

Report to Statutory Management CommitteeDate: 11th February 2016

Councillors

WHANGANUI DISTRICT COUNCIL

Subject: **Section 42a Officers Report**
Proposed Plan Change 47 – Land Stability
Assessment Areas – Stage Three

Meeting Date: **16 March 2016**

Prepared for Chief Executive by: **Julie-Anne Shanks**

1.0 SUMMARY

- 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 The purpose of Proposed Plan Change 47 (PC47) is to amend the District Plan maps to include additional sites as either LSAA (A) or (B), as recommended by this stage of research, relating to potential susceptibility to land instability issues in the Mowhanau and Roberts Avenue/Paterson Street areas of Whanganui.
- 1.3 Introduction of PC47 will partially ‘give effect’ to Horizon’s One Plan, and the Regional Policy Statement, and build on previous work completed for the now operative provisions of Plan Change 25 (PC25), which introduced Stage 1 of 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.

RECOMMENDATIONS (Of the Statutory Management Committee)

That the Council:

- 1. receives the report.
- 2. adopts the Decisions Report including the evaluation required under section 32 of the Resource Management Act 1991.
- 3. accepts, accepts in part or rejects the submissions as set out in Section 7 of the Report for the reasons given.
- 4. adopts Proposed Plan Change 47 to the Whanganui District Plan.

Appendices:

- 1. **Copy of the Public Notices**
- 2. **Submissions Received**
- 3. **Section 32 Evaluation (including proposed District Plan Maps & LSAA Plan provisions, and Opus International Consultants Report - *Land Stability Assessment Areas –Mowhanau & Roberts-Paterson – Risk Study Report*, July 2015).**

Contents Page			
Section No./ Topic		Submission No.	Page
2.0	INTRODUCTION		3
3.0	PROPOSED PLAN CHANGE		3
3.1	Purpose		
3.2	Background Research		
4.0	PROCEDURAL MATTERS		4
4.1	Consultation Summary		
4.2	Key Statistics		5
5.0	STATUTORY & LEGISLATIVE FRAMEWORK		5
5.1	Resource Management Act 1991		
5.2	National Policy Statements & Environmental Standards		6
5.3	Regional Policy Statement & Regional Plan		7
6.0	SECTION 32 EVALUATION		8
7.0	SUBMISSION ANALYSIS		9
7.1	J Souness & P Connelly	1	9
7.2	SJE Hodges	2	9
7.3	Officer Comments Relating to Submissions 1 & 2	1 & 2Appen	10
7.4	Officer Recommendations	1 & 2	13

2.0 INTRODUCTION

- 2.1 This Plan Change is one of a series of changes proposed as part of Phase 6 of the wider District Plan review.
- 2.2 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.
- 2.3 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 define specific responsibilities and frameworks for natural hazard management, which the Whanganui District Plan must 'give effect to.
- 2.4 Council has identified ten priority investigation areas within the urban area that are likely to be at least partially susceptible to land instability hazards. Study of five of these areas has now been completed (Plan Changes 25 and 38).
- 2.5 This Plan Change covers a further two areas. 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.
- 2.6 PC47 identifies sites on the Planning maps that are likely to be susceptible to land instability hazards, within the latest two areas (Mowhanau and Roberts-Avenue/Paterson Street). The implication of this is that existing objectives, policies and rules for the LSAA will apply to any development of those sites. PC47 will reduce risk to people and property through managing use of land potentially at risk of land instability.

3.0 PROPOSED PLAN CHANGE

3.1 Purpose

The purpose of PC47 is to incorporate sites in the Mowhanau and the Roberts Avenue/Paterson Street study areas that are confirmed to be moderately or highly likely to be susceptible to land stability hazards, into the LSAA overlay on the District Planning maps; and to 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.

3.2 Background Research

Council created the Land Stability Assessment Area (LSAA) A and Area B overlays by way of Plan Change 25 which was made Operative on 13

December 2014. The LSAA replaced the existing Hillside Protection Zone, for the affected sites. Area A comprises sites of very high landslide risk. Area B comprises marginal land requiring geotechnical investigation to confirm suitability for development.

Council had previously identified 10 areas prone to land instability, for priority investigation and the results of the first two studies formed the technical basis for Plan Change 25, the second three studies formed the technical basis for Plan Change 38.

In late 2014, Council commissioned investigations of another two priority areas (Mowhanau and Roberts Avenue/Paterson Street areas), to review the susceptibility to land instability risks. The properties within those study areas, deemed susceptible to land instability are captured in this Plan change.

Refer to Appendix 3 for maps of the Mowhanau and Roberts Avenue/Paterson Street study areas and a copy of the research report prepared by Opus International Consultants Ltd titled *Land Stability Assessment Areas – Mowhanau & Roberts-Paterson – Risk Study Report*, by Opus International Consultants Ltd, July 2015.

4.0 PROCEDURAL MATTERS

4.1 Consultation Summary

Consultation with a range of stake holders, in accordance with the requirements of Schedule 1, was undertaken in formulating the proposed Plan change.

Throughout the wider Plan review process, Council has had on-going dialogue with Horizons Regional Council regarding natural hazard management, and how to implement the provisions of Section 10 of the Regional One Plan.

Landowners were consulted as follows:

- 24th November 2014- Council sent a letter to all landowners within the two study areas, introducing the fact that a study had been commissioned that affected their properties: The letter included links to the existing rules for LSAA and a map of the relevant area. A timeframe for the study was identified and owners were encouraged to contact Council officers with any queries.
- 31st July 2015 - Council sent a letter to all landowners within the two study areas, providing a link to the completed report entitled "*Land Stability Assessment Areas –Mowhanau & Roberts-Paterson – Risk Study Report July 2015*". The letter invited all landowners to a series of 'Drop-in' events at the Aramoho School and the Mowhanau Hall, if they wanted to discuss the report and its implications for their individual properties.

- On Monday 10 August (Aramoho School) and Tuesday 11 August (Mowhananu Hall), a series of two hour 'Drop-in' sessions were held between 4.00 and 6.00pm. The first was only attended by a few landowners but the second was well attended by landowners, and lots of questions were asked. These Drop-in sessions were informal and people were able to view the report and maps for the study and discuss the implications with Council's representative engineer and planner. They also had the opportunity to discuss the Act process from here on, and how they could be involved.
- Letters were sent to parties are specified in Clause 3, 1st Schedule of the Act.
- Notification of all parties required by Clause 5, 1st Schedule of the Act following Council's decision to notify.

4.2 Key Statistics

PC47 was publicly notified in accordance with Clause 5 of the 1st Schedule of the Act on 10th October 2015, with the period for submissions closing on Friday 11th November 2015. A copy of the public notices are included as Appendix 1.

A total of 2 submissions, were received at the close of submissions. Copies of submissions received are included in Appendix 2.

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 16 December 2015. No further submissions were received.

5.0 STATUTORY AND LEGISLATIVE FRAMEWORK

5.1 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:

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, PC47 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 proposes to assess development on a case by case basis, subject to specified criteria. This will also 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 Act.

5.2 National Policy Statements and Environmental Standards

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

5.3 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.

It is noted that 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 compare with the objectives and policies of the Operative Horizons Regional One Plan are considered, along with an assessment of how the extension through PC47 to apply those provisions to additional sites gives effect to the One Plan is provided in Table 1 below.

Table 1

Regional One Plan (Operative 19 December 2014)		Proposed Plan Change 47
Objective	Policy	Evaluation
Objective 9-1: Effects of natural hazard events The adverse effects of natural hazard events on people, property, infrastructure and the wellbeing of communities are avoided or mitigated.	Policy 9-1: Responsibilities for natural hazard management 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..
	Policy 9-4: Other types of natural hazards The ... Territorial Authorities must manage future development and activities in areas susceptible to natural hazard events (excluding flooding) in a manner which:	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

	<p>(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</p> <p>(b) is unlikely to reduce the effectiveness of existing works, structures,</p> <p>natural landforms or other measures which serve to mitigate the effects of natural hazard events, and</p> <p>(c) is unlikely to cause a significant increase in the scale or intensity of natural hazard events.</p>	<p>in relation to land instability as the existing objectives policies and rules relating to LSAA overlays A and B will apply to these most recently confirmed areas of susceptibility to land instability. .</p>
	<p>Policy 9-5: Climate change</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 Section 32 Evaluation

- 6.1 The Act requires that when a council undertakes a plan change that it produce a report evaluating the costs and benefits of primary options considered. This is known as a Section 32 evaluation. (Refer to Appendix 3)
- 6.2 A re-evaluation has not been completed as required by s32A of the Act as no amendments are proposed as a result of submissions.

7.0 SUBMISSION ANALYSIS

The following are the assessment of submissions and further submissions with recommendations by the Planning Officer.

7.1 Submitter Name: J Souness & P Connelly

Submission No: 1

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.

7.2 Submitter Name: SJE Hodges

Submission No: 2

Address: 816 Rapanui Road

Summary:

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.

7.3 Officer Comments Relating to Submissions 1 & 2:

<i>Why the Plan Change is necessary: Response to Submitters 1 & 2</i>
--

1. 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.
2. Council research confirms a potential risk to life and the environment within the proposed Land Stability Assessment Areas. As a result, Council must take a precautionary approach to future development potential as required by the Horizon's Regional Council One Plan, which Council must give effect to.
3. 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.
4. The cost of further research to identify a more refined area of potentially affected land, would likely be significant. Council accepts the view of its engineering consultants that the boundaries of the proposed zone and development restrictions would be unlikely to alter significantly with more detailed analysis.

<i>Provide a clear and precise plan: Response to Submitter 1</i>

5. Submitter 1 seeks that Council provide a precise plan that shows what portion of their property is affected. To do this, Council would need to carry out a site investigation of the property. In response, it is not Council's role to undertake site specific investigations, as this is the responsibility of the landowner in the event that works are proposed. Council must be satisfied that it is reasonably likely that the land is susceptible to instability and that a precautionary approach prior to development being permitted is the most appropriate way to give effect to Horizon's One Plan and to achieve the purpose of the Act.
6. For both areas, stereoscopic aerial photography was obtained to assess the topography of the areas, along with walkovers of the area. The topographical data reviewed was obtained from LIDAR survey data for the Roberts Avenue/Paterson Street area, from which 0.5m contours through the city have been created. This is the most accurate topographical data available. No 0.5m contours were available for the Mowhanau Area.

Duty of Care: Response to Submitter 1

7. The Council 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.
8. The issue of a Code of Compliance including consideration of a Producer Statement, 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 time of construction, but does not remove the inherent risk identified for the site generally by the LSAA overlay.

Existing Structures and Stabilisation: Response to Submitter 1

9. 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.

10. This will over time provide increased certainty for property purchasers that structures have been designed and constructed appropriately taking account of the hazard potential.

Adequacy of Study Methodology: Response to Submitter 1

11. 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.
12. The level of information (or certainty about the extent and severity of any site specific hazard) required is significantly more onerous to enable development of a specific site susceptible to land instability, than the level of information

required to be provided by Council to demonstrate that areas are susceptible to land instability hazard and as such should be recorded in the Plan.

The rationale for this difference in thresholds of information is that the former would permit development and Council needs to be certain that it will be safe, whereas inclusion of properties within a hazard overlay is simply an indicator that further detailed investigation is required to demonstrate that development can occur without undue risk to people or the environment.

13. 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.

<p><i>Property Values and Insurance Costs: Response to Submitters 1 & 2</i></p>
--

14. 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.
15. Implications for market values of individual properties do not outweigh Council's obligation to take a precautionary approach where hazard susceptibility is identified and 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.
- Extent to which the Plan consistently identifies and controls development on sites of similar hazard vulnerability in the Plan, ie Council has only investigated half of the areas believed to be susceptible to land instability,

as these are addressed over time, a greater awareness and a certain normalising effect may occur.

Council to keep the submitter informed and to provide follow up:
Response to Submitter 2

16. Council has endeavoured throughout this process to advise landowners of information at the earliest possible time. Landowners were advised of the proposed study at the time it was commissioned. A copy of the technical report was made available to landowners within two weeks of Council receipt of the report. Landowners were encouraged to contact officers at any time about individual concerns and two Open Forum events were held at venues within the study areas to provide opportunities for informal face to face discussion about site specific issues.
17. In addition the Council is required under the Resource Management Act to keep all submitters of plan changes informed, and has statutory requirements to contact the submitters to advise of stages in the process as they occur including providing the submitter with the hearing date, and this report, and with a copy of the Council's decision.

7.4 Officer Recommendations

That Submission 1 from J Souness & P Connelly and Submission 2 from SJE Hodges are appreciated and have been considered but the remedies sought be **rejected**.

No amendments are recommended as a result of these submissions.