

**Chairperson and Committee Members**  
STRATEGY AND POLICY COMMITTEE

22 MARCH 2018

Meeting Status: **Public**

Purpose of Report: For Information

**APPEALS LODGED ON THE PROPOSED DISTRICT PLAN (PDP)**

**PURPOSE OF REPORT**

- 1 To provide a summary of the appeals filed in the Environment Court on the Proposed District Plan (PDP) Decisions Version and an outline of the process moving forward for resolving them.

**DELEGATION**

- 2 This report is to provide an update only of the process following the closing on the appeal period.

**BACKGROUND**

- 3 To briefly recap, on 9 November 2017 Council adopted the Hearing Panel's recommendations on the Proposed District Plan (PDP) and Variation 1 to the Proposed Plan – Urban Trees. On 22 November 2017 Council's decision was publicly notified.
- 4 Following notification of the decision, submitters on the PDP had 30 working days to lodge appeals to the Environment Court. The period for appeals closed on 25 January 2018.

**ISSUES**

- 5 We have received notification from the Environment Court of 18 appeals made on the PDP (including Variation 1 – Urban Trees).
- 6 The 18 appeal parties are:
  - NZ Association of Radio Transmitters Incorporated and Kapiti Amateur Radio Society Incorporated
  - St Heliers Capital Limited
  - Maypole Environmental Limited
  - Ballinger Industries Limited
  - Coastal Ratepayers United (CRU)
  - S Cunningham and others
  - Federated Farmers of New Zealand
  - Progressive Enterprises Limited

- Heritage New Zealand Pouhere Taonga
  - Coastlands Shoppingtown Limited
  - MY and SA Blackburne
  - Hedger Greenhouse Limited
  - Winstone Aggregates
  - Spark NZ Trading Limited
  - Kapiti Coast Airport Holdings Limited (KCAHL)
  - Royal Forest and Bird Protection Society of New Zealand Incorporated
  - Graham Halstead
  - Carter Family of Reikorangi.
- 7 The table in **Attachment 1** to this report outlines in more detail the appeals received, the appeal parties and s274 interested parties<sup>1</sup>, and the key PDP issues which are subject to the appeals. Information on the appeals, including appeal documents, is available on Council's website at [www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/appeals-on-the-pdp/](http://www.kapiticoast.govt.nz/Your-Council/Planning/District-Plan-Review/appeals-on-the-pdp/)
- 8 In summary, key matters subject to appeal include:
- The Ngārara Zone and Ngārara Precinct policy and rule framework;
  - The provisions for specific working Zone areas including Precincts A and C of the District Centre Zone at Paraparaumu, the Airport Zone, retail provisions in Town Centres, Local Centres and the Industrial/Service Zone, and the zoning of the Industrial/Service Zone in the Kapiti Road/Te Roto Drive area and the Ihakara Street West Precinct;
  - The Coastal Dominance area, Schedule 4.1 and Chapter 4 (Coastal Environment) rules;
  - All Special Amenity Landscapes, and Outstanding Natural Landscapes areas where they overlap with productive land;
  - Native vegetation and earthworks rules in Chapter 3 (Natural Environment);
  - Mapping of flood hazards, ecological sites and outstanding natural landscapes in the Ngārara Zone; flood hazards and ecological sites at 66 County Road, Otaki; and flood hazards at 240 Kapiti Road;
  - Flood hazards in relation to the Airport Zone; flood hazard rules in relation to Precinct A of the District Centre Zone;
  - Waahi tapu rules for Wahanga Rua and Wahanga Toru sites;
  - Rural Hills and Rural Plains subdivision rules;

---

<sup>1</sup> A s274 party means a person who files a notice with the Environment Court in the manner prescribed in section 274 of the RMA that they wish to become a party to the appeal proceedings.

- Schedule 3.1 in relation to Development Incentives for biodiversity;
  - Some network utilities rules in Chapters 3 (Natural Environment) and 11 (Infrastructure);
  - Provisions and mapped information for extractive industries (quarries);
  - The zoning of Waikanae Olde Beach area; and
  - Amateur radio permitted activity rules and related definitions.
- 9 Staff have worked through the detail of each appeal to determine which parts of the PDP each appeal relates to. In some instances appeals are relatively contained and relate to a particular provision (e.g. a specific definition, rule or policy, a mapped feature or a property); in other cases the appeal issue is broader and relates to multiple sections of the PDP.
- 10 An 'Appeals version' of the PDP is being finalised and will be made publicly available by mid-March 2018. The 'Appeals version' will replace the 'Decisions version' of the PDP and will identify which parts of the PDP are subject to appeals and therefore may change as a result of the appeals resolution process; it will also identify which parts of the PDP are not subject to any appeals and therefore take on more weighting in decision-making. Importantly section 86F of the RMA requires that all PDP rules that are not under appeal must be treated as operative and any previous rule as inoperative.
- 11 The process of resolving appeals will involve a series of Environment Court mediation meetings to determine whether or not agreement between the appeal parties can be reached. If the appeals are able to be settled, a Consent Order will be drafted, agreed and signed by the parties, and issued by the Environment Court. This process may result in subsequent amendments to the PDP.
- 12 The Environment Court held a judicial pre-hearing conference in relation to the PDP appeals on 1 March 2018. The Environment Judge presiding over the appeals, Judge B P Dwyer, outlined directions for how the appeals process will be managed including the timeframe for mediation meetings.
- 13 The Court has allocated three weeks over April to early May 2018 for mediation meetings with appeal parties as follows:

Week of 9 April 2018:

- G Halstead
- M & S Blackburne and Carter Family of Reikorangi
- Spark New Zealand Trading Limited

Week of 30 April 2018:

- Heritage New Zealand Pouhere Taonga
- Hedger Greenhouse Limited
- Winstone Aggregates
- S Cunningham and others

Week of 7 May 2018:

- Kapiti Amateur Radio Society & Another
- Federated Farmers of New Zealand

- Royal Forest and Bird Protection Society of New Zealand Incorporated.
- 14 The Court directed that all mediation meetings will take place at the Environment Court in Wellington.
  - 15 In terms of the S Cunningham and others appeal (which concerns the zoning of the Waikanae Olde Beach area), counsel for the appellant advised the Court on 1 March that the service of appeal may not have been served on all parties who might potentially have an interest in the appeal. The Court directed the appellant to serve notice on further potentially interested parties (which include the parties who made submissions on Waikanae Beach zoning and planning matters), with those parties having until 16 March 2018 to lodge a s274 notice to join the appeal proceedings.
  - 16 The Coastal Ratepayers United (CRU) appeal has been placed on hold by the Court to allow time for discussions between the appeal parties to be held prior to entering the formal mediation process. The Court has directed Council to file a report outlining progress by 31 May 2018.
  - 17 A preliminary legal issue was raised in relation to the Maypole Environmental Limited appeal and whether the relief sought by the appeal in terms of the revised rule framework is within the scope of its original submission. The Court agreed with the approach suggested by counsel for Maypole and the Council and has to set aside a half day hearing in May 2018.
  - 18 The Court confirmed that the group of appeals related to business and town centre issues in the Paraparaumu area (i.e. Coastlands, Kapiti Airport, St Heliers, Progressives and Ballinger Industries) are to be managed together because of the overlapping nature of the issues subject to appeal. The Court has placed these appeals on hold until the 31 March 2018 in order to allow for Coastlands to apply for a declaration from the Court regarding the issue of 'trade competitors'. If a declaration is sought, the other parties in this group of appeals will have until 13 April to advise whether or not they oppose the application. A further judicial conference will be organised by the Court following this.
  - 19 In terms of the process of mediating the appeals the current delegation to staff enables the Group Manager Strategy and Planning and the Manager Research Policy and Planning "the power to authorise on Council's behalf, agreement to consent orders arising from proceedings in the Environment Court in relation to the PDP, plan changes and variations, after consultation with the Chairperson or in the absence, the Deputy Chairperson from the Council committee with responsibility for managing these matters."
  - 20 It is anticipated that as staff progress through the mediation process there will be regular updates to the Chairperson and Council to keep them up to date with progress. Staff have also set up an appeals steering group to provide oversight of the appeals process, and regular progress updates will be provided to SLT. Given the tight timeframes set by the Environment Court for mediation with the appeal parties, prior to the formal mediation meetings we will outline the appeal strategy with the Mayor and Deputy Mayor. We are currently working with our legal counsel to develop a mediation strategy.

## CONSIDERATIONS

### Policy and Legal considerations

- 21 As a result of the statutory process at the present time both the Operative District Plan (ODP) and the PDP Decisions version have legal effect. The PDP will be updated to an 'Appeals Version' by mid-March 2018. While common during plan review processes nationwide, having to evaluate the weighting given to two district plans adds complexity for plan users and for our customers applying for both building and resource consents. Staff are working together to ensure that consistent interpretation of the documents is provided.
- 22 Although the RMA requires that PDP rules must be treated as operative if no appeals have been lodged in relation to them, the PDP as a whole will not be able to be made formally operative by Council until all appeals have been resolved.
- 23 The process of mediating and settling the appeals will involve support from legal counsel.

### Financial considerations

- 24 There will be some costs associated with the appeals process. This will include costs associated with producing the Appeals version of the PDP, and the costs associated with mediating appeals and any Environment Court hearings required and the subsequent amendments to the PDP documents. These costs are provided for within existing budgets.

### Tāngata whenua considerations

- 25 Staff will provide regular updates to Te Whakaminenga o Kāpiti (on a similar basis as the updates provided to the Chairperson and Council) to keep them up to date with progress on appeals.

## SIGNIFICANCE AND ENGAGEMENT

### Significance policy

- 26 While this policy decision has a high level of significance for Council and the community, the RMA 1991 mandates a specific process that Council must follow rather than the process set out in the Significance and Engagement Policy.

### Consultation already undertaken

- 27 The process of the PDP has involved almost ten years of engagement and consultation, including independent review and an extra process of submitter engagement that involved a "Submitter Engagement Version" of the PDP being released for comment. A full year of hearings were undertaken between April 2016 to April 2017 involving 22 hearings over 41 hearing days with a total of 218 submitters presenting to the Hearing Panel. Moving forward Council must work with appeal parties to resolve the matters under appeal.

Publicity

- 28 Staff are working together to ensure that the public is informed about the status of the PDP and the appeal process. This includes updating information available on Council’s website and providing regular updates to plan users and customers.

Other considerations

- 29 Staff have been active in rolling out a PDP communications and training plan for both internal staff and external plan users. This has included a series of internal workshops and presentations for internal staff, two presentations specifically for external plan users, updates to the Council’s website information, and a newsletter to plan users and customers.
- 30 Staff are also working towards having the Appeals version of the PDP as an E-Plan available online by early April 2018.

**RECOMMENDATIONS**

- 31 That the Strategy and Policy Committee receives this report SP-18-436 Appeals lodged on the Proposed District Plan (PDP).
- 32 That the Strategy and Policy Committee notes the appeals received and the next steps in the appeals process.

<b>Report prepared by</b>	<b>Approved for submission</b>	<b>Approved for submission</b>
Sherilyn Hinton	Natasha Tod	Sarah Stevenson
<b>Principal Policy Planner</b>	<b>Group Manager Regulatory Services</b>	<b>Group Manager Strategy and Planning</b>

**ATTACHMENTS**

**Attachment 1: Summary table of appeals lodged on the PDP**

## ATTACHMENT 1: SUMMARY TABLE OF APPEALS LODGED ON THE PDP

Environment Court Reference	Appellant	S274 parties	Appeal issue / topic	PDP Chapter(s)	Initial mediation meeting
ENV-2018-WLG-006	NZ Association of Radio Transmitters Incorporated and Kapiti Amateur Radio Society Incorporated	Lyndon Enterprises Limited	Definitions and rules which control the installation of amateur radio configurations (antennas, aerials and their supporting structures). Particularly in relation to the height, diameter and location of amateur radio configurations.	Chapter 1 - Introduction and Interpretation Chapter 12 - General Provisions	Week of 7 May 2018
ENV-2018-WLG-007	St Heliers Capital Limited	Department of Conservation Coastlands Shoppingtown Ltd Greater Wellington Regional Council	Policies, rules and appendices related to the District Centre Zone and provisions related to Precinct C. Specifically in relation to the mix of retail and commercial activities enabled within the precinct.	Chapter 6 – Working Zones Appendix 6.7 – District Centre Zone Structure Plan Appendix 6.9 – Centres Design Principles	On hold until 31 March
ENV-2018-WLG-008	Maypole Environmental Limited	Department of Conservation	Provisions and map overlays related to the development of the Ngārara Zone and Ngārara Precinct and objectives related to ecology, biodiversity and landscapes.	Chapter 2 – Objectives Chapter 3 – Natural Environment Chapter 5 – Living Zones	Half day hearing in May 2018 (re: scope of appeal)

				<p>Chapter 7 – Rural Zones</p> <p>Chapter 9 – Hazards</p> <p>Chapter 10 – Historic Heritage</p> <p>Chapter 11 – Infrastructure</p> <p>Planning Maps</p>	
<b>ENV-2018-WLG-009</b>	<b>Ballinger Industries Limited</b>	<p>St Heliers Capital Limited</p> <p>Progressive Enterprises Ltd</p> <p>Coastlands Shoppingtown Ltd</p>	Provisions that constrain activities on the land zoned Industrial/Service on Kāpiti Road, including supermarket activities; and rezoning of the Industrial/Service Zone fronting Kāpiti Road to a more appropriate type of zone.	<p>Chapter 2A – District-Wide Policies</p> <p>Chapter 6 – Working Zones</p> <p>Planning Maps</p>	On hold until 31 March
<b>ENV-2018-WLG-010</b>	<b>Coastal Ratepayers United (CRU)</b>	<p>Maypole Environmental Ltd</p> <p>Department of Conservation</p> <p>Wellington Regional Council</p>	Provisions relating to the extent of the coastal environment and the dominant coastal environment concept including definitions, Policy 4.1 and Plan Maps, Objective 2.4(e) and rules and standards in section 4.1.2.	<p>Chapter 1 – Introduction and Interpretation</p> <p>Chapter 2 - Objectives</p> <p>Chapter 4 – Coastal Environment</p> <p>Planning Maps</p>	On hold to allow discussions between parties prior to entering mediation – progress report due 31 May 2018.
<b>ENV-2018-WLG-011</b>	<b>S Cunningham and others</b>	<p>Waikanae Beach Residents Society Incorporated</p>	Inclusion of specific provisions to zone the area known as Waikanae Olde Beach as “beach residential”.	<p>Chapter 5 – Living Zones</p> <p>Chapter 11 - Infrastructure</p>	TBC following time extension until 16 March 2018 for potential additional s274 parties to



				Appendix 5.2 - Special Character Areas: Design Guidelines Planning Maps	join appeal.
<b>ENV-2018-WLG-012</b>	<b>Federated Farmers of NZ</b>	A Smith L Smith Waa Rata Estate Royal Forest & Bird Protection Society Margaret Niven Transpower NZ Ltd First Gas Ltd Horticulture NZ Department of Conservation Wellington Regional Council C T Brown Lyndon Enterprises Limited Guttke, (Ulrich) Egon	Definitions and provisions related to the recognition and provision for primary production and farming activities including earthworks, farm quarries, intensive farming activities, indigenous vegetation removal in rural zones, farming activities within ecological sites, Key Indigenous Tree Species, Special Amenity Landscapes, Outstanding Natural Landscapes, forestry, infrastructure including National Grid, noise from farming activities.	Chapter 1 – Introduction and Interpretation Chapter 2 – Objectives Chapter 3 – Natural Environment Chapter 7 – Rural Zones Chapter 11 – Infrastructure Chapter 12 – General Provisions Planning Maps	Week of 7 May 2018
<b>ENV-2018-WLG-013</b>	<b>Progressive Enterprises Limited</b>	St Heliers Capital Limited Ballinger Industries	The policy and rule framework as it relates to the provision of supermarkets	Chapter 1 – Introduction and Interpretation	On hold until 31 March

		Ltd Coastlands Shoppingtown Ltd	outside of “centres”.	Chapter 6 – Working Zones	
<b>ENV-2018- WLG-014</b>	<b>Heritage NZ Pouhere Taonga</b>	Maypole Environmental Ltd Waikanae Christian Holiday Park	The permitted activity and controlled activity rules for Wahanga Rua and Wahanga Tora in that they do not provide adequate protection for waahi tapu sites and areas, particularly from land disturbance, and do not support the objectives and policies of the plan for waahi tapu.	Chapter 10 – Historic Heritage	Week of 30 April 2018
<b>ENV-2018- WLG-015</b>	<b>Coastlands Shoppingtown Limited</b>	St Heliers Capital Limited Kapiti Coast Airport Holdings Limited Progressive Enterprises Ltd Sherlock Developments Ltd Mal Hire Ltd Kennott Trust Company/Forest Lakes Trust Company Kennott Trust	Recognition of Council’s roles and responsibilities for infrastructure provision in the objectives and policies; the zoning of Ihakara Street West; restrictions on development within the District Centre Zone and rules and standards; provisions for business activities including retail and commercial development outside of District Centre Zone Precinct A and the effects on the Paraparaumu Town Centre.	Chapter 2 – Objectives Chapter 2A – District Wide Policies Chapter 6 – Working Zones Chapter 9 - Hazards Chapter 11 – Infrastructure Appendix 6.7 – District Centre Zone Structure Plan Planning Maps	On hold until 31 March

		Company Ltd Galarp Holdings Ltd Firmaterra Holdings Ltd A & A McKenzie Ballinger Industries Ltd Wellington Regional Council			
<b>ENV-2018-WLG-016</b>	<b>MY and SA Blackburne</b>	Waa Rata Estate Quicksilver Enterprises Ltd	The activity status for subdivision in the rural zone (in particular the activity status described in Tables 7A.3, 7A.4 and 7A.5), and the Chapter 7 policy framework.	Chapter 7 – Rural Zones	Week of 9 April 2018
<b>ENV-2018-WLG-017</b>	<b>Hedger Greenhouse Limited</b>	Department of Conservation	The provisions contained in Chapters 3, 5, 7 and 9 and the Plan Maps as they apply to the appellant's land (66 County Road, Otaki), and in particular the ecological site overlay (K212) and the flood hazard notation.	Planning Maps	Week of 30 April 2018
<b>ENV-2018-WLG-018</b>	<b>Winstone Aggregates</b>	Federated Farmers of New Zealand Transpower NZ Ltd Coastlands	Provisions for extractive industries, including objectives, policies, rules and map provisions for quarries and river gravel extraction, noise and vibration rules and	Chapter 1 – Introduction and Interpretation Chapter 2 – Objectives	Week of 30 April 2018

		Shoppingtown Ltd Wellington Regional Council	standards for extractive industries, and definitions and rules for major traffic activities and vehicle movements.	Chapter 7 – Rural Zones Chapter 9 – Hazards Chapter 11 – Infrastructure Chapter 12 – General Provisions Planning Maps	
<b>ENV-2018-WLG-019</b>	<b>Spark NZ Trading Limited</b>	Federated Farmers of New Zealand Horticulture NZ Coastlands Shoppingtown Ltd Heritage New Zealand Pouhere Taonga	The clarity of the rule provisions for earthworks in Chapter 3 and the applicability to telecommunication and radiocommunications activities, the wording of the applicability statement at the beginning of the network utility rule tables in Chapter 11, the clarity of default rule 11A.4.3 and its relationship with permitted activity rule 11A.1.12 which relates to extensions to existing and new above ground lines in rural zones.	Chapter 3 – Natural Environment Chapter 11 – Infrastructure	Week of 9 April 2018
<b>ENV-2018-WLG-020</b>	<b>Kapiti Coast Airport Holdings Limited (KCAHL)</b>	St Heliers Capital Limited Progressive Enterprises Ltd Ballinger Industries	Objectives and policy and rule provisions that restrict the development of KCAHL's land (being the land identified as the Airport Zone).	Chapter 1 – Introduction and Interpretation Chapter 2 – Objectives	On hold until 31 March

		<p>Ltd Coastlands Shoppingtown Ltd Wellington Regional Council</p>		<p>Chapter 2A – District Wide Policies Chapter 6 – Working Zones Chapter 9 - Hazards Chapter 11 – Infrastructure Planning Maps</p>	
<p><b>ENV-2018- WLG-021</b></p>	<p><b>Royal Forest and Bird Protection Society of New Zealand Incorporated</b></p>	<p>A Smith L Smith Waa Rata Estate Federated Farmers of New Zealand Margaret Niven Transpower NZ Ltd Horticulture NZ Maypole Environmental Ltd Department of Conservation New Zealand Transport Agency Wellington Regional Council Guttke, (Ulrich) Egon</p>	<p>Definitions, policies and rules relating to the protection and maintenance of indigenous biodiversity and indigenous vegetation, including provisions for trimming and modification inside and outside of scheduled areas, earthworks and subdivision.</p>	<p>Chapter 1 – Introduction and Interpretation Chapter 3 – Natural Environment Chapter 5 – Living Zones Chapter 6 – Working Zones</p>	<p>Week of 7 May 2018</p>

		Lyndon Enterprises Limited			
<b>ENV-2018-WLG-022</b>	<b>Graham Halstead</b>		The stormwater hazards and fill control area identified on 240 Kapiti Road.	Planning Maps	Week of 9 April 2018
<b>ENV-2018-WLG-024</b>	<b>Carter Family of Reikorangi</b>	Waa Rata Estate Quicksilver Enterprises Ltd S & M Blackburne	Provisions relating to development incentives, including as they relate to rural zoned land.	Chapter 3 – Natural Environment Appendix 3.1 – Development Incentive Guidelines	Week of 9 April 2018