

0.0 PLANNING REPORT FOR PLAN CHANGE 86 - FLOODABLE AND COASTAL INUNDATION AREAS - MAINTENANCE OF STOPBANKS AND DRAINS

File Number: A3735950

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RECOMMENDATION

1. That the report titled "Planning Report for Plan Change 86 - Floodable and Coastal Inundation Areas - Maintenance of Stopbanks and Drains" dated 4 May 2020 be received.
2. That pursuant to Clause 10(1) of Schedule 1 of the Resource Management Act 1991, the District Plan Committee makes the following decisions on Plan Change 86 ...*decisions to be inserted here.*
3. That staff be authorised to make minor editorial changes to the decision of the District Plan Committee in consultation with the Committee Chairperson.
4. That pursuant to Clause 10(4)(b) of Schedule 1 of the Resource Management Act 1991, the decision on Plan Change 86 be publicly notified.
5. That pursuant to Clause 11 of Schedule 1 of the Resource Management Act 1991, the decision on Plan Change 86 be served on every person who made a submission on the Plan Change and be made available at all Council offices and all public libraries in the District.

INTRODUCTION

The purpose of this report is to provide recommendations on submissions and further submissions to Plan Change 86.

The purpose of Plan Change 86 is to allow earthworks for the purposes of maintaining stopbanks and drains as a permitted activity in Floodable Areas and Coastal Inundation Areas.

For a full background to the Plan Change and explanation of the proposed provisions please refer to the Section 32 Report (s32 Report) (Attachment 1).

Any recommended changes (by the author of this report) 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 Planning Report in blue.

BACKGROUND

Plan Change 86 sought to address an anomaly in the District Plan rules associated with activities carried out for purposes of maintaining flood control stopbanks and drains.

Section 10 – Infrastructure, Network Utilities & Designation 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 the Floodable 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.

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. The Section 32 Report identified that works for clearing drains and maintaining stopbanks are likely to exceed 5m³ in many cases and that the requirement for a resource consent appeared to be unnecessarily restrictive, particularly given such works are carried out for the purposes of controlling adverse effects associated with flooding and land drainage. Both are typically managed by the Regional or District Council for flood protection purposes.

The proposed change to Rule 8.3.3, as notified, is 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:~~

- ~~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

SUBMISSIONS

Five (5) submission points have been received on Plan Change 86 as follows:

- Three submission points are in support of retaining Plan Change 86 as notified (submission points 6.1 (Derek Spratt), 19.5 (Federated Farmers of New Zealand (Inc.)) and 17.7 (Bay of Plenty Regional Council));
- One submission point is in support of the plan change subject to amendments (submission point 1.4 (Daniel Kinnoch)); and
- One submission point opposes the plan change in its entirety (submission point 27.1 - Tauranga Moana Partnership Forum).

The key points made by submitters are as follows:

- Submitters in support of the plan change (as notified) have requested that the plan change be retained as notified as it aligns with Regional Council rules, is more efficient and cost effective as it removes duplication, and because it enables necessary maintenance works without the need for resource consent.

- Mr Kinnoch supported the change as notified, subject to amendments. He considers that the change proposed to Rule 8.3.3(c)(ii) conflicts with the change proposed to the same rule under Proposed Plan Change 84 (Public Trails). He submits that the changes should be made under one of the proposed plan changes (Proposed Plan Change 84 or Proposed Plan Change 86) as there are numbering and layout conflicts in changes proposed to the same provision.
- Tauranga Moana Partnership Forum opposes the plan change and their submission states they do not support any contractor freely excavating drains where some drains have developed ecological significance. The submitter also does not support Waihi Drainage Society to have express permission to carry out works without the need for resource consent.

Contact has been made with representatives of Tauranga Moana Partnership Forum, the Bay of Plenty Regional Council and the Waihi Drainage Society to discuss issues raised by the Partnership Forum.

The contact person for the Tauranga Moana Partnership Forum explained that a key concern for them is that archaeology may remain intact within drains and that this may be disturbed as a result of drain clearance works (which would be permitted by the proposed rule if the works are carried out by the Regional Council, District Council or Waihi Drainage Society for the purpose of maintaining existing drains). A related concern is that enabling the clearance of drains as a permitted activity may mean Tangata Whenua are not consulted regarding works that have potential to disturb items/features of significance.

The issues raised in discussions with the Partnership Forum representative are different to the matters raised in their submission (which relate to the potential for ecological values within drains). Nevertheless, I have sought to understand the potential risk of disturbing archaeology as a result of drain clearing activities and considered this in my analysis (as set out in below).

The Regional Council has confirmed that the need to clear existing drains occurs as a result of the need to remove a build-up of organic material (e.g. accumulation of silt and sediment). The Regional Council adopts a range of methods for clearing material that builds up in existing drains. These methods include weed control (by spraying or cutting), de-silting using machinery, and flushing. Regional Council advice is that mechanical intervention (such as that required for de-silting) is minimised, and other methods, such as weed cutting, are generally preferred. In addition, Regional Council staff explained that where mechanical methods are used for clearing excess material from existing drains, this is done so that the bed of the drain remains intact (i.e. only the excess / built up material is removed). One of the reasons for not excavating below the bed of drains is that deepening drains can encourage erosion and slumping to the banks and is therefore avoided.

The Waihi Drainage Society is an incorporated society that administers, operates and maintains the drainage system within the Waihi Drainage District (located near Maketu and Pukehina). The Waihi Drainage Society was incorporated and was formed in 1991 and, like the Regional Council, it has been undertaking drain maintenance works for many years. Discussions with a representative of the Waihi Drainage Society confirms that they also only remove excess material (i.e. only that which is required to be removed) and that this occurs without excavating into the bed of the drain. They also confirmed that works are undertaken in accordance with permitted activity rules under the Bay of Plenty Regional Natural Resources Plan.

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.

Having regard to the already disturbed nature of drains and the information provided by the Regional Council and Waihi Drainage Society, the risk of disturbing sites or items of cultural significance appears low. In addition, resource consents will continue to be needed for earthworks of any scale within Significant Ecological Features and any works that would alter or destroy an identified Cultural Heritage Feature.

Furthermore, the proposed rule does not negate the existing requirements of the Heritage New Zealand Pouhere Taonga Act 2014, which require an authority to be obtained from Heritage New Zealand if an archaeological site is to be modified or destroyed. The requirement to obtain an authority from Heritage New Zealand will be unaffected by the rule proposed under this plan change.

OPTIONS & ANALYSIS

Option 1 – As Proposed (Option 3 in s32 Report) – Permitted activity status for maintenance of stopbanks and drains.

Amend Rule 8.3.3(c)(ii) to permit the District Council, Regional Council and Waihi Drainage Society to carry out earthworks associated with maintenance of existing stopbanks and drains within floodable and coastal inundation areas without the need for resource consent (as set out earlier in the ‘Background’ section of this report).

Costs	<ul style="list-style-type: none"> • Council (as consent authority) would not be able to assess the effect of specific drain clearing proposals 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. • The risk of disturbing items/sites of cultural significance and ecological values (not already protected through the District Plan) may be greater than under the current rules which require resource consent for earthworks in a Floodable Area that exceed a volume of 5m³. However, this risk is considered to be low as the permitted activity rule only applies to the District Council, Regional Council and Waihi Drainage Society, the drains are already highly modified, and works are not expected to expose the bed of the drain. In addition, Heritage New Zealand requirements continue to apply.
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

	<p>time delays and expense associated with the resource consent process for the organisations identified.</p> <ul style="list-style-type: none"> Consistent with the approach in Section 10 – Network Utilities of the District Plan.
Effectiveness	<ul style="list-style-type: none"> Effective because 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. May not be effective in managing effects on ecological values and archaeological sites as there are no requirements/restrictions on how works are to occur. It is noted, however, that ecological values of Land Drainage Canals managed under the Regional Natural Resources Plan would be protected through Regional Council rules.
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. Not entirely efficient in terms of providing clear guidance on what works are permitted (i.e. clearance of excess material from drains) and those that are not (i.e. modification of the bed and 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.

Option 2 – Permitted activity status (as for option 1 above) but with an additional requirement for maintenance / clearance of drains to only allow removal of excess material affecting the drain’s function without modifying the drain itself

Amend Rule 8.3.3(c)(ii) to permit the District Council, Regional Council and Waihi Drainage Society to carry out earthworks associated with maintenance of existing stopbanks and drains within floodable and coastal inundation areas without the need for resource consent (as set out earlier in the ‘Background’ section of this report). However, add a requirement for the maintenance / clearance of drains to only allow removal of excess material affecting the drain’s function while not modifying the drain itself. This is what was originally intended by the proposed rule when notified (i.e. that drains would not be modified).

Costs	<ul style="list-style-type: none"> As for Option 1 above.
Benefits	<ul style="list-style-type: none"> As for Option 1 above, with an additional benefit that 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.

Option 3 – Permitted activity status (as for option 1 above) but with an additional requirement for those carrying out maintenance / clearance of drains to consult with Tangata Whenua

Amend Rule 8.3.3(c)(ii) to permit the District Council, Regional Council and Waihi Drainage Society to carry out earthworks associated with maintenance of existing stopbanks and drains within floodable and coastal inundation areas without the need for resource consent (as set out earlier in the 'Background' section of this report). However, add a new requirement for those carrying out works to consult with Tangata Whenua prior to and/or undertaking the works.

Costs	<ul style="list-style-type: none"> • As for Option 1 above, with additional costs. • Will result in time delays and expenses for those carrying out the works. • A permitted activity must be clear and measurable and provide certainty to plan readers as to whether someone can proceed with a proposed activity or not. Including a rule requiring consultation for all maintenance proposals creates uncertainty and an unrealistic expectation for those being consulted about their influence and involvement in decision making. There are also difficulties in determining what is required to achieve compliance with a rule requiring consultation and the person wanting to undertake will not have control over a third party in terms of when and how they respond.
Benefits	<ul style="list-style-type: none"> • As for Option 1 above, with an additional benefit. • Consultation with tangata whenua would provide them with the opportunity to provide comments and advice on proposals that may affect cultural values. It may also allow Tangata Whenua to undertake cultural monitoring to observe and provide advice on works being undertaken to manage effects on archaeological sites other cultural values.

Effectiveness	<ul style="list-style-type: none"> • Effective because 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. • Not effective as it does not provide the certainty required of a permitted activity rule and it could be legally challenged. While the requirement to consult would be certain, the outcome of the consultation would not be.
Efficiency	<ul style="list-style-type: none"> • Not an efficient method to address the identified issue of avoiding unnecessary time delay and cost for the District Council, Regional Council and Waihi Drainage Society. • Not efficient as a permitted rule requiring consultation would be problematic to interpret, administer and enforce. • Not efficient because a blanket rule requiring consultation applies whether or not values of importance exist or not, and this results in additional time and cost for those carrying out works.
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.

Option 4 – Status Quo – Resource consent required for maintenance to existing stopbanks and drains involving more than 5m³ of earthworks (Option 1 from the s32 Report)

Option 4 is to reject the plan change in its entirety. This would mean that Rule 8.3.3(c)(ii) is retained without change and so that resource consent is needed for all earthworks over 5m³, including earthworks associated with 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 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 drain clearing proposals 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)). • Would address the concern raised by the Tauranga Moana Partnership Forum that it does not want to see any contractor being allowed to undertake works within drains without the need for resource consent. • May address concerns raised by Tauranga Moana Partnership Forum regarding potential effects on ecological values within some drains, and

	that works within drains may disturb and affect sites and items of cultural significance. However, the status quo only requires a resource consent to address matters relating to flooding and coastal inundation.
Effectiveness	<ul style="list-style-type: none"> • Not effective in addressing 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. • Not effective at addressing issues raised by the Tauranga Moana Partnership Forum relating to ecological values and archaeological sites.
Efficiency	<ul style="list-style-type: none"> • 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.

DISCUSSION

In terms of the issues raised by the Tauranga Moana Partnership Forum, it is acknowledged that some drains may support ecological values. It is also acknowledged that sites and items of cultural significance may exist in the vicinity of drains (including under them). However, no specific information has been provided on the location of particular areas of interest and, taking into account the information provided by the Regional Council and the Waihi Drainage Society, it appears that the risk of disturbing sites of significance is relatively low given the already disturbed nature of existing drains, and the methods adopted that avoid exposing the base of the drain. Further to this, the rule relates to man-made drains only, and excess material that has built up in these drains has been removed many times before now.

The proposed plan change will not remove existing rules in place to protect areas identified as Significant Ecological Features or Cultural Heritage Features within the District Plan. Any earthworks for clearance affecting such features will continue to require resource consent so that the effects on the values of such features can be assessed. Regional Council rules will continue to protect ecological values of Land Drainage Canals and the requirement to obtain an authority from Heritage New Zealand to disturb any archaeological sites will also continue to apply. These requirements are unaffected by the proposed plan change.

Where drains are not identified as a Significant Ecological Feature or do not include identified Cultural Heritage Features, there are no existing rules in place to protect any ecological or cultural values. As such, the plan change (as notified) results in the status quo being maintained. Sites, features or areas of particular ecological or cultural value would need to be identified as Significant Ecological Features or Cultural Heritage Features in order for these values to be protected through the District Plan.

With respect to Mr Kinnoch's submission, when considering this plan change it is important to be mindful of the change proposed to the same rule (Rule 8.3.3(c)(ii)) under Plan Change 84 (Public Trails). However, the two changes deal with different issues and therefore have not been proposed under a single plan change. The amendments recommended under both Plan Changes (84 and 86) deal with different parts of the rule and are not conflicting. For these reasons it is considered

appropriate for the changes proposed by Plan Changes 84 and 86 to be dealt with under the two separate plan changes.

RECOMMENDATION

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 (Option 2 above).

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

Option 2 (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.

It is appropriate to deal with the changes proposed to Rule 8.3.3(c)(ii) separately to Plan Change 84 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 recommended in Option 2 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 at the time of this report, retaining Rule 8.3.3(c)(ii) without change (as per Option 4 and 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.

PLAN CHANGE 86 - RECOMMENDED CHANGES TO THE DISTRICT PLAN FIRST REVIEW

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.

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 Planning Report in blue.

Retain Plan Change 86 as notified, with minor editorial changes and an additional requirement to prevent modification of drains and only allow excess material to be removed from drains during maintenance / clearance activities. Changes to Rule 8.3.3(c)(ii) are recommended 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 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.

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

ATTACHMENTS

1. Section 32 Report - Plan Change 86 - Floodable and Coastal Inundation Areas - Maintenance of Stopbanks and Drains



*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).