

**UPPER HUTT CITY COUNCIL**  
**PROPOSED PLAN CHANGE 42**  
**MANGAROA AND PINEHAVEN FLOOD HAZARD EXTENTS**  
**MINUTE 3 OF COMMISSIONER**

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**Introduction**

1. Following my previous minute - Minute 2 dated 2 October 2017 - the Council has provided its written reply. This material is available on the Council's plan change website. I have conducted a preliminary completeness check of that material and have a few follow-up questions of clarification as a result. My more substantive review of the material will occur once I have closed the hearing.
2. The purpose of this minute is to formally put the above-mentioned questions to Officers. Given the nature of the questions being relatively confined, I am satisfied that these points can be addressed in writing without any need to formally reconvene. That said, this minute and the subsequent Council response will be available for all parties to review.
3. In summary, the matters of clarification I elaborate on below relate to:
  - a. the response to Question 7 as set out in Annexure 1 to my previous minute; and
  - b. the inclusion of a new objective (14.3.3) proposed in the reply.

**Response to Question 7**

4. Question 7 attached to minute 2 reads:
  1. *Two questions re: the activity status for various matters in the plan change as a method to implement the 'avoid' policy direction adopted for high hazard areas:*
    - a. *is Discretionary Activity status an appropriate method to implement an 'avoid' outcome; and*
    - b. *alternatively, is Non-Complying status too stringent given the 'avoid' direction will likely be unachievable in the context of the policy 'limb' of s104D of the Act?*
5. The Officers have addressed the question at Part H of their reply, and this has largely focused on clause 'a' above. I recognise that I could have been more deliberate in the way in which I worded clause 'b', and I think it is important that I get their view on this point given the proposed rule framework and associated use of non-complying activity status.
6. To that end, I request that the Officers add to their response to 7b with consideration of these additional matters of context:
  - a. clause 'a' is focused on understanding whether a discretionary activity rule is stringent enough to implement an 'avoid' policy outcome, whereas clause 'b' is whether non-complying activity status is too stringent (for the relevant activities / flood elements) in combination with the 'avoid' outcome;

- b. in reading the reply, it is clear that Officers' expectation is that proposals granted under the non-complying rules will be an exception rather than the norm – my question of clarification does not relate to the merits of that view; however, I am interested in whether Officers are satisfied that the approach won't preclude any activities (particularly in some flood overlays) that may result in an appropriate outcome (or even an overall environmental improvement) by virtue of having effects that are deemed to be minor or more (and are subject to the avoid policy direction);
- c. I'm also interested in understanding how the Officers anticipate applications for discretionary activities (say for works in overflow paths) will materially be considered differently to non-complying activities (say for works in a stream corridor) given that the 'avoid' policy direction applies to both – for example:
  - i. is it likely the former will be more likely to be approved given the lack of the effects gateway test, or does the 'avoid' policy direction level the playing field in effect;
  - ii. along similar lines, could both be effectively treated as de facto prohibited activities given the 'avoid' direction and the Court's interpretation in *King Salmon* that avoid means 'do not allow' or 'prevent the occurrence of'?

### **Proposed new Objective 14.3.3**

- 7. At Appendix 6 to the reply, the Officers have proposed a new Objective 14.3.3. As mentioned above, I have not turned my mind to any substantive evaluation of that clause; however, I would be grateful if the Officers could provide some additional information in relation to the objective:
  - a. firstly, it is important for the formal hearing record to confirm which submission (or submissions) afford the scope for this change;
  - b. the Officer's s32AA evaluation of this clause addresses the objective in isolation, and seemingly suggests that the amendment is largely administrative – be that as it may, the objectives are to be read as a whole and to be assessed (as a whole) to the extent which they are the most appropriate for achieving the Act's purpose; and from that perspective, I invite the Officers to add to their evaluation, including express consideration of how the amendment:
    - i. assists the Council in carrying out its functions;
    - ii. recognises and provides for any specific matters under s6 of the Act and has particular regard to any specific s7 matters; and
    - iii. assists the plan change in implementing any higher order documents.
- 8. In considering the above, I note the requirement of s32 and s32AA that the level of detail in the s32AA evaluation should be commensurate to the scale and significance of the amendment proposed.

### **Timeframe**

9. I appreciate that this is a short week, given the long-weekend. However, as this is a relatively self-contained set of matters, I expect the Officers should be able to provide a response within a 5 working day turnaround. Accordingly, I request that the response to the above matters be provided to the Council by **5pm on Wednesday 1 November**.
10. I also expect the response will be made available to me and on the Council website within 1 working day of that deadline.
11. From there, I will review the material for completeness. Assuming all responses are accounted for, I will then issue a final minute advising of the hearing closure.
12. I also need to conduct additional site visits, and to that end I might be in touch with some parties over the coming days to make arrangements to do so.

### **Next Steps**

13. As indicated above, I now request the Council delivers its supplementary reply by 5pm on 1 November.
14. In the meantime, if any party wishes to seek further clarification around the hearing process or this minute, contact UHCC's Planning Administrator, Helen Ellams (ph. 04 5272169 or email [planning@uhcc.govt.nz](mailto:planning@uhcc.govt.nz)) in the first instance.

**DATED** this 25<sup>th</sup> day of October 2017



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DJ McMahon  
Independent RMA Hearings Commissioner