



# Changes to Rules for Structures in Urban Flood Hazard Overlay

(Plan Change Report)

Proposed Plan Change 48 to the District Plan

November 2011



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## Executive Summary

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This document sets out the Gisborne District Council's analysis of Proposed Plan Change 48 (PC48) to the Combined Regional Land and District Plan (District Plan). PC48 is the result of a review of rule 5.24.3.1. This rule prohibits the construction of, or addition to, any building or structure within Flood Hazard Overlay 9 (F9).

Urban flooding can sometimes pose a threat to people and their property. It is important to protect stream channels to keep any structures out of the flood hazard overlay, and maintain a natural functioning stream and flood zone system. It is also important to avoid locating structures where they could be damaged during a flood. However, it is not considered necessary to prohibit all structures in the flood hazard zone. The District Plan currently does not allow for structures that could be appropriate.

An analysis of benefits, costs and alternatives has been undertaken in relation to rule 5.24.3.1 and alternative options. Options identified are the status quo (option 1), changing the activity status to discretionary but keeping buildings prohibited (option 2), replacing the existing rule with rules relating to specific activities/structures (option 3).

Option 3 is preferred because:

- it provides greater clarity about the activity status of each structure type compared to the other options.
- it meets the relevant objectives of the Regional Policy Statement and District Plan.
- It allows for consideration of river control /protection works in the flood hazard overlay, rather than prohibiting all structures.
- it gives discretion to consider other types of structures that may have a functional need to be located in the flood hazard overlay.

# 1. Introduction

## 1.1 Reasons for the Proposed Changes

The District Plan currently prohibits many structures in the F9 Urban Flood Hazard Overlay (F9) under rule 5.24.3.1:

### *5.24.3 Prohibited Activities*

*The following shall be prohibited activities for which no resource consent shall be granted, whether or not provided for in the zone concerned:*

*5.24.3.1 The construction of or addition to any building or structure not specifically provided for as a permitted activity or a restricted discretionary activity (excluding maintenance and minor upgrading)*

The rule aims to give effect to objectives in the District Plan to ensure protection of life and property from natural hazards.

Gisborne, like most urban areas in New Zealand, faces the risk of flooding. Stream flooding directs the energy of a flood out of the stream or channel and on to the flood hazard zone, which is a natural process. Control over structures in areas prone to flooding is necessary to ensure structures do not cause damage to property and diversion of floodwaters.

However, it is not always desirable to keep structures out of the flood hazard zone. Sometimes protection works need to be considered to protect infrastructure or property. Other structures with limited adverse effects, such as boardwalks, may also be appropriate and enhance the environment and amenity values of riverine areas.

It is considered that in order to meet these objectives structures need not be prohibited completely so a reassessment of the efficiency and effectiveness of this rule is necessary.

## 1.2 Public Participation

PC48 was prepared in accordance with the First Schedule of the Resource Management Act 1991 (RMA). The First Schedule states the requirements for preparing, changing and reviewing policy statements and plans including consultation requirements.

The public have an opportunity to make written submissions process. Council will analyse all submissions. A hearing panel will hear the submissions and recommend to Council how the proposed changes should be dealt with, based on the submissions and the report prepared by Council. After the decision is made, Council will notify the public and submitters can make an appeal if they disagree with the decision.

## 1.3 Report Layout

This report on PC48 includes:

- Background information about flooding in urban areas and the issues relating to current rule 5.24.3.1.
- A description of the RMA statutory and policy framework.
- A cost benefit analysis that looks at effectiveness and efficiency of options; and
- Conclusions and recommendations.

## 2. Statutory and Policy Framework

### 2.1 Resource Management Act 1991

The key legislation for environmental management in New Zealand is the Resource Management Act 1991 (RMA). The purpose of the RMA is *to promote the sustainable management of natural and physical resources*.

Council has the following relevant functions under the RMA:

- *the control of the use of land for the purpose of the avoidance or mitigation of natural hazards (section 30); and*
- *the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the avoidance or mitigation of natural hazards (section 31).*

### 2.2 Regional Policy Statement

The Regional Policy Statement is the main vehicle for interpreting and applying the sustainable management requirements of the RMA in a local context, and in this regard, guides the development of lower tier plans, including the District Plan.

Relevant provisions in the Gisborne Regional Policy Statement are:

#### 2.3.1 Objectives

1. *A pattern of human settlement that:*
  - *provides a high level of personal safety from natural hazards for its inhabitants;*
  - *avoids or mitigates the risk to property and infrastructure from natural hazards;*
  - *does not accelerate or worsen the effects of natural hazards upon the natural and physical environment.*
2. *Rehabilitation, where practicable, of aspects of the environment degraded by natural processes that were induced or accelerated by human activities.*

#### 2.3.2 Policies

1. *To encourage and facilitate changes, over time, to patterns of human settlement, development and activities which are not affected by natural hazards and which do not induce or worsen the impacts of natural processes, and which recognise and allow for some natural features to migrate inland as a result of dynamic coastal processes.*
2. *To recognise the limitations of attempts to control natural processes by physical work and limit such attempts to appropriate situations where they are:*
  - a) *needed to protect existing development, or waahi tapu or new public infrastructure such as ports, roads, bridges; and*
  - b) *have a favourable benefit to cost ratio; and*
  - c) *will not have significant adverse effects on the natural character of the coastal environment, or other adverse environmental effects; and*

- d) *will not cause or worsen hazards to other lands/waters; and*
  - e) *can be designed with confidence of long-term effective performance; and*
  - f) *are the only practical alternative.*
3. *To maintain a strong commitment to researching, recording and publicising information about natural hazards.*
  4. *To recognise that natural systems and features may provide a defence against natural hazards and that the integrity of such natural systems should be protected and enhanced where appropriate.*
  6. *To encourage participation by the affected communities in managing the risks of natural hazards*

## 2.3 District Plan

The District Plan sits below the Regional Policy Statement in the hierarchy of RMA plans and policies and is one of the main tools for promoting the purpose of the RMA within the Gisborne District.

The RMA requires District Plans to state the objectives for the district, the policies to achieve the objectives and any rules or other methods to implement the policies (sections 75 and 76). The following lists the relevant District Plan provisions for this review:

### 5.3 Objectives (Natural Hazards)

1. *A pattern of human settlement that:*
  - *provides a high level of personal safety from natural hazards for its inhabitants;*
  - *avoids or mitigates the risk to property and infrastructure from natural hazards; and*
  - *does not accelerate or worsen the adverse effects of natural hazards upon the natural and physical environment.*
2. *A community informed of the potential natural hazards of the District.*
3. *The protection of natural features that could lessen the impact of natural hazards.*

### 5.7 Policies (for Flood Hazard)

10. *In developing plan provisions, and in assessing resource and building consent applications, the Council will adopt 'design flood standards' for flood hazard assessments as follows:*
  - *Waipaoa River within the Poverty Bay Flats*  
*Peak flood flow of 5830 cumecs in the Waipaoa River at Kanakanaia over a period of 30 hours. (Cyclone Bola hydrograph plus 10%) plus a flood equal to the magnitude of the July 1985 event from all other rivers and streams on the floodplain.*
  - *Waimata and Taruheru Rivers within the Gisborne Urban area*  
*100 year return period.*
11. *The Council will recognise that localised flooding may occur outside the areas described in Policy 10.*

12. *When designing and carrying out earthworks or roadworks any adverse effects resulting from the diversion of floodwater should be avoided, remedied or mitigated.*
13. *Activities on land within the Waipaoa River Floodway should avoid causing.*

5.24 *Regional Rules for Flood Hazard Overlay 9 (Urban Floodways - F9)*

5.24.3 *Prohibited Activities*

*The following shall be prohibited activities for which no resource consent shall be granted, whether or not provided for in the zone concerned:*

- 5.24.3.1 *The construction of or addition to any building or structure not specifically provided for as a permitted activity or a restricted discretionary activity (excluding maintenance and minor upgrading)*

### 3. Options

A review of rule 5.24.3.1 was undertaken to look at ways of addressing the issue of structures within the F9. This rule was assessed against similar rules used in other District Plans (see Appendix 3). Options include maintaining the status quo, changing the activity status to discretionary but keep buildings prohibited, and replacing the existing macro rule with rules relating to specific activities and/or structures.

The different options for addressing the issue are outlined below:

#### 3.1 Option 1: Status Quo (prohibited)

The construction of or addition to any building or structure not specifically provided for as permitted activity or a restricted discretionary activity (excluding maintenance and minor upgrading) remains prohibited.

#### 3.2 Option 2: Change activity status to discretionary except for buildings

The construction of or addition to any structure excluding buildings (as defined in the District Plan) not specifically provided for as a permitted activity or a restricted discretionary activity (excluding maintenance and minor upgrading) is a discretionary activity.

For a discretionary activity a resource consent is required. Council may decline or grant the consent with or without conditions. If granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

Buildings would remain prohibited in the F9 (as in rule 5.24.3.1).

#### 3.3 Option 3: Replace with rules relating to specific activities/ structures

Construction of river control or protection works (for protecting stream banks, private or public land) is a discretionary activity. This includes fords, banks of streams, retaining walls, levees or dams.

The erection of new structures in the F9, excluding buildings (as defined in the district plan), is a discretionary activity.

Buildings would remain prohibited in the F9 (as in rule 5.24.3.1).

## 4. Analysis of options

### 4.1 Section 32 Requirements

Section 32 of the RMA establishes a process to test the appropriateness of proposed plan changes.

This section of the report has been prepared to fulfil the requirements of Section 32(1)(d) of the RMA, which requires the Council to carry out an evaluation prior to public notification.

Sections 32(3) and (4) of the RMA state:

1. *An evaluation must examine –*
  - i. *the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and*
  - ii. *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*
2. *For the purposes of this examination, an evaluation must take into account:*
  - i. *the benefits and costs of policies, rules and other methods; and*
  - ii. *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

The following tables address the relevant requirements of section 32.

The options compared are:

Option 1: Status Quo (prohibited)

Option 2: Change activity status to discretionary except for buildings

Option 3: Replace with rules relating to specific activities/ structures

## 4.2 Analysis of Benefits and Costs

Option 1 Status Quo					
Option	Benefits	Costs	Statutory Responsibility	Efficiency	Effectiveness
<p>Rule 5.24.3.1 (prohibited). The construction of or addition to any building or structure not specifically provided for as a permitted activity or a restricted discretionary activity (excluding maintenance and minor upgrading).</p>	<p>Structures will not disturb the stream. Encourages more accurate Flood Hazard Overlay mapping.</p>	<p>Structures that may be beneficial and have little or no impact on flooding issues are prohibited. No ability to construct protection works that could improve flooding issues. Where the F9 is inaccurate a private plan change/Council plan change is required to allow structures and these are costly.</p>	<p>Meets current statutory obligations under sections 5, 30 and 31 of the Resource Management Act. Inconsistent with objectives of the Regional Policy Statement Inconsistent with objectives of the District Plan:</p>	<p>Structures may be unnecessarily prohibited.</p>	<p>The objective 5.3 (1) in the District Plan is not being achieved because structures may help to reduce flood risks but they are prohibited.</p>

**Option 2: Change the activity status to discretionary except for buildings**

Option	Benefits	Costs	Statutory Responsibility	Efficiency	Effectiveness
<p>Discretionary activity rule:</p> <ul style="list-style-type: none"> <li>- The construction of or addition to any structure <u>excluding buildings (as defined in the District Plan)</u> not specifically provided for as a permitted activity or a restricted discretionary activity (excluding maintenance and minor upgrading).</li> <li>- Buildings should stay prohibited in the F9 (as in rule 5.24.3.1).</li> </ul>	<p>Allows for consideration of protection structures to keep people and properties safe from flooding hazards.</p> <p>It gives discretion to consider other types of structures that may have a functional need to locate in the F9 eg boardwalks to enhance public access to and amenity values of riverine areas.</p> <p>Buildings should stay prohibited because they could restrict flows, and the Gisborne District Council does not want buildings encroaching in the F9.</p>	<p>Less incentive to keep the flood hazard zone accurate.</p>	<p>Meets current statutory obligations under sections 5 and 31 of the Resource Management Act.</p> <p>Consistent with objectives of the Regional Policy Statement, because structures can help to achieve the objectives</p>	<p>The location of the contour lines in F9 is not always correct. A discretionary activity status allows this to be taken into consideration when assessing resource consent applications. If the F9 has been mapped incorrectly; such as a property that is shown to be in a flood zone, but is actually not; then development will be able to be considered. The existing rule does not allow this, and requires affected landowners to undertake Private Plan Changes to correct incorrect mapping. This is an inefficient process.</p> <p>Allows consideration of appropriateness of structures rather than prohibiting all structures.</p>	<p>Flood protection works can be considered on a case-by-case basis to promote the objectives and are no longer prohibited, or effects from development may be minor or less than minor.</p>

<b>Option 3: Replace with rules relating to specific activities/ structures</b>					
<b>Option</b>	<b>Benefits</b>	<b>Costs</b>	<b>Statutory Responsibility</b>	<b>Efficiency</b>	<b>Effectiveness</b>
Overall benefits, costs, statutory responsibility, efficiency and effectiveness for Option 3. (The proposed rules can be found in Appendix 4.)	<p>Clarifies the activity status of each structure type.</p> <p>Allows for consideration of protection structures to keep people and properties safe from flooding hazards.</p> <p>It gives discretion to consider other types of structures too.</p> <p>Buildings should stay prohibited because they could restrict flows, and the Gisborne District Council does not want buildings encroaching in the F9.</p>	Less incentive to keep the flood hazard zone accurate.	<p>Meets current statutory obligations under sections 5 and 31 of the Resource Management Act.</p> <p>Consistent with objectives of the Regional Policy Statement, because structures may help to achieve the objectives:</p>	<p>The location of the contour lines in the F9 is not always correct. A discretionary activity status allows this to be taken into consideration when assessing resource consent applications. If the F9 has been mapped incorrectly; such as a property that is shown to be in a flood zone, but is actually not; then development will be able to be considered. The existing rule does not allow this, and requires affected landowners to undertake Private Plan Changes to correct incorrect mapping. This is an inefficient process.</p> <p>Allows consideration of appropriateness of structures rather than prohibiting all structures.</p>	Flood protection works can be considered on a case-by-case basis to promote the objectives and are no longer prohibited, or effects from development may be minor or less than minor.

## 5. Conclusion

A review of Flood Hazard Overlay (F9) rule 5.24.3.1 has been carried out and three options have been identified.

The analysis of benefits and costs has shown that the current rule (5.24.3.1) in the District Plan is not effective because objective 5.3 (1) in the District Plan is not being achieved.

Option 2 is to change the activity status from the current rule (5.24.3.1) to discretionary, but retain buildings as prohibited. This would be more consistent with the objectives of the Regional Policy Statement and the District plan, because river and protection structures are no longer prohibited. Option 2 also gives discretionary consideration of types of structures. Although consent application and processing costs would apply.

A further option (Option 3), to replace the existing rule with rules relating to specific activities/structures, was also considered. Like Option 2, Option 3 meets the objectives in the Regional Policy Statement and the District Plan. In addition to Option 2 it would also clarify the activity status of each structure type.

It is therefore recommended that Flood Hazard Overlay (F9) rule 5.24.3.1 in the District Plan be amended as detailed in Option 3.

## 6. **Appendices**

Appendix 1 Current Objectives and Rules for F9

Appendix 2 Urban Flood Hazard Rules of Various Councils

Appendix 3 Proposed Changes to the Rules for F9

# APPENDIX 1: Current Objectives and Rules for F9

## 5.3 General Objectives

1. A pattern of human settlement that:
  - provides a high level of personal safety from natural hazards for its inhabitants;
  - avoids or mitigates the risk to property and infrastructure from natural hazards; *and*
  - does not accelerate or worsen the adverse effects of natural hazards upon the natural and physical environment.
2. A community informed of the potential natural hazards of the District.
3. The protection of natural features that could lessen the impact of natural hazards.

### 5.24 REGIONAL RULES FOR FLOOD HAZARD OVERLAY 9 (Urban Floodways - F9)

#### 5.24.1 Restricted Discretionary Activities

The following activities shall be restricted discretionary activities:

*Refer to Chapter 7 for additional rules relating to the beds of lakes and rivers.*

##### 5.24.1.1 The installation or alteration of culverting or bridging of rivers, streams and watercourses

##### 5.24.1.2 Planting of trees or shrubs on the banks/berms of rivers or streams

##### 5.24.1.3 Construction or installation of network utility structures.

Council shall restrict its discretion with regard to 5.24.1.1 - 5.24.1.3 to the matters a) - d) specified below:

- a) Avoiding, remedying or mitigating any effects of flooding
- b) Restriction or diversion of the passage of floodwaters
- c) Aggradation or erosion of the banks and berms of rivers, streams or watercourses
- d) Access for machinery

*Refer to Chapter 8 for additional rules relating to network utilities.*

#### 5.24.2 Discretionary Activities

The following shall be discretionary activities:

##### 5.24.2.1 The replacement of watercourses/drains in the Taruheru Block with alternative drainage infrastructure including pipes and swales.

#### 5.24.3 Prohibited Activities

The following shall be prohibited activities for which no resource consent shall be granted, whether or not provided for in the zone concerned:

##### 5.24.3.1 The construction of or addition to any building or structure not specifically provided for as a permitted activity or a restricted discretionary activity (excluding maintenance and minor upgrading)

##### 5.24.3.2 Deposition of any lawn clippings, tree prunings or any other waste material

##### 5.24.3.3 Raising the level of the land by the depositing of materials

*Provided that: This rule shall not apply to activities subject to Rule 5.24.2.1*

## APPENDIX 2: Urban Flood Hazard Rules of Various Councils

	Horizons	Nelson City Council (unitary)	Bay of Plenty Regional Council	GDC (current)
<u>Rule</u>	Damming and diversion	Damming and diversion (in urban area)	Activity in the Beds of Streams, Rivers and Lakes	Structures
<u>Activity Status</u>	Permitted (with conditions)	Permitted (with conditions) / discretionary (see Appendix rule FWr.13)	Discretionary	Prohibited
	Horizons	Nelson City Council (unitary)	Bay of Plenty Regional Council	GDC (now)
<u>Rule</u>	Structures	Maintenance, replacement, upgrade and removal of structures (excluding dams) (in urban area)	Structures	Structures
<u>Activity Status</u>	Discretionary	Permitted (with conditions) / controlled or discretionary	Discretionary	Prohibited
	Horizons	Nelson City Council (unitary)	Bay of Plenty Regional Council	GDC (now)
<u>Rule</u>	X	Realignment and piping (in urban area)	Disturbance to Maintain Access to Boat Ramps and Jetties administered by City and District Council (in urban area)	Structures
<u>Activity Status</u>	X	Permitted (with conditions) / discretionary	Restricted Discretionary	Prohibited
	Horizons	Nelson City Council (unitary)	Bay of Plenty Regional Council	GDC (now)
<u>Rule</u>	Other Activities	Activities (in urban area)	Activities	Other activities
<u>Activity Status</u>	Discretionary	Permitted (with conditions) / Controlled and discretionary	Discretionary	Restricted discretionary / Prohibited

## APPENDIX 3: Proposed Changes to the Rules for F9

### 5.24 REGIONAL RULES FOR FLOOD HAZARD OVERLAY 9 (Urban Floodways - F9)

#### 5.24.1 Restricted Discretionary Activities

The following activities shall be restricted discretionary activities:

- 5.24.1.1 The installation or alteration of culverting or bridging of rivers, streams and watercourses
- 5.24.1.2 Planting of trees or shrubs on the banks/berms of rivers or streams
- 5.24.1.3 Construction or installation of network utility structures.

Council shall restrict its discretion with regard to 5.24.1.1 - 5.24.1.3 to the matters a) - d) specified below:

- a) Avoiding, remedying or mitigating any effects of flooding
- b) Restriction or diversion of the passage of floodwaters
- c) Aggradation or erosion of the banks and berms of rivers, streams or watercourses
- d) Access for machinery

#### 5.24.2 Discretionary Activities

The following shall be discretionary activities:

- 5.24.2.1 The replacement of watercourses/drains in the Taruheru Block with alternative drainage infrastructure including pipes and swales.
- 5.24.2.2 Construction of soil conservation and river control or protection works where they do not accelerate or worsen the effects of natural hazards.
- 5.24.2.3 The construction of or addition to any structure (excluding buildings) not specifically provided for as a permitted activity or a restricted discretionary activity (excluding maintenance and minor upgrading).

#### 5.24.3 Prohibited Activities

The following shall be prohibited activities for which no resource consent shall be granted, whether or not provided for in the zone concerned:

- 5.24.3.1 The construction of or addition to any building (excluding maintenance and minor upgrading).
- 5.24.3.2 Deposition of any lawn clippings, tree prunings or any other waste material.
- 5.24.3.3 Raising the level of the land by the depositing of materials (excluding activities subject to Rule 5.24.2.1, 5.24.2.2 and 5.24.2.3)