

Re-building of materially damaged or destroyed buildings

**Recommendations in response to
submissions on the Proposed Regional Plan
for Northland - Section 42A hearing report**

Date: 3/07/2018
Author: Michael Day
Version: Final

Table of contents

Purpose and format of the report	3
Report author	4
About the Re-building provisions	4
Overview of submissions	5
Matters of discretion for rule C.8.6.1	6
Submissions	6
Analysis	6
Recommendation	7
Evaluation of recommended changes	7
Policy D.6.3 – Re-building of materially damaged or destroyed buildings in high risk hazard areas	8
Submissions	8
Analysis	8
Recommendation	9
Incorporation of mapped high risk flood hazard and coastal hazard areas within the Proposed Regional Plan planning maps	9
Submissions and analysis	9
Recommendations	11
Requests for natural hazard objectives	12
Submissions and analysis	12
Recommendation	12

Purpose and format of the report

1. This report provides the hearing panel the rationale for the recommended changes to the 'Re-building of materially damaged or destroyed buildings' (Re-building) provisions in the Proposed Regional Plan for Northland (the Plan) in response to submissions. The recommended changes are set out in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
2. The recommendations made in this report are mine and are not binding on the hearing panel. It should not be assumed that the hearing panel will reach the same conclusions.
3. In addition, my recommendations may change as a result of presentations and evidence provided to the hearing panel. It's expected the hearing panel will ask authors to report any changes to their recommendations at the end of the hearing.
4. My recommendations focus on changes to the Plan provisions. If there is no recommendation, then it's to be assumed that the recommendation is to retain the wording as notified.
5. Since the re-building provisions are very discrete (essentially only two rules and an associated policy), my recommended changes to the provisions are set out word-for-word in this report. The changes (including scope for changes) are also shown in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
6. The matters this report addresses are:
 - Re-building of materially damaged or destroyed buildings – restricted discretionary activity.
 - Policy – Re-building on materially damaged or destroyed buildings in high risk hazard areas
 - Requests to identify high risk flood hazard areas and high risk coastal hazard areas in the Proposed Regional Plan maps.
 - Requests to include natural hazard objectives within the Proposed Plan.
7. The approach of addressing matters raised in submissions (rather than addressing submissions and/or and submission points individually) is consistent with Clause 10 of Schedule 1 to the RMA.

8. This report should be read in conjunction with section 10 – *Natural Hazards* in the Section 32 report.

Report author

9. My name is Michael Day and I have overall responsibility for this report. I work as the Resource Management Manager for the Northland Regional Council (regional council). For further details about my qualifications and experience, refer to the s42 report: *General approach*.
10. Toby Kay, Natural Hazards Advisor for Northland Regional Council has assisted me with the preparation of this report.
11. Although this is a council hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing this report and I agree to comply with it when giving oral presentations.

About the Re-building provisions

12. The relevant provisions in the Proposed Regional Plan for 'Re-building of materially damaged or destroyed buildings' addressed in this report are:

<p>Definitions</p> <ul style="list-style-type: none">• High risk coastal hazard area• Other property• High risk flood hazard area• Materially damaged area <p>Rules</p> <ul style="list-style-type: none">• C.8.6.1 Re-building of materially damaged or destroyed buildings – restricted discretionary activity• C.8.6.2 Re-building of materially damaged or destroyed buildings – non-complying activity <p>Policy</p> <ul style="list-style-type: none">• D.6.3 Re-building of materially damaged or destroyed buildings in high risk hazard areas

13. This topic specifically addresses the re-building provisions in section C.8.6 of the Proposed Regional Plan. It does not cover earthworks in flood hazard areas (this is addressed in the *Earthworks, land preparation, vegetation clearance and bores s42A report*), nor does address obstructions (including structures) that divert water onto other property (this is addressed in the *Wetlands and beds of lakes and rivers s42A report*).

14. The genesis of these provisions is the Regional Policy Statement for Northland (RPS), specifically Method of Implementation 7.1.7(8) of section 7.1 (Development in natural hazard prone areas). I consider that it is useful to outline this method of implementation in full below:

7.1.7(8) – Where buildings occupied by people, animals and/or hazardous substances in 10 -year flood hazard areas and high risk coastal hazard areas have been materially damaged or destroyed by a natural hazard event, the regional council (through the relevant regional plan) will require land use consent for the repair or reconstruction of the building. The regional council will limit its discretion in determining the land use consent to avoiding or mitigating natural hazards.

15. The explanation to this method of implementation is also important in the context of the re-building rules in the Proposed Regional Plan. I will therefore also repeat this in full below:

Method 7.1.7(8) implements Policies 7.1.2 and 7.1.3. As existing lawfully established activities have protection under section 10 of the RMA, this causes limitations for how the district councils can manage existing development – especially existing development – in areas most susceptible to hazard risk (10-year flood hazard areas and high risk coastal hazard areas).

Regional councils are not restricted in the same way because section 10 of the RMA does not apply to regional plans. To reduce risks to people, property and the wider environment, this method requires the regional council to assume responsibility for evaluating the hazard risk and ensure that the right risk reduction measures are used when buildings are materially damaged or destroyed within high risk hazard areas. To avoid complications due to this overlap with the district councils, the regional council will investigate transferring its functions back to the relevant district council.

Overview of submissions

16. A total of 15 submitters made submissions on the 're-building' provisions (definitions, rules and policy) and these were broken up into 18 submission points. There were xx further submissions.

17. The submitters can be grouped as:
- District councils
 - Landowner/individuals
 - Companies/corporations

Matters of discretion for rule C.8.6.1

Submissions

18. There were only three submissions on this rule (C.8.6.1).
19. Fire and Emergency NZ supported the rule as notified. Far North District Council supported in part the rule (as well as rule C.8.6.2), requesting that the regional council consider delegating this rule to Building Control Authorities (District Councils).
20. The other submitter was Whangarei District Council (WDC), who also supported in part the rule. While supporting the intent of the rule, WDC is concerned that the matters of discretion do not adequately give effect to policy D.6.3 of the Proposed Regional Plan (which seeks to ensure that natural hazard risk is demonstrated to be reduced) and have requested that the matters of discretion be expanded to allow a comprehensive assessment of hazard risk.

Analysis

21. Regarding the submission point from Far North District Council, as mentioned earlier in the report, the explanation to method of implementation 7.1.7(8) of the RPS states that the regional council will investigate transferring its functions back to the relevant district council.
22. The transfer of powers (under section 33 of the RMA) is something that local authorities may do - by agreement between the authorities concerned and on such terms and conditions as agreed on. I agree with the submitter that the implementation of the proposed rule relies on district councils (as Building Control Authorities) working together with the regional council. However, I consider that the transfer of powers regarding this rule is something for councils to work through once the Proposed Regional Plan has been declared operative.

23. Turning to Whangarei District Councils submission, I consider that to ensure natural hazard risk is reduced (and therefore more appropriately give effect to Policy D.6.3, RPS), it would be beneficial to include additional matters of discretion, therefore enabling a more comprehensive assessment of hazard risk. This is because as it is a 'restricted discretionary' rule, the power to decline a consent, or to grant a consent and to impose conditions, is restricted to the matters of discretion.
24. I therefore consider that this rule would benefit by including additional text relating to the location of the building (to be re-built), as well as 'factoring in' how the hazard risk might change over a 100-year timeframe and providing the ability to consider risk to other property. I consider that these amendments will allow decision makers to undertake a more robust assessment of natural hazard risk (thereby increasing the likelihood of reducing risk). I recommend that the matters of discretion are amended as outlined below.

Recommendation

25. Amend the Matters of Discretion as follows:
1. The location and design of the building to withstand natural hazard risk, taking into account the nature of the hazard risk and how it might change over a 100-year timeframe, including the expected effects of climate change.
 2. The potential to exacerbate existing natural hazard risk as a result of the proposed re-building.
 3. The ability to avoid increasing natural hazard risk on other property

Evaluation of recommended changes

26. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 10 of the Section 32 report and therefore do not require further evaluation.

Policy D.6.3 – Re-building of materially damaged or destroyed buildings in high risk hazard areas

Submissions

27. There were four submissions on this policy (D.6.3).
28. Far North District Council and Fire and Emergency NZ both supported the policy as notified. Top Energy requested that High Risk Flood Hazard Areas and High Risk Coastal Hazard Areas are identified on the Proposed Regional Plan planning maps. Whangarei District Council supported in part the policy, requesting minor amendments to wording of the policy to give effect to Policy 25 of the New Zealand Coastal Policy Statement 2010 (NZCPS):

~~Resource consent may only be granted for Avoid the re-building of materially damaged or destroyed buildings in high risk flood hazard areas and high risk coastal hazard areas if unless the natural hazard risk to the building is demonstrated to be reduced (compared with the risk to the building previously) and hazard risk to other property is not increased.~~

Analysis

29. Top Energy's relief sought will be addressed below in the section relating to incorporation of hazard maps into the Proposed Plan.
30. Regarding Whangarei District Councils relief sought, I remain of the opinion that the Policy as currently worded does give effect to the NZCPS (and the Regional Policy Statement for Northland). I consider that the most relevant aspects of Policy 25 are clauses a,b and c. I will repeat them below:

In areas potentially affected by coastal hazards over at least the next 100 years:

- a. avoid increasing the risk of social, environmental and economic harm from coastal hazards;*
- b. avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;*
- c. encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events.*

31. In my opinion, the policy as currently worded is directive and provides clarity as to when resource consents for the re-building of materially damaged buildings may be granted – specifically if the natural hazard risk to the building is demonstrated to be reduced and hazard risk to other property not increased. I therefore believe the policy gives effect to the NZCPS, especially Policy 25(c), as the ultimate aim is to reduce the risk of potential adverse effects from hazards (not just coastal). I do not consider that amending this policy would give any greater effect to higher level policy guidance, nor provide any greater clarity as to expectations for landowners with regards to whether resource consent may be granted for re-building.

Recommendation

32. That there are no changes to Policy D.6.3.

Incorporation of mapped high risk flood hazard and coastal hazard areas within the Proposed Regional Plan planning maps

Submissions and analysis

33. Five submitters (Top Energy, The oil companies, CEP Services Matauwhi, Fonterra and GBC Winstone) made submissions requesting to incorporate hazard maps into the Proposed Regional Plan. The reasons included:
- The approach is inconsistent with the New Zealand Coastal Policy Statement with respect to identifying hazards.
 - Not having hazard maps in the planning maps makes it difficult to understand their implications.
 - Not having planning maps to illustrate the spatial extent of the hazard areas makes it difficult to understand which areas are subject to hazard risk.
 - The rules should only apply to mapped areas – no unmapped areas should be regulated as there is too much uncertainty.
34. I have sought advice from Toby Kay with regards to flood and coastal hazard mapping in the region. Toby informed me that for coastal hazards (inundation and erosion), the regional council has mapped those parts of the coastline where LIDAR survey information

is available. The maps show the potential extent of coastal erosion and flood hazard from storm surge over 50 years (zone 1 – high risk coastal hazard areas) and 100 years (zone 2) into the future. Regarding river flooding, the council has completed mapping for some 27 ‘priority’ catchments across the region. These maps identify land that is at risk of flooding from rivers. They show the likely extent of river flooding during a 10-year or 100-year flood event. A 10-year flood area (high risk flood hazard area) has a 10% chance of flooding annually, whilst the more extensive 100-year flood area has a 1% chance of flooding annually.

35. The sections of the Proposed Plan that refer to ‘high risk’ flood hazard areas are C.8.3 (Earthworks rules), C.8.6 (Re-building rules) and D.6 (Natural hazard policies). The sections that refer to ‘high risk’ coastal hazard areas are C.8.6 and D.6.
36. Turning to the submissions, in my opinion, the approach to identifying (coastal) hazards is not inconsistent with the NZCPS and in fact, gives effect to requirements of the NZCPS. Specifically, Policy 24 (Identification of coastal hazards) of the NZCPS requires councils to identify areas in the coastal environment potential affected by coastal hazards. The regional council has ‘identified’ areas potentially affected by coastal hazards by way of mapping. No-where within the NZCPS does it say that mapping (of hazard areas) is a requirement.
37. I note that there is no legal or policy requirement to include flood or coastal hazard maps in the Proposed Regional Plan¹ and I believe that there is no legal constraint to referring to the maps outside the plan (as noted in the definition section, maps are available to view on the regional council’s public website). These maps clearly outline the spatial extent of hazard areas (that have been mapped by the council).
38. Toby Kay informed me that as knowledge of natural hazards and hazard risk is always evolving, it is preferable to be able to regularly update hazard maps. This may be due to changes in floodplain knowledge as a result of more detailed flood hazard modelling or to incorporate updated Central Government guidance on climate change effects in natural hazard assessments and mapping. In his opinion, the most appropriate location for the hazard maps is to sit outside the regional plan (as currently proposed). This enables

¹ Method 7.1.7(1) of the Regional Policy Statement for Northland requires that mapped flood and coastal hazard areas shall be incorporated into district plans by way of a plan change process.

models to be re-calibrated and maps updated without having to go through a formal RMA Schedule 1 process.

39. I do not agree with the submission point relating to 'no unmapped areas should be regulated'. The submitter has not demonstrated why this is appropriate and I consider that only applying rules to locations that have been mapped would definitely result in an increase in hazard risk. In my opinion, hazard management is not just about a balance between mitigation of environmental effects and enabling development. The critical issue is finding the acceptable level of risk, taking into account the known social and economic consequences. The submitters relief would lead to an increase in risk.
40. I note that the RPS has created a framework for managing hazard risk in the region where the regional council undertakes flood and coastal hazard mapping (at a regional scale) and district councils are then required to incorporate finalised flood and coastal hazard maps into district plans. I am therefore of the view that it is appropriate for mapped high risk hazard areas to sit outside the Proposed Regional Plan maps.
41. Turning to definitions, I note that the definition of *high risk flood hazard area* includes a note, which outlines that mapped high risk (10 year flood hazard) areas are available to view on the regional councils public website. The definition of *high risk coastal hazard area* does not contain a similar note. I consider that it would be beneficial for plan users if a similar note was included with this definition.

Recommendations

42. To not include high risk flood and coastal hazard maps in the Proposed Regional Plan.
43. .Add a note at the bottom of the definition of High risk coastal hazard area (similar to the one for High risk flood hazard area), which informs plan users that high risk coastal hazard areas are available to view on the regional council's public website.

Requests for natural hazard objectives

Submissions and analysis

44. Various submitters requested the inclusion of an objective or specific objectives for natural hazards². As there is no stand-alone natural hazards s42A report, I will address this here.
45. As discussed in the General approach s42A report, the recommendation is to include specific objectives in the Plan. I have recommended including an objective natural hazard risk. This objective is based on objective 3.13 of the RPS. I have based it on this objective because I believe this objective is already specific enough to direct the policies and rules for the Plan.

Recommendation

46. Include new objective for Natural hazard risk as outlined in *s42A report*

² This is discussed in detail in the General approach s42A report.