

SECTION 42A REPORT

Rebuttal Evidence

Hearing 27B: General

Report prepared by: Yvonne Legarth

Date: 29 April 2021

Waikato



DISTRICT COUNCIL

Te Kaunihera aa Takiwaa o Waikato

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I Introduction

I.1 Background

1. My name is Yvonne Legarth. I am employed by Waikato District Council as a Principal Policy Planner.
2. I am the writer of the original s42A report for Hearing 27B: Natural Hazards General Submissions.
3. My qualification and experience are set out in paragraph 2 of that report, and I have not repeated the information contained in section 1.1 to 1.4 of that s42A Hearing Report here, and request that the Hearings Panel take this as read.

I.2 Code of Conduct

4. I confirm that I continue to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014, and that I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners.

I.3 Conflict of Interest

5. I confirm that I have no real or perceived conflict of interest.

I.4 Preparation of report 27B: Natural Hazards: General Submissions

6. I am the author of this report which has been prepared on behalf of Waikato District Council in accordance with section 42A of the Resource Management Act 1991 (RMA).
7. The scope of this report relates to the evidence received from the submitters and further submitters in relation to the general submissions on the natural hazard and climate change provisions in Variation 2 to the proposed plan that are general.
8. The Section 42A and Response reports on the evidence and hazard provisions for flooding, climate change, wildfire, and coast may also be relevant in this hearing topic.

I.5 Corrections to the Section 42A Report

Omitted submissions on Introduction text at 15.1 (1)

9. The following submission made by Ambury Properties Limited [2180.1] and further submission made by *Ohinewai Lands Limited* [FS3022.6] were inadvertently omitted from my Section 42A Report 27B. The relevant issue and decision sought are dealt with in section 11 of that report.
10. I discuss the submissions and make a recommendation in paragraph 64 of this response to submitter's evidence (planning evidence on behalf of *Ohinewai Lands Limited* [FS3022]).

Submission point	Submitter	Summary of submission
2180.1	Ambury Properties Limited	To amend proposed Introduction text at 15.1 (1) as follows (amendments underlined or struck though): <i>The Natural Hazards chapter manages land use in areas subject to the risk from natural hazards. It identifies areas where certain types of new development will <u>should</u> be avoided, <u>or mitigated</u> because of the natural hazards present...</i>

FS3022.6	<i>Ohinewai Lands Limited</i>	<i>Support. That the submission be allowed</i>
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Omitted submission on Chapter 1.12 – Strategic directions 1.12.8(d)

11. The submission made by Kāinga Ora Homes and Communities [2094.71] and the further submission made by *Mercury NZ Limited FS3034.31* were inadvertently omitted from my Section 42A Report 27B. The relevant issue and decision sought is dealt with in section 8 of that section 42A report.

Submission point	Submitter	Summary of submission
OS 2094.71	Kainga Ora Homes and Communities	Retain Variation 2 Objective 1.12.8(d) Natural Hazards and Climate Change as notified. Submitter supports the strategic objective relating to natural hazards and climate. Supports managing natural hazards through a suite of mapping overlays and provisions as this aligns with the formatting direction outlined in the National Planning Standards.
FS3034.31	<i>Mercury NZ Limited</i>	<i>Supports OS 2094.71</i>

12. Variation 2 amends the Chapter 1 Introduction section 1.12.8 by adding an Objective (d) Natural Hazards and Climate Change to the Strategic Objectives. The objective is:
- “Objective Natural Hazards and Climate Change*
The choice, location and design of development in the district takes into account the risks from natural hazards and potential impacts of climate change.”
13. The submission made by Kāinga Ora Homes and Communities [2094.71] was to retain Objective 1.12.8(d) as notified, and this is supported by *Mercury NZ Limited [FS3034.31]*.
14. In my section 42A report¹, I recommended that the objective be deleted from 1.12.8(d), and inserted (as notified) into 1.12.8(b) and into Chapter 15.
15. I consider that Strategic Objective 1.12.8(d) assists the council to manage use and development in areas that are potentially vulnerable to natural hazards, and promotes an integrated approach to development location and risks from natural hazards and climate change. In my opinion, the strategic directions provide an important touchstone that promotes a consistent planning approach that can lead the development of other parts of the plan in an integrated and consistent manner.

Correction and clarification

16. The strategic objectives are listed in the Introduction in Chapter 1.12.8(b), and the relevant strategic objective is also located at the beginning of each chapter.
17. In my opinion, it would assist users of the plan to retain 1.12.8(d) as notified, and relocate the strategic objective that deals with natural hazards as an additional sub-clause in 1.12.8(b)(vii) to refer to the strategic objective for natural hazards in the Introduction; as well as relocating the strategic objective to the beginning of Chapter 15.

¹ analysis at paragraphs 109 to 117 on pages 25 and 26

18. I recommend that the submission made by Kāinga Ora Homes and Communities [2094.71] be accepted, and that Strategic Objective 1.12.8(d) be retained as notified, and relocated into Introduction 1.12.8(b)(vii) and into Chapter 15.

Additional Recommendation

19. Having considered the points raised in the submission, and for the reasons set out above and in my section 42A report in section 8, I recommend that the Hearings Panel:
- (a) **Accept** the submission made by Kāinga Ora Homes and Communities [2094.71] and the further submission made by *Mercury NZ Limited [FS3034.31]*.

Submissions on proposed Policies 15.2.1.1-3

20. The letter received from Fire and Emergency New Zealand also noted that Policies 15.2.1.1-3 have not been assessed, and requests that these policies be given due consideration prior to a decision being made.
21. I understand that a separate s42A report will be prepared that deals with the submissions and further submissions on these policies.

2 Purpose of the report

22. In the directions of the Hearings Panel dated 26 June 2019, paragraph 18 states:
- If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.*
23. The purpose of this report is to consider the primary evidence and rebuttal evidence filed by submitters on section 42A report 27B. That report discusses the submissions on the following provisions:
- Section 4 Submissions that are out of scope
 - Section 5 Submissions that apply to multiple parts of the proposed plan
 - Section 6 Submission on Chapter 1 – Introduction [1.4 Issues for Waikato district]
 - Section 7 Submission on Chapter 1 – Introduction [1.5 What does this mean for Waikato district strategic objectives and directions?]
 - Section 8 Submission on Chapter 1.12 – Strategic directions 1.12.8(d)
 - Section 9 Submissions on Chapter 12 – How to use and interpret the rules
 - Section 10 Submissions on Chapter 12 (as notified)/Chapter 13 - Definition of ‘Annual exceedance probability (AEP)’
 - Section 11 Submissions on Chapter 15 Natural Hazards and Climate Change [15.1 - Introduction]
 - Section 12 Submissions on Chapter 15 Natural Hazards and Climate Change [15.1(3) and 15.1(4) - Introduction]
 - Section 13 Submissions on Chapter 15.1(7) - Introduction
 - Section 14 Submissions on Chapter 15 - Objective 15.2.1 Resilience to natural hazard risk
 - Section 15 Submissions on Chapter 15 – Policy 15.2.1.4 - New infrastructure and utilities
 - Section 16 Submissions no Chapter 15 – Policy 15.2.1.5 – Existing infrastructure and utilities

Section 17 Submissions on Chapter 15.2 – Policy 15.2.1.6 - Managing natural hazard risk generally

Section 18 Submissions on Chapter 15.2 – Policy 15.2.1.9 - Natural features and buffers

Section 19 Submissions on Chapter 15.2 – Objective 15.2.2 - Awareness of natural hazard risks

Section 20 Submissions on Chapter 15.2 – Policy 15.2.2.1 - Natural hazard risk information

Section 21 Submissions on Chapter 15.2 – Policy 15.2.2.2 - Community Response Plans

Section 22 Submissions on Chapter 15 – Section 15.3 - Using and interpreting rules

Section 23 Submissions on Chapter 15 – 15.13 Information requirements - Information requirements for all resource consent applications addressing natural hazards: 15.13.1 General

Section 24 Submissions on Variation 2 – Amendments to zone Chapters 16 to 18

Section 25 - Submissions on Maps.

24. Evidence on the submissions allocated to this topic was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel²:
- a. Mercury NZ Limited 2053; *FS1223*; *FS1387* and *FS3034*
 - i. Grant Webby: Hydraulic Engineering
 - ii. Angus McKenzie: Planning
 - b. Federated Farmers New Zealand 2172 and 2173; *FS1342* and *FS3030*
 - i. Jesse Quentin: Planning
 - c. Ohinewai Lands Limited *FS3022*
 - i. Matthew Twose: Planning
 - d. Powerco 2100 and *FS3007*
 - i. tabled letter
 - e. Genesis Energy Limited 2104; *FS3006*
 - i. Richard Matthews: Planning
 - f. Ports of Auckland 2139 and *FS1087*
 - i. Mark Arbuthnot: Planning
 - g. Kāinga Ora 2094; *FS3033*
 - i. Craig Sharman: Planning
 - h. Waikato Regional Council 81 and 2102; *FS3031*
 - i. James Beban: Planning
 - ii. Sarah Gunnell: Planning
 - i. Spark New Zealand 2040; *FS3002*
 - i. Chris Horne: Planning
 - j. Fire and Emergency New Zealand #378; *FS1114*
 - i. tabled letter
 - k. Ministry of Education 2086

² Hearings Panel Directions 21 May 2019

- i. tabled letter
 - l. HNZPT 2107; FS3013
 - i. Carolyn McAlley: Planning
 - m. Brett Beamsley 2109
 - i. Brett Beamsley: coastal science
25. Late evidence was filed by the following submitters:
- n. Transpower NZ Ltd 2101 and FS3003 on 20 April 2021
 - i. tabled letter.

3 Consideration of evidence received

Mercury NZ Limited 2053; FSI223; FSI387 and FS3034

26. This section of my response report deals with the matters raised in the hydraulic engineering evidence and rebuttal lodged by Grant Webby and planning evidence and rebuttal lodged by Angus McKenzie on behalf of Mercury NZ Limited.

3.1 Matters addressed by this response

27. The hydraulic engineering evidence lodged by Grant Webby on behalf of Mercury NZ Limited. These matters are dealt with in the section 42 report 27C prepared by Ms Carter.
28. The main topics raised in the planning evidence and rebuttal lodged by Angus McKenzie on behalf of Mercury NZ Limited relates to the management of land use within the flood plain to mitigate risk, and that the plan takes a risk-based approach to the management of high risk and significant risk, and that all areas of significant flood risk, including the known flood plain and Lake Waikare, are identified spatially within the PWDP to highlight areas that may be at risk from flooding.
29. I have only dealt with those matters raised by Mr McKenzie that relate to the provisions in my s42A report.
30. My s42A Report 27B in section 11 deals with the submissions made by Mercury Energy to amend 15.1 paragraph(1); and to retain 15.1 paragraph(6) and 15.1 paragraph (7).
31. My s42A Report 27B in section 12 deals with the submissions made by Mercury Energy to amend 15.1 paragraph(3); and 15.1 paragraph(4).
32. My s42A report 27B in section 23 deals with the submission made by Mercury NZ Limited to retain Information requirements in 15.13.1 General.

3.2 Analysis

Areas of agreement

33. In my s42A report, I have recommended an amendment to Chapter 15: Natural Hazards and Climate Change 15.1 Introduction paragraph (1)³. Attachment A of Mr McKenzie's evidence supports the recommended change to 15.1(1).

³ RMA s42A report 27B section 11 on page 30

Areas of disagreement

34. I disagree with Mr McKenzie at paragraph 5.3 where he states that the proposed amendments to the objectives and policies in my s42 report 27B fail to fully acknowledge the need to manage risk within the flood plain.
35. Risk is defined in the NZCPS as “often expressed in terms of a combination of the consequences of an event (including changes in circumstances) and the associated likelihood of occurrence (AS/NZS ISO 31000:2009 Risk management – Principles and guidelines, November 2009)⁴.” The approach in the district plan is essentially the same: to manage risk, based on the scale and likelihood of the natural hazard event, and the likely consequences to the community⁵.
36. I consider that proposed Chapter 15 does manage land use in areas at risk from natural hazards. I have recommended a change to Objective 15.2.1 to describe a clearer outcome, that the risks from natural hazards on people, property, infrastructure and the environment are avoided, or mitigated. Proposed Policies 15.2.1.1, 15.2.1.4, 15.2.1.5, 15.2.1.6 and 15.2.1.9 that are dealt with in my report are to avoid land use in areas where there is a significant risk from (any) natural hazard, and include criteria that manage risk associated with new infrastructure where there is no practicable alternative, recognise minor activities associated with existing infrastructure in risk areas, provide for land use outside of hazard areas and recognise natural systems that offer hazard protection. The Information requirements in proposed Chapter 15.13 require an assessment of natural hazard risk, including flood risk.
37. Awareness of natural hazard risks is dealt with in Objective 15.2.1 and Policies 15.2.2.1 and 15.2.2 that are dealt with in my report focus on community resilience, awareness of hazard risk, response and recovery from natural hazard events.
38. While the provisions do not refer to flood hazards specifically, I consider that the approach to natural hazard risk in general does include managing hazard risk within a flood plain.
39. I disagree with Mr McKenzie that proposed Policies 15.2.1.1 and 15.2.1.12, as they are currently drafted, imply that the hazard categories H4 and H3 are ‘tolerable’⁶. Ms Carter deals with proposed Policy 15.2.1.12 in her report 27C.
40. Proposed Policy 15.2.1.1 is:
- “*(a) Avoid new subdivision, use and development where they will increase the risk to people’s safety, well-being and property in the following areas identified as being at significant risk from natural hazards:*
- i. *High Risk Flood Area;*
 - ii. *High Risk Coastal Hazard (Inundation) Area;*
 - iii. *High Risk Coastal Hazard (Erosion) Area”*
41. My interpretation of the proposed provision is that Policy 15.2.1.1 uses directive language to avoid land use where there is a significant risk. I do not agree that this means that risk in all other areas is tolerable. Other provisions deal with risk that is less significant, such as Policy 15.2.1.5 which deals with “... all areas subject to natural hazards” and proposed Policy 15.2.1.6 that deals with land use outside of identified hazard areas that have been both identified and assessed.

3.3 Recommendations

42. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

⁴ New Zealand Coastal Policy Statement Glossary

⁵ Proposed Chapter 15.1(3) and (4)

⁶ Evidence of Mr McKenzie on behalf of Mercury Energy at paragraph 5.13

3.4 Recommended amendments

43. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Federated Farmers New Zealand 2172 and 2173; FS1342 and FS3030

44. This section of my response report deals with the matters raised in the planning evidence and rebuttal lodged by Jesse Quentin on behalf of Federated Farmers of New Zealand.

Matters addressed by this response

45. The main topics raised in the planning evidence and rebuttal of Jesse Quentin are whether the recommended amendment to Objective 15.2.1 Resilience to Natural Hazards gives effect to the RPS, and should include example responses to climate change; and that a new Policy 15.2.1.4A should be included to provide for non-habitable buildings and would implement Objective 15.2.1.

3.5 Analysis

46. Objective 15.2.1 with the recommended change is:

Objective 15.2.1 – Resilience to natural hazard risk

A resilient community where the risks from natural hazards on people, property, infrastructure and the environment from subdivision, use and development of land are avoided or **appropriately**⁷ mitigated.

Areas of agreement

Objective 15.2.1

47. The evidence of Jesse Quentin agrees that Objective 15.2.1 not be amended to refer to 'first avoid', and that the drafting in the proposed plan that refers to 'avoid' gives better effect to the WRPS. There is agreement that an objective should describe an outcome, however the planning evidence also seeks an amendment that recognises that some activities have beneficial outcomes in response to natural hazards that should be promoted rather than avoided or restricted⁸. There is also agreement that specific examples should not be included in an objective. I have nothing to add in respect of my assessment of the addition of examples in an objective.
48. While I agree that some beneficial activities that respond to climate change should be promoted rather than avoided, I consider that this is a separate issue, and would be better addressed in a separate objective. Climate change and a broad outcome that the community is able to adapt to the effects of climate change are in proposed Objective 15.2.3.

Areas of disagreement

49. The evidence of Jesse Quentin supports the addition of the following words to Objective 15.2.1 "... *Who are able to undertake appropriate use and development in order to respond to climate change*⁹."

⁷ Report 27B recommendation on Waikato Regional Council 2102.12 and Department of Conservation 2108.2

⁸ Jesse Quentin on behalf of FFNZ at para 6, 7 and 8

⁹ original submission made by Horticulture NZ 2149.1 and supported by Federated Farmers NZ FS3030.24.

50. In my opinion, the objective already deals with risk from natural hazards, and the policies that implement that objective provide the framework for 'how' risk from natural hazards will be managed.
51. I disagree with the addition sought by Horticulture NZ [2149.1], which is supported in the further submission of *Federated Farmers NZ [FS3030.24]* because it enables use and development to respond to climate change, but does not deal with the potential adverse effects on people and the environment. In my opinion, the potential adverse effects from use and development to manage natural hazards as a result of climate change need to be considered in light of the policy direction in the higher-order planning instruments. For example, a seawall or stopbank might be considered appropriate in some circumstances, but the scale of potential effects should be managed, and simply enabling use and development in response to climate change may fail the policy framework for those decisions set out in the higher-order planning instruments. Amending the objective to enable use and development to respond to climate change could have outcomes that are in conflict with the NZCPS provisions¹⁰ that are to manage climate change by locating new development away from areas prone to such risks; considering responses, including managed retreat, for existing development in this situation; and protecting or restoring natural defences to coastal hazards. Similarly, the NPS FM requires an integrated approach that recognises the interactions between freshwater and land, and that manage freshwater, land use and development in a way that avoids, remedies or mitigates adverse effects on water bodies, ecosystems and receiving environments.

3.6 Recommendations

52. Having considered the points raised in evidence and rebuttal evidence I have not changed my recommendations.

3.7 Recommended amendments

53. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Ohinewai Lands Limited FS3022

54. This section of my response report deals with the matters raised in the planning evidence and rebuttal lodged by Matthew Twose on behalf of Ohinewai Lands Limited on amendments to Objective 15.2.1, and the Introduction in Chapter 15.1 (I).

Matters addressed by this response

55. The main topics raised in the planning evidence and rebuttal of Matthew Twose on behalf of Ohinewai Lands Limited relate to the matters discussed in the s42A Report 27C Flood Hazards and Defended Areas prepared by Janice Carter.

3.8 Analysis

Area of agreement

56. The planning evidence of Matthew Twose supports the deletion of 'appropriately' in Objective 15.2.1¹¹

¹⁰ NZCPS Objective 5 and NZCPS Policies 25 and 26

¹¹ Planning evidence of M Twose on behalf of Ohinehwai Land Limited at para 16

Omitted submission point on Objective 15.2.1

57. Matthew Twose correctly identifies that a submission seeking an amendment to Objective 15.2.1 from Ambury Properties Limited submission [2180.1], which was supported by Ohinewai Lands Limited [FS3022.6] was omitted from my s42A report.
58. The only submission point addressed in this report is the submission made by Ambury Properties Limited [2180.1], which sought an amendment to Chapter 15 Introduction text at 15.1 (1) as follows:
- “The Natural Hazards chapter manages land use in areas subject to the risk from natural hazards. It identifies areas where certain types of new development ~~will~~ should be avoided, or mitigated because of the natural hazards present...”*
59. The submission point is that not all land uses can be avoided where they are at risk of natural hazards.
60. This issue is addressed in section 11 of my report 27B, and the submission made by Perry Group seeks the same amended wording which is discussed at paragraphs 162 to 165. My s42A report recommends that the submission point made by Perry Group be rejected.
61. My s42A report recommends that 15.1(1) be amended as follows:

15.1 Introduction

- (1) The Natural Hazards chapter identifies risks associated with natural hazards and¹² manages land use in areas subject to a the risk from natural hazards. It identifies areas where certain types of new development will be avoided because of the natural hazards present, but also recognises that there is existing development, including infrastructure and historic heritage, already located on land subject to natural hazards, and that in some circumstances new infrastructure development in natural hazard areas may be appropriate where the criteria in the plan are met.¹³ These areas will require management through mitigation and adaptation to ensure that the risk of damage to property, historic heritage or sites and areas of Significance to Maaori¹⁴ or injury or loss of lives is not increased.
62. I consider that amending the introduction to use ‘should’ and ‘or mitigated’ weakens the policy approach, and does not describe the policy intent for the management of risk associated with natural hazards in the district plan. In my opinion, the use of ‘will’ and ‘avoid’ is clearer and more certain.

3.9 Recommendations

63. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.
64. For the reason set out above, I recommend that the Hearings Panel:
- (a) **Reject** the submissions made by Ambury Properties Limited [2180.1] and the further submission made by *Ohinewai Lands Limited* [FS3022.6].

3.10 Recommended amendments

65. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

¹² 27B Recommendation to accept submission 2053.9

¹³ 27B Recommendation to accept in part submission 2101.3

¹⁴ 27B Recommendation to accept in part submission 2107.1

Powerco Limited 2100 and FS 3007

66. This section of my response report deals with the matters raised in the letter tabled by Powerco Limited.

Matters addressed by this response

67. The main topics raised in the letter from Powerco Limited that are discussed in my s42A report are the recommended amendment to Objective 15.2.1, the amendments sought to Policies 15.2.1.4 and 5.2.1.5, and the submission seeking a new Policy 5.2.1.5A.

3.11 Analysis

Areas of agreement

68. The letter from Powerco Limited supports my recommendation to amend Objective 15.2.1, and the recommendation to amend Policy 15.2.1.5(a) to refer to 'upgrading'.

Areas of disagreement

69. The further submission made by *Powerco Limited [FS3007.6]*¹⁵ seeks that 'ancillary activities' be added to Policy 15.2.1.4(a), and 'other infrastructure and utilities' be added to Policy 15.2.1.4.(a)(ii).
70. I consider that the proposed policies in Chapter 15 provide for management of risk and effects where infrastructure is technically, functionally or operationally required to locate in areas or traverse through areas subject to natural hazards. There is no evidence provided to suggest that ancillary activities must be co-located with infrastructure in areas at risk from natural hazards.
71. The letter from Powerco Limited does not agree with my recommendation to reject the submission made by Waikato Regional Council [2102.33] and the further submission made by *Powerco Limited [3007.12]*¹⁶ to add a new Policy 15.2.1.5A to provide for new infrastructure in all areas subject to natural hazards; and considers that there is a 'policy gap'.
72. I disagree with Powerco Limited that there is a policy gap on this matter. Proposed Policy 15.2.1.4 deals with new infrastructure in areas at significant risk from natural hazards. Proposed Policy 15.2.1.5 deals with existing infrastructure in all areas subject to hazard risk; and new infrastructure and utilities are 'use and development', which are dealt with in proposed Policy 15.2.1.6.
73. Proposed Policy 15.2.1.6 - Managing natural hazard risk generally is:
- (a) *Provide for rezoning, subdivision, use and development outside High Risk Flood, High Risk Coastal Hazard (Inundation) and High Risk Coastal Hazard (Erosion) Areas where natural hazard risk has been appropriately identified and assessed and can be adequately avoided, remedied or mitigated and does not transfer or exacerbate risk to adjoining properties.*

3.12 Recommendations

74. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

¹⁵ Further submission made by Powerco Limited FS3007.6 in support of the submission made by Genesis Limited 2104.3

¹⁶ Waikato Regional Council submission 2102.33 and further submission made by Powerco Limited FS3007.12

3.13 Recommended amendments

75. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Genesis Energy Limited 2104; FS3006

76. This section of my response report deals with the matters raised in the planning evidence and rebuttal lodged by Richard Matthews on behalf of Genesis Energy Limited.

Matters addressed by this response

77. The main topics raised in the planning evidence and rebuttal of Richard Matthews that are discussed in my s42A report are the submissions and my recommendation on proposed Policy 15.2.1.4.
78. The planning evidence seeks the following alternative amendment to Policy 15.2.1.4:
 Policy 15.2.1.4 - New and upgrading of infrastructure and utilities in areas subject to significant risk from natural hazards.
 (a) Enable the construction of new infrastructure and utilities, **and associated ancillary activities, and the upgrading of infrastructure and utilities**, in areas at significant risk from natural hazards, including High Risk Flood, High Risk Coastal Hazard (Inundation) and High-Risk Coastal Hazard (Erosion) areas only where: ..."

3.14 Analysis

79. The National Planning Standard defined 'ancillary activities' as an activity that supports and is subsidiary to a primary activity. Regionally-significant infrastructure is defined in the WRPS, but ancillary activities are not included or defined.
80. I disagree with Mr Matthews that ancillary activities associated with infrastructure should be enabled. In my opinion, the addition of new infrastructure and utilities as well as any associated 'ancillary activities' have potential to enable an extremely broad range of activities in an area at significant risk from natural hazards. While I accept that in some instances there may be an operational or functional need for infrastructure to be located in areas of significant risk, I consider that ancillary activities should be provided for (rather than enabled) where natural hazard risk has been appropriately identified and assessed and can be adequately avoided, remedied or mitigated and does not transfer or exacerbate risk to adjoining properties.

3.15 Recommendations

81. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

3.16 Recommended amendments

82. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Ports of Auckland 2139 and FSI087

83. This section of my response report deals with the matters raised in the planning evidence and rebuttal lodged by Mark Arbuthnot on behalf of Ports of Auckland.
84. The main topics raised in the planning evidence and rebuttal lodged by Mark Arbuthnot do not relate to matters in my s42A report H27B, but are addressed in reports H27C and H27F prepared by Mr Taylor and Ms Carter, and are discussed in their response.

3.17 Recommended amendments

85. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Kāinga Ora 2094 and FS3033

86. This section of my response report deals with the matters raised in the planning evidence and rebuttal lodged by Craig Sharman on behalf of Kāinga Ora¹⁷.

3.18 Recommended amendments

87. I have considered Mr Sharman's planning evidence and have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Waikato Regional Council 81 and 2102; FS 3031

88. This section of my response report deals with the matters raised in the planning evidence and rebuttal lodged by James Beban and Sarah Gunnell on behalf of the Waikato Regional Council.

Matters addressed by this response

89. The main topics raised in the planning evidence and rebuttal of James Beban and Sarah Gunnell that are discussed in my s42A report are the submissions and my recommendations on Chapter 1.4.2.3 Challenges; Chapter 1.5.2(b) Planning for Urban Growth, 15.1(7) Introduction; proposed Policies 15.2.1.1, 15.2.1.2 and 15.2.1.6; and proposed Policy 15.2.2.2.

3.19 Analysis

Areas of agreement

90. The planning evidence lodged on behalf of WRC is supportive of the risk-based approach in the proposed plan¹⁸, the relocation of provisions to assist with navigation of the plan¹⁹; and the recommended amendment to Chapter 1.5.2(b) Planning for Urban Growth and Development²⁰.

Areas of disagreement

91. WRC also seeks clarification of whether high hazard areas are to be considered as primary hazard zones.
92. The term 'primary hazard zone' is defined in the WRPS as "*an area in which the risk to life, property or the environment from natural hazards is intolerable.*" The WRPS requires the regional council to define primary hazard zones, in consultation with others (Method 13.1.2.). The control of land use in primary hazard zones is allocated in the Methods of implementation under WRPS Policy 4.2 Collaborative approach.
93. The allocation of responsibilities can occur through the RPS, as part of the functions of a regional council.²¹ Method 4.2.10 allocates responsibility for controlling structures in primary hazard zones to the regional council, and territorial authorities are responsible for controlling

¹⁷ Planning evidence of Craig Sharman on behalf of Kāinga Ora in section 9 on page 11 and 12

¹⁸ Planning evidence lodged by James Beban and Sarah Gunnell on behalf of the Waikato Regional Council at para 3.1

¹⁹ Planning evidence lodged by James Beban and Sarah Gunnell on behalf of the Waikato Regional Council at para 4.1

²⁰ Planning evidence lodged by James Beban and Sarah Gunnell on behalf of the Waikato Regional Council at para 4.10

²¹ RMA s62(1)(i)

the use of land outside of the coastal marine area, the beds of lakes and rivers, and primary hazard zones. The purpose of the allocation of functions in the WRPS is so that it is clear which authority is responsible, and to deal with the potential for duplication.

94. The planning evidence at para 4.3 states: "Policy 13.1.2 of the WRPS states that WRC will help to identify primary hazard zones in consultation with key stakeholders and affected communities, and these shall be recognised and provided for in regional and district plans."
95. I read this differently. I consider that the requirement of Method 13.1.2 is for the regional council to identify primary hazard zones, after consulting with other parties. To date, the regional council has not identified any primary hazard zones, and the regional plan does not refer to any.
96. The WRPS Chapter 13 deals with natural hazards, and Policy 13.1.3 Define Primary Hazard Zones, is that the regional council will define primary hazard zones in consultation with the territorial authorities, iwi and the community; assess natural hazard risk to communities; and that these shall be recognised and provided for in regional and district plans. The regional council's e-plan does not show 'primary hazard areas' on the map.
97. The management of land use in an area subject to natural hazards is a function of the district council, identified in RMA s31(1)(b)(i).
98. At a policy level, there are a number of questions:
- i. does the approach in the district plan give effect to the WRPS, and
 - ii. does the regional plan give effect to the WRPS, and if so, is the district plan inconsistent with a relevant provisions in the regional plan ?
99. As the regional council has not identified a 'primary hazard zone' on its planning maps, and the regional plan does not control land use in those areas in its regional plan, then I consider that the district plan is not inconsistent with the regional plan. In the absence of any primary hazard zones being identified by Waikato Regional Council, the PWDP gives effect to WRPS to the extent possible, in a manner consistent with the natural hazards risk management approach in WRPS Policy 13.1.
100. Natural hazards are appropriately addressed in the district plan, in accordance with the Council's functions in RMA s31. While the WRPS does allocate functions to the regional council and the district councils, the regional council has not identified primary hazard areas. Where the regional council has not identified primary hazard zones in its statutory planning documents; in accordance with its methods of implementation, I consider that it is appropriate for the district council to manage land use in areas prone to natural hazards. In the event that the regional council does identify 'primary hazard zones' in the future, a review of the district plan can deal with the matter at that time.
101. The submission made by the regional council sought amendments to Chapter 15.1(7). The planning evidence on behalf of the regional council states that "it is misleading to state that less frequent natural hazards in the Waikato District may not need a district plan response"²².
102. Neither my s42A report nor the district plan suggest that. My report states that "The description in 15.1(7) is intended to signal that, in addition to the regulatory responses, there are also non-statutory responses and instruments that play an important role in management and recovery following a natural hazard event."²³ The WRPS has an implementation method that includes information and advocacy. The explanation under those methods include a

²² Planning evidence lodged by James Beban and Sarah Gunnell on behalf of the Waikato Regional Council at paragraph 4.5

²³ RMA section 42A report 27B at paragraph 192

discussion about 'the management of natural hazard risks within the region being consistent and aligned with civil defence approaches²⁴'.

103. Other matters raised in the planning evidence by the regional council are discussed in my s42A report, and I have no additional comments to make.

3.20 Recommendations

104. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

3.21 Recommended amendments

105. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Spark New Zealand 2040; FS3002

106. This section of my response report deals with the matters raised in the planning evidence and rebuttal lodged by Chris Horne on behalf of Spark New Zealand.

Matters addressed by this response

107. The main topic raised in the planning evidence and rebuttal of Chris Horne that are discussed in my s42A report relate to the explanation of the rules in Chapter 15.3: How to use and interpret the rules.

3.22 Analysis

108. The planning evidence of Chris Horne is that a note should be added to Rule 15.3 to make it clear that where the hazard rules are silent on earthworks, they are not regulated in that hazard overlay area over and above any relevant zone or district-wide rules for earthworks that may already apply.

109. Ideally, a user of the plan would not rely on the narrative in introductory sections of a plan to know whether they comply or not. The rules must therefore be clear and certain. I have discussed my interpretation of the earthworks rules in Chapter 15 with Ms Carter, and our reading of the rules and how these apply to earthworks (all activities), and earthworks associated with utilities is the same.

110. I do not agree that the description of how the rules in the proposed plan are intended to apply to earthworks associated with infrastructure and energy in a natural hazard overlay is unclear, or that Chris Horne's suggested amendment correctly describes the relationship between Chapter 14 and Chapter 15, and the applicable earthworks provisions in the zones and overlays in the proposed plan.

111. Variation 2 proposed an amendment to Chapter 14 Introduction that added the following: "*The provisions of the Natural Hazards and Climate Change chapter (Chapter 15), and associated natural hazard overlays identified in the planning maps, apply to activities in the Infrastructure and Energy chapter*".

112. Proposed Chapter 15 deals with natural hazards, and the introduction to Chapter 15.3(a) states that the rules covering activities in the natural hazards chapter apply in addition to the rules in the relevant zone chapters and the district-wide rules in Chapter 14 Infrastructure and Energy.

113. As a land use, it is my opinion that the activity of 'earthworks' is the same as 'earthworks' associated with infrastructure, albeit that the nature and scale of the effects may differ. There are rules in Chapters 14 and 15 that apply, unless the activity is expressly provided for in a

²⁴ Waikato Regional Policy Statement Explanation on page 13-2

permitted activity rule in the plan. Where an activity is not expressly provided for as a permitted activity, then a consent is required under a rule in the proposed plan.

114. The rules in Chapter 15 have an activity-specific rule that provides for ‘earthworks that are undertaken in association with utilities’²⁵. All other earthworks, including those undertaken in association with infrastructure, are subject to the other rules in the plan.
115. The plan is never ‘silent’ on earthworks. The drafting of the rules in Chapter 15 are that where earthworks are not expressly provided for in a permitted activity, then a consent is required.
116. I consider that my interpretation is supported by the policies. There would need to be a rule in the plan that manages earthworks and infrastructure in areas vulnerable to natural hazards, in order to implement proposed Policies 15.2.1.4, 15.2.1.8 and 15.2.1.11.
117. By way of a simple summary,
- i. Earthworks associated with infrastructure are subject to rules in Chapter 14 and Chapter 15. Earthworks associated with infrastructure is not controlled by the earthworks rules in the zone chapters.
 - ii. Earthworks associated with infrastructure are also subject to specific rules that apply to those overlays specified in Chapter 14.

3.23 Recommendations

118. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

3.24 Recommended amendments

119. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Fire and Emergency New Zealand 378; FS1114

120. This section of my response report deals with the matters raised in the letter from Fire and Emergency New Zealand.

Matters addressed by this response

121. The main topics raised in the letter from Fire and Emergency New Zealand that are discussed in my s42A report are the submissions and my recommendation on proposed Objective 15.2.1, Policy 15.2.1.4, Policy 15.2.1.6, Objective 15.2.2, Policy 15.2.2.1 and 15.2.2.2.
122. The letter from Fire and Emergency New Zealand also noted that Policies 15.2.1.1-3 have not been assessed, and requests that these policies be given due consideration prior to a decision being made.

Areas of agreement

Objective 15.2.1, Policy 15.2.1.4, and Policy 15.2.1.6

²⁵ Examples include Flood Plain Management Area and Flood Ponding Areas Permitted activity rule 15.4.1 P6 (utilities), P7 (building platforms for residential purposes subject to conditions), P8 (all other earthworks not provided for by P6 and P7 subject to conditions). In High Risk Flood Areas 15.5.1 P1 and P2 provide for specific activities as permitted activities with no activity specific conditions; and the restricted discretionary, discretionary and non-complying are also activity specific rules, nevertheless the earthworks rules in Chapter 14 still apply to infrastructure and energy. Chapter 14 rule 14.3.1 P4 provides for earthworks associated with infrastructure subject to the conditions in 14.3.1.3, and restricted discretionary activity rule 14.3.3 requires a consent where earthworks associated with infrastructure do not comply with the conditions in 14.3.1.3.

123. The letter from Fire and Emergency New Zealand supports the recommended amendments to Objective 15.2.1 and Policy 15.2.1.4, and recommendation to retain proposed Policy 15.2.1.6.
Objective 5.2.2
124. The letter from Fire and Emergency New Zealand supports the recommendation to retain proposed Objective 15.2.2 as notified, and to relocate Objective 15.2.2 in Chapter 15.
Policy 15.2.2.1
125. The submission from Fire and Emergency New Zealand was to retain proposed Policy 15.2.2.1 as notified, however they advise that they now support the recommended amendment to include reference to the projected effects of climate change²⁶.
Policy 15.2.2.2
126. The letter from Fire and Emergency New Zealand supports the recommendation to retain proposed Policy 15.2.2.2 as notified.
- 3.25 Recommended amendments**
127. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Ministry of Education 781, 2086 and FS1277

128. This section of my response report deals with the matters raised in the letter from the Ministry of Education.
Matters addressed by this response
129. The main topics raised in the letter from the Ministry of Education that are discussed in my s42A report are the submissions and my recommendation on the introductory sections, and Objective 15.2.2, proposed Policies 15.2.2.1 and 15.2.2.2, and the inclusion of robust mapping of hazard areas in the district.
Areas of agreement
130. The letter from the Ministry of Education generally supports the recommendations on those matters.
- 3.26 Recommended amendments**
131. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Heritage NZ Heritage New Zealand Pouhere Taonga 2107 and FS3013

132. This section of my response report deals with the matters raised in the planning evidence and rebuttal lodged by Carolyn McAlley made on behalf of HNZPT.
Matters addressed by this response
133. The main topics raised in the planning evidence and rebuttal of Carolyn McAlley that are discussed in my s42A report are the submissions and my recommendation to amend 15.2 How to use and interpret the rules.

²⁶ Letter from Fire and Emergency NZ on page 2

Areas of agreement

134. Ms McAlley agrees with the recommended amendments to Chapter 15.2²⁷.

3.27 Recommended amendments

135. I have not made any alternative amendments to provisions, beyond those changes recommended in my s42A report H27B.

Brett Beamsley 2109

136. This section of my response report deals with the matters raised in the evidence and rebuttal lodged by Brett Beamsley.

Matters addressed by this response

137. The main topics raised in the planning evidence and rebuttal lodged by Mr Beamsley relate to matters in the s42A report 27D prepared by Ms Nicolson on coastal hazards, and are therefore discussed in her response.

3.28 Recommended amendments

138. I have read Mr Beamsley's evidence and have not made any alternative amendments to provisions. I defer to the recommendations made by Ms Nicolson on Mr Beamsley's submission.

4 Conclusion

139. I have read and considered the evidence lodge by submitters on the matters discussed in my section 42A Report 27B, and having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations.

²⁷ Planning evidence of Ms McAlley on behalf of HNZPT on page 3

Appendix I List of submitters and further submitters in RMA s42A report: Natural Hazards: General

Original Submitter	Submission number	Further Submitter	Submission number
Sofia Andreen	2083	<i>Ambury Properties Limited</i>	<i>FS3028</i>
Auckland Waikato Fish and Game	2156	<i>Bathurst Resources Limited and BT Mining Limited</i>	<i>FS1198</i>
Avant Developments Limited	2143	<i>Counties Power</i>	<i>FS3021</i>
Russell Davis	2118	<i>Department of Conservation</i>	<i>FS3012</i>
Department of Conservation	2108	<i>Federated Farmers of New Zealand</i>	<i>FS1342</i> <i>FS3030</i>
Dilworth Trust Board	2161	<i>Genesis Energy Limited</i>	<i>FS3006</i>
Ewen Brunskill	2028	<i>Heritage New Zealand Pouhere Taonga</i>	<i>FS3013</i>
Federated Farmers of New Zealand	2172 2173	<i>Horticulture New Zealand</i>	<i>FS3027</i>
Fire and Emergency New Zealand	2103	<i>Kainga Ora Homes and Communities</i>	<i>FS3033</i>
Genesis Energy Limited	2104	<i>KiwiRail Holdings Limited</i>	<i>FS3010</i>
Heritage New Zealand Pouhere Taonga	2107	<i>Mercury NZ Limited</i>	<i>FS1223</i> <i>FS1387</i> <i>FS3034</i>
Donald Graeme Hogg	2011	<i>Ohinewai Lands Limited</i>	<i>FS3022</i>
Horticulture New Zealand	2149	<i>Ports of Auckland Limited</i>	<i>FS1087</i>
Kainga Ora Homes and Communities	2094	<i>PowerCo Limited</i>	<i>FS3007</i>
Mark Mathers	2187	<i>Raglan Collective Incorporated Society</i>	<i>FS3016</i>
<i>Brett Beamsley</i>	<i>2109</i>	<i>Shand Properties Limited</i>	<i>FS3020</i>
Graham and Di McBride	2178	<i>Spark New Zealand Trading Limited</i>	<i>FS3002</i>
Mercury NZ Limited	2053	<i>Synlait Milk Limited</i>	<i>FS1110</i> <i>FS1322</i>
Ron Miller	2084	<i>TaTa Valley Limited</i>	<i>FS3029</i>
Ministry of Education	2086	<i>Timberline Contracting</i>	<i>FS3032</i>
NZTE Operations Limited	2099	<i>Transpower New Zealand Limited</i>	<i>FS3003</i>
Perry Group Limited	2105	<i>Waikato District Council</i>	<i>FS2146</i>
Pokeno Community Committee	2091	<i>Waikato Regional Council</i>	<i>FS3031</i>
Ports of Auckland Limited	2139	<i>WEL Networks Limited</i>	<i>FS3014</i>

Powerco Limited	2100
Raglan Naturally	831
Rangitahi Limited	2115
Sharp Planning Solutions Ltd	695
Spark New Zealand Trading Limited	2040
Angeline Greensill for Tainui o Tainui	942
TaTa Valley Limited	2093
Te Kopua Trust & Te Kopua 2b3 Incorporation	2175
Terry Quilty	2061
Transpower New Zealand Limited	2101
Waikato Regional Council	81 2102
Waikato-Tainui Te Kauhanganui Incorporated	2151
Ward Ranch Limited	2050
WEL Networks Limited	2106
Blair Everett	2032

Whaingaroa Environmental Defence Inc. Society	FS1276

Additional submission points in this response:

Ambury Properties Limited [2180.1] and further submission made by Ohinewai Lands Limited [FS3022.6]

Kāinga Ora Homes and Communities [2094.71] and the further submission made by Mercury NZ Limited FS3034.31