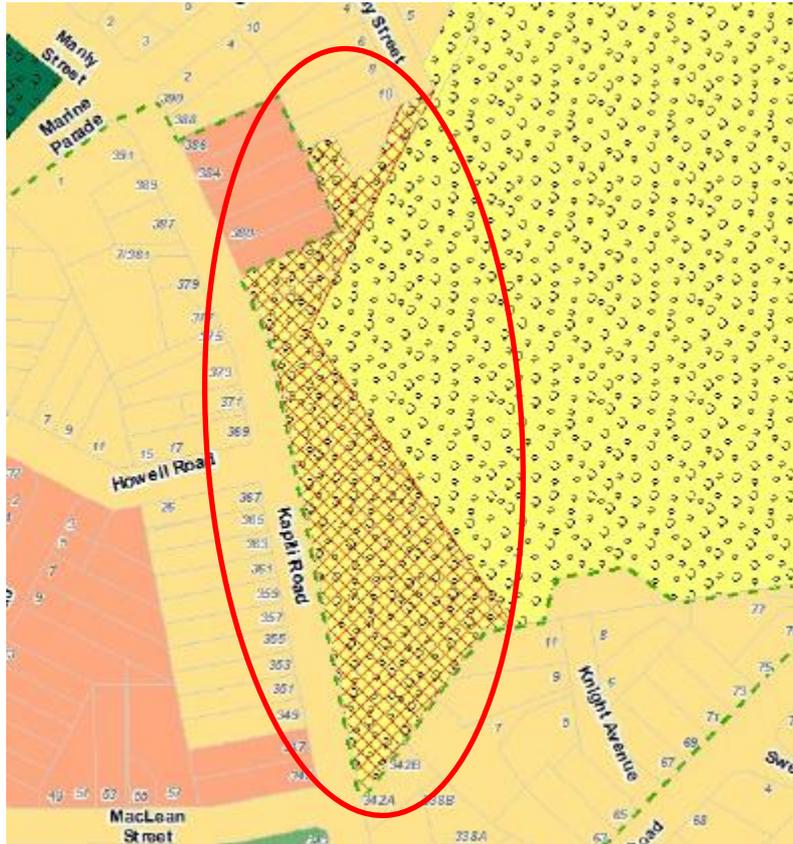
### Description of the Issue

- 9.1 The Paraparaumu Beach Golf Club [94] sought a number of amendments to recognise that the golf club fulfils a recreation opportunity and facility for the community whilst being in private ownership. The submission requested that the PDP be amended in the following five ways:
- (a) retention of the zoning of the land as Private Recreation and Leisure Zone;
  - (b) inclusion of a clause in Policy 8.15 to recognise the significance the Paraparaumu Beach Golf Course plays in relation to a private recreational asset and to have policy direction for continued development of this asset through enabling built form, appropriate activities and further facilities;
  - (c) amend the maximum height of buildings to 12m or higher, and to increase maximum gross floor area to 3,000m<sup>2</sup>;

- (d) amend Rule 8.4.2 to be a restricted discretionary activity under Rule 8.3 instead of a discretionary activity; and
- (e) clarify rule so visitor accommodation is not treated as a residential activity.

## **Evidence and Evaluation**

- 9.2 We note that Paraparaumu Beach Golf Club is zoned Private Recreation and Leisure as indicated on Map 8A, and acknowledge the submitter's support for this Zone. We also note Policy 8.15 is particularly relevant in that it provides for development in the Private Recreation and Leisure Zone.
- 9.3 We heard from Ms Carter and Mr Barber on behalf of the Paraparaumu Beach Golf Club [94] who both spoke to the submission, and explained that a more lenient approach was only sought within a defined 'precinct' within the golf course - being an approximately 17,000m<sup>2</sup> area along the Kāpiti Road frontage. We agree that specific recognition through creation of a distinct precinct is appropriate and recommend the District Plan Maps be amended to reflect this. Ms Carter acknowledged that relaxed provisions should not apply to all land zoned Private Recreation and Leisure Open Space. We agree that a precinct approach is appropriate on the Paraparaumu Beach Golf Course land, as identified by Ms Carter in her evidence.



**Figure 1:** Paraparaumu Beach Golf Course Development Precinct as shown on Map 8A of Appendix 1.

- 9.4 Ms Carter considered that Policy 8.15 should be amended and outlined alternative wording for Policy 8.15, clarifying that relaxed bulk and location standards are only for the proposed Paraparaumu Beach Golf Course Development Precinct Area. We agree some change to Policy 8.15 is required. However, we consider that Ms Carter's suggested amendments to Policy 8.15 may have an unintended consequence for weighting a consent application towards encouraging development rather than a balanced approach to the consideration of effects. Instead, we prefer the amendments to Policy 8.15 as recommended by Mr Ashby, and therefore recommend Policy 8.15 includes the following words:

Paraparaumu Beach Golf Club

Development within a defined precinct of the Paraparaumu Beach Golf Course, as identified on the District Plan Maps, is subject to limits set by separate height and coverage controls. In addition to (a) and (b) above, development which is proposed to exceed those limits will be subject to the requirement to avoid, remedy or mitigate potential adverse effects on the amenity of adjoining residential zones and on landscape values.

- 9.5 We consider our recommended amendments to Policy 8.15 strike a balance between enabling development in a defined precinct on Paraparaumu Beach Golf Course while avoiding, remedying or mitigating any potential adverse effects on the amenity of adjoining residential properties.

- 9.6 In terms of the activity status for any development within the proposed precinct, Ms Carter explained that while the Golf Club's preference as stated in their submission was to allow for all development as a permitted activity, they acknowledge that it may be more appropriate that certain development be assessed so that potential adverse effects on residential amenity and on landscape values can be avoided, remedied or mitigated.
- 9.7 Ms Carter clarified that they would consider accepting the restricted discretionary activity status as proposed by the recommendations of the Section 42A report. We agree that a restricted discretionary activity status is appropriate for the Private Recreation and Leisure Zone where development does not meet one or more of the permitted activity standards. We consider the sites in the Private Recreation and Leisure Zone are sufficiently large that there may be situations where the permitted activity standards can be exceeded, provided that the Council has an opportunity to assess the proposal in terms of the effect on the amenity of the open space and surrounding community.
- 9.8 We consider restricting the Council's discretion to the effect on amenity is appropriate and recommend the inclusion of a new restricted discretionary rule (Rule 8.3.5).

New Rule 8.3.5

The erection of any new building (including associated recreational and leisure activities), or any additions or alterations to any lawfully established building in the Private Recreation and Leisure Zone that does not comply with one or more of the permitted activity standards under Rule 8.1.7.

Matters over which Council will restrict its discretion:

1. layout, size, design and location of any building, additions or alterations;
2. visual, landscape, character, cultural and amenity effects;
3. compatibility of the activity with the context and surroundings;
4. effects on cultural values, with particular regard to any land disturbance;
5. consideration of the effects of standards not met; and
6. any positive effects to be derived from the activity.

- 9.9 We also recommend consequential amendments to discretionary Rules 8.4.1 to delete references to Rule 8.1.6, and deletion of Rule 8.4.2. As discussed in more detail in Section 11 of this Report, we recommend a rule cascade where permitted or controlled activities that cannot meet one or more of their associated standards are a restricted discretionary activity. Thus, the erection of any new building and any addition or alteration to any existing lawfully established building that could not comply with one of more of the standards in Rule 8.1.6 would be a restricted discretionary activity.

Rule 8.3.1 Any activity listed as a *permitted activity* in the Rules in Table 8.1 or a *controlled activity* in the Rules in Table 8.2 which does not comply with one or more of the associated standards, unless otherwise specified.

Rule 8.4.1 ~~In the Private Recreation and Leisure Zone, any activity which is not ancillary to recreational and leisure activities or which exceeds the permitted activity standards under Rule 8.1.6 or 8.1.9~~  
Any activity listed as restricted discretionary in Rules 8.3.2 - 8.3.4 that does not comply with one or more of the associated standards, unless otherwise specified.

9.10 We acknowledge that the Private Recreation and Leisure Zone is often located on sand dunes where there may have been burials or middens may be present, and recommend inclusion of “*cultural*” as an additional matter of discretion for Rules 8.3.1 (matter 2) (as to be renumbered as Rule 8.3.2), 8.3.3 (matter 1) (to be renumbered as Rule 8.3.4), and 8.3.5 (matter 2).

9.11 The submission from the Paraparaumu Beach Golf Club sought that the maximum height of buildings be increased to 12m or higher, and sought to increase maximum gross floor area to 3,000m<sup>2</sup>. We are aware that Rule 8.1.7 prescribes permitted activity standards for the erection of new buildings and additions or alternations to existing buildings in all Open Space and Private Recreation and Leisure Zones as having a maximum height of 8 metres and maximum gross floor area of any building is 500m<sup>2</sup>. Having considered the matter and the surrounding land uses, we consider that enabling development in the proposed Precinct to the scale sought is appropriate given then the Precinct would be located along the Kāpiti Road frontage rather than cover the entire Zone. We therefore recommend the following amendments:

Rule 8.1.7.2

• <u>Paraparaumu Beach Golf Course development precinct</u>	<u>3,000m<sup>2</sup></u>
• <u>All other locations</u>	<u>500m<sup>2</sup></u>

Rule 8.1.7.3

• <u>Paraparaumu Beach Golf Course development precinct</u>	<u>12m</u>
• <u>All other locations</u>	<u>8m</u>

9.12 The submission from the Paraparaumu Beach Golf Club also sought clarification that visitor accommodation is not classified as a residential activity. We are aware that Rule 8.1.10 lists activities and ancillary activities that are permitted in the Recreation and Leisure Zone. “*Visitor accommodation*” is listed as an ancillary activity in Rule 8.1.10 and is a term that is defined in Chapter 1. The definition of “*residential activity*” excludes “*visitor accommodation*”. We consider that the definitions for “*residential activity*” and “*visitor accommodation*” are sufficiently distinct, with “*residential activity*” specifically excluding “*visitor accommodation*”. We therefore do not recommend any changes with regards to this matter.

## Findings

9.13 We recommend that the provisions relating to Private Recreation and Leisure Zone are amended as set out in Appendix 1, including:

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- (a) amendments to Policy 8.15 (to be renumbered as Policy 8.9) to address development within a defined precinct of the Paraparaumu Beach Golf Course;
  - (b) new restricted discretionary activity Rule 8.3.5 for erection of any new building, or any additions or alterations to any existing building in the Private Recreation and Leisure Zone that does not comply with one or more of the permitted activity standards under Rule 8.1.7 and associated matters of discretion;
  - (c) amend Rule 8.4.1 to delete references to Rule 8.1.6, and to apply to any activity listed as a restricted discretionary in Rules 8.3.2 - 8.3.4 that does not comply with one or more of the associated standards, unless otherwise specified;
  - (d) deletion of Rule 8.4.2;
  - (e) amend Rule 8.3.1 so that any activity listed as a permitted activity in the Rules in Table 8.1 or a controlled activity in the Rules in Table 8.2, which does not comply with one or more of the associated standards, is a restricted discretionary activity unless otherwise specified;
  - (f) inclusion of “*cultural*” as an additional matter of discretion for Rules 8.3.1 (matter 2), 8.3.3 (matter 1), and 8.3.4 (matter 2). These Rules are recommended to be renumbered 8.3.2, 8.3.4 and 8.3.5 respectively;
  - (g) amend Rule 8.1.7.2 to enable a maximum gross floor area of any building in the Paraparaumu Beach Golf Course Development Precinct of 3,000m<sup>2</sup>; and
  - (h) amend Rule 8.1.7.3 to enable a maximum height of any building in the Paraparaumu Beach Golf Course Development Precinct of 12m.
- 9.14 We recommend that the PDP maps be amended to identify an area of approximately 17,000m<sup>2</sup> along the Kāpiti Road frontage called “*Paraparaumu Beach Golf Course Development Precinct*” as set out in Appendix 3.
- 9.15 For the reasons discussed above in Evidence and Evaluation, those submissions relating to the Private Recreation and Leisure Zone (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

## 10 Issue 5: Rules

### Description of the Issue

- 10.1 A number of submitters addressed various rules in Chapter 8 Open Space as well as Schedule 8.1. Submissions included Rob Crozier and Joan Allin [451.5] who sought amendments that ensure provisions are drafted using clear and consistent language, appropriate provisions are

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included, ill-considered provisions are removed, default rules are appropriate and provisions are drafted so that unintended consequences will not occur.

- 10.2 Bryce Moller [340.2] sought an amendment to Rule 8.1.3 to add "*or lighting on the Beach*" to the end of standard (1) for the purposes of safety and search and rescue purposes.
- 10.3 The Director-General of Conservation [202] submitted on plantation forestry rules in Chapter 8. The submitter's concerns related to requiring 20m setbacks from rivers, the detail of forestry management plans and the inclusion of ecological effects as a matter of discretion.
- 10.4 In terms of submissions on Schedule 8.1, Kapiti Coast Grey Power [480.40] supported the ability to negotiate with property owners for wider esplanade reserves under Schedule 8.1. Similarly, the Director-General of Conservation [202] also supported Schedule 8.1 on the basis that the widths of the esplanade reserves will achieve the purpose and principles of Part 2 of the RMA. Cuttriss Consultants Ltd [550.46] requested that Schedule 8.1 be amended to include subdivisions that do not create additional allotments in the exclusion for esplanade reserves.

## Evidence and Evaluation

- 10.5 With respect to the default activity Rule in Chapter 8, upon inspection we agree that Chapter 8 as notified has two rules that apply to activities that are not otherwise specified in the Open Space Zones and Private Recreation and Leisure Zone. Rule 8.1.1 deems such activities to be permitted, whereas Rule 8.5.1 deems these activities to be non-complying. It appears to us that Rules 8.1.1 and 8.5.1 clearly conflict.
- 10.6 Rob Crozier and Joan Allin [451] considered that the PDP includes default permitted activity rules which may have unintended consequences, and includes default discretionary activity rules which have unintended consequences. We have given this matter a lot of consideration and have developed a cascade of activity status that we will endeavour to implement through the PDP. We are aware the Operative District Plan takes a permitted activity stance for activities that are not specifically listed, but can comply with all the permitted activity standards. After asking Council whether this approach caused any unintended consequences, we have adopted this same approach - if an activity is not specifically listed, and it can comply with all the permitted activity standards, then it is a permitted activity.
- 10.7 This caused us to reconsider the status for activities that cannot comply with one or more of their standards. We therefore recommend the following approach:
- (a) a permitted or controlled activity that cannot comply with one or more of its associated standards will be a restricted discretionary activity, unless otherwise specified;
  - (b) an activity not specifically listed that cannot comply with one or more of the permitted standards will be a restricted discretionary activity;
  - (c) a restricted discretionary activity than cannot comply with one or more of its associated standards will be a discretionary activity; and
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(d) for discretionary activities that have standards, the inability to comply with one or more of the associated standards will be a non-complying activity.

10.8 We accept that this approach may not be appropriate in all circumstances but we have endeavoured to use this standard approach across the Chapters where it is appropriate. We recommend implementing this approach in Chapter 8, with the following amendments:

Rule 8.1.1 Any activities which are not specified as a Permitted, Controlled, Restricted Discretionary, Discretionary or Non-Complying activities in the Rules in Tables 8.1- 8.5

~~Any activities which are not specified as a Permitted, Controlled, Restricted Discretionary, Discretionary, Non-Complying or Prohibited activities and comply with all permitted activity standards in this chapter and all permitted activity standards under Rules 3A.1, 3B.1, 9D.1, 9E.1, 10A.1, 11A.1, 11B.1, 11C.1, 12A.1, 12B.1, 12C.1 and 12D.1.~~

Rule 8.3.1 Any activity listed as a permitted activity in the Rules in Table 8.1 or a controlled activity in the Rules in Table 8.2 which does not comply with one or more of the associated standards, unless otherwise specified

~~Rule 8.4.1 In the Private Recreation and & Leisure Zone, any activity which is not ancillary to recreational and leisure activities or which exceeds the permitted activity standards under Rule 8.1.6 or 8.1.9~~

Any activity listed as restricted discretionary in Rules 8.3.2 - 8.3.4 that does not comply with one or more of the associated standards

~~Rule 8.4.4 Any lighting which does not meet one or more of the permitted activity standards, under Rule 8.1.3.~~

~~Rule 8.4.5 Any fence which does not meet one or more of the permitted activity standards under Rule 8.1.14~~

~~Rule 8.5.1 Any activity that is not listed as a permitted, controlled, restricted discretionary or discretionary activity under Rules 8.1 – 8.4 (respectively).~~

~~Rule 8.5.2 Any new plantation forestry activity which does not comply with any one of the permitted standards under Rule 8.1.5 and which does not comply with any one of the restricted discretionary standards under Rule 8.3.1.~~

~~Rule 8.5.3 Any residential activity in the Open Space (Recreation, Local Parks, and Conservation & Scenic) Zones, or any residential activity in the Private Recreation and & Leisure Zone which does not comply with any one of the Restricted Discretionary Activity standards under Rule 8.3.3.~~

- 10.9 With regards to Bryce Moller's submission on lighting, we note Rule 8.1.3 prescribes the permitted activity standards for lighting, and has an inherent focus on permanent lighting. Lighting used for search and rescue will be temporary and on an emergency basis and therefore we consider no amendments are necessary to accommodate temporary and intermittent lighting for this purpose. We recommend lighting is deleted as an activity per se and relocated to Rule 8.1.1 as a permitted activity standard.
- 10.10 With respect to the Director-General of Conservation's submission on plantation forestry, we do not consider it necessary to apply the 20m setback to all waterbodies. We understand no setbacks applied under the Operative District Plan when the existing forests were planted. We understand there are only a few Open Space Zoned sites with plantation forestry and it is not a widespread practice or issue. We consider that a note in Rule 8.1.7 should be included to refer users of the Plan to Chapter 9 for standards relating to setbacks from waterbodies. This will ensure consistency with other parts of the Plan.
- 10.11 The submission from the Director-General of Conservation also requested that ecological effects be included as a matter over which the Council will restrict its discretion under Rule 8.3.1 which deals with new plantation forestry activity or any plantation forestry harvesting that does not comply with any one or more of the permitted activity standards. The standards that apply to Rule 8.3.1 (to be re-numbered Rule 8.3.2) require a management plan that includes information about "*any important environmental and heritage features (including waterways and areas of native vegetation) or values within the area to be planted and/or harvested.*" It appears to us that the intent of the Rule is to manage the potential effects of forestry activities on ecological values in the Open Space zones. We therefore recommend the inclusion of ecological effects as a matter of discretion for any new plantation forestry activity, or any harvesting activity associated with plantation forestry which does not comply with any one or more of the permitted activity standards under Rule 8.1.6.
- 10.12 Schedule 8.1 identifies the width of esplanade reserves that are required when subdivision occurs along coastal margins, lakes, rivers and streams. We note that boundary adjustment subdivisions are not required to provide esplanade reserves. Cuttriss Consultants Ltd [550.46] requested that this exclusion also applies to subdivisions where no additional allotments are created. This type of subdivision can create opportunities for the Council to extend or link the esplanade network and we therefore consider it appropriate to retain the opportunity to obtain esplanade reserves as set out in Schedule 8.1, where appropriate. We therefore do not recommend any amendments in response to this matter.
- 10.13 We heard from Ms Falconer [135.1] who outlined the importance of a Plan that insists on linkages as a result of development. We agree and consider that the combination of Schedule 8.1 and policies in Chapter 8 will enable open space for recreation and linkages to be obtained where development occurs.
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## Findings

- 10.14 We recommend that the Rules relating to Open Space and Private Recreation and Leisure Zone are amended as outlined in Appendix 1, including:
- (a) simplifying the Introduction: Applicability of Rules;
  - (b) amend the wording of Rule 8.1.1 to classify any activity not specifically listed as a permitted activity if it can meet all the standards for a permitted activity;
  - (c) delete Rule 8.1.3 lighting in favour of making lighting a general permitted activity standard under 8.1.2;
  - (d) simplification of Rule 8.1.7;
  - (e) deletion of Rule 8.1.7 standard 6
  - (f) insertion of a note in Rule 8.1.7 referring Plan users to Chapter 9 for setbacks from waterbodies;
  - (g) deletion of Rule 8.1.11;
  - (h) deletion of Rule 8.1.14 in favour of making fences a permitted activity standard;
  - (i) include ecological effects as a matter of discretion under Rule 8.3.1 (to be renumbered as Rule 8.3.2);
  - (j) deletion of assessment criteria from the Rules in Table 8.4;
  - (k) insert new Rule 8.3.1 which applies to any activity listed as a permitted or controlled activity that does not comply with one or more associated activity standards;
  - (l) reword Rule 8.4.1 to apply to activities listed as restricted discretionary activities that cannot meet one or more of their standards;
  - (m) deletion of Rule 8.4.2;
  - (n) deletion of Rule 8.4.5;
  - (o) deletion of Rule 8.4.6;
  - (p) deletion of Rule 8.5.1;
  - (q) deletion of Rule 8.5.2;
  - (r) deletion of Rule 8.5.3;
  - (s) italicising of defined terms;
  - (t) consequential renumbering; and
  - (u) amendments for consistency with the rest of the PDP.

10.15 For the reasons discussed above in Evidence and Evaluation, those submissions relating to the Rules for Open Space and Private Recreation and Leisure Zone (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

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**PART C – STATUTORY EVALUATION**

## 11 Statutory Evaluation

11.1 This part of our report addresses the mandatory requirements as summarised in Part A of this report, and draws on our detailed evaluation of the issues in Part B. In this respect, most of our substantive evaluation of the matters below has already been addressed above.

11.2 We acknowledge the analysis by report authors at time of notification of the PDP and the further analysis conducted by authors as part of Section 42A reports in relation to the matters in Sections 32 (and 32AA for provisions notified after 2014). To avoid unnecessary duplication, we have therefore adopted a thematic approach to our evaluation here, and we have omitted from considering the general requirements which are not relevant.

***Is the PDP designed to accord with, and assist KCDC to carry out its functions so as to achieve the Act's purpose?***

11.3 The PDP contains policies, rules and other methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources in the District. Likewise, the PDP adopts measures to control actual and potential environment effects.

11.4 In terms of Chapter 8 and Open Space provisions, the Chapter contains the provisions for managing activities in the Open Space land in the District. It contains policies and rules for the following four zones:

- (a) Open Space (Recreation) Zone;
- (b) Open Space (Local Parks) Zone;
- (c) Open Space (Conservation and Scenic) Zone; and
- (d) Private Recreation and Leisure Zone.

11.5 The focus of Chapter 8 is not only on managing activities and structures in the Open Space Zones, but also ensuring that new development is serviced by appropriately sized and located recreation areas. In this sense, the Chapter is firmly in line with the Council's function under the RMA and is an important aspect of promoting the health and wellbeing of people and communities in terms of Section 5 of the Act - including their amenity aspirations as captured in Section 7 of the Act.

11.6 Based on the analysis in Part B of this report, we find that the PDP, including the amendments that we have made to the policies, rules and other methods in Chapter 8 will assist the Council to carry out its functions so as to achieve the sustainable management purposes of the RMA.

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***Does the PDP give effect to any NPS or the NZCPS?***

- 11.7 The PDP was designed to give effect to the NPSs and NZCPS in effect at the time of notification. Since that time, the NPS on Urban Development Capacity has been gazetted.<sup>41</sup>
- 11.8 A number of amendments have been applied to the notified policies, rules and other methods in the PDP to better implement these higher order documents where enabled by submissions.
- 11.9 Overall, we consider that the amended PDP gives effect to the various NPSs and the NZCPS. The relevance of the NPSs varies for each PDP Chapter.

***Does the PDP give effect to the RPS?***

- 11.10 The current Wellington Regional Policy Statement (RPS) was made operative after the PDP was notified. We note that like the NZCPS, the RPS has been prepared to give effect to Part 2 of the Act generally. Accordingly, we also acknowledge that the PDP is required to give effect to that higher order instrument.
- 11.11 The RPS was made operative on 24 April 2013. We are satisfied that Chapter 8 gives effect to the most relevant “open space” provisions in the RPS including those that relate to amenity, natural character and recreation values, including:
- (a) Objective 3, Policy 4, Policy 35 - coastal environment;
  - (b) Policy 19, Policy 43 - rivers and lakes;
  - (c) Policy 21 - historic heritage;
  - (d) Policy 23 - indigenous ecosystems;
  - (e) Policy 25 - outstanding natural features and landscapes;
  - (f) Policy 27 - special amenity landscapes;
  - (g) Policy 36 - areas with high natural character
  - (h) Policy 53 - public access;
  - (i) Policy 56 - management of development in rural areas; and
  - (j) Policy 57 - integration of land use and transportation.
- 11.12 In addition, we are confident that the provisions of Chapter 8 will go a considerable way in promoting Policy 67 of the RPS which recognises that open space management is part of

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<sup>41</sup> We also note that Council has an obligation to continue to monitor housing needs and demands against supply - particularly given the NPS-UDC requirements - and is able to review and update the district plan provisions as appropriate through future RMA Schedule 1 processes.

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achieving a compact, well-designed and sustainable regional form. That policy notes that: “*The region’s open space network has helped define the region’s existing urban form and is a fundamental element of quality of life for residents ... Policy 67 seeks to enhance the role of the region’s open space network in supporting the region’s compact form. This will require authorities to work together and identify gaps and opportunities*”. We understand “*authorities*” in the context of this policy include Greater Wellington Regional Council, the Department of Conservation and Kapiti Coast District Council. In this respect, we accept that the role that Council is undertaking with the open space provisions in Chapter 8 is within the ambit of their functions under the RMA.

- 11.13 To the extent that we have scope to make amendments through the relief of submissions received, we have amended the PDP in order to further give effect to the RPS.

***In relation to Regional Plans, is the PDP inconsistent with the operative Regional Plans, and has regard been given to the proposed Natural Resources Regional Plan?***

- 11.13 In our evaluation, the PDP is not inconsistent with any Regional Plan. We have had regard to the proposed Natural Resources Regional Plan, and do not consider any amendments to the PDP are necessary as a result.

***Does the PDP satisfy the necessary requirements in relation to relevant plans and strategies under other acts, including the Heritage New Zealand Puhure Taonga Act 2014, plans of adjacent territorial authorities and plans of iwi authorities?***

- 11.15 We have applied appropriate consideration of these matters in amending the PDP policies, rules and other methods, including (for example) in relation to historic heritage and matters of significance to iwi.

- 11.16 We consider these requirements are met by the PDP

***Does the PDP state objectives, policies, rules and other methods?***

- 11.17 This general requirement has been satisfied by the notified PDP and as amended by our evaluation and recommendations.

***Is each objective the most appropriate way to achieve the purpose of the RMA?***

- 11.18 No objectives are considered as part of this decision. We have found in our Decision Report 2 that the PDP objectives, as amended by our recommendations, are the most appropriate to achieve the purpose of the Act.

***Do the policies implement the objectives, do the rules implement the policies, and are the policies and rules the most appropriate for achieving the objectives?***

- 11.19 This has been the primary focus of our report. In considering how the policies implement the objectives and in how the methods implement the policies, we were greatly assisted by the cascade and logic tables prepared by Council Officers. Those tables confirmed the

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appropriateness of various amendments we made through our deliberations, and highlighted areas where additional refinement was required.

- 11.20 In terms of the above, Chapter 8 primarily implements five Objectives in the PDP:
- (a) Objective 2.2 Ecology and Biodiversity;
  - (b) Objective 2.8 Strong Communities;
  - (c) Objective 2.9 Landscape;
  - (d) Objective 2.11 Character and Amenity Values; and
  - (e) Objective 2.18 Open Spaces / Active Communities.
- 11.21 The main method of giving effect to these PDP policies is through the spatial distribution of four zones as follows:
- (a) the Recreation Zone which comprises the District's sportsgrounds and destination parks. These areas are relatively large and serve people from a wide area;
  - (b) the Local Parks Zone which contains local neighbourhood parks, cemeteries and some active transport corridors which primarily serve local, day-today open space, cultural and recreational needs;
  - (c) the Conservation and Scenic Zone which comprises land which is generally in a natural state, and includes very large areas of land such as Kāpiti Island and Tararua Forest Park. Landscape and conservation values are of particular importance for the Zone. This Zone also includes some areas of land areas of land used for production forestry; and
  - (d) the Private Recreation and Leisure Zone. This Zone covers the District's golf courses and may also include other privately-owned facilities which contribute to the District's overall open space and recreation resource,
- 11.22 We are satisfied that the location of these zones and the provisions within them are both adequate and appropriate for implementing the above policies whilst at the same time managing effects on the environment. This is critical given that some open space areas serve multiple purposes, but the general character of all open space land is defined by the relatively minor presence of buildings and structures and by the presence of areas that facilitate either passive or active recreation. The rules in the Open Space Zones recognise and provide for appropriate levels of scrutiny for new buildings.
- 11.23 Each of the amendments to the policies and methods we have proposed has been assessed in terms of its efficiency and effectiveness of implementing the higher order provision(s) to which they relate. For the reasons we have provided above, we consider that the proposed policies are the most appropriate for implementing the objectives and the rules are the most appropriate for implementing the policies.

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***Do the PDP rules have sufficient regard to actual and potential environmental effects?***

- 11.24 This is an additional consideration which has factored heavily in our evaluation of the issues under Part B. As per our conclusion in relation to the efficiency and effectiveness of the proposed policies, rules and methods, we find that these provisions will appropriately manage any actual and potential adverse effects. This will be through both the establishment of appropriate limits for permitted activities, and through the consideration of future resource consent applications.
- 11.25 The majority of land zoned Open space is in public ownership. The only privately-owned land affected by the Open Space zoning is all covered by the Private Recreation and Leisure Zone, which only applies to the District's golf courses. A small amount of Open Space (Conservation and Scenic) Zone land is used for production forestry, but the land is owned by the Council and leased to operators.
- 11.26 The significance of the above is that the particular matter we wish to draw attention to is the provision for a 'development precinct' at the Paraparaumu Beach Golf Course. The Paraparaumu Beach Golf Club sought a number of amendments to recognise that the golf club fulfils a recreation opportunity and facility for the community whilst being in private ownership. The Club's submission requested that the PDP be amended to enable that precinct. We have recommended in favour of that because not only will it assist in promoting the objectives and policies of the Plan in respect to recreation pursuits on open space land, but also because the rule framework for that Zone has been designed to ensure that any effects arising from the built form of development is contained within boundaries of the Zone.

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**PART D - RECOMMENDATIONS****12 Recommendations**

12.1 Based on our consideration of all the material before us, including the Kapiti Coast Proposed District Plan 2012 (PDP) as notified including the Section 32 reports, the submissions and further submissions, Section 42A report from the Council advisors, evidence and submissions presented at the hearing, and following consideration of the requirements of Clause 10(2)(a) and Section 32 and of other relevant statutory matters, we make the following statutory recommendations:

- (a) That Council adopt the recommendations of the Hearings Panel in respect of Chapter 8 (Open Space) of the PDP as outlined in the Hearings Panel Report dated 11 September 2017.
- (b) That Council approve Chapter 8 (Open Space) of the PDP as amended in Appendix 1 and for the reasons stated in the report and that accordingly all submissions and further submissions on Chapter 8 (Open Space) of the PDP be accepted, accepted in part or rejected to the extent set out above and summarised in Appendix 2.
- (c) That pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991 Council give public notice of its decision on submissions and further submissions on Chapter 8 (Open Space) of the PDP.



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Alistair Aburn (Commissioner and Chair)

for and on behalf of the Kapiti Coast Proposed District Plan Hearings Panel

Commissioner Alistair Aburn  
Commissioner Diane Ammundsen  
Commissioner Miria Pomare  
Commissioner David McMahon  
Commissioner Mike Cardiff

11 September 2017

## **Appendix 1**

Volume 1 - Plan

Volume 2 - Appendices

Volume 3 - Maps

## Appendix 2

Recommendations on Submission and Further Submissions to Chapter 8 (Open Space)

