

The logo for Coastal Ratepayers United (CRU) is displayed on a black rectangular background. The letters 'CRU' are rendered in a large, white, stylized, hand-drawn font. To the right of 'CRU', the words 'Coastal', 'Ratepayers', and 'United' are stacked vertically in a smaller, white, monospaced font.

CRU Coastal
Ratepayers
United

Presentation to Council

Proposed Private Plan Change

A better way forward:

- ✓ community engagement
- ✓ statutory compliance
- ✓ and lower costs

CRU Background

- CRU was established in 2012 – and has since that time has been committed to:
Good Science, Good Planning and Good Law
- Today we have a membership of over 500
- 2013 High Court Judicial Review – the faulty erosion hazard lines were removed as were the hazard and policies derived from the lines in the (then) proposed District Plan (Chapter 4)
- As a result, the Council commissioned:
 - an independent science panel which concluded that the science was not sufficiently robust
 - An independent review of the 2012 proposed district plan which recommended that chapter 4 be withdrawn and a variation be notified

CONTENTS



What CRU is proposing



Legal basis for CRU's private plan change (PPC) application



RMA, NZCPS and Environment Court matters



Best practice advice on PPP applications from QP Quality Planning,
<https://www.qualityplanning.org.nz/>



CRU's draft Scope of Work and Memorandum of Understanding Decisions required from Councillors

CRU'S PROPOSAL

- CRU proposes to prepare a change to the district plan to cover coastal hazards.
- When CRU has prepared the plan change it is proposed that Council will then 'adopt' it – i.e. take it through notification, submissions and decision making.
- CRU's plan change will be prepared by an independent consultant approved by Council, and CRU will pay for the work up until the plan change is presented to Council.
- Once Council adopts the CRU plan change it will pay all costs until completion of the process.

CRU'S PROPOSAL

- This only works if Council enthusiastically supports it, as a means of resolving a long standing problem, engaging with communities in an issue which affects many people, and saves significant costs.
- The concern about unplanned costs should be seen as an opportunity to avoid significantly greater costs – e.g. last time CRU litigated - Council spent well over \$200,000 just on lawyers.
- CRU would prefer to engage with Council staff during plan preparation – but only if they wish the project to succeed.
- Funding this will be a significant undertaking for CRU – and doing so without a high level of confidence in Council's position makes no sense.

PRIVATE PLAN CHANGE PROVISION

RMA Schedule 1 Part 2

Clause 21 Requests

(1) Any person may request a change to a district plan or a regional plan (including a regional coastal plan).

Clause 22 Form of request

(1) A request made under clause 21 shall be made to the appropriate local authority in writing and shall explain the purpose of, and reasons for, the proposed plan or change to a policy statement or plan and contain an evaluation report prepared in accordance with section 32 for the proposed plan or change.

PRIVATE PLAN CHANGE PROVISION

- The purpose of CRU's proposed private plan change is to implement coastal hazard provisions in the Kāpiti Coast Operative District Plan 2021.
- The reason for CRU making such application is that the Council has failed to implement NZCPS 2010 in a timely manner (as required by NZCPS 2010 and RMA sections 21 and 55).
- It has also failed to abide by its Council Resolution of 24 July 2014, and its subsequent, self-imposed timeline (notification of a coastal hazard plan change within 4 years of 23 Nov 2016) to the Environment Court under *Coastal Ratepayers United Inc. v Kāpiti Coast District Council [2017] NZEnvC 31*.

Council Obligation under Section 21 RMA

21 Avoiding Unreasonable Delay

Every person who exercises or carries out functions, powers, or duties, or is required to do anything, under this Act for which no time limits are prescribed shall do so as promptly as is reasonable in the circumstances.

COUNCIL OBLIGATIONS: UNDER NZCPS 2010

This NZCPS is to be applied as required by the Resource Management Act 1991 (“the Act”) by persons exercising functions and powers under the Act. The Act itself should be consulted, but at the time of gazettal of this statement, its requirements in relation to this NZCPS are, in summary, that:

- regional policy statements, regional plans and district plans must give effect to this NZCPS (sections 62(3), 67(3)(b), 75(3)(b) refer);
- local authorities must amend regional policy statements, proposed regional policy statements, plans, proposed plans, and variations to give effect to NZCPS provisions that affect these documents as soon as practicable, using the process set out in Schedule 1 of the Act except where this NZCPS directs otherwise (section 55 refers);

BACKGROUND: ENVIRONMENT COURT 2016/2017

- [34] Those comments bring me to **the issue of the period of time (presently estimated as four years) which is likely to elapse before the Council commences the plan change processes necessary to bring down the alterations to the existing coastal hazards provisions** and CRU's complaint as to that length of time.
- [35] I commence my comments in that regard by noting that nothing in ss 79(2), (3), (6) or (7) requires a reviewing local authority to commence Schedule 1 processes within any specified time of completing its review. **Obviously the Council is bound by the provisions of s 21 RMA which requires it to exercise its functions "as promptly as is reasonable in the circumstances"**.
- [36] **A delay of some four years** in commencing the required alteration by plan change **might be regarded as pushing the extreme boundaries of promptness** and CRU's concerns in that respect are understandable. The explanation for that time period was set out in Ms Stevenson's affidavit summarized in the Council's submissions. It must also be recognized that there will be a further period of time before any potentially controversial plan change process is completed...
- [38] ...**Prima facie, I accept that the information provided in Ms Stevenson's affidavit** together with the Council's submissions support the proposition that the likely time frame is reasonable in these particular circumstances, although **I do not make any definitive finding in that regard** and would require a good deal more information before doing so.
- [39] In making those observations **I acknowledge that the situation** where control of coastal hazards will continue to be undertaken for a substantial period of time pursuant to provisions of the ODP...**is seriously unsatisfactory...**



The RMA Quality Planning Resource

WORKING WITH THE PRIVATE PLAN CHANGE PROCESS



Councils can enable, or facilitate, the private plan change process, and reduce its complexity and length. Councils should work closely with the applicant at all stages.

- Be receptive to private plan changes as a legitimate tool under the RMA. Provide information for applicants and for the general public on how the private plan change process works. The community needs to understand how councils make decisions about private plan changes.

THE PRIVATE PLAN CHANGE PROCESS



1. The applicant lodges a private plan change request with the district or regional council.
2. The council processes the request, can request further information and commission reports if necessary.
3. The council may modify the request with the applicant's permission if appropriate.
4. The council decides whether to adopt, accept, or reject the request, or convert the request to a resource consent.
5. The council publicly notifies a request that it has adopted or accepted allowing submissions and further submissions to then be made.
6. The council holds a hearing where it assesses the request and submissions made and then issues a decision on the request.
7. The council decision is open to appeal to the Environment Court.



CRU'S PREFERRED OPTION ON PRIVATE PLAN CHANGE

2. ADOPT REQUEST

- If the council adopts a private plan change, it continues through the process as if it was a council initiated plan change. This implies that the council generally supports the change proposal and it will bear the cost of managing the plan change from the date that it adopts it. If the council adopts the plan change, it is notified, heard and decided in the same way as a council-initiated plan change.
- The request must be notified within four months of the local authority adopting the request.

COUNCIL DECIDES ON THE REQUEST



After receiving all the necessary information, the council has 30 working days to decide whether to adopt or accept the request in whole or in part, convert the request to a resource consent, or reject the request.

COUNCIL OPTIONS ON PRIVATE PLAN CHANGE

- Before making a decision on which option to select – the Council can ask for more information
- Should the Council adopt the plan change Council must consult under Part 1 prior to notification
- If Council decides to reject the plan change as proposed, it would reimburse CRU

FINALLY

- Councils can enable, or facilitate, the private plan change process, and reduce its complexity and length. Councils should work closely with the applicant at all stages (QP website).
- Scope of Work (hardcopy provided): CRU has worked collaboratively with Council staff in preparing a draft ‘Scope of Work’ for the contracting of an independent consultant to prepare the Private Plan Change.
- Memorandum of Understanding (hard copy provided): CRU has worked collaboratively with Council staff in preparing a draft ‘Memorandum of Understanding’ for approval by the Council, and/or the CEO (as appropriate) prior to its undertaking the ‘Scope of Work’ (referred to above).
- If the Council chooses not to work collaboratively with CRU in this process then other options must be on the table including going back to Court.

Ultimately, this works if and only if Council want to make it work

