

Mayor and Councillors  
**COUNCIL**

**16 DECEMBER 2010**

Meeting Status: Public

Purpose of Report: For Decision

## COMMISSIONERS' RECOMMENDATION FOR PUBLIC PLAN CHANGE 64(C) - MISCELLANEOUS CHANGES

### **PURPOSE OF REPORT**

- 1 This report seeks a decision from the Council on the Commissioners' Recommendation on Public Plan Change 64(C) - Miscellaneous Changes.
- 2 Plan Change 64(C) - Miscellaneous Changes was initiated by Council in 2009 to amend the relevant policies, rules, standards and definitions to gain greater clarity for provisions relating to dwellings, accessory buildings, vehicle access, shelter belts, medium density housing and native vegetation and to update references to outdated industry standards for production forestry, parking design and radiation.

### **SIGNIFICANCE OF DECISION**

- 3 The significance policy is not triggered by this report.

### **BACKGROUND**

- 4 The Kāpiti Coast District Plan became operative in 1999. From time to time, details of rules and standards need to be updated more frequently than the 10 year cycle mandated under the Resource Management Act (RMA) for a District Plan Review. Changes to the District Plan to reflect updates of external standards referenced in the Plan and best practice methods are generally bundled up into one plan change called 'miscellaneous' to prevent constant plan changes as various standards change. Miscellaneous changes and legislative updates must be made to the District Plan as and when required in order to keep the District Plan up to date.
- 5 In keeping with this practice, over the last few years, Council staff have identified interpretation issues with provisions and definitions in the District Plan. In addition, changes to legislation and industry standards have resulted in references in the District Plan being out-of-date. These issues are addressed via this Plan Change.
- 6 Plan Change 64(C) was notified in March 2009. A plan change process generally takes approximately 12 months, but due to workloads on the planning team generated by the expressway, other plan changes and resource constraints, the period for this plan change has been longer.
- 7 Some provisions in the District Plan are out of date or unclear due to updates to legislation, industry standards and other third party documents. The

recommended changes to the rules, standards and definitions of the District Plan intend to ensure that these provisions are up to date and achieve the aims of the objectives and policies in the District Plan. For example:

- parking design - current District Plan provisions refer to car parking standards which are difficult to read and inconsistent with the current New Zealand Standard, which is a recognised industry standard.
- radiation - current District Plan provisions for Radiation refer to New Zealand Standard NZS6609 which has now been superseded by New Zealand Standard NZS2772.1:1999 (Radiofrequency Field-Maximum Exposure Levels). An amendment to reflect this will ensure that activities are undertaken in accordance with correct New Zealand Standard.
- production forestry – current District Plan provisions refer to the ‘*New Zealand Forest Code of Practice*’, however, this has been superseded by the ‘*New Zealand Environment Code of Practice for Plantation Forestry*’.

- 8 Limited guidance is provided in the current District Plan provisions on the implementation of the Medium Density Housing Design Guide. Plan Change 64(C) proposes to provide greater clarity about the role of the Medium Density Housing Design Guide when assessing resource consent applications.
- 9 The definitions for ‘dwellings’, and associated residential terms are unclear in the current District Plan. Plan Change 64(C) proposes changes to these definitions to clarify the interpretation of these terms. New definitions are also proposed in the notified Plan Change to clarify what is meant by the terms ‘sunlight’, ‘bathroom’, and ‘kitchen’ as used in the existing standards, rules and definitions. For example, under the current definition of ‘dwelling’, it is unclear when the provision of additional kitchen and/or bathroom facilities creates a second ‘dwelling’ on the property. The recommended changes are specific and clarify the interpretation adopted by staff.
- 10 The recommended provisions propose to amend the definitions of ‘dwelling’, ‘residential activity’, ‘household unit’, ‘habitable building’ and ‘habitable room’ and to add new definitions for ‘kitchen’ and ‘bathroom’ to the District Plan to clarify when more than a single ‘dwelling’ is created.
- 11 The current (operative) District Plan contains a Shelter Belt Permitted Activity Standard in the Rural Zone, but it does not provide a definition for shelter belts. Plan Change 64(C) proposes to introduce a definition of ‘shelter belt’ and to make amendments to the Shelter Belt Permitted Activity Standard to clarify the interpretation of what defines a shelter belt for resource consent purposes.
- 12 The operative Native Vegetation Permitted Activity Standard requires resource consent for the modification of certain trees to keep vehicle access ways clear. At present the Permitted Activity Standard is restricted to farm tracks and does not refer to driveways associated with residential sites. Plan Change 64(C) proposes to amend the standard to better enable landowners to keep vehicle access ways clear from encroaching vegetation.

- 13 The wording in the Native Vegetation Standard (of the operative District Plan) contains confusing provisions regarding the criteria to fell trees. Plan Change 64(C) proposes to amend the standard to ensure protection of larger trees as intended by the operative District Plan.
- 14 It is important to note that the recent RMA changes regarding blanket tree protection provisions are not dealt with through this plan change. The provision of the *Resource Management Amendment Bill 2009* abolishing the current blanket tree protection rules from ‘urban environments’ (section 76(4A), RMA) comes into effect in 2012. This will be addressed as part of the District Plan Review.
- 15 Individually, each of these changes are not substantial, but collectively they are significant, in that they remove ambiguity for assessing resource consent applications for both Council staff and applicants.
- 16 All of these changes will be reviewed again as part of the District Plan Review, but due to the time involved and recent changes to the RMA, which mean that any plan changes do not have legal effect until a decision on submissions has been publicly notified (s.86B RMA), it was deemed necessary by Council to proceed with this plan change before the District Plan Review, in order to provide greater interim clarity.
- 17 A full copy of the amended provisions as recommended by the Commissioners is Schedule 1 to the Commissioners’ Report, attached as Appendix 1 to this report. The notified provisions are Appendix C in the attached Commissioners’ Report (Appendix 1).
- 18 Public Plan Change 64(C) was publicly notified in March 2009, and six submissions were received. The submissions were summarised and the summary publicly notified for further submissions and one further submission was received.
- 19 Three commissioners were appointed to hear the Plan Change submissions and make recommendations to Council. The commissioners were Councillor Diane Ammundsen (Chair), Councillor Hilary Wooding and Adrian Webster. The hearing was held on the 12 April 2010, at which two submitters presented oral and written submissions.

## CONSIDERATIONS

### Issues

- 20 The attached Commissioners’ Report:
  - describes the Submissions and Evidence that were presented both at the hearing and in the submissions period;
  - provides an assessment of the Plan Change both in relation to these submissions and also in relation to the relevant statutory and non-statutory documents, e.g. the RMA and the Local Outcomes Statement; and based on this analysis,
  - recommends that the Plan Change be approved but with amendments.

- 21 The main changes recommended by the Commissioners from the version approved by Council for notification on 18 December 2008 are:
- The proposed definition of ‘self-contained’ has been removed due to it being considered unnecessary;
  - The wording for the Native Vegetation Permitted Activity Standard was further amended to help clarify the rule and further reduce confusion.
- 22 Schedule One of the Commissioners’ Recommendation (attached at Appendix 1) sets out their full recommended provisions.
- 23 The Appendices to the Commissioners’ Report include a Section 32 Report (Appendix A). Appendix B of the report provides a summary of the submissions and further submissions received on the Plan Change, and the Commissioners’ recommendations in relation to these submissions. Appendix C is the Notified Plan Change provisions.

### Options

- 24 There are three options for the Council to consider in regards to the Commissioners’ Recommendations on Plan Change 64(C):
- adopt the Commissioners’ recommendations as set out in Schedule 1 of the Commissioners’ Report (Attachment 1 to this report); or
  - dismiss the Commissioners’ recommendations and hear all the evidence and submissions again as a full Council and reach a decision; or
  - withdraw the Plan Change (see paragraph 28).
- 25 The Commissioners will be available at the Council meeting to answer questions about the Commissioners’ Report and recommendations.

### Financial Considerations

- 26 Plan Change 64(C) is a public plan change and all costs (including the cost of defending it against any appeals) will be met from existing budgets.

### Legal Considerations

- 27 Part I of the First Schedule of the *Resource Management Act 1991* outlines the process for managing public plan changes. If the Council wishes to alter the recommendation so that it is contrary to the Commissioners’ recommendations, then the principles of natural justice and fairness would require that the Council rehear the request and the submissions, and provide detailed reasons in support of its decision, or the Council can withdraw the plan change.
- 28 Following the release of the Council’s decision, submitters have 30 working days (six weeks) to lodge an appeal with the Environment Court if they do not agree with the decision.

## Delegation

- 29 The Council has authority to make decisions on plan changes under clause 10(1) of the first schedule of the *Resource Management Act 1991*.

## Consultation

- 30 Full public notification and involvement has occurred during the processing of the Plan Change as required by the *Resource Management Act 1991*. Appendix B of the Commissioners' Report summarises the submissions received.
- 31 Iwi were sent a copy of the Plan Change for comments, and were involved in consultation leading up to the drafting of the Plan Change. No concerns were raised with Council.

## Policy Implications

- 32 The application was fully assessed against the key outcomes of the Long Term Council Community Plan, the objectives and policies of the District Plan, and other statutory plans, and took into account the community consultation and community outcomes developed under the LTCCP process and the Development Management Strategy. The Commissioners consider that the Plan Change is consistent with these documents.

## Publicity Considerations

- 33 There are no major publicity considerations to consider in relation to this Plan Change. However, a public notice will be placed in the local paper to advise of the Council's decision, and notice will be served on every person who made a submission and further submission on the Plan Change.

## RECOMMENDATIONS

- 34 That the Council, being satisfied as to the matters in section 32 of the *Resource Management Act 1991*, adopts Plan Change 64(C) – *Miscellaneous Changes*, as set out in Schedule 1 of the attached Commissioners' Report; and
- 35 That all submissions and further submissions made in respect of Plan Change 64(C) – *Miscellaneous Changes* are accepted, accepted in part or rejected for the reasons given in the attached Commissioners' Report and Summary of Submissions.

**Report prepared by:**

**Approved for submission by:**

**James Kilbride**

**Gael Ferguson**

**Policy Planner**

**Group Manager, Strategy and Partnerships**

**ATTACHMENTS: APPENDIX 1: COMMISSIONERS' RECOMMENDATIONS**