

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement

**PROPOSED CHANGE 2 (NATURAL HAZARDS) TO THE BAY OF  
PLENTY REGIONAL POLICY STATEMENT REPORT**

**AND**

**RECOMMENDATIONS OF THE HEARING COMMITTEE**

Hearing Committee Members:

Paula Thompson  
Jane Nees  
John Cronin  
Craig Shearer



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## **Chapter One: Proposed Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement**

- (1) On 1 October 2014 the Bay of Plenty Regional Council (“Council”) acting under section 60 of the Resource Management Act 1991 (“the RMA”) and clause 5 of Schedule 1 to that Act, publicly notified Proposed Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement (PC2).
- (2) Acting under section 34 of the RMA the Council appointed us, the undersigned, as members of the Hearing Committee to hear and make decisions on submissions on PC2; and delegated to us all the functions, powers and duties of the Council to hear and consider submissions on PC2, including requiring and receiving reports under section 42A of the RMA.
- (3) The Council received a total of 35 primary submissions and 18 further submissions on PC2. One submission and one further submission were withdrawn before the hearing of submissions.
- (4) We, the Hearing Committee, conducted public hearings of the reports made under section 42A of the RMA, and of the evidence and submissions of the submitters who wished to be heard. Hearings were conducted on the 3rd and 4th of June 2015 and then adjourned. Deliberations commenced on the 8th of June and were then adjourned pending the provision of additional information requested from staff. On the 7th of August 2015 the hearing reconvened for the purposes of receiving a supplementary staff report.<sup>1</sup> The hearings concluded on that day and were followed by final deliberations, also on that day. The hearings were held at Council offices in Tauranga and Mount Maunganui. The parties who appeared at the hearing in support of their submissions are listed in chronological order of appearance in Appendix A to this report.
- (5) Most of the submissions requested amendments to PC2. We are grateful for the numerous constructive improvements suggested by submitters and their counsel, expert witnesses and other witnesses. We are also grateful for the section 42A reports prepared by officers of the Council. We acknowledge that the suggested amendments, even those we do not adopt, and the related evidence, have substantially helped us in coming to our recommendations.
- (6) Having considered and deliberated on PC2, the submissions lodged, and the reports, evidence and submissions made and given at the public hearings, we have prepared this report and the Proposed Change 2 (Natural Hazards) to the RPS Hearing Recommendations on Provisions with Submissions and Further Submissions (Appendix B). These reports contain our recommendations that Proposed Change 2 to the Regional Policy Statement be amended as set out in Appendix C (Track changes) with the final clear copy in Appendix D. Our reasons for recommending those amendments, and the other relevant matters we have considered, are

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<sup>1</sup> Proposed Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement, Supplementary Report on Submissions, Martin Butler and Gerard Willis, 31 July 2015, File Reference A2152635 (Appendix E).

summarised in these reports, and the Supplementary Report on Submissions (31 July 2015) (Appendix E).

## Chapter Two: General Legal Context

- (7) In Chapter Two of this report we state our understanding of the general legal context within which the Council must give its decisions on the submissions on PC2.

### 2.1 The purpose and principles of the RMA

- (8) Part 2 of the RMA states the purpose and principles of general application in applying and giving effect to the RMA.

- (9) The RMA's overall objective is set out in section 5.<sup>2</sup> Its purpose is identified in section 5(1) as "to promote the sustainable management of natural and physical resources." In doing this, sustainable management is to be given the meaning stated in section 5(2):

In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

- (10) Section 5 contemplates enabling people and communities to provide for their well-being and their health and safety; environmental preservation and protection as an element of the sustainable management of natural and physical resources;<sup>3</sup> and protecting the environment from adverse effects of use and development is an aspect (though not the only aspect) of sustainable management.<sup>4</sup>

- (11) Section 6 of the RMA identifies matters of national importance, and directs all persons exercising functions and powers under the Act to recognise and provide for them. The parts of section 6 relevant to PC2 include:

- The preservation of the natural character of coastal environment (including the coastal marine area), and the protection of [it] from inappropriate use and development.<sup>5</sup>
- The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.<sup>6</sup>

- (12) We understand that the word 'inappropriate' in section 6(a) should be interpreted "against the backdrop of what is sought to be protected or preserved."<sup>7</sup>The application of the section 6 matters, which are described as having national

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<sup>2</sup> *Environmental Defence Society v NZ King Salmon and ors* [2014] NZSC 38 [151]

<sup>3</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [146]

<sup>4</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [148]

<sup>5</sup> RMA s 6(a)

<sup>6</sup> RMA s 6(e)

<sup>7</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [105]

significance, is to serve the Act's purpose of promoting sustainable management. They are not to be achieved at all costs and we note that protection is not an absolute concept, and a reasonable, rather than strict, assessment is called for.<sup>8</sup>

- (13) Section 7 directs that, in achieving the purpose of the Act, all persons exercising functions and powers under it are to have particular regard to eleven matters, many of which are relevant to PC2 and our consideration of the submissions on it.
- (14) Section 8 directs persons exercising powers and functions to take into account the principles of the Treaty of Waitangi.
- (15) We have ensured Proposed Change 2 has been prepared in accordance with the provisions of Part 2.

## **2.2 Contents of Proposed Change 2**

- (16) Section 59 of the RMA states that "The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region". In PC2 this is restricted to those matters that are relevant to natural hazards responsibilities.
- (17) Section 61(1) stipulates a regional council must prepare and change its regional policy statement in accordance with its functions under section 30, the provisions of Part 2, its obligation to prepare and have particular regard to an evaluation report in accordance with section 32, and any regulations. When changing a Regional Policy Statement, under section 61(2) the regional council shall have regard to any management plans or strategies prepared under other Acts to the extent that their content has a bearing on resource management issues of the region. We are required under section 61(2)(b) to have regard to the extent to which PC2 is consistent with the policy statement and plans of adjacent regional councils.
- (18) Under section 61(2A), in changing a regional policy statement a regional council must take into account any relevant planning document recognised by an iwi authority to the extent that its content has a bearing on the resource management issues of the region. The Section 32 report notes that iwi authorities in the region were sent a copy of the draft version of the natural hazards policy provisions. Further consultation was undertaken with tangata whenua on the setting of risk thresholds between March and April 2014.<sup>9</sup>
- (19) Three hui were held (in Tauranga, Rotorua and Whakatāne) to discuss PC2, and all iwi were invited to attend. In 2009, when the now operative RPS was being prepared, a systematic review of all iwi management plans was undertaken. This has since been updated.<sup>10</sup> We have taken into account relevant iwi planning documents in our determinations. Section 61(2A)(b) is not relevant as the Ministry of Justice's Office of

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<sup>8</sup> *Environmental Defence Society v Mangonui County Council* [1989] 3 NZLR 257 (CA) 260

<sup>9</sup> Clause 2.5 Section 32 Evaluation Report October 2014

<sup>10</sup> BOPRCID:A2177250

Treaty Settlements has advised that there are no customary marine title groups in the Bay of Plenty Region<sup>11</sup>.

- (20) Section 62 stipulates the contents of a regional policy statement. In respect of natural hazards PC2 must state the significant issues for the region, those of significance to iwi authorities, the objectives to be achieved, the policies for the issues and objectives and an explanation of them, the methods used to implement the policies, the principal reasons for adopting the above, and the environmental results anticipated from implementation of the policies and methods.
- (21) Under section 62(3) PC2 must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand Coastal Policy Statement. This duty is a strong directive, creating a firm obligation, and requires positive implementation. We have borne this obligation in mind when assessing the submissions on PC2 and have accorded particular relevance to the New Zealand Coastal Policy Statement 2010 and in particular Objective 5 and Policies 6, and 24 – 27.
- (22) The procedure for changing a regional policy statement is set out in Schedule 1 to the RMA. Clause 5(1) stipulates that an evaluation report for the policy statement change must be prepared in accordance with section 32 and particular regard must be given to that report when deciding to proceed with the proposed change.
- (23) Section 32 of the RMA prescribes requirements for preparing and publishing evaluation reports. In particular section 32 directs that an evaluation report is to examine whether the plan's provisions are the most appropriate way to achieve the relevant objectives by identifying other reasonably practicable options for doing so; assessing the efficiency and effectiveness of the provisions in doing so; and summarising the reasons for deciding on the provisions. The report is to contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects anticipated from implementation of the proposal.
- (24) In assessing the efficiency and effectiveness of provisions, the section 32 assessment has to identify and assess the anticipated benefits and costs of the environmental, economic, social and cultural effects, including opportunities for economic growth and employment anticipated to be provided or reduced; the assessment has also, if practicable, to quantify the benefits and costs; and if there is uncertain or insufficient information about the subject matter of the provisions, has to assess the risk of acting or not acting.
- (25) In fulfilment of its duties under section 32, the Council prepared a section 32 report<sup>12</sup>. When adopting PC2 and approving it for notification, the Council confirmed that it had had particular regard to the section 32 evaluation report<sup>13</sup>, Proposed Change 2 (Natural Hazards) Section 32 Evaluation Report, and adopted it so that it was publicly

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<sup>11</sup> Clause 2.5 Section 32 Evaluation Report October 2014

<sup>12</sup> Operative Bay of Plenty Regional Policy Statement Proposed Change 2 (Natural Hazards) Section 32 Evaluation Report, October 2014.

<sup>13</sup> RMA Schedule 1, cl 5(1)(a)

available at the time of notification. We read and have had regard to that report when considering the requests for changes to PC2 contained in the submissions. Under section 32AA of the RMA, a further evaluation is required for any changes proposed since the initial evaluation report was completed. We note that an evaluation report is to contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects anticipated from implementation of the proposal. A further evaluation was undertaken under section 32AA after consideration of all the submissions and before adopting our final report and decisions. This is discussed further in Chapter Four of this report.

### **Chapter Three: Legal Issues Raised by Submitters**

- (26) There were no legal issues raised by submitters that we need to address.

### **Chapter Four: Practicality of Approach to Submissions**

- (27) We must consider a change to the Bay of Plenty Regional Policy Statement based on the duties set out in the RMA which we summarised in Chapter 2 of this report. However, our consideration has been supported by professional advice. In particular, we have received comprehensive advice from the Council officers/consultants in the form of two reports prepared under section 42A of the Act comprising statutory, technical and planning advice. The section 42A planning report prepared prior to the hearing recommended whether submission points should be rejected or accepted, with reasons; and precise recommended amendments to PC2 were included for our consideration.<sup>14</sup> This latter document was an updated revision of an earlier version dated 19 May 2015.
- (28) At our deliberations on 8 June we considered the matters raised by submitters appearing before us on 3 and 4 June. We found that many of these matters had merit. We also considered many deserved further technical and policy consideration before we could make our final determination on them. These matters included a better explanation of the spatial scales and associated terms, and a review of several of the specific provisions including Policies NH 2B, NH 5B, NH 6B, and NH 7B.
- (29) We also raised matters in respect of Appendix K – Methodology for risk assessment – which we considered deserved further consideration, including the potential need for the inclusion of a new step 1 establishing the hazard susceptibility area, and a potential new step for assigning risk levels for natural hazard zones.
- (30) We therefore gave guidance to officers and requested they carry out further policy and technical assessment of those matters to determine the practicality of making changes and report back to us. We requested that the testing report that had been attached as Appendix 2 to the Overview Report on Submissions be made available in its current form but with clear caveats as to its purpose and future use.

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<sup>14</sup> Proposed Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement Overview report on Submissions, Martin Butler 22 May 2015 [section 42A Report]; Proposed Change 2 (Natural Hazards) to the RPS Staff Recommendations on Provisions with Submissions and Further Submissions, 2 June 2015 (222 pages).



- (31) The officers subsequently prepared a Supplementary Section 42A<sup>15</sup> report and set out amended recommendations on the submissions addressing the issues raised by the Committee at the first deliberation meeting of 8 June. The report was comprehensive and dealt with the most contentious issues presented to us at the hearing. It addressed four key themes and then provided a detailed response to the specific provisions considered to be highly contentious during the hearing.
- (32) As part of their end of hearing reply to us officers prepared a further evaluation report under section 32AA of the Act (Appendix F).<sup>16</sup> The Section 32AA evaluation report contained an evaluation of and justification for the officers' final additional recommended amendments to the notified provisions of the PC2. This report supported the amendments referred to in the Supplementary Section 42A report above.
- (33) As a consequence of the strong guidance provided by the Committee to the officers/consultant, we have accepted the officers' recommendations for the reasons set out in the relevant officer's report(s).
- (34) We note that some submitters requested guidelines be prepared to provide assistance in the assessment required by Appendix K – Methodology for risk assessment. We consider the availability of guidelines for users of Appendix K to have merit, but do not consider it is appropriate to produce such guidelines for inclusion within PC2 as these would be non-statutory in nature and not appropriate inside a statutory document. We do however suggest it would be appropriate for Council to produce non-statutory guidelines to be available for those carrying out risk assessments required by PC2. We recommend to Council that guidelines be produced.
- (35) With regard to the further submissions, we record that all further submission points are recommended to be accepted, accepted in part, or rejected, in direct accordance with our decisions on the primary submissions to which the further submissions relate. Consequently, for the sake of brevity, we have not separately itemised our recommendations on individual further submission points.

## **Chapter Five: Evaluation and Recommendations**

### **5.1 Evaluation duties**

- (36) In giving its decision on the matters raised in submissions, a local authority must include the reasons for accepting or rejecting the submissions and must include a further evaluation of the proposed change in accordance with section 32AA of the

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<sup>15</sup> Proposed Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement, Supplementary Report on Submissions, Martin Butler and Gerard Willis, 31 July 2015, File Reference A2152635 (Appendix E).

<sup>16</sup> Proposed Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement v7.0: Section 32AA evaluation of changes, Martin Butler and Gerard Willis August 2015 (Appendix F).

RMA. Particular regard must be given to the matters raised in the section 32AA report.<sup>17</sup>

- (37) If our recommendations are adopted by the Council, this report (including its appendices) is intended to form part of the Council's decision-making record. Therefore in compliance with Schedule 1, we adopt the officers' section 32AA report, Section 32AA evaluation of changes, and recommend that the Council have particular regard to it when making its decision.
- (38) Therefore in our consideration of the amendments to PC2 requested in the submissions (whether the recommendations are recorded in the main body of this report, or in the section 42A reports prepared by the officers – see our discussion of this in Chapter Four of this report) we have, to the extent and in the detail practicable based on the evidence before us, examined and assessed the factors itemised in section 32 to the extent applicable.
- (39) Note that we have not searched for other options from our own initiatives but confined any decision and changes to issues raised by submitters throughout this process.

## **5.2 Conclusions and recommendations**

- (40) We appreciate the development, submission, hearing and deliberation processes for PC2 have been lengthy and at times complex. We appreciate the time and expertise that have been dedicated by all parties to ensuring the outcome is one which will add to the effectiveness of the Regional Policy Statement and in particular the management of natural hazards in the Bay of Plenty region. In particular we wish to acknowledge the efforts of staff and all submitters during the hearings, and in particular the helpful and positive approach all parties adopted throughout the process.
- (41) We have considered and deliberated on PC2, the submissions lodged on it, and the reports, evidence and submissions made and given at our public hearing. We have had particular regard to "Section 32AA evaluation of changes", the further evaluation of the amendments to PC2 that we are recommending. The relevant matters we have considered, and our reasons for our recommendations, are referred to in the section 42A reports for those submissions where we adopt without change the officers' recommendations and reasons.
- (42) We are satisfied that our final recommended amendments to the PC2 (as set out in Appendix B to this report) are the most appropriate for giving effect to Council's statutory and legal responsibilities.
- (43) We recommend to Council that guidelines be produced to assist users undertaking risk assessments under Appendix K of Proposed Change 2 of the Bay of Plenty

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<sup>17</sup> RMA, Schedule 1, cl 10)

Regional Policy Statement as follows: interim guidance on selected implementation issues to be available when decisions on submissions are notified; a full Appendix K User Guide to be available when PC2 is made operative.

(44) We recommend to the Council:

- (a) That it has particular regard to the "Section 32AA evaluation of changes" report (Appendix F) when making its decision on submissions.
- (b) That Appendix B, the Hearing Recommendations on provisions with submissions and further submissions, and the reasons, including those set out in Appendix E, be adopted;
- (c) That Appendices C and D, Proposed Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement Hearing recommendations, Track changes and Clear copy respectively, be adopted as true records of the changes made to PC2 as a result of the hearings process;

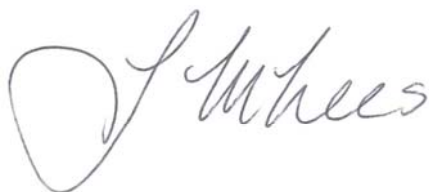
Dated 17 September 2015



Craig Shearer, Independent Hearing Committee Member (Chair)



John Cronin, Councillor and Hearing Committee Member



Jane Nees, Councillor and Hearing Committee Member



Paula Thompson, Councillor and Hearing Committee Member