

# District Plan Briefing Project Update – May 2023

**Meeting:** District Plan Review Briefing  
**Date of meeting:** 10 May 2023  
**Reporting officer:** Michael Day, General Manager – Engagement & Transformation  
Katherine Overwater, District Planning Team Leader

## Purpose | Ngā whāinga

To provide options to Elected Members on the District Plan, which evaluates the costs and benefits of each option.

## Discussion | Ngā kōrerorero

Since the March 2023 District Plan briefing, some Elected Members have raised concerns in respect to continuing with the District Plan Review, in light of the upcoming Resource Management Reforms.

The key matters of concern raised are:

- The cost of the process going forward
- Timeframes for the review
- Is the plan going to be sufficiently enabling to provide for growth and development
- Risk of reforms and where this leaves KDC.

Since the concerns of Elected Member has been raised with staff, the district planning team have evaluated available options to ensure Elected Members are fully informed of their options and the costs and benefits associated with these options. Staff believes that there are four options for Elected Members to consider - as follows:

1. Carry on the District Plan Review as planned and publicly notify the Proposed District Plan in September 2023; or
2. Carry on with the District Plan Review, but push out timeframes to allow more time to develop and test provisions; or
3. Stop the District Plan Review and carry out a Plan Change to the Operative District Plan (aiming for a September 2023 notification); or
4. Stop the District Plan Review and do nothing.

This briefing report evaluates these 4 options in detail, weighing up the potential costs and benefits of each option for Elected Members to form a view about which option they prefer.

To address the uncertainties regarding the upcoming Resource Management reforms, staff have been in touch with the RM Reform team at the Ministry for the Environment (MfE), who have shared some information with us to assist with understanding the process of transition. Unfortunately given timing (the RM reforms are currently in the Select Committee process), MfE are unable to give definitive responses, but as set out in the “Transition and Implementation” fact sheet in **Attachment A**, there is some direction that KDC can rely on in terms of evaluating the options presented.

## Advice from Ministry for the Environment

Current advice from MfE to the Resource Management Law Association is that the Select Committee report on the Resource Management Reforms is expected in early June 2023. The Government remains focused on enactment of the Bills by mid-late 2023<sup>1</sup>.

Since the release of the Natural and Built Environment and Spatial Planning Bills in late 2022, the transitional provisions proposed in the Bills have been unclear or lacking which has left some uncertainty for Councils.

When staff approached MfE for specific advice in terms of the questions relating to timeframes and having some certainty for the District Plan Review process, the Ministry helpfully provided the Transition and Implementation fact sheet, included as **Attachment A** to this report.

This fact sheet provides details in respect to the transition and implementation of the upcoming Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA), which will in time replace the current Resource Management Act.

The key “take homes” from the MfE fact sheet are as follows:

- The overall transition timetable is anticipated to be 7 – 10 years.
- The first regions are anticipated to completed transition within approximately 7 years and the last by the end of year 10.
- The first group of regions to implement the new system will be the group for which a timely process is required to uphold Treaty Settlements, Mana Whakahono ā Rohe and Joint Management Arrangements.
- In the period from SPA/NBA enactment until a region has a ‘decisions version’ of an NBA plan in place, much of the RMA will continue to apply.
- RMA national direction will remain in force. This will continue directing RMA plans and plan changes as well as consent decisions on the ground.
- RMA plans will remain in place to provide a regulatory framework.
- Many RMA processes will remain in place (eg, plan change process, consent processing provisions, and provisiong relating to the development of national direction)
- The National Planning Framework (NPF) and Regional Spatial Strategy (RSS) will not explicitly direct RMA plans or consents.
- RMA 10-year plan reviews will not be required to commence after enactment of the SPA/NBA, noting that further advice from the MfE team is that only the mandatory requirement is taken away, but Council has discretion to carry out reviews/continue them under the RMA if they wish.
- Most RMA plan changes (private and from a local authority) will not be able to proceed after an Regional Planning Committee has adopted is RSS.
- The intention is not for the whole system to stop until NBE plans start. Once an Regional Planning Committee (RPC) has released a decisions version of their NBA plan, the region will ‘switch’ systems from applying only the RMA (and its national direction and plans) to applying only the SPA/NBA (and the NPF, RSS and NBA plans) through to consent decisions on the ground.

Therefore based on the factsheet and current advice from MfE, there is no imminent risk to our existing RMA processes and it will take many years until Northland progresses into the new planning framework. KDC’s first indication will be when the Regional Planning Committee forms and begins work on the RSS, which will then be followed by the work on the NBE plan for Northland, which KDC would be part of.

There is still an outstanding question with MfE about whether KDC would be best placed to have notified the Proposed District Plan (or any plan change) prior to enactment of the NBA or SPA. This would ensure KDC are in an RMA statutory process (this would be under Schedule 1), which may make a difference in respect to any transitional provisions in the Bill (which were not indicated in the Bills presented in late 2022).

However we know from the MfE advice that processes under the RMA will still be encouraged for some time yet and it appears that not being a statutory process would not provide a disadvantage to KDC.

## District Plan review – Options moving forward:

As included in **Attachment B**, staff have provided an evaluation of the available options to Elected Members to address the concerns previously raised. The analysis is discussed in further detail below:

### Option 1 – Continue with District Plan Review and Notify in September 2023

The most important point to convey in respect to this option is that KDC are almost in a position to notify our Proposed District Plan (targeted for Council decision in August 2023 and then public notification in September 2023). The Council has worked hard with (both staff and Elected Members) to deliver the Draft District Plan in September 2022 for public consultation as well as incorporating feedback from key stakeholders to prepare the Proposed District Plan. Some of the feedback from key stakeholders has been that the Kaipara Draft District Plan has been drafted with better quality and more enabling provisions than some notified plans across New Zealand.

The current timetable for preparing the plan has meant that KDC would avoid any potential risk from the impacts of the RM reforms, which were a big unknown when Council previously committed to proceeding with a fast-paced process. We now know that while there is still a minimal risk, MfE has signalled that District Plan reviews can still happen in the transition phase. The RMA doesn't just switch off overnight.

On this basis, with almost 85% of the Proposed Plan drafted and ready to put out for public notification, it is on the cusp of being ready and the cost to date to get to this point is \$1.5M up to notification, which is considerably less than other Council's (as shown in previous briefing material). Following the monthly briefings with Elected Members, the District Planning team need to update the EPlan document and produce a draft "Notified Version" to bring back to Elected Members for direction.

It is understood that some Elected Members have concerns with respect to some of the content of the plan prepared to date – this is not unusual. Please note that developing a district plan is a complex, yet iterative process and staff are working hard to adjust to the direction provided by Elected Members.

The team have revisited the project plan and assuming that notification occurs in September 2023, note the following:

- The submission period would run for approximately 2 months until November 2023 (required to be a minimum of 40 working days).
- From there the district planning team would need to summarise submissions and work towards releasing a summary of submissions - around March 2024, depending on the number of submissions received.
- This would enable further submissions to be received until April/May 2024.
- We anticipate being able to commence hearings from July 2024.

Once the decisions on the plan are released, the appeal period commences and it is difficult to predict how long it may take to resolve appeals, but most appeals tend to be resolved within 1 year.

With regards to District Plan review costs, staff considers that the following costs will apply going forward:

Project Phase	Indicative Costs	Commentary
Up to notification of the Proposed Plan – 2023 – Includes all work done during the last 3 financial years.	\$1.5M	This includes all committed contracts we currently have with Consultants and assumes that a paper will go to the August 23 Council meeting for a decision to Notify in September 23 - therefore assumes no/minimal delay in

		notification and assumes no additional targeted 'pre-notification' engagement with stakeholders (which has a cost).
Notify the Proposed Plan – Prepare Summary of Submissions & Further Submissions – Will take us through to the end of the 23/24 FY	\$500,000 (23/24 FY)	This is the revised estimate of required DP budget for the 23/24 financial year, as it assumes that hearings will commence at the start of the 24/25 FY (and therefore previously predicted legal/consultant costs may not be required during the 23/24 FY).
Hearings (commencing from July 24)	\$800,000 - \$1M (24/25 FY)	Budget needs to include \$\$ for engaging Hearings Panel and legal costs as well as expert/ consultant costs for preparing s42A 'hearing' reports.  Do not envisage that we need more budget than what is in the current LTP for the 24/25 FY, but this would need to be revised as we get further through the Schedule 1 process.
Appeals	\$1M (25/26 FY)	It is difficult to predict appeal costs as we don't know the number and the complexity of appeals

### Option 2 – Continue with the District Plan Review, but take more time

Option 2 would effectively mirror option 1, except for more time being required to prepare the Proposed Plan ready for notification. The key benefit of this option is that it would provide more time for Elected Members to address any parts of the plan that they are not yet comfortable with (i.e. Rural provisions). It would also allow additional time for staff/Elected Members to under further pre-notification engagement with key stakeholders (if this was deemed desirable).

The costs of option 2 are that it will take longer to notify the plan, meaning more cost spent and also the expectation has been set with KDC's key stakeholders to notify the plan in mid-late 2023. This option may also mean that KDC receives more private plan changes to process, given uncertainty around timeframes.

Without knowing the timing of what Elected Member preference might be for a potential notification date if delayed, it is difficult to say whether KDC would enter a statutory process under the Resource Management Act 1991 before the NBA and SPA are enacted. However as set out above, it is clear that Council's will be able to continue with plan changes and District Plan reviews after enactment, staff just have not seen how this has been provided for in the Act yet and depending on timing, it may be that staff would need to respond to the new framework in place.

### Option 3 – Stop the District Plan Review and undertake a zoning Plan Change to the Operative District Plan

One of the most important matters to consider when evaluating this option is the age of the Operative District Plan (ODP). While it was declared Operative on 1 November 2013, it was notified on 21 October 2009. It is an 'aging' plan and with this in mind, Council has been undertaking the District Plan review for the past 2+ years.

The ODP is an effects-based plan, which assesses the "effects" of an activity, as opposed to an "activities-based" plan or hybrid plan, which assesses both activities and effects in the same framework. This is an important aspect of the ODP because the architecture of the ODP is very

different when compared to the Draft Plan, released in August 2022 (which is in the National Planning Standards template).

The National Planning Standards (introduced in November 2019) has not yet been given effect to in the Kaipara ODP. Kaipara District has until November 2024 to implement the standards, which would need to be done if the Elected members choose to proceed with the plan change option. The Planning Standards provides for a hybrid approach in terms of plan architecture, which means it has provisions for both activities and effects. Any plan change to the ODP would need to consider making these changes to the plan to ensure KDC are meeting the required timeframes. It is estimated that it would take a number of months (possible up to six months) to “retrofit” the existing plan into the National Planning Standards format and this task should not be underestimated, as it is a fairly complex process and would require some significant consequential changes (i.e. definitions and rule format) to the ODP.

From the experiences of the Waikato District Council who had to undertake this task as part of its decisions process, the consultants used to prepare this plan commented that it would have been easier to begin a new plan from scratch than to try and retrofit the provisions, as they have found that parts of the plan did not transfer from the decisions version of the plan (which was not in the NPS format) and it took a team of 3 Senior Planners (as Waikato DC did not have internal staff resources) several months to undertake the task at a significant cost to Council.

Without fully knowing the scope of a potential “zoning” plan change that Elected Members may wish to consider, it is difficult to quantify the timeframes and costs that would be required to undertake a plan change. This is because it needs to be known which zones are to be used and which provisions will either be amended or included in the Operative District Plan. If the changes were limited in their scope, this could be accommodated relatively easily. However, this task would depend on the consequential changes required to the plan. For example, if one provision is changed in one chapter, this can often lead to consequential amendments in another chapter, such as infrastructure for example.

It is also difficult to anticipate how many submissions may be received on a “zoning” only plan change, as to date stakeholders/residents have been consulted on a draft District Plan and will not be expecting a “more narrowed” version.

In terms of the RMA Schedule 1 process, a zoning plan change would likely attract more submissions which are outside of the scope of the plan change. Legal advice is often required to determine the scope of these submissions and whether the submission can raise additional matters through the process. For example, if a submitter wanted to incorporate a rule or chapter from the Draft District Plan. Our advice from legal counsel is that this is often a complex and time-consuming process, meaning more costs, particularly if there are a wide range of submissions raising various issues. An indicative cost for legal assistance is upwards of \$150,000 for the hearing phase of a plan change but the true cost would naturally depend on the number/nature of submissions and how many appeals Council received.

In respect to rezoning matters, this topic generally attracts significant attention because landowners have a vested interest, particularly where they might gain an economic benefit for their property. It is important to remember that if selected properties are identified for rezoning, submissions should be anticipated from neighbouring properties also wanting to benefit from the rezoning (the “me toos”). As an example, on the recent Waikato District Plan, 30 out of 67 appeals related to re-zoning requests. This often comes at a considerable cost to Council to resolve appeals.

If Elected Members were to use the existing information from the preparation of the Proposed District Plan, it is important to note that new zones have been introduced from the National Planning Standards and new land use and subdivision provisions would need to be included to marry up with the proposed zones (i.e. Settlement Zone, Rural Lifestyle Zone). These new zones would require significant work to integrate them into the ODP, given that the drafting done to date is for a plan with a hybrid architecture.

Without knowing the extent of the changes required, it is difficult to anticipate how much work may be required and what resource this would require (to undertake the changes) and what costs are involved. While there is some internal capacity to prepare/process the plan change, given current

resourcing issues and high workloads with the processing of 4 private plan changes, the district planning team would likely require additional assistance from external consultants to undertake this work depending on the scope of changes being sought from Elected Members.

#### **Option 4 – Stop the District Plan Review and do nothing**

While option 4 presents possible benefits in terms of cost savings to Council and ratepayers, the costs of pausing the Proposed District Plan and “doing nothing” would present more issues for Council than any of the other 3 options. Additionally, the work and cost spent to date on the Proposed Plan would be sunk costs.

Section 79 of the RMA requires Council's to review their District Plans every 10 years. If Elected Members were to favour this option, Kaipara District Council would be in breach of meeting this legislative requirement. Further to this, if we did not adopt the National Planning Standards by 2024, the Minister for the Environment could direct Council to do this anyway.

There is significant benefit going into the RM Reforms with a new and up to date plan versus a much older plan that no longer gives effect to the higher order documents, which may be 20+ years old by the time transition occurs to the NBE plans.

Given that there's an expectation amongst our communities to deliver a Proposed District Plan this year, there would be considerable disappointment if no further work happens and frustration from developers and professional planners who currently use the Operative District Plan.

This option would also attract more private plan changes from developers, which could lead to unplanned development across the Kaipara District. This would also mean that Council would struggle to respond to the infrastructure needs across the District, as uncoordinated growth is likely to occur in increased infrastructure and servicing requirements. Finally, whilst it is acknowledged that developers fund private plan change requests, when they reach the appeal stage (and they all inevitably do), Kaipara District Council has to wear this (unbudgeted) cost. For example, the costs of ‘defending’ Private Plan Change 78 (Mangawhai Central) were \$150K for Council.

#### **Evaluation of the four Options**

In summary, of the four options presented to Elected Members in **Attachment B**, option 1 is staff's recommended option because it puts Kaipara District Council in the best position possible for the upcoming RM Reforms and will provide an up to date plan that meets the higher order documents and provides enabling provisions for Kaipara residents and developers to benefit from within the next 5 – 10 years, depending on the timeframes for the new Plan to become Operative. It is acknowledged that while there is still some work to do on some parts of the Plan, staff believe that those issues can be overcome in time to put out a new Proposed Plan by September 2023.

While options 2 and 3 are still viable options for Elected Members to consider, there are a greater number of uncertainties in respect to timeframes and the scope of work required to notify either the Proposed District Plan or a “growth” plan change to the Operative District Plan. Both options involve risk, particularly to the communities and stakeholders who have already bought into the delivery of the Proposed District Plan by mid-late 2023. In regard to costs, it is anticipated that option 2 would likely attract more costs as a result of delaying the notification of the PDP and with option 3, it could be that this process attracts potentially the same costs as the PDP, depending on the scope of the plan change and how much of the Operative Plan needs to be amended.

Option 4 is not a viable option for Council, as it puts Kaipara District in the least favourable position moving into the reforms and will lead to continued frustration in the community if Kaipara does not respond to growth and development within the next 10 years.

#### **Next steps | E whaiake nei**

At the District Plan Briefing, Elected Members need to discuss the best option moving forward for the District Plan. Depending on the direction provided, a decision may need to be taken to the May Council Meeting.

## Attachments | Ngā tapiritanga

	Title
A	Transition and Integration – Fact Sheet from Ministry for the Environment
B	Overview of options for Elected Members to consider

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<sup>i</sup> Resource Management Law Association News Brief, 31 March 2023