

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2016-404-2331
[2017] NZHC 1349**

BETWEEN MAN O'WAR FARM LIMITED
 Appellant

AND AUCKLAND COUNCIL
 Respondent

FEDERATED FARMERS OF NEW
ZEALAND INCORPORATED
Section 301 party

Hearing: 16 June 2017

Counsel: C Casey QC and M Williams for Appellant
 M Dickey and A M B Green for Respondent
 R Gardner for Federated Farmers of New Zealand Incorporated

Judgment: 16 June 2017

ORAL JUDGMENT OF WHATA J

Solicitors: Clendons, Auckland
 Brookfields, Auckland

[1] Man O'War has filed an appeal against various decisions of the Council in relation to the proposed Auckland Unitary Plan (PAUP). This appeal concerns one of the matters raised by Man O'War, namely, the legality of the underlined words in the following definition:

Land which may be subject to coastal hazards

Any land which may be subject to erosion over at least a 100 year time frame:

- (a) within a horizontal distance of 20m landward from the top of any coastal cliff with a slope angle steeper than 1 in 3 (18 degrees); or
- (b) at an elevation less than 7m above mean high water springs if the activity is within:
 - (i) Inner Harbours and Inner Hauraki Gulf: 40m of mean high water springs; or
 - (ii) Open west, outer and Mid Hauraki Gulf: 50m of mean high water springs.

Any land identified as being subject to one per cent annual exceedance probability (AEP) coastal storm inundation (CSI).

[2] The parties to the appeal have reached agreement that this definition is uncertain and therefore unlawful. They seek a number of amendments to bring the requisite clarity. Attached to this judgment is an appendix showing the relief sought.

Background

[3] The following background was provided by the parties, which I adopt.

[4] The appellant and its associated companies own Man O'War Station located on Waiheke and Ponui Islands. Man O'War Station covers some 1,785 hectares, much of which is located within the coastal environment.

[5] The appellant made a submission on the notified Unitary Plan which, relevant to this appeal, addressed various provisions relating to coastal hazards.¹

¹ *Albany North Landowners v Auckland Council* [2017] NZHC 138, [279]-[290] and [302]-[303].

[6] During the hearing of submissions on the Unitary Plan before the Independent Hearings Panel (IHP), the Council proposed several changes to the provisions for coastal hazards. This included removal of the definition of ‘land which may be subject to natural hazards’ and insertion of new definitions for ‘land which may be subject to coastal hazards’ and ‘land which may be subject to land instability’.

[7] The appellant presented legal submissions regarding the Council’s proposed coastal hazards definition. Of particular relevance to Part C of the appeal, the appellant identified the uncertainty created by including the words “any land potentially subject to erosion over at least a 100 year timeframe” within the definition of “land which may be subject to coastal hazards”. It was noted that landowners would not know whether resource consent is required to establish or extend new buildings on land in areas which are near the coastline.

[8] The IHP recommended the adoption of the definition changes largely as proposed by the Council.

[9] The recommended changes were adopted by the Council in the Decisions Version of the Unitary Plan (dated 19 August 2016).²

[10] The IHP’s recommendation, as noted above, was adopted by the Council.

Alleged errors

[11] A number of alleged errors were raised in the Man O’War appeal. Of particular remaining relevance is the following ground:

- (d) A reader of the Unitary Plan will not be able to determine, including with reference to the Unitary Plan maps, where the land and coastal areas falls within that definition, and as such the definition in the provisions of the Unitary Plan triggered by the definition are void by uncertainty and *ultra vires*.

² Apart from rejecting part of the definition of coastal storm inundation one per cent AEP plus 1m sea level rise.

Assessment

[12] As I have said elsewhere, a regulatory provision may be voided for uncertainty.³

[13] I agree with the parties that the highlighted portion of the definition is ambiguous as to its scope and application. For example, the phrase “may be subject to erosion” provides no guidance as to the requisite probability required. Secondly, the second part of the phrase, “over at least a 100 year time frame” envisages a broad evaluative assessment capable of engendering considerable scientific debate.

[14] Accordingly, I agree with the parties that this aspect of the definition creates a degree of uncertainty and could make it difficult for the Plan reader to identify whether they need a resource consent for development or subdivision near the coast.

[15] The appeal is therefore allowed. However, the substantive matter of concern is the extensive nature of the relief sought. While I am amenable to facilitating the expeditious conclusion of these matters, in reality the amendments sought are substantive and require substantive review. Given the breadth of the potentially affected persons by the amendments, I am not prepared to grant the relief on a final basis. I note that the joint memorandum confirms that there were numerous submitters to the relevant provisions and even though only Federated Farmers took the opportunity to participate in the appeal, this Court should be slow to engage in an evaluative exercise of the nature proposed, without the confidence that relevant affected parties have had an opportunity to contribute to the amendments sought.

[16] I therefore propose to proceed on the following basis, given the consensus of all parties, including the Council:

- (a) I grant the appeal and make the amendments sought by the parties. I note, in this regard, that whatever prejudice this may cause to affected

³ *University of Auckland v Auckland Council* [2017] NZHC 1150 at [14], citing *Transport Ministry v Alexander* [1978] 1 NZLR 306 (CA) at 311 per Cooke J; *McEldowney v Forde* [1971] AC 632; *Official Assignee v Chief Executive of the Ministry of Fisheries* [2002] 2 NZLR 722 (CA) at [82] per Thomas J. See also *Power v Whakatane District Council* HC Tauranga, CIV-2008-470-456, 30 October 2009, at [45].

person in the interim, they have had the opportunity to participate in this appeal and did not take it.

- (b) However, in terms of finalisation of the Plan, I see no other option but to refer the matter back to the Council and for the Council to serve a copy of my decision on the submitters on this part of the Plan and to afford them an opportunity to appeal to the Environment Court, should they consider it necessary to do so, in respect of the amendments made.

Addendum

[17] Ms Dickey helpfully indicated that some clarity as to the effect of my judgment, in the event that there is no appeal, would be helpful. I simply record that, in the event that there is no appeal, the Council's decision is final and therefore that part of the Plan is settled.

APPENDIX 1

Amendments to Auckland Unitary Plan

Chapter J1. Definitions:

Coastal storm inundation one 1 per cent annual exceedance probability (AEP) ~~(CSI)~~-area

The ~~inundation of~~ area of coastal land subject to inundation caused by high sea level elevations during storm events, where the sea level elevation is of such height as to have a one per cent chance of being equalled or exceeded in any year. This includes wave set up for open coastal areas and excludes wave set up for inner harbours and estuaries. Wave run up is not included.

The coastal storm inundation 1 per cent AEP area is:

- the area shown in the Council's publicly available online GIS viewer as the modelled extent of affected land for a 100 year return period (Average Recurrence Interval); or
- as identified in a site-specific technical report prepared by a suitably qualified and experienced professional.

Note: The Coastal Storm Inundation maps included in the Council's GIS viewer represent the area of inundation indicated in the tables of the report: Stephens, S., Wadhwa, S., and Tuckey, B., (2016) Coastal inundation by storm-tides and waves in the Auckland Region, prepared by NIWA and DHI for Auckland Council, Auckland Council Technical Report TR2016/17). These maps may be amended should more updated information be made available.

Coastal storm inundation area one 1 per cent annual exceedance probability (AEP) plus 1m sea level rise ~~(CSI1)~~-area

The area inundated during a coastal-storm inundation one 1 per cent event plus an additional one metre of sea-level rise relative to the present-day mean sea level

The area of coastal storm inundation one 1 per cent AEP plus 1m sea level rise ~~(CSI1)~~ is defined as:

- the area shown in the planning maps as 'Coastal Inundation 1% AEP Plus 1m Control'; or
- as identified in a site-specific technical report prepared by a suitably qualified and experienced professional ~~for specific site~~.

~~Land which may be subject to coastal hazards~~ Coastal erosion hazard area

Any land which ~~is~~ may be subject to erosion over at least a 100 year time frame:

- (a) within a horizontal distance of 20m landward from the top of any coastal cliff with a slope angle steeper than 1 in 3 (18 degrees); or

- (b) at an elevation less than 7m above mean high water springs if the activity is within:
- (i) Inner Harbours and Inner Hauraki Gulf: 40m of mean high water springs; or
 - (ii) Open west, Outer and Mid Hauraki Gulf: 50m of mean high water springs; or
- (c) within a lesser distance from the top of any coastal cliff, or mean high water springs, than that stated in (a) and (b), where identified in a site-specific coastal hazard assessment technical report prepared by a suitably qualified and experienced professional to establish the extent of land which may be subject to coastal erosion over at least a 100 year time frame.

~~Any land identified as being subject to one per cent annual exceedance probability (AEP) coastal storm inundation (CSI).~~

Chapter E36. Natural hazards and flooding:

E36.4.1 Activity table

Activity		Activity status
Activities on land which may be subject to in the coastal erosion hazard area		
(A1)	External alterations to buildings which do not increase the gross floor area of the building, on land which may be subject to in the coastal erosion hazard area	P
(A2)	External alterations to buildings which increase the gross floor area of the building on land which may be subject to in the coastal erosion hazard area	RD
(A3)	New structures and buildings (excluding dwellings) ancillary to farming activities with a gross floor area of up to 100m ² on land which may be subject to in the coastal erosion hazard area Note 1 Structures ancillary to farming activities includes artificial crop protection structures and crop support structures.	P
(A4)	All other buildings and structures on land which may be subject to in the coastal erosion hazard area	RD
(A5)	On-site septic tanks, wastewater treatment and disposal systems, effluent disposal fields, underground storage tanks, water tanks or stormwater pipes or soakage fields on land which may be subject to in the coastal erosion hazard area	RD
Activities on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area		
(A6)	External alterations to buildings which do not increase the gross floor area on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area	P
(A7)	External alterations to buildings which increase the gross floor area of the building on land which may be subject to in the coastal storm	RD

	inundation 1 per cent annual exceedance probability (AEP) area	
(A8)	New structures and buildings (excluding dwellings) ancillary to farming activities with a gross floor area of up to 100m ² on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area Note 1 Structures ancillary to farming activities includes artificial crop protection structures and crop support structures.	P
(A9)	All other buildings and structures on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area	RD
(A10)	On-site septic tanks, wastewater treatment and disposal systems, effluent disposal fields, underground storage tanks, water tanks or stormwater pipes or soakage fields on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area	RD
Activities in areas subject to on land in the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1metre sea level rise (CSI4) area		
(A11)	Additions of habitable rooms up to 25m ² to existing buildings in areas subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1m sea level rise (CSI4) area	P
(A12)	Habitable rooms in new buildings and additions of habitable rooms (greater than 25m ²) to existing buildings in areas subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1m sea level rise (CSI4) area that comply with standard E36.6.1.1	P
(A13)	Habitable rooms in new buildings and additions of habitable rooms (greater than 25m ²) to existing buildings in areas subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1m sea level rise (CSI4) area that do not comply with Standard E36.6.1.1	D
(A51)	All other buildings and structures, on land which may be subject to land instability not otherwise provided for	RD
Infrastructure: <ul style="list-style-type: none"> • on land which may be subject to in the coastal erosion hazard area; • on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area; • in areas subject to the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1m sea level rise area (CSI4); • in the 1 per cent annual exceedance probability (AEP) floodplain; • in overland flow paths • infrastructure on land which may be subject to land instability 		
(A52)	Operation, maintenance, renewal, repair and minor infrastructure upgrading, of infrastructure in areas listed in the heading above that complies with Standard E36.6.1.13	P

E36.6.1. Permitted activity standards

Activities in areas ~~subject to the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise~~ area (CSH)

E36.6.1.1. Habitable rooms in new buildings and additions of habitable rooms (greater than 25m²) to existing buildings in areas ~~subject to the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1m sea level rise~~ area (CSH)

- (1) Finished floor levels of habitable rooms must be above the inundation level of the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area.

...

Infrastructure:

- ~~on land which may be subject to in the coastal erosion hazard area;~~
- ~~on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area;~~
- ~~in areas subject to the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area (CSH);~~
- ~~in the 1 per cent annual exceedance probability (AEP) floodplain;~~
- ~~in overland flow paths and~~
- ~~on land which may be subject to land instability~~

E36.6.1.13. Operation, maintenance, renewal, repair and minor infrastructure upgrading, of infrastructure in areas listed in the heading above.

E36.8.1. Matters of discretion

Activities ~~on land which may be subject to in the coastal erosion hazard area~~

- (1) for external alterations to existing buildings which increase the gross floor area of the building ~~on land which may be subject to in the coastal erosion hazard area;~~ for all other buildings and structures ~~on land which may be subject to in the coastal erosion hazard area;~~ and for on-site septic tanks, wastewater treatment and disposal systems, effluent disposal fields, underground storage tanks, water tanks or stormwater pipes or soakage fields ~~on land which may be subject to in the coastal erosion hazard area:~~
 - (a) the type of activity being undertaken and its vulnerability to natural hazard events including the consequences of a natural hazard event in relation to more or less vulnerable activities;
 - (b) the likelihood of a natural hazard event occurring and the likely extent of any damage to people, property or the environment taking in to account the likely effects of climate change, including sea level rise;
 - (c) the effects on public access, landscape and other environmental values, caused by any works proposed in association with the building or structure, including any associated earthworks and land form modifications, to address the hazard by way of mitigation; and
 - ~~(d) the effects on public access; and~~

~~(e)~~(d) the ability to relocate buildings or structures including the proposed duration of occupation of the building or structure within a hazard area, taking into account the long term likely effects of climate change.

Activities on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area

(2) for external alterations to existing buildings which increase the gross floor area of the building ~~on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area~~; for all other buildings and structures ~~on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area~~; for on-site septic tanks, wastewater treatment and disposal systems, effluent disposal fields, underground storage tanks, water tanks or stormwater pipes or soakage fields ~~on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area~~:

(a) the type of activity being undertaken and its vulnerability to natural hazard events including the consequences of a natural hazard event in relation to more or less vulnerable activities;

(b) the likelihood of a natural hazard event occurring and the likely extent of any damage to people, property or the environment taking in to account the likely effects of climate change, including sea level rise;

(c) the effects on public access, landscape and other environmental values, caused by any works proposed in association with the building or structure, including any associated earthworks and land form modifications, to address the hazard by way of mitigation ; and

~~(d) the effects on public access; and~~

~~(e)~~ (d) the ability to relocate buildings or structures including the proposed duration of occupation of the building or structure within a hazard area, taking into account the long term likely effects of climate change.

Infrastructure:

- * ~~on land which may be subject to in the coastal erosion hazard area;~~
- * ~~on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area;~~
- * ~~in areas subject to the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1metre sea level rise area (CSH);~~
- * ~~in the 1 per cent annual exceedance probability (AEP) floodplain;~~
- * ~~in overland flow paths and~~
- * ~~on land which may be subject to land instability~~

(17) for operation, maintenance, renewal, repair and minor infrastructure upgrading of infrastructure ~~on land which may be subject to in the coastal erosion hazard area; or on land which may be subject to in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area; or in the areas subject to coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1m sea level rise area (CSH); or in the 1 per cent annual exceedance probability (AEP) floodplain; or in overland flow paths; or on land which may be subject to land instability:~~

E36.8.2. Assessment criteria

The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:

Activities ~~on land which may be subject to~~ in the coastal erosion hazard area

- (1) for external alterations to existing buildings which increase the gross floor area of the building ~~on land which may be subject to~~ in the coastal erosion hazard area; for all other buildings and structures ~~on land which may be subject to~~ in the coastal erosion hazard area; and for on-site septic tanks, wastewater treatment and disposal systems, effluent disposal fields, underground storage tanks, water tanks or stormwater pipes or soakage fields ~~on land which may be subject to~~ in the coastal erosion hazard area:
 - (a) the likelihood of a coastal hazard event occurring, its magnitude and duration, the consequences of the event and its effects on public health, safety, property and the environment;
 - (b) the extent to which site specific analysis, such as engineering, stability or flooding reports and its analysis have been undertaken and any other information the Council may have on the site and surrounding land;
 - (c) the extent to which public access, landscape and other environmental values are affected by any works proposed in association with the building or structure, by way of ~~or~~ mitigation of the hazard; and
 - (d) the extent to which any building or structure can be relocated in the event of severe coastal erosion or shoreline retreat, taking into account the likely long term effects of climate change.

Activities ~~on land which may be subject to~~ in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area

- (2) for external alterations to existing buildings which increase the gross floor area of the building ~~on land which may be subject to~~ in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area; for all other buildings and structures ~~on land which may be subject to~~ in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area; for on-site septic tanks, wastewater treatment and disposal systems, effluent disposal fields, underground storage tanks, water tanks or stormwater pipes or soakage fields ~~on land which may be subject to~~ in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area:
 - (a) the likelihood of a coastal storm inundation hazard event occurring, its magnitude and duration, the consequences of the event and its effects on public health, safety, property and the environment;
 - (b) the extent to which site-specific analysis, such as engineering, stability or flooding reports and its analysis have been undertaken and any other information the Council may have on the site and surrounding land;

- (c) the extent to which public access, landscape and other environmental values are affected by any works proposed in association with the building or structure, by way of or mitigation of the hazard; and
 - (d) the extent to which any building or structure can be relocated in the event of severe coastal erosion or shoreline retreat, taking into account the likely long term effects of climate change.
- ...
- (17) for operation, maintenance, renewal, repair and minor infrastructure upgrading of infrastructure ~~on land which may be subject to~~ in the coastal erosion hazard area; or ~~on land which may be subject to~~ in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area; or ~~in the areas subject to~~ coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1m sea level rise area (CSLR); or in the 1 per cent annual exceedance probability (AEP) floodplain; or in overland flow paths; or on land which may be subject to land instability:
 - (a) the long-term management, maintenance and monitoring of any mechanisms associated with managing the risk of adverse effects resulting from the placement of infrastructure within a hazard area to other people, property and the environment including the management of hazardous substances;
 - (b) the extent to which residual risks to people, property and the environment resulting from any mitigation measures implemented to manage the hazard;
 - (c) the extent to which an existing hazard is exacerbated or a new hazard is created as a result of the structure;
 - (d) the extent to which the proposal includes non-structural solutions to protect infrastructure from the hazard and resulting adverse effects; and
 - (e) the extent to which landscape values and/ or public access are affected by the proposed structure or structures associated with the mitigation of the hazard.

E36.9. Special information requirements

- (1) A hazard risk assessment must be undertaken when subdivision, use or development requiring resource consent is proposed to be undertaken on land which may be subject to any one or more of the following:
 - (a) coastal erosion;
 - (b) coastal storm inundation 1 per cent annual exceedance probability (AEP);
 - (c) coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1m ~~sea~~ sea level rise;
 - ~~(d) coastal hazards;~~
 - (e) the 1 per cent annual exceedance probability (AEP) floodplain;
 - (f) overland flow paths; or

(g) land instability.

The level of information required to be provided should be proportionate to the hazard risk, the nature of the hazard. It should also be appropriate to the scale, nature and location of the development and reflective of the scale of the activity proposed. For coastal hazards this should include a consideration of the effects of climate change over at least a 100 year timeframe.

(2) A hazard risk assessment report must accompany a resource consent application for the subdivision, use or development referenced in E36.9(1) above and must identify whether the land is or is likely to be subject to coastal erosion; coastal storm inundation 1 per cent annual exceedance probability (AEP); coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise; coastal hazards; the 1 per cent annual exceedance probability (AEP) floodplain; overland flow paths; or land instability, over at least the next 100 years and, if found to be subject to one or more of these hazards, should provide an assessment, which does not need to duplicate an assessment of environmental effects, which addresses all of the following: ...

Chapter E38. Subdivision – Urban:

Table E38.4.1 Activity table - Subdivision for specific purposes

	Activity	Activity status
(A11)	Subdivision of land within any of the following natural hazard areas: <ul style="list-style-type: none"> • the 1 per cent annual exceedance probability floodplain; • coastal storm inundation the 1 per cent annual exceedance probability (AEP) area; • coastal storm inundation the 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area; • land which may be subject to coastal erosion hazards area; or • land which may be subject to land instability. 	RD

E38.7.3.4. Subdivision of land which may be subject to in the coastal erosion hazard area; hazards or the coastal storm inundation 1 per cent annual exceedance probability (AEP) area

(1) Each proposed site on land which may be subject to in the coastal erosion hazards area or the coastal storm inundation 1 per cent annual exceedance probability (AEP) area must demonstrate that all of the relevant areas/features in E38.7.3.4(a) to (c) below are located outside of any land that may be subject to coastal hazards erosion or coastal storm inundation:

- (a) in residential zones and business zones - a shape factor that meets the requirements of Standard E38.8.1.1 Site shape factor in residential zones or Standard E38.9.1.1 Site shape factor in business zones;
- (b) access to all proposed building platforms or areas; and
- (c) on-site private infrastructure required to service the intended use of the site.

E38.8.1. General standards in residential zones
E38.8.1.1. Site shape factor in residential zones

- (1) Access and manoeuvring must meet the requirements of E27 Transport.
- (2) All vacant sites must be able to contain a rectangle of 8 metres by 15 metres except the Residential - Terrace Housing and Apartment Buildings Zone must contain a rectangle of 15 metres by 20 metres, to accommodate a building that complies with all applicable standards of the zone and is located outside:
 - (a) the ~~one~~ 1 per cent annual exceedance probability floodplain;
 - (b) ~~land which may be subject to the coastal erosion hazards area;~~
 - (b2) the coastal storm inundation 1 per cent annual exceedance probability (AEP) area;
 - (c) ~~land affected by the coastal storm inundation one~~ 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area;
 - (d) land which may be subject to land instability;
 - (e) the protected root zone of trees identified in the Notable Trees Overlay; ...

E38.9.1.1. Site shape factor in business zones

- (1) All vacant sites must be able to contain a rectangle with an area equal to half the area of the site where the longer sides are no greater than twice the length of the shorter sides to accommodate a building that complies with all applicable controls of the zone and is located outside all of the following:
 - (a) the ~~one~~ 1 per cent annual exceedance probability floodplain;
 - (b) ~~land affected by the coastal storm inundation one~~ 1 per cent annual exceedance probability (AEP) area;
 - (c) ~~land affected by the coastal storm inundation one~~ 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area;
 - (d) ~~land affected by the coastal erosion as identified hazard~~ area;
 - (e) land which may be subject to land instability; ...

E38.12. Assessment – restricted discretionary activities

E38.12.1. Matters of discretion

The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary resource consent application:

- (1) subdivision of a site within the ~~one~~ 1 per cent annual exceedance probability floodplain:
 - (a) the effects of the hazard on the intended use of the site or sites created by the subdivision and the vulnerability of the uses to flood hazard events.
- (2) subdivision of a site ~~subject to in the coastal storm inundation one~~ 1 per cent annual exceedance probability (AEP) area or coastal storm inundation ~~one~~ 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area:
 - (a) the effects of the hazard on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal storm inundation events.
- (3) subdivision of a site ~~subject to in the coastal erosion hazards area~~:

(a) the effects of the hazard erosion on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal ~~hazards~~ erosion.

E38.12.2. Assessment Criteria

The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:

(1) ...

(2) subdivision of a site ~~subject to~~ in the coastal storm inundation ~~area~~ 1 per cent annual exceedance probability (AEP) area or the coastal storm inundation ~~area~~ 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area:

(a) the effects of the hazard on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal storm inundation events:

(i) whether the location and design of development including proposed and existing building platforms and access ways include the ability to relocate uses within the proposed site area, taking into account in urban and serviced areas a 1 metre rise in sea levels;

(ii) whether the use of defences to protect the land and any buildings or structures on the land from coastal storm inundation are necessary;

(iii) whether there is any residual risk posed by coastal storm inundation to the site(s) associated with any existing or proposed coastal defences;

(iv) whether there are effects on landscape values resulting from associated built and/or land form modifications required to provide for the intended use of the site; and

(v) refer to Policy E38.3(2).

(3) Subdivision of a site ~~subject to~~ in the coastal erosion ~~hazards~~ area:

(a) the effects of the hazard on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal ~~hazards~~ erosion:

(i) whether public access to the coast is affected;

(ii) the extent to which the installation of hard protection structures to be utilised to protect the site or its uses from coastal erosion hazards over at least a 100 year timeframe are necessary; and

(iii) refer to Policy E38.3(2).

Chapter E39. Subdivision – Rural:

Table E39.4.1 Subdivision for specified purposes

	Activity	Activity status
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(A8)	Subdivision of land within any of the following natural hazard areas: <ul style="list-style-type: none"> • one 1 per cent annual exceedance probability floodplain; • coastal storm inundation one 1 per cent annual exceedance probability (AEP) area; • coastal storm inundation one 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise <u>area</u>; • land which may be subject to coastal erosion hazards <u>area</u>; or <ul style="list-style-type: none"> • land which may be subject to land instability. 	RD
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E39.6.1. General standards

E39.6.1.1. Specified building area

(3) The specified building area must meet all of the following:

- (a) include a single area of at least 2,000m² clear of all of the following:
- (i) all yards;
 - (ii) one per cent annual exceedance probability floodplain areas;
 - (iii) ~~land affected by~~ coastal storm inundation ~~one~~ 1 per cent annual exceedance probability (AEP) area;
 - (iv) ~~land affected by~~ coastal storm inundation ~~one~~ 1 per cent annual exceedance probability (AEP) plus 1m sea level rise area;
 - (v) ~~land which may be subject to coastal erosion hazards~~ area;
 - (vi) land which may be subject to land instability;
 - (vii) access to all proposed building platforms or areas; and
 - (viii) on-site private infrastructure required to service the intended use of the site.

E39.6.4.3. Subdivision of land ~~which may be subject to~~ in the coastal erosion hazard area; hazards or the coastal storm inundation 1 per cent annual exceedance probability (AEP) area

(1) Each proposed site on land ~~which may be subject to~~ in the coastal erosion hazards area or the coastal storm inundation 1 per cent annual exceedance probability (AEP) area must demonstrate that all of the relevant areas/features in (a) to (c) below are located outside of any land subject to coastal ~~hazards~~ erosion or coastal storm inundation:

- (a) a specified building area that meets the requirements of Standard E39.6.1 General standards;
- (b) access to all proposed building platforms or areas; and
- (c) on-site private infrastructure required to service the intended use of the site.

E39.8. Assessment – restricted discretionary activities

E39.8.1. Matters of discretion

The Council will restrict its discretion to the following matters when assessing a restricted discretionary resource consent application:

(1) subdivision of a site within the ~~one~~ 1 per cent annual exceedance probability floodplain:

- (a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to flood hazard events.

(2) subdivision of a site ~~subject to~~ in the coastal storm inundation ~~one~~ 1 per cent annual exceedance probability (AEP) area or ~~the~~ coastal storm inundation ~~one~~ 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area:

(a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal storm inundation events.

(3) subdivision of a site ~~subject to~~ in the coastal erosion hazards area:

(a) the effects of the hazards erosion on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal erosion hazards.

E39.8.2. Assessment criteria

(2) subdivision of a site ~~subject to~~ in the coastal storm inundation ~~one~~ 1 per cent annual exceedance probability (AEP) area or ~~the and~~ coastal storm inundation ~~one~~ 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area:

(a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal storm inundation events: ...

(3) subdivision of site ~~subject to~~ in the coastal erosion hazards area:

(a) the effects of the hazards on the intended use of the sites created by the subdivision and the vulnerability of these uses to coastal erosion hazards:

Chapter I315. Gabador Place Precinct:

I315.6.3. Coastal hazards

(1) The activity status for activities listed in Table E36.4.1 of E36 Natural hazards and flooding apply except in relation to the following activities which are permitted on land ~~which may be subject to~~ in the coastal erosion hazards area, in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area, and in ~~areas subject to~~ the coastal storm inundation ~~one~~ 1 per cent annual exceedance probability (AEP) plus 1 metre sea level rise area:

- (a) marine and port accessory structures and services; and
- (b) marine and port facilities.

Chapter I402. Auckland Airport Precinct:

	Activity	Activity status
Natural hazards and flooding (these provisions replace the Auckland-wide rules at Chapter E33 E36 Natural hazards and flooding) [dp]		

(A68)	Activities which are permitted in E36 Natural hazards and flooding	P
(A69)	Activities which are permitted in E36 Natural hazards and flooding but does not comply with standards in E36 Natural hazards and flooding, or standards in this precinct	C
(A70)	Buildings, structures and works associated with the airport operation including taxiways and other aircraft movement areas, aprons, terminals, rescue facilities, navigation and safety aids, maintenance and servicing facilities, catering facilities, freight facilities, quarantine and incineration facilities, fuelling facilities, storm water facilities, roads, and monitoring activities in any hazard area	P
(A74)	Buildings, structures and works that are unable to comply with the permitted activity standards for land which may be subject to: <ul style="list-style-type: none"> · the coastal erosion hazard area · land which may be subject to land instability · the 1% AEP coastal storm inundation (CSI) 1 per cent annual exceedance probability (AEP) plus 1m of sea level rise (CS1) area 	C

Table I402.4.3 Activity table – Replacement Auckland Wide Rules (All sub-precincts)

I402.6. Standards

I402.6.11. Flooding and natural hazards

I402.6.11.2. Controlled Activities

(1) For buildings, structures and works (except those containing visitor accommodation) within a 1 % AEP floodplain, flood sensitive area, overland flow path or ~~on land which may be subject to~~ in the coastal erosion hazard area, on land which may be subject to land instability, or the ~~1% AEP coastal storm inundation 1 per cent annual exceedance probability (AEP) (CSI) plus 1m of sea level rise (CS1) area~~ that are unable to comply with the permitted activity standards must provide a report from a suitably qualified and experienced professional to the Council which

(a) identifies the risk, taking into account where relevant:

- (i) the vulnerability of the activity, and
- (ii) potential for risks to adjacent land and activities outside the zone;

(b) identifies and proposes flood management methods appropriate for the particular activity to address the risk identified.

I402.7. Assessment – controlled activities

I402.7.1. Matters of control

(5) Buildings, structures and works (except those containing visitor accommodation) within a 1 % AEP floodplain, flood sensitive area, or overland flow path or ~~on land which may be subject to~~ in the coastal erosion hazard area, on land which may be subject to land instability, or the ~~1% AEP coastal storm inundation 1 per cent annual exceedance probability (AEP) (CSI) plus 1m of sea level rise (CS1) area~~ that are unable to comply with the permitted activity standards:

(a) the management methods proposed, taking into account the extent and nature of the hazard, including the design of the building, structure or works; ...

1402.7.2. Assessment criteria

(6) Buildings, structures and works that are unable to comply with the permitted activity standards ~~for land which may be subject to coastal erosion hazard area, on~~ land which may be subject to land instability, or the ~~1% AEP~~ coastal storm inundation 1 per cent annual exceedance probability (AEP) ~~(CS1)~~ plus 1m of sea level rise ~~(CS1)~~ area:

(a) whether the methods used to identify the coastal hazard or land instability and associated risk are appropriate in the context of Auckland Airport. ...

Maps:

Unitary Plan maps

Amend the name of the coastal inundation layer as follows:

Coastal Inundation 1% AEP Plus 1m Control