



**MARLBOROUGH SOUNDS
RESOURCE MANAGEMENT PLAN**

Plan Change No. 12: Permitted Activity Hazard Rules

(Plan Change and section 32 analysis included)

**REPORT PREPARED TO FULFIL THE REQUIREMENTS OF
SECTION 32 OF THE
RESOURCE MANAGEMENT ACT 1991**

CONTENTS

Introduction.....	5
Section 32 Requirements.....	5
Part A: Resource Management Issue	6
Part B: Current Legislative Framework	7
Resource Management Act 1991.....	7
New Zealand Coastal Policy Statement.....	8
Marlborough Regional Policy Statement.....	8
Part C: Options considered for dealing with the issue.....	9
Part D: Evaluation under Section 32	9
Appropriateness of objectives	10
Efficiency and effectiveness of the policies, rules, or other methods	10
The benefits and costs of policies, rules, or other methods.....	10
The risk of acting or not acting	11
Summary	11
Appendix 1 - Proposed Plan Change 12.....	13
Schedule of Changes	13

Introduction

This report sets out an evaluation behind the Marlborough District Council's (Council) decision to change the Marlborough Sounds Resource Management Plan (Plan) to amend the wording of the requirements in the Plan, in respect of the Hazards Register.

The Sounds has a complex geology and is known to have areas of instability that can, sooner or later, compromise a specific development to the extent of making a particular area of land unsuitable for building. In conjunction with an overlay identifying hazard areas within the planning maps, the Plan contains provisions that require an assessment as to whether there are hazard issues for a particular property. However, the provisions are not consistent across all zones. This plan change seeks to remove the inconsistency.

Section 32 Requirements

In notifying any plan change to the Plan, councils have a duty under section 32 of the Resource Management Act 1991 (Act) to evaluate a number of matters. In preparing plans and changes to them, councils are required to consider the alternative ways to achieve the environmental outcomes being sought and have to consider a broad range of policies, objectives and methods. An analysis of the benefits and costs in deciding which provisions are the most efficient has to be carried out.

The specific elements of section 32 that are covered in this report are as follows:

- (3) *An evaluation must examine—*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*
- (4) *For the purposes of this examination, an evaluation must take into account—*
 - (a) *the benefits and costs of policies, rules, or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

Councils are required then to:

- Determine the environmental issue.
- Evaluate the extent to which any new objective is the most appropriate way to achieve the purpose of the Act.
- Evaluate whether the policies, rules, or other methods are the most appropriate for achieving the objective.
- Explore different methods/ways of dealing with the issue.

- Evaluate the benefits and costs of the proposed policies, rules, or other methods.
- Examine the risk of acting or not acting if there is uncertain or insufficient information on the policies, rules, or other methods.
- Decide which method or methods is the most appropriate to achieve the purpose of the Act.

The Act also requires that a report be prepared that summarises the evaluation and gives reasons for that evaluation. This report fulfils that requirement (section 32(5)).

Part A: Resource Management Issue

Each zone in the Plan has a rule requiring hazards be addressed as follows –

<p>Urban Residential Zone - Rule 29.1.4.1 Town Commercial Zone - Rule 31.1.2.7.1 Urban Industrial Zone - Rule 32.1.6.1 Port Zone - Rule 33.1.9.1 Marina Zone - Rule 34.1.8.1 Coastal Marine Zones One and Two - Rule 35.1.1.5.1 Rural Zones One and Two - Rule 36.1.3.3.1 Rural Township Zone - Rule 37.1.2.7.1</p>	<p><u>Hazards Register</u></p> <p>No building activity shall take place as a Permitted Activity within or having any adverse effect on or being affected by any natural hazard area identified on the Planning Maps or listed in the Hazards Register.</p>
<p>Sounds Residential Zone- Rule 30.1.7.1</p>	<p><u>Hazard Register</u></p> <p>No building activity shall take place as a Permitted Activity having an adverse effect or being affected by any natural hazard area identified on the Planning Maps or listed in the Hazards Register.</p>

The wording for Sounds Residential Zone differs from the rest of the zones. Leaving aside any other wording differences as being minor, the absence of the words “within or” in the Sounds Residential Zone provision, is of considerable effect.

The Sounds Residential Zone has as equally a high risk of slope failure as any other zone, comparatively speaking. In recognition of that, a natural hazards overlay is incorporated into the planning maps (Volume Three of the Plan). However, the wording for the Sounds Residential Zone does not recognise the overlay and therefore any proposal that falls within the Zone and which has the natural hazard overlay, does not have to undergo the scrutiny of a resource consent process. This means that an important regulatory control is not triggered, particularly when processing Project Information Memoranda for building consents.

This has particular implications for the public as well as for the Council's liability.

In addition, the hazard rule for all zones as currently worded, requires an element of exercising a discretion in determining whether an activity is a permitted activity. Whether an activity falls to be a permitted activity should be managed by way of a clear pass-fail test, rather than wording that requires an assessment to be made as to whether the proposed activity will 'affect' something.

Reference to a 'Hazards Register' also needs to be removed in the rules as the hazards overlay in the planning maps essentially comprises the register. Retention of reference to the register within the rule is therefore superfluous.

Part B: Current Legislative Framework

Resource Management Act 1991

Purpose

The purpose of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources. Sustainable management means:

"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."*

In achieving the purpose of sustainable management, the Council must have regard to a number of principles set out in the Act. These include recognition and provision for a number of "matters of national importance" described in section 6 of the Act. The Council must also have particular regard to matters such as "amenity" and "heritage values", "kaitiakitanga", "quality of the environment", and "ecosystem values" (section 7).

The Act enables the use and development of resources as long as such use does not adversely affect the environment in a way that impacts on the foreseeable needs of future generations, the life supporting capacity of ecosystems, other users or the environment. This is the concept of "sustainability" which the Act promotes as its overriding purpose.

Marlborough District Council Responsibilities

The Council is a unitary authority, that is, it has the functions, powers and duties under the Act of both a district council and a regional council. There is a general duty to avoid, remedy, or mitigate any adverse effect on the environment and specifically the avoidance or mitigation of natural hazards.

New Zealand Coastal Policy Statement

The Council's responsibilities for managing the coastal environment are shared with the Minister of Conservation. The Minister is responsible for the preparation of a New Zealand Coastal Policy Statement that sets out a national framework for promoting sustainable management of the natural and physical resources in the coastal environment. A regional coastal plan prepared by the Council must not be inconsistent with the Coastal Policy Statement (Section 67(2)(c)).

The Coastal Policy Statement includes provisions requiring coastal plans to recognise natural hazards and make provision for avoiding or mitigating their effects. In particular, Policy 3.4.1 requires policy statements and plans to identify areas within the coastal environment where natural hazards exist. The Plan already does this and nothing is being proposed through this plan change that alters the location of such areas. Rather the rules are being improved to ensure greater consistency across all zones is achieved.

Marlborough Regional Policy Statement

The Marlborough Regional Policy Statement (MRPS) was made operative on 28 August 1995. It provides a community based vision and direction for the management of the natural and physical resources of Marlborough.

The particular provisions relevant to the proposed plan change are –

7.4.2 OBJECTIVE – NATURAL HAZARDS

Avoid or mitigate the actual or potential effects of loss or damage to life or property from natural hazards.

7.4.3 POLICIES - HAZARD MITIGATION

- (a) *Restrict land use activities in areas of known natural hazard.*
- (b) *Restrict land use activities which would increase the risk of natural hazards to property and life.*

The particular issue of concern for the Council is the implementation or administration of the policy provisions set out above. The effect of the wording of Rule 30.1.7.1 of the Plan, is to remove the opportunity for consideration of possible hazards, although it is known that a particular site lies within the hazards overlay.

Part C: Options considered for dealing with the issue

The problems with the wording of the permitted activity rules for all zones are proposed to be dealt with by removing the wording inconsistencies and redundancies and removing the discretionary nature of the provision. The effect of the present provision is for any proposal that falls within Sounds Residential Zone and having the natural hazard overlay is to not be required to undergo the scrutiny of a consent process. With the new wording proposed, the application of a simple test can be applied to any of the zones, namely – “is the proposed building activity within the extent of the natural hazard overlay?” This is an unequivocal test. The consent process can then deal with the consequences.

It is considered that there are no alternatives to improving the wording of the hazard rule as the inconsistencies and discretionary elements that currently exist would continue to apply. The mitigation of any effects of hazards can only be dealt with through a process of evaluation and a mechanism has to be present to trigger such evaluation.

Part D: Evaluation under Section 32

The Quality Planning website, which promotes best practice by sharing knowledge about policy and plan development under the Act, states that the section 32 process must be transparent and well documented, with all assumptions and decisions justified. This helps to ensure that:

- Good environmental outcomes are achieved, at the lowest practicable cost to individuals and the community.
- Plan provisions are targeted at achieving the purpose of the Act by the most appropriate methods.
- Councillors (as decision makers) have sound policy analysis on which to base their decisions about resource management issues.
- A sound basis is provided for re-assessing whether the chosen provisions are necessary and appropriate once they are in use and the environmental outcomes become apparent.

The Council considers that the process of administering the Plan over a number of years has helped identify the resource management issue and how the rules should be clarified so that the intent of the policies in the MRPS and the Plan are appropriately implemented. Changing the rules will ultimately achieve better environmental outcomes for the community as a proper assessment through the resource consent process of the effects of building development in hazard areas will be able to be undertaken throughout all zones in the Plan. This section of the report then provides an assessment against the technical background of the requirements of section 32 of the Act.

Appropriateness of objectives

There is well known and many documented events of slope failure causing various degrees of damage to buildings in the Marlborough Sounds. It is also well known that there are localities that have a greater degree of susceptibility to slope failure and certain other damaging events such as debris dam failures. The natural hazards overlay in the planning maps provides an indicator of such susceptibility and triggers a requirement for an assessment of likely hazards and their effects.

While the presence of the overlay is not intended to indicate that there is known to be any particular hazard, it is considered that there is no other practical method of triggering an assessment given the aerial extent of the Sounds and the administrative cost of surveying down to the level of cadastral parcels. It is socially and economically desirable that hazards be identified when a development is first considered rather than facing avoidable loss at some later stage.

Any person contemplating development can readily determine the need for a geotechnical evaluation from looking at the planning maps. This provides opportunity in the planning phase of a development to adopt particular strategies to avoid or mitigate the consequences of hazards, which if they otherwise eventuated, can be at considerable economic loss and emotional effect.

Efficiency and effectiveness of the policies, rules, or other methods

Presently the rule for Sounds Residential Zone hazard identification is ineffective, by not requiring assessment for possible hazards, even if it is known to be within the natural hazards overlay.

The proposed change is positive and simple in its method of triggering consent requirements and can be readily determined by any person able to read the Plan. And putting the question “is the building activity proposed within the area of the overlay – yes or no?”

The benefits and costs of policies, rules, or other methods

To continue to do nothing exposes the individual to potential loss and in seeking redress will further be exposed to economic and emotional costs that may not be recovered. At the same time the Council will be exposed to the potential for claims for damages, which even if not realised, have particular economic costs arising, misdirection of resources and legal costs that are potentially not recoverable.

The implementation of the revised rule will force the obtaining of resource consent when a situation triggers the provision and this has a cost. In the long run, however, the provision will have the effect of indemnifying both parties for most situations through sound evaluation of hazard potential and appropriate avoidance or mitigation measures for all zones. There is also a benefit in removing the element of discretion in the rules so that any person is readily able to determine whether a resource consent is necessary or not.

It is not possible to quantify either costs or benefits but it is considered reasonable to say the ratio of probable claim amounts to consent application costs will be of two or more orders of magnitude.

The risk of acting or not acting

The hazard posed presently is that a Project Information Memorandum in respect of an application that is both within the Sounds Residential Zone and subject to the natural hazards overlay is not required to have resource consent (as in any of the other relevant zones). It is a permitted activity and there may be no apparent adverse effects upon or due to the proposal – therefore there is no regulatory control imposed, notwithstanding it is within an area susceptible to natural hazards processes. The consequence is a potential for damage or loss otherwise may have been addressed. The risk is relatively high in the Sounds with slope failure of un-retained or retained surfaces happening. For instance the Earthquake Commission Annual Report 2002/03 indicates a quieter than usual year and shows one landslip event in the Sounds whereas the 1998/99 year recorded about 15.

While it is not suggested that all the events would have been averted, clearly, when appropriately skilled evaluation is carried out the incidence of failure will be reduced. This will only happen on an ongoing basis if there is an appropriate trigger in the Plan.

Summary

At present the Sounds Residential Zone does not require that there be consideration of potential effects of natural hazards, notwithstanding the fact that the particular location being considered comes within the area identified in the natural hazard overlay. This is out of step with the similar provision in the other relevant zones and ignores the reality of the particular geology that the Sounds Residential Zone encompasses.

It is considered that the proper and responsible course for the Council is to change the provision so that it aligns with the other zones. Additionally the proposed rewording of the hazard rules removes the discretionary aspect to the rules in all of the permitted activity hazard rules.

Appendix 1 - Proposed Plan Change 12

Schedule of Changes

The Marlborough Sounds Resource Management Plan is amended in accordance with the following schedule:

1. **Delete** the following rules and replace them with a new rule as set out below:

Urban Residential Zone - Rule 29.1.4.1

Town Commercial Zone - Rule 31.1.2.7.1

Urban Industrial Zone - Rule 32.1.6.1

Port Zone - Rule 33.1.9.1

Marina Zone - Rule 34.1.8.1

Coastal Marine Zones One and Two - Rule 35.1.1.5.1

Rural Zones One and Two - Rule 36.1.3.3.1

Rural Township Zone - Rule 37.1.2.7.1

Hazards Register

~~No building activity shall take place as a Permitted Activity within or having any adverse effect on or being affected by any natural hazard area identified on the Planning Maps and/or listed in the Hazards Register.~~

Building is not a Permitted Activity within the coverage of the Natural Hazards overlay identified on the Planning Maps.

2. **Delete** Sounds Residential Rule 30.1.7.1 and replace as follows

Hazard Register

~~No building activity shall take place as a Permitted Activity having an adverse effect or being affected by any natural hazard area identified on the Planning Maps or listed in the Hazards Register.~~

Building is not a Permitted Activity within the coverage of the Natural Hazards overlay identified on the Planning Maps.

(Note that there will be no sub-section heading.)

