

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 36 Daylighting Provisions for Waihi Beach Floodable Areas

Section 32 Report

Prepared by: Russell De Luca, Resource Management & Planning Consultant

1.0 Introduction

1.1. The purpose of this report is to examine the issues relating to making provision in the District Plan for the raising of existing dwellings or the erection of new dwellings in identified floodable areas at Waihi Beach, where such dwellings will encroach through the usual daylighting plane applicable to such activities. Options for amending the existing District Plan provisions are analysed and what are considered to be the most appropriate amendments to those provisions are recommended.

1.2. The principal options discussed in this report are:

- Status quo – no change to District Plan;
- Limiting the application of more liberal daylighting provisions to the raising of an existing dwelling or the erection of a replacement dwelling with the same footprint and building envelope as the dwelling to be replaced;
- Making blanket provision for existing at risk dwellings to be raised by up to 2m so as to provide a usable ground level area under the lifted dwelling;
- Making additional provision for new dwellings on narrow sites to encroach through the daylighting plane.

1.3. In assessing the issues and options relating to this matter, consideration has been given to the overriding purpose of the Resource Management Act 1991 (the RMA) which is "to promote the sustainable management of natural and physical resources." [RMA section 5(1)] Regard also been had to other relevant matters set out in Part 2 of the RMA.

2.0 Resource Management Act 1991 (RMA)

2.1. Section 32

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

- (3) *An evaluation must examine-*
- (a) *the benefits to which each objective is the most appropriate way to achieve the purpose of the Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*
- (4) *For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account-*
- (a) *The benefits and costs of policies, rules or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

The benefits and costs include benefits and costs of any kind, whether monetary or not.

In short, this report must evaluate the extent to which the proposed plan change is the most appropriate way to achieve the purpose of the RMA.

2.2. Section 74

In accordance with Section 74(2A), Council must take into account any relevant planning document recognised by an Iwi authority lodged with Council. This particular plan change is not considered to raise any issues of relevance to the Iwi Management Plans that have been lodged with Council.

3.0 Consultation

In conjunction with the wider review of Waihi Beach floodable areas currently underway, Council has consulted with affected landowners. Letters were sent to all owners of at risk properties followed by a series of "information session" meetings as well as opportunities for appointments with individual landowners between 8 January and 19 January 2013. Up to 185 people attended on the days set aside for these meetings.

4.0 Issues Statement

- 4.1** There are in the order of 250 properties at Waihi Beach currently identified in the District Plan as at risk to flooding from a one in fifty years flood event. A significant number of these properties accommodate dwellings which are themselves subject to risk. More recent information shows the number of properties at risk increasing by over 40%.
- 4.2** One of the solutions to addressing the identified flooding hazard is to raise the existing at risk dwellings so that their floor levels are above the predicted flood level. However, many of the dwellings are located close to boundaries on narrow sections (12-13m wide). As a consequence, raising the dwelling will often result in an encroachment through the usual District Plan daylighting plane (building height in relation to boundary) applying to the property. The purpose of the daylighting rule is to protect the adjoining property from excess overshadowing and loss of privacy.
- 4.3** Because raising a dwelling is a costly exercise, it can be argued that any change to the District Plan rules should provide for a usable space (say 2m high) between ground level and the floor of the raised dwelling. This would allow a dwelling to be raised to a height above that required to just mitigate the flood risk. However, such a provision has the potential to substantially increase the degree of adverse overshadowing and privacy effects on neighbouring properties.
- 4.4** Under the current District Plan rule framework, any building work (including the raising of an existing dwelling) in an identified flood hazard area requires a resource consent, as does any non-compliance with the District Plan daylighting rule where prior neighbour written approval has not been

obtained. As potentially affected persons, neighbours to a property on which it was proposed to raise a dwelling to an extent that it encroached through the daylighting plane would be deemed affected persons and would therefore have a right of input into the resource consent process. Where prior neighbour written approvals could not be obtained, formal notice of the resource consent application must be served on the neighbours concerned who would then have the right to lodge a submission opposing the proposal. Gaining consent through such a process is by no means guaranteed and potentially any such consent granted by the Council could be appealed to the Environment Court. The usual notification and affected persons provisions of the RMA can be dispensed with where specific provision is made in the District Plan rules for this to occur. In the Waihi Beach floodable areas context, this would substantially reduce the cost and uncertainty to property owners wishing to raise their dwellings above the predicted flood level.

- 4.5** A balance therefore needs to be found between the aim of achieving a reduction in the number of dwellings at risk (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 a balance is particularly important if it is intended that the proposed new District Plan rules specifically provide for the usual RMA notification and affected persons provisions to be dispensed with.

5.0 Options

5.1. Option 1 – Status Quo – no change to District Plan

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 the 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.
--	--

5.2. Option 2 – apply new rules to existing or replacement dwellings only and limit any allowable daylight plane encroachment to the minimum required to achieve the floor level height necessary to address the identified flooding risk

Advantages	<ul style="list-style-type: none"> ▪ Specifically targets at risk properties, particularly where raising an existing dwelling to achieve the desired floor level height will inevitably involve a daylighting plane encroachment; ▪ Minimises any adverse environmental effects on neighbouring properties; ▪ Relatively simple and straightforward.
Disadvantages	<ul style="list-style-type: none"> ▪ Some adverse effects on adjoining neighbours will be inevitable; ▪ Could be seen as inequitable if non-notified resource consent process which dispenses with neighbour approvals is provided for; ▪ May not allow for a “usable” space to be created under the raised dwelling.
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.

5.3. Option 3 – apply new rules to existing or replacement dwellings only but make across the board provision for dwellings to be raised by up to 2m above ground level

Advantages	<ul style="list-style-type: none"> ▪ Specifically targets at risk properties, particularly where raising an existing dwelling will inevitably involve a daylighting plane encroachment; ▪ Enables dwellings to be raised above recommended floor level height so as to create a more usable area at ground level; ▪ Simple and straightforward.
Disadvantages	<ul style="list-style-type: none"> ▪ Has the potential to significantly increase the degree of adverse effects on adjoining neighbours; ▪ Likely to be seen as inequitable if non-notified resource consent process which negates need for 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.

5.4. Option 4 – as for Option 2 or Option 3 but with additional provision for more liberal daylighting rule applying to new dwellings on narrow sites

Advantages	<ul style="list-style-type: none"> ▪ Specifically targets at risk properties; ▪ 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 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.

6.0 Preferred Option

6.1 It is recommended that a combination of Options 2 and 4 be adopted, with any requirements for resource consent application notification and neighbour written approvals specifically dispensed with. This combined option is preferred because:

- It directly addresses the identified flood hazard;
- In respect of the raising or replacement of an existing dwelling, the degree of encroachment through the usual daylighting plane is kept to the minimum required to achieve the desired dwelling floor level;
- Provides additional design flexibility in respect of new houses on existing narrow sections;
- Although not requiring notification or written approvals, the degree of actual or potential adverse effects on neighbouring properties is minimised.

Overall, the option is considered to represent an appropriate balance between the needs of the owners of properties at risk who wish to avoid or mitigate that risk and the needs of adjoining property owners exposed to the potentially unacceptable adverse off-site effects of allowing a greater degree of non-compliance with the usual District Plan rules aimed at protecting residential amenity values. It is noted that property owners would still have the ability to apply for a resource consent if they wish to raise a dwelling higher than that provided for in the recommended new rules.

6.2 The following specific amendments to the District Plan provisions are recommended:

[Note: New text to be added to the District Plan is shown in red underlined font.]

13. Residential

13.4 Activity Performance Standards

13.4.1 General

(b) 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.

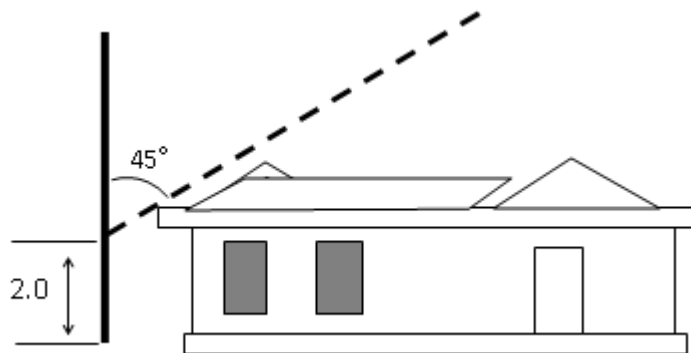


Figure 1: Daylighting Calculation

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.

Explanatory Note:

For subdivision by *unit plan*, this rule shall only apply to *buildings* on the *base land* in their relationship to the *base land* external site boundaries and shall not apply between the internal boundaries of the *principal units* within the *unit plan*, nor between the *principal units* and their internal boundary with any *common property*.

(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:

1. The raising of an existing dwelling within the same building footprint (building coverage and distance from boundaries); and
2. 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 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 *dwelling*s 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.