

Hutt River Floodplain Management Plan – Hutt/Boulcott Stopbank

Planning Process and Timeframes

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FOR FURTHER INFORMATION

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1. Introduction

The purpose of this report is to recommend the preferred planning process for the various stopbank alignment options considered by Greater Wellington for the Hutt- Boulcott stopbank.

In summary, given the nature and scale of the proposed works and the status of the activities in the Lower Hutt City District plan using the designation process set out in the RMA (ss 168-171) rather than the resource consent process is the preferred option regardless of the stopbank alignment selected.

In Section three the report describes planning timeframes for a contested and uncontested designation and resource consent process.

2. Planning Process

The Resource Management Act sets out the process for obtaining approval for the proposed stopbank alignments and associated works. Two approaches have been considered for obtaining approvals.

1. Resource Consent process under section 9 of the RMA covering consents required from Hutt City Council and sections 9 and 13 of the RMA covering consents required from the Greater Wellington Regional Council.
2. Designation process under section 168 of the RMA to Hutt City Council and resource consents under sections 9 and 13 of the RMA covering consents required from the Greater Wellington Regional Council.

2.1 Resource Consent Process

2.1.1 City of Lower Hutt District Plan requirements

The proposed stopbank alignments would be located across both the River Recreational Activity Area and the General Recreation Activity Area. A flood hazard annotation also covers a small part of the site. As such the proposed works must be assessed in accordance with both areas objectives, policies and rules contained within Chapter 7 (General Recreation 7A and River Recreation 7C) of the District Plan.

In summary the permitted activity standards cannot be met under Rule 7A2.2 in relation to yards, sunlight access planes coverage and earthworks.

Therefore consent would be required for a restricted discretionary activity with respect to:

- Yard requirements – Rule 7A 2.1.1 (a)

- Sunlight Access – Rule &A2.1.1 (c)
- Coverage – Rule 7A2.1.1(d) (ii)
- Earthworks – Rules 14I2.1.1 9 (a & b)

Consent may also be required to realign Connolly Street over the new stopbank and provide ongoing access to the Safeway Storage site.

The River Recreation Activity Area recognises and provides for flood protection work undertaken by GW. The General Recreation Activity Area does not make any provision for the proposed works.

2.1.2 Greater Wellington Freshwater Plan requirements

The proposed stopbank alignments and associated works must also be assessed in terms of the Freshwater Plan. There are a number of consents that are required from Greater Wellington for all options, they include diversion of floodwater and land use consents for works in the Hutt River.

All options will require resource consent to divert the Hutt River in a flood event. Diversions of this magnitude and for the Hutt River are not provided for under the Freshwater Plan, and must be considered as a Discretionary Activity.

All options require works to be undertaken in the bed of the Hutt River – depending on the extent of these works these may be able to be undertaken under GW existing global consent for the Hutt River. If consent is required it would be a Discretionary Activity.

2.2 Notice of Requirement/Designation¹ Process

A designation for flood protection purposes allows Greater Wellington to plan for a large public work by setting aside land outside the provisions of the Hutt City District Plan, in this way it provides an alternative to the resource consent process.

The designation process clearly signals the scale and importance of the proposed works and is a particularly useful approach for large public work projects that were not accounted for when a district plan was made operative.

A designation enables the normal land use planning controls (in particular the existing zonings) to be over ridden and would allow GW to do anything with the designated land which is in accordance with the designation. [Note GW still needs to get any relevant regional consent for the work]

Once the preferred alignment is designated GW can:

- Enter private land to undertake investigations;

¹ Designations are called requirements until included in a District Plan

- Proceed with specific work on the site as if it were permitted by the district plan (subject to agreement with the landowner or after purchase of the land)
- Control activities that occur on the site, prevent the landowner doing anything that would compromise the proposed work (this is the case even if GW does not own the land); and
- Apply to the Minister of Lands to compulsorily purchase the land under the Public Works Act 1981.

2.2.1 Information Requirements

A notice of requirement for a new designation must go through a public notification, recommendation and decision making process before it becomes a designation.

Section 168 of the RMA requires the notice of requirement to include the following information:

- reasons why the designation is needed to achieve the objectives of GW;
- physical and legal descriptions of the site;
- nature of the work;
- effects that the proposed work would have on the environment and the proposed mitigation methods;
- alternative sites, routes and methods that have been considered;
- associated resource consents that will be required;
- consultation undertaken with parties likely to be affected by the designation; and
- additional information (if any) as required by the Freshwater Plan or Hutt City District Plan.

An Assessment of Environmental Effects (AEE) would accompany the Notice of Requirement.

2.2.2 Assessment of Alternatives

GW as the requiring authority is required to consider alternative sites, routes and methods if it does not have an interest in the land, or if there is a likelihood of significant adverse effects.

Note only the adequacy of the requiring authority's consideration of alternatives is an issue, not whether any alternative is better than the others.

2.2.3 Purchase of designated land by GW

Under Section 185 of the RMA affected land owners can seek an order from the Environment Court obliging GW to acquire or lease all or part of the land, if a designation has either resulted in the land becoming unable to be sold at market value or if the designation had prevented reasonable use of the land.

2.2.4 Interim effect of a notice of requirement²

A designation has an interim effect from the time GW lodges it with Hutt City Council. The interim effect protects the land from other activities that may hinder or prevent the work that the designation seeks to undertake.

The other important distinction between the designation and resource consent process is that GW as the Requiring Authority is the decision making body (not Hutt City Council). So while HCC notifies and hears the NOR it can only make a recommendation back to GW – to confirm the requirement, modify the requirement, impose conditions or withdraw the requirement. GW can accept, accept in part or reject the HCC recommendation.

3 Planning Timeframes

The designation/resource consent process and timeframes for two options has been summarised below. For comparison purposes it a more contested process i.e. requiring a hearing both at HCC and the Environment Court³ vs. a less contested process that avoids the Environment Court have been described. For completeness timeframes have been included through to the Environment Court for both options.

For Option One a less contested process is assumed (however as is often the case the timeframe may be similar whether a hearing is held or not). The hearing process could be completed as early as October 2009. If appealed to the Environment Court – this could be resolved as early as October 2010 with property acquisition running in parallel it is likely that construction could start soon after this date.

For Option Two the hearing process could be completed as early as February 2010. If appealed to the Environment Court – this could be resolved as early as February 2011 with property acquisition and compensation taking a further six months to two years depending on whether acquisition was by negotiation or a contested process.

2 Note until the detailed design information is provided, the extent of the designation (i.e. how far it would extend into one or both golf courses) can not be confirmed. It is recommended that further internal discussions are had about the form the NOR takes i.e. whether it is split into 1, 2 or three separate notices and how far it extends.

3 Note the Environment Court timeframes are a best guess and may take up to six months longer, however this is consistent for both options. The timeframes below do not include any additional time allowance for further information requests under s 92 or Outline Plan approval or requests for additional time from submitters.

In summary, obtaining designations and resource consent for a less contested process, Option One could take between 15 months – 2 ½ years. With a best estimate being closer to 15 months.

Option Two could take 19 months to 4 ½ years. With a best estimate being closer to 3 ½ years.

As a comparison against actual timeframes, timeframes for three recent resource consent applications involving GW are set out below:

- Chrystall's stopbank designation which was lodged on the 15 February 2007 and granted on the 9 August 2007 (six months to process application from lodgement to Council decisions).
- Hilton Hotel which was lodged 23 December 2005 and granted by hearing committee on the 8 September 2006 and overturned by the Environment Court on the 14 March 2008 (two years six months to process the application from lodgement to Environment Court decision).
- Overseas Passenger Terminal which was lodged 19 September 2007 and a decision was made April/May 2008 (eight months from lodging to Council's decision).

3.1 Designation and Resource Consent Process

Option One (uncontested)	Comment	Timeframe	Date
Prepare detailed design of Boulcott alternative alignment and supporting documents (engineering, environmental – including visual amenity type effects assessment, social, economic)	Apart from engineering design – much of this work can and has been completed or undertaken in house – possibly some additional work to support alignment through Connolly Street and Safeway Storage	12-16 weeks	June-Sept 08
Prepare Notice of Requirement documents and resource consent applications	Plus 4-8 week overlap into design phase above	8 weeks	Oct-Nov 08
Circulate Draft NOR/RC to affected parties	Includes making any changes to documents, editing, collating and printing and allowance for statutory shut down period (20 Dec-10 Jan) and holidays	8 weeks	Dec-Jan 08
Lodge NOR (s176) and resource consent applications s(9) with HCC and GW	This is a milestone date		Mid Feb 2009
HCC/GW Publicly notifies NOR/RC (S 93 and ss95-103)	Includes doubling of timeframes (s37) from 10 to 20 WD because of joint process with HCC and GW. Note this is common practice as 10	4 weeks	Mid March 09

Option One (uncontested)	Comment	Timeframe	Date
	WD is pretty tight for checking between agencies, applicant and press		
Submission period closes	Note TA can double timeframes – however less likely as well canvassed issues and clear of Christmas	4 weeks	Mid April 2009
Is a hearing requested or required? Pre hearing meeting required Pre- hearing meeting held Is a hearing still required Hearing Conducted (ss 101-103)	Depending on submissions this phase could take 1-3 months – potentially at longer end if looking like we could avoid the need for a hearing. Boulcott and Hutt GC both support this option and it is unlikely based on their actions to date that they would oppose the designation. 2-3 adjoining residents and Safeway Storage have signalled to officers their intention to oppose this option.	12 weeks	July 2009
Hearings Cttee makes a decision on Resource Consents	The statutory timeframes have been doubled from 15 to 30 WD because of joint process with HCC and GW. Note this is common practice for complex/joint hearings. If a hearing were avoided this would be no more than 15 WD.	6 weeks	Mid August 09
Hearings Cttee makes recommendation to Requiring Authority (GW) on designation (s171)		6 weeks	Mid August 09
The Requiring Authority (GW) makes decision and advises HCC (s172)	GW has 30 working days to make this decision – if the decision is not contentious i.e. in agreement with HCC recommendation. Then can be made without the need for formality and signed by Div Manager.	1 week	End of Aug 09
HCC notify Requiring Authority(GW) decision (s173)	HCC have 15 WD after receiving the decision to notify and serve it on every person who made a submission and/or landowners, occupiers	3 weeks	End of Sept 09
Submitter lodges appeal against Resource Consent Application	15 WD parties to lodge appeal	3 weeks	Mid Sept 09
HCC or submitter lodges appeal (s174)	15 WD for one or both of these parties to lodge appeal	3 weeks	End of Oct
HCC puts designation in District Plan (S175)			Oct 09
Environment Court Process			

Option One (uncontested)	Comment	Timeframe	Date
Environment Court Mediation Hearing and Decision	[Based on actions and comments to date an appeal is less likely by Hutt and Boulcott Golf courses for this option] This is an optimistic timeframe based on each part of the EC process taking approximately 4 months. Possibly up to 18 months.	52 weeks	October 2010
Appeal to High Court on points of Law	This action is unlikely	52 weeks	Nov 2011
Land Acquisition			
Property purchase and easements agreed	Run parallel where possible – assume negotiated settlement – based on agreements in place likely to be closer to Oct 2009. – no appeals to EC	26 weeks	March 2010
	Environment Court Appeal on NOR and RC	26 weeks	April 2011

Option Two (contested)	Comment	Timeframe	Date
Prepare detail design of green alignment and supporting documents (engineering, environmental – inclusion visual amenity type effects assessment, social, economic)	Engineering design plus additional work to support alignment – hydraulics, modelling plus additional work to support alignment through Connolly Street, Boulcott and Safeway's including visual assessment, economic and social assessment	16-24 weeks	June-Nov 08
Prepare Notice of Requirement documents and resource consent applications	Plus 4-8 week overlap into design phase above and allowance for statutory shut down period (20 Dec-10 Jan) and holidays	12 weeks	Nov - Jan 09
Circulate Draft NOR/RC to affected parties	Includes making any changes to documents, editing, collating and printing	8 weeks	Feb - March 09
Lodge NOR (s176) and resource consent applications s(9) with HCC and GW	This is a milestone date		Early April 09
HCC/GW Publicly notifies NOR/RC (S 93 and ss95-103)	Includes doubling of timeframes from 10 to 20 WD because of joint process with HCC and GW. Note this is common practice as 10 WD is pretty tight for checking between agencies, applicant and press	4 weeks	Early May 09
Submission period closes	Note TA can double timeframes – however less likely as well canvassed issues and outside Christmas shut down period	4 weeks	Early June 09
Is a hearing requested or required?	On the basis of comments and actions to date officers anticipate that a hearing would be required		
Pre hearing meeting required	Yes – but depending on nature of submissions could decide to go straight to a hearing	4 weeks	Early July 09
Pre- hearing meeting held	Yes	1 day	July 09
Is a hearing still required	Yes	8 weeks	Early Sept 09
Hearing Conducted (ss 101-103)	Yes	1 week	Sept 09
Hearings Cttee makes a decision on Resource Consents	The statutory timeframes have been doubled from 15 to 30 WD because of joint process with HCC and GW.	6 weeks	End of Oct 09
Hearings Cttee makes recommendation to Requiring Authority (GW) on designation (s171)	Note this is common practice for complex/joint hearings.	6 weeks	End of Oct 09
The Requiring Authority (GW) makes	The Requiring Authority (GW) has	6 weeks	Mid Dec 09

Option Two (contested)	Comment	Timeframe	Date
decision and advises HCC (s172)	30 working days to make this decision – if contentious i.e. we intend to disagree with the Cttee's recommendation - GW should make this decision and full 30 WD will probably be required as RA decision would need to be written up and sent to HCC		
HCC notify Requiring Authority(GW) decision (s173)	HCC have 15 WD after receiving the decision to notify and serve it on every person who made a submission and/or landowners, occupiers	3 weeks	End of Jan 10
Submitter lodges appeal against Resource Consent Application	15 WD parties to lodge appeal	3 weeks	End of Nov 09
HCC or submitter lodges appeal (s174)	15 WD for one or both of these parties to lodge appeal	3 weeks	End of Feb 10
HCC puts designation in District Plan (s175)			Feb 2010
Environment Court Process			
Environment Court Mediation Hearing and Decision	[Based on actions and comments to date an appeal is likely Boulcott Golf course and potentially HCC - appeals are likely to EC to help strengthen case for compensation through Public Works Act process] This is an optimistic timeframe based on each part of the EC process taking approximately 4 months. Possibly up to 18 months.	52 weeks	Feb 2011
Appeal to High Court on points of Law	This action is unlikely	52 weeks	Feb 2012
Land Acquisition -			
Property purchase and easements agreed. Would run parallel where possible with RMA process			
Negotiated settlement – no ones appeals to Environment Court	Best potential outcome if Boulcott decides not to go to the EC.	26 weeks	August 2010
Negotiated settlement – after appeals to Environment Court	As mentioned above an appeal to EC would possibly strengthen case for compensation	26 weeks	August 2011
Contested Process (after Env Appeal) using PW Act	Worst case scenario as GW could not gain access to the land until directed by the court.	104 weeks	Feb 2013
Compensation Agreement using PW Act	Construction can start once contested process completed.	104 weeks	Feb 2015