

SECTION 42A REPORT

Rebuttal Evidence

Hearing 28: Natural Hazards Other Matters

Report prepared by: Yvonne Legarth
on behalf of Waikato District Council

Date: 5 July 2021 **Fin 4**



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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 28: Natural Hazards Other Matters.
3. I hold a Bachelor of Regional Planning from Massey University. I have over 30 years' experience in planning and policy development, predominantly under the Resource Management Act 1991 (RM A). My qualifications and experience are set out more comprehensively in my s42A report H27B, and I have not repeated the here, and I 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 H28: Natural Hazards Other Matters

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).

2 Evidence received

7. Evidence was received from the following submitters on the matters discussed in my section 42A Report 28 Natural Hazards Other Matters:
 - a) Craig Sharman on behalf of Kāinga Ora-Homes and Communities submitter no. 2094 and FS3033
 - b) Lynette Wharfe for Horticulture New Zealand (further submitter no. FS3027)
 - c) Ports of Auckland Limited submitter no. 2139 and FS1087 (tabled letter)
 - d) Transpower New Zealand Ltd ("Transpower") submitter no. 2101 (tabled letter)
 - e) Fire and Emergency New Zealand (Fire and Emergency) submitter no. 2103 and FS3025 (tabled).

3 Consideration of evidence received

3.1 Kāinga Ora-Homes and Communities submitter no. 2094 and FS3033

8. The planning evidence of Craig Melville Sharman on behalf of Kāinga Ora-Homes and Communities - submitter no. 2094 and FS3033:
 - (a) supports the recommendation to retain a stand-alone natural hazards chapter (#2094.)
 - (b) supports the recommended amendments to Policies 15.2.1.1 (#2094.3) and 15.2.1.2 (#2094.4), and
 - (c) does not support the recommended amendment to Policy 15.2.1.1 because it broadens the scope of the policy to all areas at risk from natural hazards, not just those that are

mapped as hazard risk areas. (This amendment was responding to Waikato Regional Council [2102.25] opposed by Kainga Ora [FS3033.13] – s42A report section 10).

9. Mr Sharman raises a concern that the “avoid” wording of the policy with the proposed amendment to the policy appears to have the statutory effect that land use development cannot locate in a wide range of localities, whether spatially mapped or not within the PDP, even if there is an engineered solution that could be applied to effectively mitigate hazard risks.

3.1.1 Response

10. The wording recommended in the s42A report is as follows [the [purple text](#) being the recommendation change]:

Policy 15.2.1.11 New development that creates demand for new protection structures and works

- (a) *Avoid locating new subdivision, use and development in [High Risk Flood, High Risk Coastal Hazard \(Inundation\) and High Risk Coastal Hazard \(Erosion\) Areas areas at risk from natural hazards](#) where a demand or need for new structural protection works will be required to reduce the risk from natural hazards to acceptable levels.*

11. I agree with Mr Sharman that the change to refer to ‘areas at risk from natural hazards’ expands the reach of the policy to areas that are not mapped.
12. The recommended amendment to the policy manages the need for new hard protection structures to protect new subdivision, use and development. While the areas are not mapped, the policy applies where both new subdivision, use and development are proposed and new hard protection structures are also needed to protect that development. I consider that this situation is unlikely to arise unless there is a real and known risk from a natural hazard now or in the future.
13. I consider that a policy layer is needed to assist decision makers when new subdivision, use and development are proposed that are dependent on new structural protection works being provided. Having considered Mr Sharman’s concern, I consider that the approach is not appropriate for all natural hazards, such as forming raised building platforms and stabilising unstable slopes and slips that are not associated with flooding of rivers and streams, or inundation in the coastal environment. As hard protection works and structural protection works are not defined in the proposed plan, I also recommend a further change to make it clear that raised building platforms are not structural protection works.
14. I have amended my recommendation to refer to areas at risk from natural hazards as a result of flooding or inundation.

3.1.2 Recommendations

15. Having considered the points raised in evidence and rebuttal evidence, I have not changed my recommendations to accept in part Waikato Regional Council [2102.25], but I now recommend amended wording for the plan text.

3.1.2 Recommended amendments

16. I recommend the following alternative amendments to provisions:

Policy 15.2.1.11 New development that creates demand for new protection structures and works

- (a) *Avoid locating new subdivision, use and development in [High Risk Flood, High Risk Coastal Hazard \(Inundation\) and High Risk Coastal Hazard \(Erosion\) Areas areas at risk of flooding or inundation](#) where a demand or need for new structural protection works will be required to reduce the risk from natural hazards to acceptable levels.*

- (b) [The formation of a raised building platform to achieve minimum floor levels does not constitute structural protection works under this policy.](#)

3.2 Horticulture New Zealand (further submitter no. FS3027)

17. There are two briefs of evidence from Lynette Wharfe on behalf of Horticulture New Zealand (further submitter no FS3027), both dated 21 June 2021. One brief relates to Hearing 28: Other Matters – Rural, and the other to Hearing 27: Natural Hazards and Hearing 28: Other Matters Natural Hazards: Supplementary. My comments are in respect of the second brief on Natural Hazards H27B and H28 Supplementary.
18. The planning evidence of Lynette Wharfe for Horticulture New Zealand (further submitter no. FS3027) mostly applies to the matters already covered in the H27 hearings, e.g. provisions that apply to habitable and non-habitable buildings in s42A Report 27C and crop protection structures in s42a Report 27F. I have made no further comment on those submission points in those hearings that have already concluded.
19. Ms Wharfe’s discussion¹ on Objective 15.2.1 does not relate to the H28 Other Matters report that is the subject of this hearing. Ms Wharfe discusses my analysis, in para 215 of my s42A Report 27B, that an objective should not contain examples. In the earlier s42A H27B at paragraph 216 of that report I discuss the examples put forward by Horticulture NZ, which are to “provide water storage, or undertake different types of primary production and the practices that may support primary production” as non-regulatory responses. I consider that providing water storage (for example) is a non-regulatory tool. For the avoidance of doubt, I am not suggesting that regulation does not have a role in managing natural hazards. I have concluded that no change is needed to Objective 15.2.1 as a result of the submission and evidence of Horticulture NZ.
20. Habitable rooms are discussed by Ms Wharfe, rebutting the analysis and recommendations in s42A Report 27C, paras 130-132 and para 206 in respect of habitable and non-habitable buildings. At paragraph 5.10 Ms Wharfe suggests a definition for non-habitable rooms, stating that “In my opinion a habitable building is one that provides cooking and ablution facilities. If these facilities don’t exist a building would not be suitable for human habitation.”
21. I disagree with the definition offered by Ms Wharf. I consider that a sleepout or other detached bedroom space should also be considered a habitable room. The suggested approach is not quite aligned with the National Planning Standard use of terms for: **Habitable room**, which means any room used for the purposes of teaching or used as a living room, dining room, sitting room, bedroom, office or other room specified in the Plan to be a similarly occupied room; and the definition in that Standard of **net floor area** excludes (viii) non-habitable floor spaces in rooftop structures. Another example is a wharenui, where overnight stays may occur and the cooking and ablutions are often in separate buildings. I have concluded that no change is needed to the definitions or rules that apply to habitable rooms.

3.2.1 Recommended amendments

22. I have not made any alternative amendments to the provisions referred to in evidence by Horticulture NZ.

¹ Planning evidence of Ms Wharfe dated 21 June 2021 at paragraph 9.3 and 9.4 on page 11

3.2.2 Other evidence tabled

23. Ports of Auckland Limited submitter no. 2139 and *FS1087*, Transpower New Zealand Ltd (“Transpower”) submitter no. 2101 and Fire and Emergency New Zealand (Fire and Emergency) submitter no. 2103 and *FS3025* are generally supportive of the recommendations made in my s42A report on the matters raised in their submissions.

3.2.3 Recommended amendments

24. I have not made any alternative amendments to provisions referred to by Ports of Auckland Limited, Transpower New Zealand Ltd or Fire and Emergency New Zealand.

4 Coastal Sensitivity Area Maps – clarification

25. A number of amendments to the Coastal Sensitivity Area (Erosion) maps were not fully addressed in the Coastal Hazards s42A report (H27D). Consequently, there are some areas where the recommended change has resulted in a gap between the natural hazard overlay areas that were recommended to be retained as notified, and the areas that were recommended to be amended. These areas are discussed in the following section.

4.1 Port Waikato – Coastal Sensitivity Area (Erosion) and Coastal Sensitivity Area (Open Coast)

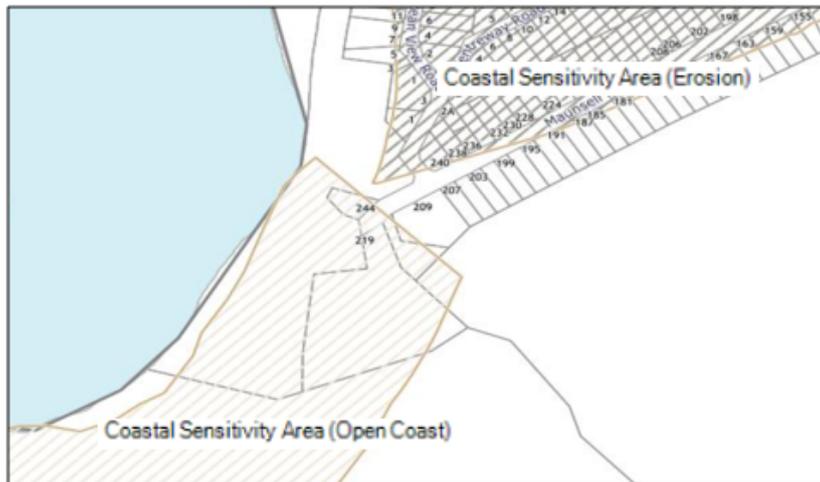


Figure 1: Coastal Sensitivity Area (Erosion) and Coastal Sensitivity Area (Open Coast) as notified

26. Changes to the Coastal Sensitivity Area (Open Coast) at the southern end of Sunset Beach at Port Waikato were recommended as a result of submissions by Sunset Heights (Port Waikato) Ltd [2002.1], Glenn & Marion Hunter [2004.1] and [2162.1], and Neal Gordon & Teresa Mary Phillips [2010.1]. These submitters sought to have the overlay removed from their properties between 209 and 215 Maunsell Road at the western end of Maunsell Road.
27. The reason for the recommendation as outlined in the s42A report H27D – Coastal Hazards Part 2 Maps, section 1.1.2, is that the more detailed mapping of the Coastal Sensitivity Area (Erosion) should apply to properties in the urban environment. The report writer therefore recommended accepting the submissions and amended the Coastal Sensitivity Area (Open Coast) according to the expert recommendations by Mrs Gibberd, as shown in Figure 2 below.

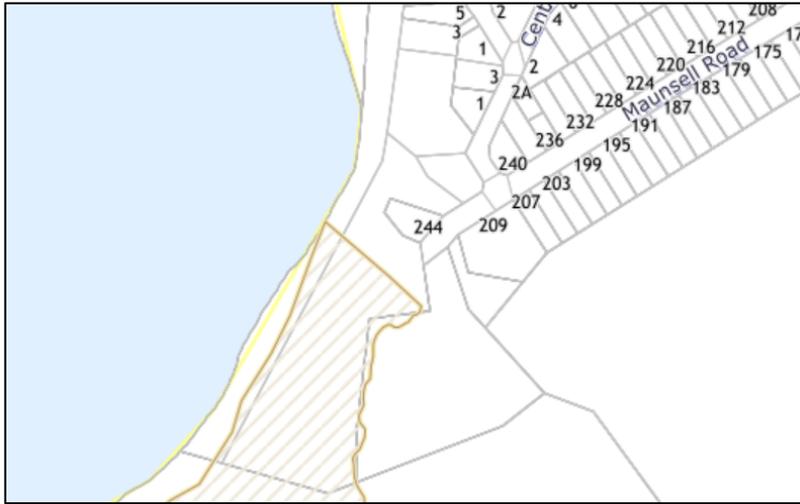


Figure 2: Recommended amendment to the Coastal Sensitivity Area (Open Coast)

28. However, rather than removing the Coastal Sensitivity Area (Open Coast) from the property at 244 Maunsell Road, Port Waikato, entirely as shown in Figure 2, the report author should have recommended that the overlay be changed to ‘Coastal Sensitivity Area (Erosion)’ over the property at 244 Maunsell Road, Port Waikato, as shown in figure 3 below.

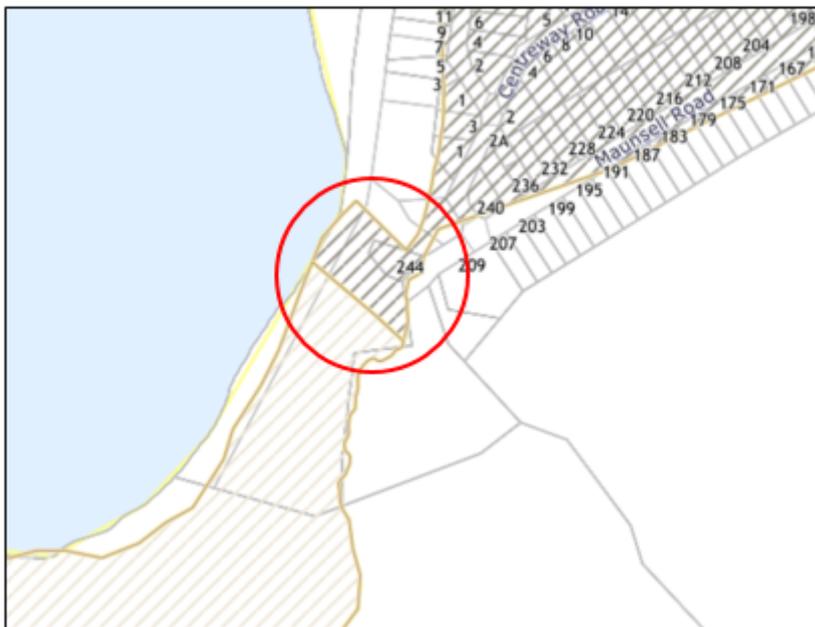
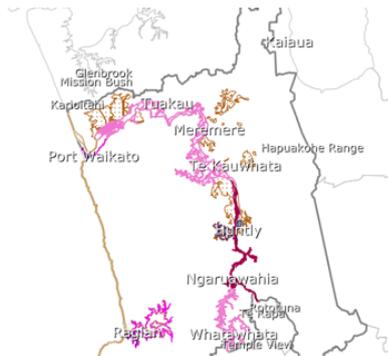


Figure 3: Extension to the Coastal Sensitivity Area (Erosion)

29. Mrs Gibberd recommended adjusting the Coastal Sensitivity Area (Open Coast) in response to the submissions where residential properties were unintentionally affected by the Coastal

Sensitivity Area (Open Coast) and where the detailed modelling of the Coastal Sensitivity Area (Erosion) should have applied. This change brought the inland boundary of the Coastal Sensitivity Area (Open Coast) to the landward side of the coastal ridge. This recommendation should have also included a change from 'Coastal Sensitivity Area (Open Coast)' to 'Coastal Sensitivity Area (Erosion)' to over the residential property at 244 Maunsell Road and the surrounding reserve land, replacing that part of the area covered by the notified Coastal Sensitivity Area (Open Coast) overlay.

30. The rules that apply to the two overlays are very similar, and are also the subject of a recommendation to amalgamate Rules 15.7 and 15.8 in the proposed plan into 15.7A².
31. The intention was to apply the Coastal Sensitivity Area (Open Coast) to rural properties and the Coastal Sensitivity Area (Erosion) to urban properties. I therefore recommend that the Coastal Sensitivity Area (Erosion) be applied to the property at 244 Maunsell Road and the surrounding reserve land, as shown in Figure 3 above, replacing the Coastal Sensitivity Area (Open Coast) overlay. This is a consequential amendment arising from the submissions made by Sunset Heights (Port Waikato) Ltd [2002.1], Glenn & Marion Hunter [2004.1] and [2162.1], and Neal Gordon & Teresa Mary Phillips [2010.1].

4.2 Raglan - High Risk Erosion Area (Cox Bay, Greenslade Road, Norrie Ave, Rangitahi Peninsula and Mara Kai Lane)

32. A number of submissions sought to either amend or delete the High Risk Coastal Erosion Area on various properties adjacent to the cliffed shoreline around Cox Bay, Greenslade Road, Norrie Ave, Rangitahi Peninsula and Mara Kai Lane. The report author describes the submissions as challenging the extent of the area and that submitters considered it to be too conservative.
33. Mrs Gibberd reassessed the methodology and recommended that the 1:2 stable slope be amended to a 1:1.5 stable slope in response to the submissions. The report author recommended amending the High Risk Coastal Erosion Area in accordance with Mrs Gibberd's advice, while also recommending that the Coastal Sensitivity Area (Erosion) remain unchanged (see s42A Report H27D – Part 2 Maps, Sections 1.6, 1.7 1.12, 1.13 and 1.14).
34. However, the Coastal Sensitivity Area should also be amended as a consequence of the changes to the High Risk Coastal Erosion Area. If the Coastal Sensitivity Area extent is retained as notified, this would result in a gap between the two overlay areas. The recommended maps in Figures 20, 23, 31, 34 and 38 of the s42A report H27D – Part 2 Maps, show the desired changes to the High Risk Coastal Erosion Area and the Coastal Sensitivity Area (Erosion), but the changes to the latter were not reflected in the text. These are included in this report as Appendix 2.
35. I recommend that the Coastal Sensitivity Area (Erosion) be amended to cover the area between the seaward side of the notified Coastal Sensitivity Area (Erosion) overlay and the landward side of the amended High Risk Coastal Erosion Area, as shown in Figure 20 (Cox Bay), Figure 23 (Greenslade Road), Figure 31 (Norrie Ave), Figure 34 (Rangitahi Peninsula) and Figure 38 (Mara Kai Lane) of the s42A report H27D – Part 2 Maps, and included in this report as Appendix 2.

5 Conclusion

36. I have considered the tabled letters and matters raised in evidence on behalf of submitters on the matters discussed in my section 42A Report 28 Natural Hazards Other Matters. I have

² RMA s42A report – Natural Hazards H27B section 25 at para 414

not changed my recommendations. I have revised my recommended amendment to Policy 15.2.1.11 to focus on flooding and inundation of coastal areas.

37. A need for consequential amendments has been identified as a result of the recommendations made in response to submissions. I recommend that the 'Coastal Sensitivity Area (Open Coast)' overlay be changed to 'Coastal Sensitivity Area (Erosion)' on the property at 244 Maunsell Road Port Waikato.
38. I also recommend that the Coastal Sensitivity Area (Erosion) overlay map be adjusted to cover the area between the seaward side of the notified Coastal Sensitivity Area (Erosion) overlay and the landward side of the amended High Risk Coastal Erosion Area. These areas are shown in the s42A Report H27D – Part 2 Maps and attached as Appendix 2 of this report.

Yvonne Legarth

Appendix I
Report on submissions and further submissions on the
Proposed Waikato District Plan

Hearing 28: Other Matters

Natural Hazards

Recommended alternative policy

Policy 15.2.1.11 New development that creates demand for new protection structures and works

- (a) Avoid locating new subdivision, use and development in ~~High Risk Flood, High Risk Coastal Hazard (Inundation) and High Risk Coastal Hazard (Erosion) Areas~~ areas at risk of flooding or inundation where a demand or need for new structural protection works will be required to reduce the risk from natural hazards to acceptable levels.
- (b) The formation of a building platform to achieve minimum floor levels does not constitute structural protection works under this policy.

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Policy 15.2.1.11 New development that creates demand for new protection structures and works

- (a) Avoid locating new subdivision, use and development in areas at risk of flooding or inundation where a demand or need for new structural protection works will be required to reduce the risk from natural hazards to acceptable levels.
- (b) The formation of a building platform to achieve minimum floor levels does not constitute structural protection works under this policy.

Figure 23 – Greenslade Road



Figure 31 Norrie Ave



Figure 34 – Rangitahi Peninsula



Figure 38 – Mara Kai Lane



Figure 39 - H28

