



*Western Bay of Plenty
District Council*

Change to the District Plan - First Review

Plan Change 86

Floodable and Coastal Inundation Areas - Maintenance of Stopbanks and Drains

Section 32 Report



1.0 Introduction

1.1. General Introduction and Background

The purpose of this report is to consider a plan change to allow earthworks for the purposes of maintaining stopbanks and drains as a permitted activity in Floodable Areas and Coastal Inundation Areas.

2.0 Resource Management Act 1991

2.1. Section 32 – Requirements for Preparing Evaluation Reports

Before a proposed plan change can be publicly notified the Council is required under section 32 ("s.32") of the Resource Management Act 1991 ('the Act' or 'RMA') to carry out an evaluation of alternatives, costs and benefits of the proposal. With regard to the Council's assessment of the proposed plan change s.32 requires the following:

- (1) An evaluation report required under this Act must—*
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) summarising the reasons for deciding on the provisions; and*
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

- (2) An assessment under subsection (1)(b)(ii) must—*
 - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) economic growth that are anticipated to be provided or reduced; and*
 - (ii) employment that are anticipated to be provided or reduced; and*
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

- (3) If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—*
 - (a) the provisions and objectives of the amending proposal; and*
 - (b) the objectives of the existing proposal to the extent that those objectives—*
 - (i) are relevant to the objectives of the amending proposal; and*
 - (ii) would remain if the amending proposal were to take effect.*

(4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

(4A) If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in Schedule 1, the evaluation report must—

- (a) summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and*
- (b) summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.*

2.2. Section 74

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority that has been lodged with Council.

There are seven hapu management plans that have been lodged with the Council. These are:

- a. Te Mana Taiao o Ngai Tamarawaho Hapu Management Plan (2013);
- b. Ngai Te Ahi Hapu Management Plan (2013);
- c. Matakana Island and Rangiwaea Islands Hapu Management Plan (2012);
- d. Te Awaroa – Ngati Kahu Environmental Management Plan (2011);
- e. Te Awanui Tauranga Harbour Iwi Management Plan (2008);
- f. Pirirakau Hapu Environmental Management Plan (2004); and
- g. Tapuika Environmental Management Plan (2014).

As relevant to this plan change, the key theme arising from a review of these hapu and environmental management plans is the importance of protecting wahi tapu, sites of significance and cultural features and landscapes. In addition, the potential for earthworks activities to adversely affect these values is identified. Some of the management plans include specific policy direction to require consultation with the hapu on earthworks proposals, and the need for cultural monitoring during physical works.

The rules within the District Plan that protect cultural sites of significance will remain unchanged, and are not affected by this proposed plan change.

As part of a separate process to this plan change, Council is currently reviewing the provisions of the District Plan in relation to how they provide for the management of Māori cultural values. It is anticipated that this broader review of District Plan provisions to manage cultural values will identify whether there is a need for earthworks rules to be changed to provide for cultural values in a manner consistent with the RMA.

2.3. Clause 3 of Schedule 1 - Consultation

Clause 3(1) of Schedule 1 of the RMA requires the Council to consult the following during the preparation of a proposed plan:

- a. The Minister for the Environment;
- b. Other Ministers of the Crown who may be affected;
- c. Local authorities who may be affected;
- d. Tangata Whenua of the area who may be affected (through iwi authorities); and
- e. Any customary marine title group in the area.

Information was provided to the Minister for the Environment on a range of proposed plan changes and feedback was requested. No feedback has been received.

No other Ministers of the Crown or marine title groups are considered affected by the proposed change.

The Bay of Plenty Regional Council is affected by the proposed change as it has responsibilities for managing the effects of natural hazards and for land drainage. It is also responsible for flood protection and land drainage assets in the District. The Regional Council provided feedback that it is supportive of a plan change that would enable it to carry out maintenance works to its flood protection assets without the need to obtain resource consent (as is currently the case) for earthworks exceeding 5m³.

Under Clause 3B of Schedule 1, with respect to Tangata Whenua, the Council is treated as having consulted iwi authorities if it:

- (a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and*
- (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and*
- (c) consults with those iwi authorities; and*
- (d) enables those iwi authorities to identify resource management issues of concern to them; and*
- (e) indicates how those issues have been or are to be addressed.*

Tangata Whenua have been consulted through the Tauranga Moana and Te Arawa ki Tai Partnership Forum on 14 March 2019 and 25 June 2019. No specific feedback was provided in relation to this proposed plan change.

In addition, the Council engaged with the public to request input prior to the writing of this report. This was done through notices in local newspapers and the Council's 'Have Your Say' website. Two people provided feedback; one in support and the other in opposition.

The person in support of the proposed change states that allowing the maintenance of stopbanks and drains without the need for resource consent would speed up necessary works.

The person opposed to the proposed change described concerns with the state of drains and suggested that they should be managed to exclude livestock, and to enhance their ecology and water quality.

Council also engaged with the following groups and stakeholders on a range of proposed plan changes:

- a. Representatives of the kiwifruit industry through NZKGI;
- b. New Zealand Transport Agency ('the Agency');
- c. Toi Te Ora Public Health.

No specific issues were raised by any of these stakeholders regarding this proposed plan change.

3.0 Issue 1 – Floodable and Coastal Inundation Areas - Maintenance of Stopbanks and Drains

3.1. Introduction

It has been identified by staff that there is an anomaly in the District Plan with respect to rules associated with activities carried out by the Regional Council for purposes associated with its flood control stopbanks and drains.

In this regard, Section 10 – Infrastructure, Network Utilities & Designations allows activities associated with the protection of Regional Council flood control stopbanks and drains to be carried out as permitted activities, subject to the relevant performance activity standards (Rule 10.3(ba)).

However, within Chapter 8 – Natural Hazards, Rule 8.3.3(c)(ii) requires resource consent for a restricted discretionary activity for any earthworks in a Floodable Area or Coastal Inundation Area that exceed a volume of 5m³. The only exemption to this rule is for earthworks associated with the maintenance, operation, upgrading and development of above ground lineal network utility structures and underground network utilities where the ground is reinstated to the same contour as existed immediately prior to the works being undertaken.

Section 10 makes it clear (through the Explanatory Statement on page 2 and Performance Activity Standard Rule 10.4(n)) that the Natural Hazards rules in Section 8 also apply to infrastructure and network utilities, such as the Regional Council's flood protection and drainage schemes.

Because the clearing of drains involves 'earthworks' (as defined by the District Plan) resource consent would be required for such works if the volume of material exceeds 5m³, which is likely to be the case in many situations. This requirement appears to be unnecessarily restrictive, particularly given such works are carried out for the purposes of controlling

adverse effects associated with flooding and land drainage. The same issue applies to stopbanks, which are typically managed by the Regional or District Council for flood protection purposes.

3.2. Option 1 – Status Quo – Retain Rule 8.3.3(c)(ii) without change so that resource consent is needed for earthworks over 5m³ for the maintenance of existing drains and stopbanks in floodable and coastal inundation areas

Costs	<ul style="list-style-type: none"> ▪ Requires resource consents when they are not necessary to manage adverse effects associated with flooding. ▪ Results in unnecessary time delays and financial costs for those responsible for managing drainage schemes and flood protection assets. ▪ Inconsistent with the approach in Section 10 – Network Utilities of the District Plan.
Benefits	<ul style="list-style-type: none"> ▪ Would allow Council to assess the effect of a specific earthworks proposal on the capacity of ponding areas and the function of overland flow paths (as set out in the relevant matters of discretion in Rule 8.5.1.3(a)).
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Not effective in addressing the identified issue. ▪ Not efficient as it results in unnecessary time and expense associated with the preparation and processing of resource consent applications.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

3.3. Option 2 – Amend Rule 8.3.3(c)(ii) to permit any person to carry out earthworks associated with the maintenance of existing stopbanks and drains

Costs	<ul style="list-style-type: none"> ▪ Council (as consent authority) would not be able to assess the effect of a specific earthworks proposal on the capacity of ponding areas and the function of overland flow paths (as set out in the relevant matters of discretion in Rule 8.5.1.3(a)). ▪ There is potential that excavated material may be placed in locations that would adversely affect the capacity of ponding areas and obstruct overland flowpaths, if undertaken by inexperienced persons or those unaware of the need to ensure placement of excess spoil does not cause other flooding and/or drainage issues. ▪ Only partly consistent with the approach in Section 10 – Network Utilities of the District Plan.
Benefits	<ul style="list-style-type: none"> ▪ This option would enable works associated with stopbanks and the clearance of drains without unnecessary time and expense associated with the resource consent process.
Effectiveness/	<ul style="list-style-type: none"> ▪ Partly effective because an amendment to the rule would

Efficiency	<p>address the identified issue, however, other adverse effects on ponding areas and overland flow paths may occur if the works are not undertaken in an appropriate manner.</p> <ul style="list-style-type: none"> Amending Rule 8.3.3(c)(ii) is somewhat efficient as it would avoid unnecessary time delay and cost for those maintaining drains and stopbanks.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> N/A – Sufficient information is available.

3.4. Option 3 – Amend Rule 8.3.3(c)(ii) to permit only the District Council, Regional Council and Waihi Drainage Society to carry out earthworks associated with maintenance of existing stopbanks and drains

Costs	<ul style="list-style-type: none"> Council (as consent authority) would not be able to assess the effect of a specific earthworks proposal on the capacity of ponding areas and the function of overland flow paths (as set out in the relevant matters of discretion in Rule 8.5.1.3(a)) for works undertaken by the District Council, Regional Council or Waihi Drainage Society. However, such works would be undertaken for the purposes of avoiding effects associated with flooding and land drainage so this is not considered to be a significant issue. All parties and persons other than the District Council, Regional Council and Waihi Drainage Society would still require resource consent for the clearing of drains if the works exceeded 5m³ and this may cause time delays and additional financial costs for those persons needing to carry out drain clearance activities.
Benefits	<ul style="list-style-type: none"> Prevents inexperienced persons from carrying out works in a manner that may cause issues associated with flooding and/or drainage. This option would allow works to be carried out by the main organisations with flood management and/or land drainage responsibilities without the need for resource consent. This would avoid time delays and expense associated with the resource consent process for the organisations identified. Consistent with the approach in Section 10 – Network Utilities of the District Plan.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> Effective because an amendment to the rule would address the identified issue, being that the Regional Council often requires resource consent to undertake drain clearance works in Floodable Areas and Coastal Inundation Areas. Amending Rule 8.3.3(c)(ii) is an efficient method of addressing the identified issue and would avoid unnecessary time delay and cost for the District Council, Regional Council and Waihi Drainage Society.
Risks of	<ul style="list-style-type: none"> N/A – Sufficient information is available.

Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	
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3.5. Preferred Option

The preferred option is Option 3:

- (a) Amend Rule 8.3.3(c)(ii) to exempt the District Council, Regional Council and Waihi Drainage Society from requiring resource consent for earthworks associated with maintenance of stopbanks and drainage channels as follows:

8.3.3 Restricted Discretionary Activities

...

- (c) Floodable Areas and Coastal Inundation Areas
- (i) *Buildings/Structures* not within an *Approved Building Site – Natural Hazards*
 - (ii) *Earthworks* over 5m³ (~~except for:~~
 - ~~m~~Maintenance, operation, upgrade and development of above ground lineal network utility structures and underground network utilities where the ground is reinstated to the same contour as existed immediately prior to the works being undertaken); and
 - Maintenance of existing stopbanks and drains (including the clearing of drains) carried out by or on behalf of the Council, Regional Council or the Waihi Drainage Society.
 - (iii) Closed board fences, retaining walls, raised gardens, concrete and block walls

3.6. Reasons

Option 3 is considered to be the most effective and efficient method to address the issue that those organisations with flood control and land drainage responsibilities often require resource consent for the maintenance of existing stopbanks and drains where they are located in Floodable and Coastal Inundation Areas.

Consideration was given to allowing all persons to undertake these maintenance works without the need for resource consent (if the volume of earthworks exceeds 5m³), however, there was some concern that if such work was not undertaken in an appropriate manner, unanticipated adverse effects may arise (e.g. if excavated material was placed in a location that affected ponding areas and/or overland flowpaths).