

Appendix F

**Proposed Change 2 (Natural Hazards) to the
Bay of Plenty Regional Policy Statement
V 7.0: Section 32AA Evaluation of Changes,
August 2015**



Proposed Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement v7.0: Section 32AA evaluation of changes

August 2015

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1 Introduction

This report should be read in conjunction with the Supplementary Report dated 31 July. It addresses the Hearing Committee's duty under section 32 of the Resource Management Act (RMA) to be carried out by the Committee in the course of deciding whether to accept or reject a submission on Proposed Change 2 (PC2).

Sections 32 and 32AA are provided as Appendix 1.

2 Background

Section 32 of the RMA prescribes requirements for preparing and publishing evaluation reports, including an 'amending proposal' that would amend a proposed policy statement. Section 32 directs that an evaluation report is to examine whether its provisions are the most appropriate way to achieve the relevant objective by:

- a. identifying other reasonably practicable options for doing so;
- b. assessing the efficiency and effectiveness of the provisions in doing so; and
- c. summarising the reasons for deciding on the provisions.¹

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.²

In assessing the efficiency and effectiveness of provisions, the 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. If there is uncertain or insufficient information about the subject matter of the provisions, the risk of acting or not acting must also be assessed³.

Such an evaluation report was prepared and made available to the hearings committee along with all submissions received⁴. This is referred to in the report that follows as "the Evaluation Report".

2.1 Further evaluation

Section 32AA, requires a further evaluation for any changes proposed since the original evaluation report was completed. That further evaluation does not need to be published as a separate report if it is referred to in the decision-making record in sufficient detail to demonstrate that it was undertaken in compliance with that section⁵.

The purpose of this supplementary report is to provide the Hearing Committee with the necessary evaluation to include within its decisions report should it accept the

¹ RMA s32(1)(b)

² RMA s 32(1)(c)

³ RMA s 32(2)

⁴ Operative Bay of Plenty Regional Policy Statement, Proposed Change 2 (Natural Hazards), Section 32 Evaluation Report, October 2014

⁵ RMA s32AA(1)(d)(ii)

recommendations made in the *Supplementary Report on Submissions Dated 31 July 2015* (“the Supplementary Report”).

That will enable the Committee to fulfil its duty under section 32AA.

3 **Fulfilling the S32AA Duty**

The first point to note is that the duty relates only to changes made between notification and decisions on submissions. Section 32AA states that a further evaluation is made for:

any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed

All changes recommended to be made (excepting a few very minor consequential changes) are discussed in detail in the Supplementary Report. That report explains the provision sought by submitters to be amended; outlines the amendment sought; explains the effect of making the amendment; sets out the Officers’ evaluation and rationale for making or not making the change sought (as the case may be).

Although numerous issues and provisions are discussed in the Supplementary Report only limited changes are recommended. Further, of the changes recommended very few substantively change the policy such that the approach would be characterised as a “different” approach from that addressed in the evaluation report. In almost all instances the changes recommended aim to clarify the intent and remove potential confusion or ambiguity. Accordingly, the underlying cost and benefits of the provisions will not vary from those already addressed in the Evaluation Report.

This is explained in further detail below and any exceptions requiring specific new evaluation addressed.

3.1 **Reasonably practical options**

The Hearing Committee’s duty is to examine whether the amendments proposed to PC2 are the most appropriate way to achieve the objective by (firstly) identifying other reasonably practicable options for achieving the objectives.

That objective (as recommended following submissions) states:

Avoidance or mitigation of natural hazards by managing risk for people’s safety and the protection of property and lifeline utilities

In doing so the Hearing Committee should confine itself to options presented in submissions or the section 42A (Staff) Report, and to combinations or refinements to them. It should refrain from searching for other options on its own initiative, that being beyond the Committee’s function, and risking depriving submitters of opportunity to respond.

In that sense wholly new or different planning approaches for achieving the objective cannot be considered (as none were put forward by submitters) but any alternative wording sought to particular provisions that would constitute a genuinely alternate option should be considered.

The issues on which submitters identified genuinely alternate options to that in PC2 (as opposed to changes aimed at clarification or technical wording changes) are as follows:

1. Policy NH 5B with alternatives put forward by a number of submitters as to which activities should be required to assess hazard risk at the time of land use change. The appropriateness of these changes are evaluated in section 6.7 of the Supplementary Report.
2. Policy NH 7B with alternatives put forward by submitters as to which activities in what locations need to achieve a low level of risk at the development site scale. The appropriateness of those options is discussed in section 6.9 of the Supplementary Report.
3. Susceptibility mapping – the option advanced by submitter 17 of mapping being a step in the risk assessment process required of all those using Appendix K (rather than something confined to the preparation of regional and district plans). The appropriateness of that option is discussed in section 6.19 of the Supplementary Report.
4. Natural hazards zones – the option advanced by submitter 17 of natural hazard zones being an output of the risk assessment process. The appropriateness of that option is discussed in section 6.21 of the Supplementary Report.
5. Annual Individual Fatality Risk (AIFR) – The option advanced by submitter 13 of not applying the AIFR assessment metric at low population scales. The appropriateness of that option is discussed in section 6.24 of the Supplementary Report.
6. Implementation guidance – The option advanced by submitter 25 of including further implementation within PC2. The appropriateness of that option is discussed in section 7.1 of the Supplementary Report.

3.2 Effectiveness and efficiency

An assessment of the efficiency and effectiveness of amendments to PC2 must involve identifying and assessing the benefits and costs of the anticipated effects of implementing them, including opportunities for economic growth and employment.

As noted above, if practicable, the assessment is to include quantifying those benefits and costs; and assessing the risk of activity or not acting if there is uncertain or insufficient information about the technical subject matter.

In those respects the Hearing Committee will also need to confine its consideration to the evidence available from both the Officers and submitters. Quantifying social, cultural, economic and environmental benefits and costs of PC2's amendments and alternative options, in monetary terms is generally problematic.

PC2 is essentially a framework or methodology, the full effect of which cannot be practically quantified in advance of implementation. The quantum of costs and benefits is reliant on a number of "down stream" implementation decisions by other parties (including how and when district councils implement PC2 through their district plans). It is also dependent on the outcome of risk assessment yet to be undertaken (and hence how limiting or costly the risk management policies of PC2 will be on a site specific or detailed sense cannot be known with certainty).

For those reasons, the Hearing Committee will have to rely on assessments of costs and benefits of both the recommended PC2 provisions and the alternative options put forward by Officers and submitters that are more conceptual and general than analytical and calculated.

3.3 Evaluation

The limitation set out above accepted, the broad nature of the costs and benefits of the proposed amendments relative to the alternative options and the appropriateness overall is assessed as follows.

1. The option proposed in the Supplementary Report in relation to 1 above is more appropriate because:
 - a. it will better achieve the objective by potentially requiring risk assessment from a broad range activities that might affect, or be affected by, natural hazards ensuring better ability to achieve the desire risk outcomes of Policy NH 6A; and
 - b. The costs should be less than the alternatives because there is greater certainty about the threshold that applies but also flexibility for risk assessments to be required when, but only when, they are warranted.
2. The option proposed in the Supplementary Report in relation to 2 above is more appropriate because:
 - a. It will better achieve the objective in the interim period (before regional and district plans give effect to PC2) by ensuring a broad range of new activities/land use change is required to achieve a low risk level. If the alternations options were adopted it is likely that risk would increase over the interim period; and
 - b. The costs should be less than the alternatives because the amendment: i. is more explicit about the exclusion of activities that do not involve building work; and (ii) provides flexibility to increase risk in Low risk natural hazard zones.
3. The option proposed in the Supplementary Report in relation to 3 above is more appropriate because:
 - a. Susceptibility mapping provides a broad public benefit and the cost of that should be borne by regional and district councils (in accordance with Policy NH 3A) rather than being imposed on consent applicants (as would be the case under the alternative option, for example).
4. The option proposed in the Supplementary Report in relation to 4 above is more appropriate because:
 - a. The Natural Hazard Zones (NHZ) should be defined by the regional councils and territorial authorities as part of the plan planning process. That will lead to a more robust NHZ setting process that is more likely to achieve the objective; and
 - b. The costs should be less than alternatives because the option recommended in the Supplementary Report would remove duplication and enhance clarity of intent.
5. The Supplementary Report recommends no change to the way PC2 applies the AIFR metric. As no change to the provision is proposed there is no duty for further evaluation under section 32AA.
6. The Supplementary Report recommends no change to the extent or depth of implementation guidance contained within PC2. As no change to the provisions is proposed there is no duty for further evaluation under section 32AA.

4 Conclusion

The Supplementary Report recommends a number of changes that have not previously been subject to an evaluation under section 32 of the Act. The majority of those changes seek to clarify the intent or scope of provisions or are technical or consequential in nature rather than proposing some alternative option for achieving the objective.

Nevertheless some submitters did propose amendments that could be regarded as reasonably practicable options that are alternatives to particular provisions or parts of provisions in PC2. To the extent that they have done so, and the Supplementary Report has recommended changes that in whole or part reflect the option advanced by the submitter, a further evaluation is required.

The Hearing Committee should consider the Supplementary Report and if it accepts the recommendations therein, it should adopt that report in full together with this Further Supplementary Report as the further evaluation required under section 32AA of the Act.

If after consideration and deliberation the Committee resolves to depart from the recommendations contained in the Supplementary Report in a substantive way (that is, it proposes amendments that could materially change the effectiveness and efficiency – including social, cultural, economic and environments costs and benefits of the provisions) then it will need to undertake a further evaluation in respect of those amendments it proposes.

Recommendation

That the Hearing Committee:

- 1 Receives this report – Proposed PC2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement Further Supplementary Report at the Conclusion of Presentation of Submissions 8 June 2015.
- 2 Agrees to adopt the report referenced in 1 above, together with this report as the further evaluation required under section 32AA of the Resource Management Act.
- 3 Notes that if the recommendations contained in the Report referenced in 1 above are not accepted, further evaluation may be required in respect of those provisions that are not accepted.

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32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions; and
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An assessment under subsection (1)(b)(ii) must—
 - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- (3) If the proposal (an **amending proposal**) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to—
 - (a) the provisions and objectives of the amending proposal; and
 - (b) the objectives of the existing proposal to the extent that those objectives—
 - (i) are relevant to the objectives of the amending proposal; and
 - (ii) would remain if the amending proposal were to take effect.
- (4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.
- (5) The person who must have particular regard to the evaluation report must make the report available for public inspection—
 - (a) as soon as practicable after the proposal is made (in the case of a standard or regulation); or
 - (b) at the same time as the proposal is publicly notified.
- (6) In this section,—

objectives means,—

 - (a) for a proposal that contains or states objectives, those objectives:

(b) for all other proposals, the purpose of the proposal

proposal means a proposed standard, statement, regulation, plan, or change for which an evaluation report must be prepared under this Act

provisions means,—

- (a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change;
- (b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

32AA Requirements for undertaking and publishing further evaluations

- (1) A further evaluation required under this Act—
 - (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and
 - (b) must be undertaken in accordance with section 32(1) to (4); and
 - (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and
 - (d) must—
 - (i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement), or the decision on the proposal, is publicly notified; or
 - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
- (2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).
- (3) In this section, **proposal** means a proposed statement, plan, or change for which a further evaluation must be undertaken under this Act.