

SECTION 32 ANALYSIS FOR

PROPOSED PLAN CHANGE 34 TO THE CENTRAL AREA SECTION OF THE DISTRICT PLAN TO INCORPORATE THE REQUIREMENTS OF THE HAURAKI GULF MARINE PARK ACT 2000

Introduction

This report provides a section 32 analysis undertaken as part of the development of Plan Modification ... to the Central Area Section of the District Plan. This Plan Change introduces certain amendments to the District Plan required to give adequate recognition to the Hauraki Gulf Marine Park Act 2000 (“HGMPA 2000”).

The HGMPA 2000 requires that territorial authorities make such changes as are necessary, within 5 years of its enactment, to ensure the provisions of the District Plan do not conflict with its objectives and its recognition of the national significance of the Hauraki Gulf.

This assessment considers the provisions of the Central Area section of the District Plan in terms of this requirement, recommends certain changes to the District Plan, and assesses those changes against section 32 (the duty to consider alternatives, etc) of the Resource Management Act 1991 (“RMA 1991”).

Contents of this report

- 1.0 The Hauraki Gulf Marine Park Act 2000
- 2.0 Summary of the Proposed Plan Change
- 3.0 Assessment of the Proposed Plan Change against Section 32 of the Act
- 4.0 Conclusion

1.0 The Hauraki Gulf Marine Park Act 2000

1.1 The Requirement of the Hauraki Gulf Marine Park Act 2000

- 1.1.1 Section 9(3) of the HGMPA 2000 states that a territorial authority must ensure that any part of a District Plan that applies to the Hauraki Gulf, its islands, and catchments, does not conflict with section 7 and 8 of the Act.
- 1.1.2 Sections 7 and 8 recognise the national significance of the Hauraki Gulf and specify a suite of management objectives for persons exercising powers or carrying out functions under the RMA 1991, and other legislation.
- 1.1.3 In particular, section 7 states that the interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life supporting capacity of the environment of the Hauraki Gulf and its islands, are matters of national significance as follows:

“7(1) The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.

(2) The Life-supporting capacity of the environment of the Gulf and its islands includes the capacity –

(a) to provide for -

(i) the historic, traditional, cultural, and spiritual relationship of the Tangata Whenua of the Gulf with the Gulf and its islands; and

(ii) the social, economic, recreational, and cultural well-being of people and communities;

(b) to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation.

(c) to maintain the soil, air, water and ecosystems of the Gulf.”

- 1.1.4 Section 8 sets out six objectives for the management of the Gulf, as follows:

“8 Management of Hauraki Gulf

To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are-

(a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, and catchments;

(b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments;

(c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its

islands, and catchments with which Tangata Whenua have an historic, cultural, and spiritual relationship;

- (d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources;*
- (e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the⁴ Hauraki Gulf and New Zealand;*
- (f) the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.”*

1.2 Resource consents

- 1.2.1 Section 9(4) requires that consent authorities, when considering an application for a resource consent for the Hauraki Gulf, its islands, and catchments, have regard to sections 7 and 8 of the HGMPA 2000 in addition to the matters contained in the RMA 1991.

1.3 The extent of the HGMPA 2000

- 1.3.1 Sections 7 and 8, in addition to applying to the waters and islands of the Gulf, also apply to its catchments. This is defined as meaning any area of land where the surface water drains into the Hauraki Gulf, and accordingly extends well inland of the coastal marine area. In relation to the Auckland City territorial boundary, this includes all of the Hauraki Gulf Islands and the large majority of the Isthmus area (excluding those catchments to the south and west of the Isthmus, which drain into the Manukau Harbour) and all of the Central Area. Schedule 3 of the HGMPA 2000 includes a map showing the spatial extent of the catchment (refer **Annexure** to this report). This feature of the HGMPA 2000 recognises the need for an integrated management of the Gulf and its catchments and extends the ambit of the legislation much further inland from the commonly perceived interpretation of ‘Gulf’.

1.4 HGMPA 2000 – Same effect as a National Policy Statement

- 1.4.1 Section 9(5) of the HGMPA 2000 states that the provision of section 55 of the RMA 1991 apply as though sections 7 and 8 of the HGMPA 2000 were a national policy statement. It requires the council to take action in accordance with that section and notify a change to the District Plan within 5 years of the date of the commencement of the HGMPA 2000 (27 February 2000).

2.0 Summary of the Proposed Plan Change

- 2.1 This assessment considers the relevant provisions of the Central Area section of the District Plan against the requirements of section 9(3) of the HGMPA 2000, primarily being that they do not conflict with sections 7 and 8 of the Act.
- 2.2 Various changes to the plan are recommended. The objectives of this proposed plan change is to:

- (i) ensure the Central Area section of the District Plan gives adequate recognition to the HGMPA 2000;
- (ii) ensure that the requirements of the council under the HGMPA 2000, when assessing applications for resource consent for the Hauraki Gulf islands and catchments, are clearly set out in the District Plan.

2.3 In summary, the following changes are proposed to the Central Area section of the District Plan to meet these objectives:

- Recognise that the Plan is influenced by the HGMPA 2000 by inserting reference to this Act and its requirements in relation to the District Plan in Clause 2.4 “Other Planning Agencies”.
- Recognise the requirement for the Plan to be consistent with the HGMPA 2000 by making particular reference to this in a new clause “2.15 Hauraki Gulf Marine Park Act 2000”.
- Make it clear that the HGMPA 2000 is relevant to the entire ‘Central Area’, and reiterate the requirements under the Act with regard to the coastal environment by inserting a paragraph in clause 3.2.3 “Coastal Environment”.

2.4 For the reasons set out below, it is considered that the remaining provisions of the Central Area section of the District Plan does not conflict with section 7 and 8 of the HGMPA 2000 and therefore are not required to be changed.

3.0 Assessment of the Proposed Plan Change against Section 32 of the Act

3.1 Before adopting an objective, policy, rule, or other method in the District Plan, the Council must ensure that the proposed provisions meet the requirement of the RMA 1991 through an assessment of the matters outlined in Section 32.

3.2 Section 32(1) states:

“In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall –

(a) Have regard to:

- (i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of the Act; and*
- (ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of the Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and*
- (iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principle alternative means available, or of taking no action where this Act does not require otherwise; and*

(b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principle alternative means including, in the case of any rule or other method, the extent to which it is likely to be

effective in achieving the objective or policy and the likely implementation and compliance costs; and

(c) Be satisfied that any such objective, policy, rule, or other method (or any combination thereof):

(i) Is necessary in achieving the purpose of this Act; and

(ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.”

3.3 In *Nugent Consultants Limited v the Auckland City Council* (Decision No A33/96), the Environment Court stated that:

“...a rule in a proposed District Plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the territorial authority to carry out its function of control of actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the Plan.”

3.4 These section 32 matters are assessed in this report below under the following headings:

- Whether the proposed rules are necessary in achieving the purpose of the Act and whether the proposed rules assist the Council to carry out its function of control of actual or potential effects of the use, development or protection of land;
- Alternative means of achieving the purposes of the Act and reasons for and against these alternative or of taking no action;
- Likely benefits and costs of the proposed rules and any alternative.

3.5 *Whether the proposed rules are necessary in achieving the purpose of the Act and whether the proposed rules assist the Council to carry out its function of control of actual or potential effects of the use, development or protection of land*

3.5.1 Section 5 of the RMA 1991 describes its purpose to be:

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

(2) In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while -

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

- 3.5.2 The proposed amendments to the respective sections of the plan are necessary in achieving the purpose of the RMA 1991. In particular, they are required by section 9 of the HGMPA 2000, as set out above.
- 3.5.3 The following assesses the Central Area section of the District Plan in terms of the requirement of section 9(3) of the HGMPA 2000 that a territorial authority must ensure that any part of a District Plan that applies to the Hauraki Gulf, its islands, and catchments, does not conflict with section 7 and 8 of the Act (refer section 1 of this report).
- 3.5.4 In broad terms, the Central Area section of the District Plan includes a range of objectives, policies and rules relating to the management of the natural and physical resources of the Hauraki Gulf (as defined within the HGMPA 2000), which accord with the objectives in sections 7 and 8 of the HGMPA 2000.
- 3.5.5 The principle higher-level objectives of the Central Area section of the District Plan, which are directed at achieving the sustainable management of the resources of the Central Area, are set out in section 3.5 of the Plan. These objectives are not in conflict with those stated in sections 7 and 8 of the HGMPA 2000. In summary, they seek to:
- manage the use and development of the Central Area's natural and physical resources, to protect heritage features and viewshafts, maintain and enhance built and streetscape character, and ensure an attractive, healthy, clean and safe environment;
 - facilitate access throughout the Central Area for passenger vehicles, goods transport, private vehicles, pedestrians and cyclists;
 - promote the Central Area as an exciting, appealing and distinctive centre with a wide variety of attractions;
 - ensure that the Central Area is acknowledged as an outstanding centre in business, culture, arts, accommodation, entertainment and learning, and is responsive to new ideas and change.
- 3.5.6 These "higher-level" objectives are further provided for by the specific objectives for the management of the Central Area throughout the Plan, as part of a catchment to the Hauraki Gulf.
- 3.5.7 With respect to the water quality of the Hauraki Gulf and its catchments, these objectives are supported by council's development contributions policy, which requires payment of a contribution for new floor area, to improve drainage infrastructure within the city. Development sites are also closely monitored to ensure that run-off of earth, concrete and other materials do not enter the stormwater system.
- 3.5.8 The Central Area section of the District Plan adopts an approach to the management of the use, development and protection of natural and physical resources, which provides for a range of lifestyle aspirations and opportunities of residents, and opportunities for business. They include provisions which allow flexibility and choice for accommodation, recreation, and business activities. In respect of the management of development and growth, the Plan adopts a strategy where the capacity for development and land use opportunities is related, in part, to the physical land use capacity of the land, including the ability to minimise the adverse effects of stormwater run-off.

3.5.9 Based on the above assessment, it is concluded that the existing provisions of the Central Area section of the District Plan do not conflict with the HGMPA 2000. However, as the Plan was notified prior to the enactment of the HGMPA 2000, no specific reference is made to it in the Plan. It is considered necessary, therefore, to introduce certain changes to give adequate recognition to the HGMPA 2000 and the council's responsibility to have regard to the Act when considering resource consents for the Hauraki Gulf, its islands, and catchments.

3.6 Other Alternatives

3.6.1 The council is required to consider other means, which may be used in achieving the purpose of the Act, and reasons for and against these alternatives. The council is also required to carry out an evaluation of potential methods to see whether they will have some effect in achieving an objective. The alternatives to the proposed provisions contained in the proposed plan change and a comment on each of these alternatives follows.

- *Take no action / Do nothing approach*

The RMA 1991 requires decision-makers to consider the option of '*taking no action*' where the Act does not require otherwise. 'Take no action' means to have no methods in the Plan to address an issue. The council is required by the HGMPA 2000 to ensure that the District Plan does not conflict with its provisions. For obvious reasons, this approach is not considered to be appropriate.

- *Status quo*

The 'status quo' approach involves retaining the existing District Plan provisions. Based on the above assessment, the existing District Plan provisions are not considered to conflict with those of the HGMPA 2000, and therefore are not required to be changed to remove any inconsistency. However, this approach will not ensure that adequate recognition is given in the Plan of the HGMPA 2000 and the requirement to assess resource consents for the Gulf, its islands, and catchments against its provisions. As such, this approach is discounted as not appropriate to meet the purposes of either the RMA 1991 or the HGMPA 2000.

- *Delay the introduction of the plan change*

The council was required by the HGMPA 2000 to notify a change to a District Plan within 5 years of the commencement of the Act (by 27 February 2005). In terms of the timeframes set out within the Act, this plan change is over four years overdue. It would be irresponsible of council to further postpone this statutory duty.

- *An alternative plan change*

For the reasons set out above, it is considered that the existing provisions of the Plan do not conflict with the HGMPA 2000 and that the Plan only needs to be changed to ensure the Central Area section gives adequate recognition to the HGMPA 2000, and ensures that the requirements of the council under the HGMPA 2000, when assessing applications for resource consent for the Hauraki Gulf island and catchments, are clearly set out in the District Plan. The proposed plan change is considered to satisfy these requirements and no alternative provisions are considered necessary.

3.7 Identification and evaluation of the likely costs and benefits

3.7.1 The RMA 1991 requires the council to identify and evaluate the costs and benefits of any proposal and the principle alternative means for addressing the effects / issues raised.

3.7.2 *Benefits associated with the proposed plan change:*

- The Central Area section of the District Plan would be up-to-date, with clear reference to the HGMPA 2000;
- The Council's District Plan obligations under the Act would be met.

3.7.3 *Costs associated with the proposed plan change:*

- Development and, if necessary, defence of the new provisions;
- Providing education and information to staff, members of the public and applicants on the new provisions;
- Possible cost to the community of challenging the proposed provisions.

3.7.4 *The principle alternative*

The only possible alternative to the proposed plan change would be to delay its introduction further. This is considered to be inappropriate.

The only *Benefit* associated with this alternative would be that the costs referred to above would be delayed until some stage before that time.

Costs associated with this alternative would be:

- Council would continue to err on its statutory duty to give adequate recognition to the requirements of the HGMPA 2000;
- The Central Area section of the District Plan would continue to incorrectly give inadequate recognition to the requirements of the HGMPA 2000;
- The potential would continue to exist for applications for resource consents for the Hauraki Gulf, its islands, and catchments to be incorrectly assessed in terms of the requirements of the HGMPA 2000 while there is no appropriate cross reference to this requirement in the Plan.

3.7.5 On balance, and for the reasons outlined in this report, the benefits of the proposed plan change to the community are considered to outweigh its costs, and the only principle alternative, which is to further delay the introduction of the plan change.

4.0 **Conclusion**

4.1 An analysis of the proposed plan change, as required by Section 32 of the Resource Management Act 1991, has been undertaken on the necessity of these changes. After such an analysis, it is concluded that the Proposed Plan Change meets the requirements of Section 32, and is the most effective means of meeting the requirements of the Hauraki Gulf Marine Park Act 2000 and the purpose of the Resource Management Act 1991.