

**Wanganui District Council
District Plan Review
Phase 6**

Section 32 Report

**Proposed Plan Change 38
Land Stability Assessment Areas –
Stage Two**

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1. PLAN CHANGE PROPOSAL

1.1 DESCRIPTION OF PROPOSED PLAN CHANGE 38

Proposed Plan Change 38 (PPC38) proposes to:

- amend District Plan maps Urban 16, Urban 22 and Urban 27 to identify additional properties as being within the LSAA A and B areas;
- amend Chapter 8 Introduction to incorporate the recent report looking at Durie Hill, Bastia Hill and Ikitara Road study areas; and
- delete Sections 8.6 and 8.7 relating to the Hillside Protection Zone.

1.2 PROPOSED AMENDMENTS TO THE DISTRICT PLAN

Chapter 8 of the Plan identifies a series of areas which are identified as potentially prone to a land stability hazard. Research to confirm or refine this anecdotal assessment is being undertaken in stages over the next few years. The first stage of research was completed in 2012 and reviewed two the areas identified as most at risk – being the Hipango Terrace and Anzac Parade study areas. These areas and relevant Plan provisions were incorporated into the Plan by way of Plan Change 25 which was made operative in 2013.

PPC38 proposes to include additional sites as either LSAA (A) or (B) as identified by the second stage of research which covered the Bastia Hill, Durie Hill and Ikitara Road areas.

The existing District Plan provisions for LSAA would then apply to those affected properties.

No changes are proposed to the LSAA objectives, policies or rules as part of this Plan change. The LSAA provisions will supersede and replace the Hillside Protection Zone for the sites in Turoa Road where that has previously applied. The Hillside Protection Zone will no longer apply to any properties in the District and will be deleted.

2. SECTION 32 REPORT

2.1 INTRODUCTION

This report has been prepared in fulfilment of the requirements of Section 32(1) of the Resource Management Act 1991 (RMA) which requires Local Authorities to prepare an evaluation report summarising the alternatives considered along with the benefits and costs of the Plan change, and giving reasons for that evaluation.

2.1.1 Plan Change Purpose

The purpose of PPC38 is to incorporate sites in the Bastia Hill, Durie Hill and Ikitara Road 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.

2.2 REASON FOR PROPOSED PLAN CHANGE 38

2.2.1 Background

Council created the Land Stability Assessment (LSA) Area A and Area B 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.

In early 2014 Council commissioned investigations of another three priority areas, to review the susceptibility to land instability risks. The properties affected by the new LSA Areas are defined in this study.

Refer to Appendix One for maps of the Bastia Hill, Durie Hill, Ikitara Road study areas.

2.2.2 Engagement with Landowners

- 22nd April 2014 Council send a letter to all landowners within the three 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 encouraged to contact Council officers with queries.
- 10th June 2014, Council sent a letter to all landowners within the three study areas, providing a link to the completed report entitled "*Land Stability Assessment Areas – Ikitara Road, Bastia Hill and Durie Hill – Risk Study Report May 2014*". The letter invited all landowners to a series of 'drop in'

events at the Durie Hill School Hall, if they wanted to discuss the report and its implications for their individual properties.

- 18th, 19th, 24th June a series of two hour 'Drop in' sessions were held between 4.30 and 6.30pm. These were well attended by landowners. It was informal and people could view the implications for their properties and discuss the implications with Council's representative engineer and planners.
- A letter was sent to landowners affected by PPC38 advising that Council would be considering the recommendation from the Planning officer that PPC38 be notified on 10th September 2014.
- Notification of all parties required by clause 5, 1st Schedule RMA will occur following any decision of Council to notify.

2.2.3 Legal Framework for Plan Changes

Section 74 of the RMA requires the Council to change the District Plan in accordance with its functions under Section 31, the purpose of the Act and the other matters under Sections 6, 7 and 8. In addition, the District Plan must also give effect to the Regional Policy Statement (Section 75(3)). Council must also carry out an evaluation under Section 32 before notifying any proposed change to the District Plan.

2.2.4 Resource Management Act 1991

Section 74 of the RMA 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 RMA:

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

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.*

Further guidance and direction on the way in which resources are to be managed is provided in sections 6, 7 and 8 of the RMA.

Before a Plan change is notified, the Council must undertake the following duties under Section 32 of the RMA:

32(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 provision*

.....

(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.

2.2.5 National Policy Statements and Environmental Standards

There are no relevant statements or standards.

2.2.6 Horizons Regional Council – Regional Policy Statement

Section 75(2) of the RMA requires that a District Plan must not be inconsistent with the regional policy statement or any regional plan.

Horizons Regional Council's One Plan is considered to be relevant to this Proposed Plan Change in that it relates to seismic activity.

It is noted that Plan Change 38 does not amend any of the objectives policies or methods associated with LSAA. However for completeness an assessment of how the provisions in Proposed Plan Change 38 compare with the Objectives and Policies of the Operative Regional Policy Statement and the Proposed One Plan are considered in Table 1 below.

Table 1

Operative Regional Policy Statement (RPS)		Proposed Plan Change 25
Objectives 24 & 5, 6, & 36	Policy	Evaluation
<p>To avoid or mitigate the adverse effects of natural hazards upon human life, infrastructure and property, and the natural environment.</p> <p>Obj 5. To achieve sustainable land use.</p> <p>Obj 6. To avoid, remedy or mitigate the adverse effects of urban development.</p> <p>Obj 36. To improve the availability of information to assist the understanding of the effects of activities on the environment.</p>	<p>24.1 To raise public awareness of the risks of natural hazards.</p> <p>24.2 To improve knowledge of the threats posed by natural hazards.</p> <p>24.3 To ensure that activities and development of areas at risk from natural hazards minimise risks to human life, infrastructure and property, and the natural environment.</p> <p>In areas of high risk to people and communities, hazard avoidance is to be advocated. Where costs of hazard avoidance outweigh its benefits local authorities are to promote hazard mitigation. This includes education, planning, response and recovery procedures.</p>	<p>Objective 8.2.1 gives effect to RPS Objective 36 directly and Objective 24 indirectly.</p> <p>Objective 8.2.2 gives effect to RPS Objective 24, 5 and 6 directly as the focus of research and protection is in the urban area where greatest risk to life and infrastructure is present.</p>

Regional One Plan (As Amended by Decision August 2010)		Proposed Plan Change 38
Objective	Policy	Evaluation
Objective 10-1: 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 10-1: Responsibilities for <i>natural hazard</i> 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, and (ii) identifying <i>floodways*</i> (as shown in Schedule I1) and other areas known to be inundated by a 0.5% annual exceedance probability (AEP) flood event on planning maps in <i>district plans</i> , and controlling <i>land</i> use activities in these areas in accordance with Policies 10-2, and 10-4.	Objective 8.2.2 gives effect to One Plan Objective 10-1. Policies 8.3.2, 8.3.3 and 8.3.7 give effect to Policy 10-1. Existing rules regulate land instability hazards.
	Policy 10-2: Development in areas prone to flooding	Policy 8.3.7 and 8.3.8 at present give some effect to this policy. A future phase of the Plan review project will include rules to give stronger effect to Policy10-2.
	Policy 10-5: 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: (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 increase in the scale or intensity of natural hazard events.	Proposed Objective 8.2.2 gives effect to One Plan Objective 10-1. Policies 8.3.2, 8.3.3 and 8.3.7 give effect to Policies 10-1 and 10-5. The LSAA as proposed to be extended, gives effect to this policy in relation to land instability. It is acknowledged that rules are required along with detailed site specific scale mapping. This has been developed in conjunction with Horizons in relation to flood hazards and is being progressed separately.
	Policy 10-6: Climate change 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: ... (c) activities adjacent to rivers, and streams ... (f) flood mitigation efforts activities,	Policy 8.3.3 gives effect to this RPS policy, by requiring a precautionary approach in respect to assessment of all hazards and this includes consideration of climate change. It is acknowledged that rules are required along with detailed site specific scale mapping. This is being progressed separately for flood hazards.

2.3 EVALUATION

2.3.1 Evaluation of the purpose of PPC38

Section 32 (1)(a) of the RMA requires that Council evaluate the extent to which the purpose of PPC38 is the most appropriate way to achieve the purpose of this Act. To do this Council has compared PPC38 to the other reasonable alternatives as follows:

Reasonable Options

1. Do nothing – retain the existing Plan maps unchanged and do not identify the Bastia Hill, Durie Hill or Ikitara Road properties as being within the LSAA.
2. Extend the existing Hillside Protection zone to include the Bastia Hill, Durie Hill or Ikitara Road properties identified by the 2014 Opus Report as being susceptible to land instability.
3. Extend the existing LSAA overlay to include the Bastia Hill, Durie Hill or Ikitara Road properties as recommended by the June 2014 Risk Assessment Report¹

The Do Nothing Option would be inconsistent with the existing land instability hazard management approach, adopted in the District Plan through Plan Change 25 in 2013. Council and the community have, through that Plan Change, determined that progressive investigation of the 10 urban areas most likely to be susceptible to land instability hazard risks and the subsequent inclusion in the District Plan, of sites confirmed as being of moderate or high susceptibility. Those sites are then subject to the LSAA objectives policies and regulation of activities on those sites. This is the most appropriate way to achieve the objectives of the Plan, the requirements of the One Plan and the purpose of the RMA. The staging of research is not ideal but has been necessary due to Council budget constraints.

Option two to apply the Hillside Protection Zone to sites identified in the Opus 2014 Risk Report, as being susceptible to land instability hazard risk is not appropriate as the provisions are less effective than those developed in 2013 for the LSAA. The Hillside Protection Zone is a rather blunt instrument eg all excavation of land is a non-complying activity. It does not respond to the varying degrees of hazard risk by site and by activity. It is less effective and efficient and not the most appropriate way to achieve the objectives given the recent completion of the LSAA provisions which were designed to eventually replace the Hillside Protection Zone.

Option 3 is considered to be the simplest and most effective and efficient way to achieve the objectives of the Plan, the One Plan and the purpose of the RMA. Additional properties now confirmed to be likely to be subject to a moderate or high risk of land instability are to be identified as being within the LSAA overlay

¹ Opus Report June 2014

and existing recently developed Plan provisions would apply as a consequence. No change to the existing Operative LSAA Plan provisions is required.

2.3.2 Examination of Provisions in PPC38

Section 32 (1)(b) of the RMA requires that Council examine whether the provisions included in PPC38 are the most appropriate way to achieve the purpose of this Act. In this instance the 'provisions' are deemed to be:

Methods

- i) Identify sites as LSAA overlay on planning maps
- ii) Existing objectives, policies, and rules for LSAA overlay shall be applied to the sites identified on the planning maps.

The reasons for deciding on these provisions are that:

- Inclusion of the relevant sites on the planning maps is the simplest and clearest way to identify sites of moderate and high risk of susceptibility to land instability. It is consistent with the format and intended functioning of the Plan. Plan users expect to identify the relevant zone, overlays or site features or heritage items on the planning maps. This is a method which is most appropriate in the context, to achieve the objectives of the Plan, the requirements of the One Plan and the purpose of the RMA.
- Adoption of the recently operative Plan provisions relating to the LSAA overlay is the simplest and most effective and efficient way to achieve the purpose of the RMA. It was the clear intention of the Council and community, in making Plan Change 25 operative, that as further priority study areas were investigated that they would be included in the Plan and the Plan provisions for sites in the LSAA overlay would apply. This intention is clearly spelt out in the introduction to Section 8.4 of the Plan.

The options available to achieve the purpose of PPC38 are detailed above.

Evaluation of Provisions in PPC38 -	
<p><i>Methods</i></p> <p>i) <i>Identify sites as LSAA overlay on planning maps</i></p> <p>ii) <i>Existing objectives, policies, and rules for LSAA overlay shall be applied to the sites identified on the planning maps.</i></p>	
summary of benefits	<p>Environmental Inappropriate development on hazard prone sites in the Bastia Hill, Durie Hill and Ikitara Road areas will be avoided.</p> <p>Economic Potential purchasers or occupiers of property increasingly rely on District Plans to identify this information and alert them to the potential affects. Community will be enabled to make better informed development and investment decisions. No specific employment consequences except potential increase in demand for geotechnical specialist skills.</p> <p>Social/ Cultural Improved awareness and understanding of the risks of natural hazards will be achieved by identifying those sites most likely to be susceptible to land instability, in the Plan.</p>
summary of costs	<p>Environmental Nil</p> <p>Economic Costs fall on the current owners who risk loss of property value and increased resistance in the property market, as well as potential constraints on development opportunities. No specific employment consequences except potential increase in demand for geotechnical specialist skills.</p> <p>Social/ Cultural Add stress and financial hardship on those who own property affected, where perception rather than real risk will impact on their options eg retirement income</p>
Effectiveness	The methods are effective in relation to PPC38 properties as improved understanding and regulation will support better informed decision making and sustainable management.
Efficiency	The methods are efficient in relation to PPC38 properties as improved understanding will support better informed decision making which recognises inherent levels of risk. It is consistent with the recently developed approach operative in the Plan.

Evaluation of Provisions in PPC38 -	
<p><i>Methods</i></p> <p>iii) <i>Identify sites as LSAA overlay on planning maps</i></p> <p>iv) <i>Existing objectives, policies, and rules for LSAA overlay shall be applied to the sites identified on the planning maps.</i></p>	
Appropriateness	<p>The methods are appropriate in achieving the purpose of the Act. It is appropriate to clearly signal the thresholds for development and give effect to the One Plan.</p> <p>In view of existing levels of understanding of local natural hazard risks, it is considered the current District Plan approach is not the most appropriate to achieve the proposed objective of avoiding or mitigating risk. The alternative approach of providing clear information, raising awareness and providing regulatory direction is more appropriate as it protects areas at risk from the effects of natural hazards by managing activities in these areas. Inevitably much existing development is located in areas subject to natural hazards and it is important to manage any further intensification or redevelopment of these areas. In addition, new areas of development may be subject to natural hazards, and it is important to firstly to identify and avoid these areas, or if not practical to avoid, then mitigate the adverse effects of natural hazards.</p> <p>Given this conclusion, and Horizon's One Plan policy direction, the District Plan policies advocate the identification of areas at significant risk from land instability and control structures and activities within these identified areas. This approach is considered the most appropriate way to achieve the proposed objectives for natural hazards.</p>
Risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods	<p>It is vital for the Council to demonstrate that it is managing the risk of natural hazards in accordance with the requirements of the RMA and the Regional Council's Proposed One Plan.</p> <p>The economic and safety risks to the community are significant, and the 2014 risk assessment report confirm this. Council is obliged by the RMA and the One Plan specifically to act to manage this risk. Making information readily available tis part of that requirement. PPC38 is consistent with this objective and necessary to achieve the objective.</p>

2.4 CONCLUSION

The objective of PPC38 is to identify in the Plan, additional sites that are now known to be moderately or highly likely to be susceptible to land stability hazards and ensure that appropriate assessment and regulation of any development occurs where such activities might adversely affect the hazard risks for the property or surrounding area.

The Wanganui District Council is satisfied that the preferred option is necessary to achieve this desired outcome in accordance with the purpose of the RMA and that it is the most appropriate way of doing so.