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Committee **Rural Services and Wairarapa**
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Designations – Wairarapa District Plan

1. Purpose

To obtain Committee approval to include designations for river management and forestry assets in the new Wairarapa District Plan.

2. Background

Greater Wellington has responsibilities for flood protection under both the Resource Management Act 1991 and the Soil Conservation and Rivers Control Act 1941. In the Wairarapa there is approximately 230 kms of flood protection structures that have been constructed and are maintained by Greater Wellington. These flood protection structures are generally stopbanks constructed of earth with a grass covering and are located on private land.

Greater Wellington maintains these stopbanks and reviews their effectiveness as part of its flood protection schemes. Various activities, including frequent stock grazing or vehicle use, and the installation of pipes can affect the integrity of stopbanks leading to surface degradation, internal weakening, slope failures, overflow breaches and erosion. While such activities are often controlled informally through education and awareness it is necessary to have a level of control over activities on and around stopbanks in the event that informal mechanisms are not sufficient.

Greater Wellington also owns several soils conservation reserve forests in the Wairarapa. This land is planted and periodically harvested and replanted to prevent soil erosion and land slips. The management of these forests also has “downstream” benefits for river control and protection works. Currently district council consent is required for clearing native vegetation. This requirement is often triggered when new tracks need to be established in these lots to enable harvesting of the exotic species.

It should be noted that this report only relates to the Wairarapa part of the region. It has arisen because of the preparation of the Combined District Plan by the three district councils. In addition, stopbanks in the western part of the

region are located on land owned by Greater Wellington and this gives a substantial degree of control that is not the case in the Wairarapa.

2.1 Past and current controls

Between 1979 and 1991 there was a Catchment Board/Regional Council bylaw in place that regulated the use of stopbanks. These provisions became rules in the Transitional Regional Plan with the introduction of the Resource Management Act 1991. The Transitional Regional Plan was withdrawn in 2002.

The South Wairarapa District Plan (operative 1998) includes designations over about half of Greater Wellington's stopbanks and overland floodways in that district but there are no Greater Wellington designations in the Carterton and Masterton District Plans.

The Soil Conservation and Rivers Control Act has provisions relating to activities that damage or destroy river protection works. Unfortunately this only applies retrospectively, that is, action can only be taken against someone once the damage has been done.

Rule 49A of the Regional Freshwater Plan also has controls over heavy vehicles on stopbanks. The provision is quite specific. It is the subject of a current reference to the Environment Court.

3. Options

The preparation of the new Wairarapa District Plan, recent reviews of the flood protection schemes, and the floods in February, have provided impetus to consider the best way to protect the stopbank network in the Wairarapa.

The Committee may wish to take one or a combination of the following approaches:

3.1 A "do nothing" approach

It would be possible to rely on the existing controls and an informal approach to try and prevent activities that would damage the stopbank network. The Soil Conservation and Rivers Control Act, the existing designations in South Wairarapa District, and the rule in the Freshwater Plan do provide some level of control and protection. There is also a good level of education and awareness through the scheme committees and their work.

The benefit of this approach is that it would largely maintain the status quo. The drawback of this approach is that, the existing designations will not simply be "rolled over" into the Wairarapa District Plan, and Greater Wellington will be left with a piecemeal and often reactive approach that will not ensure it is meeting its obligations under the Resource Management Act and the Rivers Control Soil Conservation Act. The effects of not properly controlling activities to ensure stopbank networks are well maintained are potentially devastating.

3.2 Introducing a bylaw

While Greater Wellington's approach has been to eliminate bylaws in favour of using controls under the Resource Management Act (Regional Plans and designations in district plans), the new Local Government Act 2002 has provisions for regional councils to introduce bylaws for certain functions. Such a bylaw would only be for controlling activities on existing stopbanks, and designations would still be required for proposed works and soil conservation reserve forestry lots.

The benefit of this approach is that the bylaw can be written for the specific situation in the Wairarapa and implemented and controlled independently of the district planning process. It can also require licensing or other fees in respect to the bylaw, which would help cover licensing and compliance costs. The drawback of this approach is that Greater Wellington will have to go through a process to make a bylaw and the time and cost involved in that is uncertain. A bylaw is also only as effective as the landowner awareness and compliance, and the enforcement regime that accompanies it.

3.3 Introducing designations into the Wairarapa District Plan

With the development of the new Wairarapa District Plan, Greater Wellington has the opportunity to adopt a "Wairarapa-wide" approach to control activities and land use on and near flood protection works, and can also take the opportunity to designate soil conservation reserve forestry lots.

The benefits of using designations are that Greater Wellington would not require any district council consents for work within a designation (regional council consents will still be required). It would also provide a high degree of certainty for landowners (including prospective landowners) about the intended purpose and management of the land (it is shown on the District Planning Maps and on a Land Information Memorandum if one is requested).

The drawbacks to using designations are that there may be possibly instances where Greater Wellington is required to purchase or lease land, and the timeframes for the notification and possible subsequent appeals on the proposed Wairarapa District Plan are uncertain.

4. Discussion

At this stage, using designations is the option preferred by staff as it provides the benefits of both protecting key Greater Wellington assets and removing the requirement for Greater Wellington to obtain district council consent. With the upcoming release of the Draft Wairarapa District Plan it is timely that Greater Wellington decide on its approach to designations so they can be included on the Draft Maps that go out for consultation.

As such, this section of the report provides some more detail on the designation process and the consultation that is recommended to support that process.

4.1 What is a designation and how can they be included in the Wairarapa District Plan?

A designation in a sense creates a “zone” which enables the requiring authority (in this case Greater Wellington) to carry out work on the site without the need for land use consent from the district council. It also places restrictions on what anyone other than the requiring authority can do on that land without the written approval of the requiring authority. Greater Wellington could use designations for:

- land where it is planning to build flood protection works,
- existing flood protection assets to protect them from activities, or
- areas such as soil conservation reserve forestry lots where works (vegetation removal and tracking) are planned and would require district council consent.

Greater Wellington can apply for a designation to be included in any existing district plan at any time. However, because the Wairarapa District Plan is a new plan, there is a process whereby all requiring authorities have been invited to confirm or modify their existing designations. If Greater Wellington does not confirm its existing designations or request new designations, none of the existing designations will be included.

4.2 How long does a designation last?

If a designation is used to protect land for future or proposed works, it only remains in the district plan for five years. However, once the works have been completed, or if the designation is to protect existing works or land from activities then the designation remains for the life of the district plan or until the requiring authority removes or alters it.

4.3 Will using designations mean Greater Wellington does not have to consider the environmental effects of its works?

No. When giving a notice of requirement, a requiring authority must submit information about the effects the work will have (basically an Assessment of Environmental Effects). The district council can recommend conditions to be included for the designation. Greater Wellington will also need to meet any regional council consent requirements.

Prior to any works commencing, the requiring authority must also submit an outline plan that provides more detail on the proposed works. However, if the works are minor (as is expected for the ongoing maintenance of the stopbank network, or track maintenance in the soil conservation reserve forestry blocks) the district council can waive the requirements for an outline plan.

4.4 Will Greater Wellington be required to purchase the land it designates?

Irrespective of whether designations are used or not, the purchase of land and compensation in relation to *new* works on private land is covered by the Public Works Act. Past and current practice sees this compensation negotiated between Greater Wellington and the landowner as works are proposed.

In relation to designated land, under the Resource Management Act a person can apply to the Environment Court for the requiring authority to acquire or lease all or part of the land *if* they tried and are unable to sell the land, *and* either the designation prevents the reasonable use of the land, *or*, the person was the owner of the land when the designation was created. In the Wairarapa it is unlikely that a landowner could show that they were unable to use or sell their land because of the proposed designations. On the contrary most flood protection works increase the value of large amounts of land.

4.5 Does Greater Wellington have to do any consultation?

Greater Wellington already consults scheme ratepayers and advisory committees on proposed works or changes to Scheme Asset Management Plans. There is, however, no legal requirement for Greater Wellington to consult on proposed designations or on the process of including designations in a district plan.

Given the existing mechanisms for consultation and that there may be some confusion between the designation and other district planning processes, it is recommended that the advisory committees are briefed on the matter, and, if possible, wider consultation with all affected landowners and other stakeholders is undertaken.

4.6 Can Greater Wellington adopt an interim approach?

Due to the urgency of making a decision about designations for the Draft Wairarapa District Plan, the Committee may wish to pursue the inclusion of designations and at the same time look into the process for introducing a bylaw. As the timing for both of these processes is uncertain they can be run in parallel until the timeframes and outcomes become more clear.

If a bylaw is introduced, Greater Wellington can remove any redundant designations from the Proposed or Operative Wairarapa District Plan. Designations that were implemented to protect areas for future works or to minimise the need for district council consents (e.g. new flood protection works or soil conservation reserve forestry lots that are due to be harvested) would need to remain in the Wairarapa District Plan.

5. Communication

Should the Committee decide to include designations in the Wairarapa District Plan, this can be communicated to advisory committees and scheme ratepayers through scheme newsletters and at advisory committee meetings.

The district councils will also be running a consultation process for community comment on the Draft Wairarapa District Plan. Greater Wellington may be able to work in with this process to ensure any questions or comments that relate specifically to Greater Wellington designations are forwarded to us.

6. Recommendation

That the Committee:

- 1) Approves the use of designations in the Wairarapa District Plan for key Greater Wellington assets, and*
- 2) Requests staff to further investigate the use of a bylaw to control activities on existing flood protection structures and report the findings back to this Committee.*

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