

Proposed Plan Change 1 to the Whakatane District Plan and Proposed Plan Change 17 to the Bay of Plenty Natural Resources Plan

Supplementary s42A Planning Report

1. This report supplements my report dated 20 December 2019 and comments on issues that have arisen at the hearing on 2nd and 3rd March 2020.

RPS Policies NH 3B and NH 12A

2. Several questions have been raised about the interrelationship between RPS policies and how they are to be given effect to through Plan Changes 1 and 17. Particular reference has been made to Policies NH 3B and NH 12A. These two policies are closely interrelated. Policy NH 3B refers to applying Policy NH 12A and NH 12A refers to 'promoting the Natural Hazard risk outcomes set out in Policy NH 3B...' Both policies are classified as 'Directive' policies in Part 5 of the RPS. This provides more guidance than usual in planning instruments that they are policies that are to be given greater weight and must be implemented, in terms of the *King Salmon*¹ decision.
3. While Policy NH12A is classified as 'Broad Directive' and Policy NH 3B as 'Specific Directive'² in my view they should be read together and applied together, as they each have different intents. NH 12A refers to plans taking into account risk reduction measures, including where practicable, to existing land use activities. NH 3B is more specific, referring to the outcomes of reducing the hazards in High natural hazard risk zones to Medium or lower.
4. I agree with Mr Batchelar that the plan changes give effect to these policies.

Incorporation of AGS 2007 by reference

5. There are two separate issues here. The first is the way that AGS 2007 is to be incorporated into the plan changes and the second is the inclusion of material referred to as in a 'User Guide'.
6. The Section 32 Evaluation Report³ which incorporated the plan change documents stated that; 'The proposed plan changes refer to the Australian Geomechanics Society - Landslide Risk Management 2007 risk assessment methodology'. Subsequently under clause 34 of Schedule 1 of the RMA the references to AGS 2007 were separately publicly notified and comments sought and received. The public notice stated that 'The proposed plan change references the Australian Geomechanics Society -Landslide Risk Management 2007

¹ Environmental Defence Society Inc v The New Zealand King Salmon Co (2014)

² RPS Section 5.2.1

³ Boffa Miskell, 8 June 2018

methodology'. Comments were received and considered by the Councils before the plan changes were notified.

7. In both plan changes the references to *AGS 2007* are in new policies introduced which read;

'To assess the natural hazard risk from Debris Flows on the Awatarariki fanhead at Matata by undertaking a risk analysis using the methodology set out in the Australian Geomechanical Society – Landslide Risk Management 2007'.

8. These policies achieve two things. They provide a technical basis for the other policies and rules in the plan changes. They also address the issue of use of Appendix L of the RPS which provides for alternative risk assessment methodologies if they *'are included in a regional, city or district plan'*. I understand that *AGS 2007* is a useful methodology for assessing other landslide risks. This would also allow *AGS 2007* to be used for example when considering resource consent applications in the Medium Risk Debris Flow Policy Area.

9. If it is found that there has been a flaw in the way that *AGS 2007* has been included in Plan Change 17, this can be rectified by a minor rewording of Policy NH P6. The recommended rewording is;

'To assess the natural hazard risk from Debris Flows on the Awatarariki fanhead by undertaking a risk analysis using a the methodology that complies with Appendix L of the Regional Policy Statement set out in Australian Geomechanics Society – Landslide Risk Management 2007.

10. The efficiency and effectiveness of including an alternative risk assessment methodology through the method set up by Appendix L is still achieved through Plan Change 1. It is not essential that both plan changes include the specific reference to *AGS 2007*. In any case the plan changes rely on *AGS 2007* because it is the appropriate risk assessment methodology, regardless of whether it is referred to in Appendix L.

11. There has been some discussion about whether a 'sequential approach' to inclusion of *AGS 2007* is needed; that is, should *AGS 2007* be included in an operative plan change before it can be relied on? I do not consider these plan changes represent a sequential approach. They take an integrated approach where *AGS 2007* is introduced into the plans as part of a real life example of its use. In any case, you have to start somewhere; if you had to wait until a plan change was operative before you could rely on an alternative methodology in Appendix L it would be a very inefficient approach.

The 'User Guide'

12. The second matter relates to User Guides. Part of Plan Change 17 states on pages 5 and 6 that it is 'To incorporate into the Regional Natural Resources Plan User Guide – The Management of Debris Flow hazards on the Awatarariki Fanhead at Matata'. The paragraphs are headed 'Issue', 'Principal Reasons for Provisions' and 'Design of Rules'. There is no User Guide either in the Regional Natural Resources Plan or as a guidance document outside it. There is a User Guide to the RPS that sits outside the RPS.

13. The information on pages 5 and 6 of Plan Change 17 is a summary of the reasons for the provisions and an explanation of them. It is very consistent with the material in Appendix 1 of the Regional Natural Resources Plan that contains explanations and reasons. The Natural Resources Plan was revised in 2017 by reorganising its contents and relocating many of the explanations and reasons into the Appendices. Previously they were mixed in with the policies and rules. Some confusion may have arisen as this process occurred at the same time as the plan changes were being prepared.
14. The Section 32 Evaluation Report clearly summarises Plan Change 17 as comprising;
- Objectives and Policies
 - A rule
 - Explanatory information⁴
15. It is clear from this that the plan change was to include explanatory information in the Natural Resources Plan, not in a document outside it. It erroneously refers to a user guide, whereas the only logical place to insert the explanatory information is in Appendix 1 of the plan. I consider placing it in this appendix is a minor administrative matter within the scope of the plan change as a whole and improving its workability.

Removal of Medium Risk Area

16. Mr Batchelar commented on the possibility of removal of the Medium Risk Policy Area. I agree with his opinion that such an amendment would be outside the scope of submissions on the plan changes so would require variations. I also agree that it would impact on the voluntary retreat package as funding has only been allocated for acquisition of properties in the High Risk Policy Area.

John Olliver

4 March 2020

⁴ Boffa Miskell, 8 June 2018, p7