

Mayor and Councillors
COUNCIL

24 JULY 2014

Meeting Status: **Public**

Purpose of Report: For Decision

PROPOSED DISTRICT PLAN INDEPENDENT REVIEWS AND WAY FORWARD

PURPOSE OF REPORT

- 1 This report presents a series of recommendations on the preferred way forward for the Proposed District Plan (PDP) process. The recommendations are the result of two final independent review reports received by the Council on 24 June 2014 and staff analysis.
- 2 The Council's decisions in respect of these recommendations will determine the Council's work programme for the PDP and the resultant community and submitter involvement for the next 5 years.

SIGNIFICANCE OF DECISION

- 3 While the contents of this report represents critical decisions for this Council and the Community, Council's Significance Policy is not triggered by this report.

BACKGROUND

- 4 The current District Plan became operative in 1999. In 2008 a full review of the District Plan was commenced. A Proposed District Plan 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.
- 6 On 24 June 2014 the Council received final copies of the two independent review reports entitled "Coastal Erosion Hazard Assessments for the Kāpiti Coast: Review of the Science & Assessment Undertaken for the Proposed Kāpiti Coast District Plan 2012" (Coastal report) and "Independent Review of the Kāpiti Coast Proposed District Plan" (Independent report). Attachments 1 and 2 contain the final reports while Attachments 3 and 4 contain summary power point presentations.
- 7 Staff have undertaken a thorough review of both reports and as a result have drafted this report to enable Council to make key decisions on the way forward for the PDP process.

CONSIDERATIONS

Issues

Coastal Hazard Provisions

- 8 The key finding of the Independent Coastal Hazard Review Panel at Page 51 of the final Coastal report is as follows:

“The opinion of the Panel based on its review is that the existing recommended hazard lines are not sufficiently robust for incorporation into the Proposed District Plan. However there are components of the analyses undertaken by Lumsden and CSL, which if updated and combined could potentially yield scientifically-sound, best practice hazard lines for the Kapiti Coast.”

- 9 The Coastal report then presents a series of further technical recommendations to improve the scientific evidence to quantify the coastal hazard risks posed to the Kapiti coastline. Staff recommend that Council adopt these recommendations in full.
- 10 As a result of this Coastal report Council staff recommend the formal withdrawal of the coastal hazard provisions of the PDP. It must be noted that if Council resolve to withdraw provisions from the PDP a detailed Resource Management Act 1991 (RMA) process must be followed that will take some months to complete and further reports will be brought back to Council to implement this process. Future Council updates will also be provided to keep Elected Members informed of this process. This report also recommends that the Council commit to a two to three year programme of scientific and engineering research for coastal hazards as recommended by the Independent Coastal Panel.
- 11 Synergies with other initiatives such as the “Regional Hazards Strategy” being led by Greater Wellington Regional Council and supported by Council will also be pursued.
- 12 Given that the full withdrawal of all coastal hazard provisions will result in a new RMA Schedule One process in respect of these provisions, staff support the recommendation of the Independent Panel to formulate a “Coastal Advisory Group” (CAG) comprised of statutory agencies and community representatives to guide Council’s future work programme decisions on coastal hazard issues and to facilitate community engagement. Staff will develop a draft terms of reference and membership criteria in relation to the CAG for Councils further consideration.
- 13 Once the CAG membership is finalised and established a draft coastal hazard research strategy can be formulated via the CAG process and then recommended to Council for adoption and budget consideration.

Recommendation to Adopt Option 4

- 14 The independent review of the PDP evaluated four options for progressing the PDP.
- 15 The first recommendation of the report at Page 54 states *“That Council proceed with the PDP on the basis of a modified process of hearings and making decisions which includes all elements set out in section 5.5 of this report”*.
- 16 The principal reasons for the independent review recommending Option 4 are:
 - makes best use of resources already expended (including submissions)
 - expected to be most efficient and quickest
 - favoured by some parts of community (including business, tangata whenua)
 - some risks (but less than other options)
 - expected to be most cost-effective.

Staff Analysis of Options 3 and 4

- 17 Staff have independently analysed the two main options – Option 3 and 4 - and concur with the independent review finding in favour of Option 4.

- 18 In completing this review, staff mapped both options against timelines as per the attached flow charts. The Option 3 flowchart is attached as Attachment 5 and Option 4 flowchart is attached as Attachment 6. These charts demonstrate that Option 4 is significantly more time efficient than Option 3 and will result in operative provisions, hence greater certainty for the community in a shorter timeframe.
- 19 Staff consider that the Option 4 flow chart (Attachment 6 to this report) be adopted as the “Implementation Plan” recommended by the independent review and can form the basis of a detailed project plan for Option 4.
- 20 Notable elements of the Option 4 flowchart include:
- The end of November 2014 “go/no go” final decision for Option 4 / Option 3 adoption. Staff consider that a critical step in progressing with Option 4 is the detailed analysis of submissions and further submissions to ensure that any changes to the PDP provisions are within scope. Consequently it is recommended that staff formally confirm to Council at the 11 December 2014 Council meeting whether to proceed with Option 4, and if any required changes to the operative District Plan are required, or whether to return to Option 3.
 - The separate and parallel processes for the coastal hazard provisions and all other PDP provisions which will result in hearing decisions on all non-coastal hazard provisions by December 2016.
 - Achieving the intent of Option 3 inside the Option 4 process by adopting a minimum of a 6 month period of consultation and workshops with submitters on a new set of draft plan provisions before formal pre-hearings and hearings begin. This is an attempt to achieve, where necessary, new plan provisions that are agreed as far as possible with submitters to reduce the scope of points in contention at formal hearings. This serves to fulfil the recommendation of the independent review to use all “tools in the RMA toolbox”, adopting a collaborative and consultative approach and reducing Councils and submitters time and costs in formal hearings.
 - A go/no go decision, no later than March 2016, on whether to proceed with hearings pre or post the 2016 local government elections and a consequential hearing timeframe contingency.

Rules with Immediate Effect

- 21 A key concern for many submitters was the significant number of new rules within the PDP that trigger the need for resource consents.
- 22 The submitter concern is based on a number of issues including:
- practicality
 - enforceability
 - ultra vires wording
 - cost imposition
 - lack of release of draft rules to allow the above to be assessed.
- 23 The legal position in respect of rules with immediate effect based on the Independent Review Report and subsequent legal opinions is now clear. Rules that meet the tests of s.86B (3) of the RMA are deemed “in effect” from the date of notification. All other rules

are not “in effect” as no Council resolution was specifically passed to give this legal effect.

- 24 As a result staff are completing a revised table of rules that meet the tests of s.86B (3) that require resource consents. Essentially these are any rules that are concerned directly with protection of significant ecology and heritage sites (including Waahi Tapu).
- 25 This revised table will be sent to all submitters and posted on Councils website.

Withdrawal of Hazardous Facilities and Priority Areas for Restoration Provisions

- 26 In conjunction, and within the same process as withdrawing the coastal hazard provisions, it is recommended to also withdraw the Hazardous Facilities provisions and the map layer and provisions relating to Priority Areas for Restoration.
- 27 The rationale and basis for the withdrawal of the Hazardous Facilities provisions are:
- The approach taken in the PDP is now not considered to be best practice.
 - It conflicts with requirements (and sometimes duplicate) landowner’s requirements to comply with HSNO legislation.
 - Issues surrounding practicalities of enforcement.
 - The withdrawal of these provisions is recommended by the independent peer review of the PDP.
- 28 The rationale and basis for withdrawing of the Priority Areas for Restoration provisions are:
- The evidence base for this approach is extremely limited.
 - The information was developed at a high level for the development of an open space strategy and applied to the PDP at a very late stage.
 - The mapping does not match the definition and is very broad scale, and also overlaps with other features.
- 29 The withdrawal of these provisions will result in the removal of objectives, policies, map information, rules, some definitions (which relate to these issues only) and cross references to these provisions.
- 30 As with the withdrawal of the Coastal Hazard provisions, a detailed RMA process is required to be followed and Council will be kept updated on this progress.

PDP Timeframe Extension

- 31 Clause 10 of Schedule 1 of the RMA requires that hearing decisions are completed on a proposed plan within 2 years of its notification. For the Kapiti Coast PDP this timeframe expires in November 2014.
- 32 The RMA at Sections 37 & 37A allow for this timeframe to be extended. In exercising Council’s authority pursuant to Sections 37 & 37A, a balance must be attained between having sufficient time to allow for the RMA process and submitter involvement versus giving certainty and confidence as quickly as possible via an operative district plan.
- 33 As a result, the staff recommend that the PDP timeframe be extended to 30 November 2017. This allows a 1 year contingency to the projected end of hearings in December 2016.
- 34 This contingency is important to allow for any time over-runs and also the fact that legally Council is unable to extend the timeframe beyond the first timeframe extension

decision. In addition it enables time for hearings to be held in 2017, if they are deferred until after the 2016 election.

- 35 In exercising this decision, Council must notify “every person who is in its opinion directly affected by the extension of the time limit”.
- 36 In practice the staff consider that a letter to every submitter, in conjunction with a series of more general community wide communications and press releases, more than fulfils this statutory requirement.
- 37 Staff recommend that this decision is made at the 16 October Council meeting to allow more detailed work to be completed to confirm this timeframe.

Appointment of Commissioners

- 38 An appointment of commissioners is required for hearings. Section 14 of the RMA requires that commissioners who preside over pre-hearings cannot preside over the hearing. Hence separate commissioners are required for both processes.
- 39 Staff recommend that the Council make a decision on hearing panel composition at this Council meeting and subsequently decide on panel membership at the October Council meeting. This will allow time for independent commissioners to be canvassed for availability and suitability for appointment and recommendations to be bought back for Council consideration.
- 40 Hearing panel composition options that could be considered by the Council include:
 - Independent chair plus 2 independent commissioners and 2 elected commissioners; or
 - Independent chair plus 1 independent commissioner and 1 iwi commissioner and 2 elected commissioners; or
 - Independent chair plus 1 independent commissioner and 3 elected commissioners.
 - Pre-hearing panel composition options that could be considered by Council include:
 - 1 elected commissioner
 - 2 elected commissioners
 - 1 elected and 1 independent commissioner

It should be noted that hearing panel members as at September 2014 must all be accredited commissioners. In addition all panel members must be free of any conflict of interest, bias and pre-determination of any issue likely to arise.

Communications and Engagement Plan

- 41 A communications and engagement plan is being finalised that addresses four distinct groups:
 - Submitters
 - Whole of community
 - Councillors and Community Board Members
 - Internal staff.

42 The critical elements of the strategy are:

- That all groups are fully informed of where the process is at.
- A 6 weekly formal update to the Regulatory Management Committee updating on activities, consultation, performance against time and budget and risks.
- Additional Council briefings as required or requested.
- A “PDP Update” sheet issued after each RMC meeting targeted specifically at submitters but also suitable to inform all stakeholders.
- Employment of the full range of communication tools, such as press releases, website/Facebook updates, Mayors column etc. on an as required basis.

Financial Considerations

43 A critical aspect highlighted by recommendation 7 of the independent planning report which predicates the selection of Option 3 and Option 4 on the Council’s ability to appropriately resource the process.

44 Councillors should note that two new Principal Planners with 18 and 25 years of direct RMA Policy experience have been recruited, along with the appointment of two specialist planning consultancy firms. In addition, budget provision in 2014/15 include provision for further additional subject matter experts (e.g. landscape, ecology, coastal hazards etc.).

45 All new staff and consultants have been employed within the 2014/15 existing “headcounts” and budgets.

Legal Considerations

46 Development of a district plan must follow the Schedule 1 process of the RMA and many aspects of the PDP are the subject of legal interpretation and legal opinion.

47 Council’s solicitors, Simpson Grierson, have been advising on the PDP to date to ensure legal matters are managed by specialist RMA lawyers.

48 Given the contentious nature of the Kapiti Coast Proposed District Plan and indeed any district plan legal risks surround the process, particularly judicial reviews.

Delegation

49 Council has full delegation to decide upon the recommendations contained within this paper.

Consultation

50 Statutorily defined consultation processes apply to many aspects of the PDP process. In addition this report also signals that a minimum 6 month period of submitter consultation and workshops to, if possible, resolve submission points before proceeding to pre-hearing and hearing.

Policy Implications

- 51 The district plan is the most significant RMA planning document for the Kapiti community.

Tāngata Whenua Considerations

- 52 Significant involvement of tāngata whenua in the District Plan process has been maintained to date. In 2009/2010, Te Whakaminenga o Kāpiti signalled a clear desire to participate in the review of the District Plan. The mechanism for tāngata whenua involvement was identified as the establishment of a Tāngata Whenua District Plan Working Party (the working party). The group consists of representation from each of the three iwi groups in the District. The working party meets regularly (usually 6 weekly) to discuss District Plan issues and is now looking to advance monitoring work, to ensure tikanga identified through the process are being managed in an appropriate way.

Publicity Considerations

- 53 A detailed communications plan is being developed specifically for the PDP process as outlined in paragraphs 41 and 42.

RECOMMENDATIONS

- 54 That the Council, in relation to the report “Independent Review of the Kapiti Coast Proposed District Plan” (Attachment 2 to Report SP-14-1253):

(a) endorse the Independent report; and

(b) adopt its recommendations 1 to 6 being:

1. The Council proceed with the PDP on the basis of a modified process of hearing and making decisions which includes all elements set out in section 5.5 of this report.
2. A detailed implementation plan including resourcing and timetable is developed to progress the PDP in accordance with recommendation 1. A communications plan to keep the community informed would be a necessary part of the implementation.
3. The Council undertake a detailed review of the rules of the PDP having legal effect and clarify these provisions as soon as possible.
4. 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.
5. The Council develop an implementation plan to progress work on the coastal erosion hazard assessment, and other aspects of coastal hazard management. The implementation should build on the work already done and incorporate adequate and appropriate communication and consultation provisions, including a role for an advisory group as described in section 6.4 of this report.
6. 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; and

- (c) adopt Option 4 (continuation of the Proposed District Plan process) but reserve the ability to invoke Option 3 (withdraw the PDP) once further analysis of all submissions have been completed in November 2014.
- 55 That the Council, in relation to the report "Coastal Erosion Hazard Assessment for the Kapiti Coast: review of the science and assessment undertaken for the Proposed Kapiti Coast District Plan" (Attachment 1 to Report SP-14-1253):
- (a) endorse the Coastal report; and
- (b) adopt the report's recommendations in full.
- 56 That the Council endorse the formulation of a Coastal Advisory Group (CAG) with membership from key statutory agencies, neighbouring councils, submitters, coastal land owners and community representatives with an independent chair.
- 57 That staff develop a draft terms of reference for the Coastal Advisory Group and identify the skills / attributes of potential group members for Council consideration.
- 58 That Council endorse the appointment of an independent chair for the Proposed District Plan Hearings Panel.
- 59 That Council endorse the appointment of a Proposed District Plan Hearings Panel comprising the following:
- Independent chair person
 - Independent commissioner
 - Iwi commissioner
 - Two elected commissioners
- 60 That staff canvas independent commissioner's availability and suitability for positions on the Proposed District Plan Hearings Panel following Councils decision on panel composition and present suitable candidates to Council for its consideration and appointment.
- 61 That Council
- a) agree to formally withdraw the following provisions of the Proposed District Plan, including all related objectives, policies, rules, map layers, definitions and references:
- Coastal Hazards
 - Hazardous Facilities
 - Priority Areas for Restoration.
- b) request staff to report back on the necessary steps to implement the withdrawal of the Proposed District Plan provisions.
- c) note that the elected members will be regularly updated on progress on the RMA process for withdrawing these provisions.

- 62 That the Council endorse the Option 4 Implementation Plan (Attachment 6 to Report SP-14-1253) and staff update the Regulatory Management Committee and Te Whakaminenga o Kāpiti (TWOK).
- 63 That the Council acknowledges that the RMA timeframe for Proposed District Plan decisions will require an extension by invoking Sections 37 & 37A of the Resource Management Act and defer this decision until the 16 October 2014 Council Meeting.
- 64 That Council formally express its gratitude to the members of the two independent review panels: Coastal Experts Panel comprising James Carley, Paul Komar, Paul Kench and Robert Davies; and the Independent Reviewers Sylvia Allan and Richard Fowler, for their thorough and professional reports.
- 65 That Council formally express their appreciation to the people that took part in the independent review processes and subsequent invitations to provide comments on the draft reports.

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ATTACHMENTS:

- Attachment 1: “Coastal Erosion Hazard Assessment for the Kāpiti Coast: Review of the Science & Assessments Undertaken for the Proposed Kāpiti Coast District Plan 2012”.
- Attachment 2: “Independent Review of the Kāpiti Coast Proposed District Plan”.
- Attachment 3: A power point summary of the Final Report of the Independent Coastal Panel.
- Attachment 4: A power point summary of the Independent Review of the Kapiti Coast Proposed District Plan.
- Attachment 5: Draft indicative Option 3 timeline.
- Attachment 6: Draft indicative Option 4 timeline.