

Flood Protection Designations

Activities Requiring Approval under Section 176, Resource Management Act

February 2009

Flood Protection Designations

Activities Requiring Approval under Section 176, Resource Management Act

For Further Information contact:

Greater Wellington
Regional Council
Wellington
PO Box 11646

Tracy Berghan
Lucy Harper

T 04 384 5708
F 04 385 6960
W www.gw.govt.nz

WP/02/02/05-v8

WGN_DOCS-#569880 – v3

Final

February 2009

Table of Contents

1	Purpose of this Report	1
2	Flood Protection Designations	1
2.1	Purpose of the Designations.....	1
2.2	Restrictions within Designated Areas.....	2
2.3	Access to Private Land.....	2
2.4	Obtaining Approval from the Designating Authority (GW).....	3
2.5	Reviewing Decision of the Designating Authority.....	3
3	Definitions	4
4	Activities requiring approval under section 176	5
4.1	Existing structures.....	5
4.2	Proposed Structures	5
4.3	Floodway's and Drains	6
5	Applying for Approval under section 176.....	7
5.1	Written Approval	7
6	Compliance and Enforcement	7
6.1	Revocation of Approval.....	7
6.2	Offences and Liabilities	7
6.3	Notice to Remedy	8
6.4	Removal of Works	8

First Schedule

List of designated existing stopbanks, to which this document applies.

Second Schedule

List of designated proposed stopbank works, to which this document applies.

Third Schedule

List of designated floodways and drains, to which this document applies.

Appendix One

Flood Protection Designation -Approval under Section 176 RMA - Application Form.

1 Purpose of this Report

This report has been prepared to provide an understanding of the purpose and effect of Greater Wellington (GW) Flood Protection designations contained in the Wairarapa Combined District Plan.

The report describes why the designations are in place, outlines what activities are not permitted or need approval and the process for obtaining approval from GW. It also includes forms to be used for obtaining approval and schedules which show the designations. As designations are updated these schedules will be updated.

2 Flood Protection Designations

2.1 Purpose of the Designations

The purpose of the Flood Protection designations contained within the Wairarapa Combined District Plan is to secure the means by which GW can protect the ability of identified floodways and drains to convey floodwater in a flood event and, to that end, ensure structural integrity of the stopbank network and the ability of identified floodways and drains to convey floodwater in a flood event. Several proposed stopbanks have also been identified by the designations.

The designations enable GW to:

- access, maintain and upgrade existing stopbanks, floodways and drains where required and without the need for a resource consent from the district council; and
- construct new stopbanks without the need for a resource consent from the district council¹.

The designation width is typically 20 metres in each direction from the centreline of the stopbank. The 20 metre width enables modifications to be made by GW to the stopbank footprint and height.

In circumstances where only maintenance would be required, the footprint of the designation is 5m from the toe of the stopbank.

For existing stopbanks, there will generally be minimal ongoing work apart from maintenance. Works include vegetation control including clearing and spraying, minor earthworks, annual inspections of the network including access by foot and vehicle, construction of culverts and floodgates, channel alignment work including gravel extraction and bed recontouring, fencing and boulder collection.

¹ GW may still require regional resource consents from Environmental Regulation, GW.

The designations also enable GW to:

- prevent unauthorised activities (planting, structures and pipes) on or under the stopbank that could affect the stopbanks structural integrity;
- prevent access onto the stopbank from unauthorised vehicles; and
- prevent the location of obstructions (shelter belts, tree planting, structures) in the floodway that would adversely affect the conveyance of floodwater in a flood event occurring within the designated areas.

2.2 Restrictions within Designated Areas

Restrictions within designated areas include, but are not limited to earthworks, planting, fencing, erection of structures, laying of pipes, dumping or depositing anything on the existing structure, passage of heavy vehicles over or along the existing structure and removing or interfering with the flood protection works.

This list is not exhaustive and restrictions will need to be determined on a site-by-site basis. All fencing will be negotiated with the affected owner.

2.3 Access to Private Land

Existing stopbanks floodways and drains

The designations enable GW to restrict how designated land can be used and also enables GW to undertake flood protection activities without the need for a resource consent from the district council².

The designations do not confer automatic access to the designated land. Most of the land designated for existing and proposed stopbanks, floodways and drains remains in private ownership.

Although, under the Soil Conservation and Rivers Control Act 1941 (SCRCA) GW has the right of access to existing stopbanks or river control works, it is intended that access to these designated areas will continue to be by agreement with affected landowners. The type of access agreement may vary from informal (verbal) to formal (written) agreements.

Proposed Stopbanks

Where land is designated for proposed stopbanks GW is unlikely to have discussed access and other issues with the land owner. GW has statutory obligations under the Resource Management Act (RMA), the SCRCA and the Public Works Act 1981, which will need to be discussed and, preferably, agreed with the affected landowners prior to any physical works being undertaken.

² Note a resource consent may still be required from Greater Wellington Regional Council

2.4 Obtaining Approval from the Designating Authority (GW)

Section 176 of the RMA³ sets out the effect of a designation. One important aspect of this is GW setting out the activities that may be affected by the designation and the process for obtaining written approval from GW if a landowner wishes to undertake such an activity within the designated area.

Sections 3 and 4 of this document describe in more detail the nature of activities GW is seeking to control and the process for obtaining written approval from GW. Please note that while this is a statutory process GW is instituting a process to enable approvals to be processed with a minimum of formality.

To that end:

- S176 approvals are not a resource consent application
- No payments will be required
- Decisions will be provided without undue formality and within 20 working days of receiving a request.

2.5 Reviewing Decision of the Designating Authority

Decisions will initially be made (under delegated authority) at officer level. Any land owner (or occupier) who is dissatisfied with that decision can seek a review by the Divisional Manager, Catchment Management. A response will be provided within 20 working days of receiving a request in writing. There is a right of appeal to the Environment Court under s.179 of the RMA. That must be made within 15 working days if the date of the final response from GW.

³ Effect of designation

(1) If a designation is included in a district plan, then—

(a) section 9(1) does not apply to a public work or project or work undertaken by a requiring authority under the designation; and
(b) no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder a public work or project or work to which the designation relates, including—

(i) undertaking any use of the land described in section 9(4); and

(ii) subdividing the land; and

(iii) changing the character, intensity, or scale of the use of the land.

(2) The provisions of a district plan or proposed district plan shall apply in relation to any land that is subject to a designation only to the extent that the land is used for a purpose other than the designated purpose.

3 Definitions

Approval means written approval issued by GW pursuant to Section 176 of the RMA.

Construct includes erect, alter, reconstruct, replace, extend, remove and demolish.

GW/Greater Wellington Regional Council means

- a. the Wellington Regional Council; and
- b. includes any person duly authorised by the Wellington Regional Council to exercise any of the powers conferred upon the Wellington Regional Council by the RMA.

Drain means any drain shown on the plans listed in the Third Schedule.

Floodway means any floodway shown on the plans listed in the Third Schedule.

Flood protection system means any structure, equipment, planting or associated works erected or adopted by the Wellington Regional Council to provide protection from or to reduce the incidence of flooding or erosion by water.

Occupier, in relation to any property, means the inhabitant occupier of that property.

Structure includes any building, crossing, equipment, device or other facility made by people and which is fixed to land; and includes any raft (and also includes, but is not limited to, any fence, line or cable and any culvert, pipe, or other kind of conduit) but does not include any lines or cables to be carried upon existing bridges or utility support structures authorised in accordance with the RMA.

4 Activities requiring approval under section 176

Resource consent may also be required under the RMA. Accordingly, every user of this document should consult with the Greater Wellington Regional Council and the relevant territorial authority regarding other necessary authorisations.

The following activities require approval under Section 176 of the RMA. Please note this section does not override the provisions set out in Section 176, RMA (refer to footnote 2 above).

4.1 Existing structures

No person shall, without the prior written approval of GW, in respect of a designated area described in the First Schedule –

- a. Widen, raise, lower, reduce in width, or otherwise alter any structure;
- b. Remove or interfere with any machinery or equipment;
- c. Plant any tree,
- d. Erect any structure in on, over, through or under any floodway and/or drain and/or any stopbank or other structure comprising part of the flood protection system;
- e. Place anything within the designated area that would obstruct the passage of water in or through the floodway;
- f. Drive any vehicle, or take or operate any machinery or equipment on or over any stopbank or designated land in such a manner that might cause damage to that stopbank or to the flood protection system;
- h. Carry out any excavation (cut or fill)

4.2 Proposed Structures

No person shall, without the prior written approval of GW, in respect of any designated area described in the Second Schedule –

- a. Raise and/or lower or otherwise alter the existing topography;
- b. Plant any tree,
- c. Erect any structure (other than a post and wire fence) in on, over, through or under any floodway and/or drain;

- d. Place anything within the designated area that would obstruct the passage of water in or through the floodway;
- e. Carry out any excavation (cut or fill).

4.3 Floodways and Drains

No person shall, without the prior written approval of GW, in respect of any floodway and or drain described in the Third Schedule –

- a. Widen, raise, lower, reduce in width, or otherwise alter, any floodway or drain;
- b. Obstruct any floodway and/or drain;
- c. Remove or interfere with any machinery or equipment relating to any floodway and/or drain.
- d. Plant any tree in any floodway and/or drain;
- e. Construct any structure in on, over, through or under any floodway and/or drain;
- f. Carry out any excavation in any floodway and/or drain;

5 Applying for Approval under Section 176

5.1 Written Approval

- a. An application to GW for approval under section 176 of the RMA shall be made in accordance with the Section 176 Approval Application Form (Appendix One).
- b. Any approval under section 176 will be in writing and may be granted subject to such conditions as GW considers appropriate. When considering applications for approval, GW shall have regard, but not be limited to, the following assessment criteria, in order to ensure the effective operation of the designation:
 - Structure integrity of the flood protection system
 - Capacity
 - Scour
 - Access
 - Maintenance

6 Compliance and Enforcement

6.1 Revocation of Approval

- a. GW may, revoke an approval granted under section 176 of the RMA, if the holder of the approval contravenes or fails to comply with any condition of the approval.
- b. Before revoking any approval, GW shall give:-
 - i. written notice to the holder of the written approval that GW may revoke the approval; and
 - ii. the holder an opportunity of making, within 10 working days, written submissions relating to the possible revocation of the approval.

6.2 Offences and Liabilities

- a. Every person commits an offence under section 338 of the RMA who -
 - i. Contravenes section 9(2) of the RMA [which says no person may contravene section 176];
 - ii. Permits any contravention of section 176 of the RMA.
- b. Every person who commits an offence against the designation is liable to the penalties prescribed by section 339 of the RMA namely:

- (1) Every person who commits an offence against section 338(1) or (1A) or (1B) is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$200,000, and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues.
- c. Every person commits an offence under section 154(1) of the SCRCA who –
- i. Wilfully destroys or damages any watercourse or defence against water (which includes a stopbank); or
 - ii Destroys or damages any plantation or work under the control of GW.
- d. Every person commits an offence under section 154(1) of the SCRCA is liable for a fine up to \$10,000.
- e. Every person who destroys or damages any watercourse or defence against water or any plantation or work under the control of GW or who allows any animal to destroy any tree, shrub or plant forming a defence against water under the control of GW, regardless of whether or not an offence has been committed under section 154(1) of the SCRCA is liable, under section 154(2) of the SCRCA, to pay GW the whole cost of restoring or repairing the damage or injury.

6.3 Notice to Remedy

GW may, by written notice, require any mitigation or remediation considered necessary by GW, in relation to the contravention of any clause of Section 3 or the conditions of the relevant authority, in the time, and in the manner stated in the notice, at the cost of the owner, or occupier or person responsible.

6.4 Removal of Works

GW, or any agent of GW, may remove or alter any work or any thing, constructed or being in contravention of any provision of the designation or any conditions of an approval, and may recover the costs incurred by GW in connection with the removal or alteration. The undertaking of this action shall not relieve any person from liability to any penalty incurred by reason of the breach.

First Schedule

List of designated existing stopbanks, to which this document applies.

District Plan Reference	Designation (existing works)
Dm003	Waipoua River Stopbanks
Dm006	Upper Ruamahanga Stopbanks
Dc013	Mangatarere Stopbank
Dc013a	Ruamahanga Stopbanks
Dc013b	Waiohine River Stopbanks
Ds006	Waiohine River Stopbanks
Ds007	Tauherenikau Stopbanks
Ds008	Manganui Stream Stopbank
Ds009	Owhanga Stream Stopbanks
Ds011	Waiorongomai Stream Stopbanks
Ds012	Abbots Creek Stopbank
Ds013	Cross Creek Stopbanks
Ds023	Upland Cutoff Drain Stopbanks
Ds010	Pounui Stream Stopbanks
Ds022	Turanganui River Stopbanks
Ds024	Tauanui River Stopbanks
Ds026	Lower Ruamahanga River and Floodway Stopbanks
Ds027	Donalds Creek Stopbanks

Ref	Name	Location	Purpose
Dm003	Waipoua River Stopbanks	Wairarapa Combined District Plan Maps 8, 14, 39, 40, 44, 45, 49	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Dm006	Upper Ruamahanga Stopbanks	Wairarapa Combined District Plan Maps 8, 14, 20, 39,	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Dc013	Mangatarere	Wairarapa Combined	Flood protection and mitigation

	Stopbank	District Plan Map 53	purposes
Dc013a	Ruamahanga Stopbanks	Wairarapa Combined District Plan Maps 19, 20	Flood protection and mitigation purposes
Dc013b	Waiohine River Stopbanks	Wairarapa Combined District Plan Maps 19, 58	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Ds007	Tauherenikau Stopbanks	Wairarapa Combined District Plan Maps 18, 24, 62	Flood protection and mitigation purposes
Ds008	Manganui Stream Stopbank	Wairarapa Combined District Plan Map 29	Flood protection and mitigation purposes
Ds009	Owhanga Stream Stopbanks	Wairarapa Combined District Plan Maps 18, 24	Flood protection and mitigation purposes
Ds011	Waiorongomai Stream Stopbanks	Wairarapa Combined District Plan Map 24	Flood protection and mitigation purposes
Ds012	Abbots Creek Stopbank	Wairarapa Combined District Plan Maps 18, 62	Flood protection and mitigation purposes
Ds013	Cross Creek Stopbanks	Wairarapa Combined District Plan Map 24	Flood protection and mitigation purposes
Ds023	Upland Cutoff Drain Stopbanks	Wairarapa Combined District Plan Map 30	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Ds006	Waiohine River Stopbanks	Wairarapa Combined District Plan Maps 19, 58, 59	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Ds010	Pounui Stream Stopbanks	Wairarapa Combined District Plan Map 29	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Ds022	Turanganui River Stopbanks	Wairarapa Combined District Plan Maps 29, 30	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Ds024	Tauanui River Stopbanks	Wairarapa Combined District Plan Map 30	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Ds026	Lower Ruamahanga River and Floodway Stopbanks	Wairarapa Combined District Plan Maps 24, 25, 29, 30	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Ds027	Donalds Creek Stopbanks	Wairarapa Combined District Plan Map 65	Flood protection and mitigation purposes

Second Schedule

List of designated proposed stopbank works, to which this document applies.

District Plan Reference	Designation (new works)
Dm002	Waingawa River Proposed Stopbank Works
Ds017	Waiohine River Proposed Stopbanks Works
Dc013c	Waiohine River Proposed Stopbanks Works
Ds018	Lower Ruamahanga River Proposed Stopbanks

Ref	Name	Location	Purpose
Dm002	Waingawa River Stopbank Works	Wairarapa Combined District Plan Maps 14, 39, 50	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Dc013c	Waiohine River Proposed Stopbanks Works	Wairarapa Combined District Plan Map 58	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Ds018	Lower Ruamahanga River Proposed Stopbanks	Wairarapa Combined District Plan Maps 24, 25, 67	Flood protection and mitigation purposes

Ref	Name	Location	Purpose
Ds017	Waiohine River Proposed Stopbanks Works	Wairarapa Combined District Plan Map 58	Flood protection and mitigation purposes

Third Schedule

List of designated floodways and drains, to which this document applies.

District Plan Reference	Designation
Ds015	Tauherenikau Floodplain
Ds020	Abbots Creek Drain Area
Ds021	Tawaha Loop Drain
Ds025	Lower Ruamahanga River Floodways Floodplain
Ds001	Waiohine – River Corridor – Apple Barrel Floodway
Ds014	Turanganui Floodplain
Ds016	Donalds Creek Floodplain and Drain area
Ds019	Whakawiriwiri Drain

Ref	Name	Location	Purpose
Ds015	Tauherenikau Floodplain	Wairarapa Combined District Plan Maps 18, 62	Conveyance of water for flood mitigation purposes
Ds020	Abbots Creek Drain Area	Wairarapa Combined District Plan Maps 18, 62	Conveyance of water for flood mitigation purposes
Ds021	Tawaha Loop Drain	Wairarapa Combined District Plan Maps 25, 67	Conveyance of water for flood mitigation purposes

Ref	Name	Location	Purpose
Ds025	Lower Ruamahanga River Floodways Floodplain	Wairarapa Combined District Plan Maps 24, 25, 29, 30, 67	Conveyance of water for flood mitigation purposes

Ref	Name	Location	Purpose
Ds016	Donalds Creek Floodplain and Drain area	Wairarapa Combined District Plan Maps 62, 65	Conveyance of water for flood mitigation purposes

Ref	Name	Location	Purpose
Ds001	Waiohine – River Corridor – Apple Barrel Floodway	Wairarapa Combined District Plan Maps 58, 59	Conveyance of water for flood mitigation purposes

Ref	Name	Location	Purpose
Ds019	Whakawiriwiri Drain	Wairarapa Combined District Plan Maps 25, 67	Conveyance of water for flood mitigation purposes

Ref	Name	Location	Purpose
Ds014	Turanganui Floodplain	Wairarapa Combined District Plan Maps 29, 30	Conveyance of water for flood mitigation purposes