

Planning Report

Plan Change 36 – Daylighting Provisions for Waihi Beach Floodable Areas

1.0 Introduction

- 1.1** The purpose of this report is to provide recommendations on submissions and further submissions to Plan Change 36 – Daylighting Provisions for Waihi Beach Floodable Areas.
- 1.2** Plan Change 36 proposes to introduce new more liberal daylighting provisions into the District Plan applying to properties within identified floodable areas at Waihi Beach. The proposed new rules provide greater flexibility for existing dwellings to be raised or replaced and for new dwellings to be built on existing narrow sections in a manner which achieves compliance with the minimum habitable floor level requirements applying in the identified floodable areas. Under the proposed new rules, specific provision is made to dispense with the usual RMA notification and neighbour written approval requirements in the case of resource consent applications to encroach through the daylighting plane applying in the Residential Zone.
- 1.3** For a full background to the Plan Change and the proposed provisions please refer to the Section 32 Report. For a list of the proposed provisions only, please refer to the document titled 'Proposed Plan Change Combined Notification Document'.
- 1.4** Any recommended amendments to rules in this report will be shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this report in blue.

2.0 Topic: General merits of proposed plan change – Proposed New Rule 13.4.1 (ba)

2.1. Submissions received

Two principal submissions and one late further submission were received, all opposing the proposed Plan Change. No submissions in support of the Plan Change were received. All submitters request that the Plan Change not be proceeded with and that the status quo (ie the existing Operative District Plan provisions) be retained. Council will need to consider whether it will accept the late further submission and make a specific decision in that regard.

2.2. Submission Points

2.2.1 Adverse impact on privacy and amenity of neighbouring properties

The proposed new rules will result in neighbour disputes through loss of privacy, overlooking, building dominance and other unacceptable adverse effects on residential amenity values.

2.2.2 Provide adequate flood protection

The proposal only addresses the effects of flooding, not the cause. Council should provide a permanent solution to the flooding problem through an upgrading of the existing stormwater disposal system together with promotion of responsible and appropriate development.

2.2.3 Compensation

The proposal is contrary to Section 5 of the RMA (sustainably managing resources in a manner which enables people to provide for their wellbeing) and if the proposed new daylighting rules are adopted, Council is likely to face legal action, including claims for compensation for loss of amenity and property values.

3.0 Discussion

3.1 There are in the order of 350 properties at Waihi Beach currently identified as being at risk from flooding. One of the available measures to mitigate the identified risk is to raise dwelling floor levels above the predicted flood level. Information provided by Council's Utilities Asset Engineers indicates that around 75% of the at risk dwellings will need to have their floor levels raised by up to 1.0m and approximately 25% by more than 1.0m. Because many existing dwellings are located close to property boundaries on narrow residential sections, there is limited scope to raise floor levels without encroaching through the Residential Zone daylighting rule of the Operative District Plan.

3.2 The proposed Plan Change endeavours to strike a balance between the aim of achieving a reduction in the number of dwellings currently at risk from flooding (by making provision for them to be raised through a cost-effective and relatively certain resource consent process) and minimising the adverse environmental effects on neighbours that an increased dwelling height will inevitably create. Such adverse effects include loss of privacy, overshadowing, building dominance etc. Striking an appropriate balance is particularly important given that the proposed new District Plan rules specifically provide for the usual RMA notification and affected persons provisions to be dispensed with.

3.3 In summary, the benefits of the reduced flooding risk able to be achieved through the proposed more liberal daylighting provisions are seen to outweigh the acknowledged disbenefits created by a potential reduction in the residential amenity values of affected neighbouring properties.

- 3.4** The thrust of the submissions received is that the residential amenity disbenefits of the proposed new daylighting provisions are unacceptable and that the most appropriate way of addressing the flooding risk is through upgraded reticulated stormwater systems and better controls on development.
- 3.5** While it is agreed that the flooding issue should be addressed through engineering solutions and appropriate development controls, these alone are unlikely to fully resolve the problems in respect of existing dwellings currently at risk from flooding. The more liberal daylighting provisions proposed through Plan Change 36 are therefore believed to form part of the overall package of appropriate measures.
- 3.6** However, some of the concerns raised by submitters are nonetheless considered valid and there is some scope to amend the provisions of the plan change so that such concerns are addressed at least in part. In particular, it would be possible to “cap” the degree of permitted encroachment through the daylighting plane without notification or affected person’s written approvals to a maximum of say 1.0m. Such a “cap” is likely to provide for most of the identified at risk dwellings to be raised above the predicted flood level, including a 500mm “freeboard”. In the case of daylighting plan encroachments greater than 1.0m, the usual RMA notification and affected persons provisions would apply thereby ensuring adjoining neighbours are consulted through the resource consent application process.
- 3.7** Effectively, a maximum encroachment of 1.0m would mean that the daylighting requirement for properties identified as being at risk from flooding would be 3.0m + D (distance from boundary) rather than the usual 2.0m + D. A maximum 1.0m encroachment without neighbour involvement is considered reasonable, particularly given that by comparison with the District Plans of other local authorities in the Bay of Plenty and Waikato Regions the Western BOP District Plan provision is relatively restrictive. The following table compares the Residential Zone daylighting requirement of the Western BOP with those of other District Plans:

District Plan	Daylighting rule
Western BOP District	2.0m + D
Hauraki District	2.0m + D
Matamata-Piako District	2.0m + D
Waikato District	2.5m + D
Waipa District	2.7m + D

Tauranga City	2.7m + D
Whakatane District	2.7m + D
Rotorua District	3.0m + D
Thames-Coromandel District	3.0m + D

4.0 Options

4.1. Option 1 – retain status quo (as requested by submitters)

Advantages	<ul style="list-style-type: none"> ▪ Provides for encroachments through daylighting plane to be considered subject to the usual RMA resource consent application provisions relating to notification and affected persons' written approvals. ▪ Maintains existing degree of protection to neighbouring properties provided under the current District Plan rules.
Disadvantages	<ul style="list-style-type: none"> ▪ In many cases, a resource consent application to raise an existing dwelling will have to be notified to adjoining neighbours. The potential additional time and costs involved in a notified resource consent application and the actual or perceived increased difficulty in obtaining such a consent will be a significant deterrent to many owners of at risk properties. ▪ Any reduction in the number of dwellings currently at risk from flooding is likely to be relatively small.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Administratively inefficient with respect to resource consent process required to raise existing dwellings; ▪ Will be neither efficient nor effective in achieving the aim of reducing the level of risk to properties in identified floodable areas.

4.2. Option 2 – adopt Plan Change as currently proposed

Advantages	<ul style="list-style-type: none"> ▪ Specifically targets at risk properties; ▪ Streamlines resource consent process for raising the floor levels of existing dwellings; ▪ Provides greater design flexibility for new dwellings on narrow sites; ▪ Simple and straightforward.
Disadvantages	<ul style="list-style-type: none"> ▪ Increases the potential degree of adverse effects on adjoining neighbours; ▪ May be seen as inequitable because non-notified resource consent process dispenses with need to obtain neighbour written approvals.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Administratively efficient; ▪ Both efficient and effective in addressing the

	identified flood hazard risk.
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4.3. Option 3 – modify Plan Change provisions through introduction of a 1.0m encroachment “cap”

Advantages	<ul style="list-style-type: none"> ▪ Specifically targets at risk properties; ▪ Provides greater design flexibility for new dwellings on narrow sites; ▪ Provides greater protection for neighbouring property owners by “capping” degree of encroachment for a non-notified resource consent application; ▪ Simple and straightforward.
Disadvantages	<ul style="list-style-type: none"> ▪ Increases the potential degree of adverse effects on adjoining neighbours; ▪ May be seen as inequitable if non-notified resource consent process which dispenses with neighbour approvals is provided for.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Administratively efficient (particularly if non-notified resource consent process provided for); ▪ Both efficient and effective in addressing the identified flood hazard risk.

5.0 Recommendations

- 5.1. That the late further submission from Roger Course be accepted on the grounds that it supports the valid concerns raised in the principal submission of Warren Coffey relating to potential adverse residential amenity effects and no other persons will be prejudiced by such acceptance.
- 5.2. That the provision of proposed Plan Change 36 be modified as follows (recommended amendments in [blue](#) font:

(ba) Daylighting requirements applying to dwellings at Waihi Beach (Planning Maps U01-U08) and which are subject to rule 8.3.3 (b)

(i) Existing or replacement dwellings

This rule shall apply to:

- The raising of an existing dwelling within the same building footprint (building coverage and distance from boundaries); and
- The erection of a replacement dwelling within the same building footprint and building envelope (height in relation to boundaries) as the dwelling to be replaced.

In either of the foregoing cases, the dwelling may encroach through the daylighting plane referred to in rule 13.4.1(b) to an extent no greater than that required to achieve a floor level of 500mm above the 2% AEP Maximum Probable Development Flood Level for the subject property. Provided that:

1. The maximum vertical extent of any encroachment through the daylighting plane shall be 1.0m;
2. In respect of an existing or replacement dwelling the term "building footprint" shall be limited to that of the dwelling itself and shall not include any floor area used for garaging or other accessory purposes.

(ii) Additional provision for dwellings on narrow width properties

In respect of properties with an average width of less than 13m, and notwithstanding any non-compliance of an existing or replacement dwelling with clause (i) above, any dwelling (existing, replacement or new) may encroach through the daylighting plane set out in rule 13.4.1(b) by a maximum vertical extent of 1.0m.

NOTE: Pursuant to rule 8.3.3(b), the activity status of the buildings referred to in foregoing clauses (i) and (ii) is restricted discretionary. Any resource consent application under rule 8.3.3(b) to which rule 13.4.1(ba) also applies shall be processed without notification and without written approvals of other persons being required. In the case of encroachments through the daylighting plane exceeding a vertical extent of 1.0m, the usual provisions of the RMA relating to notification and affected persons shall apply.

5.2. Submissions

The following submissions are therefore accepted in part:

Submission	Point Number	Name
6	1	Derek & Shirley Price
FS76	1	Roger Course
23	1	Warren Coffey

5.3. Reason

Option 3 provides flexibility through more liberal daylighting provisions whilst affording greater protection to neighbours by specifically limiting the extent of adverse impact on residential amenity values without input from potentially affected parties. The ability to encroach further through the daylighting plane is retained as a restricted discretionary activity, a process which provides for direct neighbour involvement.

6.0 Plan Change 36 - Recommended Changes to the District Plan First Review

- 6.1 The purpose of this part of the report is to show the Proposed Plan Change in full including any recommended changes in response to the submissions and further submissions.
- 6.2 Recommended changes to the District Plan First review are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this report in blue.
- 6.3 **That Rule 13.4.1 – General – Daylighting is amended as follows;**

“Daylight (except as provided for in clause (ba) below)

All *buildings* shall be within a building envelope of 2m *height* above *ground level* at all boundaries and an angle of 45 degrees into the site from that point. Except where the site has a boundary with a road in which case this rule shall not apply in respect of that boundary.

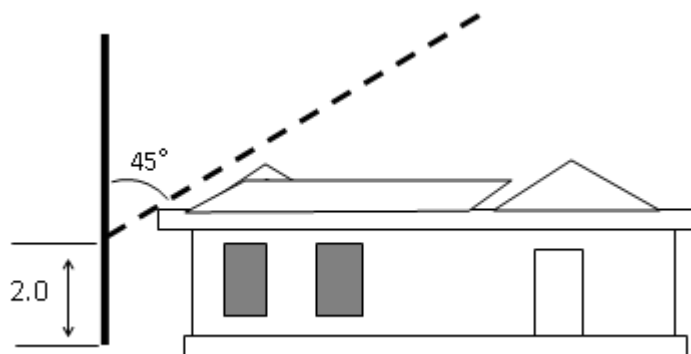


Figure 1: Daylighting Calculation

Provided that:

A building may encroach through the above daylighting plane where the written approval of the owner(s) of the immediately adjoining property to the specific encroachment is obtained.

(ba) Daylighting requirements applying to dwellings at Waihi Beach (Planning Maps U01-U08) and which are subject to rule 8.3.3 (b)

(i) Existing or replacement dwellings

This rule shall apply to:

- The raising of an existing dwelling within the same building footprint (building coverage and distance from boundaries); and
- The erection of a replacement dwelling within the same building footprint and building envelope (height in relation to boundaries) as the dwelling to be replaced.

In either of the foregoing cases, the dwelling may encroach through the daylighting plane referred to in rule 13.4.1(b) to an extent no greater than that required to achieve a floor level of 500mm above the 2% AEP Maximum Probable Development Flood Level for the subject property. Provided that:

1. The maximum vertical extent of any encroachment through the daylighting plane shall be 1.0m;
2. In respect of an existing or replacement dwelling the term "building footprint" shall be limited to that of the dwelling itself and shall not include any floor area used for garaging or other accessory purposes.

(ii) Additional provision for dwellings on narrow width properties

In respect of properties with an average width of less than 13m, and notwithstanding any non-compliance of an existing or replacement dwelling with clause (i) above, any dwelling (existing, replacement or new) may encroach through the daylighting plane set out in rule 13.4.1(b) by a maximum vertical extent of 1.0m.

NOTE: Pursuant to rule 8.3.3(b), the activity status of the buildings referred to in foregoing clauses (i) and (ii) is restricted discretionary. Any resource consent application under rule 8.3.3(b) to which rule 13.4.1(ba) also applies shall be processed without notification and without written approvals of other persons being required. In the case of encroachments through the daylighting plane exceeding a vertical extent of 1.0m, the usual provisions of the RMA relating to notification and affected persons shall apply.