

|                          |        |
|--------------------------|--------|
| Report No.               | 18-166 |
| <b>Decision Required</b> |        |

## PLAN CHANGE 2 PROCESS

### 1. PURPOSE

- 1.1. This report outlines the two RMA planning pathways that may be used to make progress on revision of Table 14.2, known as **Plan Change 2 (PC2)**. These are the standard planning process and the **streamlined planning process (SPP)**.

### 2. RECOMMENDATION

That the Committee recommends that Council:

- a. receives the information contained in Report No. 18-166;
- b. resolves to pursue a streamlined planning process for Plan Change 2; and
- c. directs the Chief Executive to:
  - i. prepare an application to the Minister for the Environment for a direction for a streamlined planning process to revise Table 14.2 of the One Plan; and
  - ii. incorporate the hearing of submissions by independent commissioners into the requested streamlined process.

### 3. FINANCIAL IMPACT

- 3.1. A plan change process was provided for in the LTP budget for 2018-19. The cost of a SPP is predicted to be less than using the standard process.

### 4. COMMUNITY ENGAGEMENT

- 4.1. Early engagement with iwi and hapū on the proposal to update Table 14.2 and its implications began in early August and is continuing. Plan Change information was posted on Horizons' website after the August Strategy & Policy meeting. Consultation with resource users and other stakeholders has begun and will go beyond what is strictly required by Schedule 1 of the **Resource Management Act 1991 (RMA)** regardless of which plan process is used.

### 5. SIGNIFICANT BUSINESS RISK IMPACT

- 5.1. Delays in progressing a plan change process, either by notifying PC2 or applying for a direction from the Minister for the Environment to carry out a streamlined planning process, could have significant implications. These include the risk of further legal challenge.

### 6. BACKGROUND

- 6.1. In response to a report to this Committee in August (18-112), Council has directed the Chief Executive to proceed toward notification of a plan change to recalibrate Table 14.2 of the One Plan as soon as possible.

6.2. There are two appropriate procedural options for this particular plan change proposal:

- the standard process set out in Part 1 Schedule 1 RMA, and
- the SPP set out in Part 5 RMA.

The key differences between the two processes are set out in the table attached as **ANNEX A**.

- 6.3. The One Plan was developed using the standard planning process. The process includes pre-notification consultation, notification, submissions, further submissions and a Council hearing. Submitters can appeal Council's hearing decision on submissions. In a standard process Council retains decision-making powers and determines the timing of different stages, within the bounds of the RMA.
- 6.4. The One Plan process took seven years to complete. It is considered that this simple plan change could be shorter than that.
- 6.5. In an SPP, Council applies to the Minister for the Environment for a direction to use the SPP, and then carries out the process as set out in the direction. The process is based on the standard process with some steps being optional depending on the circumstances. A key difference is that appeal rights are limited to very narrow circumstances that do not apply to the type of plan change Council is pursuing.
- 6.6. The minimum SPP requirements are pre-notification consultation (if not already completed), notification and submissions. Submissions can be evaluated with or without a Council hearing, and a final version of the proposed change forwarded to the Minister. The Minister decides whether to accept or decline the change, or refer it back to Council to alter or reconsider.
- 6.7. Optional steps such as further submissions and a Council hearing can be included in the direction from the Minister.
- 6.8. There have been two SPP since the option became available in April 2017. These are focused on enabling urban and residential development in the Bay of Plenty Region and Hastings District. Hastings District Council made its recommendations to the Minister in July and is awaiting his final decision. Bay of Plenty Regional Council must make its recommendations by 3 September. The directions for both these SPP included a council hearing of submissions. The length of the process after the direction was issued was six months for the Hastings District Council SPP and seven months for the Bay of Plenty SPP so far.

## 7. DISCUSSION

- 7.1. SPP is a new process, available in specific circumstances such as responding to urgent or unanticipated issues. It is intended to provide a quicker alternative to the standard process, and to allow plan-making processes and timeframes to be tailored to specific issues and circumstances.
- 7.2. New section 18A, setting out procedural principles, was inserted into the RMA at the same time. These principles include that "every person exercising powers and performing functions under this Act must take all practicable steps to... use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised..."
- 7.3. Officers are confident that PC2 would meet at least one of the criteria for applying to the Minister for a direction: "a plan or policy statement raising an issue that has resulted in unintended consequences."

- 7.4. Revision of Table 14.2 is a very narrow, technical plan change. It is being done to respond to unintended adverse consequences of OVERSEER<sup>®</sup> improvements on implementation of the intensive farming land use rules. This type of plan change appears to sit very well with the intention of the SPP and is a viable option for Council to pursue.
- 7.5. As mentioned in paragraph 6.7, holding a Council hearing of submissions is an optional requirement of the SPP. However, given the wide interest in the One Plan's nutrient management provisions, it is considered that a hearing of submissions by an independent commissioner(s) would ensure the process is transparent and robust.

## 8. COMMENT

- 8.1. Officers have considered the practical differences, advantages and disadvantages of the two processes in the context of PC2.
- 8.2. In terms of timing, there is less certainty during the commencement of a streamlined process (that is, when notification of the proposed plan change will occur) because it depends on the Minister responding to the request for a direction. There is no timeframe within the RMA for this step. However, once the direction is issued, the formal process (including the amount of time allowed for pre-notification consultation and who must be consulted) is prescribed and the timeframes certain.
- 8.3. The process should include fewer steps than a standard process. Officers consider that the further submissions step is unnecessary, however, given the potential wide public interest in PC2, a council hearing would be advisable. There is no limit on how long the Minister can take to respond to Council's recommendation other than a general duty to use timely and efficient processes. Appeals would not be allowed for PC2.
- 8.4. For a standard process, Council retains control over the timing of notification and can proceed once pre-notification steps (including consultation requirements) are concluded. Council (and its appointed representatives) retains decision-making power. However, the ability to appeal means the extent and end-point of the process is very uncertain and could be drawn out over months or years.
- 8.5. Officers consider that the SPP is the most fit for purpose process for PC2. The SPP is likely to take longer to start, but will be completed more quickly than the standard process which may be quicker to start, but almost certainly take a lot longer to complete. It is considered that the SPP will be more cost-effective than the standard process because of the reduced number of planning steps, especially the lack of appeal provisions.

## 9. CONSULTATION

- 9.1. PC2 will, regardless of whether a standard or streamlined process is undertaken, require as a minimum consultation prior to notification of the proposed plan change and formal consultation in the form of submissions.

## 10. TIMELINE / NEXT STEPS

- 10.1. If Council resolves to pursue a SPP to amend Table 14.2, officers would continue to prepare for notification of PC2, including consulting with iwi, stakeholders and the community. Simultaneously, we would work closely with officers from the Ministry for the Environment RM Practice Directorate to prepare and submit the request for direction as soon as possible.
- 10.2. Once submitted, formal notification of a plan change must wait until the Minister issues and gazettes his direction. There is no restriction on how long this could take, and the Minister could also seek further information or decline the request. Once a direction has been issued, Council must comply with the process, expectations and reporting requirements it sets out.

**11. SIGNIFICANCE**

- 11.1. This is not a significant decision according to the Council's Policy on Significance and Engagement because consultation, engagement and decision-making must be carried out in accordance with the RMA.

Barry Gilliland  
**ACTING MANAGER STRATEGY & POLICY**

Pen Tucker  
**POLICY ANALYST**

**ANNEXES**

- A Comparison of Streamlined and Standard Plan Change Processes