

Right of Reply

Plan Change 47 – Natural Hazards

Right of Reply to the Hearing Panel Minute 2

PREPARED BY JAMES BEBAN | CONSULTANT PLANNER

10 May 2024

1. On 29 April a minute was received from the Hearing Panel for Plan Change 47 with 10 questions arising from the hearing held on 22 April 2024. This reply responds to these questions from the Commissioners.
2. For the purpose of this reply, the question has been highlighted in bolded text, with the answer to the question, provided below the bolded text.
3. **You advised that the subdivision remains a controlled activity under proposed Plan Change 50 and that the rule does not include consideration of natural hazards as a matter of control. Can you please provide the Panel with a copy of the relevant provisions.**
4. Please find attached in Appendix 1 the proposed subdivision provisions as notified under Plan Change 50. I would like to correct a verbal response I provided in a right of reply. I advised the panel that Under Plan Change 50, subdivisions in the rural zone is a controlled activity. This was incorrect. They are only a Controlled Activity in Development Area 2, which is a small area of land known as Barretts Block and was created as a result of a private plan change. This Controlled Activity rule does not apply to subdivisions beyond this site. For the purposes of completion, I would note that Barretts Block is not within the Mangaroa Peat Overlay.

Under Plan Change 50, subdivisions that create vacant allotments, are proposed to be a Restricted Discretionary Activity under SUB-RUR-R6. This is a change in direction from the current District Plan, where subdivisions are a controlled activity. The proposed subdivision rule under Plan Change 50 states:

Subdivision which complies with the standards of SUB-RUR-S1 but not with the access standards in SUB-RUR-S2 Council will restrict its discretion to, and may impose conditions on:

1. *Traffic effects including vehicle access points onto roads and state highways*
2. *Design, appearance and layout of the subdivision*
3. *Provision of and effects on network utilities and/or services.*
4. *Standard, construction and layout of vehicular access*
5. *Esplanade reserves and esplanade strips*
6. *Financial contributions*
7. *Landscaping and visual effects.*
8. *Effects of earthworks.*
9. *Natural hazards.*
10. *Reverse sensitivity.*
11. *Compliance with the Code of Practice for Civil Engineering Works.*
12. *Council's discretion is also restricted to the matters listed in SUB-RUR-R1.*

Under this proposed rule natural hazards would be a matter of discretion. However, there has been a number of submissions on the rural provisions, including this rule. As such, there is a degree of uncertainty on what the final wording of this rule will be as it is still subject to the hearing process.

5. Please confirm whether there is scope to remove the “Uncertain Constrained Area of the Wellington Fault” from the planning maps covering multiple properties in the vicinity of Turksma Lane, in response to the submission from Karen Pugh at 7 Turksma Lane. You may wish to seek legal advice in responding to this question, particularly with regard to clause 16, Schedule 1. Should the Panel determine it can be removed, would the Wellington Fault Trace information around Turksma Lane remain on UHCC databases as a reference, and how would it be used as such?

The submission from Karen Pugh largely focuses on the property at 7 Turksma Lane. There is a sentence in her submission that does state: “*We understand from this new report that the fault area has been mapped in error and wish for it to be removed from the final decision/maps.*” This broad statement and provides scope to consider removing the Uncertain Constrained Area of the Wellington Fault Overlay. We have explored this issue in detail with the legal team at Upper Hutt City Council and given this scope in the submission, they have advised that Clause 10(2)(b) of Schedule 1 is available for use. This clause states:

The decision.....

(b) may include—

- i. matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and*
- ii. any other matter relevant to the proposed statement or plan arising from the submissions.*

The test for using Clause 10 (2) (b) of Schedule 1 is *whether the relief [in question] would go beyond what was reasonably and fairly raised in the submissions.* The legal opinion goes on to state: *It seems to me that on what you’ve said below the submission does fairly raise a question of the incorrect mapping and that removing that hazard mapping from the plan altogether would not go beyond what was fairly raised.* On this basis, there appears to be scope to use Clause 10 (2) (b) of Schedule 1 to correct this mapping error.

For the purposes of completion, it was considered that Clause 16 is not available to use in this instance. This clause allows for minor errors to be fixed, but not ones that would have an effect on people rights. Removing the Uncertain Constrained Area of the Wellington Fault Overlay would have an effect on people rights and therefore it is not appropriate to use Clause 16.

It is important to recognised that the mapped extent of the fault hazard in Turksma Lane is incorrect and was based on an older report. A new 2022 report from GNS Science identified the fault position to be further north in Turksma Lane from what was shown in the maps in Plan Change 47. This means that in terms of Turksma Lane, the following will apply if the fault hazard overlay is removed from the map:

- The Uncertain Constrained Area of the Wellington Fault as shown in Plan Change 47 would not be available in any of the Council databases as it is incorrect and there is no fault trace present in this location; and

- The correct fault hazard trace and associated overlay as identified in the 2022 GNS Report will be available on internal council maps to inform LIM reports, Building Consents and Resource Consents.
6. **Please comment on the appropriateness of Mr Harris’s recommended approach that the Slope Hazard Overlay be removed and be replaced with a rule that relates to slopes over 26 degrees (for example, EW-R9 would become “earthworks for a building platform on land with a slope greater than 26 degrees”).**
7. It is possible to have rules that state: “earthworks for a building platform on land with a slope greater than 26 degrees and to not have the slope hazard mapped. I do not prefer this approach for the following reasons:
- It is difficult for the lay person to determine slope angle on a site and therefore it makes it difficult to determine when resource consent is required when looking at a site or preparing plans for a development. To be able to determine compliance a topographical survey may be required. This issue is addressed through the High Slope Hazard Overlay, where the slope angle over 26 degrees has been mapped. This makes it easier for plan users to be able to determine compliance with their respective project based on whether the project is within the mapped extent or not.
 - The use of the rule to manage slope hazards would be an inconsistent approach to the management of this hazard when compared to all the other hazards within the District Plan. The other natural hazards, flooding and fault hazards, are managed through mapped overlays. It is proposed to do the same for the Mangaroa Peat and High Slope hazards as this ensures a consistent approach to the visual representation of the areas of the City impacted by natural hazards.
 - Mr Harris approach would capture all building platforms, whereas the proposed rule framework in the notified Plan Change 47 provisions specifically only captures earthworks associated with building platforms for Potentially Hazard Sensitive Activities and Hazard Sensitive Activities. As such, this rule would capture more building platforms than what was initially intended under the plan change.
8. **For the land subject to the Mangaroa Peat Overlay, please provide a table setting out:**
- i. **The Operative District Plan zoning**
 - ii. **The Operative District Plan subdivision minimum and average (if relevant) lot sizes**
 - iii. **The Proposed Plan Change 50 zoning**
 - iv. **The Proposed Plan Change 50 subdivision minimum and average lot sizes.**
9. Please see Appendix 2 attached to this reply for the zoning patterns on the sites under both the Operative District Plan and Plan Change 50. Under the Operative District Plan there are 2 zones that interact, whereas under Plan Change 50 there are 3 proposed zones that interact with the Mangaroa Peat Overlay. Each of these rural zones have different provisions as outlined in the tables below:

Operative District Plan

Zone	Minimum Lot Size
Rural Production Zone	4 hectares
Rural Lifestyle Zone	1 Hectare

Proposed Plan Change 50

Zone	Minimum Lot Size	Average lot size within the subdivision	Building Platform
General Rural Zone	1 hectare	20 hectare	200m ²
Rural Lifestyle Zone	3000m ²	1 hectare	200m ²
Rural Production Zone	4 hectare	16 hectare	200m ²

10. Please confirm whether there is scope in Mr Anker's submission for us to consider his comments on the Wellington Fault and Slope Hazard Overlays.

11. I have reviewed Mr Ankers submission. His entire submission relates to the Mangaroa Peat Overlay and does not cover the points on the Wellington Fault or High Slope Hazard Overlays that was raised in the hearing. It is my view that Mr Ankers submission does not provide him with the scope to raise those points in relation to the Wellington Fault and Slope Hazard Overlays.

12. Please provide updated marked up district plan chapters with reference to submission points.

13. Please see Appendix 3 to this right of reply where the recommended changes to the provisions have been updated to include the submission point reference.

14. Please provide a succinct summary of the impact of the Slope Hazard Overlay provisions on a property.

15. The proposed provisions relating to the High Slope Hazard Overlay are located in the earthworks and subdivision chapters of the District Plan. The purpose of the proposed provisions are:

- a. To manage earthworks when they are for a building platform for a Potentially Hazard Sensitive Activity or Hazard Sensitive Activity. This is to ensure that the proposed earthworks do not create a slope stability issue for either the proposed Hazard Sensitive Activity or Hazard Sensitive Activity or the adjacent properties.
- b. To manage subdivision when the building platform for a Potentially Hazard Sensitive Activity or Hazard Sensitive Activity is proposed to be located within the High Slope Hazard Overlay. This is to ensure that the proposed building platform for the subdivision does not create a slope stability issue for either the future Hazard Sensitive Activity or Hazard Sensitive Activity or the adjacent properties.

The proposed provisions do not control activities outside of what is described above, including the use of rural land for rural purposes.

16. Please confirm the weight you gave to GWRC RPS Plan Change 1 in your analysis and recommendations.

17. At the time of preparing my s.42a report, I considered the proposed changes to RPS Change 1. I gave more weight to the operative RPS provisions as the proposed changes to the natural hazard provisions under the RPS-Change 1 have been challenged in the submissions and the decision on the submissions have not been made.

18. Overall, I gave moderate weight to the proposed provisions under GWRC RPS Change 1. In undertaking this weighting exercise, I recognise that the proposed changes to the RPS represent an updating of the natural hazard provisions, as opposed to being a complete rewrite of the management of natural hazard risk for the region. If the proposed provisions had been a fundamentally different approach to the management of natural hazard risk, that represented a strong divergence from the existing RPS provisions, then I would have applied less weight due to the matters than have been raised within the submissions.

19. Please outline your understanding of the difference in meaning between the term “do not significantly increase” and the proposed term “minimise”.

20. The term “do not significantly increase” allows for there to be an increase in risk, providing that risk increase is not significant. This is an open term and does allow for there to be an increase in risk from a development. The term minimise means “to reduce as far as practicable.” This term changes the focus of the provisions from allowing for some increase in risk, to reducing risk to a level that is as far as practicable. This is a clearer outcome in terms of what is expected of applicants as well as aligning with the requirements of Section 6(h) of the Act.

21. Please confirm the anticipated cost that would be incurred for obtaining a geotechnical assessment at subdivision stage, rather than at building consent stage.

22. In the hearing, Mr David Sullivan from Tetra Tech Coffey provided a cost of between \$3,000 - \$6,000 for a geotechnical assessment. I have spoken with Mr Bruce Simms from Abuild Geotechnical Engineers after the hearing and he advised of cost of between \$4,000 - \$7,000, with the difference in price depending on the complexity of the development and the site.

Signed:

Name and Title		Signature
Report Author	James Beban Consultant Planner, on behalf of Upper Hutt City Council	