

RECOMMENDATION FROM THE CITY PLAN HEARINGS PANEL

PROPOSED CITY PLAN CHAPTER 1 - PLAN OVERVIEW AND GENERAL ISSUES AND CHAPTER 2 - ISSUES OVERVIEW

1.0 INTRODUCTION

- 1.1 The Proposed City Plan was publicly notified on 17th October 2009 and submissions closed on 15th December 2009. In relation to proposed Chapter 1 - Plan Overview and General Issues a total of 57 submission points were received. In relation to Chapter 2 - Issues Overview a total of 23 submission points were received. The summary of submissions was prepared and notified on 17th March 2010 with further submissions closing on 1st April 2010. A total of 25 further submission points were received in relation to Chapter 1 – Plan Overview and Chapter 2 – Issues Overview.
- 1.2 The purpose of Chapters 1 and 2 is to set the scene for the overall City Plan provisions. Both Chapters are primarily for information purposes only and to assist in the reading of the Plan. Chapter 2 is also designed to provide a high level overview of the resource management context within which the Plan will operate.
- 1.3 A connection is made here between the significant resource management issues the city faces and the City Plan provisions that follow to address those issues. These provisions also need to ensure that they deliver the purpose and principles of the RMA under Part 2.

2.0 RECOMMENDATION

- 2.1 As the Hearings Panel has delegated authority to hear submissions and recommend a decision on general matters and Chapter 1 – Plan Overview and Chapter 2 – Issues Overview careful consideration has been given to the advice received from Council officers, the content of all submissions, the alterations to the proposed plan content requested by submitters, and the evidence and/or submissions of those submitters and further submitters that appeared at the hearing.
- 2.2 The recommendation of the Hearings Panel is as follows:

Recommendation

That it be Resolved

- (a) That the Council receive the recommendation of the Hearings Panel in relation to Chapter 1 – Plan Overview and Chapter 2 – Issues Overview of the Proposed City Plan.
- (b) That the Council approve proposed Chapter 1 – Plan Overview and Chapter 2 – Issues Overview with the additions, amendments and deletions resulting from the consideration of submissions as set out in Appendix 1 to this report.
- (c) That the Council accept and/or reject in whole or in part the submissions and further submissions as set out in Appendix 2 for the reasons set out in this report.

3.0 SUBMISSIONS

- 3.1 Submissions or further submissions received after the closing date for submissions were accepted or rejected under staff delegation pursuant to s37 of the RMA prior to the hearing commencing.
- 3.2 A general overview of the matters raised through the submissions and further submissions in relation to Chapter 1 – Plan Overview and Chapter 2 – Issues Overview is provided below under each specific topic. For a more detailed summary of the submissions and further submissions received please refer to Appendix 2 of this Recommendation Report.

General Submissions to the Proposed Plan

- 3.3 There were general submissions received on philosophical matters such as the use of prescriptive rules, use of a design panel approach, non notification rules, reference to objectives and policies in Restricted Discretionary Activity assessment, use of discretionary and non complying activities in certain situations.

Plan Format

- 3.4 Submissions were received both in opposition and support of the Proposed City Plan format. Recommended changes to the Proposed City Plan reflect responses to these submissions, but are relatively minor matters in the context of the overall project.

Plan Maps

- 3.5 Submissions were received to clarify aspects of the planning maps and to add or delete specific information on certain sites or areas of the city. These are relatively minor matters in the context of the overall city.

4.0 THE HEARING

- 4.1 The Hearing for Chapter 1 – Plan Overview and Chapter 2 – Issues Overview was held on the 8th June 2010.

Recommendation to the Hearing Panel

- 4.2 The Hearings Panel received a detailed review of all submissions and recommendations on the matters raised in those submissions in the form of a Hearings Report pursuant to s42A of the RMA.
- 4.3 The Council Planner's recommendations were principally guided by sections 5, 6 and 7, under Part 2 of the RMA and section 31 (under Part 4).
- 4.4 Section 5 of the RMA outlines the purpose of the RMA as promoting the sustainable management of natural and physical resources whilst sections 6, 7 and 8 requires decision makers to consider matters of national importance, other matters and the principles of the Treaty.
- 4.5 Section 31 (under Part 4) of the RMA requires decision makers to ensure that objectives, policies and methods achieve integrated management of the effects of the use, development of land and associated natural resources of the district.
- 4.6 In assessing these 'general' planning matters raised by submissions to these chapters no one specific part of the RMA is highlighted, but Hearing Panel is mindful that the overall purpose of the RMA has to be supported by these general provisions.

- 4.7 The Hearings Report recommended that the City Plan Hearings Panel accept proposed amendments which were in response to the submissions received and in accordance with statutory requirements and consistent with the Council's internal policies and strategies.

Submitters

- 4.8 The Hearings Panel heard from and/or received supplementary written evidence from the following submitters:
- (i) Gerry Hodgson, DHT Architects Ltd;
 - (ii) Jason Benton;
 - (iii) Andrew Coker, and Richard Kinzett on behalf of Priority One;
 - (iv) Jeff Fletcher on behalf of Ford Land Holdings, Te Tumu Kaituna 11B2 Trust; Te Tumu Kaituna 14 Trust and Te Tumu Landowners Group;
 - (v) John Collie;
 - (vi) Brendon Gordon,
 - (vii) Craig Batchelar, Boffa Miskell Ltd
 - (viii) Maria Ngatai; and
 - (ix) Carole Gordon.
- 4.9 Below is a summary of each submitter's presentation/tabled evidence

Gerry Hodgson, DHT Architects Ltd

- Mr Hodgson expressed an opinion on what he believed to be a proliferation of rules that have nothing to do with the RMA. He argued that matters such as building height, sunlight admission, and site coverage are not important and that the plan should legislate to reduce expansion over food producing land, for sustainable energy and to reduce greenhouse gases.
- He believed the design criteria for development to be of a 'high architectural standard' to be well intended but too subjective for council to administer. Rather an architectural design panel should be formed.
- Finally, he called for the Council to activate higher density intensification nodes around the city.

Jason Benton

- Mr Benton asked for a design panel to be considered as some of the new Plan rules required design considerations. He felt the Council's design professionals could be used more.

Andrew Coker, and Richard Kinzett on behalf of Priority One

- Some proposed City Plan provisions were overly prescriptive and may restrain growth due to increased compliance costs. Development had to be affordable.

Jeff Fletcher on behalf of Ford Land Holdings, Te Tumu Kaituna 11B2 Trust; Te Tumu Kaituna 14 Trust and Te Tumu Landowners Group

- Mr Fletcher primarily focused on the Plan issues related to Papamoa East and Te Tumu future urban growth area although he had some general comments to make about activity status throughout the Plan.

- He requested that Te Tumu's role in the future expansion of the city be properly acknowledged in Chapter 1 and as part of the significant urban growth issues of Chapter 2. Mr Fletcher noted the reporting planner's recommendations on many of these overview aspects supported his submissions and that was acceptable.
- He expressed the view that the Plan inappropriately references broad objectives and policies in matters of discretion for restricted discretionary activities and used two examples in the coastal area to illustrate his point.
- He also commented on the use of non-complying activity status as the Plan "default rule".

John Collie

- Mr Collie represented the Welcome Bay Catchment Care Group. The Group is actively involved in managing mangroves in the Welcome Bay coastal area.
- He then commented on the Planning Maps covering the Welcome Bay area (R54, R55, R67 and R68).
- He commented that identifying areas below MHWL as Special Ecological Areas in beyond TCC's jurisdiction in this Plan. In particular the area descriptive text appears inaccurate.
- He noted that there are Regional Council consents in place to clear mangroves. Hence the environment of the sites will be changing. The SEA classification will give a false impression to people on the values of these areas, and that the City Plan somehow applies over these areas, which it does not. This is misleading.
- He asked that the maps be changed so that no areas outside the city boundaries be shown.

Brendon Gordon

- Mr Gordon presented his view that the City Plan, City Living Zone created a challenge to apply good architecture and needed the right 'mechanism' to do that. That mechanism was a design panel type process or at least some third party discussion forum.

Craig Batchelar, Boffa Miskell Ltd

- Mr Batchelar represented Bluehaven, Hawridge and the Thorne Group on submissions in relation to the two general chapters and plan maps.
- He acknowledged the reporting planner's favourable recommendations on all the main submission points made on behalf of his clients.
- In addition he wanted the Plan to clearly state that housing affordability is already a significant issue. Also environmental standards compliance costs add to the cost of housing.

Maria Ngatai

- Mrs Ngatai outlined issues pertaining to the presence of Transpower power lines on her property in Matapihi Road.
- Raised concerns regarding flooding hazards and erosion around the peninsula of Matapihi..The stormwater outlet at Waipu Bay was exacerbating erosion in that area.

Carole Gordon

- Mrs Gordon expressed the view that Tauranga City should be aware of its aging population and become an 'age friendly' city by including age friendly provisions within the City Plan.
- She recommended wording changes to Chapters 1 and 2 to make these issues clearer.

5.0 STATUTORY CONSIDERATIONS

Part 2

- 5.1 In considering the general submissions and Chapters 1 and 2 the Hearing Panel is guided by the requirements of Section 5 – Purpose of the RMA which is identified as follows:

Section 5 – Purpose

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources*

- 5.2 Section 5 of the RMA outlines the purpose of the RMA as promoting the sustainable management of natural and physical resources whilst Sections 6, 7 and 8 requires decision makers to consider matters of national importance, other matters and the principles of the Treaty.

Section 31

- 5.3 Section 31 of the RMA identifies the functions of the Council for the purpose of giving effect to the RMA. In particular section 31(a) and (b) state that these functions include:

- (a) *the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
- (b) *the control of any actual or potential effects of the use, development, or protection of land....*

Other Relevant Provisions

- 5.4 In establishing a regulatory framework that enables the Council to undertake its functions under section 31, the Proposed City Plan is also required to:
- Have regard to any management plans or strategies prepared under other legislation (s74(2)(b));
 - Give effect to any national policy statement, the New Zealand Coastal Policy Statement and any regional policy statement (s75(3)); and
 - Not be inconsistent with any regional plan (s75 (4)).
- 5.5 The Hearings Panel is of the view that these statutory matters are addressed in detail in relation to each part of the City Plan provisions and the Hearings that have been held in relation to those provisions.
- 5.6 For the purpose of considering the general submissions received and those in relation to Chapter 1 – Plan Overview and Chapter 2 – Issues Overview, an overview of the statutory requirements is appropriate. Where a particular provision of the RMA has a strong influence on these general matters in these two chapters that is

identified in the considerations outlined below in Section 6 of this Recommendation Report.

6.0 CONSIDERATION OF SUBMISSIONS AND CONCLUSIONS

6.1 The Hearing Panel's consideration and recommendation on the issues that were raised through the submissions and further submissions process in relation to general matters and Chapter 1 – Plan Overview and Chapter 2 – Issues Overview are discussed in more detail in Appendix 1 of this Recommendation Report.

6.2 The matters discussed below are the Panel's decision on the key matters and other matters that were raised specifically at the Hearing. These decisions are a result of considering the Council Planner's recommendation and the points raised through submissions at the hearing.

Activity Status and Design Panel

6.3 Several architects argued for a more "permissive" planning approach but also for the use of a design panel approach to assess the merits of a proposal. The problem with that approach is that the RMA clearly requires permitted activities to have certainty (that is without any discretion applied) whereas the submitters wanted to apply discretion on design matters which can only be done through a consent process. It is not effective or efficient to make all development go through a consent process. Secondly, whether the Council wishes to allocate resources to support a design panel approach is not a matter for the City Plan but an Annual Plan/ 10 Year Plan matter.

6.4 The second main area of concern raised at the Hearing was by Mr Fletcher in relation to activity status in the Proposed City Plan, particularly reference to objectives and policies for a Restricted Discretionary Activity assessment and also having a non-complying activity status as the 'default' status in the Plan.

6.5 The Panel is of the opinion that objectives and policies are an integral part of the Plan content and provide the policy direction of the City. Hence they are appropriate as matters of discretion along with other specific matters for assessment provided they are placed in the appropriate context of a relevant assessment.

6.6 In relation to the 'default' activity status the Panel accepts the view of the reporting planner that by virtue of the permissive presumption of Section 9 RMA a default rule is needed to ensure effects of activities not specified in the Plan can be avoided, remedied or mitigated. In other circumstances where a permitted activity rule is not complied with, the experience of implementing the Operative District Plan over a long time period has been that failure to comply with some specific rules may introduce effects that are broad in nature and requiring a wider environmental assessment that is not possible if the discretion has been restricted under the current Restricted Discretionary Activity approach. The Panel in making its determination for the Proposed Plan needs to recognise from that Operative District Plan experience and provide an appropriate planning response to this issue. The non-complying activity status is therefore an appropriate planning solution.

Planning Maps

6.7 Several submitters raised points in relation to the maps, both specific and more general. Minor amendments to the maps are supported where noted in Appendix 1 to this Report. In relation to the Proposed Plan jurisdiction matter raised by Mr Collie it is noted that generally areas outside the TCC jurisdiction (below Mean High Water

Spring (MHWS)) have not been shown but there are several overlay exceptions such as the Special Ecological Plan Area. The purpose of these overlays has been to acknowledge that their environmental values do not just stop at MHWS. However there has to be clarity on the maps that the actual Plan jurisdiction stops at MHWS and does not extend beyond that, even when shown as a feature on the maps. A simple approach is to include MHWS notation of the Right-Hand side of the planning maps where applicable. This will show the Plan jurisdiction by linear means. Furthermore, within the Plan text for Chapters 5 and 6, where the Plan Areas cross MHWS, specific reference is made to the jurisdictional boundary as a result of other submissions raised within those relevant hearings.

Plan Format

- 6.8 It is acknowledged that the presentation of the Proposed Plan could benefit from some differentiation between objectives, policies and rules. This can be done by reviewing the format style and numbering system. In addition, the Suburban Residential Zone provisions, which are likely to be the most used in the Plan are to be moved to the front section of Chapter 14 along with other formatting/ numbering upgrades.

Chapter 1 – Plan Overview (Specific Submissions)

Jeff Fletcher

- 6.9 The Panel heard from Mr Fletcher in relation to the Future Urban Zone. The Panel notes that the details of this zone and its purpose are rightly covered in Chapter 16 – Rural Zones and as such there is no need to repeat details in this Chapter 1 – Plan Overview as requested by Mr Fletcher.

Carole Gordon

- 6.10 Ms Gordon addressed the Panel on ‘age friendly’ matters. While acknowledging the issue the Panel do not see how a District Plan has to have specific age friendly provisions in it, other than the land use activities or rules already provided for in the Plan. Most of the submitter’s points are matters more relevant to the LTCCP and other strategies that the Council has developed.
- 6.11 The Panel accepts and adopts the recommendations of the Reporting Planner in regard to Chapter 1 – Plan Overview as there are some minor wording changes recommended that the Panel confirm as being appropriate after hearing submissions and reviewing the Planners Report. These changes are outlined in Appendix 3 of this Recommendation Report.

Chapter 2 – Issues Overview (Specific Submissions)

Cross Boundary Issues

- 6.12 Several submitters raised legislative or cross-boundary issues. The Panel considers that these minor plan text changes will aid in Plan interpretation and are to be provided for as outlined in Appendix 1 of this Recommendation Report...

Significant Resource Management Issues

- 6.13 A second set of submissions raised matters relating to the way the Proposed City Plan articulates the significant resource management issues, or not as the case maybe. There is no one right way to express these issues. This section of the

Proposed City Plan aims to be of a high-level nature only and does not need to deal with detail. Matters of detail are addressed, as appropriate, in the other relevant Chapters of the Plan.

- 6.14 The Panel accepts and adopts the recommendations of the Reporting Planner in regard to Chapter 2 – Issues Overview as there are some minor wording changes recommended that the Panel confirm as being appropriate after hearing submissions and reviewing the Planners Report. These changes are outlined in Appendix 3 of this Recommendation Report



Commissioner David Stewart
Chairman – City Plan Hearings Panel

Date: 4/3/11