

23 January 2024

Mayor and Councillors

Kaipara District Council,
Private Bag 1001
Dargaville 0340

Cc Chief Executive, Kaipara District Council

Tēnā koutou,

Re: Kaipara District Council's decisions to cancel key climate work

1. We refer to our letter to the Kaipara District Council (**Council**) dated 27 October 2023, and the Council's decisions: (i) pausing the Ruawai Adaptive Pathways pilot (**RAP pilot**) and all related expenditure; and (ii) cancelling Council's emission accounting contract and stopping development of Kaipara's climate policy.
2. In this letter, we raise further issues with these decisions, which stop important mitigation and adaptation work in a region which is particularly vulnerable to the effects of climate change.

The Ruawai Adaptive Pathways Pilot Decision

3. At its 25 October 2023 meeting, the Council received a report entitled 'Ruawai Adaptive Pathways – Decision on sub-areas and adaptation approaches'.¹ The Council did not support that report and requested that the Chief Executive report to the Council providing specific information on the RAP pilot.
4. At its 29 November 2023 meeting, the Council received a Report entitled 'Ruawai Adaptive Pathways Pilot – Information for Council' (**the RAP Report**).² The RAP Report was published in the open agenda and included legal advice from Simpson Grierson entitled 'Potential legal risk arising from decision to cancel Ruawai Adaptive Pathways' (**the RAP Legal Advice**).
5. Following consideration of the RAP Report and the RAP Legal Advice, the Council resolved as follows:

5.1 Ruawai Adaptive Pathways Pilot – Information for Council

That the Kaipara District Council:

- a) Notes the staff report on the Ruawai Adaptive Pathways Pilot.*
- b) Pauses the Ruawai Adaptive Pathways Pilot and all related expenditure.*
- c) Consults on the Climate Smart Programme through the 24/34 Long Term Plan.*

¹ See Report to the Kaipara District Council, '[Ruawai Adaptive Pathways – Decision on sub-areas and adaptation approaches](#)', 25 October 2023.

² See Report to the Kaipara District Council, '[Ruawai Adaptive Pathways Pilot – Information for Council](#)', 29 November 2023.

6. Pausing the RAP pilot stops the ongoing partnership between the Ruawai community and the Council to devise a plan to prepare for, and respond to, coastal hazards, flood hazards and sea level rise. This is an important project for Ruawai, which is particularly affected by the effects of climate change. Parts of Ruawai are below sea level and the Ruawai community was among the regions most affected by the 2023 cyclones. We understand the pilot also covers Te Kowhai Valley, which is at high to extreme risk of flooding and has no formal flood management structure or current support from the Council.
7. There are significant issues with the Council’s decision. Principally, the decision does not comply with s 97 of the Local Government Act 2002 (**LGA**). Section 97 provides that the Council can only cease or significantly alter the intended level of service of a “significant activity” if it is explicitly provided for in the long-term plan *and* following consultation in accordance with s 93E of the LGA. The RAP is a “significant activity” – and, as such, it is unlawful for the Council to pause the program without first undertaking consultation with the community and amending the LTP.
8. We also note that neither the RAP Report nor the RAP Legal Advice mention the fact that the Kaipara District Council is a signatory to the Local Government Leaders’ Climate Change Declaration.³ By signing the Declaration, the Kaipara District Council committed to working with their communities to “understand, prepare for and respond to the physical impacts of climate change”. Our understanding is that the RAP pilot is exactly this. The Declaration created a legally enforceable legitimate expectation that the Council would work with communities in this way⁴ – cancellation of the RAP pilot is inconsistent with this commitment.
9. If a court were to consider the Kaipara District Council’s decision, they would likely closely scrutinise the Council’s decision-making given the critical importance of climate change– and the particular vulnerabilities of the Ruawai area.⁵
10. In light of the above, we ask the Council to revoke its decision of 29 November 2023 to pause the Ruawai Adaptive Pathways Pilot and all related expenditure and to immediately resume this important work.

The Climate Policy and Accounting Decision (13 December 2023)

11. By way of background, on 27 September 2023, the Council resolved to support a Notice of Motion requesting that the Chief Executive cancel the Council’s emission accounting contract and stop the development of Kaipara’s climate policy:⁶

4. Notice of motion

That the Kaipara District Council:

- a) *Requests that the Chief Executive cancels Council’s emission accounting contract and stops development of Kaipara’s climate policy.*
- b) *Notes that this will reduce cost to the ratepayer of approximately \$33,000 according to supplied budgets.*

³ See Report to the Kaipara District Council, ‘Local Government New Zealand – Climate Change Declaration’ for the Ordinary Meeting of the Kaipara District Council, 2 May 2019. [Link](#) See also, Minutes of the Ordinary Meeting of the Kaipara District Council, 2 May 2019, where the Council resolved: “That Kaipara District Council: (a) Becomes a signatory to the Local Government New Zealand’s Local Government Leaders’ Climate Change Declaration.” [Link](#)

⁴ See *Hauraki Coromandel Climate Action Incorporated v Thames-Coromandel District Council* [2020] NZHC 3228 at [31]-[32] ([Link](#))

⁵ At [1].

⁶ [Minutes of the Ordinary Meeting of the Kaipara District Council](#), 27 September 2023.

12. Following receipt of our letter dated 27 October 2023, at its meeting on 13 December 2023 the Council considered a report from the Chief Executive entitled 'Reconsideration of the Notice of Motion to cancel Council's emissions accounting contract and Kaipara's climate policy' and legal advice on cancelling Council's emissions accounting contract and climate policy (provided in the public excluded agenda) **(the CPA Legal Advice)**.⁷
13. Following consideration of the Report from the Chief Executive and the CPA Legal Advice, the Council resolved as follows:

That the Kaipara District Council:

- (a) *Notes that it has agreed to consult on the Climate Smart programme as part of the 2024-2027 Long-Term Plan; and*
- (b) *Notes that it has reconsidered the decision made on 27 September 2023 as follows -*

That the Kaipara District Council:

- a. Requests that the Chief Executive cancels Council's emission accounting contract and stops development of Kaipara's climate policy*
- b. Notes that this will reduce cost to the ratepayer of approximately \$33,000 according to supplied budgets; and*
- (c) *Reconfirms the above decision of 27 September 2023.*

14. The Council's decision remains significantly inconsistent with the Council's 2021-2031 LTP and Annual Plan 2023/2024, and inconsistent with the decision-making requirements under ss 76-81 of the LGA and the Council's Significance and Engagement Policy.
15. Additionally, although the CPA Legal Advice was only provided in the public excluded agenda (and, as a result, we have not seen it), from what we can see in the Report from the Chief Executive, as for the RAP decision, no mention is made of the fact that the Kaipara District Council is a signatory to the Local Government Leaders' Climate Change Declaration.⁸ The Declaration created a legitimate expectation that the Council would "develop and implement ambitious action plans that reduce greenhouse gas emissions and support resilience within our own Councils". The Council's decision means it is not apparent that it has *any* action plan to reduce its emissions, let alone an ambitious one.
16. In light of the above, we request that the Council revoke its decision of 13 December 2023 reconfirming its decision of 27 September 2023 to cancel Council's emission accounting contract and stop development of Kaipara's climate policy and that it reinstates its emission accounting and climate policy work.

Nga mihi,



Jessica Palaret
Executive Director, Lawyers for Climate Action NZ Inc.
jessica@lawyersforclimateaction.nz

⁷ [Kaipara District Council Open Meeting Agenda](#), 13 December 2023.

⁸ See Report to the Kaipara District Council, '[Local Government New Zealand – Climate Change Declaration](#)' for the Ordinary Meeting of the Kaipara District Council, 2 May 2019. See also, [Minutes of the Ordinary Meeting of the Kaipara District Council](#), 2 May 2019, where the Council resolved: "That Kaipara District Council: (a) Becomes a signatory to the Local Government New Zealand's Local Government Leaders' Climate Change Declaration."