

Mayor and Councillors
COUNCIL

3 OCTOBER 2013

Meeting Status: **Public**

Purpose of Report: For Information

PROPOSED DISTRICT PLAN: UPDATE AND REVISED HEARING TIMELINE

PURPOSE OF REPORT

- 1 This report provides an update on the Proposed District Plan (PDP), including a revised hearing timeline and issues relating to project management and resourcing, commissioners and decision-making. Submitters on the PDP will subsequently be informed of the revised timeframes.

SIGNIFICANCE OF DECISION

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

BACKGROUND

- 3 The District Plan, required by the Resource Management Act 1991 (RMA), is the primary document that manages land use and development within the District's boundaries, by regulating the environmental effects created by new buildings and activities.
- 4 Section 79(1) of the RMA requires councils to review District Plan provisions that have not been reviewed within the previous 10 years. The Kāpiti Coast District Plan was made operative in August 1999; therefore a review was required to commence by August 2009 of any provisions that had not changed since 1999.
- 5 The Council initiated a full District Plan Review in September 2008 and released a series of discussion documents in 2010 on a variety of topics to inform the review. Public feedback on these documents, extensive research, and dozens of elected member workshops and briefings in 2010 – 2012 led to notification of the Proposed District Plan (PDP) on 29 November 2012.
- 6 The initial submission period on the PDP was from 29 November 2012 to 1 March 2013, approximately two weeks more than the 40-working day minimum time period specified in the RMA. Submissions regarding the Coastal Environment were allowed an extended submission period.
- 7 Summaries of decisions requested, and subsequent corrections to these summaries, have been released since April. Further submissions have now closed.
- 8 A total of 768 submissions and 232 further submissions have been received on the PDP.
- 9 The next step is hearings, preceded by voluntary pre-hearing meetings between Council staff and submitters as well as expert witness conferencing. Hearings give submitters a chance to speak to a panel of commissioners about their views

on the PDP, and to submit expert evidence to support their case if they wish. Council planners also provide their recommendations via the “Section 42A” report, along with any other supporting expert evidence.

- 10 A tentative schedule for hearings and pre-hearing meetings was sent to submitters and published on the Council website in early July 2013. This schedule was organised by PDP chapter and/or topic. It indicated a hearing start month of August 2013 for Chapter 5: Living Environment and September 2013 for Chapter 7: Rural Environment, with the final hearing expected to commence in May 2014. The Section 42A reports for the hearing on Chapter 5: Living Environment and “General Submissions (e.g. whole-of-Plan issues and non-District Plan issues) were sent to submitters in early August, a few weeks behind schedule.
- 11 Subsequently it was decided that hearings on the PDP would not begin until after the October local body elections, to avoid complications arising from the transition across the triennium and to allow all PDP hearings to take place under the new Council. In the case of the Rural Environment chapter, this also allows further pre-hearing discussions with rural landowners.
- 12 The delay has provided an opportunity to develop a more realistic hearing timeline and process, and to revisit the work required to support this.

CONSIDERATIONS

Issues

Hearing Timeline: Reasons for Revision

- 13 Experience with pre-hearing meetings for the Living Environment and Rural Environment chapters of the PDP has revealed that the original hearing timeline did not allow enough time for this process; in particular, follow-up meetings and analysis as well as documentation. It is important to invest time in the pre-hearing process to achieve greater consensus and/or clarity on issues of contention before the formal hearing process starts.
- 14 In addition, the experience of analysing submissions, writing and reviewing the Living Environment and General Submissions Section 42A reports has shown that this process has taken longer than anticipated, due to the number and complexity of submissions.¹
- 15 Other issues proactively identified with the previous timeline for all hearings include an over-reliance on overlapping hearings and a consequent risk of staff and other resources being stretched beyond capacity, and inadequate time allowed for peer review and a variety of important administrative tasks.
- 16 It is also now considered important to allow more time for:
 - periodic debriefing and process evaluation at key milestones (e.g. when Section 42A reports are released, or when a hearing concludes); and
 - contribution of planning staff to important non-District Plan issues.

¹ The term “submissions” is used throughout the rest of this report to include both original submission and further submissions.

Revised Hearing Timeline

- 17 A revised proposed hearing timeline for the PDP is attached as Appendix 1 to this report. It shows all Council decisions on the PDP being made by the end of 2015. No hearings or deliberations would be required in 2016 (the year of the next local body elections). This is a realistic but ambitious timeframe which cannot be shortened without compromising the quality of the decision-making process and/or staff wellbeing.
- 18 To be achieved, this proposed timeframe requires additional resources (refer “Project Governance and Resources” below). It also requires consideration of issues relating to decision-making (refer “Grouping and Sequencing of Topics for Hearings and Decisions” and “Commissioners, Accreditation and Decision-making” below).
- 19 A few additional points are worth noting about the timeline itself. First, there are options around when the first hearing (Living Environment / General Submissions) commences. The recommended option, shown in the timeline, is that this hearing commences 25 November 2013 for a four-week period ending 18 December 2013. This would minimise the length of the delay between the initial release of the relevant Section 42A reports in August 2013 and the hearing itself. A backup option is that this hearing would commence after the holiday period (e.g. the week of 27 January 2014). This option would probably be required if the new Council selects new commissioners for this hearing who require more time between their appointment (after the planned approval of the new Governance Structure on 7 November) and the start of the hearing. These options do not affect the end date of the overall hearings process.
- 20 Second, the parts of the timeline showing when commissioners’ recommendations would be available for a Council decision are indicative only, as there is no statutory timeframe within which commissioners must conduct their deliberations and complete their recommendations. The actual timeframe can be highly variable depending on the complexity of the matters considered and the commissioners’ other time commitments.
- 21 Third, the RMA requires decisions to be made by Council within two years of notification; i.e. by 29 November 2014. However, the RMA allows the Council to double this timeframe via a resolution, giving itself until 29 November 2016. This timeframe can be extended further with the approval of the applicant (in this case the Council itself).
- 22 Fourth, the attached timeline only extends through hearings and subsequent Council decisions upon the recommendations of hearing panels, not the appeals process. Once Council decisions are made, the PDP provisions have legal weight along with those of the operative District Plan, and the 30-working-day period begins for lodgement of any appeals to the Environment Court. If no appeals are lodged, or if appeals are resolved through mediation or through Environment Court proceedings, the relevant provisions of the PDP can be made fully operative by the Council. This can occur in a rolling manner, with an increasing proportion of the PDP becoming operative over time.

Grouping and Sequencing of Topics for Hearings and Decisions

- 23 The twelve chapters of the PDP have been grouped into six hearings of related topics, in order to achieve economies of scale and a reduction of the number of hearings a submitter might have to attend. The PDP’s definitions (Chapter 1) and its objectives (Chapter 2) have been assigned to specific hearings based on

the topics to which they most closely related, as have the various issues in Chapter 12: General Provisions (i.e. Noise, Temporary Events, Signage, and Financial Contributions).

- 24 The six hearings themselves have been organised to allow for the rolling release of decisions in four phases. Allowing some panels' recommendations to be brought to Council for decisions ahead of others will provide earlier certainty for Council and submitters. On the other hand, as part of a balanced approach, enabling the grouping of the three hearings scheduled for 2015 allows some related hearing panels' recommendations to be held as draft until the other hearings in that phase are complete and any inconsistencies can be resolved. A balance has been struck between topic-by-topic Council decisions (releasing decisions as soon as possible) and a unified Council decision on all panels' recommendations at the end of the hearings process (allowing for improved integration and consistency).
- 25 Some parts of the PDP have had immediate legal effect since the date of notification (specifically, provisions relating to the protection of historic heritage or significant ecological areas). It is desirable to make decisions on these provisions sooner rather than later, to address submitter concerns with rules they are already having to follow. While this will not change the outcome of any resource consents already sought, an early decision on these PDP provisions will reduce the period during which new developments must comply with the proposed rules, which in some cases are likely to change as a result of submissions. These topics are therefore scheduled to be heard and have Council decisions made within the first year of hearings.
- 26 For all hearings except Coastal Environment / Natural Hazards, a three to four month gap is allowed between the conclusion of pre-hearing meetings and the commencement of hearings. This allows one to two months for planners to write Section 42A reports, one month for internal and external peer review and revisions, and one month for pre-circulation of evidence to submitters. The Coastal Environment / Natural Hazards process requires an eight-month gap because of the number and complexity of submissions on these topics, and the consequent need for more technical analysis, writing and peer review time. If this entire gap ends up not being needed, the hearing date can be brought forward without adversely affecting the rest of the PDP hearing process.

Commissioners, Accreditation and Decision-making

- 27 Recent RMA amendments require all commissioners to be fully accredited through the Ministry for the Environment's "Making Good Decisions" programme by 12 September 2014. At present, this is only required for commissioners on resource consents and private plan changes, not for public plan changes such as the District Plan Review. The current Elected Members with accreditation who are standing for re-election are Councillors Ammundsen, Cardiff, Lloyd and Gurunathan, as well as Waikanae Community Board member Jocelyn Prvanov.
- 28 The Council's current Governance Structure allows Elected Members without accreditation to qualify as commissioners for the District Plan Review if they have undertaken a one-day training session organised by the Council. This arrangement was put in place to increase Elected Members' potential involvement in the hearing process, given their involvement in dozens of workshops leading to the notification of the PDP and their understanding of the core issues. The Mayor and most other Councillors have undertaken this training session.

- 29 Using the option of non-accredited Elected Members presents a risk for any hearing panels that will not complete their duties, including any final deliberations and revision of draft recommendations arising from the consistency check with other hearing panels, before 12 September 2014.
- 30 The appointment of commissioners for the first hearing (Living Environment and General Submissions) will be confirmed once the make-up of the new Council is known, taking into account the implications of the RMA amendments regarding accreditation.
- 31 It should be noted that, according to the Council's current Governance Structure, commissioners do not make decisions on plan changes such as the Proposed District Plan. They make recommendations to the Regulatory Management Committee, which can then make decisions on behalf of Council. There are limitations on the Committee members' scope for decision-making, in terms of natural justice considerations and predetermination issues. The Council has the option of revising the Governance Structure to allow commissioners to make decisions on plan changes, as they do with resource consents.

Project Management and Resources

- 32 To support the achievement of the proposed hearing timeline, improved stakeholder engagement, enhanced quality control, and maintenance of staff wellbeing, a revised internal project management structure has been developed and additional resources will be sought.
- 33 Staff wellbeing is important to the PDP process, which can be likened to a marathon rather than a sprint. A cross-Council approach to support the team, along with additional internal resources and increased ability to access external peer review and advice, will promote the sustainability of the team's effort and minimise costly burnout, and turnover.
- 34 Additional resources will be needed to meet requirements of the revised timeframes, processes and priorities identified in this report (e.g. external peer review, pre-hearing meeting and conferencing facilitation, dedicated communications support, hearing logistics support, and project coordination assistance). All of these will support stakeholder engagement and quality control as well as achieving the proposed timeline while maintaining staff wellbeing.
- 35 In addition, an extra senior planner will be required for an 18-month period (July 2014 through December 2015) to achieve Council decisions on the entire PDP by the end of 2015. Without this resource, some decisions would be likely to be required in the first half of 2016, with increased risk of election-year delays.
- 36 No additional resourcing is required this financial year, through 30 June 2014. The impact on future Council budgets will be considered through the development of the 2014/15 Annual Plan and the 2015-2025 Long Term Plan.
- 37 The proposed timeline in Appendix 1 spreads some costs (e.g. for independent commissioners, consultant advice, and legal advice) across three financial years (2013/14 through the first half of 2015/16) instead of the one financial year shown in the 2013/14 Annual Plan. This means some budgets can be distributed differently over time. It is probable, however, that additional funds will be requested through the Annual Plan and/or Long Term Plan processes.

Financial Considerations

- 38 Funding issues will be considered through the 2014/15 Annual Plan process and the 2015-2025 Long Term Plan process as required. The attached timeline requires the redistribution of resources across financial years, an extra planner for 18 months, and additional resources to achieve quality control and stakeholder management

Legal Considerations

- 39 Legal considerations have been discussed throughout this report as required, with reference to the Resource Management Act 1991 (RMA).

Delegation

- 40 The Council has the authority to consider this matter.

Consultation

- 41 No consultation has been undertaken on this matter and none is required.

Policy Implications

- 42 This report has no direct policy implications but is relevant to the Proposed District Plan, which is a key Council policy document.

Tāngata Whenua Considerations

- 43 The tāngata whenua District Plan Review working party, operating under the auspices of Te Whakaminenga o Kāpiti, is expected to continue working with Council staff on the Proposed District Plan and its implementation throughout the hearings process and afterwards. The working party's programme and budget are not negatively affected by the proposed change to the timeframes.

Publicity Considerations

- 44 A media release would be appropriate to inform the public of the new hearing timeline for the PDP. In addition, a newsletter or other communication directly with submitters on the PDP will inform them of the revised timeline.

RECOMMENDATIONS

- 45 That the Council notes the content of this report (SP-13-993), including the attached revised hearing timeline for the Proposed District Plan.

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ATTACHMENTS:

Appendix 1: Revised Timeline for Proposed District Plan Hearings