

DECISION REPORT

PLAN CHANGE 86 - FLOODABLE AND COASTAL INUNDATION AREAS – MAINTENANCE OF STOPBANKS AND DRAINS

INTRODUCTION

Pursuant to Section 10(1) of Schedule 1 of the Resource Management Act 1991, the District Plan Committee makes the following decisions on the provisions of the District Plan First Review and matters raised in submissions to Plan Change 86 – Floodable and Coastal Inundation Areas – Maintenance of Stopbanks and Drains.

The decision is set out as follows:

- Decisions on submissions
- Decisions on the provisions of the District Plan First Review

DECISIONS ON SUBMISSIONS

The purpose of this part of the report is to show the decisions made on submissions with reasons and Section 32AA Analysis. Decisions are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and further changes as the result of decisions in blue.

DECISION

That Plan Change 86 be retained as notified, subject to an additional requirement to clarify that only excess material can be removed from drains, and a minor edit to ensure consistency with Plan Change 84.

- (i) *Earthworks over 5m³* ~~(except for:~~
- ~~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 provided that the clearing of a drain only involves removal of excess material required to maintain the function of the drain and does not deepen, widen, realign or otherwise modify the drain.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
6	1	Derek Spratt
19	5	Federated Farmers of New Zealand (Inc.)
17	7	Bay of Plenty Regional Council

Rejected

Submission	Point Number	Name
1	4	Daniel Kinnoch
27	1	Tauranga Moana Partnership Forum

REASONS / SECTION 32AA ANALYSIS

The option to retain plan change as notified subject to an additional requirement to clarify that only excess material can be removed from drains, and minor editorial changes is considered to be the most effective and efficient method to address the issue. This is because those organisations with flood control and land drainage responsibilities currently require resource consents that are considered to be unnecessary for the maintenance of existing stopbanks and drains where they are located in Floodable and Coastal Inundation Areas. The costs and delays incurred by those needing resource consent is recognised.

It is appropriate to deal with the changes proposed to Rule 8.3.3(c)(ii) separately to Plan Change 84 (Public Trails) given the two plan changes deal with different issues and relate to different parts of the rule. In addition, minor amendments to proposed Rule 8.3.3(c)(ii) to ensure that Plan Changes 84 and 86 do not conflict is good practice.

The proposed plan change does not affect existing rules that require resource consent for earthworks within Significant Ecological Features and Cultural Heritage Features. As currently worded, Rule 8.3.3(c)(ii) does not allow assessment of ecological or cultural values when assessing an earthworks proposal due to its location within a floodable or coastal inundation area. As such, the plan change (as notified) results in the status quo being retained with respect to potential effects on ecological and cultural values within drains (i.e. they would be protected if within Significant Ecological Features or Cultural Heritage Features, but otherwise could not be assessed through a resource consent due to the location of a drain within a floodable or coastal inundation area).

In addition, the potential risk of disturbing sites or items of cultural significance in existing drains is considered to be low (due to the modified nature of drains, previous works undertaken, and the methods adopted that do not expose or extend below the base of the drain) and existing requirements for archaeological authorities will remain unchanged. Furthermore, the additional requirement ensures only excess material is removed from drains and that the beds and drains are not modified. This additional requirement would further reduce the risk of disturbing archaeological sites.

As such, based on the information available, retaining Rule 8.3.3(c)(ii) without change (as requested by Tauranga Moana Partnership Forum) does not appear justified in terms of achieving the objectives and policies of the District Plan and the purpose and principles of the RMA.

The Bay of Plenty Regional Council also control the clearing of drains under their own functions. The Regional Natural Resources Plan rules that apply to the maintenance of land drainage canals include permitted activity conditions designed to manage effects on the natural and physical environment, including effects on ecological values. The explanatory note to the rule associated with the maintenance of land drainage canals (NH R3) suggests that aquatic habitat values can be maintained if maintenance works are managed appropriately. The rule prevents maintenance works from occurring as a permitted activity (and therefore requires resource consent for any non-compliant works) if disturbance of vegetation in wetlands occurs, there is to be a change in water quality and/or quantity in wetlands, or if works prevent the passage of migrating fish. In addition, exclusion periods apply to ensure works are not undertaken during key fish spawning periods.

It is considered that the additional requirements in Plan Change 86 to not deepen, widen, realign or otherwise modify the drains complements the Regional Council's rules and does not duplicate them.

The evidence tabled at the hearing from Derek Spratt (Waihi Drainage Society) has also been considered. The Committee was advised by staff that they had spoken to Mr Spratt the evening prior to the Hearing to resolve a misunderstanding with the interpretation of the rule. It was clarified with Mr Spratt that although Rule 8.3.3 (c) is a rule that requires resource consent (as a restricted discretionary activity), the Plan Change sought to give an exemption to the clearing of drains. As an outcome, the exemption would ensure that the clearing of drains would be a permitted activity. Mr Spratt still had a concern regarding the permitted activity status not being clear and obvious to which staff advised that all earthworks are expressly permitted under Rule 4A.5 of the District Plan. This existing rule combined with the new exemption from Rule 8.3.3 (c) would make it clear that the clearing of drains would be a permitted activity for the Waihi Drainage Society.

The following provides a further evaluation of the changes made to Plan Change 86 since the original evaluation report under s32 of the Resource Management Act 1991. The level of detail corresponds to the scale and significance of the changes.

The additional requirement to only allow removal of excess material affecting the drain’s function without modifying the drain itself (to remain a permitted activity)

Costs	<ul style="list-style-type: none"> Permitted activities can be carried out as of right (in this case without consultation with tangata whenua). However, the risk of non-compliance is considered relatively low as the permitted activity status is only being provided to those experienced in the clearing of drains.
Benefits	<ul style="list-style-type: none"> The requirement will make it clear to those carrying out works that they are only permitted to remove excess material that has built up in the drain (e.g. sediment and vegetation as required to maintain the function of the drain). They will not be allowed to widen, deepen, realign or modify the drain in any other way. This additional requirement would reduce the risk of impacts on archaeological sites.
Effectiveness	<ul style="list-style-type: none"> Effective as it would address the identified issue, being that the Regional Council, District Council and Waihi Drainage Society would otherwise often require resource consent to undertake drain clearance works in Floodable Areas and Coastal Inundation Areas. Also effective in managing adverse effects on archaeological sites where these are present in the bed and banks of the drains.
Efficiency	<ul style="list-style-type: none"> Is an efficient method to address the identified issue and would avoid unnecessary time delay and cost for the District Council, Regional Council and Waihi Drainage Society. Also efficient in that it now provides clearer guidance on what is permitted (i.e. clearance of excess material from drains) and what is not (i.e. modification of the bed or banks of drains).
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.

DECISIONS ON THE PROVISIONS OF THE DISTRICT PLAN FIRST REVIEW

The purpose of this part of the report is to show the decisions to change the provisions of the District Plan First Review.

Decisions are shown as follows; existing District Plan text in black and decisions in red.

Section 8 – Natural Hazards

Change Rule 8.3.3(c)(ii) as follows:

8.3.3 Restricted Discretionary Activities

(c) Floodable Areas and Coastal Inundation Areas

(ii) *Buildings/Structures not within an Approved Building Site – Natural Hazards*

(iii) *Earthworks over 5m³ except for:*

- 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.
- 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 provided that the clearing of a drain only involves removal of excess material required to maintain the function of the drain and does not deepen, widen, realign or otherwise modify the drain.

(iv) Closed board fences, retaining walls, raised gardens, concrete and block walls