

District Plan review programme overview

Meeting: Council Briefing
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Purpose/Ngā whāinga

To provide Council a high-level overview of the District Plan review programme.

Context/Horopaki

Given the different levels of knowledge about the purpose and content of a District Plan (the DP) within Council, this report goes back to first principles to provide an overview of the framework of the DP environment as well as providing an overview of the current review program.

The District Plan is a large legal document that Council is required to have under the Resource Management Act 1991 (RMA). It contains a range of resource management matters that Council is required to address, so the needs of today's and future communities are met. DPs must be reviewed every ten years.

There is a substantial range of individual DP elements councils needs to consider when reviewing and drafting a proposed DP. Numerous regulations and national and regional direction also guide what needs to be considered during the development of a DP, as well as elements of the DP structure and content.

This report focuses on the DP review program and development, up to the point at which a draft is adopted by Council as a proposed plan and does not address the statutory review process after this point. The current scheduled date for the adoption of the draft DP is May 2023. The complete timeline for the formal RMA process will be brought to Council at a later date.

Discussion/Ngā kōrerorero

The DP is a statutory document required under the Resource Management Act 1991 (RMA). It is designed to manage the District's physical and natural resources, through identification of features to protect and setting the conditions for what development may occur in the District and how that may be sustainably achieved. It is a forward looking document and considers the intergenerational needs of our communities.

In 2017, Council determined the statutory review (due to commence in 2023) be brought forward, to better respond to development pressures and facilitate growth within the District.

How the review proceeds, in what order, and over what timeframe is largely at the discretion of Council. However, Council has little to no discretion regarding the scope of a DP.

What the District Plan must contain

While the RMA provides the overarching framework for the DP, a DP also needs to give effect to any National Policy Statements (NPS) and National Environmental Standards (NES). These are regulations made under the RMA. The RMA also directs that a DP needs to give effect to the Regional Policy Statement (RPS) and not be inconsistent with any Regional Plan (RP).

Attachment A illustrates this framework and shows the relationship between these documents.

Best practice

To help guide a DP review and interpreting the various requirements, case law is an important consideration. In addition to providing interpretation support, it also helps set best practice guidance, such as criteria to identify features of national importance under section 6 of the RMA.

Best practice guidance can come in different forms, including New Zealand Standards or other equivalent country standards, such as Australian or British Standards, or industry best practice. To support the DP development the Quality Planning website provides guidance on best practice for DP review and development.

Why Council needs to engage with experts

Many of the requirements are highly technical in nature and are very topic specific (e.g. Significant Natural Areas, whereby knowledge of ecology, flora, fauna and how they interact is required). Usually the knowledge of technical experts, who understand how certain criteria or requirements work in practice, and how they are to be applied is needed in developing the various sections or chapters of the DP. Technical experts are people with the appropriate training and or experience that understand a specific subject matter. They will also be able to provide evidence in the Environment Court, if need be, to defend the technical input they provided and how that has been incorporated into the DP policy approach.

The need to engage in technical experts adds significant costs to a DP review process.

Attachment A also provides an overview of how all relevant matters link together and an indication of what type of technical reports will be required.

Levels of technical expertise and scope

The proposed DP will contain approximately 68-70 chapters (grouped into 'Parts'). The National Planning Standards now stipulate most chapters and components contained within the DP. Each chapter will also represent a plan change. The reason for individual plan changes, as opposed to having just one plan change, is so individual chapters can be made operative as they are finalised through the statutory process and not be held up by other chapters or parts that are subject to an appeal process. This will also help ensure the DP follows the National Planning Standards, which standardises the DP structure.

Each chapter will require different levels of expertise to support the development of its objectives, policies and methods, either through an in-depth technical report, or a technical expert peer review of the staff drafted chapter. The level of engagement of experts will depend on the amount of direction already prescribed through a NPS, NES, RPS or RP and the level of discretion that can be applied. For some chapters, Council will have more discretion than others.

Broadly, each proposed DP chapter can be put into one of three categories in terms of the discretion Council has in the work required to complete the review. These categories are:

1. The DP matter is prescribed in detail and little to no discretion is afforded to Council in terms of the content and/or approach of the draft chapter. However only limited technical expertise is required and Council officers can draft the chapters, with only a peer review by technical experts required to ensure technical correctness and a correct application of the RMA requirements.
2. Council has a wide range of discretion on the chapter topic. This is where Council can determine to what 'depth' the matter must be reviewed, depending on how important they consider this matter is to the community. This means that costs could vary significantly, ranging from a peer review only, to an in-depth study or a comprehensive technical report. The current budgets have been set based on the least intensive approach.
3. The third category is where a comprehensive technical report is required due to the nature of the matter and the associated regulatory environment. The subject matters will usually have specific criteria that needs to be applied. These criteria come from several different sources, including NPSs, NESs, the RPS, the RP and case law. Experts will be required to interpret the criteria and apply it to Kaipara's circumstances. For these matters, Council has little discretion on the costs involved to complete the necessary work.

Attachment B provides an indicative overview of the chapters and which of the above three criteria they fall within. **Attachment C** provides a high-level overview of when Council can expect to be introduced to a topic matter or provide direction or input on an individual DP topic, and when community engagement on the matter is planned.

Depending on what type of category the individual chapter(s) falls into, staff will be seeking detailed guidance from Council as to what level of research and engagement they wish to see inform that matter of the DP.

Kaipara's DP review approach

The review process has been developed based on past learnings and best practice approaches. This involves early and informal (non-statutory) engagement on the individual chapters, or groups of chapters of the proposed DP before combining all elements into a draft DP and proceeding to the statutory process requirements. Effectively this means that the DP review is split into 2 phases.

This has several advantages. It allows for the draft DP content to be socialised with the communities in more manageable and easily understood components that they can analyse for their early involvement and feedback. This involves the community in the development journey, rather than asking them for their feedback on a final document that is large and difficult to understand.

Staff are also looking at ways at how best to support and collaborate with Mana Whenua through each step of the process, to ensure meaningful involvement from our treaty partners.

The added advantage of this approach is that Council will be able to propose a DP that has already been significantly informed by community input, through an informal process that is not burdened by statutory requirements and associated risks and costs.

The anticipated outcome is a proposed DP that will be subject to less appeals and a timelier transition from proposed to operative DP. This is expected to provide potentially substantial cost savings in the long run, by reducing appeals and associated court processes.

The proposed structure of the DP has been split into several parts (and sub-parts where required). These are reflected in the high-level work programme. **Attachment C** outlines the current programme, indicating decision points or updates to Council and the various planned timeframes for associated engagement activities. **Attachment C** also focuses predominantly on phase 1 of the DP review programme which is expected to be completed in January 2023, but also provides a summary overview of the anticipated process to complete phase 2 (the statutory process).

Some engagement activities will focus on specific individuals who are potentially directly impacted by the requirements of the DP, whereas other engagements may focus on a number of individual geographic communities, communities of interest, or may be District-wide.

In some instances, chapters will be logically grouped together with others for this informal engagement, at other times it may be more helpful to only focus on a specific individual chapter topic. Staff are also recommending a 'discussion paper' approach for engagement which is further detailed in this report as well as a separate report to Council at this Briefing.

Foundation work

The review has commenced by procuring technical reports from consultants that capture baseline information that will flow through to and support the overall review including individual chapters. This information can be seen under the technical reports identified to support the DP review, in **Attachment A**.

The key baseline information captured includes the identification of opportunities and constraints, understanding what sites or areas need to be protected and understanding how our communities want to grow. This information includes soil mapping, understanding Kaipara's underlying geology,

and GIS layers such as flooding, landscapes and significant natural areas (indigenous biodiversity).

The spatial plan provides a significant contribution to the background knowledge and data required to inform the DP development within the new requirements of the RMA framework. Although a spatial plan is presently not a statutory requirement for DPs, the requirements include a strategic direction, and a spatial planning process provides the necessary components for this. The National Policy Statement on Urban Development will require spatial planning approaches for future urban development.

The spatial plan will provide information and a basis to support where future growth could or should not occur. The spatial plan does this by looking at the different spaces within the District and identifies where the best places for growth to occur, type of growth and what we need to protect. It considers community aspirations as opposed to managing community issues. This information then provides crucial direction from the community for individual DP chapters as well as the broader DP approach. Noting that spatial plans generally cover a 30-50 year period, while a DP has to be reviewed every 10 years.

New and Proposed national direction through NPSs and NESs, will affect the consideration of DP provisions relating to urban expansion matters and how the DP addresses the protection of the rural environment, including indigenous biodiversity. These matters have already been considered throughout the spatial planning exercise.

Key Chapters

There are some specific chapters that will recognise matters of national importance under section 6 of the RMA. These matters may influence other chapters of the DP. These matters include the identification and provision of significant natural areas, high and outstanding natural character, the coastal environment, outstanding natural features and landscapes. These matters are those also recognised in the RPS or National Planning instruments and are required to be addressed in the DP.

Once Council has researched and analysed within the Kaipara District context, the matters that are specifically directed by the national and regional requirements, we can then look at how all the different elements of the DP fit together and align with each other. This is to ensure that proposed provisions make logical sense when placed side by side, particularly regarding where different levels of protection are required. We call this the 'hierarchy of provisions'.

An example of a hierarchy for provisions is that the natural character areas requires a higher level of protection than the coastal environment, and the coastal environment requires a higher level of protection than the general environment.

A detailed example of how the hierarchy will apply is the various earthworks provisions anticipated. The DP would be expected to allow only a minimal (e.g. 5m³) disturbance in the natural character area, and then in the coastal environment allow a bit more (e.g. 20m³) and then more again in the general environment (e.g. 100m³). This example does not indicate specific current thinking on earthwork provisions, it is provided to demonstrate what the hierarchy for earthworks may look like.

Budgets

The 2018/28 Long Term Plan allocated \$2.5 million across the first three years of the DP review and \$4.82 million over the subsequent seven years, which included the notification and appeals processes. The total DP review budget as provided for in the 2018/28 LTP was therefore \$7.32 million.

Most of the DP review work to date and the associated expenditure has focused on our spatial planning work, supported by the identification of potential hazards (geotechnical, flooding and climate change related) and the foundation work previously outlined. Establishing working

relationships with Mana Whenua and related initial engagement activities has also been a focus to ensure Council's partnerships with Mana Whenua are appropriately reflected in the DP.

The DP review program and associated budgets have been adjusted and revised since the adoption of the LTP, primarily to accommodate budget amendments, but also delays in the work programme, which was significantly impacted by Covid-19. The revised DP review expenditure (and 2020/2021 budget) for the first three years of the current LTP is now \$1.65 million.

While finalised proposed budgets will be presented to Council as part of the 2021/31 LTP development process, the table below provides a high level overview of the anticipated costs for the DP review process from 2021 onwards.

Year	What	Preliminary budgets
2021/2022	Continuation of individual chapter reviews (<i>phase 1</i>)	\$890K
2022/2023	Completion of chapter reviews (<i>phase 1</i>), legal advice on draft DP and formal plan notification stage (<i>commencement of phase 2</i>)	\$475K
2023/2024	Expert evidence for S42 reports and hearings	\$1 million
2024/2025	Appeals	\$950 K
2025/2026	Appeals	\$950 K

Total \$4,265 000

The current and future budgets have been established based on the requirements of the three categories as described in a previous section of this report and reflect the most basic approach required across all categories, including the areas that provide Council larger discretion. If direction is provided by Council to undertake more detailed work and/or community engagement for those matters, then budgets will have to be adjusted accordingly.

At this stage of the DP review process it is very difficult to assess the scale and scope of appeals and therefore whether the appeal processes will extend beyond the 2025/2026 financial year. There will be a much better understanding of the situation during the budget setting phase for the 2024/34 LTP and will be reflected in that process.

This revised budget has also impacted on the original timeline of the DP review process by a year. To achieve the original timeframe of notifying the proposed DP in 2022, additional resources would be required.

What can Council and the community expect to see in the next six months

With spatial planning nearing completion, the next planned engagements will be on the key chapters. Our key chapters will also help inform the zoning chapters as we move through the DP review, in particular when considering the hierarchy of provisions.

Most of the key chapters will result in individual sites or areas being identified on the planning maps of the DP to show their geographical location (e.g. a Significant Natural Area). For each individual site or area identified in this way, Council will need to contact affected landowners to explain and discuss the implications of this.

The information provided will include an outline of the individual site or area that affects their property and a report saying what the values are that make it special. To help communicate what it means these will be accompanied with a high-level overview in the form of a 'discussion paper'.

The discussion papers for the key chapters will outline why we need to protect an individual site or area and our current proposed approach to how the DP might protect them while balancing reasonable use of, the individual site or area, and/or the land where it is located. This will provide an opportunity for landowners to provide us with feedback and potentially more detail on the exact location or status of the site or area identified.

Further engagements based on discussion papers for other chapters of the DP are also proposed. The separate agenda item on this provides more details on this and indicative associated timeframes.

Given the current Covid-19 climate, it is important to note that all engagement activities of Council will have to adapt to, or be delayed, depending on the covid-19 level the country and/or District is in at any point in time in the future.

Timeframes

Based on the above process outline and within current budgets, a combined draft DP is scheduled to be presented to Council in the first half of the 23/24 financial year. Should there be any reductions in budgets for the first three years of the 2021/2022 LTP, then the programme will have to be reviewed and adapted accordingly, with an associated delay in the delivery timeframes for the combined draft DP. This is assuming that the program is not disrupted by further Covid-19 response level changes.

Next steps/E whaiake nei

Continue the DP review as presented and in accordance with information supplied at this Council Briefing.

Staff have reviewed their DP update and reporting processes. Council will now be provided with a quarterly DP review update report on the progress of the review at Council Briefings. All future individual DP matter reports will also include details on how the topic fits within the wider review work programme and any associated changes to the schedule.

Attachments/Ngā tapiritanga

	Title
A	DP Review Framework
B	DP Review Overview of level of technical experts required for each chapter
C	DP Review indicative work programme timeline