

Mayor and Councillors
COUNCIL

5 FEBRUARY 2013

Meeting Status: **Public**

Purpose of Report: For Decision

COASTAL HAZARDS: CLOSING DATE FOR SUBMISSIONS AND APPOINTMENT OF COMMISSIONERS

PURPOSE OF REPORT

- 1 This report seeks approval from Council in relation to the future administration of the formal public engagement process¹ on the Proposed Kāpiti Coast District Plan 2012 (“the proposed Plan”) to:
 - extend the time limit for submissions to Chapter 4 (Coastal Environment) of the District Plan; and
 - resolve to appoint independent commissioners to preside over the hearing of submissions on the proposed coastal hazard provisions.

SIGNIFICANCE OF DECISION

- 2 This report does not trigger the Council’s Significance Policy.

BACKGROUND

- 3 On 22 November 2012, the Council’s Regulatory Management Committee resolved to publicly notify the proposed Plan. The Committee also authorised a 13 week submission process, commencing on 29 November 2012 and closing on 1 March 2013. This timeframe allowed for an additional two weeks for submissions to be made over and above the 40-day minimum required under the Resource Management Act 1991 (“the RMA”).
- 4 Following notification, the District Plan Review Team held a series of four non-statutory public information sessions on the proposed plan – one session each at Ōtaki, Paekākāriki, Paraparaumu and Waikanae. Members of the public were invited to ask questions about the proposed Plan, how it may affect their property, and how to navigate the notification, submission and hearing processes associated with the Plan.
- 5 Though the number of attendees and the nature of issues raised varied at each session, the provisions relating to coastal hazards were raised by some coastal property owners at all four venues.

¹ As required under Schedule 1, RMA 1991

- 6 Some members of the public have recently suggested that additional time is required to adequately assess the policies and rules managing development within Coastal Hazard Management Areas and associated coastal erosion hazard information, and to make constructive submissions on these matters.
- 7 It should be noted that submitters do not have to prepare detailed evidence on their views but should focus on a statement of whether they support or oppose a particular provision (or are neutral) and indicate the grounds for their position. This can be relatively general statement. Nor do they have to engage technical experts to prepare detailed technical evidence (in relation to the coastal science if they are submitting on that matter) at this time. In effect, the submitter is formally securing a place in the process and is identifying the broad basis on which this was done. This was further clarified in the letters which went to coastal property owners just prior to Christmas and early in January 2013.
- 8 This message on what is needed to make a submission will continue to be reinforced. An independent 'Friend of the Submitter' style resource has also been appointed to help potential submitters (on all aspects of the proposed District Plan) with the submission process. This assistance is available to help people with how they might capture their views in a submission, what steps to take to have the submission lodged and how they may wish to present themselves at a hearing. That person cannot offer an opinion on District Plan content, what content should go in a submission or fill in a form on someone's behalf.

The hearing of submissions

- 9 Following the closing date for making submissions, a summary of the submissions received will be prepared and publicly notified. Once this further submission phase is closed, all submissions will be collated, and measures will be taken to organise the formal hearing of parties who indicate a desire to speak in support of submissions they have made.
- 10 The nature and extent of hearings and the question of makeup of hearing panels will not be able to be finalised until after the close of the submissions process. However, there will be submissions on the coastal hazard provisions in the District Plan and there is benefit in identifying early the approach Council wishes to take in relation to the hearing of these submissions. Staff have been in discussion with the Chair of the Regulatory Management Committee on this matter prior to Christmas and it is appropriate that this is also brought to Council for decision at this time.

CONSIDERATIONS

Extension of time for receiving submissions

- 11 Under the current timeframe enabled by the public notice, submissions will close on the proposed Plan at 4pm on 1 March 2013. The Council has the option to extend the time limit for receiving submissions relating to coastal hazard provisions and it is recommended that if it wishes to do so that it be for an additional four weeks (until 29 March). With this approach more time will be available for parties to gather additional information in respect of this highly complex issue, ultimately allowing for a more robust examination of the issues, and a more comprehensive overall result.
- 12 Although this places pressure on the process to a degree and is likely to push hearings on the Coastal Environment chapter into August 2013, it is possible to

make the extension work in terms of the wider timelines. It is not recommended that any other extension of time is introduced.

Appointment of Independent Hearing Commissioners

- 13 The Council's Governance Structure allows for District Plan hearings to be conducted by Elected Member commissioners, independent commissioners, or a combination thereof. Independent commissioners tend to be used when there is a need for specific technical expertise on the hearing panel or where Elected Members may have a perceived bias or potential conflict of interest. Coastal hazards are highly technical and it could be useful to have independent commissioners with hearing experience related to technical hazard management issues.
- 14 The recommendation is therefore that the hearing panel for submissions on the Proposed District Plan relating to the Coastal Environment chapter consists entirely of independent hearing commissioners. It should be noted that the final decision on adoption of the proposed District Plan remains with Council.
- 15 It may be possible for this set of commissioners to hear submissions on other natural hazard provisions in the Proposed District Plan (e.g. earthquake or flooding hazards), but at this stage it would be best to assess the number and type of submissions relating to the hazard provisions before making that decision.

Financial Considerations

Extension of time for receiving submissions

- 16 There will be an additional cost attributed with the granting of an extension of time for receiving coastal hazard submissions. These are:
 - a public notice must be placed in the local newspaper to formally notify the extension of time. This discharges formal responsibilities to the wider community but will also be followed up with general publicity;
 - all parties deemed to be directly affected by the extension must be notified of the change – at a minimum it will require another letter to the approximately 1800 ratepayers affected by coastal hazard provisions;
 - if the coastal hazards provisions are managed separately from all other proposed provisions from this stage, it will mean that there will be some duplication in costs associated with future public notices, reports and correspondence required for the further submission, hearing, decision and appeal components of the proposed Plan administration process; and
 - Additional expenditure on Council communications will be required to assist public understanding of the changes to the process.

Appointment of Independent Hearing Commissioners

- 17 There will be additional costs arising from the appointment of independent hearing commissioners for coastal hazards. Actual costs will depend on the length of the hearing based on the number of submissions received and the

number wishing to be heard, and the hourly rate of commissioners. Typical hourly rates for commissioners are between \$150 and \$250 per hour. A 40-hour week of hearings supplemented by an average of (say) 80 hours of reading and deliberation and recommendation-writing per commissioner could therefore cost somewhere between \$18,000 and \$30,000. This is a matter for consideration in the Annual Plan process.

Legal Considerations

Extension of time for receiving submissions

- 18 Schedule 1 of the RMA sets out the procedures to be followed for a change to a District Plan. Clause 1(2) of Schedule 1 enables Council to extend any time limit set out in the schedule, including the duration of time for receiving submissions.
- 19 S37A of the RMA is the primary reference when determining Council's requirements for granting an extension. Subsection (1) states that Council must not grant an extension unless it has taken into account:
- (a) *the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and*
 - (b) *the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and*
 - (c) *its duty under section 21 to avoid unreasonable delay.*
- 20 Clause (a) is the main driver in favour of granting the extension, as some property owners directly affected have sought an extension of time. Wider community interests (clause b) are not adversely affected by the extension of time. Insofar as clause (c) is concerned, an extension of four weeks is not considered to be unreasonable.
- 21 Clause 10(4) of Part 1 of Schedule 1 of the RMA requires Council to make a decision and publicly notify its decision on a proposed District Plan no later than two years after notification of that proposed Plan. The extension of four weeks is not considered to pose a significant risk in this regard although it will place some pressures on the process.

Appointment of Independent Hearing Commissioners

- 22 The appointment of independent hearing commissioners is allowed by the RMA and by Council delegations. Council delegations currently require the selection of commissioners to be made by the Chair of the Regulatory Management Committee in consultation with the Mayor, and for selections to be made from a pool of potential commissioners pre-approved by the Regulatory Management Committee. This pool of potential commissioners may need to be expanded to allow for the selection of commissioners with the required expertise regarding coastal hazards.
- 23 The Council is able to provide guidance to the Chair of the Regulatory Committee as to its preferred approach to the use of independent commissioners prior to detailed selection being undertaken.

Delegation

- 24 The Council has the authority to make this decision.

Consultation

25 This report's recommendations arise from matters raised to date through the District Plan Review consultation process.

Policy Implications

26 There are no policy implications.

Tāngata Whenua Considerations

27 There are no tāngata whenua considerations.

Publicity Considerations

28 A media release and other communications materials should be developed to promote the decisions.

RECOMMENDATIONS

29 That Council extends the time limit for accepting submissions on the Chapter 4 - Coastal Environment of the 2012 proposed District Plan (including any policies referred to in that chapter) for four weeks from 1 March to 29 March.

30 That Council resolves that independent commissioners only be used to preside over hearing of submissions associated with Chapter 4 - Coastal Environment of the 2012 proposed District Plan.

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