

# **SECTION 42A REPORT**

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

## **Hearing 28: Other matters Natural Hazards: Supplementary**

**Yvonne Legarth**

**On behalf of Waikato District Council**

Date: 1 June 2021



## TABLE OF CONTENTS

1	Introduction .....	4
2	Scope of Report.....	4
3	Statutory framework .....	6
4	Consideration of submissions received.....	7
5	Chapter 15 - Rule category.....	12
6	Chapter 15.2 – Objectives and policies.....	14
7	Policy 15.2.1.1 New development in areas at significant risk from natural hazards .....	20
8	Policy 15.2.1.2 Changes to existing land use activities and development in areas at significant risk from natural hazards .....	25
9	Policy 15.2.1.3 New emergency services and hospitals in areas at significant risk from natural hazards.....	28
10	Policy 15.2.1.11 New development that creates demand for new protection structures and works .....	32
11	Development in known hazard areas .....	36
12	Definition of natural hazard area .....	37
13	Addition to the planning maps.....	38
14	Natural hazards and contaminated land.....	39
15	Policy 15.2.1.10 Areas defended by stopbanks.....	41
16	Submissions on Chapter 14: Infrastructure and Energy .....	42
17	Providing information to submitters and the Panel.....	44
18	Proposed Policy 15.2.1.5.....	44
19	Proposed 15.13 Information requirements for natural hazards .....	45
20	Maps of High Risk Coastal Hazard (Erosion) Area.....	47
21	General submissions - all objectives and policies.....	48
22	Rule 15.7.1 Coastal Sensitivity Area (Erosion) and Coastal Sensitivity Area (Open Coast) .....	50
23	Definition of 'emergency services' .....	51
24	Clearer guidance on applicability of rules and assessment requirements .....	53
25	Submissions on Chapter 15.12 information requirements and planning map 23.3 .....	58
26	Policy 15.2.1.23 .....	58
27	Conclusion .....	61
	Appendix 1: Table of submission points.....	62
	Appendix 2: Recommended Amendments.....	63

### List of submitters and further submitters addressed in this report

Original Submitter	Submission number
Auckland Waikato Fish and Game Council	433
Brett Beamsley	2109
Jane Bethell	2176
Rachael Brown	2068
Director General of Department of Conservation	2108
Counties Power Limited	2123
Dilworth Trust Board	2161
Spencer L. Drinkwater	2042
Federated Farmers of New Zealand	2173
Fire and Emergency New Zealand	2103
Genesis Energy Limited	2104
Heritage New Zealand Pouhere Taonga	2107
Kainga Ora Homes and Communities	2094
MG Solutions Ltd	2140
Mercury NZ Limited	2053
Perry Group Limited	2105
Pokeno Village Holdings Limited	2147
Ports of Auckland Limited	2139
Powerco Limited	2100
Shand Properties Limited	738
Tainui Hapu Environmental Management Committee & Tainui o Tainui Charitable Trust	2097
TaTa Valley Limited	2093
Terra Firma Resources Limited	2148
Transpower New Zealand Ltd	2101
Waikato Regional Council	81, 2102
Waikato-Tainui Te Kauhanganui Incorporated	2151

Further Submitter	Submission number
<i>Allen Fabrics Limited</i>	<i>FS1349</i>
<i>Department of Conservation</i>	<i>FS3012</i>
<i>Federated Farmers</i>	<i>FS1324</i>
<i>Fire and Emergency New Zealand</i>	<i>FS3025</i>
<i>Genesis Energy Limited</i>	<i>FS3006</i>
<i>Havelock Village Limited</i>	<i>FS1377</i>
<i>Heritage New Zealand Pouhere Taonga</i>	<i>FS3013</i>
<i>Horticulture New Zealand</i>	<i>FS3027</i>
<i>Kainga Ora – Homes and Communities</i>	<i>FS3033</i>
<i>KiwiRail Holdings Limited</i>	<i>FS3010</i>
<i>Mercury NZ Limited</i>	<i>FS1387, FS3034</i>
<i>Ports of Auckland Limited</i>	<i>FS1087</i>
<i>PowerCo Limited</i>	<i>FS3007</i>
<i>Raglan Collective Incorporated Society</i>	<i>FS3016</i>
<i>Shand Properties Limited</i>	<i>FS3020</i>
<i>TaTa Valley Limited</i>	<i>FS1340, FS3029</i>
<i>Simon Upton</i>	<i>FS1107</i>
<i>Waikato Regional Council</i>	<i>FS3031</i>
<i>WEL Networks Limited</i>	<i>FS3014</i>

**Please refer to Appendix I to see where each submission point is addressed within this report.**

# I Introduction

## 1.1 Qualifications and experience

1. My name is Yvonne Legarth. I am employed by Waikato District Council as a Principal Policy Planner.
2. My qualification and experience are set out more comprehensively in my s42A report H27B. 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 (RMA).

## 1.2 Code of Conduct

3. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and that I continue to comply with it. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
4. I am authorised to give this evidence on the Council's behalf to the hearings commissioners.

## 1.3 Conflict of Interest

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

## 1.4 Preparation of this report

6. I am the author of this report which has been prepared on behalf of the Waikato District Council in accordance with section 42A of the Resource Management Act 1991 (RMA).
7. This s42 report *H27G: Natural Hazards Supplementary* topic considers and makes recommendations on those submissions and further submissions made on the natural hazard and climate change provisions in Variation 2 and Chapter 15 of the proposed plan that were not addressed in other section 42A reports. The s42A reports on flooding, climate change, wildfire, and coast may also be relevant to this hearing topic.
8. A list of all submitters and a summary of all decisions requested for the changes dealt with in this report are in Appendix I attached to this report. I understand that the Hearing Panel has full copies of the submissions available to them, therefore I have not included these in full as part of this report.
9. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
10. In preparing this report I rely on expert advice in the RMA section 32 reports that deal with the modelling and extent of natural hazards.
11. Prior to preparing this RMA section 42A report, I have not had any previous involvement with the preparation of the proposed Waikato District Plan or variations to that plan.

# 2 Scope of Report

## 2.1 Matters addressed by this report

12. This report is prepared in accordance with Section 42A of the RMA and relates to the provisions in Variation 2 and Chapter 15 Natural Hazards and Climate Change within the Proposed Waikato District Plan (PWDP).

13. I have addressed the primary submissions together with the further submissions that they relate to.

## 2.2 Overview of the topic / chapter

14. Stage 2 of the PWDP involves the introduction of a new chapter - Chapter 15: Natural hazards and Climate Change.
15. Chapter 15 includes provisions to manage the risk to people and structures on land subject to natural hazards, and provisions to mitigate and/or adapt to the effects of climate change. Stage 2 also includes Variation 2 that notified amendments to some of the provisions in the PWDP (Stage 1) to add references to natural hazards and promote consistency across all sections of the Proposed District Plan.
16. Chapter 15 has an introduction that explains the content, three objectives, and the policies and rules that implement them. Chapter 15.14 has a number of proposed definitions. Natural hazard mapping was based on expert technical assessments and modelling to identify areas where the risk of certain natural hazards are present, such as river flooding or coastal erosion and inundation. The technical reports form part of the RMA Section 32 reports.

## 2.3 Overview of previous reports

17. In the week beginning 10 May 2021 the Panel heard from authors of s42A reports and submitters who wished to be heard on flooding, climate change, wildfire, and coast. The list of submission points already in previous reports are appended to each of those reports, with recommendations.
18. Council prepared six s42A reports on the natural hazard and climate change provisions. These reports and their authors are:
- 27A: Background and process, by Neil Taylor
  - 27B: Objectives, policies and general submissions, by Yvonne Legarth
  - 27C: Flood hazards and defended areas, by Janice Carter
  - 27D: Coastal hazards, by Kelly Nicolson
  - 27E: Subsidence, liquefaction and other hazards, by Grant Eccles
  - 27F: Climate change and definitions, by Neil Taylor.

## 2.4 The policy intent behind the natural hazard and climate change provisions

19. The proposed plan takes a risk-based approach for subdivision, use and development and infrastructure, and an activities-based approach to reduce exposure to risk, and to avoid more vulnerable and less mobile people establishing new activities in hazard-prone areas.
20. Broadly, the outcome sought through the plan for managing the risk of natural hazards, is that the social, cultural and economic well-being, and the health and safety of the community are promoted by managing the areas at high risk from natural hazards. The proposed plan aims to provide stronger direction in terms of activities in hazard areas, including identifying where an area is so vulnerable to natural hazards that activities should be avoided.
21. Rules identify activities in the areas where the degree of risk from natural hazards is known and can be managed with conditions on a permitted activity rule; or should be assessed and managed through conditions on a resource consent. There are no controlled or prohibited activity rules. The following table summarises the classification of the proposed rules applicable in natural hazard areas.

**Table 1 Summary of natural hazard proposed rule classification**

	Permitted	Restricted Discretionary	Discretionary	Non-Complying
15.4 flood plain management area and Flood ponding area	P	RD	D	
15.5 High risk flood area	P	RD	D	NC
15.6 Defended area (residual risk)	P	RD	D	
15.7 Coastal sensitivity area (erosion) and (open coast)	P	RD	D	
15.8 Coastal sensitivity area (inundation)	P	RD	D	
15.9 High risk Coastal erosion area	P		D	NC
15.10 High risk Coastal inundation area	P		D	NC
15.11 Mine subsidence risk area	P	RD	D	
15.12 Liquefaction (not mapped)		additional matters of discretion		

## 2.5 Structure of this report

22. This report discusses the submissions on the policies, rules and mapping of natural hazards, and I have endeavoured to group submissions and further submission points together under relevant plan provisions, and have grouped submissions together where similar issues are raised. Appendix 1 contains a list of submitters with my recommendations and the section reference where this is discussed. Appendix 2 contains my recommended amendments.

## 3 Statutory framework

23. The statutory considerations that are relevant to the content of this report are largely set out in the opening legal submissions by counsel for Council (23 September 2019) and the opening planning submissions for Council (23 September 2019, paragraphs 18-32). The opening planning submissions from the Council also detail the relevant iwi management plans (paragraphs 35-40) and other relevant plans and strategies (paragraphs 41-45). The following sections identify statutory documents with particular relevance to this report.
24. The other section 42A reports set out the statutory framework that is relevant to the consideration of the natural hazard risks discussed in each report. I have not repeated that advice in this report.
25. The common theme in the RMA and higher-order statutory instruments that deal with natural hazards and climate change is the management of risk to people and property and the environment.
26. The avoidance and mitigation of natural hazards is within the functions of the district council. The management of risks from natural hazards is a matter of national importance under RMA section 6(h). RMA section 7 is to have particular regard to the effects of climate change.

27. The Waikato Regional Policy Statement requires district plans to take a risk-based approach to the management of subdivision, use and development in relation to the risk from natural hazards. The RMA s32 report identifies the Waikato District as being susceptible to a range of natural hazards.

### Section 32 of the RMA

28. Section 32 of the RMA requires that the objectives of the proposal be examined for their appropriateness in achieving the purpose of the RMA, and the provisions (policies, rules or other methods) of the proposal be examined for their efficiency, effectiveness and risk. Section 32 reports were published when Stage 2 and Variation 2 to the PWDP were notified in 2020. This report updates that earlier analysis in “section 32AA evaluations” where material changes to the plan are recommended.

### 3.1 Procedural matters

29. There were no meetings or pre-hearing meetings with submitters on the matters addressed by this report.

### 3.2 Amendments to plan text

30. Where amendments to plan text are recommended, the relevant text is presented after the recommendations with new text in **red underlined**, and deleted text in **red struck-through**. All recommended amendments are brought together in Appendix 2 of this report.

## 4 Consideration of submissions received

### Chapter 15 - General

#### 4.1 Introduction

31. This section addresses miscellaneous submissions generally referring to aspects of Chapter 15.

#### 4.2 Submissions

32. 10 submission points and 6 further submission points are addressed in this section.
33. These submissions were made:

Submission point	Submitter	Decision requested
2093.13 <sup>1</sup>	TaTa Valley Limited	<b>Amend</b> PWDP with any consequential relief required to give effect to submitter’s submission points including to other provisions as required to ensure a consistent approach throughout the Plan.
FS3034.22 <sup>2</sup>	Mercury NZ Limited	<i>Support 2093.13</i>
2093.15	TaTa Valley Limited	Retain the delineation between high risk and lower risk areas
FS3034.24	Mercury NZ Limited	<i>Oppose 2093.15</i>

<sup>1</sup> H27B section 5 page 13

<sup>2</sup> H27B section 5 page 13

2094.1	Kainga Ora Homes and Communities	Retain stand-alone natural hazards and climate change chapter.
2053.10 <sup>3</sup>	Mercury NZ Limited	Amend Chapter 15 to ensure the principles articulated in 15.1(3) are implemented in the plan and make better use of spatial tools to ensure the principles are implemented.
<i>FS3031.21<sup>4</sup></i>	<i>Waikato Regional Council</i>	<i>Support 2053.10</i>
2101.1	Transpower New Zealand Ltd	Retain Chapter 15: Natural Hazards and Climate Change as proposed except for following points made in this submission.
2105.8	Perry Group Limited	Amend natural hazards rules to clarify that the natural hazard rules and thus the status of an activity under the rules only applies to that area of land where the natural hazard exists, and not across an entire site. This will avoid the unintended consequence of an activity status change across a wider site area.
<i>FS3016.6</i>	<i>Raglan Collective Incorporated Society</i>	<i>Support 2105.8</i>
2105.9	Perry Group Limited	Amend the plan to make any necessary amendments to address the submitter's concerns and additional amendments set out in submissions And any further relief or other consequential amendments as considered appropriate and necessary to address the concerns.
2108.1	Director General of Department of Conservation	Add to Chapter 15 policies or amend existing policies to respond when new development may compromise the ability to respond to climate change or implement actions that restore natural flood regimes.
2109.1	Brett Beamsley	Amend Chapter 15: Natural Hazards and Climate Change to undertake a more detailed and relevant process around defining the risk assessment and to apply a joint- probability extreme analysis to the evaluation of the inundations level, rather than a maximum.
<i>FS3031.119</i>	<i>Waikato Regional Council</i>	<i>Neutral 2109.1</i>
2151.1 <sup>5</sup>	Waikato-Tainui Te Kauhanganui Incorporated	Supports the risk-based approach and avoidance of increasing risk to significant natural hazards, and to align Stage 2 with submitters positioned as contained in submissions on Stage 1
<i>FS3029.12</i>	<i>TaTa Valley Limited</i>	<i>Supports Pokeno Community Committee [2091.1] TVL supports the intent of this submission 2091.1 to identify issues specific to North Waikato but considers that a "Strategic Property Plan" is not an appropriate tool to include in Stage 2 of the review of the Waikato District Plan. The matters identified as being part of the Property Plan are addressed in Stage 1 of the PWDP or in other documents such as structure plans or master plans.</i>

---

<sup>3</sup> H27B section 12 page 38

<sup>4</sup> H27B section 12 page 38

<sup>5</sup> Submission 2151.1 deals with same matters as the issue dealt with in H27B section 26

### 4.3 Analysis

#### *Support the risk-based approach*

34. The submission made by Waikato-Tainui Te Kauhanganui Incorporated [ 2151.1] is to align Stage 2 with their position on Stage 1. My s42A report H27B deals with submissions made on Stage 1 that relate to provisions that have been replaced through Variation 2 and Chapter 15 in Stage 2. The relief sought applies broadly across the plan and the specific submission points are addressed in other reports. I recommend that submission point is accepted to the extent that it is consistent with the recommendations made by other s42A report writers.

#### *Submissions on plan structure*

35. Kainga Ora Homes and Communities [ 2094.1] and Transpower New Zealand Ltd [ 2101.1] seek to retain stand-alone natural hazards and the climate change chapter. The approach sought in the submission complies with that in the National Planning Standard (the Standard).
36. The Standard prescribes the district plan structure. The mandatory direction in the Standard is that where provisions relating to natural hazards (except coastal hazards) are addressed, they must be located in the *Natural hazards* chapter.
37. I recommend that these submission points be accepted in part, and the chapter be retained, noting that further changes to the plan structure may be made to align with the National Planning Standards.

#### *Consequential amendments or similar relief*

38. There are general submissions that refer to consequential amendments arising from main submission points. Submission points also refer to similar or like relief. TaTa Valley Limited [2093.13] seek to amend the PWDP with any consequential relief required to give effect to submitter's submission points including to other provisions as required to ensure a consistent approach throughout the Plan, and *Mercury NZ Limited [FS3034.22]* support [2093.13]. Perry Group Limited [2105.9] seek to amend the plan to make any necessary amendments to address the submitters' concerns and additional amendments set out in submissions. Transpower New Zealand Ltd seek that Chapter 15: Natural Hazards and Climate Change be retained as proposed, except for the points made in their submission.
39. No specific relief is identified, however where consequential amendments are recommended, these are identified by the section 42A report writers in their recommendations. No separate consideration of consequential amendments is required. I recommend that the submissions on consequential changes be accepted in part, to the extent that this is consistent with the recommendations made by other s42A report writers.

#### *Mapping of natural hazards*

40. TaTa Valley Limited [2093.15] seek to retain the delineation between high risk and lower risk areas, and *Mercury NZ Limited [FS3034.24]* oppose [2093.15].
41. The principles in proposed plan chapter 15.1(3) explain the risk-based approach to natural hazard management. The plan identifies High risk coastal and flood hazard areas, and other areas that are subject to natural hazard risk are also mapped and subject to rules (or in the case of liquefaction subject to additional matters of discretion) in the proposed plan. I consider that the risk-based approach gives effect to the natural hazard themes in the WRPS and WRPS Method 13.1.1. I recommend that the submission made by [2093.15] be accepted.
42. Mercury NZ Limited [2053.10] seek amendments to ensure that the principles articulated in 15.1(3) are implemented in the plan and make better use of spatial tools to ensure that the principles are implemented. The further submission made by *Waikato Regional Council [FS3031.21]* supports [2053.10]. While submission [2053.10] seeks better use of spatial tools, no specific relief is identified in this submission point. The submission point is unclear as to

what other spatial tools, apart from mapping or changes are sought, therefore I have recommended that these submissions be rejected.

43. Perry Group Limited [2105.8] seek to amend natural hazards rules to clarify that the natural hazard rules and thus the status of an activity under the rules only apply to that area of land where the natural hazard exists, and not across an entire site. The submitter is concerned that there may be an unintended consequence of an activity status being applied across a wider site area. *Raglan Collective Incorporated Society [FS3016.6]* support [2105.8].
44. The intention of the maps and rules is that the category of rule applying to a natural hazard is only triggered where there is a risk from a natural hazard. Depending on the nature and scale of subdivision, use or development that is proposed, there may be several different rules in the plan that apply, and council has the discretion to consider those together. The rules specify that a rule applies "within" the natural hazard areas "as shown on the planning maps". For unmapped hazards (liquefaction and fire), entire sites will need to be assessed for the hazards.
45. I do not recommend a change to the rules in the plan to address this issue, as the relevance and application of the rules will depend on the site, and the 'facts' or form of the development proposal. I consider that it is clear from the maps that the natural hazard rules will apply to land that is identified on the planning maps as vulnerable to natural hazard risk.
46. The plan does include additional matters of discretion in restricted discretionary activity rules that provide the council with an ability to assess whether development may be vulnerable to liquefaction. I recommend that an amendment be made to 15.3 'How to use the plan' to alert users of the plan to additional assessment matters that may apply to subdivision, use and development.

*Effects on natural processes and the natural environment*

47. The Director General of Department of Conservation [ 2108.1] seeks additional or amended policies to respond to new development where that may compromise the ability to respond to climate change or implement actions that restore natural flood regimes. The proposed plan contains objectives and policies that deal with the natural environment and the protection of natural character from inappropriate subdivision, use and development. Where these objectives and policies are relevant to new development, and there is sufficient discretion retained in the rules, the decision maker is required to have regard to the district-wide chapters (including 3.1 Indigenous Vegetation and Habitats and Chapter 3.5 Natural character), in addition to the provisions in Chapter 15. I recommend that the submission be accepted in part, to the extent that the submission supports management of new development.
48. The submission point made by Brett Beamsley [2109.1] and the further submission made by *Waikato Regional Council [FS3031.119]* seek that a more detailed and different process be undertaken to identify risk. The submitter seeks that a joint probability extreme analysis be applied to the evaluation of the inundation level, rather than a maximum. The submitter does not provide details of the wording sought, or the technical reports that would support the development of policy to implement a change in approach. I consider that the change of direction sought would need to be the subject of detailed analysis, as well as the RMA Schedule 1 process. I rely on the RMA s32 reports and technical reports prepared for the District Council, and the collaborative processes undertaken by the Council to develop the plan approach, and I recommend that these submission points be rejected.
49. The further submission made by *Tata Valley Ltd [FS3029.12]* supports the submission made by *Pokeno Community Committee [2091.1]*,<sup>6</sup> which is to add a strategic plan to specifically

---

<sup>6</sup> Original submission [2091.1] was discussed in section 4 of the s42A report 27B, but the further submission was inadvertently omitted. At paragraph 43 the recommendation is to reject 2091.1 as it is out of scope 43.

address issues relating to North Waikato. The focus of the original submission [2091.1] is on a Strategic property plan to address issues around reserves, parklands, significant natural areas, walkways, wetlands, and other protected areas. I recommend that the further submission made by *Tata Valley Ltd* [FS3029.12] be rejected, as it is out of scope of Variation 2.

#### 4.4 Recommendations

50. For the reasons above I recommend that the Hearings Panel:

- (a) **Accept in part** the submission made by Waikato-Tainui Te Kauhanganui Incorporated [2151.1]
- (b) **Accept** the submission made by Kainga Ora Homes and Communities [2094.1]
- (c) **Accept in part** the submission made by TaTa Valley Limited [2093.13]; the further submission made by *Mercury NZ Limited* [FS3034.22] and the submission made by Perry Group Limited [2105.9]
- (d) **Accept in part** the submission made by Transpower New Zealand Ltd [2101.1]
- (e) **Accept** the submission made by TaTa Valley Limited [2093.15]
- (f) **Reject** the further submission made by *Mercury NZ Limited* [FS3034.24], the submission made by Mercury NZ Limited [2053.10] and the further submission made by *Waikato Regional Council* [FS3031.21].
- (g) **Accept in part** the submission made by Perry Group Limited [2105.8] and the further submission made by *Raglan Collective Incorporated Society* [FS3016.6]
- (h) **Accept in part** the submission made by the Director General of Department of Conservation [2108.1]
- (i) **Reject** the submission made by Brett Beamsley [2109.1] and further submission made by *Waikato Regional Council* [FS3031.119]
- (j) **Reject** the further submission made by *Tata Valley Ltd* [FS3029.12] in support of [2091.1].

#### 4.5 Recommended amendments

51. The following amendments are recommended:

15.3(a)(1) (additional clause)

The restricted discretionary activity rules contain additional matters of discretion that apply in areas that are assessed as being at risk from liquefaction

- (b) Where subdivision is specified, a subdivision consent is also required under the provisions of the relevant zone chapter, and the district-wide rules in Chapter 14 Infrastructure and Energy will also apply.

#### 4.6 Section 32AA evaluation

52. The recommended change to 15.3 is considered to be a minor change. No section 32AA evaluation is required as this is introductory text.

## 5 Chapter 15 - Rule category

### 5.1 Introduction

53. This section addresses submissions seeking changes to the classification of the rules in Chapter 15 that apply to activities in hazard areas.

### 5.2 Submissions

54. 3 submission points are addressed in this section.

55. These submissions were made:

Submission point	Submitter	Decision requested
2140.1	MG Solutions Ltd	Amend rules to increase volume of earthworks permitted within the Residential Zone for sites affected or partially affected by natural hazard areas.
2140.2	MG Solutions Ltd	Amend the activity status for the construction of a new building and additions or alterations to an existing building to a Restricted Discretionary activity, including matters of discretion (subject to Council's review).
2140.3	MG Solutions Ltd	Amend the activity status for any new subdivision that can accommodate a compliant building platform clear of the applicable natural hazard area to a Restricted Discretionary activity, including matters of discretion (subject to Council's review).
2093.18	TaTa Valley Limited	Amend all rules so that non-compliance with permitted activity standards does not default to discretionary activity, but to a restricted discretionary activity.
FS3033.2	Kainga Ora - Homes and Communities	Supports 2093.18. Kainga Ora supports this submission. Applying this approach to all permitted activity standards provides better certainty for Plan users as to the nature of effects that need to be assessed for land use activities within an identified natural hazard overlay/s. The potential adverse effects associated with these land use activities are discrete and well understood - meaning it is possible to identify appropriate matters of discretion.
FS3034.26	Mercury NZ Limited	Opposes 2093.18. It is appropriate to identify natural hazard risk within the plan for the purposes of ensuring that land use and development decisions are cognisant of flood risk. Mercury supports land use intensification and development in appropriate areas, and where mitigation of natural hazard risk has been appropriately considered and addressed.

### 5.3 Analysis

*Provide more enabling rules*

56. Where a site is not completely within a mapped hazard risk area, the submissions made by MG Solutions Ltd [2140.1, 2140.2, and 2140.3] seek to amend the rules that apply to earthworks in the residential zone and any new subdivision that can accommodate a compliant building platform clear of the applicable natural hazard area; and also to amend the rules that apply to the construction of a new building and additions or alterations to an existing building.

57. Variation 2 adds matters of discretion, but does not amend the conditions in the rules in Chapter 16 Residential zone that apply to earthworks. An amendment to the rules in Chapter 16 to increase the volume of earthworks that is permitted within the residential zone for sites affected or partially affected by natural hazard areas, would be out of scope.
58. Chapter 15 includes rules that apply to earthworks in an area identified as being at risk from natural hazards. Within the floodplain management area there is a permitted activity in the proposed plan that controls the minimum floor levels for new buildings and additions to existing buildings, and fill height, by referring to the annual exceedance probability flood level.
59. The s32 report<sup>7</sup> states that the purpose of the earthworks rules in the hazard risk areas is to give effect to proposed Policy 15.2.1.9. Placing limits on earthworks and requiring setbacks provides protection for natural buffers and features from disturbance from development. Allowing minor earthworks provides for some development, while retaining the ability to assess effects for larger areas of earthworks that would require input from technical experts.
60. The proposed plan takes a risk-based approach, and the level of regulation reflects the degree of risk. The RMA section 32 report states that "*The general approach taken to managing natural hazard risk is to strictly regulate vulnerable land uses and development and certain activities within high risk areas, while applying a more lenient approach to land use and development outside high risk areas where realistic and effective mitigation measures can be utilised to reduce risk.*"<sup>8</sup>
61. I consider that the category of rule that applies to the volume of earthworks and to new buildings or alterations to existing buildings, or other activities should relate to the degree of vulnerability, and reliability of any mitigation to be adequately assessment and managed by conditions. Requiring a consent be obtained in the high risk hazard areas ensures that an assessment can identify and consider any mitigation methods and the potential effects of a hazard event.
62. Ms Carter discusses other submissions about earthworks and building platforms within a floodplain in her s42A report<sup>9</sup>. Ms Carter advises that the earthworks rule has been carried over from the operative Waikato Plan, where it applied to filling within the Flood Risk area for a building platform for a building approved by a building consent.
63. I consider that the degree of control in the rules in the proposed plan should provide the council with sufficient ability to impose conditions or decline applications in areas of coastal hazard risk. The rules in Chapter 15 address specific natural hazards or activities in hazard areas. Rules apply to activities where the degree of risk from natural hazards is predictable and the nature and scale of the risk can be managed with conditions on a permitted activity rule. Where the risk from natural hazards is more significant, that risk needs to be assessed and understood, to determine whether that risk can be managed through conditions on a resource consent or declined.
64. I recommend that the submissions made by MG Solutions Ltd [2140.1; 2140.2 and 2140.3] be rejected, to retain the ability for decision makers to consider natural hazard risk in the context of the subdivision, use and development.
65. The submission made by TaTa Valley Limited 2093.18 is to amend the rule category that applies when the conditions in a permitted activity are not met, from discretionary to restricted discretionary. This is supported by *Kainga Ora - Homes and Communities FS3033.2* and opposed by *Mercury NZ Limited FS3034.26*.

---

<sup>7</sup> RMA s32 report Natural hazards and climate change at pages 91 and 92

<sup>8</sup> RMA s32 report Natural hazards and climate change para 169 at page 66

<sup>9</sup> s42A report H27C paragraphs 241 to 243

66. As can be seen in Table I above, a restricted discretionary activity would apply to development in a number of instances. Key to whether a rule category is appropriate is whether all of the potential effects can be identified, and also whether the rule is effective and efficient in implementing the objectives and policies. I do not consider that a restricted discretionary activity would be appropriate in all instances, and the submission has not specified the matters of discretion that should be imposed. I recommend that the submission made by TaTa Valley Limited 2093.18 and the further submission made by *Kainga Ora - Homes and Communities FS3033.2* be rejected.

#### 5.4 Recommendations

67. For the reasons above I recommend that the Hearings Panel:
- (a) **Reject** the submissions made by MG Solutions Ltd [ 2140.1; 2140.2 and 2140.3].
  - (b) **Reject** the submission made by TaTa Valley Limited 2093.18 and the further submission made by Kainga Ora - Homes and Communities FS3033.2.
  - (c) **Accept** the further submission made by *Mercury NZ Limited FS3034.26*.

#### 5.5 Recommended amendments

68. No amendments are recommended as a result of these submissions.

## 6 Chapter 15.2 – Objectives and policies

### 6.1 Introduction

69. This section addresses general submissions on the objectives and policies in section 15.2.

### 6.2 Submissions

70. 7 submission points and 7 further submission points are addressed in this section.

Submission point	Submitter	Decision requested
2042.1	Spencer L Drinkwater	<b>Amend</b> section 15.2 Objectives and Policies to include Poplars, Willows, Alders, Maples and other fast-growing exotic softwood trees as a natural hazard.
2093.14	TaTa Valley Limited	<b>Retain</b> Chapter 15.2 objectives and policies, subject to amendments in other submissions.
<i>FS3034.23</i>	<i>Mercury NZ Limited</i>	<i>Oppose 2093.14</i>
2093.16	TaTa Valley Limited	<b>Retain</b> the policy approach to “avoid” certain activities and effects only in high risk areas <b>And Amend</b> policies which adopt an avoidance approach in lower risk areas where appropriate development should be allowed.
<i>FS3034.25</i>	<i>Mercury NZ Limited</i>	<i>Support 2093.16</i>
2101.7	Transpower New Zealand Ltd	Amend Policy 15.2.1.4 to provide for the development of new infrastructure and utilities in areas not considered to be of significant risk (for example, flood plain management areas and flood ponding areas). OR If this relief is not supported then Retain Policy 15.2.1.4 and Amend Policy 15.2.1.5 to provide for the development of new infrastructure and utilities in hazard areas not considered to be of significant risk.

FS3013.2	Heritage New Zealand Pouhere Taonga	Oppose 2101.7
FS3014.3	WEL Networks Limited	Support 2101.7
2101.8	Transpower New Zealand Ltd	Amend 15.2.1.5(a) - Existing infrastructure and utilities in all areas subject to natural hazards as proposed as follows: (a) Provide for the operation, repair maintenance, replacement and minor upgrading of existing infrastructure and utilities in all areas subject to natural hazards. Or If including upgrading is not supported and the reference to 'minor upgrading' is to be retained, Amend Policy 15.2.1.4 to include 'upgrading'.
FS3006.1	Genesis Energy Limited	Support 2101.8
FS3010.2	KiwiRail Holdings Limited	Support 2101.8
FS3014.4	WEL Networks Limited	Support 2101.8
2107.4	Heritage New Zealand Pouhere Taonga	Add a new objective and policy to Chapter 15.2 as follows: New Objective Ensuring that the effects of any hazard related works avoids effects on historic heritage and Sites and Areas of Significance to Maaori. And New Policy That any hazard or climate change related works that potentially impact on historic heritage and Sites and Areas of significance to Maaori demonstrate consideration of a range of appropriate alternatives to avoid adverse effects on these finite resources.
2107.6	Heritage New Zealand Pouhere Taonga	Add a new policy as follows: Policy 15.2.1.2a - Changes to existing land use activities and development in areas that are at significant risk from natural hazards in locations containing historic heritage (a) In areas of High Risk Flood, High Risk Coastal Hazard (Erosion) and High Risk Coastal Hazard (Inundation), ensure that when changes to existing land use activities and development occur, a range of risk reduction options are assessed, and development that would increase risk to Historic heritage and sites and areas at Significance to Maaori is avoided.

### 6.3 Analysis

*Out of scope*

71. Spencer L Drinkwater [2042.1] seeks to amend section 15.2 Objectives and Policies to identify specific species of exotic trees as a natural hazard. I consider this is out of scope. The district plan does not provide a suitable control mechanism for dangerous trees. While some tree species do have the potential to exacerbate flood events, trees are not a major risk factor compared to other sources. I consider that the risks from natural hazards on people, property,

infrastructure and the environment are already included in the objectives, albeit in more general terms. I recommend that the submission be rejected.

*Activities in high risk areas*

72. TaTa Valley Limited [2093.14] seeks to retain Chapter 15.2 Objectives and policies, subject to amendments in other submissions. This is opposed by *Mercury NZ Limited [FS3034.23]*. Their submission points made on the objectives and policies are very general, seeking that Chapter 15 as a whole, or the objectives and policies in that chapter, be retained, subject to amendments sought in other parts of the submission. The relief sought applies broadly across the plan and the specific submission points are addressed in other reports. I recommend that submission point [2093.14] be accepted in part, to the extent that the submission is that the objectives and policies be retained, and that further submission point [FS3034.23] be rejected.
73. The submission made by TaTa Valley Limited [2093.16] and further submission by *Mercury NZ Limited [FS3034.25]* seek a policy approach to avoid certain activities and effects in high risk areas, and reduce that degree of control in lower risk areas to allow appropriate development. I consider that the policy approach in the proposed plan is to avoid new activities in high risk areas, and allow mitigation to be considered in lower risk areas where appropriate. I recommend that the submission and further submission be accepted in part, to the extent that the objectives and policies already reflect a risk-based approach to natural hazard management.

*New, and upgrading of infrastructure in high risk areas*

74. The submission made by Transpower New Zealand Ltd [2101.8] and further submissions made by *Genesis Energy Limited [FS3006.1]*, *KiwiRail Holdings Limited [FS3010.2]* and *WEL Networks Limited [FS3014.4]* seek amendments to Policy 15.2.1.5 to deal with 'upgrading' of infrastructure.<sup>10</sup> The amendment sought is to address a policy gap in the proposed plan where upgrading of infrastructure is not 'minor'.

*New infrastructure in all natural hazard areas*

75. I have recommended that proposed Policy 15.2.1.4 be amended to deal with new and upgrading of infrastructure in high risk areas, and Policy 15.2.1.5 as notified deals with existing infrastructure in all areas subject to natural hazards. There are submissions that seek to change the policy approach in proposed Policy 15.2.1.4 in a manner that will reduce the level of management over all infrastructure and utilities in areas where there is significant risk; or alternatively amend proposed Policy 15.2.1.5 to provide for all infrastructure and utilities in all areas subject to natural hazards.
76. Transpower New Zealand Ltd [2101.7] seeks to amend Policy 15.2.1.4 to provide for the development of new infrastructure and utilities in areas not considered to be of significant risk (for example, flood plain management areas and flood ponding areas), and their alternative relief is to amend Policy 15.2.1.5 to provide for the development of new infrastructure and utilities in hazard areas not considered to be of significant risk. *Heritage New Zealand Pouhere Taonga [FS3013.2]* oppose this and *WEL Networks Limited [FS3014.3]* support it.
77. Where infrastructure provides a public service that cannot be located elsewhere, the plan has a policy that enables appropriate infrastructure, subject to criteria being met. Where the rules in the proposed plan require a consent be obtained, then the functional needs of infrastructure to locate in high hazard areas, associated high risk, mitigation works and the ability to function after a hazard event, can be assessed by decision makers.

---

<sup>10</sup> Issue address in s42A H27B section 15 and recommendation to amend 15.2.1.4 in para 254

78. The effect of the amendment sought in submission point [2101.7] is to extend the policy approach for new infrastructure (and larger-scale upgraded infrastructure<sup>11</sup>) in proposed Policy 15.2.1.4 to include areas that are not 'high risk'; or an alternative relief to amend proposed Policy 15.2.1.5 to enable new infrastructure in all areas subject to natural hazards.
79. I consider that providing for all infrastructure subject to natural hazards would fail to give effect to the Waikato Regional Policy Statement (WRPS). WRPS Objective 3.24 and WRPS Policy 13.1 is that community resilience is increased, the effects on people, property and the environment are managed to reduce the risks and enable efficient and effective recovery. I consider that the risk-based approach in the district plan that includes criteria for new infrastructure in high risk areas was intended to promote resilience, while addressing risks to infrastructure from natural hazards. I have recommended an amendment to Policy 15.2.1.4<sup>12</sup> to deal with both new and upgrading of existing infrastructure in high hazard areas.
80. New infrastructure in areas identified as being high risk are managed by the criteria in proposed Policy 15.2.1.4. NZCPS Policy 25(d) is to encourage infrastructure to locate away from at risk areas. New infrastructure in high risk natural hazard areas is dealt with in proposed Policy 15.2.1.4, which provides a consenting pathway for new, and upgrading of, existing<sup>13</sup>, infrastructure only where criteria are met.
81. Proposed Policy 15.2.1.5 deals with existing infrastructure in all areas subject to natural hazards, which would include flood plain management areas and flood ponding areas that are identified using the metrics in the definitions in Chapter 15. This leaves the question of how new infrastructure in an area that is not 'high risk' is addressed. I consider that new infrastructure (i.e. use and development) outside of high risk natural hazard areas is dealt with in proposed Policy 15.2.1.6. I recommend that the submission made by Transpower New Zealand Ltd [2101.8] and further submissions made by *Genesis Energy Limited [FS3006.1]*, *KiwiRail Holdings Limited [FS3010.2]* and *WEL Networks Limited [FS3014.4]* be accepted in part, to the extent that the amendment recommended to Policy 15.2.1.4 addresses the concern raised about a policy gap.

*Historic heritage and sites and areas of significance to Maaori*

82. Heritage New Zealand Pouhere Taonga [2107.4] and [2107.6] seek a new objective and policy to address effects of hazard works on historic heritage and sites and areas of significance to Maaori; and amendments to proposed policies that deal with consideration of risk reduction options and avoiding increased risk, to specifically refer to historic heritage and sites and areas of significance to Maaori. The pitch of Policies 15.2.1.1 and 15.2.1.2 in the proposed plan is to avoid increased risk to people's safety, well-being and property.
83. RMA s6 requires the council to recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development; and the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga when managing natural and physical resources. These matters of national importance are dealt with in the proposed plan in Chapters 2 and 7. Where a resource consent is needed, the objectives and policies in Chapter 15 work together with those in Chapters 2 and 7 to provide for the protection of those matters.
84. The issue appears to be whether it is clear that the potential adverse effects on historic heritage and sites and areas of significance to Maaori should be protected when mitigation measures are considered, and alternatives that may have fewer effects are identified and preferred. Chapter 15 already includes proposed Policies 15.2.1.1 and 15.2.1.2 that deal with

<sup>11</sup> Recommended amendment in s42A report H27B

<sup>12</sup> Issue addressed in s42A H27B section 15 and recommendation to amend 15.2.1.4 in para 254

<sup>13</sup> Recommendation in H27B section 15 at paragraph 254

new and existing use and avoid increased risk from development in high risk areas. Proposed Policy 15.2.1.2 requires the consideration of a range of alternatives, and Policy 15.2.1.1 is to avoid new subdivision, use and development where that will increase risk to people and property.

85. I consider that it would assist the council to perform its functions by including a policy that supports that assessment of potential adverse effects where there may be significant adverse effects on a matter of national importance. I do not agree that the new objective and policies sought by Heritage New Zealand Pouhere Taonga [2107] is the most effective option.
86. If the Panel form the view that the combination of objectives and policies in Chapters 2 and 7 and those in Chapter 15, are not sufficient to avoid adverse effects on historic heritage from inappropriate activities or on sites and areas of significance to Maaori in high risk areas, then the following alternative policy is recommended:

*New Policy 15.2.1.2A - Managing natural hazard risk or climate change mitigation works*

*Any mitigation works to protect land in an area identified as being a high risk from natural hazards does not transfer or exacerbate risk to historic heritage and Sites and Areas of significance to Maaori.*

#### 6.4 Recommendations

87. For the reasons above I recommend that the Hearings Panel:
- (a) **Reject** the submission made by Spencer L Drinkwater [2042.1]
  - (b) **Accept in part the** submission made by Transpower New Zealand Ltd [2101.8] and the further submissions made by *Genesis Energy Limited [FS3006.1]*, *KiwiRail Holdings Limited [FS3010.2]* and *WEL Networks Limited [FS3014.4]*, to the extent that an amendment is sought to provide for new infrastructure in areas not at risk.
  - (c) **Accept in part** the submission made by TaTa Valley Limited [2093.14], to the extent that the submission is to retain the objectives and policies.
  - (d) **Reject** the further submission made by *Mercury NZ Limited [FS3034.23]*
  - (e) **Accept in part** the submission made by TaTa Valley Limited [2093.16] and the further submission made by *Mercury NZ Limited [FS3034.25]*
  - (f) **Reject** Transpower New Zealand Ltd [2101.7] and the further submission made by *WEL Networks Limited [FS3014.3]*
  - (g) **Accept** the further submission made by *Heritage New Zealand Pouhere Taonga [FS3013.2]*
  - (h) **Reject** the submission made by Transpower New Zealand Ltd [2101.8] and the further submissions made by *Genesis Energy Limited [FS3006.1]*, *KiwiRail Holdings Limited [FS3010.2]*, and *WEL Networks Limited [FS3014.4]*
  - (i) **Accept in part** the submissions made by Heritage New Zealand Pouhere Taonga [2107.4] and Heritage New Zealand Pouhere Taonga [2107.6], to the extent that the policies manage the transfer or increase of risk to historic heritage and Sites and Areas of significance to Maaori.

#### 6.5 Recommended amendments

88. I do not recommend any amendments as a result of the above submissions.

#### 6.6 Section 32AA evaluation

89. To assist the Panel, I have undertaken an RMA s32AA analysis on the following alternative policy in response to submission [2107.4]:

**Policy 15.2.1.2A - Managing natural hazard risk or climate change mitigation works**

Any mitigation works to protect land in an area identified as being at high risk from natural hazards does not transfer or exacerbate risk to historic heritage and Sites and Areas of significance to Maaori.<sup>14</sup>

90. This evaluation is undertaken in accordance with RMA section 32AA and only deals with the alternative policy recommended as a result of the submissions made by Heritage New Zealand Pouhere Taonga [2107.4] and [2107.6] which is additional to those discussed in Council's s32 report.

### 6.7 Evaluation of the objective

91. I have not undertaken an evaluation of whether the objective achieves the purpose of the RMA, as it is not amended by a recommendation in this report.

### 6.8 Analysis of proposed provisions

92. RMA section 32AA requires an evaluation of whether the provisions in the proposal are the most appropriate way to achieve the objectives. Objective 15.2.1 with recommended amendments shown in red, 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~~<sup>15</sup> mitigated.

93. The following options were identified for consideration:
- Option 1 – status quo (no change from proposed plan)
  - Option 2 – include the policies sought by the submitter
  - Option 3 - add a new policy to manage effects of mitigation works on historic heritage and Sites and Areas of significance to Maaori.

## Assessing the efficiency and effectiveness of the new policy in achieving Objective 15.2.1

### Option 1 - no change from proposed plan

94. Broadly, the approach to increased risk in proposed Policy 15.2.1.1 and Policy 15.2.1.2 focuses on avoiding the increased risk to people's safety, well-being and property; other policies refer to risk or vulnerability of people or communities, increased risks to people, property and the environment and not transferring or exacerbating risk to adjoining properties. Proposed Policy 15.2.1.4 only mitigates increased risks to people, property and the environment to the extent practicable.
95. Those policies that implement Objective 15.2.1 Resilience to natural hazard risk that refers to 'environment' or 'property' will encompass 'historic heritage and Sites and Areas of Significance to Maaori', even though those matters are not specifically identified.

---

<sup>14</sup> Heritage New Zealand Pouhere Taonga 2107.6

<sup>15</sup> Recommended amendment in s42A Report 27B recommendation on Waikato Regional Council [2102.12] and Department of Conservation [2108.2] in section 14 at para 217

### **Option 2 - include the objectives and policies sought by the submitter**

96. The objective is to avoid the effects of hazard-related works on historic heritage and Sites and Areas of Significance to Maaori. The first policy sought just requires consideration of a range of alternatives, but isn't specific enough to ensure that the option with the fewest effects is selected. The second policy sought is that risk reduction options be assessed, and development that would increase risk to Historic heritage and Sites and Areas of Significance to Maaori are avoided.
97. The new objective sought would need some minor refinement to simplify the drafting, and I consider that it could achieve the purpose of the RMA and is consistent with the approach in RMA s6(e) and (f).
98. I consider that the first policy sought would not be effective because it only requires consideration of alternatives. I consider that the second policy would assist in the consideration of alternatives for mitigation works in high natural hazard areas.

### **Option 3 - add the recommended new Policy 15.2.1.2A - Managing natural hazard risk or climate change mitigation works**

99. I have recommended a new policy to address the issue of mitigation works having the potential to increase or transfer risk from natural hazards and having adverse effects on historic heritage and Sites and Areas of Significance to Maaori.
100. I consider that the recommended alternative policy implements Objective 15.2.1 Resilience to natural hazard risk, because it addresses risk from natural hazards on historic heritage and Sites and Areas of Significance to Maaori, and how the risk from mitigation works in high risk areas will be addressed.
101. The policy recognises the potential for mitigation methods to increase natural hazard risk to sites with significant values, and together with the provisions in other parts of the plan, recognises and provides for the protection of historic heritage and Sites and Areas of Significance to Maaori.
102. There is potential for the recommended new policy to be inefficient, because of possible duplication. Mitigation works will also be subject to the objectives and policies in Chapter 2 Tangata Whenua and Chapter 7 Historic Heritage and relevant rules in the proposed plan.

### **The reasons for deciding on the preferred option**

103. Option 1 is my preferred option, and I do not recommend that a new Policy 15.2.1.2A be included in Chapter 15 Natural Hazards and Climate Change. I consider that it is clear in other parts of the plan that that the potential effects of mitigation methods on RMA s6 Matters of national importance must be managed.

## **7 Policy 15.2.1.1 New development in areas at significant risk from natural hazards**

### **7.1 Introduction**

104. Based on the definitions in the proposed plan, areas at high risk are areas subject to flooding to a defined depth and flow, or where there is risk from coastal inundation and coastal erosion identified on the planning maps. The policy intent is to reduce risk from natural hazards by controlling new development in those areas where there is a risk to people's safety, well-being and property.

105. A natural hazard risk eventuates when human life and property are vulnerable and exposed to a natural event. The level of risk can be described quantitatively (e.g. dollar losses, fatalities) or qualitatively (e.g. minor, moderate, severe/significant). The assessment of natural hazard risk includes the likelihood of a particular natural hazard event resulting in injury, loss of life, or damage to property.
106. In response to a question from the Panel in Hearing H27 on 10 May 2021, Ms Carter recommended that the reference to 'significant risk' be amended, by deleting the reference to 'significant' from the policy and replacing it with 'High' Risk. This change is shown in blue below.
107. In my opinion, a further consequential change could be made to retain the meaning, but simplify the policy. The 'high risk' areas are identified on the maps and are defined in the proposed plan. I consider that it is unnecessary to also refer to the areas as being of 'significant' (or high) risk from natural hazards in the policy, and I recommend that the words " *identified as being at significant [high]<sup>16</sup> risk from natural hazards*" be deleted. I have shown my recommended change to proposed Policy 15.2.1.1 in purple:
108. With my previous recommendations shown red, Ms Carter's recommendation is shown in blue and my further recommendations in this report shown in purple, Policy 15.2.1.1, is:

**Policy 15.2.1.1- New development in areas at significant high risk from natural hazards**

- (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] high risk from natural hazards:
- i. High Risk Flood Area;
  - ii. High Risk Coastal ~~Hazard (Inundation)~~ Area;
  - iii. High Risk Coastal ~~Hazard (Erosion)~~ Area.<sup>17</sup>

## 7.2 Submissions

109. 9 submission points and 10 further submission points on Policy 15.2.1.1 are addressed in this section.
110. These submissions were made:

Submission point	Submitter	Decision requested
2094.3	Kainga Ora Homes and Communities	<b>Retain Policy 15.2.1.1</b> New Development in areas at significant risk from natural hazards as notified.
2101.5	Transpower New Zealand Ltd	<b>Retain Policy 15.2.1.1</b> on the basis that Policy 15.2.1.4 and Policy 15.2.1.5 are also retained (subject to amendments requested in other submissions).
FS3034.38	Mercury NZ Limited	Support 2101.5
2102.14	Waikato Regional Council	<b>Amend Policy 15.2.1.1(a)</b> as follows: (a) Avoid new subdivision, use and development where they will increase the risk to people's safety, well-being and property

<sup>16</sup> Recommendation by Ms Carter following the H27 hearing is shown in blue and underlined

<sup>17</sup> Hearing 27B: rename coastal overlays discussion at paragraphs 395 and 396, and recommendation at paragraph 414

		<del>and the environment in the following areas identified as being at significant risk from natural hazards:</del> (i) <del>High Risk Flood Area;</del> (ii) <del>High Risk Coastal Hazard (Inundation) Area;</del> (iii) <del>High Risk Coastal Hazard (Erosion) Area.</del>
FS3012.4	Department of Conservation	Support 2102.14
FS3033.6	Kainga Ora - Homes and Communities	Oppose 2102.14
FS3027.29	Horticulture New Zealand	Oppose 2102.14
FS3034.121	Mercury NZ Limited	Support 2102.14
2102.15	Waikato Regional Council	<b>Add</b> a new policy 15.2.1.1A as follows: <u>Policy 15.2.1.1A – Identified areas at significant risk from natural hazards</u> (a) <u>The following areas are identified as being at significant risk from natural hazards:</u> (i) <u>High Risk Flood Area;</u> (ii) <u>High Risk Coastal Hazard (Inundation) Area;</u> (iii) <u>High Risk Coastal Hazard (Erosion) Area.</u>
FS3012.5	Department of Conservation	Support 2102.15
FS3034.122	Mercury NZ Limited	Support 2102.15
2103.2	Fire and Emergency New Zealand	<b>Retain</b> Policy 15.2.1.1 as proposed.
2104.1	Genesis Energy Limited	<b>Amend</b> Policy 15.2.1.1(a) as follows: (a) Avoid new subdivision, use and development where <del>they will increase</del> the risk to people's safety, well-being and property in the following areas identified as being at significant risk from natural hazards <u>cannot be appropriately remedied or mitigated:</u> (i)...
FS3007.4	PowerCo Limited	Support 2104.1
2108.3	Director General of Department of Conservation	<b>Retain</b> Policy 15.2.1.1 as notified.
2151.8	Waikato-Tainui Te Kauhanganui Incorporated	<b>Retain</b> Policy 15.2.1.1 - New development in areas at significant risk from natural hazards.
2173.3	Federated Farmers of New Zealand	<b>Retain</b> Policy 15.2.1.1 – New development in areas at significant risk from natural hazard as notified.
FS3027.2	Horticulture New Zealand	Support 2173.3
FS3034.92	Mercury NZ Limited	Support 2173.3

## 7.1 Analysis

### *Submissions in support of retaining Policy 15.2.1.1*

111. The submissions made by Kainga Ora Homes and Communities [2094.3], Director General of Department of Conservation [2108.3], Fire and Emergency New Zealand [2103.2], Waikato-Tainui Te Kauhanganui Incorporated [2151.8], and Federated Farmers of New Zealand [2173.3] are to retain Policy 15.2.1.1 as notified. *Horticulture New Zealand [FS3027.2]* and *Mercury NZ Limited [FS3034.92]* support [2173.3].
112. I recommend that the submissions in support of proposed Policy 15.2.1.1 be accepted in part. I have made recommendations to refine the wording of the policy that do not change the intent. I rely on the RMA section 32 reports that have concluded that the policy is efficient and effective in implementing Objective 15.2.1 Resilience to natural hazard risk. I consider that the risk of not acting could be significant, in terms of developing on land subject to high risk natural hazards. I consider that the policy gives effect to NZCPS Objective 5, NZCPS Policies 25 and 26, and WRPS Policy 13.1, which are about locating new development away from at-risk areas, managing risk, and enhancing community resilience. Changes that do not change the policy approach have been recommended to refine the wording, therefore I recommend that the submissions to retain proposed Policy 15.2.1.1 be accepted in part.
113. Transpower New Zealand Ltd [2101.5] seeks to retain Policy 15.2.1.1 on the basis that Policy 15.2.1.4 and Policy 15.2.1.5 are also retained (subject to amendments requested in other submissions). *Mercury NZ Limited [FS3034.38]* supports this. The submission offers general qualified support for proposed Policy 15.2.1.1. I recommend that these submissions be accepted in part and Policy 15.2.1.1 be retained, subject to changes made in response to other submissions.

### *Change the approach in Policy 15.2.1.1*

114. The submission made by Waikato Regional Council [2102.14] is to amend Policy 15.2.1.1(a) so that it applies to the environment generally, not just high risk areas. This is supported by *Department of Conservation [FS3012.4]* and *Mercury NZ Limited [FS3034.121]*; and opposed by *Kainga Ora - Homes and Communities [FS3033.6]*, and *Horticulture New Zealand [FS3027.29]*. The submission made by Waikato Regional Council [2102.15] also seeks the addition of a new policy stating that the high risk overlays are at significant risk from natural hazards. This is supported by *Department of Conservation [FS3012.5]* and *Mercury NZ Limited [FS3034.122]*. Genesis Energy Limited [2104.1] seeks to amend Policy 15.2.1.1(a) to allow development where natural hazards can be appropriately remedied or mitigated. This is supported by *PowerCo Limited [FS3007.4]*.
115. Broadly, the effect of the changes sought in the collection of submissions that seek to extend Policy 15.2.1.1 is to remove the clear and directive wording for the management of new subdivision, use and development in high risk areas.
116. Common among the high-order planning instruments is to manage high or unacceptable risk, to reduce risk, and to ensure the risk from natural hazards is not increased. The term 'high risk' is used in the NZCPS<sup>18</sup>. In areas of high risk from natural hazards in the coastal environment, the NZCPS uses directive wording to "avoid increasing the risk of social, environmental and economic harm from coastal hazards"<sup>19</sup>. The NZCPS<sup>20</sup>, WRPS<sup>21</sup> and

---

<sup>18</sup> NZCPS Policy 24

<sup>19</sup> NZCPS Policy 25(a)

<sup>20</sup> NZCPS Policy 3

<sup>21</sup> WRPS policy 4.1.9(c)

Waikato Regional Coastal Plan<sup>22</sup> include policies about taking a precautionary approach. NZCPS Policy 25 (a) and (b) are to avoid increasing the risk of social, environmental, and economic harm, and to avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards.

117. I consider that the proposed Policy 15.2.1.1 is appropriate in managing new development in high risk hazard areas, and that the NZCPS approach supports a high test of 'avoid' where there is a high risk from natural hazards. As I understand it, the high risk areas are areas that have been assessed as being at significant risk from natural hazards, and therefore 'avoidance' is an appropriate management approach. In other areas where the degree of risk from natural hazards is not assessed as high, it may be appropriate to manage the risk through mitigation methods that do not have the potential to exacerbate the level of risk or reliance on hard engineering solutions.
118. I do not consider it necessary to add a policy that only states that "The following areas are identified as being at significant risk from natural hazards ...". Use of "significant" in the policy implies that there is a possible range or hierarchy of risk factors managed in the plan, and suggests there are other unspecified areas at significant risk, in addition to and separate from the high risk areas. Removing the reference to 'significant' addresses uncertainty that may arise when implementing the plan. In my opinion the name is self-explanatory. The policy sought by [2102.15] does not provide direction that would assist decision makers when considering subdivision, use and development. If the Panel consider that this needs to be explicitly stated, I consider that the information should be part of the definition of 'high risk ... areas'.

## 7.2 Recommendations

119. For the reasons above I recommend that the Hearings Panel:
- (a) **Accept in part** the submissions made by Kainga Ora Homes and Communities [2094.3], Director General of Department of Conservation [2108.3], Fire and Emergency New Zealand [2103.2], Waikato-Tainui Te Kauhanganui Incorporated [2151.8], Federated Farmers of New Zealand [2173.3] and Transpower New Zealand Ltd [2101.5], and the further submissions made by *Horticulture New Zealand* [FS3027.2] and *Mercury NZ Limited* [FS3034.92] supporting [2173.3]
  - (b) **Reject** the submissions made by Waikato Regional Council [2102.14 and 2102.15] and Genesis Energy Limited [2104.1], and the further submission made by the *Department of Conservation* [FS3012.4 and FS3012.5], *Mercury NZ Limited* [FS3034.121 and FS3034.122], and *PowerCo Limited* [FS3007.4]
  - (c) **Accept** the further submissions made by *Kainga Ora - Homes and Communities* [FS3033.6] and *Horticulture New Zealand* [FS3027.29].

## 7.3 Recommended amendments

120. I recommend the following additional amendment (shown in purple ~~strikeout~~) is made to Policy 15.2.1.1 to make it clearer. Previous s42A reports have recommended changes, and these are referenced in blue and red.

**Policy 15.2.1.1- New development in areas at ~~significant~~ high risk from natural hazards**

---

<sup>22</sup> WRCP Policy 8.1.2 and 8.1.4

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] high risk from natural hazards:

- a. High Risk Flood Area;
- b. High Risk Coastal ~~Hazard (Inundation)~~ Area;
- c. High Risk Coastal ~~Hazard (Erosion)~~ Area.<sup>23</sup>

#### 7.4 Section 32AA evaluation

121. No additional s32AA evaluation is required as this is a minor change to clarify the policy that does not change the intent.

## 8 Policy 15.2.1.2 Changes to existing land use activities and development in areas at significant risk from natural hazards

### 8.1 Introduction

122. Proposed Policy 15.2.1.2 recognises that there is existing land use and development in areas that are vulnerable to high risk from natural hazards, and that risk reduction measures should be considered where land use changes occur, provided the risk to people and property is not increased.
123. With my previous recommendations shown **red**, and Ms Carter's recommendation shown in **blue**, Policy 15.2.1.1, is:

**Policy 15.2.1.2 - Changes to existing land use activities and development in areas at **significant High<sup>24</sup>** risk from natural hazards**

- (a) In areas of High Risk Flood, High Risk Coastal ~~Hazard (Erosion)~~ and High Risk Coastal ~~Hazard (Inundation)~~<sup>25</sup>, ensure that when changes to existing land use activities and development occur, a range of risk reduction options are assessed, and development that would increase risk to people's safety, well-being and property is avoided.

### 8.2 Submissions

124. 8 submission points and 4 further submission points on Policy 15.2.1.2 are addressed in this section.
125. These submissions were made:

Submission point	Submitter	Decision requested

<sup>23</sup> Hearing 27B: rename coastal overlays discussion at paragraphs 395 and 396, and recommendation at paragraph 414

<sup>24</sup> Change in **blue** is the recommendation from Ms Carter H27C in response to a question from the Panel in hearing H27 on 10 May 2021, and in her closing

<sup>25</sup> Change in **red** Hearing 27B: rename coastal overlays discussion at paragraphs 395 and 396, and recommendation at paragraph 414

2094.4	Kainga Ora Homes and Communities	<b>Retain</b> Policy 15.2.1.2 Changes to existing land use activities and development in areas at significant risk from natural hazards as notified.
2101.6	Transpower New Zealand Ltd	<b>Retain</b> Policy 15.2.1.2 on the basis that Policy 15.2.1.4 and Policy 15.2.1.5 are also retained (subject to amendments requested in other submissions).
2103.3	Fire and Emergency New Zealand	<b>Retain</b> Policy 15.2.1.2 as proposed.
2108.4	Director General of Department of Conservation	<b>Retain</b> Policy 15.2.1.2 as notified.
2151.9	Waikato-Tainui Te Kauhanganui Incorporated	<b>Retain</b> Policy 15.2.1.2 - Changes to existing land use activities and development in areas at significant risk from natural hazards.
2104.2	Genesis Energy Limited	<b>Amend</b> Policy 15.2.1.2(a) as follows: (a) In areas of High Risk Flood, High Risk Coastal Hazard (Erosion) and High Risk Coastal Hazard (Inundation), ensure that when changes to existing land use activities and development occur, a range of risk reduction options are assessed, and development that would increase risk to people's safety, well-being and property is <u>avoided where the risk cannot be appropriately remedied or mitigated.</u>
<i>FS3007.5</i>	<i>PowerCo Limited</i>	<i>Support 2104.2</i>
2102.16	Waikato Regional Council	<b>Amend</b> Policy 15.2.1.2 as follows: Policy 15.2.1.2 - Changes to <u>zoning</u> existing land use activities and development in areas at significant risk from natural hazards (a) In areas of <u>significant risk from natural hazards including</u> High Risk Flood, High Risk Coastal Hazard (Erosion) and High-Risk Coastal Hazard (Inundation), ensure that when changes to existing land use activities and development occur, a range of risk reduction options are assessed, and development that would increase risk to people's safety, well-being <u>and the environment and property is avoided.</u>
<i>FS3012.6</i>	<i>Department of Conservation</i>	<i>Support 2102.16</i>
<i>FS3034.123</i>	<i>Mercury NZ Limited</i>	<i>Support 2102.16</i>
2173.4	Federated Farmers of New Zealand	<b>Amend</b> Policy 15.2.1.2 – Changes to existing land use activities and development in areas at significant risk from natural hazards as follows: ...increase risk to people's safety, <u>or well-being and property is avoided and does not transfer or exacerbate risk to adjoining properties.</u> AND Any consequential amendments that may be required.
<i>FS3027.3</i>	<i>Horticulture New Zealand</i>	<i>Support 2173.4</i>

### 8.3 Analysis

126. The submissions made by Kainga Ora Homes and Communities [2094.4], Fire and Emergency New Zealand [2103.3], Director General of Department of Conservation [2108.4] and

Waikato-Tainui Te Kauhanganui Incorporated [2151.9] are to retain Policy 15.2.1.2 as proposed. The submission made by Transpower New Zealand Ltd [2101.6] is to retain Policy 15.2.1.2 on the basis that Policy 15.2.1.4 and Policy 15.2.1.5 are also retained (subject to amendments requested in other submissions).

127. I recommend that the submissions in support of proposed Policy 15.2.1.2 be accepted in part. I have made recommendations to refine the wording of the policy, that do not change the intent. I rely on the RMA section 32 reports that have concluded that the policy is efficient and effective in implementing Objective 15.2.1 Resilience to natural hazard risk. I consider that the risk of not acting could be significant in terms of developing on land subject to high risk natural hazards. I consider that the policy gives effect to NZCPS Objective 5, NZCPS Policies 25 and 26, and WRPS Policy 13.1, which are about locating new development away from at-risk areas, managing risk, and enhancing community resilience. Changes have been recommended to refine the wording that do not change the policy approach, therefore I recommend that the submissions to retain proposed Policy 15.2.1.2 be accepted in part.
128. The issue raised by the submission from Genesis Energy Limited [2104.2] and the further submission made by *PowerCo Limited* [FS3007.5] is about whether the test of 'avoid' in high risk areas should be qualified and only applied where increased risk cannot be 'appropriately remedied or mitigated'. Federated Farmers of New Zealand [2173.4] and *Horticulture New Zealand* [FS3027.3] submit that Policy 15.2.1.2 be amended to focus on not transferring or exacerbating risk to adjoining properties.
129. The policy recognises that there is existing development in areas identified as being 'high risk'. Where changes in land use occur, there is an opportunity to reduce risk, thereby increasing the resilience of the community. I consider that the use of 'avoid' in the policy sends a clear signal that development that would increase risk to people's safety, well-being and property should not occur. The degree of risk in a high risk area is already significant. Replacing 'avoid, with 'appropriately remedied or mitigated' does not provide sufficient direction for the management of the issues associated with development in an area identified as being at high risk from natural hazards to assure the well-being of people and communities.
130. The policy approach in 15.2.1.2 is to assess options to reduce risk, and avoid those development changes where that would increase risk from natural hazards in high risk areas. In the coastal environment the NZCPS uses the term 'high risk'<sup>26</sup> (when prioritising the identification of risk). I consider that adding in a reference to 'rezoning' and 'areas significant risk' does not add to the policy and does not assist the plan to give effect to the NZCPS. The various 'High Risk ..' areas have been assessed, and are referred to in the policies and rules of the proposed plan. Where there are areas of 'significant risk' these should have been identified by the technical reports and encompassed in the 'High Risk ..' areas shown on the planning maps. I consider that the approach sought in submission [2102.16] is not as clear as the policy as notified.
131. The submission made by Waikato Regional Council [2102.16] is to amend Policy 15.2.1.2 to apply to re-zoning, to avoid increased risk to the environment, and to add areas of 'significant risk from natural hazards including' ... [high risk areas]. The further submissions made by the *Department of Conservation* [FS3012.6] and *Mercury NZ Limited* [FS3034.123] support the change sought.
132. I recommend that the submission made by Waikato Regional Council [2102.16] to specifically refer to the 'environment' be rejected. In doing so, I have assumed that any increased risk to the 'environment' from development in the context of proposed Policy 15.2.1.2 and the matters addressed in a district plan would be encompassed by the term 'property'.

---

<sup>26</sup> NZCPS Policy 24

## 8.4 Recommendations

133. For the reasons above I recommend that the Hearings Panel:
- (a) **Accept in part** the submissions made by Kainga Ora Homes and Communities [2094.4], Transpower New Zealand Ltd [2101.6], Fire and Emergency New Zealand [2103.3], Director General of Department of Conservation [2108.4] and Waikato-Tainui Te Kauhanganui Incorporated [2151.9].
  - (b) **Reject** the submission made by Genesis Energy Limited [2104.2] and the further submission made by *PowerCo Limited* [FS3007.5].
  - (c) **Reject** the submission made by Federated Farmers of New Zealand [2173.4] and the further submission made by *Horticulture New Zealand* [FS3027.3].
  - (d) **Reject** the submission made by Waikato Regional Council [2102.16] and the further submissions made by the *Department of Conservation* [FS3012.6] and *Mercury NZ Limited* [FS3034.123].

## 8.5 Recommended amendments

134. No amendments are recommended as a result of the above submission points. Previous s42A reports have recommended changes, and these are referenced above.

## 8.6 Section 32AA evaluation

135. No additional s32AA evaluation is required.

# 9 Policy 15.2.1.3 New emergency services and hospitals in areas at significant risk from natural hazards

## 9.1 Introduction

136. Waikato Regional Policy Statement (WRPS) Policy 13.1 includes requirements to manage risk from natural hazards, and to protect health and safety. The intent of proposed Policy 15.2.1.3 is that the risk from natural hazards to vulnerable people, communities and essential services not be increased.
137. The level of risk for a building depends on the characteristics of the natural hazard and the location and vulnerability of the buildings. If people receive a warning and are able to evacuate the risk of loss of life or injury is lowered. Buildings are static, and their exposure to a hazard risk in a high risk area remains high.
138. The policy intent is to locate new development for critical services away from high risk areas to promote the health and safety of vulnerable people and communities. Emergency services and hospitals can come under pressure in a major hazard event, and in the case of hospitals, the vulnerability of people to risk is higher if they are unable to evacuate. Locating emergency services and hospitals away from areas at high risk promotes outcomes for community resilience and assists with the implementation of Objective 15.2.1.
139. Proposed Policy 15.2.1.3, with the amendments recommended in previous s42 reports and responses to the Panel shown in red and blue, is:

**Policy 15.2.1.3 - New emergency services and hospitals in areas at significant high<sup>27</sup> risk from natural hazards**

Avoid locating new emergency service facilities and hospitals in areas which are at significant high risk from natural hazards, including High Risk Flood, High Risk Coastal ~~Hazard (Inundation)~~ and High Risk Coastal ~~Hazard (Erosion)~~<sup>28</sup>, unless, considering engineering and technical constraints or functional and operational requirements, they cannot be reasonably located elsewhere and will not increase the risk to or vulnerability of people or communities.

## 9.2 Submissions

140. 5 submission points and 5 further submission points on Policy 15.2.1.3 are addressed in this section.

141. These submissions were made:

Submission point	Submitter	Decision requested
2103.4	Fire and Emergency New Zealand	<b>Retain</b> Policy 15.2.1.3 as proposed.
<i>FS3034.39</i>	<i>Mercury NZ Limited</i>	<i>Support 2103.4</i>
2108.5	Director General of Department of Conservation	<b>Retain</b> Policy 15.2.1.3 as notified.
2151.10	Waikato-Tainui Te Kauhanganui Incorporated	<b>Retain</b> Policy 15.2.1.3 - New emergency services and hospitals in areas at significant risk from natural hazards.
<i>FS3025.10</i>	<i>Fire and Emergency New Zealand</i>	<i>Support 2151.10</i>
2173.5	Federated Farmers of New Zealand	<b>Retain</b> Policy 15.2.1.3 – New emergency services and hospitals in areas at significant risk from natural hazards as notified.
<i>FS3025.11</i>	<i>Fire and Emergency New Zealand</i>	<i>Support 2173.5</i>
2102.23	Waikato Regional Council	<b>Amend</b> Policy 15.2.1.3 - New emergency services and hospitals in areas at significant risk from natural hazards as follows: <b>Policy 15.2.1.3 - New <u>critical community infrastructure or</u> emergency services <del>and hospitals</del> in areas at significant risk from natural hazards</b> (a) Avoid locating new emergency service facilities and <u>critical community infrastructure</u> <del>hospitals</del> in areas which are at significant risk from natural hazards, including High Risk Flood, High Risk Coastal Hazard (Inundation) and High Risk Coastal

<sup>27</sup> Change in blue is the recommendation from Ms Carter H27C in response to a question from the Panel in hearing H27 on 10 May 2021, and in her closing

<sup>28</sup> Change in red Hearing 27B: rename coastal overlays discussion at paragraphs 395 and 396, and recommendation at paragraph 414

		Hazard (Erosion), unless, considering engineering and technical constraints or functional and operational requirements, they cannot be reasonably located elsewhere and will not increase the risk to or vulnerability of <u>vulnerable people, or communities, other property or the environment.</u>
FS3025.3	Fire and Emergency New Zealand	Support 2102.23
FS3034.126	Mercury NZ Limited	Support 2102.23
2053.23	Mercury NZ Limited	<b>Amend</b> Policy 15.2.1.3(a) as follows: (a) Avoid locating new emergency service facilities and hospitals in areas which are at significant risk from natural hazards, including High Risk Flood, <u>Flood Plain Management Area</u> , High Risk Coastal Hazard (Inundation) and High Risk Coastal Hazard (Erosion), unless, considering engineering and technical constraints or functional and operational requirements, they cannot be reasonably located elsewhere and will not increase the risk to or vulnerability of people or communities.
FS3031.34	Waikato Regional Council	Neutral 2055.23

### 9.3 Analysis

142. Fire and Emergency New Zealand [2103.4], Director General of Department of Conservation [2108.5], Waikato-Tainui Te Kauhanganui Incorporated [2151.10] and Federated Farmers of New Zealand [2173.5] seek to retain Policy 15.2.1.3. *Mercury NZ Limited* [FS3034.39] supports [2103.4]. *Fire and Emergency New Zealand* [FS3025.10, FS3025.11] supports [2173.5] and [2151.10].
143. I recommend that the submissions in support of proposed Policy 15.2.1.1 be accepted in part. The policy as notified is not clear, therefore I recommend changes to refine the wording without changing the intent. I rely on the RMA section 32 reports that have concluded that the policy is efficient and effective in implementing Objective 15.2.1 Resilience to natural hazard risk. I consider that the risk of not acting could be significant where new development providing hospital and essential services is located on land subject to high-risk natural hazards. Within the coastal environment, I consider that the policy gives effect to NZCPS Objective 5, NZCPS Policies 25 and 26, and WRPS Policy 13.1 which are about locating new development away from at-risk areas, managing risk, and enhancing community resilience. I consider that applying the same approach to other high-risk natural hazard areas promotes consistency in the plan.
144. Waikato Regional Council [2102.23], *Fire and Emergency New Zealand* [FS3025.3] and *Mercury NZ Limited* [FS3034.126] are to amend Policy 15.2.1.3 to replace “hospitals” with “critical community infrastructure” and other wording changes.
145. I recommend that the submission points seeking that “hospitals” be replaced by critical community infrastructure be rejected, because the term “critical community infrastructure” is much broader, and would require a definition to provide certainty about what is meant for plan users. The policy intent is to manage the health and safety of people who may be unable to evacuate in a natural hazard event, and that would not apply to all types of 'community infrastructure'.
146. The submission made by Mercury NZ Limited [2053.23] is to add 'Flood Plain Management Area' to proposed Policy 15.2.1.3. The further submission made by the Waikato Regional Council FS3031.34 is neutral on this submission and is about working with the district council on mapping. The policy intent is to focus on the high risk areas, rather

than including all areas that may be prone to flooding. I consider that the high test of 'avoid' is appropriate in high risk areas, and that mitigation options may be feasible for areas that may flood, but are not 'high risk'. I recommend that the submission made by Mercury NZ Limited [2053.23] and Waikato Regional Council FS3031.34 be rejected.

#### 9.4 Recommendations

147. For the reasons above I recommend that the Hearings Panel:

- (a) **Accept** the submissions made by Fire and Emergency New Zealand [2103.4], Director General of Department of Conservation [2108.5], Waikato-Tainui Te Kauhanganui Incorporated [2151.10] and Federated Farmers of New Zealand [2173.5] which seek to retain Policy 15.2.1.3. Mercury NZ Limited [FS3034.39] supports [2103.4]. Fire and Emergency New Zealand [FS3025.10, FS3025.11] supports [2173.5] and [2151.10].
- (b) **Reject** the submission made by Waikato Regional Council [2102.23] and the further submissions made by Fire and Emergency New Zealand [FS3025.3] and Mercury NZ Limited [FS3034.126].
- (c) **Reject** the submission made by Mercury NZ Limited [2053.23] and the further submission made by the Waikato Regional Council [FS3031.34].

#### 9.5 Recommended amendments

- 148. The policy intent is to increase resilience to hazard events by locating new development for emergency services and hospitals away from high risk areas to promote the health and safety of vulnerable people and communities.
- 149. The following additional amendments shown in purple are recommended to simplify the drafting of proposed Policy 15.2.1.3.

**Policy 15.2.1.3 - New emergency services and hospitals in areas identified as high risk areas at significant risk from natural hazards**

- (a) Avoid locating new emergency service facilities and hospitals in areas which are at significant high risk from natural hazards, including High Risk Flood, High Risk Coastal Hazard (Inundation) and High Risk Coastal Hazard (Erosion) areas<sup>29</sup>, where unless, considering engineering and technical constraints or functional and operational requirements, they cannot be reasonably located elsewhere and will not increase the risk to or vulnerability of people or communities.
  - i. the risk to or vulnerability of people or communities would be increased.
  - ii. there are feasible alternatives.
  - iii. there are engineering and technical constraints, and
  - iv. there is no functional or operational need to locate in an area vulnerable to a high risk natural hazard

**[Recommended alternative Policy 15.2.1.3 clean version]**

**Policy 15.2.1.3 - New emergency services and hospitals in areas identified as high risk from natural hazards**

- (a) Avoid locating new emergency service facilities and hospitals in High Risk Flood, High Risk Coastal (Inundation) and High Risk Coastal (Erosion) areas, where:
  - i. the risk to or vulnerability of people or communities would be increased,

---

<sup>29</sup> Hearing 27B: rename coastal overlays discussion at paragraphs 395 and 396, and recommendation at paragraph 414

- ii. there are feasible alternatives,
- iii. there are engineering and technical constraints, and
- iv. there is no functional or operational need to locate in an area vulnerable to a high risk natural hazard

## 9.6 Section 32AA evaluation

150. No additional s32AA evaluation is required because the proposed policy is re-drafted to improve clarity, but retains the same tests and planning outcomes are unchanged.

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

## 10.1 Introduction

151. The intent of Policy 15.2.1.11 is to avoid locating new development where it will be dependent on structural protection works to mitigate natural hazards.
152. With the recommended changes to the naming of high hazard areas, Policy 15.2.1.11 is:

### **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<sup>30</sup> where a demand or need for new structural protection works will be required to reduce the risk from natural hazards to acceptable levels.

## 10.2 Submissions

153. 6 submission points and 7 further submission points on Policy 15.2.1.4 are addressed in this section.

Submission point	Submitter	Decision requested
2103.11	Fire and Emergency New Zealand	<b>Retain</b> Policy 15.2.1.11 as proposed.
2108.11	Director General of Department of Conservation	<b>Retain</b> Policy 15.2.1.11 as notified.
2173.13	Federated Farmers of New Zealand	<b>Retain</b> Policy 15.2.1.11 – New development that creates demand for new protection structures and works as notified.
2094.7	Kainga Ora Homes and Communities	<b>Retain</b> Policy 15.2.1.11 New development that creates demand for new protection structures and works as notified.
2053.29	Mercury NZ Limited	<b>Amend</b> Policy 15.2.1.11(a as follows: (a) Avoid locating new subdivision, use and development in High Risk Flood, <u>Flood Plain Management Area</u> , High Risk

<sup>30</sup> Hearing 27B: rename coastal overlays discussion at paragraphs 395 and 396, and recommendation at paragraph 414

		Coastal Hazard (Inundation) and High Risk Coastal Hazard (Erosion) Areas where a demand or need for new structural protection works will be required to reduce the risk from natural hazards to acceptable levels.
FS3029.8	TaTa Valley Limited	Oppose 2053.29
FS3020.27	Shand Properties Limited	Oppose 2053.29
FS3031.40	Waikato Regional Council	Neutral 2053.29
2102.25	Waikato Regional Council	<b>Amend</b> Policy 15.2.1.11 - New development that creates demand for new protection structures and works as follows: (a) Avoid locating new <u>and redevelopment of existing subdivision, use and development in all coastal and flood hazard areas</u> <del>High Risk Flood, High Risk Coastal Hazard (Inundation) and High Risk Coastal Hazard (Erosion) Areas</del> where a demand or need for new structural protection works will be required to reduce the risk from natural hazards to acceptable levels.
FS3012.8	Department of Conservation	Support 2102.25
FS3020.39	Shand Properties Limited	Oppose 2102.25
FS3033.13	Kainga Ora - Homes and Communities	Oppose 2102.25
FS3034.128	Mercury NZ Limited	Support 2102.25

### 10.3 Analysis

154. Fire and Emergency New Zealand [2103.11], Director General of Department of Conservation [2108.11], Federated Farmers of New Zealand [2173.13] and Kainga Ora Homes and Communities [2094.7] seek to retain Policy 15.2.1.11 which deals with the potential for new development creating a demand for new structural protection works.
155. RMA s6 is to recognise and provide for the protection of natural character from inappropriate subdivision, use and development. In the coastal environment, NZCPS objectives and policies<sup>31</sup> aim to protect the natural character of the coastal environment, and locate new development away from areas prone to natural hazard risk, to discourage the use of coastal protection works and encourage alternatives. NZCPS Policy 25 is to avoid increasing social, environmental or economic harm, and to avoid re-development where that would increase risk from natural hazards. WRPS Policy 13.1 (b) is to manage natural hazard risks to protect health and safety, (g) is to prefer the use of natural defences over man-made structures, and (h) to recognise natural systems. Both higher-order planning instruments have policies about taking a precautionary approach. The WRPS policy applies to all natural hazards, not just coastal, as covered in the NZCPS.
156. I recommend that the submissions in support of proposed Policy 15.2.1.11 and the submission seeking that it also include the Flood Plain Management Area be accepted in part. I have made

<sup>31</sup> NZCPS Objective 1 and 5, NZCPS Policies 25 and 26

a recommendation to refine the wording of the policy, that extends the policy to all areas prone to natural hazard risk.

157. The submission made by Mercury NZ Limited [2053.29] is to extend the proposed Policy 15.2.1.11(a) to apply to the Flood Plain Management Area. This is opposed by *TaTa Valley Limited* [FS3029.8], *Shand Properties Limited* [FS3020.27] and *Waikato Regional Council* [FS3031.40] is neutral.
158. The submission made by Waikato Regional Council [2102.25] is to extend proposed Policy 15.2.1.11 to apply to all hazardous areas and to all redevelopment as well as new development. This is supported by *Department of Conservation* [FS3012.8] and *Mercury NZ Limited* [FS3034.128], and opposed by *Shand Properties Limited* [FS3020.39] and *Kainga Ora - Homes and Communities* [FS3033.13]. I recommend that the submission be accepted in part, to the extent that the policy could be applied more broadly to manage new development creating a demand for new protection works in all areas prone to natural hazards.
159. I consider that the policy should not be amended to apply to the redevelopment of existing subdivision, use and development, because the approach in the plan recognises that there is existing development in areas at risk from natural hazards. The policy as notified focuses on the mitigation response to new development. Applying the same regulatory tests of avoidance to redevelopment could have unintended consequences for health and safety of people where there are existing buildings and structures in use, and would be inefficient where there are existing use rights.
160. The approach in the higher-order planning instruments is to encourage new development to locate away from areas vulnerable to natural hazard risk, to managing risk, and enhancing community resilience. I consider that applying the policy about avoiding new development that is dependent on new structural protection works should be applied to all areas known to be at risk from natural hazards, to give better effect to the NZCPS and WRPS.

#### 10.4 Recommendations

161. For the reasons above I recommend that the Hearings Panel:
- (a) **Accept in part** the submissions made by Fire and Emergency New Zealand [2103.11], Director General of Department of Conservation [2108.11], Federated Farmers of New Zealand [2173.13] and Kainga Ora Homes and Communities [2094.7], to the extent that the submissions support the policy approach of Policy 15.2.1.11.
  - (b) **Accept in part** the submissions made by Mercury NZ Limited [2053.29] to the extent that the submissions seek that Policy 15.2.1.11 be extended to apply to all hazard risk areas.
  - (c) **Reject** the further submissions made by *TaTa Valley Limited* [FS3029.8], *Shand Properties Limited* [FS3020.27] and *Waikato Regional Council* [FS3031.40].
  - (d) **Accept in part** the submission made by Waikato Regional Council [2102.25] and the further submissions made by *Department of Conservation* [FS3012.8] and *Mercury NZ Limited* [FS3034.128], to the extent that the submissions seek that Policy 15.2.1.11 be extended to apply to all hazard risk areas.
  - (e) **Reject** the further submission made by *Shand Properties Limited* [FS3020.39] and *Kainga Ora - Homes and Communities* [FS3033.13].

#### 10.5 Recommended amendments

162. The following amendment is recommended to Policy 15.2.1.11:

**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~~<sup>32</sup> 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.

**10.6 Section 32AA evaluation**

163. This evaluation is undertaken in accordance with RMA section 32AA and only deals with the alternative policy that I have recommended as a result of the submission made by Waikato Regional Council [2102.25 ] and the further submissions made by *Department of Conservation* [FS3012.8] and *Mercury NZ Limited* [FS3034.128].

**Evaluation of the objective**

164. I have not undertaken an evaluation of whether the objective achieves the purpose of the RMA, as it is not amended by a recommendation in this report.

**Analysis of proposed provisions**

165. RMA section 32AA requires an evaluation of whether the provisions in the proposal are the most appropriate way to achieve the objectives. Objective 15.2.1 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~~<sup>33</sup> mitigated.

166. The following options were identified for consideration:
- Option 1 – status quo (no change from proposed plan)
  - Option 2 – amend Policy 15.2.1.11 to avoid new development that may create a demand for new structural protection works.

**Assessing the efficiency and effectiveness of the new policy in achieving Objective 15.2.1**

**Option 1 - no change from proposed plan**

167. Proposed Policy 15.2.1.11 only controls the need for new structural works in high hazard areas, while the higher-order planning instruments do not make that distinction. Avoiding new development where that is, or may become, dependent on new structural works to mitigate natural hazards assists with implementing the Objective for a resilient community, but does not provide a policy platform for considering new development in areas at risk from natural hazards.

**Option 2 – amend Policy 15.2.1.11 to avoid new development that may create a demand for new structural protection works**

168. Option 2 is to amend Policy 15.2.1.11 to apply to new structural protection works for new development in any area at risk from natural hazards. The amended policy allows natural

---

<sup>32</sup> Hearing 27B: rename coastal overlays discussion at paragraphs 395 and 396, and recommendation at paragraph 414

<sup>33</sup> Report 27B recommendation on Waikato Regional Council [2102.12] and Department of Conservation [2108.2] in section 14 at para 217

processes to operate, and applies where new development is proposed that requires some hard structural mitigation measures to manage potential adverse effects on the health and safety of people.

169. The approach in the higher order planning instruments is to encourage new development to locate away from areas vulnerable to natural hazard risk, to managing risk, and enhancing community resilience. I consider that applying the policy about avoiding new development that is dependent on new structural protection works should be applied to all areas known to be at risk from natural hazards to give better effect to the NZCPS and WRPS.

### The reasons for deciding on the preferred option

170. Option 2 is my preferred option, and I recommend that proposed Policy 15.2.1.11 be amended to apply to new structural protection works to protect new development in all areas subject to natural hazards. I consider that it would assist with the implementation of the plan if it is clear how the potential effects of mitigation methods on natural character and new development in potentially vulnerable areas is to be managed.
171. I have concluded that the alternative Policy 15.2.1.11 will assist with the implementation of Objective 15.2.1, and gives better effect to the objectives and policies in the NZCPS and WRPS that manage risks from natural hazards.

## 11 Development in known hazard areas

172. The submissions discussed in this section apply to the proposed plan as a whole.

### 11.1 Submissions

173. The following submissions are addressed in this section:

Submission point	Submitter	Decision requested
433.78	Auckland Waikato Fish and Game Council	Amend the Proposed District Plan to ensure development is directed away from known hazard areas (i.e. flooding hazards).
<i>FS1340.75</i>	TaTa Valley Limited	Oppose
<i>FS1377.99</i>	Havelock Village Limited	Oppose

### 11.2 Analysis

174. The submission made by Auckland Waikato Fish and Game Council [433.78] seeks that the proposed plan be amended to ensure that development is directed away from known hazard areas (i.e. flooding hazards). *TaTa Valley Limited* [FS1340.75] and *Havelock Village Limited* [FS1377.99] support this submission.
175. The approach in the proposed plan is to take a risk-based approach to the management of new development in areas subject to the risk from natural hazards. It identifies certain areas as 'high risk' from natural hazards, and other areas where there is a lower risk from natural hazards. The plan controls new development by reference to the level of risk. The proposed plan directs development away from high risk areas as requested in the submission. In lower risk areas, and where there is existing development, including infrastructure and historic heritage already located on land subject to natural hazards, the plan aims to manage risk in other ways. The policy approach is to manage the identified risk in lower risk areas and areas

that have already been developed through mitigation and adaptation to ensure that the risk of damage to property or injury or loss of lives is not increased.

176. I recommend that the submissions be accepted in part because the plan as a whole manages development to avoid creating new or increased risk from natural hazard events, and to reduce risk in areas where the risks can be reasonably mitigated and where existing development has already occurred.

### 11.3 Recommendations

177. For the reasons above, I recommend that the Hearings Panel:

(a) **Accept in part** the submissions made by Auckland Waikato Fish and Game Council [433.78] and the further submissions made by *TaTa Valley Limited* [FSI 340.75] and *Havelock Village Limited* [FSI 377.99].

### 11.4 Recommended amendments

178. No amendments are recommended as a result of the above submissions.

### 11.5 Section 32AA evaluation

179. No additional s32AA evaluation is required.

## 12 Definition of natural hazard area

### 12.1 Submissions

180. The following submissions are addressed in this section:

Submission point	Submitter	Decision requested
738.7	Shand Properties Limited	Add a definition for "natural hazard area" to Chapter 13: Definitions with reference to standards and/or mapped location.
<i>FSI 087.23</i>	<i>Ports of Auckland Limited</i>	<i>Support</i>
<i>FSI 349.10</i>	<i>Allen Fabrics Ltd.</i>	<i>Support</i>
<i>FSI 342.196</i>	<i>Federated Farmers</i>	<i>Oppose</i>
<i>FSI 387.829</i>	<i>Mercury NZ Limited</i>	<i>Oppose</i>

### 12.2 Analysis

181. The submission made by Shand Properties Limited [738.7] is to add a definition for "natural hazard area" to Chapter 13: Definitions with reference to standards and/or mapped location. *Ports of Auckland Limited* [FSI 087.23], *Allen Fabrics Ltd* [FSI 349.10], *Federated Farmers* [FSI 342.196], and *Mercury NZ Limited* [FSI 387.829] support the submission.
182. This submission was made to Stage 1 of the plan. The expression "natural hazard area" appeared in subdivision rules in a number of the zone chapters notified in Stage 1 (e.g. Rule 16.4.7 RD 1(a)(ii)). The expression is removed by Variation 2 from each rule where it appeared, so this submission is now largely redundant.
183. The RMA includes a definition of natural hazard which is: "natural hazard means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion,

volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment."

184. I recommend that the submissions be accepted in part, to the extent that definitions are already included in the plan. Where a definition is included in the RMA, that definition applies and it does not need to be duplicated in a plan. Terms that are used in the plan, such as "high risk coastal erosion area" are defined in the plan, and identified on the planning maps.
185. I agree that the definitions would be better located together in Chapter 13 rather than in Chapter 15, because this improves readability of the plan.

### 12.3 Recommendations

186. For the reasons above, I recommend that the Hearings Panel:
- (a) **Accept in part** the submission made by Shand Properties Limited [738.7] and the further submissions made by *Ports of Auckland Limited* [FS1087.23], *Allen Fabrics Ltd* [FS1349.10], *Federated Farmers* [FS1342.196], and *Mercury NZ Limited* [FS1387.829].

### 12.4 Recommended amendments

187. No amendments are recommended as a result of the above submissions.

### 12.5 Section 32AA evaluation

188. No additional s32AA evaluation is required.

## 13 Addition to the planning maps

189. Planning maps are a spatial tool to show where particular rules and other provisions in a district plan apply.

### 13.1 Submissions

190. The following submissions are addressed in this section:

Submission point	Submitter	Decision requested
81.186	Waikato Regional Council	Amend the planning maps to show streams and their flood plains.
FS1107.19	Simon Upton	Support
FS1340.25	TaTa Valley Limited	Support

### 13.2 Analysis

191. The submission made by Waikato Regional Council [81.186] is to amend the planning maps to show streams and their flood plains. The further submissions made by *Simon Upton* [FS1107.19] and *TaTa Valley Limited* [FS1340.25] support this submission.
192. The purpose of a district plan is to assist the council to perform its functions for the purpose of giving effect to the RMA. There is no obligation to identify streams and their flood plains in a district plan. RMA s75 requires the council to state the objectives, policies and rules (if any), and the district plan may state other matters including methods for implementing policies for the district. Unless there is a specific resource management reason for identifying a stream and its flood plain in the context of avoiding or mitigating a natural hazard, then in my opinion, including those natural resources on a planning map is not necessary. If there are no provisions

in the plan that refer to the streams and their flood plains, then I consider that a map of those features is not needed. Therefore I recommend that the submissions be rejected.

### 13.3 Recommendations

193. For the reasons above, I recommend that the Hearings Panel:

- (a) **Reject** the submission made by the Waikato Regional Council [81.186] and the further submissions made by *Simon Upton* [FS1107.19] and *TaTa Valley Limited* [FS1340.25].

### 13.4 Recommended amendments

194. No amendments are recommended as a result of the above submissions.

### 13.5 Section 32AA evaluation

195. No additional s32AA evaluation is required.

## 14 Natural hazards and contaminated land

### 14.1 Submissions

196. The following submissions are addressed in this section:

Submission point	Submitter	Decision requested
738.5	Shand Properties Limited	Amend Rule 23.4 Subdivision, 23.4.4 Title boundaries and 23.3 Land use - Building, to address issues related to natural hazards and contaminated land in a more targeted and specific way. This could include through: The replacement of standards 23.4.4(1)(iii)A and B; The rewording of matters for discretion 23.4.4(b)(v) and (vi); Addition of standards e.g. floor levels, in 23.3.
FS1349.8	Allen Fabrics Ltd	Support
FS1387.827	Mercury NZ Limited	Oppose

### 14.2 Analysis

197. This submission was made to Stage 1 of the proposed plan. Variation 2 amended Rule 23.4 Subdivision by:

- adding a matter of discretion about avoidance and/or mitigation of natural hazard risk to Rule 23.4.2 RDI
- deleting 'natural hazard area' from 23.4.4 Title boundaries
- adding liquefaction as a matter of discretion to 'geotechnical suitability' in 23.4.8 RDI;
- and making no changes to the rules in 23.3 Land use - Building
- Variation 2 also added an explanation to Chapter 15.3 'How to use and interpret the rules' to explain that the rules in Chapter 15 apply in addition to other chapters.
- Chapter 13 deals with hazardous substances and contaminated land, and was not amended by Variation 2 Natural hazards and climate change.

198. The submission made by Shand Properties Limited [738.5] is to amend Rule 23.4 Subdivision, 23.4.4 Title boundaries and 23.3 Land use - Building, to address issues related to natural

hazards and contaminated land in a more targeted and specific way; including through replacement of Standards 23.4.4(1)(iii)A and B; and the rewording of matters of discretion 23.4.4(b)(v) and (vi); addition of standards e.g. floor levels, in 23.3. *Allen Fabrics Ltd [FS1349.8]* supports this, and *Mercury NZ Limited [FS1387.827]* opposes the submission.

199. Variation 2 and Chapter 15 together provide a comprehensive approach to natural hazards, making this submission now largely redundant. Stage 2 does not contain any new provisions in regard to contaminated land, but this topic is addressed by Chapter 10 of the plan (Stage 1) and through an National Environmental Standard.<sup>34</sup>
200. I consider that Variation 2 as a whole addresses issues relating to natural hazards. The submission provides no specific relief sought in regard to contaminated land, however the submission does identify an inconsistency in the explanation of 'how the rules apply', which in my opinion should be corrected by making it clear that all of the district-wide rules apply in addition to those in Chapters 14 and 15. I recommend that the submission be accepted in part, to the extent that it seeks that the relationship between natural hazards and contaminated land be clearer and more specific.

### 14.3 Recommendations

201. For the reasons above, I recommend that the Hearings Panel:
- (a) **Accept in part** the submission made by Shand Properties Limited [738.5] and the further submission made by *Allen Fabrics Ltd [FS1349.8]*.
  - (b) **Accept** the further submission made by *Mercury NZ Limited [FS1387.827]*.

### 14.4 Recommended amendments

202. I recommend that the following amendment be made to 15.3 'How to use the Rules' (shown purple and underlined)

#### 15.3 How to use and interpret the rules

- (a) The activities covered by the rules in this chapter are also subject to the rules in the relevant zone chapters, the district wide chapters<sup>35</sup>, and ~~the district wide rules in~~ Chapter 14 Infrastructure and Energy.
- (b) Where subdivision is specified, a subdivision consent is also required under the provisions of the relevant zone chapter, and the district-wide rules in Chapter 14 Infrastructure and Energy will also apply.
- (c) The rules in this chapter apply alongside the National Environmental Standards for Electricity Transmission 2010 (NESETA).<sup>36</sup>
- (d) The rules in this chapter do not apply to:
  - (i) any activity which is a regulated activity under the National Environmental Standards for Telecommunication Facilities 2016 (NESTF);
  - (ii) plantation forestry activities regulated under the National Environmental Standards for Plantation Forestry (NESPF).
- (d) The information requirements for resource consent applications in respect to natural hazards are set out in Rule 15.13.

#### Advice note

<sup>34</sup> Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

<sup>35</sup> s42A report H27G section 14

<sup>36</sup> s42A report H27B

Effects on archaeological sites, both recorded (identified by the New Zealand Archaeological Association) and unrecorded, are regulated under the Heritage New Zealand Pouhere Taonga Act 2014. Heritage New Zealand Pouhere Taonga must be contacted regarding development and the need to undertake an archaeological assessment to determine the need for an archaeological authority. In the event of an accidental discovery Heritage New Zealand Pouhere Taonga Lower Northern Office must be contacted immediately.<sup>37</sup>

#### 14.5 Section 32AA evaluation

203. No additional s32AA evaluation is required.

## 15 Policy 15.2.1.10 Areas defended by stopbanks

204. There are a number of submissions and further submissions raising matters about Policy 15.2.10, and these are discussed in the s42A report H27C prepared by Ms Carter. With Ms Carter's recommendations, Policy 15.2.1.10 is:

205. Proposed Policy 15.2.1.10 deals with Defended Areas (stopbanks) on the Waikato River. Proposed Policy 15.1.2.10 as amended by recommendations in H27C is:

#### **Policy 15.2.1.10 Areas defended by stopbanks adjacent to the Waikato River**

- (b) Control subdivision, use and development in areas identified as Defended Areas adjacent to the Waikato River by:
  - (i) assessing the potential risk of overtopping or structural failure of the stopbanks, and overwhelming of associated flood protection structures, before subdivision, use and development occurs; and
  - (ii) requiring that consideration be given to appropriate mitigation to reduce any residual risk identified to acceptable levels<sup>38</sup>; and
  - (iii) ensuring that any residual risk is not transferred to neighbouring sites; and (iv) recognising the functional needs and operational needs of the National Grid.<sup>39</sup>
- (c) Specify minimum setbacks for buildings and earthworks from stopbanks to:
  - (i) protect the structural integrity of the stopbanks; and
  - (ii) provide a buffer to reduce the potential risk to life and damage to property from deep and fast-flowing flood waters in the event of a breach

#### 15.1 Submissions

206. The following further submission is addressed in this section:

Submission point	Submitter	Decision requested
FS3027.4	Horticulture New Zealand	Support retaining policy 15.2.1.10

<sup>37</sup> s42A report H27B

<sup>38</sup> Report 27C recommendation on Waikato Regional Council [2102.69]

<sup>39</sup> Report 27C recommendation on Transpower New Zealand [2101.9]

## 15.2 Analysis

207. The further submission made by *Horticulture New Zealand [FS3027.4]* supports the retention of Policy 15.2.1.10. The submissions on Policy 15.2.1.10 are dealt with in the s42A report H27C Flood Hazards and Defended Areas prepared by Ms Carter.
208. Ms Carter recommends that the submissions in support of retaining Policy 15.2.1.10 be accepted in part to the extent that Ms Carter has also recommended some minor amendments to the policy.<sup>40</sup>
209. I agree that the policy be retained, with the amendments recommended by Ms Carter.
210. I consider that Policy 15.2.1.10 gives effect to WRPS Objective 3.24, which is to manage the effects of natural hazards on people, property and the environment, and WRPS Policy 13.1 that deals with matters including the need to protect health and safety. I consider that the policy approach to control subdivision, use and development in areas defended by a stopbank does give effect to the WRPS, and I recommend that the further submission made by *Horticulture New Zealand [FS3027.4]* be accepted in part.

## 15.3 Recommendations

211. For the reasons above, I recommend that the Hearings Panel:
- (a) **Accept in part** the further submission made by *Horticulture New Zealand [FS3027.4]*.

## 15.4 Recommended amendments

212. No amendments are recommended as a result of the above submissions.

## 15.5 Section 32AA evaluation

213. No additional s32AA evaluation is required.

# 16 Submissions on Chapter 14: Infrastructure and Energy

214. Chapter 14 of the proposed plan deals with infrastructure and energy. Chapter 14.1(1) is the introduction section, which is:

### 14.1 Introduction

- (1) The provisions within this and Energy chapter of the district plan shall apply across the district in all the zones and overlays in the district plan. The zone chapters and their associated overlays, objectives, policies and rules do not apply to infrastructure and energy activities unless specifically referred to within this Infrastructure and Energy chapter.
215. Variation 2 added "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"
216. Variation 2 also added an additional matter of control to the controlled activity Rule 14.3.2 CI dealing with subdivision to create a utility allotment for accommodating infrastructure "Measures to avoid or mitigate natural hazards including liquefaction risk (refer to Chapter 15)".

---

<sup>40</sup> Report 27C section 8.3, para 109

## 16.1 Submissions

Submission point	Submitter	Decision requested
2101.2	Transpower New Zealand Ltd	Retain the proposed additional wording to 14.1(1).
2123.1	Counties Power Limited	Amend rule 14.3.2.1 CI(c) - Infrastructure and energy - Controlled Activities so that the matter of control applies only to areas located within the natural hazard overlays.

## 16.2 Analysis

217. The submission made by Transpower [2101.2] is to retain the Introduction to Chapter 14.1(1), which explains that the provisions in Chapter 15 and associated overlays applying to activities in the Infrastructure and Energy Chapter (Chapter 14) also apply. The section also explains that the provisions in the zone chapters do not apply.
218. I consider that the addition to introduction section 14.1(1) assists users of the plan, and I recommend that the submission made by Transpower 2101.2 be accepted.
219. The submission made by Counties Power Limited [2123.1] is to amend Rule 14.3.2.1 CI(c) Infrastructure and energy - Controlled Activities so that the matter of control applies only to areas located within the natural hazard overlays. The submission is that the council has discretion under s106 of the Resource Management Act when making decisions, even if it were not located within the natural hazard overlays. Incorporating a generic matter of control may result in additional costs during consent even if not necessary. Furthermore, the rule refers to the provisions within Chapter 15 that would address any concerns if relevant.
220. While Council does have the discretion to decline any application for subdivision if it considers that there is a significant risk from natural hazards, I consider that including the matter of control in the plan assists decision makers and plan users to be aware of which matters the Council considers relevant. A controlled activity cannot be declined - it must be granted (with conditions as appropriate). RMA s106 goes further and applies to areas where there may be 'significant risk', and an application should be refused.
221. The effect of the submission is to remove the ability for the council to consider whether an application has addressed liquefaction risk areas which are not yet mapped. Changing the rule in that way would mean that it fails to implement the relevant policies in Chapter 15 that deal with risk from liquefaction.
222. I recommend that the submission made by Counties Power Limited [2123.1] be rejected.

## 16.3 Recommendations

223. For the reasons above, I recommend that the Hearings Panel:
- Accept** the submission made by Transpower [2101.2]
  - Reject** the submission made by Counties Power Limited [2123.1].

## 16.4 Recommended amendments

224. No amendments are recommended as a result of the above submissions.

## 16.5 Section 32AA evaluation

225. No additional s32AA evaluation is required.

## 17 Providing information to submitters and the Panel

### 17.1 Submissions

226. The submission made by Mercury NZ Limited [2053.6] is that the outputs of the risk assessment should be made available to all Stage 1 submitters (and the Hearing Commissioners).

Submission point	Submitter	Decision requested
2053.6	Mercury NZ Limited	The outputs of the risk assessment should be made available to all Stage 1 submitters (and the Hearing Commissioners).
<i>FS3031.17</i>	<i>Waikato Regional Council</i>	<i>Neutral 2053.6</i>

### 17.2 Analysis

227. No specific relief is sought, however I understand that the Hearing Commissioners, and all members of the public, have access to the technical reports that contain the risk assessments, therefore I recommend that the submission be accepted. The submission is not a matter that can be addressed in the district plan and is out of scope. The neutral further submission by the *Waikato Regional Council FS3031.17* raises a separate matter about working with the district council on maps that cannot be addressed by the Panel in the current process and should be rejected..

### 17.3 Recommendations

228. For the reasons above, I recommend that the Hearings Panel:
- (a) **Reject** the submission made by Mercury NZ Limited [2053.6] and reject the further submission made by *Waikato Regional Council FS3031.17*.

### 17.4 Recommended amendments

229. No amendments are recommended as a result of the above submissions.

### 17.5 Section 32AA evaluation

230. No additional s32AA evaluation is required.

## 18 Proposed Policy 15.2.1.5

231. Proposed policy 15.2.1.5 deals with existing infrastructure and utilities in all areas subject to natural hazards. Policy 15.2.1.5 is:

**Policy 15.2.1.5 Existing infrastructure and utilities in all areas subject to natural hazards**

- (a) Provide for the operation, maintenance and minor upgrading of existing infrastructure and utilities in all areas subject to natural hazards.

### 18.1 Submissions

Submission point	Submitter	Decision requested
2100.2	Powerco Limited	Retain Policy 15.2.1.5 as notified.

FS3034.36	Mercury NZ Limited	Supports 2100.2. Mercury supports policy which allows for the provision of infrastructure within a flood plain or high risk flood area only where such infrastructure has a functional need to be so located. Mercury seeks to ensure also that the functional and operational requirements of the Lower Waikato Flood Scheme are not compromised.
-----------	--------------------	--

## 18.2 Analysis

232. The submission made by Powerco Limited [2100.2] and the further submission made by Mercury NZ Limited [FS3034.36] are to retain Policy 15.2.1.5 as notified. Proposed Policy 15.2.1.5 manages existing infrastructure in all areas subject to natural hazards.
233. I consider that the policy recognises that there is existing infrastructure and utilities in areas vulnerable to natural hazards, and that the policy assists the council to manage existing infrastructure in areas subject to natural hazards.

## 18.3 Recommendations

234. For the reasons above, I recommend that the Hearings Panel:
- (a) **Accept** the submissions made by Powerco Limited [2100.2] and the further submission made by Mercury NZ Limited [FS3034.36].

## 18.4 Recommended amendments

235. No amendments are recommended as a result of the above submissions.

## 18.5 Section 32AA evaluation

236. The recommended change is considered to be a minor change. No section 32AA evaluation is required.

# 19 Proposed 15.13 Information requirements for natural hazards

237. Chapter 15.13 contains information requirements when applying for a resource consent that addresses natural hazards. Proposed Chapter 15.13, with the amendments recommended in the earlier s42A report H27B (shown in red), and in this supplementary report (shown in purple), are:

### 15.3 How to use and interpret the rules

- (a) The activities covered by the rules in this chapter are also subject to the rules in the relevant zone chapters, [the district wide chapters<sup>41</sup>](#), and [the district-wide rules in Chapter 14 Infrastructure and Energy](#).
- (b) Where subdivision is specified, a subdivision consent is also required under the provisions of the relevant zone chapter, and the district-wide rules in Chapter 14 Infrastructure and Energy will also apply.
- (c) [The rules in this chapter apply alongside the National Environmental Standards for Electricity Transmission 2010 \(NESETA\)<sup>42</sup>](#).
- (d) The rules in this chapter do not apply to:

<sup>41</sup> s42A report H27G section 14

<sup>42</sup> s42A report H27B

- (iii) any activity which is a regulated activity under the National Environmental Standards for Telecommunication Facilities 2016 (NESTF);
- (iv) plantation forestry activities regulated under the National Environmental Standards for Plantation Forestry (NESPF).
- (e) The information requirements for resource consent applications in respect to natural hazards are set out in Rule 15.13.

Advice note

Effects on archaeological sites, both recorded (identified by the New Zealand Archaeological Association) and unrecorded, are regulated under the Heritage New Zealand Pouhere Taonga Act 2014. Heritage New Zealand Pouhere Taonga must be contacted regarding development and the need to undertake an archaeological assessment to determine the need for an archaeological authority. In the event of an accidental discovery Heritage New Zealand Pouhere Taonga Lower Northern Office must be contacted immediately.<sup>43</sup>

## 19.1 Submissions

Submission point	Submitter	Decision requested
2161.14	Dilworth Trust Board	retain the provision as notified
2139.14	Ports of Auckland Limited	retain the provision as notified
2102.92	Waikato Regional Council	to retain 15.13
FS3034.154	Mercury NZ Limited	Support 2102.92. It is appropriate to identify natural hazard risk within the plan for the purposes of ensuring that land use and development decisions are cognisant of flood risk. Mercury supports land use intensification and development in appropriate areas, and where mitigation of natural hazard risk has been appropriately considered and addressed.
FS3034.155	Mercury NZ Limited	Support 2102.92. It is appropriate to identify natural hazard risk within the plan for the purposes of ensuring that land use and development decisions are cognisant of flood risk. Mercury supports land use intensification and development in appropriate areas, and where mitigation of natural hazard risk has been appropriately considered and addressed.

## 19.2 Analysis

238. The submissions made by Dilworth Trust Board [2161.14] and Ports of Auckland Limited [2139.14] are to retain the provision as notified, and Waikato Regional Council [2102.92] is to retain the provisions in Section 15.13 that would require an assessment to be undertaken by a suitably-qualified person. *Mercury NZ Limited* [FS3034.154] and [FS3034.155] support this. The further submission says that it is appropriate to identify natural hazard risk within the plan for the purposes of ensuring that land use and development decisions are cognisant of flood risk. Mercury supports land use intensification and development in appropriate areas, and where mitigation of natural hazard risk has been appropriately considered and addressed.

---

<sup>43</sup> s42A report H27B

239. Submissions made on proposed section 15.13 are discussed in my s42A report H27B at section 23.
240. Proposed Policies 15.13.4, 15.2.1.20, 15.2.1.21, and 15.13.2(c) are that a risk assessment is carried out by a suitably-qualified person, and this is also referenced in some of the rules in the proposed plan (e.g. 15.4.1). Proposed Chapter 15.13 contains information requirements specific to natural hazard applications. The information requirements in 15.13 apply to the extent that they are relevant to a proposal. Decision-makers need to have sufficient information to assess an application, and I consider that it assists both the council and applicants to include those requirements in the plan.

### 19.3 Recommendations

241. For the reasons above, I recommend that the Hearings Panel:
- (a) **Accept in part** the submissions made by Dilworth Trust Board [2161.14], Ports of Auckland Limited [2139.14] and Waikato Regional Council [2102.92], and the further submissions made by *Mercury NZ Limited* [FS3034.154 and FS3034.155], to the extent that the information requirements are retained.

### 19.4 Recommended amendments

242. No amendments are recommended as a result of the above submissions.

### 19.5 Section 32AA evaluation

243. No additional s32AA evaluation is required.

## 20 Maps of High Risk Coastal Hazard (Erosion) Area

244. The proposed planning maps show high risk coastal hazard areas. A recommendation has been made in response to other submissions to amend the names of those areas. The change of name does not impact on the mapped extent of those areas.

### 20.1 Submissions

Submission point	Submitter	Decision requested
2068.1	Rachael Brown	Retain all High-Risk Coastal Hazard (Erosion) Areas as proposed.
2068.2	Rachael Brown	Retain all High-Risk Flood Areas as proposed.
FS3031.101	Waikato Regional Council	Note that WRC acknowledges that there may be some need for refinement of the mapping. WRC will continue to work with Waikato District Council through this process to do so.
2176.4	Jane Bethell	WDC to provide local reference levels at points such as boundary pegs.

### 20.2 Analysis

245. The submission made by Rachael Brown [2068.1] is to retain all High-Risk Coastal Hazard (Erosion) Areas and High-Risk Flood Areas [2068.2] as proposed. The further submission made by *Waikato Regional Council* [FS3031.101] supports the submission and refers to refinement of the mapping.

246. The risk-based approach and technical reports have been used to identify the high-risk coastal erosion areas and High-Risk Flood Areas. I recommend that submissions made by Rachael Brown [2068.1 and 2068.2] be accepted, The further submission made by the Waikato regional council goes beyond the original submission. I recommend that the further submission made by the *Waikato Regional Council [FS3031.101]* be rejected because it goes beyond the original submission and raises matters that sit outside of the district plan.
247. The submission made by Jane Bethell [2176.4] is that Waikato District Council provide local reference levels at points such as boundary pegs. The provision of location references (such as boundary pegs) is a method that sits outside of the plan. I recommend that submission [2176.4] be rejected.

### 20.3 Recommendations

248. For the reasons above, I recommend that the Hearings Panel:
- Accept** the submission made by Rachael Brown [2068.1] and [2068.2]
  - Reject** the submission made by Jane Bethell [2176.4].
  - Reject** the further submission made by the *Waikato Regional Council [FS3031.101]*

### 20.4 Recommended amendments

249. No amendments are recommended as a result of the above submissions.

### 20.5 Section 32AA evaluation

250. No additional s32AA evaluation is required.

## 21 General submissions - all objectives and policies

251. Chapter 15 Natural Hazards and climate change contains three objectives and more than 20 policies to address the issues arising from natural hazards.

### 21.1 Submissions

Submission point	Submitter	Decision requested
2094.86	Kainga Ora Homes and Communities	Amend the proposed objective and policy framework to ensure clarity for plan users.
2148.1	Terra Firma Resources Limited	Retain the overall risk-based approach on which Chapter 15 Natural Hazards and Climate Change is based.
2151.21	Waikato-Tainui Te Kauhanganui Incorporated	Add to s32 reporting on 15.13 Information requirements - the financial cost of preparing detailed assessments.
2053.83	Mercury NZ Limited	<b>Amend</b> paragraph 36 of the Natural Hazards and Climate Change Section 32 Report as follows: For those hazards that do need a district plan response, the district plan will need to follow the direction set out in the Waikato Regional Policy Statement, including: <ul style="list-style-type: none"> <li>· identifying the areas potentially affected by flooding during a 1% AEP flood event and coastal hazards, prioritising the areas at high risk, <u>which are subject to development pressure;</u></li> <li>· <u>manage risk to ensure tolerable land use outcomes associated with all land</u></li> </ul>

		<p><u>use development and controlling</u> subdivision in areas identified as within <u>the flood plain</u>, high risk flood zones and high risk coastal hazard areas to avoid the demand for new protection structures;</p> <ul style="list-style-type: none"> <li>· controlling the use and development (including habitable structures, significant community infrastructure such as hospitals and emergency services, and lifeline utilities) in <u>flood plain</u>, high risk flood zones and high risk coastal hazards risk areas;</li> <li>· ensuring risk to <u>people and</u> development within the floodplain or a coastal hazard area is appropriately assessed and any adverse effects either avoided, remedied or mitigated;</li> <li>· allowing for essential infrastructure where it cannot be located elsewhere or where it will not increase natural hazard risk;</li> </ul> <p>[...]</p>
FS3031.94	Waikato Regional Council	Neutral 2053.83. WRC acknowledges that there may be some need for refinement of the mapping. WRC will continue to work with Waikato District Council through this process to do so.

## 21.2 Analysis

252. The submission made by Kainga Ora Homes and Communities [2094.86] is to amend the proposed objective and policy framework to ensure clarity for plan users, and the submission made by Terra Firma Resources Limited [2148.1] is to retain the overall risk-based approach on which Chapter 15 Natural Hazards and Climate Change is based.
253. I agree that some of the policies have complicated drafting and that amendments that clarify the intent would assist users of the plan. I recommend that the submission made by Kainga Ora Homes and Communities [2094.86] be accepted.
254. I consider that the risk-based approach gives effect to the WRPS, and I rely on the s32 reports and technical reports that conclude that the approach in the plan is the most appropriate for achieving the purpose of the RMA. I recommend that the submission made by Terra Firma Resources Limited [2148.1] be accepted.
255. The submission made by Waikato-Tainui Te Kauhanganui Incorporated [2151.21] is to add to s32 reporting on 15.13 Information requirements - the financial cost of preparing detailed assessments.
256. The evaluation in RMA s32 must identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions. The s32A report lists the technical reports used for the evaluation of the provisions. Amongst these is the Economic Assessment: Waikato District Plan Review: Natural Hazards and Climate Change Economic Assessment, M.E Consulting, Waikato District Council, June 2020<sup>44</sup>. The cost to developers is discussed in the RMA s32 report at page 72, and concludes that the costs are considered to be greatly outweighed by the benefits of appropriate awareness and regulatory planning for flood hazards.
257. I recommend that submission made by Waikato-Tainui Te Kauhanganui Incorporated [2151.21] be accepted in part, to the extent that the s32 report does deal with costs.
258. The submission made by Mercury NZ Limited OS 2053.83 seeks changes to the RMA s32 report. The further submission made by *Waikato Regional Council* [FS3031.94] is neutral. The s 32 report is prepared prior to the release of the notified version of the proposed plan. Amendments to the s32 report released at the time of notification would not have any effect on the notified version of that document. A revised s32AA evaluation is undertaken as part of the decisions made by the hearing panel to amend the plan. I recommend that the

---

<sup>44</sup> s32A natural hazards and climate change at page 16

submission made by Mercury NZ Limited OS 2053.83 and the further submission made by *Waikato Regional Council [FS3031.94]* be rejected.

### 21.3 Recommendations

259. For the reasons above, I recommend that the Hearings Panel:

- (a) **Accept** the submission made by Kainga Ora Homes and Communities [2094.86]
- (b) **Accept** the submission made by Terra Firma Resources Limited [2148.1]
- (c) **Accept in part** the submission made by Waikato-Tainui Te Kauhanganui Incorporated [2151.21], to the extent that the s32 report deals with costs.
- (d) **Reject** the submission made by Mercury NZ Limited OS 2053.83 and the further submission made by *Waikato Regional Council [FS3031.94]*

### 21.4 Recommended amendments

260. No amendments are recommended as a result of the above submissions.

### 21.5 Section 32AA evaluation

261. No additional s32AA evaluation is required.

## 22 Rule 15.7.1 Coastal Sensitivity Area (Erosion) and Coastal Sensitivity Area (Open Coast)

262. Permitted activity Rule 15.7.1 in the proposed plan allows:

- Additions to an existing lawfully-established building, subject to a condition that these do not exceed a total of 15m<sup>2</sup>
- Construction of an accessory building without a floor
- Construction of a farm building without a floor
- Construction, upgrading, minor upgrading, replacement, repair or maintenance of utilities, and
- Maintenance or repair of an existing lawfully-established coastal protection structure.

### 22.1 Submissions

Submission point	Submitter	Decision requested
2097.5	Tainui Hapu Environmental Management Committee & Tainui o Tainui Charitable Trust	<b>Amend</b> Rule 15.7.1 to manage coastal hazard risk through appropriate building materials, structural or design work, engineering solutions or other appropriate mitigation measures, including the ability to relocate the building.

### 22.2 Analysis

263. The submission made by Tainui Hapu Environmental Management Committee & Tainui o Tainui Charitable Trust [2097.5] is to amend Rule 15.7.1 to manage coastal hazard risk through appropriate building materials, structural or design work, engineering solutions or other appropriate mitigation measures, including the ability to relocate the building.

264. The rules as notified allow the activities specified, and do not require conditions to be met that deal with the use of materials or any mitigation. As these are permitted activities, the

council has no ability to assess whether or not the mitigation measures, engineering solutions or materials are appropriate. If the rule were to be amended, technical advice would need to be obtained to identify conditions and to ensure that the conditions imposed in the permitted activity rule are reasonable and sufficiently certain. There is insufficient information to amend the rule, therefore I recommend that the submission be rejected.

### 22.3 Recommendations

265. For the reasons above, I recommend that the Hearings Panel:

- (a) **Reject** the submissions made by Tainui Hapu Environmental Management Committee & Tainui o Tainui Charitable Trust [2097.5].

### 22.4 Recommended amendments

266. No amendments are recommended as a result of the above submissions.

### 22.5 Section 32AA evaluation

267. No additional s32AA evaluation is required.

## 23 Definition of 'emergency services'

268. The proposed plan as notified does not include a definition of 'emergency services' or 'emergency services facility'.

### 23.1 Submission

Submission point	Submitter	Decision requested
FS3025.2	Fire and Emergency New Zealand	Supports 2094.57. Fire and Emergency supports this submission. Fire and Emergency sought in its submission on the Proposed Waikato District Plan (Stage 1) that a new definition for 'emergency services' be included within Chapter 13 Definitions. The Officer's report on that chapter has recommended accepting in part Fire and Emergency's submission subject to a minor amendment as follows: Means the New Zealand Police, Fire and Emergency New Zealand, and hospital and emergency services. This has been supported by Fire and Emergency in earlier hearings. Fire and Emergency support the introduction of a new definition within Rule 15.14 for 'Emergency service facility' as notified.

### 23.2 Analysis

269. The further submission made by Fire and Emergency New Zealand [FS3025.2] supports original submission [2094.57]<sup>45</sup>. Fire and Emergency sought in its submission on the Proposed Waikato District Plan (Stage 1) that a new definition for 'emergency services' be included within Chapter 13 Definitions. The officer's report<sup>46</sup> on that chapter has recommended

<sup>45</sup> 2094.57 is discussed in the s42A report H27F section 13 prepared by Mr Taylor

<sup>46</sup> Report H5 Definitions (para 968)

accepting in part Fire and Emergency's submission, subject to a minor amendment (shown below).

270. As notified the definition of 'Emergency service facility' is: "*Means fire station, ambulance station, police station or an emergency co-ordination facility.*" This has been supported by Fire and Emergency in earlier hearings.
271. The issue is discussed in the s42A Report H27F section 13 prepared by Mr Taylor. Mr Taylor recommends that the original submission made by Kainga Ora Homes and Communities [2094.57] be accepted in part, to the extent that the definition be retained, and that a consequential change be made to the definition of 'emergency services' to refer to the facility. This promotes internal consistency of the defined terms that refer to the facility, without changing the planning outcomes. The recommended amendment is:
- “ ‘Emergency service facility’ means a ~~fire station, ambulance station, police station~~ facility used by emergency services, or an emergency coordination facility.”
272. I agree that a definition 'emergency services' should refer to 'emergency services facilities' and be included within Chapter 13 Definitions, as the term is used in the proposed plan, and a definition will assist users of the plan to understand the policies and rules that apply.

### 23.3 Recommendations

273. For the reasons above, I recommend that the Hearings Panel:
- (a) **Accept in part** the further submission made by *Fire and Emergency New Zealand* [FS3025.2].

### 23.4 Recommended amendments

274. No amendments are recommended as a result of the above submission, additional to those recommended in Report 27F.

### 23.5 Section 32AA evaluation

275. No additional s32AA evaluation is required.

## 24 Clearer guidance on applicability of rules and assessment requirements

### 24.1 Submissions

Submission point	Submitter	Decision requested
2147.1	Pokeno Village Holdings Limited	Provide clearer guidance on how to determine the applicability of each natural hazard or the extent to which an assessment will need to address their respective effects; AND Having regard to the above, provide greater clarification in relation to the specific matters of discretion. In particular, the preparation of non-statutory natural hazard maps and more clear guidance on matters to be addressed in each respective assessment.

### 24.2 Analysis

#### *Application of rules in the hazard areas*

276. Pokeno Village Holdings Limited [2147.1] seek clearer guidance on how to determine the applicability of each natural hazard or the extent to which an assessment will need to address their respective effects; and clarify the matters of discretion. The submitter also asks for non-statutory natural hazard maps to be prepared.
277. The rules in the hazard areas mostly apply to the areas identified on the Planning Maps and I consider that the mapped overlays are clear. The unmapped hazards are liquefaction, elevated fire risk and land instability. These are the subject of specific policies and an assessment where a consent is required and council has retained discretion over those matters. The submitter has not asked for any specific wording changes to amend the plan to achieve the outcome they seek.
278. Proposed Policy 15.2.1.2 and the information requirements in 15.13 identify that information is to be provided when an application is made in an area at risk from a natural hazard. There are general information requirements<sup>47</sup> to the Country Living Zone in Tamahere<sup>48</sup>, additional requirements in areas where liquefaction is a risk<sup>49</sup>, and in a defended area<sup>50</sup>. The information requirements identify what information is to be provided with an application. As I understand it, the resource consents team are also able to meet with people proposing a development to discuss what the requirements may be. The Council offers pre-application meetings to talk about a proposal, and provide advice and assistance.
279. I recommend that the submission made by Pokeno Village Holdings Limited [2147.1] be accepted in part, to the extent that the submission seeks guidance on application requirements that is available outside of the plan.

#### *Maps of possible liquefaction-prone areas*

<sup>47</sup> proposed 15.13.1

<sup>48</sup> proposed 15.13.3

<sup>49</sup> proposed 15.13.2

<sup>50</sup> proposed 15.13.4

280. The second part of the submission is to ask for non-statutory maps to be prepared. It may be possible to include maps in the proposed plan that identify liquefaction-prone areas. A limited mapping exercise required under the Building Act is currently underway, for completion later this year, to identify areas that are not liquefaction-prone (“Level A” mapping.) Referencing these maps, when available, would have value in reducing regulatory costs for those parts of the district that are not mapped as ‘possible liquefaction prone areas’.
281. In the closing statement prepared by Grant Eccles dated 21 May 2021, he refers to the mapping work to identify Level A land with liquefaction potential, and recommends that the Council undertake district-wide liquefaction mapping. Mr Eccles understands that the Level A mapping being undertaken by WRC will be available by the end of 2021.
282. If the mapping is completed by the end of 2021 I recommend that the following plan provisions dealing with possible liquefaction risk could be made operative from the date that work is completed. The Panel may already hold the delegations to set an operative date, or it may be that the Council would need to pass a resolution to the effect that the following provisions do not become operative until a future date, once the mapping has been completed.
283. Retaining the matters of discretion as notified, and also including a suite of provisions that are made operative at a later date, would reduce the risk of not acting given insufficient information. The regulatory costs of the proposed provisions applies to land that has not been assessed, and in the absence of information this is necessary to ensure the risk to people and property is addressed. Once the land has been assessed and maps of possible liquefaction vulnerability are produced, an alternative option could apply. The following provisions have not been notified as part of the RMA Schedule 1 process, however the option (below) has the potential to reduce regulation for some property owners when compared to the proposed plan. The planning outcome is unchanged for owners identified on future maps as being prone to possible liquefaction.
284. I recommend that the following amended provisions ([shown in purple](#)) be made operative on the date a resolution is passed by Council. I have also recommended some consequential changes to the provisions to reflect the recommended changes to the matters of discretion in the rules.

#### **Amend 15.3(14) How to use and interpret the rules**

~~While liquefaction areas have not been identified on the planning maps~~ [Where the liquefaction vulnerability category is assessed as possible and is identified on regional or district plan maps, or maps held by Council prepared under the Building Act](#), provisions in the district plan require this seismically-induced natural hazard to be assessed before new zonings or subdivision and development are undertaken. This will primarily be achieved through resource consent or [as part of](#) a plan change processes.

#### **Amend 15.12.1 Overview of method**

15.12.1 Overview of method: [liquefaction vulnerability category](#)

- (1) ~~Where A~~ areas in the district susceptible to liquefaction have ~~not~~ been identified on [regional or district plan maps, or maps held by Council prepared under the Building Act](#), ~~as with a liquefaction vulnerability category of possible a natural hazard overlay as is the case with the other natural hazards in this chapter.~~ ~~Where specific land uses have already been identified as restricted discretionary activities in the activity status tables in the relevant zone,~~ liquefaction risk has been added as a matter over which the Council [has retained its discretion will reserve its discretion in the controlled and restricted discretionary activity rules.](#) ~~where it is considered relevant for that activity.~~ To satisfy the requirements of sections 104 and 106 of the RMA, [identification of appropriate mitigation](#) may be required where the site and proposed development are considered vulnerable to liquefaction based on site specific characteristics. It is expected that best

practice geotechnical and engineering methods will be used to ensure that the site is suitable for the intended use.

### Clean version 15.12.1

#### 15.12.1 Overview of method: liquefaction vulnerability category

- (1) Where areas in the district susceptible to liquefaction have ~~not~~ been identified on regional or district plan maps, or maps held by Council prepared under the Building Act, with a liquefaction vulnerability category of possible liquefaction risk has been added as a matter over which the Council has retained its discretion in the controlled and restricted discretionary activity rules. To satisfy the requirements of sections 104 and 106 of the RMA, mitigation may be required where the site and proposed development are considered vulnerable to liquefaction based on site specific characteristics. It is expected that best practice geotechnical and engineering methods will be used to ensure that the site is suitable for the intended use.
- (2) Where potential liquefaction risk is identified on regional or district plan maps, or maps held by Council prepared under the Building Act, as a matter that the Council restricts its discretion to, the additional matters outlined in Rules 15.12.2 and 15.12.3 below apply where relevant.

### 15.12.2 Additional matters of restricted discretion for subdivision to create one or more additional vacant lots – liquefaction risk

- (1) Where ~~potential~~ possible liquefaction risk is identified on regional or district plan maps, or maps held by Council prepared under the Building Act, ~~as a matter that the Council will restrict its discretion to in a subdivision rule elsewhere in this Plan~~, and where that proposal involves subdivision to create one or more additional vacant lots, the ~~Council restricts its discretion to the~~ following additional matters of discretion also apply (note: these matters will also be relevant to the assessment of a discretionary or non-complying resource consent application where a potential liquefaction hazard has been identified on a site): ...

### Clean version 15.12.2

#### 15.12.2 Additional matters of restricted discretion for subdivision to create one or more additional vacant lots – liquefaction risk

- (1) Where possible liquefaction risk is identified on regional or district plan maps, or maps held by Council prepared under the Building Act, and where that proposal involves subdivision to create one or more additional vacant lots, the following additional matters of discretion also apply (note: these matters will also be relevant to the assessment of a discretionary or non-complying resource consent application where a potential liquefaction hazard has been identified on a site): ...

### 15.12.3 Additional matters of restricted discretion for new land use (e.g. multi-unit development) – liquefaction risk

- (1) Where ~~potential~~ possible liquefaction risk is identified on regional or district plan maps, or maps held by Council prepared under the Building Act, and ~~as a matter that the Council will restrict its discretion to in a rule elsewhere in this Plan~~ a resource consent is required for a new land use, the Council restricts its discretion to the following additional matters (note: these matters will also be relevant to the assessment of a discretionary or noncomplying resource consent application where a potential liquefaction hazard has been identified on a site):

### Clean version 15.12.3

15.12.3 Additional matters of restricted discretion for new land use (e.g. multiunit development) – liquefaction risk

- (1) Where possible liquefaction risk is identified on regional or district plan maps, or maps held by Council prepared under the Building Act, a resource consent is required for a new-land use, the Council restricts its discretion to the following additional matters (note: these matters will also be relevant to the assessment of a discretionary or non-complying resource consent application where a potential liquefaction hazard has been identified on a site):

### 15.13 Information requirements for all resource consent applications addressing natural hazards

15.13.2 Liquefaction Potential

- (1) For land use resource consent applications where potential liquefaction risk is identified on regional or district plan maps, or maps held by Council prepared under the Building Act, and is a matter over which the Council has retained discretion, the additional matters the Council will restrict its discretion to include liquefaction, as per Rule 15.12.3, the following information is required:
- (a) A preliminary geotechnical assessment in sufficient detail to determine: ....

### 24.3 Consequential amendments:

285. Add the following matter of control / discretion to the controlled and restricted discretionary activity rules:

#### Controlled activity rule

In Chapter 14 Infrastructure and energy amend the matter over which the Council has reserved control as follows:

#### Rule [14.3.2 Controlled Activities](#)

Control is reserved over:

Liquefaction hazard remediation methods in areas in areas mapped with a liquefaction vulnerability category of possible (refer to Chapter 15).

#### Restricted discretionary activity rules

In the restricted discretionary activity rules in Chapters 15, 16, 17, 18, 20, 21, and 22 add the following matters of discretion to the restricted discretionary activity rules:

- i. Liquefaction hazard remediation methods in areas in areas mapped with a liquefaction vulnerability category of possible (refer to Chapter 15).
- ii. Geotechnical suitability for building in areas mapped with a liquefaction vulnerability category of possible (refer to Chapter 15).
- iii. Measures to avoid or mitigate natural hazards, including liquefaction risk in areas mapped with a liquefaction vulnerability category of possible (refer to Chapter 15).

List of rules with matters of control / discretion dealing with liquefaction:

- 16.1.3 Restricted Discretionary Activities
- 16.4.1 Subdivision - General
- 16.4.2 Subdivision - Te Kauwhata Ecological Residential Area
- 16.4.3 Subdivision - Te Kauwhata West Residential Area
- 16.4.4 Subdivision - Multi-unit development

- 16.4.12 Subdivision - Building platform
- 16.5.3 Restricted Discretionary Activities
- 16.5.9.1 Subdivision Lakeside - general
- 16.5.9.2 Lakeside Comprehensive Subdivision Consent (CS)
- 16.5.9.3 Subdivision – Sites less than 5ha
- 17.1.3 Restricted Discretionary Activities
- 17.4.1 General subdivision
- 17.4.1.1 Subdivision - Multi-unit development
- 17.5.2 Restricted Discretionary Activities
- 17.5.9 Subdivision
- 18.1.3 Restricted Discretionary Activities
- 18.4.1 Subdivision - general
- 18.4.2 Subdivision - Multi-unit subdivision
- 20.4.1 Subdivision - General
- 21.4.1 Subdivision - General
- 22.4.1.2 General subdivision
- 22.4.1.5 Rural Hamlet Subdivision
- 22.4.9 Subdivision - Building platform
- 22.8.8 Lakeside Comprehensive Subdivision Consent
- 23.4.2 General Subdivision
- 23.4.8 Subdivision - Building platform
- 24.4.1 Subdivision – General
- 24.4.2 Subdivision – Te Kowhai and Tuakau
- 24.4.10 Subdivision - Building platform
- 27.4.6 Building platform
- 28.1.3 Specific Activities - Restricted Discretionary Activities
- 28.1.3 Specific Activities - Restricted Discretionary Activities
- 28.4.1 Subdivision - General
- 28.4.6 Subdivision - Building platform

#### **24.4 Recommendations**

286. For the reasons above, I recommend that the Hearings Panel:
- (a) **Accept in part** the submission made by Pokeno Village Holdings Limited [2147.1].

#### **24.5 Recommended amendments**

287. No amendments are recommended as a result of the above submissions. I have recommended amendments that could become operative at a later date once maps of possible liquefaction risk are available.

#### **24.6 Section 32AA evaluation**

288. I consider that including the maps of possible liquefaction areas in the plan improves certainty, reduces regulatory costs for applicants, and is more efficient than the proposed plan. There is a risk of both acting and not acting, as at present the information about the location of possible liquefaction-prone areas is anticipated, but not yet available. The recommended provisions would be ineffective until the time that the maps are completed, and would only become the more efficient and effective option after the maps are completed.

## 25 Submissions on Chapter 15.12 information requirements and planning map 23.3

### 25.1 Submissions

Submission point	Submitter	Decision requested
2175.7	Te Kopua Trust & Te Kopua 2b3 Incorporation	Provide further site-specific investigation in Planning Map 23.3 Raglan West for Te Kopua on the Coastal Sensitivity Area (Erosion) and Coastal Sensitivity Area (Inundation) mapped areas

### 25.2 Analysis

289. The submission made by Te Kopua Trust & Te Kopua 2b3 Incorporation 2175.7 seeks further site-specific investigation in Planning Map 23.3 Raglan West.
290. The details of the particular provisions sought in are not provided in submission 2175.7. I recommend that the submissions be rejected.

### 25.3 Recommendations

291. For the reasons above, I recommend that the Hearings Panel:
- (a) **Reject** the submissions made by Te Kopua Trust & Te Kopua 2b3 Incorporation 2175.7.

### 25.4 Recommended amendments

292. No amendments are recommended as a result of the above submissions.

### 25.5 Section 32AA evaluation

293. No additional s32AA evaluation is required.

## 26 Policy 15.2.1.23

294. Proposed policy 15.2.1.23 is:

### **Policy 15.2.1.23 – Control activities on land susceptible to damage from liquefaction**

- (a) Control subdivision, use and development on land assessed as being susceptible to liquefaction- induced ground damage, to ensure that appropriate mitigation is provided so that the level of risk to people, property, infrastructure and the environment is acceptable.

### 26.1 Submissions

Submission point	Submitter	Decision requested
------------------	-----------	--------------------

FS3003.7	Transpower New Zealand Ltd	Supports OS 2094.16 <sup>51</sup> In its submission Transpower supported Policy 15.2.1.23 on the basis the policy has a management directive as opposed to avoidance. Transpower supports the submission point seeking amendment of the policy to replace the word 'assessed' with 'identified' as the replacement wording would provide greater clarity to the policy. The amendment would also reflect the relief sought in Transpower submission point on Policy 15.2.1.23.
----------	----------------------------	--

## 26.2 Analysis

295. The further submission made by Transpower New Zealand Ltd 3003.7 supported a submission from Kainga Ora Homes and Communities [2094.16 ] to amend policy 15.2.1.23 as follows: "Control subdivision, use and development on land ~~assessed~~ identified as being susceptible to liquefaction- induced ground damage ...". Transpower New Zealand Ltd 2101.11 made a separate original submission to retain Policy 15.2.1.23.
296. The recommendation made by Mr Eccles on Policy 15.2.1.23<sup>52</sup> was to retain proposed policy 15.2.1.13 as notified, because he considers that the requirement and intent of the policy are easily understood with the current wording, and the requested amendments would not improve the policy in that regard.
297. I agree that replacing 'assessed' with 'identified' would not improve upon the policy as notified, because the areas are not yet identified. In the absence of mapping, the amended wording sought would make the policy ineffective.
298. I recommend that the further submission made by Transpower New Zealand Ltd 3003.7 be rejected.

## 26.3 Recommendations

299. For the reasons above, I recommend that the Hearings Panel:
- (a) **Reject** the submissions made by Transpower New Zealand Ltd 3003.7.

## 26.4 Recommended amendments

300. No amendments are recommended as a result of the above submissions.

## 26.5 Section 32AA evaluation

301. No additional s32AA evaluation is required.

## 27 15.6.3 Discretionary Activities and earthworks definition

302. Proposed Rule 15.6.3 Discretionary Activities is:
- (a) The activities listed below are discretionary activities within the Defended Area.

---

<sup>51</sup> s 42A report prepared by G Eccles section 5.4 original submission Kainga Ora homes and communities 2094.16 at para 116

<sup>52</sup> s 42A report prepared by G Eccles section 5.4 original submission Kainga Ora homes and communities 2094.16 at para 116

D1 : Construction of a new building or new accessory building, located within 50m of the toe of a stop-bank where the stop-bank is under the responsibility of the Council, the Waikato Regional Council or the Crown.

D2 : Earthworks located within 50m of the toe of a stop-bank where the stop-bank is under the responsibility of the Council, the Waikato Regional Council or the Crown.

303. Proposed Rule 15.6.3 implements Policy 15.2.10, which is discussed in the s42A report H27C prepared by Ms Carter, and in section 15 above.

## 27.1 Submissions

Submission point	Submitter	Decision requested
2149.17	Horticulture New Zealand	<b>Amend</b> Rule 15.6.3 D2 and Chapter 13 Definitions so that the definition of earthworks excludes ancillary rural earthworks.
FS3003.2	Transpower New Zealand Ltd	Opposes 2149.17 Transpower opposes amendment to the definition of earthworks that would have application wider than Chapter 15. Chapter 14 contains provisions relating to earthworks within the National Grid Yard and Transpower opposes any amendments which would exclude consideration of earthwork activities within the National Grid Yard. Transpower notes the definition of earthworks within Stage 1 PWDP has been recommended (in Hearing 5) to be amended to reflect the National Planning Standards. Transpower supports such amendment and the relief sought by the submitter in Stage 2 would be contrary to the recommendation for Stage 1
FS3030.37	Federated Farmers New Zealand	Supports 2149.17 The Hort NZ submission is consistent with that of FFNZ on Rule 15.6.3 D2. FFNZ are asking that ancillary rural earthworks are enabled within 50m of a stop bank as we agree that rural ancillary earthworks are critical to the day-to-day operation of farming and horticultural activities. If such a setback applies to ancillary rural earthworks high class soil and highly productive land would become unproductive.

## 27.2 Analysis

304. The submission made by Horticulture New Zealand 2149.17 seeks to amend definitions to exclude 'ancillary rural earthworks' from the rule and the definitions. The proposed plan contains a definition of 'earthworks' and 'ancillary rural earthworks'. This is supported by *Federated Farmers New Zealand [FS3030.37]*. Variation 2 does not amend these two definitions, and that part of the submission is out of scope. A similar submission was made by Horticulture New Zealand [2149.19], and was discussed in Report 27C, para 399 and rejected.
305. Rule 15.6.3 D2 is quoted above. All earthworks within 50m of a stopbank, irrespective of the purpose of the activity, require a resource consent so that the potential effects of those earthworks can be assessed. I consider that this approach implements the objectives that deal with managing risk. The purpose of a setback is to protect the integrity of a stopbank from inappropriate activities, and to maintain access for maintenance purposes. The area would be at risk if the stopbank is breached. I consider that the rule should remain as notified, and should apply to all earthworks. I recommend that the submissions made by Horticulture New Zealand 2149.17 and *Federated Farmers New Zealand [FS3030.37]* be rejected.
306. I consider that the rule applying to setback for earthworks is appropriate and gives effect to WRPS Objective 3.24, which is to manage the effects of natural hazards on people, property and the environment, and WRPS Policy 13.1 that deals with matters including the need to

protect health and safety. I recommend that the further submission made by *Transpower New Zealand Ltd [FS3003.2]* be accepted.

### 27.3 Recommendations

307. For the reasons above, I recommend that the Hearings Panel:

- (a) **Reject** the submission made by Horticulture New Zealand 2149.17 and the further submission made by *Federated Farmers New Zealand [FS3030.37]*
- (b) **Accept** the further submission made by *Transpower New Zealand Ltd [FS3003.2]*

### 27.4 Recommended amendments

308. No amendments are recommended as a result of the above submissions.

### 27.5 Section 32AA evaluation

309. No additional s32AA evaluation is required.

## 28 Conclusion

- 310. This report deals with those submissions that were omitted from the s42A reports dealing with natural hazards.
- 311. I have recommended changes to policies in the proposed plan to assist Council with the implementation of the natural hazards provisions.
- 312. I consider that the submissions should be accepted, accepted in part, or rejected, as set out in Appendix 1, for the reasons set out above.
- 313. I have concluded that Stage 2, and the PWDP as amended by Variation 2 and the recommendations in this report, are within the functions of the council, that the objectives achieve the purpose of the RMA, and the policies and methods dealt with in this report are effective in implementing the objectives in the proposed plan.
- 314. I have concluded that the recommended amendments give better effect to the NZCPS and WRPS objectives and policies that deal with natural hazard risk than the provisions as notified.
- 315. **Appendix 1** contains the list of submissions and further submissions made, and recommendation to accept or reject the submission point.
- 316. **Appendix 2** contains recommended amendments to the District Plan provisions.

## Appendix I: Table of submission points

## Appendix 2: Recommended Amendments