



# **RĀRANGI TAKE AGENDA**

## **Additional Kaunihera | Council Meeting**

**I hereby give notice that a Meeting of the Kāpiti Coast District Council  
will be held on:**

**Te Rā | Date: Thursday, 10 August 2023**

**Te Wā | Time: 11.00am**

**Te Wāhi | Location: Council Chamber  
Ground Floor, 175 Rimu Road  
Paraparaumu**

**Darren Edwards  
Chief Executive**

**Kāpiti Coast District Council**

**Notice is hereby given that a meeting of the Kāpiti Coast District Council will be held in the Council Chamber, Ground Floor, 175 Rimu Road, Paraparaumu, on Thursday 10 August 2023, 11.00am.**

**Kaunihera | Council Members**

Mayor Janet Holborow	Chair
Deputy Mayor Lawrence Kirby	Deputy
Cr Glen Cooper	Member
Cr Martin Halliday	Member
Cr Sophie Handford	Member
Cr Rob Kofoed	Member
Cr Liz Koh	Member
Cr Jocelyn Prvanov	Member
Cr Kathy Spiers	Member
Cr Shelly Warwick	Member
Cr Nigel Wilson	Member

**Te Raupapa Take | Order Of Business**

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## **1 NAU MAI | WELCOME**

## **2 KARAKIA A TE KAUNIHERA | COUNCIL BLESSING**

I a mātou e whiriwhiri ana i ngā take kei mua i ō mātou aroaro, e pono ana mātou ka kaha tonu ki te whakapau mahara huapai mō ngā hāpori e mahi nei mātou. Me kaha hoki mātou katoa kia whaihua, kia tōtika tā mātou mahi, ā, mā te māia, te tiro whakamua me te hihiri ka taea te arahi i roto i te kotahitanga me te aroha.

“As we deliberate on the issues before us, we trust that we will reflect positively on the communities we serve. Let us all seek to be effective and just, so that with courage, vision and energy, we provide positive leadership in a spirit of harmony and compassion.”

## **3 WHAKAPĀHA | APOLOGIES**

## **4 TE TAUĀKĪ O TE WHAITAKE KI NGĀ MEA O TE RĀRANGI TAKE | DECLARATIONS OF INTEREST RELATING TO ITEMS ON THE AGENDA**

Notification from Elected Members of:

4.1 – any interests that may create a conflict with their role as an elected member relating to the items of business for this meeting, and

4.2 – any interests in items in which they have a direct or indirect pecuniary interest as provided for in the Local Authorities (Members' Interests) Act 1968

## **5 HE WĀ KŌRERO KI TE MAREA MŌ NGĀ MEA E HĀNGAI ANA KI TE RĀRANGI TAKE | PUBLIC SPEAKING TIME FOR ITEMS RELATING TO THE AGENDA**

## **6 NGĀ TAKE A NGĀ MEMA | MEMBERS' BUSINESS**

(a) Leave of Absence

(b) Matters of an Urgent Nature (advice to be provided to the Chair prior to the commencement of the meeting)

## 7 PŪRONGO | REPORTS

### 7.1 DECISIONS ON INDEPENDENT HEARING PANEL'S RECOMMENDATIONS ON PLAN CHANGE 2 TO THE OPERATIVE KAPITI COAST DISTRICT PLAN

Kaituhi | Author: **Jason Holland, District Planning Manager**

Kaiwhakamana | Authoriser: **Kris Pervan, Group Manager Strategy & Growth**

#### TE PŪTAKE | PURPOSE

- 1 To seek Council's decision on the recommendations of the Independent Hearings Panel ('Panel') on Proposed Plan Change 2 ('PC2') to the Operative Kapiti Coast District Plan 2021 (the 'District Plan') under clause 101 of Schedule 1 to the Resource Management Act 1991 ('RMA').

#### HE WHAKARĀPOPOTO | EXECUTIVE SUMMARY

- 2 In December 2021, Parliament passed the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act. This Act specifies Kāpiti Coast District Council ('Council') as a Tier 1 territorial authority. Tier 1 territorial authorities are local authorities that the government has identified as being subject to high levels of growth, now and into the future.
- 3 The Council, because of its classification as a Tier 1 territorial authority, is required to prepare and notify a change to the District Plan (referred to as an Intensification Planning Instrument or 'IPI') to:
  - 3.1 incorporate the Medium Density Residential Standards ('MDRS'); and
  - 3.2 give effect to policies 3 and 4 of the National Policy Statement on Urban Development 2020 ('NPS-UD').
- 4 PC2 is that plan change. In addition to incorporating the MDRS and giving effect to policies 3 and 4 of the NPS-UD, the purpose of PC2 also includes:
  - 4.1 enabling tangata whenua to develop papakāinga on their ancestral land;
  - 4.2 provision for new qualifying matters (including a Coastal Qualifying Matter Precinct, Kārewarewa Urupā, and Takiwā precincts at Ōtaki and Waikanae); and
  - 4.3 amendments to financial contribution provisions.
- 5 The development of PC2 began in late 2021. It involved engagement with the community on a full draft of PC2, and engagement with tangata whenua (including to co-design PC2's papakāinga provisions). In accordance with section 80F of the RMA, which requires Tier 1 Council's to notify the IPI, the Council publicly notified PC2 on 18 August 2022.
- 6 The Council received 219 primary submissions and 99 further submissions on PC2, from a range of submitters including:
  - 6.1 tangata whenua;
  - 6.2 community groups;
  - 6.3 infrastructure providers;
  - 6.4 government entities;
  - 6.5 the development community;
  - 6.6 landowners; and
  - 6.7 individuals.

- 7 As required by Part 6 of Schedule 1 to the RMA, the Council delegated its powers to hear submissions on and make recommendations on PC2 to an Independent Hearings Panel (the 'Panel'). The Panel considered the submissions and evidence put before them by submitters and Council officers and conducted a hearing in March and April 2023. On 20 June 2023, the Panel reported back to the Council with its recommendations on PC2 (Attachment 1).
- 8 Considerable efforts have been made by tangata whenua and submitters to participate in the plan change process and present evidence to the Panel. Considerable effort has also been made by Council officers, and the Panel to evaluate the submissions and evidence put before it. The Panel's report is the result of these combined efforts. The report enables the Council to make a decision that meets its statutory obligations under the RMA and meet the deadline set by the Minister for the Environment for notifying its decision.
- 9 The Council must now decide whether to accept or reject the Panel's recommendations, which are set out at paragraph [13] of their report. Under clause 101 of Schedule 1 to the RMA, the Council has three options available to it:
- 9.1 Option 1: accept all of the Panel's recommendations;
- 9.2 Option 2: reject all of the Panel's recommendations;
- 9.3 Option 3: reject some of the Panel's recommendations and accept others.
- 10 The Council is required to notify its decision on the Panel's recommendations by 20 August 2023.
- 11 In making and notifying its decision, the Council must comply with its statutory obligations under clauses 101 and 102 of Schedule 1 to the RMA. In particular:
- 11.1 In making its decision, the Council "must not consider any submission or other evidence unless it was made available to the independent hearings panel before the panel made the recommendation" (clause 101(4)(b) of Schedule 1);
- 11.2 If the Council chooses to reject the Panel's recommendations, it must specify reasons for doing so. It must refer its reasons to the Minister for the Environment (clause 101(2)(a) of Schedule 1) and publicly notify its reasons when it notifies its decision (clause 102(1)(b) of Schedule 1).
- 12 Option 1 is recommended by Council staff because the Panel have arrived at their recommendations after considering and evaluating all of the submissions and evidence that was before them, following the statutory process and requirements set out in the RMA. As stated by the Panel at paragraph [301] of their report:
- The Panel confidently concludes that the outcome it recommends fulfils the statutory requirements, serves the community's interests within the legal framework, and is based on the preponderance of the evidence.*
- 13 If the Council proceeds with:
- 13.1 Option 1, then PC2 as recommended by the Panel will become operative on a date specified by Council in its public notice of the decision. This date is proposed to be 1 September 2023. From this date, PC2 would be fully incorporated into the District Plan and have legal effect. This will bring an end to the plan change process.
- 13.2 Either Option 2 or Option 3, then the recommendations that the Council rejects are referred to the Minister for the Environment, who will make the final decision. There is no timeframe for the Minister to make their decision, and no certainty as to the outcome of their decision. In the meantime, for matters related to recommendations that the Council rejects, the notified version of PC2 will continue to be relevant to decision-making. This will lead to a period of regulatory uncertainty (with no specified end date) for businesses, the community and Council. This means that, until the Minister decides on PC2:
- 13.2.1 The MDRS will continue to have immediate legal effect under the provisions of proposed PC2;

- 13.2.2 Amendments to qualifying matters that were recommended by the Panel as part of the hearings process will not have legal effect (for example, the expansion of the Coastal Qualifying Matter Precinct at Peka Peka Beach and the expansion of the Takiwā Precincts at Ōtaki and Waikanae)<sup>1</sup>;
  - 13.2.3 The papakāinga provisions will not have legal effect;
  - 13.2.4 Other aspects of PC2, such as the proposed Design Guides, the Council’s *Land Development Minimum Requirements* and the changes to financial contributions provisions will not have legal effect.
- 14 Option 3 generates the greatest degree of regulatory complexity as the Council will be required to implement an operative-in-part plan change while the Minister makes their decision. This situation is expected to generate disputes between Council and resource consent applicants as to which rules in PC2 have legal effect.
- 15 The following documents are attached to this report:
- 15.1 **Attachment 1:** the Panel’s report to Council on PC2 under RMA Schedule 1, Part 6, Clause 100;
  - 15.2 **Attachment 2:** PC2, as amended by the Panel’s recommendations.
  - 15.3 **Attachment 3:** Maps showing a high-level summary of changes to notified PC2 as a result of the Panel’s recommendations.
  - 15.4 **Attachment 4:** Glossary of terms used in this report.

**TE TUKU HAEPAPA | DELEGATION**

- 16 Clause 101 of Schedule 1 to the RMA requires the Council (which is a specified territorial authority under the RMA) to consider and make decisions on the Panel’s recommendations. Clause 101 states:

**101 Specified territorial authority to consider recommendations**

*(1) The specified territorial authority—*

*(a) must decide whether to accept or reject each recommendation of the independent hearings panel; and*

*(b) may provide an alternative recommendation for any recommendation that the authority rejects.*

*(2) The specified territorial authority must refer to the Minister—*

*(a) each rejected recommendation, together with the authority’s reasons for rejecting the recommendation; and*

*(b) any alternative recommendation that the authority has provided under subclause (1)(b).*

*(3) The specified territorial authority must make decisions under subclause (1) in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe, or joint management agreement.*

*(4) When making decisions under subclause (1), the specified territorial authority—*

*(a) is not, subject to subclause (2), required to consult any person or consider submissions or other evidence from any person; and*

*(b) must not consider any submission or other evidence unless it was made available to the independent hearings panel before the panel made the recommendation that is the subject of the specified territorial authority’s decision; and*

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<sup>1</sup> The Coastal Qualifying Matter Precinct and Marae Takiwā Precincts set out in the notified version of PC2 would continue to have effect.



*(c) may seek clarification from the independent hearings panel on a recommendation in order to assist the specified territorial authority to make a decision under subclause (1).*

*(5) To avoid doubt, the specified territorial authority may accept recommendations of the independent hearings panel that are beyond the scope of the submissions made on the IPI.*

- 17 Clause 102 of Schedule 1 to the RMA requires the Council to publicly notify its decisions. On 27 April 2022, the Minister for the Environment published [Gazette Notice 2022-sl1594](#), which requires the Council to notify its decisions by 20 August 2023.
- 18 Council has the authority to consider this matter.

**TAUNAKITANGA | RECOMMENDATIONS**

- A. **Option 1:** that the Council accept the formal recommendations of the Independent Hearings Panel set out at paragraph [13] of their report (Attachment 1); and
  - A.1 Amend the District Plan as set out in Attachment 2 (which also includes minor amendments pursuant to clause 102(2) of Schedule 1 to the RMA); and
  - A.2 Publicly notify its decision in accordance with clause 102 of Schedule 1 to the RMA by 20 August 2023, and
  - A.3 Specify in the public notice that PC2 will become operative on 1 September 2023.
- B. **Option 2/Option 3:** if (and only if) recommendation A is not accepted, that Council:
  - B.1 Identify which recommendations of the Independent Hearings Panel that it rejects, the reasons for doing so, and any alternative recommendations in *Table 1* below:

*Table 1*

Recommendation rejected	Reason	Alternative recommendation (if any)
[Councillors to specify]	[Councillors to specify]	[Councillors to specify]

and

- B.2 Accept the recommendations of the Independent Hearings Panel that it does not identify in *Table 1* above; and
- B.3 Publicly notify its decision in accordance with clause 102 of Schedule 1 to the RMA by 20 August 2023; and
- B.4 Where Council rejects some (but not all) of the recommendations of the Independent Hearings Panel, that the public notice specifies that PC2 will become operative-in-part in accordance with clause 104(2) of Schedule 1 to the RMA on [a date reasonably necessary to allow staff to prepare an operative-in-part version of PC2, to be specified at the meeting]; and
- B.5 Refer the recommendation(s) of the Independent Hearings Panel that it has rejected, along with the reasons for doing so and any alternative recommendations, to the Minister for the Environment in accordance with clause 101(2) of Schedule 1 to the RMA.
- C. If (and only if) recommendation A is accepted, that the Council instruct staff to:
  - C.1 Investigate, and report back to Council within 6 months, on the potential scope for further changes to the District Plan related to future urban development, mana whenua (sites and areas of significance to Māori), coastal environment and flood risk;

- C.2 Consider the potential impacts of PC2 on the Council’s Infrastructure Strategy and Development Contributions Policy as part of the 2024 Long-term Plan review;
- C.3 Investigate, and report back to Council within 6 months, on the following matters:
  - C.3.1 Steps to support the development of papakāinga by tangata whenua, including the development of papakāinga design guides and progressing actions related to Māori housing in the Council’s Housing Strategy 2022;
  - C.3.2 Whether it is necessary to review the Council growth strategy *Te tupu pai – Growing Well*;
  - C.3.3 Options to build the Council’s urban design capacity and expertise, including by building mana whenua kaupapa (values), huanga (vision) and tikanga (approach) capability, developing in-house urban design expertise and/or exploring the use of Design Review Panels.

## TŪĀPAPA | BACKGROUND

### Purpose of PC2

- 19 In December 2021, Parliament passed the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (the ‘Amendment Act’). This legislation requires that all Tier 1 territorial authorities (including Kāpiti Coast District Council) amend their district plans to incorporate the Medium Density Residential Standards (‘MDRS’) and give effect to policies 3 and 4 of the National Policy Statement on Urban Development (‘NPS-UD’). To achieve this, Tier 1 territorial authorities must prepare a plan change document called an ‘Intensification Planning Instrument’ (‘IPI’) and amend their district plans using a special plan change process called the ‘Intensification Streamlined Planning Process’ (‘ISPP’).
- 20 The MDRS are the requirements, conditions and permissions set out in [Schedule 3A to the RMA](#). In summary, the MDRS require that the District Plan provide for the construction of up to three, 3-storey residential units on a site in a relevant residential zone as a permitted activity, subject to compliance with a range of density standards<sup>2</sup>. The MDRS also include subdivision rules, notification preclusions, and a range of objectives and policies that must be incorporated into the District Plan.
- 21 The NPS-UD requires that the District Plan enable more people to live in, and more business and community services to be located in, the areas within and around the district’s centres zones and rapid transit stops. To achieve this, policy 3 of the NPS-UD requires the District Plan to enable greater building heights and densities within those areas (except in areas where policy 4 relating to “qualifying matters”<sup>3</sup> applies).
- 22 PC2 is the Council’s IPI. The purpose of PC2 is to amend the District Plan to:
  - 22.1 Incorporate the Medium Density Residential Standards into the District Plan;
  - 22.2 Give effect to policies 3 and 4 of the National Policy Statement on Urban Development;
  - 22.3 In addition to the range of existing qualifying matters that are already provided for in the District Plan, provide for three new qualifying matters in relation to 0 and 0, specifically:
    - 22.3.1 A Coastal Qualifying Matter Precinct;

<sup>2</sup> In summary, the density standards include an 11-metre building height limit, a height in relation to boundary standard, yard setbacks, a maximum 50% building coverage, outdoor living space and outlook space requirements, a requirement for windows to face the street, and a requirement to provide a minimum 20% landscaped area.

<sup>3</sup> “Qualifying matters” are matters referred to in [sections 77I](#) or [77O](#) of the RMA. The District Plan may make the requirements of the MDRS or Policy 3 of the NPS-UD less enabling of development where necessary to accommodate a qualifying matter.

- 22.3.2 Kārewarewa Urupā; and
- 22.3.3 Takiwā Precincts at Ōtaki and Waikanae;
- 22.4 Provide for tangata whenua<sup>4</sup> to develop papakāinga on ancestral land; and
- 22.5 Amend existing financial contributions provisions to improve their efficiency and effectiveness.

## Development of PC2

- 23 The Council commenced the development of PC2 at the end of 2021, following the passing of the Amendment Act. The early development of PC2 followed on from, and was informed by, engagement with tangata whenua and the community on the preparation of the 2021-2024 Long-term Plan ('LTP'), as well as the development of *Te Tupu Pai – Growing Well*, the District Growth Strategy. Both the LTP and *Te Tupu Pai* identified the development of housing (including papakāinga) as a key issue for the district.
- 24 In addition to this, the Council's 2021 Housing and Business Development Capacity Assessment ('HBA') identified that the District Plan does not enable sufficient housing development capacity to provide for forecast population growth over the long-term. This assessment was undertaken to meet requirements from the NPS-UD. Under the District Plan, a shortfall is projected of just over 8,350 dwellings by 2051.
- 25 In early 2022, the Council sought public feedback on PC2.<sup>5</sup> While not required to do this, Council took this extra step to provide tangata whenua and the wider community with early and fulsome information about how Council planned to give effect to the Government's requirements. This also enabled tangata whenua and the wider community to provide feedback on PC2 to inform and improve its development prior to it being publicly notified.
- 26 Because of the scale and significance of PC2, the Council chose to consult on a full exposure draft of PC2. This enabled the community to see the extent of changes proposed to the District Plan, prior to it being publicly notified in August 2022. The Council was one of the few Tier 1 territorial authorities to consult on a full exposure draft, with many other councils opting instead to consult on the broader intent of their plan changes through discussion documents.
- 27 At its [meeting on 24 March 2022](#), Council approved public consultation on draft PC2. Consultation began on 4 April 2022, with feedback closing on 2 May 2022.
- 28 The Council received over 200 submissions on draft PC2. All submissions were analysed and considered as part of the development of PC2, and PC2 was subsequently refined in response to the feedback received<sup>6</sup>. Section 3.5 of the [Council's Section 32 Evaluation Report for PC2](#) describes in further detail the consultation undertaken with the community as part of the preparation and development of PC2.
- 29 The timeline for the development of PC2, up to the point where it was publicly notified, is summarised in [Figure 1](#) below.

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<sup>4</sup> The terms *tangata whenua* and *mana whenua* are used interchangeably throughout this report. Under the RMA, the term *tangata whenua* means: "in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area".

<sup>5</sup> Noting that the Council also engaged directly with iwi authorities on the development of PC2, beginning with a hui on the potential scope of PC2 at the end of 2021.

<sup>6</sup> The Council's consideration and response to each of the submissions received on draft PC2 was included in [Appendix B](#) to the Council's Section 32 Evaluation Report for PC2.

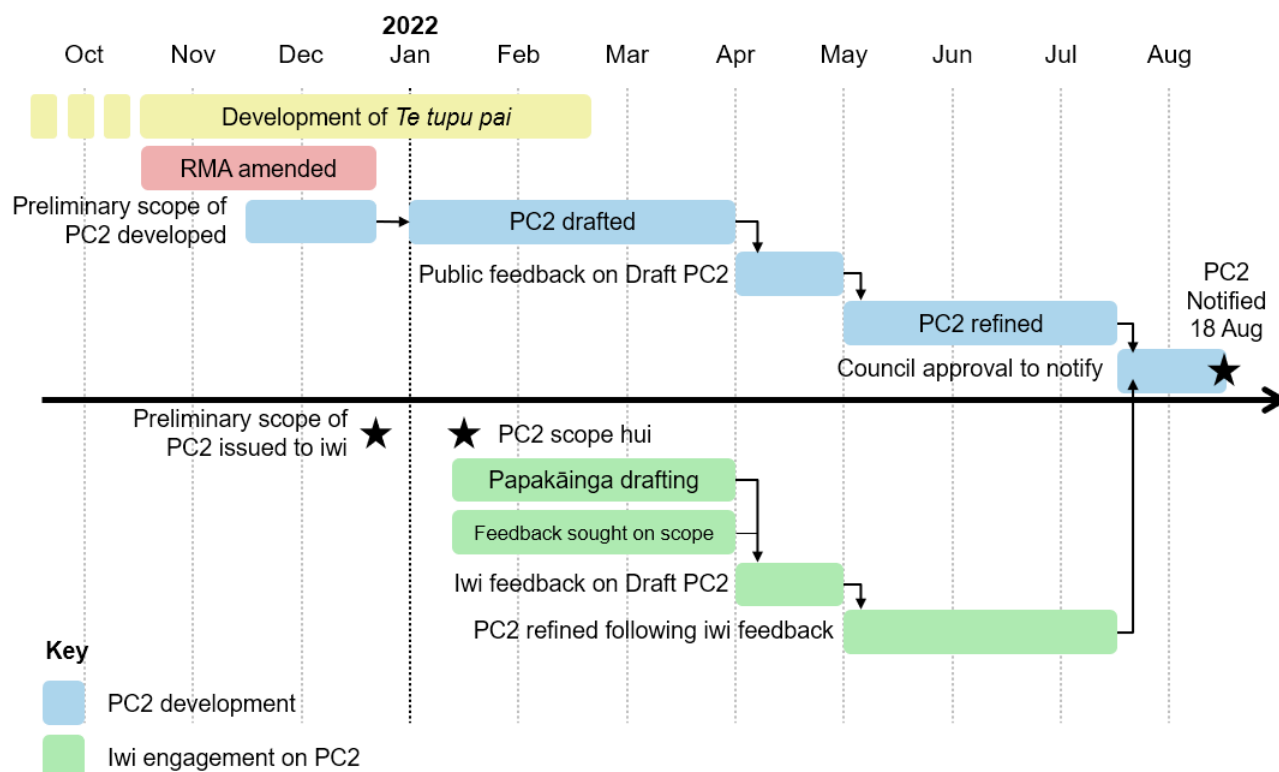


Figure 1: timeline of the development of PC2, up to the point of public notification.

**Notified PC2**

- 30 At its [meeting on 28 July 2022](#), Council approved the public notification of PC2.
- 31 The agenda to that meeting describes in detail the content of notified PC2. In summary, the notified version of PC2 included:
  - 31.1 Incorporation of the MDRS into the General Residential Zone (including removal or amendment of objectives, policies and rules that are inconsistent with the MDRS);
  - 31.2 Giving effect to policy 3 of the NPS-UD, by enabling increased building heights within and around the district’s centres zones and rapid transit stops<sup>7</sup> (refer to [Table 2](#) and [Table 3](#) below for more information on the building heights proposed by notified PC2);
  - 31.3 Providing for three new qualifying matters to be incorporated into the District Plan, including:
    - 31.3.1 Providing for a ‘Coastal Qualifying Matter Precinct’, which is an interim measure intended to maintain the status-quo level of development provided for by the Operative District Plan, until the management of coastal hazards is addressed through a future coastal environment plan change
    - 31.3.2 Recognising and providing for Kārewarewa Urupā at Waikanae Beach by adding it as a wāhi tapu site to Schedule 9 of the District Plan; and
    - 31.3.3 Providing for a ‘Marae Takiwā Precinct’. This provided for the building heights currently provided for in the District Plan to be maintained around marae, in recognition that the activities that occur at a marae are likely to be sensitive to the effects of surrounding intensification.
  - 31.4 Rezoning several sites around the District to General Residential Zone;

<sup>7</sup> *Rapid transit stop* is a defined term in the NPS-UD. In the Kāpiti Coast district, the rapid transit stops are the train stations on Metlink’s Kāpiti Line commuter rail service, being Paekākāriki, Paraparaumu and Waikanae train stations.

- 31.5 Replacing the existing Medium Density Housing Design Guide with two new design guides (the *Residential Design Guide* and *Centres Design Guide*) to encourage high-quality design of residential and mixed use development;
  - 31.6 Replacing all references to the Council's *Subdivision and Development Principles and Requirements, 2012* document with references to Council's new *Land Development Minimum Requirements, April 2022*. The *Land Development Minimum Requirements, April 2022* is the Council's document that outlines the requirements for new or upgraded infrastructure to be provided as part of new development;
  - 31.7 Amending the District Plan to enable tangata whenua to develop papakāinga in the rural zones, General Residential Zone and Town Centre Zone;
  - 31.8 Amendments to the financial contributions provisions to provide a set of general rules for the taking of financial contributions for infrastructure (other than reserves), alongside a policy to clarify that financial contributions can be taken for the purposes of ensuring positive effects on the environment;
  - 31.9 Consequential or supporting amendments across the District Plan where necessary to incorporate the MDRS or give effect to policy 3 of the NPS-UD.
- 32 Notified PC2 also provided for 'existing qualifying matters'. Existing qualifying matters are matters that are already provided for in the District Plan that restrict development and that meet the definition of a qualifying matter. These rules will continue to restrict development to less than would otherwise be required to be enabled by the MDRS or Policy 3 of the NPS-UD. Existing qualifying matters provided for by PC2 include rules for:
- 32.1 Flood hazards;
  - 32.2 Earthquake hazards;
  - 32.3 Ecological sites;
  - 32.4 Key indigenous trees and notable trees;
  - 32.5 Historic heritage;
  - 32.6 Sites of significance to Māori (wāhi tapu);
  - 32.7 Outstanding natural features and landscapes;
  - 32.8 Rules that protect nationally significant infrastructure (the National Grid and the high pressure gas pipeline);
  - 32.9 Rules that provide for low density business uses in the General Industrial and Airport Zones;
  - 32.10 Rules that provide for the safe and efficient functioning of the airport in the Airport Zone;
  - 32.11 Open space zones;
  - 32.12 Requirements to provide esplanade reserves or strips as part of subdivision.
- 33 The [Section 32 Evaluation Report for PC2](#), which the Council published at the same time that it made its decision to notify PC2, sets out in detail the purpose of PC2, and the justification for the provisions contained within PC2 as notified.

**Submissions on notified PC2 and hearings by the Independent Hearings Panel**

- 34 The Council publicly notified PC2 on 18 August 2022. This initiated the Intensification Streamlined Planning Process ('ISPP') under Part 6 of Schedule 1 to the RMA. The steps involved in this process are specified in Schedule 1 and are summarised in below.

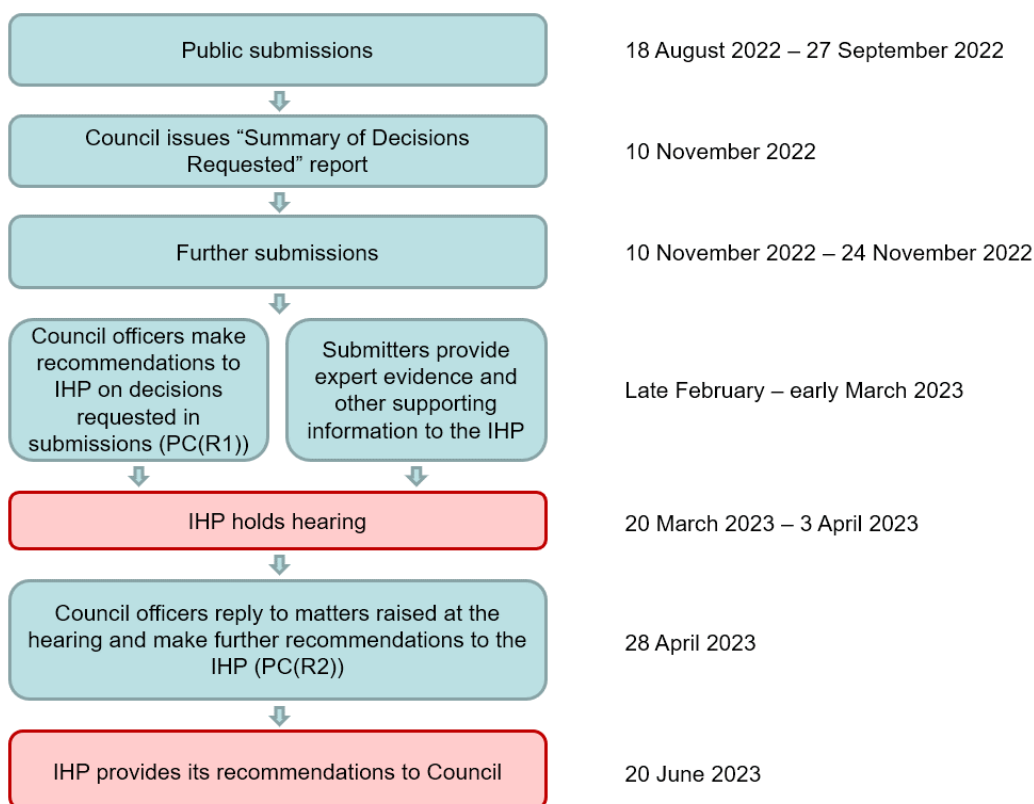


Figure 2: diagram showing the steps of the ISPP up to the point where the Independent Hearings Panel issued its recommendations to Council.

- 35 In total, Council received 219 primary submissions on notified PC2, containing 1,295 decisions requested by submitters. The Council subsequently received 99 further submissions containing 1,099 further decisions requested. All primary submissions and further submissions were made available to the public on the Council website<sup>8</sup>.
- 36 A range of individuals and groups submitted on PC2, including:
- 36.1 Tangata whenua (Ngā Hapū o Ōtaki, Te Ātiawa ki Whakarongotai, Ngāti Toa Rangatira, Ngāti Haumea ki Paekākāriki and A.R.T (Ātiawa ki Whakarongotai, Ngā Hapū o Ōtaki (of Ngāti Raukawa ki te Tonga) and Ngāti Toa Rangatira));
  - 36.2 Community groups and not-for-profit organisations;
  - 36.3 Individual residents and property owners;
  - 36.4 Infrastructure providers (including KiwiRail, Waka Kotahi and Transpower);
  - 36.5 Government entities (including Kāinga Ora, Ara Poutama (Department of Corrections) and the Ministry of Education);
  - 36.6 Greater Wellington Regional Council;
  - 36.7 Groups representing the retirement village sector;
  - 36.8 Groups representing fuel retailers;
  - 36.9 Land developers;
  - 36.10 Local planning and surveying consultants.

<sup>8</sup> See: <https://www.kapiticoast.govt.nz/your-council/forms-documents/district-plan/hearings/proposed-plan-change-2-intensification/submissions-and-further-submissions-received/#submissions2a72902f2743466b9204d6404884b01f>

- 37 Clause 96 of Schedule 1 to the RMA required that the Council establish an Independent Hearings Panel to conduct a hearing into PC2 and make recommendations back to the Council. The Council established the Panel in late 2022. As required by clause 96, the Council consulted with tangata whenua on appointing a member to the Panel with an understanding of tikanga Māori. Following consultation with tangata whenua, the Council appointed a Panel composed of the following independent commissioners:
- 37.1 John Maassen (chair of the Panel, with expertise in resource management law);
  - 37.2 Jane Black (commissioner with expertise in urban design and planning);
  - 37.3 Rauru Kirikiri (commissioner with expertise in tikanga Māori).
- 38 In accordance with the Panel's direction in its first minute, Council planning officers<sup>9</sup> prepared planning evidence to respond to the matters raised by submitters and to provide recommendations to the Panel on each of the decisions requested by submitters. This evidence was provided in the form of a report (including appendices)<sup>10</sup>, which was circulated to the Panel and submitters three weeks prior to the hearing. This included a revision-tracked version of PC2 which identified changes to notified PC2 recommended by Council officers to the Panel in response to matters raised by submitters. This version of PC2 is referred to as PC(R1).
- 39 Prior to the hearing, several submitters also provided evidence to the Panel in support of their respective positions. This evidence is publicly available on the Council website<sup>11</sup>.
- 40 The Panel held the hearing from 20 March to 3 April 2023. The entire hearing was held at the Kāpiti Sports Pavilion at Mazengarb Reserve except for two hearing days held at Raukawa marae in Ōtaki.
- 41 Following a mihi whakatau by tangata whenua, the hearing commenced with Council's legal counsel and officers presenting the Council's evidence to the Panel. Following this, 63 submitters who wished to be heard then presented their submissions to the Panel. Council officers attended throughout the hearing and answered questions from the Panel as required.
- 42 After the hearing, the Panel gave Council officers the opportunity to provide a written reply to matters raised at the hearing. This provided Council officers with the opportunity to reconsider their recommendations to the Panel, based on consideration of the evidence provided by submitters prior to the hearing, as well as the oral presentations of submitters and their experts at the hearing. In addition to this, following direction provided by the Panel at the hearing, Council officers engaged with tangata whenua in the course of preparing their reply to the Panel. The Panel also requested that some submitters provide them with further

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<sup>9</sup> The Council engaged planning consultants to act as planning officers for the Council.

<sup>10</sup> See the following links to the Council officers' planning evidence report:

[https://www.kapiticoast.govt.nz/media/vxmgkhkv/pc2\\_planningevidence\\_report-3.pdf](https://www.kapiticoast.govt.nz/media/vxmgkhkv/pc2_planningevidence_report-3.pdf)

Appendix A: [https://www.kapiticoast.govt.nz/media/znmhevav/pc2\\_planningevidence\\_appa\\_ipi\\_pcr1.pdf](https://www.kapiticoast.govt.nz/media/znmhevav/pc2_planningevidence_appa_ipi_pcr1.pdf)

Appendix B:

[https://www.kapiticoast.govt.nz/media/pp5dcqoy/pc2\\_planningevidence\\_appb\\_rectablestopic.pdf](https://www.kapiticoast.govt.nz/media/pp5dcqoy/pc2_planningevidence_appb_rectablestopic.pdf)

Appendix C:

[https://www.kapiticoast.govt.nz/media/h4hdfmr0/pc2\\_planningevidence\\_appc\\_rectablesprimarysubmitter.pdf](https://www.kapiticoast.govt.nz/media/h4hdfmr0/pc2_planningevidence_appc_rectablesprimarysubmitter.pdf)

Appendix D:

[https://www.kapiticoast.govt.nz/media/1fivn0c/pc2\\_planningevidence\\_appd\\_legaladvisescope.pdf](https://www.kapiticoast.govt.nz/media/1fivn0c/pc2_planningevidence_appd_legaladvisescope.pdf)

Appendix E:

[https://www.kapiticoast.govt.nz/media/vm1egr3f/pc2\\_planningevidence\\_appc\\_proposedrpsanalysis.pdf](https://www.kapiticoast.govt.nz/media/vm1egr3f/pc2_planningevidence_appc_proposedrpsanalysis.pdf)

Appendix F:

[https://www.kapiticoast.govt.nz/media/5vbh0qef/pc2\\_planningevidence\\_appf\\_rezonerequestmaps.pdf](https://www.kapiticoast.govt.nz/media/5vbh0qef/pc2_planningevidence_appf_rezonerequestmaps.pdf)

Appendix G:

[https://www.kapiticoast.govt.nz/media/o33meyyc/pc2\\_planningevidence\\_appg\\_populationforecast.pdf](https://www.kapiticoast.govt.nz/media/o33meyyc/pc2_planningevidence_appg_populationforecast.pdf)

<sup>11</sup> Documents provided by Council and submitters to the Panel as part of the hearing are available on the Council website at the following address: <https://www.kapiticoast.govt.nz/your-council/forms-documents/district-plan/hearings/proposed-plan-change-2-intensification/hearing-documents/>

information. The Council officers' reply was provided to the Panel on 28 April<sup>12</sup>. This included a revision-tracked version of PC2 which identified further changes to notified PC2 recommended by Council officers to the Panel<sup>13</sup>. This version of PC2 is referred to as PC(R2).

- 43 In accordance with clause 100 of Schedule 1 to the RMA, on 20 June 2023 the Panel provided a report to the Council containing its recommendations on the provisions of PC2 and the matters raised by submitters (Attachment 1).

## HE KŌRERORERO | DISCUSSION

### He take | Issues

#### Recommendations of the Independent Hearings Panel

- 44 **Attachment 1** contains the Panel's report which sets out its recommendations to the Council. Paragraph 13 of the report sets out the formal recommendations of the Panel. These are the recommendations that the Council must decide to accept or reject in accordance with clause 101(1) of Schedule 1 to the RMA.
- 45 **Attachment 2** sets out the amendments to PC2 as a result of the Panel's formal recommendations. This includes minor amendments pursuant to clause 102(2) of Schedule 1 to the RMA (as discussed below). If the Council accepts all the Panel's formal recommendations, then PC2 (and by extension the District Plan) will be amended as set out in Attachment 2.
- 46 In summary<sup>14</sup>, the changes to notified PC2 recommended by the Panel include:
- 46.1 Amendments to building heights enabled within several centres and mixed use zones (see [Table 2](#) below);
  - 46.2 Amendments to building heights and the size of walkable catchments within residential zones around several centres zones and rapid transit stops (see [Table 3](#) below);
  - 46.3 Expansion of the papakāinga provisions so that they apply in all centres and mixed use zones, as well as other amendments to improve the effectiveness of the provisions for tangata whenua;
  - 46.4 Provision for a significantly expanded Takiwā precinct at Ōtaki to incorporate a range of places and areas of significance to tangata whenua around the Ōtaki Main Street town centre;
  - 46.5 Expansion of the Takiwā precinct around Waikanae marae to include the area around Ruakōhatu Urupā, and incorporation of a height in relation to boundary standard around the marae;
  - 46.6 Adjustment of the south-western boundary of the area to be scheduled as Kārewarewa Urupā;

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<sup>12</sup> Two reply reports were provided to the Panel, one addressing submissions relating to rezoning (the report of Katie Maxwell), and the other addressing the remainder of the matters raised at the hearing (the report of Andrew Banks),

See the following links to the Council officers' reply reports:

Council officer reply (Andrew Banks): <https://www.kapiticoast.govt.nz/media/u0rocq13/council-reply-andrew-banks.pdf>

Council officer reply (Katie Maxwell):

[https://www.kapiticoast.govt.nz/media/ydmhcz1o/pc2\\_councilreply\\_katiemaxwell.pdf](https://www.kapiticoast.govt.nz/media/ydmhcz1o/pc2_councilreply_katiemaxwell.pdf)

<sup>13</sup> See Council officer reply (Andrew Banks) Appendix A (revision-tracked reply version of PC2 (PC(R2)):

[https://www.kapiticoast.govt.nz/media/hf3cqlfo/pc2\\_councilreply\\_andrewbanks\\_appa\\_ipi\\_pcr2.pdf](https://www.kapiticoast.govt.nz/media/hf3cqlfo/pc2_councilreply_andrewbanks_appa_ipi_pcr2.pdf)

<sup>14</sup> This is a summary list only. Refer to Attachment 2 for all changes to notified PC2 recommended by the Panel. Refer to Attachment 3 for maps that provide a high-level summary of the spatial changes to notified PC2 recommended by the Panel.



- 46.7 Amendments to better align PC2 with the National Planning Standards, including:
  - 46.7.1 Replacing areas identified in notified PC2 as Residential Intensification Precinct A with a new High Density Residential Zone;
  - 46.7.2 Replacing areas identified in notified PC2 as Residential Intensification Precinct B with a “height variation control” spatial overlay;
- 46.8 Amendments to areas identified as High Density Residential Zone, including:
  - 46.8.1 Enabling small scale commercial activity to be established at the ground floor level of apartment buildings (as a restricted discretionary activity);
  - 46.8.2 A more lenient height in relation to boundary standard for apartment buildings;
  - 46.8.3 Increase in the building height standard from 20 metres to 21 metres (to align with the height standards for the Town Centre Zone);
- 46.9 In relation to the rezoning proposed by PC2:
  - 46.9.1 Rezoning of additional land at Tieko Street in Otaihanga and Rongomau Lane in Raumati from a rural zone to General Residential Zone;
  - 46.9.2 Expansion of the proposed rezoning of land to General Residential Zone at Ruahine Street in Paraparaumu;
  - 46.9.3 Rezoning of land on the corner of Rahui Road and old State Highway 1 in Ōtaki from General Residential Zone to Town Centre Zone;
  - 46.9.4 Removal of land on Poplar Ave in Raumati from proposed rezoning;
- 46.10 Expansion of the Coastal Qualifying Matter Precinct at Peka Peka Beach;
- 46.11 Provision for areas of high or outstanding natural character in the coastal environment as a qualifying matter, by amending the rules associated with these areas so that they also apply in the General Residential Zone;
- 46.12 Expansion of the application of acoustic design standards for noise sensitive activities so that they apply within 100 metres of the boundary of the railway purposes designation;
- 46.13 Amendments to subdivision provisions to support their efficiency or effectiveness;
- 46.14 Supporting or consequential amendments to several provisions throughout PC2 for consistency with the MDRS or NPS-UD.

Table 2: summary of the changes building heights recommended by the Panel in the centres, mixed use and hospital zones

Zone	Location	Notified PC2		Changes to notified PC2 because of Panel recommendations	
		Building height permitted	Building height enabled (restricted discretionary)	Building height permitted	Building height enabled (restricted discretionary)
Metropolitan Centre Zone	Paraparaumu	21 metres (6-storeys)	40 metres (12-storeys)	No change	53 metres (15-storeys)
Town Centre Zone	Ōtaki Main Street	12 metres (3-storeys)	21 metres (6-storeys)	No change	12 metres (3-storeys), because of the Ōtaki Takiwā Precinct
	Ōtaki Railway	12 metres (3-storeys)	21 metres (6-storeys)	No change	No change
	Waikanae	12 metres (3-storeys)	21 metres (6-storeys)	No change	No change (except for the expansion of the

Zone	Location	Notified PC2		Changes to notified PC2 because of Panel recommendations	
		Building height permitted	Building height enabled (restricted discretionary)	Building height permitted	Building height enabled (restricted discretionary)
					Whakarongotai Takiwā Precinct)
	Paraparaumu Beach	12 metres (3-storeys)	21 metres (6-storeys)	No change	No change
	Raumati Beach	12 metres (3-storeys)	21 metres (6-storeys)	No change	No change
<b>Mixed Use Zone</b>	Ihakara Street West, Ihakara Street East and Kapiti Road Precincts	12 metres (3-storeys)	21 metres (6-storeys)	No change	36 metres (10-storeys)
<b>Hospital Zone</b>		12 metres (3-storeys)	21 metres (6-storeys)	No change	No change
<b>Local Centre Zone</b>	Paekākāriki	12 metres (3-storeys)	21 metres (6-storeys)	No change	No change
	Waikanae Beach, Kena Kena, Mazengarb, Meadows, Raumati South	12 metres (3-storeys)	15 metres (4-storeys)	No change	No change

Table 3: summary of the changes to changes to building heights and walkable catchments recommended by the Panel in the residential zones

Zone	Location	Notified PC2 building height permitted <sup>15</sup>	Changes to notified PC2 because of Panel recommendations
<b>Residential zones around the Metropolitan Centre Zone</b>	Paraparaumu Metropolitan Centre	20 metres (6-storeys) within approximately 800 metres of the zone	21 metres (6-storeys) within approximately 800 metres of the zone  36 metres (10-storeys) within approximately 400 metres, to the east of the Kāpiti Expressway only  Application of a High Density Residential Zone
<b>Residential zones around rapid transit stops</b>	Paekākāriki Paraparaumu Waikanae	20 metres (6-storeys) within approximately 800 metres of the rapid transit stop	21 metres (6-storeys) within approximately 800 metres of the rapid transit stop  Application of a High Density Residential Zone
<b>Residential zones around Town Centre Zones</b>	Ōtaki Main Street	14 metres (4-storeys) within approximately 400 metres of the zone	Extent is reduced because of the increased size of the Ōtaki Takiwā Precinct
	Ōtaki Railway	14 metres (4-storeys) within approximately 400 metres of the zone	No change
	Waikanae	20 metres (6-storeys) within approximately 400 metres of the zone	21 metres (6-storeys) within approximately 800 metres of the zone

<sup>15</sup> Note that while these heights are permitted, it likely that a resource consent will still be required, as resource consent is required for four or more residential units on a site.

Zone	Location	Notified PC2 building height permitted <sup>15</sup>	Changes to notified PC2 because of Panel recommendations
			Application of a High Density Residential Zone
	Paraparaumu Beach	14 metres (4-storeys) within approximately 400 metres of the zone	21 metres (6-storeys) within approximately 800 metres of the zone Application of a High Density Residential Zone
	Raumati Beach	14 metres (4-storeys) within approximately 400 metres of the zone	No change
<b>Residential zones round Local Centre Zones<sup>16</sup></b>	Waikanae Beach, Kena Kena, Mazengarb, Meadows, Raumati South	14 metres (4-storeys) within approximately 200 metres of the zone	No change

**Alterations with a minor effect or to correct minor errors**

- 47 Clause 102(2) of Schedule 1 to the RMA provides for the Council, as part of accepting the Panel’s recommendations, to make alterations to PC2 that have a minor effect or to correct minor errors.
- 48 If the Council decides to accept the recommendations of the Panel, then this provision will be used for the following purposes:
  - 48.1 To renumber all new provisions added to the District Plan by PC2 with new provision numbers in accordance with standard 10 of the National Planning Standards (these are alterations with a minor effect); and
  - 48.2 To correct several minor errors as identified in the table on pages 4 and 5 of Attachment 2.
- 49 The amendments to PC2 set out in Attachment 2 identify alterations under clause 102(2) of Schedule 1 using a separate colour.

**Future action the Council can take to support the implementation of PC2**

- 50 Once incorporated into the District Plan, PC2 will enable greater levels of development to occur in the district’s urban environments. It will also enable tangata whenua to develop papakāinga in many locations throughout the district’s rural and urban environments. The following paragraphs set out some of the matters that the Council could investigate to support new development to occur in a manner that contributes to a well-functioning urban environment.

*Future changes to the District Plan*

- 51 The 2021-2024 Long-term Plan identified that the Council would develop four further changes to the District Plan, in addition to PC2.<sup>17</sup> These include:
  - 51.1 A future urban development plan change;
  - 51.2 A mana whenua plan change;
  - 51.3 A flood risk plan change; and

<sup>16</sup> Residential zones around the Paekākāriki Local Centre Zone are addressed under the “Residential zones around rapid transit stops” category.

<sup>17</sup> Note that the LTP also provided for a range of omnibus plan changes which are individually known as Plan Change 1, followed by an alphabetic identifier.

- 51.4 A coastal environment plan change.
- 52 The future urban development plan change provides the Council with the opportunity to address urban development matters that were not addressed through PC2, because of its limited scope. Once decisions have been made on PC2, the Council will be well positioned to investigate and report back to the Council on a potential scope for this plan change. Some examples of what this plan change could include are:
- 52.1 Reviewing the District Plan's strategic direction for urban form and development<sup>18</sup>;
  - 52.2 Investigation of opportunities for the Council to initiate or facilitate strategic planning for greenfield development (for example, through structure planning). This would provide the Council with the opportunity to address the Panel's advisory recommendations at paragraphs [14](c) and (d) of their report, as well as to support the development of Māori land;
  - 52.3 Review of the provision for commercial activities and areas of employment, and their distribution throughout the district (including review of the size, location and distribution of centres zones, mixed use zones and industrial zones). Any review would include the involvement of tangata whenua, so that the impacts and opportunities for tangata whenua can be recognised and provided for;
  - 52.4 Investigation of planning approaches to support the development of a more diverse range of housing types, such as inclusionary zoning;
  - 52.5 Any other matters that the Council considers would support good urban development throughout the district.
- 53 In relation to the mana whenua plan change, Council staff are progressing work with iwi partners to develop a scope for this change. This is likely to include a specific focus on the District Plan's framework to recognise and provide for sites and areas of significance to Māori, as well as a review of the schedule of sites of significance. It is also likely to include a more general review to ensure that the Plan appropriately recognises and references mana whenua, for example through the development of the tangata whenua chapter as provided for by the National Planning Standards.
- 54 In relation to the flood risk plan change, the Council is currently working with flood modelling experts to update the district's flood hazard information, to inform stormwater infrastructure planning and flood hazard management. Updated flood hazard modelling can be used as a basis for reviewing both the flood hazard maps that are within the District Plan, and the objectives, policies and rules that regulate development within flood hazard areas. This plan change provides the Council with an opportunity to address the Panel's advisory recommendation at paragraph [14](a) of their report.
- 55 In relation to the coastal environment plan change, the scope and timing of this plan change is intended to be integrally related to the Takutai Kāpiti project. The recommendations of the Coastal Advisory Panel will inform the development of this plan change, alongside wider relevant information, which would include a framework within the District Plan for managing coastal hazards. The provisions for the Coastal Qualifying Matter Precinct recommended by the Independent Hearings Panel for PC2 also make it clear the precinct will be removed when provisions to manage coastal hazards are incorporated into the District Plan as part of a future coastal environment plan change<sup>19</sup>.
- 56 Council staff will continue to work on the scoping and development of these plan changes and will report back to the Council on the steps necessary to progress them after decisions have been made on PC2.

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<sup>18</sup> While this strategic direction was reviewed as part of PC2 to ensure that it is consistent with the MDRS and policy 3 of the NPS-UD, the future urban development plan change is an opportunity for a more comprehensive review.

<sup>19</sup> For example policy GRZ-P26 on page 36 of the Panel's Recommendations Version of PC2 (Attachment 2).

*Papakāinga*

- 57 If the Panel's recommendations are accepted by Council, PC2 will incorporate a package of new objectives, policies, and rules for papakāinga that will support the development of papakāinga by tangata whenua on their ancestral land and reduce or remove existing barriers within the District Plan to their development.
- 58 In addition to the papakāinga provisions contained within PC2, there are other actions that Council can take to support tangata whenua to develop papakāinga. These include:
- 58.1 Partnering with tangata whenua to prepare papakāinga design guides that are underpinned by kaupapa Māori (this reflects a commitment made by Council as expressed in policy PK-P6 of PC2);
- 58.2 Partnering with tangata whenua to progress actions in the Council's Housing Strategy<sup>20</sup> that support the development of papakāinga, including by:
- 58.2.1 Investigating ways of assisting papakāinga to connect to Council infrastructure;
- 58.2.2 Working with tangata whenua to facilitate the development of more housing for mana whenua;
- 58.2.3 Developing a toolkit to help tangata whenua to navigate Council processes when undertaking papakāinga development.

*Infrastructure and the 2024 LTP*

- 59 The sufficiency of existing and planned infrastructure is a matter that is monitored through the Council's Housing and Business Development Capacity Assessment ('HBA'). The Council is in the process of preparing its HBA to inform the development of the 2024 Long-term Plan ('LTP'). The HBA the Council is currently preparing will include an assessment of whether there is sufficient existing and planned infrastructure capacity to meet the needs of projected population growth over the short term (3 years), medium term (10 years) and long term (30 years). This HBA is also informed by the level of development enabled by notified PC2.
- 60 The Council's HBA provides base data to inform the review of the Council's Infrastructure Strategy as part of the 2024 LTP. The Infrastructure Strategy is the principal document within the LTP that ensures the necessary works are planned to meet the infrastructure needs of the district over at least the next 30 years.
- 61 The Council's Development Contributions Policy, which is also part of the LTP, sets out how new development will contribute to the funding of the new or upgraded infrastructure. The level of contribution is informed by the Infrastructure Strategy, and the 2024 LTP provides the Council with the opportunity to review the Development Contributions Policy to ensure that it sets development contributions at a sufficient level to enable the development of new and upgraded infrastructure.
- 62 Review of both the Infrastructure Strategy and Development Contributions Policy as part of the 2024 LTP provide Council an opportunity to ensure both the planning for and funding of infrastructure are aligned with anticipated growth. It also provides tangata whenua and the community an opportunity to provide input into infrastructure planning at a local level.

*Developing urban design capacity and expertise*

- 63 With an increasing focus on the development of existing urban areas, urban design becomes an important tool to ensure that development contributes to the creation of a liveable, well-functioning urban environment. PC2 includes measures, such as Design Guides, to support and encourage high-quality development. However, this can be further supported through the Council building its own urban design capacity and expertise, which would include being informed by mana whenua kaupapa (values), huanga (vision) and tikanga (approach).

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<sup>20</sup> See page 29 of the [Kāpiti Coast District Council Housing Strategy May 2022](#).

- 64 Council could investigate a range of methods to build its urban design capacity and expertise. One option is to develop in-house staff expertise in urban design. This would have the benefit of enabling the ready provision of urban design expertise to inform Council’s decision-making on resource consents.
- 65 Another option would be to investigate establishing a Design Review Panel. Design Review Panels are frequently used by other local authorities, including Auckland, Wellington City and Christchurch City, to provide independent, objective advice on the design merits of larger or more complex development proposals. Design Review Panel processes are often iterative and result in design improvements where developers adopt the feedback of the Panel. The recommendations of a Design Review Panel are also used to inform Council decision-making on resource consents.
- 66 The constitution of a Design Review Panel would be at the discretion of Council, but they would typically involve practitioners with expertise in architecture, urban design or planning. In the Kāpiti context, the involvement of tangata whenua representatives in any Design Review Panel process would also be a priority.
- 67 Because they would require funding, investigating options to build urban design capacity and expertise is a matter that would need to be explored through the LTP process.

*Opportunity to review Te Tupu Pai*

- 68 The development of *Te Tupu Pai – Growing Well* preceded, and informed, the development of PC2. However, in the period since *Te Tupu Pai* was adopted by the Council, there have been changes in national direction under the RMA, including the National Policy Statement on Highly Productive Land, and the National Policy Statement on Indigenous Biodiversity. These are likely to have an impact on the way the district’s urban environments grow and change into the future. In addition to this, the MDRS were incorporated into the RMA prior to the Council progressing its current work to develop a vision and blueprint for the district.
- 69 Changes in national direction provide reason and opportunity to review *Te Tupu Pai* to ensure that it reflects the impacts and opportunities that these changes may bring to urban development at a local level. Review of *Te Tupu Pai* also provides an opportunity to engage with the community on strategic direction for urban form and development, particularly as it relates to the future urban development plan change discussed at paragraph 0.

**Ngā kōwhiringa | Options**

**Decision-making options for PC2**

- 70 Clause 101(1) of Schedule 1 to the RMA requires that the Council either accept or reject the recommendations made by the Panel. Clause 103 of Schedule 1 sets out what happens if the Council accepts all the recommendations of the Panel, and clause 104 of Schedule 1 sets out what happens if the Council accepts some, or none, of the recommendations.
- 71 Under these clauses, there are three options available to the Council. These are summarised in [Table 4](#) below. Each of option sets of a cascade of events which are described in [Figure 3](#). The implications of each option are discussed in further detail in the following paragraphs.

*Table 4: options available to the Council under clause 101 of Schedule 1 to the RMA*

Options	Benefits	Risks
<b>Option 1 (recommended):</b> Council accepts all Panel recommendations	<ul style="list-style-type: none"> <li>• Straightforward implementation.</li> <li>• Certainty for businesses, community and Council.</li> </ul>	<ul style="list-style-type: none"> <li>• Given that this is a national directive which is legislatively required to be implemented, no identified risks.</li> </ul>

Options	Benefits	Risks
	<ul style="list-style-type: none"> <li>Enables Council to fulfil its statutory obligations under the RMA.</li> </ul>	
<p><b>Option 2:</b> Council rejects all Panel recommendations</p>	<ul style="list-style-type: none"> <li>Given that this is a national directive which is legislatively required to be implemented, no identified benefits.</li> </ul>	<ul style="list-style-type: none"> <li>Legal risk if Council does not fulfil its obligations or breaches statutory provisions when rejecting Panel recommendations.</li> <li>Prolonged uncertainty (no timeframe for the Minister to make a decision, and no certainty as to how they will decide).</li> </ul>
<p><b>Option 3:</b> Council rejects some Panel recommendations but accepts others</p>	<ul style="list-style-type: none"> <li>Given that this is a national directive which is legislatively required to be implemented, no identified benefits.</li> </ul>	<ul style="list-style-type: none"> <li>Legal risk if Council does not fulfil its obligations or breaches statutory provisions when rejecting Panel recommendations.</li> <li>Prolonged uncertainty (no timeframe for the Minister to make a decision, and no certainty as to how they will decide).</li> <li>Complexity for businesses, community and Council associated with implementing an operative-in-part plan change.</li> <li>Duplication of implementation effort.</li> <li>Risk of defaulting on statutory deadline for notifying decisions.</li> </ul>

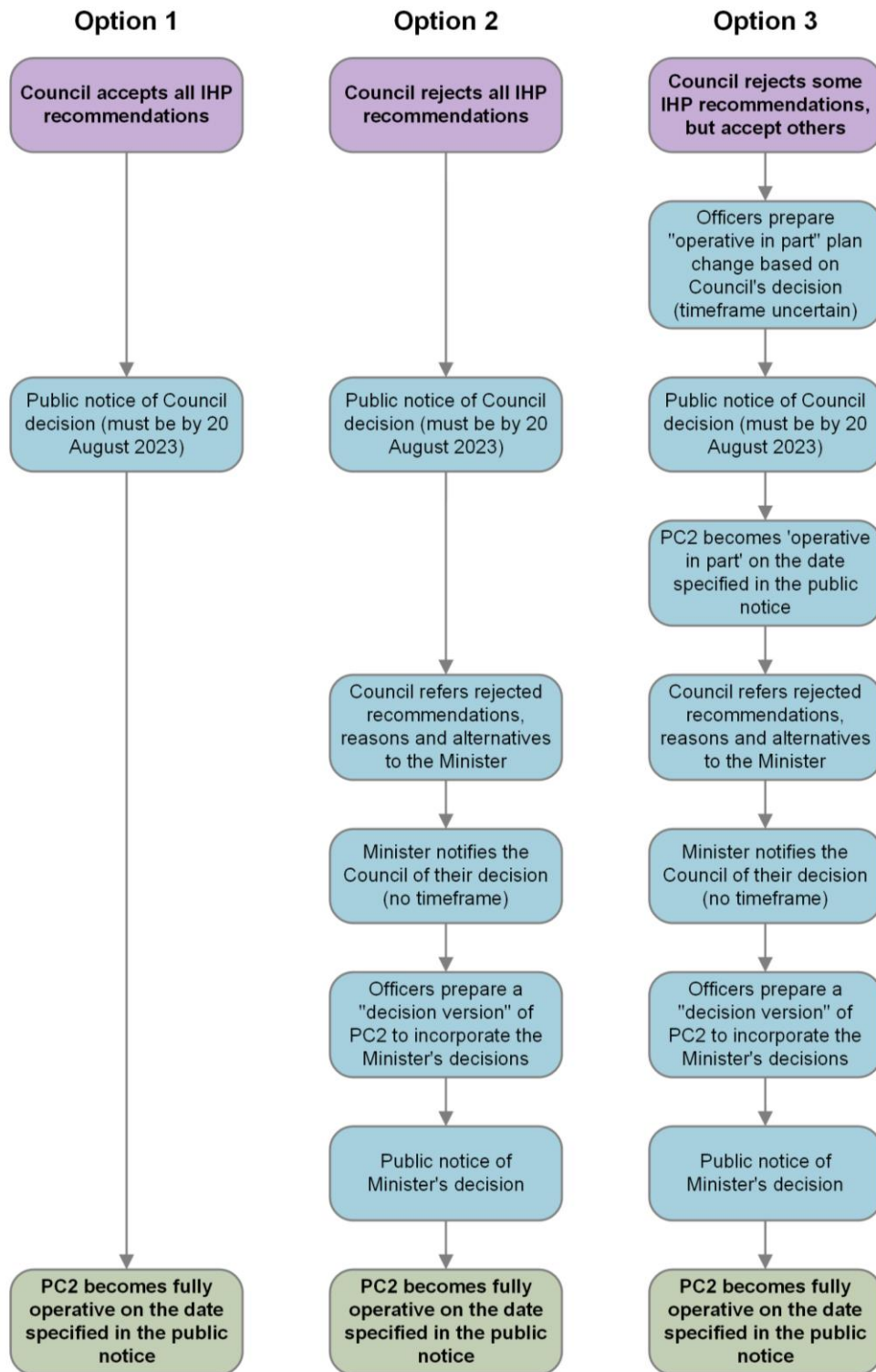


Figure 3: summary of steps associated with each of Council's decision-making options

**Option 1: Council accepts all Panel recommendations**

72 Option 1 is recommended by Council staff. This option is recommended because the Panel arrived at their recommendations after considering and evaluating all of the submissions and evidence that was before them, following the statutory process and requirements set out in the RMA. As stated by the Panel at paragraph [301] of their report:

*The Panel confidently concludes that the outcome it recommends fulfils the statutory requirements, serves the community's interests within the legal framework, and is based on the preponderance of the evidence.*



- 73 If the Council accepts all Panel recommendations, then staff will issue a public notice of the Council’s decision by 20 August, and PC2 (as set out in Attachment 2) will become operative on 1 September 2023.
- 74 Under this option, the rules in PC2 will be treated as operative (and any previous rule as inoperative) from the date of the Council decision (under section 86F of the RMA). Once PC2 becomes operative, the remaining provisions of PC2 will have legal effect and those provisions that are replaced by PC2 will cease to have legal effect.
- 75 To prepare for PC2 to become operative, Council staff will update the text and maps of the District Plan (including the Council’s online ePlan), as set out in Attachment 2. Council staff will also undertake internal and external communications with key stakeholders, including the Council’s resource consents team to facilitate a smooth transition to the new District Plan.

**Option 2: Council rejects all the recommendations of the Panel**

- 76 While clause 101(1) of Schedule 1 provides the Council with the option to reject the recommendations of the Panel, its ability to do this is subject to obligations and limitations. Specifically:
- 76.1 In making its decision, the Council “must not consider any submission or other evidence unless it was made available to the independent hearings panel before the panel made the recommendation” (clause 101(4)(b) of Schedule 1); and
- 76.2 If the Council chooses to reject the recommendations of the Panel, it must refer its reasons for doing so to the Minister for the Environment (clause 101(2)(a) of Schedule 1) and publicly notify its reasons for rejecting the recommendations when it notifies its decision (clause 102(1)(b) of Schedule 1).
- 77 When considering the Panel’s recommendations, the Council should be aware that unlike the Panel, it has not had the benefit of hearing submissions and evidence on PC2. The Council has also not had the benefit of asking witnesses who appeared before the Panel questions about their evidence. The Council would need sound reasons for rejecting the Panel’s recommendations, which in principle would require the Council to reconsider all of the submissions and evidence that was before the Panel (but only the submissions and evidence that was before the Panel). If the Council did otherwise, the Council’s decision to reject the Panel’s recommendations could be found to be improperly made.
- 78 If the Council chooses to reject the Panel’s recommendations, then the rejected recommendations will be referred to the Minister for the Environment for a decision. This would introduce a period of uncertainty for both the Council and the community because:
- 78.1 There is no statutory timeframe for the Minister to make their decision (and any decision-making timeframe is likely to be interrupted by the general election period);
- 78.2 There is no certainty as to how the Minister will decide, and the Council has no control over the outcome (although it can provide alternative recommendations to the Minister for it to consider).
- 79 While the Minister is considering their decision, PC2 as notified will continue to apply as a proposed plan change. This means that, until the Minister decides on PC2:
- 79.1 The MDRS will continue to have immediate legal effect under the provisions of proposed PC2;
- 79.2 Amendments to qualifying matters that were recommended by the Panel as part of the hearings process will not have legal effect (for example, the expansion of the Coastal Qualifying Matter Precinct at Peka Peka Beach and the expansion of the Takiwā Precincts at Ōtaki and Waikanae)<sup>21</sup>;

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<sup>21</sup> The Coastal Qualifying Matter Precinct and Marae Takiwā Precincts set out in the notified version of PC2 would continue to have effect.

79.3 The papakāinga provisions will not have legal effect;

79.4 Other aspects of PC2, such as the proposed Design Guides, the Council's *Land Development Minimum Requirements* and the changes to financial contributions provisions will not have legal effect.

### Option 3: Council rejects some of the recommendations of the Panel, but accepts others

80 The matters covered in paragraphs 76 to 79 would also apply to Option 3, to the extent that the Council rejects the recommendations of the Panel.

81 However, in addition to this, if the Council decides to accept some of the Panel's recommendations but not others, provisions of PC2 that relate to the recommendations that the Council accepts must become operative, while the provisions that relate to the recommendations that the Council rejects remain proposed (but not operative) while they are referred to the Minister for a decision. This will put the Council in the challenging position of having to implement an 'operative-in-part' plan change.

82 The level of complexity this will create will depend on the nature of the Council's decision if it chooses this option. Many aspects of PC2 are integrated to the extent that it would be challenging to implement them in part. This is also likely to lead to confusion and uncertainty within the community as to which parts of PC2 have legal effect, and which do not. This could be particularly challenging for Council officers in the consents and compliance teams, who will be on the front line of managing the uncertainty created by this option.

83 In addition to this, if the Council chooses this option, there is a high risk that the Council will default on the 20 August statutory deadline to notify its decision. This is because, prior to notifying its decision and it becoming 'operative-in-part', Council will need to take time to re-draft an 'operative-in-part' version of PC2 to reflect the Council decision. Again, the level of complexity involved in this task will depend on the nature of Council's decision.

84 The complexity and uncertainty created by this option would last until the Council notifies the decisions made by the Minister on the rejected recommendations, which, as set out above, is not subject to any timeframe. The complexity will lead to additional costs that will need to be met by Kāpiti's ratepayers, as well as businesses, land owners and developers.

### Mana whenua

85 The Council engaged with Ngā Hapū o Ōtaki, Te Ātiawa ki Whakarongotai and Ngāti Toa Rangatira throughout the development of PC2. This is described in detail at section 3.4 of the [Section 32 Evaluation Report for PC2](#). This includes co-design of the papakāinga provisions that are incorporated into PC2.

86 Tangata whenua submitted on notified PC2. These include the submissions of:

86.1 Te Ātiawa ki Whakarongotai (submission [S100](#) and further submission [S100.FS.1](#));

86.2 Te Rūnanga o Toa Rangatira on behalf of Ngāti Toa Rangatira (submission [S161](#) and further submission [S161.FS.1](#));

86.3 Ngāti Haumia ki Paekākāriki (submission [S180](#)); and

86.4 Ngā Hapū o Ōtaki (submission [S203](#) and further submission [S203.FS.1](#));

86.5 A.R.T (submission [S210](#)).

87 As part of establishing the Panel, Council consulted with tangata whenua on appointing a member to the Panel with an understanding of tikanga Māori.

88 The Panel and the hearing process was supported through tikanga Māori. This included:

88.1 Mihi whakatau by tangata whenua representatives prior to the commencement of the hearing;

- 88.2 Transfer of the hearing to Raukawa Marae at Ōtaki for two days. This included a mihi whakatau by the hau kāinga, which was attended by the Panel, Council elected members and officers, as well as submitters;
- 88.3 A mihi whakatau by Te Ātiawa ki Whakarongotai prior to hearing their submission on the last day of the hearing;
- 88.4 The guidance, support and expertise of Commissioner Rauru Kirikiri.
- 89 The Panel has made findings about how Council's processes met the principles of Te Tiriti o Waitangi at paragraph [8](b) of their report:
- The Council's processes met the principles of Te Tiriti o Waitangi in an exemplary way. The Council showed an excellent appreciation of the Treaty principles both in the design of the process and in the substantive content of the PC2 as notified and later modified in the reply report of Mr Banks, the planning consultant at Boffa Miskell with the primary responsibility for PC2. Procedural examples of recognition of the Treaty principles included the hearing of the Ngā Hapū o Ōtaki submission at the Raukawa Marae. The Council also followed tikanga when receiving Te Ātiawa's submission on the Kārewarewa Urupā. Substantive recognition of Treaty principles included a co-designed set of new Plan provisions for papakāinga. Also, Mr Banks responded positively to information provided at the hearing at Raukawa Marae by Ngā Hapū o Ōtaki concerning special historical patterns of development around the Raukawa Marae, resulting in a new Ōtaki Takiwā Qualifying Matter.*
- 90 To acknowledge the Council's relationship with its mana whenua partners, the Panel's report was shared with iwi after it was received. Notwithstanding the efforts made by Council as acknowledged by the Panel, iwi have stated to Council that they remain concerned about:
- 90.1 *"the enduring negative impacts of PC2 on their relationships with their lands and waters";*
- 90.2 *"increased risks to our culture, the wellbeing of te taiao, our people and that of the wider community";*
- 90.3 *"the timing of the provision of infrastructure; the rezoning of large areas, pre-empting decisions best made under the future development plan change; and the approach to hazard management and protection of taonga";*
- 90.4 *"the increased risk to sites and areas of significance resulting from widespread enabling of intensification".*
- 91 These matters were raised by iwi in their submissions to the Panel.

### Panonitanga āhuarangi | Climate change

- 92 The report to the [Council meeting on 28 July 2022](#), sets out the consideration given to climate change as part of the preparation of notified PC2.
- 93 In addition to this, since 30 November 2022, changes to the RMA have required Council to have regard to the government's Emissions Reduction Plan 2022 and National Adaptation Plan 2022 when making changes to the District Plan. Council officers provided evidence to the Panel on both these plans to the extent that they are relevant to PC2. This evidence is set out in sections 3.2.3 and 3.2.4 of the [Council Officers' Planning Evidence report](#).

### Ahumoni me ngā rawa | Financial and resourcing

- 94 Resourcing for PC2 was provided for in the Council's LTP. If the Council chooses to proceed with Option 1 (accept all recommendations), no additional financial and resourcing costs have been identified.
- 95 However, there are likely to be additional financial and resourcing costs associated with Option 2 (reject all recommendations) and Option 3 (reject some of the recommendations of the Panel, but accept others). It is difficult to quantify these costs due to the uncertainty and

complexity associated with these options. However, additional financial and resourcing costs to Council could occur as a result of:

- 95.1 Liaison between the Minister/Ministry for the Environment and the Council (to the extent that this occurs);
  - 95.2 Re-drafting of PC2 to incorporate the Minister’s decisions;
  - 95.3 Additional communication and engagement with businesses and the community to explain the implications of the Council’s decisions, and the Minister’s decisions;
  - 95.4 Implementation of an operative-in-part plan change (under Option 3);
  - 95.5 Resolution of potential disputes between resource consent applicants and Council about the legal effect of District Plan provisions (under Option 3).
- 96 If the Minister takes action under sections 24A and 25 of the RMA (see discussion in Legal and Organisational Risk section below), the Council may be liable for the Minister’s costs.

**Tūraru ā-Ture me te Whakahaere | Legal and Organisational Risk**

**Legal risk associated with Council decision-making**

- 97 The statutory obligations placed on the Council when making and notifying its decision on the recommendations of the Panel are set out in clauses 101 and 102 of Schedule 1 to the RMA. In particular:
- 97.1 In making its decision, the Council “must not consider any submission or other evidence unless it was made available to the independent hearings panel before the panel made the recommendation” (clause 101(4)(b) of Schedule 1).
  - 97.2 If the Council chooses to reject the recommendations of the Panel, it must refer its reasons for doing so to the Minister for the Environment (clause 101(2)(a) of Schedule 1) and publicly notify its reasons for rejecting the recommendations when it notifies its decision (clause 102(1)(b) of Schedule 1). As set out at paragraph 0, the Council would need sound reasons for rejecting the Panel’s recommendations and they cannot be based on submissions or other evidence that was not before the Panel.
- 98 The potential consequences of breaching these statutory obligations include:
- 98.1 Judicial review of the Council’s decision;
  - 98.2 Investigation of the Council’s decision by the Minister for the Environment under section 24A of the RMA<sup>22</sup>.

**Deadline for notifying decisions**

- 99 Direction of the Minister for the Environment under [Gazette Notice 2022-sl1594](#) requires the Council to notify its decisions on the recommendations of the Panel by 20 August 2023. As set out above, if the Council chooses to proceed with Option 3, there is a risk that the Council will not meet this deadline.
- 100 A potential consequence of the Council not meeting this deadline is an investigation of the Council’s failure to do so by the Minister for the Environment under section 24A of the RMA. Notwithstanding this, under section 80M of the RMA, the Council has an option to request to the Minister that the deadline for notifying decisions be extended. However, there is no guarantee that such a request would be granted, and in any case, it is highly unlikely that such an extension would be granted before the 20 August deadline expired.

**Kārewarewa Urupā**

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<sup>22</sup> This can lead to the Minister appointing a commissioner to perform the functions, powers or duties of Council under the RMA, and recovering the costs of doing so from the Council (under section 25 of the RMA). Any appointment can only be made after first providing the Council reasonable opportunity to respond to the Minister’s concerns.

- 101 During the course of the hearing, the Environment Court published its decision *Waikanae Land Company v. Heritage New Zealand Pouhere Taonga*<sup>23</sup>. In its decision, the Environment Court found that the Council’s proposal to incorporate Kārewarewa Urupā into Schedule 9 of the District Plan as part of PC2 was *ultra vires*. This means that the Environment Court considered that the Council did not have the statutory authority to incorporate Kārewarewa Urupā into Schedule 9 of the District Plan as part of PC2.
- 102 At the hearing, it was common ground that the decision of the Environment Court did not bind the Panel or the Council in making decisions on PC2<sup>24</sup>. The Panel addresses the Environment Court decision at paragraphs [182] to [203] of its report. After due analysis, the Panel respectfully disagreed with the Environment Court on the jurisdictional question and recommended Council incorporate Kārewarewa Urupā into Schedule 9 of the District Plan.
- 103 The Council has appealed the decision of the Environment Court to the High Court.
- 104 In June 2023, Waikanae Land Company filed judicial review proceedings against the Council. The proceedings relate to the same legal issue that the Environment Court determined (which the Council is appealing). The judicial review and the Council’s appeal will be heard together by the High Court in early 2024.
- 105 Following the outcome of this appeal and judicial review proceedings, Council staff will report back to Council on the findings of the High Court, and any further action that may need to be taken (if any) as a result of the Court’s findings.

**Ngā pānga ki ngā kaupapa here | Policy impact**

- 106 Potential impacts on Council policies have been discussed above.

**TE WHAKAWHITI KŌRERO ME TE TŪHONO | COMMUNICATIONS & ENGAGEMENT**

**Te mahere tūhono | Engagement planning**

- 107 Council has engaged extensively with the public to raise public awareness of and seek feedback on PC2. This included:
- 107.1 Communications and engagement on *Te tupu pai* in 2021 and 2022;
  - 107.2 Communications and engagement on draft PC2 in early 2022;
  - 107.3 Seeking public submissions on notified PC2 in mid to late 2022 through a variety of channels including the Council website, media, social media, and paid advertising. This included directly notifying all ratepayers in the district of PC2 by way of letter;
  - 107.4 The hearings process, which included extensive participation of submitters.
- 108 The level of further engagement necessary will vary depending on the outcome of the Council’s decision.
- 109 If the Council chooses Option 1 (accept all recommendations), then key engagement and actions will include:
- 109.1 Ongoing internal engagement between the District Planning team and the Consents and Compliance team to assist with familiarisation of PC2 as recommended by the Panel;
  - 109.2 Updating the Council’s ePlan (online version of the District Plan) so that it is ready to go live on the date that the Council specifies that PC2 will become operative;
  - 109.3 Direct notification of the Panel’s recommendations and the Council’s decision to all submitters;

<sup>23</sup> *Waikanae Land Company v. Heritage New Zealand Pouhere Taonga* [2023] EnvC 056.

<sup>24</sup> See paragraph [187] of the Panel’s report.

109.4 Communications and engagement with external stakeholders, including development professionals and the wider community, to ensure that there is a reasonable understanding of what it means for PC2 to become operative.

- 110 If the Council chooses Option 2 (reject all recommendations) or Option 3 (reject some recommendations), there is likely to be additional engagement necessary to assist businesses and the community with understanding the regulatory uncertainty and complexity resulting from these options. This is likely to require a sustained and adaptable engagement effort throughout the period in which the Minister is making their decision, and in the transitional period after the Minister has made their decision.

### Whakatairanga | Publicity

- 111 The principal form of publicity for the Council's decisions on PC2 will be the public notice that the Council is required to place in a newspaper that distributes throughout the District, in accordance with the requirements of section 2AB of the RMA.
- 112 The Council will also advertise its decision through a range of communication channels, including the Council website, media and social media.

### NGĀ ĀPITI HANGA | ATTACHMENTS

1. The Panel's Report to Council on PC2 under RMA Schedule 1, Part 6, Clause 100 (under separate cover) [⇒](#)
2. PC2, as amended by the Panel's recommendation (under separate cover) [⇒](#)
3. Maps showing a high-level summary of changes to notified PC2 as a result of the Panel's Recommendation [↓](#)
4. Glossary of terms used in this report [↓](#)

# Maps summarising the recommendations of the Independent Hearing Panel on PC2

**Notes:**

1. These maps are intended to provide a high-level summary of the spatial recommendations of the Independent Hearings Panel ('IHP').
2. The maps contain an annotations that summarise the spatial changes from the notified version of PC2 as a result of the recommendations of the Independent Hearings Panel.
3. Refer to the **Report of the Independent Hearings Panel** for their recommendations in full.
4. For details on all changes to the District Plan as a result of the recommendations of the Independent Hearings Panel, refer to the **Plan Change 2 – Intensification Planning Instrument (IPI) PC(C) Independent Hearings Panel Recommendations Version**.
5. The General Residential Zone at Te Horo Beach has not been included in these maps, as the Independent Hearings Panel have not recommended any spatial changes to the General Residential Zone at Te Horo Beach.













## 7.2 ESTABLISHMENT OF A MĀORI WARD

Kaituhi | Author: **Steffi Haefeli, Manager Democracy Services**

Kaiwhakamana | Authoriser: **Janice McDougall, Group Manager People and Partnerships**

### TE PŪTAKE | PURPOSE

- 1 This report asks Council to consider the establishment of a Māori ward for the 2025 local body elections.

### HE WHAKARĀPOPOTO | EXECUTIVE SUMMARY

- 2 An executive summary is not required for this report.

### TE TUKU HAEPAPA | DELEGATION

- 3 Section A.2 of the Governance Structure and Delegations for the 2022-2025 triennium provides Council with authority to consider this matter.
- 4 Section A.1 provides that Council's decision-making is guided by a partnership between elected members and the mana whenua of the district comprising the iwi and hapu of Ngā Hapū o Ōtaki (Ngāti Raukawa), Ngāti Toa Rangatira and Ātiawa ki Whakarongotai Charitable Trust (together forming the A.R.T. Confederation).

### TAUNAKITANGA | RECOMMENDATIONS

- A. That Council either:
  - A.1 Resolve not to establish a Māori ward for electoral purposes under section 19Z of the Local Electoral Act 2001 ahead of the 2025 local body election.
  - Or
  - A.2 Resolve to proceed with wider community consultation with tangata whenua and other communities ahead of a final decision on whether to establish a Māori ward this triennium prior to 23 November 2023.

### TŪĀPAPA | BACKGROUND

- 5 On 6 May 2021, following the recommendation of its three iwi partners, Te Āti Awa ki Whakarongotai Charitable Trust, Ngā Hapū o Ōtaki (Ngāti Raukawa) and Ngāti Toa Rangatira Council resolved not to establish a Māori ward for electoral purposes under section 19Z of the *Local Electoral Act 2001* before the 2022 local body elections. As part of this decision, Council committed to reconsidering the question this triennium.

#### **Current Legislative Context**

- 6 On 26 July 2022, the Government announced the introduction of the Local Government Electoral Legislation Bill (the Bill). The Legislation Bill is currently progressing through Parliament and was expected to come into force mid-2023. Initially, if passed, the Bill would have enacted amendments to the Local Electoral Act 2001 making revisions to the process that local authorities are required to follow in deciding their representation arrangements, making the consideration of a Māori ward a mandatory step in the representation review process. These would have taken effect ahead of the 2025 local authority elections. Under the proposed provisions:
  - 6.1 Local authorities that had not established a Māori ward in the last triennium, would be required to reconsider whether to create a Māori ward; and

- 6.2 Local authorities would be required to engage with 'Māori and other communities' and to 'have regard to' this engagement in deciding whether to establish a Māori ward.
- 7 On 6 April 2023, after the Bill's second reading, Parliament made changes to timeframes proposed under the initial Bill and delayed the introduction of certain provisions to reduce the impact of the new requirements especially for those councils affected by Cyclone Gabrielle and subsequent flooding events. Changes to the bill include delaying provisions requiring Councils to consider Māori representation as part of their representation review until after the 2025 Local Body Elections. As a result, the proposed Māori ward requirements will not be in force for 2025 elections. The intention is that they will be in force for the 2028 elections and the provisions are expected to remain the same.
- 8 Councils still have the ability to optionally consider Māori representation, but it will no longer be a legal requirement ahead of the next elections.
- 9 The impact of the delay in provisions is that the legislative status quo under the Local Electoral Act 2001 remains. This is that Council may, but is not required to, resolve whether to establish a Māori ward ahead of the elections in 2025. In the last triennium, Council guided by mana whenua resolved not to establish a Māori ward, however, committed to reconsidering the question this triennium. As such, it is appropriate that Council and mana whenua consider the matter again this triennium.
- 10 Under the current provisions of the Local Electoral Act 2001, a resolution to establish a Māori ward must be made by 23 November 2023, which is the 23 November of the year that is 2 years before the next triennial general election, to take effect for that next election. If Council did resolve to establish a Māori ward, then a representation review would need to take place in 2024 ahead of the 2025 elections.

**What is a Māori Ward?**

- 11 The Local Government Act 2002 requires Council to provide for Māori participation in decision-making, but it does not prescribe how this should happen. The establishment of one or more Māori wards is one avenue to be considered under the Local Electoral Act 2001.
- 12 A Māori ward is a representation structure which would allow tangata whenua electors enrolled on the Māori electoral role to directly elect a Councillor to Council. The person standing for the Māori ward vacancy does not have to identify as mana whenua or tangata whenua to stand; however, only those on the Māori electoral role can nominate that person and vote for the person to be elected.
- 13 The Electoral Act 2001 sets out a formula to determine how many Māori wards may be established which is based on population size of the territorial authority area.
- 14 Previous amendments to the Local Electoral Act 2001 under the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021:
- 14.1 removed the ability for electors to bring a petition requiring a poll on the introduction of Māori wards (only the Council will be able to undo a decision to establish a Māori ward or constituency);
  - 14.2 removed the ability for local authorities to resolve to hold binding polls on whether to establish Māori wards or constituencies (although non-binding polls may continue to be conducted);
  - 14.3 provided that past polls, or Council resolution to hold binding polls, on whether to establish Māori wards or constituencies cease to have any effect.

**Engagement Planning**

- 15 If a decision is made by Council that the establishment of a Māori ward should be considered, an engagement plan should be considered and developed in line with mana whenua advice on what type of engagement would be appropriate.
- 16 Input on engagement could be sought via Te Whakaminenga o Kāpiti and then Council on what the proposed engagement plan with mana whenua, tangata whenua and other

communities should look like in the lead up to a final decision on whether to establish a Māori ward this triennium.

### **Future for Local Government Review**

- 17 Current local governance structures and systems were designed many years ago and are now facing considerable pressure. Over the past three years an independent review has been conducted by the Future for Local Government Review panel which is an opportunity to find new approaches to local governance that create the conditions for communities to prosper and thrive.
- 18 While the recently released final report from the panel conducting the Review into the Future for Local Government recommend that the threshold for Māori wards in legislation be reduced, it also acknowledges that changes to legislative frameworks alone are not sufficient to ensure a Te Tiriti based partnership between local government and Māori.
- 19 The panel recommends councils develop partnership frameworks with hapū/iwi and Māori to give effect to Te Tiriti provisions and enabling Tiriti-based appointments to councils for iwi and hapu who want to participate in the kāwanatanga sphere.

## **HE KŌRERORERO | DISCUSSION**

### **He take | Issues**

- 20 Council's current governance structure allows for the appointment of mana whenua representatives to its committees and subcommittees with full voting rights which currently provides a mechanism for all of Council's mana whenua partners to be represented around the Council and committee table.
- 21 If a Māori ward is established, Māori electors enrolled on the Māori electoral roll will need to vote for Māori ward councillors in the place of general ward councillors. Māori electoral roll electors will still be able to vote for the Mayor, district-wide councillors and community board representatives of the community they reside in. This could be perceived as less representation across the wards. In comparison, general roll electors would be able to vote for the Mayor, three district-wide councillors, community board representatives and up to three ward councillors depending on the ward they are able to vote for. For example, for a Māori elector voting for the Paraparaumu ward electorate, establishing a Māori ward would mean that instead of voting for three ward councillors they might only be able to vote for one Māori ward councillor.
- 22 The exact number of Māori ward councillors would not be known with certainty until a representation review has taken place, however, this is determined by a 'fair representation' ratio in the Local Electoral Act 2001 and based on population numbers from the previous representation review, there would likely be one Māori ward councillor to 10 general ward councillors. As the legislative ratio is between Māori ward and general ward councillors, a decision to establish a Māori ward would likely impact on Council's representation structure including the type and number of ward versus district-wide councillors and consequentially, the total number of councillors.
- 23 While Māori electors are able to switch between the Māori electoral roll and the general electoral roll easily due to a recent change in electoral legislation, this can still only be done up to three months before the relevant elections. Messaging around these considerations for Māori electors can be incorporated in pre-election communications and engagement to ensure Māori are aware of the impacts of the different rolls.

### **Ngā kōwhiringa | Options**

- 24 In the last triennium, Council guided by mana whenua resolved not to establish a Māori ward and committed to reconsidering the question this triennium. The options are:

- 24.1 For Council to resolve not to establish a Māori ward at this point in time (as there is no legislative requirement in force to require Council to consider it this triennium and as such this is discretionary).
- 24.2 For Council to resolve to proceed with wider community consultation with tangata whenua and other communities in a lead up to a final decision on whether to establish a Māori ward this triennium.

### Mana whenua

- 25 At the 20 June 2023 Te Whakaminenga o Kāpiti meeting the chair, André Baker, noted that Council was subject to timeframes in making these decisions and that a response had been provided directly to the Mayor. Through the chair of Te Whakaminenga o Kāpiti, the A.R.T Confederation reflected that work they are committing themselves to, in terms of a review of the Memorandum of Partnership, and opportunities for mana whenua to be represented at Council and committee meetings through the Governance Structure, is still in its infancy. These relationships will continue to evolve following the recent appointment of a Group Manager Iwi Partnerships.
- 26 The A.R.T Confederation have indicated they would like to embed the new partnership arrangement and new relationship with the newly appointed iwi partnerships group this triennium and do not consider the establishment of a Māori ward a priority at present. They have indicated that they will continue to consider this matter throughout the triennium.

### Panonitanga āhuarangi | Climate change

- 28 There are no climate change considerations as part of this report.

### Ahumoni me ngā rawa | Financial and resourcing

- 29 There are no direct financial and resourcing implications as a result of this report. If Council supported the establishment of a Māori ward, community engagement would need to be planned and implemented. Community engagement would have a budgetary impact.
- 30 If a decision was then made to establish a Māori ward as a result of the engagement, a representation review would need to take place in 2024, also with a budget impact.

### Tūraru ā-Ture me te Whakahaere | Legal and Organisational Risk

- 31 As Council considered whether to establish a Māori ward last triennium, under the Local Electoral Act 2001 Council is not required to consider the establishment of a Māori ward until next triennium ahead of the 2028 Local Body Elections. Consideration of this matter this triennium is optional (noting that Council and mana whenua committed to revisiting this matter this triennium when they resolve not to establish a Māori ward last triennium).
- 32 Under the Local Electoral Act 2001, if Council wishes to establish a Māori ward ahead of the 2025 elections, it must make a decision by 23 November 2023 and give public notice in accordance with the timeframes in the Act.

### Ngā pānga ki ngā kaupapa here | Policy impact

- 33 There will be no direct impact on any existing or planned policies as a result of this decision.

## TE WHAKAWHITI KŌRERO ME TE TŪHONO | COMMUNICATIONS & ENGAGEMENT

### Te mahere tūhono | Engagement planning

- 34 If required, an engagement plan would be developed by Council Officers with input from mana whenua and presented to Council for endorsement at a Council meeting at the end of August 2023. Any community engagement would need to take place between mid-August and October 2023 to make a decision in line with legislative timeframes.



- 35 Any input provided by mana whenua as part of the discussions on this report will be presented to Council to inform the proposed engagement approach.

**Whakatairanga | Publicity**

- 36 If a decision is made to consider the establishment of a Māori Ward, publicity will be in line with an agreed communications and engagement plan. The decision on whether or not to establish a Māori ward will also be publicly notified.

**NGĀ ĀPITI HANGA | ATTACHMENTS**

1. 19Z Local Electoral Act 2001 [↓](#)
2. Schedule 1A Local Electoral Act 2001 [↓](#)























### 7.3 CONDUCTING A POLL TO SELECT THE ELECTORAL SYSTEM FOR THE LOCAL BODY ELECTIONS 2025

Kaituhi | Author: **Anna Smith, Senior Democracy Services Advisor**

Kaiwhakamana | Authoriser: **Janice McDougall, Group Manager People and Partnerships**

#### TE PŪTAKE | PURPOSE

- 1 On 20 July 2023, Council resolved to undertake a poll of electors on the electoral system to be used for the next two triennial elections, in accordance with the provisions of the Local Electoral Act 2001 (the Act).
- 2 This report provides Council with the option to alter its resolution to specify a date for the poll to occur. This will allow the poll to be conducted at a time that allows for an appropriate communications campaign to inform the community about the different electoral systems ahead of the poll and for this to be aligned with other community conversations already underway.

#### TAUNAKITANGA | RECOMMENDATIONS

- A. That Council alter the resolution passed at the Council meeting of 20 July 2023 to *undertake a poll of electors on the electoral system to be used for the next two triennial elections, in accordance with the provisions in the Local Electoral Act 2001*

That the resolution be altered to say: That the Council resolves to undertake a poll of electors on the electoral system to be used for the next two triennial elections, in accordance with the provisions in the Local Electoral Act 2001. Polling day will be 1 December 2023.

#### TŪĀPAPA | BACKGROUND

- 3 The next local body elections 2025 will be held on 11 October 2025.
- 4 The Local Electoral Act 2001, sections 27 to 34, provides for local authorities and their communities to choose either of the following as their electoral system for local elections:
  - first past the post (FPP) or,
  - single transferable vote (STV).
- 5 A territorial authority's chosen electoral system also applies to the election of members of any local boards or community boards.
- 6 A change of electoral system can be achieved by:
  - local authority resolution, or
  - favourable outcome of a poll of electors. This poll may be:
    - demanded by electors, or
    - the result of a local authority resolution.
- 7 On 20 July 2023, Council were asked to consider the electoral system for future elections. Council resolved to undertake a poll of electors on the electoral system to be used for the next two triennial elections. The outcome of this poll determines the electoral system to be used and no further resolution of Council is required.
- 8 The recommendation to Council regarding a poll did not specify a date for the poll to be held. The Act provides that if a date for the poll is not specified in the resolution, the poll must be held as soon as practicable but no later than 89 days after the date of notice to the electoral officer. It is good practice to notify the electoral officer in good time after the resolution is passed.

- 9 In preparation for notifying the electoral officer council officers investigated the likely timing of the poll in line with provision in the Act. The poll would have been required to have been conducted in October, with an information campaign to help educate electors about the options to be conducted in the months prior.
- 10 The Act provides that if a local authority sets a date for when a poll is to take place, that it must take place by a certain date the year before elections (in this case 2024). Under the current version of the Act this date is 21 May 2024. However, a bill seeking amendments to the Act is currently travelling through parliament which would change that date to 14 March 2024. It is expected that these date changes will come into effect in the near future.

## HE TAKE | ISSUES

- 11 The conduct of polls must comply with the provisions of the Act and the Local Electoral Regulations 2001. Voting documents for the poll must be sent to all electors prior to the close of voting (the last date of the poll) within timeframes prescribed by legislation and the voting methods must be by postal vote, booth vote, or a combination of both.
- 12 A number of engagement activities are proposed and planned throughout the months of September, October and November including engagement on Councillor's ten strategic priorities, Vision Kāpiti, Takutai Kāpiti, and consultations of a draft Culture and Creative Strategy, draft TAB venue/Class 4 Gaming Policies, Local Alcohol Policy and Smokefree Policy and engagement on various draft Council policies. Also relevant is the General Election taking place between 2 October 2023 to 14 October 2023.
- 13 Officers considered the risk of engagement and information fatigue on the part of the community and the Council's capacity to deliver a robust information and education campaign if the poll were to be conducted in October. Officers are of the view that creating some space between these engagement and consultation activities and the poll will help mitigate these risks.
- 14 Council staff recommend the poll be conducted in late November with a polling day of 1 December. On this basis the notification to the electoral officer of a requirement for a poll has been deferred pending the Council's consideration of this report.
- 15 If Friday 1 December was selected for a poll date, the electoral officer would be notified within a reasonable timeframe after this meeting.
- 16 If Council chooses not to alter its resolution passed at the Council meeting of 20 July 2023 the electoral officer will be advised of the requirement for a poll shortly after this meeting. with the result that the poll must be held as soon as practicable but no later than 89 days after the date of notice to the electoral officer. This would likely result in a poll being conducted in late October/early November.
- 17 The updated estimated cost of holding a stand-alone poll is \$105,000 (plus GST). There will also be costs relating to the campaign to educate voters on the two electoral systems and to encourage participation in the poll. Staff have begun developing this campaign, which would require us to utilise a range of traditional and digital communications channels to make sure we provide equitable access to information and opportunities for people to participate in the poll. The estimated cost of this is \$20,000-\$30,000.

Council officers will bring a subsequent report to council outlining how this will be funded from within existing budgets.

## NGĀ ĀPITI HANGA | ATTACHMENTS

1. Timeframes and Statutory Provisions [↓](#)

















## RESOLUTION TO EXCLUDE THE PUBLIC

**PUBLIC EXCLUDED RESOLUTION**

That, pursuant to Section 48 of the Local Government Official Information and Meetings Act 1987, the public now be excluded from the meeting for the reasons given below, while the following matters are considered.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

<b>General subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Ground(s) under section 48 for the passing of this resolution</b>
<b>8.1 - Approval of Tender for Civil Works Associated with the Construction of a Reservoir at Te Manuao Road, Ōtaki</b>	<p>Section 7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p> <p>Section 7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities</p>	<p>Section 48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7</p>