

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 35 Natural Hazards - Where the Hazard Does Not Exist

Section 32 Report

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1.0 Introduction

1.1. General Introduction and Background

The purpose of this report is to consider a change to the Natural Hazard provisions of the 2012 Operative District Plan. This report will consider a change to the Plan such that where the District Plan identifies the location of a hazard, if it can be demonstrated that there is no hazard on the site, then no resource consent will be required.

It is important to note that in the recent round of Plan Changes, Plan Change 4 sought to restructure Section 8.0 "Natural Hazards" of the Plan. As such a number of provisions were modified such as matters of instability and "Approved Building Sites" and works within the "Minden Area - Stability C" area.

Accordingly, the primary driver for this plan change is to deal with areas identified on the Planning Maps as "Floodable Areas".

Applicants are required to obtain a resource consent for earthworks or building within an identified floodable area. The contentious issue arises when the applicant states that the land involved is not floodable due to historical (approved) land filling or that the development site is on too high contour to be floodable. Recent examples have identified a floodable area not aligned to landform contours as one would expect.

Council, in seeking initial submissions from the public and the consultant community published the following statement outlining the issue:

Natural Hazards - Where the Hazard Does Not Exist

The mapping of some natural hazards (notably flooding) is not 100% accurate because of the scale of the maps used. A rule is needed to avoid landowners having to apply for consent when it can be clearly proven that the hazard does not affect their proposal. Consideration should also be given to making certain buildings exempt such as carports and open sheds without formed floors.

Council has considered a land use application under what is known as a "Quick Consent" where the non-floodable assessment is supported by a Council Land Development Engineer and no further analysis from them is required. This carries a significantly reduced application fee and is processed in parallel with a Building Consent to avoid unreasonable delay.

However, it is considered that the Plan should go further and provide for a clear waiver of the need to apply for resource consent where it is proven that the hazard does not exist on the property. It is anticipated such evidence would be clearly evidenced from Building Consent information, or other supporting evidence such as site photographs.

Under the recent Plan Change 4, a number of submitters expressed that Council should exclude carports, implement sheds or similar from requiring resource consent given there are no adverse effects on the non-habitable

structures or property stored within them. This matter could apply to land under any zoning in the Plan but is primarily being driven from the rural sector. Under that Plan Change these submissions were deemed to be 'out of scope' but have been put forward within this Plan Change.

This report will consider the changes required to the Operative District Plan [First Review] – June 2012 in order to modify the provisions under Section 8 of the Plan.

2.0 Resource Management Act 1991

2.1. Section 32

Before a proposed plan change can be publically notified the Council is required under section 32 ("s.32") of the Act to carry out an evaluation of alternatives, costs and benefits of the proposed review. With regard to the Council's assessment of the proposed plan change, section 32 requires the following:

- (3) *An evaluation must examine-*
 - (a) *the benefits to which each objective is the most appropriate way to achieve the purpose of the Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*

- (4) *For the purposes of [[the examinations referred to in subsections (3) and (3A)], an evaluation must take into account-*
 - (a) *The benefits and costs of policies, rules or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

The benefits and costs are defined as including benefits and cost of any kind, whether monetary or not. This report must evaluate the extent to which the proposed plan change is the most appropriate way to achieve the purpose of the Act.

2.2. Section 74

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority lodged with Council. None of the Iwi Management Plans that have been lodged with Council raise any issues which are of relevance to this Plan Change.

3.0 Consultation

Council engaged with the public to request input prior to the writing of this report, this was done by notices in our local newspapers and a specific information page on the Council website relating to the proposed changes.

Council also engaged with the surveying and planning community in the Western Bay of Plenty and Tauranga area via the "Surveyor & Agents Newsletter".

No feedback was received for this Plan Change.

4.0 Issue 1 - Adopt the Plan Change and Waive the Need for Resource Consent.

4.1. Option 1 – Status Quo – No Changes to Section 8 - Floodable Areas

Advantages	<ul style="list-style-type: none"> There are no identified advantages in retaining the status quo.
Disadvantages	<ul style="list-style-type: none"> Resource consents remain required for a provision which does not actually occur on the site. Unreasonable costs imposed on the applicant. Potential time delays for the applicant whilst consent is processed. Time spent by Council staff on a report for a hazard that does not exist.
Efficiency/Effectiveness	<ul style="list-style-type: none"> There are no efficiencies beyond the interim "quick Consent" process which has sought to reduce the burden on the applicant. Information should be logged and retained by Council for a future Plan Change to the District Plan maps.

4.2. Option 2 - No Resource Consent Required

Advantages	<ul style="list-style-type: none"> Removes the need for resource consent when everyone accepts there is no flooding risk on the property. Removes unnecessary burden on applicant and processing staff.
Disadvantages	<ul style="list-style-type: none"> There are no identified disadvantages.
Efficiency/Effectiveness	<ul style="list-style-type: none"> Allows building consent projects or site works to proceed without un-necessary delay.

4.3. Preferred Option

The preferred option is:

Option 2 – Add a waiver to the Activity List under Section 8 of the District Plan (new Rule 8.3.1 (c)) such that an activity on the land does not require resource consent where evidence is presented that clearly proves that the site is not subject to the Natural Hazard (floodable area), as shown below.

(c) Buildings/Structures where evidence proves that the site is not subject to the Natural Hazard (floodable area).

5.0 Issue 2 - Give Exemptions to Certain Buildings

5.1. Option 1 – Status Quo – No exempted buildings

Advantages	<ul style="list-style-type: none"> ▪ Allows Council to consider the potential effects of the inundation across all building types and assess and determine the risks to the land owner. ▪ Council will implement conditions of consent and apply appropriate (minimum) floor levels to habitable and non-habitable buildings based on the best knowledge at the time and subject to change over time. ▪ Council acts as the controlling body that all structures be protected.
Disadvantages	<ul style="list-style-type: none"> ▪ Council cannot monitor and control what is placed within each structure after consent is given and as such inundation may still occur on the structures and contents irrespective of consent being given. ▪ Extra expense to landowners to comply, even when flooding of building may be acceptable.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Protects Council from legal challenge if a structure to which Council allowed to be located within a flood-plain actually became inundated and contents were damaged.

5.2. Option 2 - Exempted Buildings

Advantages	<ul style="list-style-type: none"> ▪ There are some structures such as open carports or implement sheds where, due to the limited, or no, side walls on the structure, that there is no impeding of overland flows. Water is able to pass freely through the structure. Given the nature of these structures and the likelihood that they hold only vehicles and/or farm implements (rather than a dwelling's habitable rooms or holding household belongings), that they may in fact be subjected to the potential for overland flows or inundation which is accepted by the land owners.
Disadvantages	<ul style="list-style-type: none"> ▪ Overland flows and inundation, if deep enough still has the potential to damage vehicles and implements beyond the tyres getting wet. There remains a risk to property located at too lower level on the site.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ The only efficiency identified is for the potential applicant in that a fewer number of resource consents would be required on low lying residential or rural land holdings. ▪ Council may require some form of indemnity from the land owner at the time of building consent absolving Council from any future claim should contents be damaged or lost.

5.3. Preferred Option

The preferred option is:

Option 1 – Status Quo – No Exempted buildings.

Council has a duty to ensure all development is considered, consented to and developed in a manner that there is no risk to persons or property. That is, Council should not be allowing to locate in areas of an identified hazard any structures where the potential for damage, or loss of the contents of that structure might occur due to a floor level being set too low.

Current practice is to require all structures, habitable or not, including carports and implement sheds, to obtain land use consent such that a floor level can be set higher than the known risk levels.

Whilst we accept that a carport and implement shed is likely to be all metal construction and are essentially poled structures that allow water to pass through and can be designed to not affect ponding on-site, the contents remain at risk. Council cannot be held liable for risk in that regard.

An indemnity from the applicant/ land owner is a potential option absolving Council from any claim on loss of contents damaged by inundation; however, Council cannot seek to protect itself from claims by an applicant or Their successors by reallocation of risk by covenant on the title and would be inconsistent with the Council's obligation under the Resource Management Act and Building Act.

Council retains a discretion under the Plan to apply floor levels by condition and to vary or do otherwise could be considered on a case by case basis. In any even, a notice under Section 72 and 73 of the Building Act remains necessary given the site is under a known and identified risk. A Notice under Section 72 of the Act will protect the Council against claims by those with an interest in the land arising out of the issue of a building consent; however, a s.72 notice would not prevent claims by parties whose chattels/property may be damaged.

Accordingly, it is considered to remain prudent to retain all buildings, as defined under the Plan, to require land use consent assessment where located in a floodable area on a case by case basis such that appropriate floor level conditions to mitigate the hazard can be set.