

Closing Statement

Hearing 27D: Coastal Hazards

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I Introduction

1. My name is Kelly Nicolson. I am the author of the original Section 42A report and subsequent Rebuttal in response to the submissions and evidence on the coastal hazards provisions (H27D). This closing statement is provided as a response to the evidence raised by submitters and questions from the Panel relating to provisions for coastal hazards at the Natural Hazards and Climate Change Hearing held between 10th and 12th May 2021.
2. In this statement I have focused on areas where my recommendations have changed as a result of submitter presentations at the hearing. Where my recommendations have not changed, I rely on the recommendations in my Section 42A report and/or subsequent Rebuttal rather than duplicate the recommendations here.
3. In addition to matters raised by submitters, I have highlighted some minor drafting errors in the recommended provisions that should be amended to improve their functionality.
4. The following submissions were presented at the hearing in respect of the coastal hazard provisions:
 - (a) Mark Mitchell on behalf of Ruth and Shane Walden & Jane Lee-Smith [2054];
 - (b) Alex Staheli and Viki Stokes [2087];
 - (c) Lorraine Webber [2157];
 - (d) Brett Beamsley [2109];
 - (e) Horongarara Community Group [2021];
 - (f) Andrew Wilson [2066];
 - (g) Trish Waugh [2080];
 - (h) Mark Mathers [2187];
 - (i) Waikato Regional Council [2102];
 - (j) Kainga Ora [2094];
 - (k) Rangitahi Limited [2115];
 - (l) Graham & Ingrid Rusbatch [2122];
 - (m) Darcel Rickard on behalf of Te Kopua Trust & Te Kopua 2b3 Incorporation [2175];
 - (n) Sherry Coulson (Peninsula Farms Ltd) [2158];
 - (o) The Raglan Collective Society [2047, 2048, 2049, 2127, 2131, 2132, 2134, 2135, 2170];
 - (p) Chris & Sue Harris [2128];
 - (q) Chris Williams on behalf of Chris, Kathryn, and Williams family [2130].
5. I have provided further discussion and recommendations on the following submissions:
 - (a) Waikato Regional Council [2102] - Controlled activity rules for 'Beach Nourishment' and 'Dune Stabilisation';
 - (b) Andrew Wilson [2066], Trish Waugh [2080] and the Horongarara Community Group [2021] – Request to include detailed site-specific coastal hazard mapping for a group of 5 properties at Te Akau South;
 - (c) Graham & Ingrid Rusbatch [2122] - Existing Use Rights and how Section 10 RMA interacts with the Building Act.
6. I have also provided further discussion on the following questions raised by the Panel at the hearing:

- (a) Rule 15.10.2 D2 providing for the replacement and relocation of an existing building within the same site;
 - (b) The structure of the permitted activity rules for utilities, not including coastal protection structures.
7. A consolidated version of Chapter 15 has been prepared, reflecting recommended changes from all Hearing 27 reports. Copies have been circulated to the Hearings Panel and placed at the same website location as this closing statement.

2 Waikato Regional Council

8. Waikato Regional Council [2102.52] originally requested beach nourishment and dune stabilisation activities to be specifically provided for as permitted activities, including activity-specific conditions, and discretionary activity rules to apply where the conditions are not met.
9. The relief sought was in recognition of these activities, providing soft protection against natural hazards, as referred to in Policies 15.2.1.7 and 15.2.1.9, and that the Proposed District Plan does not currently provide for these activities within the rule framework.
10. I agreed that the District Plan was silent on these activities, and that in the absence of specific rules, the activities would likely rely on the earthworks provisions under each zone chapter where applicable. In most zones, re-contouring of dunes and beach nourishment of any significant scale would be a restricted discretionary activity under earthworks rules. Planting of dunes is not currently a regulated activity under the district plan.
11. I noted that beach nourishment is a controlled activity in the Operative Regional Coastal Plan (Rule 16.6.15) and that any rule for this activity should be assessed as a controlled activity at a minimum. I recommended that the submitter provide further evidence to support a permitted activity status for beach nourishment and dune stabilisation, and in the absence of further evidence, I recommended that the submission be rejected. I also noted that if the Panel were to consider instead that these activities can be provided for as a controlled activity, additional time would be required to draft appropriate activity-specific conditions and matters of control.
12. In their evidence Mr Beban and Ms Gunnell (on behalf of Waikato Regional Council) agreed that the activities should be provided for as a controlled activity, and now seek rules to that end. The submitter provided no evidence supporting the original submission for permitted activity, or any drafting suggestions for a controlled activity rule. The original recommendation to reject the submission therefore still holds.
13. In addition, the Waikato Regional Coastal Plan is currently under review, with a replacement proposed coastal plan expected to be notified in 2022. The rules for beach nourishment are also under review and the approach that will be taken to this activity is uncertain. I have contacted the Waikato Regional Coastal Plan review team highlighting the issue, and they have indicated that they would like to meet with internal staff to discuss the matter but are not able to respond before the completion date for my right of reply.
14. Given this circumstance, it would be better at this time to reject the submission and for the district plan to have no specific rule for beach nourishment or dune stabilisation until further engagement can be carried out with the Waikato Regional Council and the community, including iwi. This would mean that in most zones, beach nourishment and dune stabilisation activities of any significant scale would be a restricted discretionary activity under earthworks rules.

3 Andrew Wilson, Trish Waugh and Horongarara Community Group

15. Andrew Wilson, Trish Waugh and the Horongarara Community Group requested that they be given additional time to carry out a site-specific investigation of coastal erosion risk for 5 properties on the Horongarara Peninsula at Te Akau South. These submitters have sent a letter to the Panel outlining the details of the geological/geotechnical assessment work to be carried out by Engineering Geologist Mr Michael Carter and provided the timeframe for the completion of this work, being 20 August 2021.
16. Mrs Gibberd of 4D Environmental Ltd and Mr Dahm of Economos Ltd have expressed support for the collection of further-site specific data as a means of refining the mapped high-risk erosion area. This investigation can consider stable slopes with better information about underlying geology. Mrs Gibberd and I have assisted this group of submitters in identifying the parameters of the site-specific assessment and are willing to continue to provide assistance to ensure that the outcome of any coastal hazard modelling is appropriate for the district plan.
17. Please note that the local-scale assessment of coastal hazards at Te Akau carried out by Mrs Bronwen Gibberd and Mr Jim Dahm was peer-reviewed by Dr Tom Shand of Tonkin + Taylor. Mr Shand did recommend a slight change in methodology in one area of the coastline. This recommendation may result in a small change to the extent of the High Risk Erosion Area around 2E Ryan Road, Te Akau South. Any reassessment would require some more data to refine and implement the recommended methodology.
18. I would support any update to the district plan maps to redefine the High-Risk Coastal Erosion Area based on site-specific data, if provided for within timeframes specified by the submitters and completed to a standard acceptable for the district plan.
19. If the Panel accepts the proposal from Andrew Wilson, Trish Waugh and the Horongarara Community Group to conduct further site-specific investigations, then I will arrange for Mrs Gibberd and Mr Dahm to collaborate with Mr Carter on behalf of Council to investigate and potentially incorporate the recommendations suggested by Dr Shand. If the Panel declines the Horongarara proposal, then the originally recommended maps should stand.

4 Questions from the Panel

Existing Use Rights

20. The matter of existing use rights was raised by a number of submitters at the hearing.
21. Mr Rusbatch's submission requested a permitted activity for the replacement of an existing building, arguing that if the building was to burn down, the Council should not impose extra conditions on the new building, such as raising the floor level.
22. In a case such as this the owner may be granted existing use rights in accordance with Section 10 RMA to rebuild on the same footprint, as long as the new building is of the same or similar scale, intensity and character. Existing use rights may allow a property owner to rebuild their home within 12 months without the need to comply with the floor level requirements in the district plan (i.e. a stated freeboard above the 1% AEP flood level). However, it is important to note that even if the property owner has existing use rights to rebuild at a lower floor level,

they will still need a building consent and will need to comply with the Building Code minimum floor level requirements. This requirement includes providing protection from a one-in-50-year flood event.

23. The minimum floor level requirements do not apply when repairing a building, unless the repair work requires a resource and/or building consent and triggers a reassessment of floor level compliance as part of the consent process.
24. Whether the insurance provider covers any additional costs for the reconstruction of the replacement building to comply with the building code will depend on the specifics of the individual insurance agreement held between the land owner and their insurance provider.

Rule structure

25. During the hearing, Dr Mitchell (Panel Chair) queried the structure of Rules 15.7A.1 P3, 15.9.1 P2 and 15.10.1 P2 with respect to the exclusion of coastal protection structures being an activity-specific condition. I have redrafted these rules so that the exclusion of these structures is stated as part of the description of the activity, rather than being listed as an activity-specific condition. I recommend the amendments to the rules as shown below.

15.7A Coastal Sensitivity Areas

(Recommendation for amalgamated Rules 15.7 and 15.8)

15.7A.1 Permitted Activities

Activity		Activity-specific conditions
P3	Construction, upgrading, minor upgrading, replacement, repair or maintenance of utilities <u>excluding coastal protection structures.</u>	<u>Nil</u> <u>Excludes coastal protection structures.</u>

15.9 High Risk Coastal Hazard (Erosion) Area

15.9.1 Permitted Activities

Activity		Activity-specific conditions
P2	<ol style="list-style-type: none"> (1) Repair, maintenance or minor upgrading of existing utilities <u>excluding coastal protection structures.</u> (2) <u>New Construction, operation, replacement or upgrading of telecommunications and electricity lines, poles, cabinets and masts/ poles supporting antennas.</u> 	<u>(a) The works do not involve coastal protection structures.</u>

	(3) <u>New electricity lines, poles, cabinets and masts/ poles supporting antennas.</u>	
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15.10: High Risk Coastal ~~Hazard (Inundation)~~ Area

15.10.1 Permitted Activities

Activity		Activity-specific conditions
P2	(1) Repair, maintenance or minor upgrading of existing utilities <u>excluding coastal protection structures.</u> (2) <u>New Construction, operation, replacement or upgrading of telecommunications and electricity lines, poles, cabinets and masts/ poles supporting antennas.</u> (3) <u>New electricity lines, poles, cabinets and masts/ poles supporting antennas.</u>	(a) The works do not involve coastal protection structures.

26. Dr Mitchell also questioned the intent of Rule 15.10.2 D2. This rule was to allow for an existing building or replacement building to be relocated on the same site but in a different location to the existing building. In this case, existing use rights would not apply as the location is different. The intention was for a building to be placed in the High Risk Coastal Inundation Area but in a lower risk location to the current situation as a Discretionary Activity rather than Non-Complying. It allowed for a degree of managed retreat.
27. However, I have recommended that the non-complying activity status for the construction of a new building and additions to an existing building within the High-Risk Coastal Inundation Area be reduced to a discretionary activity (Rule 15.10.2 D7). If the Panel are of a mind to accept my recommendation, then as a consequence, Rule 15.10.2 D2 will no longer be required. This amendment would also result in other consequential amendments to the discretionary rule framework, as shown below.

15.10.2 Discretionary Activities

- (a) The activities listed below are discretionary activities in the High Risk Coastal ~~Hazard (Inundation)~~ Area.

D1	Earthworks not provided for in Rule 15.10.1 P4.
D2	(1) Replacement and relocation of an existing building within the same site where: (a) There is no increase in the ground floor area of the building.

D32	Construction of a new coastal protection structure, <u>or any extension to, or upgrade or replacement of an existing coastal protection structure.</u>
D43	Construction of new utilities not provided for in Rule 15.10.1 P2.
D54	Upgrading of existing utilities not provided for in Rule 15.10.1 P2.
D65	(1) Subdivision that creates one or more additional vacant lot(s) where: (a) The additional vacant lot(s) are located entirely outside the High Risk Coastal Hazard (Inundation) Area; or¹ (a) The additional lot(s) are partially within the High Risk Coastal Hazard (Inundation) Area and each additional lot(s) contains a net site area capable of containing a complying building platform entirely outside the High Risk Coastal Hazard (Inundation) Area. (2) Rule 15.10.2 D6(1) does not apply to subdivision for a utility allotment, access allotment or subdivision to create a reserve allotment.
D76 ²	<u>Construction of a new building or additions to an existing building, not provided for in Rule 15.10.1 P1 – P2 or Rule 15.10.2 D2 - D54.</u>
D87	<u>A hazardous facility</u>

5 Other matters

28. During the update of the consolidated version of Chapter 15, it has come to my attention that there is a duplication in the discretionary matters listed in Rule 15.7A.2 RDI. The duplication occurred when consolidating the rules within proposed Chapters 15.7 and 15.8. 15.7A.2 RDI (i) and (j) cover the same matter. I therefore recommend the deletion of matter 15.7A.2 RDI (j) as shown in the table below.

15.7A.2 Restricted Discretionary Activities

- (a) The activities listed below are restricted discretionary activities in the Coastal Sensitivity Area (Erosion), Coastal Sensitivity Area (Open Coast), and the Coastal Sensitivity Area (Inundation).
- (b) Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in the following table.

Activity		Matters of Discretion
RDI	Construction of a new building or additions to an existing building not provided for in Rule 15.7A.1 P1-P3 and not listed in Rule 15.7A.3 D1.	Discretion is restricted to: (a) The ability to manage coastal hazard risk through appropriate building materials, structural or design work, engineering solutions, and other appropriate mitigation measures, including the ability to relocate the building; (b) <u>the setting of minimum floor levels where appropriate;</u>

¹ Report 27D Rebuttal Evidence recommendation on Rangitahi Limited [2115.6] – pg 17, para 58 – 62.

² Report 27D recommendation on Brent Fowler [2005.1], Hayden Vink [2168.2] and Jason Vink [2169.2] – pg44, para 175 - 177.

		<ul style="list-style-type: none"> (c) The application of mitigation through natural features and buffers where appropriate; (d) The ability to impose time limits or triggers to determine when the building and services to be removed or relocated; (e) The degree to which coastal hazard risk, including the effects of climate change over a period to 2120, has been assessed in a site specific coastal hazard <u>risk assessment</u>; (f) Suitability of the site for the proposed use, including the provision for servicing such as access, wastewater, stormwater, and water supply; (g) Adverse effects to people and property and overall vulnerability from the establishment of the new building or additions to an existing building (h) <u>Any mitigation measures to reduce risk</u>; (i) Whether there is any suitable alternative location for the activity to locate within the site.; (j) <u>In coastal inundation areas:</u> <ul style="list-style-type: none"> (i) <u>Whether there is any suitable alternative location for the activity to locate within the site.</u>
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