

MEMO

edocs 269776

TO: Waiorua trust
CC: Jim Webber
FROM: Jim Ebenhoh, Sustainable Development Manager, Kapiti Coast District Council
DATE: 26 April 2012

SUBJECT: District Plan Review - Kapiti Island

On Tuesday evening 17 April 2012, Jim Ebenhoh (Sustainable Development Manager) and James Kilbide (Policy Planner) met with representatives from Waiorua trust to discuss the District Plan Review and how this relates to land management on Kapiti Island.

A brief summary of the conversation is as follows

- Rural zoning not appropriate. Currently 12 hectares (30 acres) and only 16 houses.
- Under residential zoning, approximately 130 houses
- Building permits to Minister of Conservation?
- Department of Conservation (DOC) powers (veto etc) re: Kapiti Island
- Māori Land – Te Ture Whenua Act? Applies to Kapiti?
- Māori Reservation Zone?
 - Special Precinct?
- Local Outcomes statement
- Iwi/Hapu Management Plan?
- JK to email handout re: Operative District Plan text regarding Kapiti Island to group (edocs 268757 -)
- Neighbouring landowners (DOC) operates under the Reserves Act and therefore limits use of northern end (eg. live stock not permitted).
- Options to remove Kapiti Island from any zoning (KCDC jurisdiction).

Background/context

The current (Operative) District Plan was developed following the introduction of the Resource Management Act in 1991 and was notified in 1996 and became operative in 1999. A review of the operative District Plan began in 2009 and everything that hasn't been changed in the past 10 years, plus anything required by other legislation or mandatory RMA documents including: National and Regional Policy Statements and National Environmental Standards will form part of the Review.

Kapiti Island is zoned rural in the operative District Plan and the current District Plan provisions relating to Kapiti Island permit the 16 dwellings on Kapiti Island and off-shore Islands. This does not prohibit further development but makes any proposal for a further dwelling a discretionary resource consent. A discretionary activity resource consent may or may not be publicly notified and may or may not be approved.

Papakāinga housing is defined in the operative District Plan as *communal housing, often based around a marae and consisting of members of an extended family* and is a discretionary activity on Kapiti Island. However, the standards which must be met include the permitted activity standard allowing a maximum of 16 dwellings on Kapiti Island. This means that any proposal for a new dwelling would jump to a non-complying activity.

A non-complying activity is any activity which is listed in the rules as a non-complying activity or which contravenes any one or more of the discretionary activity standards. A non-complying activity also requires a resource consent which may or may not be approved. If the effects of the proposed activity are deemed to be more than minor or if the application is contrary to objectives and policies of the District Plan, then the consent will be declined.

In general a non-complying activity applications will be publicly notified and often be declined and should only be granted in exceptional circumstances.

Issues raised at meeting – grouped by topic

1. Zoning

Zoning is a long-used technique used to divide areas of land or water into distinct areas in order to manage effects, activities or uses. Zoning can be [described](#) as allowing the district plan to create bundles of activities considered generally appropriate in each zone or area, while recognising the constraints of the environment and that some activities may not be appropriate in every location.

a. Māori Reservation Zone

A Māori Reservation Zone could be the name of a zone in the District Plan which is specific to a given area (eg. the northern end of Kapiti Island). The rules and standards relating to the zone dictate what activities can be undertaken rather than name of the zone in which Kapiti Island is part of.

To make the land a Māori Reservation under the Māori Reserved Land Act 1955. An application must be made to the Māori Land Court. The [process](#) to do this is different from other Māori Land Court application processes.

It's not clear to me the advantages (or disadvantages) of making the Northern End of Kapiti Island Māori Reservation land. It seems that the Māori Reserved Land Act would benefit some land under differ circumstances, however there are no clear effects on this relating to the District Plan and thererfore wherether the land is or isn't Māori Reservation land will not change how the land is managed under the RMA (and District Plan).

b. Special Precinct

Precints are essentially sub-zones. The area would still have to fit within a zone but if it's a somewhat generic (district wide) zone, some more spefic provsions (rules/standards) can be applied through the use of a precint overlay.

c. Options to remove Kapiti Island from any zoning (KCDC jurisdiction)

I'm not sure if this is a viable option in the context of the District Plan Review. To be honest I'm not sure about the legal requirements for land to be part of a territorial or national (eg. DOC) authority.

d. Zone discussion summary

General information on [zoning](#) can be found at the Quality Planning [website](#). A few useful extracte follow:

In considering the rezoning of land the test is whether the zoning is appropriate for the purpose of, and in terms of, the RMA. An argument based on whether an alteration to the zoning given to land under previous legislation is justified, is unsound. The Court (Cornwall Trust Board v Auckland City Council [1997] A058/97.)accepted that when deciding on zoning it is usual to look at existing uses, but noted that the land in question had high environmental quality and amenity value. The Court found that the most appropriate zoning was that to achieve the objectives and policies of the proposed district plan.

Two questions are relevant:

- Does the proposed zoning achieve integrated management of the effects of the use, development, or protection of the land?
- Does it control the potential effects of the use, development, or protection of the land?

2. Department of Conservation (DOC)

The Department of Conservation (DOC) owns and manages most of Kapiti Island and operates under the Reserves Act.

The DOC whare at Rangatira subject to Conservation Plan management and considered a significant building due to being “intimately connected with New Zealand’s natural heritage conservation. ([Source](#) – pp. 37 [Kapiti Conservation Action Plan 2009–2014](#)).

Objective B (*Conservation values on Kapiti Island are protected and appreciated*) contains the following action point: Determine the carrying capacity for visitors to Kapiti Island and manage visitor numbers at that level (KZ4.B12).

I'm not sure if this has been achieved yet but interesting based on our discussion around the carrying capacity of the land for development.

- a. powers (veto etc) re: Kapiti Island

If consent is sought for private land on Kapiti Island – what rights do DOC have (under Reserves Act etc) to undermine development opportunities of local land owners?

- b. Building permits to Minister of Conservation?

Building Consents are required for any building work that occurs on Kapiti Island irrespective of whether it is on DOC land or private. They are not referred to the Minister of Conservation (on DOC land) as KCDC assumes the applicant would have previously obtained that approval.

- c. Neighbouring landowners (DOC) operates under the Reserves Act and therefore limits use of northern end (eg. live stock not permitted).

Check Reserves Act? I think it basically overrides the RMA.

3. Māori Land

- a. Te Ture Whenua Act - Applies to Kapiti?

I think the private land on Kapiti Island is Maori land <check/confirm – see Appendix 2 below>. Maori land is treated any differently under the District Plan provisions.

4. Methods to 'formalise' future plans of Kapiti Island

- a. Local Outcomes Statement

Local Outcomes Statements can be developed by a community without assistance/guidance from Council. An example of one is [here](#). To get Council endorsement, they must first be approved by the local community Board.

- b. Iwi/Hapu Management Plan

The Resource Management Act 1991 (RMA) describes an iwi management plan (IMP) as "...a relevant planning document recognised by an iwi authority and lodged with the council". Section 2 of the Act defines an iwi authority as "the authority which represents an iwi and which is recognised by that iwi as having authority to do so".

Quality Planning gives a good [overview](#) of Iwi management plans. The advantage over a Local Outcomes Statement is that endorsement by the Community Board isn't required. However, other relevant tribes are required to approve that the iwi/hapu management plan is regarding an area which that group has authority to manage (ie. Maybe Ngati Toa would need to "sign-off" on an iwi/hapu management plan for [Kapiti Island?](#)).

An iwi management plan (IMP) is a term commonly applied to a resource management plan prepared by an iwi, iwi authority, rūnanga or hapū.

IMPs are generally prepared as an expression of rangatiratanga to help iwi and hapū exercise their kaitiaki roles and responsibilities. IMPs are a written statement identifying important issues regarding the use of natural and physical resources in their area.

While the Resource Management Act 1991 (RMA) does not define IMPs, it refers to these plans as 'planning documents recognised by an iwi authority'. More information is available at: [What is the statutory recognition for an iwi management plan?](http://www.qp.org.nz/plan-topics/faq-iwi-management.php)

IMPs are often holistic documents that cover more than RMA matters (see How do I know if an iwi management plan has been 'recognised by an iwi authority?'). They may assume a variety of shapes and forms; from formal planning documents similar to council policy documents, to informal statements of iwi policies, or a series of detailed memos or reports.

Source: <http://www.qp.org.nz/plan-topics/faq-iwi-management.php>

Appendix 1 – Relevant RMA definitions:

iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so

tangata whenua, in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area

35A Duty to keep records about iwi and hapu

(1) For the purposes of this Act or regulations under this Act, a local authority must keep and maintain, for each iwi and hapu within its region or district, a record of—

- (a) the contact details of each iwi authority within the region or district and any groups within the region or district that represent hapu for the purposes of this Act or regulations under this Act; and
- (b) the planning documents that are recognised by each iwi authority and lodged with the local authority; and
- (c) any area of the region or district over which 1 or more iwi or hapu exercise kaitiakitanga.

74 Matters to be considered by territorial authority

(2A) A territorial authority, when preparing or changing a district plan, must—

- (a) take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district;

Appendix 2 – Map of Kapiti Island showing areas of differing land management

