

Chairperson and Committee Members
REGULATORY MANAGEMENT COMMITTEE

2 OCTOBER 2014

Meeting Status: **Public**

Purpose of Report: For Information

PROPOSED DISTRICT PLAN WITHDRAWAL OF PROVISIONS AND MAPS

PURPOSE OF REPORT

- 1 This report summarises the provisions and maps to be withdrawn from the Proposed District Plan (PDP) and updates the Council on progress with the withdrawal of those provisions.
- 2 The report provides the Council with details on the process and implications of withdrawing PDP provisions relating to coastal hazards, hazardous facilities and priority areas for restoration.

SIGNIFICANCE OF DECISION

- 3 While the content of this report is a critical step in progressing the PDP, Council's Significance Policy is not triggered.

BACKGROUND

- 4 The PDP was notified in November of 2012 and submissions / further submissions received.
- 5 As a result of community and submitter concerns surrounding many of the PDP provisions, the Council commissioned two independent review reports of the PDP: "Coastal Erosion Hazard Assessments for the Kāpiti Coast: Review of the Science & Assessment Undertaken for the Proposed Kāpiti Coast District Plan 2012" and "Independent Review of the Kāpiti Coast Proposed District Plan".
- 6 Based on the recommendations of the independent review of the PDP, at the meeting on 24 July 2014 Council resolved to withdraw from the PDP the Coastal Hazard Management Areas on the plan maps along with the associated policy section and rules. The Council also sought clarification on the parts of the operative district plan which will provide stop-gap coverage relating to coastal hazards.
- 7 At that same meeting on 24 July 2014, Council resolved to withdraw from the PDP provisions relating to hazardous facilities and all references to Priority Areas for Restoration.
- 8 Based on these resolutions, staff have analysed the PDP and identified all related objectives, policies, rules, and map layers for withdrawal. A strikethrough version of the PDP chapters identifying text for withdrawal has been prepared.

CONSIDERATIONS

Coastal Hazard Management Areas

- 9 Recommendation 4 of the Independent Review of the Kāpiti Coast Proposed District Plan (Sylvia Allan and Richard Fowler, 2014) advised that the Council resolve to withdraw from the PDP the Coastal Hazard Management Areas on the plan maps along with the associated policy section and rules, and clarify the parts of the operative District Plan which provide stop-gap coverage relating to coastal hazards.
- 10 Withdrawal of the Coastal Hazard Management Areas will enable Council to undertake Recommendation 6 of the independent report:

At an appropriate time (or times) the Council proceeds with a variation (or variations) to include suitable and relevant policy, methods and rules in the PDP to address the district's coastal hazards in accordance with the NZCPS, the RPS and best practice.
- 11 Council staff and their planning consultants have reviewed in detail the entire PDP and have identified all the provisions associated with Coastal Hazards. A summary of the sections of the PDP affected is contained in Attachment 1.
- 12 In some chapters of the PDP, withdrawal has required deleting one or two words only, but some other chapters (eg Chapter 4 Coastal Environment) have been affected by deletion of larger tracts of text including whole policies.
- 13 Coastal Hazard Management Areas are mapped on Map Series C of the PDP maps. This is effectively three layers comprising Rural No Build, Urban Relocatable Build and Urban No Build. These layers will be removed from the C series of PDP maps.

Hazardous Substances and Facilities

- 14 The independent review of the PDP identified the hazardous substances provisions as being out of date and no longer best practice. The provisions in the PDP are considered to conflict with (and sometimes duplicate) landowner's requirements to comply with the Hazardous Substances and New Organisms Act 1996. Issues were also identified regarding the practicalities of enforcement.
- 15 Although the independent review identified hazardous substances provisions as being problematic, hazardous facilities are intrinsically linked and for this reason have been identified for withdrawal also.
- 16 The provisions relating to hazardous substances and facilities are largely contained in Chapter 9: Hazards and the sections affected by the withdrawal are summarised in Attachment 1.
- 17 A number of other chapters are affected in a minor way by withdrawal of cross references to Chapter 9 of the PDP.

Priority Areas for Restoration

- 18 Priority Areas for Restoration were identified in the PDP as areas where restoration would be likely to result in significant improvements in biodiversity. However the evidence basis for this is limited and the inclusion of the Priority Areas for Restoration was based on a high level open space strategy.

- 19 After considering the submissions on this topic, Council staff recommended withdrawal of the provisions. The withdrawal requires deletion of terms from Definitions but is largely contained in Chapter 3: Natural Environment.
- 20 Priority Areas for Restoration are mapped on Map Series D of the PDP maps. This layer will be removed from the D series of PDP maps.

Process for Withdrawing Parts of the PDP

- 21 Clause 8D of Schedule 1 of the Resource Management Act 1991 (RMA) allows for the withdrawal of whole or part of proposed changes to district plans. Provisions can be withdrawn at any time up until the point where appeals are made to the Environment Court or the plan change is approved by the local authority.

8D Withdrawal of proposed policy statements and plans

(1) Where a local authority has initiated the preparation of a policy statement or plan, the local authority may withdraw its proposal to prepare, change, or vary the policy statement or plan at any time—

(a) if an appeal has not been made to the Environment Court under clause 14, or the appeal has been withdrawn, before the policy statement or plan is approved by the local authority; or

(b) if an appeal has been made to the Environment Court, before the Environment Court hearing commences.

(2) The local authority shall give public notice of any withdrawal under subclause (1), including the reasons for the withdrawal.

- 22 The process for withdrawing any part of the PDP is relatively straight forward and only requires public notice of the withdrawal, including the reasons for the withdrawal. For consistency, it is proposed that the withdrawal is notified using the same newspapers used to notify the PDP in November 2012.

Implications of Withdrawal on Submitters

- 23 A large proportion of the submitters to the PDP have submitted on these three topics, particularly the Coastal Hazard Management Areas. These points of submission (and in some cases the full submission) will no longer have any standing in the process once the provisions to which they relate are withdrawn.
- 24 A communications approach has been developed to ensure that the community, and in particular submitters, understand how this process affects submitters and further submitters. A general letter to all submitters has been prepared to coincide with the notification of withdrawal at the end of October. In addition, a detailed identification of all the submissions has begun to identify the points of each submission that will no longer be valid. An individual personalised letter to each of the submitters will outline the effect of the withdrawal on their particular submission points. This letter is programmed for November.
- 25 The implications are that some submissions may no longer be valid in their entirety where all of the submission points relate to withdrawn provisions. Those submitters will no longer be involved in the PDP process.
- 26 A wider communication process such as press releases, the PDP update, updates of the Council's website and Facebook page will also be used.

Implications of Withdrawal for Rules

- 27 It is worth noting that Section 86B of the RMA states that a rule in proposed plans and changes does not have legal effect until a decision on submissions relating to the rule is made and publicly notified. The only exception to this are those rules that have immediate legal effect as identified in Section 86B(3) which are concerned with issues such as historic heritage or significant indigenous vegetation.
- 28 The effect of this section of the RMA is that apart from those provisions identified as having immediate effect, none of the rules in the PDP will have legal effect until decisions are made and notified on those rules. For clarity, none of the rules identified for withdrawal have immediate legal effect under Section 86B(3).
- 29 Removal of the provisions and maps relating to coastal hazards does leave a gap in the PDP. The land that was covered by Coastal Hazard Management Areas overlays in the PDP is still covered by an underlying PDP zone such as Beach Residential. The coastal hazards will continue to be addressed by the Operative District Plan while the coastal hazards research continues.
- 30 The relevant parts and rules of the Operative District Plan that would fill the gap left by removal of the coastal hazard provisions from the PDP are outlined in Attachment 2 to this report. While the Operative District Plan provisions are based on an outdated evidential base, the provisions provide some regulatory control over developments in coastal hazard prone areas in the interim until new plan provisions are developed.
- 31 Similarly, the Operative District Plan provisions relating to hazardous substances and facilities will prevail while a plan change is being developed. Objectives and policies relating to hazardous substances are contained in Part C.17 of the Operative District Plan. Standards relating to Hazardous Facilities are contained in Part M of the Operative District Plan. There are also standards contained in the zone rules which requires no activity shall exceed a Hazardous Facility Threshold (effects ratio) of 0.2. It is acknowledged the operative provisions are similar to those in the PDP, and are therefore also out of date and no longer best practice. However it is appropriate that they remain in the interim.
- 32 The independent review report recommended an explanatory 'placeholder' be inserted which clarifies which provisions of the operative District Plan will remain in place while a plan change is prepared and processed. This is likely to be more of a 'signpost', and will be particularly important once decisions are released on the remainder of the PDP (given that the PDP provisions do not have legal effect until this point of the process).
- 33 For clarity, 'signpost text' will be inserted into the PDP. That text will not form part of the District Plan but will note that for coastal hazards and hazardous facilities, the objectives, policies and rules of the Operative District Plan apply. It is intended that the council website note specifically which objectives, policies and rules from the Operative District Plan will apply in terms of coastal hazards and hazardous facilities to provide additional guidance.
- 34 With the removal of the Priority Areas for Restoration, there are no similar Operative District Plan provisions so there is no need to 'signpost' to the operative provisions.

Financial Considerations

- 35 The costs are within budget.

Legal Considerations

- 36 Withdrawal of part or whole of a plan change must follow the requirements of Clause 8D of Schedule 1 of the RMA. The Council's solicitors, Simpson Grierson, have been advising on the PDP to date to ensure matters are managed by specialist RMA lawyers. Simpson Grierson are reviewing the draft public notice and process of withdrawing the provisions to ensure the RMA requirements are met.

Delegation

- 37 The committee may consider this matter under clause 7.19 of the Governance Structure and Delegations. Clause 7.19 gives RMC the following delegation:
- "Authority to exercise all of the Council's functions, powers, and duties under the Resource Management Act 1991, except under clause 17 of Schedule 1."
- 38 As outlined in paragraph 6 and 7 of this report, the resolution to withdraw the provisions on coastal hazards, hazardous facilities, and Priority Areas for Restoration was made by the council at its meeting of 24 July 2014.

Consultation

- 39 Comments from the community were invited on the two independent reviews of the PDP. The withdrawal of the provisions is a response to both the recommendations of the independent reviews and submissions received on the PDP.
- 40 Communication associated with the proposed withdrawal of provisions and maps is outlined in paragraphs 24-26 above. The key steps are:

End of October:

- Public notice advising of the withdrawal of parts of the PDP
- Plan updates
- General letter to submitters and Plan holders advising of withdrawal
- Updated text for the PDP, and the PDP website that guides district plan users to the relevant parts of the Operative District Plan for coastal hazards and hazardous facilities.

November:

- Specific communication with submitters to inform them which parts of their submissions have been affected by the withdrawal, and explain the implications of that.

Policy Implications

- 41 The district plan is the most significant RMA planning document in the Kapiti community.

Tāngata Whenua Considerations

- 42 Tangata whenua have been involved throughout the PDP process, with particular involvement through the Tangata Whenua District Plan Working Party. Te Whakaminenga O Kāpiti will be advised of progress in this matter at their meeting of 7 October where they will receive their regular update on the PDP. In addition, iwi who have lodged submissions to the PDP will receive written advice along with other submitters.

Publicity Considerations

- 43 Communication with the community, submitters and users of the plan will be important. Submitters need to understand the implications of withdrawal on their submissions. The message also needs to be widely communicated that although Council is removing provisions, the operative provisions and policy framework will prevail until Council has developed new provisions and have gone through a plan change process.
- 44 This is being factored into the development of the communication and engagement plan.

RECOMMENDATIONS

- 45 That, in accordance with Clause 8 of Schedule 1 of the RMA, and as generally outlined in Attachment 1, the Committee resolve to withdraw from the Proposed District Plan those parts of the maps, objectives, policies, and rules relating to:
- Coastal Hazard Management Areas
 - Hazardous substances and facilities
 - Priority Areas for Restoration

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ATTACHMENTS:

Attachment 1: Summary of the Sections of the PDP Affected by Withdrawal

Attachment 2: Summary of Relevant Provisions from the Operative District Plan

Attachment 1: Summary of the Sections of the PDP Affected by Withdrawal

Chapter of the PDP	Sections affected by withdrawal of text
COASTAL HAZARDS	
Chapter 1: Introduction and Interpretation	Introductory text Definitions
Chapter 2: Objectives	Objectives 2.4 and 2.5
Chapter 4: Coastal Environment	Introductory text Policy 4.3 and 4.6 Policies 4.8 - 4.15 Activity table
Chapter 5: Living Environment	Activity tables rules and standards
Chapter 6: Working Environment	Activity tables rules and standards
Chapter 7: Rural Environment	Activity tables rules and standards
Chapter 8: Open Space	Activity table rules and standards
Chapter 9: Hazards	Introductory text Policies 9.1, 9.2, 9.5, 9.6 Activity table and assessment criteria
Chapter 11: Infrastructure, services and associated resource use	Policies 11.9 and 11.25 Activity table and assessment criteria
Maps	Series C maps
HAZARDOUS SUBSTANCES AND FACILITIES	
Chapter 1: Introduction and Interpretation	Definitions
Chapter 2: Objectives	Objectives 2.10 and 2.16
Chapter 9: Hazards	Introductory text Policies 9.22 - 9.28 Activity table 9E Schedules 9.1 - 9.4
Chapter 11: Infrastructure, services and associated resource use	Policies 11.32 and 11.33
PRIORITY AREAS FOR RESTORATION	
Chapter 1: Introduction and	Definitions

Interpretation	
Chapter 3: Natural Environment	Policy 3.14 Rule 3A.3.4
Maps	Series D maps

Attachment 2: Summary of Relevant Provisions from the Operative District Plan

Following is a description of the parts and rules of the Operative District Plan that would fill the gap left by removal of the coastal hazard provisions from the PDP.

- 1 Section C9 of the Operative District Plan contains objectives and policies regarding the coast and addresses issues such as coastal amenity, natural character and hazards. Only those objectives and policies relevant to the management of coastal hazards will be retained in the PDP while the coastal hazard approach is revised.
- 2 Yard setbacks are the key mechanism in the Operative District Plan for managing buildings in the coastal environment. Section D1 contains the standards for the Residential Zones:
 - (iii) *Coastal Building Line Restriction*

Waikanae, Te Horo Beach - 7.5 metres from the seaward title boundary.

Peka Peka - 70.0 metres from the seaward edge of the existing Esplanade Reserve.

Paraparaumu, Raumati, Paekakariki - 20 metres as shown on Paraparaumu Urban Zone Maps 1, 2, 6, 7, 11, 16, 21 and 26 and Paekakariki Urban Zone Maps 1-3.
- 3 Section D1 also contains standards for residential buildings in certain areas to be relocatable:
 - (iv) *Relocatable Buildings*

Buildings within the relocatable area, as defined in Part Q of this Plan and shown on Paraparaumu Urban Zone Maps 1, 2, 6, 7, 11, 16, 21 and 26 and Paekakariki Urban Zone Maps 1-3, between 20 metres and 50 metres, shall be relocatable. Section 36 of the Building Act 2004 may be implemented for new and relocated buildings in areas subject to coastal erosion or flooding to indemnify Council against possible damages.
- 4 Similarly D2 contains coastal yard setback rules for the rural environment

All buildings including relocated buildings, replacements and extensions shall be set back at least 100 metres (50 metres on Kapiti Island) from the seaward title boundary or Esplanade Reserve Boundary, whichever is the most seaward, or the seaward toe of the foredune or vegetation line where this is within the title.