

TE WHAKAMINENGA O KĀPITI

“He toa taki tini taku toa,

E hara i te toa taki tahi”

“My strength will only be achieved

Because of the efforts of us all.”

RĀRANGI TAKE AGENDA

Te Whakaminenga o Kapiti
Tuesday, 26 March 2024

I hereby give notice that a Te Whakaminenga o Kapiti meeting will be held on:

Date: Tuesday, 26 March 2024

Time: 9.30am

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

**Hara Adams
Group Manager Iwi Partnerships**

Kapiti Coast District Council

Notice is hereby given that a meeting of Te Whakaminenga o Kapiti will be held in the Council Chamber, Ground Floor, 175 Rimu Road, Paraparaumu, on Tuesday 26 March 2024, 9.30am.

Te Whakaminenga o Kapiti Members

Mr André Baker	Chair
Mayor Janet Holborow	Member
Ms Kirsten Hapeta	Member
Ms Denise Hapeta	Member
Ms Janine Huxford	Member
Ms Kim Tahiwai	Member
Mr Huriwai Paki	Member
Cr Martin Halliday	Member

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- 1 KARAKIA
- 2 WHAKAPĀHA | APOLOGIES
- 3 HE WĀ KŌRERO KI TE MAREA | PUBLIC SPEAKING TIME
- 4 HE TĀPIRITANGA KI TE RĀRANGI TAKE | ADDITIONAL AGENDA ITEMS

5 TE WHAKAŪ I NGĀ ĀMIKI | CONFIRMATION OF MINUTES

5.1 CONFIRMATION OF MINUTES

Author: Jessica Mackman, Senior Advisor, Democracy Services

Authoriser: Hara Adams, Group Manager Iwi Partnerships

TAUNAKITANGA | RECOMMENDATIONS

That the minutes of Te Whakaminenga o Kapiti meeting of 12 Hakihea 2023 (12 December 2023) be accepted as a true and correct record.

NGĀ ĀPITIHINGA | ATTACHMENTS

1. Minutes of Te Whakaminenga o Kapiti 12 December 2023 [↓](#)

TE WHAKAMINENGA O KAPITI MINUTES

12 DECEMBER 2023

**MINUTES OF KAPITI COAST DISTRICT COUNCIL
TE WHAKAMINENGA O KAPITI
HELD AT THE COUNCIL CHAMBER, GROUND FLOOR, 175 RIMU ROAD, PARAPARAUMU
ON TUESDAY, 12 DECEMBER 2023 AT 9.35AM**

PRESENT: Mr André Baker (Ātiawa ki Whakarongotai), Mayor Janet Holborow, Ms Denise Hapeta (Ngā Hapū o Ōtaki), Ms Kim Tahiwai (Ngā Hapū o Ōtaki), Mr Huriwai Paki (Ngāti Toa Rangatira), Cr Martin Halliday

IN ATTENDANCE: Cr Sophie Handford, Cr Rob Kofoed, Cr Kathy Spiers, Cr Nigel Wilson, Mr Darren Edwards, Ms Kris Pervan, Ms Deanna Rudd, Ms Steffi Haefeli, Ms Anna Smith, Ms Jessica Mackman

WHAKAPĀHA | Ms Kirsten Hapeta (Ngā Hapū o Ōtaki), Te Rakauoteora Te Maipi (Koro Don Te Maipi), Ms Hara Adams

APOLOGIES:

LEAVE OF ABSENCE: There were none.

1 KARAKIA

The Chair, André Baker opened the hui and respectfully acknowledged members of the A.R.T. Confederation (Ātiawa ki Whakarongotai, Ngāti Raukawa ki te tonga, Ngāti Toa Rangatira) who had recently passed and their whanau at this time.

The Chair welcomed the rangatira o te Kaunihera o Kapiti, mana whenua, kaiwhiriwhiri and manuhiri in attendance.

2 WHAKAPĀHA | APOLOGIES

The Chair, André Baker noted apologies had been received from Hara Adams, Group Manager Iwi Partnerships, Kirsten Hapeta (Ngā Hapū o Ōtaki) and Te Rakauoteora Te Maipi.

APOLOGY

COMMITTEE RESOLUTION TWOK2023/29

Moved: Ms Denise Hapeta

Seconder: Mr Huriwai Paki

That the apologies received from Hara Adams, Kirsten Hapeta and Te Rakauoteora Te Maipi be accepted.

CARRIED

3 HE WĀ KŌRERO KI TE MAREA | PUBLIC SPEAKING TIME

Chris Webber highlighted the new government's proposed disestablishment of Te Aka Whai Ora (Māori Health Authority) and asked that Council take a proactive role in the health and wellbeing space as a result of this. Mr Webber also noted recent Te Tiriti o Waitangi debate and the need for Council to engage in the discussion constructively.

TE WHAKAMINENGA O KAPITI MINUTES**12 DECEMBER 2023**

Mr Webber reiterated an earlier request made to Council advocating for a review of Te Whakaminenga o Kapiti to better understand how the voices of hapu could be heard and requested a meeting on behalf of the Paraparaumu Māori Committee.

Hariata Higgott acknowledged Cr Martin Halliday and Mayor Janet Holborow in assisting to have her art exhibited at Toi Mahara gallery. Ms Higgott requested she be informed of future arts, heritage and culture related kaupapa at Council so she can advocate for local artists.

4 HE TĀPIRITANGA KI TE RĀRANGI TAKE | ADDITIONAL AGENDA ITEMS

The Chair, André Baker acknowledged the elevation of whaea Denise Hapeta to Purutanga Mauri o Te Wānanga o Raukawa which was celebrated at a recent graduation ceremony at the Wānanga. The Chair noted that Piripi Walker was also inducted to the role of Purutanga Mauri and commended both on attaining that position.

Denise Hapeta noted the upcoming celebration of the 30 year partnership of Te Whakaminenga o Kapiti and the review of the Memorandum of Partnership given the significance of the milestone.

The Chair, André Baker requested an update on Budge House which was provided by Kris Pervan, Group Manager Strategy & Growth. Ms Pervan noted that Karl Webber, Ngāti Haumia has met with Ngāti Toa Rangatira who are consulting with Greater Wellington Regional Council (GWRC). GWRC have sought legal advice in relation to the honorary kaitiaki role and where that role should sit. Ms Pervan noted that a formal update was expected from GWRC before the year end and the Chair, with support of members, requested Ms Pervan convey the desire for this to be received.

Huriwai Paki left the hui at 10.10am and returned at 10.15am.

Kim Tahiwai left the hui at 10.15am and returned at 10.17am.

5 TE WHAKAŪ I NGĀ ĀMIKI | CONFIRMATION OF MINUTES

The Chair, André Baker introduced the item and suggested administrative changes to enhance the preparation of future minutes.

5.1 CONFIRMATION OF MINUTES**COMMITTEE RESOLUTION TWOK2023/30**

Moved: Mr Huriwai Paki

Seconder: Ms Kim Tahiwai

That the minutes of Te Whakaminenga o Kapiti meeting of 31 Whiringa-ā-nuku 2023 (31 October 2023) be accepted as a true and correct record.

CARRIED

6 PŪRONGO | REPORTS

There were no reports scheduled on the agenda.

7 HE KŌRERO HOU MŌ NGĀ IWĪ | IWĪ UPDATES

Denise Hapeta noted it had been an active time for Ngā Hapū o Ōtaki and other large entities in Ōtaki and that tangihanga in recent weeks had lead to the need to defer Waitangi Tribunal hearings. Hearings would now be held March, April and May 2024.

Denise Hapeta noted the need to consider the celebration of partnership of Te Whakaminenga o Kapiti and the Memorandum of Partnership (MOP) and whether any changes need to be made to the MOP.

TE WHAKAMINENGA O KAPITI MINUTES**12 DECEMBER 2023**

The Chair, André Baker acknowledged those that had recently celebrated tertiary achievements at Te Wānanga o Raukawa.

8 NGĀ WHAKATAUNGA TIRITI - HE TIROHANGA WHĀNUI NŌ IA IWI | TREATY SETTLEMENTS – OVERVIEW FROM EACH IWI

Deferred dates for hearing week 15 to be provided (March 2024, online hearing -)

9 HE KŌRERO HOU MŌ TE KAUNIHERA | COUNCIL UPDATE

9.1 DRAFT CALENDAR OF MEETINGS 2024

Steffi Haefeli, Manager Democracy Services and Deanna Rudd, Manager Iwi Partnerships took the report as read and answered members' questions.

Kim Tahiwai noted the need to include the commemoration of Te Whakaminenga o Kapiti.

The Chair, André Baker thanked Council officers for their efforts and noted his desire to review the dates and progress this take.

Darren Edwards, Chief Executive noted Far North District Council had recently implemented a meeting calendar in line with maramataka and he supported the development of a similar approach.

COMMITTEE RESOLUTION TWOK2023/31

Moved: Ms Kim Tahiwai

Seconder: Mr Huriwai Paki

That Te Whakaminenga o Kapiti notes the content of the update and the temporary proposed meeting schedule for 2024 in attachment 1 of this report - Draft Calendar of Meetings.

CARRIED

9.2 WAITANGI DAY COMMEMORATIONS 2024

Deanna Rudd, Iwi Partnerships Manager provided an update on upcoming Waitangi Day commemorations which will be celebrated 3 February 2024 at Whakarongotai Marae, as agreed. Ms Rudd noted that Council officers are working with Marae Trustees to confirm the programme.

Members discussed the matter and Ms Rudd answered members' questions.

The Chair, André Baker acknowledged the mahi undertaken to date and the need for the A.R.T. Confederation to consider their contribution to the day to protect the significance of Te Tiriti.

Huriwai Paki left the hui at 10.45am.

9.3 MARAE GRANTS

Deanna Rudd, Iwi Partnerships Manager provided an update on the distribution of Marae grants since 2021. Ms Rudd noted that Whakarongotai Marae have completed refurbishment of their ablution blocks and a report would be forthcoming.

Ms Rudd further noted that this year's allocation to Raukawa Marae would be the last that has been approved and Te Whakaminenga o Kapiti would need to discuss future allocations of the fund in the new year.

TE WHAKAMINENGA O KAPITI MINUTES**12 DECEMBER 2023**

Ms Rudd answered questions from members and members discussed the matter noting the challenges of insuring Marae. The Chair, André Baker noted that it may be helpful to revisit the Terms of Reference for the fund.

Huriwai Paki returned to the hui at 10.50am.

9.4 MĀORI ECONOMIC DEVELOPMENT GRANTS 2023/24

Deanna Rudd, Iwi Partnerships Manager provided an update on the Māori Economic Development Grants and confirmed that the annual funding round would open shortly. Ms Rudd noted the refresh of the Economic Development Strategy would give direction to the Māori Economic Development Strategy that informs the grant.

Ms Rudd confirmed a report would be brought to Te Whakaminenga o Kapiti in the new year.

9.5 UPDATE ON LONG-TERM PLAN 2024-2034

Chief Executive Darren Edwards provided an update on the Long-term Plan 2024-2034 noting that consultation is currently taking place with elected members and that a draft consultation document would be presented shortly.

The Chief Executive confirmed that an update to the A.R.T. Confederation was imminent and noted his regular engagement with Council's mana whenua partners from Ātiawa ki Whakarongotai Charitable Trust, Ngā Hapū o Ōtaki and Te Rūnanga o Toa Rangatira.

Members discussed the matter and Denise Hapeta noted the success of the Living Building Project at Te Wānanga o Raukawa.

10 TE WHAKAWHITI KŌRERO | CORRESPONDENCE

The Chair, André Baker confirmed there was no correspondence to note.

11 HE TONO ANAMATA MŌ TE RĀRANGI TAKE | FUTURE AGENDA REQUESTS

The Chair, André Baker noted that several take had been captured during the hui for future meetings.

Kim Tahiwī requested an update on older persons' housing and the Chair noted the importance of this matter.

Mayor Janet Holborow proposed that Council officers provide Te Whakaminenga o Kapiti with an overview of current strategy work including older persons housing, health strategy social needs assessment and the implementation of older persons strategy in the new year.

12 CLOSING KARAKIA

The Chair, André Baker acknowledged all in their efforts, achievements and engagements across the year and thanked all for their time, patience and perseverance in providing input. The Chair also acknowledged those who were no longer with us who had contributed.

Members and Councillors provided closing comments and the Chair closed the hui with karakia.

Te Whakaminenga o Kapiti closed at 11.29am.

.....

Unconfirmed

6 PŪRONGO | REPORTS

6.1 KAPITI COAST AFFORDABLE HOUSING TRUST

Kaituhi | Author: **Stephen Cross, Housing Programme Manager**

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

TE PŪTAKE | PURPOSE

- 1 This paper provides an update on the decision to establish an independent affordable housing trust, the make-up of the Trust Board and the processes for appointing Trustees.

HE WHAKARĀPOPOTO | EXECUTIVE SUMMARY

- 2 Not required.

TE TUKU HAEPAPA | DELEGATION

- 3 Te Whakaminenga o Kapiti has authority to make this decision.

TAUNAKITANGA | RECOMMENDATIONS

That Te Whakaminenga o Kapiti:

- A. **Note** that Kapiti Coast District Council at its meeting on 29 February 2024:
 - A.1 Resolved to establish an independent housing trust including approving in principle the Trust Deed, Relationship Framework Agreement and the process to appoint Trustees.
 - A.2 Agreed to the placeholder name of the Trust as the 'Kapiti Coast Affordable Housing Trust'.
 - A.3 The Trust Deed specifies the appointment process of Trustees. The Trust will have a maximum of seven Trustees including one Council appointed Trustee, one Trustee appointed by Te Whakaminenga o Kapiti and three to five independent trustees appointed by a Board Appointment Panel.
- B. **Note** members of Te Whakaminenga o Kapiti are requested to confirm a Te Whakaminenga o Kapiti nominated Trustee at its next meeting on 7 May 2024.
- C. **Discuss** the preferred option and process to select the Trustee nominated by Te Whakaminenga O Kapiti, with members of Te Whakaminenga o Kapiti to nominate candidates who have the necessary skills and experience to be appointed as a Trustee to the Kapiti Affordable Housing Trust by 12 April 2024.
- D. **Note** that upon receipt of the nominees, Council staff will assist representatives of Te Whakaminenga o Kapiti, along with a specialist recruitment consultant to undertake a selection process to confirm a trustee at its meeting on 7 May 2024.
- E. **Agree** to progress Option 1 to select the Trustee nominated by Te Whakaminenga O Kapiti, to be appointed as a Trustee to the Kapiti Affordable Housing Trust by 12 April 2024.

TŪĀPAPA | BACKGROUND

- 4 Housing Affordability is identified as one of seven focus areas in Kapiti Coast District Council's Housing Strategy, which was approved in May 2022 and includes an action to "*Explore how alternative tenure and ownership models could be incentivised or delivered in partnership with others (e.g. build to rent, community land trust or leasehold arrangements)*".
- 5 To better understand alternative tenure options and how these could be implemented. Council officers commenced a process of desktop research and interviews with organisations

from across New Zealand, including discussions with representatives of Te Rūnanga O Toa Rangātira, Ngā Hapū o Ōtaki and Āti Awa ki Whakarongotai Charitable Trust.

- 6 As there are a range of possible entities to assist with the delivery of affordable housing, it was important that Council was clear about its key objectives from this work and how this would affect the approach taken. The following objectives have been developed and confirmed by Council:
- It can be established and/or operated in partnership with iwi and other partners.
 - It is able to qualify for government funding and support.
 - It is able to operate with a degree of independence and has access to necessary specialist skills and experience.
 - It can provide affordable rentals and affordable housing ownership options (e.g., a range of alternative tenure options) to the local community.
 - It is able to operate with financial sustainability over the long term.
 - Any returns are to be reinvested into affordable housing.
- 7 In May 2022, Council confirmed an independent trust was the preferred option for an entity focused on housing, and that it should be structured so that it can partner with iwi and other organisations to deliver social and affordable housing solutions and support existing providers to improve housing outcomes in Kapiti.
- 8 At the same meeting, Councillors approved consultation on the preferred option, which occurred over a four-week period from early June to early July 2022, 279 responses were received during the consultation process, 82.1% of respondents were supportive of the preferred option. Council received the verbal submissions from this consultation process on 30 March 2023. Responses were received from across the district, including mana whenua.
- 9 In May 2023, officers provided elected members and iwi representatives with a draft Trust Deed and Relationship Framework Agreement. Subsequent workshops in May and October 2023 considered these documents as well as the composition of the Trust Board and how the Trust might work with and support existing providers.
- 10 In September 2023, an external workshop was held with service providers, social agencies, existing housing providers and Community Housing Aotearoa (the peak body for the community housing sector). The attendees at the workshop were supportive of the approach and encouraged Council to continue to be a strong advocate for housing in the community.
- 11 At the Council meeting on 29 February 2024, Elected Members resolved to approve in principle the Trust Deed to establish an independent housing trust in Kapiti and a draft Relationship Framework Agreement between the Council and the Trust. The Trust Deed outlines the make up of the Trust Board and the selection process to appoint Trustees. This includes the appointment of a trustee by Te Whakaminenga o Kapiti. See appendix 1 for copies of the Trust Deed and Relationship Framework Agreement.

HE KŌRERORERO | DISCUSSION

- 12 The rationale for the establishment of the Kapiti Coast Affordable Housing Trust is to create an entity focused on providing permanent affordable housing opportunities for whanau and communities in Kapiti Coast. The advantages of forming the housing trust include:
- 12.1 The ability to hold land, transferred to it by Council or acquired on its own, for the purpose of delivering affordable or social housing. The Trust can use this land to create affordable housing solutions in partnership with iwi, community housing providers and other organisations.
- 12.2 Access to a wider range of funding sources, particularly if it is registered as, or partnered with, a Community Housing Provider.

- 12.3 Ability to consider and offer a wider range of housing services and tenure models, such as affordable rentals, rent-to-own and leasehold options.
- 12.4 A singular focus and ability to attract assistance from suitable qualified trustees and staff, resources and expertise to develop and deliver housing projects.
- 13 Section 4.2 of the Trust Deed identifies that the Trustees in carrying out charitable purposes shall focus on benefitting those who qualify for community housing, social housing, public housing, affordable housing, older persons' housing, or any other similar housing due to their financial position and income, with due regard to:
 - 13.1 Te Tiriti o Waitangi;
 - 13.2 Tikanga Māori;
 - 13.3 Te Ao Māori, and
 - 13.4 Principles, including (but not limited to):
 - 13.4.1 Manaakitanga, inclusivity and collaboration with mana whenua;
 - 13.4.2 Recognition and respect for sacred kinship networks that extend to our natural environment;
 - 13.4.3 Balance during processes, engagements and infrastructure;
 - 13.4.4 Honesty and transparency;
 - 13.4.5 Solutions that bring success through aroha and Kotahitanga, and
 - 13.4.6 Humility and service to promote care and safety to others.
- 14 The Trust Deed states the Trust will engage with local whānau, hapū and iwi, where appropriate, to ensure their needs are understood and recognised, and that housing for mana whenua is provided for through the Trust's housing development projects.
- 15 The proposed size and composition of the Board and the processes for appointment are based on regulatory standards set by Community Housing Regulatory Authority "CHRA" and on our understanding of the way CHRA applies those standards in their consideration of applications. Even if the Trust does not become a Community Housing Provider (CHP) It is useful to use the standards created by CHRA as they are considered to represent best practice.
- 16 Decisions about the size and composition of the Board considered how the Trust may change and grow over time, and therefore how its governance may need to adapt to ensure it is fit-for-purpose and that the entity is well-run.
- 17 The Trust Deed allows for a range in the number of Trustees, rather than a fixed number, to provide flexibility. It is proposed that the Trust Board is comprised of a minimum of five Trustees at all times and a maximum of seven Trustees in order to provide capacity to bring in extra expertise if required.
- 18 The Trust Board is comprised as follows:
 - 18.1 **Council-Appointed Trustee:** One Council-Appointed Trustee, to be appointed by Council in accordance with the Council's Recruitment and Selection Policy, in accordance with the requirement of the Local Government Act.
 - 18.2 **Māori Trustee:** One Māori Trustee to be appointed by Te Whakaminenga o Kapiti.
 - 18.3 **Independent Trustees:** A minimum of three and a maximum of five Independent Trustees.
- 19 Experience of other councils has strongly supported the use of skills-based recruitment for all Trustees. This is to help ensure the board is comprised of suitably qualified people with the range of skills, expertise and experience required for good governance of a housing trust.
- 20 The Trust Deed lists in section 4.3 (b) of Schedule 2 the skills and experience that need to be always represented on the Board, these include: social tenancy management, property

development, strategy development and business planning, financial management and literacy, and legal and risk management. These also cover the key areas of expertise that CHRA requires in a CHP Board.

21 Alongside these skills, the following expertise would be beneficial to have represented on the Trust’s Board. These are listed at 1.1 *Interpretation* in the Trust Deed:

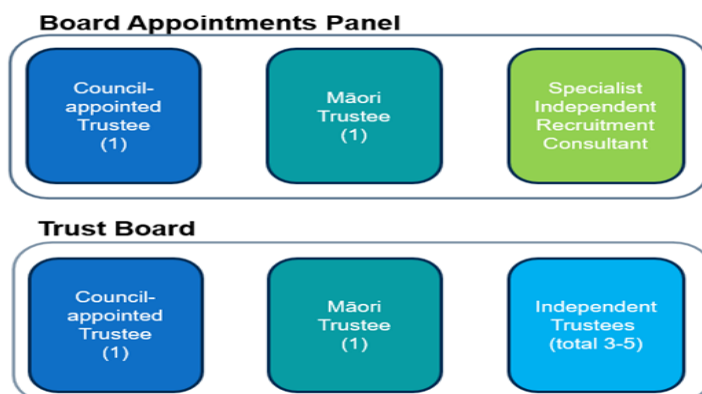
- Experience in community, social or affordable housing;
- experience in management or governance in any or all of tenancy management, property development, asset management and social services;
- experience in the operation and implementation of government funding programmes;
- an empathy with the communities in locations where the Trust intends to provide community, social and/or affordable housing;
- an understanding of the Charitable Purposes;
- financial management experience
- governance experience in either not-for-profit or business organisations;
- legal experience in either not-for-profit or business organisations;
- experience in strategy development, policy development, risk management or organisational change;
- experience in operations or service delivery;
- knowledge and understanding of Te Tiriti o Waitangi, Te Ao Māori and tikanga Māori;
- financial literacy relevant to the financial and economic issues related to the Trust

APPOINTMENT PROCESS

22 To ensure the Trust is independent (and eligible for potential CHP registration, the Trust must be governed at arm’s length of and cannot be controlled by Council.

23 The Trust Deed specifies the appointment process for the Independent Trustees and the Chair. This appointment process is described in Schedule 2 of the Trust Deed and outlined in the diagram below. This includes the initial appointment of the Council-appointed Trustee and Te Whakaminenga o Kapiti appointed Trustee, who together will form the Board Appointments Panel, and with the support of an independent recruitment specialist, appoint the Independent Trustees.

24 In order to support the appointment of the Te Whakaminenga o Kapiti appointed trustee, Council officers are seeking nominations of potential trustees from Te Whakaminenga o Kapiti members by no later than 12 April 2024. Upon receipt of the nominees, Council staff are proposing to meet with representatives of Te Whakaminenga o Kapiti, along with a specialist recruitment consultant to undertake a selection process that will enable Te Whakaminenga o Kapiti to confirm a Trustee at its meeting on 7 May 2024.



- 25 The Trust Deed ensures that each appointing party (i.e. Council, Te Whakaminenga o Kapiti and the Board Appointment Panel) has the right to remove their appointed Trustees at any point. The Trust Deed also provides other ways in which a Trustee may be removed from being a Trustee (including, for example, if they resign or fail to fulfil their Trustee duties).
- 26 Council and Te Whakaminenga o Kapiti will need undertake a parallel process to identify their respective Trustee to ensure the Board Appointment Panel can be formed in a timely manner.

NEXT STEPS

- 27 The establishment of the Trust will proceed in three stages, with an overall plan to have the Trust operational in the first quarter of the 2024/25 year.

Table: Summary of Trust establishment stages

Establishment stage	Timeframes	Milestones	Working structure
Stage 1: Council-led	February-June 2024	Approve Trust Deed and RFA in principle Appoint Council-appointed Trustee Appoint Te Whakaminenga o Kapiti nominated Trustee Form Board Appointments Panel Independent Trustee appointments completed by Board Appointments Panel Settle the Trust	Council governance through relevant committees
Stage 2: Jointly managed	July-December 2024	Finalise RFA Complete charitable registration	Governance through a joint arrangement with details to be confirmed Some decisions will still sit with Council
Stage 3: Trust-led	February 2025 onwards	Complete remaining setup	Trust Board Council oversight to be confirmed once RFA finalised.

He take | Issues

Governance Structure

- 28 A Trust Board of five to seven members including a Council-appointed trustee, Māori trustee, and independent trustees is recommended for the Affordable Housing Trust. The aim of this structure is to provide opportunities for input from Council and Te Whakaminenga o Kapiti appointees along with advice from independent trustees. Skills-based selection is recommended for all trustees. The structure proposed has been selected based on legal advice, the experience of other councils, and central government requirements for community housing providers.

Independence and Council Influence

- 29 Ensuring the Trust is truly independent is important to ensure potential funding opportunities are not jeopardised. However, Council will be able to influence the focus and conduct of the Trust through selection of the Council-appointed trustee and mechanisms within the Relationship Framework Agreement, including regular reporting and meetings.

Ngā kōwhiringa | Options

- 30 Options including benefits, risks and implications are summarised in the table below:

Kōwhiringa Options	Hua Benefits	Tūraru Risks
Option A: Members of Te Whakaminenga o Kapiti nominate candidates who have the necessary skills and experience to be appointed as a Trustee to the Kapiti Affordable Housing Trust by 12 April 2024.	Council support is available to undertake the process. Parallel process with the appointment of the Council Trustee.	Members of Te Whakaminenga o Kapiti do not have sufficient time to nominate candidates and to agree on a trustee.
Option B: Te Whakaminenga o Kapiti discuss and agree an alternative approach to the appointment.	Members of Te Whakaminenga o Kapiti are able to directly input into the process on how to nominate candidates and also agree on the trustee.	The Process to appoint the independent trustees will not commence until the appointment of the Te Whakaminenga o Kapiti Trustee has been completed. This could have an impact on timeframes and next steps.

- 31 Council is in the process of appointing an independent specialist recruitment consultant to assist with the appointment process for trustees, the consultant will be available to assist Te Whakaminenga o Kapiti during the appointment process. Upon receipt of the nominees, Council staff are proposing to assist representatives of Te Whakaminenga o Kapiti, along with a specialist recruitment consultant to undertake a selection process that will enable Te Whakaminenga o Kapiti to confirm a trustee at its meeting on 7 May 2024.
- 32 Following the appointment of an independent specialist consultant, a recruitment pack will be developed and made available to assist with the identification of suitably qualified candidates.

Mana whenua

- 33 To support the implementation of the Housing Strategy, Te Urunga Whakakāinga, a Kapiti Place-Based Housing Steering Group, with representation from Te Rūnanga O Toa Rangātira, Ngā Hapū o Ōtaki and Āti Awa ki Whakarongotai Charitable Trust and central government (including the Ministry for Housing and Urban Development, Kāinga Ora, and Te Puni Kokiri) has been formed.
- 34 Council staff have also proactively worked with Ngā Hapū o Ōtaki, Ngāti Toa Rangātira, and Āti Awa ki Whakarongotai Charitable Trust to understand their aspirations and current activity to support provision of housing in their communities. These discussions confirmed that there was a strong willingness to partner, and that iwi and hapu were already well advanced in their thinking about the delivery of social and affordable housing.

- 35 The inclusion of specific principles, an objective and actions related to Māori housing within the Housing Strategy ensure that Council takes a supportive role in helping to deliver Māori housing solutions.
- 36 Initial feedback on the preferred option for an affordable housing entity was sought from Ngā Hapū o Ōtaki, Āti Awa ki Whakarongotai Charitable Trust, and Ngāti Toa Rangitira and the establishment of a trust has continued to be supported.
- 37 The importance of Māori representation at a governance level within the Trust is recognised by the Te Whakaminenga o Kapiti appointed Trustee.
- 38 One of the key objectives for the affordable housing entity is to be able to partner with iwi for delivery. This is aligned with the above key guiding principle from the Housing Strategy and enables ongoing partnership.
- 39 Engagement and discussion to date has confirmed a strong interest in housing across the district and available capacity to appoint a representative to the proposed Housing Trust. Further engagement with iwi will occur throughout the trust establishment period.

Panonitanga Āhuarangi me te Taiao | Climate change and Environment

- 40 Minimising climate impact can be achieved through having compact and well-designed and planned urban areas.
- 41 Climate impact will be considered through greater housing options, a variety of transport connections, and ensuring that development considers natural hazard constraints.
- 42 The resilience and sustainability objective within the Housing Strategy considers that new homes meet or exceed Climate/Carbon measurements and Healthy Homes benchmarks. This will be built into the affordable housing trust approach when delivery of housing is considered.

Ahumoni me ngā rawa | Financial and resourcing

- 43 The Relationship Framework Agreement outlines support services that Council will provide to the Trust. These include an annual operating grant, and in-kind support such IT and administrative services on a transitional basis.
- 44 There is sufficient funding in Council's Housing budget to support the establishment of the Trust.
- 45 Should additional funding / support be required from the Trust, Council would consider this in accordance with the requirements of the RFA.

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

- 46 Legal advice was sought for the preparation of the Trust Deed and Relationship Framework Agreement.
- 47 Further legal advice will be sought if Council considers transferring further assets / funding to the trust following trust establishment.

Ngā pānga ki ngā kaupapa here | Policy impact

- 48 The community outcome '*our people have access to suitable quality housing in Kapiti so that they can live and thrive*' was included in the Long-Term Plan 2021-41 due to the strong concern about the growing local housing issues and to guide Council's response to the district's challenges and opportunities.
- 49 The Kapiti District Council Housing Strategy was approved by the Strategy and Operations Committee on 12 May 2022.
- 50 Alongside work to establish an Affordable Housing Trust, Council is also undertaking a review of its Older Persons' Housing portfolio. The review has been conducted without reference to the potential establishment of a Trust to ensure the outcome of the review was

not predetermined. As both projects progress, particularly following the outcome of formal consultation as part of the development of the Long-Term Plan 2024-34, there may be advantages in the projects combining, i.e. pending the outcome of the review of older persons' housing, the Trust Deed would allow Council the option to transfer ownership and management of the portfolio to the Trust, should this be the preferred approach for managing the portfolio.

TE WHAKAWHITI KŌRERO ME TE TŪHONO | COMMUNICATIONS & ENGAGEMENT

Te mahere tūhono | Engagement planning

- 51 Clear communication of the drivers and intent of establishing the Kapiti Coast Affordable Housing Trust is important. There may be a perception in the community that the move to establish a Trust could be a way of Council of absolving itself of responsibility in responding to growing housing need.
- 52 A Communications Plan has been developed to support communications with the community and key stakeholders about the establishment of the housing trust.

Whakatairanga | Publicity

- 53 Council will use its established communications channels to inform the community of the key stages of the establishment of the Trust and the rationale for the decision to establish the Trust.

NGĀ ĀPITI HANGA | ATTACHMENTS

Nil

- 7 HE KŌRERO HOU MŌ NGĀ IWI | IWI UPDATES
- 8 NGĀ WHAKATAUNGA TIRITI - HE TIROHANGA WHĀNUI NŌ IA IWI | TREATY SETTLEMENTS – OVERVIEW FROM EACH IWI

9 HE KŌRERO HOU MŌ TE KAUNIHERA | COUNCIL UPDATE

9.1 REVIEW OF OLDER PERSONS' HOUSING

Kaituhi | Author: **Stephen Cross, Housing Programme Manager**

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

TE PŪTAKE | PURPOSE

- 1 This paper provides an update the review of Older Persons' Housing, an action identified in the Kapiti Coast District Council Housing Strategy (2022).

TAUNAKITANGA | RECOMMENDATIONS

That Te Whakaminenga o Kapiti:

- A. **Note** the Kapiti Coast District Council *Review of Older Persons' Housing Stage Two Report* (Appendix One) has been completed and that the report recommends Council assists an independent Community Housing Provider (CHP) establish in Kapiti and transfer ownership of the older persons housing portfolio to the CHP.
- B. **Note** that Council has resolved that any potential changes to the ownership and management of the Older Persons' Housing Portfolio is a key issue for consultation for the Long-Term Plan 2024-2034; and that consultation will occur during March / April 2024.

TŪĀPAPA | BACKGROUND

- 2 The Kapiti Coast District Council Housing Strategy was approved in May 2022 following the completion of a comprehensive Housing Needs Assessment for the Kapiti Coast District. The strategy includes a number of actions for Council in order to help improve local housing outcomes.
- 3 Improving older persons' housing and the review of Council's Older Persons' Housing portfolio is a targeted action under the "*Implement the Housing Strategy*" priority for Council. Of note, the Council provides housing throughout the Kapiti Coast to support eligible older persons to have access to affordable rental accommodation. The portfolio comprises 118 single-storey one-bedroom units in ten complexes that are owned, and managed, by Council.
- 4 On 31 October 2023, Te Whakaminenga o Kapiti received an update following the receipt of the Review's Stage One Report that examined the current operation and considered how well the portfolio supports those most in need and whether the portfolio is set up to meet growing demand. Stage one of the review concluded that:
 - 4.1 The current operating model of the portfolio is not financially sustainable without ongoing rates-based funding.
 - 4.2 Redevelopment of the portfolio, and increasing its size is cost prohibitive without a change in operating model.

HE KŌRERORERO | DISCUSSION

- 5 On 14 December 2023, Council received the Stage Two Report – Delivery Options, which examined a number of potential operating options to improve the financial sustainability of the portfolio whilst also enabling growth of the portfolio over time. Options included:
 - 5.1 Status quo – Council retain ownership and continues to manage the portfolio.

- 5.2 Council assists an independent CHP to establish and transfers (or sell) ownership of the portfolio to the CHP.
- 5.3 Council transfers or sells ownership to an existing CHP.
- 5.4 Council leases the portfolio to a CHP.
- 5.5 Full or partial divestment of the portfolio.
- 6 The report identified five key findings:
 - 6.1 The recommended delivery model is that Council establishes a Community Housing Provider and transfers ownership of the older persons' housing portfolio to the CHP.
 - 6.2 A mixed-model approach will be required.
 - 6.3 Redevelopment should be undertaken once the delivery model has been changed.
 - 6.4 Redevelopment should be undertaken using a staged approach.
 - 6.5 Investigate capital funding for portfolio expansion.
- 7 Council resolved to consult with the community on future operating models for the Older Persons' Housing portfolio as part of the Long-Term Plan process, the consultation will occur during March and April 2024.

HE TAKE | ISSUES

- 8 A review of the Older Persons' Housing portfolio had not been undertaken for over 30 years and during that time the policy and funding settings for social housing in New Zealand had understandably changed significantly. Currently, the majority of social houses in New Zealand are provided by Kāinga Ora with a smaller, but growing, number provided and managed by CHPs.
- 9 As part of the Government directive to support the overall growth in social housing provision, CHPs can receive an operational supplement (OS) and an income related rent subsidy (IRRS) for each new tenant provided for, from the Ministry of Housing and Urban Development (MHUD). Council's, including Council Controlled Organisations, are currently ineligible for this funding and are funding the shortfall from subsidising rents to their tenants, as part of Council's operational budget.
- 10 Access to these subsidies is considered crucial to improve the operational sustainability of the portfolio and to support the growth in units in Kapiti. The lack of support and funding from Central Government has led to many Territorial Local Authorities reviewing their provision of affordable housing.
- 11 Clear communication of the intent of the review of the Older Persons' Housing portfolio and the establishment of the Affordable Housing Trust is critical. A communication plan has been developed to ensure clear messaging and information is available to inform the local community on both matters.

NGĀ KŌWHIRINGA | OPTIONS

MANA WHENUA

- 12 Te Whakaminenga o Kapiti continues to be engaged on the progress of implementing the Housing strategy. The establishment of Te Urunga Whakakāinga, a Place-Based Housing Steering Group, with representation from local iwi and hapū represented by Te Rūnanga O Toa Rangātira, Ngā Hapū o Ōtaki and Āti Awa ki Whakarongotai Charitable Trust and lead central government agencies including the Ministry for Housing and Urban Development, Kāinga Ora, and Te Puni Kokiri, Council is a key operational mechanism to proactively partner on day-to-day activity. As a result of engagement to date:

- 12.1 Iwi feedback through the review processes has identified opportunities for greater cooperation in the delivery of the Older Persons Housing service to better understand need in the community, and to better reflect aspects of Te Ao Māori.
- 12.2 There is better awareness of demand for kaumatua housing options. It is now clear that this demand is not reflected in Council's current application register. There are opportunities to work with iwi to improve the application and allocation systems to improve access for kaumatua.
- 12.3 There is better awareness around the portfolio's ability to meet universal accessibility standards; currently this is low, and we know that some eligible kaumatua with physical disability may not be able to access housing through Council. There is an opportunity to ensure any new units planned meet the necessary standards to remove this barrier.

NGĀ MAHI PANUKU | NEXT STEPS

- 13 Council has agreed the following in relation to the ownership and management of the Older Persons' Housing:
 - 13.1 Council will consult during the development of the Long-Term Plan on the proposed changes to the ownership and management of the Older Persons' Housing Portfolio during March / April 2024.
 - 13.2 Early discussions have been held with the Ministry of Housing and Urban Development ("MHUD"). Financial modelling will now be undertaken to inform more in-depth discussions regarding access to IRRS and the Operating Grant to enable expansion of the portfolio to meet growing demand in the district.

NGĀ ĀPITI HANGA | ATTACHMENTS

1. Review of Older Persons' Housing Stage 2 Report - Delivery Options [↓](#)



Review of Older Persons Housing
Stage 2 Report - Delivery Options
Kāpiti Coast District Council

December 2023



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Quality control

Document	Kāpiti Coast District Council: Older Persons Housing Review Stage 2 Report – Delivery Options
Ref	719046
Date	6 December 2023
Prepared by	Sophie Randell, Senior Property Consultant
Reviewed by	Ruth Allen, Principal Urban Regeneration

Revision history

Revision	Revision date	Details	Authorised	
			Name/Position	Signature
1.0	15/09/2023	Draft for consultation	Sophie Randell, Senior Property Consultant	
2.0	11/11/2023	Revised draft for consultation	Sophie Randell, Senior Property Consultant	
3.0	22/11/2023	Revised draft for consultation	Sophie Randell, Senior Property Consultant	
4.0	6/12/2023	Final Report	Sophie Randell, Senior Property Consultant	

Executive summary

Purpose of review

The Property Group Limited (TPG) has been engaged by Kāpiti Coast District Council (Council) to provide a review of Council's existing Older Persons Housing Portfolio (OPH), identify the opportunities to grow the portfolio, and assess future delivery options. This report is the second of three reports which defines and analyses delivery options to understand which options will help Council to achieve its portfolio growth objectives whilst ensuring the portfolio is financially sustainable. Whilst this report provides an overview of the different delivery models available to Council under the current policy settings, further work will need to be undertaken before Council determines the best delivery model going forward, the next steps are outlined within this report.

Background

Council provides an older person's housing service to meet the needs of those 65 years and older who require access to affordable rental accommodation. Council currently own 118 one-bedroom units in 10 villages across the Kāpiti Coast. As Council's Housing Policy was last reviewed in 1993, there is a need to understand whether the current service is appropriate and whether the portfolio could be supporting a larger demographic going forward. Demand for affordable, accessible rentals in the district currently exceeds supply, and the need is projected to increase substantially into the future.

This report should be read in conjunction with the Stage 1 report which sets out the need to review and update the delivery model. Council's housing portfolio needed to be reviewed both operationally and financially to ensure the portfolio is well-placed to meet current and future demand, this review was completed as part of that initial report and key findings are provided on page 16 of this Stage 2 report.

Housing in Kāpiti

Like much of New Zealand, demand for affordable housing in Kāpiti is exceeding supply. Although housing register numbers are down slightly from their peak in early 2022, demand for social and affordable housing within the Kāpiti district remains high, especially for older persons who are overrepresented on the housing register. The Housing Needs Assessment commissioned by Council in May 2022 provides strong evidence of current and future demand for affordable housing solutions for older residents within the district.

Currently Kāpiti has low levels of public and affordable housing with Kāinga Ora providing 219 dwellings and Council providing 118 units. Whilst Kāinga Ora and a small number of Community Housing Providers (CHPs) operate in the district, Council's portfolio is the only housing within the district focused on meeting the needs of older persons requiring rental assistance and as such Council's portfolio plays a crucial role in providing housing for those in need of social and affordable housing. The Stage 1 report found that the district needs more affordable housing and housing choices.

The combination of an aging population, lack of supply of affordable housing options and shortage of smaller housing typologies, is putting increasing pressure on older persons in the district. Of the 219 tenancies Kāinga Ora had as at January 2022, 70 of these households had a main tenant who was 65 years or older. Council plays a vital role in providing affordable housing options for older people, decreasing pressure on Kāinga Ora and existing CHPs to support this cohort. With a growing unmet need for affordable and accessible housing for older people in the district, the Stage 1 report recommended future growth of Council's portfolio.

Current MSD Social Housing Register numbers are at 177 as of 30 September 2023, though it is also worth noting that this does not include hidden demand from those who require Affordable or Public Housing but are not represented on the register.

Approach

TPG's approach to undertaking this Stage 2 Report was carried out in four parts outlined in more detail as follows:

Part A: Understanding The Housing Sector

This section of the report provides an overview of the housing sector including a brief description of the challenges in providing affordable housing within the district, information on those involved in social and affordable housing and government funding support.

Part B: Portfolio Delivery Options

There are a range of future delivery options for Council to consider. When considering the options, Council must review each delivery model against their objectives for the portfolio. An overview of each of the delivery options is provided within the report, for each we have including the following sections:

- *Overview*: a description of the delivery model.
- *Process*: how Council would change their current model to operate under the delivery model.
- *Benefits, risks & implications*: the impacts that the change of delivery model would have on Council, stakeholders, and tenants.
- *Public Works Act (PWA) Implications*: high level input into any PWA implications to be considered under the delivery model.
- *Future growth*: how the delivery model would impact on Council's objective to continue to see an increase in supply of new units.
- *Case studies*: for each option case studies have been provided on other Council/s who have adopted the delivery model and the key learnings from these experiences. The Nelson City Council, Wellington City Council and Christchurch City Council are examples of where the funding models are outside of the standard Ministry of Housing and Urban Development (MHUD) product parameters. It should be noted that Ministerial approval was required in these cases.

The objective of this section is to provide an overview of each of the delivery options and provide details on what impacts they would have on the future delivery of the portfolio.

Part C: Evaluation Of Portfolio Delivery Options

Part C of this report provides financial modelling summarises and evaluates the delivery options against evaluation criteria to help determine which option will best support Council's objectives. These include both qualitative and quantitative criteria including assessing whether the option:

- Supports improved financial sustainability.
- Supports portfolio growth.
- Provides security of tenure for older persons.

Key findings of Stage 2

Overall, the Stage 2 report considers future delivery options of the portfolio to help support growth to meet current and future demand for affordable rental housing for older persons within the district. To ensure that the delivery model is sustainable and allows for growth, Council will need to adopt an alternative delivery model.

The key findings of the Stage 2 assessment are summarised below.

1. The recommended delivery model is Council establishing a CHP.

The recommended delivery model is for Council to establish an independent entity which operates at arm's length and can achieve CHP registration. Depending on the financial implications to Council the CHP could own or lease the portfolio from Council and would be eligible for the income related rent subsidy (IRRS) on new tenancies accommodated. Council may also be able to negotiate 'redirects' with MHUD and this should be explored as a next step.

2. There is an opportunity to work with MHUD to bring on new supply within Kāpiti.

With Kāinga Ora having less of a presence in the district compared with Porirua, Hutt City and Wellington there is an opportunity for MHUD to work with a CHP to increase supply in the district. The public housing plan has identified the need for new supply, and with Kāpiti not being a focus area for Kāinga Ora, MHUD may be willing to work with the CHP sector to bring on supply to meet current and growing demand for public housing within the district which presents an opportunity for Council should they adopt the preferred delivery model of establishing a CHP.

3. A mixed model approach will be required.

A combination of multiple delivery models may be required to support ongoing delivery and future growth of the portfolio. With the need to expand the portfolio to meet growing demand for affordable older persons housing within the district divestment of less suitable villages may be required to provide capital funding for new developments. Therefore, Council may need to use a mix of the different delivery models explored in this report to achieve the best outcomes for the portfolio. Further modelling would need to be completed to understand in more detail what financial impact divestment and development will have on the portfolio under different scenarios to understand how to best achieve future growth and financial sustainability of the portfolio.

4. Redevelopment should be undertaken once the delivery model has been changed.

To support future growth of the portfolio a change in the delivery model is required. Under the current delivery model where Council is not receiving any form of government subsidy on the portfolio and receiving a below market rent from tenants, Council will experience an upfront loss with the cost of developing the units. Council will also experience an ongoing deficit operationally for any new units if market rent is not achieved through access to the two MHUD subsidies (IRRS and OS). We therefore recommend that no redevelopment is undertaken until a new delivery model has been adopted which can better support portfolio growth.

5. Redevelopment of 49 Aotaki Street (and any other villages) should be undertaken using a staged approach.

Redevelopment should be staged to ensure that existing tenants have security of tenure and can be decanted into other units whilst redevelopment of the site is undertaken. It is important that there is a net increase in dwellings at each stage of redevelopment. Council may decide to undertake redevelopment at multiple villages over the same period to meet demand across the district. With the current market conditions being unfavourable for construction projects, staging the development will minimise the impact of risk factors such as construction costs, financing and rehousing existing tenants during the redevelopment period.

6. Investigate capital funding for portfolio expansion.

Although under the modelling provided within this report a CHP may be able to access ongoing Operating Supplement (OS) and IRRS to ensure the portfolio becomes sustainable there is still a need to consider in more detail how the funding of any new developments or acquisitions are structured.

Conclusions

Council has a clear and important role to play in providing housing for older persons with a high and increasing need within the district. As the current delivery model is unsustainable now and in the long term the options within this report should be further explored by Council to ensure that a new model is adopted which meets the needs of the community whilst ensuring the portfolio is financially sustainable. This will require Council to work with MHUD to determine the level of funding support MHUD can provide to Council going forward. With Kāinga Ora having a smaller presence in Kāpiti compared to other areas within the Wellington region along with a small number of dwellings provided within the district by CHPs, there is a need for Council's portfolio to meet the need for affordable rentals within the district.

Based on initial discussions between TPG, Council and MHUD, given the existing and growing need for affordable and social housing within the district, there is an opportunity for Council and MHUD to work together to deliver new housing within the district. Further negotiation around the level of funding support MHUD can provide to Council to support the financial sustainability and growth of the portfolio still needs to be undertaken.

Recommendations

To continue to support the provision of affordable housing for older persons within the district and allow for future growth, Council needs to change the current delivery model. The best way for Council to achieve its housing objectives may require Council to implement a combination of the delivery options outlined within this report. The recommended model for Council is to establish an independent entity which can become a registered CHP and transfer ownership of the portfolio across either by sale or by gifting. Prior to commencing this process further discussions would need to take place with MHUD to understand what level of funding Council could access through MHUD's various

funding streams, however based on our conversations with MHUD to date and the case studies within this report this is the preferred delivery model for Council.

Next Steps.

- **Engage further with MHUD-** The recommended option for future delivery is for Council to establish an independent entity which becomes a registered CHP or partners with an existing CHP to enable Council to access IRRS and OS funding through MHUD. TPG & Council have had initial conversations with MHUD to ensure that modelling aligns with the level of IRRS and OS that MHUD would typically fund in this scenario. Discussions were had around the need to increase housing supply within Kāpiti and Council's appetite for growth. The next step would be for Council to provide further information on the current position of the portfolio and development aspirations to determine what funding could be accessed from MHUD to support the ongoing provision of housing.

- **Exploring different partnership options** – There are opportunities for Council to work in partnership with others within the sector.

Council and Kāinga Ora are the main providers of social and affordable housing within the district. Council is currently drafting an MOU with Kāinga Ora and both parties have objectives to increase housing supply within the district. There are opportunities to partner on both 45-49 Aotaki Street and other sites owned by both Kāinga Ora and Council within the district.

Local iwi has expressed in interest in being involved with Council's older persons housing. Council should continue to engage with iwi to identify opportunities for iwi to have an active role in supporting Māori housing outcomes, including specifically for kaumatua. This could be in a range of areas including but not limited to, Council supporting iwi to build capability as a housing provider, iwi taking a management role for some units within the existing or new portfolio and exploring partnership opportunities for new development.

- **Review Preliminary Section 40 Reports** – Council is currently completing a property due diligence exercise to investigate land specific issues and constraints to assist its future decision making regarding the portfolio. Part of this work will consider whether there are any section 40 PWA obligations to former owners that create the need for further consideration. The land will need to be declared surplus to its current public works use if to be transferred to a non-public works provider. The preliminary Section 40 reports should be reviewed prior to any decisions being made regarding the future of the portfolio. Initial legal advice is that section 40 PWA should not impede the transfer and leasing options currently under consideration on the assumption these will achieve an improved delivery. Section 40 due diligence will further assist to tailor Council's strategy.

1. Introduction

1.1 Purpose

TPG has been engaged by Council to complete a review of Council's older persons' housing portfolio. The review includes: an examination of the current suitability of the 118 older persons housing units (OPHUs) owned by Council; an analysis of the ability for the Council to meet future demand for older persons housing; and the portfolio's overall cost-effectiveness for Council. The review is undertaken with consideration of the current provision for older persons and community housing in Kāpiti, and within the context of a housing sector which is coming under increasing pressure to meet growing demand for affordable housing across New Zealand.

1.2 Context

This report is the second of three reports to be provided to Council as part of the review. The reports cover the following:

- **Stage 1 Report – Review of the current operation.** The Stage 1 report provided a review of the current operational and financial performance of the portfolio. Analysis was completed to understand current and future need for older person's housing, to help Council best position the portfolio to meet demand and support the future provision of older person's affordable rental housing in the district.
- **Stage 2 Report – Consideration of future operating models.** This report considers the future delivery options for the portfolio to meet current and projected need. The options were assessed in terms of benefits, risks, and financial viability to determine which option/s will ensure that Council meet its housing objective, remain financially viable and in a position to grow the portfolio.
- **Stage 3 Report – Final report.** The final report will compile the findings of the Stage 1 & 2 reports and be drafted to be used by Council for wider consultation as a Section 17A assessment under the Local Government Act 2002.

2. Understanding the housing sector

2.1 Housing Supply & Demand within Kāpiti

There is a high and growing level of demand for affordable housing options within the Kāpiti district. Due to the combination of an aging population many of whom are reaching retirement with limited financial means and lack of supply of accessible and smaller housing typologies, this is putting increased pressure on those aged 65 and older.

Combined with the district having low numbers of public and affordable dwellings there has been a limited increase in new supply through Kāinga Ora and CHPs in recent years. Demand from this demographic has continued to grow which has resulted in further housing stress for this cohort. An in-depth analysis on supply and demand within the district is provided in the Stage 1 report.

2.2 Housing Sector Overview

The housing sector uses the concept of a 'housing continuum' to identify the role public and community housing organisations have in providing homes to meet a range of housing needs in New Zealand. The housing continuum, shown in Figure 1 below, is a concept used by policy makers to consider the impact a policy has on different tenancies. It illustrates the various living situations from homelessness and emergency shelters on the far left, through to assist rental or assisted ownership, to provide renting and ownership options in the market.

Council's older persons housing service falls in the 'social or public housing and affordable rental' segment of the continuum, in that it provides subsidised rental accommodation combined with supportive services/referrals appropriate to the household needs. Public housing helps low to very low-income households access appropriate, secure, and affordable housing. Generally, public housing tenants spend about 25% of their net income on housing (the income-related rent as determined by the Ministry of Social Development), and the Community Housing Provider or Kāinga Ora receive an income-related rent subsidy and operating supplement from the Ministry of Housing and Urban Development to cover the balance between the tenant's rental payment and the market rent for the property. To be able to access IRRS for new tenancies a tenant needs to be taken off the MSD Social Housing Register where their eligibility for public housing has been assessed. However currently, Councils are not eligible for the IRRS, and tenants can only access accommodation supplement, meaning Councils absorb a much higher proportion of the subsidy. Council's older persons housing portfolios throughout New Zealand are rented to tenants at affordable rentals.

There may be changes to current policy under the new government, this should be considered by Council and decisions should be made once the new government announces their approach going forward. For the purposes of this report, we have assessed options under the current funding settings.

FIGURE 1: THE HOUSING CONTINUUM



Adapted from: Canada Mortgage & Housing Corporation and Community Housing Aotearoa

Figure 2 below provides an overview of the key stakeholders involved within the affordable and social housing space within New Zealand and the roles they each play to deliver the key outcomes for the sector. The following section goes on to provide more information on the stakeholders, MHUD funding streams, and partnership opportunities for Council.

FIGURE 2: NEW ZEALAND SOCIAL & AFFORDABLE HOUSING CONTEXT – DELIVERING HOUSING.

Stakeholders	Territorial Local Authorities	Kāinga Ora	Community Housing Providers	Ministry of Housing & Urban Development	Community Housing Regulatory Authority	Developers and Private Sector
Roles	Provide affordable and social housing options throughout New Zealand to those in need.			Shapes strategies and work programme for development. Supports supply through funding: <ul style="list-style-type: none"> Income related rent subsidies Operating supplement Redirects Affordable Housing Fund 	Register CHPs and engage with registered providers to monitor their performance and intervene if they do not meet the required Performance Standards.	Working with Territorial Local Authorities, Kāinga Ora and Community Housing Providers to deliver new supply.
Outcomes	<ul style="list-style-type: none"> Increase supply of housing Increase housing choices Capacity for future needs Improve affordability. Wellbeing outcomes 					

2.3 Stakeholders

Territorial Local Authorities

Territorial Local Authorities (TLA) have historically been New Zealand's second biggest provider of social housing in that they have provided housing at subsidised rents. Having provided housing for almost a century many Councils across the country have found it difficult to maintain and grow their portfolio under the current model with an increasing reliance on ratepayer funding to enable them to deliver the service. As a result, many Councils (especially those with larger portfolios) have changed their delivery model to ensure that the service can continue to be delivered, some of these examples are provided as case studies within this report.

Community Housing Providers

Community Housing Providers, who are typically not-for-profit groups, provide an alternative to the public housing provided by Kāinga Ora. CHPs become registered through the Community Housing Regulatory Authority (CHRA) and can then contract with MHUD to provide public housing and access Income-related rent subsidies. CHPs currently provide around 18,520 homes throughout New Zealand which include emergency housing, affordable rental, or home ownership assistance. Some CHPs also provide additional wrap-around support services to tenants whilst others ensure tenants are linked up with services as required through navigation. Currently CHPs play a small role within the district with 42 units in Kāpiti. The largest CHP operating in the district is The Salvation Army who own units in Paraparaumu which are a mix of transitional and social housing.

Local authorities and council-controlled organisations cannot register to become CHPs. However, Council can establish an independent entity which becomes a registered CHP to own or lease the portfolio and access IRRS.

Ministry of Housing & Urban Development

MHUD is the government agency responsible for the strategies and work programmes for housing and urban development in Aotearoa New Zealand. The Public Housing Plan (PHP) is developed by MHUD and sets the Government's public housing supply intentions and provides information on the location and number of additional places to be delivered by 2025 to meet demand. The PHP provides MHUD with a mandate to contract with CHPs to bring on new supply throughout New Zealand ensuring it is being delivered in the areas of need identified in the PHP. The PHP targets to bring on an additional 170-230 new public housing places in the Wellington region between 2024-2025 with Kāinga Ora delivering most of the new supply. Although the PHP is developed to direct the amount of new supply within each region it will not solve the shortage of public housing across New Zealand as there is not enough funding available. Demand in Kāpiti exceeds what MHUD can fund within the district.

Whilst MHUD is focused on bringing on new supply (new build) of housing, in limited circumstances they will consider redirects (funding a CHPs existing dwellings) such as when it enables a CHP to progress redevelopment opportunities in the short term. This would be relevant to Council's portfolio as IRRS funding on the current portfolio would enable Council to improve their financial situation

which in turn sets the portfolio up for future growth. MHUD is happy to work with Councils to discuss the option of redirects when they are considering the future provision of housing. Redirects do however require ministerial approval and are not a preferred funding arrangement for MHUD.

MHUD can fund new supply under two models: build-to-own or build-to-lease. The first, most common and straightforward model is build-to-own where the CHP retains ownership of the place once it is built. This option helps to strengthen the CHPs ability to develop more places in the future by owning the asset, these contracts between the CHP and MHUD are usually for a term of 25 years. Alternatively, and less common is the build-to-lease model where the CHP leases the place from the owner, these contracts are more expensive for MHUD to fund and are only used in limited circumstances, the contracting period is generally for a shorter period such as 10-15 years.

Whilst MHUD have product parameters for their different funding streams, providers have been able to negotiate additional funding in certain circumstances where there is a strong need for additional government support to ensure that the provision of housing remains sustainable.

Community Housing Regulatory Authority

The Community Housing Regulatory Authority (CHRA) works with CHPs that provide quality public housing, affordable rental housing and affordable home ownership products for those in need. CHRA's role is to register CHPs and engage with registered providers to monitor their performance and intervene if they do not meet the required performance standards. CHRA also provide an assurance to Government that registered CHPs are well governed, sustainable, and deliver appropriate long-term housing services to their tenants. CHPs must go through a rigorous registration process before they can contract with MHUD and access the IRRS or OS.

Housing Tenure Mix

Housing providers often provide housing across different sections of the housing continuum. Council may decide to set the entire portfolio up as public housing to access IRRS or alternatively provide a mix of public and affordable housing. The number of public housing places will be negotiated with MHUD once CHP registration has been achieved. With the public housing places, the provider has discretion over who they allocate units to by way of eligibility criteria i.e., if Council's role is to provide housing to those 65 years and older (and Council's eligibility criteria reflects this), they would only be required to accept people off the housing register who met this criterion.

If Council decided that a mix of public and affordable housing was the best option to meet the needs of the community, they would contract for a certain number of public housing places with the remainder of the portfolio kept as affordable rentals to support those who are not eligible for public housing but unable to afford market rents. When Nelson City Council's portfolio was divested to Kāinga Ora (explored in more detail in the portfolio delivery options) a certain number of units remained as affordable rentals to support this group, with Council subsidising the rent by covering the shortfall between the affordable rent and market rent.

2.4 Ministry of Housing & Urban Development Funding

Income-Related Rent Subsidy

Since 2014, registered CHPs have been able to provide homes to those on MSD's Public Housing Register and access IRRS. The IRRS is paid by MHUD to public housing landlords, to cover the balance between what a public housing tenant pays in rent and the market rent for the property. The tenant's rent is determined by MSD but is generally set at 25 percent of their net income. MHUD will partner with the CHP to deliver new supply public housing and the CHP will have access to IRRS through this contract.

Operating Supplement

The operating supplement is a funding subsidy paid in addition to the IRRS for eligible net new public houses to help enable new build supply. The OS is calculated as a percentage of market rent up to a percentage cap, this is 90% of market in the Wellington region. This funding was introduced to support the delivery of new public housing which without the supplement may not have been financially viable for providers to deliver and is paid over the term of the contract between MHUD and the provider.

Redirects

Council units which are transferred to a CHP, are classed as redirects. Whilst MHUD is focused on bringing on new supply there are very limited circumstances where they will consider allowing an existing house to be used for public housing and access IRRS where it was previously used for a different purpose.

This model, which was introduced by MHUD in October 2021, allows the CHP to receive a market rent on existing dwellings. Redirects are considered by MHUD in very limited where they are required by a provider to help make portfolio growth financially viable and require ministerial approval meaning that there must be a strong need for this funding model. Redirects are a model Council should explore further with MHUD.

Affordable Housing Fund

The Affordable Housing Fund is administered by MHUD and was set up to support not-for-profits including organisations such as CHPs, Iwi and Māori housing providers, Councils, and Charitable Trusts to increase the supply of new affordable housing throughout New Zealand. The fund offers grant funding to not-for-profit organisations to build new affordable rental homes and will cover up to 50% of the total project cost to delivery new housing. These homes will provide long-term accommodation for people who can't afford a market rent but can't access, or don't need, public housing. The provider then contracts with MHUD to ensure the rent remains affordable (80% of market or less) for a term of at least 15 years. The first two rounds provided a combined \$150 million in funding for affordable rental accommodation throughout New Zealand, high interest from providers resulted in the fund being oversubscribed. The fund is contestable and at this point future funding rounds are yet to be

announced. The incoming government has a stated policy to end the fund, however it may be replaced with something similar and therefore it has been included in the review.

2.5 Partnership Opportunities

There are opportunities under the different operating models to work in partnership with others in the sector. Local iwi groups have expressed an interest in playing a role in supporting Council with the delivery of housing within the district which Council should further explore. Kāinga Ora are working on projects to increase supply and there are opportunities for Council to work in partnership to bring on new supply. The private sector could also partner with Council to bring on new supply.

2.6 The need to revisit Council's operating model.

As identified in the Stage 1 report the current operating model is not financially sustainable and Council is not well-placed to grow to support an increased need without significant additional investment. To meet Council's objectives of growing the current portfolio and to ensure sustainability of the housing portfolio into the future, it is recommended that Council considers a change in operating model to both improve the financial performance of the portfolio and enable its growth.

Key findings from the Stage 1 report include:

1. There is a growing unmet need for affordable and accessible housing for older people in the district.
2. Council's older persons housing portfolio is targeting a group that are currently overrepresented in social housing demand.
3. The portfolio is not meeting the accessibility needs of older persons.
4. The portfolio does not provide diversity and housing choice to meet the differing and changing needs of older persons.
5. The current operating model of the portfolio is not financially sustainable without significant and ongoing rates-based funding.
6. Redevelopment of the portfolio and increasing its size is cost prohibitive without a change in operating model.
7. Strategic asset management needs to align with the long-term strategy for the portfolio.

3. Portfolio delivery options

3.1 Introduction

Kāpiti Coast District Council are in a similar position to many Councils throughout the country with the older persons housing portfolio currently operating with a year-on-year financial deficit. With the current and projected need for affordable housing for those over 65 years within the district exceeding supply, Council is exploring options to expand the portfolio in a financially sustainable way. The different delivery options available to Council are explored in this section of the report including an overview, risks, benefits & implications, PWA impacts, future growth under the delivery model and relevant case studies for each option.

3.2 Delivery options definition

There are a range of options available to Council to balance financial sustainability of the portfolio and continue to support older persons housing outcomes, particularly with Council looking to expand its portfolio. We note that if Council considers that an alternative option for the delivery of the portfolio achieves a better outcome for the community, Council needs to comply with the Local Government Act 2002 (LGA) that requires public consultation, and to confirm Council's decisions through the Annual and Long-Term Plan processes.

The list of alternative approaches for the delivery of the Council's OPH portfolio are summarised as follows and explored in more detail throughout this section of the report:

TABLE 1: DELIVERY OPTIONS DESCRIPTION

DELIVERY OPTION	DESCRIPTION SUMMARY
Option 1 – Status quo.	Council continues to own and operate the existing (and/or additional) OPH portfolio under their current delivery model.
Option 2A – Council establishes a CHP and transfers ownership.	Council creates an independent entity which can become a registered CHP and transfers ownership either by sale or by gifting.
Option 2B – Council transfers ownership to existing CHP.	Council transfers ownership to an existing CHP either by sale or by gifting for the continuation and expansion of the housing portfolio.
Option 3 – Council leases the portfolio to a CHP.	Council creates an independent entity which can become a registered Community Housing Provider and the CHP leases the portfolio from Council.
	<u>or</u>

	Council leases the portfolio to a registered CHP with conditions to ensure the existing level of housing and service provision is at least maintained. We have not considered leasing to a non-registered agency as there are numerous benefits of a registered agency that outweigh a non-registered agency, due to Government regulations and funding etc.
Option 4 – Divest the portfolio.	Council divests either the full or part of the portfolio by selling it on the open market.

3.3 Delivery Option 1 - Status quo

Overview

The first option available to Council is continuing to operate the current (and any additional) OPHUs under the current delivery model. The current model relies heavily on ratepayer funding which means it is not well positioned for future growth as it is running at a loss. If Council is to continue to operate under this model, to ensure that the reliance on rates is minimised, Council should ensure that rents are maximised whilst remaining affordable for tenants. This can be done through ensuring rent reviews are completed annually and ensuring tenants are accessing all available entitlements. Further information on the current position of the portfolio and recommended improvements to support portfolio performance is included within the Stage 1 report. For any future growth Council would need to fund this through ratepayer funding and/or debt under the status quo model.

The Affordable Housing Fund is a way Council may consider portfolio expansion under the current delivery model. Councils can apply for this grant funding for the delivery of new affordable housing units and could access up to 50% of the development project cost. Council can apply to this contestable fund to access capital funding for the construction of new units; however, this does not include any rental subsidy for the units and Council would be required to ensure they remain at an affordable rent for at least a 15-year period under the grant funding agreement with MHUD.

Benefits, Risks, and Implications

Benefits	Risks	Implications
<ul style="list-style-type: none"> Council can ensure the continuation of the current service. Council retains ownership of properties into the future. 	<ul style="list-style-type: none"> Costs to maintain and renovate existing buildings exceeds income resulting in a greater reliance on rates to remain operational. Higher annual maintenance costs. 	<ul style="list-style-type: none"> Council needs to continue to subsidise the current portfolio through ratepayer funding. No access to IRRS or OS. If affordable housing fund not available, then no

<ul style="list-style-type: none"> • Tenants not required to be on the public housing register. • Restricting to people over the age of 65 years old ensures Council provide housing to those who may not be adequately catered for by CHPs. • Council could access funding through the affordable housing fund to support the provision of additional housing without changing the delivery model. 	<ul style="list-style-type: none"> • Likely to need a capital injection in the future and/or annual rent reviews as per the Residential Tenancies Act to address the gap. 	<p>provision of additional housing.</p> <ul style="list-style-type: none"> • Continuation of non-market rent restricts ability for funding for additional housing and would require an increased level of subsidy through ratepayer funding. • Tenants potentially miss out on other wraparound services provided by CHPs. • Tenants pay 30% of their income under this model which would be capped at 25% if they were eligible for IRRS.
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PWA Implications of Options

Under this option Council would retain the land meaning no section 40 PWA decision making, or other land disposal consequence arises.

Future growth

As per the key findings in the Stage 1 report, under the current model, Council will face issues with its ability to both continue to deliver the current units as well as any portfolio growth without a high reliance on ratepayer funding. Under this option Council will face funding issues with both development costs and the ongoing subsidy required to operate the portfolio under the current rent setting approach.

Council can apply to MHUD's Affordable Housing Fund which would not require Council to change the current delivery model of the older persons housing portfolio. There is however no certainty around this option with the fund being contestable, nor is there any guarantee of future rounds of this funding.

Under the status quo delivery model, it is harder to increase portfolio size and address the issue of not having accessible housing options within the portfolio.

Case studies

Napier City Council

Napier City Council which recently completed a review of their 377-unit older persons housing portfolio. Their units are 60 years old and maintenance costs were increasing due to the age of the portfolio. With projected repairs, maintenance, and replacement over the next 25 years the projected average annual shortfall based on their current delivery model is \$2.2m. Napier City Council consulted with the public on the three options below:

1. Keep all 377 units in 100% Council ownership.
2. Keep the 'retirement villages', sell the 'social villages' to another CHP and use the sale proceeds to build some new units.
3. Sell all the units to a CHP.

There were several considerations in the decision-making process including the community feedback received, Napier's housing situation, the Government reforms underway, and the impact this decision would have on current tenants.

The decision was made to retain the whole portfolio and to fund the forecasted annual shortfalls through a combination of increased rents and increased rates, the breakdown being 80% of the costs would be funded through rents (tenants) and 20% of the costs would be funded through rates (ratepayers).

When the decision was made in 2022 to retain the portfolio, Council agreed to continue to lobby Government for access to the income-related rent subsidy, without which the Council needs to reconsider its position on provision of the housing.

Western Bay of Plenty District Council

Unfortunately, as funding available through the first two rounds of the Affordable Housing Fund has only recently been allocated to successful applicants, there is no example of where new units have been completed. However, the Western Bay of Plenty District Council was successful in their funding application to MHUD's first round of the Affordable Housing Fund and was able to access \$2.4 million towards their development in Katikati. Through this funding and an additional \$4.6 million Council had available through its Better Off Funding it can redevelop its Katikati site by delivering a mix of 26 new one- and two-bedroom units. There are currently 11 older units on the site which will be demolished, resulting in an additional 15 units on the site (the AHF funding can only be used for net new dwellings). Much like Kāpiti, Katikati has a shortage of smaller typologies, and this funding will increase the supply meaning older people can stay in their local community. The project is currently open for tenders.

3.4 Delivery Option 2A – Council establishes a CHP and transfers ownership of the portfolio.

Overview

The second option for Council to consider is creating a CHP to transfer ownership of the portfolio. Councils have been unable to apply to become CHPs and therefore cannot access income-related rent subsidy on their portfolios. To access the IRRS, some Councils have set up housing entities which

operate independently of Council, so that they are able to achieve CHP registration. An entity's independence can be evidenced by its constitution, membership of its governing body, and its governance and financial management structures. The establishment of a CHP and contracting with MHUD can be a long process and will take time before the CHP will be eligible to start receiving IRRS, OS and redirects.

Under current policy, an independent housing entity can access the IRRS and OS on net new units within their portfolio, but it is important to note that existing tenants are not eligible for IRRS, and providers can only access the subsidy for new tenants in new supply dwellings. In limited circumstances MHUD will consider redirects (IRRS on existing dwellings) where through the additional funding the provider is able to bring on new supply. The OS which is paid in addition to the IRRS for eligible net new public housing was introduced by MHUD to incentivise new builds, and it is calculated as a percentage of market rent up to a percentage cap. The IRRS and OS funding through MHUD is an invitation to partner, however OS is capped at 90% in the Wellington Region.

Council may consider the transfer of the portfolio to the CHP through a staged approach, prioritising villages which can be further developed first. This would support the access to external funding which would help to ensure that the CHP is set up for financial success.

Under this option the independent entity can achieve CHP registration to access IRRS but also provide affordable rentals should Council wish to provide housing options to those not eligible for public housing. All tenants accessing IRRS will come through via the MSD social housing register. When taking tenants from the register, Council has some level of discretion on who they allocate units as they have eligibility criteria based on age of applicant (i.e., must be over 65).

Process

If Council looks to set up their own CHP, they will need to establish an independent entity and achieve CHP registration through CHRA before MHUD will contract for IRRS. The establishment and registration of the CHP will take time, as currently CHRA are experiencing record numbers of applications and the projected wait time once an application is received is approximately six months for an evaluation to begin. Once the evaluation process begins, CHRA aim to provide the applicant with a decision within 60 working days.

MHUD is looking to work with CHPs on new public housing which complements the delivery by Kāinga Ora, in line with the approach set out in the Public Housing Plan 2021-2025. MHUD have additional criteria they like CHPs to meet, however they are not compulsory. These include:

- A CHP owning or having access to land for development.
- Develop in locations where Kāinga Ora have a limited presence or development pipeline.
- Provide bespoke housing solutions to meet the needs of individuals, families, and whanau.
- Use innovative delivery models.
- Meet accessibility and universal design standards.

Benefits and risks

Benefits	Risks	Implications
<ul style="list-style-type: none"> Potential access to government funding. CHP specifically set up to deliver service. Some degree of control could be retained. This could be through a Trust Deed, Board involvement or reporting. Reduced financial commitment and risk to Council. Potential for increased wraparound services for tenants. Potential to grow portfolio in district with access to the IRRS and OS for new units. Ability to have a mix tenure portfolio of affordable and public housing places. 	<ul style="list-style-type: none"> Size of portfolio may not justify the creation of a CHP (only councils with larger portfolios have established CHPs to date). Portfolio may lack scale to recruit sufficient resources. Large set up costs with creation of CHP and transfer of portfolio. MHUD may not provide funding for existing OPHUs. 	<ul style="list-style-type: none"> Council loses direct control. Portfolio may no longer sit on Council's balance sheet depending on how the entity is structured. Long timeframes expected for Council to set up an independent entity, achieve CHP registration and contract with MHUD.

PWA Implications of Options

The land will need to be declared surplus to its current public works use if to be transferred to a non-public works provider. This is a viable option for Council to best meet its ongoing housing delivery but will necessitate section 40 PWA decision making if entitlements to an offer are enjoyed by former owners or successors.

We suggest the overall s40 PWA equation be considered in light of the due diligence exercise noted, as that is likely to highlight the overall significance of and options to address any s40 PWA obligations once identified.

Notwithstanding this, there is good opportunity for Council to pursue a portfolio transfer to a CHP on the basis that the making of any section 40 PWA offer would be unreasonable. An offer may be unreasonable as protecting the rights of a former under s40 PWA must be balanced against other

relevant criteria, including public benefit in allowing another form of transfer. The public benefit could be substantiated assuming Council can, with objective evidence, demonstrate that the transfer of the portfolio will provide a better result.

We believe an exemption can be supported if the outcome of the transfer would be to give a better public housing delivery than what could be achieved if to continue as a public work (essentially being option 1).

In addition to this we recommend Council consider creating controls on the new provider to ensure the ongoing housing use. This could take several forms, including an encumbrance registered on the titles in favour of Council requiring commitment by the purchaser to public housing and protection of tenants. Other options could include an ability to repurchase if the use is to be discontinued at a required public housing delivery level.

The nature and strength of recommended controls will depend on currently unknown factors, such as the actual s40 PWA interests that might be compromised, strength of the public housing outcome compared to alternatives, and the standing and nature of the new provider.

We don't believe s40 PWA rights should exist to compromise Council achieving what is otherwise the best future housing decision. What exactly is required can be addressed as the project evolves.

Future growth

This delivery model (build-to-own) is the preferred method of contracting from MHUD over the partnership models (build-to-lease) as a partnership model is more expensive for MHUD due to the requirement of both the lessee and lessor accessing OS. By establishing a CHP that operates independently of Council, the CHP could access IRRS for new (eligible) tenants as well as access to an OS. With additional funding by way of IRRS and OS this delivery option would be the most financially viable growth mechanism for the portfolio. It is important to note that as Council is not automatically eligible for this funding, it will take time to create the entity, achieve CHP registration, and negotiate with MHUD to access the funding.

Case studies

Wellington City Council / Te Toi Mahana

Wellington City Council (WCC) had to consider a change of delivery model for their portfolio of almost 1,800 properties as it was in an unsustainable financial position (losing circa \$29,000 a day) with operating and capital shortfalls, cash reserves being depleted by 2022/23, and unable to meet Deed of Grant requirements beyond FY22/23.

The decision was made to establish a CHP (Te Toi Mahana) that would be set up as an independent community-owned trust. Assets were then leased to the trust (not transferred) via a leasehold agreement and the CHP would be capitalised with a least a medium level of up-front capital (\$20-\$50m) to enable it to get underway with housing upgrades work and invest in new supply. Under this model the CHP delivers a full service offering and is responsible for tenancy management,

minor/reactive maintenance and major maintenance and upgrades. As the asset owner, the Council retains some control on major asset maintenance and upgrades through the establishment of a maintenance fund. WCC will continue to undertake the major housing upgrade programme agreed with central government and implement upgrades for healthy homes.

Whilst this is an example of a lease model between Council and Te Toi Mahana, Council also provided the CHP with approximately \$10m of property and \$23m of development funds and therefore it is an example of both delivery options 2 & 4.

3.5 Delivery Option 2B – Council transfers portfolio ownership to an existing CHP

Overview

The third option for Council to consider is transferring the ownership of the portfolio to an existing CHP by way of sale or gifting the portfolio. Council would need to ensure that the CHP was well-placed to continue to support the existing tenants and in a good operational position to be able to grow the portfolio in the future. Horowhenua District Council transferred their portfolio to Compassion Housing under this model and the transfer set the CHP up well for future growth through the sale at a discounted rate and the inclusion of additional land for future expansion as detailed in the below case study. An existing CHP may also be in a position where they have a strong balance sheet and a large portfolio they can leverage off.

Process

If transferring to an existing CHP, Council will need to ensure that the CHP is well placed to provide housing to older persons going forward. Council would need to carry out investigation into suitable CHPs to transfer the portfolio to who well placed to acquire the portfolio, support existing tenants, and continue to grow the portfolio.

Benefits and risks

Benefits	Risks	Implications
<ul style="list-style-type: none"> Potential for increased wraparound services for tenants. Potential to grow portfolio in district with access to the IRRS and OS for new units. 	<ul style="list-style-type: none"> Council may be unable to find a suitable existing CHP to transfer ownership of the portfolio to. Portfolio may lack scale to recruit sufficient resources. MHUD may not provide funding for existing OPHUs. 	<ul style="list-style-type: none"> Council loses control.

-
- If the CHP has a larger portfolio Kāpiti may not be a key focus area for the CHP.
-

PWA Implications of Options

The same implications apply for Option 2B as applied for Option 2A; these has been repeated for completeness.

The land will need to be declared surplus to its current public works use if to be transferred to a non-public works provider. This is a viable option for Council to best meet its ongoing housing delivery but will necessitate section 40 PWA decision making if entitlements to an offer are enjoyed by former owners or successors.

We suggest the overall s40 PWA equation be considered in light of the due diligence exercise noted, as that is likely to highlight the overall significance of and options to address any s40 PWA obligations once identified.

Notwithstanding this, there is good opportunity for Council to pursue a portfolio transfer to a CHP on the basis that the making of any section 40 PWA offer would be unreasonable. An offer may be unreasonable as protecting the rights of a former under s40 PWA must be balanced against other relevant criteria, including public benefit in allowing another form of transfer. The public benefit could be substantiated assuming Council can, with objective evidence, demonstrate that the transfer of the portfolio will provide a better result.

We believe an exemption can be supported if the outcome of the transfer would be to give a better public housing delivery than what could be achieved if to continue as a public work (essentially being option 1).

In addition to this we recommend Council consider creating controls on the new provider to ensure the ongoing housing use. This could take several forms, including an encumbrance registered on the titles in favour of Council requiring commitment by the purchaser to public housing and protection of tenants. Other options could include an ability to repurchase if the use is to be discontinued at a required public housing delivery level.

The nature and strength of recommended controls will depend on currently unknown factors, such as the actual s40 PWA interests that might be compromised, strength of the public housing outcome compared to alternatives, and the standing and nature of the new provider.

We don't believe s40 PWA rights should exist to compromise Council achieving what is otherwise the best future housing decision. What exactly is required can be addressed as the project evolves.

Future growth

Should Council look to transfer the portfolio through sale or gifting to a CHP, Council should ensure the CHP is positioned to manage the current portfolio well and further expand including taking on

existing tenancies as a condition of the transfer. Council will also require further financial advice on whether it is an option to divest at a below market value before the decision is made to do so.

Case studies

Horowhenua District Council – transfer to CHP Compassion Housing

Horowhenua District Council sold the portfolio in November 2017 to Compassion Housing who are a registered CHP. The 115 units were sold along with 1.1 hectares of land which is yet to be developed but was included in the sale to enable Compassion to build more public housing to meet future demand. The portfolio was sold for \$5.25m with the express intent of retaining the portfolio for older persons housing. Should the portfolio have been sold on the open market it may have sold for a higher price, however Council wished to ensure that it provided security of tenure for its current tenants and continued to support this demographic into the future. Compassion Housing are a CHP who are focused on providing older persons housing which meant they were well placed to support Council's tenants.

Nelson City Council – transfer to Kāinga Ora

Nelson City Council (NCC) transferred their portfolio to Kāinga Ora in February 2021. NCC's Pensioner Housing portfolio was a contingent liability. Although well managed and maintained, upgrading to meet current regulatory standards was difficult and would become an increasing burden to ratepayers. Key motivations for divestment were:

- Future financial sustainability.
- Meeting the needs of the community and tenants.
- The portfolio size (142 units).
- NCC unable to extend wraparound services to tenants.

NCC retained its key objective to 'meet the needs of the local community'. Discussions commenced with tenants, stakeholders, local housing providers, Kāinga Ora, Local Government, and a strategic asset consultancy company to establish a delivery method encompassing the key objectives.

The portfolio was divested to Kāinga Ora because it offered the most secure tenure to retain and manage existing tenants. Kāinga Ora offered market value and were considered the most suited provider in terms of access to community wrap around services.

The agreement also supported the shared housing priorities of both parties by creating a Housing Reserve to help support both affordable and social housing projects in Nelson. The portfolio sold for \$19.8m with \$12m being available to the reserve immediately on settlement, \$5m held back for up to 15 years, the remaining \$2.7m was to be used for healthy homes upgrades to housing and to pay back a loan from Kāinga Ora. Many of NCC's tenants qualified for IRRS, but for the small number of tenants who didn't meet the criteria, money was set aside to provide rent top ups. Generally, only new tenants are eligible for IRRS, however existing eligible tenants could access it in this case.

The divestment was a slow and complex process. There were no examples of this being carried out in any other territories, so it was a custom-made approach to NCC's situation. Informing stakeholders and interested parties was a positive decision as it allowed transparency with the community and resulted in a positive outcome. It is important to note that this deal was a 'one-off' which required ministerial approval and potentially not an option for Kāpiti Coast District Council.

3.6 Delivery Option 3 – Council leases the portfolio to a CHP

Overview

Under this option Council retains ownership and leases the OPH portfolio to a registered CHP with conditions to ensure the existing level of housing and service provision is at least maintained. We have not considered leasing to a non-registered agency as there are numerous benefits of a registered agency that outweigh a non-registered agency, due to Government regulations and funding etc. Under this option Council could create a CHP which leases the portfolio or lease to an existing CHP.

Council leasing the portfolio to a CHP would require a significant contribution from MHUD by way of an operating supplement and is therefore a less preferred funding model for MHUD. Small build-to-lease opportunities will be considered by MHUD in limited circumstances in the Wellington region. This would be considered as an option by MHUD where they are supporting an existing CHP to get established in a location where they currently do not operate or they, or they own most of their stock and they have reached their maximum borrowing capacity. MHUD generally funds build-to-lease contract for 10-15 years as opposed to build-to-own which are usually 25-year contracts.

Process

If Council decide to partner with a CHP, they will need to ensure the CHP is well placed to support existing tenants and is committed to supporting future growth of the portfolio. Once a suitable lessee partner is decided upon, discussions should be undertaken with MHUD around the level of support they are able to provide with existing and new supply. Once the model has been agreed, lease and partnership agreements will need to be signed up between Council (lessor) and CHP (lessee).

If Council decide to establish their own CHP to lease the portfolio to, Council will have the ability to ensure that the CHPs mandate aligns with Council objectives for the portfolio which is a level of control they would not achieve when partnering with an existing provider.

Benefits, Risks, and Implications

Benefits	Risks	Implications
<ul style="list-style-type: none"> • Council retains ownership. • Greater level of Council control over development. • Balanced level of return to Council. 	<ul style="list-style-type: none"> • Set up costs to agree partnership and document agreement. • Council loses a level of control. • Potential for deadlock if parties disagree. • Mixed tenure model likely required which is a change to current OPH model. • MHUD funding will need to be negotiated. 	<ul style="list-style-type: none"> • Leasing would impact the ability for a CHP to raise mortgage debt and another instrument may be required.

PWA Implications of Options

A lease to a CHP could be granted without the land being declared surplus such that no section 40 PWA inquiry is needed. This would be on the basis Council continues to own the land which remains needed for a public work, however the actual delivery is best achieved through the outsourcing lease arrangement. We are aware of examples of leases in similar circumstances.

We note some of our section 40 PWA comment under option 2 is relevant, in that it is assumed the lease would improve the current public works housing functioning and so provide an improved public benefit. It is difficult to see a former owner having a complaint on this basis, as the land would not be surplus in the alternative if retained by Council. Controls to ensure the housing delivery could be built into the lease. This seems a straighter forward setting than the development of controls needed under option 2. The section 40 PWA rights would arise for consideration at such point as the lease ends and there is no other public works need for the land which remains owned by Council.

Future Growth

Ensuring that the lease arrangement and financial model is viable for both Council and the lease partner will be crucial to the long-term success of the partnership. When exploring this model Council needs to ensure that the partner is well placed to support existing tenancies and have a desire and the means to grow. Depending on the level of funding Council can access under the new model, this model may still require capital injections from Council. Should Council find that a partnership model with an existing CHP would not be suitable they may wish to explore establishing a CHP to lease the portfolio to as Christchurch City Council and Wellington City Council have.

Case Study

Christchurch City Council / Ōtautahi Community Housing Trust

Ōtautahi Community Housing Trust (OCHT) was established in 2016 and has been leasing the Christchurch City Council's housing portfolio since. OCHT has provided a better service and quality of housing, increased its housing stock by a further 587 units (which are owned by the Trust), and Council has been able to ensure a sustainable and viable social housing entity for Christchurch. A change from specific pensioner housing to social housing did however cause a management obstacle as the portfolio now catered to a mix of different cohorts, but the Trust now provides wraparound support services to tenants that it was not able to offer under its previous model.

The process of establishing OCHT included consultation with the wider community, key stakeholders, and tenants. The feedback was used to develop OCHT, retain staff knowledge and expediate the transfer of properties to OCHT in three stages:

1. Shift tenancy management and small maintenance requirements across to the OCHT.
2. Maintenance transfer once the team had a pool of suppliers established to manage this work.
3. All major and minor management including some 40 Council staff transfers to OCHT, completing transition in 2021.

Council was able to provide OCHT access to lending at reduced rates which was beneficial to both parties. Whilst the Christchurch City Council's portfolio is still leased to OCHT the Trust now have a portfolio of owned and leased properties. MHUD's current preference is for the CHP to have ownership of the portfolio rather than leasing and therefore under current settings this structure will be harder to negotiate than a CHP ownership model.

3.7 Delivery Option 4 - Divest the portfolio on the open market.

Overview

Divestment of the portfolio is the fourth delivery model available to Council. Divestment could be considered for either individual village or the entire portfolio. By divesting of individual villages which were identified in the Stage 1 report as not being as suitable for older persons housing, capital could be reinvested into growing the portfolio at more suitable locations within the district.

Whilst divestment to the private market does not meet Council's housing objective to retain and grow housing stock within the sector this is an option Council could use to raise capital through divestment of less suitably located villages. Capital could then be used to fund intensification of other villages which would support portfolio growth in locations within the district with a higher level of need.

Process

If Council decides the preferred option is to divest all or some of the OPH portfolio, adequate community consultation will be required. Council may decide to divest of the portfolio on a village-by-

village basis selling off sites which were identified in the Stage 1 report as not being as suitably located for older persons housing. Should the units be sold on the open market, Council will look to achieve market value for the units.

Benefits & Risks

Benefits	Risks	Implications
<ul style="list-style-type: none"> No further reliance on ratepayer funding to support the service. Sale proceeds could be reinvested into new housing supply. 	<ul style="list-style-type: none"> If partial divestment of the portfolio and no change in operating model, there would be no improvement in sustainability of the remaining portfolio. Market sounding and procurement approach required to select organisation. Public concern at loss of portfolio. 	<ul style="list-style-type: none"> Loss of control. Some or all of the portfolio will be no longer be available for affordable housing.

PWA Implications of Options

Option 4 is divestment to the market, with no controls to ensure ongoing public housing use. We understand this would require the land to be declared surplus to the current public works function on the basis Council would be deciding this is no longer necessarily to be the use of the land. Potentially making s40 PWA offers could be unreasonable if say the return from the sale would be substantially reduced if sold to former owners in a piece meal fashion. There may be other land use and encroachment issues that mean Council cannot make a simple offer of the land and therefore what is reasonably and practicably required needs consideration. This may lead to grounds for s40 PWA exemptions but would require close consideration on the facts.

This question would need to be considered once preliminary Section 40 reports have been completed to establish specific issues. Finding an exemption on these grounds appears much riskier and we are unaware of any comparable experience.

Future growth

Council may consider divesting individual villages which are not meeting needs identified in the site evaluation criteria (Stage 1 report). The sale of villages which are not as suitable for future growth or not well positioned to meet the needs of the cohort as others, could be divested with the funds reinvested into growth of other existing villages, or development of other suitable land owned by Council.

Case studies

Tauranga City Council – divested to Kāinga Ora & Private Market

In 2022 Tauranga City Council (TCC) sold seven of its nine older persons villages to Kāinga Ora with an arrangement in place that Kāinga Ora would continue to deliver affordable housing to existing tenants. Kāinga Ora was better placed than TCC to redevelop the villages and upgrade the existing units. TCC considered the other two villages were in unsuitable locations for public housing and therefore these villages are being sold for private development. Funds received from the sale of the portfolio are being reinvested into supporting local community housing providers and papakāinga housing. Further consultation is being carried out on where funds will be allocated but the first part of the proposal involves investing \$10m into a Housing Equity Fund.

4. Evaluation of Portfolio Delivery Options

4.1 Overview

To support Council’s decision-making process and to inform further engagement with MHUD this section provides an evaluation of the different delivery models available to Council. The evaluation of each delivery model has been undertaken against a set of evaluation criteria to determine which option best meets Council’s objectives for the portfolio. The evaluation framework used, and inputs is outlined below.

4.2 Delivery options evaluation framework

The below evaluation framework has been used to evaluate each of the delivery options against Council’s objectives for the portfolio. The three criteria below are used to rank the different delivery options using both qualitative and quantitative measures to ensure that the evaluation of the delivery options considers all objectives for Council. The options are ranked from 0-4 (lowest to highest score).

TABLE 2: DELIVERY OPTIONS EVALUATION CRITERIA

Evaluation criteria	Definition
1. Supports improved financial sustainability for Council	The delivery option is financially sustainable, minimising the impacts on ratepayer and Council debt levels.
2. Supports portfolio growth	The ability for the delivery option to support further growth of the portfolio through an increase in the number of units.

3. Security of tenure for older persons	The delivery options provide security of tenure for the older persons' cohort (i.e., Council retains some level of control of eligibility to ensure this cohort remains the focus).
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4.3 Financial Evaluation of the delivery options

To evaluate and compare the potential financial performance of each of delivery option (Evaluation Criteria 1), high level financial analysis and modelling has been undertaken based on a range of scenarios. The purpose of this analysis is to identify the potential operating deficit or surplus across the options for both the Council and the CHP. A summary of the outcomes of this analysis is provided in the following sections.

It is important to note that this financial analysis has been undertaken to inform the high-level evaluation process only and is based on some assumptions (refer to Appendix A) and potential scenarios outlined below. It is recommended that, as the decision process progresses, more in-depth financial analysis is undertaken to determine the settings required for transfer or lease of the portfolio.

The modelling undertaken for the financial evaluation has been based on MHUD's Template Financial Model which is used internally to assess CHP applications for funding. That model has been updated to analyse how the different scenarios, including how servicing differing debt levels affect the CHP's financial performance. Council has provided the analysis of impacts to the book value and CAPEX/OPEX expenditure.

Status quo (Option 1)

As outlined in the Stage 1 report, the portfolio is currently operating at a year-on-year loss. This is presented again in the summary Table 3 below which has been taken from the draft 2024 Long term plan for the next 5 years. This ongoing deficit is anticipated to result in a 1-2% impact on rates annually (Kāpiti Coast District Council, 2023).

TABLE 3: FINANCIAL PERFORMANCE OF STATUS QUO

Budget year	2024/25	2025/26	2026/27	2027/28	2028/29
Operating deficit	(\$807,970)	(\$941,286)	(\$1,082,686)	(\$1,235,967)	(\$1,438,778)
Capital Expenditure	\$1,447,675	\$932,783	\$1,327,794	\$1,152,056	\$2,283,004

A further forecast budget across the next 10 years demonstrates that without a change to operating model the portfolio will potentially make a combined loss of up to \$37 million over the next 10 years.

Transfer to CHP (Option 2A & 2B)

Due to the long-term operational deficit anticipated, transfer of the portfolio to a CHP will require a level of financial assistance as part of the transfer to ensure the success of the CHP at the outset.

To understand both the financial impact on Council to provide varying levels of support and the financial sustainability of the CHP a range of scenarios have been modelled. This includes the following scenarios:

- Scenario A: Council transfers the portfolio to CHP as 50% equity and 50% debt.
- Scenario B: Council transfers the portfolio to CHP as 70% equity and 30% debt.
- Scenario C: Council transfers the portfolio to CHP as 99% equity and 1 % debt (equivalent to gifting of the portfolio)

Note: all scenarios assume that through negotiation with MHUD 50% of the existing portfolio will receive access to the IRRS. This has been included based on the initial results of the analysis that demonstrate some level of central government support will be required to achieve a sustainable outcome for the portfolio for both a CHP and Council.

As noted in earlier sections of this report, MHUD have advised that the IRRS subsidy is available to net new tenancies created. It is therefore a key recommendation of this report that further engagement is required with MHUD to discuss the level of subsidy required to address the high level of need in the district.

The results of the analysis of Option 2A and 2B are demonstrated in the following Table 4. The analysis demonstrates that, as the support from Council increases (by way of equity) the yearly deficit to the CHP reduces. Whilst full transfer of the portfolio at market value will incur a “one off” financial impact to the Council (\$20M - current book value of the portfolio), Council will no longer be experiencing the yearly operational deficit of the portfolio.

TABLE 4: FINANCIAL PERFORMANCE OF OPTION 2A AND 2B (TRANSFER OF THE PORTFOLIO TO A CHP)

Scenario:		A	B	C
(All scenarios assume IRRS applies to 50% of portfolio)		50% equity - 50% debt	70% equity - 30% debt	99% equity – 1% debt
Equity		\$6,070,000	\$8,498,000	\$12,018,600
Debt	(Council loan at LGNZ rate)	\$6,070,000	\$3,642,000	\$121,400
CHP				
Year 1 surplus/(deficit)		(\$505,852)	(\$325,729)	(\$64,549)
Council OPEX forecast	(2024/25 LTP)	(\$807,969.50)	(\$807,969)	(\$807,969)
Council				
Balance sheet	\$20M (book value)	(\$13,930,00)	(\$16,358,000)	(\$19,878,600)
Reduction in OPEX/CAPEX	2024/25-2033/34	\$37,011,612		

Lease to CHP (Option 3)

To understand how leasing the portfolio to a CHP would change the financial outcome to and the success of the CHP, modelling has been undertaken to both determine the potential cash flow impacts (refer to Table 5). This includes the following scenarios:

- Scenario D: Portfolio retained by Council and leased by CHP. OPEX costs transferred to CHP and CAPEX costs retained by Council.
- Scenario E: Portfolio retained by Council and leased by CHP. OPEX and CAPEX costs transferred to CHP.

TABLE 5: FINANCIAL PERFORMANCE OF OPTION 3 (LEASE TO CHP)

Scenario: (All scenarios assume IRRS applies to 50% of portfolio)		D CAPEX costs to Council	E CAPEX costs to CHP
Equity (retained by Council)		\$12,140,000	\$12,140,000
CHP			
Year 1 surplus/(deficit)		\$390,590	\$390,590
Council OPEX forecast	(2024/25 LTP)	-\$179,852	-\$179,852
Operating supplement		>52%	>140%
Council			
Balance sheet	\$20M (book value)	\$20M	\$20M
Reduction in CAPEX/OPEX	2024/25-2033/34	-\$1,882,080	\$37,011,612

The analysis demonstrates that the lease option will continue to have an ongoing financial cost to Council unless the lease agreement transfers the CAPEX costs to the CHP. If this was the case a similar saving to Council as under the transfer model (Scenario C) can be achieved. However, MHUD is unlikely to agree this as an option as the operating supplement required to ensure this works is very high.

Divestment

Divestment of the portfolio would mean that Council would reduce its overall equity position by the estimated \$20M book value however no longer have the ongoing operating loss. However, as demonstrated in the following section does not allow for continuation of the service.

5. Portfolio Delivery options evaluation summary

The below table summarises the performance of the delivery options against the evaluation framework. The evaluation table provides a ranking for each of the options based on the ability for the delivery model to meet the objectives of Council for the portfolio. Scores range from 0 – 4 being lowest to highest, options are then ranked on which options have scored the highest by meeting the evaluation criteria.

Table 4: Delivery Options Evaluation Summary Older persons housing Portfolio

Evaluation Scale:

1 - Does not meet criteria	2 - Provides some improvement but does not meet criteria	3 –Partially meets criteria	4 – Meets criteria
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Evaluation Criteria	Option 1 Status Quo (No change)	Option 2A Council creates CHP and transfers ownership	Option 2B Council transfers portfolio ownership to an existing CHP	Option 3 Council leases portfolio to CHP or KO	Option 4 Council divests to the open market
Supports improved financial sustainability for Council. The delivery option is financially sustainable, minimising the impacts on ratepayer and Council debt levels.	1	4	4	3	4
Supports portfolio growth. The ability for the delivery option to support further growth of the portfolio through an increase in the number of units.	1	4	4	3	1
Security of tenure for older persons. The delivery options provide security of tenure for the older persons’ cohort	3	3	2	2	1
Total Score	5	11	10	8	6
Council retains majority ownership	Yes	No	No	Yes	No
Council retains operating control	Will be limited by financial burden.	Potential to influence through governance structure and partnership agreement.	Some potential to influence through conditions of sale.	Some potential to influence through conditions of lease.	If sold on the open market Council has no ability to retain operating control.
Ranking	5	1	2	3	4

6. Conclusion

The Stage 1 report identified that the current delivery model does not ensure sustainability of the housing portfolio into the future and a change of operating model is required. To ensure that the portfolio can decrease reliance on rates funding whilst ensuring rents remain affordable for tenants, financial support is required from central government. We recommend Council adopts a delivery model which enables the ability to apply for funding to help support future growth of the portfolio.

The recommended delivery model is for Council to establish a CHP which can take over the portfolio from Council either through a transfer of ownership or lease model. Under the current delivery model where Council is not receiving any form of government subsidy on the portfolio and receiving a below market rent from tenants, Council will experience an upfront loss with the cost of developing the units. Council will also experience an ongoing deficit operationally for any new units if market rent is not achieved through access to IRRS and OS. We therefore recommend that no redevelopment is undertaken until a new delivery model has been adopted which can better support portfolio growth.

A combination of multiple delivery models may be required. With the need to expand the portfolio to meet growing demand for affordable older persons housing within the district, divestment of less suitable villages may be required to provide capital funding for new developments. Therefore, Council may need to use a mix of the different delivery models explored in this report to achieve the best outcomes for the portfolio. Further modelling would need to be completed to understand in more detail what financial impact divestment and development will have on the portfolio under different scenarios to understand how to best achieve future growth and financial sustainability of the portfolio.

It is recommended that redevelopment be staged to ensure that existing tenants have security of tenure and can be decanted into other units whilst redevelopment of the site is undertaken and that there is a net increase in dwellings at each stage of redevelopment. Council may decide to undertake redevelopment at multiple villages over the same period to meet demand across the district. With the current market conditions being unfavourable for construction projects, staging the development will minimise the impact of risk factors such as construction costs, financing and rehousing existing tenants during the redevelopment period.

With Kāinga Ora having a smaller presence in the district compared to the rest of Wellington and only a small number of places provided by CHPs there is an opportunity for Council to work with MHUD to bring on new supply in Kāpiti which aligns with the public housing plan.

Although under the modelling provided within this report Council may be able to access ongoing OS and IRRS to ensure the portfolio remains sustainable there is still a need to consider in more detail how the funding of any new developments or acquisitions are structured and it is therefore recommended that Council investigate capital funding for portfolio expansion.

Appendix A – Modelling Assumptions

The modelling undertaken for the financial evaluation included in this report has been based on MHUD's Template Financial Model which is used internally to assess CHP applications for funding. That model has been updated to analyse how the different scenarios, including how servicing differing debt levels affect the CHP's financial performance. Council has provided the analysis of impacts to the book value and CAPEX/OPEX expenditure.

The following key assumptions are included in the modelling:

- Council's projected rental as per the annual planned income 2023/2024 has been used to determine future revenue of the of the portfolio.
- A 98% occupancy rate has been assumed.
- Tenancy Management costs are based on 8.5% of gross rental income per annum based on a review of industry benchmarks.
- Finance cost assumptions incorporate Local Government Funding Agency (LGFA) discounted interest rates.
- \$2,500 per annum per unit capex cost is assumed across all scenarios.
- Utilities are paid by tenants.
- GST has been excluded from the analysis. Seeking further advice to determine tax implications is recommended.
- No operating supplement from MHUD has been included in the modelling. Allowance for the IRRS has been used as a proxy for a level of financial support required from central government moving forward.
- OPEX includes:
 - Rates base year 2024/25 135KR Rates, Housing for Older Persons 06 Oct 2023 (002).xlsx, 1/12/2023
 - Insurance base year 2024/25 135KI Insurance, Housing for Older Persons 06 Oct 2023 (002).xlsx, 1/12/2023
 - R&M base year 2024/25 13591 District Maintenance (total), Housing for Older Persons 06 Oct 2023 (002).xlsx, 1/12/2023
 - Other Expenses base year 2024/25 13577 Depreciation, Housing for Older Persons 06 Oct 2023 (002).xlsx, 1/12/2023
 - Tenancy Management base year 2024/25 13580, 13581, 13583 Overheads & 13558 Tenant Liason Officer & 135KI Interest, Housing for Older Persons 06 Oct 2023 (002).xlsx, 1/12/2023
 - Intererst base year 2024/25 135KI Interest, Housing for Older Persons 06 Oct 2023 (002).xlsx, 1/12/2023
- CAPEX includes:
 - Capital replacements base year 2024/25 1355D Districtwide Housing Renewals from 2024/25 - 2033/34 (10yrs), Housing for Older Persons 06 Oct 2023 (002).xlsx, 1/12/2023.

9.2 UPDATE OF THE COUNCIL'S COMPLIANCE AND ENFORCEMENT POLICY

Kaituhi | Author: **Laura Willoughby, Principal Advisor Regulatory Services**

Kaiwhakamana | Authoriser: **James Jefferson, Group Manager Regulatory and Environment**

TE PŪTAKE | PURPOSE

1 To provide an update on the Council's revised compliance and enforcement policy.

TAUNAKITANGA | RECOMMENDATIONS

That Te Whakaminenga o Kapiti:

- A. Note that the Council's compliance and enforcement policy has been updated.
- B. Agree to explore further joint opportunities to coordinate and exercise kaitiakitanga within the bounds of our compliance and enforcement regulation, through the Council's iwi partnership group.

TŪĀPAPA | BACKGROUND

- 2 This operational policy outlines the Council's approach to compliance and enforcement matters within the Kapiti Coast district.
- 3 The current [2018 policy](#) was required to be reviewed in 2023. This work has now been completed resulting in a revised operational policy – see Attachment 1.
- 4 The revised policy complies with legislative imperatives, the Solicitor General's Guidelines as well as best practice guidelines for compliance, monitoring and enforcement under the Resource Management Act 1991, as published by the Ministry for the Environment in 2018.

HE TAKE | ISSUES

- 5 During the policy review, it was identified that our agreed partnership approach with iwi and the recognition of mātauranga Māori within our compliance & enforcement work was not acknowledged within the 2018 policy.
- 6 The revised policy now specifically recognises our Memorandum of Partnership with iwi and the special status of tāngata whenua to the Council.
- 7 The principles contained within our partnership document are now incorporated into the policy, along with identification of opportunities to strengthen decision-making and partnering across our compliance and enforcement function.
- 8 This will help to ensure a resilient, safe, healthy and connected environment on the Kapiti Coast.

NGĀ KŌWHIRINGA | OPTIONS

- 9 Joint opportunities to coordinate and exercise kaitiakitanga through the Council's iwi partnership group, have been identified and include:
 - Developing a greater shared understanding of mātauranga Māori
 - Partnering on decision-making on enforcement issues
 - Working together on active protection
 - Increasing the sharing of information to better enable compliance
 - Sharing our networks to broaden our reach and influence

- Broadening our understanding of 'harm' to include the cultural and spiritual relationship of the tāngata whenua with the natural world
 - Seeking advice from tāngata whenua, through our iwi partnerships group, on possible reparation options where significant harm has occurred.
- 10 When applying these opportunities to regulation, it is acknowledged that the Council is bound by legislation which prescribes the powers and functions, and by common law principles relating to the exercise of its statutory powers and functions.
- 11 We must recognise the additional responsibilities of Council under the Local Government Act 2002 and the Resource Management Act 1991 as further opportunities to engage effectively.

MANA WHENUA

- 12 Discussions with our iwi partnership group has occurred with the recommendation that the revised policy is shared with Te Whakaminenga o Kapiti.
- 13 Feedback and advice on any future opportunities for partnership in our compliance and enforcement work is now sought.

NGĀ MAHI PANUKU | NEXT STEPS

- 14 A similar briefing will be held with the Council's Strategy and Operations Committee to introduce the revised compliance and enforcement policy.
- 15 As this is an operational policy, it will be 'owned' by the Council's Senior Leadership Team, which includes the Chief Executive and all Group Managers. Final approval will sit with the Senior Leadership Team.

NGĀ ĀPITI HANGA | ATTACHMENTS

1. Attachment 1 - Revised Compliance and Enforcement Policy [↓](#)

Compliance Enforcement Policy

Draft

Compliance Enforcement Policy

Draft

Version	1.0
Endorsed by Senior Leadership Team	
Review due	
Owner	Regulatory Services Group

Foreword

Welcome to our Compliance and Enforcement Policy. This policy will articulate what and how we act as regulators within the Kāpiti District.

Why regulate? Quite simply, regulation seeks to influence the behaviour of individuals and collectives in order to make community interactions safe and predictable, reducing uncertainty by setting expectations and standards via rules and articulating consequences for not meeting those standards and rules. In short, regulation is part of our social glue, whether it is keeping our communities safe or protecting the taonga that is our environment, while providing the foundation for a vibrant and more resilient Kāpiti.

We start from a position of guardianship and stewardship when describing what and how we regulate. We are committed to protecting all that is special about Kāpiti by judiciously implementing and administering the various policy positions that central government and Council has adopted as our operating framework. Moreover, our stewardship approach to regulating seeks to include the oversight, monitoring, and care of our various regulatory systems, taking an end-to-end view and ensuring that all the different parts of the regulatory system work well together to achieve its goals and are fit for purpose over time. This requires us to be proactive, collaborative, analytical and open for change as we imbed good regulatory practice.

Our activities are varied and often challenging, yet critically important in delivering on our legislative responsibilities and on the community aspirations of Kāpiti, ensuring it remains a safe and healthy place with a thriving environment and vibrant economy.

Our operating environment is also full of complexities and challenges as communities experience more stress and tension. This is magnified by a central government change agenda that could have profound impacts on what and how we regulate.

I trust you find value in this document, that it clearly articulates my expectations of us as regulators and is a place that you can see and be proud of your positive contribution to our bigger picture of a safe, healthy, and vibrant Kāpiti.

James Jefferson

Group Manager of Regulatory Services, Kāpiti Coast District Council

Contents



Compliance and Enforcement Policy 2023

There are three types of environmental monitoring that councils are actively involved in:

1. State of the environment
2. Efficiency and effectiveness of regulation
3. Compliance, monitoring and enforcement of activities and development and the management of its impact.

This compliance and enforcement policy focuses on the third area, ensuring that the regulation of development and public spaces achieves the desired outcomes.

The policy provides direction at a high level and outlines our approach to regulating new development to manage its impact on the receiving environment and our community.

With more growth comes more built development, but also associated social impacts, such as more food and alcohol facilities, more noise, an increase in domesticated animals and a greater demand for the use of public spaces (including our beaches, freedom camping sites and availability of public car parking).

The responsibility for regulating and monitoring compliance of new development and associated activities sits with the Regulatory Services Group within our Council.

Purpose

We want to prevent harm and influence people's behaviour to equitably comply with rules designed to keep us all healthy and safe. This supports our Council to deliver on the outcomes that have been set by the community and government.

Our regulatory compliance monitoring work includes:

- checking that consent holders/licensees are meeting the conditions of their consent/license
- checking that registered users, premises and animals meet the conditions of their registration (administrative/process monitoring)
- checking that members of the public are complying with relevant legislation and bylaws relating to the use of public spaces and animal management
- reporting to the public about levels of compliance and reporting back to policy makers on the effectiveness of regulation.

We want to make it easy to comply and difficult not to.



Outcomes

The wider Council outcomes that we contribute to are:

- Ensuring warm, dry and safe development occurs on the Kāpiti Coast by enforcing required minimum standards.
- Maintaining a healthy and natural environment, where the impact of intensification and development is actively managed and monitored to reduce harm to our Kāpiti Coast environment.
- Ensuring our communities are safe and healthy.
- Allowing peoples economic choices to be made with more certainty as they know what to expect when investing in the Kāpiti Coast.

If we aim for these outcomes then we can enable the Kāpiti Coast to grow well and remain a quality place to live, work and play.

We already have strong foundations in place to help us achieve this:



Our principles

To achieve the outcomes that we seek, we will adopt the following principles:

Transparency - we will provide clear information and explanations to our community about the standards and requirements for compliance and ensure that information about district issues and non-compliance is accessible. We will measure and report on our regulatory performance.

Consistency of process - our actions will be consistent with legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances.

Fairness and proportionality - we will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably and actions will be proportionate to the risks posed to people and the environment and the seriousness of non-compliance.

Based in evidence, led by intelligence - we will use an evidence-based and intelligence-led approach to our decision-making.

Collaborative approach - we will work with and, where possible, share information with, other regulators and stakeholders to ensure the best compliance outcomes. We will consider the public interest and engage with the community, those we regulate, and central government, to explain and promote environmental requirements and achieve better community and environmental outcomes.

Legal, accountable, and ethical - we will conduct ourselves lawfully, ethically and in accordance with these principles, as well as relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions.

Outcomes-focussed - we will focus on the most important issues and problems to achieve the best outcomes. We will target our strongest regulatory interventions at behaviours that pose the greatest risk to the environment. We will apply the right tool for the right problem at the right time.

Responsive and effective - we will consider all alleged non-compliance to determine the necessary interventions (considering all relevant factors) and actions to minimise impacts on the district, the community and to maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

These principles will ensure that our actions are transparent, and our decision making remains without influence or bias.



Our authorising regulatory environment

We operate under a suite of legislation. Collectively this enables us to provide appropriate stewardship, leadership and oversight of our regulatory system.

Authorising legislation

Building Act 2004	Gambling Act 2003	Reserves Act 1977
Dog Control Act 1996	Burial and Cremation Act 1964	Resource Management Act 1991
Fire and Emergency New Zealand Act 2017	Self-Contained Motor Vehicles Act 2023	Public Works Act 1981
Food Act 2014	Freedom Camping Act 2011	Summary Proceedings Act 1957
Health Act 1956	Criminal Procedure Act 2011	Transport Act 1962
Impounding Act 1955	Local Government Act 1974	The Sale and Supply of Alcohol Act 2012
Land Transport Act 1998	Local Government Act 2002	Trespass Act 1980
Litter Act 1979		

Kāpiti Coast District Council – policies, bylaws and plans

Policies	Bylaws	Plans
Development Contribution Policy 2021	Solid Waste Management and Minimisation Bylaw 2021	Kāpiti Coast District Plan 2021
Class 4 Gambling Policy 2019	Control of Alcohol in Public Places Bylaw 2018	Airport Noise Management Plan
Dangerous and Insanitary Buildings Policy 2018	Keeping of Animals, Bees and Poultry Bylaw 2021	
Dog Control Policy 2019	Dog Control Bylaw 2019	
Freedom Camping Policy 2012	Public Places Bylaw 2017	
	Beach Bylaw 2021	
	Trade Waste Bylaw 2019	
	Transport Bylaw 2022	

Our current operating environment

Economic pressures

We see the increase in financial pressure on our communities and the continued need for additional housing in the district. Building requires a big investment and supply costs are increasing rapidly. The land in Kāpiti can be challenging to develop with many natural hazards existing on our low-lying land and slopes that require additional work and monitoring. We want to grow well in Kāpiti with quality and safe buildings without contributing to increasing costs through excessive monitoring and compliance costs. We also need to consider whole-of-life costs, who pays and who is responsible long term - this is a form of economic fairness. If we let something slide today because it will cost too much but it will cost more in the future, then it is not a fair decision for future residents.

Changing behaviour

We are experiencing an increase in challenging and aggressive behaviour towards Council members from people within our communities. In recent times, stress and pressure in all areas of life has also increased and this has taken a toll on our communities. This is reflected in rates of poor mental wellbeing rising significantly across many age groups.¹ A significant component considered in our response to any breaches of regulation is the willingness of the person to correct and comply. A negative attitude towards compliance may require a quicker and stronger response from Council.

We also anticipate that increased urban intensification in Kāpiti will be a significant change for our community as people adjust to living closer to each other. Increasingly, our compliance function is also being used by conflicting neighbours to make repetitive complaints and counter-complaints against each other. This use of our compliance service in this manner can be time consuming and resource-intensive for Council. There is little benefit to the outcomes that we seek to achieve, and it can have a negative impact on the wellbeing of our staff.

Ability to comply

We perceive that there is an increased level of non-compliance with the regulations that we work under in the district, including undertaking work without obtaining any consents. This is partly due to the increased complexity of regulation and residents not fully understanding what is required of them to comply with a variety of legislation.

Kāpiti Coast has also been experiencing growth at a time where the cost of building has risen. As a result, our teams are witnessing an increase in actions that appear to be driven by a desire for efficiency but are leading to non-compliance with regulation, and in some cases increased costs. Examples are undertaking earthworks in winter months, low-quality information contained within consent applications and an increase in non-payment of licensing/registration fees.

¹ General Social Survey (GSS) 2021, Stats NZ Tatauranga Aotearoa

Central government involvement

There are significant changes from central governments reform agendas. These include the Water Services Reform, the Local Government Review, Resource Management Reform (including climate change and reducing carbon emission expectations), Building Systems Review and change in housing density and supply to address access to affordable housing. These changes are combined with central government's desire to introduce new regulations and requirements at pace. The development sector is already stretched and a lack of clear guidance on implementing these policy changes is having a negative impact on the people who need to deliver on the changes.

Impacts of climate change

More frequent and intense extreme weather events like flooding, storm surges, drought, forest fires, tornadoes and ex-tropical cyclones are also likely to impact people's health and property. More coastal erosion and flooding will damage homes and infrastructure like pipes and roads. We are beginning to experience more frequent and intense weather events that are leading to increased damage and flooding to properties and the natural environment.

Our response

Customers

- Regularly engage with and seek feedback from our community to understand the impact of our work.
- Aim to innovate for our customers, with the resources that we have, with the aim to reduce burden.
- Develop material to guide complainants on the process, which includes:
 - what is in a council's jurisdiction and what is not
 - the kind of information to include when notifying the council of an incident
 - other sources of advice and assistance.
- Explore more opportunities to recognise and reward our champion customers (including self-monitoring options, if appropriate).

Continuous Improvement

- Undertake regular reviews of our end-to end compliance systems (including our risk settings) and level of resourcing.
- Regularly review case study examples of when our work has gone well, and not so well, to learn and improve.
- Improve the level of compliance activity and resource for permitted activity monitoring to meet the challenges of increased intensification in our district.
- Develop an internal pathway and process for handling of repetitive complainants with a view to reducing time and resources spent where there is little impact.

Collaboration

- Continue to build relationships with our key partners – this includes mana whenua, agencies who we need to work with on high risk/complex work and those that we work with frequently.
- Work across Council teams to use our channels to educate and enable our customers to understand what is required of them and to make it easy to comply.
- Explore initiatives to establish a community network of interested groups that could assist with compliance education and monitoring.
- Seek more administration support to allow our delegated teams a stronger focus on the work that they are delegated to do.

Conversations

- Commit to improving our communication and stakeholder engagement skills and reducing the use of technical jargon.
- Maintain a clear separation between the enforcement and political arms of the Council. We will continue to advise and educate councillors on regulations and seek their feedback on future changes.
- Engage with mana whenua to integrate mātauranga Māori into our assessments, including seeking statements of values and harm as part of our compliance and enforcement investigations.

Colleagues

- Ensure that our teams have the tools and support they need to do their work efficiently, effectively and safely.
- Provide opportunities and time for our people to remain highly skilled in a constantly evolving regulatory environment.
- Equip our staff with skills to deal with confronting customers and complex situations.
- Regularly talk about our wellbeing and take positive action to look after ourselves and each other.
- Improve the ability to share our information across the Council to keep our colleagues and community safe.

Our partners

We recognise that we cannot do this work alone. We need to work alongside our partners to achieve the outcomes that we seek. Our partners include:

Mana whenua

Te Whakaminenga o Kāpiti is one of the longest lasting partnerships between tāngata whenua and local government in Aotearoa New Zealand. The partners are the Kāpiti Coast District Council and the mana whenua (people with 'authority over the land') on the Kāpiti Coast being Ātiawa ki Whakarongotai Charitable Trust, Ngā Hapū o Ōtaki and Te Rūnanga o Ngāti Toa Rangatira.

While Te Whakaminenga o Kāpiti has primarily been involved with issues to do with resource management, it has also worked, particularly in more recent years, to ensure that the Māori world view is better represented and understood in the broader community. From the beginning Te Whakaminenga o Kāpiti has focused on harmonising different cultural attitudes to resources and solve local issues according to national legislation.

Te Whakaminenga o Kāpiti stems from two core principles of the Treaty of Waitangi as identified and defined by the Court of Appeal and the Waitangi Tribunal. The first principle, 'partnership', obliges both parties 'to act reasonably, honourably and in good faith'. For that, consultation is vital. The second principle, 'active protection', requires the Crown to protect Māori in the use of their lands and waters to the fullest extent practicable.

A Memorandum of Partnership exists to recognise the special status of tāngata whenua to the Council - being separate and distinct from other interest groups. The Council recognises the need for active protection of tāngata whenua interests to be considered in its dealings with other parties. The goal is to develop an effective and meaningful partnership.

In doing so, the Council will uphold the following principles:

1. To actively promote the sustainable management of the district's natural and physical resources and those taonga of significance to the tāngata whenua, in a way that recognises the cultural and spiritual relationship of the tāngata whenua with the natural world.
2. To develop an effective partnership with the tāngata whenua in the management of the district's natural and physical resources by the exercise of the utmost good faith, co-operation, flexibility and responsiveness in their dealings with each other.
3. To promote active partnership of the tāngata whenua in the preparation, implementation and review of resource management policies and plans.
4. To have particular regard to the rights of the tāngata whenua in the management and development of resources by recognising and providing for kaitiakitanga.
5. To recognise the Rangatiratanga right of the tāngata whenua as guaranteed in Article II of the Treaty of Waitangi, to retain responsibility and control of the management and allocation of their resources.

In applying these principles to regulation, it is acknowledged within the Memorandum of Partnership that:

- the Council is bound by legislation which prescribes the powers and functions, and by common law principles relating to the exercise of its statutory powers and functions.
- the Council must act in accordance with its statutory powers and the common law principles affecting these powers.
- Te Whakaminenga o Kāpiti recognises the additional responsibilities of Council under the Local Government Act 2002 and the Resource Management Act 1991 as further opportunities to engage effectively.

Mātauranga Māori enhances our approach, particularly around environmental stewardship and kaitiakitanga. Mana whenua hold unique knowledge around active protection measures and the identification of values that may be at risk of harm due to poor regulatory behaviour.

Council staff will continue to work with mana whenua to ensure a strong and effective partnership is achieved on compliance and enforcement matters.

We recognise that there are opportunities to strengthen our partnerships, such as:

- Developing a greater shared understanding of mātauranga Māori
- Partnering on decision-making on enforcement issues
- Working together on active protection
- Increasing the sharing of information to better enable compliance
- Sharing our networks to broaden our reach and influence
- Broadening our understanding of 'harm' to include the cultural and spiritual relationship of the tāngata whenua with the natural world
- Seeking advice from tāngata whenua on possible reparation options where significant harm has occurred.

Local authorities

Our council neighbours, Wellington Region and other local authorities across Aotearoa New Zealand are all dealing with similar compliance and monitoring issues. We will commit to work with, learn from and take opportunities with local authorities to share our experiences and our resources where possible.

Central government – ministries and agencies

From time to time, council staff may require assistance from the police to execute a search warrant or in relation to the health and safety of enforcement officers. WorkSafe New Zealand also plays a part in our health and safety.

Relevant ministries and agencies are often responsible for ensuring legislation is effectively administered under its regulatory stewardship role.

Council staff may partner with these agencies on the following issues:

- managing water quality.
- working with public health units on pollution incidents.

- consent monitoring of nationally significant projects (for example, Kāpiti expressway projects).
- regulating forestry, agriculture and biosecurity.
- regulating building and construction and infrastructure.
- civil defence and emergency management.
- collecting fines and fees.
- roading and parking transport rules.
- freedom camping education.

Mahi tahi – one council

At an organisational level, our structure and leaders will ensure that there is adequate separation between the Council's regulatory function and the Council's construction/building function, i.e. where Council projects are subject to Council consenting requirements. We will also work with other teams in our Council to deliver our compliance and enforcement functions.

Communications team

We rely on good communication to be effective. An example may be that we use a public campaign to educate on a compliance issue in our district, or that we may require a media release to outline the reasons for our actions. For these approaches to be successful, we need to work with our Communication and Engagement team to seek advice and assistance to improve understanding of the behaviours that we seek and actions that we take.

Legal team

Our regulatory response requires the input of our legal experts into decision-making to ensure that the right approach is taken for the right outcome. Our legal team will become more involved when prosecutions and complex investigations occur but will also assist in ensuring that we use our principles and operate within our powers. The legal team will provide independent legal advice and, where necessary, instruct external legal specialists.

Information management team

Our record keeping systems are essential to enable us to record, monitor and analyse activities. Technology can assist us by identifying emerging trends and turn our information into useful intelligence. Our systems and processes will ensure that the information is collected and used appropriately, and people's privacy is maintained.

Policy team

As regulators of legislation, strategies, policies and bylaws, our compliance and monitoring regulatory function is well placed to provide feedback and evidence on the effectiveness of these regulatory instruments. We will work with our policy teams to provide feedback with a view to improving legislation and supporting regulation and its implementation.

Elected members

Our councillors play an important governance role in setting the desired local outcomes that can assist us in prioritising our resources to deliver on these outcomes. Councillors also indicate the risk settings for our compliance and monitoring function and provide corresponding resources through the organisation's financial allocation processes. Reporting back to councillors on our compliance and monitoring function is also a requirement.

Our people and their role

Monitoring officers

People across our teams engage in consenting, licensing, inspecting, monitoring, and auditing to ensure compliance with legislation. Generally, the regulatory system is mandatory. Our monitoring officers ensure that customers participating within the regulatory system comply with the necessary rules/laws.

Investigating officers

Where information about a compliance issue or incident comes to our attention, the relevant Council investigating officer will conduct the initial investigation. The powers that may be exercised by investigating officers are prescribed in their position descriptions or in formal delegations (for statutory powers) and vary according to the area for enforcement and the nature of the enforcement option.

Compliance team leaders and compliance managers

The compliance team leaders and compliance managers will provide day-to-day advice on compliance and enforcement options to investigating officers. They will ensure that the right tool is used at the right time. They are also responsible for the ongoing reporting on compliance and enforcement activity within the Kāpiti Coast District.

Council's legal team

The Council's legal team will provide independent legal advice to Council staff and may instruct external legal specialists.

Quarterly enforcement meetings

A quarterly meeting is held with the regulatory services leadership team to offer guidance and advice on day-to-day compliance and enforcement decision-making.

Council's enforcement decision group

The enforcement decision group will make all decisions on whether to commence a prosecution or make an application to the Court, on our behalf. This group will comprise a panel of at least two of Council's group manager positions, a member of Council's legal team and a member of the Council's iwi partnerships group.

An additional person, with relevant experience, may be appointed as required. External appointments are made by the Chief Executive and all group members will hold the relevant delegations to perform the role outlined in this policy. The Enforcement Decision Group operates by consensus.

Our risk model

As the Kāpiti Coast continues to experience growth, we may need to reprioritise the best use of our resources and allow for increasing development effects and public nuisance activity across our district.

To do this we will:

- assess the risk of harm from an activity, and then
- focus resources to where the risk is greatest and that may require active management.

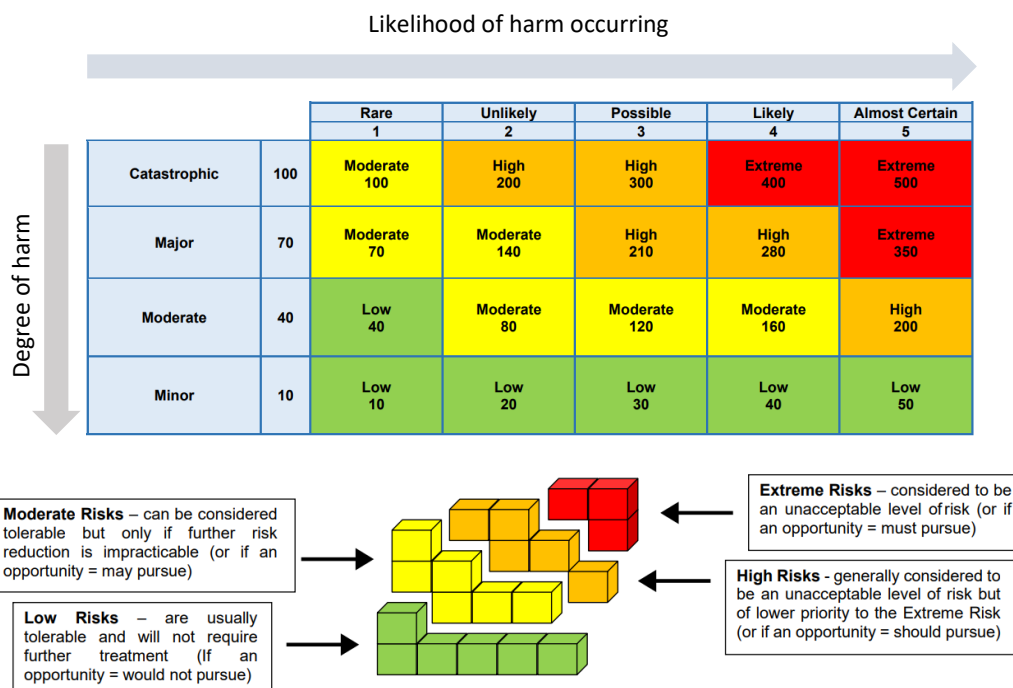
When determining the extent of risk, we consider the:

- likelihood of harm occurring and
- the degree of that harm if it did occur.
- the outcome of this risk assessment then informs the extent/frequency of our monitoring efforts or action.

If we find that a breach of regulation is causing a consequence that is negligible and the likelihood of harm occurring is low, then we will provide that feedback to the rule or regulation makers.

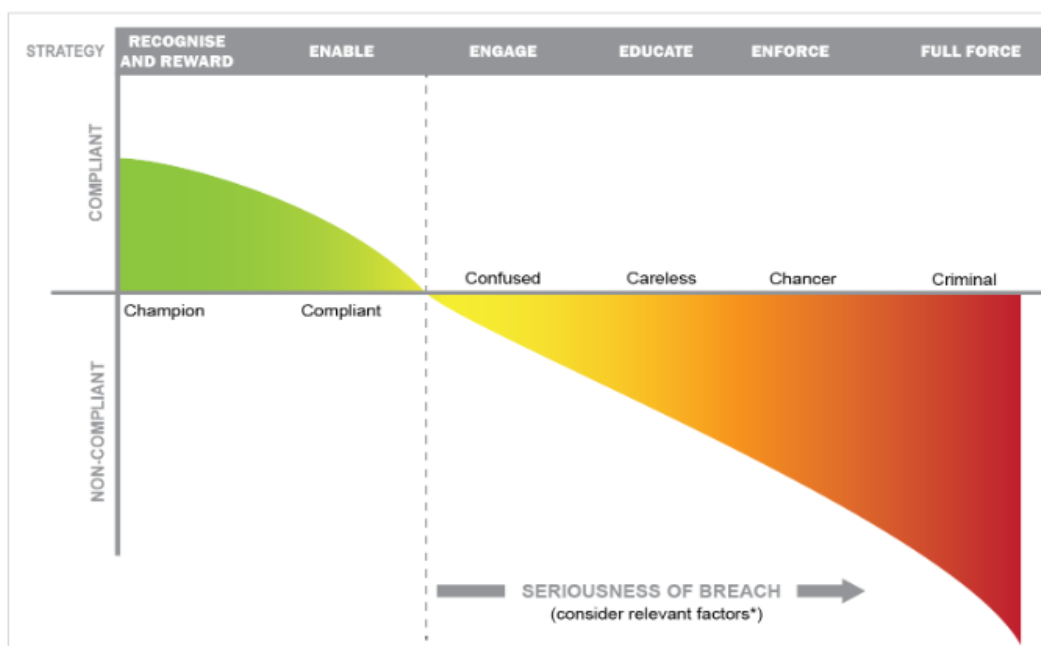
For low risks, a breach may be recorded and noted on property file, however further formal action may not be taken.

Council may also waive the non-compliance and decide that the activity is a permitted activity (under section 222 of the Natural and Built Environment Act).



Our compliance model

Our aim is to influence people's behaviour to comply.



Relevant factors:

- The extent of any breach
- Enforceability of the regulation
- Statutory defence
- Case law
- Behaviour/attitude
- Harm caused
- Public Interest
- Purpose of legislation
- Previous compliance history
- Statutory limitation period
- Repetitiveness of breach
- Cultural practice
- Standard of proof
- Solicitor-General Prosecution Guidelines
- Speed of action required.

Our approach – compliant behaviour

We seek to influence behaviours by using our suite of strategic tools. We prefer compliance promotion (such as education, on-site directions, and awareness-raising) as the preferred method for encouraging compliance.

Recognise and reward

For our champions in Kāpiti, we will recognise and reward their willingness to comply and 'do the right thing'.

An example of this is our approved owner status for dogs. If your dog is micro-chipped, your property is securely fenced, you have paid a previous registration fee and have no reported dog incidents then we can assign you an approved owner status on our records and offer a discounted dog registration fee.

Enable

We understand the importance of people having access to good quality information and guidance on how to comply with regulatory requirements. The regulations can be confusing, and we will make it clear to people what action they need to take to comply. Advice and guidance material can take many forms including verbal or written advice, or reference to other sources of compliance information such as the Council website, FAQs, alerts, leaflets, newsletters, and posters. We want to make it easy to comply and difficult not to.

We undertake permitted activity monitoring to see the level of voluntary compliance that is occurring. This involves monitoring of activities that do not require specific Council authorisations. These are often monitored from afar using other information sources and/or desktop assessments based on geo-spatial data. An example of this type of monitoring can include the checking of building consents for compliance with the district plan requirements.

We also license and consent activities and development using conditions to manage potential harm and to enable people to demonstrate compliance. These consent conditions are actively monitored by us, and inspections are undertaken to ensure compliance. Larger and more complex developments will generally require frequent and a greater number of monitoring visits.

The legislation that we operate under requires us to monitor the following:

- Inspections to ensure compliance with a building consent – These inspections are authorised under the Building Act 2004 to obtain a Code of Compliance Certificate for a building or structure. Inspections are booked and inspectors are often met on-site to view and discuss the building work undertaken in accordance with their building consent conditions.
- Inspections to ensure compliance with swimming pool fencing requirements, Building Warrant of Fitness - these inspections are mandatory under the Building Act 2004 and are charged to relevant owners in the interests of maintaining safe buildings and structures.
- Resource consents - we monitor subdivisions and land use activities for which resource consents have been issued. We also investigate breaches of District Plan rules that may not have the necessary consents.
- Animal management – registration and inspections may occur to ensure compliance with the Dog Control Act 1996 and other legislation and bylaws. The purpose is to ensure that the responsibilities of owners are being met.

- Health registered premises – under the Health Act, hairdressing facilities and funeral director premises are required to be registered and licensed by the Council (including an annual inspection).
- Food businesses – businesses operate under the requirements of the Food Act 2014 to ensure that all food sold is safe. Registration is mandatory and occurs with the Council or Ministry of Primary Industries. Registered parties need to operate under a set of food safety rules. These will be either a national programme (for low and medium risk businesses) or a food control plan (for higher risk businesses). These are audited and verified via a visit to the business to ensure compliance and to renew registration.
- Alcohol licensing – the Council administers the Sale and Supply of Alcohol Act 2012 and has appointed the Kāpiti Coast District Licensing Committee (DLC) to consider and determine applications for licences and managers' certificates, renewal of licences and managers' certificates, temporary authority orders and special licences. The purpose of licensing and monitoring is to ensure that hosts serve alcohol responsibly and to minimise potential harm from alcohol.
- Trading in public places – the rules for trading in public places are set out in the Council's Trading in Public Places Policy 2017. A license from the Council is required to trade on public land.
- Gambling consents - operating gaming machines outside of casinos falls under the Gambling Act 2003. To operate gaming machines in the Kāpiti Coast District, you must obtain a Class 4 consent from the Council. Council is not involved in deciding how community funds are distributed by gaming societies.
- Campgrounds – premises need to be registered with the Council to ensure that the site is fit for purpose.
- Discharging trade waste - trade waste is controlled by laws to help protect wastewater system treatment plants. Businesses producing more liquid waste than a large household need a trade waste consent from the Council.
- Recreational water quality - we support Greater Wellington Regional Council to regularly monitor our swimming sites. We help by collecting samples at our recreational river sites and fourteen coast sites and provide information to the public if there is an unacceptable health risk.
- Excessive noise - noise is an inevitable part of living in a community, but with a little consideration and communication, noise can be managed so we can all live together peacefully. We step in when noise being generated by some members of the community is excessive and causing a disturbance to others.
- Patrolling of public spaces – these monitoring inspections and patrols are part of our everyday business and are not directly charged for as they serve a greater public good. We monitor public spaces, from our beaches and freedom camping sites to our public car parking spaces, to ensure that the relevant rules and bylaws are being followed and that any public nuisance is being avoided.



Our approach to non-compliant behaviour

This can be picked up through our monitoring work or may involve responding to an incident or complaint that comes to the Council and requires assessment, investigation, and an action/response by our people. Council officers are warranted to access properties for the purposes of this type of inspection.

A significant proportion of these incidents and complaints either result in no action or education around regulation or consent conditions. Most can be settled by a phone call or meeting.

Engage

Most incidents are dealt with by means of informal action and would involve the Council Investigating Officer drawing the matter to the attention of the person responsible for the compliance issue or incident, and giving appropriate guidance.

A minor incident may result in an infringement being issued to deter behaviour, such as a parking ticket. Rarely will a minor or technical infringement result in more formal action being taken, particularly if it is capable of immediate rectification.

We can conduct more in-depth audits to determine compliance and record our findings.

Educate

If previous advice has been ignored, or of there is another factor that warrants a formal response, the Investigating Officer may choose to act in a formal way.

A formal warning is documented by way of a letter to a person informing them that an offence has been committed, and that they are liable, but that no further action will be taken in respect of that offence. The person will also be informed that the formal warning will be documented and recorded by the Council and taken into consideration should there be further offending.

The types of situations where a formal warning may be given are when:

- an administrative, minor, or technical breach has occurred.
- the harm, or potential harm, is minor or trivial in nature.
- the person does not have a history of offending.
- the matter is one which can be quickly and simply put right.

Enforce

At the other end of the scale, the Council may discover or be advised of a serious breach of regulation that could result in significant harm. There is a need to respond swiftly in these circumstances to ensure issues can be addressed as soon as possible to reduce the potential for harm arising from the non-compliance. Warning of a Council inspection may not always be appropriate or possible.

We have a range of statutory powers available to us under the authorising legislation outlined in the earlier section of this document. Some of the key statutory powers include the following:

Compliance/directive notice (such as an abatement notice or notice to fix)

These notices are formal, written directives. They are written and served by Council staff instructing an individual or company to cease an activity, prohibit them from commencing an activity or requiring

them to do something. The form, content and scope of these notices is prescribed in statute. It is an offence to fail to comply with these notices.

Cancel, amend, suspend or refuse to renew a licence, consent or permit

In some cases, we can cancel, amend or suspend (or apply for cancellation or suspension) of licences or consents where we believe:

- the grounds for being licensed are no longer met.
- the licence holder is failing (or has failed) to comply with the Act or the conditions of the licence or consent.
- false or misleading information has been provided.

Infringement notice

An infringement notice is a written notice alleging that a person has committed an offence which requires the payment of a fine or the election to have the matter heard in court. The actual fine for each type of offending is set within a statutory schedule or bylaw. Payment of the fine does not lead to the recording of a criminal conviction.

The types of situations where an infringement notice may be issued are when:

- there is evidence of a regulatory breach.
- a one-off or isolated regulatory breach has occurred which is of minor impact and can be remedied.
- it is likely to be a sufficient deterrent.

Full force

Court order or injunction

Like an abatement notice, an enforcement order can direct a person to cease an activity, or to take particular action. However, an application for an enforcement order must be made to the Environment Court. It is an offence to fail to comply with an enforcement order. In some of our regulatory roles, we can seek a court injunction to require a person to undertake something they have refused or previously failed to do. For example, an injunction may be granted to halt demolition of buildings to allow time for a hearing on the cultural and heritage values of the buildings.

Prosecution

A prosecution is initiated by laying criminal or summary charges in the District Court. The matter is then heard by a District Court Judge. All evidential rules and standards must be met in a prosecution. A successful prosecution will generally result in a conviction, and/or a penalty imposed.

A proposal for Council to pursue enforcement action that involves a prosecution or application to court must be referred to the Council's Enforcement Decision Group by the Compliance Team Leader or Compliance Manager. A report from the relevant Investigating Officer must be provided to the Group to assist with decision-making.

When making a decision, the Enforcement Decision Group must consider:

- whether the test for prosecution as set out in the Solicitor-General's Prosecution Guidelines (2013) is satisfied.
- whether there is sufficient evidence to lay charges (the evidential test)
- whether the charges are in the public interest (the public interest test)
- whether to undertake a prosecution in a specific case in accordance with relevant policies and strategies.
- what the impact or consequences of failing to prosecute may be.
- the alternatives to criminal prosecution.
- the outcomes sought by the relevant legislation.
- the expected cost of a prosecution (including the Council's resources and funding).
- whether another prosecuting agency has or may bring criminal proceedings in relation to the same incident.
- whether the decision is independent of any undue or improper pressures such as political pressures or pressures from elected members of the Council.

A decision not to prosecute does not preclude Council from further considering the case if new and additional evidence becomes available, or if a review of the original decision is required (provided always that we are within the applicable limitation period for bringing a prosecution).

Negotiated settlements/restorative justice

Restorative justice is becoming increasingly popular in the wider criminal justice system and in Resource Management Act (RMA) offending in particular. Its main purpose in criminal justice is to:

- Provide an opportunity for the offender to understand the impacts of their offending, and for the offender to display remorse for the wrongdoing
- Produce practical outcomes that restore harm done, educate the offender, and achieve a change in their attitude, and provide a basis for the community to begin to trust the offender again.

This is an alternative to traditional sentencing. It is intended to bring victims and the community together with the offenders to address the wrongdoing.

The Sentencing Act 2002 allows for restorative justice processes to occur when certain conditions are met. The Council is generally open to resolving non-compliance by agreement where a remedy is possible, and where those requirements are fulfilled.

A negotiated settlement typically requires all or some of the following - the person to admit that they are likely to have breached the law, to cease the non-compliant conduct, undertake suitable reparation measures, pay compensation, pay our costs, and may involve some publicity. Any restorative justice measures agreed to by the parties may be considered by the Court in sentencing².

A negotiated settlement will only be agreed to if it is in the public interest. For example, we are unlikely to agree to a negotiated settlement where the non-compliance has caused serious harm or the person is a repeat offender, lacks contrition or actively resists compliance.

² Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991

Communication

Elected Members

If a prosecution is initiated, the Mayor, Councillors, iwi representatives, and any relevant community board members should be advised of the identity of the parties being prosecuted and the nature of the charges. This will ensure that they are aware of the prosecution and be able to avoid being drawn into any media comment or improper contact with the individuals that could jeopardise the right to a fair trial.

It is important to note that names of defendants and other parties must not be released to the public or to media.

Media

Public scrutiny is beneficial to the administration of justice and the community has a right to accurate information, subject to lawful restrictions and the individual's right to a fair trial.

However, it is of primary importance that any public statements do not prejudice an individual's right to a fair trial. An individual's right to a fair trial under the New Zealand Bill of Rights Act 1990 is fundamental.

Release of information to the media

Only the Chief Executive or the relevant Group Manager can release information to the media about enforcement incidents. Before providing any information to the media the relevant Group Manager must first discuss with Council's legal team the information that is proposed to be released.

In prosecutions before the Courts the rule of sub judice applies, which means that while a matter is under judicial consideration public comment on the case is prohibited, as the matter has yet to be decided by the Court.

As the media often report about matters prior to the Court making a decision, any press releases about enforcement matters should be restricted to the simple fact that Council is undertaking enforcement action in respect of an alleged breach.

Regulatory complaint/incident grading

Each regulatory complaint or incident that the Council discovers or is advised of will be assessed by a Compliance and Monitoring Officer. An assessment will include the relevant factors shown in our compliance model:

- The extent of any breach
- Enforceability of the regulation
- Any relevant statutory defence
- Case law
- Behaviour/attitude
- The level of harm caused (including victims and the environment)
- Public interest
- Purpose of legislation/regulation breached
- Previous compliance history
- Statutory limitation period
- Repetitiveness of breach
- Standard of proof required
- Solicitor-General prosecution guidelines
- Speed of action required
- Cultural practice.

Once an assessment/investigation has been made the Compliance Officer must allocate a colour-coded compliance grade) as shown in the table below.

	Regulatory compliance grade
	FULL COMPLIANCE: with all relevant conditions of consent, licence or registration, all rules, regulations, and bylaws.
	LOW RISK NON-COMPLIANCE: compliance with most consent conditions, licence, or registration and/or rules, regulations and bylaws. Non-compliance carries a low risk of harm or is technical in nature (for example, failure to submit a monitoring report).
	MODERATE NON-COMPLIANCE: Non-compliance with some consent conditions, licence, or registration, and/or rules, regulations and bylaws – where there is some consequential harm and/or there are some risks of negative effects.
	SIGNIFICANT NON-COMPLIANCE: Non-compliance with many consent conditions, licence, or registration, and/or rules, regulations and bylaws – where there is a high level of consequential harm and/or a high risk of negative effects.

The appropriate compliance grade will be recorded and reported.

Consistent grading of the incidents/complaints that we receive will inform our risk assessments and enable us to improve reporting on our compliance, monitoring and enforcement function and progress towards achievement of our desired outcomes.

Our reporting may include:

- numbers of sites with significant non-compliance, moderate non-compliance, low-risk non-compliance, and compliance.
- types of incident notifications received and council responses to these incidents, including time taken to respond.
- number of consents, and percentage of total consents that are monitored per financial year.
- number of enforcement actions taken, by action type (such as, prosecution, abatement notice, infringements issued), and percentage of total non-compliance.

This information will also contribute to assessment and monitoring of the effectiveness of Council's policies (such as the Freedom Camping Policy, Dog Control Policy and Trading in Public Places Policy).

Reporting

We will commit to reporting on our compliance, monitoring and enforcement activities through the following channels:

Council reporting

- Long-term Plan – annual and quarterly reporting
- Committee and Sub-Committee – issues and risk reporting, as required
- Senior Leadership Team – reporting on prosecutions and serious breaches
- Regulatory Services Group – monthly reporting
- Regulatory Services Leadership Team – ongoing monitoring and issues escalation

National reporting

- Ministry for the Environment's National Monitoring System reporting
- Ministry for the Environment's Resource Management Act Surveys of Local Authorities
- Animal Management annual report, as required by section 10A of the Dog Control Act 1996
- Annual report of alcohol licensing income and costs – Ministry of Justice.

9.3 FREEDOM CAMPING POLICY REVIEW

Author: Hamish McGillivray, Manager Research & Policy

Authoriser: Kris Pervan, Group Manager Strategy & Growth

TE PŪTAKE | PURPOSE

An update and outline of the process to review the Freedom Camping Policy 2012, which is getting underway.

NGĀ ĀPITI HANGA | ATTACHMENTS

Nil

9.4 IWI PARTNERSHIPS GROUP UPDATE

Author: Deanna Rudd, Kaiwhakahaere-Hononga-ā-Iwi – Iwi Partnerships Manager

Authoriser: Hara Adams, Group Manager Iwi Partnerships

TE PŪTAKE | PURPOSE

An update from the Iwi Partnerships Group.

NGĀ ĀPITI HANGA | ATTACHMENTS

Nil

- 10 TE WHAKAWHITI KŌRERO | CORRESPONDENCE
- 11 HE TONO ANAMATA MŌ TE RĀRANGI TAKE | FUTURE AGENDA REQUESTS
- 12 KARAKIA WHAKAMUTUNGA | CLOSING KARAKIA