

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of Submissions and Further Submissions on
the Proposed Wellington City District Plan

Minute 35:

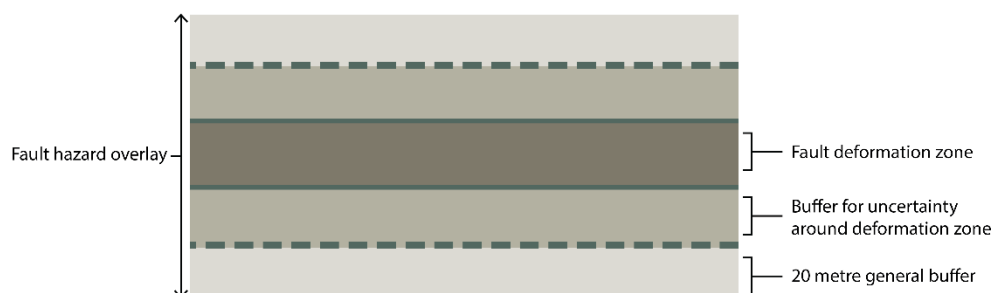
Further Follow-up Directions – Hearing Stream 5

Introduction

1. The purpose of this Minute is to provide further directions following Hearing Stream 5, following the circulation of Council replies on 28 August 2023. These directions relate to natural hazards provisions.

Explanation of Fault Hazard Overlay

2. We are grateful for the considered responses we received to the questions we put to the reporting officer for natural hazards in Hearing Stream 5.
3. In relation to our question about the potential to provide clarification (for example, in the Introduction), the reporting officer has explained some of the complexities involved in describing the Fault Hazard Overlays, and recommended either use of non-statutory guidance or a short note (refer paragraphs 41-53). While we accept that it is a complex issue and consider there to be merit in providing some out-of-plan guidance to Plan Users on how the fault hazards rules work as suggested, we also consider further effort is required to see if a 'plain English' description might be included in the Introduction to assist Plan readers that is rather more informative than the suggested note. The Panel has prepared the following diagram to assist its own understanding:



4. Can the reporting officer confirm whether the diagram above represents an accurate schematic of the Fault Hazard Overlay. Alternatively, if the reporting officer considers that our understanding of the position is incorrect or incomplete, we request that a revised/new schematic diagram be provided to illustrate the relevant elements of the Fault Hazard Overlay. If the reporting officer considers that the diagram would be assisted if accompanied by a brief commentary, please supply same.
5. In relation to the 20m setback requirements from the Fault Deformation Zone as prescribed in some rules, can the reporting officer confirm that "the Fault Deformation Zone is an area that can only be identified by a suitably qualified and experience geologist or geotechnical (or similar) engineer" as indicated by the suggested advisory note (refer paragraph 53). The Panel's understanding was previously that the deformation areas of some faults are well defined already (for example, the Wellington Fault) and that those areas are identified by the proposed map revisions showing 'well-defined' and 'well-defined extended' areas.

Reconciling Tensions between the NZCPS and NPS-UD

6. In Minute 33, we asked the reporting officer on natural hazards for a response on two questions in regard to the consistency of several coastal environment policies relating to natural hazards with the NZCPS: in particular, whether the recommended changes to Policies CE-P15 to CE-P18 (numbering as notified) were consistent with the New Zealand Coastal Policy Statement 2010?
7. The reporting officer recommended changing policies CE-P15 to CE-P17 to enable hazard sensitive and potentially hazard sensitive activities in low to medium coastal hazard areas provided the activity, building, or subdivision incorporates measures that *minimise*, rather than *reduce or do not increase*, the risk to people and property from the coastal hazard. This recommended change appeared in face value to conflict with the NZCPS, in particular:
 - Policy 25(a) which provides direction to “avoid increasing the risk of social, environmental and economic harm from coastal hazards”; and
 - Policy 25(b) seeking to avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards.
8. ‘Minimising’ appears to accept some level of increase in risk.
9. We also asked whether excluding the CCZ and Airport from Policy CE-P18 (numbering as notified) as recommended was consistent with the NZCPS.
10. In his response, the reporting officer accepted there was some misalignment with the ‘avoid’ element of Policy 25(b):

[79] In considering this misalignment, I consider that this matter needs to be viewed in the context of the NPS-UD as this document has the same status as the NZCPS with respect to council’s requirements when preparing a District Plan as set out in s74(1)(ea) of the RMA. In achieving the intent of the NPS-UD, development in the medium coastal hazard overlay is provided for, and only limited to the extent necessary to manage the coastal hazard risk. In my opinion, this has created a situation where strict adherence with the NZCPS is in conflict with the NPS-UD, with no additional supporting direction provided to help determine which should prevail.

11. Since the issuing of Minute 33 on 14 August, the decision of the Supreme Court in the *Port Otago Limited v Environment Defence Society* case has been released¹. Through this decision, the Supreme Court has provided guidance to plan-makers how national direction is to be interpreted, reconciled and given effect to, where there are tensions between different directive policies; in that case, two policies within the NZCPS.
12. The Court emphasised the need for a close study of the relevant provisions to confirm there was indeed a conflict between them and identified that the particular policies in question were both directive ones, albeit there being a difference in the language used. The Court then provided guidance on how any conflicts should be addressed, directing that decision-makers should provide a ‘structured analysis’ to provide a disciplined approach to identifying and resolving conflicts between competing directive policies.

¹ [Port Otago Limited V Environmental Defence Society Incorporated \[2023\] NZSC 112 \[24 August 2023\]](#)

While the Supreme Court decision focused on two directive policies within the NZCPS, we consider the decision has relevance to reconciling directive competing policies in two separate national directions.

13. It would assist the Panel if the reporting officer could identify precisely which NPS-UD provisions conflict with NZCPS Policies 25(a) and (b), and provide a 'structured analysis' along the lines the Supreme Court has identified is required as to how the competing policies in the NZCPS and NPS-UD might be reconciled.

Flood Inundation Standards

14. In his s42A report, the reporting officer for natural hazards recommended amending the condition relating to building within the inundation area of the Flood Hazard Overlay under Rules NH-R4 to NH-R8 to read:

When located within an overland flowpath of the Flood Hazard Overlay, the finished floor levels of the building for the hazard sensitive activity is located above the 1% Flood Annual Exceedance Probability level, plus the height of the floor joists or the base of the concrete floor slab and an allowance for freeboard.

15. This condition applies across several activity statuses, ranging from a condition as a permitted activity under Rules NH-R4.1 and NH-R5.1 to discretionary activity under NH-Rules R4.3 and NH-R8.1.
16. Two questions arise from the recommended rewording of this condition.
17. First, can an explanation be provided how the finished floor level would be determined under this revised condition, ideally by reference to an example or diagram, particularly in relation to a concrete base slab?
18. Second, does the condition referring to an unquantified allowance for freeboard meet the tests for a condition for a permitted activity in terms of certainty and avoiding an unlawful reservation of discretion?

Timetabling

19. The Hearing Panel directs that the Council reply to these questions be circulated by 1pm on Monday 25 September 2023.

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20. If you have any questions or concerns relating to this hearing, please contact our Hearings Co-ordinator at jaskirat.kaur@wcc.govt.nz.



Robert Schofield
For the Wellington City Proposed District Plan Hearings Panel

Dated: 1 September 2023