

TAUPŌ DISTRICT COUNCIL

SECTION 32AA EVALUATION OF RECOMMENDED CHANGES

PLAN CHANGE 34 – FLOOD HAZARD

REPORT DATED:

23 October 2018

SUBMITTED BY:

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FOR AND ON BEHALF OF THE TAUPŌ DISTRICT COUNCIL

1 INTRODUCTION

This report should be read in conjunction with the following reports:

- Taupō District Council (20 October 2017) Plan Change 34 - Flood Hazard. Section 32 Report
- Taupō District Council (1 October 2018). Planner's Report for Plan Change 34 - Flood Hazard
- Taupō District Council (11 October 2018) Addendum to Planner's Report for Plan Change 34 – Flood Hazard
- Taupō District Council (19 October 2018) Summary of issues of contention. Planner's Report for Plan Change 34 – Flood Hazard
- Taupō District Council (23 October 2018) Planner's Right of Reply Plan Change 34 – Flood hazard
- McConchie J (22 October 2018) Addendum to evidence of Dr John McConchie
- McConchie J (21 October 2018) Further addendum to evidence of Dr John McConchie
- McConchie J (27 September 2018) Statement of evidence of Dr John McConchie
- McConchie J (23 October 2018) Right of Reply comments by Dr John McConchie

These reports provide detailed analysis of the Planner's and Council's flooding expert's recommended changes to Plan Change 34 (PC34) and address the Hearing Panel duty under Section 32 of the RMA for the Committee in the course of deciding whether to accept or reject a submission on PC34.

2 SECTION 32 REPORT

Before notifying PC34 the Council is required to prepare an evaluation report in accordance with Section 32 (Sec 32) of the Resource Management Act (RMA).

Under Sec 32 of the RMA, PC34, when notified, must be accompanied by an evaluation report. Taupō District Council undertook a section 32 evaluation of the plan change, which examined whether the plan change objectives are the most appropriate way to achieve the purpose of the Act and whether its provisions are the most appropriate way to achieve the relevant objectives by:

- a. identifying other reasonably practicable options for doing so;
- b. assessing the efficiency and effectiveness of the provisions in doing so; and
- c. summarising the reasons for deciding on the objective provisions.

The RMA states that the S32 report must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects anticipated from implementation of the proposal. In assessing the efficiency and effectiveness of provisions, the assessment has to identify and assess the anticipated benefits and costs of the environmental, economic, social and cultural effects, including opportunities for economic growth and employment anticipated to be provided or reduced. The assessment, if practicable, shall also quantify the benefits and costs. If there is uncertain or insufficient information about the subject matter of the provisions, the risk of acting or not acting must also be assessed.

The Section 32 report ¹ was publically available when the PC 34 was notified on 20 October 2017. The Section 32 report will also be made available to the Hearing Panel prior to the hearing.

2.1 Section 32AA further evaluation

Section 32AA of the RMA, requires a further evaluation to be undertaken for any changes proposed to PC 34 since the original Section 32 report was completed. The purpose of this report is to provide the Hearing Panel with the necessary evaluation to include within its decisions report should it accept the recommendations made in the Planner's Report, the addendum to Planner's Report, the summary of issues of contention and the Planner's Right of Reply reports. That will enable the Hearing Panel to fulfil its duty under section 32AA.

3 FULFILLING THE S32AA DUTY

The Section 32AA report only needs to evaluate changes made between the notification of PC 34 and the final decision on submissions to PC 34. Section 32AA states that a further evaluation must be made for:

¹ Taupō District Council (20 October 2017) Plan Change 34 - Flood Hazard. Section 32 Report

“any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal (Sec 32 report) was completed”

All changes recommended by the Planner are discussed in detail in the report outlined in section 1 of this report. These reports outline the decisions sought by each submission point (grouping them by issues) discusses the effect of making the amendment; and sets out the Planner’s recommendations and reasons for each submission point.

Although numerous issues and provisions are discussed in the Planner’s report only 14 changes are recommended. Further, of the changes recommended, very few substantively change the policy such that the approach would be characterised as a “different” approach from that addressed in the original Sec 32 report. In almost all instances the changes recommended aim to clarify the intent and remove potential confusion or ambiguity. Nine of the recommended changes aim to clarify the intent, provide consistency with other statutory documents, amend flood hazard on eight individual properties to reflect their physical characteristics and remove potential confusion or ambiguity. Accordingly, the underlying cost and benefits of these recommended provisions will not vary from those already addressed in the Section 32 report.

Only one recommendation (regarding rule 4e.13.2 Hazardous Substances) changes provisions of PC34 in a way that would be characterised as a “different” approach from that addressed in the original Sec 32 report.

A prehearing meeting was held between Ngāti Kurauia and Council on 2 October 2018 to discuss and seek resolution to the relief sought in their submission. As this was after the Sec 32 report was produced the details and agreements made at this prehearing meeting need to be outlined in this Section 32AA report. The Planner’s recommendations on Ngāti Kurauia’s submission are in the Addendum to the Planner’s Report².

This is explained in further detail below and the Planner’s recommendation that require new evaluation addressed.

3.1 Reasonably practical options

The Hearing Panel’s duty is to examine whether the amendments proposed to the provisions in PC34 are the most appropriate to achieve the purpose of the RMA and achieve the objectives of the plan change. The first step in this assessment is to identify other reasonably practical options. The Hearing Panel need to confine themselves to options that have been identified in submissions or the Section 42A report and to combinations or refinements to them. They must not identify other options as this is beyond their function and would not enable submitters to respond to these options. So completely new or different planning approaches cannot be considered.

The Planner’s recommendations identifying genuinely alternative options to those in PC34 (as opposed to changes aimed at clarification or technical wording changes) are listed as follows:

- Whole plan change – Waikato Regional Council sought an alternative mechanism in terms of the inclusion of provisions in PC34 to ensure that hazardous substances/facilities are appropriately located, designed and managed in relation to flood areas. This approach was supported by Mercury.

3.2 Effectiveness and efficiency

An assessment of the efficiency and effectiveness of amendments to PC34 must involve identifying and assessing the benefits and costs of the anticipated effects of implementing them, including opportunities for economic growth and employment. As noted above, if practicable, the assessment is to include quantifying those benefits and costs; and assessing the risk of activity or not acting if there is uncertain or insufficient information about the technical subject matter.

In those respects the Hearing Panel will also need to confine its consideration to the evidence available from both the Planner, Council flooding expert and submitters. Quantifying social, cultural, economic and environmental benefits and costs of PC34’s amendments and alternative options, in monetary terms is difficult.

² Taupō District Council (11 October 2018) Addendum to Planners Report for Plan Change 34 – Flood Hazard

3.2.1 Adverse effects of the storage, use, disposal or transportation of hazardous substances

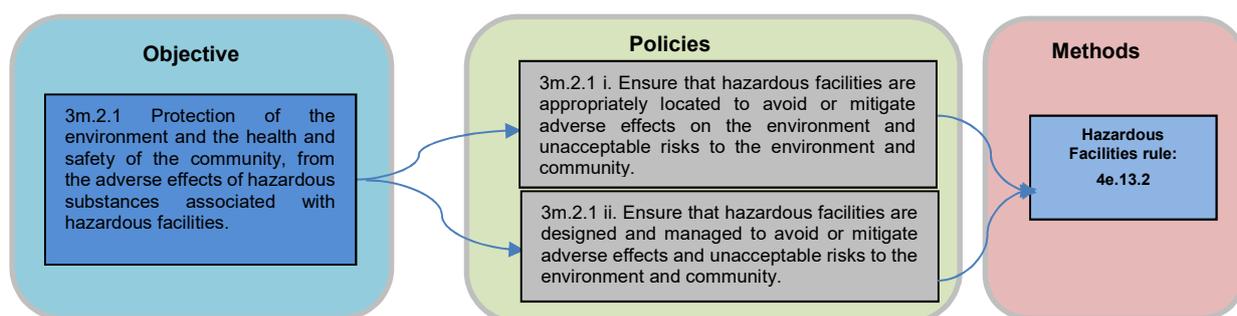
PC34 does not include a policy or rule relating to the protection of people and the environment in flood areas from the adverse effects of hazardous facilities. The reason for this was that Sections 12 and 13 of the Resource Legislation Amendment Act 2017 amended Sections 30 and 31 of the RMA to remove the control of hazardous substances as an explicit function of councils. This means that the Council no longer has an obligation to regulate hazardous substances in its District Plan. Advice from MfE is that the inclusion of hazardous substance controls in plans should be the exception rather than the rule.

Waikato Regional Council (WRC) submitted on PC34 seeking the inclusion of a provision in PC34 to ensure that hazardous substances/facilities are appropriately located, designed and managed in relation to flood areas. This approach was supported by Mercury.

WRC identified that method 4.2.9 of the RPS allocates to the Council the responsibility for developing objectives, policies and rules for land for the prevention or mitigation of any adverse effect of the storage, use, disposal or transportation of hazardous substances. Also method 13.2.5 of the RPS requires that the district plan ensures that use and development in high risk flood hazard zones is appropriate. Method 13.2.6(a)(vi) states that subdivision, use and development can only occur in a 1% AEP floodplain where any hazardous substance stored as part of the development, or during the construction, or found on or near to the site, will not create a hazard. The further submitter (Mercury) stated that it is considered good environmental practice to locate hazardous substances and hazardous facilities away from flood hazard areas to avoid the risk of hazardous spills and associated contamination entering waterbodies. The Council needs to give effect to this.

Section 31(1)(a) of the RMA gives Council a broad function of achieving integrated management. Under the RMA, if existing HSNO or Worksafe controls are not adequate to address the environmental effects of hazardous substances in any particular case (including managing the risk of potential effects on the local environment) the District Plan needs to address this issue. HSNO does not specifically address the management of hazardous facilities in flood hazard areas. Therefore PC34 needs to manage the location and design of hazardous facilities in flood hazard areas.

Section 3m of the District Plan currently controls the use of land to prevent or mitigate any adverse effects of hazardous substances. Section 3m contains an objective and two policies to protect the environment and the health and safety of the community, from the adverse effects of hazardous substances associated with hazardous facilities. Rule 4e.13.2 controls the location and design of hazardous facilities within and adjacent to the Residential Environment. The Planner's report recommends amending the existing rule 4e.13.2 to include any hazardous facilities located within the flood hazard area as well as within and adjacent to the Residential Environment.



The table overleaf outlines the benefit and cost assessment, any opportunities for improved or reduced economic growth and improved or reduced employment of this new method of managing the location and design of hazardous facilities in the flood hazard area.

A. Other reasonably practicable options for achieving objectives(s32(1)(b)(i)) :	
<ul style="list-style-type: none"> Control the location and design of hazardous facilities in the flood hazard area by including a policy and rule in the flood hazard section of the plan. 	
B. Benefits and Costs of Effects (s32(2)(a))	
Benefits	Costs
Environmental	
<ul style="list-style-type: none"> Managing the design and location of hazardous facilities within the flood hazard area will ensure adverse effects on the environment are avoided from hazardous facilities during floods. 	None
Economic	
<ul style="list-style-type: none"> Managing the design and location of hazardous facilities within the flood hazard area is likely to reduce damage to hazardous facilities during floods and therefore the costs of reinstatement by the owner of the hazardous facility following a flood event. Financial impact of a flood event is potentially reduced as there are unlikely to be adverse effects to people and the environment from hazardous facilities during a flood event so the cost of response and recovery is reduced. Policy framework supports integrated resource management and aligns to RPS flood hazard management objectives and implementation methods. 	<ul style="list-style-type: none"> Likely to be a higher upfront cost of locating hazardous facilities in a flood hazard areas or for meeting higher design requirements. Monitoring costs for Council to ensure the District Plan is implemented and adhered to. Costs associated with the plan change.
Social	
<ul style="list-style-type: none"> Health and well-being of communities will be enhanced as hazardous facilities will be located and designed to ensure that people will not be affected by hazardous facilities during a flood. 	None
Cultural	
None	
C. Economic Growth and Employment Opportunities (s32(2)(a)(i)(ii))	
Managing the location and design of hazardous facilities in flood hazard areas is not anticipated to have a significant effect on economic growth or employment opportunities.	
D. The efficiency and effectiveness of provisions (s 32(1)(b)(ii))	
Efficiency	
<p>The provisions use the resource consent process to ensure hazardous facilities are appropriately designed and located in flood hazard areas. The amended approach for hazardous facilities will ensure alignment with the RPS (Method 4.2.9, Policy 13.2 and method 13.2.6(a)(iv)). The proposed provision is efficient as it clearly states the approach for the management of hazardous facilities in the flood hazard areas and will do so at a lower cost relative to benefits.</p> <p>There will be regulatory costs to individual owners or operators of hazardous facilities. However those costs more appropriately sit with the individuals rather than the broader community. There are likely to be relatively few sites where consent is required for hazardous substances in flood areas.</p>	
Effectiveness	
The provisions are considered to be effective to keep people and the environment safe from the effects of hazardous facilities in a flood. The resource consent process ensures that hazardous	

facilities can only locate in flood areas where it can be demonstrate there will be no risk to the environment or to people from the hazardous substances during a flood.

The discretionary status of the rule reflects the limited information that council has about the management of hazardous substances on individual sites. It will also be effective in enabling site by site consideration and assessment of a variety of mitigation methods.

E. Risk of acting or not acting if there is uncertain or insufficient information(s32(2)(c))

Proposed PC34 did not control the design or location of hazardous facilities in flood hazard areas as it was considered this could no longer be done under the RMA and was controlled under HSNO. This was incorrect. Existing HSNO controls are not adequate to address the environmental effects of hazardous substances from the location and design of hazardous facilities in flood hazard areas so the District Plan needs to do this.

F. Appropriateness

The proposed provisions are considered the most appropriate practicable mechanism as they use the resource consent process to ensure any adverse safety effects of hazardous facilities on the environment and on people in a flood are avoided. The safety benefits outweigh any potential economic costs of a more restrictive approach. For this reason they give effect to the RPS and therefore the RMA.

G. Reasons for deciding on the provisions (s32(1)(b)(iii))

The notified version of PC34 did not include any control over the location and design of hazardous facilities in flood hazard areas based on the belief that this was controlled under HSNO. The RPS specifies that activities can only occur in a flood plain where any hazardous substance will not create a hazard. Therefore an amendment has been proposed to the existing rule (Rule 4e.13.2) that controls the location and design of hazardous facilities within and adjacent to the Residential Environment. This amendment will ensure that any hazardous facilities located within the flood hazard area as well as within and adjacent to the Residential Environment will be managed. This amendment to the existing rule is the most effective way of meeting the objectives and the RPS.

4 CONSULTATION WITH NGATI KURAUIA TAIAO MANAGEMENT

Ngāti Kurauia were a submitter to PC34 but the Section 32 report does not record the consultation that Council had with Ngāti Kurauia after PC 34 was notified.

As outlined in the Section 32 report on consultation with Tūwharetoa Maori Trust Board, consultation with the three marae affected by the flood hazard plan change was undertaken by the Council. Council sent three letters to the three marae that are affected by the Flood Hazard Plan Change (Waihi Marae, Tokaanu Marae, Poukura Marae). The letters outlined the flood risk plan change, included a plan showing the extent and depth of the possible flooding (from the new flood data) across the marae site and asking them to get in touch if they wish to discuss it further. Letters were sent to Tokaanu marae in November 2015, March 2016 and April 2016. A further letter was send to the marae in April 2017 explaining that staff had found an error in the flood hazard data in the Tokaanu area which had been corrected and the updated flood hazard information was available on the Council’s website.

The following is a record of the communication between Council staff and Ngāti Kurauia from April 2017.

Date	Content
28/04/17	Council staff sent a letter to landowners including Tokaanu marae Explained that an error had been found in the flood mapping for the plan change. Encouraged owners to check the revised flood hazard on the mapping tool and to share their views on this revised data and to contact Council staff if they would like a meeting to discuss.
2/05/17	Email from David Livingstone to Sue Mavor (Council) Responding to letter from Council dated 28th April 2017 and requesting a meeting with council planners about the plan change. He stated that the land is Maori land held in multiple ownership and the owners do not recognise, acknowledge or accept this strategy. Noted that instead of limiting what landowners can do Council needs to recognise that this flooding is due to man-made intervention

Date	Content
	<p>through the Tongariro Power Development Scheme and the power companies holding such a high lake level. Regional council has allowed this to continue and Ngāti Kurauia are left with flooded lands so when heavy rains occur there is nowhere for the water to go.</p> <p>Sending a letter does not mean Council has met their consultation obligations. The plan change approach is contrary to the second article of the Treaty.</p>
3/05/17	<p>Email from Sue Mavor to David Livingstone</p> <p>Sue outlined that she was happy to meet Mr Livingstone to discuss the plan change and asked him to confirm a date and time.</p>
12/05/17	<p>Sue Mavor phoned David Livingstone to organize a date and time to meet and left a message on his answer machine.</p>
02/06/17	<p>Sue Mavor phoned David Livingstone to set up a date and time to meet. Mr Livingstone is off to Australia so agreed that Sue would contact him by e-mail on 26 June when he returns to find a time and location to meet up and have a chat.</p>
3/07/17	<p>E-mail from Sue Mavor to David Livingstone</p> <p>Seeking to arrange a meeting to discuss the flood hazard plan change.</p>
8/11/17	<p>Meeting with David Livingstone, Sue Mavor and Dominic Bowden</p> <p>Dominic and Sue met with Mr Livingstone in Taupō. Dominic set up a meeting with Mr Livingstone as a representative of the Tokaanu Marae (as requested by Maria at TMTB). Mr Livingstone outlined his concerns as follows:</p> <ul style="list-style-type: none"> -The flooding Council has shown is not a natural hazard as the river system is not natural due to all the changes made through the Tongariro River Power scheme and the unnaturally high lake level. -The marae will not submit against (or for) the plan change as they believe that is a form of acceptance of the plan change -The power scheme, lake level and roading works have resulted in flooding that has contravened property rights -Instead of writing plan changes Council should be working with WRC and Genesis to solve the flooding issue instead of planning for it. -The parties agreed the way forward was a meeting with Mr Livingstone, policy staff, Dominic, WRC staff and Kaumatua at the Tokaanu Marae. Dominic to arrange this meeting with Mr Livingstone. -The flooding as modelled is incorrect and Council should have consulted the Kaumatua so they could inform Council where it floods (not a consultant who knows nothing of the local conditions).
8/11/17	<p>E-mail from Sue Mavor to David Livingstone</p> <p>Thanked Mr Livingstone for taking time to meet with Council about the flood hazard plan change. Attached the recent letters Council had sent and a screen shot of the flooding at the Tokaanu marae. Explained that as the flooding is low then the plan change would allow for building on the property provided the floor level is 300mm above the maximum flood level. Council will be in touch shortly to organize a meeting with Mr Livingstone and the marae committee and the regional council</p>
8/11/17	<p>Email from David Livingstone to Sue Mavor</p> <p>Thanking for meeting about the flood hazard plan change. Tokaanu marae do not agree with consultants study as there has been no local input from the tangata whenua or local community. Tokaanu marae have a hui on 19 November 2017</p>

Date	Content
	when they will discuss the issue. Mr Livingstone will contact the Council after this hui.
27/11/17	<p>Email from Dominic Bowden to marae, iwi and hapū contacts.</p> <p>Informing them that there is a Flood Hazard Plan Change hui/information evening on Thursday 7th December 2017 at 6pm at Waihi Marae.</p> <p>The email included information about the plan change and affected areas and encouraged people to come along and have their say. It also identified where more information could be found.</p>
19/08/18	<p>Meeting at Toakaanu marae. Taupō District Council and WRC staff attended Ngāti Kurauia's monthly meeting.</p> <p>Ngāti Kurauia outlined the importance of freshwater and the effects on the hapū of decisions and legislation since 1897. The main issues are the taking of land by the government since 1897, the raising of lake levels in 1941 and the 1950s and the development of the Tongariro Power Scheme in 1973. This has resulted in loss of traditional land and land north of the marae, which has been inundated and is unable to be used to live on or grow food. It also resulted in the silting up and raising of the water levels in the Tokaanu Stream making the area more susceptible to flooding. Wave action from the, now raised, lake levels has destroyed any access to the traditional land north of the marae. Ngāti Kurauia live with constant flooding and the plan change needs to take account of this history and resulting factors. Council staff agreed to meet with the Ngāti Kurauia Taiao to discuss the issues raised in their submission and to work together to find solutions.</p>
2/10/18	Meeting with members of Ngāti Kurauia Taiao Management. See below for notes from the meeting.
22/10/18	<p>Email from G Asher to the Hearings Panel</p> <p>Mr Asher stated that after consideration of Ms Mavor's Addendum to the Section 42A Report he wished to withdraw his request to speak to Ngāti Kurauia's submission to PC34 at the hearing.</p> <p>He outlined that the Addendum report provides a clear response to matters raised in Ngāti Kurauia's submission and outlines an acceptable pathway and mutual commitment between Ngāti Kurauia and the Council to address issues relating to flood hazard management and related aspects of land inundation through the District Plan Review and the Ngāti Kurauia hapū management plan</p> <p>He concluded by stating that in acknowledgement of the very positive progress made in recent consultations, he confirmed his position that the plan change not be amended.</p>

The full details of the meeting with Ngāti Kurauia Taiao Management at Turangi Service Centre on 2 October 2018 is below.

Present

George Asher, Danica Searancke-Tipene; David Livingstone – Ngāti Kurauia Taiao Management
Nick Carroll & Sue Mavor – Taupō District Council

Proceedings

Agreed the main purpose of the meeting was to discuss the Ngāti Kurauia submission on Plan Change 34, clarify the issues raised and seek to facilitate resolution of the issues. It was agreed that if time permitted discussions would include Mana Whakahono a Rohe and the Ngāti Kurauia Environmental Plan.

Sue explained the plan change process, in particular the hearings process and explained that her report and Dr Jack McConchie's evidence were available on the Council website.

George explained that the plan change does not assess the risk correctly relative to the Tongariro Power Scheme. The canal mitigates flooding by taking water. Flooding extends to the east and west of the canal but is not identified in Dr McConchie's report.

George explained that there has been a long term impact on Ngāti Kurauia since 1897 with:

- them losing large areas of land and other areas of their land being inundated.
- their occupation and cultural sites have disappeared rapidly
- they cannot use their urupa and pa sites
- their marae is on private land as they have no customary land.

Ngāti Kurauia have had to move from ancestral land due to:

- the Township Act 1897
- the development of the Tongariro Power Scheme in 1973 and
- the raising of the lake levels in 1941 and the 1950s.

George explained that experts need to talk to locals to form their opinions when they are developing technical reports. There are photos that show the Tokaanu Stream prior to the development of the Tongariro Power Scheme.

Nick explained how the rules in the plan change were designed to work. George explained that the high lake level means flood water has nowhere to go in Tokaanu. Water hits the lake and has nowhere to go except to come back upstream. This happened in 2004. The high flow management regime needs to be amended so the flooding occurs further down the Waikato River instead of at Tokaanu. Also the regime used to stop water coming from the Tongariro Power scheme into the catchment in times of flood needs to be amended. Water from the scheme needs to be stopped from coming into the catchment sooner than it currently is.

George suggested the following mitigations were relevant for the plan change and are within the Council's control:

- Development of extreme wave activity section of the district plan. This is being done through the District Plan Review.
- Providing funding assistance for flood proofing buildings. This related to reducing the costs of applying for a new building consent for buildings in flood prone areas. Council to consider this as part of the broader consideration of fees and charges and regulation through the District Plan and the impact on multiply owned Maori land.
- Consider allowing fill to be placed on land to raise it above the flood level. This can be done as a permitted activity under the District Plan within some zones subject to relevant performance standards.

A discussion on the District Plan Review followed. It was agreed that the hapū's issues would be more effectively addressed through the development of the District Plan Review. Regular meetings, working together and the development by Ngāti Kurauia of their hapū environmental management plan will help inform the development of the District Plan Review. It was agreed that the District Plan Team will meet with Ngāti Kurauia Taiao Management in February 2019 to establish how we can work together in the District Plan Review.

Meeting closed

As a result of the e-mail from George Asher on 22 October 2018 the Hearing Panel decided that no changes were necessary to PC34 as a result of the Ngāti Kurauia submission. Instead they encouraged staff to ensure that they undertook the meetings arranged with Ngāti Kurauia, starting in February 2019 to discuss how the Council and Ngāti Kurauia can work together on the District Plan Review.

5 CONCLUSION

The Planning Officers Section 42A reports recommend a number of changes to PC34 that have not previously been subject to an evaluation under Section 32 of the RMA. Most of these changes are to clarify the intent and remove potential confusion or ambiguity, provide consistency with other statutory documents, amend the flood hazard on eight individual properties to reflect their physical characteristics and to remove potential confusion or ambiguity.

There is only one recommendation that proposes an alternative option or approach - that is, for the protection of the environment and the safety of people from any adverse effects from the development of hazardous facilities in the flood hazard area. Therefore this section 32AA report provides a further evaluation of the option to include a rule to manage the location and design of hazardous facilities in the flood hazard area to ensure that the safety of people and the environment is protected.

If after consideration and deliberation the Hearing Panel decides to depart from the recommendations in the Planner's Section 42A reports in a substantive way, it will need to undertake a further evaluation in respect of those amendments it proposes.