

Under the Resource Management Act 1991

In the matter of Hearing of Submissions and Further Submissions on the Proposed
Porirua District Plan

Submissions of Kāinga Ora – Homes and Communities

6 December 2021

Hearing Stream 3 – Wednesday 8 December at 1.30pm

MC.

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Submissions of Kāinga Ora – Homes and Communities

1 Summary

- 1.1 Kāinga Ora is generally supportive of the Council’s approach to natural hazards, but it opposes the inclusion of flood hazard mapping within the PDP. It instead considers that flood hazard mapping should be included on a GIS viewer that sits outside the Plan. It supports the proposed changes identified in the evidence of Karen Williams to give effect to that position.
- 1.2 To avoid unnecessary duplication, and since the issues are well elucidated in the evidence, these submissions focus on the differences between the evidence of Brendon Liggett and Karen Williams on behalf of Kāinga Ora, the s 42A report and supplementary evidence from Torrey McDonnell, and the evidence of Iain Dawe lodged on behalf of the Greater Wellington Regional Council.

2 Flood hazard mapping

- 2.1 As a preliminary point, it appears as though the evidence of Mr Dawe mischaracterises Kāinga Ora’s position. To be clear, Kāinga Ora supports the general risk-based approach the PDP takes to managing natural hazards. To the extent that the underlying work has been completed (a point to which I will return), Kāinga Ora agrees that it is robust and has no reason to doubt its accuracy. The only real point of contention is the appropriate location of the mapping component of the plan framework.
- 2.2 Counsel understands there is some concern about the lawfulness of flood hazard maps being located outside the plan. Counsel does not share those concerns and notes that a s 42A supplementary report supporting the Tauranga position attaches a memorandum of advice from Simpson Grierson confirming that it is lawful.¹
- 2.3 The contest here is really a matter of planning preference. As characterised in the evidence of Brendon Liggett, the competing approaches are a traditional approach of mapping flood hazards within the plan as opposed to preferring the efficiency and adaptability that leaving the maps outside of the plan allows. Kāinga Ora does not consider that it can properly be said that the traditional approach is “best practice”. It is one approach of two or more available approaches.
- 2.4 In saying that, there are some points made by the s 42A report and in Mr Dawe’s evidence that should be corrected.

Interpretation of the RPS

- 2.5 Mr Dawe’s evidence relies on Policy 29 of the RPS, which provides for district plans to “identify areas at high risk from natural hazards”. His evidence appears

¹ https://www.tauranga.govt.nz/Portals/0/data/council/city_plan/plan_changes/pc27-s42ahearings-report.pdf. See Appendix 2.

to assume or imply that Policy 29 requires that hazards be spatially identified through maps included within the district plan. That is not the meaning of “identify” in the RPS. The approach that Kāinga Ora urges on the Panel would just as effectively “identify areas at a high risk from natural hazards” and give effect to the RPS.

- 2.6 Identification is different from mapping. Higher order policy documents usually use the word “map” or “mapping” when that is what is required – see for example the NPS-FM at [3.23(1)] which requires regional councils to “identify and map” certain natural inland wetlands. The drafters of the RPS (of which Mr Dawe was one) only required identification.

The mapping is incomplete

- 2.7 Mr Dawe’s evidence at [19] states that the traditional approach (as I have labelled it above) is “underpinned by accurate and scientifically robust mapping of natural hazard areas that creates certainty and clarity for plan users of the areas that these provisions apply without the need for individuals, development companies or businesses to undertake their own costly and time-consuming geotechnical studies”.
- 2.8 Paragraphs [20]-[38] of his evidence focus on how the risk-based approach taken in the proposed plan are consistent with best practice hazard management by reference to several frameworks and strategies.
- 2.9 There is no dispute that the approach taken is consistent with “best practice” on hazard management, or that the mapping work that has been done is robust or accurate. But none of the strategies or frameworks, to counsel’s knowledge, address the question of where mapping information is best located in a plan.
- 2.10 However, *even if* it were best practice to include hazard maps within the plan, it does not follow that this should be the case when the underlying mapping work is still to be completed in respect of some areas and is necessarily fluid. In that regard, it is notable that nowhere does Mr Dawe acknowledge, as the Council’s s 32 report does, that in fact the mapping is incomplete.²
- 2.11 For the same reason, Mr McDonnell’s reference in his supplementary evidence to the Auckland Council experience is helpful in showing a further reason why the maps should be located outside the plan. In the Auckland case the mapping was inadequate. Here the incompleteness of the underlying work is an issue that justifies taking a similar approach to Auckland.

Interpretation of the Resource Management (Enabling Housing and Other Matters) Bill

- 2.12 The s 42A report relies on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill as part of the reasons expressed for preferring that the maps be included within the plan. It says:

² See section 8.2.5 of the Council’s Section 32 Evaluation Report Part 1 – Overview to s 32 Evaluation, as noted in [5.8] of Karen Williams’ evidence.

63. Section 77H requires any plan change to give effect to the intensification requirements to include in their s32 analysis:

(ii) a description of how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters, and in particular how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including—

(A) any operative district plan spatial layers; and

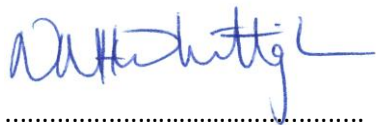
(B) any new spatial layers proposed for the district plan.

64. This indicates that for flood hazards to be considered as a qualifying matter, they must be included in a plan as a spatial layer.

2.13 First, what constitutes a qualifying matter is established by Policy 4 and [3.31]-[3.33] of the NPS-UD. The Bill does not purport to provide for the determination of qualifying matters justifying modification from required building heights and densities.

2.14 Second, all that proposed s 77H requires is for a s 32 analysis to describe how any modifications to the MDRS have been limited to the least degree necessary to accommodate a qualifying matter and how the modifications apply to any spatial layers. This does not require any potential qualifying matter to *be included* in a spatial layer. The conclusion in [64] contains an unavailable leap of logic and is wrong. The Bill has no significance to the issue the Panel has to determine.

Date: 6 December 2021



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Nick Whittington

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