

Terms of Reference for Panel of Experts assisting with S 42A process for Chapter 4 of Proposed District Plan, 2013

Background

Coastal erosion hazard risk assessment

In August 2012, the Council received a report it had commissioned from Coastal Systems Ltd (CSL) on their assessment of the risks of coastal erosion hazards along the Kāpiti Coast. This assessment was intended to support new development controls to be documented in a revised District Plan. CSL were first contracted in 2005 to complete an analysis of the 50 year risk. However, when the draft report was submitted in 2008, the Council was aware that the Department of Conservation was consulting on a draft Coastal Policy Statement including a requirement to use a 100 year planning horizon. The Council decided to delay finalising the hazard assessment until the NZCPS was published which occurred in 2010 with the 100 year requirement unchanged. As a result, CSL were contracted to extend their risk assessment out to 2110.

Policy 24 of the NZCPS is as follows:

Policy 24: Identification of coastal hazards

1. Identify areas in the coastal environment that are potentially affected by coastal hazards (including tsunami), giving priority to the identification of areas at high risk of being affected. Hazard risks, over at least 100 years, are to be assessed having regard to:
 - a. physical drivers and processes that cause coastal change including sea level rise;
 - b. short-term and long-term natural dynamic fluctuations of erosion and accretion;
 - c. geomorphological character;
 - d. the potential for inundation of the coastal environment, taking into account potential sources, inundation pathways and overland extent;
 - e. cumulative effects of sea level rise, storm surge and wave height under storm conditions;
 - f. influences that humans have had or are having on the coast;
 - g. the extent and permanence of built development; and
 - h. the effects of climate change on:
 - i. matters (a) to (g) above;
 - ii. storm frequency, intensity and surges; and
 - iii. coastal sediment dynamics;

taking into account national guidance and the best available information on the likely effects of climate change on the region or district.

Also relevant is Policy 3:

Policy 3: Precautionary approach

1. Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.
2. In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:
 - a. avoidable social and economic loss and harm to communities does not occur;
 - b. natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and
 - c. the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.

In reviewing its District Plan, the Council has developed a new set of development policies and rules in relation to the hazards identified as required by the Resource Management Act (RMA) 1991. The process relating to public consultation on the Proposed District Plan (PDP) is summarised below.

In addition to the requirements to identify and mitigate natural hazards contained in the RMA, the Council is further obliged by the Local Government Official Information and Meetings Act 2002 to supply on request any information it holds on such hazards in relation to specific properties (Land Information Memorandum or LIM). In a letter of 25 August 2012, affected property owners were informed of the existence of CSL's report and the specific coastal hazard information relating to their property which would henceforward be included on LIMs.

This action by Council in relation to LIMs has been challenged and is currently subject to a judicial review. The outcomes of that review are expected to be made known in the next few weeks.

Proposed District Plan process

The PDP was notified on 29 November 2012. Chapter 4 addresses coastal hazards. Submissions were called for with a closing date of 2 April 2013 for submissions on Chapter 4 and related parts of the PDP. Because of the contentious nature of the coastal erosion hazard assessment issues, the Council resolved to appoint independent commissioners to hear submissions in relation to Chapter 4 and related parts of the Plan.

Submissions were then summarised and circulated to all those submitting on the PDP to allow them to make cross-submissions on issues raised by other submitters.

Once the cross-submissions are received and summarised, pre-hearing discussions will be held culminating in a report to the hearings commissioners produced by the planners - the Section 42A report. The Section 42A report is the planners' report to the hearing commissioners responding to issues raised in submissions.

During the pre-hearing phase, experts discuss the technical and scientific issues raised by submitters and identify areas of agreement and disagreement with a view to resolving those issues. This process is known as caucusing or conferencing. They then produce, individually or as a group, a conference statement on their

conclusions. The conference statement(s) must be included in the S42A (RMA) report. In addition, an independent statement of evidence may be required. This could be submitted directly to the commissioners or included as an appendix to the S42A report.

Councillors' resolution to establish Panel of Experts

On 18 April 2013 the Council resolved to appoint three independent coastal experts, additional to its existing coastal experts, to consider the coastal hazard work done to date and be part of pre-hearing expert-to-expert technical discussions with the Council's existing coastal experts and submitters' coastal expert witnesses. It also resolved to invite nominations of these experts from people who made submissions on coastal issues.

The full Council resolution is below:

MOVED (Lester/Lloyd)

That Council approves the following:

- a) **That a panel of three independent experts be appointed by Council to be involved in the District Plan pre-hearing assessment and conferencing relating to coastal erosion hazard lines and management areas as prescribed in Section 42A of the Resource Management Act 1991 and**
- b) **The independent experts be provided full access to all information relating to the coastal erosion hazard work that Council has carried out over the past 9 years, and**
- c) **The Chief Executive provide a report to a Working Party of six councillors (Cr Cardiff, Cr Lester, Cr Church, Cr Gurnathan, Cr Gaylor, Cr Wooding) that will make recommendations to Council on the appointments to the panel and**
- d) **Submitters on coastal erosion hazard lines and management areas be invited to submit names of appropriately qualified experts to the Chief Executive for inclusion in the report to the Working Party.**

CARRIED

As a result of that process, the Council has appointed the following to be members of the independent panel:

- Dr Paul Komar, Emeritus Professor of Oceanography, Oregon State University;
- Dr Paul Kench, HOD, School of environment, University of Auckland; and
- James Carley, Senior Project engineer, Water Research Laboratory, University of New South Wales.

At the suggestion of submitters, the Council has also appointed a statistical expert, Dr Paul Cowpewart, HOD, School of Computing and Mathematical Sciences, Auckland University of Technology, to be included in the panel's discussions where matters of statistical analysis are at issue.

Desired outcome

The Council's objective in appointing the independent panel of experts is to gain access to a completely impartial view on technical issues of coastal science raised by Chapter 4 submitters regarding the data and methods used by CSL in undertaking their coastal erosion hazard risk assessment. These issues include, but are not limited to,

- accretion
- the use of the 2008 shoreline as a reference shoreline
- the sea level rise figures used
- the combined uncertainty value in relation to the precautionary approach.

Requirements of panel members

Panel members are expected to:

- be scientists or engineers with current best practice experience in coastal processes and to use that expertise in this conferencing process;
- contribute as impartial experts to technical and scientific discussions of issues raised by submissions in order to resolve differences in conclusions drawn as far as is possible. In participating in these discussions, panel members will be mindful of international best practice in coastal hazard identification and risk assessment over multi-decadal time scales, including recent best practice material published in New Zealand¹;
- consider, as part of this process:
 - whether the data used in making the hazard assessment is sufficiently complete;
 - the fitness for purpose of the methodology used in making the hazard assessment;
 - the appropriateness of the hazard risk conclusions reached by CSL based on the data and methodology used;
- contribute to a group conference statement **or** provide an individual conference statement on areas of agreement and/or disagreement between the technical experts, such statement to be included unchanged in the planners' S42A report;
- contribute, if required, an independent, impartial, opinion-based statement of evidence;
- attend hearings as expert witness, if required.

For the removal of doubt, assumptions about the level of risks willing to be taken by the community or the ability to manage them are out of scope.

¹ For example, the recent NIWA publication "*Defining coastal hazard zones and setback lines: a guide to good practice*" by Ramsay DL, Gibberd B, Dahm J, Bell RG (2012).