

BEFORE THE ENVIRONMENT COURT

UNDER The Resource Management Act 1991

IN THE of an appeal pursuant to Clause 14(1)
MATTER of the First Schedule to the Act

AND IN THE of Decisions on the Proposed Waikato
MATTER District Plan

BETWEEN **Horongarara Point Group**

Appellant

AND **WAIKATO DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST
DECISIONS ON PROPOSED WAIKATO DISTRICT PLAN**

To The Registrar
Environment Court
PO Box 7142
AUCKLAND

1. **Horongarara Point Group (HPG)** appeals against the decision of the Waikato District Council on the **PROPOSED WAIKATO DISTRICT PLAN (“PWDP”)**.
2. HPG made a submission on the PWDP.
3. HPG is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“RMA”).
4. HPG received notice of the decision on 17th January 2022.
5. The decision was made by the Waikato District Council.

6. HPG appeals the decision insofar as it relates to Coastal Hazard (Erosion) designations affecting 2B, 2C, 2D, 2E & 0 Ryan Rd, Te Akau South. (*the Properties*)

7. CONTEXT

- 7.1 HPG comprises Andrew Wilson, Trish Waugh, Mark Windust & Jeremy Coombes who are the owners of the Properties aforementioned.

When notified the WPDP showed a blanket rural coastal hazard overlay over the Properties. Te Akau South had been completely overlooked as a residential development. The original oversight contributed to the lack of time to resolve this issue.

After initial submissions were received a desktop local area study of Te Akau South area was produced and included in the section 42A report. The PWDP provisions stated that residential development or extensions are to be avoided within the High Risk Coastal Hazard (Erosion) overlay & these become restricted discretionary activities within the Coastal Sensitivity overlay. The Properties are each impacted by both overlays.

HPG submission

- 7.2 HPG made identical submissions on the PWDP specifically in relation to Coastal Hazard (Erosion) designations as they affected the Properties. *HCG Submission WDC Hearing 27D* presented *11 May 2021* at *Hearing 27D*. copy attached
- 7.3 We proposed privately commissioning site specific slope stability investigation by Engineering Geologist Michael Carter of Raglan Geotech. Details of the proposed investigation were presented in the letter entitled *HCG. Letter to Hearings Panel 27D* on 18 May 2021. The scope of the report and timeframe was accepted by the WDC.
- 7.4 The key relief sought by the submission was for the Coastal Hazard designations to be redefined by the recommendations of the site specific report upon completion.
- 7.5 HPG did participate in the hearing process 11 May 2021 and presented further evidence on 23 September 2021 by way of the report entitled *Horongarara Point Slope Stability Assessment Version 2* dated 23/9/2021 (hereafter referred to as the *RG Report*). copy attached
- 7.6 HPG received notice of the decision on 17 January 2022. The decision rejected the HPG submission by choosing to rely on the recommendations of the WDC desktop local study Section 42A report over the site specific investigations of the RG Report.

8. HPG APPEAL

- 8.1 HPG appeals the decision to reject the recommendations of the RG Report. The reason provided in the WDC Decision report *dated 17 January 2022* for the rejection was PWDP time constraints impacting the opportunity to resolve diverging opinions in the expert reviews.

Reasons for the appeal

- 8.2 The reasons for the HPG appeal are that:
- (a) WDC disregarded the recommended Coastal Hazard (Erosion) overlays from the RG Report. These were informed by a higher resolution site specific investigation prepared by an appropriately qualified Engineering Geologist.
 - (b) WDC decided to rely on the extents of the desktop local study report prepared by Marine Scientists of the Focus Group: document entitled *Waikato District Plan Stage 2: Coastal Hazard Maps - Response to Submissions* dated 03/2021. *Fig 56. page 30* copy attached (Hereafter referred to as the *WDC Report*).
- 8.3 Sequentially:
- (i) The WDC Report is a desktop local study that designated highly conservative overlays. The authors are not qualified in the areas of geology or geotechnical engineering.

Waikato District Plan Stage 2: Coastal Hazard Maps - Response to Submissions (3) Coastal Erosion: 3.3 recommendations. page 13 “Our coastal hazard assessment provides discussion and some criteria for assessing likely coastal erosion hazard on the various shoreline types. In some cases, these criteria will provide sufficient guidance to determine whether a location is likely to be subject to coastal erosion hazard. In other locations, additional site-specific data and investigation will be required”.

Te Akau South: Section 2. page 24 “We suspect (based on existing cliff slopes and the nature of materials exposed on the shoreline) that steeper stable slopes may be appropriate to define coastal erosion hazard. However, this would need to be determined by a site-specific study by a suitably qualified engineering geologist or geotechnical engineer, in the context of any proposed activity.”

Te Akau South: Section 3. Page 29 “Detailed site-specific investigations may indicate that the 1V:2H stable slope is overly conservative, but we have taken a precautionary approach due to lack of knowledge about subsurface geology and characteristics.”

- (ii) At Hearing 27D the HPG asked the Commissioners for time to prepare a site specific slope stability assessment to be undertaken by Engineering Geologist Michael Carter of Raglan Geotech to provide a higher resolution understanding of Coastal Hazard. The scope of the assessment & timeframe of completion entitled ***Horongarara Peninsula Geo-assessment framework*** (copy attached) was provided and accepted.

(iii) The HPG engaged Michael Carter of Raglan Geotech because of his extensive professional experience working with the unique geology and geotechnical properties found on the Horongarara Peninsula. He delivered his report *Horongarara Point Slope Stability Assessment 2021* and then on request from the Commissioners added an addendum to incorporate a 100 year projection to incorporate anticipated sea level rise.

Horongarara Point Slope Stability Assessment Version 2 (copy attached)

K.7: Summary page 64 “The WDC proposed hazard area boundaries were based on an assumption that deep-seated failure of basement rocks could occur, and that sea level rise would further impact this mechanism. The Carter 2021 study finds that deep-seated failure of basement rocks that could compromise the 5 lots being addressed is highly unlikely, and that embankment retreat will primarily be controlled by small-scale surface and embankment crest failure, which is a periodical historical occurrence.”

“Given the degree of uncertainty regarding the impact of sea level change, the hazard zone boundaries displayed in Figure K.1 incorporate a high FOS (6.6) resulting in very conservative interpretation.”

(iv) A peer review of the report was commissioned by the WDC entitled *Specific Review of Geotechnical Aspects of the Horongarara Point Slope Stability Assessment Report* prepared by Tonkin & Taylor dated 12/11/2021 (***copy attached within Proposed Waikato District Plan Hearings-Commissioner Minute 17 November 2021***)

5: Summary “In summary, our Specific Review has identified a number of issues with RG’s slope stability and toe erosion assessment, and we recommend that WDC do not accept the High Risk Coastal Hazard Area (Erosion) and Coastal Sensitivity (Erosion) Area delineation currently proposed by RG. Whilst the original delineations proposed by FOCUS may be conservative due to the wider scale assessment, RG’s site specific assessment report does not provide reasonable grounds to adjust the delineations to the extent proposed.”

(v) The HPG found aspects of the Peer Review problematic and responded to the Commissioners with a submission titled ***Hearing 27D T+T Peer Review response HPG*** (copy attached). We highlighted that the reviewer repeatedly misquotes the definition of the notified High Risk Coastal Hazard (Erosion) Area’s. T&T’s interpretation of this designation influenced their review and is not accurate to that confirmed and notified by the WDC. By loosening this criteria it is no longer reflective of the corresponding restrictions in the District Plan. We are concerned about a potential conflict of interest as the Raglan Geotech report produced findings that differ from those previously endorsed by T&T in their peer review(s) of the Focus Groups report(s). T&T also failed to acknowledge a further independent geotechnical report (2004) that was provided on request to the reviewer which reinforced Michael Carter's findings.

(vi) Michael Carter provided a robust response to the ***T&T Peer Review Hearing 27D T+T Peer Review response Raglan Geotech*** (copy attached)

12: Conclusion page 18

“The degree of field testing required to satisfy the T+T critique is untenable due to geographical constraints and cost (> \$1000,000). Given time, cost, and geographical constraints, I placed my prime emphasis on field observation and basic testing, supported by my extensive experience working with the HP lithotypes throughout the Raglan region. I maintain that the RG report and addendum hazard boundary recommendations are based on an assessment that was thorough, conservative, fit for purpose, and dependable.”

“Given the principle of peer review impartiality as defined by Engineering New Zealand, T+T should not have engaged in a peer review of my report in reflection of its prior involvement in the topic being addressed.”

13: Recommendation page 18

“I submit that due to its obvious inapplicability and the potential for bias the T+T review be disregarded in its entirety.”

(vii) In their decision the Commissioners responded that they had run out of time to resolve the issue. **Decision report 29c natural hazards and climate change coastal hazards** (copy attached)

Mapping: Te Akau South - Horongarara peninsula. Page 17

5.21 “Given the divergence between the expert reviews, we have decided to rely on the recommendation of the section 42A report and have retained the mapping as recommended (refer to Figure 6).”

5.22 “As set out in our direction to the submitters, time was a limiting factor in terms of potentially resolving this matter as part of our Decision. In recognition of this, we suggest that the submitters and Council continue working together on the unresolved matters.”

9.0 **RELIEF SOUGHT**

9.1 HPG seek the following relief:

(a) The RG Report entitled *Horongarara Point Slope Stability Assessment Version 2* be accepted as fit for purpose for the five Ryan Road properties involved and;

(b) The extent of the Coastal Hazard (Erosion) mapping be redefined to match those recommended in the RG Report entitled *Horongarara Point Slope Stability Assessment Version 2 dated 23/9/2021. Fig K.1 page 65*

10.0 **ATTACHMENTS**

10.1 HPG attaches the following documents to this notice: [Link to files here](#)

(a) *Waikato District Plan Stage 2: Coastal Hazard Maps - Response to Submissions.03/2021*

(b) *HCG Submission WDC Hearing 27D*

(c) *HCG. Letter to Hearings Panel 27D*

(d) Horongarara Point Slope Stability Assessment Version 2

(e) Proposed Waikato District Plan Hearings-Commissioner Minute 17 November 2021

(f) Hearing 27D T+T Peer Review response HPG

(g) Hearing 27D T+T Peer Review response Raglan Geotech

(h) Decision report 29c natural hazards and climate change coastal hazards

Dated at Hamilton this 23rd Day of February 2022



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