

Notice is given that an ordinary meeting of the Strategy and Policy Committee will be held on:

Date: Thursday 9 March 2023
Time: 9.30 am
Meeting Room: Tasman Council Chamber
Venue: 189 Queen Street, Richmond
Zoom conference link: <https://us02web.zoom.us/j/86147890578?pwd=SzFzWkJBNTYtDT3FVQ0wvMHZMSFpjQT09>
Meeting ID: 861 4789 0578
Meeting Passcode: 562746

Strategy and Policy Committee

Komiti Rautaki me te Kaupapahere

AGENDA

MEMBERSHIP

Chairperson	Cr K Maling	
Deputy Chairperson	Cr C Butler	
Members	Mayor T King	Cr M Greening
	Cr S Bryant	Cr M Kininmonth
	Cr C Hill	Cr C Mackenzie
	Cr G Daikee	Cr B Maru
	Cr B Dowler	Cr D Shallcrass
	Cr J Ellis	Cr T Walker

(Quorum 7 members)

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Note: The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted.

9.2 COMMENCEMENT OF PLAN CHANGE – DEFERRED ZONE UPLIFT MECHANISM**Decision Required**

Report To:	Strategy and Policy Committee
Meeting Date:	9 March 2023
Report Author:	Jeremy Butler, Team Leader - Urban and Rural Policy
Report Number:	RSPC23-03-3

1 Summary

- 1.1 The Tasman Resource Management Plan (TRMP) uses a method known as deferred zoning to identify and rezone land that is suitable for future urban development. The method allows for the land to be identified for its future zoned purpose until servicing is provided, at which point the land becomes available for its future purpose through a process known as “uplifting the deferral”.
- 1.2 The process that must be followed is set out in the TRMP. However, that process has recently been challenged by lawyers acting for two landowners in Mapua. In response to that challenge Tasman District Council has elected to no longer use that process and to consider amendments to the TRMP.
- 1.3 Staff recommend commencing work to develop plan change options to change the TRMP to determine if Council can amend the process and mitigate or eliminate any risk from legal challenge while still achieving the strategic outcome described above. If Council agrees, staff will commence work to scope and draft plan change options to correct or amend the mechanism in the TRMP.
- 1.4 There are a range of risks associated with this issue, including financial, legal and reputational risks. However, staff do not see any viable route to entirely avoid these risks. The best strategy and approach is to proceed with a plan change as quickly as possible.

2 Draft Resolution**That the Strategy and Policy Committee:**

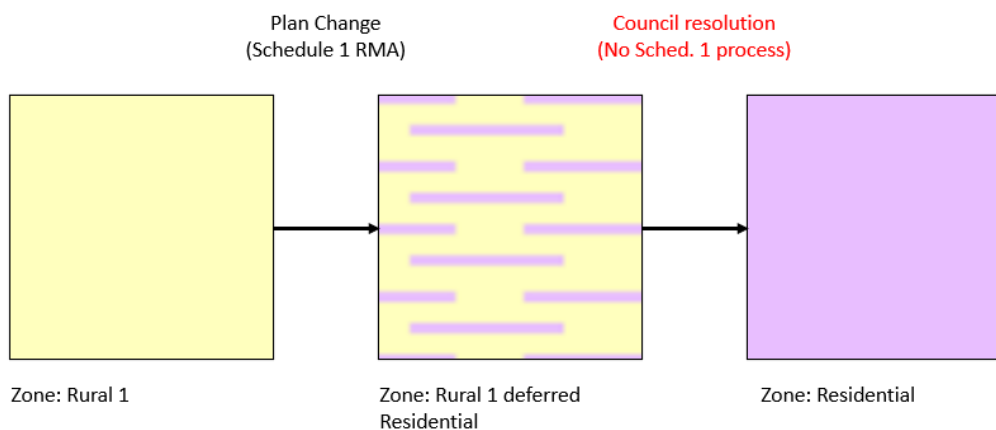
1. **receives the Commencement of Plan Change – Deferred Zone Uplift Mechanism report RSPC23-03-3; and**
2. **approves the commencement of work to scope and draft a plan change to correct or amend the mechanism in the Tasman Resource Management Plan for rezoning land where sufficient services or other deferred zoning requirements are not yet provided.**

3 Purpose of the Report

- 3.1 To seek approval to scope and draft plan change options to amend the TRMP to consider alternatives to the current deferred zoning process.

4 Background and Discussion

- 4.1 The TRMP uses a method known as deferred zoning to identify land for future urban development. The method was introduced as part of the original TRMP in 1996 and has been used very effectively as a tool to enable strategic management of urban growth ever since. Land is identified as potentially appropriate for rezoning and goes through a normal plan change process to assess its suitability for urban development. Once a plan change is complete and has passed all the required legal checks and balances, the land is essentially parked (deferred) until the land is required and all the required services are available. Once services are available the deferred status is lifted, and the land can be developed. In areas subject to deferred zoning:
- (a) the existing, generally rural zoning is retained until certain conditions are met; and
 - (b) the identified new zone is applied once those certain conditions have been met and a resolution of Council made to uplift the deferral.
- 4.2 In essence the rezoning is deferred until the conditions have been met. In the TRMP the most common condition is the provision of three waters servicing. Although the tool is also used where roading upgrades are needed, and also to support staging and sequential release of land.
- 4.3 The technique has been in use for many years and is well understood in principle by Council staff and the land development community.
- 4.4 Deferred zones (i.e. the areas of land that have been parked awaiting services) are zones in their own right. They have their own iconography identified in the key to the planning maps in the TRMP, and they are afforded the title of a “zone”. For example, the “Rural 1 deferred Residential Zone”.
- 4.5 Current practice is shown in Figure 1 which provides an example of Rural 1 Zone transitioning into Residential Zone. Two changes are made to the TRMP through the process. The first is to undertake a full plan change under the process set out in Schedule 1 RMA. This changes the land in question to a “deferred zone”. The second change occurs once the necessary servicing has been provided. This second change is done through a resolution of Council and has the effect of changing the “deferred zone” into an “open zone” (for example, Residential Zone).



How Deferred Zoning Works

- 4.6 Part 17.14 TRMP addresses the procedure for the uplift of deferrals for residential, rural residential, industrial, tourist service and papakāinga zones, typically from an existing rural zoning. The TRMP maps show the underlying zone, the deferral overlay and hatching in the colour of the deferred zone. Until the uplift occurs, the underlying zone rules generally apply. **This enables the existing land uses, usually rural, to continue without being subject to new zone rules that would make rural activities increasingly difficult until the land is developed.**
- 4.7 Schedule 17.14A is a table that particularises, using legal descriptions, sites that are subject to deferred zoning. It describes the reasons for the deferral and the new (described as “effective”) zone once the uplift occurs. The reasons column briefly identifies the services required, for instance reticulated water or stormwater services, or particular roads or intersections that require upgrading.
- 4.8 The methods for uplifting the zoning are at 17.14.2(a). Either, at (i), the new zoning becomes effective following a Council resolution confirming the service or other upgrade has or can be provided to the satisfaction of the Council. This resolution can apply to the whole or part of the area identified in Schedule 17.14A. Alternatively, at (ii), the deferral can be uplifted by a resolution that a date identified in the Schedule has passed and the deferral is now due to be removed.
- 4.9 Method 17.14.2(b) requires concept engineering plans to be provided if a person other than the Council is providing the service. In practice, this has been the most common pathway to an uplift. The Group Manager - Community Infrastructure is tasked with making recommendations to the Council as to whether he or she considers the services or upgrade can or have been satisfactorily provided or completed.
- 4.10 At 17.14.2(c), the commencement of the new zone is confirmed by a resolution of the Council and allows the Plan to be amended. This means that when the Council undertakes an update to the TRMP the zone maps are changed to remove the deferred (hatched) zoning and show the new zoning in its place. Schedule 17.14A is also amended to show the date the deferral was removed, along with other details relating to the affected sites and services or upgrade.

Implications

- 4.11 There is just under 400 ha of land in Tasman that has a deferred zone over it. A large proportion of the deferred land is deferred for residential development.

Deferred zone name	Total Area (ha)	Total no. of sites
Light Industrial	92.82	5
Mixed Business	17.50	2
Residential	167.68	18
Rural Residential	74.39	2
Heavy Industrial	3.90	1
Rural Residential		
Serviced	36.00	4
Papakāinga	2.48	2
Tourist Services	3.66	1
Total (ha)	398.47	35

- 4.12 The decision not to lift deferrals on further areas of land is already starting to cause concern with developers. There are a number of projects at the preapplication stage that involve land that has a deferred zoning that may not proceed as quickly as third party interests would like. However, this does not mean land that is subject to a deferral cannot be developed now. Anyone with deferred zoned land that is looking to develop it has the options of applying for a resource consent, albeit with potentially a higher bar to cross to allow the development.

Discussion

- 4.13 Currently, significant residential consents recently issued or in progress will provide around 475 new residential lots. This is additional to existing developments that continue to release new lots for housing. This will help to address the immediate demand for new homes. However, longer term, the 167 ha of residential land that is tied up in deferred zones will become increasingly important as is the deferred light industrial and deferred mixed business land. As a result of the above, it is recommended that staff scope options for a change to the TRMP as discussed above. This would enable consideration of an alternative mechanism to deferred zoning that Tasman can continue to use in the future.
- 4.14 It is possible the underlying suitability of the land with deferred zoning could be challenged as part of a plan change. The potential for these challenges will need to be considered when preparing any plan change.
- 4.15 The recent National Planning Standards that introduce nationally consistent zones do not include a mechanism like deferred zoning. The current RMA replacement bills also do not specifically include a mechanism to enable land release in the manner that deferred zoning allows. Tasman's submission to the Environment Committee on the two new RMA replacement bills includes a request for the addition of a new mechanism to ensure a process like deferred zoning is available under the new legislation.

5 Options

- 5.1 The options are outlined in the following table.

	Option	Advantage	Disadvantage
1.	Status quo	<ul style="list-style-type: none"> Short term cost and workflow savings 	<ul style="list-style-type: none"> Current method may be challenged in the Environment Court

			<ul style="list-style-type: none"> • May have to do more plan changes to release land for urban purposes • Landowners / developers will have to apply for resource consents (with unfavourable policy settings) to enable development • Council is unable to meet its legal obligations under the National Policy Statement for Urban Development (NPS-UD) to provide for sufficient development capacity
2.	Plan Change to amend TRMP	<ul style="list-style-type: none"> • Potential to preserve deferred zoning method without court proceedings. • Opportunity to consider method and ensure TRMP robust legally and procedurally and reliable. 	<ul style="list-style-type: none"> • An unforeseen plan change will have budgetary and workflow implications • PC may be challenged via appeal to the Environment Court or other proceedings.

5.2 Option 2 is recommended.

6 Strategy and Risks

- 6.1 All land parcels under deferred zoning have progressed through a comprehensive plan change process that identified and addressed all considerations relating to the shift from rural zone to an urban zone. It is just the delayed provision of servicing which holds back the land from being suitable for urban land uses. Therefore, arguably, any Council shortcomings justifying a change to the TRMP are technical rather than substantial.
- 6.2 There is a risk that some parties may see a plan change as an opportunity to relitigate sites that have already been rezoned to a deferred status. This risk cannot be mitigated except by keeping the scope of the plan change tight.
- 6.3 This report has not identified the possible directions that a plan change could take to amend the TRMP. These options will be further developed and then discussed with Councillors in a workshop forum.
- 6.4 There is a risk that Council comes under criticism for this issue. The process has been in place and used effectively for over 25 years. It has in part been considered by the Environment Court in an earlier case. The process did come under some criticism from the judge at the time. Following the Environment Court's decision, a plan change to address the concerns the judge raised with the process was successfully completed. There was no indication from the judge at the time (ca. 2012) that the deferred zone uplift process was of concern to the Court.
- 6.5 The recommendation to commence a plan change was considered by staff in accordance with the process set out in Council's 'Climate Change Consideration Guide'.

7 Policy / Legal Requirements / Plan

- 7.1 The NPS-UD requires that a certain amount of land is maintained as available for development purposes, plus an additional 20% margin above expected growth. While there is currently sufficient development capacity, if the current issue is not addressed, Tasman may find itself in a position where it is not meeting its obligations under the NPS-UD.

8 Consideration of Financial or Budgetary Implications

- 8.1 Commencing a plan change can be accommodated within the existing Environmental Policy budget, but this will mean that there are other workflows that will need to be re-prioritised. This will include work on the Tasman Environment Plan (TEP).
- 8.2 The new requirements to produce a combined plan with Nelson mean that we are reassessing the TEP work programme. This will include a re-set of the entire Environmental Policy work programme so proceeding with a plan change to address deferred zoning now is very timely.

9 Significance and Engagement

	Issue	Level of Significance	Explanation of Assessment
1.	Is there a high level of public interest, or is decision likely to be controversial?	Medium	This topic will only be of interest to some, particularly amongst the land development community. But for those involved it will be of very significant interest and possible concern.
2.	Are there impacts on the social, economic, environmental or cultural aspects of well-being of the community in the present or future?	High	The status quo would not allow the Council to efficiently provide for land for growth and development purposes if it is challenged in court. It would create uncertainty.
3.	Is there a significant impact arising from duration of the effects from the decision?	High	The decision is necessary to allow for development that will support housing and businesses in the community and to remove any uncertainty the legal challenge has created.
4.	Does this activity contribute or detract from one of the goals in the Tasman Climate Action Plan 2019 ?	Low	This decision will result in no direct impact on greenhouse gas emissions. Any indirect impact on emissions is not

	Issue	Level of Significance	Explanation of Assessment
			known and would be extremely difficult to quantify.
5.	Does the decision relate to a strategic asset? (refer Significance and Engagement Policy for list of strategic assets)	No	
6.	Does the decision create a substantial change in the level of service provided by Council?	Yes	The inability to efficiently release land except by plan change will substantially reduce the Council's ability to allow, through regulation, land to be brought forward to market.
7.	Does the proposal, activity or decision substantially affect debt, rates or Council finances in any one year or more of the LTP?	No	A plan change should be reasonably tightly circumscribed and can be efficiently processed. However, there is a risk that legal challenges could result, but these risks exist in any case.
8.	Does the decision involve the sale of a substantial proportion or controlling interest in a CCO or CCTO?	No	
9.	Does the proposal or decision involve entry into a private sector partnership or contract to carry out the deliver on any Council group of activities?	No	
10	Does the proposal or decision involve Council exiting from or entering into a group of activities?	No	
11	Does the proposal require inclusion of Māori in the decision making process (consistent with s81 of the LGA)?	Yes	The Resource Management Act codifies the engagement required with iwi on plan changes.

10 Conclusion

- 10.1 It is appropriate that a decision is made to commence a plan change to address a potential technical issue in the TRMP.
- 10.2 There are legal, financial and reputational risks associated with this issue, but staff consider that the best and most appropriate way to deal with these risks is to rapidly commence and progress a plan change to amend the TRMP.

11 Next Steps / Timeline

- 11.1 Staff have already commenced work to look at the scope of a possible plan change. Staff will draft an options paper and bring this to Councillors in a workshop forum to discuss the best approach for a plan change.
- 11.2 All aspects of the plan change will be progressed as quickly as practicable.

12 Attachments

Nil