

Section 42A report overview:

CHAPTER 9 Hazards

1.0 Introduction

- 1.1 This report considers submissions regarding the provisions of Chapter 9 Hazards. The scope of the report relates to submissions received on Chapter 9 related to Chapter 9 matters, including key related definitions in Chapter 1, and hazard features as shown in the plan maps.
- 1.2 There were many submissions and further submissions received on Chapter 9. The submissions received were diverse and sought a range of outcomes; including for example: support for many provisions, as well as a range of amendments to related definitions, policies, rule provisions including the activity status of specific activities, and corrections of inaccuracies and the removal of duplicated provisions. Chapter 9 is also subject to a number of consequential amendments arising from submissions to the whole of the Proposed District Plan (PDP) and other chapters. I have recommended consequential amendments in the amended text of Section 4 of my report, to the extent possible at the time of writing my report.
- 1.3 In introducing this report I also note that, I prepared a section 42A overview for Chapter 9 in relation to coastal issues for the coastal issues presentation day on the 13th of July 2016. I refer to that overview as necessary in this overview if there are corrections or amendments to the opinions I expressed at that time.

2.0 Report Structure

- 2.1 The first two sections of my Section 42A report (Sections 1 and 2) provide an introduction to the report, its scope and key submission issues, and outline the key statutory and other relevant considerations.
- 2.2 Section 3 identifies the matters raised by submissions, provides an assessment of submission issues, my recommendations to accept, accept in part, or reject each submission point (including further submissions), and outlines any recommended amendments to the PDP as a result of the submissions.
- 2.3 The submissions analysis (and recommendations) in Section 3 is structured around 15 main topic areas, being:
 - General/whole of Chapter 9 matters (section 3.3)
 - General hazards policies and their introduction (sections 3.4 - 3.10)
 - Section 9.1.4 and Rule 9A.5 - Subdivision and Development on land subject to two or more hazard (section 3.11)
 - Flood hazards introduction and policies (sections 3.12 - 3.16)
 - The requested new policy related to gravel extraction(section 3.17)
 - Flood hazard rules (sections 3.18 - 3.27)

- Gravel extraction (section 3.28)
 - Subdivision in flood hazard areas (section 3.29)
 - Site specific and general flood mapping issues (section 3.30)
 - Earthquake policies, rules and mapping (sections 3.31 - 3.33)
 - Erosion and slope stability provisions (section 3.34)
 - Fire hazards (section 3.35)
 - Contaminated land - general issues, policies and rules (Sections 3.36 - 3.38)
 - Definitions (section 3.39)
 - Other matters (section 3.40)
- 2.4 For efficiency, and in accordance with Clause 10(3) of Schedule 1 to the RMA, the evaluation of submissions under each topic area has been undertaken on both an issues and provisions-based approach, as opposed to a submission by submission approach.
- 2.5 Section 4 of the report contains a marked up version of the amendments recommended to the Chapter 9 provisions, as well as amendments to specific Definitions in Chapter 1, and the plan maps.
- 2.6 Section 5 of my report contains a summary table of all the submissions (including further submissions) and the recommendations in relation to each submission point considered as part of the report.
- 2.7 The report also has several appendices which contain specific information and expert advice relevant to the assessment and recommendations of submissions made on Chapter 9.

3.0 Relationship to PDP Chapters

- 3.1 Chapter 9 Hazards contains provisions that apply within all of the PDP's zones. Therefore, my report, has relationships with multiple other PDP chapters, particularly, Chapters 1 (Introduction & Interpretation), 2 (Objectives), 3 (Natural Environment), 4 (Coastal Environment), 5 (Living Environment), 6 (Working Environment), 7 (Rural Environment), 10 (Historic Heritage). These chapters all have provisions which could be relevant to natural hazards and their mitigation. My report highlights these relationships where relevant to the submission issue analysis and recommendations.
- 3.2 Chapter 9 implements multiple objectives in Chapter 2, for example: 2.1 – Tāngata Whenua, 2.2 – Ecology and Biodiversity, 2.3 – Development management, 2.5 – Natural Hazards, 2.8 Strong Communities, 2.10 – Contaminated Land. My report references key objectives where they are relevant to the assessment of submissions and my recommendations.
- 3.3 The report highlights a number of consequential amendments I have recommended to Chapter 9 as a result of amendments recommended in other Section 42A reports. These amendments are varied and can relate to plan-wide issues (such as the

deletion of policy explanations and summary rule tables), or are to help ensure consistency of policies, rules and standards between PDP chapters. I have identified these recommended changes in the comments boxes in the amended text of Chapter 9 provided in Section 4 of my report.

- 3.4 In my overview presentation for the Coastal Issues presentation day I noted the issue of the primacy of chapters within the PDP and the fact that there is no clear primacy given to any chapters over others. The basis for this statement was the importance of natural hazards and risks that they pose to people and property and their ability to have severe adverse effects. On reflection there is no basis for a primacy over and above the importance of hazards shown in the background documents or the s32 report for Chapter 9. Therefore, although I still consider that the overall primacy of chapters within the plan is something that the integration report will need to cover, I do not continue to assert that Chapter 9 should have primacy over whole other chapters.

4.0 Key submission topics / issues

- 4.1 As already mentioned, a significant number of submissions were received on Chapter 9, spanning a range of different matters and in relation to numerous Chapter 9 provisions.

- 4.2 Without derogating from the details of the submissions, which are addressed in Section 3 of my report, I consider the following to be key submission topics / issues:

- Deletion of the Erosion and Slope Stability Provisions as recommended by expert advice which considers that the provisions are not based on appropriate information.
- Deletion of the Rules for Contaminated Land to avoid duplication with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011.
- Amendments to ensure that the provisions are in line with relevant regional and national planning instruments.
- Amendments to ensure the workability of provisions
- Amendments to attempt to ascertain the best balance between risk protection and enabling development where natural hazards are considered.
- Amendments to the Hazard Maps where these have been recommended by Technical Experts.
- Amendments to definitions to ensure workability.

- Rejection of the request from Winstone Aggregates to include a policy specific to gravel extraction.
- Amendments to try to ensure that stream and river clearance, gravel extraction and other flood mitigation measures are permitted as intended.

4.3 As flood hazard mapping is an important issue for Chapter 9 I considered it appropriate to outline which agency prepares the Hazard maps. Flood hazard information for the Kapiti Coast District is a combination of 'main watercourse' flooding which is modelled by Greater Wellington Regional Council and stormwater flooding which is modelled by the Kapiti Coast District Council. Which agency has modelled and mapped flooding from particular watercourses is generally set out in the 1991 Administration of Watercourses Agreement between Greater Wellington Regional Council and Kapiti Coast District Council. Generally Greater Wellington has administrative control over and has modelled and mapped the flooding from major watercourses, and Kapiti Coast District Council has responsibility for minor watercourses and stormwater flooding within the Kapiti Coast District. The available flood hazard information from both agencies (at the time the PDP was notified) was combined to make the flood hazard maps in the PDP.

4.4 As noted in some of the submitter's evidence KCDC and Greater Wellington update their flood information regularly in a Geographical Information System (GIS) layer. This layer is updated much more regularly than the PDP hazard maps. This is because the GIS layer does not have to go through the Schedule 1 process of the RMA. The GIS system flood hazard layer is used for the preparation of Land Information Memorandum, it may be considered under section 106 of the RMA (to consider the appropriateness of subdivision when the land is or is likely to be subject to material damage by erosion, falling debris, subsidence, slippage, or inundation from any source) and is used for section 71 and section 72 considerations under the Building Act 2004 (where the Council decides whether or not it is willing to issue a building consent for buildings within hazard areas). The GIS layer information is not used for the rules within the plan.

5.0 Matters resolved & still to be resolved

5.1 A number of meetings were held with submitters on Chapter 9. The notes and actions from these meetings have been considered as part of my Section 42A report preparation. There were also a number of planner drop-in sessions and submitter meetings held during which Chapter 9 submission issues have been discussed and clarified. A number of amendments have been recommended in the Section 42A report in response to submissions and submitter meetings, and these are reflected in the recommendations in my report. There are however no specific agreements as provided for under clause 8AA of the RMA that I am aware of that relate to Chapter 9

5.2 In the s42A report I do not make a recommendation on **submission 453 Lowell Manning** as I note that a survey has been carried out of Mr Manning's site, but that an assessment of the survey in relation to flood mapping is on-going. I have learned

since my report was written that this statement was incorrect, a survey had not been commissioned at the time of writing my report. A survey has now been commissioned. Therefore, the results of the survey and how any change in stream bed levels would affect the flood mapping for the site are still not available. I apologise to both the submitter and the panel for this and I suggest that this submission be re-visited in the hearing and s42A report for integration in October.

- 5.3 The issue of the Chapter 9 and whether it includes Coastal Hazards is very important to the Chapter. Both in my s42A report and my overview presentation for the Coastal Issues presentation day I stated that the Chapter does not refer to coastal hazards and was not intended to. Through further research I have ascertained that this assertion is incorrect. The s32 report for Chapter 9 states the following:

“Policies 9.2-9.7 and methods in the Natural hazards subchapter relate to coastal hazards as well as the natural hazards listed in the subchapter”

- 5.4 **Submitter 451 Rob Crozier and Joan Allin** also addresses this issue in their evidence. They note that both section 9.1.1 and 9.1.2 of Chapter 9 as notified state that Coastal Hazards are considered under the chapter. The sections state:

“Coastal Hazards

There are significant areas of the coast which are affected by coastal erosion hazard risks. The policies in the general section of this chapter are relevant to coastal hazards. Due to the wide ranging issues associated with the coastal environment, the District Plan provisions relating specifically to the coastal erosion hazards are set out in a separate chapter. Chapter 4: Coastal Environment outlines the coastal hazard management issues for the district and sets out the policies and methods intended to specifically address coastal hazard issues.”

“These policies apply to all natural hazards, including coastal erosion in addition to more specific policies in this chapter and the Coastal Environment Chapter.”

- 5.5 Both of these sections from the PDP as notified show that it was initially proposed that Chapter 9 and in particular the policies in the general section i.e. 9.2-9.7 apply to Coastal Hazards. The withdrawal of the coastal hazards provisions however leaves this issue uncertain. All references to coastal hazards have been removed from the chapter, but coastal hazards are not clearly excluded.

- 5.6 **Submitter 451** is also correct that the definition of natural hazards within the RMA includes Coastal Hazards. Therefore, I consider this an issue that should be addressed. I recommend that the panel considers amending the wording under the heading 9.1.2 General Hazards as suggested by **submitter 451** to clearly exclude coastal hazards and to read (additional amendments shown in red):

“These policies apply to all natural hazards (excluding coastal hazards) in addition to more specific policies in this chapter”

5.7 **Submitter 451** also notes in a later part of their evidence that they believe that it is clear that the Rules in section 9.2.3 only relate to flood hazards because of the heading for the rules which is “9.2.3 Flood Hazard Rules and Standards”. I agree with this reasoning and believe that when the heading is considered it is clear that none of the rules within Chapter 9 relate to Coastal Hazards. The submitter also suggests that amendments be made to other parts of the Chapter to make this exclusion clear, I will cover this evidence in my closing statement.

6.0 Corrections to s42A Report

6.1 Since my s42A report was prepared, I have been advised that **submission 698 Philippa Poole** was coded to Chapter 4 when it should have also been coded to Chapter 9. **Submission 698 Philippa Poole** makes the same points as **submission 664 Ian Sheen**. My s42A report addresses **submission 664 Ian Sheen** in paragraphs 71, 79, 80 and 88. Therefore I recommend that the panel consider accepting **submission 698 Philippa Poole** in part, in line with the recommendation in my report in relation to **submission 664 Ian Sheen**.

6.2 In writing my s42a report I failed to address a number of submission points. These submission points relate wholly to the explanations to policies. As noted in my report the explanations to policies are proposed to be deleted throughout the plan. This recommendation was addressed in the General/Plan Wide s42A report, however these submissions should have been addressed in my report and this is an omission. The relevant submission points are:

- **202.QQ, SS, UU, XX and YY Department of Conservation**
- **441.31, U and W Greater Wellington Regional Council**

6.3 I recommend that the panel consider rejecting these submission points in line with the decision to delete the explanations of policies throughout the PDP.

6.4 I note that throughout my s42A report I incorrectly refer to **submitter 378 Coastal Ratepayers United** as the Coastal Ratepayers Union. This is an error and I apologise to Coastal Ratepayers United for this.

6.5 I would also like to acknowledge that the Kapiti Coast District Council logo on the cover of my report that includes a macron over the ‘a’ was used in error. I also referred to **submitter 271 Lyndon Enterprises** by the incorrect number in my report, please note that the submission should be referenced as 271.38 Lyndon Enterprises not 267.3. Again I apologise for these errors.

7.0 Areas in which evidence has led me to recommend further changes

7.1 I have reviewed the evidence provided by submitters in advance of the hearings today, and I have the following comments to make regarding further recommended changes.

- 7.2 **Submitter 512 The Oil Companies** provided evidence that raised some issues with the wording of sections 9.6.1 and 9.6.4. The submitter requests that section 9.6.1 be amended as follows (additional amendments shown in red):

Both District and Regional Councils have roles in managing contaminated land. Under the RMA (Section 30(1)(ca)), Regional Councils are charged with the investigation of land to identify and monitor contaminated sites, while District Councils control the effects of ~~land the~~ use, development ~~and~~ protection of land to prevent or mitigate the adverse effects of the development, subdivision or use of contaminated land (Section 31(4)).

- 7.3 The submitter requests that section 9.6.4 be amended as follows (additional amendments shown in red):

For areas containing contaminated and potentially contaminated ~~sites land~~ as defined under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the 'NES'), the NES applies in its entirety.

~~No rule in any chapter of this Plan that duplicates or conflicts with the NES shall apply. The NES applies in addition to all other rules in any chapter of this Plan, applicable to the same areas or sites, however no rule in any chapter of this Plan that duplicates or conflicts with the NES shall apply.~~

- 7.4 I have considered the amendments requested by **submitter 512 The Oil Companies** in their evidence and I consider that the amendments sought are appropriate and make the wording clearer and more correct. I therefore recommend that the panel considers making further amendment to sections 9.6.1 and 9.6.4 of Chapter 9 as shown above.

- 7.5 I note that two submitters (submitter **441 Greater Wellington Regional Council** and **submitter 451 R Crozier and J Allin**) raised concerns about the use of the term "specified activities" in Policy 9.3 in their evidence. I have considered their concerns including that there is no list of specified activities. I have also considered the definition of development. I now consider that the term development (as defined in the PDP) covers the activities that are controlled by provisions of the chapter in terms of hazards. Therefore, I recommend that the panel consider amending Policy 9.3 as follows (additional amendments shown in red):

Policy 9.3 – Managing activities in Hazard prone areas

In areas identified on the District Plan Maps, ~~New subdivision, and land use and development~~ ~~and specified activities~~ will be managed in a way that ~~located to avoid~~ increasing risks from natural highly hazards prone areas, identified on the District Plan Maps. Subdivision, development and the specified activities will be allowed only where it can be shown that any potential increase in risk exposure on or beyond the land itself has been avoided, remedied or mitigated. ~~Where a modelled risk can be removed, through mitigation, to allow development on part of a site, any mitigation~~

~~must demonstrate the activities and development do not exacerbate the adverse effects of natural hazards for other people and properties including residual risks.~~

7.6 I also agree with **submitter 451 R Crozier and J Allin** that the heading in 9.2.3 “Rules and Standards – Flood hazards” should remain to keep the section consistent with the format of the earthquakes section and to ensure there is no ambiguity. Therefore, I recommend that the Panel considers not deleting the heading Rules and Standards – Flood hazards in section 9.2.3.

7.7 Again I agree with **submitter 451 R Crozier and J Allin** that the new exemption iii proposed to Rule 9B.1.4 is not appropriate. I agree that the exemption is too restrictive as written and does not cover all of the activities that may be permitted under rule 9B.1.4. Therefore, I recommend that the panel considers amending 9B.1.4 iii to read as follows (additional amendments shown in red):

iii. ~~flood mitigation works in the River Corridor complying with activities permitted under rule 9B.1.6~~

7.8 Lastly **submitter 451** notes in evidence that an exemption should be added to Rules 9B.5.2 and 9B.5.4 for structures associated with flood protection, erosion control and natural hazard mitigation measures permitted under rule 9B.1.6. I agree that this is currently an omission which could lead to confusion. Therefore, I recommend that the Panel considers amending Rules 9B.5.2 and 9B.5.4 as follows (additional amendments shown in red):

2. New or relocated building in any *overflow path*, or residual overflow path ~~or flood erosion area.~~

Note: This does not apply to additions to existing habitable buildings which are restricted discretionary under Rule 9B.3.4 or structures permitted under Rule 9B.16.

~~Exemption: Extensions to existing habitable buildings where they do not exceed 15% of the total floor space of the existing room or 20m², whichever is lesser.~~

4. The construction, placement or erection of any building in the *River corridor* or *stream corridor* except where related to gravel extraction activities and permitted by Rule 9B.1.8 or restricted discretionary under rule 9B.3.1 or structures permitted under Rule 9B.1.6.

7.9 **Submitter 441 Greater Wellington Regional Council** proposes a consequential amendment in their evidence that I consider appropriate. This amendment is to the definition of Flood Hazard categories in Chapter 1. I recommend that the panel consider making the amendment below (additional amendments shown in red):

Flood Hazard categories means refers to the areas based on the 1 in 100-yr flood extent shown on the District Plan Maps. The flood hazard categories within this flood extent are river corridor, stream corridor, flood storage, flood erosion, fill control, over flow path, residual overflow path, ponding, and residual ponding and shallow surface flow. The purpose of the flood hazard categories is to describe the varying hazard risk across the floodplain. The flood hazard categories have determined by taking the following into account:

1. The depth and speed of flood waters;
2. The threat to life;
3. The difficulty and danger of evacuating people and their property; and
4. The potential for damage to property and social disruption.

There are two types of flood hazard risk identified in the Natural Hazard Maps:

1. Direct Flood Hazard

The direct flood ~~risk~~ hazard areas are those subject to 1%AEP flooding. This includes affects areas that are not protected from flooding by flood protection structures (such as stopbanks or floodwalls) built to the ~~1-in-100-yr~~ 1%AEP flood event standard. A direct flood risk can also occur where existing structural protection, built to less than the ~~1-in-100-yr~~ 1%AEP flood standard, is vulnerable and likely to fail in a ~~1-in-100-yr~~ 1%AEP flood event.

2. Residual Flood Risk

The residual flood risk is the additional or 'left over' risk due to possible breaching and overtopping of flood protection structures (such as stopbanks or flood works) built to the ~~1-in-100-yr~~ 1%AEP flood event standard when a greater than design standard flood occurs.

7.10 As stated in my overview at the Coastal Issues presentation day I do not consider that any provisions within Chapter 9 should be moved to the Proposed New Chapter 2A. I also do not consider that there are any issues in regards Chapter 9 that would require an amendment to Chapter 2: Objectives.

7.11 At this stage I am not recommending any further changes to my report, however I will maintain an open mind as I hear submissions during the course of the Chapter 9 hearing and I will advise the Panel of any additional recommended changes in my written closing statement.

7.12 Thank you Mr Chair and members of the Panel.

Rebecca Lloyd

2 August 2016