

IN THE MATTER of a Notice of Requirement for Designation Pursuant to Sections 168 & 169 of the Resource Management Act 1991.

BETWEEN Horizons Regional Council

Applicant

AND Wanganui District Council

Territorial Authority

Plan Change 30
District Plan reference:
D233

LOCATION Balgownie Riverbank, Wanganui.

PROPOSAL To designate the riverbank between Wharf Street and Balgownie Avenue for Flood Control purposes.

1. NOTICE OF REQUIREMENT

A copy of the notice for requirement for a new designation along the Whanganui Riverbank at Balgownie, Wanganui which formed part of the public notification process, is attached as part of the Section 32 report for Plan Change 30.

2. INTRODUCTION

A Notice of Requirement has been submitted by Horizons Regional Council, to designate part of 219 Great North Road. Horizons Regional Council wishes to designate the area for Flood Control works.

The area of this designation follows the Wanganui River from just past Affco Meat Works to the end of the main Industrial area at Wharf Street. It contains flood protection with a walkway/cycle way along most of the top that was constructed in 2010 by Horizons Regional Council. The cycle way is part of the National cycle way route. The stopbank was constructed via a Resource Consent granted by the Wanganui District Council in 2009.

Part of the land proposed to be designated as Flood Protection is already Designated Railway Purposes.

3. SUBMISSIONS

Consistent with the provisions of section 196 of the Resource Management Act 1991 the Notice of Requirement was publically notified as part of the District Plan review on Thursday 12 September 2013. The period for submissions on the requirement closed on Friday 11 October 2013. No submissions were received within the statutory time frame.

4. CONSIDERATION

This Notice of Requirement is submitted under Section 168 of the Resource Management Act 1991.

The Horizons Regional Council is a requiring authority for the purposes approved under Section 167 of the Resource Management Act 1991. That authority may therefore give notice to a territorial authority of its requirement for a designation.

Section 168 of the Act states:

- (1) *A Minister of the Crown who, or a local authority which, has financial responsibility for a public work, may at any time give notice in the prescribed form to a territorial authority of its requirement for a designation—*
 - (a) *for a public work; or*
 - (b) *in respect of any land, water, subsoil, or airspace where a restriction is necessary for the safe or efficient functioning or operation of a public work.*
- (2) *A requiring authority for the purposes approved under section 167 may at any time give notice in the prescribed form to a territorial authority of its requirement for a designation—*
 - (a) *for a project or work; or*

- (b) *in respect of any land, water, subsoil, or airspace where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.*
- (3) *[Repealed]*
- (4) *A requiring authority may at any time withdraw a requirement by giving notice in writing to the territorial authority affected.*
- (5) *Upon receipt of notification under subsection (4), the territorial authority shall—*
 - (a) *publicly notify the withdrawal; and*
 - (b) *notify all persons upon whom the requirement has been served*

The proposed designation of the land adjoining the Whanganui River at Balgownie, Wanganui, is consistent with the requirements of section 168(1) as it is a public work that is carried out within the Wanganui District.

Section 169 of the RMA 1991 specifies how a notice of requirement shall be processed following receipt by the territorial authority. The process is parallel to that followed by a resource consent application, and includes public notification, a period for submissions, and the discretion to hold a hearing. This application was notified and no submissions were received within the statutory timeframe.

Section 100 of the RMA 1991 covers the obligation to hold a hearing. A hearing need not be held unless either the requiring authority or a person who made a submission to the notice of requirement has requested to be heard or the territorial authority considers that a hearing is necessary. The requiring authority has not requested to be heard at a hearing, and no submissions have been received. It is therefore my view that there is no obligation to hold a formal hearing beyond the processing of Plan Change 30.

Part II of the Resource Management Act 1991, which comprises Sections 5 to 8, outlines the purpose and principles of the Act.

Section 5 of the Act states:

1. *“The purpose of this Act is to promote the sustainable management of natural and physical resources.*
2. *In this Act, “sustainable management” means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while:-*
 - a. *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - b. *Safeguarding the life supporting capacity of air, water, soil and ecosystems; and*
 - c. *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

It is my view that the proposed designation of the Balgownie stopbank, will maintain the purpose of the Act. The requirement is necessary to safeguard the surrounding properties from flood events.

Section 6 (Matters of National Importance) states as follows:

“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- (f) The protection of historic heritage from inappropriate subdivision, use and development.*
- (g) The protection of recognised customary activities.*

It is considered that the proposed designation of the land adjoining the Whanganui River at Balgownie, Wanganui, to control flood waters in the Industrial area, will enhance the natural character of the river as it will provide access and viewing spaces that do not interfere with the habitats of the wading birds and natural vegetation. Therefore it is not inconsistent with any of the Matters of National Importance outlined in Section 6 of the Act.

Section 7 (Other Matters) *requires that in achieving the purpose of RMA, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to:-*

- a. Kaitakitanga*
- aa. the ethic of stewardship*
- b. The efficient use and development of natural and physical resources.*
- ba. the efficiency of the end use of energy.*
- c. The maintenance and enhancement of amenity values.*
- d. Intrinsic values of ecosystems.*
- e. Repealed*
- f. Maintenance and enhancement of the quality of the environment.*
- g. Any finite characteristics of natural and physical resources.*
- h. The protection of the habitat of trout and salmon.*
- i. The effects of climate change*
- j. The benefits to be derived from the use and development of renewable energy.*

Two Iwi; Te Runanga O Nga Rauru and Te Runanga O Tupoho have been sent a copy of the application and invited to submit on it. No responses were received within the statutory timeframes.

The stopbank has enhanced the amenity of the area by providing access along the Whanganui River. It has maintained the ecosystem of the birds and plants that are native to the area. Designating the stopbank will ensure that any new activities will be consistent with the Flood Protection works and not undermine them. The stopbank is constructed to a height to take into account the effects of climate change, particularly higher flood levels.

Section 171 of the Act states:

- (1A) *When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition*
- (1) *When considering a requirement and any submissions received, a territorial authority must, subject to Part II, consider the effects on the environment of allowing the requirement, having particular regard to —*
- (a) *any relevant provisions of —*
 - (i) *A National Policy Statement;*
 - (ii) *A New Zealand Coastal Policy Statement;*
 - (iii) *A Regional Policy Statement or Proposed Regional Policy Statement;*
 - (iv) *A Plan or Proposed Plan; and*
 - (b) *whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if —*
 - (i) *the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
 - (ii) *it is likely that the work will have a significant adverse effect on the environment;*
 - (c) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
 - (d) *any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*
- (2) *The territorial authority may recommend to the requiring authority that it —*
- (a) *confirm the requirement;*
 - (b) *modify the requirement;*
 - (c) *impose conditions;*
 - (d) *withdraw the requirement.*
- (3) *The territorial authority must give reasons for its recommendation under subsection (2).*

Visual Effects

The visual effects will be minor as the stopbank has already been constructed and the effects considered minor under Resource Consent RCLU09/0010. It is also noted that stopbanks are a permitted activity except where it crosses the “Karoro Road area (bird life)” which is protected as a historic asset in the District Plan, reference 90.

Noise

As the stopbank and other Flood Protection works have been completed, the noise of the activity is limited to maintenance. A condition on the designation to ensure that any maintenance does not occur during the breeding season of the native birds at Karako Road area (unless emergency works) will ensure that the effects are minor.

Existing Designation

The proposed Flood Control designation crosses the Railway Purposes Designation. As the Railway designation was established prior to the proposed Flood Control designation, a note on this designation stating that the Railway Purposes designation takes precedence shall ensure no confusion in the future.

Section 8 (Treaty of Waitangi) states that:

“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti O Waitangi).”

The proposal will not conflict with the principles of the Treaty of Waitangi.

The Necessity for the Designation

Consideration is required as to whether the designation of the Balgownie Stopbank is reasonably necessary for achieving the Horizons Regional Council’s objectives. This consideration should not include any questioning of the Council’s objectives.

The Regional Council has the responsibility to manage the risk of Flooding. The construction of the stopbank in Balgownie in 2010 was carried out under this objective. Designating the stopbank will protect the area against other developments and provide certainty to the businesses and homes in the area that are dependant on the stopbank for Flood Control.

Consideration of Alternatives

Section 171(1)(b) requires the requiring authority to consider alternative sites, routes and methods if it does not have an interest in the land sufficient for undertaking the works or there is the likelihood of significant adverse effects.

The Balgownie Industrial area was considered the most at risk from a Flood event by the Horizons Regional Council’s assessment. The exact location of the stopbank and designation was designed to reduce the potential for damage from a flood event, while not restricting access to the Whanganui river to those industries and recreational facilities that depended on it.

As this is a built up area and the stop bank is already constructed, there are no alternative locations for the designation.

Provisions of Relevant Policy Statement or Plans

The area to be designated is currently zoned as Manufacturing and Residential in the Wanganui District Plan as well as being within 20 metres of a waterway. It is my view that the proposed Notice of Requirement is consistent with the policies and objectives of this Plan and the already existing resource consent.

5. CONCLUSION

The consideration of the designation under section 171(2) of the Act has shown that the requirement is consistent with all relevant statutory requirements and it is recommended that the notice of requirement be confirmed without modification, for the reasons outlined in the recommendation.

6. RECOMMENDATION

The reasons for this recommendation are as follows:

- (a) The designation of the Balgownie Stopbank will ensure that the Wanganui Urban area will have an improved flood control system and is considered reasonably necessary to continue to provide risk management for the main Industrial area of Wanganui.
- (b) The proposal will not adversely affect the amenity values of the existing environment as the stopbank already exists and provides for access along the Whanganui River for business and recreational opportunities.
- (c) Having considered the matters under Part II of the Resource Management Act 1991, the notice of requirement is not inconsistent with the purpose and principles of the Act.
- (d) The proposal is not inconsistent with the objectives and policies of the Wanganui District Plan, and the Regional Council's plans and policy statement.
- (e) The effects of this proposal are considered to be less than minor.

Rachael Pull
Resource Management Planner
Date: 26 February 2014