

# ENVIRONMENTAL SERVICES COMMITTEE

## FOR THE MEETING OF 8 MAY 2018

### Report for Agenda Item No 9

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### Planning Process for the District Plan Review

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#### Purpose of Report

1. To determine the planning process for the District Plan Review.

#### Background

2. The Resource Legislation Amendment Act 2017 (RLAA) introduced two new planning processes into the Resource Management Act 1991 (RMA). The two new planning processes accompany the RMA's standard planning process<sup>1</sup> and are referred to as the: collaborative planning process<sup>2</sup> and the streamlined planning process<sup>3</sup>.

#### Options

3. The options are to review the District Plan using one or more of the following RMA's planning processes:
  - a. the standard planning process; or
  - b. the streamlined planning process; or
  - c. the collaborative planning process.
4. A brief assessment of all three planning processes and the use of two processes concurrently are provided in Appendix 1. The assessment concludes that the standard planning process is the most appropriate planning process for Timaru District Plan Review.

#### Identification of Relevant Legislation, Council Policy and Plans

5. The following legislation and Council plans are relevant to this matter:
  - a. Resource Management Act 1991
  - b. Resource Legislation Amendment Act 2017
  - c. Timaru District Plan
  - d. Long Term Plan.

#### Assessment of Significance

6. This matter is not deemed significant under the Council's Significance and Engagement Policy.

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<sup>1</sup> Part 1, Schedule 1 RMA

<sup>2</sup> Part 4, Schedule 1 RMA

<sup>3</sup> Part 5, Schedule 1 RMA



### **Consultation**

7. This matter was workshopped with the Environmental Services Committee on 13 March 2018.

### **Other Considerations**

8. There are no other relevant considerations.

### **Funding Implications**

9. The budget proposed for the District Plan Review in the Long Term Plan 2018-2028 is based on the RMA's standard planning process. If the Committee determined that an alternative planning process was to be used, the Long Term Plan budget for the District Plan Review would need to be revised.

### **Conclusion**

10. The RMA standard planning process should be used for the District Plan Review.

### **Recommendations**

- a) That the report be received.
- b) That the planning process under Part 1, Schedule 1 of the Resource Management Act 1991 be used for the Timaru District Plan Review.

## **APPENDIX 1 – ASSESSMENT OF PLANNING PROCESSES**

### **Introduction**

1. This appendix provides a brief assessment of the suitability of the following planning processes provided by the Resource Management Act 1991 (RMA) in terms of their suitability for the Timaru District Plan Review:
  - a. the standard plan making process;
  - b. the streamlined plan making process;
  - c. the collaborative planning process.
2. These plan making processes are assessed in turn below.

### **Standard Planning Process**

3. The RMA's standard (Part 1, Schedule 1) planning process sets out the process for the preparation and change of policy statements and plans by local authorities. This process includes five phases: pre-notification, public notification, hearing, decision and appeal. A timeframe of two years is required by the process from the notification of the proposed plan to the notification of decision. No timeframes are required for pre-notification or appeal phases.
4. In the pre-notification phase, Councils are required to consult certain central and local government agencies, relevant tangata whenua and relevant customary marine title groups. Although not required by the process, it is common practice that stakeholders and the public are consulted during this phase in order to obtain community's view and to minimise potential conflicts and objections post notification.
5. Once a plan is prepared, it is publicly notified for submissions. The submissions received on the proposed plan will then be publicly notified for further submission on the matters raised in submissions. Following the close of further submissions, hearing(s) will be held for Council to hear the submissions and further submissions. Decisions on the submissions and further submissions will then be made and publically notified by Council.
6. Post the decision on submissions being notified, parties involved in the process have a right to appeal the decision to the Environment Court. Although appeals can be expensive and time consuming to resolve, the experience of most second generation district plan reviews is that, if resourced appropriately, the majority of appeals can be resolved reasonable quickly.

### **Streamlined Planning Process**

7. The streamlined planning process was inserted into the RMA by the RLAA in 2017 in order to achieve an expeditious planning process that is proportionate to the complexity and significance of the planning issues being considered.
8. The Minister for the Environment's approval is required to use the streamlined planning process. If the request was accepted, the Minister will set the process for Council to follow, with the Minister making the final decision on the plan. The merits of the Minister's decision cannot be appealed.

9. Having no appeal right in this process has benefits for Council in terms of saving cost and time. However it also means that if Council were not satisfied with the Minister's decision, it could not challenge the merits of the decision. Due to the Minister's involvement in the process, there would be a loss of Council autonomy in controlling the process and final decision.
10. The Minister determines whether the streamlined planning process should be used having regard to whether there is a need to:
  - a. implement national direction; or
  - b. urgently address a matter of public policy; or
  - c. meet a significant community need; or
  - d. deal with an unintended consequence of a policy statement or plan; or
  - e. combine several policy statements or plans; or
  - f. expeditiously prepare a plan for a reason comparable to those listed above.
11. Although District Plan Reviews are not expressly prohibited from the streamlined planning process, the streamlined planning process has clearly not been designed for full District Plan Reviews, which by their nature are complex, involve significant resource management issues and generally do not benefit from expeditious processes. Legal advice obtained on this matter suggests that the Timaru District Plan Review would not qualify for a streamlined planning process. Accordingly, the streamlined planning process is unlikely to be an option for the Timaru District Plan Review.

### **Collaborative Planning Process**

12. The collaborative planning process was inserted into the RMA by the RLAA in 2017. The rationale for this new plan making process is to legislate for collaborative plan making processes. The RMA's standard plan making process traditionally used consultation, rather than formal collaboration.
13. Under the collaborative planning process Council is required to appoint a collaborative group. Membership of the group is required to reflect a balanced range of the community's interest, values and investments and must include a member from an iwi authority. In consultation with the group, Council is required to set the group's terms of reference.
14. The collaborative group then provides Council with a consensus report on the plan provisions. Mandatory matters required in the report include matters on which the group has/has not reached consensus and how the community's views were obtained and considered. Council then can draft the new plan based on the consensus report. The new plan will subsequently be publicly notified for submission.
15. A review panel must be established by Council to hear the submissions. Members of the panel must be accredited and have appropriate knowledge, skills and experiences in relation to the relevant matter. The majority of the members must be persons who are not elected or appointed members. The review panel must prepare a report to Council with their recommendations on the proposed plan and matters raised in submissions. The review panel must not recommend any changes to a proposed plan unless changes are required to comply with regulatory requirements, or the collaborative group is given the chance to comment on the changes.

16. Upon the receipt of the review panel's recommendation, Council must decide whether to accept or reject the recommendations, and publicly notify its decision. If Council rejects the review panel's recommendation, it must prepare alternative provisions in its decision. Such alternative provisions must be developed with the collaborative group. Appeal rights on the decision are limited to:
  - a. matters that are inconsistent with the review panel's recommendation; or
  - b. matters that are not based on the consensus recommendation of the collaborative group; or
  - c. matters that were opposed by the collaborative group.
17. Council can only withdraw from the collaborative planning process in very limited circumstances. The RMA does not proscribe timeframes for the report from the collaborative group or the review panel recommendation.
18. The following are some potential issues associated with the collaborative planning process:
  - a. The lack of statutory timeframes for the process does not give Council or the public any certainty that the process will be completed in a timely manner.
  - b. The fact that Council can only withdraw from the process in very limited circumstances poses a significant risk if major issues arise during the process.
  - c. The diminished role Council's elected members have in the process, which changes representation arrangements.
  - d. The diminished role Council staff have in the process, which could potentially lead to a lack of local and institutional knowledge and input in terms of how the proposed provisions impact on Council.
  - e. The limited ability of Council to provide alternative provisions to that recommended by the review panel.
  - f. The likely higher cost and resourcing associated with the process.
  - g. The complicated nature of the process and the lack of public and stakeholders familiarity with it.
  - h. The fact that no other Council to date has been through the process, which means that there are no examples of how the process works in practice.
  - i. The scope of a District Plan Review is too broad to ensure all stakeholders are represented on a collaborative group.
19. There are a number of criteria proscribed by the RMA for Councils to consider in determining whether to use the collaborative planning process. The most relevant criteria are:
  - a. Whether the resource management issues to be dealt with in the plan would benefit from the use of the collaborative planning process, having regard to the scale and significance of the relevant resource management issues.
  - b. Whether the local authority has the capacity to support the collaborative planning process, having regard to the financial and other costs of the process.
20. While there are resource management issues that will arise during the District Plan Review that will benefit from taking a collaborative approach, it is considered that they

are not of a scale and significance that would justify the financial and human resources required to support the process. Most of the other resource management issues that will arise during the District Plan Review will not be of a scale and significance that would benefit from using the collaborative planning process. Therefore using the collaborative planning process for the entire District Plan Review would likely be excessive and inappropriate.

21. Although Council has taken a collaborative approach to particular aspects of the District Plan Review, there is no need for such an approach for the majority of the review. Taking such an approach would likely cost more, take more resourcing and take longer. Council can achieve collaboration with stakeholders through the RMA's standard plan making process without having to enter into the formal collaborative planning process.
22. The collaborative planning process is more suited to a defined resource management issue(s), rather than a District Plan that includes a large number of resource management issues. For instance, for a defined resource management issue(s), it would be straight forward to establish a collaborative group. For example, it was easy to identify the relevant stakeholders for Council's ecosystems and indigenous biodiversity stakeholder group. However, for a District Plan Review, there are numerous stakeholders. Therefore trying to ensure relevant stakeholders are represented on a collaborative group would be problematic, either leading to no representation or a very large collaborative group. The latter would likely be unwieldy in terms of trying to build consensus.
23. Having regard to the potential issues associated with this process, it is not recommended.

### **Concurrent Use of the Standard and the Collaborative Planning Processes**

24. The RMA does not prevent the use of a mixture of different planning processes for a plan review. Legal opinion obtained from Simpson Grierson confirms that the collaborative planning process can be used for a single topic, while using the standard planning process for the rest of a plan review. The legal opinion also advises the following implications should Council decide to use the mixed approach:
  - a. The collaborative planning process will require significant resourcing and costing compared to the standard process.
  - b. Public notice must be given to initiate a collaborative planning process. Once the notice is given, the process cannot be withdrawn from except under limited circumstances;
  - c. The single topic provisions developed through the collaborative planning process will need to integrate with and be consistent with the remainder of the proposed plan provisions;
  - d. The additional time required for the collaborative planning process may mean that much of the proposed plan becomes operative while the collaborative planning process is in progress (although dependent on time of notification of the two processes, and any subsequent appeals). This could result in a need to make changes to the newly operative plan, to achieve integration with the collaborative planning process provisions. This will lengthen the District Plan Review process and incur additional costs;
  - e. Interested submitters would need to engage in the two different processes. This may cause confusion for lay people, and may mean more

resource from some submitters than if they had to engage in just the standard process.

25. Having regard to the potential issues associated with the use of two processes for the District Plan Review, it is not recommended.
26. Council already is, or is proposing, to use collaborative approaches in the District Plan Review. For example, a collaborative approach is proposed for heritage and iwi topics, while the Committee has already agreed to a collaborative approach to the biodiversity topic. This approach has the benefits of the collaboration, while avoiding the issues associated with the formal collaborative planning process. It also has the benefits of retaining the relative flexibility of the standard planning process.

### **Conclusion**

27. With the above matters in mind, it is considered that the RMA's standard planning process is the most suitable plan making process for the DPR.