



PLAN CHANGE 76
FLOODABLE AREAS AND
COASTAL INUNDATION
AREAS - VARIOUS
PLANNING REPORT

The Western Bay Way



*Western Bay of Plenty
District Council*

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1.0 Introduction

- 1.1** The purpose of this report is to provide recommendations on submissions and further submissions to Plan Change 76 – Floodable Areas and Coastal Inundation Areas - Various.
- 1.2** Plan Change 76 proposes four minor changes to the Natural Hazards section of the Operative District Plan, including:
- a. The potential to amend the permitted activity rule (Rule 8.3.1(c)(iii)) for uninhabited farm buildings in Floodable Areas to replace the requirement to attach a notice under s73 of the Building Act 2004 to the Certificate of Title with the requirement to enter into another type of agreement;
 - b. The potential to allow non-habitable buildings within Floodable Areas and Coastal Inundation Areas without requiring minimum finished floor levels (i.e. allow buildings at ground level) to avoid effects associated with inundation;
 - c. The inclusion of matters of assessment for resource consents for subdivision within Floodable Areas and Coastal Inundation Areas; and
 - d. The potential for earthworks, closed board fences, retaining walls, raised gardens and concrete and block walls to be exempt from requiring resource consent within Floodable Areas if it is established that these activities are located clear of, or are not affected by the floodable area. This exemption is already provided for buildings/structures.
- 1.3** For a full background to the Plan Change and the proposed provisions please refer to the Section 32 Report. For a list of the proposed provisions only, please refer to the document titled 'Summary of Recommendations – All Section 32 Reports'.
- 1.4** Any recommended amendments to rules in this report will be shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.

2.0 Topic 1: Reference to s73 of the Building Act in permitted activity Rule 8.3.1(c)(iii) for uninhabited farm buildings

2.1 Background

Rule 8.3.1(c)(iii) permits uninhabited farm buildings and structures within Floodable Areas without the need for resource consent where a notice under s73 of the Building Act 2004 has been attached to the Certificate of Title advising owners of the hazard. This rule was included in response to a submission on Plan Change 35 (Natural Hazards – Where the Hazard Does Not Exist) and it was initially thought that a notice under s73 of the Building Act attached

to the Certificate of Title for the land in question would limit Council's risk against damage to buildings.

It has now been identified that s73 notices under the Building Act do not limit Council's risk against damage to buildings as originally thought and changes were proposed as part of Plan Change 76 to address liability issues.

2.2 Submission Points

The Bay of Plenty Regional Council submitted in support of the proposed change, subject to amendments requiring the property owner to acknowledge the building (rather than the property) is subject to inundation from flooding, and that any damage to the building or its contents arising from the hazard will not affect the building's functionality.

In this regard, the main reason for the submission is that the Bay of Plenty Regional Council considers that the proposed change does not reflect the metric of building related consequences identified in the Natural Hazard provisions of the Bay of Plenty Regional Policy Statement, including the proportion of buildings that are 'functionally compromised'. Concern is also raised regarding the relevance of liability within the context of the Resource Management Act 1991 ('RMA').

2.3 Option 1 – As Proposed - Preferred option from Section 32

Benefits	<ul style="list-style-type: none"> ▪ Enables uninhabited farm buildings without the need for resource consent and reduces time delays and additional costs associated with the preparation and processing of resource consent applications. ▪ Reduces potential risk for Council where building consents are granted for uninhabited farm buildings in Floodable Areas without an assessment of flooding effects through the resource consent process. ▪ Makes it clear to the community and property owners that there are risks associated with the development of uninhabited farm buildings within floodable areas and that property owners are required to accept those risks (if they chose to locate these buildings in areas at risk of flooding). ▪ Provides certainty for the community that farm buildings can be established without the need for resource consent.
Costs	<ul style="list-style-type: none"> ▪ Results in time delays and financial cost associated with the preparation and administration of agreements between property owners and Council. It is anticipated, however, that a standardised agreement could be developed and administered through the PIM/building consent process to mitigate this issue.
Effectiveness/	<ul style="list-style-type: none"> ▪ Efficient and effective in addressing the identified issue

Efficiency	and the relevant objectives of the District Plan.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

2.4 Option 2 – As Requested – Amend proposed changes to Rule 8.3.1(c) to require owners’ acknowledgement of the risk of inundation from flooding to the building (rather than the property), and confirmation that the building’s functionality will not be compromised

Benefits	<ul style="list-style-type: none"> ▪ Provides clear acknowledgement from the property owner that the building itself (rather than the property) is subject to the risk of inundation from flooding. ▪ Potentially ensures that the building is able to be used for its intended purpose following a flood event.
Costs	<ul style="list-style-type: none"> ▪ Assessment of whether or not a building will be ‘functionally compromised’ is likely to result in additional financial costs.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Deleting the sub-clauses in Rule 8.3.1(c)(iii) (as notified) is not efficient or effective in addressing the identified issue (set out in section 4.0 of the s32 Report).
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

2.5 Discussion

The purpose of this plan change is to amend Rule 8.3.1(c)(iii) to ensure that the correct mechanisms are used to limit Council’s risk against damage to buildings located in areas subject to flood hazard, where the owner is willing to accept that risk.

The Regional Council’s submission suggests that the proposed change does not give effect to the natural hazard provisions of the Bay of Plenty Regional Policy Statement (‘RPS’) and this is the overriding reason for the changes requested.

In general terms, the natural hazard provisions of the RPS require a risk based approach to natural hazards and there is a requirement for district councils to identify areas susceptible to natural hazards,

to assess the risk of the natural hazard, and to develop district plan rules accordingly.

Method 1A of the RPS specifically requires city and district councils to amend their plans to give effect to Policies NH 7A, NH 8A and NH 12A (i.e. policies that require identification of natural hazard risk, risk assessment and development of rules associated with managing risk) as part of the next District Plan review, or as part of any change to the city or district plan that provides opportunity for land use change or intensification.

In addition, Policy NH 9B of the RPS requires that before a plan gives effect to Policies NH 7A and NH 8A, the risk of natural hazards associated with a proposal to subdivide land or change or intensify land use, is to be assessed in accordance with the methodology set out in the RPS if the proposal involves an urban site of 5 hectares or more, or if the consent authority considers a risk assessment appropriate having regard to specific matters set out in the policy. This policy acknowledges that development and land use change will occur before district plans are changed in response to the new natural hazard provisions of the RPS and that risk assessments are generally only required where the risk and consequences of natural hazards are moderate to high. It does not require risk assessments or tweaks to existing rules within existing natural hazard areas associated with minor ancillary activities, such as buildings accessory to farming activities.

In this case, the proposed plan change is a minor technical matter and is not a review of the Plan. It is also not a change that provides for land use change or intensification. As a consequence, it is my view that the proposed change (as notified) does not give rise to an obligation to give effect to the natural hazard provisions of the RPS.

I also note that the Western Bay of Plenty District Council is part of a Natural Hazards Charter with the Bay of Plenty Regional Council and Tauranga City Council. The Charter establishes a co-operative approach for future work streams to give effect to the broader outcomes sought by the natural hazard provisions of the RPS. It is through this work that future plan changes will be developed to give effect to the natural hazard provisions of the RPS, particularly in relation to identifying and assessing natural hazard risk.

2.6 Recommendation

That Rule 8.3.1(c)(iii) be retained as notified (Option 1), with a minor amendment as shown below:

- (iii) Uninhabited farm buildings including, but not limited to, pump sheds, implement sheds and storage sheds, provided ~~that an appropriate notice under s73 of the Building Act has~~*

- ~~been attached to the title~~ the property owner(s) enter into an agreement with the Council confirming that they:
- a. acknowledge the ~~property~~ building is subject to the risk of inundation from flooding;
 - b. accept the risks of any damage to the building and/or its contents arising from that hazard; and
 - c. undertake not to take any action (legal or otherwise) against the Council in relation to any damage to the building and/or its contents as a result of the location of the building within the Floodable Area.

The following submission is therefore:

Accepted in Part

Submission	Point Number	Name
20	1	Bay of Plenty Regional Council

2.7 Reason

The purpose of this plan change is to amend Rule 8.3.1(c)(iii) to ensure that the correct mechanisms are used to limit Council’s risk against damage to buildings located in areas subject to flood hazard, where the owner is willing to accept that risk.

An assessment of whether or not a building is ‘functionally compromised’ is likely to result in additional financial costs and, as a result, reference to this concept is not accepted at this time.

The proposed plan change is considered a minor technical change that does not warrant risk assessment in accordance with the natural hazard provisions of the Bay of Plenty Regional Policy Statement. This is only required through a district plan review, as part of any change to a district plan that provides opportunity for land use change or intensification, or for resource consent proposals involving an urban site of 5 hectares or more. The natural hazard provisions also do not require tweaks to existing rules within existing natural hazard areas associated with minor ancillary activities, such as buildings accessory to farming activities.

The proposed change does not give rise to an obligation to give effect to the natural hazard provisions of the Bay of Plenty Regional Policy Statement.

3.0 Topic 2: Non-habitable buildings within Floodable Areas & Coastal Inundation Areas

3.1 Background

Plan Change 76 (refer to Issue 2 of the s32 Report) sought to include an explanatory note within the matters of discretion for

Rule 8.5.1.2(b) to highlight that the Council would consider granting resource consent for non-habitable buildings (e.g. sheds or garages, or non-habitable parts of a building such as a ground level garage in a two storied dwelling), without the required minimum finished floor level if the property owner enters into an agreement with the Council confirming they accept the risks associated with inundation.

3.2 Submission Points

The Bay of Plenty Regional Council submitted in support of the proposed change, subject to amendments requiring the property owner to acknowledge the building (rather than the property) is subject to inundation from flooding, and that any damage to the building or its contents arising from the hazard will not affect the building's functionality.

The amendments sought and reasons for the submission on this change are essentially the same as those in relation to Rule 8.3.1(c)(iii) as set out in section 2.2 of this report.

3.3 Option 1 – As Proposed - Preferred option from Section 32

<p>Benefits</p>	<ul style="list-style-type: none"> ▪ Makes it clear that Council will consider granting resource consent for non-habitable buildings without the required minimum finished floor level, where the property owner accepts the associated risks. ▪ Reduces potential risk for Council if resource consents are granted and buildings and/or their contents are damaged due to inundation. ▪ Makes it clear to the community and property owners that there are risks associated with establishing buildings with finished floor levels lower than usually required, but recognises there are some circumstances where it may be impractical to achieve minimum finished floor levels. ▪ Allows Council to consider effects and assess the risk of inundation on a case by case basis. ▪ Allows Council to consider other relevant matters, including the impact on ponding areas and overland flow paths, as well as specific design features that potentially increase or mitigate the risk of inundation. ▪ Allows resource consent applicants to reduce the required finished floor levels to ensure buildings are able to be used for their intended purpose. This may also mean that property owners proceed with their development proposals instead of abandoning them due to the existing finished floor level requirements.
<p>Costs</p>	<ul style="list-style-type: none"> ▪ Results in time delays and financial cost associated with the preparation and administration of agreements between property owners and Council. It is anticipated, however, that a standardised agreement

	could be developed and administered through the resource consent process to mitigate this issue.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> Amending the explanatory note to the matters of discretion is an efficient and effective method to achieve the relevant District Plan objectives and addresses the identified issue.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> N/A – Sufficient information is available.

3.4 Option 2 – As Requested – Amend the proposed explanatory note to the matters of discretion for Rule 8.5.1.2(b) to require owners’ acknowledgement of the risk of inundation from flooding to the building (rather than the property), and confirmation that the building’s functionality will not be compromised

Benefits	<ul style="list-style-type: none"> Provides clear acknowledgement from the property owner that the building itself (rather than the property) is subject to the risk of inundation from flooding. Potentially ensures that the building is able to be used for its intended purpose following a flood event.
Costs	<ul style="list-style-type: none"> Assessment of whether or not a building will be ‘functionally compromised’ is likely to result in additional financial costs.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> Deleting the changes are not efficient or effective in addressing the identified issue (set out in section 5.0 of the s32 Report).
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> N/A – Sufficient information is available.

3.5 Discussion

The purpose of this plan change is to amend an existing explanatory note in the matters of assessment for Rule 8.5.1.2(b) to state that Council will consider granting resource consent for non-habitable buildings without the required minimum finished floor level if the property owner enters into an agreement with the Council confirming they accept the risks associated with inundation.

As with the submission point on Rule 8.3.1(c)(iii), the Regional Council's submission on the proposed explanatory note suggests that the proposed change does not give effect to the natural hazard provisions of the Bay of Plenty Regional Policy Statement ('RPS') and this is the overriding reason for the changes requested.

For the same reasons set out in section 2.5 of this report, it is my view that the proposed change (as notified) does not give rise to an obligation to give effect to the natural hazard provisions of the RPS.

3.6 Recommendation

That the explanatory note to Rule 8.5.1.2(b)(iii) be retained as notified (Option 1), with minor amendments as follows:

- (b) *The appropriate minimum finished floor level of the proposed building/structure.*

Explanatory Notes:

This is the combination of the flood level plus an additional freeboard height as stipulated in Council's Development Code.

Council will consider granting consent for sheds and garages (used for non-habitable purposes) without meeting minimum finished floor levels provided the ~~property~~ owner of the property and building enters into an agreement with the Council confirming the owner:

- *acknowledges that the ~~property~~ building is subject to the risk of inundation from flooding or coastal inundation;*
- *accepts the risks of any damage to the building and/or its contents arising from that hazard; and*
- *undertakes not to take any action (legal or otherwise) against the Council in relation to the issue of a resource consent without imposing the required minimum finished floor levels.*

Council can provide specific flood levels for all Coastal Inundation Areas and for some but not all of the Floodable Areas. Where specific flood levels are unknown, applicants may be required to engage a suitably qualified engineer to undertake a flood level assessment for the property.

For Waihi Beach Floodable Areas (Planning Maps A03 and U01-U04) this shall be based on the 2% AEP (inclusive of climate change).

The following submission is therefore:

Accepted in Part

Submission	Point Number	Name
20	2	Bay of Plenty Regional Council

3.7 Reason

The purpose of this plan change is to amend an existing explanatory note in the matters of assessment for Rule 8.5.1.2(b) to state that Council will consider granting resource consent for non-habitable buildings without the required minimum finished floor level if the property owner enters into an agreement with the Council confirming they accept the risks associated with inundation.

An assessment of whether or not a building is 'functionally compromised' is likely to result in additional financial costs and, as a result, reference to this concept is not accepted at this time.

The proposed plan change is considered minor and does not warrant risk assessment in accordance with the natural hazard provisions of the Bay of Plenty Regional Policy Statement. This is only required through a district plan review, as part of any change to a district plan that provides opportunity for land use change or intensification, or for resource consent proposals involving an urban site of 5 hectares or more. The natural hazard provisions also do not require tweaks to existing rules within existing natural hazard areas associated with minor ancillary activities, such as buildings accessory to farming activities.

The proposed change does not give rise to an obligation to give effect to the natural hazard provisions of the Bay of Plenty Regional Policy Statement.

4.0 Topic 3: Lack of Matters to Guide Assessment of Discretionary Activity Subdivisions in Floodable Areas and Coastal Inundation Areas

4.1 Background

In response to recent confusion and debate about matters to be assessed in applications for discretionary activity subdivisions within Floodable Areas and Coastal Inundations Areas, new section 8.5.2(c) was proposed to include matters of assessment for such applications. It was also thought that the inclusion of matters of assessment would provide for greater consistency with the general approach taken by the District Plan (i.e. which generally includes matters of assessment for discretionary activities as a way of providing guidance to the community and staff).

4.2 Submission Points

The Bay of Plenty Regional Council submitted seeking an amendment to paragraph (ii) of proposed Rule 8.5.2(c), which clarifies that for Waihi Beach (north of 2 Mile Creek) the flood levels are to be based on the 2% Annual Exceedence Probability ('AEP'), inclusive of climate change. The Regional Council requests that the explanatory note be changed so that in all situations, site levels shall be such that the flood risk level (inclusive of climate change) is low at the 2%, 1% and 0.2% AEP event.

In this regard, the main reason for the submission is that the Bay of Plenty Regional Council considers that the proposed change does not reflect the Natural Hazard provisions of the RPS, which require land use activities to be managed according to the level of natural hazard risk that they are subject to. The Regional Council states that risk varies with likelihood and that the RPS requires that flood risk be assessed at three likelihoods: 2%, 1% and 0.2% AEP events.

4.3 Option 1 – As Proposed - Preferred option from Section 32

Benefits	<ul style="list-style-type: none"> ▪ Provides clear guidance for the community, consent applicants and Council regarding matters to be addressed within subdivision applications. ▪ Reduces financial costs associated with the preparation and processing of resource consent applications.
Costs	<ul style="list-style-type: none"> ▪ No costs identified.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Effective in addressing the identified issue. ▪ Efficient as it draws on existing, related provisions of the District Plan and provides clear guidance which is in the best interests of the community. ▪ Efficient and effective in terms of reducing confusion and addressing the current lack of guidance for resource consent applications.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

4.4 Option 2 – As Requested – Amend explanatory note regarding Waihi Beach Flood levels being based on the 2% AEP event

Benefits	<ul style="list-style-type: none"> Although premature, such an approach would better align with the risk management approach promoted by the RPS.
Costs	<ul style="list-style-type: none"> The reference to the 1% and 0.2% AEP events does not align with the current approach of the District Plan and is inconsistent with the flood hazard areas shown on the District Plan maps. Also, Council is not yet capable of setting floor levels that ensure low risk based on 1% and 0.2% AEPs given only the 2% AEP has been assessed to date.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> The proposed amendment is not efficient as it results in piecemeal changes in an attempt to give effect to the broader outcomes of the natural hazard provisions of the RPS, which are proposed to be addressed through a more comprehensive process.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> N/A – Sufficient information is available.

4.5 Discussion

This plan change seeks to include matters of assessment to help guide the assessment of resource consent applications for discretionary activity subdivisions within Floodable Areas and Coastal Inundations Areas. The change was proposed as a result of recent confusion regarding relevant matters to be assessed and also to ensure consistency within the Plan.

The explanation included within the proposed matter of assessment (i.e. that flood levels for Waihi Beach are based on the 2% AEP) is consistent with other similar provisions in the District Plan and any amendment to reflect the 1% and 0.2% Annual Exceedence Probability events is considered premature given Western Bay of Plenty District Council is yet to undertake a broader review of the District Plan to specifically reflect the requirements of the natural hazard provisions of the RPS (refer also to discussion under section 2.5 of this report).

4.6 Recommendation

That the matters of assessment proposed for Rule 8.5.2(c) be retained as notified (Option 1) and as follows:

8.5.2 Discretionary / Non Complying Activities

The matters in 8.4.1 and 8.5.1 and the following matters shall be used as a guide for assessing Discretionary Activities and Non-Complying Activities:

...

(c) Floodable Areas & Coastal Inundation Areas

- (i) The effect of the proposed subdivision (including, but not limited to any building site, building/structure, or earthworks) on the capacity of ponding areas and function of overland flow paths.*
- (ii) The provision of finished site levels to mitigate adverse effects associated with inundation. For Waihi Beach (Planning Maps A03 and U01-U04) the flood level shall be based on the 2% AEP (inclusive of climate change).*
- (iii) In the case of Floodable Areas, any verifiable new information which demonstrates that the subject site is not in fact under threat from flooding.*

The following submission is therefore:

Rejected

Submission	Point Number	Name
20	3	Bay of Plenty Regional Council

4.7 Reason

This plan change seeks to include matters of assessment for resource consent applications for discretionary activity subdivisions within Floodable Areas and Coastal Inundations Areas.

The explanation included within the proposed matter of assessment (i.e. that flood levels for Waihi Beach are based on the 2% AEP) is consistent with other similar provisions in the District Plan and any amendment to reflect the 1% and 0.2% Annual Exceedence Probability events is considered premature given Western Bay of Plenty District Council is yet to undertake a broader review of the District Plan to specifically reflect the requirements of the natural hazard provisions of the RPS. Also, Council is not yet capable of setting floor levels that ensure low risk based on 1% and 0.2% AEPs given only the 2% AEP has been assessed to date.

The proposed change does not give rise to an obligation to give effect to the natural hazard provisions of the Bay of Plenty Regional Policy Statement.

5.0 Topic 4: Resource consent requirements for earthworks, closed board fences, retaining walls, raised gardens and concrete and block walls regardless of whether the land is actually floodable or not

5.1 Background

Changes were proposed to Rule 8.3.1(c)(i) to include earthworks, closed board fences, retaining walls, raised gardens and concrete and block walls as permitted activities within Floodable Areas. The purpose of this change was to ensure consistency within the District Plan between buildings/structures and other types of activities, and was intended to remove the need for unnecessary resource consents.

5.2 Submission Points

Two submissions were received on this change, one in support of the change as notified and the other in support with amendments.

- a. David James submitted in support of the proposed change and requested the change be adopted as notified.
- b. The Bay of Plenty Regional Council submitted in support of the change, but sought that the rule be expanded to include consideration of the effect of the activity on the Floodable Area (as well as the effect on the activity itself).

5.3 Option 1 – As Proposed - Preferred option from Section 32

Benefits	<ul style="list-style-type: none"> ▪ Removes the need for unnecessary resource consents and reduces time delays and financial costs for the community, consent applicants and Council.
Costs	<ul style="list-style-type: none"> ▪ Property owners will need to provide evidence to demonstrate the works and/or structures are not within a Floodable Area, or will not be affected by the hazard. Researching and obtaining this information has potential to result in financial costs and time delays for property owners.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Effective in addressing the identified issue (as set out in section 7.0 of the s32 Report). ▪ Efficient as it draws on existing, related provisions of the District Plan.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

5.4 Option 2 – As Requested – Amend the rule to require consideration of the effect of the activity on the Floodable Area

Benefits	<ul style="list-style-type: none"> ▪ The amendment requested correctly acknowledges that buildings, structures and works can have an effect on Floodable Areas (e.g. overland flow paths and ponding areas).
Costs	<ul style="list-style-type: none"> ▪ The amendment requested requires an assessment of effects associated with an activity which is not appropriate for a permitted activity rule and is likely to result in time and financial cost associated with engineering assessments.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ The amendment is not efficient or effective in addressing the identified issue (set out in section 7.0 of the s32 Report).
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

5.5 Discussion

The purpose of this plan change is to remove the requirement for resource consents for earthworks greater than 5m³, closed board fences, retaining walls, raised gardens and concrete and block walls in situations where consent is not necessary to manage effects associated with flooding (e.g. where evidence shows that the floodable area is inaccurate). This approach aligns with the current rules of the plan, which allows for buildings and structures that are not affected by flooding.

The Regional Council’s submission is acknowledged and it is considered that the second sub-clause of Rule 8.3.1(c)(i) (as currently worded) is not ideal as it requires an assessment and exercise of judgement on whether a proposed building or structure will be affected by the Floodable Area. Given the exercise of judgement required, such assessments are best left to resource consent applications rather than district plan permitted activity rules which should be definitive.

Rule 8.3.1(c)(i) (as currently worded) was introduced through Plan Change 35. The intent of the rule was to acknowledge that there are existing inaccuracies in the Council’s flood hazard maps and it intended to allow property owners to provide evidence to confirm proposed buildings and structures are outside of an area actually subject to flooding. The second sub-clause was introduced in response to a submission from Powerco, which sought to extend

the rule to exclude activities from requiring resource consent if the building/structure was not going to be affected by flooding (e.g. power poles).

In hindsight, it is considered that the current wording of the second sub-clause should not have been included within the permitted activity rule given the assessment and exercise of judgement required.

While the Regional Council's proposed change has merit, it is considered that it would only add to confusion about how to apply the rule and would not assist in addressing the existing issues with the rule.

The concerns with this rule can be addressed at the time Council undertakes a more comprehensive review of the District Plan to give effect to the natural hazard provisions of the RPS, particularly Policies NH 7A, NH 8A and NH 12A.

5.6 Recommendation

That Rule 8.3.1(c)(i) be retained as notified (Option 1) and as set out below:

- (i) *Buildings/Structures, earthworks, closed board fences, retaining walls, raised gardens and concrete and block walls where evidence establishes:*
- *The activity A-building/structure will be located clear of the floodable area irrespective of the extent of the floodable area shown by the Planning Maps; or*
 - *The activity A-building/structure will not be affected by the floodable area.*

The submission of David James is therefore accepted, and the Regional Council's submission is rejected:

Accepted

Submission	Point Number	Name
11	2	David James

Rejected

Submission	Point Number	Name
20	4	Bay of Plenty Regional Council

5.7 Reason

The purpose of this plan change is to remove the requirement for resource consents for earthworks greater than 5m³, closed board fences, retaining walls, raised gardens and concrete and block walls in situations where consent is not necessary to manage effects associated with flooding. This approach aligns with the current rules of the plan, which allows for buildings and structures that are not affected by flooding.

The Regional Council's submission is acknowledged and it is considered that the second sub-clause of Rule 8.3.1(c)(i) (as currently worded) is not ideal as it requires an assessment and exercise of judgement on whether a proposed building or structure will be affected by the Floodable Area. Given the exercise of judgement required, such assessments are best left to resource consent applications rather than district plan permitted activity rules which should be definitive.

Rule 8.3.1(c)(i) (as currently worded) was introduced through Plan Change 35 and, in hindsight, the current wording of the second sub-clause should not have been included within the permitted activity rule given the assessment and exercise of judgement required.

While the Regional Council's proposed change has merit, this would only add to confusion about how to apply the rule and would not assist in addressing the existing issues with the rule.

The concerns with this rule can be addressed at the time Council undertakes a more comprehensive review of the District Plan to give effect to the natural hazard provisions of the RPS, particularly Policies NH 7A, NH 8A and NH 12A.

6.0 Plan Change 76 – Recommended Changes to the District Plan First Review

6.1 The purpose of this part of the report is to show the Proposed Plan Change in full including any recommended changes in response to the submissions and further submissions.

6.2 Recommended changes to the District Plan First Review are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.

6.3 Amend Rule 8.3.1(c)(iii) as follows:

(iii) Uninhabited farm buildings including, but not limited to, pump sheds, implement sheds and storage sheds, provided ~~that an appropriate notice under s73 of the Building Act has~~

~~been attached to the title~~ the property owner(s) enter into an agreement with the Council confirming that they:

- acknowledge the ~~property~~ building is subject to the risk of inundation from flooding;
- accept the risks of any damage to the building and/or its contents arising from that hazard; and
- undertake not to take any action (legal or otherwise) against the Council in relation to any damage to the building and/or its contents as a result of the location of the building within the Floodable Area.

6.4 Amend the explanatory note to the matter of discretion for Rule 8.5.1.2(b) as follows:

- (b) *The appropriate minimum finished floor level of the proposed building/structure.*

Explanatory Notes:

This is the combination of the flood level plus an additional freeboard height as stipulated in Council's Development Code.

Council will consider granting consent for sheds and garages (used for non-habitable purposes) without meeting minimum finished floor levels provided the ~~property~~ owner of the property and building enters into an agreement with the Council confirming the owner:

- acknowledges that the ~~property~~ building is subject to the risk of inundation from flooding or coastal inundation;
- accepts the risks of any damage to the building and/or its contents arising from that hazard; and
- undertakes not to take any action (legal or otherwise) against the Council in relation to the issue of a resource consent without imposing the required minimum finished floor levels.

Council can provide specific flood levels for all Coastal Inundation Areas and for some but not all of the Floodable Areas. Where specific flood levels are unknown, applicants may be required to engage a suitably qualified engineer to undertake a flood level assessment for the property.

For Waihi Beach Floodable Areas (Planning Maps A03 and U01-U04) this shall be based on the 2% AEP (inclusive of climate change).

6.5 Include matters of assessment for discretionary and non-complying activities within floodable areas and coastal inundation areas (Rule 8.5.2(c)) as follows:

8.5.2 Discretionary / Non Complying Activities

The matters in 8.4.1 and 8.5.1 and the following matters shall be used as a guide for assessing Discretionary Activities and Non-Complying Activities:

...

(c) Floodable Areas & Coastal Inundation Areas

- (i) The effect of the proposed subdivision (including, but not limited to any building site, building/structure, or earthworks) on the capacity of ponding areas and function of overland flow paths.*
- (ii) The provision of finished site levels to mitigate adverse effects associated with inundation. For Waihi Beach (Planning Maps A03 and U01-U04) the flood level shall be based on the 2% AEP (inclusive of climate change).*
- (iii) In the case of Floodable Areas, any verifiable new information which demonstrates that the subject site is not in fact under threat from flooding.*

6.6 Amend Rule 8.3.1(c)(i) as follows:

- (i) Buildings/Structures, earthworks, closed board fences, retaining walls, raised gardens and concrete and block walls where evidence establishes:
 - The activity A-building/structure will be located clear of the floodable area irrespective of the extent of the floodable area shown by the Planning Maps; or*
 - The activity A-building/structure will not be affected by the floodable area.**