

**HEARINGS PANEL REPORT AND RECOMMENDATIONS**

**ON THE**

**PROPOSED KĀPITI COAST DISTRICT PLAN 2012**

**Chapter 11 Infrastructure, Services and Associated  
Resources Use: Community Facilities**

Report 15 of 16

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

**on the**

**Proposed Kāpiti Coast District Plan 2012: Chapter 11  
Infrastructure, Services and Associated Resources Use:  
Community Facilities**

**Report 15 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 11 Infrastructure, Services and Associated Resources Use: Community Facilities

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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 11 of the PDP dealing with Community Facilities.
- 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.

- 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 of the structure of each decision report is contained later in this section and also in Section 5 of this report.
- 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. Whilst 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 planners' 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 the 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 submitters to 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 submitters 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 leading up to the hearing. 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 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 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 that procedural meeting. 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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1.20 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)

1.21 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**

1.22 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 Match 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.

1.23 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 Community Facilities

### Role of Chapter

- 2.1 Section 8 of Chapter 11 is the main section for managing activities and development in terms of community facilities. It contains policies and rules that apply to all zones in the District.
- 2.2 Community facilities include a wide range of both public and private facilities and include places of worship, recreation, school and community centres, halls and meeting places, and those offering medical, voluntary and welfare services. Community facilities also include marae, which often include multiple buildings and different components of Māori culture. Key to this Chapter is the definition of Community Facilities which is:

the use of land and buildings by the public for the purposes of welfare, care, safety and culture.

Community facilities include:

1. Multi-purpose community halls;
2. Places of worship;
3. Civic offices;
4. Community centres;
5. Community libraries;
6. Display of information to the public;

7. Community museums;
8. Community galleries;
9. Courthouses;
10. Emergency service facilities;
11. Hospitals;
12. Marae and other cultural facilities.
13. Public toilets;
14. Plunket rooms and rooms where information, counselling advice or similar assistance conducive to welfare is provided.

For the avoidance of doubt, any offices and storage areas required to operate the facility form part of the community facility, but the community facility does not include any other retail, industrial or commercial activities. A community facility does not include probation or detention centres or prisons.

- 2.3 The Chapter applies to purpose-built community facilities as well as activities established in converted or existing buildings. Larger facilities may provide a greater range and intensity of services or cater for a wider catchment, but are likely to generate greater environmental impacts and therefore require more intensive control.
- 2.4 The Chapter primarily implements Objectives: 2.1 Tāngata whenua, 2.8 Strong Communities, and 2.18 Open Spaces / Active Communities.
- 2.5 We acknowledge that the PDP is required to give effect to relevant higher order statutes and instruments. We understand the most relevant provisions in the Wellington Regional Policy Statement include those that relate to social services and Tāngata whenua, including:
- (a) Objective 22(l) essential social services to meet the region's needs; and
  - (b) Policy 49 Recognising and providing for matters of significance to Tāngata whenua.
- 2.6 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.
- 3.7 We return to these matters later in Section 7 of this report when we outline the statutory requirements of the RMA.

## Summary of Community Facilities Provisions

- 2.8 Section 8 of Chapter 11 of the PDP contains policies and rules that apply across the District, irrespective of zone. The focus of this section is to manage activities and structures associated with community facilities.

- 2.9 The initial section of the Chapter contains a description of the variety of activities that are covered by the term community facility. The introductory text outlines why community facilities are important and acknowledges their contribution to the community. It identifies some of the effects of design of the buildings, as well as effects associated with concentrations of people, hours of operation, glare, and the generation of traffic and parking pressures.
- 2.10 There are four policies addressing the following matters:
- (a) development and operation;
  - (b) marae;
  - (c) neighbourhood amenity; and
  - (d) assessment criteria.
- 2.11 The Section contains rules to manage both the buildings / structures, as well as the activity itself. They cover:
- (a) new community facilities;
  - (b) extension of existing community facilities buildings; and
  - (c) community facilities which exceed the specified standards.

### **3 Submissions**

- 3.1 As noted in the Section 42A report<sup>6</sup>, there were four submissions received regarding community facilities. We note Chapter 11 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.
- 3.3 Submissions received sought a range of outcomes, with most submissions seeking amendments to the Chapter 11 provisions.

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<sup>6</sup> s42A Report: Part B - Chapter 11, Infrastructure, Services and Resource Use, Gina Sweetman and Rebecca Lloyd - 6 July 2016.

## 4 The Hearing

- 4.1 Although 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 was the most effective process with regards to integrated management and consistency through the Plan. As a result, the Panel convened an all of plan integration hearing to canvas these matters, with an integration being held at the end of the hearings schedule.
- 4.2 We note that a number of submitters either attended or submitted written evidence for the General/Plan-wide hearing that had relevance to Chapter 11. We have considered their submissions in our decision-making.
- 4.3 The hearing for community facilities was held as part of the Chapter 11 Infrastructure hearing and spanned two days, being Monday 15 August 2016 and Tuesday 16 August 2016 at Council Chambers, Civic Building, 175 Rimu Road, Paraparaumu.
- 4.4 We received a joint Section 42A report from Ms Gina Sweetman and Ms Rebecca Lloyd, and a closing statement incorporating input from both authors. We note from the officer's opening statement that Ms Lloyd was the primary author of the community facilities section of the Section 42A report.<sup>7</sup> This was circulated to submitters on this Chapter and made available on Council's website.
- 4.5 We did not receive any written evidence from any of the submitters on the matter of community facilities, nor did any attend the hearing.
- 4.6 We heard from Ms Lloyd as the Council advisor on the matter of community facilities. Following completion of the hearing on Chapter 11 Infrastructure, Ms Sweetman and Ms Lloyd drafted a closing statement which was made public on the Council's website. Having reviewed all the material, we are satisfied that the responses were complete and answered our questions.
- 4.7 Although not specific to just Chapter 11, there was an issue as to whether the chapter-by-chapter approach embodied in the PDP (and also adopted for the purpose of hearing submissions), represented the most effective process. In response to these concerns, we directed a 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 Panel required four separate sittings to complete the Whole of Plan Integration Hearing. The first siting commenced for two days being

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<sup>7</sup> Paragraph 2.4, Section 42A Report Overview: Chapter 11 Infrastructure, Services and Resource Use.

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

- 4.8 For all parties who presented to us at the various fixtures, 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 hearing satisfied any outstanding matters on Chapter 11 Infrastructure, services and associated resource use.

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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>8</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.
- 5.1 Where we do not refer to a specific submission or further submission topic or recommended amendment to Chapter 11 (Community Facilities) 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.
- 5.2 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 11 (Community Facilities) provisions, and our recommendations on all Chapter 11 (Community Facilities) submissions and further submissions, are contained in Appendix 1 and Appendix 2 respectively.
- 5.3 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.
- 5.4 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.
- 5.5 We have organised our discussion of issues under a single heading “General Community Facilities Matters”.

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<sup>8</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.



## Evaluation Preamble - Statutory Framework

### Context

- 5.6 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.
- 5.7 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 Section 32 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

- 5.8 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>9</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 provided in *Colonial Vineyard Ltd v Marlborough District Council*.<sup>10</sup>
- 5.9 The framework established by the Court sets out the relevant decision-making framework as follows:

#### **General requirements**

- a. the Plan should be designed to accord with,<sup>11</sup> and assist Council to carry out its functions<sup>12</sup> so as to achieve the purpose of the Act;<sup>13</sup>
- b. when preparing/changing the Plan, Council must:
  - i. give effect to any NPS<sup>14</sup>, the NZCPS<sup>15</sup> or any RPS;<sup>16,17</sup>

<sup>9</sup> Decision No. A 078/2008.

<sup>10</sup> Decision No. [2014] NZEnvC 55.

<sup>11</sup> s74(1), RMA.

<sup>12</sup> s31, RMA.

<sup>13</sup> ss 72, 74(1), RMA.

<sup>14</sup> National Policy Statement

<sup>15</sup> New Zealand Coastal Policy Statement

<sup>16</sup> Wellington Regional Policy Statement

- ii. have regard to any *proposed* RPS;<sup>18</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>19</sup>
  - iv. take into account any relevant planning document recognised by an iwi authority;<sup>20</sup>
  - v. not have regard to trade competition or the effects of trade competition;<sup>21</sup>
  - vi. be in accordance with any regulation;<sup>22</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>23</sup> and
  - ii. shall have regard to any proposed regional plan on any matter of regional significance;<sup>24</sup>
- d. the Plan must also state its objectives, policies and the rules (if any) and may state other matters;<sup>25</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>26</sup>

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

- f. the policies are to implement the objectives, and the rules are to implement the policies;<sup>27</sup>
- 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>28</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>29</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>30</sup>

### **Rules**

- h. in making a rule, Council shall have regard to the actual or potential effect of activities on the environment;<sup>31</sup>
- i. rules have the force of regulations;<sup>32</sup>

<sup>17</sup> s75(3)(a)-(c), RMA.

<sup>18</sup> s74(2), RMA.

<sup>19</sup> s74(2)(b)-(c), RMA.

<sup>20</sup> s74(2A), RMA.

<sup>21</sup> s74(3), RMA.

<sup>22</sup> s74(1), RMA.

<sup>23</sup> s75(4), RMA.

<sup>24</sup> s74(2)(f), RMA.

<sup>25</sup> s75(1)-(2), RMA.

<sup>26</sup> s74(1) and s32(3)(a), RMA.

<sup>27</sup> s75(1), RMA.

<sup>28</sup> s32(3)(b), RMA.

<sup>29</sup> s32(4), RMA.

<sup>30</sup> s32(3A), RMA.

<sup>31</sup> s76(3), RMA.

<sup>32</sup> s76(2), RMA.

- 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>33</sup>
- k. there are special provisions for rules about contaminated land;<sup>34</sup>
- l. there must be no blanket rules about felling of trees<sup>35</sup> in any urban environment<sup>36</sup>; and

**Other Statutes**

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

5.10 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.

### **The Applicable Section 32 Framework**

- 5.11 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>37</sup> as opposed to the version of Section 32 as it currently sits.
- 5.12 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.
- 5.13 We record that the Council 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.
- 5.14 The next juncture when an evaluation is required by the Act is before making the Decision referred to in (b) above.
- 5.15 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.
- 5.16 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

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

<sup>34</sup> s76(5), RMA.

<sup>35</sup> s76(4A), RMA.

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

<sup>37</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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evaluation required under Section 32(2). Nor is there an express requirement in the applicable version of Clause 10 of Schedule 1 of the Act for the Decision to address Section 32 matters.

- 5.17 This position differs from Clause 10 as it is currently worded in the Act (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.
- 5.18 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.
- 5.19 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.
- 5.20 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**

- 5.21 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.
- 5.22 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>38</sup>
- 5.23 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

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<sup>38</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.

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Working Zones and we have picked up those matters where relevant in Chapters 5 and 6, but again within the scope of submissions.

- 5.24 The NZCPS is particularly relevant for the Kapiti Coast District, where a large proportion of the urban environment is located close to the coastal. The NZCPS sets out a number of objectives and policies which have relevance to the District's Living Environment (Zones). These include:
- (a) Objective 2: To preserve the natural character of the coastal environment and protect natural features and landscape values;
  - (b) Objective 6: To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development;
  - (c) Policy 6: Activities in the coastal environment; and
  - (d) Policy 7: Strategic Planning.
- 5.25 The NZCPS provides a strong direction on managing the coastal edge in a way that recognises the potential effects of climate change and the need for communities to adapt over time. This is relevant to residential areas along the coast. There is a clear directive in the NZCPS to manage "*inappropriate*" development. Chapter 4 (Coastal Environment) of the PDP is the primary means by which the Plan gives effect to these NZCPS provisions; however, Chapter 5 includes policies and rules that relate to and integrate with the Chapter 4 provisions.
- 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>39</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 Statement 1999 by Section 75(3)(c) of the Act. 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 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 now *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

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<sup>39</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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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 General Community Facilities 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 11 (Community Facilities) 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 use by the report writers.
- 6.3 Our recommendations on all Chapter 11 (Community Facilities) 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 Eight submission points were received from four submitters were received on the Community Facilities section of Chapter 11. There were no further submissions.
- 6.5 There were no common themes evolving from the submissions, each addressed a different matter. The submissions pertained to:
- (a) correcting minor errors;
  - (b) the definition of community facilities;
  - (c) Rule 11D.3.1 relating to all zones except in Open Space Zones;
  - (d) replacement of the assessment criteria in favour of those listed in Policy 11.40;
  - (e) extension of existing facilities; and
  - (f) references to increased nuisance effects.

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## Evidence and Evaluation

- 6.6 Although we did not hear any evidence on the matters addressed in the submissions, we have carefully considered the analysis and recommendations in the Section 42A report.
- 6.7 Kapiti Coast District Council made several submissions on this section to correct minor errors. These included:
- (a) amend the note at the end of the community facilities definition to add “*unless specifically provided for in rules and standards 11D*” after the words “*commercial activities*”;
  - (b) amend the title for Section 11.7.2 to “*Community Facility Policies*”; and
  - (c) amend Policy 11.40 Clause f) to change “*disabled people*” to “*people with disabilities*” and add the words “*where appropriate*” at the start of clause j).
- 6.8 We agree that correcting the minor errors as set out in the submission from the Kapiti Coast District Council [440.77 and 440.78] are appropriate and recommend that these minor amendments are made.
- 6.9 Grey Power [480.9] supported “*places of worship*” being included in the definition of Community Facilities. We acknowledge this support and recommend no amendments in response to this submission.
- 6.10 Hope Centre Church [134.4] requested that Rule 11D.3.1 be amended to relate to community facilities in all zones except in Open Space Zones. We consider the effects need to be able to be assessed and a restricted discretionary activity status will ensure these are considered. We are aware that sites zoned as Open Space are likely to be Council-owned and, as these are essentially public areas, we think it is appropriate that community facilities are assessed through a resource consent process. We therefore recommend that Rule 11D.3.1 be retained (renumbered to be Rule 11F.3.1) to relate to community facilities in Open Space Zones.
- 6.11 Hope Centre Church [134.5] also requested that the assessment criteria associated with Rule 11D.4.1 be removed and that the matters outlined in Policy 11.40, with the exception of point (a), be used as assessment criteria instead. We agree with that assessment criteria for a discretionary activity are not necessary and recommend their deletion. We therefore recommend deletion of the assessment criteria from Rule 11D.4.1 (to be renumbered as Rule 11F.4.1).
- 6.12 Hope Centre Church [134.6] requested that the permitted activities be amended to include the extension of a community facility that existed at the time the PDP was notified, and where the extension will occur within the footprint and complies with all other standards applicable to the zone. We have considered this submission with regards to extensions of a community facility within the existing footprint and it is not clear what relief the submitter is seeking. We note Rule 11F.1.2 enables extensions to existing community facilities within the building footprint specified in 11F.1.2.2. as a permitted activity. We also note the permitted activity status relies on standards being met including not being located in the any Rural Zone or any Open Space Zone

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(except marae in the Rural Zone), maximum gross floor area and landscaping. If the extension to the existing activity is unable to comply with these standards, we consider a resource consent application is appropriate to allow the effects to be assessed. We therefore do not recommend any amendments in response to this submission as we consider Rule 11D.1.2 (renumbered as Rule 11F.1.2) already provides for extensions.

- 6.13 Michelle Lewis [147.22] raised concerns regarding the statement on page 11-115 which said: "*cumulative effects particularly increased nuisances, where community facilities are clustered in residential areas as they should be scattered throughout and more community facilities in residential areas would reduce people's needs to travel by motorised means*". We agree with deleting the term "*increased nuisances*" from the Introductory text as this is adequately covered by the term "*community effects*". We therefore recommend the following amendment to the Introductory text:

The operation of *community facilities* can give rise to *effects* associated with concentrations of people, hours of operation, glare and the generation of traffic and parking pressures. Where facilities are located on busy *roads* or intersections, community safety, noise and air pollution need to be taken into account. Some *community facility buildings* can be obtrusive in scale and character in relation to surrounding *development*. There is also potential for cumulative *effects*, ~~particularly increased nuisances~~, where *community facilities* are *clustered* in residential areas.

## Findings

- 6.14 We recommend the provisions for Community Facilities are largely retained for the reasons outlined above and as outlined in Appendix 1, although recommend the following amendments:
- (a) minor amendments to the Introductory text to remove reference to "*increased nuisance effects*";
  - (b) amend Policy 11.40(f) to refer to "*people with disabilities*";
  - (c) rationalisation and simplification of the Explanations to the policies;
  - (d) amendments to clarify the permitted activity standards;
  - (e) delete the assessment criteria for Rule 11D.4.1 (to be renumbered as 11F.4.1);
  - (f) minor wording changes for clarity; and
  - (g) minor amendments to the rules for consistency with the rest of the PDP.
- 6.15 For the reasons discussed in Evidence and Evaluation, those submissions relating to the provisions in Chapter 11.8 are either accepted, rejected or accepted in part as outlined in Appendix 2.



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**PART C – STATUTORY EVALUATION****7 Statutory Evaluation**

7.1 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.

7.2 We acknowledge the analysis undertaken by reporting authors at notification of the PDP and further analysis 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 of that material, 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?***

7.3 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.

7.4 In respect to that part of Chapter 11 of the PDP dealing with community facilities, we note that Section 8 contains policies and rules that apply across the District, irrespective of Zone. The focus of this Section is to manage activities and structures associated with community facilities.

7.5 The initial part of Section 8 contains a description of the variety of activities that are covered by the term community facility. The introductory text outlines why community facilities are important and acknowledges their contribution to the community. It identifies some of the effects of design of the buildings, as well as effects associated with concentrations of people, hours of operation, glare, and the generation of traffic and parking pressures.

7.6 We find that the content of Section 8 of Chapter 11, including the amendments that we have made to the provisions, will assist the Council to carry out its functions in respect to the provision for, and the management of, community facilities so as to achieve the sustainable management purposes of the RMA, particularly those matters covered by Section 5 of that Act.

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

- 7.7 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>40</sup>
- 7.8 Very few amendments have been recommended to the notified policies, rules and other methods in the PDP dealing with community facilities as we believe the notified provisions more than adequately implement these higher order documents.
- 7.9 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?***

- 7.10 The current Wellington Regional Policy Statement (RPS) was made operative after the PDP was notified. We acknowledge that the PDP is required to give effect to relevant higher order statutes and instruments. Based on our evaluation contained in Part B of this report, we find that Section 8 of Chapter 11 dealing with community facilities gives effect to the most relevant provisions in the RPS, including those that relate to social services and Tāngata whenua, namely:
- (a) Objective 22(l) essential social services to meet the region's needs; and
  - (b) Policy 49 recognising and providing for matters of significance to Tāngata whenua.
- 7.11 To the extent that we have scope to make amendments through the relief of submissions received, we have made minor amendments to Chapter 11 of the PDP in order to give further 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?***

- 7.12 In our evaluation, that part of the PDP dealing with community facilities is not inconsistent with any Regional Plan. We have also 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 Pouhere Taonga Act 2014, plans of adjacent territorial authorities and plans of iwi authorities?***


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<sup>40</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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- 7.13 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.
- 7.14 We consider these requirements are met by the community facilitate provisions within Chapter 11 of the PDP. In particular, we note that community facilities also include marae, which often include multiple buildings and different components of Māori culture. Such facilities, along with other cultural facilities, are an integral part of the definition of community facilities are therefore generally enabled throughout the District.

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

- 7.15 The Chapter does not include any Objectives as all the Plan Objectives are contained within Chapter 2. Notwithstanding this, it is clear to us that the Chapter primarily implements the following three PDP Objectives:
- (a) Objective: 2.1 Tāngata Whenua,
  - (b) Objective 2.8 Strong Communities, and
  - (c) Objective 2.18 Open Spaces / Active Communities.
- 7.16 The Chapter has four policies aimed at implementing the aforementioned Objectives and thereby addressing the following aspects of the community facilities portfolio:
- (a) development and operation;
  - (b) marae;
  - (c) neighbourhood amenity; and
  - (d) assessment criteria.
- 7.17 The Section also contains rules to manage both the buildings / structures, as well as the activity itself. The rules cover:
- (a) new community facilities;
  - (b) extension of existing community facilities buildings; and
  - (c) community facilities which exceed the specified standards.

- 7.18 On the above basis, we find that the PDP clearly states objectives, policies, rules and other methods in respect to the provision for and management of community facilities.

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

- 7.19 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?***

- 7.20 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 appropriateness of various amendments we made through our deliberations, and highlighted areas where additional refinement was required.
- 7.21 We were particularly mindful that in terms of the implementation cascade between objectives, policies and rules, that community facilities include a wide range of both public and private facilities and include places of worship, recreation, school and community centres, halls and meeting places, and those offering medical, voluntary and welfare services.
- 7.22 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.

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


- 7.23 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.
- 7.24 We specifically note that this Chapter applies to purpose-built community facilities as well as activities established in converted or existing buildings. Larger facilities may provide a greater range and intensity of services or cater for a wider catchment, but are likely to generate greater environmental impacts and therefore require more intensive control. The provisions acknowledge that difference in scale and the rules are tailored accordingly.

## PART D - RECOMMENDATIONS

### 8 Recommendations

8.1 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 11 (Community Facilities) of the PDP as outlined in the Hearings Panel Report dated 11 September 2017.
- (b) That Council approve Chapter 11 (Community Facilities) 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 11 (Community Facilities) 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 11 (Community Facilities) 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 McMahan  
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 11 (Community Facilities)