

Mayor and Councillors
COUNCIL

18 JULY 2013

Meeting Status: **Public**

Purpose of Report: For Decision

APPOINTMENT OF PRE-HEARING EXPERTS' PANEL FOR CHAPTER FOUR, PROPOSED DISTRICT PLAN

PURPOSE OF REPORT

- 1 This report seeks the Council's approval of recommendations from the working group on the appointment of members of the experts' panel for the pre-hearing process relating to submissions on Chapter 4 of the Proposed District Plan (PDP). Recommendations are made on
 - the membership of the panel;
 - the Terms of Reference for the panel's work.

SIGNIFICANCE OF DECISION

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

BACKGROUND

- 3 At its meeting of 18 April 2013, Council resolved as follows:

MOVED (Lester/Lloyd)

That Council approves the following:

- a) **That a panel of three independent experts be appointed by Council to be involved in the District Plan pre-hearing assessment and conferencing relating to coastal erosion hazard lines and management areas as prescribed in Section 42A of the Resource Management Act 1991 and**
- b) **The independent experts be provided full access to all information relating to the coastal erosion hazard work that Council has carried out over the past 9 years, and**
- c) **The Chief Executive provide a report to a Working Party of six councillors (Cr Cardiff, Cr Lester, Cr Church, Cr Gurunathan, Cr Gaylor, Cr Wooding) that will make recommendations to Council on the appointments to the panel and**
- d) **Submitters on coastal erosion hazard lines and management areas be invited to submit names of appropriately qualified experts to the Chief Executive for inclusion in the report to the Working Party.**

CARRIED

- 4 The working group has met and considered a number of technical experts – scientists, engineers, practitioners and statisticians – whose names have been suggested by

- Council search;
 - submitters on the PDP.
- 5 A search was conducted by Council officers through the internet and current networks to identify coastal experts who were not involved with the Coastal Systems Ltd (CSL) risk assessment or conflicted through other work with CSL or the Council.
 - 6 People who had submitted on the coastal hazards parts of the PDP were also asked to propose suitably qualified experts who could participate in the panel and a number did so. Several submitters questioned being asked to suggest names in the absence of the Terms of Reference on the grounds that it was difficult to know exactly what areas of expertise were required. Council officers' response was that the experts proposed should be capable of addressing the matters raised in the submissions.
 - 7 When the suggestions were received, there was significant commonality in the names both from the submitters and from the Council search.

CONSIDERATIONS

Issues

The experts' panel

- 8 Clause a) of the resolution (para 3) refers to a prescription in S42A of the Resource Management Act (RMA) for a method of reviewing information which underpins proposed rules and policies in PDPs: there is no such prescription in S 42A. However, conferencing or caucusing between experts is widely used where information of a highly technical nature is questioned or challenged by submitters on PDPs. Environment Court Practice Notes will be used to ensure best practice guides the deliberations and conduct of the panel alongside the expectations as laid out in the draft Terms of Reference (attached at Appendix 2).
- 9 The experts appointed to this panel will meet with the Council's experts, Dr Roger Shand and Mr Jim Dahm, and any technical experts submitters may put forward to discuss and try to resolve by consensus any issues raised by submitters relating to the scientific data, methodology or conclusions used to develop the policies and rules relating to coastal erosion hazards in Chapter 4 of the PDP. This process is known as conferencing or caucusing.
- 10 If the experts can agree a resolution of the issues raised, they will contribute a group statement for inclusion unchanged in the Planner's Report to the independent hearing Commissioners. If not, individual statements, or statements from smaller groups, will be made which will similarly be included in the Planner's Report. In addition to these statements, the hearings Commissioners may call on any or all of the experts as witnesses during the hearings.
- 11 The working group agreed that, in order to ensure all aspects of the technical issues raised could be robustly considered, the panel should be made up of two scientists with expertise in coastal geomorphology and an engineer with expertise in coastal processes.

- 12 Several submitters put forward the names of statisticians for inclusion in the panel. The working group discussed this and agreed that, while the majority of the technical issues raised by submitters in relation to Chapter 4 involve coastal geomorphology rather than statistical analysis, this concern could be addressed by including a fourth expert in the panel discussions in a slightly more limited way. It seemed to the working group that it was unnecessary to require a statistician to grapple with the wider geomorphological issues but that such expertise could make a good contribution where statistical issues were raised.
- 13 In light of these discussions, the working group recommends the appointment to the full panel of Dr Paul Komar, Dr Paul Kench (both coastal geomorphologists) and James Carley (coastal engineer). In addition, the working group recommends Dr Paul Cowpertwait (statistician) be asked to contribute to the pre-hearing conferencing sessions where issues of statistical analysis are raised. Council officers are in the process of discussing participation with Dr Cowpertwait but these discussions are not concluded at the time of writing.

Terms of Reference

- 14 While Council made no formal request to the community for input to the development of the Terms of Reference (ToR), several submitters took the opportunity to provide drafts. Council officers have included many of the ideas raised in the proposed ToR attached at Appendix 2.
- 15 The draft ToR have been discussed and agreed by the working group and are attached at Appendix 2 for consideration. They have also been forwarded to the recommended panel members for comment and verification that they provide clear instructions for their work. A response has been received from Paul Komar, Paul Kench and James Carley, all of whom endorsed the draft with no suggestions for changes.

Financial Considerations

- 16 The costs of this work will be covered from existing budgets.

Legal Considerations

- 17 There are no legal issues raised by this work.

Delegation

- 18 The Council has the authority to make these decisions.

Consultation

- 19 All those who submitted on coastal issues in the PDP were invited to put forward suggestions for panel members.

Policy Implications

- 20 There are no policy implications of this decision.

Tāngata Whenua Considerations

- 21 There are no issues for consideration in relation to iwi or the Treaty of Waitangi.

Publicity Considerations

22 A press statement will be made to coincide with publication of this paper.

RECOMMENDATIONS

23 That the Council approve the appointment of:

- Dr Paul Komar, Emeritus Professor of Oceanography, Oregon State University;
- Dr Paul Kench, HOD, School of Environment, University of Auckland;
- James Carley, Senior Project Engineer, Water Research Laboratory, University of New South Wales;

to the independent panel of experts to consider the technical and scientific issues raised by submitters in relation to Chapter Four of the Proposed District Plan.

24 That the Council delegate to Council officers the authority to recruit Dr Paul Cowpertwait, HOD, School of Computing and Mathematical Sciences, Auckland University of Technology to the panel, **or**, should he not be available, a statistician with similar expertise.

25 That the Council approve the Terms of Reference for the independent experts' panel as detailed in Appendix 2 of report SP-13-932.

Report prepared by:

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Working Group of Councillors

ATTACHMENTS: APPENDIX 1: BACKGROUND INFORMATION ON RECOMMENDED PANEL MEMBERS

APPENDIX 2: DRAFT TERMS OF REFERENCE FOR INDEPENDENT EXPERTS PANEL