

Mayor and Councillors
COUNCIL

18 APRIL 2013

Meeting Status: **Public**

Purpose of Report: For Information

NOTICE OF MOTION: INFORMATION ON COASTAL EROSION HAZARDS AND THE DISTRICT PLAN REVIEW

PURPOSE OF REPORT

- 1 To provide background information in relation to the coastal erosion hazard as a precursor to consideration of the tabled Notice of Motion and proposed resolutions.

SIGNIFICANCE OF DECISION

- 2 This report does not trigger Council's significance policy.

BACKGROUND

- 3 In 2005, the Council commissioned a report on coastal erosion hazard to be undertaken according to an approved methodology; the methodology had previously been circulated for public consultation. The intent of this work was to provide a local level analysis (a level consistent with other hazard analysis already undertaken on the Kāpiti Coast and used elsewhere). The intention at this time was to provide a level of analysis fit for purpose in relation to the review of development controls to be undertaken under the District Plan review process. Notification that this research was being undertaken was placed on any new Land Information Memorandum (LIM) report within the relevant coastal area.
- 4 In 2008 the Council received the report of coastal erosion hazard for the open coast and inlets which had been commissioned from Dr Roger Shand. The report provided information based on a 50 year time horizon. Notification of the 2008 report was placed on any new LIM request within the coastal area from that time.
- 5 At the time of receipt, the government was developing the New Zealand Coastal Policy Statement and had indicated that it was possible that it would require a 100 year time horizon. It was decided to place further work on coastal erosion hazard on hold, including identification of erosion hazard lines until that decision had been made. In 2010, the New Zealand Coastal Policy Statement was adopted with the requirement for a 100 year time horizon.
- 6 Further work was then commissioned to extend the 50 year analysis (2008 report) to the 100 year time horizon requirement. This completed work, along with associated information establishing the 50 year and 100 year erosion hazard risk areas under managed and unmanaged scenarios, fully linked to property information, was received in August 2012.
- 7 The Council also formally noted the existence of the information and its inclusion as LIM information on 30 August 2012.
- 8 The proposed District Plan was notified on 29 November 2012 with submissions scheduled to close on 2 March 2013. The Council made a subsequent decision to

extend the time for submissions on the coastal environment provisions to 2 April 2013.

- 9 Some Councillors have raised questions relating to the coastal hazard information, principally:
- the adequacy of the peer review process;
 - the adequacy of consultation processes;
 - the issue of natural justice;
 - effects on coastal property values.

CONSIDERATIONS

Peer review

What is peer review?

- 10 There is no definition or description of requirements for peer review included in either the Resource Management Act or the Local Government Act. Nor is there any other formal standard for peer review in local government in New Zealand. Wikipedia has a layperson's description of *peer review* which is summarised here:

Peer review is the evaluation of work by one or more people of similar competence to the producers of the work (peers). It constitutes a form of self-regulation by qualified members of a profession within the relevant field. Peer review methods are employed to maintain standards of quality, improve performance, and provide credibility.

Professional peer review focuses on the performance of professionals, with a view to improving quality, upholding standards, or providing certification. Many professional fields have some level of peer review process: medicine, accounting, law, engineering (e.g., software peer review, technical peer review), aviation, and even forest fire management. This may take a variety of forms, including closely mimicking the scholarly peer review processes used in science and medicine.

- 11 The process of scholarly peer review mentioned here is used, for the most part, in relation to the publication of new science in academic journals. Wikipedia's lay description of it is similarly summarised below:

Scholarly peer review (also known as refereeing) is the process of subjecting an author's scholarly work, research, or ideas to the scrutiny of others who are experts in the same field, before a paper describing this work is published in a journal. The work may be accepted, considered acceptable with revisions, or rejected. Peer review requires a community of experts in a given (and often narrowly defined) field, who are qualified and able to perform impartial review.

The peer review process encourages authors to meet the accepted standards of their discipline and prevents the dissemination of irrelevant findings, unwarranted claims, unacceptable interpretations, and personal views. Publications that have not undergone peer review are likely to be regarded with suspicion by scholars and professionals.

- 12 Given that Coastal Systems Ltd's (CSL) reports (2008 and 2012) on their assessment of coastal erosion hazard risks on the Kāpiti coast contained no new science or new ideas, a full-scale scholarly review would have been unnecessary and inappropriate.

- 13 The question then arises as to what would constitute a peer review that was fit for purpose in this case.

Peer review of the Coastal Systems Ltd report

- 14 In the CSL reports of 2008 and 2012, accepted best practice methodologies which are widely used both nationally and internationally were applied to an analysis of the particular conditions observed on the Kāpiti coastline in order to assess erosion risks, initially over the next 50 years and subsequently out to a 100-year time horizon.
- 15 The initial report on the 50-year erosion risks was submitted to five reviewers with a range of relevant expertise for comment in 2005 and 2006:
- Dr Mike Shepherd, Coastal Geomorphologist (on two occasions)
 - Mr John Lumsden, Coastal Engineering Consultant
 - Dr Jeremy Gibb, Coastal Management Consultant,
 - Dr Bob Kirk, Coastal Geomorphologist
 - Dr S Ganesalingam, Mathematician
- 16 It should be noted that not all reviewers reviewed the full report. Dr Mike Shepherd reviewed the full report and is referred to as *the* peer reviewer. In the case of the other reviewers, aspects relating to their area of expertise were submitted for comment rather than the full report.
- 17 A summary of their comments and Dr Shand's responses to them is attached (Appendix 1). Following their comments, the report was finalised and submitted in draft form to the Council in 2008.
- 18 In 2008 the Draft New Zealand Coastal Policy Statement was released for comment indicating that the government was considering requiring a risk analysis out to 100 years which prompted the Council to put the work on hold until the final Policy Statement came out. When it was finalised and published in 2010, the 100 year time horizon was confirmed and the Council commissioned Dr Shand to extend his work to address the new timeframe.
- 19 Dr Mike Shepherd again reviewed the full report as included in Appendix H of the 2012 CSL report (Appendix 2 to this paper) but given that this work was an extension of the previous work, it was not considered necessary to commission a further formal peer review. However, two other well-qualified coastal scientists have considered the report. Neither has questioned its validity. The scientists in question are:
- Jim Dahm, Coastal Scientist, Focus Resource Management Group
 - Bronwen Gibberd, Coastal Scientist, Focus Resource Management Group
- 20 Focus Resource Management Group (Focus RMG) carried out planning and mapping work in relation to the District Plan Review (DPR). Three relevant memos from Jim Dahm are attached at Appendix 3. The memo dated 12 March 2012 documents a meeting he and Bronwen Gibberd had with Dr Shand while the final report was in draft. One of the purposes of the meeting was to discuss any queries they had in relation to the scientific work and confirm any additional work which might be needed for the DPR.
- 21 A full timeline of all reviews is included as a table at Appendix 4.

Adequacy of the reviews

- 22 Three questions need to be answered in making a judgment as to whether Dr Shand's report was adequately reviewed:

- Did the reviewers have the appropriate expertise to review a coastal erosion risk assessment?
- Were the reviewers sufficiently independent of Dr Shand to provide an impartial view?
- Did the extension of the work to a 100-year time horizon necessitate an additional formal peer review?

Expertise of reviewers

- 23 The formal reviewers of the draft of the first report, with the exception of Dr Ganesalingam, were all highly-regarded practitioners in the field of coastal process science and/or coastal engineering at the time of the reviews.
- 24 At the time of the review, **Dr Mike Shepherd** was Senior Lecturer in Physical Geography at Massey University and an internationally recognised expert in coastal evolution. He has since retired from that position and has recently become an associate of Coastal Systems Ltd.
- 25 **John Lumsden** was and still is a well-regarded consultant on coastal matters. He had been commissioned by the Council to carry out the initial assessment of coastal hazard risks and reported on that work in 2003. His background is in coastal engineering.
- 26 **Dr Jeremy Gibb** established a coastal management consultancy in 1993 following a career in marine conservation and coastal mapping. Most recently in relation to the Council, he was a peer reviewer of the NIWA report on climate change effects on storm tides in the Wellington region which the Council was briefed on in October 2012.
- 27 **Emeritus Professor Dr Bob Kirk** had a career in the Department of Geography at Canterbury University where he was a founder of the university's Coastal Research Group. His research has been in both academic and applied areas. He was also a councillor with Environment Canterbury. Dr Kirk is currently an associate of CSL.
- 28 **Dr S Ganesalingam** is a mathematician and Teaching Fellow at Massey University's Institute of Fundamental Sciences. His review of Dr Shand's report was requested in order to ensure the credibility and soundness of the mathematical modelling involved in the risk assessment.
- 29 **Jim Dahm and Bronwen Gibberd** of Focus RMG both have Masters of Science degrees with specializations in coastal processes. Both are current practitioners in this area and consult widely to councils in New Zealand.
- 30 Officers conclude that all of these reviewers had the appropriate expertise to review and comment on CSL's reports.

Independence of reviewers

- 31 While **Dr Mike Shepherd** and Professor Dr Bob Kirk are now associates of CSL, it should be noted that this was not the case at the time of the 2008 review.
- 32 In the case of **John Lumsden**, his acceptance of Dr Shand's report and methodology was unlikely to be unquestioning, given the work undertaken in 2003. The attached summary of peer review comments indicates that he was satisfied with the report on 21 February 2006.
- 33 **Jim Dahm and Bronwen Gibberd** were commissioned independently by the Council in relation to the District Plan Review. In this capacity, they reviewed the entire report. They mapped the set-back lines in relation to the coastal hazards and advised on the development of related Proposed District Plan policy. As a result, they needed to fully understand how Dr Shand had come to his conclusions and to be satisfied that they were sound.

- 34 It should be noted that the number of people involved in the field of coastal processes science in New Zealand is not large and that all are known to each other. Where consultants are concerned in particular, their professional reputations, and therefore their livelihoods, depend on the impartiality of their judgments. It would run counter to their interests to support sub-standard or unsound work. This professional stake is what ensures their independence when asked to review the work of colleagues whom they inevitably know more or less well.
- 35 Also worthy of note is that the associates of CSL are not employees of that company. They act rather as a technical advisory panel established to work together on larger pieces of work and who can ensure that work is up to best practice standard. Since the associates were established, no such work has been undertaken. As independent professionals, the reputational stake discussed above ensures they would not allow sub-standard work to be published.
- 36 In the view of officers, all of the scientists and practitioners who have reviewed the reports can demonstrate an acceptable degree of impartiality in their review.

Need for additional review of later report

- 37 Based on the description by Dr Shand of the additional work involved in extending his original risk assessment out to a 100-year time horizon, it was the officers' view that the value that might be derived from an additional formal review of the CSL 2012 report would not offset the expense and length of time involved. The methods used were not altered, Ministry for the Environment guidelines for the sea level rise components were followed and uncertainty values were increased to take account of the longer time frame involved. This view is strengthened by the by fact that Focus RMG's subsequent work in applying the conclusions of the report to the development of set-back lines and related policies for the Proposed District Plan necessitated a very thorough review of the scientific analysis and satisfaction with the conclusions drawn.

Conclusions

- 38 It is the judgment of officers that the peer reviews of the 2008 CSL report were fit for purpose: they were conducted by professionals with the appropriate level of expertise in their relevant fields and were sufficiently professionally distant from Dr Shand to provide an impartial view of the work.
- 39 Further, it is the view of officers that the review of the 2012 CSL report by Dr Mike Shepherd and the effective review by Focus RMG, provide sufficient reassurance that the soundness of the analysis has not been altered by the extended time frame. It is officer advice that the 2012 report is fit for purpose, which is to provide a local level erosion analysis over the 100 year time frame, required by central government as base level input into the development of landuse management policies and rules.

Consultation Process

- 40 No particular details have been provided as to what might be considered to have constituted a 'faulty consultation process' but comments to date provided by some property owners have centred on the following:
- a view that there has been a lack of pre-consultation on the Shand report (erosion hazard) and its implications prior to inclusion on LIMs, and a lack of pre-consultation on the development of the District Plan (development controls);
 - a suggestion that property owners are not being consulted.

Pre-consultation on the Shand Reports Prior to Inclusion on LIMs

- 41 Pre-consultation on the final coastal erosion hazard information (Shand report) prior to inclusion on LIMs is not possible under the requirements of the Local Government Official Information and Meetings Act (LGOIMA). If information in the form of a report exists then it is immediately affected by Section 44A of the Local Government Official Information and Meetings Act. That information must be available to property owners or buyers and this is done via the Land Information Memoranda system.
- 42 Under this process, pre-consultation is not possible before something goes onto LIMs. Nor can a Council resolve to remove the information from LIMs based on non-scientific feedback from landowners.
- 43 If the Council had decided to take the risk and consult with landowners before putting the information on LIMs, then anyone who purchased an affected property during that period would have had very good grounds to sue Council for withholding the coastal erosion information.
- 44 Conversely, any consultation process with landowners on this highly technical issue after the coastal erosion information was on LIMs would not have been productive or successful either, as the Council had no ability to change the report or withdraw the lines from the LIMs.
- 45 However, within the constraints of this process Council did undertake consultation on the development of the methodology to be used to undertake the coastal erosion assessment. This activity is summarised in Table 1 below.
- 46 In the case of any erosion hazard information, the focus is on a local level analysis, sufficient to identify hazard risk and to form a basis for drawing policy conclusions. It does not include site specific analysis but a property owner can undertake such an analysis. This is common practice via the resource consent process and in some cases, it is a requirement of the consent process. If further information is generated this is also placed on LIMs.
- 47 There is no statutory requirement to provide a process for general consultation on information that is placed on LIMs. However, in a situation where information held has contributed to policy development either under the Local Government Act or the Resource Management Act, it is appropriate that there should be a process available whereby property owners and residents can put forward their views on the information and on any proposed or existing policies. The relevant process here is the District Plan review process under the Resource Management Act: without it there is no process that enables consideration and redress of any matters, including any matters arising in relation to the erosion hazard risk information.

Pre-consultation on the District Plan Review Process

- 48 The Resource Management Act does not require pre-notification consultation except with a certain specified stakeholders. The Act identifies that pre-notification consultation may be undertaken and it is certainly good practice to do so. However, recent changes to the Act provide that only limited parts of the Plan automatically take immediate legal effect. This means interested persons can now have input through the submission process before the provisions take legal effect.
- 49 The process is specified, contestable, has best practice standards set through case law, is independent and provides for appeal. As such, it offers the fairest system for making decisions on the coastal management matters under debate. The New Zealand Coastal Policy Statement and the Regional Policy Statement require Council to identify natural hazards and to develop a land-use management policy response. Irrespective of whether other informal processes have been gone through, this formal process must be followed.

- 50 Although Council had intended early on in the process to have a pre-notification consultation period for the full draft District Plan, closer to the time of notification elected members took the view that they would prefer to proceed to notification with an extended formal submission period. Experience in the previous triennium where pre-notification consultation was used for the Beach Bylaw and Dog Bylaw had shown people found the two processes (pre-notification and formal post notification) of very similar documents confusing and frustrating.
- 51 The formal consultation process of the District Plan Review with submissions, cross submissions, prehearing meetings, hearings and rights of appeal provides every opportunity for people to be heard and to understand the steps familiar to other RMA processes.

Timeline of Consultation and Communication to Date.

- 52 A wide range of consultation and information activities were undertaken leading up to and around the release of coastal hazard line information in August 2012. This continued in the build-up to the November 2012 notification of the Proposed District Plan, and through the submissions phase. Table 1 below sets the timeline of consultation and communication to date.

Table 1: Timeline of work commissioned, consultation and information communication on coastal hazard line information	
Event	Date
<p>Lumsden report</p> <ul style="list-style-type: none"> • Circulated for comment and community submission • Note: coastal setback lines had been in place in most parts of the District at varying times from 1976, 1981 and 1995. Exception Ōtaki north of Te Horo beach. 	2003
<p>Coastal hazards submissions report to Council</p> <p>Staff report recommended a further peer review be undertaken</p>	2004
<p>Report back on Peer Review of Lumsden report to Council</p> <ul style="list-style-type: none"> • Shand commissioned to undertake a reassessment using standard techniques. • Identified would report back detailing methodology to be used for new analysis in January 2006. Community consultation on the methodology would also be undertaken. 	February 2005

Note placed on LIMs that further work was being undertaken on coastal erosion hazard assessment	Early 2005
Consultation on Draft Methodology for Coastal Erosion Assessment <ul style="list-style-type: none"> • Draft methodology sent to all submitters seeking comment on the draft methodology prior to coastal assessment commencing. 	2005
2005 Coastal Strategy Report to Council Staff report recommended: <ul style="list-style-type: none"> • Undertake new analysis based on the methodology recommended by Dr Shand; • Undertake a wider coastal strategy development process which would provide a context for future discussions on coastal hazard management (bring all interest groups together) 	2005
Shand commissioned to undertake further work based on finalised methodology	June 2005
2006 Long Term Council Community Plan <ul style="list-style-type: none"> • Contains summary of approach to coastal management, coastal erosion issues and work programmed (development of coastal strategy, coastal erosion analysis and provision for extended monitoring). 	Approved late June and active from 1 July 2006
2006 Coastal strategy process commenced <ul style="list-style-type: none"> • 10 workshops along the coast (involved members of each community walking in groups along the coast to record issues and views, views summarised and circulated and used as input into process. Two focus group sessions and three hiko with iwi. • Formal consultation process including hearings and response to submissions • Strategy contained extensive discussion of erosion hazards, set back lines and signalling context for managing hazard response. Linked process for community input to the District Plan Review. 	Strategy adopted December 2006
2007 Development Management Strategy <ul style="list-style-type: none"> • Formal consultation process including hearings and response to submissions • Contained reference to the Coastal Strategy and summary of broad approach including reference to coastal erosion work and set back lines. 	Approved 21 September 2007
2008 CSL Report	

<ul style="list-style-type: none"> • Analysis of open coast and inlets over 50 year period • At time apparent that central government undertaking a review of NZCPS and that may require a 100 year timeframe for analysis. Further work and conclusions about where erosion lines might sit put on hold until gained clarity – to avoid property owners having to deal with a 50 year impact and then return to 100 year impact later. • Wording included on LIMs identifying report's existence, that not yet formally received by Council, that further work was being undertaken and that it would not be formally received for sign-off until August 2012. 	
<p>2008 New Zealand Coastal Policy Statement review commenced</p> <ul style="list-style-type: none"> • Council submitted against extension of timeframe for analysis of coastal hazards from 50 years to 100 years. 	<p>Submission May 2008.</p>
<p>2008 District Plan review</p> <ul style="list-style-type: none"> • Review put on hold awaiting outcome of RM Act reforms in relation to District Plan review process. 	<p>Late 2008</p>
<p>2009 Long Term Council Community Plan</p> <ul style="list-style-type: none"> • Continues to refer to coastal erosion work and explicitly links this to the timing for the District Plan review process and timelines. 	<p>Approved late June and active from 1 July 2006</p>
<p>2009 District Plan review commenced – Scoping Report for consultation</p> <ul style="list-style-type: none"> • Identified a range of review topics including natural hazards and impacts of climate change for discussion. • Included summary in newspapers and call for submissions, included reference to natural hazards. • Submissions on areas for review called for and formal report to Council on outcomes with revised list – including natural hazards. 	<p>Report for consultation released in late 2009 29 April 2010</p>
<p>2010 District Plan Discussion documents</p> <ul style="list-style-type: none"> • Seven documents: one on considering impacts of climate change and the another on natural hazards and managed retreat • Included illustrated summary in newspapers and call for submissions • Note: extensive discussion of approaches to identifying hazard (50 and 100 years in light of NZCPS review), risk based approach, advocacy to GWRC for a consistent approach, zoning. Refers to strengthening trigger points for relocation of buildings, undertaking 100 year analysis. 	<p>Released October 2010</p>

Focus on what could be strengthened and any barriers to be removed for building owners.	
2010 New Zealand Coastal Policy Statement final decision <ul style="list-style-type: none"> Now required a 100 year analysis 	December 2010
2011 Further work commissioned from Dr Shand in context of new NZCPS to: <ul style="list-style-type: none"> Extend 2008 50 year analysis to include a 100 year analysis Provide final maps of extent of coastal hazard erosion risk lines over a 50 year and 100 year period for managed and unmanaged coastline, open coast and inlets. 	Early 2011
Indicative (draft) erosion lines received from CSL. Note: draft erosion lines provided to give illustrative data for natural hazards information sessions with caveat report itself not yet completed.	10 May 2012 (draft)
Natural hazard information exchanges <ul style="list-style-type: none"> Sessions held throughout Kāpiti Coast – advertised in print media and radio, billboards Draft shoreline projections based on Shand work (mapped but without specific property information and with caveat that subject to final report) were on display and available to around 200 people who attended a series of six information exchanges that were advertised in local newspapers, on radio and on billboards in each community. 	May / June 2012 19 May – Ōtaki 26 May – Paraparaumu 9 June – Raumati 16 June – Paraparaumu 23 June – Paekākāriki 30 June – Te Horo / Peka Peka
Natural hazard working groups <ul style="list-style-type: none"> Following on from the information exchanges working groups are being set up to identify issues and ideas to respond to local impacts of climate change – including coastal erosion and flooding. 	Ongoing
2012 Final CSL report <ul style="list-style-type: none"> Inclusive of 100 year timeframe. Final confirmed erosion hazard lines. 	9 August 2012

<p>Focus Resource Management Group: Report on District Plan Review Coastal Hazard Provisions received</p> <ul style="list-style-type: none"> This report analysed potential approach to coastal development control based on practice elsewhere in NZ and coastal erosion hazard information prepared by Dr Shand. 	<p>August 2012.</p>
<p>Letter to affected property owners re coastal hazard information in LIMs</p> <ul style="list-style-type: none"> 1,800 property owners whose property is within the 50 or 100 year shoreline projections were sent a letter, map and FAQ about the inclusion of coastal hazard information in Land Information Memorandum. While this is not a required process, it was considered appropriate to inform property owners and to indicate the forthcoming District Plan review process which would allow consideration of any issues arising. 	<p>25 August 2012</p>
<p>Briefing for real estate agents, property lawyers and valuers in Kāpiti</p> <ul style="list-style-type: none"> This was a well attended session to inform those who work closely with coastal property that new hazard information was to be included in LIMs, and what would happen from then on (e.g. District Plan process). 	<p>29 August 2012</p>
<p>Report to Regulatory Management Committee on Shand reports</p> <ul style="list-style-type: none"> Council formally noted that the reports had been received and would need to be released on LIMs as required by LGOIMA. 	<p>30 August 2012</p>
<p>Coastal hazard open days</p> <ul style="list-style-type: none"> Affected property owners were invited to these in the letter announcing the release of new coastal hazard information. This was an opportunity to speak with coastal science experts (including two involved in peer review of the coastal hazard assessment), Council staff and elected representatives, plus Quotable Value, GWRC and insurance industry representatives. Also advertised in local newspapers. 	<p>September 2012 - 15th – Paraparaumu - 16th – Otaki - 16th – Waikanae - 22nd – Paekākāriki</p>

Letters to interested people registered for updates on District Plan review process (approx 450). The letter directed them to draft chapters for reading and review and identified timelines.	10 October 2012
Public briefing of Council by Dr Roger Shand, Mr Jim Dahm and Dr Iain Dawe (GWRC). Presentation and opportunity for the public to ask questions through Councillors.	1 November 2012
Coastal property owners - technical clarification meeting An information sharing session with Roger Shand, Jim Dahm and Iain Dawe – attended by coastal property owners Dr Jeff Ashby, Dr Paul Callister, Dr Warren Dickenson, Don Frampton, John Harding, Laurie Petherick and Christopher Ruthe. This was held on a without prejudice basis.	1 November 2012
Meeting: Ōtaki South Beach residents Focus on understanding erosion hazard information and processes around LIMs and District Plan. (requested by residents).	3 November 2012
Proposed District Plan notification	29 November 2012
Information sessions on Proposed District Plan (PDP) A series of four sessions held around the district following notification of the Proposed District Plan on 29 November 2012. Opportunity to discuss coastal environment and any other policies and rules in the proposed plan with council staff, and to talk with the independent ‘friend of submitter’.	8 – 15 December 2012 - 8 th – Ōtaki - 11 th – Paekākāriki - 12 th – Paraparaumu - 15 th - Waikanae
Letter to inlet property owners. This update advised LIM wording had been modified following feedback, summarised coastal development controls in the Proposed District Plan, and outlined the submission process to the Proposed District Plan.	10 December 2012
Follow-up property owners’ technical meeting with an information sharing session with Roger Shand and Jim Dahm – attended by coastal property owners Dr Jeff Ashby, Dr Paul Callister, Dr Warren Dickenson, Don Frampton, Laurie Petherick and Christopher Ruthe. This was held on a without prejudice basis.	19 December 2012
Meeting of Joan Allin, Sue Chetwyn and Jeff Ashby with Jim Dahm to clarify technical questions relating to PDP and coastal issues	19 December 2012
Letter to open coast property owners	

This update advised LIM wording had been modified following feedback, summarised coastal development controls in the Proposed District Plan, and outlined the submission process to the Proposed District Plan.	18 January 2013
<p>Further information sessions on Proposed District Plan</p> <p>This was a second opportunity to attend four sessions across the district on the proposed District Plan including coastal erosion hazard matters. .</p>	<p>2 – 9 February 2013.</p> <ul style="list-style-type: none"> - 2nd – Paraparaumu - 4th – Waikanae - 7th – Paekākāriki - 9th – Ōtaki
<p>Meeting with residents – Ōtaki Beach – South</p> <p>2nd meeting with Ōtaki Beach residents who had requested a meeting to be further informed and discuss coastal erosion hazard matters, in particular process.</p>	9 February 2013

53 The Council has undertaken extensive pre-notification consultation for the District Plan, has provided a mechanism for early sighting of draft erosion hazard lines prior to receiving of the final report and the need to place the report on LIMs, and has provided opportunities for property owners to be informed about coastal hazard matters leading into the District Plan review.

The Question of Natural Justice

54 The concept of natural justice exists in English law as a concept that can be summarised as a 'duty to act fairly'. This incorporates two key matters:

- the making of decisions without bias;
- the right to a fair hearing, notably:
 - informing people of decisions which do or could affect them;
 - having an opportunity to put their point of view and formally present their case before decision makers. This would include both time and access to relevant information;
 - proper conduct of any hearing or decision according to any requirements set down in statute;
 - access to reasons given for a decision.

55 It was always considered essential that property owners had formal opportunity to make known their views on both coastal erosion information and subsequent proposed policy decisions, in a forum where their views could be properly considered and addressed. The appropriate process is that set out under the Resource Management Act; and it is this process that is being followed. It is transparent, contestable (via hearings and the capacity for appeal), provides for independence and provides for consideration of lay opinion as well as technical expertise.

56 It has been identified throughout the process that the Council would arrange for nominated technical experts to meet with Dr Shand to clarify technical data and

discuss technical matters and that this could occur prior to closure of submissions. This has already commenced where nominated experts have been identified.

Next Steps: District Plan Review Process

- 57 Submissions on the coastal provisions are currently being summarised and it was expected that these would be published and opened for further submission by mid May (other subject areas will proceed earlier). At the same time submitters would be contacted and asked whether they wish to participate in lay-person pre-hearing meetings and/or they have a nominated expert they wish to have involved in expert conferencing or as it is sometimes termed, caucusing. At the earliest, pre-hearing meetings and caucusing would commence in July. Expert caucusing would be conducted within the guidelines set out by the Environment Court practice note.
- 58 Independent facilitators will be used for pre-hearing meetings. Expert conferencing follows a standard path or code of conduct. Both processes would be on a 'without prejudice' basis. Following these meetings, hearings would be scheduled with the appropriate timeframes for pre-circulation of evidence.
- 59 It is estimated that, with the number of submissions on coastal provisions and the fact that about 50% have asked at this stage to be heard, actual hearings would not occur until the last two months of 2013. This is because it is quite possible that this percentage would wish to be involved in pre-hearing meetings. It is likely therefore that a decision by commissioners on coastal hazard issues would not occur until late 2013 or early 2014.
- 60 During this lead in period prior to hearings, the following would also occur:
- officer review of submissions and identification of any further work that may need to be commissioned. If further work is undertaken then this would be commissioned and information would be made available to all interested parties as early as possible in the process so it is available for pre-hearing meetings;
 - officer review of the relief in submissions sought and how this may be accommodated in the context of the proposed intent of the proposed District Plan, as input into pre-hearing meetings;
 - officer identification of contested areas which require consideration by experts as part of pre-hearing conferencing.
- 61 The intent of both the further analysis and the pre-hearing meetings and conferencing is to resolve as many submitter issues as possible prior to hearings commencing. This is standard practice for RMA processes.
- 62 Table 2 sets out the principles of natural justice discussed earlier and summarises actions to date and going forward in relation to coastal erosion risk and the District Plan review process. The Council has gone beyond minimum requirements procedurally and in terms of dealing with any concerns about independent decision-making in a contested area.

Table 2:

Consideration or Natural Justice Principles	
Principle	Approach to date
Make decisions without bias, or perception of bias	<ul style="list-style-type: none"> Decision to appoint a full hearing committee with independent commissioners Provision of an independent Friend of the Submitter to provide advice on process and general preparation of submissions
Informing people of decision which does or could affect them (this relates to existing and potential new property owners)	<ul style="list-style-type: none"> Updated LIM information since 2005, 2008 and 2012 on coastal erosion hazard provided to potential new property owners. May/ June natural hazards Information Sessions Letters to affected property owners informing of existence of information. Media information and promotion of participation
<p>Opportunity to formally present case</p> <ul style="list-style-type: none"> Timing Access to information Forums to present views 	<ul style="list-style-type: none"> Active encouragement of participation in District Plan review process which provides an opportunity for presenting views and having them formally considered. Extension of minimum RMA submission periods <ul style="list-style-type: none"> Overall District Plan submission period extended by three weeks from RMA minimum Extension of submission period on coastal matters by a further month. Proposed extension of further submissions period by an additional two weeks. Timing of hearings to be dictated by timelines needed for full and appropriate pre-hearing meetings and conferencing. All coastal hazard data, reports etc held by Council provided on request and on Council website (where file size permits) Information sessions held (see earlier in report) Access to technical experts provided Normal RMA requirements followed (e.g. summary of submissions, preparation and

Consideration or Natural Justice Principles	
Principle	Approach to date
	<p>exchange of evidence, notification of hearing commissioner's report)</p> <ul style="list-style-type: none"> • Council meetings, submissions, pre-hearing meetings and hearings
Proper conduct of formal processes	<ul style="list-style-type: none"> • Adherence to RMA processes • Adherence to Environment Court practice notes, minimum timelines, etc
Access to reasons for decision	<ul style="list-style-type: none"> • All formal decisions provided to submitters, with information about available appeal period.

- 63 The Resource Management Act processes with the guidelines set down in court practice notes and in statute provide the single greatest protection for people in terms of delivery of a fair process.
- 64 The process of pre-hearing meetings, formal hearings with independent commissioners and right to appeal to the Environment Court will adequately test any differing views on coastal hazard matters. The process also encourages the technical experts to achieve consensus. Failing that, the decisions made by the independent commissioners (or Environment Court) will finally decide the extent of the coastal erosion hazards and the appropriateness of development controls. Outside this process there is very little opportunity to consider and address the concerns raised.
- 65 In conclusion, the Council has worked through a process which is consistent with the principles of natural justice. A process which in itself is structured around the principles of natural justice is available to all existing property owners. Statute requires the placement of known information on LIMs; this is to protect the interests of future buyers of property.

Impacts on Property Values

- 66 There has been speculation about the impact of the existence of coastal erosion hazard information on property values, with suggestions made as to the extent of effect. In previous briefings and reports to Council reference has been made to a report commissioned by Hawkes Bay Regional Council to review the effects of introduction of coastal development controls in the Hawkes Bay region.¹ Note: implicit in this analysis is consideration of the impact of known information about coastal erosion hazard.
- 67 The conclusions drawn in the report are provided as follows:

¹ Environmental Management Group, Report for the Hawkes Bay Regional Council – Hawkes Bay regional Hazard Zones Valuation Report, April 2008.

10.0 CONCLUSIONS AND SUMMARY [from report to Hawkes Bay Regional Council]

Prior to undertaking this survey we had a general view that seaside settlements are considered desirable and have grown at faster rates than general residential property. This affected by supply and demand, the general economic climate and property market factors at the time. Seaside settlements and holiday destinations generally tend to feel downward movement in the property market more than general residential areas as they are often secondary housing and when market conditions change and finances tighten are generally the first property to be disposed of to alleviate those pressures. Therefore being exposed to not only the high growth rates but also reasonable downward pressure in values in less buoyant times. We have come through a period of a very buoyant real estate market which is now starting to slow and the signs of that slowing have been apparent in the marketplace since 2006.

After undertaking the analysis of each of the localities and analysing median sale prices, volume of sales and graphing this data and comparing it to the benchmarks of Hawkes Bay, Napier and Hastings we are of the view that there is insufficient evidence that anything other than normal market forces are at play in affecting property values at the localities analysed as stated above. This analysis also confirms my view that demand and economic factors can quickly overcome the perception of negative effects of property damage and adverse publicity, even when it is of a potentially reoccurring nature.

Given the explanations as to the variation and drop in median sale price from 2005 to 2006 for Whirinaki all other localities appear to be performing adequately as compared to the overall wider residential property market for the same period of time.

The results confirm that the wider property market and economic factors have outweighed any stigma that may be apparent with the initial announcement of Coastal Hazard Zones, the publicity received and the lack of understanding of how the zone rules are to be applied. As time has moved forward markets have continued to operate consistently in line with general market trends. I therefore conclude that there does not appear to have been any adverse effects to value that can be identified as caused by the proposed RCEP and the introduction of Coastal Hazard Zones.

- 68 Circumstances differ slightly on the Kāpiti Coast in that development setback lines have been in place for some time in many parts of the District, except for the area north of Te Horo Beach. What is new is the presence of underpinning coastal erosion risk information. Nonetheless the testing of impacts is still valid.

Financial Considerations

- 69 There are no financial considerations.

Legal Considerations

- 70 The matters outlined in this report are governed by legal processes and principles. Advice is being sought and some aspects of that advice are discussed in a separate public excluded part of this meeting.

Delegation

71 The Council has the authority to consider this matter.

Consultation

72 Consultation matters are addressed in the main body of the report.

Policy Implications

73 There are no policy considerations.

Tāngata Whenua Considerations

74 There are no tāngata whenua considerations.

Publicity Considerations

75 A press release will be issued following the Council meeting.

CONCLUSION

76 This report sets out information for Council in relation to peer review, consultation and discharge of natural justice principles in relation to the coastal erosion hazard information and the District Plan process and provides some limited insight into impacts on property values.

77 It is the advice of officers that a sufficiently robust peer review process has been undertaken, that a wide range of consultation and communication activities have been undertaken around coastal hazard information. Despite the constraints imposed by LGOIMA, an extensive consultation process is planned through the District Plan review process on coastal erosion hazards and development controls

78 The District Plan review process provides a transparent, thorough and contestable process around addressing matters raised in submissions. There is very little opportunity outside this process to consider and address the concerns raised by affected property owners. Including the erosion hazard information on LIMS while considering property owners' concerns through the District Plan review process is entirely consistent with principles of natural justice (for both property owners and prospective purchasers)

79 It is the advice of officers that for the reasons outlined in this report and in the public excluded report included within this agenda that the draft resolutions contained within the Notice of Motion should not be adopted.

RECOMMENDATIONS

80 That the report is received and the matters covered in the report are noted.

Report prepared by:

Approved by:

Gael Ferguson

Pat Dougherty

GM, Strategy & Partnerships

Chief Executive

ATTACHMENTS:

Appendix 1:
Summary of Peer review comments relating to 2008 Coastal Systems Limited report.

Appendix 2:
Peer review comments relating to 2012 Coastal Systems Limited report.

Appendix 3:
Focus RMG memoranda

Appendix 4:
Peer review timeline