

# Proposed Plan Change 78 (PC78)

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to the Auckland Unitary Plan (Operative in  
part)

**SECTION 32 and sec77K / sec 77Q alternative process for existing qualifying  
matters**

**EVALUATION REPORT for qualifying matter s77I(a) and qualifying matter  
s77O(a)**

(a) a matter of national importance that decision makers are required to recognise  
and provide for under section 6

Significant Natural Hazards – Land Instability

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## Executive Summary

Significant risk from land instability is a qualifying matter under sections 77I(a) and 77O(a), as the management of significant risk from natural hazards is a matter of national importance under section 6 of the RMA.

There is limited information in the public mapping systems regarding land which may be subject to land instability. Only the mapping of land susceptible to coastal instability and erosion, which only became available recently, is included on the public version of Geomaps. Subsequently, there is currently no mapping layer available to reflect the areas in the region that meet this definition.

Significant risk from land instability in the urban area is currently managed by the provisions in Chapter E36 and E38 of the Auckland Unitary Plan. The relevant rules rely on the definition of “land which may be subject to land instability”<sup>1</sup>, which uses geological characteristics and slope angle to identify likely land instability risk. There are also provisions in Chapter E15 relating to the management of vegetation alteration and removal in areas prone to natural hazards, requiring an RDA for the alteration or removal of an area greater than 25m<sup>2</sup> of contiguous indigenous vegetation in areas of instability.

This qualifying matter does not inherently restrict the level of overall development potential of a site. The consenting process provides a check to ensure that adverse land instability effects are avoided, remedied or mitigated but does not prevent the densities and heights prescribed by MDRS/NPSUD Policy 3 (updated May 2022). Nor does this qualifying matter require amendments to the MDRS/NPSUD Policy 3 (updated May 2022) except to incorporate the water body yard setbacks and maximum impervious surface controls of the various current AUP zones to control the impact of development in contributing to the hazard.

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<sup>1</sup> Auckland Unitary Plan (OiP) Definitions, pg.67.

## Introduction

This report is prepared as part of the evaluation required by Section 32 and S77I and 77Q of the Resource Management Act 1991 ('the Act') for proposed Plan Change 78 (PC78) to the Auckland Unitary Plan (Operative in Part) (AUP).

The background to and objectives of PC78 are discussed in the overview report, as is the purpose and required content of section 32 and 77I / 77Q evaluations.

This report discusses the implications of applying significant risk of land instability as a qualifying matter to the medium density residential standards (MDRS) of Schedule 3A of the RMA and the implementation of policy 3 of the NPS-UD (updated May 2022).

An existing qualifying matter is a qualifying matter referred to in section 77I or 77O (a) to (i) that is operative in the relevant district plan when the IPI is notified.

- S77I relates to relevant residential zones.
- S77O relates to urban non-residential zones.

The Council may make the MDRS and the relevant building height or density requirements under policy 3 NPS-UD (updated May 2022) less enabling of development in relation to an area within a relevant residential zone or urban non-residential zone only to the extent necessary to accommodate 1 or more of the qualifying matters listed in 77I or 77O.

### Integrated evaluation for existing qualifying matters

For the purposes of PC78, evaluation of significant risk from land instability as an existing qualifying matter has been undertaken in an integrated way that combines sec 32 and 77K / 77Q requirements. The report follows the evaluation approach described in the table below.

Preparation of this report has involved the following:

- review of the AUP to identify all relevant provisions that apply to this qualifying matter
- assessment of the identified relevant provisions within the AUP relating to land instability against the MDRS in accordance with Schedule 3A of the RMA
- development of draft amendments to the operative district plan provisions of the AUP to implement this matter as a Qualifying Matter in accordance with s77I(a) and s77O(a)
- review of the AUP to identify all relevant provisions that require a consequential amendment to integrate the application of this qualifying matter
- review of the AUP Maps to assess the spatial application of this qualifying matter
- section 32 options analysis for this qualifying matter and related amendments

The scale and significance of the issues is assessed to be medium.

This section 32/77K evaluation report will continue to be refined in response to any submissions (and technical evidence that supports those submissions) provided to the council, and in response to any other new information received.

**Table 1 Integrated approach**

Standard sec 32 steps	Plus sec 77K / 77Q steps for existing qualifying matter
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Issue  Define the problem- provide overview/summary providing an analysis of the qualifying matter	Sec 77K or 77Q (1) (a)  Describe the qualifying matter.  Identify by location (for example, by mapping) where an existing qualifying matter applies
Identify and discuss objectives / outcomes	Sec 77K or 77Q(1) ( c )  Identify relevant RPS objectives and policies. Describe why the Council considers that 1 or more existing qualifying matters apply to these areas and why the qualifying matter is necessary.
Identify and screen response options	Sec 77k or 77Q (1) (b)  Consider a range of alternative density standards for those areas having considered the particular MDRS standards and/or Policy 3 (updated May 2022) intensification requirements
Collect information on the selected option(s)	Sec 77K or Q (1) (d)  Describe in general terms for a typical site the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by the MDRS and policy 3 (updated May 2022) having regard to the modified zone, with regard to the identified density options
Evaluate option(s) - environmental, social, economic, cultural benefits and costs	Sec 77K or Q (1) (b)  Provide a general assessment of the benefits and costs of the options in the light of the new objectives introduced by the NPS-UD and MDRS relating to well-functioning urban environments
Overall judgement as to the better option (taking into account risks of acting or not acting)	Conclusion as to the implications of the qualifying matter for development capacity to be enabled by NPS-UD/MDRS in the areas where the qualifying matter applies

## Issues

- Significant risk from land instability is a qualifying matter under sections 77I(a) and 77O(a), as the management of significant risk from natural hazards is a matter of national importance under section 6 of the Act.

- This qualifying matter applies to both relevant residential zones and urban non-residential zones.
- Land instability refers to land that is susceptible to landslides, subsidence, or riverbank erosion. As identified in Auckland Council’s Natural Hazards Risk Management Action Plan – Part 1 (2021), most of Auckland is at moderate to high risk of land instability, as land instability is often prevalent in the soft soils and weak rock that are common across the region. Landslides can be triggered by heavy rainfall, earthquakes, and human activity, and can result in a significant risk to people, property, and the environment.
- Significant risk from land instability in the urban area is currently managed by the provisions in Chapter E36 and E38 of the Auckland Unitary Plan. The relevant rules rely on the definition of “land which may be subject to land instability”<sup>2</sup>, which uses geological characteristics and slope angle to identify likely land instability risk.
- There is limited information in the public mapping systems regarding land which may be subject to land instability. Only the mapping of land susceptible to coastal instability and erosion, which only became available recently, is included on the public version of Geomaps. Additional information is available on the internal Geomaps viewer however this is very limited as the majority of the information has not been suitably validated/ is not reliable and so would not be appropriate for use in assessing the hazard. Subsequently, there is currently no mapping layer available to reflect the areas in the region that meet this definition.
- There are also provisions in Chapter E15 relating to the management of vegetation alteration and removal in areas prone to natural hazards. E15.4.1(A22) specifically seeks a RDA for the alteration or removal of vegetation in the coastal area greater than 25m<sup>2</sup> of contiguous vegetation, or tree alteration or tree removal of any indigenous tree over 3m in height, that is within
  - (a) a horizontal distance of 20m from the top of any cliff with;
  - (b) a slope angle steeper than 1 in 3 (18 degrees); and
  - (c) within 150m of mean high water springs
- In addition, there are riparian, lakeside and coastal yard provisions located within various zone chapters that require a minimum setback from lakes, streams and the coastal edge in order to provide protection from natural hazards.
- This qualifying matter seeks to ensure that the risks of land instability are appropriately considered when subdivision, use and development occur on sites that may be subject to such a hazard. However the densities and heights specified in the MDRS and Policy 3 (updated May 2022) do not need to be modified to accommodate this qualifying matter as although a RDA resource consent is required for development within the hazard area, it does not inherently restrict the level of overall development potential of a site. The consenting process being the check to ensure that adverse land instability effects are avoided, remedied or mitigated.

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<sup>2</sup> Auckland Unitary Plan (OiP) Definitions, pg.67.

## Objectives and Policies (existing)

The relevant RPS objectives and policies in the AUP relating to the management of significant risk from land instability are outlined in Chapter B10.2 – Natural hazards and climate change. The following objectives and policies in other RPS chapters are also relevant to this topic:

AUP chapter	Objective	Policy
<b>B2.4</b> Residential intensification		<b>B2.4.3(5)</b> Avoid intensification in areas: <b>(b)</b> that are subject to significant natural hazard risks; where such intensification is inconsistent with the protection of the scheduled natural or physical resources or with the avoidance or mitigation of the natural hazard risks.
<b>B10.2</b> Natural hazards and climate change	<b>B10.2.1(2)</b> The risks to people, property, infrastructure and the environment from natural hazards are not increased in existing developed areas. <b>(3)</b> New subdivision, use and development avoid the creation of new risks to people, property and infrastructure.	<b>B10.2.2 (5)</b> Manage subdivision, use and development of land subject to natural hazards based on all of the following: <b>(b)</b> the vulnerability of the activity to adverse effects, including the health and safety of people and communities, the resilience of property to damage and the effects on the environment; and <b>(c)</b> the cumulative effects of locating activities on land subject to natural hazards and the effects on other activities and resources. <b>(7)</b> Avoid or mitigate the effects of activities in areas subject to natural hazards, such as earthworks, changes to natural and built drainage systems, vegetation clearance and new or modified structures, so that the risks of natural hazards are not increased.
<b>E15</b> – Vegetation management and biodiversity	<b>E15.2(2)</b> Indigenous biodiversity is restored and enhanced in areas where ecological values are degraded, or where development is occurring.	<b>E15.3(1)</b> Protect areas of contiguous indigenous vegetation cover and vegetation in sensitive environments including the coastal environment, riparian margins, wetlands, and areas prone to natural hazards. <b>(2)</b> Manage the effects of activities to avoid significant adverse effects on biodiversity values as far as practicable, minimise significant adverse effects where avoidance is not practicable, and avoid, remedy or mitigate any other adverse effects on indigenous biological diversity and ecosystem services, including soil conservation, water quality and quantity management, and the mitigation of natural hazards.
<b>E36</b> – Natural hazards and flooding	<b>E36.2(2)</b> Subdivision, use and development, including redevelopment in urban areas, only occurs where the risks of adverse effects from natural	<b>E36.3(1)</b> Identify land that may be subject to natural hazards, taking into account the likely effects of climate change, including all of the following:

	<p>hazards to people, buildings, infrastructure and the environment are not increased overall and where practicable are reduced, taking into account the likely long term effects of climate change.</p>	<p><b>(c )</b> land instability;</p> <p><b>(3)</b> Consider all of the following, as part of a risk assessment of proposals to subdivide, use or develop land that is subject to natural hazards:</p> <p><b>(a)-(k)</b></p> <p><b>(4)</b> Control subdivision, use and development of land that is subject to natural hazards so that the proposed activity does not increase, and where practicable reduces, risk associated with all of the following adverse effects: <b>(a)-(d)</b></p> <p><b>(31)</b> Identify land that may be subject to land instability taking into account all of the following features:</p> <ul style="list-style-type: none"> <li>a) proximity to cliffs;</li> <li>b) steepness of land;</li> <li>c) geological characteristics; and</li> <li>d) uncontrolled fill.</li> </ul> <p><b>(32)</b> Require risk assessment prior to subdivision, use and development of land subject to instability.</p> <p><b>(33)</b> Locate and design subdivision, use and development first to avoid potential adverse effects arising from risks due to land instability hazards, and, if avoidance is not practicably able to be totally achieved, otherwise to remedy or mitigate residual risks and effects to people, property and the environment resulting from those hazards.</p>
<p><b>E38 – Subdivision - Urban</b></p>	<p><b>E38.2(10)</b> Subdivision:</p> <p><b>(a)</b> within urban and serviced areas, does not increase the risks of adverse effects to people, property, infrastructure and the environment from natural hazards;</p>	<p><b>E38.3(2)</b> Require subdivision to manage the risk of adverse effects resulting from natural hazards in accordance with the objectives and policies in E36 Natural hazards and flooding, and to provide safe and stable building platforms and vehicle access.</p>

The current management approach used by the AUP is to require a Restricted Discretionary Activity resource consent for particular activities on land which may be subject to land instability (E36.4.1(A50) and (A51)). Consent is also required for vegetation alteration and removal in riparian and coastal areas, or for development that cannot achieve the specified riparian, lakeside, and coastal yard setbacks. This enables consideration to be given to the potential land instability effects on the proposed activity and for appropriate conditions to be imposed.

Aside from seeking the inclusion of the current waterbodies yard setbacks of the various zones of the AUP into Schedule 3A of the RMA, there are no amendments required to the district level objectives and policies proposed in response to the MDRS and Policy 3.

[It is noted that the coastal yard setback and supporting maximum impervious surface control are not currently supported by relevant objectives or policies. These are recommended in support of seeking the incorporation of these standards into the various zones and considered consequential in supporting these mechanisms of the qualifying matter.]



## Development of Options

As discussed in the overview report the ‘default base’ for consideration of options no longer includes a status quo of the Auckland Unitary Plan (Operative in Part) as the IPI is required to incorporate the mandatory requirements of the NPSUD Policy 3 (updated May 2022) and the MDRS of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. Therefore against this base the following two options were considered for the qualifying matter:

1. **Adoption of the qualifying matter in full** – [Preferred option] this option includes:
  - retaining all references and provisions of Chapters E36 and E38
  - retaining the provisions relating to the Lakeside, riparian and coastal protection yards in the various zones as mechanisms of the qualifying matter in protecting against natural hazards (it is noted that these are not currently supported by relevant objectives and policies. These will consequently be incorporated into the various zones along with the standards).
2. **Removal of the qualifying matter** – this option seeks;
  - removal of all relevant references and provisions from Chapters E36 and E38

Option one is the preferred option at this point in time. As discussed earlier there is a lack of reliable information available to map this hazard. This is currently being built and will be reviewed through the required review of the AUP in 2026. In the meantime the relevant provisions as noted above appropriately manage the impact of this hazard.

Regardless the densities and heights specified in the MDRS and Policy 3 (updated May 2022) do not need to be modified to accommodate this qualifying matter. The presence of this qualifying matter only limits the extent of development that could occur on a site as a permitted activity but does not inherently restrict the level of overall development potential of a site.

## Consequences for development potential

As stated above the densities and heights specified in the MDRS and Policy 3 (updated May 2022) do not need to be modified to accommodate this qualifying matter. In the case of a site affected by this qualifying matter, the level of overall development would likely be the same as that permitted by the MDRS and Policy 3 (updated May 2022) as this qualifying matter does not impact on any of the standards of the underlying zone. The key difference would be that consent would be required to establish future development, for example the construction of new buildings. On some sites, the permitted developable area may also be limited by the presence of vegetation within the specified coastal and riparian areas, the removal or alteration of which would require a resource consent. The presence of additional yard controls may also restrict the permitted developable area of a site.

## Evaluation of options

The options considered in assessing land instability as a qualifying matter are considered above and elaborated on here:

Qualifying matter	Option 1 - Retain the QM	Option 2 – remove the QM
<b>Broader costs - social, economic,</b>	<b>Low costs</b> of retaining the current relevant rules of the	<b>High environmental costs</b> due to not providing sufficient

<b>environmental, cultural</b>	AUP as they do not restrict the overall development potential of the site. <b>Low social cost</b> as the hazard is catered for in the design to future proof communities.	protection from the hazard. <b>Moderate economic costs</b> of not adequately accommodating for the hazard when developing which may result in issues in the future.
<b>Costs to housing supply / capacity</b>	<b>Moderate costs</b> as the presence of the hazard may constrain capacity	<b>Low cost</b> to housing capacity as development potential of site does not cater for hazard.
<b>Benefits to social, economic, environmental, cultural</b>	<b>High environmental and economic benefits</b> as the identification and avoidance of land instability reduces the impact of this hazard on the communities now and into the future.	<b>Moderate economic benefits</b> in reduction in need to go through consenting process.

Section 32(2)(c) of the Act requires this evaluation to assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

Information pertaining to land instability in the Auckland region became operative in 2016. Initially a limited base it has since expanded with the information provided through the 2020/21 study on coastal instability and erosion<sup>3</sup>. Further information is recorded as it is gathered through the required resource consenting process for such applications. This information is considered certain and sufficient for the assessment of land instability as a qualifying matter under s6(a) of the Act.

## Overall conclusion

Land instability as a significant natural hazard of the Auckland region is a matter of national importance under the Act. It is deemed a qualifying matter in accordance with s771 (a) and s770(a) of the Act.

As stated above significant risk from land instability in the urban area is currently managed by the provisions in Chapter E36 and E38 of the Auckland Unitary Plan. The relevant rules rely on the definition of “land which may be subject to land instability”<sup>4</sup>, which uses geological characteristics and slope angle to identify likely land instability risk. The densities and heights specified in the MDRS and Policy 3 (updated May 2022) do not need to be modified to accommodate this qualifying matter.

With the exception of including the provisions relating to the waterbody yards and the maximum impervious surface control this qualifying matter does not require any amendments to the MDRS/ NPS-UD (updated May 2022).

## Information Used

Information relied on for this report is detailed here:

<b>Document</b>	<b>How did it inform the development of the plan change</b>
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<sup>3</sup> Predicting Auckland’s exposure to coastal instability and erosion. Technical report 2020/021. December 2020.

<sup>4</sup> Auckland Unitary Plan (OiP) Definitions, pg.67.

Natural Hazard Risk Management Action Plan	Summarises Auckland's risk from natural hazard (including land instability) and identifies across-Council actions which need to be undertaken to mitigate these risks.
Predicting Auckland's exposure to coastal instability and erosion. Technical report 2020/021. December 2020.	Provides most recent study of coastal instability and erosion in Auckland Region and provides a reliable tool – ASCIE. Foundation report for Coastal hazard plan change.
Auckland Unitary Plan (Operative in Part)	Manages the effects of natural hazards through the 'Environmental Risk' chapter of the Regional Policy Statement (B10), Natural Hazards and Flooding Provisions (E.36), Subdivision Controls (E.38).

## Consultation

Schedule 1 of the RMA sets out the relevant consultation requirements for PC78.

Mana whenua have been engaged at various stages in the preparation to provide feedback on the process and to the development of PC78.

Council provided an opportunity to the Auckland community to comment on its 'preliminary response' proposals during the period April 19 to May 9, 2022. The consultation documentation included Information Sheet #6: Qualifying matters (Part 1) which provided a definition of a qualifying matter and an explanation of their ability to constrain the anticipated intensification in relation to NPS-UD and the Act.

The government-specified qualifying matters and their corresponding list of AUP provisions were also provided as part of this consultation including Land instability as a Significant Natural Hazard under s77(a) and s77O(a).

Throughout this process subject matter experts have also been consulted regarding the history of the heritage area and the development of the response to the anticipated intensification of the NPS-UD Policy 3 (updated May 2022) and MDRS.