



# Strategy and Policy Committee Agenda

NOTICE IS GIVEN that the next meeting of the Strategy and Policy Committee will be held in Council Chambers, Ground Floor, Regional House, 1 Elizabeth Street, Tauranga on:

Tuesday 16 February 2021 COMMENCING AT 9.30 am

**This meeting will be recorded.**

The Public section of this meeting will be recorded and uploaded to Bay of Plenty Regional Council's website. Further details on this can be found after the Terms of Reference within the Agenda.

Fiona McTavish  
Chief Executive, Bay of Plenty Regional Council Toi Moana  
5 February 2021

# Strategy and Policy Committee

## Membership

<b>Chairperson</b>	Cr Paula Thompson
<b>Deputy Chairperson</b>	Cr Stuart Crosby
<b>Members</b>	All Councillors
<b>Quorum</b>	Seven members, consisting of half the number of members
<b>Meeting frequency</b>	Six weekly rotation between committee meetings and strategic sessions

## Purpose

- Inform the strategic direction for the Council and implement through approved planning and policy frameworks.
- Identify regional issues resulting from emerging trends, providing thought leadership on matters of regional significance, analysing implications and developing a strategic response.

## Role

- Develop, implement and review best practice strategy, policy and planning framework for decision making which enables connection across committees of Council.
- Consider emerging environmental issues and provide advice on the implications for effective resource management within the region.
- Inform Council's strategic direction, including prioritisation and policy responses.
- Enhance awareness and understanding of emerging issues and trends relating to meeting Councils strategic direction.
- Develop Council's position on regionally significant issues and provide guidance on sub-regional and regional strategy matters such as spatial planning and SmartGrowth.
- Approve submissions on matters relating to the committee's areas of responsibility that are not delegated to staff.
- The provision of governance oversight into the development and review of policies, plans, and strategies.
- Approve statutory and non-statutory plans, strategy and policy other than those required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement.
- Develop, review and approve Council's position on regional economic development.

- Consider any issues delegated by Council that have a regional, environmental, social or economic focus.
- Develop and review bylaws.
- Delegate to hearings commissioners under section 34A of the Resource Management Act 1991 to exercise the powers, functions duties in relation to any authorities that have been delegated by Council to the committee.

## Power to Act

To make all decisions necessary to fulfil the role and scope of the committee subject to the limitations imposed.

The Strategy and Policy Committee is not delegated authority to:

- Approve the Regional Policy Statement and bylaws;
- Review and adopt the Long Term Plan and Annual Plan;
- Develop and review funding, financial, Risk and Assurance Policy and frameworks;
- Approve Council submissions on Maori related matters;
- Develop, approve or review non statutory policy for co-governance partnerships.

## Power to Recommend

To Council and/or any standing committee as it deems appropriate.

## Recording of Meetings

Please note the Public section of this meeting is being recorded and uploaded to Bay of Plenty Regional Council's web site in accordance with Council's Live Streaming and Recording of Meetings Protocols which can be viewed on Council's website. The recording will be archived and made publicly available on Council's website within 48 hours after the meeting on [www.boprc.govt.nz](http://www.boprc.govt.nz) for a period of three years (or as otherwise agreed to by Council).

All care is taken to maintain your privacy; however, as a visitor in the public gallery or as a participant at the meeting, your presence may be recorded. By remaining in the public gallery, it is understood your consent is given if your image is inadvertently broadcast.

Opinions expressed or statements made by individual persons during a meeting are not the opinions or statements of the Bay of Plenty Regional Council. Council accepts no liability for any opinions or statements made during a meeting.



# Bay of Plenty Regional Council - Toi Moana

## Governance Commitment

**mō te taiao, mō ngā tāngata - our environment and our people  
go hand-in-hand.**

We provide excellent governance when, individually and collectively, we:

- Trust and respect each other
- Stay strategic and focused
- Are courageous and challenge the status quo in all we do
- Listen to our stakeholders and value their input
- Listen to each other to understand various perspectives
- Act as a team who can challenge, change and add value
- Continually evaluate what we do

**TREAD LIGHTLY, THINK DEEPLY,  
ACT WISELY, SPEAK KINDLY.**

**Recommendations in reports are not to be construed as Council policy until adopted by Council.**

# Agenda

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<b>3.</b>	<b>Items not on the Agenda</b>	
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<b>5.</b>	<b>Declaration of Conflicts of Interest</b>	
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## **9. Public Excluded Section**

### **Resolution to exclude the public**

**Excludes the public from the following parts of the proceedings of this meeting as set out below:**

**The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:**

<b>Item No.</b>	<b>Subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Grounds under Section 48(1) for the passing of this resolution</b>	<b>When the item can be released into the public</b>
9.1	Public Excluded Strategy and Policy Committee Minutes - 3 November 2020	As noted in the relevant Minutes.	As noted in the relevant Minutes.	To remain in public excluded.

### **Minutes to be Confirmed**

#### **9.1 Public Excluded Strategy and Policy Committee Minutes - 3 November 2020**

#### **10. Public Excluded Business to be Transferred into the Open**

#### **11. Readmit the Public**

#### **12. Consideration of Items not on the Agenda**

# Strategy and Policy Committee

## Open Minutes

- Commencing:** Tuesday 3 November 2020, 9.30 am
- Venue:** Council Chambers, Ground Floor, Regional House, 1 Elizabeth Street, Tauranga
- Chairperson:** Cr Paula Thompson
- Deputy Chairperson:** Cr Stuart Crosby
- Members:**
- Cr Norm Bruning
  - Cr Bill Clark
  - Cr Toi Kai Rākau Iti
  - Chairman Doug Leeder
  - Cr David Love
  - Cr Matemoana McDonald
  - Cr Jane Nees
  - Cr Stacey Rose
  - Cr Lyall Thurston
  - Cr Andrew von Dadelszen
  - Cr Te Taru White
  - Cr Kevin Winters
- In Attendance:**
- Fiona McTavish – Chief Executive; Namouta Poutasi – General Manager, Strategy and Policy; Chris Ingle – General Manager, Integrated Catchments; Stephen Lamb – Environmental Strategy Manager; Julie Bevan – Policy & Planning Manager; Anaru Vercoe – Strategic Engagement Manager; Andy Bruere – Lake Operations Manager; Stephanie Macdonald – Community Engagement Team Leader; Karen Parcell – Team Leader Kaiwhakatinana; Nassah Rolleston-Steed – Principal Advisor, Policy & Planning; Nicola Green – Principal Advisor, Policy & Planning; Santiago Bermeo – Senior Planner; Sandra Barns – Economist; Jessica Durham – Committee Advisor
- Apologies:** Cr Andrew von Dadelszen for lateness

### 1. Chair's Announcement

The Chair announced the meeting would be recorded and available on YouTube, in accordance with Council's Live Streaming and Recording of Meetings Protocols and as noted within the Agenda.

### 2. Order of Business

The Chair announced Agenda Item 7.1, Taumata Arowai – Water Services Regulator Body would be considered at 12.30pm to accommodate the presenter's availability.

### 3. Declaration of Conflicts of Interest

Nil.

### 4. Minutes

#### Minutes to be Confirmed

#### 4.1 Strategy and Policy Committee Minutes - 11 August 2020

##### Resolved

That the Strategy and Policy Committee:

- 1 Confirms the Strategy and Policy Committee Minutes - 11 August 2020 as a true and correct record.

Thompson/Rose  
CARRIED

### 5. Reports

#### Strategy

#### 5.1 Operating Environment Report

Presented by: Namouta Poutasi – General Manager, Strategy and Policy; Stephen Lamb – Environmental Strategy Manager; Julie Bevan – Policy & Planning Manager; Andy Bruere – Lake Operations Manager

9:36am - Cr von Dadelszen entered the meeting.

##### Key Points - Staff:

- Wording within the report in the case of Proposed Change 5 (Kaituna River) and the obligation to change the Regional Policy Statement (RPS) to recognise the vision, objectives and desired outcomes of the Kaituna River Document was clarified, and that the objectives did not need revisiting each time Regional Council proposed changes to the RPS.
- Although Lake Rotorua was within its Trophic Level Index (TLI) target, there had been a recent algal bloom. Alum dosing was ongoing, but at a reduced rate due to work underway to renew a storage tank. Long term mitigation such as land use change was ongoing, however it would be decades for leaching to resolve due to long groundwater flow times and nutrients in lake bed sediments recycling.

##### Key Points - Members:

- Notification of plans and ongoing engagement should be undertaken through numerous channels, including social media, online, newspapers, and other traditional methods.

**Items for Staff Follow Up:**

- Provide an update on Plan Change 14 and On-Site Effluent Treatment (OSET) funding replacement for Rotorua Lakes with a holistic overview.
- Provide information to the Committee outlining various incoming changes to be implemented by Council and implications.
- Undertake communication and engagement with Rotorua Lakes communities to advise of BOPRC actions underway to prevent future algal blooms and the delayed timelines for land use changes to take effect.
- Provide Ngāi Tahu proceedings to members as soon as possible with any potential implications noted.
- Provide to members forecasts of local population growth, particularly within the Western Bay of Plenty, accounting for land availability and productive soil including figures, diagrams, and caveats.

**Resolved****That the Strategy and Policy Committee:**

- 1 Receives the report, Operating Environment Report.**

**Thompson/Crosby  
CARRIED**

- 2 Requests staff provide a public excluded update of ongoing Treaty of Waitangi settlement negotiations as part of the Operating Environment Report, following consideration of the other agenda reports and presentations.**

**Thompson/Thurston  
CARRIED**

**Regulatory Policy****5.2 Essential Freshwater Policy Programme - Implementing the National Policy Statement for Freshwater Management 2020**

*Presentation: Essential freshwater policy programme: Objective ID A3665788*

Presented by: Namouta Poutasi – General Manager, Strategy and Policy; Julie Bevan – Policy & Planning Manager; Anaru Vercoe – Strategic Engagement Manager; Stephanie Macdonald – Community Engagement Team Leader; Nassah Rolleston-Steed – Principal Advisor, Policy & Planning; Nicola Green – Principal Advisor, Policy & Planning

**Key Points - Members:**

- Consider and incorporate lessons from previous processes.
- Communication and engagement across numerous channels was key.

- Programme work should commence immediately.
- Communications and engagement needed to begin as soon as possible to enable the community and stakeholders to understand what was happening, and to have a chance to engage and provide feedback.

**Key Points - Staff:**

- Essential Freshwater branding was aligned nationally for consistency.
- RPS and the Regional Natural Resources Plan (RNRP) were interrelated, aligning the processes for development of both would ensure community engagement was interactive and robust.
- Staff had given consideration to capability and capacity of iwi partners, stakeholders, and the community to be involved in engagement in the proposed timelines.
- Staff would continue work and start early communications to allow communities to understand the National Policy Statement for Freshwater Management (NPSFM) implementation and enable involvement and engagement.

**Items for Staff Follow Up:**

- Present to the Long Term Plan (LTP) workshop with greater detail on options for notification prior to December 2024, including consequential risks and resourcing requirements.

**Resolved**

**That the Strategy and Policy Committee:**

- 1 Receives the report, Essential Freshwater Policy Programme - Implementing the National Policy Statement for Freshwater Management 2020.**
  - 2 Requests the Chief Executive to provide a presentation for the Long Term Plan discussions (next week) on potential changes to the Policy Programme Plan and the Communications and Engagement Plan.**
  - 3 Confirms the decision has a medium level of significance as determined by the Council's Significance and Engagement Policy. Council has identified and assessed different options and considered community views as part of making the decision, in proportion to the level of significance.**
  - 4 Notes the Regional Natural Resources Plan will be amended (without using the Schedule 1 process) to:**
    - (a) insert NPSFM 2020 clauses 3.22(1) - Natural Inland Wetlands, 3.24(1) - Rivers and 3.26(1) -Fish Passage of the NPSFM 2020 (or words to the same effect); and**
    - (b) delete the word 'secondary' in both places it appears in RNRP policy DW P6 (Policy 43A).**
- Thompson/Leeder  
CARRIED**
- 5 Early and consistent communications with the community is imperative in the Communications and Engagement Plan.**



Thurston/Rose  
CARRIED

Item 7.1

### 5.3 Giving effect to the National Policy Statement for Freshwater Management through the Bay of Plenty Regional Policy Statement

Presented by: Namouta Poutasi – General Manager, Strategy and Policy; Julie Bevan – Policy & Planning Manager; Nassah Rolleston-Steed – Principal Advisor, Policy & Planning

#### **Key Points:**

- The report proposed aligning the RPS and NPSFM processes to meet the December 2024 notification deadline in order to increase efficiencies whilst regulating pressure and resources.
- Councillors could consider options through LTP discussions to increase resourcing in order to speed the process up.
- Partners and the community must be included, and consideration given to their capacity and capability.

#### **Resolved**

##### **That the Strategy and Policy Committee:**

- 1 **Receives the report, Giving effect to the National Policy Statement for Freshwater Management through the Bay of Plenty Regional Policy Statement.**
- 2 **Subject to LTP discussions, agrees to aligning RPS changes to give effect to the NPSFM with the timing of changes to the RNRP no later than December 2024.**
- 3 **Notes scope for RPS changes to give effect to the NPSFM to be considered under the Freshwater Planning Process may be limited to provisions within the 'Land and Freshwater' domain only.**
- 4 **Endorses staff working closely and in partnership with tangata whenua in freshwater policy development consistent with Te Hononga principles.**

Thompson/Rose  
CARRIED

11:05am - The meeting **adjourned**.

11:28am - The meeting **reconvened**.

### 5.4 Adoption of Plan Change 13 (Air Quality)

Presented by: Karen Parcell – Team Leader Kaiwhakatinana

#### **Key Points - Members:**

- Members thanked and applauded Karen for her efforts and support on Plan Change 13.

**Resolved****That the Strategy and Policy Committee:**

- 1 Receives the report, Adoption of Plan Change 13 (Air Quality).**
- 2 Adopts all provisions of Proposed Plan Change 13 (Air Quality) to the Regional Natural Resources Plan that are beyond appeal and the consequential changes to the Regional Natural Resources Plan, to be effected by affixing the seal of the Regional Council, for reference to the Minister of Conservation for approval.**
- 3 Delegates to the Group Manager Strategy and Science to make minor corrections to Proposed Plan Change 13 (Air Quality) to the Regional Natural Resources Plan that are beyond appeal and the consequential changes if required.**
- 4 Delegates to the Chief Executive the authority to set the date to make Proposed Plan Change 13 (Air Quality) to the Regional Natural Resources Plan operative, once approval has been given by the Minister of Conservation.**

**White/Winters  
CARRIED**

**Non-Regulatory Policy****5.5 Impact investment scheme for energy efficiency: an update**

*Presentation: Impact investment scheme for energy efficiency: Objective ID  
A3665789*

Presented by: Stephen Lamb – Environmental Strategy Manager; Santiago Bermeo  
– Senior Planner; Sandra Barns – Economist

**Key Points:**

- The proposals in the report focussed on financial return and the level of impact from investment.

**Key Points - Members:**

- Most initiatives had consequential ongoing resourcing and maintenance.
- A trial could provide clarity of impact.
- Conceptually in favour of the scheme, however greater detail, evidence, and clarity was required.
- Impacts across the four well beings should be considered within the scheme.
- Administration costs should not be recovered.
- Interest rates in the scheme needed to align with the current lending environment.
- Must consider disparity of wealth and accessibility for low income households.

- Should include consultation on the proposals within the Long Term Plan.
- Details regarding ongoing maintenance costs of proposals were requested.
- Information on projected electricity needs for New Zealand were also requested.

**Key Points - Staff:**

- Insulation was the most cost effective initiative with positive outcomes across the four well beings.

**Resolved**

**That the Strategy and Policy Committee:**

- 1 Receives the report, Impact investment scheme for energy efficiency: an update.**
- 2 Notes the proposed scheme will continue to be considered as part of the development of the Long Term Plan 2021-31, specifically in relation to the scale of investment.**
- 3 Notes that the proposed scheme can be designed in way to make it more likely to be cost neutral or result in financial returns for Council in the long-term, however this may come at the expense of uptake (and associated social and environmental benefits).**
- 4 Provides feedback to staff on the developing design of the scheme as set out in this report, particularly in relation to the importance to be placed on cost-neutrality/financial return relative to social and environmental impact.**

**Thurston/White  
CARRIED**

**Other**

**5.6 Bay of Connections and Toi Kai Rawa Update**

*Tabled Document 1 - Bay of Connections - Bay of Plenty Regional Recovery Framework - COVID-19 Regional Recovery October 2020: Objective ID A3668261*

Presented by: Stephen Lamb – Environmental Strategy Manager

**Key Points:**

- Council's funding was mostly focussed on milestone delivery.
- The scope of capital investment would be reported to the Committee once traction was gained.

**Resolved**

**That the Strategy and Policy Committee:**

- 1 Receives the report, Bay of Connections and Toi Kai Rawa Update.**

**Thompson/Iti**

CARRIED

Item 7.1

12:09pm - The meeting **adjourned**.

12:32pm - The meeting **reconvened**.

## 6. Presentations

### 6.1 Taumata Arowai - Water Services Regulator Body

*Presentation: Taumata Arowai - Bill Bayfield: Objective ID A3665787*

Presented by: Bill Bayfield, Establishment Chief Executive for Taumata Arowai  
(Water Services Regulator) Establishment Unit

#### **Key Points:**

- Taumata Arowai would be the new water services regulator, giving effect to Te Mana o Te Wai.
- They would oversee affordable, reliable, and safe water services for all and empower the public with accessible data on water quality and regulatory results.
- Expected progress on the appointment of a board and advisory group by March 2021.
- The number of unregulated private water supplies was significantly underestimated.
- Wastewater regulation was becoming a major concern and was expected to be raised in submissions.
- Oversight of wastewater would only apply to reticulated services.

#### **Key Points - Members:**

- Significant changes were on the way for local government over the next five years.

#### **Resolved**

**That the Strategy and Policy Committee:**

- 1 Receives the presentation, Taumata Arowai - Water Services Regulator Body.**

Thompson/Rose  
CARRIED

## 7. Public Excluded Section

#### **Resolved**

**Resolution to exclude the public**

- 1 Excludes the public from the following parts of the proceedings of this meeting as set out below:**

**The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:**

<b>Item No.</b>	<b>Subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Grounds under Section 48(1) for the passing of this resolution</b>	<b>When the item can be released into the public</b>
5.1	Operating Environment - Verbal Update regarding Ongoing Treaty Settlements	Withholding the information is necessary as the public disclosure of the information would constitute contempt of court or of the house of representatives.	Section 48(1)(b)(ii)	To remain in Public Excluded.

**Thompson/Thurston  
CARRIED**

**1.35pm - the meeting closed.**

**CONFIRMED**

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Cr Paula Thompson  
Chairperson, Strategy and Policy Committee



**Report To:** Strategy and Policy Committee

**Meeting Date:** 16 February 2021

**Report Writer:** Julie Bevan, Policy & Planning Manager

**Report Authoriser:** Namouta Poutasi, General Manager, Strategy & Science

**Purpose:** To provide an update on the operating environment and to provide a signal to the Committee of the upcoming workstream.

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## Operating Environment Report

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### Executive Summary

This report covers operating environment areas that influence and inform Council's policy direction and work. This report provides information on the operating environment and highlights a number of upcoming workstream delivery decisions that will be required of Council and this Committee.

It covers:

- Strategy and Policy Committee Indicative Work Programme 2021 and Regional Policy Statement Changes and Regional Natural Resources Plan Changes Programme Summary
- Natural Hazards Workstream Update
- National Climate Change Policy Progress
- Territorial Authority Boundary Change – Tauriko West
- Submission to TCC Plan Changes 26, 27 and 28

### Recommendations

**That the Strategy and Policy Committee:**

- 1 Receives the report, Operating Environment Report.**

## 1. Introduction

This report provides a summary of the Strategy and Policy Committee Indicative Work Programme 2021 and the current Regional Policy Statement (RPS) and Regional Natural Resources Plan (RNRP) changes and proposed changes to ensure that Councillors are aware of the upcoming reporting and decision making programme. Also updates are provided on the Natural Hazards workstream, National Climate Change Policy Progress, the Territorial Authority Boundary Change at Tauriko and a copy of the submission to TCC Plan Changes 26, 27 and 28.

### 1.1 Legislative Framework

Section 79 of the Resource Management Act 1991 (RMA) requires Regional Council to review the RPS and the RNRP at least every 10 years.

Under the RMA most decisions on how resources are managed are made locally by local authorities. In some cases the Government has determined that it is appropriate to have a nationally consistent approach, i.e. national direction. The range of instruments under the RMA that can be used to develop a nationally consistent approach to resource management issues include national policy statements, national environmental standards, national planning standards and regulations under section 360.

The National Planning Standards (NPStds) are national directions introduced through RMA amendments in 2017. They aim to make RPS, regional and district plans more consistent with each other, easier to use and faster to make.

### 1.2 Alignment with Strategic Framework

<b>A Healthy Environment</b>	We develop and implement regional plans and policy to protect our natural environment.
<b>Freshwater for Life</b>	<p>Good decision making is supported through improving knowledge of our water resources.</p> <p>We listen to our communities and consider their values and priorities in our regional plans.</p> <p>We collaborate with others to maintain and improve our water resource for future generations.</p> <p>We deliver solutions to local problems to improve water quality and manage quantity.</p> <p>We recognise and provide for Te Mana o Te Wai (intrinsic value of water). We listen to our communities and consider their values and priorities in our regional plans.</p>
<b>Safe and Resilient Communities</b>	<p>We work with communities and others to consider long term views of natural hazard risks through our regional plans and policies.</p> <p>We provide systems and information to increase understanding of natural hazard risks and climate change impacts.</p>
<b>A Vibrant Region</b>	We contribute to delivering integrated planning and growth management strategies especially for sustainable urban management.



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**The Way We Work** We honour our obligations to Māori.
 

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The delivery of RPS and RNRP Changes are an integral part of the Long Term Plan's Regional Planning activity which sets Council's strategic planning and policy direction. The RPS identifies how the integrated management of the region's natural and physical resources is to be managed by establishing policy direction for regional and district plans. The RNRP is focussed on promoting the sustainable management of land, water and geothermal resources, achieving integrated management and improving environmental quality in the Bay of Plenty Region.

## 2. Operating Environment

### 2.1 Strategy and Policy Committee Indicative Work Programme 2021 and RPS Changes and RNRP Changes

The indicative work programme for the Strategy and Policy Committee meetings and Workshops for 2021 are set out in Attachment 1. A number of possible national direction instruments are included in the work programme based on the status of national direction under development noted in the Ministry for the Environment webpage however the final gazettal timelines are not currently confirmed.

The current indicative programme of RPS Changes and RNRP Changes to give effect to the RMA s79 requirements, the gazetted NPS's and NES's and the NPStd's requirements are set out in Attachment 2.

These programmes will be updated and reported to Strategy and Policy Committee meetings throughout 2021.

### 2.2 Natural Hazards Workstream and Natural Hazards Working Group Update

#### 2.2.1 Background

This update follows an earlier item reported at the Strategy and Policy Committee on 5 May 2020. By way of background, an inter council Natural Hazards Working Group<sup>1</sup> (NHWG) was established in June 2020 to address 11 implementation issues that were considered impediments to urban growth as identified by the Natural Hazards Way Forward (NHWF) project.

The majority of the issues have been significantly progressed through a series of 7 meetings. A brief update of this work is outlined below and a possible change to the natural hazard chapter of the RPS will be workshopped with councillors on 23 March 2021.

#### 2.2.2 Mapping and risk assessment

The RPS natural hazards provisions require extensive hazard mapping and risk assessment work to be undertaken by either a territorial authority or Bay of Plenty Regional Council (BOPRC). The outputs of this work are used for a range of resilience and climate change adaptation planning purposes that will inform district plan

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<sup>1</sup> Includes planning and engineering from Tauranga City Council, Western Bay of Plenty District Council and Bay of Plenty Regional Council

reviews, urban growth structure planning and subdivision/resource consenting undertaken by territorial authorities.

To progress this work, the Natural Hazards Planning Charter (NHPC<sup>2</sup>) led by BOPRC has been reinstated to further integrate delivery of planning and engineering functions across the various councils. This is to ensure the timing of mapping and modelling can be aligned according to priority growth areas and to address implementation concerns i.e. mapping and risk assessment methodology and national climate change guidance.

An indicative table of the workstream for natural hazards is attached in Attachment 3 to this report. In summary, the focus of the work will be to complete region-wide mapping and began risk assessment for natural hazards<sup>3</sup> assigned to BOPRC to support forthcoming district plan reviews by Tauranga City and Western Bay of Plenty.

To date, Tauranga City Council have made significant progress on the mapping and risk assessment work. Western Bay of Plenty, Rotorua Lakes Council and Whakatāne District council have recently begun to undertake the initial mapping work as a precursor to risk assessment. BOPRC staff will continue to engage with each of the territorial authorities to ensure they meet their obligations under BOP RPS (Regional Policy Statement).

### 2.2.3 Policy implementation and monitoring

Since becoming operative, the overall RPS policy framework for managing natural hazards to inform urban growth is supported by the NHWG following a review of the NHWF project.

However, a number of implementation shortcomings, informed by the implementation of a number of urban growth related proposals<sup>4</sup>, have been identified and workshopped on a without prejudice basis<sup>5</sup> by the NHWG resulting in a number of suggested changes to the RPS (natural hazards).

It is expected that the changes would streamline the implementation of the natural hazard provisions (mapping, risk assessment and risk reduction) by territorial authorities in plan making processes i.e. district plans across the region and, provide clarity on implementing urban development proposals.

### 2.2.4 Options for RPS review

The resulting recommendations of the NHWG that could be considered for a possible change to the natural hazard chapter of the RPS are as follows:

- address technical matters associated with the application of Appendix L (risk assessment methodology);

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<sup>2</sup> Same as above

<sup>3</sup> Coastal inundation, coastal erosion, tsunami, liquefaction, active faults and volcanic activity

<sup>4</sup> Plan changes 26 (housing choice) and 27 (flooding from intense rainfall events) by Tauranga City; Plan change 2 (Pukehangi Heights) by Rotorua Lakes Council and pre-notification structure plan proposals including Tauriko West, Te Tumu and Ōmokoroa.

<sup>5</sup> As provided for in the Terms of Reference for the NHWG.

- explore options to use other risk assessment methodologies other than Appendix L;
- consider wording amendments to reduce ambiguity and improve clarity; and
- re-draft the non-statutory user guide, with a focus on risk reduction.

BOPRC staff will workshop the above suggested changes at the Strategy and Policy Committee on 23 March 2021 to seek guidance on the next steps.

## 2.3 National Climate Change Policy Progress

On Sunday 31 January, the Climate Change Commission released its draft package of advice to government on the steps Aotearoa must take to meet the country's domestic and international climate change obligations in response to the climate crisis. The document sets out three emissions budgets, covering 15 years to 2035. It also provides advice on the direction policy should take to achieve the country's 2050 net-zero goal. The commission's advice is built around 17 recommendations covering key sectors of the economy: land, waste, transport and heat, industry and power.

Key messages include:

- Current government policies do not put Aotearoa on track to meet the recommended emissions budgets and 2050 targets;
- The focus needs to be on real cuts in emissions and eliminating the use of fossil fuels and less reliance on planting trees;
- Priority areas for action are: increasing electric vehicles, accelerated renewable energy generation, climate friendly farming practices and more permanent forests, predominantly natives;
- Most of the solutions and technologies are already known and available;
- The cost of action is lower than previously expected - less than 1 per cent of projected annual GDP;
- Government needs to move faster whilst provide support for business, agriculture and community through the changes;
- Central and local government need to acknowledge iwi/Māori rights to exercise rangatiratanga and kaitiakitanga in a joint plan to reduce emissions;
- The transition needs to be equitable, with the benefits of climate action shared across society whilst ensuring the costs of the climate transition do not fall unfairly on certain groups or people.

Alongside the emissions budget recommendations, the Commission has provided policy recommendations to inform the direction of policy needed in the Government's emissions reduction plan.

Public consultation on the draft advice runs from 1 February to Sunday 14 March. Staff are preparing a submission from BOPRC as well as looking to review and potentially support submissions from SOLGM, LGNZ and other Councils. The Commission's final recommendations will then be released on 31 May and the Government then has until the end of 2021 to formalise the emissions budgets and

associated emissions reduction plan. Staff are currently considering implications of this national direction including the need for bus decarbonisation.

## 2.4 Territorial Authority Boundary Change – Tauriko West

The reorganisation of the boundary between Tauranga City Council (TCC) and Western Bay of Plenty District Council (WBOPDC) at Tauriko West was gazetted on 23 November 2020 and came into force on 1 January 2021.

The attached gazette notice (Attachment 4) states that as of 1 January 2021 TCC became the local authority responsible for all constitutional matters for Tauriko West, however rates collection and the annual plan remain with WBOPDC until 30 June 2021.

Although all matters under the RMA for the area at Tauriko West became the responsibility of TCC from 1 January 2021, TCC has up to two years to make any changes their district plan required to cover Tauriko West.

## 2.5 Submission to TCC Plan Changes 26, 27 and 30

Tauranga City Council notified Plan Changes (PC) 27, 28 and 30 in November 2020 and submissions closed on 1 February 2021.

PC 26 – Housing choice proposes changes to the City Plan to make it easier for people to build a variety of more compact types of homes, like duplexes, terraced houses, townhouses and apartments that better suit their needs.

PC27 – Flooding from Intensive rainfall introduces a new rule framework to manage the effects of flooding in intense rainfall events on people, properties and infrastructure.

PC30 – Earthworks proposes to clarify wording of existing provisions to ensure that earthworks are undertaken in a safe manner, avoiding negative effects on the environment.

BOPRC's submission, attached in Attachment 5 and 6, supported the overall intent of the plan changes and addressed the following topics with respect to the three proposed plan changes:

- Urban growth
- Natural hazards
- Stormwater
- National Policy Statement for Freshwater Management
- Climate change.

## 3. Considerations

### 3.1 Risks and Mitigations

This is an information only report and matters of risk in relation to the indicative programme package of RPS and RNRP changes and the possible Natural Hazards RPS Change will be outlined in the separate reports when reported to the Committee for decision making purposes.

### 3.2 Climate Change

The matters addressed in this report are of a procedural nature. Section 2.3 outlines the latest National Climate Change Policy Progress. Climate Change is a key matter that will be considered in the implementation policy development and analysis process of the proposed RPS Changes and RNR Plan Changes and will be reported to the Committee during the process.

### 3.3 Implications for Māori

The RMA processes, RPS Changes and Plan Changes discussed in this report all involve consideration of implications for Māori, engagement and consideration of iwi planning documents.

### 3.4 Community Engagement



#### **CONSULT** **Whakauia**

To obtain input or feedback from affected communities about our analysis, alternatives, and /or proposed decisions.

The RMA processes, RPS Changes and Plan Changes discussed in this report all involve consideration of community engagement undertaken through those processes.

### 3.5 Financial Implications

The matters addressed in this report are of a procedural nature and information only. There are no material unbudgeted financial implications and this fits within the allocated budget.

## 4. Next Steps

Further updates on operating environment areas that influence and inform Council's policy direction and work will be provided at future Strategy and Policy Committee Meetings.

## Attachments

Attachment 1 - Strategy and Policy Committee Indicative Work Programme 2021 [↓](#)

Attachment 2 - RPS and RNR Plan Changes Programme 2021-2024 [↓](#)

Attachment 3 - Natural Hazards Workstream Indicative Roadmap [↓](#)

Attachment 4 - Gazette Notice Local Government Reorganisation (Tauriko West)  
Implementation Order 2020 [↓](#)

Attachment 5 - Bay of Plenty Regional Council Submission TCC PC 26, 27 and 30 [↓](#)

Attachment 6 - BOPRC Submission on TCC PC26, 27 and 30 Appendix 1 [↓](#)

<b>Strategy &amp; Policy Committee Indicative Work Programme 2021</b> Additional informal meetings will be scheduled to discuss Council's position on a range of matters including SLG workshops and meetings, EFPP work programme							
Meeting 16 February	Workshop 23 March	Meeting 4 May	Workshop 15 June	Meeting 4 August	Workshop 14 September	Meeting 26 October	Workshop 17 November
<b>Strategy</b> Operating Environment Report • RPS Changes and RNRP Changes, • National Climate Change Policy Progress • Natural Hazards Workstream Update • TA Boundary Change – Tauriko • Submission to TCC Plan Changes 26, 27 & 30		<b>Strategy</b> Chair's Report Operating environment		<b>Strategy</b> Chair's Report Operating environment		<b>Strategy</b> Chair's Report Operating environment	
<b>Regulatory Policy</b> Reports: • Process to change the Regional Policy Statement to implement the NPS-UD • Mount Maunganui Airshed – Direction and Scope • Approval of PC17 (Awatarariki Fanhead) • Change to Rotorua Airshed Boundary	<b>Regulatory Policy</b> Workshop Items: • RPS Change 5 (Kaituna River) • Essential Freshwater Policy Programme (EFPP) Update - NPSFM Implementation /Te Hononga implementation & budget/FMUs/national planning standards compliant RNRP and RPS structure • Possible RPS Natural Hazards Change • Update on OSET direction	<b>Regulatory Policy</b> Reports: • Mount Maunganui Airshed Consultation Approval • PC11 Geothermal Issues and Options Consultation Approval • Confirm EFPP programme Te Hononga implementation and FMU's approach Possible Items: • National Policy Statement for Highly Productive Land Update ( <i>assuming gazettal is prior to Committee Meeting</i> ) • National Policy Statement for Indigenous Biodiversity Update ( <i>assuming gazettal is prior to Committee Meeting</i> ) • National Environmental Standards for Air Quality Update ( <i>assuming gazettal is prior to Committee Meeting</i> )	<b>Regulatory Policy</b> Workshop Items: • Essential Freshwater Policy Programme (EFPP) Update – upcoming online engagement	<b>Regulatory Policy</b> Possible Items: • Proposed Amendments to NES for Sources of Human Drinking Water Update ( <i>assuming public consultation commences prior to Committee Meeting</i> ) • National Policy Statement for Highly Productive Land Update ( <i>assuming gazettal is prior to Committee Meeting</i> ) • National Environmental Standards for Outdoor Storage of Tyres ( <i>assuming gazettal is prior to Committee Meeting</i> )	<b>Regulatory Policy</b> Workshop Items: • EFPP Update	<b>Regulatory Policy</b> Reports: • Geothermal Rotorua SMP and Draft PC Consultation Approval • NPS-UD approves proposed change for public notification	<b>Regulatory Policy</b> Workshop Items: • EFPP Update
<b>Non Regulatory Policy</b>	<b>Non Regulatory Policy</b>	<b>Non Regulatory Policy</b> • Development of energy efficiency initiative • Smart Growth Update • Bay of Connections Update	<b>Non Regulatory Policy</b>	<b>Non Regulatory Policy</b> • Smart Growth Update	<b>Non Regulatory Policy</b>	<b>Non Regulatory Policy</b> • Smart Growth Update • Bay of Connections Update	<b>Non Regulatory Policy</b>



## RPS and RNRP Changes Programme 2021 -2024 (indicative)

2021	2021	2022	2022
Jan - June	Jul - Dec	Jan - June	Jul - Dec
<b>EFPP</b> - implementing NPSFM - research, science, & planning work	<b>EFPP</b> - implementing NPSFM - research, science & planning work continuing	<b>EFPP</b> - implementing NPSFM - research, science, planning work continuing	<b>EFPP</b> - S&P approves draft issues and options for consultation
<b>RPS Change 5</b> – S&P to approve proposed change for public notification. Council nominates 2 panel members.	<b>RPS Change 5</b> – Submissions, Hearing (using Freshwater Planning Process (FPP))	<b>RPS Change 5</b> – Freshwater hearing panel provides recommendations; Council notifies decisions	<b>RPS Change 5</b> – Appeals process (possible timeframe)
<b>RPS Change NH</b> –S&P approves draft issues and options for consultation	<b>RPS Change NH</b> –S&P approves proposed change for public notification	<b>RPS Change NH</b> –Submissions	<b>RPS Change NH</b> – Hearing, decisions and possibly appeals
<b>RPS Change UD</b> – S&P approves scope and process for change	<b>RPS Change UD</b> – S&P approves proposed change for public notification	<b>RPS Change UD</b> – Submissions	<b>RPS Change UD</b> – Hearing, decisions and possibly appeals
	<b>RPS</b> updated to insert housing bottom lines without need to use Schedule 1 process		
<b>Possible PC14</b> – S&P direction on process	<b>Possible PC14</b> – Update on process	<b>Possible PC14</b> – Update on process	<b>Possible PC14</b> - Update on process
<b>PC11</b> - S&P approves draft issues and options for consultation (excluding Tauranga)	<b>PC11</b> - S&P approves draft Rotorua SMP & draft plan change for consultation	<b>PC11</b> – Consultation and development of proposed plan change	<b>PC11</b> - S&P approves proposed plan change for public notification. Council nominates 2 panel members
<b>PC MMA</b> - S&P confirm draft issues and options for consultation	<b>PC MMA</b> – S&P approves proposed plan change for public notification	<b>PC MMA</b> – Submissions	<b>PC MMA</b> – Hearing, decisions and possibly appeals
<b>RNRP</b> updated to insert Air chapter (PC13), Awatarariki Fanhead content (PC17) and NPSFM changes not requiring Schedule 1 process			
	<b>NPStds</b> - S&P approves NPStds compliant RPS and proposed RPS review programme	<b>NPStds</b> - RPS complies with structure, format, definitions requirements by 3 May 2022	
2023	2024		
<b>EFPP</b> - Consultation on issues and options with community and stakeholders	<b>EFPP</b> – S&P approves proposed changes to RNRP & RPS for notification. Council nominates 2 panel members		
	<b>RPS</b> Full review process commences for chapters not already reviewed through the NPSFM process		
<b>PC11</b> – Submissions, hearings (FPP), panel recommendations, Council decisions and appeals			
<b>EFPP</b> - RPS change and RNRP plan change drafting and consultation			

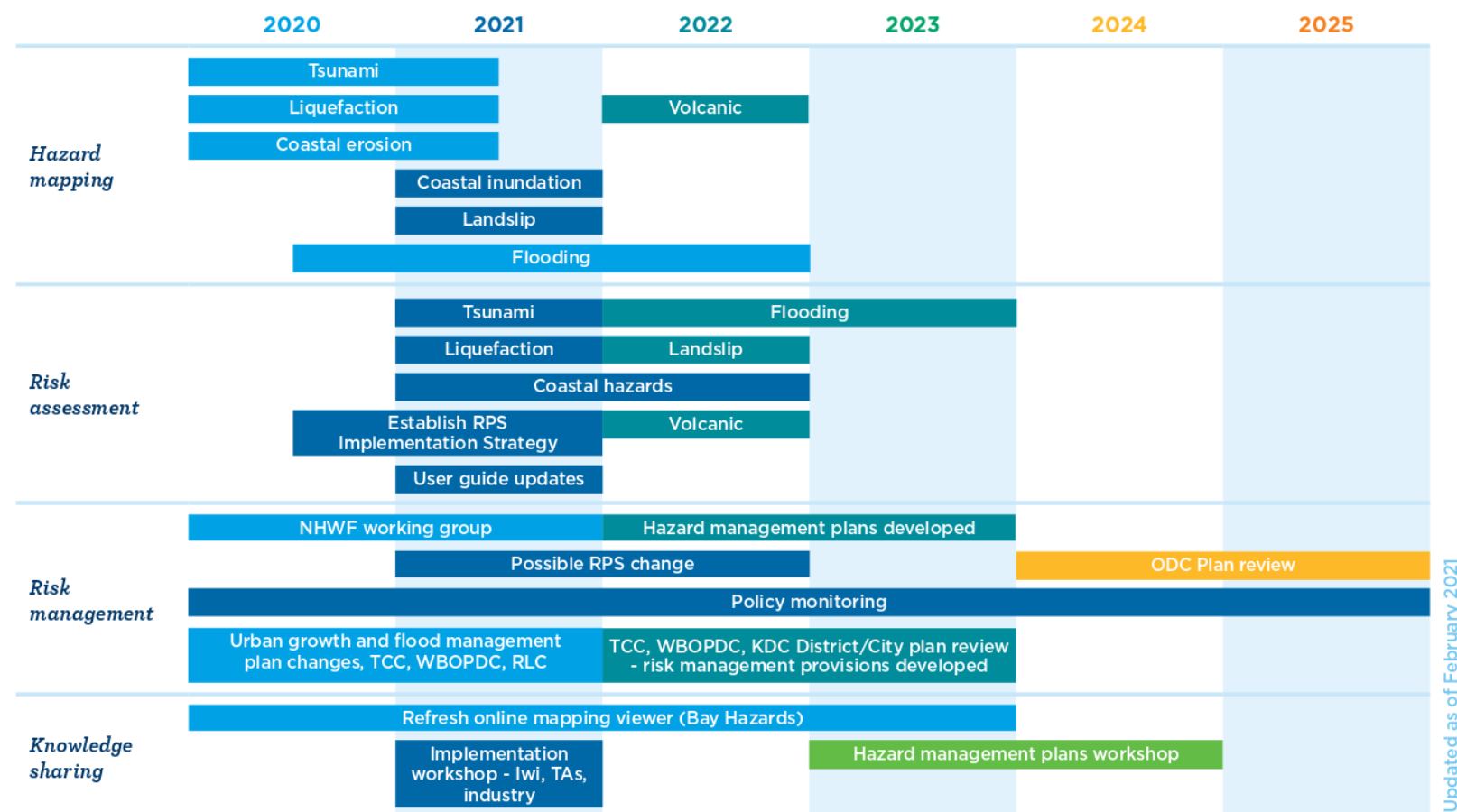
Legend
Essential Freshwater Policy Programme (EFPP)
RPS Change 5 Kaituna River (RPS Change 5)
RPS Change Natural Hazards (RPS Change NH)
RPS Change NPS Urban Development (RPS Change UD)
Regional Policy Statement Other (RPS)
RNRP Possible Plan Change 14 OSET (PC14)
RNRP Plan Change 11 Geothermal (PC11)
RNRP Plan Change Mt Maunganui Air Shed (PC MMA)
Regional Natural Resources Plan Other (RNRP)
National Planning Standards (NPStds)



# Natural Hazards Workstream Indicative Roadmap



**Goal:** Lead the implementation of the RPS natural hazards framework through district/city plan reviews across the region.



## NEW ZEALAND GAZETTE

**Local Government Reorganisation (Tauriko West) Implementation Order 2020**

Order in Council

At Wellington this 23rd day of November 2020

Present:

The Rt HON PATSY REDDY, GZNM, QSO, Governor-General

Presiding in Council

Pursuant to section 25 and part 4 of Schedule 3 of the Local Government Act 2002, the Governor-General, acting by and with the advice of the Executive Council and at the request of the Local Government Commission, makes the following order.

**Order*****Preliminary Provisions*****1. Title and Purpose**

(1) This is the Local Government Reorganisation (Tauriko West) Implementation Order 2020.

(2) This order:

- a. gives effect to the reorganisation scheme adopted by the Local Government Commission on 15 October 2020 which completes the reorganisation plan given effect to by the Local Government Reorganisation (Tauriko West) Order 2020 made on 10 August 2020; and
- b. promotes good local government in a way that meets the needs and preferences of affected communities.

**2. Commencement**

This order comes into force on **1 January 2021**.

**3. Interpretation**

The following terms have their meaning in this order as follows:

**Act** means the Local Government Act 2002.

**Area A** means the area defined in Schedule 1 of this order, and also defined on map LG-022/023-2020-Boundary-1 deposited with the Local Government Commission.

***Boundary Alteration*****4. Boundary Alteration**

The boundaries of Western Bay of Plenty District and Tauranga City are altered by excluding Area A from Western Bay of Plenty District and including it in Tauranga City.

***Representation*****5. Territorial Authority Wards**

Area A is excluded from the Kaimai Ward of Western Bay of Plenty District and is included in the Otumoetai-Pyes Pa Ward of Tauranga City.

**6. Regional Constituencies**

Area A is excluded from the Western Bay of Plenty Constituency of Bay of Plenty Region and is included in the Tauranga Constituency of Bay of Plenty Region.

**7. Representation Reviews**

Clauses 5 and 6 are subject to any review of representation arrangements undertaken under Part 1A of the Local Electoral Act 2001 prior to the triennial elections of local authorities to be held on 8 October 2022.

***Effect on Other Matters*****8. Affected Local Authorities Continue in Existence**

(1) The Western Bay of Plenty District Council and the Tauranga City Council, being territorial authorities, continue in existence.

(2) The districts for those local authorities are the Western Bay of Plenty District and Tauranga City.

**9. Affected Iwi and Hapū**

For the purposes of clause 14(2) of the Schedule 3 of the Act, it is noted that Area A falls within the areas of interest of hapū Ngāti Kahu, Ngāti Rangī, Ngāti Pango, Pirirakau, Ngāti Hangarau, and Ngāi Tamarawaho, which whakapapa to Ngāti Ranginui iwi of Tauranga Moana.

## NEW ZEALAND GAZETTE

**Transitional Matters****10. Transitional Matters**

- (1) Except as provided by clause 13, clause 45 of Schedule 3 of the Act applies to this order.
- (2) Except as provided by clause 16 of this order, clause 46 of Schedule 3 of the Act applies to bylaws in force in Area A.

**11. Long term plans**

The Long Term Plan adopted by the Western Bay of Plenty District Council for the period 2018/2028 continues to apply to Area A until the Long Term Plan to be adopted by the Tauranga City Council for the period 2021/2031 becomes operative.

**12. Annual plan**

The annual plan adopted by the Western Bay of Plenty District Council for 2020/2021 continues to apply to Area A until the close of 30 June 2021.

**13. Rates**

- (1) Clause 45(e) of Schedule 3 of the Act does not apply. All rates and charges payable to or owing to the Western Bay of Plenty District Council in respect of Area A prior to 1 January 2021 continue to be payable to that council.
- (2) The Western Bay of Plenty District Council:
- shall collect the rates and charges assessed for Area A for the period beginning 1 January 2021 and ending on 30 June 2021; and
  - shall pay those rates and charges to the Tauranga City Council as soon as practicable after receipt.

- (3) From 1 July 2021, all rates and charges assessed for Area A shall be collected by and payable to the Tauranga City Council.

**14 Resource Management Act**

- (1) In accordance with section 81 of the Resource Management Act 1991:

- the operative district plan prepared by the Western Bay of Plenty District Council as it relates to Area A continues to apply to Area A and is deemed to be part of Tauranga City Council's district plan; and
- the Tauranga City Council shall, as soon as practicable but within two years, make such changes to its district plan as it considers necessary to cover Area A.

- (2) All matters under the Resource Management Act 1991 relating to Area A become the responsibility of the Tauranga City Council from 1 January 2021.

**15. Policies**

- (1) Subject to clause 16, any policy prepared by the Western Bay of Plenty District Council, in so far as it applies to Area A, continues to apply to that area until that policy is, in relation to its application to Area A, revoked, amended or replaced by the Tauranga City Council.
- (2) The Tauranga City Council shall, as soon as practicable but within two years, make such changes as it considers necessary to cover Area A, and, after the changes are made, the Western Bay of Plenty District Council's policies cease to apply.

**16. Election signs**

For the purpose of regulating election signs at any poll or election:

- the Western Bay of Plenty District Council's Election Signs Policy and clause 4D:4.1.1 of the Western Bay of Plenty District Plan cease to apply to Area A; and
- the Tauranga City Council's Local Elections Policy, clause 14 of the Street Use and Public Places Bylaw 2018, and rules 4D.2.1 and 4D.2.2 of the Tauranga City Plan apply to Area A.

**Schedule 1****Area Included in Tauranga City**

All that area bounded by a line commencing at the easternmost corner of Lot 7 DP 512150, thence following the northern boundary of the said Lot 7 in a westerly, northerly and then westerly direction, thence following a projection of that boundary to the middle line of the Wairoa River, thence following the middle line of the Wairoa River in a generally south-westerly direction to coordinate 1870682 mE 5816544 mN, thence to coordinate 1870778 mE 5816549 mN, thence following the middle line of the physical road of State Highway 29 to its intersection with Belk Road, thence following the middle line of the legal road of State Highway to the point of commencement.

NEW ZEALAND GAZETTE

2020-g05579

03-12-2020 15:36

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**Item 8.2, Attachment 4**

29 January 2021



Manager: City and Infrastructure Planning  
 Tauranga City Council  
 Private Bag 12022  
 Tauranga 3143  
[city.plan@tauranga.govt.nz](mailto:city.plan@tauranga.govt.nz)

Tēnā koutou rā,

**Bay of Plenty Regional Council Submission: Plan Change 26 (Housing Choice), Plan Change 27 (Flooding from Intense Rainfall) and Plan Change 30 (Earthworks)**

**Summary**

Bay of Plenty Regional Council (BOPRC) wishes to express its thanks for the opportunity to provide input and guidance on the plan changes noted above at pre-notification stage. It provided a valuable opportunity to address a number of issues at an early stage.

Overall BOPRC supports Tauranga City Council's (TCC) Plan Change 26 (Housing Choice) (PC 26) to increase urban capacity in the identified locations, particularly in the western part of the City. BOPRC notes that further growth opportunities could be explored as part of the City Plan Review. BOPRC encourages intensification that demonstrates innovative, exemplar urban design that creates sustainable, liveable and connected communities and promotes community well-being. BOPRC would like to see Tauranga City communities of the future reflecting the principles set out in TCC's Residential Outcomes Framework.

BOPRC supports the exclusion zones identified by TCC in response to hazard risks associated with coastal erosion, coastal inundation and liquefaction. This appropriately factors in climate change in line with national direction.

BOPRC supports the overall framework promoted by TCC's Plan Change 27 (PC 27) to better manage flooding risk from intense rainfall events and the overall intent of TCC's Plan Change 30 (PC 30) to clarify wording of existing provisions to ensure that earthworks are undertaken in a safe manner, avoiding negative effects on the environment.

BOPRC notes the importance of securing funding and resourcing to enable the implementation of these plan changes, particularly with respect to infrastructure.

BOPRC's submission addresses the following topics with respect to the three proposed plan changes:

- Urban growth

BOPRC ID: A3689713

5 Quay St, PO Box 364, Whakatāne 3158, New Zealand 0800 884 880 0800 884 882 [info@boprc.govt.nz](mailto:info@boprc.govt.nz) [www.boprc.govt.nz](http://www.boprc.govt.nz)

- 
- Natural hazards
  - Stormwater
  - National Policy Statement for Freshwater Management
  - Climate change.

Specific submission points on these topics are included in tables in **Appendix 1** to this letter.

### **Urban Growth**

The guiding documents providing the opportunity for transformational change in urban growth in Tauranga City are the National Policy Statement – Urban Development (NPS – UD), the Urban Form and Transport Initiative (UFTI) and the Te Papa Spatial Plan.

While it is imperative that the policy framework for PC 26 gives effect to the directions set out in these documents, it is noted that there will be a further review of the built form provisions and the spatial extent of the Suburban Residential and City Living zones through the City Plan review from 2021-23.

The Bay of Plenty Regional Policy Statement (RPS) provisions that relate to urban growth management are likely to be reviewed and a change proposed during 2021 as part of the implementation of UFTI, the NPS-UD, prompting a new joint spatial plan for the Western Bay sub-region.

On this basis, BOPRC wishes to continue to collaborate with TCC further as PC 26 is implemented to maximise opportunities to incentivise intensification.

### **Natural Hazards**

BOPRC acknowledges the substantial work undertaken by TCC to assess and map the various hazards for Tauranga City and across the Bay of Plenty region including the flooding mapping which allows for the most authoritative and up to date climate change projections.

This mapping will serve the community as a critical tool to understand, assess and manage natural hazard risk over time and ultimately, develop risk reduction strategies that will inform future land use and infrastructure planning decisions.

BOPRC has worked closely with TCC on the preparation of the risk assessment under Appendix L of the RPS and the consideration of the natural hazard provisions for PC 26 and PC 27.

Overall, the regional council supports the approach TCC has taken to manage natural hazard risk by excluding PC 26 from areas affected by liquefaction/lateral spread, coastal erosion and coastal inundation. BOPRC notes that the 'exclusion areas' are based on latest national guidance<sup>1</sup> and is appropriately based on the level of uncertainty that is inherent in a liquefaction assessment at the city wide scale.

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<sup>1</sup> MBIE/MfE (2017) *Planning and engineering guidance for potentially liquefaction-prone land*

Moreover, as ground water levels are expected to rise over time along the coastal margin due to climate change induced sea level rise, BOPRC considers overall, the decision to adopt a precautionary approach (i.e. exclude particular locations) is an appropriate planning response.

While national legislative changes may require council's to more carefully consider the long term implications of planning decisions in coastal areas, it is expected that the City Plan review will provide a further opportunity to reconsider the extent of these exclusion areas in light of any forthcoming national direction.

In summary, BOPRC considers PC 26 and PC 27 are consistent with the relevant natural hazard provisions of the RPS, in particular Policies NH 3B, NH 4B, NH 5B, NH 7A, NH 8A and NH 12A which seek to manage the identified natural hazard risk in Tauranga City.

### **Stormwater**

While BOPRC generally supports PC 26, BOPRC raises concerns regarding the extent to which water quality and existing flood risk is exacerbated by intensification envisaged by PC 26.

Monitoring carried out as a condition of the comprehensive stormwater consent for Tauranga City indicates increasing contaminant levels in stormwater runoff across the city and a number of catchments are approaching or 'at capacity'. Further, it has become clear that comprehensive stormwater consents and Infrastructure Development Codes are not effective tools in themselves to regulate stormwater effects.

As the NPS-UD has confirmed Tauranga City is a Tier 1 urban environment<sup>2</sup>, a location to provide significant future urban growth, BOPRC considers the need to manage stormwater more effectively is necessary to be consistent with the relevant provisions of the RPS.

For these reasons BOPRC seeks amendments to the City Plan to better manage stormwater quantity and quality in the city. In particular, BOPRC seeks that mandatory provisions requiring low impact stormwater design be required as part of subdivision and development proposals promoted by PC 26. Low Impact Urban Design is an accepted stormwater management technique and has been employed successfully in other high growth areas, including Tāmaki Makaurau, to reduce reliance on the stormwater network infrastructure which is both costly and at capacity. Further detail is provided in the specific submissions points in **Appendix 1**.

### **National Policy Statement on Freshwater Management**

BOPRC has prepared a programme to implement the National Policy Statement for Freshwater Management 2020 (NPSFM). This programme involves the review of relevant chapters of the Bay of Plenty Regional Natural Resources Plan and the RPS. BOPRC's focus is ensuring the policy settings within which urban development occurs are consistent with government direction.

<sup>2</sup> Appendix 1: National Policy Statement on Urban Development 2020



BOPRC encourages TCC to be cognisant of these changes, the ramifications of Te Mana o Te Wai, the National Environmental Standards for Freshwater Management and, in particular, to ensure that improved water quality is a key outcome in the preparation of district plans.

It should be noted that a key aspect of BOPRC's work programme entails determining Freshwater Management Unit "values" which drive objective setting. These will in turn drive freshwater limits which could impact development feasibility.

Also, NPSFM clause 3.5(4) states:

*Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments –*

There is no mention in the section 32 report for PC 26 of the NPSFM so to ensure TCC meets its requirements under the NPSFM it is recommended that TCC works closely with its community and BOPRC's freshwater policy staff to ensure strong alignment between both processes. In particular, BOPRC encourages close scrutiny of the impact of additional demand for water on supply sources and of increased (construction and ongoing) contaminant loads on receiving environments, especially in light of prevailing community and tangata whenua attitudes.

### **Climate Change**

BOPRC supports the 1% AEP (1 in 100 year) rainfall event while taking into account the effects of climate change on rainfall and sea level as of the year 2130 based on the RCP 8.5 median scenario for subdivision or RCP 8.5H+ scenario for greenfield subdivision/development.

However, the regional council would like to draw TCC's attention to the Ministry for the Environment guidance document *Coastal hazards and climate change: Guidance for local government (2017) ref. ME 1341* which supports local government to include a risk assessment and to take a new adaptive 'pathways' approach to planning in coastal areas.

While this process is relatively new, it does reflect national direction on how land use planning responds to coastal hazard risk. The guidance suggests that councils may need to look beyond the 100 year horizon that is typically considered under the NZCPS (Policy 25).

On this basis, BOPRC encourages TCC to consider options to engage with their coastal communities for future proposals that seek to increase natural hazard risk in coastal locations.

Please contact Sharlene Pardy should you require any clarification or wish to discuss any of the matters outlined above.

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Nāku iti noa, nā,



Julie Bevan  
**Acting General Manager Strategy and Science**

**Appendix 1: Submission from Bay of Plenty Regional Council on Proposed Plan Change 26 (Housing Choice), Proposed Plan Change 27 (Flooding from Intense Rainfall) and Proposed Plan Change 30 (Earthworks)**

Reference	Specific Provision That Submission Relates To	Support, Oppose or Amend	Issues and Reasons	Relief Sought
<b>Plan Change 26: Housing Choice</b>				
Urban Growth				
PC 26 (1)	Objective 14A.1.1 and Policies 14A.1.1.1-12, particularly 14A.1.1.5 Policy – Site and Context and 14A.1.1.9 Policy – Residential Interface	<b>Amend</b>	<p><b>Issue:</b></p> <p>Policy 1 of the NPS-UD supports well-functioning urban environments that support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets. The protection of existing amenity needs to be clarified so that it is more clearly aligned with the NPS-UD policy.</p> <p><b>Reason:</b></p> <p>The approved Urban Form Transport Initiative (UFTI) Final Report July 2020 allocates significant housing capacity to the Te Papa Peninsula over the next 30 years. This will require significant and dramatic change to the existing character and amenity of this urban area. Page 65 of UFTI refers to the Central Urban Corridor and states that it “will see the most significant transformation in the sub-region in the next 30 years”.</p> <p>Many redevelopments are, therefore, likely to impact the existing amenity and privacy. It is critical that the provisions in PC 26 do not simply encourage the status quo and therefore could be used against redevelopment as a result of their potential adverse effects on existing ‘character, privacy and amenity’.</p> <p>To ensure consistency with the objectives and policies of the NPS-UD consent proposals that comply with the new height and density rules should be processed on a non-notified basis with the focus being on achieving good urban design outcomes and well-functioning urban environments.</p>	<p><b>Amend</b> Objective 14A.1.1 and policies 14A.1.1.1-12 to clarify reference to retaining or respecting existing character, privacy and amenity to ensure that it gives effect to the NPS-UD and the aspirations of UFTI and the Te Papa Spatial Plan and focuses on achieving good urban design outcomes and well-functioning urban environments.</p>

Reference	Specific Provision That Submission Relates To	Support, Oppose or Amend	Issues and Reasons	Relief Sought
PC 26 (2)	Rules 14B.3.17.1-11 and 14B.6.26 Matters of Discretion	<b>Amend</b>	<p><b>Issue:</b></p> <p>Rules 14B.3.17.1-11 introduce an overly complex and onerous framework for duplexes that may conflict with the intent of the development and create unnecessary additional costs for minor site-specific matters that will only affect future occupants.</p> <p><b>Reason:</b></p> <p>Rule 14B.3.17.10 Fences and Walls will be difficult to enforce as it involves heights of structures that are not defined as a 'building' and the City Plan standards may conflict with developer's covenants or design principles for a new development.</p> <p>The assessment criteria in Rule 14B.6.26 are supported.</p>	<b>Amend</b> Rules 14B.3.17.1-11 applying to duplexes in the Suburban Residential Zone to encourage this type of intensification to occur.
PC 26 (3)	Section 14D Purpose of the City Living Zone Objectives and Policies that direct the Bulk and Scale of Buildings and Structures in the City Living Zone and the Te Papa Housing Overlay area.	<b>Amend</b>	<p><b>Issue:</b></p> <p>Local authorities should let the market determine what developments are viable in terms of the amenity of the area, land values, and demand for apartment style living in central Tauranga. PC 26 will invariably change the nature of the Te Papa Peninsula and the wider city over time. The requirement to manage the effects of development on adjoining sites should be aligned to TCC's Residential Outcomes Framework and the NPS-UD to achieve the outcomes that the plan change is seeking. It is important that the rules are not unnecessarily constraining growth.</p> <p><b>Reason:</b></p> <p>The NPS-UD states that building heights should be 'at least 6 storeys' not 'up to a maximum of 6 storeys', unless there are compelling reasons to restrict building heights. The City Living Zone is within a walkable catchment of high frequency public transport, community and social infrastructure, and high density employment areas. Therefore, it should enable redevelopment on appropriate sites for buildings greater than 6 storeys in height.</p> <p>In general, Bay of Plenty Regional Council considers that the Te Papa maximum height housing overlay is overly complex, with up to four different height limits in some individual city blocks. The proposed restrictions of height limits to 9 or 12</p>	<p>(1) <b>Amend</b> the following criterion for the intent of the planning framework for the City Living Zone: <i>"Manage the effects of development on adjoining sites, including visual amenity, privacy and access to daylight and sunlight"</i> to give effect to the NPS-UD and TCC's Residential Outcomes Framework.</p> <p>(2) <b>Amend</b> the height limits to allow greater than 20 metres in parts of the City Living Zone south of the CBD where it is viable and appropriate urban design outcomes can be achieved.</p> <p>(3) <b>Consider amending</b> the Te Papa Housing overlay height limits to enable over 20 metres maximum height in the parts of the Te Papa Peninsula outside the City Living Zone where taller residential buildings may be viable and where the context is appropriate and</p>

Reference	Specific Provision That Submission Relates To	Support, Oppose or Amend	Issues and Reasons	Relief Sought
			metres in many cases is supported by evidence in Appendix 7 to PC 26, however this evidence does not appear to provide a compelling case to meet the threshold provided for in the NPS-UD for qualifying matters.  Additionally, the criterion to manage the effects on amenity gives too much weight to the consideration of potential off-site effects on existing 'character and amenity'.	achieves amenity, good urban design outcomes, adequate green space/pervious surfaces (eg. Low Impact Urban Design options, rain-gardens) and liveable communities.
PC 26 (4)	Objective 14D.1.1(b) Bulk and Scale of Buildings and Structures in the City Living Zone	<b>Amend</b>	<b>Issue and reason:</b>  The existing provision for existing vacant sites in the City Living Zone to be developed in accordance with specified Suburban Residential Zone provisions is out of date and does not encourage competitive land markets or well-functioning urban environments required by the NPS-UD.	<b>Amend</b> Objective 14D.1.1(b) to remove the 'legacy' provision as described, noting that it has been place for many years, unless there is compelling evidence of it delivering well-functioning urban environments.
Low Impact Urban Design (LIUD) (see also Reference PC 27 (7))				
PC 26 (5)	Policy 14B.1.2.1 – Site Layout and Building Design – Suburban Residential Zone and Large Lot Residential Zone.  Policy 14D.1.2.1 – Site Layout and Building Design in the City Living Zone “and Te Papa Housing Overlay” – Comprehensively Designed Development.	<b>Amend</b>	<b>Issue:</b>  As PC 26 allows for an increase in intensification, reduction in pervious surfaces, and in turn an increase in volume of stormwater runoff and concentration of contaminants, assurance is needed that stormwater will be managed on-site. BOPRC seeks that the plan change delivers intensification efficiently while reducing impacts on the environment.  Monitoring carried out as a condition of the comprehensive stormwater consent (CSC) for Tauranga City indicates increasing contaminant levels in stormwater runoff across the city and a number of catchments are approaching or 'at capacity'. Further, it has become clear that CSC and Infrastructure Development Codes are not effective tools in themselves to regulate stormwater effects.  <b>Reason:</b>  Low Impact Urban Design (LIUD)/ Water Sensitive Urban Design (WSUD) are practicable methods to manage and attenuate stormwater at an early stage before heavy rain causes flooding issues downstream. Flooding in urban areas is generally an on-going issue, particularly in locations where intensification proposals will increase impervious surface coverage overtime. Integrated	<b>Amend</b> the wording around LIUD in Policy 14B.1.2.1 and Policy 14D.1.2.1 to ensure that LIUD is enforceable for new developments, and where existing areas are intensified.

Reference	Specific Provision That Submission Relates To	Support, Oppose or Amend	Issues and Reasons	Relief Sought
			<p>methods such as LIUD and WSUD are encouraged by BOPRC as they are consistent with RPS policies IR 3B: Adopting an integrated approach, RPS IR 5B: Assessing cumulative effects, and RPS CE 10B: Managing adverse effects of land-based activities in the coastal environment on marine water quality, controlling effects on-site and reducing costs of infrastructure over time.</p> <p>This amendment is also consistent with Tauranga City Plan Objective 12G.1.3 – Stormwater safeguarding from adverse effects of flooding associated with stormwater</p>	
National Policy Statement Freshwater Management				
PC 26 (6)	<p>All provisions</p> <p>Note this also applies to PC 27 and PC 30.</p>	Amend	<p><b>Issue and reason:</b></p> <p>The Section 32 Report for PC 26 has not considered the National Policy Statement for Freshwater Management (NPSFM), in particular, clause 3.5(4) which requires territorial authority's plans to include objectives, policies, and methods to promote positive effects and avoid, remedy, or mitigate adverse effects of urban development on the health and wellbeing of water bodies, freshwater ecosystems, and receiving environments.</p> <p>Note: PC 27 and PC 30 mention the NPSFM at a high level but fail to adequately give effect to clause 3.5(4).</p>	<p>TCC to consider the NPSFM and clause 3.5(4) in particular as part of the section 32 assessment.</p> <p>To ensure TCC meets its requirements under the NPSFM, it is recommended that TCC works closely with its community and BOPRC's freshwater policy staff to ensure strong alignment between both processes. In particular, BOPRC encourages close scrutiny of the impact of additional demand for water on supply sources and of increased (construction and ongoing) contaminant loads on receiving environments, especially in light of prevailing community and tangata whenua attitudes.</p>

Also note PC 27(2) submission regarding impervious surfaces.

Plan Change 27: Flooding from Intense Rainfall				
Definitions				
PC 27 (1)	Chapter 3 Definitions – Flood Prone Area and Overland Flow Path  Rule 4C.2.10 Floodplains, Major Overland Flowpaths and Flood Prone Areas	Amend	<p><b>Issue:</b></p> <p>It is difficult to ascertain which rules apply here as flood prone areas and overland flow paths could change during higher coastal events when stormwater systems are not performing and compound flooding occurs. An overland flow path created by a coastal event would be different to an overland flow path created by an intense rainfall event.</p> <p><b>Reason:</b></p> <p>Some or all of the Flood Hazard Plan Area will be inundated during a combined 1% AEP rainfall event with a 5% AEP storm-tide event and therefore considered a Flood Prone Area. As a result there could be confusion over which rules apply in the Flood Hazard Plan Area if it's subject to both rainfall and coastal inundation.</p> <p>Clarification is needed for whether the Flood Hazard Plan Area is included in the definition of Flood Prone Areas or if the Flood Hazard Plan Area is exempt from the earthwork limitations for Flood Prone Areas. Rules 4C.2.4 and 4C.2.10 have substantially different volume thresholds (i.e. 500m<sup>3</sup> and 10m<sup>3</sup>).</p>	<p><b>Amend</b> the definition of Flood Prone Area to explicitly state that the Flood Hazard Plan Area is included in the definition. If it's not included then it should be clarified which rule is applicable in areas that are subject to both definitions.</p>
PC 27 (2)	Chapter 3 Definitions – Impervious Surfaces  <u>Note</u> this also applies under PC 26 due to a duplication of this definition in both PC 26 and PC 27.	Amend	<p><b>Issue:</b></p> <p>Within impervious surface exclusions, it is considered that the surface areas described in d) to g) are not entirely pervious and as such they should not be discounted as a whole from the impervious surface area.</p> <p><b>Reason:</b></p> <p>It is understood that these areas are partially self-mitigating or are mitigating runoff from other areas and have benefits for small rain events, but their pervious functions cannot be retained during an intensive rainfall event.</p> <p>The purpose of defining imperviousness for PC 27 is to limit runoff during intensive rainfall events. The flood risk modelling has been undertaken for 70% imperviousness and as such discounting these areas as a whole can result in additional flooding beyond what has been assessed.</p> <p>An assessment should be made of the percentage of pervious function that can be retained during an intensive rainfall event and this should reflect the percentage of area that should be considered impervious.</p>	<p><b>Add</b> the following to the definition of "Impervious surfaces" inclusions:</p> <p><u>g) &lt;50% of area covered in porous or permeable paving;</u></p> <p><u>h) &lt;50% of area covered in permeable artificial surfaces, fields or lawns;</u></p> <p><u>i) &lt;50% of area covered in slatted decks on natural ground; and</u></p> <p><u>j) &lt;30% of area covered in slatted decks on loose aggregate.</u></p> <p><b>Amend</b> the definition of "Impervious surfaces" exclusions as follows:</p> <p><u>d) ≥50% of area covered in porous or permeable paving and living roofs;</u></p>

			<p>Likewise, not all stormwater management devices can be considered pervious and should not be fully excluded from impervious surfaces.</p> <p>Additionally, "living roofs" are considered within the definition of "stormwater management devices" as "green roofs" and should be deleted from this definition.</p> <p>These amendments need to be made for consistency with RPS NH 4B: Managing natural hazard risk on land subject to urban development.</p>	<p>e) <u>≥50% of area covered in permeable artificial surfaces, fields or lawns;</u></p> <p>f) <u>≥50% of area covered in slatted decks on natural ground</u></p> <p>g) <u>≥70% of area covered in slatted decks on loose aggregate;</u> and</p> <p>h) <u>the area covered by stormwater management devices.</u></p>
PC 27 (3)	Chapter 3 Definitions – Stormwater Management Devices	<b>Amend</b>	<p><b>Issue and reason:</b></p> <p>Porous or Permeable Paving is included in both the definition of Stormwater Management Devices and the definition of Impervious Surfaces. It should be deleted from the definition of Stormwater Management Devices to avoid confusion.</p>	<p><b>Amend</b> the definition of Stormwater Management Devices as follows:</p> <p>a) rain gardens and swales;</p> <p>b) <del>porous or permeable paving;</del></p> <p>c) <u>b) rainwater tank;</u></p> <p>d) <u>c) infiltration trenches;</u></p> <p>e) <u>d) sand filters;</u></p> <p>f) <u>e) green roofs;</u></p> <p>g) <u>f) wetlands;</u></p> <p>h) <u>g) ponds; and</u></p> <p>i) <u>h) proprietary devices.</u></p>
Height of Freeboard				
PC 27 (4)	Note 12B.3.1.6 Building Platform Requirements – Pāpāmoa	<b>Amend</b>	<p><b>Issue:</b></p> <p>The proposed plan provisions provide for a lower freeboard than is currently being used in consent processes.</p> <p><b>Reason:</b></p> <p>Note 12B.3.1.6 requires allotments to have a minimum building platform level of RL5 metres above Moturiki Datum.</p> <p>There is a note stating: <i>Minimum freeboard level for activities located within floodplains, overland flowpaths and flood prone areas is addressed in Chapter 8 – Natural Hazards.</i></p> <p>It is unclear whether RL5 includes freeboard or not. For example, Consent 63636 clause 5.4 allows the Top Water Level in the Wairakei Stream Corridor within the Part 1 (Wairakei) and Part 2 (Te Tumu) up to a height of 4.6 m RL in a 1% AEP event, with 500mm freeboard this would be RL5.1 adjacent to the stream corridor.</p>	<p><b>Amend</b> Note 12B.3.1.6 to clarify whether RL5 includes the freeboard or is in addition to it. Review proposed plan provisions to ensure they are consistent with current practices and that they include adequate freeboard.</p>



Groundwater				
PC 27 (5)	Appendix 12B: Performance Standard, Stormwater	<b>Amend</b>	<p><b>Issue:</b></p> <p>Groundwater interaction is not considered in Appendix 12B c) iv). Soakage systems or pond/raingarden performance may be compromised in shallow groundwater systems during rain events.</p> <p><b>Reason:</b></p> <p>Appendix 12B c) iv) is potentially inconsistent with RPS WQ 2A: Setting and applying instream flows and allocation limits for taking freshwater (c) set and apply allocation limits for groundwater which take into account the interaction between groundwater and surface water.</p> <p>Some discharge to soakage will effect catchments that are administered by another local authority, e.g. effect of pumping on Bell Road.</p>	<p><b>Amend</b> Appendix 12B c) to ensure groundwater interaction is assessed as follows:</p> <p>iv) The overall stormwater management system shall be designed to accommodate and contain flows from a 1% AEP (1 in 100yr) rainfall event ... with the primary conveyance system being designed to accommodate flows from a 10% AEP (1 in 10yr) design rainfall event <u>including consideration for groundwater interaction and groundwater effects mitigation during the design event unless b(i) applies.</u></p> <p><u>Advice note: Swales may not be an appropriate mitigation method where the groundwater table is high.</u></p>
PC 27 (6)	Rule 14B.3.7 Site Coverage – Suburban Residential Zone	<b>Amend</b>	<p><b>Issue and reason:</b></p> <p>BOPRC have concerns about the Council's ability to control runoff in this catchment, given that there are uncertainties around the consenting for the Kaituna outfall structure. Careful consideration should be given to the maximum allowable impervious surfaces proposed in the Pāpāmoa Urban Area, specifically with regards to the effect that this will have on the performance of the Wairakei Stream, the timing of the construction of the Kaituna Overflow and the requirements of the Comprehensive Stormwater Consent for Pāpāmoa (63636).</p>	<p><b>Amend</b> Rule 14B.3.7 to reduce the maximum impervious area for the Pāpāmoa catchment to what can be serviced without the Kaituna Overflow. Once the overland flow has been established then the maximum impervious area can be adjusted.</p>
Low Impact Urban Design (LIUD) / Water Sensitive Urban Design (WSUD) (see also Reference PC 26 (5))				
PC 27 (7)	12G.1.3.1 Policy – Stormwater	<b>Amend</b>	<p><b>Issue:</b></p> <p>Monitoring carried out as a condition of the comprehensive storm water consent (CSC) for Tauranga City indicates increasing contaminant levels in storm water runoff across the city and a number of catchment are approaching or 'at capacity' Further, it has</p>	<p><b>Amend</b> 12G.1.3.1 Policy – Stormwater as follows:</p> <p>Ensuring stormwater systems are designed and constructed to:</p>

	12G.1.3.2 Policy – Low Impact Design	<p>become clear that CSC and Infrastructure Development Codes are not effective tools in themselves to regulate stormwater effects.</p> <p><b>Reason:</b></p> <p>Low Impact Urban Design (LIUD)/ Water Sensitive Urban Design (WSUD) are practicable methods to manage and attenuate stormwater at an early stage before heavy rain causes flooding issues downstream. Flooding in urban areas is generally an on-going issue, particularly in locations where intensification proposals will increase impervious surface coverage overtime. Integrated methods such as LIUD and WSUD are encouraged by BOPRC as they are consistent with RPS policies IR 3B: Adopting an integrated approach, RPS IR 5B: Assessing cumulative effects, and RPS CE 10B: Managing adverse effects of land-based activities in the coastal environment on marine water quality, controlling effects on-site and reducing costs of infrastructure over time.</p> <p>Use of LIUD/WSUD need be enforced in developments and redevelopment to reduce adverse effects related to stormwater runoff – primarily with respect to stormwater quantity in small storm events and stormwater quality. It is important that LIUD/WSUD is integrated into the core of urban design and should be reflected in the proposed urban design framework and rules.</p> <p>This amendment is also consistent with Tauranga City Plan Objective 12G.1.3 – Stormwater safeguarding from adverse effects of flooding associated with stormwater</p>	<p>c) Utilise <u>Low Impact Urban Design / Water Sensitive Urban Design</u> and ground soakage in appropriate locations;</p> <p><b>As a consequential amendment noting that 12G.1.3.2 is not in PC 26: Amend 12G.1.3.2 Policy – Low Impact Design / <u>Water sensitive urban design (WSUD)</u></b></p> <p>Ensuring that <del>where</del> low impact stormwater design/ <u>water sensitive urban design</u> is incorporated into a stormwater system it is:</p>
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Also note PC 26 (6) submission regarding National Policy Statement Freshwater Management.

Plan Change 30: Earthworks				
Definition				
PC 30 (1)	Chapter 3 Definitions – “Approved Earthworks”	Amend	<b>Issue and reason:</b> It is unclear the scope of earthworks that may be considered “ancillary” particularly in reference to exempt ancillary earthworks for subdivisions or primary production.	<b>Add</b> a definition of Ancillary Earthworks to limit the scope of activities that may be considered under the exemptions.
Offsite land stability and flooding effects				
PC 30 (2)	4C.2.1 Exemptions to the Permitted Activity Rules ii) iii) and iv)  <u>Note</u> this also applies under PC 27 due to a duplication of 4C.2.1 in both PC 27 and PC 30.	Amend	<b>Issue:</b> Earthworks in the road zone, associated with utilities, or construction of stormwater reserves should not be exempt from Rules 4C.2.4 - 4C.2.10 if they have an offsite land stability or flood effect.  <b>Reason:</b> Proposed exemptions to the permitted activity rules may increase the risk to offsite land stability or flood risk.  This is inconsistent with RPS IR 5B: Assessing cumulative effects, and RPS WL 7B: Minimising the effects of land and soil disturbance.	<b>Amend</b> 4C.2.1 Exemptions from Permitted Activity Rules as follows:  ii) Earthworks in the Road Zone <u>where no offsite land stability or flood effects exist</u> ;  iii) Earthworks associated with the maintenance, renewal and minor upgrading (in relation to electric lines) of network utilities listed in Chapter 10 – Network Utilities and Designations subject to Rule 10A.5.9 – Establishment, Maintenance or Demolition of a Network Utility <u>where no offsite land stability or flood effects exist</u> ;  iv) Earthworks associated with the construction of stormwater reserves <u>where no offsite land stability or flood effects exist</u> .
Sediment Control				
PC 30 (3)	4C.2.2 All Zones b) iv) and vi)	Amend	<b>Issue:</b> With the deletion of Erosion and Sediment Control Measures, the matters listed do not include reference to Stormwater Inlet Protection and other treatment and conveyance options.	<b>Amend</b> 4C.2.2 All Zones as follows:  b) Any earthworks, exposing more than 100m <sup>2</sup> of area shall apply ...

			<p><b>Reason:</b></p> <p>Amend matters listed in 4C.2.2(b)(iv) and (vi) to be consistent with RPS WL 7B(c): Minimising the effects of land and soil disturbance.</p> <p>For example, the proposed iv) Stormwater inlet protection is not explicitly required so a requirement for downpipes to be connected directly to the stormwater system during earthworks could increase the likelihood of sediment laden discharge into the system. This is particularly a risk where there is no downstream treatment.</p> <p>For example, the proposed vi) Other treatment and conveyance options are acceptable in place of "channelled" and "retention", respectively. This word choice is prescriptive about the method but vague about the device required; it promotes excavated retention and channels in lieu of other applicable treatment and conveyance options or use of existing drainage patterns/features.</p>	<p>iv) Temporary or permanent downpipes connected to the stormwater system <u>including stormwater inlet protection to prevent sediment laden discharge; and</u></p> <p>vi) Sediment-laden water from the works area <u>is treated</u> channelled to a retention area on the site.</p>
PC 30 (4)	4C.2.2 All Zones	<b>Amend</b>	<p><b>Issue:</b></p> <p>The design thresholds as set out in TCC's Erosion and Sediment Control Guidelines are not enforceable.</p> <p><b>Reason:</b></p> <p>The rules require that the measures are installed, and provide a helpful note to reference the guidelines; however, requiring those steps to meet the guidelines would ensure that they are effective and enforceable.</p>	<p><b>Amend</b> to include the advice note under 4C.2.2 b) in the rule, or similar, to ensure that TCC's Erosion and Sediment Control Guidelines are enforceable.</p>
Flood Hazard Plan Area Inconsistency				
PC 30 (5)	4C.2.4 Flood Hazard Plan Area	<b>Amend</b>	<p><b>Issue:</b></p> <p>Maintaining a 500 m<sup>3</sup> threshold in the Flood Hazard Plan Area seems inconsistent with proposed changes to limit earthworks in other flood prone areas to 10m<sup>3</sup>.</p> <p><b>Reason:</b></p> <p>500m<sup>3</sup> is a considerable volume, more than BOPRC permitted amounts for coastal margins, and can have a substantial upstream flood effect. As noted above, it is not abundantly clear which areas of the Flood Hazard Plan Area are considered "flood prone areas" from extreme rainfall so the considerable difference in permitted earthworks volumes is questionable.</p> <p>Amend to ensure consistency with RPS CE 10B: Managing adverse effects of land-based activities in the coastal environment on marine water quality.</p>	<p><b>As a consequential amendment noting that 4C.2.4 is not in PC 30: Amend 4C.2.4 to ensure consistency and to support other recommendations.</b></p> <p>4C.2.4 Flood Hazard Plan Area: In addition to Rule 4C.2.2 – All Zones, <i>earthworks within the Flood Hazard Plan Area</i> shall not exceed more than <del>500m<sup>3</sup></del> <u>10m<sup>3</sup></u> except where they are associated with the <i>construction, erection or placement of a building</i>.</p>

Off-site Effects				
PC 30 (6)	Chapter 12 - Subdivision, Services and Infrastructure Rules 12B.3.1.5 b), 12B.3.2.1 b) vi), 12C.3.1.3 b), 12C.3.2.1 a) vi), 12D.3.1.2 b), 12D.3.2.1a)vi), 12E.3.1.4 b), 12E.3.2.2a)vi)	<b>Amend</b>	<p><b>Issue:</b></p> <p>Earthworks could potentially have inundation or instability effects on other sites that are not necessarily directly “adjoining” the subject site.</p> <p><b>Reason:</b></p> <p>Nearby, upstream or downstream sites are not covered by the wording of this condition. This is inconsistent with RPS IR 5B: Assessing cumulative effects, and RPS WL 7B: Minimising the effects of land and soil disturbance.</p>	<p><b>Amend</b> to replace “adjoining” with “nearby”, in the following rules:</p> <p>12B.3.1.5 b), 12B.3.2.1 b) vi), 12C.3.1.3 b), 12C.3.2.1 a) vi), 12D.3.1.2 b), 12D.3.2.1a)vi), 12E.3.1.4 b), 12E.3.2.2a)vi).</p>

Also note PC 26 (6) submission regarding National Policy Statement Freshwater Management.



<b>Report To:</b>	Strategy and Policy Committee
<b>Meeting Date:</b>	16 February 2021
<b>Report Writer:</b>	Rebekah Waltham, Planner
<b>Report Authoriser:</b>	Ruth Feist, Team Leader Urban Namouta Poutasi, General Manager, Strategy & Science Nassah Rolleston-Steed, Principal Advisor, Policy & Planning Julie Bevan, Policy & Planning Manager
<b>Purpose:</b>	Approve a process to develop a Change to the Regional Policy Statement to implement the responsive planning requirements of the National Policy Statement on Urban Development

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## Process to change the Regional Policy Statement to implement the National Policy Statement on Urban Development 2020

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### Executive Summary

The National Policy Statement on Urban Development 2020 (NPS-UD) took effect on the 20 August 2020. The responsive planning requirements in the NPS-UD seek to ensure that local authorities respond to development proposals that would add significantly to development capacity and contribute to well-functioning urban environments, regardless of whether they are planned for or anticipated in existing documents. It applies to development proposals in both greenfield and brownfield locations. Requirements are quite specific and leave little scope for interpretation.

The NPS-UD, Clause 4.1 sets out the timeframes for implementation. As a tier 1 and 2 local authority Regional Council must notify a change to the Bay of Plenty Regional Policy Statement (RPS) to give effect to the NPS-UD by 20 August 2022.

Staff recommend using Section 55 of the Resource Management Act 1991 (RMA) to make RPS changes without using the schedule 1 process to implement directive NPS-UD provisions. For those changes to existing operative RPS urban and rural growth management provisions, not within the ambit of Section 55, staff recommend seeking approval from the Minister for the Environment to utilise the Streamlined Planning Process.

Subject to the Committee Draft regional policy statement changes will be developed in consultation and engagement with relevant hapu and iwi, stakeholders, local and central government agencies and infrastructure providers and then workshopped with this committee.

## Recommendations

**That the Strategy and Policy Committee:**

- 1 Receives the report, Process to change the Regional Policy Statement to implement the National Policy Statement on Urban Development 2020.**
- 2 Agrees in principle to Council using a combination of both Section 55 of the Resource Management Act 1991 and the Streamlined Planning process to implement the responsive planning requirements of the National Policy Statement on Urban Development 2020.**
- 3 Notes subject to endorsing the above process for RPS changes staff will develop a detailed Project Plan, Communications and Engagement Plan, draft policy framework and a proposal to use the Streamlined Planning Process to be reported the Strategy and Policy Committee for consideration in the first quarter of 2021.**
- 4 Notes use of the Streamlined Planning Process must be approved by the Minister for the Environment.**

### 1. Introduction

The National Policy Statement on Urban Development 2020 (NPS-UD) took effect on the 20 August 2020. The NPS-UD requirements were reported to, and received by, the Strategy and Policy Committee on 3 November 2020, in the 'Operating Environment Report'. Regional Councils are required to implement its direction which requires changes to the Bay of Plenty Regional Policy Statement (RPS). The NPS-UD responsive planning requirements are more specific than those in the previous National Policy Statement on Urban Development Capacity 2016.

The NPS-UD responsive planning requirements seek to ensure local authorities respond to development proposals that would add significantly to development capacity and contribute to well-functioning urban environments, regardless of whether they are planned for or anticipated in existing documents. It applies to development proposals in both greenfield and brownfield locations.

The NPS-UD identifies Bay of Plenty Regional Council as both a Tier 1 and Tier 2 local authority. Tauranga City Council and Western Bay of Plenty District Council are Tier 1 local authorities. Rotorua Lakes Council is a Tier 2 local authority.

#### 1.1 Legislative Framework

Section 55 of the Resource Management Act 1991 (RMA) requires local authorities to amend their plans or policy statements if a national policy statement directs so. Amendments must be made as soon as practicable or within the time specified in the National Policy Statement. Amendments that relate to requirements to include specific objectives and policies; or give effect to objectives or policies; or are necessary to make the document consistent with any constraint or limit set out in the statement must be amended without using an RMA Schedule 1 process.

Subpart 5 of the RMA provides for a [Streamlined Planning Process \(SPP\)](#) to achieve an expeditious planning process that is proportionate to the complexity and significance of the planning issue being considered. Applications must meet certain criteria, one of which is to implement a national direction. If the Minister agrees, he will issue a direction, setting out the process steps, timeframes and expectations for the RPS change process. Council must follow the steps in the direction instead of the standard Schedule 1 process.

The National Policy Statement on Urban Development 2020, Clause 4.1 sets out the timeframes for implementation. Every tier 1, 2 and 3 local authority must amend its RPS or district plan to give effect to the provisions of the NPS-UD as soon as practicable. In addition, an RPS change must be notified no later than 20 August 2022 to give effect to Policies 3 and 4 relating to Tier 1 urban form density to reflect housing and business use demand in city centre and metropolitan centre zones.

Responsive planning requirements apply to tier 1 and 2 local authorities. The policies need to be implemented continuously, as and when relevant requests for plan changes or consent applications are made. For the purposes of implementing Policy 8 (responsive planning), criteria must be included in RPSs to determine what plan-change requests will be treated as adding significantly to development capacity.

## 1.2 Alignment with Strategic Framework

<b>A Vibrant Region</b>	We contribute to delivering integrated planning and growth management strategies especially for sustainable urban management.
<b>The Way We Work</b>	We look to partnerships for best outcomes.
Delivery of RPS changes is an integral part of the Long Term Plan's Regional Planning activity which sets Council's strategic planning and policy direction. The RPS identifies how the integrated management of the region's natural and physical resources are to be managed by establishing policy direction for regional and district plans.	

### 1.2.1 Community Well-beings Assessment

Dominant Well-Beings Affected			
<input type="checkbox"/> Environmental	<input type="checkbox"/> Cultural	<input type="checkbox"/> Social	<input type="checkbox"/> Economic
Medium - Positive	Low - Positive	Medium - Positive	Low - Positive
The NPS-UD 2020 recognises the national significance of having well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future. It is part of a broader Urban Growth Agenda that aims to remove barriers to the supply of land and infrastructure and make room for cities to grow. The NPS-UD aims to ensure urban development can enhance and provide for changing amenity to meet changing demands and preferences, and to help local authorities give greater weight to the types of amenity that benefit the whole community and future generations. Encouraging increased indigenous biodiversity in urban areas with too little indigenous biodiversity is one way to achieve this.			

## 2. NPS-UD Responsive Planning requirements

### 2.1 Requirements for Regional Councils

The responsive planning requirements in the NPS-UD seek to ensure local authorities respond to development proposals that would add significantly to development capacity and contribute to well-functioning urban environments, regardless of whether they are planned for or anticipated. It applies to development proposals in both greenfield and brownfield locations.

Council's must review policies relating to unplanned and out-of-sequence development to implement the NPS-UD. For example, the existing RPS urban limits line and hard rural/urban boundary restrictions do not meet NPS-UD requirements.



The NPS-UD recognises the national significance of:

- having well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future; and
- providing sufficient development capacity to meet the different needs of people and communities.

### 2.1.1 RPS Changes

At this early stage it is anticipated the RPS be amended in two stages. The first stage, to give effect to the NPS-UD (the focus of this report) will insert criteria, housing bottom lines and remove the hard line urban limits line policy approach, potentially notified in late 2021.

The second stage will likely be aligned with the broader RPS review in 2023/24 and ensure alignment with the broader policy package to give effect to the NPS-HPL, NPSFM and NPS-IB.

The NPS-UD requires RPS changes to:

1. amend the Urban and Rural Growth Management policy framework (including transport policies with an urban link) to enable more land and infrastructure supply, growth (up and out) of urban centres and support well-functioning urban environments;
2. amend the urban limits (ULs) line approach and supporting policies to be more flexible/responsive and enable new urban growth areas (including those provided for by the Urban Form and Transport Initiative 2020 (UFTI));
3. include criteria for determining what district and city plan changes will be treated as adding significantly to development capacity including out of sequence or unplanned private development proposals; and
4. set short-medium and long term housing bottom lines for Tier 1 and 2 local authorities based on the most recent Housing and Business Development Capacity Assessments (HBAs).

RPS changes to introduce housing bottom lines can be progressed without using the Schedule 1 process. However, the timing for the release of this information will likely coincide with the RPS Change process to implement the NPS-UD responsive planning framework requirements. Staff consider it best to progress these provisions jointly as a combined change using the SPP. This wider package includes amendments to the existing RPS urban limits line, associated urban and rural growth management policies, growth area and business land sequencing and timing. These broader changes must be progressed as soon as practicable.

The exact details of what changes will fall within the ambit of the first stage SPP and what falls within the second stage broader RPS review will become clearer as the policy changes are drafted and consultation is progressed with Ministry for the Environment officials and Council's legal team.

## 2.2 High level summary of changes required

This paper seeks approval of a process to progress implementation of the NPS-UD responsive planning requirements through changes to the RPS. Actual draft RPS changes still need to be assessed and drafted in consultation with stakeholders and then workshopped with this Committee. Many RPS changes required are specific and leave little scope for interpretation. However, this level of detail is not yet available.

The table below shows at a high level where review/amendment/addition/deletion of existing operative RPS provisions are required.

<b>Existing operative RPS content required to be reviewed and potentially amended/deleted/new content drafted to implement NPS-UD requirements</b>	<b>Action</b>
Section 2.8 and 2.8.1 Urban and rural growth management and regionally significant issues-	Review, amend/delete/draft new in consultation with stakeholders. Workshop with Strategy and Policy Committee
Table 8 Urban and Rural Growth Management objectives and titles of policies and methods to achieve the objectives	Review, amend/delete/draft new in consultation with stakeholders. Workshop with Strategy and Policy Committee
3.1 Policies UG 1A - UG 25B	Review, amend/delete/draft new in consultation with stakeholders. Workshop with Strategy and Policy Committee
Appendix A - definitions for developable land, development of land, development site, greenfield development, growth area, infrastructure, large-scale, regionally significant infrastructure, social and cultural buildings, urban activities, urban limits	Review, amend/delete/draft new in consultation with stakeholders. Workshop with Strategy and Policy Committee
Appendix B - High quality urban design principles Appendix C - Indicative growth area timing and business land provision Appendix d - Indicative growth area sequencing Appendix E - Management and growth areas for the western Bay of Plenty	Review, amend/delete/draft new in consultation with stakeholders. Workshop with Strategy and Policy Committee
References to any of the above in other parts of the RPS	Review, amend/delete/draft new in consultation with stakeholders. Workshop with Strategy and Policy Committee

## 2.3 Process options

Regional Council must implement the responsive planning requirements in the NPS-UD. There is limited scope for interpretation of the changes required, most of which must be implemented as soon as practicable. The western Bay of Plenty sub-region is a high growth area (Tier 1) with pressure on Councils to provide more development capacity urgently from central government, stakeholders and the community.

As the RPS changes required are related to national direction, broader and robust public consultation is not viewed as critical for this process. Instead consultation should be focused on key stakeholders including relevant hapu and iwi, territorial authorities, infrastructure providers, the development community and affected landowners. A Communications and Engagement Plan will be developed targeting these stakeholder groups and imbedded into whatever plan change process is used. If the SPP is granted the Minister will have specific and further consultation requirements stipulated as conditions for approval.

### **Streamlined Planning Process**

Staff recommend using the SPP as it provides more certainty for our stakeholders regarding timeframes, steps and final criteria requirements. There are limited rights of appeal which avoids protracted delays and costs involved with mediation and potential Environment Court appeals. Territorial Authorities are required to implement the NPS-UD through district plan changes which relate to the RPS urban growth policies, a streamlined process would provide greater clarity and certainty for them. Councils may make a request to the Minister to use a streamlined planning process (SPP) for a proposed policy statement, plan, plan change or variation. The process must be "proportional to the issues being addressed" and is intended to provide greater flexibility in planning processes and timeframes and allow these to be tailored to specific issues and circumstances.

The SPP was used for RPS Change 4 (Tauriko West Urban Limit).

The criteria for using the process is as follows:

- a) The proposed planning instrument will implement a national direction;
- b) As a matter of public policy, the preparation of the planning instrument is urgent;
- c) The proposed planning instrument is required to meet significant community need;
- d) A plan or policy instrument raises an issue that has unintended consequences;
- e) The proposed planning instrument will combine several policy statements or plans to develop a combined document prepared under section 80;
- f) The expeditious preparation of a planning instrument is required in any circumstance comparable, or relevant to, those set out in paragraphs (a) to (e) of section 80c.

The following steps are mandatory within the streamlined approach:

- a) Consultation with affected parties and iwi;
- b) Public notification of the proposed Plan Change;
- c) Opportunity for written submissions;
- d) Report showing how the submissions have been considered;
- e) Preparation of an evaluation report under s32 or s32AA; and
- f) Particular regard has been given to the evaluation report.

The direction provided must also specify the timeframe for completion of the streamlined process.

After the Council has undertaken the agreed planning process it must submit the proposed plan change to the Minister for approval. In doing so Council must provide the following information:

- The proposed Change;
- A summary report of the written submissions received;
- A report showing how the submissions have been considered and any modifications to the proposed Change;
- The section 32 Evaluation Report of the Change;
- A section 32AA Evaluation Report - if any changes have been made to the proposal subsequent to the evaluation report;
- A summary document showing how the statement of expectation has been considered
- A summary document showing how the proposed Change complies with the RMA, any national direction and any regulations;
- Any other information or documentation required by the direction; and
- Any additional information.

The Minister may decide to approve the proposed planning document, refer it back to the Council for reconsideration or decline to approve it.

### Options

The key difference between the streamlined process and a conventional RMA process is that the Minister for the Environment approves the process and there is no ability to appeal the decision through the Environment Court.

The RPS changes required to implement the NPS-UD are limited in scope and are largely prescribed in the NPS-UD therefore should be relatively the same regardless of the process used.

Council can progress the RPS Change through a Schedule 1 Process with Council making the decision and leave open the opportunity for potential appeals and delays through the Environment Court or use the Streamlined Planning Process, leaving the final decision to be made by the Minister for the Environment.

Staff consider the RPS Change required to implement the NPS-UD responsive planning requirements meet SPP criteria a) by implementing the NPS-UD. Also, managing the western Bay of Plenty sub-region's growth is required to meet significant and pressing community need, criteria c). Using the SPP approach will mean the timeframes for the rest of the process will be more certain and won't be delayed as they may if there are any appeals to the Environment Court.

If approved through this paper staff would liaise with Ministry for the Environment officials to determine whether using the SPP would receive favourable consideration. The Minister must grant the request for it to proceed. The Minister has a statutory requirement to consult on the proposal to use the streamlined process.

## 3. Considerations

### 3.1 Risks and Mitigations

**The risks for the Schedule 1 (conventional RMA) approach are:**

Risk	Explanation	Mitigation
Council's in the sub-region are unable to meet the timeframes set out in the National Policy Statement for Urban Development	Our planning processes may be too slow to respond to the population growth that is occurring.	Use the streamlined approach to provide more certainty over timing.
Appeals to the Environment Court	Most RPS changes result in appeals to the Environment Court. This would generate delays and additional legal and mediation costs.	Using the streamlined approach removes the ability for appeal.

**The risks for the streamlined approach are:**

Risk	Explanation	Mitigation
Loss of control over the process and decision-making for Regional Council	The approach requires the Minister to make decisions to approve or decline using the process, setting out change specific procedural steps and timeframes and approval before the Change becomes operative.	A well-resourced, consulted on, and drafted RPS change, clearly implementing the requirements of the NPS-UD.
Loss of the community's ability to appeal the decision through the Environment Court	The Minister will make a decision and the ability to appeal that decision through the Environment Court is not available.	Well resourced, consulted and engaged stakeholders, local authorities, iwi and hapu and infrastructure providers, early and throughout the RPS Change process including clear transparency about process requirements and lack of appeal rights.

### 3.2 Climate Change

The matters addressed in this report are of a procedural nature and there is no need to consider climate change impacts.

There are no direct implications from climate change on the RPS change. Any new greenfield development will be required to comply with the Natural Hazard provisions of the RPS and have regards to the effects of climate change.

### 3.3 Implications for Māori

Progressing an RPS change to give effect to the NPS-UD has the potential to help address the under-utilisation of multiple owned Maori land within existing urban growth areas. The utilisation of multiple owned land for housing is the most affordable solution for many Māori whanau with land shareholdings in Tauranga.

In the Tauranga City area, there is a total of 616.5ha of multiple owned Maori land with appropriate residential zone to facilitate housing that could potentially yield 6,165 house sites based on 10 lots/ha or 9,247 lots at a density of 15 lots/ha with the provision of bespoke infrastructure services. This is a theoretical yield rate that

has not been qualified on the ground with any analysis to date by Tauranga City Council.

In the Tauranga City area: the Te Tumu Kaituna Blocks in Papamoa East account for 305.9 ha, the current rural and urban Marae community zones collectively account for 163 ha in total and Māori land zoned residential/rural in Wairoa, Hangarau, Waimapu, Hairini, Ohauti, Kaitemako, Welcome Bay, Kairua Road, Matapihi and Mangatawa account for 147.6ha in total.

The majority of Māori freehold land in the Western Bay of Plenty District is zoned Rural with a total of 17,633 ha (i.e. 9.6% of total rural land in the district). Currently there is 97.6ha of multiple owned Maori land zoned residential and rural residential. This has the potential to yield 976 house sites based on 10 lots/ha or 1,464 lots at 15 lots/ha with the provision of appropriate infrastructure services. These are potential gross estimates only that don't take into account any land development constraints such as topography features gullies, streams, drains, as well as harbour coastal setbacks, hazards/flooding zones, access to infrastructure services, communal facilities, open space and or reserves.

Many of these Maori land blocks have considerable housing development potential but lack governance bodies, infrastructure and structure plans. Lending institutions have stricter criteria for building on Maori land that are often too onerous for many whanau to satisfy. Whanau wanting to building on Maori land must manoeuvre through dual RMA and Maori Land Court processes which complicate.

The NPS-UD 2020 requires councils to plan well for growth and ensure a well-functioning urban environment for all people, communities and future generations. This includes Policy 9 which requires taking into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi), in relation to urban environments, must:

- a) Undertake effective involvement and consultation with hapu and iwi that is early, meaningful and, as far as practicable, in accordance with tikanga Maori;
- b) Take into account hapu and iwi values and aspirations for urban development;
- c) Provide opportunities for Maori involvement in decision-making on resource consents, designations, heritage orders, and water conservation orders, including in relation to sites of significance to Maori and issues of cultural significance; and
- d) Operative in a way that is consistent with iwi participation legislation.

Council will work with Māori to develop the proposed change to the RPS regardless of whether a Schedule 1 or Streamlined Planning process is used.

### 3.4 Community Engagement



#### **CONSULT** **Whakauia**

To obtain input or feedback from affected communities about our analysis, alternatives, and /or proposed decisions.

Council will consult and engage with key stakeholders and landowners during development the proposed change to the RPS regardless of whether a Schedule 1 or Streamlined Planning process is used.

### 3.5 Financial Implications

There are no material unbudgeted financial implications and this fits within the allocated budget for the 2020/2021 year.

The cost of this process relating to the 2020/21 year of the Long Term Plan 2018-2028 budget is staff time. From the public notification of the RPS change (expected to be in the second half of 2021), there will be additional costs for the hearing process which have not yet been budgeted for. A change to the RPS urban and rural growth management provisions was not budgeted for ahead of the formal RPS review in 2024. This requirement has resulted from the National Policy Statement – Urban Development.

Staff will ensure the anticipated costs for the all RPS changes previously approved at the Strategy and Policy Committee in November 2020 are included in the relevant years of the Long term Plan 2021-2031. The hearing costs for the NPS-UD change are expected to be similar for both the Schedule 1 process and the Streamlined Planning Process.

## 4. Next Steps

Subject to the Strategy and Policy Committee agreeing in principle to using a combination of Section 55 and the Streamlined Planning Process to implement the NPS-UD, staff will develop and report back in the first quarter of 2021 a:

1. Project plan;
2. Communications and engagement plan;
3. Draft RPS change; and
4. SPP application.

Staff will liaise with Council's legal advisors and Ministry for the Environment officials to refine the scope of RPS changes covered by an application to use the Streamlined Planning Process and those provisions which come within the ambit of Section 55 of the RMA.

Staff will commence developing draft provisions to comply with NPS-UD requirements in consultation and engagement with key stakeholders, iwi and hapu, local authorities and infrastructure providers. To the extent practicable, consultation will be combined with that being undertaken as part of the Tauranga City Plan and Western Bay of Plenty District Plan reviews. Particularly with landowners seeking urban rezoning or land use change along the existing RPS urban limits line fringes.

Staff anticipate workshops on the draft RPS changes, issues and options with Strategy and Policy Committee in the second quarter of 2021.



**Report To:** Strategy and Policy Committee

**Meeting Date:** 16 February 2021

**Report Writer:** Mark Hamilton, Senior Policy Analyst

**Report Authoriser:** Namouta Poutasi, General Manager, Strategy & Science

**Purpose:** To update the Committee on the suggested content of new provisions for the Mount Maunganui Airshed, and to seek approval of their direction and scope.

## Mount Maunganui Airshed – Direction and Scope

### Executive Summary

The Mount Maunganui Airshed (the Airshed) was established in November 2019. It was introduced following a history of degraded air quality in and around the Mount Maunganui industrial area and Port of Tauranga, resulting in community concern and leading to air quality monitoring and increased regulatory compliance action.

The National Environmental Standards for Air Quality (NESAQ) includes an ambient air quality standard for particulate matter (PM10). Due to the number of breaches of the standard prior to being gazetted, the Airshed was declared polluted upon its establishment in November 2019. In 2020, this standard was breached a further 12 times.

At the Strategy and Policy committee workshop on 29 September 2020, Councillors provided guidance for the preferred approach for new plan provisions to improve air quality, as part of a future plan change primarily intended to manage the effects of PM10 within the Airshed.

There was a stated desire for provisions that were equitable for all members of the community within the airshed, based on the following approach.

A relatively small number of specific provisions to manage key dust producing activities, with a policy for cumulative effects to assist with reviewing resource consents in a set timeframe. In addition, a policy response for odour producing activities was also requested.

The matters suggested for inclusion in the provisions are incorporated below. If the Committee approves their direction and scope, staff will draft provisions for Committee approval and then subsequent consultation with the public later in 2021.



## Recommendations

**That the Strategy and Policy Committee:**

- 1 Receives the report, Mount Maunganui Airshed – Direction and Scope; and**
- 2 Provides guidance on the matters recommended for inclusion in the draft provisions to be later approved for community engagement.**

### 1. Introduction

#### 1.1 Background

On 8 October 2004, the National Environmental Standards for Air Quality came into effect. The NESAQ includes an ambient air quality standard for particulate matter (PM10). The deadline for achieving the PM10 standard was initially set at one exceedance per year by 2013, but was subsequently extended to 1 September 2020.

The NESAQ is currently under review by the Ministry for the Environment (the Ministry). Council made a submission to the draft review and any amendments to the Standards are expected in mid-2021.

At the Regional Direction and Delivery meeting of 10 April 2019, staff sought approval for the creation of a separate airshed at Mount Maunganui to allow its boundary to be used as a compliance tool. It was advised that area-specific rules could then be introduced to manage air discharges in the new airshed, which would be more efficient and effective than utilising region-wide rules.

On 2 May 2019, Council received a letter from the Associate Minister for the Environment querying breaches and exceedances of the NESAQ, and seeking clarification of Council's intended approach to improve air quality in the Mount Maunganui area. In its reply, Council noted the ongoing work to manage the problem, as well as preparations to apply for the gazettal of a new Mount Maunganui airshed.

The Mount Maunganui Airshed was gazetted in October 2019, and was subsequently declared polluted on its establishment in November 2019 by the Associate Minister.

#### 1.2 Policy Development

At a Strategy and Policy workshop on 29 September 2020, staff gave an overview of the air quality issues within the Airshed. This included:

- A history of air quality complaints within the Mount Maunganui industrial area leading to the introduction of the current, extensive, monitoring network.
- Repeated exceedances of the NESAQ, and the main source contaminants.

The following three policy options were presented for consideration:

1. Broad Scope – Several inclusive general policies and rules designed to have broad coverage of the dust management issue. This would include a permitted activity rule that would apply to dust transported beyond the boundary of the subject property, with associated conditions. Should the conditions be unable to be complied with, then the activity would revert to another activity status, for example, discretionary.

2. Focussed Approach – Draft specific, detailed provisions to manage each identified source of dust where specific contaminants are identified and targeted.
3. Middle Ground – A combination of Options 1 and 2 where a relatively small number of specific provisions target key dust producing activities, with a “catch-all” rule as backstop to address any activities which are not captured by the specific rules.

Councillors sought a focussed-middle ground Option 3 as an initial preferred approach.

The following feedback was received from Councillors:

- New provisions must provide fairness for the community, businesses and workers.
- Specific rules for key issues, as well as a policy for cumulative effects to assist with reviewing resource consents in a set timeframe.
- In further reporting, provide a list of matters and activities that were out of scope.
- Provide an overview of non-regulatory responses within the Airshed and how they intersect with regulatory responses.
- Non-regulatory, incentivised tools and a ‘polluter pays’ component should be considered alongside regulatory tools to encourage voluntary support of cleaning up the Airshed.

### 1.3 Alignment with Strategic Framework

<b>A Healthy Environment</b>	We develop and implement regional plans and policy to protect our natural environment.
<p>Preparation of an air plan is not compulsory under the Resource Management Act 1991 (RMA), however regional councils may choose to prepare one to allow them to carry out their role under the RMA.</p> <p>In particular, the Regional Council has a role under the RMA to control of discharges of contaminants into air (s30(d)(iv) and if appropriate, establish rules in a regional plan to allocate the capacity of air to assimilate a discharge of a contaminant: (s30(fa)iv).</p>	

## 2. Direction and Scope

Given Council’s obligation to ensure compliance with the NESAQ, and central Government’s close interest in this airshed, staff investigated options for improving air quality in Mount Maunganui. These options were presented at the 29 September 2020 workshop where Councillors expressed a clear preference for a rules framework to manage this issue.

The matter of whether to use regulations to better manage discharges of contaminants to air in the Mount Maunganui Airshed was extensively canvassed during the Environment Court process for the Regional Natural Resources Plan Change 13 (Air Quality) (PC13) held in October 2020. As a result, there is general acceptance of the requirement for air quality rules specific to the Airshed.

To date, Councillors have made no formal decision to progress a plan change for the Mount Maunganui Airshed.

Instead of repeating the analyses already presented to Councillors, staff have prepared a draft scope and direction for a plan change, based on the feedback already given for further discussion by the Committee.

## 2.1 Scope

Staff recommend a plan change to the Regional Natural Resources Plan to better manage all significant sources of particulate matter and odour within the Mount Maunganui Airshed.

The scope of the plan change is limited to the Mount Maunganui Airshed, and to particulate matter and odour; no other contaminant or discharge to air will be included. PC13 will continue to apply to the rest of the region, and to the Mount Maunganui Airshed.

The scope of the plan change will be limited to regulatory matters only. Non-regulatory approaches, such as those raised by Councillors in the September 29 workshop (referred to in the Policy Development section, above) will be developed alongside the plan change.

As PC13 has only recently become operative, any new plan change provisions will be developed independently of those already included in PC13, so that no PC13 provisions will be amended or revisited as part of this plan change.

Tauranga City Council and the Regional Council are currently working with the Whareroa Marae regarding the investigation of a managed retreat of some industrial activities to the north of the Marae. The proposal for the managed retreat is out of scope for this plan change.

## 2.2 Assumptions

Currently there is one rule of PC13 still subject to appeal in the Environment Court. Rule AQ R22 covers discharges from handling of bulk solid materials above a threshold volume. The scope and direction of the Mount Maunganui Airshed plan change assumes that AQ R22, will remain substantially unchanged from what Council put forward to the Court. AQ R22 doesn't cover other significant sources of dust such as log handling. Furthermore, it doesn't cover other smaller sources like permitted boilers, unsealed yards which also all contribute to the cumulative effect of dust.

If AQ R22 changes significantly as a consequence of the Court's decision, staff will reassess the approach if necessary. However, at this stage the direction will be broad enough to accommodate most decisions made by the Court.

## 2.3 Direction

New policies and rules will be developed to specifically target the sources of particulates and odour in the Mount Maunganui Airshed. No amendments are recommended for the provisions currently included in PC13 recently made operative.

Council's legal submission to the Environment Court in support of AQ R22 is that all industries within the Airshed responsible for emissions to air have a responsibility to contribute to the Airshed's remediation. Council acknowledged that existing provisions including Rule AQ R22 on its own will not achieve this outcome.

No additional objectives are recommended – the existing objectives in PC13 remain fit for purpose.

It is anticipated that policies are drafted to address the following matters:

- Build on the existing policies of PC13 to be strengthened and more specific to particulates and odour within Mount Maunganui.
- Refer to a broader set of contaminants (Health-based Guideline Values in the Ambient Air Quality Guidelines, or other relevant international guidelines for the protection of human health), rather than just the five contaminants included within the NESAQ.
- Specific Mount Airshed policy – airshed as a control mechanism, prioritise development of air quality management plans where necessary to prevent further degradation of airshed.
- Duration of air consent is dependent on activities to avoid, remedy or mitigate adverse effects on air quality – a longer consent duration may be available to provide ongoing operational certainty. Default becomes 10-12 years, and longer duration available for best practice. Or, if airshed is polluted, maximum consent terms is 10-12 years, and best practice must still apply.
- Cumulative effects – To assist with reviewing resource consents in a set time frame, activities that require resource consent and contribute to the cumulative discharge of PM within the Airshed shall be required to be reviewed within a set timeframe.
- Odour – develop a policy to manage odorous industrial emissions to minimise adverse effects on sensitive receptors and manage activities depending on drift.

It is anticipated that rules are drafted to address the following matters:

- Particulate matter from log handling within Mount Maunganui Airshed.
- The discharge of contaminants to air from general fugitive (diffuse) discharges and dust sources beyond the boundary of the property.
- More specific permitted, controlled and restricted discretionary activities.

In the event that the Environment Court does not rule in Council's favour regarding Rule AQ R22, staff will develop an appropriate rule to address the issue of particulates from bulk solid materials handling.

### 2.3.1 Community Well-beings Assessment

Dominant Well-Beings Affected			
<input checked="" type="checkbox"/> Environmental	<input type="checkbox"/> Cultural	<input type="checkbox"/> Social	<input type="checkbox"/> Economic
Medium - Positive	Low - Positive	High - Positive	Low - Negative

Staff have assessed the community well-beings of the matters discussed in this report as follows:

- Environmental – New plan provisions would be expected to lead to a change in dust management practices at sites currently contributing to the

cumulative discharge of fugitive dust within the Airshed. Modified dust management techniques should in turn lead to an improvement in recorded PM<sub>10</sub> levels and air quality as a whole.

- Cultural – A reduction in PM<sub>10</sub> recorded in the Airshed is likely to be a positive outcome for local iwi and hapū as the Tauranga Moana Iwi Management Plan refers to the management of air discharges. However, PM<sub>10</sub> levels are just one of the air quality issues troubling hapū at Whareroa Marae and the air quality monitor situated at the marae records relatively few PM<sub>10</sub> exceedances.
- Social – Compromised air quality is the leading cause of complaint within both the Airshed, and the region as a whole. Air quality has a high public profile with community groups such as Clear the Air and Whareroa Marae vocal about the presence of various air-borne contaminants within the wider Mount Maunganui area. Reductions to the emissions of odour and PM as the result of new plan provisions will be a positive outcome for residents within and neighbouring the Airshed, as well as workers, customers and sports ground users and spectators. A reduction in the discharge of both odour and PM could well become a source of pride and relief amongst local residents.
- Economic – New plan change provisions which require non-compliant businesses to introduce physical measures to manage PM and odour emissions will likely have a financial cost for those businesses.

### 3. Considerations

#### 3.1 Risks and Mitigations

A considerable cross-section of the population who live, work or engage in recreational activities within the Airshed will be affected by proposed changes to introduce new air quality management provisions. Residents of Whareroa marae, airport residents and passengers, players and spectators at Blake Park, Harbour Bridge marina users and workers within the Airshed are all groups to benefit from any improvement in air quality as a result of new plan provisions to manage PM in accordance with the NESAQ. Some businesses within the Airshed could be affected by requirements to adhere to suggested plan change provisions, or obtain resource consents.

New plan provisions are likely to have a negligible increase on rates, as most costs will be incurred by businesses adhering new requirements and the cost of introducing the plan change. In the long term, if air quality improves in the Airshed, then the need for monitoring may subside, with a consequent reduction in related costs borne by ratepayers.

Although odour is not a contaminant subject to control by the NESAQ, it is the leading cause of complaints within the Airshed (and region itself) that could benefit from additional, targeted policies.

#### 3.2 Climate Change

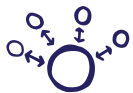
The matters addressed in this report are not sensitive to the effects of climate change. Staff have also considered the effect of the initiative on greenhouse gas emissions and have determined that there will be no effect.

### 3.3 Implications for Māori

If new plan provisions to manage odour and PM emissions achieve improved air quality in the Airshed, it may result in positive social and cultural effects for Whareroa marae, and the three iwi partners of the Tauranga Moana Iwi Collective. No consultation has yet been undertaken as the scope and direction of the specific options to manage odour and PM within the Airshed is still to be confirmed.

Once this direction is provided, then local iwi and hapū, and all relevant iwi planning documents and legislation would be consulted with as plan provisions are drafted and refined.

### 3.4 Community Engagement



#### INVOLVE Whakaura

To work directly with affected communities throughout the process to ensure that their issues and concerns are consistently understood and fully considered in Council's decision making.

We will work with iwi and hapū and other community stakeholders during the process to ensure that their issues are considered as part of Council's decisions making.

### 3.5 Financial Implications

There are no material unbudgeted financial implications and this fits within the allocated budget.

## 4. Next Steps

Councillor commitment to a plan change and associated direction will result in formation of draft provisions based on feedback received from the committee.

Final approval of draft provisions to inform proposed plan change will then be sought from the Committee at a subsequent meeting. Following approval of the draft provisions, feedback will be sought from stakeholders and the community.

Informal Community consultation – we already have diverse array of engaged stakeholders including the Whareroa marae, local residents' group "Clear the Air" and industry within the Airshed. The wider community will then also be consulted during the notification of a Plan change.

The following diagram is an overview of the plan change process and gives an indication of the steps and high-level timeframe involved:





**Report To:** Strategy and Policy Committee

**Meeting Date:** 16 February 2021

**Report Writer:** Karen Parcell, Team Leader Kaiwhakatinana

**Report Authoriser:** Namouta Poutasi, General Manager, Strategy & Science

**Purpose:** Approval of Plan Change 17 (Awatarariki Fanhead)

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## Approval of Plan Change 17 (Awatarariki Fanhead)

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### Executive Summary

On 18 May 2005, a severe rainfall event caused several large debris flows that led to significant damage on the Awatarariki Fanhead. The Whakatāne District Council (WDC) investigated engineering solutions to mitigate the high risk that the destructive force the debris flow poses to life and property. These options were found to be unfeasible.

WDC proposed Plan Change 1 to the Whakatāne District Plan and requested that the Regional Council include provisions in a regional plan to extinguish existing use rights. Regional Council accepted these provisions as Plan Change 17 (PC17) to the Regional Natural Resources Plan which was notified and processed concurrently with Plan Change 1.

A number of houses that were damaged or destroyed during the debris flow had been rebuilt, therefore the notification of PC17 created significant stress and uncertainty for the landowners. The Hearing Panel did not support the submission points in opposition and recommended minor changes to the proposed provisions of PC17.

One appeal was made to the Environment Court on a number of grounds including that the plan change was unlawful, contrary to Part 2, and an abuse of public power. The relief sought was for the plan changes to be withdrawn.

The Environment Court hearing was set down for early December 2020. Prior to the hearing, the councils negotiated an agreement with all but one landowner for a voluntary managed retreat programme to sell their properties. One property owner sought an extension of time to occupy their property for a further year which was accepted by the councils and granted by the Court.

The Court has directed Regional Council to amend PC17 to insert a new rule providing for the time extension for one property. The recommendation is for the Committee to approve the provisions of PC17.



## Recommendations

**That the Strategy and Policy Committee:**

- 1 Receives the report, Approval of Plan Change 17 (Awatarariki Fanhead).**
- 2 Approves all provisions of Proposed Plan Change 17 (Awatarariki Fanhead) to the Regional Natural Resources Plan and any consequential changes to the Regional Natural Resources Plan, to be effected by affixing the seal of the Regional Council.**
- 3 Delegates to the Group Manager Strategy and Science to make minor corrections to Proposed Plan Change 17 (Awatarariki Fanhead) to the Regional Natural Resources Plan and any consequential changes if required.**
- 4 Delegates to the Chief Executive the authority to set the date to make Proposed Plan Change 17 (Awatarariki Fanhead) to the Regional Natural Resources Plan operative.**

### 1. Introduction

Proposed Plan Change 17 (Awatarariki Fanhead) to the Regional Natural Resources Plan (PC17) was prepared by Whakatāne District Council (WDC) alongside Plan Change 1 to the Whakatāne District Plan.

On 18 May 2005, a severe rainfall event caused several large debris flows that caused significant damage to land, buildings, and road and rail infrastructure on the Awatarariki Fanhead. Although there were no deaths or injuries the destructive force of the debris flow was such that fatalities could have easily occurred.

To avoid this outcome during future events, WDC investigated and consulted on engineering options for debris flow control and concluded that there were no viable engineering solutions to manage the debris flow risk to life and property that meet community engagement outcomes, engineering viability, or feasibility. WDC pursued planning based options instead.

#### 1.1 Legislative Framework

The Natural Hazards chapter of the Regional Policy Statement became operative in 2016 and contains a number of provisions specific to management of natural hazards. In particular Policy NH3B imposes a requirement to reduce the level of risk from high to medium (or lower if reasonably practicable).

A hazard and risk assessment for landslides and debris flow confirms that the risk to life and property on the Awatarariki Fanhead is high. WDC identified managed retreat as the most effective measure to reduce risk, which would require the owners of properties at high risk to relocate out of harm's way. There are 34 properties within the affected area. At the time this option was identified, 16 of the properties contained houses.

WDC proposed Plan Change 1 to the Whakatāne District Plan to rezone the high risk area from Residential to Coastal Protection Zone, and for residential activity within the high risk area to become a prohibited activity.

However, Plan Change 1 has no effect on existing use rights as s10 of the Resource Management Act (RMA) specifies that land may be used in a manner that contravenes a rule in a District Plan if the use was lawfully established before the



notification of a proposed rule, therefore the prohibited activity rule would only apply to new developments.

However, the Regional Council has a function under s30(1)(c) RMA to control the use of land for the purpose of avoiding or mitigating natural hazards, and s10 does not extend the protection of existing use rights to land controlled under s30(1)(c).

Therefore, WDC prepared PC17 with provisions intended to extinguish existing use rights within the high risk area. The Regional Direction and Delivery Committee accepted PC17 at its meeting on 20 February 2018.

The affected properties are not within the Coastal Marine Area and therefore the additional procedural requirements of the RMA involving the Minister of Conservation do not apply.

## 1.2 Alignment with Strategic Framework

### Safe and Resilient Communities

We work with communities and others to consider long term views of natural hazard risks through our regional plans and policies.

PC17 will contribute to the safe and resilient communities outcome.

Once operative, PC17 will initially be included in the Natural Hazards chapter of the Regional Natural Resources Plan (RNRP). However, when the RNRP is brought into compliance with the National Planning Standards, the provisions of PC17 will move to an Area chapter (Area 2 – Awatarariki Fanhead). This will not result in any substantive changes and will be done without the need for a further Schedule 1 process.

### 1.2.1 Community Well-beings Assessment

A number of houses were significantly damaged or destroyed during the debris flow on 18 May 2005. As the natural hazard risk was not fully understood in the immediate aftermath of the event, landowners rebuilt their homes, investing “physically, financially, and in some cases emotionally, in their land and buildings in good faith.”<sup>6</sup>

Understandably, the notification of PC17 created significant stress and uncertainty for landowners affected.

WDC, Regional Council and Central Government agreed to provide financial assistance towards managed retreat from the high risk area. This provides landowners with the ability to sell their properties at market value; as though no natural hazard exists and no plan changes notified.

These factors have been considered at various stages of the public notification process required under Schedule 1 of the RMA.

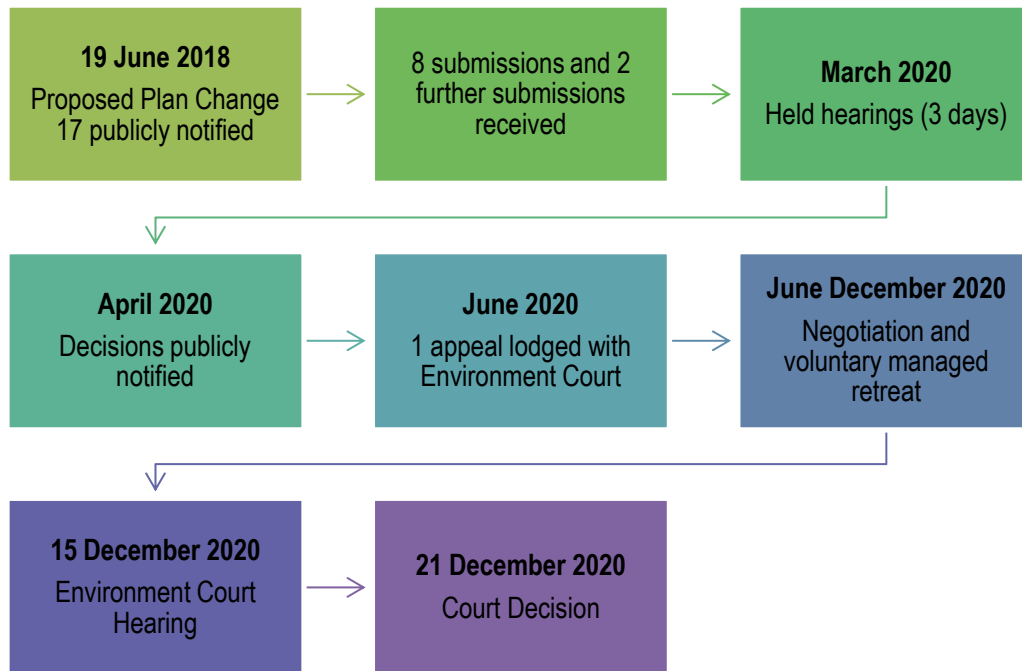
## 2. Plan Process

PC17 and Plan Change 1 were processed concurrently and a combined hearing used to hear submissions.

<sup>6</sup> Proposed Plan Change 1 and Plan Change 17: Awatarariki Fanhead Section 42A Planning Report on Submissions and Further Submissions – 20 December 2019

The Regional Council notified PC17 on 19 June 2018, receiving 8 submissions and 2 further submissions. Submitters were heard by an independent panel of hearing commissioners over 3 days.

The diagram below summarises the process.



## 2.1 Submissions

Key concerns raised by submitters were:

- Plan provisions contrary to Part 2 of the RMA.
- Uncertain science and imprecise modelling of risk of landslide and debris flow.
- Breach of the New Zealand Bill of Rights Act 1990.
- Awatarariki community marginalised and discriminated against.
- Flow hazard decreased if upstream farming and forestry was better managed.
- Alternative engineering solutions not fully investigated.
- Guaranteed funding needed in place before existing use rights extinguished.

The Hearing Commissioners considered all submissions and did not support the majority of the concerns. The Commissioners recommended minor changes to the proposed provisions of PC17.

## 2.2 Appeals

The Environment Court received one appeal from Awatarariki Residents Incorporated. Reasons for the appeal were:

- Unlawful with no jurisdiction to remove existing use rights.
- Contrary to Part 2 and s85 of the RMA.

- Abuse of public power, inconsistent with councils' statutory functions, adverse impacts disproportionate to the risk being managed, and inappropriate, inefficient or ineffective.
- Challenging the assessments of adverse effects and of risk on which the hearing commissioners made their decisions.
- Failure to address reasonable available alternatives.

The relief sought was for the plan changes (PC17 and Plan Change 1) to be withdrawn.

## 2.3 Environment Court Hearing and Decision

The Environment Court hearing was set down for two weeks in early December 2020. However most of these hearing dates were vacated at the parties' request to allow for the extensive negotiations between residents and councils.

As a result of these negotiations, all but one landowner signed up to the voluntary managed retreat programme to sell their properties to WDC. One property owner sought an extension of time to occupy their property for a further year and has acknowledged that they have chosen to remain in occupation of the property at their own risk. They have indemnified the councils against any claim for injury or damage suffered as a result of a debris flow hazard.

The Court congratulated the parties on reaching an agreement, acknowledging the difficulty and stress for everyone involved.

The Court granted the orders sought by the parties on the terms sought, which involved a direction that Regional Council amend PC17 to insert a new rule providing for the time extension for one property. The pre-operative version of PC17 is included as Attachments 1 and 2 (shown as track changes and clear copy), and the Environment Court decision as Attachment 3.

## 3. Considerations

### 3.1 Risks and Mitigations

Avoiding the high risk of loss of life and damage to property is at the core of PC17 and has been assessed at every stage of the process.

The WDC considered mitigation options that did not involve extinguishing existing use rights and pursued the provisions in PC17 only when all other mitigation options were exhausted.

### 3.2 Climate Change

The effect of climate change on the frequency and intensity of rainfall was found to increase the risk of a further debris flow occurring at Matatā, and this was a key factor considered by both the Hearing Commissioners and the Court.

### 3.3 Implications for Māori

Schedule 1 of the RMA requires consultation with iwi regarding plan changes. WDC consulted with Ngāti Awa, Ngāti Rangitihi, and Ngāti Rangitihi Raupatu Trust who indicated support for the retreat from the Awatarariki Fanhead. Ngāti Awa and Ngāti Rangitihi subsequently lodged submissions supporting the plan changes.

WDC also consulted with Ngāti Hinerangi Trust, Ngāti Tūwharetoa ki Kawerau and the Mātaatua District Māori Council.

The planner for WDC also considered the relevant iwi and hapū management plan – Ngāti Rangitihi Iwi Environmental Management Plan when making recommendations to the Hearing Commissioners.

### 3.4 Community Engagement

Community engagement was been carried out extensively during the drafting and notification of PC17, including the submissions process and appeals to Environment Court.

### 3.5 Financial Implications

There are no material unbudgeted financial implications and this fits within the allocated budget.

## 4. Next Steps

When the Committee approves the recommendations, staff will publicly release PC17 along with notification of the date on which it will become operative, to be approved by the Chief Executive.

## Attachments

Attachment 1 - Proposed Plan Change 17 (Awatarariki Fanhead) - Pre-Operative Track Changes version 10 PDF [↓](#)

Attachment 2 - Proposed Plan Change 17 (Awatarariki Fanhead) - Pre-Operative Clear copy version 10 PDF [↓](#)

Attachment 3 - 2020-12-15 Determination by the Environment Court [2020] NZEnvC 215 Awatarariki Residents Incorporated - released 21 December 2020 [↓](#)

Version 10  
February 2021

**PROPOSED**  
**Plan Change 17 (Natural Hazards)**  
**to the Regional Natural Resources Plan**  
**Management of Debris Flow Hazards on the**  
**Awatarariki Fanhead at Matatā**

**PRE-OPERATIVE**

**TRACK CHANGES**

This version incorporates changes resulting from consent orders and decisions issued by the Environment Court in order to resolve appeals and changes required for compliance with the National Planning Standards

Amendments are shown underlined in red and deleted text is shown ~~struck-through in red~~.

Bay of Plenty Regional Council  
PO Box 364  
Whakatāne 3158  
New Zealand

The Natural Hazards provisions are included in the Bay of Plenty Regional Natural Resources Plan as a separate chapter. Objective, policies, and rule are prefaced by the unique identifier “NH”.

**NH: Natural Hazards AREA2 – Awatarariki Fanhead**

Add the following provisions to chapter NH: Natural Hazards:

**Management of Debris Flow Hazards on the Awatarariki Fanhead at Matatā**

**Objective**

**NH-04 AREA2-O1** Avoidance or mitigation of debris flow hazard by managing risk for people’s safety on the Awatarariki Fanhead.

**Policies**

**NH-P6 AREA2 – P1** To assess the natural hazard risk from Debris Flows on the Awatarariki fanhead at Matatā by undertaking a risk analysis using a methodology that complies with Appendix L to the Regional Policy Statement.

**NH-P7 AREA2 – P2** To reduce the level of natural hazard risk associated with debris flow on the Awatarariki Fanhead by ensuring existing residential land uses retreat from the high risk hazard area as soon as reasonably practicable.

**NH-P8 AREA2 – P3** To ensure existing residential land uses retreat from the high risk hazard on the Awatarariki Fanhead by extinguishing existing use rights that would otherwise enable those residential land uses to continue.

**Rules**

**NH-R71 AREA2 – R1** **Prohibited - Residential Activities subject to High Risk Debris Flow on the Awatarariki Fanhead at Matatā after 31 March 2021**

From 31 March 2021, the use of land for a residential activity is a prohibited activity on any property listed below in Table NH 3.

**AREA 2 – R2 Prohibited - Residential Activities subject to High Risk Debris Flow on the Awatarariki Fanhead at Matatā after 31 March 2022**

**From 31 March 2022, the use of land for a residential activity is a prohibited activity on Allot 322 TN of Richmond (10 Clem Elliott Drive, Matatā).**

Add the following definitions to the **Glossary Terms of Reference**:

**Meaning of “Residential Activity” and “Property”**

**For the purposes of Rule R71**

- “residential activity” **for the purposes of AREA2 – R1 and AREA2 – R2 shall** means the use of land or buildings by people for living accommodation whether permanent or

temporary and includes, but is not limited to, any dwellings, apartments, boarding houses, hotels, hostels, motels, camping grounds, mobile homes, caravans, tents, and accommodation for seasonal workers.

- “property” for the purposes of AREA2 – R1 and AREA2 – R2 shall means, as applicable to the context, a parcel of land described in Table NH 3 and shown with a yellow border on Figure NH1.

Table NH 3

Legal Description	Physical Address
Lot 1 DPS 46347	16, 16A, 18, 18A Clem Elliott Drive, Matatā
Lot 2 DP 308147	14B Clem Elliott Drive, Matatā
Lot 1 DP 308147	14A Clem Elliott Drive, Matatā
Lot 3 DP 308147	12B Clem Elliott Drive, Matatā
Lot 4 DP 308147	12A Clem Elliott Drive, Matatā
<del>Allot 322 TN OF Richmond</del>	<del>10 Clem Elliott Drive, Matatā</del>
Allot 323 TN OF Richmond	8 Clem Elliott Drive, Matatā
Lot 1 DPS 54496	7 Clem Elliott Drive, Matatā
Lot 2 DPS 54496	5 Clem Elliott Drive, Matatā
Lot 2 DPS 4869	23 Richmond Street, Matatā
Lot 3 DPS 4869	21 Richmond Street, Matatā
Allot 360 TN OF Richmond	5 Pioneer Place, Matatā
Allot 361 TN OF Richmond	6 Pioneer Place, Matatā
Allot 362 TN OF Richmond	7 Pioneer Place, Matatā
Lot 4 DPS 4869	96 Arawa Street, Matatā
Lot 5 DPS 4869	94 Arawa Street, Matatā
Lot 1 DPS 16429	100 Arawa Street, Matatā
Lot 2 DP 306286	104 Arawa Street, Matatā



Figure NH1





Version 10  
February 2021

**PROPOSED  
Plan Change 17 (Natural Hazards)  
to the Regional Natural Resources Plan  
Management of Debris Flow Hazards on the  
Awatarariki Fanhead at Matatā**

**PRE-OPERATIVE**

**CLEAR COPY**

This version incorporates changes resulting from consent orders and decisions  
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Bay of Plenty Regional Council  
PO Box 364  
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New Zealand

The Natural Hazards provisions are included in the Bay of Plenty Regional Natural Resources Plan as a separate chapter. Objective, policies, and rule are prefaced by the unique identifier “NH”.

### AREA2 – Awatarariki Fanhead

*Add the following provisions to chapter NH: Natural Hazards:*

#### **Management of Debris Flow Hazards on the Awatarariki Fanhead at Matatā**

##### ***Objective***

**AREA2-O1** Avoidance or mitigation of debris flow hazard by managing risk for people’s safety on the Awatarariki Fanhead.

##### ***Policies***

**AREA2 – P1** To assess the natural hazard risk from Debris Flows on the Awatarariki fanhead at Matatā by undertaking a risk analysis using a methodology that complies with Appendix L to the Regional Policy Statement.

**AREA2 – P2** To reduce the level of natural hazard risk associated with debris flow on the Awatarariki Fanhead by ensuring existing residential land uses retreat from the high risk hazard area as soon as reasonably practicable.

**AREA2 – P3** To ensure existing residential land uses retreat from the high risk hazard on the Awatarariki Fanhead by extinguishing existing use rights that would otherwise enable those residential land uses to continue.

##### ***Rules***

**AREA2 – R1 Prohibited - Residential Activities subject to High Risk Debris Flow on the Awatarariki Fanhead at Matatā after 31 March 2021**

From 31 March 2021, the use of land for a residential activity is a prohibited activity on any property listed below in Table NH 3.

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From 31 March 2022, the use of land for a residential activity is a prohibited activity on Allot 322 TN of Richmond (10 Clem Elliott Drive, Matatā).

*Add the following definitions to the Terms of Reference:*

##### **Meaning of “Residential Activity” and “Property”**

- “residential activity” for the purposes of AREA2 – R1 and AREA2 – R2 means the use of land or buildings by people for living accommodation whether permanent or temporary

and includes, but is not limited to, any dwellings, apartments, boarding houses, hotels, hostels, motels, camping grounds, mobile homes, caravans, tents, and accommodation for seasonal workers.

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Lot 1 DPS 16429	100 Arawa Street, Matatā
Lot 2 DP 306286	104 Arawa Street, Matatā

Figure NH1



**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision No. [2020] NZEnvC 215**

**IN THE MATTER** of an appeal under Schedule 1 to the  
Resource Management Act 1991

**BETWEEN** AWATARARIKI RESIDENTS  
INCORPORATED

(ENV-2020-AKL-000064)

Appellant

**AND** BAY OF PLENTY REGIONAL COUNCIL

First Respondent

WHAKATĀNE DISTRICT COUNCIL

Second Respondent

**Court:** Chief Judge D A Kirkpatrick  
Commissioner A C E Leijnen  
Commissioner J A Hodges

**Hearing:** at Whakatāne on 15 December 2020

**Appearances:** R Enright and R Haazen for the Appellant  
M Hill for the first respondent  
A Green for the second respondent

**Date of Decision:** 15 December 2020

**Date of Issue:** 21 December 2020

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**DETERMINATION OF THE ENVIRONMENT COURT**

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**A:** By consent Plan Change 17 to the Bay of Plenty Regional Natural Resources Plan is amended to extend the time by which the property at 10 Clem Elliott Drive, Matatā, must be vacated to 31 March 2022.

**B:** The relief sought in the appeal is otherwise refused.

**C:** There is no order as to costs.



Awatarariki Residents Incorporated v Bay of Plenty Regional Council & Whakatāne District Council

### REASONS FOR MAKING ORDERS BY CONSENT

[1] The background to this matter is fully set out in the report dated 26 March 2020 of the respondent Councils' hearing commissioners. That report contains the decision which is the subject of this appeal. By s 290A of the Resource Management Act 1991 we are required to have regard to that decision. We have found the report to be comprehensive and helpful, clearly setting out the reasons of the hearing commissioners for their decision.

[2] We do not repeat the contents of the report except to the limited extent necessary to assist readers to gain some understanding of the context in which the Court is now making orders by consent to conclude this appeal. In the ordinary course of making orders by consent to settle appeals before this Court it is unusual to set out this context but the circumstances of this matter and the nature of the plan changes make it desirable that we do so.

#### Background

[3] On 18 May 2005 a storm triggered a debris flow of approximately 300,000 cubic metres in the catchment of the Awatarariki Stream at the western end of the settlement at Matatā in the Bay of Plenty. That debris flow caused significant damage to land, buildings and transport infrastructure: 27 homes were destroyed, 87 other properties were damaged, and the state highway and the railway line were cut. The total value of the damage was estimated to be \$20 million. Fortunately, there were no fatalities.

[4] The return period of that storm was initially thought to be around 200-500 years, but further analysis recalculated the return period as being between 40-80 years. Those periods are a method of expressing the probability of an event occurring, but the method can be misleading in suggesting that there will a gap between such events when in fact such events could occur in quick succession. The hearing commissioners found that future debris flows in the catchment could be expected to occur as a result of any future storm known to be capable of generating them, so that the risk is both significant and as certain as any natural phenomenon can be. The hearing commissioners also noted that there is clear evidence of previous debris flows having occurred at Matatā.

[5] Various investigations were made to see how the risk of future debris flows could be avoided or mitigated. Following an independent review in 2012, the Council resolved



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not to proceed with an engineered solution. A hazard and risk assessment in 2015 identified that the risk to life and property on parts of the debris flow area was high. In 2016, the Ministry of Business, Innovation and Employment concluded in terms of the Building Act 2004 that because of the high probability that loss of life could occur, houses should not be permitted to be built there. On that basis it was concluded that the area is subject to a significant natural hazard which precludes any form of permanent occupation.

[6] A programme of managed retreat was subsequently determined to be the most effective measure to reduce risk. Important components of the programme are the changes to the Whakatāne District Plan and the Bay of Plenty Regional Natural Resources Plan which are the subject of this appeal. The essence of the plan changes is to require the residents of the debris flow area to vacate their homes by 31 March 2021 and to prohibit future occupation of the area.

[7] It is fair to say that the time it had taken between 2005 and the notification of the Plan Changes has been a very difficult one for everyone involved, most particularly the owners and occupiers of land in the debris flow area. There are a number of issues that have arisen during that time and while it will not be helpful to rehearse those in this determination, it is appropriate to acknowledge how significant the stress of the whole process has been on the residents.

#### **The Plan Changes**

[8] Plan Change 1 to the District Plan identifies an area on the fanhead of the Awatarariki Stream as the Awatarariki Debris Flow Policy Area which is divided into areas identified as high, medium and low risk. The high risk area is proposed to be rezoned from residential to coastal protection with effect from 31 March 2021, in which residential activity is proposed to be a prohibited activity, as are other activities with the exception of transitory recreational use of open space. This will only affect future use of the area.

[9] Plan Change 17 to the Regional Plan was requested by the District Council to include provisions for the Debris Flow Policy Area in the chapter of the Regional Plan dealing with natural hazards. Importantly, the plan change includes a proposed rule NH R71 that would make the use of 18 parcels of land, comprising 21 specified properties, for a residential activity a prohibited activity from 31 March 2021. This status under the regional plan would override and have the effect of terminating any existing use rights for residential activities on that land after that date. We are told by counsel for the District



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Council that this is the first time that such a proposal to terminate existing use rights has been before the Court.

[10] The District Council requested this change to the Regional Plan because it does not have any power to alter existing use rights arising under s 10 of the RMA. The Regional Council, under s 30(1)(c)(iv) of the RMA, has the function of controlling the use of land for the purpose of avoiding or mitigating natural hazards. Under s 63(1) of the RMA, the purpose of a regional plan is to assist a regional council to carry out any of its functions in order to achieve the purpose of the RMA. A regional council may make rules under s 68(1) for carrying out its functions under s 30(1)(c). Under s 10(4) of the RMA, s 10 does not apply to any use of land that is controlled under s 30(1)(c). It is by that combination of functions and powers that the Regional Council may terminate existing use rights.

[11] We add that any regional rule which has the effect of altering or terminating existing use rights in relation to land remains subject to all of the controls under the RMA in relation to the making of rules, including the requirement under s 68(3) for the regional council to have regard to the effect on the environment of activities and the requirements under s 32 to examine the appropriateness of any rule by, among other things, identifying other options for achieving the relevant objectives, assessing the efficiency and effectiveness of the rule for achieving such objectives, identifying and assessing the benefits and costs of anticipated effects and assessing the risk of acting or not acting if there is uncertain or insufficient information.

[12] Provisions of plans must give effect to the relevant regional policy statement. The Bay of Plenty Regional Policy Statement includes the following particularly relevant provisions:

- a) Objective 31: *Avoidance or mitigation of natural hazards by managing risk for people's safety and the protection of property and lifeline utilities*
- b) Policy NH 3B: *By the application of Policies NH 4B and NH 12A, achieve the following natural hazard risk outcomes at the natural hazard zone scale\*: (a) In natural hazard zones subject to High natural hazard risk reduce the level of risk from natural hazards to Medium levels (and lower if reasonably practicable); ...*
- c) Policy NH 12A: *Promote the natural hazard risk outcomes set out in Policy NH 3B by: (a) Providing for plans to take into account natural hazard risk reduction measures including, where practicable, to existing land use activities, ...*





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[13] A further consideration in making rules under the RMA is the possible application of s 85. While s 85(1) of the RMA declares that an interest in land is deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in the RMA, the remainder of s 85 goes on to provide for a process for assessing whether a plan provision would render an interest in land incapable of reasonable use and places an unfair and unreasonable burden on any person who has such an interest. Any such person may challenge a rule on that basis.

[14] As set out in the report of the hearing commissioners, a further method being implemented by the Councils and the Crown is in the form of a voluntary managed retreat programme, including funding for the acquisition of high risk properties. While not forming part of either plan, this programme is clearly an integral component of the approach to managing the natural hazard at Matatā.

### **The Appeal**

[15] The appeal by the Awatarariki residents is against both Plan Changes. Among the reasons for the appeal, as lodged, were:

- a) A challenge to the lawfulness of the Plan Changes, including that there is no jurisdiction to remove existing use rights in this way;
- b) That the plan changes are contrary to Part 2 and s 85 of the RMA;
- c) That the plan changes are an abuse of public power, inconsistent with the statutory functions of the Councils', have adverse impacts disproportionate to the risks being managed and are inappropriate, inefficient or ineffective in terms of s 32 of the RMA;
- d) Challenging the assessments of adverse effects and of risk on which the hearing commissioners made their decision; and
- e) Failing to address reasonably available alternatives.

[16] The relief sought by the Society was for the Plan Changes to be withdrawn under Schedule 1 or deleted under s 85 of the RMA. Alternatively, the Society sought amendments to address their concerns including, without limitation, allowing residential activity to continue on high risk properties.



[17] We understand that there have been extensive discussions and negotiations

between the residents and the Councils. The agreements that they have reached will amount to compromises in order to settle the appeal and to address their interest. In particular, we record that at the hearing of the proposed consent orders, counsel for the appellants expressly did not dispute the jurisdictional basis for such orders. On that basis we do not venture further into any examination of those matters.

[18] The hearing of the appeal was set down for the weeks of 7 and 14 December 2020. On 15 October 2020, the parties advised the Court that only one of those weeks would be needed, so the fixture for the week of 7 December 2020 was vacated with the hearing to start on 14 December 2020. On 3 November 2020 the parties advised that agreement had been reached on a basis on which the appeal could be settled. The basis of the settlement comprised:

- a) Agreement by all but one landowner to enter into the voluntary managed retreat programme and sell their properties to the District Council;
- b) The one remaining property owner resigning from the Society;
- c) One property owner, the Whalleys, seeking an extension of time to be able to occupy their property for a further year.

[19] The presiding Judge convened a judicial telephone conference on 6 November 2020 so that the manner in which this settlement might be documented could be discussed. At that conference it was agreed by all parties that it would be appropriate to have a brief hearing of the proposed settlement at Whakatāne. The need for a hearing was in light of the significance of the issue of terminating existing use rights by use of a change to a Regional Plan, the extensive publicity that the event at Matatā and subsequent processes had had and the importance of enabling members of the Society to have access to the process by which any consent order would be made.

#### Evidence

[20] Prior to the hearing, the councils filed and served the following evidence:

- a) The affidavit of Peter Lindsay Blackwood sworn on 23 November 2020;
- b) The joint affidavit of Christopher Ian Massey and Timothy Reginal Howard Davies affirmed on 23 November 2020; and
- c) The joint affidavit of Craig Barry Batchelar and Gerard Matthew Willis sworn on



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23 November 2020.

[21] We also received a joint affidavit sworn by Rick Whalley, Rachel Whalley and Pamela Whalley sworn on 3 December 2020.

[22] Mr Blackwood is an engineer with over 40 years' experience in central and regional government environmental and civil engineering around New Zealand, specialising in rainfall and flood frequency (including the effects of climate change), river hydraulics and catchment and coastal engineering. He has examined the environment at Matatā and the surrounding area in detail. He concludes that the rainfall threshold for severe weather warnings are highly likely to be exceeded between 15 December 2020 and 21 March 2022 between 1 and 5 times.

[23] Dr Massey is a principal scientist at the Institute of Geological and Nuclear Sciences with over 20 years' experience in the investigation and analysis of landslides and slope stability in New Zealand and overseas. Dr Davies is a professor in the School of Earth and Environment at the University of Canterbury, Christchurch, with over 20 years' experience in researching debris-flow behaviour and management in New Zealand and overseas. They conclude that while the probability of detecting a heavy rain event is given by the Meteorological Service of New Zealand as between 83 and 93%, the probability that a missed event could be large enough to trigger a debris flow is likely to be relatively small, of the order of  $1 \times 10^{-3}$  or 0.1%. They also note that the risk reduction afforded by an early warning system is unlikely to be by an order of magnitude, so that the annual individual fatality risk might remain greater than  $1 \times 10^{-4}$  or 0.01% and therefore be greater than the risk tolerability threshold specified in the Bay of Plenty Regional Policy Statement.

[24] Mr Batchelar is a planning consultant with 35 years' experience, including particular experience in planning for natural hazard risk management. Mr Willis is a planning consultant with 30 years' experience in New Zealand and overseas, including developing provisions addressing natural hazards in the RPS. They concluded that extending time for occupation of the debris flow area would not generally give effect to the regional policy statement, but also that further litigation of the plan changes would likely mean that termination of occupation would be delayed by as much as a year. A compromise of allowing a one year extension for one property, while not ideal, would in their opinion not be contrary to reducing the risk to an acceptable level as soon as practicable and would shorten the overall timeframe for reducing risk in the area. On that basis, they concluded that an extension for the Whalley property would not materially



affect the degree to which the plan changes give effect to the RPS. They helpfully set out proposed amendments to Plan Change 17 to do this.

[25] The joint affidavit by the Whalleys helpfully explained their position, including the background to their house and to their involvement in the processes addressing the 2005 event. They explained the basis on which they were willing to settle their involvement in this appeal and in particular how an extension to the time for vacating their property would work and how they would provide for their safety during that period. We refer to this evidence further in our assessment of the proposed extension.

#### **Extension of time for 10 Clem Elliott Drive**

[26] As well as settling the appeal in relation to both plan changes, the parties seek an amendment to them to enable the property at 10 Clem Elliott Drive to be used by the Whalley family for a further year, until 31 March 2022.

[27] The house at 10 Clem Elliott Drive was built by Pamela and the late Rick Whalley as their "forever home" in the early 1990's, and it is where they retired together. It is a special place for Mrs Whalley, in particular, for reasons that include it is where her late husband died and it is her wish to spend her remaining days in the house.

[28] The period since the debris flow occurred has been a period of great uncertainty and stress for the Whalley family, as for other property owners and residents of the area. Up until 2012 a range of engineered mitigation options were being considered by the District Council and six property owners were allowed to rebuild their homes during that time. They say that they were assured that there was no predetermined agenda to remove them from their homes because of risks associated with future debris flows.

[29] It was Mrs Whalley's wish to spend her remaining days in the house and resulted in an appeal against the Council decision. Agreement was reached by all parties to the appeal that the Whalley family could continue to live in the house for a period one year beyond 31 March 2021.

[30] The evidence before us was that extending the date on which prohibited activity status and the termination of existing use rights for the Whalley property would occur, while not ideal, would not be contrary to the principle that reducing risk to an acceptable level should occur as soon as practicable and that early resolution of the appeal with regard to other properties would shorten the timeframe for reducing risk in all other cases.

[31] In addition, the Whalley family has an early warning system in place which



enables them to evacuate the house if there is a severe weather or tsunami warning. They have safely evacuated on four previous occasions of severe weather conditions. The Whalley family has also entered into an agreement with the District Council which provides that they must permanently vacate the property within seven days if they fail to evacuate in the event of a severe level warning.

[32] The Whalley family have acknowledged that they have chosen to remain in occupation of the property at their own risk and have agreed to indemnify both Councils against any claim for any injury or damage they or members of their family may suffer as a result of the debris flow hazard.

#### **Evaluation and determination**

[33] We are satisfied that in terms of the statutory provisions we have referred to and the purpose of the plan changes before us, both the District Council and the Regional Council may include the proposed provisions in their respective plans. We are also satisfied that the circumstances at Matatā justify such plan provisions. Whether the issues raised by this appeal may arise in any other place will depend on the circumstances of the case and we do not presume to set out any reasoning which will necessarily apply to any other case.

[34] In respect of the proposed extension for the property at 10 Clem Elliott Drive, we conclude that a better overall risk reduction outcome will be achieved by confirming such an extension of the effective date to 31 March 2022. We are satisfied that the extension is unlikely to be significantly longer than the time it may take for the appeal to be heard and determined and for a reasonable period being allowed for moving after a final decision were issued. Accordingly, we are satisfied that in the circumstances, the proposal gives effect to Objective 31 and Policy NH 3B of the Bay of Plenty Regional Policy Statement.

[35] This is an unusual case where there are special circumstances that provide grounds for an exception to be made to the general provisions of the plan changes.

[36] In terms of both plan changes we note that the appropriateness of the provisions are agreed by all counsel appearing for the parties and that accordingly the requirements of s 32 and of Part 2 of the RMA are being appropriately addressed. We see no reason to doubt those views and will make the orders as sought by consent.

[37] We congratulate the parties on reaching an agreement on this. We understand



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how difficult it would have been for everyone involved given the stresses of the circumstances and the novel issues being dealt with through the district and regional plan.

[38] We accordingly determine and direct that Plan Change 17 to the Bay of Plenty Regional Natural Resources Plan be amended as follows:

a) By inserting a new rule as follows:

**NH R72 Prohibited – Residential Activities subject to High Risk Debris Flow on the Awatarariki Fanhead at Matatā after 31 March 2022**

From 31 March 2022, the use of land for a residential activity is a prohibited activity on Allot 322 TN of Richmond (10 Clem Elliott Drive, Matatā)

b) By amending Table NH 3 by deleting the sixth item referring to Allot 322 TN OF Richmond – 10 Clem Elliott Drive, Matatā.

[39] In all other respects, the relief sought in the appeal is refused.

[40] In accordance with the usual practice in relation to plan appeals, there is no order as to costs.

For the court:



**D A Kirkpatrick**  
**Chief Environment Court Judge**





**Report To:** Strategy and Policy Committee

**Meeting Date:** 16 February 2021

**Report Writer:** Elsa Weir, Planner

**Report Authoriser:** Namouta Poutasi, General Manager, Strategy & Science

**Purpose:** To approve an extension to the Rotorua Airshed boundary to include new areas of development that could contribute particulate matter into the Airshed and adversely impact on air quality.

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## Change to the Rotorua Airshed Boundary

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### Executive Summary

The Rotorua Airshed was originally gazetted in 2005. The Airshed has breached the National Environmental Standards for Air Quality (NESAQ) standards for PM<sub>10</sub> every year, until 2020, where only one exceedance was recorded. The main source of particulate matter in the Rotorua Airshed is domestic woodburners i.e. winter fires. The location of the town at the bottom of a caldera allows an inversion layer to form and trap particulate matter from smoke, rather than it being able to disperse.

There has been gradual air quality improvement in the Airshed over the last 15 years, but it is continually at risk of breaching the NESAQ limits. In its current state the Airshed is likely to breach the NESAQ if additional particulate matter flows into the Airshed across the existing Airshed boundary from new development.

It has always been anticipated that the Airshed boundaries would be extended, however previous advice was that this should be done in conjunction with the implementation of proposed amendments to the NESAQ. However, at the *Rotorua Air Quality Working Party* (the Working Party) meeting held on 30<sup>th</sup> November 2020, it was raised that Rotorua Lakes Council is receiving solid fuel burner building consent applications for new dwellings being built in a new subdivision adjacent to the Airshed. Due to the subdivision's location smoke emitted from dwellings solid fuel burners will flow into the Airshed and impact its air quality.

This matter was subsequently taken to the Operations and Monitoring Committee in December 2020, so that the issue could be referred to the Strategy and Policy Committee for action at the first meeting in 2021. The Operations and Monitoring Committee recommended that the Airshed boundary be extended, and indicated that the preference would be to future-proof the new boundary as much as possible.



This report therefore puts forward three options to the Strategy and Policy Committee for consideration, being:

- Option 1 – Retain the status quo, and leave the boundary as-is.
- Option 2 – Extend the Airshed boundary now to be strictly aligned with growth and development areas as defined by Rotorua Lakes Council.
- Option 3 – Extend the Airshed boundary now based on a combination of topography, and growth and development areas as defined by the Rotorua Lakes Council.

Option 3 is the recommended option, because it strikes a good balance of future-proofing the Airshed boundary based on topographical reasoning and identified future development, without impacting on more existing properties and dwellings than necessary. Due to the pace of development and its potential to cause adverse effects, retaining the status quo (Option 1) is not considered to be the best option in this instance.

If the Committee approve the recommendations, staff will seek clarification from the Ministry for the Environment as to the level of consultation required for the process, and will then begin the re-gazettal process to extend the Rotorua Airshed.

## Recommendations

**That the Strategy and Policy Committee:**

- 1 Receives the report, Change to the Rotorua Airshed Boundary to extend the Rotorua Airshed boundary.**
- 2 Directs staff to seek clarification from the Ministry for the Environment as to the level of consultation required prior to beginning the formal re-gazettal process, to ensure the application for re-gazettal is approved by the Minister.**
- 3 Approves either:**
  - Option 1 – Status quo. The Airshed boundary will be retained as-is;**
  - OR**
  - Option 2 – Extend the Airshed boundary now to be strictly aligned with growth and development areas as defined by Rotorua Lakes Council;**
  - OR**
  - Option 3 (recommended) – Extend the Airshed boundary now based on a combination of topography, and growth and development areas as defined by Rotorua Lakes Council (recommended).**
- 4 Approves application to the Minister for the Environment to re-gazette the Rotorua Airshed once consultation with affected parties is completed.**

## Introduction

### 1.1 Rotorua Air Quality

Regional councils monitor air quality in areas (airsheds) where air quality has or could breach the National Environmental Standards for Air Quality (NESAQ).



The Rotorua Airshed was originally gazetted in 2005. The Airshed has breached the NESAQ standards for PM<sub>10</sub> every year, until 0, where only one exceedance was recorded. The main source of particulate matter in the Rotorua Airshed is domestic woodburners i.e. winter fires. The location of the town at the bottom of a caldera allows an inversion layer to form and trap particulate matter, rather than it being able to disperse.

Since 2010 the Regional Council and Rotorua Lakes Council have worked collectively to improve Rotorua's air quality with a combination of solid fuel burner regulations and burner replacement funding assistance. This carrot and stick approach has led to a steady reduction in the number of annual exceedances.

## 1.2 The Rotorua Airshed

The Airshed boundary was first gazetted in 2005 after the introduction of the National Environmental Standards for Air Quality (NESAQ). The Airshed was then re-gazetted in 2018 to include new areas of development, and in alignment with the introduction of the new rules for woodburners being introduced through Plan Change 13. The boundary was generally based on "identified areas of fast growth" in the Rotorua Lakes Council Spatial Plan. Some areas of potential new development were not included in this re-gazetted. It was considered that the best approach would be to hold off amending the Airshed boundary again until proposed amendments to the NESAQ were in place, so that any changes to the boundary could be aligned with any new requirements.

## 1.3 Legislative Framework

Ensuring that the boundary of the Airshed includes all sources that could potentially increase concentrations of particulates is a key factor in achieving compliance with the Resource Management (National Environmental Standards for Air Quality) Regulations 2004.

## 1.4 Alignment with Strategic Framework

### A Healthy Environment

We manage our natural resources effectively through regulation, education and action.

### 1.4.1 Community Well-beings Assessment

Dominant Well-Beings Affected			
<input checked="" type="checkbox"/> Environmental High - Positive	<input checked="" type="checkbox"/> Cultural Low - Positive	<input checked="" type="checkbox"/> Social High - Positive	<input checked="" type="checkbox"/> Economic Low - Positive

Solid fuel burner regulations control air pollution within the Rotorua Airshed. Improved air quality in the Airshed:

- (1) Improves the environment;
- (2) Improves the air the community breathes which in turn improves their health (social well-being);
- (3) Is important to Māori as air is a taonga;
- (4) Improves the economy due to decreased medical costs and lost productivity when people are unable to work.

## 2. Background

At the *Rotorua Air Quality Working Party* (the Working Party) meeting held on the 30<sup>th</sup> November 2020, it was raised that Rotorua Lakes Council is receiving solid fuel burner building consent applications for new dwellings being built in a new subdivision. This subdivision sits just outside the Rotorua Airshed (“the Airshed”). Due to the subdivision’s location, smoke emitted from dwellings solid fuel burners will flow into the Airshed and impact its air quality.

There has been gradual air quality improvement in the Airshed over the last 15 years, but it is continually at risk of breaching the National Environmental Standards for Air Quality (NESAQ). In its current state the Airshed is likely to breach the NESAQ if additional particulate matter (PM) flows into the Airshed across the existing Airshed boundary from new development.

In order to make immediate progress on the consideration of this matter it was determined that a report should be made to the Operations and Monitoring Committee at the meeting on 15<sup>th</sup> December, with the intention that the matter would then be referred to the correct committee for action (being the Strategy and Policy Committee).

The Operations and Monitoring Committee resolved to recommend to the Strategy and Policy Committee that the Rotorua Airshed boundary be extended to include any subdivision that could contribute additional particulate matter into the Rotorua Airshed.

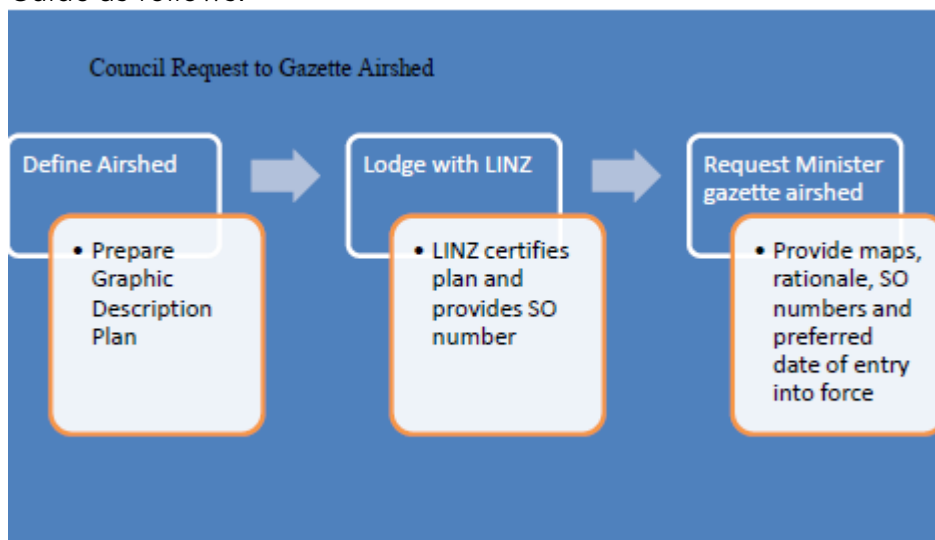
Discussion of the matter at the meeting indicated that the most preferable outcome would be to extend the Airshed boundary so that it was as future-proofed as possible, to avoid having to change the boundary multiple times as further development occurs on the periphery of the Rotorua Township.

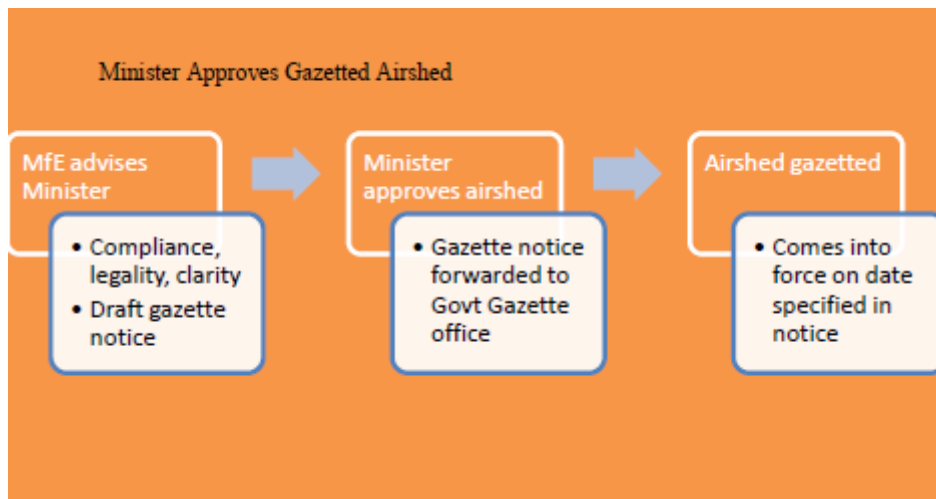
Staff are therefore now approaching this Committee with an analysis of three options for changes to the Airshed boundary for consideration and decision.

## 3. Changing the Airshed

### 3.1 Re-gazettal process

To make any changes to an Airshed, it must be re-gazetted with the Ministry for the Environment. The process to re-gazette an Airshed is defined in the NESAQ User Guide as follows:





As part of the rationale and justification to the Minister, staff will need to show that we have consulted with the affected property owners. It is unclear from the guidance material as to what level of consultation would be required. It is recommended that staff seek clarification from the Ministry for the Environment on the expected level of consultation required prior to beginning the formal request for re-gazettement.

We have received legal advice on this process.

## 4. Key context when considering the potential options

### 4.1 Mapping requirements

The Airshed boundaries must be shown on a 'Graphic Description Plan', and must be in a format suitable for Landonline's database. This includes following existing property boundaries or other accepted cadastral points to ensure that the boundary is clear, easily identifiable, and legally defensible.

### 4.2 NESAQ Amendments

The NESAQ is in the process of being amended. The proposed amendments are generally focussed on reducing particulate matter, with the relevant changes being a shift from PM<sub>10</sub> to PM<sub>2.5</sub> for the standards and amending the design standards for woodburners to a lower emission rate (1.0g/kg instead of 1.5g/kg).

Consultation has been undertaken on the proposed amendments and submissions closed in July 2020. A summary of the submissions was released on 22 December 2020 which advises that MfE intend the amendments to be gazetted by October 2021.

Initial investigation by staff into the implications of these amendments has shown that should the PM<sub>2.5</sub> standards be imposed as currently proposed, the Rotorua Airshed would have exceeded the standard 14 times in 2020. Only one exceedance would be permitted under the NESAQ per year.

### 4.3 Plan change may be required

The Rotorua Airshed map is not included within Plan Change 13. Instead, it is only referenced in the Plan, and defined as "the area of Rotorua specified by the Minister for the Environment as a separate airshed, by notice in the New Zealand Gazette". Previous changes to the Airshed (and the establishment of the Mount Maunganui

Airshed) have been able to proceed without the need for a plan change to also occur in tandem.

However, in this instance, as an extension to the Airshed boundary would apply existing operative rules to additional properties, the Minister may require a plan change process to give legal effect to the re-gazetted Airshed boundaries, and provide a suitable means of public consultation on the matter.

To provide a level of certainty, it is recommended that staff seek clarification from the Ministry for the Environment as to the expectations for consultation as part of the process, and whether a plan change will also be required.

#### 4.4 **Impact of operative rules**

Extending the Airshed boundary will apply existing operative rules to the additional properties included within the Airshed. This includes both Plan Change 13 and the Rotorua Lakes Council Air Quality Control Bylaw 2017. The implications for these properties being within the Airshed include:

- Woodburners installed prior to 2005 cannot be used.
- Coal and multi-fuel burners cannot be used.
- Indoor open fires cannot be used.
- Pellet burners can continue to be used or installed.
- Woodburners installed after 2005 can continue to be used (if they meet the NESAQ standards).
- Replacement woodburners can be installed under certain conditions.
- The current incentive schemes that Council have made available will be ending in April this year, so will not be available for property owners of any additional properties included in an extension to the Airshed.

It is noted that the PC13 rules only control the discharge from burners, so any non-compliant burners themselves will not need to be immediately removed. They will just be unable to be used. The Bylaw then requires the removal of a non-compliant burner at point of sale.

As detailed previously, it is recommended that staff seek clarification from the Ministry as to their expected level of consultation prior to undertaking the re-gazettal process given this unique situation.

### 5. **Options**

#### 5.1 **Options for changing the Airshed boundaries**

There are many potential options for extending the Airshed boundary. Based on the direction expressed by the Operations and Monitoring Committee to future-

proof any change to the boundary, the following three potential options for the Airshed have been identified as the most relevant for consideration.

#### 5.1.1 Option One: Status quo

Option One is to retain the status quo and leave the current Airshed boundary in place. An extension to the Airshed boundary could be reconsidered once the amendments to the NESAQ are in force.

See Attachment A for a copy of the existing Airshed boundary map.

Pros	Cons
<ul style="list-style-type: none"> <li>• Approach is consistent with previously received advice (from 2018) to align further changes to the Airshed boundary with the NESAQ amendments.</li> <li>• Potentially avoids two changes in quick succession, which could create confusion and frustration for both the public and staff enforcing the rules.</li> </ul>	<ul style="list-style-type: none"> <li>• Development will continue in the meantime, and burners may be installed that then may need to be removed or be unable to be used when the Airshed boundary is changed at a later date.</li> <li>• Particulates from new burners adjoining the Airshed could negatively impact on the air quality within the Airshed, and the ability to comply with the NESAQ limits.</li> <li>• Continued health impacts from additional particulates.</li> <li>• Uncertainty for property owners and developers as to when a change may occur.</li> </ul>

Given the speed at which development is occurring locally and the demand for housing, Option One is not recommended. Building consents for new dwellings in some of the adjoining developments are already being received by RLC, along with queries from the public as to the methods of domestic heating allowed within these developments.

The Rotorua Airshed has only just managed to meet the NESAQ limit of one PM<sub>10</sub> exceedance per year, but will remain a 'polluted airshed' until it has maintained an average of one exceedance per year for five consecutive years. The additional particulates from new development adjacent to the Airshed boundaries will jeopardise this compliance, as well as contributing to negative health outcomes.

#### 5.1.2 Option Two: Extend the Airshed boundaries to be strictly aligned with growth and development areas as defined by Rotorua Lakes Council

Option Two is to extend the Rotorua Airshed boundaries now, to cover those areas where residential development is currently zoned or planned (i.e. a Plan Change is proposed or underway). This would extend the current boundary to cover the part of the Pukehangi Heights (Plan Change 2 to the Rotoura District Plan) area not currently included, and the proposed Eastside Wellness Structure Plan area (which includes the Redwood Park subdivision on Tarawera Road).

<b>Additional properties included (approx.)</b>	160
<b>Existing dwellings included (approx.)</b>	91

See Attachment B for map.

<b>Pros</b>	<b>Cons</b>
<ul style="list-style-type: none"> <li>Changing the boundary to include these areas now (rather than waiting for the NESAQ amendments) should avoid many new dwellings being 'caught out' by then needing to comply with the PC13 Airshed rules and Rotorua Air Quality Control Bylaw.</li> <li>The additional areas identified are already zoned, or planned to be used for residential development, so the extension to include these areas should be generally accepted by the public.</li> <li>Will reduce the potential for continued exceedances of the NESAQ PM limits within the Airshed.</li> <li>Health benefits of reduced particulates in the Airshed.</li> </ul>	<ul style="list-style-type: none"> <li>This option may not sufficiently future-proof the Airshed boundary, as the zoning could change, or developments may creep beyond the currently identified areas (via resource consents or further Plan Changes).</li> <li>The Airshed boundary may need to change again as a result of NESAQ amendments or additional development, which could be within a short space of time, and is likely to create confusion and frustration for both the public and staff enforcing the rules.</li> <li>The Airshed boundary must be in a format suitable for the Landonline database. Where zoning is not aligned with defined boundaries (which is the case in both Pukehangi and Eastside), this may create issues in preparing a suitable map for LINZ.</li> <li>The Eastside Wellness Structure Plan is only in very early stages so relying on it's proposed extent to define the Airshed boundary on the eastern side may not result in a good outcome.</li> <li>This option will cover Rotorua Airport, Rotokawa etc which staff have previously identified as being unlikely to contribute significantly to the air quality in the Airshed, due to prevailing wind direction, lower density of housing, and large areas of business use (where woodburners are unlikely).</li> <li>Impact on existing dwellings within this area.</li> </ul>

While Option 2 will provide a level of future-proofing to the Airshed, it is not considered to be the best option. The main reasons for this are because it will include a large number of additional properties and dwellings to the east that will not have any real benefit to air quality within the Airshed. Additionally, strictly aligning the boundaries to development as it is currently zoned or planned now runs the risk of changes to zoning, or development creeping beyond these indicative areas (via resource consent or plan change) which may mean the Airshed boundary would need to be altered again.

### 5.1.3 **Option Three: Extend the Airshed boundaries based on a combination of topography, and growth and development areas as defined by Rotorua Lakes Council**

Option Three is to extend the Rotorua Airshed boundary now, but beyond those areas currently zoned or planned for development. Option Three proposes to encompass all areas of proposed residential development that are part of the Rotorua Township (including the Pukehangi Heights area, and the areas within the Eastside Wellness Structure Plan earmarked for residential development) and then extend to the south to align generally with the rim of the Caldera (along the closest property boundaries).

<b>Additional properties included (approx.)</b>	70
<b>Existing dwellings included (approx.)</b>	40

See Attachment C for map.

<b>Pros</b>	<b>Cons</b>
<ul style="list-style-type: none"> <li>Changing the boundary to include these areas now (rather than waiting for the NESAQ amendments) should avoid many new dwellings being 'caught out' by then needing to comply with the PC13 Airshed rules and Rotorua Air Quality Control Bylaw.</li> <li>Future-proofs the Airshed boundary. Covering all proposed development areas, and then taking the boundary up to generally align with the Caldera Rim to the south will ensure that the Airshed boundary covers any potential development "creep" outside of areas that are currently zoned, consented or planned for development.</li> <li>Extending the boundary in this way is also likely to future-proof the Airshed boundary in relation to the proposed NESAQ amendments. By taking the boundary to the edge of the topographic boundary (caldera rim)</li> </ul>	<ul style="list-style-type: none"> <li>This wider approach will include some larger properties over 2ha that currently do not have to meet the NESAQ requirements for woodburners.</li> <li>Impact on existing dwellings within this area.</li> </ul>

and to the edge of residential development, it is unlikely that further changes would need to be made to the Airshed boundary, as there will be no area left that is likely to significantly contribute particulates to the Airshed. It is more likely that new rules would be required in the Air Plan to address any new NESAQ requirements, rather than any further extension to the Airshed.

- This option keeps it simple and clear for the public, and gives certainty to developers/potential purchasers that the boundary is very unlikely to change again, given the wide extent.
- Rotorua's air quality issue results from the inversion layer created by the topography of the area. Using the Caldera Rim as the general alignment for the southern boundary provides a topographical justification, rather than having to make arbitrary decisions where to draw the line or engage in expensive and time-consuming modelling to decide which properties to include or not include. It is further noted that modelling for this purpose would essentially be an unhelpful exercise.
- Easier to achieve mapping suitable for Landonline, as the boundary will follow property boundaries rather than indicative zoning boundaries.
- This option will be in line with the areas of future growth for Rotorua City as shown in the RLC Spatial Plan 2018 (which uses the phrase "further up the caldera behind existing approved subdivisions" multiple times to indicate where future growth is expected).
- Health benefits of reduced particulates in the Airshed.
- Will reduce the potential for continued exceedances of the NESAQ particulate limits within the Airshed.



This option is the recommended option as it future-proofs the Rotorua Airshed boundary for future development, and is likely to future-proof the boundary in relation to the proposed NESAQ amendments as well. This option will provide clarity and a degree of certainty to the public as to the requirements for woodburners within the future development of the Rotorua Township. It avoids Council having to make judgement calls or engage in expensive and time consuming modelling to decide on which properties should be included. While it may require some property owners to remove or replace solid fuel burners, the number will be relatively small.

## 5.2 Recommended option

Option Three is the recommended option because it strikes a good balance of future-proofing the Airshed boundary based on topographical reasoning and identified future development. While Option 2 is more strictly in line with intended development areas, it doubles the approximate number of properties and dwellings that would be added to the Airshed in comparison to Option 3. However, given the location of the additional properties included in Option 2, there would be minimal benefit to the Airshed due to the type of properties (Rotorua Airport, Eastgate Business Park etc.), the lower density and the prevailing south-westerly wind direction.

Staff therefore recommend that the Rotorua Airshed be extended as generally outlined in Option 3.

## 6. Considerations

### 6.1 Risks and Mitigations

#### 6.1.1 Risks

Rotorua Airshed solid fuel burner regulations cannot be applied to properties outside the Airshed. This means that solid fuel burners can be installed as dwellings are built.

The proximity of some new development (currently outside the Airshed) poses a problem for the Airshed as smoke from new solid fuel burners will potentially flow into the Airshed and:

- Increase the level/concentration of particulate matter
- Increase the number of particulate matter exceedances.

#### 6.1.2 Mitigations

Gradual air quality improvement has been made in the Rotorua Airshed through staged solid fuel burner regulations, however, the Airshed remains vulnerable to particulate matter exceedances.

Staff advise extending the Rotorua Airshed boundary to include areas of new development that could contribute particulate matter into the Airshed. This would:

- Protect air quality improvements made to date; and
- Mitigate against new sources of particulate matter flowing into the Airshed.

## 6.2 Climate Change

No matter how it burns, a wood fire produces carbon dioxide. From the moment a tree is felled until a mature tree grows to take its place, the carbon released from the fire represents an addition of warming pollution to the atmosphere. There is a lag time for that carbon to be absorbed again by the growth of new trees. It is generally accepted that wood smoke has minimal impact on climate change.

## 6.3 Implications for Māori

Poor air quality is linked to poor health, particularly respiratory diseases such as asthma. Improved air quality will reduce the number of asthma hospitalisations in the community, of which, according to the Ministry of Health in a 2018 report, Māori aged 5-34 years were almost twice as likely as non-Māori (in the same age group) to have been hospitalised for asthma.

## 6.4 Community Engagement

For any change to the Airshed, we will need to, at a minimum, send letters to the affected property owners advising them of Council's intention to include their property within the Airshed boundary, and what implications this will have for them. It is unclear from the guidance material what level of consultation and feedback from affected parties will be required to satisfy the Minister for the Environment. It is therefore recommended that staff seek clarification from the Ministry as to their expected level of consultation prior to undertaking the formal re-gazettal process.

## 6.5 Financial Implications

There are no material unbudgeted financial implications and this fits within the allocated budget.

## 9. Next Steps

If the Committee adopts the recommendations, the next steps are for staff to seek clarification from the Ministry for the Environment as to the level of consultation that will be required to ensure that the request for re-gazettal is approved.

Staff will then finalise the proposed new Airshed boundary plan and consult with affected property owners about the intended change. Due to the pace of development and its potential to cause adverse effects, staff will prioritise this work and liaise with MfE at the earliest opportunity.

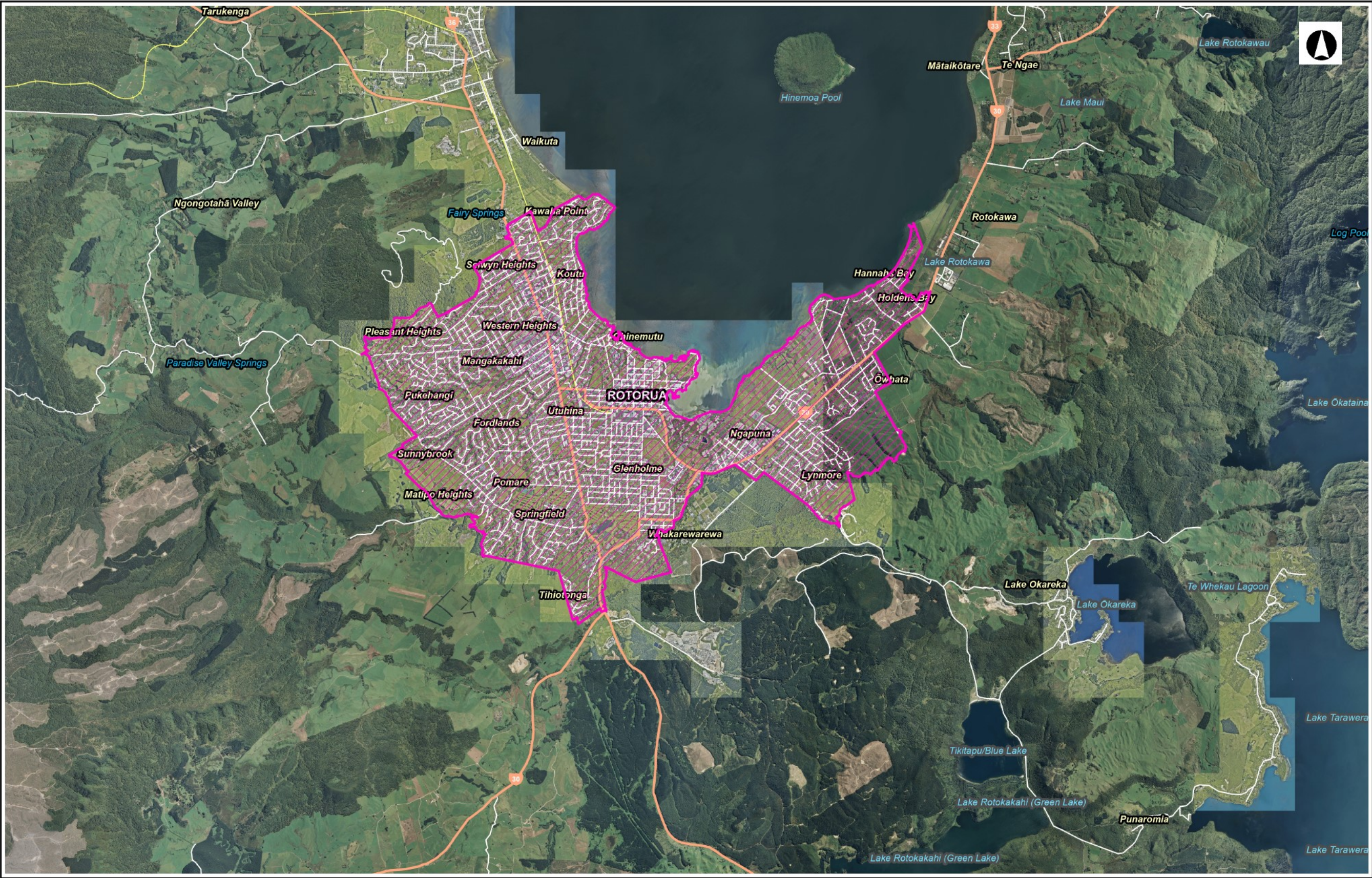
Once they have been advised, the re-gazettal process as outlined above in Section 3 will be followed. MfE generally progress these requests within a few months.

An update to Council on the progress of the extension to the Airshed boundary will be provided at the next Strategy and Policy Committee meeting.

## Attachments

Attachment 1 - Option 1 - Current Airshed Boundary  
Attachment 2 - Option 2 - Potential Airshed Boundary  
Attachment 3 - Option 3 - Potential Airshed Boundary





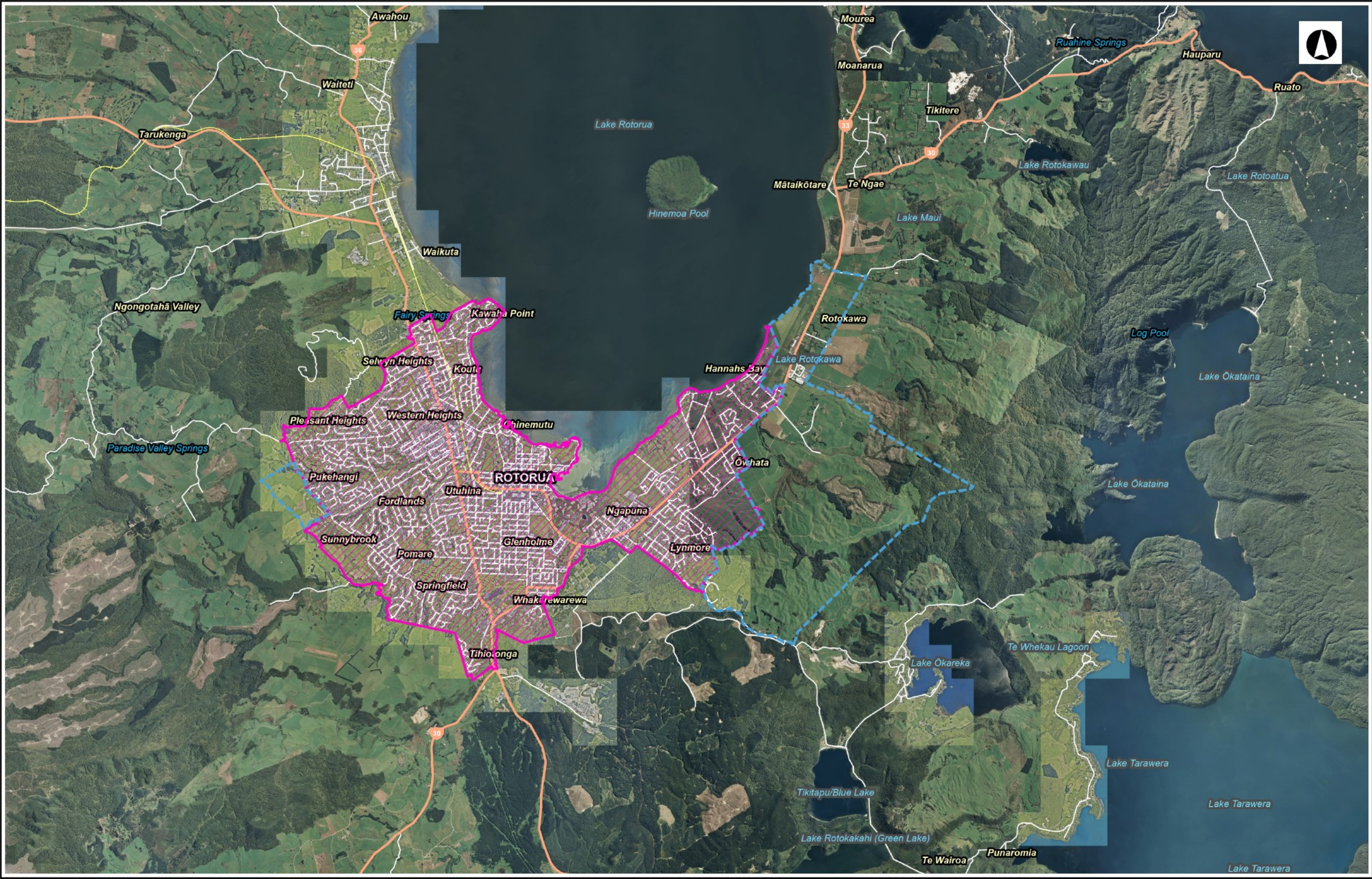
HORIZONTAL DATUM: New Zealand Geodetic Datum 2000 For practical purposes, NZGD2000 equates to WGS84 VERTICAL DATUM: Mean Sea Level PROJECTION: New Zealand Transverse Mercator 2000 © Bay of Plenty Regional Council, 2013 © Sourced from Land Information New Zealand data. CROWN COPYRIGHT RESERVED

Current Rotorua Airshed Boundary

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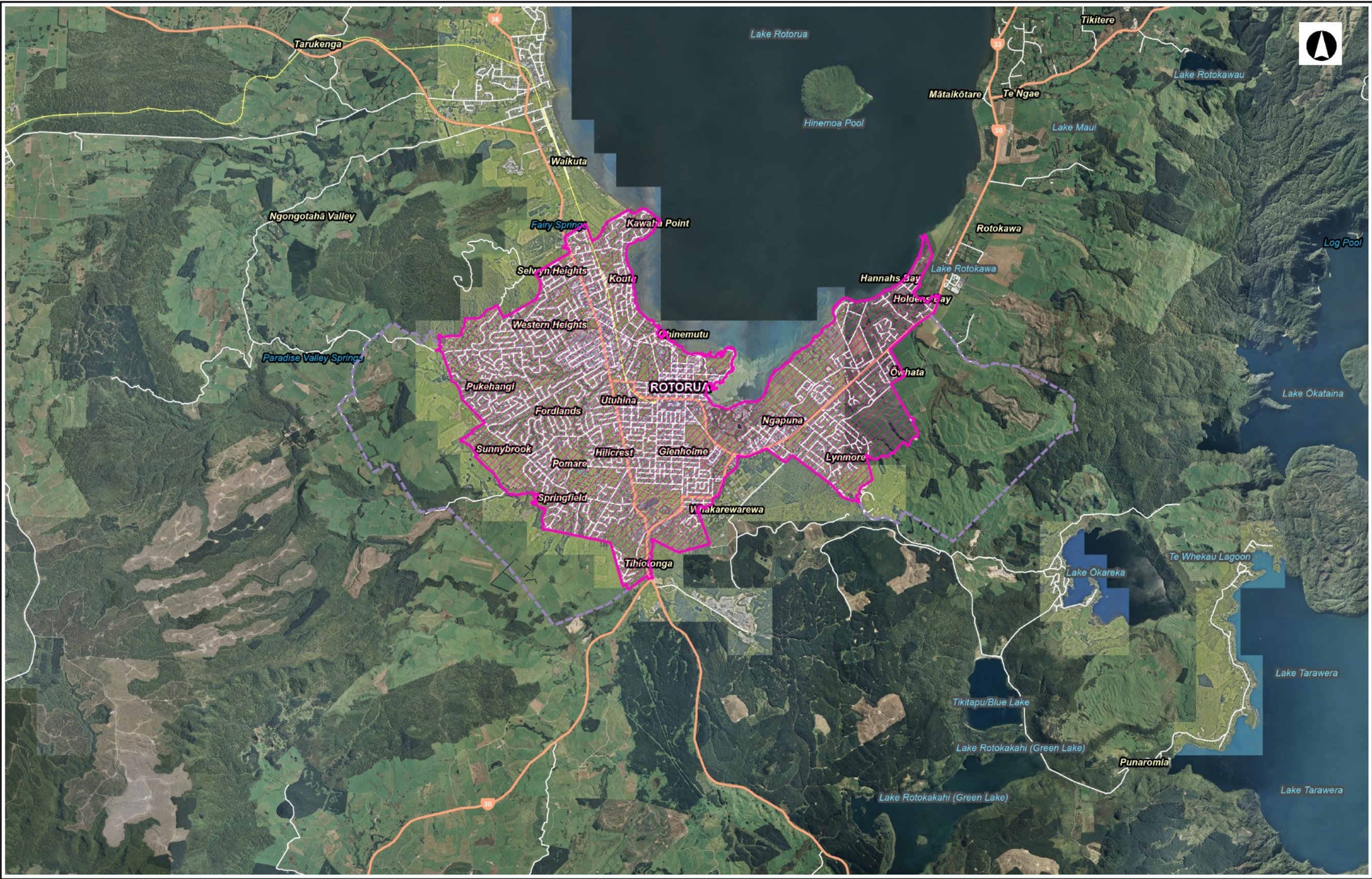
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Option 2 - Potential Airshed Boundary Extension

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REGIONAL COUNCIL**  
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**Option 3 - Potential Airshed Boundary Extension**

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