

Upper Hutt City Council

Proposed Plan Change 42: Pinehaven and Mangaroa Flood Hazard Extents

ADDENDUM: Officer Right of Reply

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10/31/2017

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Minute 3 of the Commissioner requests the officers consider the additional matters of context set out under a, b and c of paragraph 6 of that same minute in order to add to the officers right of reply to point 7 b (Minute 2 of the Commissioner).

Question 6 [Response to Question 7(b)].

The question as clarified at 6 b (Minute 3 of the Commissioner) is whether the officers are satisfied the approach wont preclude any activities that may result in an appropriate outcome due to the Non-Complying Activity status being too stringent for some activities so that use of the “avoid” policy could result in some activities not passing the gateway test because the effects are also likely to be more than minor.

Officers Response:

The policy framework is responsive to the catchment context. It is designed around the characteristics of the catchment including the relevant identified hazard risk and the range of activities. The means that avoidance for some activities is appropriate. For some other activities avoidance may not always be appropriate and the associated policy framework deliberately does not use the term “avoid” but different terminology such as “limit” as in the case of earthworks.

The following proposed policies require avoidance within the PC42 framework;

- Policy 9.4.4 (subdivision and location of future building platforms)
- Policy 9.4.6 (earthworks)¹
- Policy 14.4.3 (development in high hazard areas)
- Policy 14.4.8 (access to lots in high hazard areas)

For clarity, we refer to the relevant extracts (included below) from the rule summary table (attached as Appendix 3 to the Officer’s Right of Reply) in order to add to our initial response.

Policy 9.4.4 (Subdivision and building platforms)

The purpose is to avoid subdivision where the future building platform would be located within a high hazard area. Where the location of the building platform is within an Overflow Path, River or Stream Corridor, then the status is Non-Complying Activity. We do not see any circumstances where locating an entire future building platform within a River Corridor or Overflow Path would be an acceptable outcome.

Note that subdivision where these features are present within the application site can be considered as a Restricted Discretionary Activity (please see Policy 9.4.5 and corresponding rules 18.37, 18.39, 19.29, 20.32 and 20.33) all which address proposed subdivisions where the building platform is located within the ponding or erosion hazard area of the Rural, Residential or Business zones. The key differentiator is the location of the building platform rather than the act of subdivision.

¹ Note while the term ‘avoid’ is included in the policy, the purpose is to “limit” rather than expressly avoid.

Policy	Rule to address policy	Activity Status
Policy 9.4.4. To avoid subdivision where building platforms would be located within high hazard areas of the identified Flood Hazard Extents and Erosion Hazard Areas.	Table 18.1 – Subdivision where building platform is in river corridor of Mangaroa FHE (Residential Zone)	Non-Complying
	Table 18.1 – Subdivision where building platform is within overflow path and stream corridor of Pinehaven FHE (Residential Zone)	Non-Complying
	Table 19.1 - Building platforms in overflow path or river corridor (Rural Zone)	Non-Complying
	Table 20.1 –Building platforms in overflow path or river corridor (Business Zone)	Non-Complying

Policy 9.4.6 (Earthworks)

While the term “avoid” is included in this policy, the purpose is in fact to “limit” rather than expressly avoid, as the policy also anticipates some activities that may be appropriate and thus the avoidance term would not be suitable for the policy direction. For example, other activities that this policy links to include earthworks within an Overflow Path (Rule 23.17 Discretionary Activity) and earthworks associated with network utilities in the river corridor where located within the legal road (Rule 23.17 Permitted Activity). Flood mitigation works are also a permitted activity but specifically addressed by Policy 9.4.9.

Policy	Rule to address policy	Activity Status
Policy 9.4.6 Limit earthworks in the high hazard areas within identified Flood Hazard Extents and Erosion Hazard Areas to avoid an increase in risk from flood hazards to people and property.	Table 23.1 – Earthworks within the River Corridor of the Mangaroa Flood Hazard Extent (excluding those for a Permitted Activity).	Non-Complying

Policy 14.4.3 (Development in high hazard areas)

This policy requires avoidance of the identified activities within the River and Stream Corridors of both the Mangaroa and Pinehaven Flood Hazard Extents. We do not see any circumstances where providing for buildings within the River or Stream Corridor would result in a better outcome. For Mangaroa, the catchment and pattern of land use activities allows for greater choice to locate such structures outside the River Corridor. Within Pinehaven, the stream catchment is much more constrained and further development within the Stream Corridor would not be appropriate. An exception is provided for vehicle crossings in recognition of the need for access to existing lots. However, that situation is addressed specifically by Policy 14.4.6.

Policy	Rule to address policy	Activity Status
Policy 14.4.3 Avoid development within high hazard areas of identified Flood Hazard Extents and Erosion Hazard Areas.	Table 33.1 – Buildings in river corridor of Mangaroa FHE	Non-Complying
	Table 33.1 – Buildings, structures or fences within stream corridor of Pinehaven FHE (except where provided for as Controlled Activity)	Non-Complying

Policy 14.4.8 (Accesses in high hazard areas of Mangaroa)

This policy addresses the rule framework regarding primary vehicle accesses serving lots within the Mangaroa Flood Hazard Extent. The activity status escalates based on the relationship to the hazard feature and whether above or below the 100 year flood level. The rule progression (summarised in the rule summary table Appendix 3 to the Officers Right of Reply) outlines the escalation which provides for a range of circumstances before arriving at the Non-Complying Activity status for accesses within the river corridor. Given the scale of the catchment and pattern of land use there will be scope for accesses to avoid the river corridor and we do not see circumstances where it would be appropriate or result in a better outcome.

Policy	Rule to address policy	Activity Status
Policy 14.4.8 Within the Mangaroa Flood Hazard Extent enable accesses positioned above the 1 in 100-year level to serve dwellings where located within the lower hazard areas and avoid locating accesses within high hazard areas to serve dwellings.	Table 33.1 – Vehicle access in River Corridor	Non-Complying

Question 6 C (i) and (ii)

Question 6 C (i) asks for clarity around how applications for Discretionary and Non-Complying Activities will be treated where they rely on the same ‘avoid’ policy. Four ‘avoidance’ policies are identified;

- Policy 9.4.4 (subdivision and location of future building platforms)
- Policy 9.4.6 (earthworks)²
- Policy 14.4.3 (development in high hazard areas)

² Note while the term ‘avoid’ is included in the policy – the purpose is worded to “limit” rather than expressly avoid.

- Policy 14.4.8 (access to lots in high hazard areas)

When formulating these policies, strong regard was had to the higher order planning documents, in particular the Regional Policy Statement has the following policies:

Policy 29: Avoiding inappropriate subdivision and development in areas at high risk from natural hazards – district and regional plans

Regional and district plans shall:

- (a) identify areas at high risk from natural hazards; and*
- (b) include policies and rules to avoid inappropriate subdivision and development in those areas.*

Policy 51: Minimising the risks and consequences of natural hazards – consideration

When considering an application for a resource consent, notice of requirement, or a change, variation or review to a district or regional plan, the risk and consequences of natural hazards on people, communities, their property and infrastructure shall be minimised, and/or in determining whether an activity is inappropriate particular regard shall be given to:

- (g) avoiding inappropriate subdivision and development in areas at high risk from natural hazards;*

Both of these policies (29 & 51) in the Regional Policy Statement place a strong emphasis on avoiding inappropriate subdivision and development in areas at high risk from natural hazards. Under the proposed Plan Change, the River Corridor and the Overland Paths are considered to be the high risk areas, though it is recognised that the River Corridor has a higher risk than Overland Paths and this has generally been reflected through the differential between a Discretionary Activity consent status for activities in the Overflow Path and Non-Complying Activity status for activities and subdivisions in the River Corridor.

Policy 9.4.4 does not have Discretionary Activity rules linked to it. Policy 9.4.6 does have Discretionary and Non-Complying rules linked to it but it uses the term “limit” rather than avoid. Policy 14.4.8 is worded to “enable” vehicle accesses in lower hazard areas and “avoid” in high hazard areas thereby providing discretion in determining the consent application based on the scale of effect and circumstances of the proposal.

Policy 14.4.3 does link to both Discretionary Activities (buildings within an Overflow Path) and non-complying activities (building in a River Corridor). The question (6 C (i)) from the Commissioner is therefore; will this mean Discretionary Activities are more likely to be approved than Non-Complying Activities given the gateway test or will this level the playing field?

We do not see this levelling the playing field. Under either approach the merits of the proposal will ultimately determine acceptability. Development proposed within an Overflow Path might be generally considered a comparatively lower risk than locating within the more dynamic River Corridor. However, the relevant effects associated with these activities are ones that result in a threat to life and property. It is considered appropriate to signal the inappropriateness of buildings within the River Corridor through the Non-Complying Activity status.

In addition, the proposed plan change adds to the existing 'Matters for Consideration' at 33.12 which provides matters to consider for Discretionary Activities and Non-Complying Activity, this includes requiring consideration of the effect of the proposal on the function of the floodplain and appropriateness of the location in relation to the identified risk. This enables the circumstances of the proposal to be considered relative to the identified hazard and the scale of the effects to be considered. Therefore we do not see this 'levelling the playing field' but appropriately discouraging development is the high risk area.

In response to Question 6 C (ii) we don't see this being a 'de facto' Prohibited Activity status, mainly because the Act expressly prohibits an application for the identified activity being made. In this case an application can be lodged and considered by the consenting authority. Furthermore, the avoid direction applies at a policy level and leaves the pathway (for both activities) to be determined on the effects for acceptability or otherwise.

Summary

The above clarifies that the policy and rule framework is based on the characteristics of the catchment with specific policies and rules to provide for possible activities.

Based on the above it is not considered the rules would unduly preclude any activities due to the non-complying activity status and use of avoid within the policy frameworks. This is because the policies are targeted within their scope and corresponding specific rules (with escalating activities statuses). This also aligns with the response to the second question by the Commissioner on the inclusion of a new objective (14.3.3) which is to provide clearer direction within the policy and supporting rule framework as opposed to reliance on the existing broad objective. That is addressed in more detail below.

If the effects are considered minor or more and are subject to the avoidance policy then it would be appropriate for the activity to not pass the gateway given the high hazard risk to people and property.

Question 7 [New Objective 14.3.3]:

The Commissioner seeks clarification on the reason for the proposed new objective in Chapter 14 to address Hydraulic Neutrality within the Pinehaven Catchment Overlay (see s32AA table, Appendix 6 of the Officer's Right of Reply dated 20/10/2017).

The submission and evidence³ presented by Save our Hills Inc *inter alia* specifically addresses the scope of Objective 14.3.2 and in particular that it is limited to subdivision and development only within the flood hazard extent. The proposed objective within the s32AA table directly addresses this point made by the submitter in his evidence. It also clarifies and is consistent with the proposed policy and rule mechanisms in the plan change as notified.

The proposed policy and rule framework directly address the Pinehaven Catchment Overlay and hydraulic neutrality requirements for subdivision and development in the upper catchment of Pinehaven as follows;

³ See paragraph 1.3.12 of the policy assessment document by Save our Hills Inc.

- **Subdivision** - see Policy 9.4.10 and the corresponding rules for the rural and residential zones at 18.38 and 19.28⁴ (as highlighted within Appendix 3 Rule Summary Table to the Officer's Right of Reply dated 20/10/2017).
- **Development** – see policy 14.4.7 and the corresponding rule in chapter 33.9 (as highlighted within Appendix 3 Rule Summary Table to the Officer's Right of Reply dated 20/10/2017).

As such, the proposed new objective would be consistent with the notified policy and rule framework and consistent with the notified subdivision objective (9.3.4).

In accordance with question 7 b (i), (ii) & (iii) the proposed objective has been considered against the provisions of Section 32 of the Resource Management Act 1991. The proposed objective is considered to be consistent with Section 32 for the following reasons:

- The proposed objective achieves the purpose of the Act in that it sets the outcomes sought for land development within the Pinehaven Catchment. This outcome sought by this objective would be addressed by the policies and rules that have already been proposed in the plan change. The proposed objective would also ensure consistency between the subdivision and land use provisions of the District Plan;
- The proposed objective is consistent with the Regional Policy Statement, particularly policies 29 and 51. The proposed objective would support the management of natural hazard risk by setting the outcomes sought for hydraulic neutrality for any land development in the upper catchment of the Pinehaven Stream;
- The proposed objective is not inconsistent with any regional plans or the Proposed Natural Resources Plan;
- There are no National Policy Statements or National Environmental Standards that are applicable to the proposed objective;
- The proposed objective does not impose any additional costs or requirements on development in the Pinehaven Catchment Overlay. The proposed objective merely ensures a consistent approach between subdivision and land development in the Pinehaven Catchment Overlay. The existing proposed policies and rules are sufficient to ensure the outcomes sought under the objective are achieved.
- The proposed objective does not change the cultural assessment that is outlined in the original s.32 analysis;
- The scale and significance of the proposed objective is not substantial. While the proposed objective ensures greater consistency between the subdivision and land development provisions of the plan change, the proposed objective does not in itself create any additional work that applicants within the Pinehaven Catchment Overlay would need to undertake for their resource consent applications. The resource consent requirements are set by the proposed rules, which are unaffected by the proposed objective.

⁴ It's important to highlight that the *subdivision* provisions are zone based (and thus require addressing in the relevant zone based chapters of the District Plan), while the *development* provisions are addressed within the natural hazard chapter which applies city wide (chapter 33) and thus does not require separate zone based rules which is necessary for the subdivision rules.

Reporting Officers:

A handwritten signature in black ink, appearing to read "B Osborn".

Brett Osborne
Senior Consultant Planner

A handwritten signature in blue ink, appearing to read "James W.". The "W" is stylized and somewhat abstract.

James Beban
Senior Consultant Planner

31 October 2017