

## **Recommendations to Council from the Statutory Management Committee**

Date: 1 April 2016

Councillors

### **WHANGANUI DISTRICT COUNCIL**

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**Subject:** **Plan Change 47 – Land Stability Assessment Areas  
(Roberts Avenue/Paterson Street and Mowhanau study areas)**

**Decisions on Submissions**

**Meeting Date:** **16<sup>th</sup> March 2016**

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#### **1.0 INTRODUCTION**

- 1.1 Council is presently reviewing the District Plan in phases. This Plan Change is the third of multiple stages of work relating to land stability.
- 1.2 This report records the public notification and hearing process in relation to Plan Change 47. It records the Statutory Management Committee's recommendations and Council's decisions on submissions.
- 1.3 For further details of the deliberations discussion refer to the formal Council Minutes of the meeting.

#### **2.0 PROCEDURAL MATTERS**

- 2.1 The Committee was convened to hear submissions on 16<sup>th</sup> March 2016. A total of 2 submitters attended. The Committee reviewed tabled evidence from submitters and listened to the reporting officer's recommendations before deliberating on submissions.
- 2.2 The Committee members were: Councillors Hamish McDouall (Chair) and Martin Visser, and Independent Commissioner Ramari Te Uamairangi.
- 2.3 Submitters who tabled or presented information to support their submissions were:
  - SJE Hodges
  - P Connelly
- 2.4 PC47 was publicly notified in accordance with Clause 5 of the 1st Schedule of the Resource Management Act 1991 (the Act) on 10<sup>th</sup> October 2015, with the period for submissions closing on Friday 11th November 2015.
- 2.5 A total of 2 submissions, were received at the close of submissions.
- 2.6 All submissions received were summarised and the decisions requested by submitters were publicly notified in accordance with Clause 7 of the First Schedule of the Act. The further submission process closed on Friday 16<sup>th</sup> December 2015. No further submissions were received.

#### **3.0 SCOPE OF THE PROPOSED PLAN CHANGE**

- 3.1 This Plan Change is one of a series of changes proposed as part of Phase 6 of the wider District Plan review which also addresses a variety of other matters.
- 3.2 One of the significant natural hazards affecting the Whanganui District is land instability. Lack of public awareness and knowledge of the extent of land instability

hazards has limited opportunities to avoid or mitigate potential effects on people and property.

- 3.3 The Local Government Act 2002 and Resource Management Act 1991 (the Act) both require councils to manage various aspects of natural hazards. This is supplemented by the provisions of the Regional Policy Statement (Horizons One Plan) which defines specific responsibilities and frameworks for natural hazard management, which the Whanganui District Plan must 'give effect to'.
- 3.4 Council identified ten priority areas within the urban area for investigation as they are considered likely to be at least partially susceptible to land instability hazards. Study of seven of these areas has now been completed. Sites that are confirmed as being susceptible to land instability hazard are identified in the LSAA overlays as follows:
  - Area A comprises sites of very high landslide risk that are unsuitable for future development.
  - Area B comprises marginal land requiring geotechnical investigation to confirm suitability for development.
- 3.5 The purpose of Plan Change 47 (PC47) is to amend the District Plan maps to include additional sites as either LSAA A or B, as recommended by the third stage of research, which investigated land instability issues in the Roberts Avenue/Paterson Street and the Mowhanau areas of Whanganui.
- 3.6 PC47 will partially 'give effect' to Section 10 of the Horizon's One Plan, and the Regional Policy Statement and build on previous work completed for the now Operative provisions of Plan Change 25 (and the subsequent Plan Change 38) which introduced the Land Stability Assessment Area (LSAA) overlays A and B, including issues, objectives, policies and rules for activities likely to affect or be affected by land stability issues.
- 3.7 This will ensure that appropriate assessment and regulation of development occurs to minimise any adverse effects of the hazard risk for the specific property and surrounding area.

#### **4.0 STATUTORY AND LEGISLATIVE FRAMEWORK**

##### **4.1 Resource Management Act 1991**

Section 74 of the Act requires the Council to change the District Plan in accordance with its functions under Section 31, the purpose of the Act in section 5 and the other matters under sections 6, 7 and 8.

Territorial authorities have the following functions under the Act:

##### *31 Functions of territorial authorities under this Act*

1. *Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
  - a. *The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources.*

- b. *The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –*
  - i. *the avoidance or mitigation of natural hazards*
- 2. *The methods used to carry out any of the functions under subsection (1) may include the control of subdivision.*

The Council is given these functions for the purpose of promoting the sustainable management of natural and physical resources, which is defined as:

- 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 wellbeing 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.*

In accordance with Section 5 of the RMA, PC38 has been developed with a focus on providing for the community’s health and safety whilst avoiding or mitigating any adverse effects of activities on the environment, including people and property.

Section 7 matters to which particular regard shall be had in assessing this Plan change are:

- (aa) *stewardship: ...*
- (f) *maintenance and enhancement of the quality of the environment:*

PC47 identifies areas prone to land instability, and as such addresses particular issues associated with subdivision, use or development of sites within such areas. Council is acting constructively and proactively to inform the community about known hazards and their extent. This will assist landowners to make decisions in full knowledge of the potential risks and potential costs. In addition, Council will assess development on a case by case basis, subject to specified criteria. This will facilitate an informed decision encouraging efficient use and development of land in hazard prone areas. In turn such an approach will facilitate maintenance of the quality of the environment.

Further guidance and direction on the way in which resources are to be managed is provided in sections 6, and 8 of the RMA.

## **5.0 RELEVANT POLICY STATEMENTS AND PLAN PROVISIONS**

### **5.1 National Policy Statements and Environmental Standards**

There are no National Policy Statements or National Environmental Standards relevant to this Plan change.

## 5.2 Regional Policy Statement and Regional Plan (the One Plan)

Sections 75 (3) and (4) of the Act require that a district plan must give effect to any regional policy statement and must not be inconsistent with any regional plan. Horizons Regional Council's One Plan is considered to be relevant to this proposed Plan change where they include requirements for the avoidance and mitigation of natural hazards generally and rules in relation to managing land instability risk.

PC47 does not amend any of the objectives policies or methods associated with the LSAA overlay. However, for completeness an assessment of how the provisions made Operative by PC25 compared with the objectives and policies of the Operative Horizons Regional One Plan are considered, along with an assessment of how PC47 extends the application of those provisions to additional sites and gives effect to the One Plan is provided in Table 1 below.

**Table 1**

<b>Regional One Plan (Operative 19 December 2014)</b>		<b>Proposed Plan Change 47</b>
<b>Objective</b>	<b>Policy</b>	<b>Evaluation</b>
<b>Objective 9-1: Effects of natural hazard events</b>  The adverse effects of natural hazard events on people, property, infrastructure and the wellbeing of communities are avoided or mitigated.	<b>Policy 9-1: Responsibilities for <i>natural hazard</i> management</b>  In accordance with s62(1)(i) RMA, <i>local authority</i> responsibilities for <i>natural hazard</i> management ...are as follows:...  (c) <i>Territorial Authorities</i> must be responsible for:  (i) developing objectives, policies, and methods (including <i>rules</i> ) for the control of the use of <i>land</i> to avoid or mitigate <i>natural hazards</i> in all areas and for all activities except those areas and activities described in (b)(ii) above,..... \	Objectives 11.2.1 and 11.2.2 give effect to One Plan Objective 9-1. Policies 11.3.2, 11.3.3 and 11.3.7 give effect to Policy 9-1. Rules are in place for land instability hazards and will be applied to these two additional areas.
	<b>Policy 9-4: Other types of natural hazards</b>  The ... Territorial Authorities must manage future development and activities in areas susceptible to natural hazard events (excluding flooding) in a manner which:  (a) ensures that any increase in risk to human life, property or infrastructure from natural hazard events is avoided where practicable, or mitigated where the risk cannot be practicably avoided  (b) is unlikely to reduce the effectiveness of existing works, structures, natural landforms or other measures which serve to mitigate the effects of natural hazard events, and  (c) is unlikely to cause a significant	Policies 11.3.2, 11.3.3 and 11.3.7 give effect to Policy 9-4.  The incorporation of these areas into the LSAA section of the Plan gives effect to this policy in relation to land instability as the existing objectives policies and rules relating to LSAA overlay A and B will apply to these most recently confirmed areas of susceptibility to land instability.

	increase in the scale or intensity of natural hazard events.	
	<p><b>Policy 9-5: Climate change</b></p> <p>The ... Territorial Authorities must take a precautionary approach when assessing the effects of climate change and sea level rise on the scale and frequency of natural hazards, with regard to decisions on:</p> <p>... (c) activities adjacent to rivers, and streams</p> <p>...(f) flood mitigation efforts activities, .....</p>	<p>Policy 11.3.3 gives effect to policy 9-5, by requiring a precautionary approach in respect to assessment of all hazards and this includes consideration of climate change.</p> <p>The focus of this policy is on flood hazard and this has been addressed in a previous plan change.</p>

## 6.0 SUMMARY OF SUBMISSIONS

6.1 Refer to Appendix 1 to this report for a summary of each submission and Council's decision and reasons for each decision.

## 7.0 PRINCIPAL ISSUES IN CONTENTION

7.1 Submitters identified the following concerns in relation to PC47:

- Inadequate site specific research and investigation to justify restrictions
- Implications for existing property owners, loss of property value and difficulties obtaining insurance; Council has a duty of care.
- Plans are not concise enough with regard to individual properties.

## 8.0 SUMMARY OF EVIDENCE HEARD

8.1 Key evidence presented by submitters is summarised below:

### ***Mr Connelly (Sub 1)***

- The submitter was unsure where he is left now as he believes that he has done everything he can to ensure that the risk is eliminated from his property. He provided photos of the work that has been done, confirmed that his property was currently vacant and pointed out on a map where his property (95 Mowhanau Drive) is located.
- The submitter also had concerns that he cannot protect his land from the hazards of adjoining land as he cannot do work on his neighbour's properties. He wanted to know if there was anything that could be done to protect his land.

### ***Mr Hodges (Sub 2)***

- Mr Hodges table a one-page report which advised that he did not feel that there had been enough research done on the land stability issues in the Mowhanau area. He felt that part of one of his properties (situated on the intersection of Handley Road and Kai Iwi Valley Road bordering Broadview Heights), should not be included within Area A.

- Mr Hodges asked that Councillors and staff meet with him on site to see if this could be rectified.
- He also requested that if Plan Change proceeds in the present form that Council address rating on those properties affected by the resulting drop in value.

8.2 Officer's Right of Reply is summarised below:

- The Officer confirmed that nothing she had heard at the Hearing, had caused her to change the recommendation in the S42A report.
- Due to the concerns raised by the submitters, the Officer asked that Mark Frampton (Opus Consultants) comment on the confidence of his assessment. Mr Frampton advised that this is the third stage of the LSAA studies in which 7 areas had been assessed to date. Opus has developed a methodology to assess areas of land stability. Giving him further confidence was the storm event of June 2015 which confirmed the study's findings, and provided a further understanding of where and how slips were occurring. Following the storm event, Mr Frampton confirmed that himself and a colleague (who had prepared the mapping) viewed sites within the study area. This enabled him to calibrate the effects of the storm event in June with the findings in the report.
- The Officer stands by the comments and recommendations of the S42A report.

## 9.0 MAIN FINDINGS ON PRINCIPAL ISSUES

9.1 The Committee considered each submission and confirmed a decision for each.

The Committee accepted the Officer's assessment that the S.32 evaluation had been completed appropriately.

Refer to Appendix 1 for the decisions on individual submissions.

9.2 Effect of Plan Change on individual properties

- The Council accepts it has a duty of care to inform residents of natural hazards as knowledge about them becomes available, regardless of previous consents that may have been issued.
- Balancing the costs and benefits to both the wider community and individual property owners, Council believes research undertaken to date is sufficient to guide it in establishing broad thresholds for development. The study methodology has used remote sensing methods, historical photographs, and existing soil and geological maps, supplemented with a walkover of the study area by an engineering geologist. This has identified areas where further investigations and reporting are required before certain activities are undertaken. Undertaking this site specific work for all properties would be cost prohibitive, particularly when further development work may never occur on a number of properties.
- The issue of a Code of Compliance, indicates Council has reasonable grounds to believe that a particular structure has been built in accordance with the Building Consent issued in compliance with the Building Code/ Building Act and Building Regulations in effect at the time of issue. This confirms the structure is appropriate

given knowledge at the time of construction, but does not remove the inherent risk identified for the site generally by the LSAA overlay.

- The risk zoning applies to the underlying ground, and the Land Stability Assessment Area (LSAA) overlay does not imply that existing structures within the Area are inherently unstable. However, if development works are undertaken without due regard to the land stability hazards, then people and property may be at increased risk. The LSAA rules attempt to ensure that appropriate consideration of land stability hazards are made before future development works are undertaken.
- The LSAA rules also ensure that good practice is followed when development works are planned, and that poorly planned and executed development work that would likely have a negative impact on property and people is avoided. The LSAA rules require a geotechnical report be prepared before most land disturbance activities are commenced.
- The District Plan rules relating to LSAA areas will ensure that all future works, for instance on neighbouring properties or on the road above will need to consider the risk of instability and ensure any proposed works are appropriately designed.
- It is for private land owners to demonstrate that land can be safely developed without adverse effect on the environment. It is not Council's role to investigate the suitability of individual sites for development, rather it is for Council to take a precautionary approach to the identification of hazards and the management of risks of development on hazard prone sites.
- Council has a responsibility to the wider community to ensure that any future use or development of potentially unstable land does not worsen or exacerbate the hazard potential, as this would have an adverse effect on the environment and be contrary to the purpose of the Resource Management Act 1991.

### 9.3 Impact on property values:

- The actual level of risk remains the same as before the study was undertaken. With the LSAA rules in place, Council is better able to manage the risk of future development causing instability and damage to the property or adjacent properties, which is more likely to affect property prices and insurance costs.
- Implications for the market value of individual properties do not outweigh Council's obligation to take a precautionary approach where hazard susceptibility is identified, to inform the community and to avoid works that may worsen the risks to people or property.
- The impact on insurance and property values will be affected by a range of variables for each property such as:
  - Extent to which insurance and market already recognises and accounts for the hazard potential.
  - The portion of the site susceptible to the hazard.
  - The location of dwellings or other buildings relative to the hazard area.
  - The extent to which structures can be demonstrated to have been designed and constructed appropriately for the site specific hazard potential.

- Familiarity of the market to what hazard susceptibility means and recognition that many hazards exist and are recognised in the Plan including flood, coastal and land instability. In future, the Plan is likely to also include identification of sites susceptible to liquefaction and possibly tsunami hazards.

#### 9.4 Ongoing provision of information regarding LSAA

- Affected landowners were kept informed as research progressed and as the Plan change process was implemented. A significant number of landowners visited and discussed their site specific circumstance with Council officers at two drop in sessions held at the Mowhanau Hall and Aramoho School, or through individual approaches to Council officers.
- Furthermore, the Act requires the Council to provide the submitters with a copy of this decision.
- Councillors acknowledged that landowners would be kept similarly informed , if and when any future investigation is undertaken by Council.

#### 9.5 Other Matters

The Committee acknowledged and appreciated that the officers had used the opportunity of the Hearing, to engage further with the submitters about site specific concerns.

### 10.0 **SECTION 32 REPORT EVALUATION**

No further evaluation for the S.32 report was required as no amendments were made to the Plan change as a result of Council's Decision on Submissions. The S32 report is attached as Appendix 4.

### 11.0 **STATEMENT OF DECISIONS AND REASONS**

Refer to Appendix 1 to this report for the Council's decision and reasons relating to each submission. Refer to Appendices 2 and 3 for the complete version of the Plan change maps and text.

### 12.0 **APPENDICES**

- 1: Decisions on Submissions and Reasons for Decisions
- 2: Relevant Planning Maps
- 3: Marked- Up Version of Plan Change 47 following Decisions on Submissions
- 4: Section 32 Evaluation

Signature of Chairman

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Councillor Hamish McDouall

Dated



## APPENDIX 1 – Decisions on Submissions and Reasons for Decisions

The following are the summary of submissions received and decisions of Council on each submission following consideration of the evidence.

Submitter Name	Sub Number	Page
J Souness & P Connelly	1	9
SJE Hodges	2	10

**Submitter Name:** J Souness & P Connelly

**Submission No:** 1

**Address:** 95 Mowhanau Drive

Summary:

Opposed in part to the proposed plan change. Purchased property at 95 Mowhanau Drive, Kai Iwi in 2010. The LSAA approach is a global approach to the Mowhanau area.

Have undertaken extensive development of the property including the construction of two retaining walls and obtained building consent with an engineer's Producer Statement. Submitters consider all risk of potential landslides on the property are mitigated, by going through this process. The proposed plan change will have financial impacts due to increased costs such as requirements for a geotechnical assessment for future building and would devalue the property.

Existing map of affected area is low scale and difficult to make an accurate assessment on.

Decision Sought:

1. A clear and concise plan that shows what portion, if any of their property is directly affected.
2. That 95 Mowhanau Drive, Kai Iwi be removed from the LSAA as the owners have already undertaken extensive work to eliminate risk of potential landslides on this property.

**Council Decision:**

That Submission 1 from J Souness & P Connelly is appreciated and has been considered but the remedies sought be **rejected**.

No amendments are made as a result of this submission.

**Council Reasons for Decision:**

1. The Councillors were satisfied that the staff had addressed the need for submitters property to be included.

2. The Councillors acknowledged the submitter's situation but they did not believe that the submitter's concern of the effect of the plan change on their individual property should outweigh the need for the public to be aware of the risk of land stability.
3. The Councillors also acknowledged that there would be a process for any new development to follow, and that the onus was on the owner of the property to have that individual risk assessment undertaken, and not the Council. The Councillors were mindful that if they made an exception for this submitter and undertook a more in-depth assessment on the individual property, that they would need to do this for every affected property.
4. It was noted that the submitter acknowledged the need for the Plan Change but that they did not want it to affect their property.
5. The Councillors acknowledged that the land stability assessments were more appropriate than ever after the June 2015 rain event.

**Submitter Name: SJE Hodges**

**Submission No: 2**

**Address: 816 Rapanui Road**

**Summary:**

Mr Hodges opposes the plan change because Government Valuations (GVs) are high. Submitter owns several properties on separate titles at Mowhanau. If they are not able to be subdivided, it will reduce the value of the properties, and the GV will need to drop along with rates.

**Decision Sought:**

1. That Council keep the submitter up to date with future research relating to potential land instability at Mowhanau.
2. That Council provide more follow-up so that when a submitter speaks in support of the submission, research is complete.

**Council Decision:**

That Submission 2 from SJE Hodges is appreciated and has been considered but the remedies sought be **rejected**.

No amendments are made as a result of this submission.

**Reasons for Decision:**

1. The Councillors were satisfied that the staff had addressed the need for submitters property to be included.
2. The Councillors acknowledged the submitter's situation but they did not believe that the submitter's concern of the effect of the plan change on their individual property should outweigh the need for the public to be aware of the risk of land stability.

3. The Councillors were satisfied that Mr Frampton had provided them with the knowledge of the potential risk to Mr Hodges' property, and therefore, that the Opus report should be supported.
4. It was noted that Mr Hodges had concerns about the value of his properties. It boils down to a matter of private property rights versus public good, and in this cause the public good had to prevail.
5. It was noted that the submitter acknowledged the need for the Plan Change but that they did not want it to affect their property.
6. The Councillors acknowledged that the land stability assessments were more appropriate than ever after the June 2015 rain event.