

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2024] NZEnvC 214

IN THE MATTER OF appeals under clause 14 of the First
Schedule of the Resource Management
Act 1991

BETWEEN GENESIS ENERGY LIMITED

(ENV-2022-AKL-060)

WEL NETWORKS LIMITED

(ENV-2022-AKL-081)

Appellants

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Alternate Environment Judge L J Newhook sitting alone under s
279 of the Act

Last case event: 19 July 2024

Date of Order: 2 September 2024

Date of Issue: 2 September 2024

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the
Environment Court, by consent, orders that:



- (1) Policy NH-P6, Rules NH-R6, NH-R7, NH-R11 and NH-R17 in the NH – Natural hazards and climate change chapter in the Proposed Waikato District Plan be amended in accordance with **Appendix 1** to this order (additions marked as underlined and deletions as ~~striketrough~~); and
- (2) Paragraphs 6(c) and 20 – 25 of Genesis Energy Ltd’s appeal and paragraphs 2.1(g) and 4.30 – 4.33 of WEL Networks Ltd’s appeal allocated to Topic 17: Climate change and natural hazards are otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent determination relates to appeals by Genesis Energy Ltd (**Genesis**) and WEL Networks Ltd (**WEL**) against parts of the decisions of the Waikato District Council (**Council** or **Respondent**) in respect of the Proposed Waikato District Plan (**PDP**).

Background

[2] The specific relief sought by Genesis and WEL with respect to Topic 17 and the decision by the Independent Hearings Panel (**IHP**) on these are addressed below.

Genesis Energy Ltd

[3] As a general submission point, the original submission by Genesis supported the intent of the PDP, for the purpose of appropriately managing the effects of natural hazards and climate change on land use activities within the Waikato District. Whilst a risk-based approach is taken to avoid sensitive activities in areas subject to natural hazard and climate change impacts, Genesis supported the recognition and provision for essential infrastructure and utilities, which may already be located, or have a

technical, functional or operational need to be located, on land subject to natural hazards.

[4] However, Genesis considered the proposed framework did not adequately provide for maintenance or repair to existing infrastructure, such as the Huntly Power Station (**HPS**), nor did it provide for ancillary activities necessary as part of the HPS operation. In particular, Genesis' submission highlighted that the permissive regime, as anticipated by the section 32 report, appeared to apply only to utilities provided by a network utility operator or requiring authority. Genesis is not a network utility operator and the HPS is not a "utility" as defined in the RMA. Further, Genesis was concerned this approach does not recognise that existing infrastructure may already be located in areas of natural hazards and cannot be avoided. Genesis therefore sought amendments to all rules which apply to utilities to also include reference to infrastructure.

[5] In addition, Genesis sought amendments to the permissive framework of the PDP to also apply to any rehabilitation activities and ancillary activities necessary for infrastructure and utilities.

[6] In Decision Report 29B: Natural Hazards and Climate Change – Flood Hazards and Defended Areas (**Decision Report 29B**), the IHP accepted the recommendations of the section 42A report author to amend the definition of 'utility'.¹ The section 42A report recommended deleting the words 'provided by network utility operators or requiring authorities' from clause (1) of the definition. The IHP were satisfied that this amendment would effectively include 'electricity generation infrastructure' in the 'utilities' definition, meaning that 'electricity generation infrastructure' would therefore be captured by rules NH-R6² and NH-R7.³

WEL Networks Ltd

[7] The original submission by WEL sought, amongst other relief, to amend policy NH-P6⁴ to provide for the 'upgrading' of existing infrastructure in areas subject

¹ Decision Report 29B: Flood Hazards and Defended Areas at [4.8] – [4.9] and [5.6].

² Rule 15.4.1 P5 of the notified version of the PDP.

³ Rule 15.4.1 P6 of the notified version of the PDP.

⁴ Policy 15.2.1.5(a) of the notified version of the PDP.

to natural hazards. The basis for this amendment was to provide for upgrading of existing infrastructure in natural hazard areas which are not considered ‘minor’.

[8] The IHP did not accept WEL’s submission, and no explanation was provided for this decision in the decisions reports on the natural hazard hearings.

Appeals

[9] Following the IHP decisions, WEL and Genesis subsequently filed these appeals seeking, amongst other things:

Genesis Energy Ltd

- (a) Amendment to the definition ‘utility’ to remove the words ‘provided by network utility operators or requiring authorities’. This relief was raised in the original submission and accepted by the IHP in Decision Report 29B,⁵ however despite the IHP’s decision, it appears the amendment was not carried over into the decisions version of the PDP;
- (b) Amendment to Policy NH-P6 to include ‘infrastructure, including ancillary activities and site rehabilitation activities’. Genesis sought this amendment to adequately provide for the operation, maintenance and minor upgrading of existing infrastructure in all areas subject to natural hazards, as anticipated by the objectives and policies of the PDP;
- (c) Amendments to Rules NH-R6, NH-R7, NH-R11 and NH-R17 to include explicit reference to ‘infrastructure’ (including ancillary and site rehabilitation activities); and

WEL Networks Ltd

- (d) Amendment to NH-P6 to provide for the upgrading of existing infrastructure and utilities in areas subject to natural hazards.

[10] The above aspects of the two appeals have been assigned to Topic 17: Natural hazards and climate change.

⁵ Decision Report 29B: Flood Hazards and Defended Areas at [4.8] – [4.9] and [5.6].

[11] Waikato Regional Council (**WRC**) has given notice of an intention to become a party to both the Genesis and WEL appeals under section 274 of the Act.

Agreement reached between the parties

[12] Following the filing of the appeals, Genesis, WEL and Council have entered into direct discussions regarding the appeal points in relation to Topic 17. While discussions on other points of the appeals continue, the parties have now agreed on a proposal which will fully resolve the parts of the Genesis and WEL appeals in Topic 17: Natural hazards and climate change. The details of the agreements reached with each appellant is set out below.

Genesis Energy Ltd

[13] The agreed amendments to the NH – Natural hazards and climate change chapter of the PDP decisions version as a result of the Genesis appeal are as follows:

- (a) Amend policy NH-P6 as follows (for completeness, WEL’s amendments to the same policy as detailed below are shown in blue):

NH-P6 Existing infrastructure and utilities in all areas subject to natural hazards.

Provide for the operation, maintenance, ~~and~~ minor upgrading, and upgrading of existing infrastructure and utilities, including ancillary activities, and site rehabilitation, in all areas subject to natural hazards.

- (b) Amend rule NH-R6 as follows:

	Construction, replacement, repair, maintenance, minor upgrading, or upgrading of <u>infrastructure and utilities and their ancillary activities, including rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u>	
Flood plain management area and Flood ponding area across all zones	Activity status: PER Activity-specific standards: Nil	Activity status where compliance not achieved: n/a

(c) Amend rule NH-R7 as follows:

	Earthworks associated with construction, replacement, repair, maintenance, minor upgrading or upgrading of <u>infrastructure and utilities, including ancillary activities, the formation and maintenance of access tracks, rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u>	
Flood plain management area and Flood ponding area across all zones	Activity status: PER Activity-specific standards: Nil	Activity status where compliance not achieved: n/a

(d) Amend rule NH-R11 as follows:

NH-R6	Repair, maintenance or minor upgrading of existing <u>infrastructure, utilities, and their ancillary activities, including rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u>	
High risk flood area across all zones	Activity status: PER Activity-specific standards: Nil	Activity status where compliance not achieved: n/a

(e) Amend rule NH-R17 as follows:

NH-R7	Upgrading of existing <u>infrastructure, utilities, and their ancillary activities, including rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u> , not provided for in Rule NH-R11	
High risk flood area across all zones	Activity status: RDIS Activity-specific standards: Nil Council's discretion is restricted to the following matters: (a) Functional and operational requirements	Activity status where compliance not achieved: n/a

	<p>to be located in the High risk flood area;</p> <p>(b) The adverse effects on people and property from establishing or upgrading the <u>infrastructure, utility or ancillary activities</u> in the high risk flood area;</p> <p>(c) The potential for the development to transfer/increase flood risk to neighbouring properties;</p> <p>(d) Consideration of alternative locations;</p> <p>(e) Consideration of the projected effects of climate change;</p> <p>(f) Any mitigation measures to reduce the risk to people's safety, well-being and property.</p>	
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WEL Networks Ltd

[14] The agreed amendment to policy NH-P6 in the NH chapter of the PDP decisions version as a result of the WEL appeal is as follows. For completeness, Genesis' agreed amendments to the same policy are shown in blue:

- (a) Amend policy NH-P6 as follows (for completeness, Genesis' amendments to the same policy as detailed above are shown in blue):

NH-P6 Existing infrastructure and utilities in all areas subject to natural hazards.

Provide for the operation, maintenance, ~~and~~ minor upgrading, and upgrading of existing infrastructure and utilities, including ancillary activities, and site rehabilitation, in all areas subject to natural hazards.

Section 32AA evaluation

[15] Section 32AA of the Act requires a further evaluation of any changes to the proposed plan change since the initial section 32 evaluation report and the Decision.

Council has prepared a stand-alone section 32AA evaluation, which is included in **Appendix 2** to this order.

[16] In summary, the section 32AA assessment concludes that:

- (a) The scale and significance of the proposed amendment to the NH chapter are low to medium, given:
 - (i) The proposed amendment to NH-P6 makes the policy consistent with the existing rules in the NH chapter and with the AINF chapter where upgrading is generally permitted subject to conditions;
 - (ii) The proposed amendment to NH-R6 aligns the rule with NH-P6 in addressing infrastructure and utilities in the FPMA and FPA;
 - (iii) The proposed amendments to NH-R6, NH-R7, NH-R11 and NH-R17 only apply in limited areas;
 - (iv) The proposed amendments to NH-R11 simplify the undertaking of activities ancillary to infrastructure and utilities in this area. However, the proposed amendments add repair, maintenance and minor upgrading of infrastructure as permitted activities in an area of high risk which increases the policy risk and potential effect of the change;
 - (v) Whilst the proposed amendment to NH-R17 adds upgrading of infrastructure in HRFAs, the activity requires consent as a restricted discretionary activity;
- (b) The objective of the proposed amendment is to adequately provide for the operation, maintenance and upgrading of existing infrastructure in all areas subject to natural hazards, as anticipated by the objectives and policies of the PDP. The objective of the amendments sought by WEL are to ensure that application of policy NH-P6 of the PDP is not limited to 'minor upgrading'. It is considered that the proposed amendments are

the most appropriate way to achieve the purpose of the RMA on the following basis:

- (i) Infrastructure provides essential services and support to the communities of the Waikato district. The proposed changes enable more efficient use and management of infrastructure by better enabling the operation, maintenance and development of infrastructure which will enable people and communities to provide for their health and well-being under section 5 of the Act;
 - (ii) The proposed amendments recognise that infrastructure is located in NH areas, and enable the most efficient ongoing use, maintenance and upgrading of that infrastructure within the NH environment under section 6 of the Act;
 - (iii) The proposed amendments enable the best use of the Huntly Power Station, (located in a NH area) which generates electricity for the district, and relies mainly on renewable resources to produce the electricity. This achieves the purpose of section 7 of the Act;
- (c) The proposed amendments are considered the most appropriate method for achieving the objectives of the NH chapter and other related objectives in the decisions version of the PDP for the following reasons:
- (i) The proposed amendments provide for consistency between the policy and rules on infrastructure within NH areas and clarify a similar treatment should be given to infrastructure and utilities as well as a common level of assessment for ancillary activities and site rehabilitation;
 - (ii) The proposed amendments will afford infrastructure in NH areas the same approach as utilities; and
 - (iii) The proposed amendments clarify the activity status of certain affected activities but do not change the level of assessment for

activities in areas of high NH risk. This retains the existing efficiency of the PDP as the proposed amendments make it clear the rules and policies align and that infrastructure and ancillary activities are treated in the same way. This will reduce the consenting costs that would have applied to infrastructure that is not captured by the definition of ‘utilities’.

[17] Based on the analysis contained in the section 32AA evaluation, the parties consider that the proposed amendments to the NH chapter of the PDP are the most appropriate way to achieve the objectives of the PDP, and the objectives of the proposal.

Consideration

[18] In making this order the Court has read and considered:

- (a) The notices of appeal dated 1 March 2022; and
- (b) The Joint Memorandum of the parties dated 17 July 2024.

[19] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

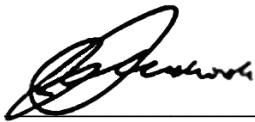
- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court’s endorsement fall within the Court’s jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[20] The Court is satisfied that the changes sought are within the scope of WEL and Genesis’ submissions and appeals.

Orders

[21] The Court orders, by consent, that:

- (a) The NH – Natural hazards and climate change chapter in the Proposed Waikato District Plan be amended in accordance with **Appendix 1** to this order (additions marked as underlined and deletions as ~~strikethrough~~);
- (b) Paragraphs 6(c) and 20 – 25 of Genesis’ appeal and paragraphs 2.1(g) and 4.30 – 4.33 of WEL’s appeals with respect to Topic 17: Natural hazards and climate change are otherwise dismissed; and
- (c) There is no order as to costs.



L J Newhook
Alternate Environment Judge



Appendix 1 – Tracked change version of the agreed amendments to the NH – Natural hazards and climate change chapter of the PDP decisions version

NH-P6 Existing infrastructure and utilities in all areas subject to natural hazards.

Provide for the operation, maintenance, ~~and~~ minor upgrading, and upgrading of existing infrastructure and utilities, including ancillary activities, and site rehabilitation, in all areas subject to natural hazards.

NH-R6	Construction, replacement, repair, maintenance, minor upgrading, or upgrading of <u>infrastructure and utilities and their ancillary activities, including rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u>	
Flood plain management area and Flood ponding area across all zones	(1) Activity status: PER Activity-specific standards: Nil	(2) Activity status where compliance not achieved: n/a

NH-R7	Earthworks associated with construction, replacement, repair, maintenance, minor upgrading or upgrading of <u>infrastructure and utilities, including ancillary activities, the formation and maintenance of access tracks, rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u>	
Flood plain management area and Flood ponding area across all zones	(1) Activity status: PER Activity-specific standards: Nil	(2) Activity status where compliance not achieved: n/a

NH-R11	Repair, maintenance or minor upgrading of existing <u>infrastructure, utilities, and their ancillary activities, including rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u>	
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High risk flood area across all zones	(1) Activity status: PER Activity-specific standards: Nil	(2) Activity status where compliance not achieved: n/a

NH-R17	Upgrading of existing <u>infrastructure, utilities, and their ancillary activities, including rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities,</u> not provided for in Rule NH-R11	
High risk flood area across all zones	(1) Activity status: RDIS Activity-specific standards: Nil Council's discretion is restricted to the following matters: (a) Functional and operational requirements to be located in the High risk flood area; (b) The adverse effects on people and property from establishing or upgrading the <u>infrastructure, utility or ancillary activities</u> in the high risk flood area; (c) The potential for the development to transfer/increase flood risk to neighbouring properties; (d) Consideration of alternative locations; (e) Consideration of the projected effects of climate change; (f) Any mitigation measures to reduce the risk to people's safety, well-being and property.	(2) Activity status where compliance not achieved: n/a

Appendix 2 – S32AA Assessment

Overview

This s32AA evaluation report addresses relevant statutory tests under the Resource Management Act 1991 (RMA) as they relate to the appeals from Genesis Energy Ltd (ENV-2022-AKL-000060) and WEL Networks Ltd (ENV-2022-AKL-000081) to the Proposed Waikato District Plan – Decisions Version (PDP-DV).

The appeals seek to amend provisions of the Natural hazards and climate change (NH) chapter of the PDP-DV to remove inconsistencies and better enable the operation, repair, maintenance, minor upgrading and upgrading of infrastructure, utilities, and ancillary activities in areas of natural hazard.

This evaluation report firstly considers the scale and significance of the proposal, before addressing the following relevant tests:

- the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA (s32(1)(a));
- the relevant policies and methods are the most appropriate way to achieve the objectives, having regard to their efficiency and effectiveness (s32(1)(b)) and taking into account:
 - the scale and significance of the proposed policies and methods;
 - the benefits and costs of the proposed policies and methods; and
 - the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules of other methods.

Scale and significance of the proposals

A Section 32AA evaluation must be undertaken in a level of detail that corresponds to the scale and significance of the changes proposed. The following questions of scale and significance have been considered in assessing the proposed amendments. The proposed amendments are only a minor shift from the status quo; the amendments align the policy and rules for infrastructure and utilities in the plan, align ancillary activities with the primary activity, and enables upgrading of infrastructure in addition to utilities. This does not change the overarching controls of infrastructure and utilities in the All infrastructure (AINF) and other infrastructure chapters in the PDP. The changes only directly affect infrastructure providers and utility operators. There is no change in impact on hapu, iwi, or Māori interests as these amendments clarify or align existing rules for infrastructure and utilities.

The proposed amendments would be effective immediately as the regulations address operations, repair and maintenance which are ongoing. While the proposed amendment to the NH-P6 applies to infrastructure and utilities in all areas subject to natural hazards, the proposed amendments to the rules are limited in extent to areas subject to flood hazard. It is expected that the proposed amendments directed at the operation, maintenance and upgrading of essential infrastructure and utilities will have generally beneficial effects on the social and economic wellbeing of the Waikato community. There is only minor policy risk as infrastructure and utilities currently exist in the areas covered by the proposed amendments, the changes do not include new infrastructure and the overarching regulation of infrastructure remains unchanged.

The scale and significance of each proposed amendment individually is set out below:

- **NH-P6 – low scale and significance:** The proposed amendment makes the policy consistent with the existing rules in the NH chapter and consistent with the AINF chapter where upgrading is generally permitted subject to conditions. This change applies across all natural hazard areas. The changes allow upgrading to existing infrastructure, ancillary activities, and sites rehabilitation.
- **NH-R6 – low scale and significance:** This rule applies across Flood Prone Management Areas (FPMA) and Flood Prone Areas (FPA) and simplifies the undertaking of ancillary activities to infrastructure and utilities. The proposed change makes ancillary activities, including site rehabilitation, the same activity status as the primary activity and aligns the rule with policy NH-P6 in addressing infrastructure and utilities in the FPMA and FPA. The rule has a limited and clearly defined area of effect, and the amendment is a minor change from the status quo and directly affects only infrastructure and utility operators. Infrastructure and utilities remain subject to regulation by the AINF chapter.
- **NH-R7– low scale and significance:** The proposed amendment applies only across the defined areas of the FPMA and FPA. This change adds earthworks for construction of infrastructure to the range of permitted activities and aligns the rule with policy NH-P6

in addressing earthworks for infrastructure and utilities in the FPMA and FPA.

- **NH-R11 – medium scale and significance:** The proposed amendments apply only in high-risk flood areas (HRFA). The amendments simplify the undertaking of activities ancillary to infrastructure and utilities in this area. Because the proposed amendments adds repair, maintenance, and minor upgrading of infrastructure as permitted activities in an area of high risk, this increases the policy risk and potential effect of the change.
- **NH-R17 – low scale and significance:** This proposed amendment applies only in HRFA and is therefore very limited in the physical extent of the effect. Whilst the proposed amendment adds upgrading of infrastructure in HRFA, which may result in an increase in activity or intensity, the activity requires consent as a restricted discretionary activity.

On the basis of the above, the scale and significance of the overall proposal is therefore considered **low to medium**.

Appropriateness of Objectives, Policies and Methods

Achieving the purpose of the RMA

Council must evaluate, in accordance with s32 of the RMA, the extent to which each objective proposed is the most appropriate way to achieve the purpose of the RMA. In this case, there are no proposed changes to objectives, but s32 clarifies that “objectives” can mean the purpose of the proposal.¹

The purpose of the amendments sought by the Genesis appeal² is to adequately provide for the operation, maintenance, and minor upgrading of existing infrastructure in all areas subject to natural hazards, as anticipated by the objectives and policies of the PDP. The purpose of the amendments sought by the WEL appeal³ is to ensure that application of policy NH-P6 of the PDP is not limited to only “minor upgrading”.

Section 5

Infrastructure consists of the physical structures and networks that support and provide essential services to the communities of the district. The efficient use and management of infrastructure as a physical resource is critical to the District’s economic productivity, environmental outcomes, and wellbeing of the community. The benefits of infrastructure to the functioning of the district are therefore substantial.

Connected and reliable infrastructure is vital to the functioning of the District. The term “infrastructure” covers a wide range of networks, necessary to support the social and economic well-being as well as the health and safety of people and communities.

¹ RMA s32(6).

² Genesis Notice of Appeal, paragraph 20, page 5.

³ WEL Network Limited Notice of Appeal, paragraph 4.31, page 9.

The efficient development, maintenance, and operation of the physical resources of infrastructure is fundamental to both present and future communities. In this respect the Objective achieves Section 5(2)(a) of the Act.

The continuing use of infrastructure through enabling the operation, maintenance and development enables people and communities to provide for their health and well-being in accordance with Section 5(2) of the Act. An example is the electricity distribution network which enables people to stay warm and cook, and therefore stay healthy.

In this regard, the objectives of the proposal achieves section 5(2) of the RMA.

Section 6

Section 6(h) of the RMA requires the management of significant risks from natural hazards to be recognised and provided for as a matter of national importance. The objectives of the appeals achieve this as it recognises that infrastructure is (by necessity) located in natural hazard areas and enables the ongoing use, maintenance and upgrading of those structures.

Section 7

Section 7(j) of the RMA requires particular regard be given to the benefits to be derived from the use and development of renewable energy. The objective of Genesis' appeal is to enable upgrading, repair maintenance and rehabilitation activities associated with the Huntly Power Station which are currently located in the natural hazard areas. The Huntly Power Station is an electricity generator, of which the main part relies on renewable resources. The objectives of the appeal achieve section 7(j) of the RMA.

Section 8

Section 8 has limited relevance to the proposal. Additional engagement with iwi is anticipated under the PDP where resource consent is required.

Having assessed the objectives of the proposal against Part 2 of the RMA it is considered that they are the most appropriate way to achieve the purpose of the RMA.

Evaluation of provisions

Section 32 assessments must determine whether the proposed provisions are the most appropriate way to achieve the proposed objectives. This must include the identification of alternatives, and cost benefit analysis of the economic, social, environmental, and cultural effects of the provisions including whether opportunities for economic growth and employment are reduced or increased. The risk of acting or not acting where uncertain information exists must also be considered.

To enable the proposal requires several discrete amendments to the PDP-DV, including:

- (a) amendment to a policy in the NH chapter; and
- (b) amendments to various rules in the NH chapter regarding the operation, repair, maintenance, minor upgrading or upgrading of utilities and infrastructure in areas of natural hazard, including amendment to Council's matters of discretion.

The following sections of this report will identify the range of options available, and the efficiency and effectiveness of the preferred provisions.

The following broad options have been identified:

Option 1 – Decisions version: Retain the provisions in the NH chapter for operation, repair, maintenance, minor upgrading and upgrading of infrastructure, utilities, and ancillary activities in areas of natural hazard as contained in the PDP-DV.

Option 2 – Amend the provisions in the NH chapter to remove inconsistencies and better enable the operation, repair, maintenance, minor upgrading and upgrading of infrastructure, utilities, and ancillary activities in areas of natural hazard. This option would have the effect of amending the PDP-DV as detailed in Appendix A, including:

- (a) Amend policy NH-P6 to include "upgrading" as well as "minor upgrading" of "infrastructure, including ancillary activities and site rehabilitation activities". This amendment ensures that the policy is consistent with the subsequent rules in the NH chapter and the AINF chapter, where upgrading is generally permitted, subject to conditions.
- (b) Amend rule NH-R6 to simplify the undertaking of ancillary activities to infrastructure and utilities by ensuring ancillary activities, including site rehabilitation, is the same activity status as the primary activity.
- (c) Amend rule NH-R7 to include "earthworks for construction of infrastructure" to the range of activities permitted in the Flood Prone Management Area and the Flood Prone Area.
- (d) Amend rule NH-R11 to refer to 'infrastructure' as well as ancillary activities, including site rehabilitation, to simplify the undertaking of repairs, maintenance, or minor upgrading of ancillary activities to infrastructure and utilities in the HRFA.
- (e) Amend rule NH-R17 to include "upgrading of infrastructure" as a restricted discretionary activity in the HRFA and amend Council's matters of discretion to include infrastructure and ancillary activities in the consideration of adverse effects on people and property.

The preferred option is Option 2 for because it recognises that infrastructure is often required (by necessity) in natural hazard areas, and that those structures already exist. Option 2 broadens the applicability of the rules to "infrastructure" in addition to "utilities" and therefore applies the rules to some additional structures not captured by the definition of "utilities". The changes to the policy and rules will enable ancillary activities and site rehabilitation.

Table 1 below provides a high-level assessment of the appropriateness of Option 2 for comparative purposes.

Option 2	
Amend the provisions in the NH chapter to remove inconsistencies and better enable the operation, repair, maintenance, minor upgrading and upgrading of infrastructure, utilities, and ancillary activities in areas of natural hazard. This option would have the effect of amending the PDP-DV as detailed in Appendix A.	
Costs	Benefits
<p>Environmental costs There are no significant environmental costs associated with the proposed amendments.</p>	<p>Environmental benefits Enables site rehabilitation.</p>
<p>Economic costs Allowing upgrading to existing infrastructure in natural hazard areas does increase the financial consequences if the structure is damaged by a natural hazard event. The costs to people, businesses and the community may be significant if infrastructure is damaged by a natural hazard event.</p>	<p>Economic benefits The proposed amendments provide greater consistency in the regulation of infrastructure, utilities, and ancillary activities in natural hazard areas. This reduces the cost of repairs, maintenance, and minor upgrading of these developments as a resource consent is not required. Enables efficient use of existing infrastructure.</p>
<p>Social costs There are no social costs associated with the proposed amendments.</p>	<p>Social benefits Enables upgrading and maintenance of infrastructure which supports the health and safety of people and property.</p>
<p>Cultural costs There are no cultural costs associated with the proposed amendments.</p>	<p>Cultural benefits There are no additional cultural benefits arising from the proposed amendments.</p>

Opportunities for economic growth

The proposed amendments ensure the continuity of operations of existing infrastructure and simplify the processes for repairs and maintenance. The proposed amendments also streamline the processes for upgrading of infrastructure and utilities in areas subject to flooding. Upgrading the existing infrastructure may support additional economic growth.

A supportive regulatory regime for operation, repairs, maintenance, minor upgrades and upgrading of infrastructure and utilities supports the economy and wellbeing of the Waikato district and contributes to local economic growth.

Opportunities for employment

Not able to be identified.

Certainty and sufficiency of information

The proposal has been subject to an appropriate level of investigation as to the effects of the amended provisions, including consideration by reference to the natural hazards management program for the Waikato Regional Council. There are no material gaps in the knowledge base that give rise to any need for a risk assessment.

Effectiveness and efficiency

Effectiveness

The existing drafting of the policy and rules in the decisions version of the PDP provide for infrastructure and utilities in the Waikato District, including new development, upgrading, minor upgrading, repairs, and maintenance. Additionally, the NH chapter provides for these activities in areas subject to natural hazards. This is recognised as essential to the wellbeing of the community. The proposed amendments provide for consistency between the policy and rules on these matters and clarifies a similar treatment for infrastructure and utilities as well as a common level of assessment for ancillary activities, and site rehabilitation. The amendments will be effective at affording infrastructure in the natural hazard overlays the same approach as utilities.

Efficiency

The proposed amendments clarify the activity status of certain affected activities, the bulk of which are permitted activities. The amendments do not change the level of assessment for activities in areas of high natural hazard risk. This retains the existing efficiency of the PDP as the amendments make it clear that the rules and policies align to include infrastructure and make explicit that ancillary activities are treated in the same way. This also increases the efficiency of these rules.

The amendments will reduce the consenting costs that would have applied to infrastructure that was not captured by the definition of utilities.

Overall evaluation

Option 2 is the most appropriate option to achieve the relevant PDP objectives. It is anticipated to provide an increased benefit in contrast to Option 1 (the status quo).

The proposed amendments have been considered by officers of Waikato Regional Council to ensure consistency with the natural hazard provisions of the Waikato Regional Policy Statement. The proposed amendments provide for greater internal plan consistency and coherence in the regulation of infrastructure, utilities, and ancillary activities in areas subject to natural hazards. The proposed amendments do not reduce the standards required of these developments.

The amended provisions will achieve the following PDP objectives:

AINF-O1 Development, operation and maintenance of infrastructure

The amendments will ensure infrastructure can be developed, operated, maintained, and upgraded to enhance social, economic, cultural, and environmental well-being where this infrastructure is located in natural hazard overlays.

NH-O2 Areas at risk from natural hazards

The amendments will continue to manage use and development of infrastructure within areas at risk from natural hazards so that natural hazard risks on people, property and infrastructure are avoided, remedied, or mitigated.

SD-O1 Socio-economic advancement

The amendments will enable the ongoing maintenance and upgrading of existing infrastructure and therefore support a thriving economy.

SD-O7 Regionally significant infrastructure and industry

Whilst not specific to the Huntly Power Station, the amendments will enable the continued maintenance, operation and upgrading of the Huntly Power Station and its activities which are located in a natural hazard overlay.

Conclusion

Pursuant to s32 of the RMA, the objective of the proposal is to better enable the operation, repair, maintenance, minor upgrading and upgrading of infrastructure, utilities, and ancillary activities in areas of natural hazard. This has been analysed against Part 2 of the RMA and is considered to be the most appropriate way to achieve the purpose of the RMA.

The proposed amendments to the policy and rules in the Natural hazards and climate change chapter have been compared against reasonably practicable options. The amended provisions are considered to represent the most appropriate way of achieving the objectives of the proposal, as well as the objectives in the PDP.

Attachment 1 – Scale and Significance Assessment

<i>Criteria</i>	<i>Scale/Significance</i>			<i>Comment</i>
	<i>Low</i>	<i>Medium</i>	<i>High</i>	
Addresses a resource management issue	X			<ul style="list-style-type: none"> • The proposal relates to Council’s functions under s31(1)(a), s31(1)(aa) and s31(2) of the RMA. • Implements higher order direction from national and regional planning instruments. • Enables sustainable management of 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 well-being and for their health and safety. This is as per s5 of the RMA. • The amendments to the provisions are in response to concerns raised by Genesis and WEL in their appeals.
Addresses a matter that relates to human health or the protection of life and property	X			<ul style="list-style-type: none"> • The proposal does not directly relate to a human health matter. • The proposal does address infrastructure and utilities in natural hazard areas and therefore affects the protection of property.
Degree of shift from the status quo		X		<ul style="list-style-type: none"> • The amended provisions make the following changes to activity status: • The inclusion of “upgrading” of existing infrastructure and utilities in policy NH-P6 clarifies the status of upgrading which is already included in rules NH-R6 and NH-R7 as a permitted activity. • The inclusion of ancillary activities, and site rehabilitation in NH-P6 and rules NH-R6, NH-R7 and NH-R11 changes the activity status for these matters from restricted discretionary to permitted and aligns them with the primary activities for infrastructure and utilities.

Who and how many will be affected/ geographical scale of effect/s	X			<ul style="list-style-type: none"> The geographical scale of the proposal is general for policy NH-P6 and limited for the proposed amendments to the rules. The corresponding scale of effect will be low and will only affect a limited number of activities in areas of flood hazard.
Degree of impact on or interest from iwi/ Māori	X			<ul style="list-style-type: none"> Iwi were consulted by the Council in the formative stages of the PDP. No iwi authority has joined as a s274 party to the appeals.
Degree of likely community interest	X			<ul style="list-style-type: none"> The following entities joined as a s274 party in opposition to the Genesis and WEL appeals: <ul style="list-style-type: none"> Waikato Regional Council. Waikato Regional Council has been involved in the negotiations for both these appeals.
Likelihood of resulting in major financial impact on households / community due to compliance or administrative costs	X			<ul style="list-style-type: none"> Nil.
Implications for servicing and transport networks		X		<ul style="list-style-type: none"> While the appeals are from energy related infrastructure and utility providers, the proposed amendments are not limited to those sectors. Other infrastructure providers may benefit from the clarification of the policy and the additional regulatory efficiency arising from the amendments.
Type of effect/s	X			<ul style="list-style-type: none"> The amended provisions will have generally beneficial effects on the social and economic wellbeing of the Waikato community.

Likelihood of significantly reducing development opportunities or land use options	X			<ul style="list-style-type: none"> • Nil.
Degree of risk and uncertainty	X			<ul style="list-style-type: none"> • There is a medium level of information to inform decision-making on the proposal. • Input to the analysis of these amendments has also been provided by the natural hazards management program for the Waikato Regional Council. • Correspondingly, there is a low risk associated with the proposed provisions.
OVERALL ASSESSMENT		X		For the above reasons, the proposal is assessed as having a low to medium overall scale and significance.