

TAUPŌ DISTRICT COUNCIL

PROPOSED DISTRICT PLAN CHANGES:

PLAN CHANGE 39: RESIDENTIAL BUILDING COVERAGE **PLAN CHANGE 41: REMOVAL OF FAULT LINES**

MINUTE 7 OF THE INDEPENDENT HEARING PANEL

Introduction

1. This Minute is being sent to you because you are either a submitter or a Council reporting officer to **Plan Changes 39 and 41** being the change to the residential building coverage and the removal of fault lines from the District Plan.
2. This Minute is of particular relevance to the Councils reporting officers as specific responses are required from them.

Background

3. Recipients will recall in Minute 4 (dated 20 July 2023) we confirmed that the in-person hearing for Plan Changes 39 and 41 was not necessary or required due to all submitters being satisfied to forgo their actual attendance and presentation to the Panel. To this extent, we acknowledge that some submitters have filed statements in support of their submission.
4. The outcome of the above, as Minute 4 detailed, is that the Panel will decide the outcome 'on the papers'. In this respect the Panel has begun their deliberations for the said Plan Changes and several questions for clarification / further information has arisen which requires a response from the reporting officers. This Minute outlines those matters.
5. In undertaking our deliberations, we have read the following documents:

PC39:

- S32a Evaluation Report
- Original submissions and further submissions
- Overarching s42a Report
- S42a Report
- Submitter statement – Alana Delich on behalf of Taupō Climate Action Group

PC41:

- S32a Evaluation Report
- Original submissions and further submissions

- Overarching s42a Report
 - S42a Report
 - Evidence of Aidan Smith
 - Submitter evidence – Sarah-Jayne McCurrach on behalf of Toka Tū Ake EQC
6. This Minute records several matters that have arisen during these initial deliberations on both plan changes that we require a written response from the reporting officers for each. The reason for the response being requested is to provide further clarification, to assist us in our understanding, and ultimately to assist us in formulating our recommended decision to the Council.

Plan Change 39 – Residential building coverage

7. Having read the relevant material, we do not have any fundamental issues with PC39 in terms of its rationale and mechanics. However, there are some minor matters that we would appreciate a response back from the s42A author (Mr Sapsford) for PC39:
- a. What is the current activity class for a resource consent that breaches the Building Coverage standard in the District Plan?
 - b. The s42A report states (paragraph 13) that in the past resource consents for a breach in building coverage have been ‘generally granted’ – have any been declined? If so, what were the reason/s for decline?
 - c. Why do you say that it is reasonable to expect that there will be more applications seeking greater building coverages at paragraph 20? The answer to this goes towards assessing the risk of acting or not acting.
 - d. Could you clarify what the permitted building coverage is for High Density Residential? Are there any other variations of building coverage for the other residential zones that are listed on Figure 1 page 4 of the s42A?
 - e. In relation to ‘Issue 2’ in the s42A – Retention of green spaces and impermeable surfaces, is there any standard (such as the stormwater standard - 4a.1.23) in the District Plan rules that controls the minimum amount of green space on an allotment (paragraph 47 refers)? In other words, are there any bulk and location standards that control the minimum amount of green space in the Residential Environment?
 - f. Could you explain how the Total Coverage rule (4a.1.3) as it is worded manages the amount of impermeability on an allotment.
 - g. Could you provide an update as to where PC1 to the Waikato RPS is in the process – is it fully operative? And if not, how much weight should be attributed to it?
 - h. Do you consider that PC39 gives effect to the NPS-UD? How?
8. Finally, the s42A says that there is a clear connection between the resource management issue underpinning this plan change and the policies to address those issues (para 68). To the extent that this may be covered in the s32 assessment, what are the objectives and policies of the District Plan that PC39

will give effect to? We would appreciate this be provided in the form of a wiring diagram or table that links the objectives to policies and ultimately links the policies to the standard being amended?.

9. We look forward to receiving the response to the above from Mr Sapsford by **1 pm 16 August 2023**.

Plan Change 41 – Removal of Fault Lines

10. We have read the s32 evaluation, s42A Report (also authored by Mr Sapsford) and the evidence of Mr Aiden Smith. Unlike PC39, we have a more fundamental enquiry about the rationale and mechanics for/of this Plan Change.
11. We start by our acknowledgment of the following:
- a. That the fault line maps and details in the Operative District Plan are out of date and that this creates uncertainties and inefficiencies as described in para 7 of Mr Smith's evidence. We agree that these provisions need amendment in some form.
 - b. We acknowledge that GNS were commissioned to undertake new active fault mapping and an accompanying report '*Active Fault Hazards in the Taupō District (GNS 2020)*' and the result has been that they have developed Fault Avoidance Zones (FAZ) and Fault Awareness Areas (FAA) as described in paragraph 9 of Mr Smith's evidence.
 - c. We also understand the Council's proposed response to fault hazard planning as described in paragraphs 11 and 19 of Mr Smith's evidence namely a combination of structure planning, subdivision consent / s106 RMA and the Building Act (in addition to LGA information requirements under the LIM process). In other words, we acknowledge that the Council's approach embodies the following key tenants:
 - i. Zoning of land for new urban areas affected by fault hazard areas (presumably both FAZ and FAA but this needs to be confirmed) will be avoided – this applies to both Council and privately initiated plan changes.
 - ii. Subdivision in all zones affected by the fault hazard areas (as per the above assumption) will (for non-hazard reasons - i.e. no subdivision is permitted) be subject to a consent process. That consent process, in conjunction with s106 RMA, gives Taupō District Council the power to refuse or impose conditions on a subdivision consent if the Council considers that there is a risk from natural hazards.
 - iii. Where land use consent is not required (or even where it is required for a reason other than a fault hazard matter) by the District Plan the Council is able to rely on the November 2021 amendment to the Building Act which enables Councils to refuse building consent on land subject to natural hazards (presumably using the maps that will sit outside the plan showing areas affected by fault hazard areas),
12. We assume that our understanding and representation of the above is correct but would welcome any correction by the officers that might be required.

13. On the assumption that the above is generally accurate, the potential issue that arises from this for the Panel is twofold.

- a. Firstly, under the above approach it appears that, aside from the subdivision process (which we also have some comments on), there is little to no role for the District Plan in informing or controlling land use and development on land subject to the revised fault hazard areas. This is in part acknowledged at paragraph 13 of Mr Smith's evidence where he says:

I do note however, that this approach may not capture discrete land uses and development within rural zoned land. The TDP is a reasonably permissible district plan, for development in rural areas. It is reasonable to expect a range of development including industrial development, such as a milk processing plant, or a power plant, or facilities using second hand geothermal heat, next to a power plant in the rural area. Given that the Taupō District is also a tourist destination, and there is potential for accommodation or lodges in the rural environment where there might be fault hazards.

This is of particular concern to us specifically because of the quantum of developments that could fall into this 'gap' could be significant given the '*reasonably permissible district plan*'.

- b. Secondly, and in respect to subdivision, whilst we acknowledge that Council could use s106 to approve and impose conditions or decline a subdivision consent where the site is affected by hazard areas it is a concern that it is not proposed that the District Plan would identify the lands affected by fault hazard areas (in a regulatory manner as opposed to an information source only) and secondly it is unclear what the policy direction for guiding decisions on such subdivision consents is.

14. Ultimately, we are not convinced that the s32 evaluation has assessed that the method adopted by PC41 (i.e. *Option 3 – removal of fault lines from the District Plan maps*) is the most effective and efficient or the most appropriate mechanism to meet the purpose of the Act. On the face of it Option 2 in the s32 report (*replacement of the current fault line on the planning maps with the GNS data*) seems to achieve those s32 tests more readily but has not been pursued even though it seems to be effective in dealing with the gap identified in paragraph 13b above.

15. We can only assume that the s32 authors believe it is not efficient to have the ability to require a land use consent under the District Plan on land affected by the new hazard areas (and have the ability to decline it or grant it with conditions), when there is the ultimate ability to do that under the Building Act. Whether this the case or not (and we have our doubts) the question is whether it is effective and appropriate to allow a land use to occur (either by permitted activity rule or land use consent) in a recognized hazard area only to potentially have the building consent for it declined at a later stage.

16. In addition to the effectiveness and efficiency tests, we need to understand what the quantum of risk is in relation to the two matters that we have identified above (in paragraphs 13a and 13b), and we need to have some certainty in terms of the s32 evaluation aspects.
17. We will leave it to Mr Sapsford (with assistance from Mr Smith as required), to respond to the above matters. To the extent that it assists, and without limiting the above enquiry, we particularly need to receive an updated and bespoke s32 evaluation report that carefully compares Option 2 and Option 3 in terms of the s32 tests – particularly in terms of the efficiency and effectiveness arguments and the risks of acting and not acting (with particular regard to not including the new hazard area maps into the District Plan with attached polices and rules). Such an assessment should include quantifiable information in addition to qualitative assessment particularly in terms of the risk of not acting in respect to Option 2.
18. As an aside , we acknowledge the inclusion of the non-regulatory maps on the Councils website however there is no identified time frame for their inclusion or indeed what these maps would detail. What certainty do we have that this would occur?
19. In addition to the above fundamental questions, we have the following specific questions:
 - a. How does the proposed approach differ from how other Councils manage the risks from fault lines? Is this approach considered to be a common approach?
 - b. Has the whole of Taupō district been mapped by LiDAR? If not – how certain are you that where LiDAR has not been flown regarding the identification of fault lines? Is there a work programme for the additional LiDAR to occur?
 - c. How are the risks of earthquakes managed through subdivision controls in the operative plan? (as stated in the s32 Evaluation Table 1, Option 2, fourth column)?
 - d. Can you confirm that the Building Act / building consent process would be the sole mechanism for managing the risks associated with building in close proximity to the revised hazard area/fault lines. The term “primary” is used in the s32 evaluation under Option 3 on page 13. Primary potentially suggests more than one mechanism is available when in reality PC41 appears to be relying solely on the Building Act / building consent process.
 - e. What is the role of the non-regulatory map layer?
 - f. In developing PC41 it was identified that that under current law, once hazard maps are in the Taupō District Plan then they are not required to be on LIMs - but is this information precluded from being included in LIMS under that scenario?
20. We look forward to receiving the response to the above from Mr Sapsford by **1 pm 30 August 2023**.

Next steps

21. To assist us with our recommendation to the Council for Plan Changes 39 and 41 we require a written response to the above queries corresponding with the following timetable:
- a. For **PC39** as mentioned in paragraph 9 above by **1pm 16 August 2023**.
 - b. For **PC41** by **1pm 30 August 2023**.
22. The two different dates reflect the level of detail required for each response. If additional time is required, please forward the request to the Panel via the Hearing Administrators for our consideration. We note that the issue raised in respect to PC41 are not insignificant and we also note that Mr Sapsford is the principal author in both cases so the demands on his time need to be taken into consideration. For these reasons, we are open to an extension of time if required.
23. The Panel will provide subsequent Minutes on any further updates in relation to the hearing's proceedings in due course.
24. Any submitter enquiries relating to the proposed plan changes and the hearing should be directed to the Hearing Administrators Hilary Samuel or Haydee Wood and can be contacted at districtplan@taupo.govt.nz

DATED Tuesday 1 August 2023



DJ McMahon

Chair - Independent Hearings Panel

For and on behalf of:

Commissioner Elizabeth Burge

Councillor Yvonne Westerman