

Upper Hutt City Council

Recommendations on submissions to Proposed Plan Change 47 to the Upper Hutt District Plan

From:	Ms G M Sweetman (Chair, on behalf of the Independent Hearings Panel)
Hearing date:	Monday 22 April 2024
Hearing closed:	Monday 27 May 2024
Recommendation date:	Wednesday 25 July 2024

1) Summary of recommendations

- 1.1 Upper Hutt City Council (the Council) appointed Gina Sweetman¹ (Chair), Rob Bell and Sarah Stevenson to act under delegated authority pursuant to sections 34 & 34A of the Resource Management Act 1991 (RMA) to hear and make recommendations on submissions on proposed Plan Change 47 – Natural Hazards (PC47) to the Operative Upper Hutt City District Plan (the District Plan).
- 1.2 The Panel recommends that:
 - 1.2.1 Pursuant to section 32(2)(a) of the RMA, Council adopts the evaluation of PC47, including the conclusion that PC47 is the most appropriate means of achieving the objectives of the District Plan, and in doing so, achieving the overall purpose of the RMA.
 - 1.2.2 Council accepts PC47 with modifications.
 - 1.2.3 Council accepts, accepts in part, rejects or rejects in part the submissions and further submissions to PC47 for the reasons set out in this report and as set out in Appendices 1 and 2.

2) Summary of proposed Plan Change 47 (PC47)

- 2.1 PC47 is a review and proposed update of the Natural Hazards Chapter of the District Plan that became operative in 2004 and has been amended through subsequent plan changes. The purpose of PC47 is firstly to review the extent of the Wellington Fault Overlay (from updated

¹ Commissioner Sweetman is an experienced independent commissioner and accredited Chair. She has a planning qualification and is a Fellow of the New Zealand Planning Institute. She is also a Government-appointed Freshwater Commissioner and Development Contributions Commissioner.

Commissioner Stevenson is an experienced planner and accredited independent commissioner. She has a planning qualification and is a full member of the New Zealand Planning Institute.

Commissioner Bell is an experienced environmental engineer and hazard/risk expert. He has a PhD in Civil Engineering, is a Fellow of Engineering NZ, Life Member of the NZ Coastal Society and an accredited independent commissioner.

mapping) and associated provisions to manage subdivision, use and development. Secondly, it introduces new overlays and provisions for managing potential hazards in high slope hazard areas and the Mangaroa Peatlands.

- 2.2 Specifically, as notified, PC47 proposes to:
- Introduce new definitions for Hazard Sensitive Activities, Potentially Hazard Sensitive Activities, and Less Hazard Sensitive Activities.
 - Update natural hazard objectives, policies, rules and the mapped overlay that relate to managing natural hazards associated with the Wellington Fault.
 - Introduce new objectives, policies, rules, and mapped overlays pertaining to areas within the proposed High Slope Hazard Overlay and the Mangaroa Peat Overlay to manage potential natural hazards. The current District Plan provisions do not address the potential natural hazards that may arise in these mapped areas.
 - Update the earthworks and subdivision provisions in relation to managing natural hazards in the above three mapped overlays.

3) Background

- 3.1 The section 32 report that was notified concurrently with PC47 provides the background to PC47 and includes an assessment of the relevant statutory and policy context. The section 42A report (“council evidence report”) prepared by Mr James Beban (the Council’s Planning and Reporting Officer) also provides the background to why PC47 was proposed in the section entitled ‘Overview of the Plan Change’. The council evidence report was accompanied by a statement of evidence of Ms Martin and Mr Sullivan from Tetra Tech Coffey (19 March 2024).
- 3.2 We (the Panel) do not repeat the content of these documents, other than when we address matters raised by submitters at the Hearing. Also, we highlight in section 4 below the statutory considerations that are relevant to issues raised in the hearing related to managing the three types of natural hazards proposed in PC47 of the District Plan.
- 3.3 In essence, to give effect to the RMA, a territorial authority shall recognise and provide for ‘*the management of significant risks from natural hazards*’ as a matter of national importance [s6(h). The authority must have, as one of its functions, the control of any actual or potential effects of the use, development, or protection of land, including – providing for the avoidance or mitigation of natural hazards [s31(1)(b)(i)]. More detail on the relevant statutory provisions is provided below.
- 3.4 The District Plan currently has natural hazard provisions relating to earthquake fault ruptures (Wellington Fault), riverine flooding (within the Hutt River, Mangaroa River and Pinehaven Stream catchments), and land slope instability (when an earthworks resource consent is required for an activity as a matter of discretion). Since these provisions became operative, the Council has received more natural hazard information and research on the spatial extent of the Wellington Fault, poor ground conditions associated with the Mangaroa Peatlands, and mapped areas of land with slopes greater than 26° above the horizontal.
- 3.5 Upper Hutt is also subject to other natural hazards that have not been addressed by PC47 including pluvial (stormwater) flooding, severe winds, wildfire, drought, and the more widespread ground shaking from earthquakes (as distinct from localised damage from fault ruptures). The Council proposes to address these either through a future plan change or primarily manage them through other statutory instruments or processes such as the Civil

Defence and Emergency Management Act 2002, the Building Act 2004, and the Local Government Act 1974. Management of these additional natural hazards are beyond the scope of our decision.

- 3.6 Technical expertise and information used by UHCC to develop the hazard-related overlays for PC47 and provide the evidence base for the section 32 report, includes the following reports:²

Wellington Fault Overlay:

- Upper Hutt City Fault Trace – GNS Science Report (December 2005)
- Revision of fault avoidance zones for the Wellington Fault in Upper Hutt City – GNS Science Letter Report (14 March 2022)

Slope Hazard Overlay (notified as the High Slope Hazard Overlay but subsequently renamed):

- UHCC Residential and Rural Chapter Review – Tetra Tech Coffey Report (6 March 2020)
- High slope hazard update – Tetra Tech Letter Report (26 August 2022)
- Slope hazard mapping update and robustness of the mapping following submissions in 2023 – Statement of Evidence of Sarah Alicia Martin / David Allen Sullivan (19 March 2024)

Mangaroa Peat Overlay:

- UHCC Residential and Rural Chapter Review – Tetra Tech Coffey Report (6 March 2020)
- Mangaroa Peatlands Extent – Mapping Update. Tetra Tech Coffey Letter Report (25 February 2022)
- Mangaroa Peatlands Extent – Mapping Update (Revision B). Tetra Tech Coffey Letter Report (26 August 2022)
- Mapping of peat and response to issues raised by submitters – Statement of Evidence of Sarah Alicia Martin / David Allen Sullivan (19 March 2024)

- 3.7 Our recommendation on PC47 follows the same framework of the council evidence report. However, we primarily report by exception or in addressing issues raised at the hearing, providing reasons where it differs from the recommendations on changes to PC47 provided in the council evidence report.

4) Statutory Provisions

- 4.1 Part 2 of the RMA, the purpose and principles, is the overarching part of the RMA. Any decision on a plan, or a plan change, is subject to Part 2. Of key relevance is the *'management of significant risks from natural hazards'*, which is a matter of national importance that all persons exercising functions and powers are obligated to recognise and provide for [s6(h)].
- 4.2 Section 74 of the RMA sets out the matters to be considered by a territorial authority in preparing or changing its district plan. These matters include doing so in accordance with its functions under section 31, the provisions of Part 2, and its duty under section 32. Further, consideration is also required of other documents, including operative and proposed regional planning documents, management plans and strategies prepared under other Acts and iwi planning documents, which we address further below.
- 4.3 Section 75 of the RMA requires that a district plan must give effect to any national policy statement, any New Zealand Coastal Policy Statement, any national planning standard, any

² Available on the PC47 Hearings web site: <https://www.upperhuttcity.com/Services/District-Plan/PC47>

regional policy statement and must not be inconsistent with a regional plan. There is currently an operative Regional Policy Statement for the Wellington Region (the RPS) – to which a district plan has to give effect. There is also a proposed change – Proposed Change 1 (PC1) - to that Regional Policy Statement, notified on 19 August 2022, after PC47 was notified, which must be had regard to. PC1 was initiated to update the RPS, incorporating new national direction and addressing resource management issues in the Greater Wellington region particularly related to urban development, freshwater management, indigenous biodiversity, natural hazards and climate change. Public submissions on PC1 closed on 14 October 2022 and hearings are currently underway. In his council evidence report, Mr Beban states that PC1 has been referenced but reflecting its ongoing progress through the statutory process has not been given significant weight during the process of preparing or considering PC47.

- 4.4 There were no national policy statements or national environmental standards identified as being relevant to our consideration. We were advised of a proposed National Policy Statement on Natural Hazards Decision-making (released for comment on 18 September 2023). However, as this has not been gazetted, it has no legal weighting and we do not consider it further.
- 4.5 Section 31 of the RMA addresses the functions of territorial authorities under the RMA and includes:
- (a) *the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;*
 - (b) *the control of any actual or potential effects of the use, development, or protection of land,...*
- 4.6 Section 32 of the RMA provides for the consideration of alternatives, benefits, and costs and requires that an evaluation must be carried out and that the evaluation must:
- “(a) examine the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) examine whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives by –*
 - (i) identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) summarising the reasons for deciding on the provisions; and*
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*
- An assessment under s32(1)(b)(ii) must:
- (a) Identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for –*
 - (i) Economic growth that are anticipated to be provided or reduced; and*
 - (ii) Employment that are anticipated to be provided or reduced; and*
 - (b) If practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matters of the provisions.”*
- 4.7 If the proposal will amend an existing plan provision, including zoning, the examination under s32(1)(b) must relate to –

- (a) *“The provisions and objectives of the amending proposal; and*
- (b) *The objectives of the existing proposal to the extent that those objectives –*
 - (i) *Are relevant to the objectives of the amending proposal; and*
 - (ii) *Would remain if the amending proposal were to take effect.”*

4.8 Section 32AA of the RMA requires councils to undertake further evaluations of proposed plan changes for any changes proposed since the s32A evaluation report was completed, to ensure the decision-making process remains transparent and the implications of any changes are well understood.

4.9 Specifically, s32AA(1) states:

(1) A further evaluation required under this Act -

- (a) *is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
- (b) *must be undertaken in accordance with [section 32\(1\) to \(4\)](#); and*
- (c) *must, despite paragraph (b) and [section 32\(1\)\(c\)](#), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and*
- (d) *must—*
 - (i) *be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or*
 - (ii) *be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.*

4.10 Section 32AA(2) clarifies that:

- (2) *To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).*

4.11 Section 106(1)- of the RMA is also relevant:

‘A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that – (a) there is a significant risk from natural hazards’.

If granted, conditions under s106(1) must be *‘for the purposes of avoiding, remedying, or mitigating the effects referred to in subsection (1)’*, which includes risk from natural hazards.

4.12 Clause 10 of Schedule 1 of the RMA states a local authority must give a decision on the provisions and matters raised in the submissions and must include the reasons for accepting or rejecting any submissions. In doing so a local authority may address the submissions by grouping them according to the provisions of the plan change to which they relate or the matters to which they relate and, may include matters relating to any consequential alterations necessary to the plan change arising from the submissions. A local authority is not required to give a decision that addresses each submission individually.

5) Plan Change Process

- 5.1 PC47 was publicly notified by the Council on 5 October 2022 with submissions closing on 4 November 2022. The summary of submissions was notified on 8 February 2023 and further submissions closed on 22 February 2023.
- 5.2 The vast majority of submitters and further submitters opposed PC47 with the main concerns being the accuracy of the mapped extents of the High Slope Hazard Overlay (later renamed 'Slope Hazard Overlay'), the hazard relevance, accuracy and extent of the Mangaroa Peat Overlay, the need to manage subdivision in the area covered by the Mangaroa Peat Overlay and anomalies in mapping a branch of the Wellington Fault (Turksma Lane area).

6) Appearances at the hearing

- 6.1 The hearing was held on Monday 22 April 2024, with submitters in order of appearance as follows:

Submitter	Submission Number
Paul Harris	S50
Mary Beth Taylor	S102 and FS5
Noeline Berkett (appearing also for Jeff Berkett)	S68
Bob Anker	S59

- 6.2 The following Council officers were in attendance:

Name	Role
Mr James Beban	Planner and reporting officer (consultant), Urban Edge Planning
Mr David Sullivan	Geotechnical expert (consultant), Tetra Tech Coffey
Ms Suzanne Rushmere	Acting Planning Policy Manager
Mr Nick Tait	Policy Planner
Mr Connor Spence	Geospatial Team Leader
Ms Liz Carter (observing)	Geospatial team member
Mr Kelly Gee	Karakia timatanga / karakia whakamutunga

7) Procedural Matters

- 7.1 The Panel issued Minute 1 dated 28 February 2024 introducing the Panel and providing details of the hearing, and directions for pre-circulation of the reporting planner's report and the submitters' expert evidence, if any. In Minute 1 the Panel also requested that submitters contact the hearing administrator should they wish commissioners to visit a particular site or locality.
- 7.2 The Council's council evidence report was circulated to all parties to the hearing on 21 March 2024. The council evidence report was structured largely on the key topics that arise in

submissions and further submissions, and grouped those submissions together into the following topics:

- Topic 1 – General – Objectives, Policies, Anticipated Environmental Results, Appendices and Definitions
- Topic 2 – Wellington Fault Overlay Provisions
- Topic 3 – Wellington Fault Overlay Spatial Extent
- Topic 4 – High Slope Hazard Overlay General Matters
- Topic 5 – High Slope Hazard Overlay Provisions
- Topic 6 – High Slope Hazard Overlay – Spatial Extent
- Topic 7 – Mangaroa Peat Overlay General Matters
- Topic 8 – Mangaroa Peat Overlay Provisions
- Topic 9 – Mangaroa Peat Overlay – Spatial Extent

- 7.3 The council evidence report contains a summary and analysis of and recommendations on the submission points. It is unnecessary to repeat the analysis and recommendations, but the Panel found it useful in considering the issues raised in submissions and in making our recommendations.
- 7.4 We received no expert evidence from submitters and no legal submissions prior to the hearing. We did receive from submitters:
- Speaking notes from Mr Bob Anker
 - A presentation and speaking notes from Ms Mary Beth Taylor
 - A tabled letter from the Ministry of Education – Te Tāhuhu o Te Mātauranga (dated 17 April 2024)
 - A tabled letter from Greater Wellington Regional Council (dated 12 April 2024)
- 7.5 The hearing commenced with a karakia and general introductions. The Panel first heard an opening statement from Mr Beban. Mr Sullivan attended the hearing via video link to answer questions from the Panel on the Slope Hazard and Mangaroa Peat Overlays.
- 7.6 The Panel then adjourned the hearing and conducted a site visit. On the request of Mr Bob Anker, the Panel visited his property at 76 Katherine Mansfield Drive (Whitemans Valley). The Panel also viewed other properties from the roadside in the Mangaroa Peatlands area and Turksma Lane but did not enter onto any of those properties.
- 7.7 On reconvening, the Panel heard from submitters Mr Harris, Ms Taylor, Mrs Berkett and Mr Anker. Ms Taylor tabled a document, “Mansfield, Developers Crest Properties Limited”, published in 1976, during her presentation to the Panel. We then heard a verbal reply from Mr Beban and received clarification of geotechnical matters from Mr Sullivan.
- 7.8 During his presentation Mr Anker raised several points regarding the Wellington Fault and Slope Hazard Overlays, matters that were not raised in his original submission. We asked Mr Beban whether there was scope to consider the additional matters Mr Anker raised at the hearing. Mr Beban confirmed in his Right of Reply Report (‘Reply Report’) that those matters were out of scope of Mr Anker’s original submission which related entirely to the Mangaroa Peat Overlay. Accordingly, we have not further considered Mr Anker’s comments related to the Wellington Fault and Slope Hazard Overlays.
- 7.8 We adjourned the hearing on the same day at the end of the Officer’s verbal reply, to enable the Panel to consider whether we required any further information before closing the hearing and beginning our deliberations. We issued Minute 2 on 24 April 2024 directing the questions

to be answered through the reporting planner's reply report. We received Mr Beban's Reply Report on 16 May 2024.

- 7.9 After reviewing the Reply Report, the Panel issued Minute 3 on 27 May 2024, closing the hearing.

8) Evaluation of Submissions on the Matters in Contention

- 8.1 In undertaking our evaluation of the matters in contention, the Panel considered the submissions, the council evidence report, the s32 report, evidence presented at the hearing by Mr Beban and Mr Sullivan, the presentations and material provided by submitters, other relevant planning documents, and the statutory framework of the RMA.

- 8.2 The matters in contention are as follows.

- The accuracy and name of the High Slope Hazard Overlay maps.
- Whether peat is a natural hazard and the accuracy of the Mangaroa Peat Overlay maps.
- The need to map and manage subdivision on the Mangaroa Peat Overlay.
- Technical issues related to the Wellington Fault Overlay, including wording of provisions and mapping uncertainties and the inclusion of the Turksma Lane Strand.
- Disagreements on how to address hazards associated with the Mangaroa Peat Overlay, specifically regarding reliance on the Building Act 2004 versus the RMA for subdivision processes.
- The impact of PC47 – what the provisions do and do not cover, particularly their impact on productive rural activities.

- 8.3 We address each of these matters in turn.

The accuracy of the High Slope Hazard Overlay maps

Submission Points

- 8.4 The accuracy of High Slope Hazard Overlay maps was raised by several submitters, including by Mr Harris at the hearing. The submitters considered the hazard overlay mapping to be inaccurate. At the hearing Mr Harris also recommended that the Slope Hazard Overlay be removed and replaced with a rule that is triggered where slopes exceed 26 degrees. On the matter of activities captured, during the hearing Mr Harris' expressed his concerns regarding the impact of PC47 on farming activities (roading, tracks, culverts and drains).

Evidence

- 8.5 The Tetra Tech Coffey Report which informed PC47 sets out that for the High Slope Hazard Overlay, the main technical criterion used was land slope, with all natural soils and rock within Upper Hutt District regarded as generally stable up to a 26° slope angle. Mapped slopes over that threshold informed the spatial extent of the overlay, which then signals the requirement for a specific land stability assessment from a geo-professional prior to development.³
- 8.6 At paragraph 174 of the council evidence report, Mr Beban noted the High Slope Hazard Overlay was remapped in response to submissions, and the remapping process refined the

³ Page 6, paragraph 2.1.2, Tetra Tech Coffey report to UHCC (2020)

extent of the High Slope Hazard Overlay through more accurate and up to date LiDAR data and site visits. This reduced the extent of the overlay on many properties (including those of submitters).

- 8.7 The Panel sought Mr Beban’s opinion on Mr Harris’ recommendation that a rule (with a 26° slope threshold) replace the mapping overlay. In his Reply Report Mr Beban set out his concerns with the approach, including the difficulty for a lay person to determine slope angle on a site and then determine when a resource consent is required, inconsistency of the proposed approach with the approaches the District Plan takes to other hazards (specifically flooding and fault hazards) which are managed through mapped overlays, and the outcome of Mr Harris’ proposed approach that would likely capture more building platforms than was originally proposed. Mr Beban also explained that the activities Mr Harris was concerned would be captured by the Overlay would not be covered by it.
- 8.8 In response to Ms King (S55), Mr Beban proposed that the name of the overlay is changed to Slope Hazard Overlay based on the premise that none of the other hazard overlays in the District Plan or PC47 have a qualifying component (high, medium or low) to the meaning. The change would keep the nomenclature consistent.⁴

Evaluation

- 8.9 We find that from an RMA perspective the matters raised in submissions are within scope of PC47 and are therefore relevant to our deliberations and recommendations.
- 8.10 The matter raised in S55 by Ms King related to renaming the land slope overlay to “Slope Hazard Overlay” sought an outcome consistent with all other hazard overlays in the District Plan that do not include a qualifying term (e.g. high/medium/low). We accept that consistency is desirable from the perspective of plan effectiveness, simplicity and efficiency. We agree with Mr Beban’s recommendation that the names of the land slope overlay be revised to “Slope Hazard Overlay”, in recommending accepting Ms King’s submission S55 in part. Accordingly, the Panel recommends that Council renames the overlay.
- 8.11 The accuracy of High Slope Hazard Maps was raised in multiple submissions, as set out in Mr Beban’s council evidence report. The submissions were addressed in the evidence of Miss Martin and Mr Sullivan and were satisfied in part or full by the remapping process undertaken using more accurate and up to date LiDAR, as well as site visits. We accept the updated overlay using latest LiDAR, reducing the spatial extent of the overlay for several properties.
- 8.12 We do not support Mr Harris’s requested approach for a new rule for the reasons set out in Mr Beban’s written Reply Report which include difficulty for lay persons in determining slope angle on a site, inconsistency with approaches to managing other hazards in the District Plan, and the capture of all building platforms as opposed to only those for potentially hazard sensitive activities, and hazard sensitive activities.
- 8.13 The Panel agrees with Mr Beban’s recommendation against replacing the mapped Slope Hazard Overlay with a rule relating to slopes over 26 degrees. Accordingly, we recommend rejecting Mr Harris’s submission point S50.1.

Recommendations

- 8.14 The Panel recommends that:

⁴ Paragraph 182, Section 42A report

1. Accepts Ms King’s submission point S55.2 in part, renaming the “Slope Hazard Overlay”.
2. Rejects Mr Harris’ submission point S50.1.

Whether peat is a natural hazard and the accuracy of the Mangaroa Peat Overlay map

Submission Points

- 8.15 Several submissions opposed the Mangaroa Peat Overlay on the basis that peat is just another soil type and its link to a natural hazard are not supported by scientific and technical evidence. Mr Anker also raised this issue at the hearing. In contrast, Ms Taylor in her presentation set out her understanding of the instability of the land and the associated risk it presents. She provided a timeline and supporting documentation to support her position.
- 8.16 Several submitters⁵ also questioned the accuracy of the Mangaroa Peat Overlay, especially in the Katherine Mansfield Drive area. Mr Anker in his submission requested that prior to incorporating the overlay in PC47, the area should be comprehensively surveyed to establish the extent, depth, and underlying ground conditions. The submitters’ position was that subdivision planning provisions should not be linked to the Mangaroa Peat Overlay.

Evidence

- 8.17 At the hearing, Mr Anker indicated the depth of overburden soils and thickness of peat varies considerably at the edges of the Mangaroa Peat Overlay. He stated that the outside edges of the Overlay are not peat but rather an overburden of Golans (sic) clay soils (commonly 800 mm depth), capping layers of clay and rotten rock, with some of the deposits of clay being anaerobic.
- 8.18 Ms Martin and Mr Sullivan in their statement of evidence state that the peat in the Mangaroa area is a loose accumulation of organic matter in a former swamp. Mr Anker stated that this swamp was drained in the 1800’s.
- 8.19 Tetra Tech Coffey used several sources of information and soil/geology mapping to determine and update the Mangaroa Peat Overlay. Its spatial extent was predominantly informed by the area mapped as peat in the *Geology of Wellington 1:50 000 Map*, complemented by a review of borehole data available on the New Zealand Geotechnical Database, as well as previous studies on the Mangaroa Peatlands produced by GNS Science.⁶
- 8.20 Several submitters supported an alternative soil map “Soils of Mangaroa-Whitemans Valley, Upper Hutt, New Zealand” to represent the extent of the Mangaroa Peat Overlay. This alternative map was assessed by Ms Martin and Mr Sullivan in their evidence and for the reasons in their paragraph 2.18, they outlined why it is not appropriate to use this alternative soil map as the mapped extent of the Mangaroa Peat Overlay.⁷
- 8.21 Following initial submissions and further walk-over assessments to conduct geological and geomorphological mapping and a review of available data including any available geotechnical reports and soil maps⁸, Tetra Tech Coffey modified the south-eastern boundaries of the

⁵ Paragraphs 303–306, s42A report

⁶ Paragraph 2.6, statement of evidence by Ms Martin and Mr Sullivan (March 2024)

⁷ Paragraph 315, s42A report

⁸ Letter reports, Tetra Tech Coffey (February and August, 2022) and paragraphs 2.7–2.10, statement of evidence by Ms Martin and Mr Sullivan (March 2024)

mapped overlay. Tetra Tech Coffey only adjusted the peatland overlay boundary where there was clear evidence that areas currently mapped as peat were likely not peat.

8.22 Ms Martin and Mr Sullivan state that peat is considered a geotechnical hazard because these ground conditions are soft and organic. It is well documented that peatland settles over time which is expected to result in ground settlement. Further, they commented that during an earthquake, consolidation of peat soils can result in large settlements. Through questioning at the hearing, Mr Sullivan stated that basic near-surface soil testing could miss the peat below, so there is a need to undertake geotechnical assessments to assess the risk from subsidence. We noted Ms Taylor's statement that she believes the Tetra Tech Coffey report to be accurate, based on her experience of living in the area for almost 40 years.

8.23 Mr Beban in his council evidence report⁹ stated his view that the potential hazard presented by the soft wet peat soils within the Mangaroo area remain sufficient that it is appropriate to have a planning response at the time of subdivision to ensure that any future lots have a sufficient building platform integrity to mitigate this hazard. He also outlined the considerable effort undertaken to refine the extent of the Mangaroo Peat Overlay as much as possible. Further on-site geotechnical investigations would be cost prohibitive while uncertainties on the peat extent, depth and condition would remain across the peatlands area.¹⁰

8.24 We were advised that the Mangaroo Peat Overlay only relates to subdivision activities and primarily requires a geotechnical assessment of the risk from poor ground conditions and potential subsidence as part of a subdivision application. Mr Beban concluded that the regulatory control associated with this overlay is relatively limited, and for a number of properties will have no significant impact as they are either too small to be subdivided or the owners may never opt to subdivide.¹¹

Evaluation

8.25 We acknowledge the submitters' concerns regarding the accuracy of the Mangaroo Peat Overlay. However, we accept that the Council has undertaken a reasonable effort and additional walk-over assessments to incorporate the best available information and expertise that befits the purpose of incorporating an overlay in a district plan. We received no expert evidence to the contrary. We accept Mr Beban's evaluation outlined above, as generally for spatial hazard overlays in district plans, it is not feasible or cost effective at wider scales to resolve the local complexities and variability of hazard-relevant characteristics within such overlays.

8.26 In this case, the purpose of the overlay is to trigger a few additional planning provisions for subdivision applications (NH-P5 and NH-R3/NH-R4), primarily to require a geotechnical assessment, and as such takes a precautionary approach to managing subsidence as a natural hazard in the Mangaroo peatlands.

8.27 We are satisfied these provisions in relation to subdivision within the Mangaroo Peat Overlay are sufficient to give effect to section 6(h) of the RMA and to give effect to the RPS by managing significant risks from the potential for subsidence in the Mangaroo peatlands area.

8.28 We accept Mr Beban's advice in the council evidence report that the submission points on:
i) the accuracy of the Mangaroo Peat Overlay; and

⁹ Paragraph 262, s42A report

¹⁰ Paragraphs 308–313, s42A report

¹¹ Paragraph 314, s42A report

- ii) that peat is not a hazard, be rejected and that the approach of using an overlay is fit for the purpose of managing potential subsidence hazards before subdivision approval.

Recommendation

- 8.29 The Panel recommends that Mr Anker’s submission points regarding the accuracy of the Mangaroa Peat Overlay and that peat is not a hazard be rejected.

Technical issues related to the Wellington Fault Overlay, including wording of provisions and mapping uncertainties

Submission Points

- 8.30 Ms Karen Pugh (S34) in her submission asserted that the classification of her property in Turksma Lane as ‘uncertain constrained’ within the Wellington Fault Overlay is not correct and based on the new report, the fault area has been mapped in error and wished for it to be removed from the final decision/maps.
- 8.31 Mr Grant Boyd (S46) in his submission considered that there is no evidence or justification requiring changes to the Wellington Fault Overlay relating to properties in Emerald Hill Drive and requested recognition in the plan provisions for the right to rebuild existing single-storey dwellings.

Evidence

- 8.32 Mapped areas, covering the spatial extent of the Wellington Fault trace, have been revised to update the Wellington Fault Overlay within PC47.¹² The purpose this overlay is to identify hazard prone areas in relation to potential ground deformation from earthquake ruptures and differential land movement (excluding the much wider effects of ground shaking and associated liquefaction).
- 8.33 The 2022 revision of the Wellington Fault trace by GNS Science used 2013 LiDAR topography data at 1 metre resolution to update the 2005 GNS Science Report (see paragraph 3.6) as the basis for a revised methodology to determine the buffer extents for Fault Avoidance Zones.¹³ This district-wide analysis by GNS Science was complemented with on-site assessments and field work specifically in the Turksma Lane area.
- 8.34 The main changes to the Wellington Fault Overlay arising from the 2022 GNS report were:
 - i) the removal of the fault traces in the Kiwi Ranch Road area (Figure 2.1A of report);
 - ii) the eastern part of the main Wellington Fault trace near the South Wairarapa District boundary was found to be up the headwaters of Farm Creek (not Phillips Creek); and
 - iii) the western end of the Turksma Lane Strand has been shifted 200 m north.¹⁴
- 8.35 With the exception of these changes, the revised Wellington Fault traces and associated fault avoidance zones (buffers) derived from the 2022 analysis are within the bounds of the avoidance zones in the previous 2005 report, but in most situations the revised avoidance zones or buffers around the fault trace are narrower than previously identified.¹⁵

¹² GNS Science Letter Report CR 2022/10 LR, dated 14 March 2022

¹³ Section 2.2 of the 2022 GNS Science Letter Report

¹⁴ Paragraphs 143–145, Section 42A Report (20 March 2024)

¹⁵ Section 4, GNS Science Letter Report CR 2022/10 LR, dated 14 March 2022

- 8.36 While the western end of the Turksma Lane Strand of the Wellington Fault has been shifted 200m north, there remains some uncertainty whether it was a fluvial feature or a fault feature.¹⁶
- 8.37 As stated in the council evidence report, due to uncertainties in the Turksma Lane Strand of the Wellington Fault Overlay, Council decided prior to notifying PC47 to not include the original fault strand identified in 2005 in the overlay as part of the Wellington Fault system. However, we were advised that due to an administrative error it remained in the Wellington Fault Overlay within the notified PC47. As we understand it, the sequence of events was:
- The fault was shown in original location on hazard maps based on 2005 GNS report.
 - New evidence in 2022 report shifted this fault 200m further north.
 - Council made the decision to not include original location on maps in PC47 as notified, however, this was notified in PC47 error.
 - The new location 200m north was also not included as uncertain if it was a fluvial or fault feature.
- 8.38 Mr Beban in the council evidence report and his opening statement to the hearing recommends the Turksma Lane strand of the fault is removed from the Wellington Fault Overlay.¹⁷
- 8.39 In his Reply Report, Mr Beban stated ‘It is important to recognised(sic) that the mapped extent of the fault hazard in Turksma Lane is incorrect and was based on an older report. A new 2022 report from GNS Science identified the fault position to be further north in Turksma Lane from what was shown in the maps in Plan Change 47.’ Further, he stated that the Uncertain Constrained Area in the Turksma Lane area, as shown in the Wellington Fault Overlay of the notified Plan Change 47, would not be available in any of the Council databases as it is incorrect and there is no fault trace present in this location. The council evidence report also stated there remained some uncertainty on whether the new area of the Turksma Lane strand was a fluvial or a fault feature.¹⁸ We note that Mr Beban sought legal advice in respect to the Turksma Lane mapping error, and was advised that Clause 10(2)(b) of Schedule 1 of the RMA was available to address this error.
- 8.40 In response to Mr Boyd’s submission, Mr Beban stated that the mapping of the Wellington Fault Overlay in the Emerald Hill Drive area is well defined and understood. The reason the overlay has expanded reflects the guidance from the Ministry for the Environment Active Fault Guidelines and the revised methodology used by GNS Science (see 11.5.4).¹⁹ No further expert evidence on this area of the Wellington Fault Overlay was forthcoming at the hearing.
- 8.41 No other expert evidence was presented at the hearing.

Evaluation

- 8.42 We accept Mr Beban’s advice that the inclusion of the Turksma Lane strand of the Wellington Fault Overlay within PC47 was an error. Having reviewed Ms Pugh’s submission, we consider it provides scope to remove the entire strand from the Wellington Fault Overlay. We note that even if we thought that there was no scope, that Clause 10(2)(b) of Schedule 1 of the RMA is available as another option to remove the entire strand.

¹⁶ Paragraphs 143–145, Section 42A Report (20 March 2024)

¹⁷ Paragraphs 145–148, Section 42A Report and paragraph 8, Opening Statement of Mr Beban (22 April 2024)

¹⁸ Paragraph 144, Section 42A Report

¹⁹ Paragraph 149-150, Section 42A report

- 8.43 The Panel accepts Mr Beban’s position that the mapping of the Wellington Fault Overlay in the Emerald Hill Drive area does not need to change and should remain as notified.²⁰

Recommendations

- 8.44 The Panel recommends that:
1. Ms Pugh’s submission be accepted and the Turksma Lane strand of the Wellington Fault Overlay be removed.
 2. Mr Boyd’s submission be rejected.

Disagreements on how to address hazards associated with the Mangaroa Peat Overlays, specifically regarding reliance on the Building Act 2004 versus the RMA for subdivision processes.

Submission Points

- 8.45 Several submitters made the point in their submissions that the Mangaroa Peat Overlay is adequately covered by existing District Plan provisions, or other legislation (notably the Building Act 2004), making the proposed rule framework unnecessary.

Evidence

- 8.46 In presenting to the hearing, Mr Anker confirmed that PC47’s proposed provisions – requiring geotechnical assessments at subdivision stage for properties where peat is identified as present – would have no impact on his property due to the fact he had previously subdivided his 2.6 ha property in half, and current plan zoning requires a minimum lot size of 1 ha. Mr Anker explained he was looking after the interest of the community, but that his submission was his own individual submission.
- 8.47 Mr Anker was concerned that Greater Wellington Regional Council would seize on PC47 and use it for their own agenda to control the Mangaroa Peatland as a “wetland” when it is not currently deemed to be a wetland. He further stated that PC47 identifies the whole peatland area as having poor ground conditions and should be withdrawn. Mr Anker was also concerned that peat soil in and of itself does not constitute a hazard, that PC47 assumes that if the land is flat it is “dodgy”, but said that within the area there’s an overburden of peat from 2 cm to 1 m or so, varying within each property, and that there is a stratified layer of clay under that overburden. Mr Anker gave an example of his daughter’s neighbouring property and advised that when her dwelling was built, the water travelled down to the clay and then went sideways.
- 8.48 In his council evidence report²¹, Mr Beban considered whether the proposed provisions duplicate processes under other legislation, and therefore are not required. While agreeing that during the building consent process under the Building Act 2004, the foundations of a residential unit will be assessed, and a geotechnical report will be required, Mr Beban noted this process only applies for the consent process of individual buildings, not at subdivision stage.
- 8.49 During the hearing the Panel questioned Mr Beban regarding the implications of the PC47 proposed provisions addressing hazards at subdivision stage rather than only at building stage. Mr Beban confirmed the current District Plan allows subdivision in the Rural Zone as a controlled activity if certain standards (not including standards relating to natural hazards) are

²⁰ Paragraphs 152, 154, Section 42A report

²¹ Paragraph 271 of the council evidence report

met. Mr Beban also explained that s 106 of the RMA applies to all subdivision and manages significant natural hazard risks, but this creates a tension in practice as controlled activities must be granted but s 106 may require declining subdivision consent.

- 8.50 The proposed provisions make subdivision within the Mangaroa Peat Overlay a restricted discretionary activity, requiring evaluation of ground conditions and mitigation measures to ensure an appropriate building platform for residential units. Mr Beban noted the benefits of this approach²², including making hazard consideration mandatory for all subdivision applications, requiring geotechnical assessment as part of applications for subdivision consent and allowing Council to decline consent if hazards cannot be mitigated.
- 8.51 We were advised that there is no duplicate legislative process for subdivisions outside of the RMA. A geotechnical assessment under the Building Act 2004 only occurs at building consent stage and does not address the feasibility of building platforms across vacant lot subdivisions to manage subsidence hazards. Two ranges of cost estimates (\$3,000-\$6,000 and \$4,000-\$7,000, depending on complexity of the site and the development) for geotechnical reports were set out through Mr Beban's Reply Report.
- 8.52 The council evidence report²³ and the evidence of Ms Martin and Mr Sullivan²⁴ address the specific concern of the appropriateness of restricted discretionary provisions for subdivisions. It relates particularly the requirement for a geotechnical report, to ensure building platforms and utility services at that scale can be effectively constructed to minimise any potential subsidence hazard and prevent instances where lots may be approved but ground conditions preclude practical foundation designs.²⁵

Evaluation

- 8.53 We place no weight on the information Mr Anker shared with the hearing regarding the extent and depth of peat in the area covered by the Mangaroa Peat Overlay, because Mr Anker is not a geotechnical engineer, and no expert evidence was provided to support the information he conveyed.
- 8.54 We are cognisant that the point of the PC47 provisions is to trigger a geotechnical evaluation on a case by case/subdivision by subdivision basis, which we agree with Mr Beban is a far more efficient approach than requiring a general geotechnical evaluation of the entire overlay area in order to confirm the extent and depth of peat (as we have addressed earlier). In addition, while noting Mr Anker's concern for the wider community, the approach proposed through PC47 will have no impacts on Mr Anker's property, noting Mr Anker confirmed at the hearing that his property has no further development potential.
- 8.55 We accept Mr Beban's acknowledgment that under the Building Act 2004, geotechnical reports are required for foundation assessment during the building consent process, but also the gap Mr Beban highlighted where subdivision can currently occur without requiring an evaluation of ground conditions, potentially creating lots unsuitable for development due to subsidence, which may only become evident at building consent stage. The proposed PC47 provisions would make subdivision in the Mangaroa Peat Overlay a restricted discretionary activity, requiring geotechnical assessments during subdivision consent applications. This approach mandates hazard consideration at subdivision stage (before lot creation), allowing

²² Paragraph 267 of the council evidence report

²³ Paragraph 262, Section 42A Report (20 March 2024)

²⁴ Paragraphs 2.2–2.5, statement of evidence by Ms Martin and Mr Sullivan (March 2024)

²⁵ Paragraph 96, Section 32 Report and Mr Beban's response to a question at the Hearing

Council to decline subdivision proposals if hazards are unable to be mitigated under s106 (RMA). In this way, Council can ensure all building platforms and infrastructure/utilities are viable and the risk of subsequent subsidence is minimised.

8.56 We accept both the s42A report and evidence from Ms Martin and Mr Sullivan which support the restricted discretionary provisions, emphasising the need for geotechnical evaluations to prevent future subdivision development problems with subsidence due to poor ground conditions.

8.57 The evidence supports the need for the proposed PC47 provisions, highlighting significant gaps in current process and emphasising the need for and benefits of the evaluation of hazards at an earlier (subdivision) stage. This approach ensures that subdivision is viable and safe for future development, despite submitter's concerns about the additional costs of geotechnical reports (concerns the Panel does not support).

8.58 We find that Mr Anker's concerns that the Overlay may be picked up and used by Greater Wellington Regional Council for other purposes are beyond the scope of what we can make recommendations on.

Recommendation

8.59 The Panel recommends that Mr Anker's submission be rejected.

The impact of PC47 – what the provisions do and do not cover, particularly their impact on productive rural activities

Submission points

8.60 Mr Harris (S50) submission asked (under "specific provisions" rather than under "I seek the following") for "clearer wording for the maintenance of existing roads, tracks, culverts and drains this should be explicit". Mrs Berkett (S68) raised concerns at the hearing about the impact of PC47 provisions (associated with the Slope Hazard Overlay) on their farming activities.

Evidence

8.61 During the hearing we asked Mr Beban what impact PC47 would have on the activities of concern to Mrs Berkett. We also requested further information be provided in Mr Beban's Reply Report. He confirmed that the proposed provisions relating to the High Slope Hazard Overlay are in the earthworks and subdivision chapters of the District Plan.

8.62 Mr Beban explained that the purpose of the proposed provisions are two-fold - to manage earthworks for a building platform for a Potentially Hazard Sensitive Activity or Hazard Sensitive Activity (to ensure the proposed earthworks do not create a slope stability issue either on the subject property, or on adjacent properties) and to manage subdivision when the building platform for a Potentially Hazard Sensitive Activity or Hazard Sensitive Activity is proposed to be located within the High Slope Hazard Overlay (to ensure the proposed building platform for the subdivision does not create a slope stability issue either on the property or adjacent properties). Mr Beban stated that PC47 proposed provisions do not control activities outside of what is described above, including the use of rural land for rural purposes.

Evaluation

8.63 We accept Mr Beban's explanation both at the hearing and in his Reply Report regarding the impacts PC47 will have on productive rural activities; that is, the PC47 provisions will not

impact on productive rural activities. Given PC47's clear wording regarding its application to subdivision and building platforms (for Potentially Hazard Sensitive Activities or Hazard Sensitive Activities) we do not consider any amendments are required.

Recommendations

8.64 The Panel recommends that Council:

1. Rejects Mr Harris submission in part.
2. Rejects Mr and Mrs Berkett's submission in part.

9) Statutory Considerations

9.1 The Panel notes there was no dispute regarding statutory considerations or claims from submitters that PC47 did not give effect to any relevant national or regional policy statements or national environmental standards, was inconsistent with any regional plan, Upper Hutt City Council strategy, or did not achieve the objectives of the Upper Hutt District Plan. We noted the tabled statement in support by the Greater Wellington Regional Council. No submitters raised any other statutory documents that PC47 was inconsistent with that we must or may have regard to. There was no contention overall that the proposal was not the most appropriate means of achieving the purpose of the Act, nor that it was not in accordance with the functions of the Council. Accordingly, we find that PC47 meets the relevant statutory tests under the RMA.

Section 32 Evaluation of Alternatives

9.2 Section 32 requires an evaluation of the extent to which the objectives are the most appropriate way to achieve the purpose of the Act, and whether the policies and rules are the most appropriate for achieving those objectives. PC47 does not propose any change to the existing plan objectives. As outlined above, if a proposal will amend an existing plan provision, including zoning, the examination under s32(1)(b) must relate to –

- (a) *The provisions and objectives of the amending proposal; and*
- (b) *The objectives of the existing proposal to the extent that those objectives –*
 - (i) *Are relevant to the objectives of the amending proposal; and*
 - (ii) *Would remain if the amending proposal were to take effect.*

9.3 The Panel reviewed the s32 evaluation that accompanied PC47 and all submissions, evidence and statements. The Panel concurs with the s32 conclusions set out in that report, and in evaluating PC47 the Panel is satisfied that the proposed amendments to the District Plan retains existing objectives that have previously been determined as the most appropriate way of achieving the purpose of the Act, and introduces policies and rules that are the most appropriate way of achieving those objectives.

Section 32AA Further Evaluation

9.4 Section 32AA requires a further evaluation of any changes that have been made to, or are proposed for, the proposal since the evaluation required for the proposal was completed. The Panel reviewed the Section 32AA evaluation in Mr Beban's council evidence report and concurs with the further evaluation set out therein. Consistent with Section 32AA(2) the Panel considers a separate evaluation report is not required to be prepared, given the further evaluation was undertaken in accordance with Section 32AA(d)(ii) as part of the council evidence report.

Consistency with Part 2 of the RMA

- 9.5 Under s74(1) of the RMA, any changes to a District Plan must be in accordance with, inter alia, the purpose and principles of the RMA, under Part 2 of the RMA. The purpose of the RMA is set out in section 5, as follows:
- “Managing the use, development and protection of natural and physical resources in a way or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –*
- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) safeguarding the life supporting capacity of air, water, soil, and ecosystems; and*
 - (c) avoiding, remedying or mitigating any adverse effects of activities on the environment”.*
- 9.6 The Panel consider the applicable Part 2 matters are the enablement of people and communities to provide for their social, economic and cultural well-being, the efficient use and development of natural and physical resources, the maintenance and enhancement of amenity values and the quality of the environment and particularly the management of significant risks from natural hazards (s5, s7(b), s7(c),s7(f), and s6(h)). The Panel note that no Treaty of Waitangi issues have been raised in the documentation or through the submission process.

10) Conclusion

- 10.1 Based on our assessment of all relevant matters, the Panel consider that the application of the Mangaroa Peat Overlay, the Slope Hazard Overlay, and the revised Wellington Fault Overlay, along with the associated amended and new provisions, promote the sustainable and safe management of the PC47 land and the surrounding area in accordance with the purpose and principles of the RMA. In particular, the Panel consider the proposed new provisions will be adequate and effective in managing the potential impacts of significant risks from the three natural hazards addressed in PC47, including land slope stability, land deformation arising from the Wellington Fault and subsidence where poor soils occur within the Mangaroa Peatlands.

11) Other Matters

- 11.1 During the course of the hearing, the Panel questioned Mr Beban and Mr Sullivan regarding how the effects of climate change had been addressed through PC47. In particular, the Panel were and remain concerned that the information and analyses used in the determination of the High Slope Hazard Overlay did not include the effects of climate change, as confirmed by Mr Sullivan in the hearing.
- 11.2 The topic is beyond the scope of PC47 as it was not specifically addressed in PC47 as notified or the accompanying s32 report. It was also not raised by submitters or in letters of support from Greater Wellington Regional Council and the Ministry of Education. Nevertheless, the effects of climate change are a matter that councils shall have particular regard to, in relation to managing the use, development, and protection of natural and physical resources [s7(i)], in tandem with recognising and providing for the management of significant risks from natural

hazards [s6(h)]. In the Panel's opinion, assessing the risks of natural hazards should not be limited to the present-day risk profile. While it is still in process, we also note the direction given through Proposed Change 1 to the RPS, which includes taking a risk-based approach to assessing the consequences to subdivision, use and development from natural hazard and climate change impacts.

- 11.3 The Panel strongly recommends that Council undertake further analysis of the effects of climate change on landslips and soil erosion in the Upper Hutt District as part of a future update of the Slope Hazard Overlay.

12) Recommended decision on Plan Change 47

That pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991:

- 12.1 Proposed Plan Change 47 to the Upper Hutt District Plan is recommended to be **approved with modifications**, as set out in Appendix 3
- 12.2 The submissions and further submissions to Proposed Plan Change 47 be accordingly **accepted, accepted in part, rejected in part or rejected**, as set out in Appendices 1 and 2.
- 12.3 All for the reasons set out above in this decision report.



Ms Gina Sweetman
Chair and Commissioner, Independent Hearings Panel



Ms Sarah Stevenson
Commissioner, Independent Hearings Panel



Dr Rob Bell
Commissioner, Independent Hearings Panel

Date: 25 July 2024

APPENDIX 1 Recommendations on submissions

APPENDIX 2 Recommendations on further submissions

APPENDIX 3 Recommended amendments to provisions