

# **SOUTH WAIRARAPA DISTRICT COUNCIL**

**24 FEBRUARY 2016**

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## **AGENDA ITEM D4**

### **APPLICATION FOR EXTENSION OF TIME FOR DESIGNATED WORKS UNDER SECTION 184 OF RESOURCE MANAGEMENT ACT 1991**

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#### **Purpose of Report**

To enable Council to decide whether to grant an extension of time for the completion of designated (in the WCDP) river control and flood management works undertaken by the Wellington Regional Council. The power to determine such matters, has not been delegated to officers, hence the need for Council to determine the matter.

#### **Recommendations**

Officers recommend that the Council:

1. *Receive the information.*
2. *That Council hereby grant the extension of the lapse dates of designations Ds017 and Ds018 in the Wairarapa Combined District Plan 2011 pursuant to Section 184 of the Resource Management Act 1991 with the new lapse dates being when a new Operative District Plan replaces the Wairarapa Combined District Plan 2011 for the reason that substantial work and effort has been made, and is continuing to be made to give effect to the works covered by the designations.*

#### **1. Background**

In 2008 the Wellington Regional Council lodged a Notice of Requirement (NoR) for designations related to existing and proposed flood protection stopbanks on the banks of the Waiohine River and Ruamahanga River.

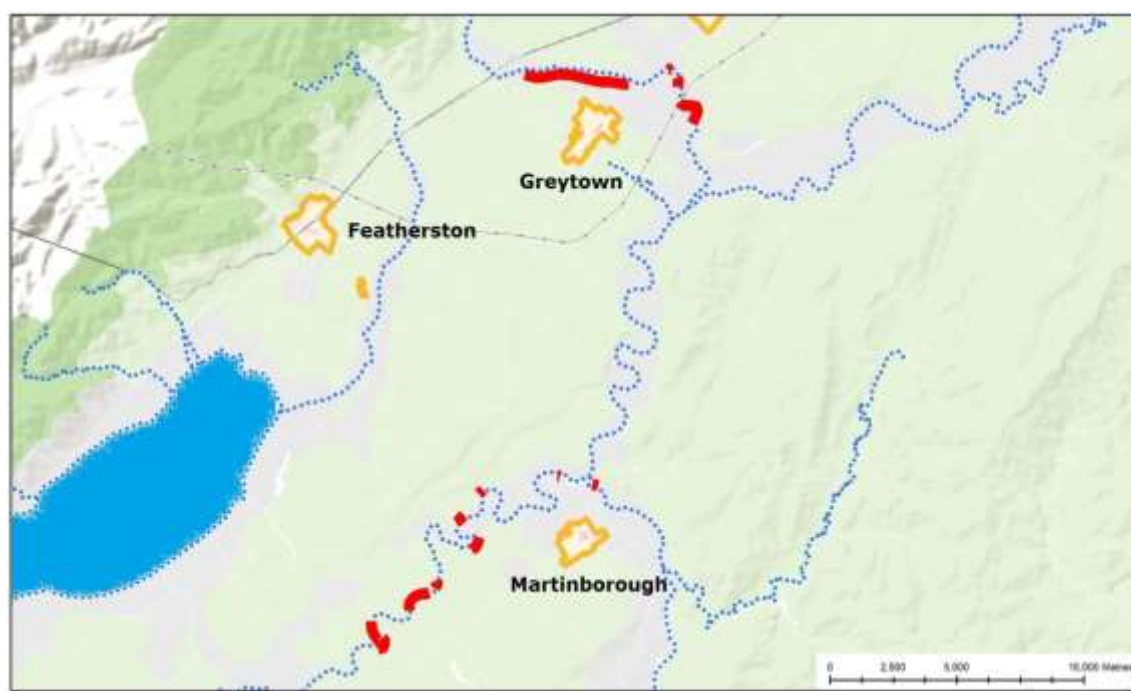
The WCDP became operative on 25 May 2011 and the designations for existing and proposed flood protection structures were included in the district plan on this date. The Regional Council at that time believed that they had requested that the designations be included on the basis of "for the life of the plan".

However when checking the designations for other purposes recently no evidence could be found to confirm this. Hence the need for the time extension request.

Section 184(1) of the Resource Management Act 1991 states that a designation lapses on the expiry of 5 years after the date on which it is included in the district plan unless it is given effect to before the end of that period, or an extension is granted (upon application), or at adoption a longer time span was applied.

The work on the proposed stopbanks has not been completed and will not be completed within 5 years of the operative date of the District Plan. Therefore the regional council has had to request an extension to the timeframes for the proposed works and designation.

## 2. Location of Sites Affected



## 3. Section 184 Test

As noted above, a designation lapses 5 years after the date on which it is included in the District Plan unless it is given effect to. Section 184(1) (b) enables the Council to fix a longer period (upon application prior to the date it would lapse).

This is subject to the *"Council determining that substantial progress or effort has been made towards giving effect to the designation and is continuing to be made"*.

## **4. Substantial Progress Assessment**

The request for an extension of time has set out in detail the progress the regional council has made towards giving effect to the designation. This includes comprehensive analysis (modelling) of the potential flood risks, design, consultation, purchasing of land and undertaking some physical works within the designated areas. The regional council has also confirmed that capital works will be budgeted for in the next few years.

While the Resource Management Act does not provide exact guidance as to what is "substantial progress", case law in regard to extension of times for resource consents (under Section 125 of the Act) does provide assistance.

Considerable physical works need not have taken place to satisfy the test that substantial progress has occurred. Case law recognises that planning and design work and fulfilling legal requirements are necessary prior to physical works and these can satisfy the criteria for substantial and ongoing progress.

In that regard Officers are satisfied on the basis of the work to date outlined in the attached Beca report, that substantial and ongoing progress towards completing the work subject to the designations has in fact taken place.

## **5. Conclusion**

It is considered the requirements for granting an extension to the designations have been met and that Council may give approval to extend the time.

## **6. Appendices**

Appendix 1 – Letter from GWRC requesting time extension on behalf of Wellington Regional Council

Prepared by: Chris Gorman, Senior Planner

Review and contact Officer: Murray Buchanan, Group Manager Planning and Environment.

# **Appendix 1 – Letter from GWRC requesting time extension**

## By email

22 December 2015

Doc Ref: FMGT-2-275

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**For: Murray Buchanan**

Dear Murray

## Designation lapse extension - flood protection infrastructure

As a local authority, Wellington Regional Council (WRC) [note Greater Wellington Regional Council is the promotional name of WRC] is a Requiring Authority under the Resource Management Act 1991(RMA). GWRC utilises the designation tool under the RMA in District Plans for flood protection and management purposes. As you are aware, there are a number of flood protection designations in the Wairarapa Combined District Plan (WCDP) that are yet to be constructed, or in other words 'given effect to'. Under section 184 of the RMA, a designation lapses after 5 years from the date it is included in a district plan if it has not been given effect to.

The WCDP became operative on 25 May 2011 and included the designations outlined in **Table 1** below. This means that the designations in question need to be 'given effect to' before 25 May 2016 otherwise they will lapse by default.

You have requested that GWRC confirm which of its' flood protection related designations are at risk of lapsing under s184 and what designations have been 'given effect to'. The 'outputs' of this exercise provides GWRC the necessary information to apply for an extension to the 5 year lapse for giving effect to flood protection designations (under s184(1)(b) of the RMA), where deemed appropriate. An application in this respect is attached to this letter.

DESIGNATION LAPSE PERIODS - SWDC



## 1 Section 184 of the RMA

Under s184(1) of the RMA a designation lapses on the expiry of 5 years after the date on which it is included in the district plan<sup>1</sup> unless:

- (a) it is given effect to before the end of that period; or*
- (b) the territorial authority determines, on an application made within 3 months before the expiry of that period, that substantial progress or effort has been made towards giving effect to the designation and is continuing to be made and fixes a longer period for the purposes of this subsection; or*
- (c) the designation specified a different period when incorporated in the plan.*

Where (b) or (c) above apply, the designation shall lapse on the expiry of the period referred to in that paragraph unless:

- (a) it is given effect to before the end of that period; or*
- (b) the territorial authority determines, on an application made within 3 months before the expiry of that period, that substantial progress or effort has been made towards giving effect to the designation and is continuing to be made and fixes a longer period for the purposes of this subsection.*

We are of the opinion that a designation is ‘given effect to’ when that designation is implemented or constructed. Once a designation is ‘given effect to’, it remains valid for the life of the District Plan.

We believe the ‘continuing substantial progress or effort’ test is similar to that for resource consents under s125 of the RMA. Importantly, it does not require completion or near completion of the designation related works and does not necessarily always mean that physical works must be underway.

## 2 GWRC Flood Protection designations due to lapse

**Table 1** below lists the GWRC flood protection designations in the WCDP that it believes are yet to be ‘given effect to’ (i.e. be constructed), and therefore will lapse if no time extension is secured. While assessed and considered as ‘new’ designations in the WCDP process, the designations listed in Table 1 relate to extensions and upgrades to existing stopbanks within the South Wairarapa district.

Construction of the designations in **Table 1** has not commenced, and is unlikely to commence before the designations lapse by default on 25 May 2016. GWRC is therefore applying to have this 5 year timeframe extended under section 184(1)(b) of the RMA. The application to facilitate this time extension is attached to this letter. The locations of the designation in **Table 1** below are shown in the appendices of the attached application.

<sup>1</sup> An ‘operative’ rather than ‘proposed’ District Plan

**Table 1: Proposed designations in the WCDP yet to be given effect**

Desg No.	Requiring Authority	Name	Purpose	Map Number
Dc013c	Greater Wellington Regional Council	Waiohine River Proposed Stopbanks Works	Flood protection and mitigation purposes	58
Ds017	Greater Wellington Regional Council	Waiohine River Proposed Stopbanks Works	Flood protection and mitigation purposes	58
Ds018	Greater Wellington Regional Council	Lower Ruamahanga River Proposed Stopbanks	Flood protection and mitigation purposes	24, 25, 67

### 3 GWRC Flood Protection designations ‘given effect to’

All remaining designations within the South Wairarapa district listed in the WCDP have been constructed, and accordingly can be deemed as having been ‘given effect to’. On this basis, it is expected that these designations will remain in the WCDP for the life of the WCDP, and furthermore the expectation would be that as physical assets, those designations would ‘roll-over’ through future WCDP reviews. These designations are listed in **Table 2** below.

**Table 2: Flood protection designation that have been given effect to**

Desg No.	Requiring Authority	Name	Purpose	Map Number
<b>Masterton District</b>				
Dm002	Greater Wellington Regional Council	Waingawa River Proposed Stopbank Works	Flood protection and mitigation purposes	14, 39, 50
Dm003	Greater Wellington Regional Council	Waipoua River Stopbanks	Flood protection and mitigation purposes	8, 14, 39, 40, 41, 44, 45, 49
Dm004	Greater Wellington Regional Council	Upper Ruamahanga Proposed Stopbank Works	Flood protection and mitigation purposes	20
Dm005	Greater Wellington Regional Council	Waipoua River Proposed Stopbank Works	Flood protection and mitigation purposes	8
Dm006	Greater Wellington Regional Council	Upper Ruamahanga Stopbanks	Flood protection and mitigation purposes	8, 19, 20, 39

<b>Carterton District</b>				
Dc013	Greater Wellington Regional Council	Mangatarere Stopbank	Flood protection and mitigation purposes	53
Dc013a	Greater Wellington Regional Council	Ruamahanga Stopbanks	Flood protection and mitigation purposes	19, 20
Dc013b	Greater Wellington Regional Council	Waiohine River Stopbanks	Flood protection and mitigation purposes	58
<b>South Wairarapa District</b>				
Ds001	Greater Wellington Regional Council	Waiohine – River Corridor – Apple Barrel Floodway	Conveyance of water for flood mitigation purposes	58, 59
Ds002	Greater Wellington Regional Council	Hiwinui Forest	Soil conservation and forestry	30, 31
Ds003	Greater Wellington Regional Council	Rough Hill Forest	Soil conservation and forestry	35
Ds004	Greater Wellington Regional Council	Stoney Creek Forest	Soil conservation and forestry	31, 35
Ds005	Greater Wellington Regional Council	Tauanui Forest	Soil conservation and forestry	30, 34
Ds006	Greater Wellington Regional Council	Waiohine River Stopbanks	Flood protection and mitigation purposes	19, 58, 59
Ds007	Greater Wellington Regional Council	Tauherenikau Stopbanks	Flood protection and mitigation purposes	18, 24, 62
Ds008	Greater Wellington Regional Council	Manganui Stream Stopbank	Flood protection and mitigation purposes	29
Ds009	Greater Wellington Regional Council	Owhanga Stream Stopbanks	Flood protection and mitigation purposes	18, 24
Ds010	Greater Wellington Regional Council	Pounui Stream Stopbanks	Flood protection and mitigation purposes	29
Ds011	Greater Wellington Regional Council	Waiorongomai Stream Stopbanks	Flood protection and mitigation purposes	23, 24
Ds012	Greater Wellington Regional Council	Abbots Creek Stopbank	Flood protection and mitigation purposes	18, 53, 62
Ds013	Greater Wellington Regional Council	Cross Creek Stopbanks	Flood protection and mitigation purposes	24
Ds014	Greater Wellington Regional Council	Turanganui Floodplain	Conveyance of water for flood mitigation purposes	29, 30
Ds015	Greater Wellington Regional Council	Tauherenikau Floodplain	Conveyance of water for flood mitigation purposes	18, 24, 62
Ds016	Greater Wellington Regional Council	Donalds Creek Floodplain and Drain area	Conveyance of water for flood mitigation purposes	62, 65



Ds019	Greater Wellington Regional Council	Whakawiriwiri Drain	Conveyance of water for flood mitigation purposes	25, 67
Ds020	Greater Wellington Regional Council	Abbots Creek Drain Area	Conveyance of water for flood mitigation purposes	18, 53, 62
Ds021	Greater Wellington Regional Council	Tawaha Loop Drain	Conveyance of water for flood mitigation purposes	25, 67
Ds022	Greater Wellington Regional Council	Turanganui River Stopbanks	Flood protection and mitigation purposes	29, 30, 56
Ds023	Greater Wellington Regional Council	Upland Cutoff Drain Stopbanks	Flood protection and mitigation purposes	30
Ds024	Greater Wellington Regional Council	Tauanui River Stopbanks	Flood protection and mitigation purposes	30, 56
Ds025	Greater Wellington Regional Council	Lower Ruamahanga River Floodways Floodplain	Conveyance of water for flood mitigation purposes	24, 25, 29, 30
Ds026	Greater Wellington Regional Council	Lower Ruamahanga River and Floodway Stopbanks	Flood protection and mitigation purposes	19, 24, 25, 29, 30, 67
Ds027	Greater Wellington Regional Council	Donalds Creek Stopbanks	Flood protection and mitigation purposes	65

For certainty and clarity on any future processes, GWRC seeks confirmation from South Wairarapa District Council (SWDC) that it is in agreement with this opinion.

## 4 Concluding Remarks

The purpose of this letter has been to confirm which GWRC Flood Protection designations within the South Wairarapa district (as listed in the WCDP) have been given effect to, and which designations require an extension of the 5 year default designation lapsed period.

Those designations which have not been ‘given effect to’ (i.e. constructed) to date, and which GWRC seek an extension of time for in respect of their lapse period, have been identified in this letter. The application(s) to extend these lapse period timeframes under Section 184(1)(b) is attached.

Note that letters are also being sent to Milan Hautler (Planning & Regulatory Manager) of Carterton District Council and Sue Southey (District Planner) Masterton District Council to confirm the above approach with the designations relevant to those two respective Councils.

If you have any questions or queries please contact Tracy Berghan. We look forward to hearing your response to the attached application.

Yours sincerely



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