



Report To: Regional Direction and Delivery Committee

Meeting Date: 04 April 2018

Report From: David Phizacklea, Regional Integrated Planning Manager

Late Item - Notification decision: Request for Plan Change: Debris Flow Risk Management on the Awatarariki Fanhead, Matatā

Executive Summary

Whakatāne District Council has requested that the Regional Council now publicly notify the proposed regional plan change relating to the Awatarariki fanhead. The Committee needs to now consider the changed circumstances, set out in a letter dated 29 March 2018 from Whakatāne District Council, which advise the test for limited notification of directly affected persons is not able to be met.

Because the Committee has previously resolved to undertake limited notification, this will require the Committee's previous decision of 20 February 2018, to follow a limited notification process, to be rescinded and a new decision to be made to publicly notify the change.

Recommendations

That the Regional Direction and Delivery Committee under its delegated authority:

- 1 Pursuant to section 46A of the Local Government Official Information and Meetings Act 1987, considers Late Item - Notification decision: Request for Plan Change: Debris Flow Risk Management on the Awatarariki Fanhead, Matatā as a late item at the meeting.**
- 2 Receives the report, Late Item - Notification decision: Request for Plan Change: Debris Flow Risk Management on the Awatarariki Fanhead, Matatā;**
- 3 Rescinds paragraph 4 of its resolution of 20 February 2018, relating to item Notification decision: Request for Plan Change: Debris Flow Risk Management on the Awatarariki Fanhead, Matatā, as follows:**

[That the Regional Direction and Delivery Committee under its delegated authority: ...]

- 4 Agrees to limited notification of the proposed regional plan change under clause 5A of Schedule 1 to the Resource Management Act 1991; and that the limited notification to include Awatarariki fanhead**

residents, the wider Matatā community, tangata whenua, Department of Conservation and relevant utility operators; ...

- 4 Agrees to public notification of Proposed Regional Plan Change 17 to the Bay of Plenty Regional Natural Resources Plan under clause 5 of Schedule 1 to the Resource Management Act 1991.**

1 Late item

This item was not included in the agenda as the letter from Whakatāne District Council was not received until after the agenda had been published, and its consideration cannot be delayed until a subsequent meeting as, at its meeting on 29 June 2017, the Regional Council resolved that “Planning decisions on this matter need to be expedited as soon as possible to give certainty to the Matatā community and residents”.

2 Purpose

The purpose of this report is to inform the Committee of new information that requires a reconsideration of the decision to subject the requested plan change to limited notification and to recommend that Proposed Change 17 (Awatarariki Fanhead) now be publicly notified.

3 Background

At its meeting on 20 February 2018, the Committee received the report *“Request for Plan Change: Debris Flow Risk Management on the Awatarariki Fanhead, Matatā”*, and, having accepted the request from Whakatāne District Council, agreed to limited notification of the proposed plan change.

The Chief Executive of Whakatāne District Council has since written to the Regional Council Chief Executive on 29 March 2018 advising that, due to a change of circumstances (set out in the letter, attached as Appendix 1), WDC has decided to publicly notify its own district plan change and now requests that the proposed regional plan change also be publicly notified.

4 Rescinding of decision

At its meeting on 20 February 2018, the Committee resolved:

That the Regional Direction and Delivery Committee under its delegated authority: ...

- 4 Agrees to limited notification of the proposed regional plan change under clause 5A of Schedule 1 to the Resource Management Act 1991; and that the limited notification to include Awatarariki fanhead residents, the wider Matatā community, tangata whenua, Department of Conservation and relevant utility operators; ...**

As set out in the letter from Whakatāne District Council, clause 5A(2) of Schedule 1 to the Resource Management Act 1991, requiring the local authority to identify all persons directly affected, cannot now be complied with. On this basis it is now recommended to revert to the normal public notification process under Schedule 1.

This requires the Committee to rescind its decision, paragraph 4 of its resolution of 20 February 2018, set out above, and pass a new resolution to publicly notify Proposed Regional Plan Change 17 to the Bay of Plenty Regional Natural Resources Plan. This is included in this report's recommendation.

5 Risks

The risk of limited notification of Plan Change 17 is that the notification decision is challenged through judicial review in the High Court. This will introduce delays, as well as increased costs and adverse publicity associated with having to re-notify the plan change if such a review were successful.

There is also additional risk in that the clause 5A limited notification provision is new and therefore there is no specific case law to guide its application.

The risk of publicly notifying Plan Change 17 is that submissions are potentially received from persons not directly affected by, or not having an interest in, the plan change. The plan change could attract submissions from persons and/or organisations concerned that the plan change will set a precedent for natural hazard risk management in other areas of New Zealand, an issue that relates to the content of the Resource Management Act per se, rather than the merits of this plan change.

It is considered that the risks associated with limited notification outweigh the risks of public notification.

6 Council's Accountability Framework

The statements under Council's Accountability Framework in the item presented to the 20 February 2018 meeting continue to apply.

Martin Butler
Regional Planner

for Regional Integrated Planning Manager

29 March 2018