

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of Hearing 22: Infrastructure

of the Proposed Waikato District Plan

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**STATEMENT OF EVIDENCE OF MARIE-LOUISE (MIFFY) FOLEY**

**For the Waikato Regional Council**

**DATED 29 September 2020**

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## **Introduction**

1. My name is Marie-Louise (Miffy) Foley. I am a Senior Policy Advisor in the Integration and Infrastructure Section at the Waikato Regional Council. I have been in this role since February 2019.
2. I hold the academic qualifications of a Bachelor of Sciences from the University of Waikato and a Graduate Diploma in Urban and Regional Planning from the University of New England in New South Wales (NSW), Australia. I am an intermediate Member of the New Zealand Planning Institute.
3. My role with Waikato Regional Council has been as a member of the Policy Implementation Team which involves working with the territorial authorities of the Waikato Region and with neighbouring regional councils to assist in the development of consistent integrated regional policy. I am also involved with Future Proof and a number of the Hamilton to Auckland Corridor Plan work streams. I represent Waikato Regional Council on the Future Proof Technical Implementation Group.
4. I have 15 years' experience working in the planning field. Prior to my role with Waikato Regional Council, I was employed as a policy and strategic planner in local government in NSW for over 13 years.
5. I confirm that I am familiar with the Code of Conduct for Expert Witnesses as set out in the Environment Court Practice Note 2014. I have read and agree to comply with the Code. Except where I state that I am relying upon the specified evidence or advice of another person, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **Scope of evidence**

6. My evidence is given on behalf of Waikato Regional Council.
7. The submission made by Waikato Regional Council addressed several aspects that relate to the Infrastructure Chapter. The submission sought amendments to improve consistency with regional policy documents. I was not involved in the preparation of Waikato Regional Council's submission, dated 18 September 2018. However, I led the preparation of the further submission, dated 15 July 2019.

8. My evidence reinforces the Waikato Regional Council submission and reflects my professional opinions as a resource management policy advisor. The focus of my evidence is on:
- low impact approach to stormwater management;
  - consistency in the provisions for identified areas, and
  - need for a rule framework to provide for WRC flood protection schemes.

#### **Low impact approach to stormwater management**

9. WRC's submission point 81.7 requested amendment to the Proposed District Plan's provisions to support the use of low impact design principles for stormwater management, particularly for restricted discretionary activity criteria and permitted activity standards.

10. As noted in the S42A report<sup>1</sup>, the Proposed District Plan proposes a low impact approach to stormwater management through Objective 6.4.6 and Policy 6.4.7 which require best-practice low impact design approach to the management of stormwater. The stormwater rules in Section 14.11 P1 require that stormwater systems for new development or subdivision must comply with all the conditions in 14.11.1.1 including (a)(v) low impact design measures as appropriate. I support this approach, however, if a proposal does not meet P1 activity standards, it becomes a restricted discretionary activity. RD1 restricts discretion to:

*(a)The likely effectiveness of the system to avoid flooding, nuisance or damage to other buildings and sites;*

*(b)The capacity of the system and suitability to manage stormwater.*

11. I suggest that an additional matter of discretion be included to address this gap such as:

*(c) Use of low impact design principles and approaches*

12. This would ensure that all developments are required to consider best-practice low impact design approach to the management of stormwater, not just those that comply with the permitted activity standards.

#### **Consistency in the provisions for identified areas**

13. WRC's submission points 81.246 requested amendments to Chapter 14 to ensure the Proposed District Plan takes a consistent approach to overlay areas as do the zone chapters.

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<sup>1</sup> Section 42A Hearing Report – Infrastructure Section D0 – Section 4

For example, there should be consistency between permitted activity thresholds and activity status between Chapter 14 and the zone chapters.

14. Mr Mackie has recommended in the s42a report<sup>2</sup> inclusion of additional permitted activity standards and new matters of discretion for identified areas in Section 14.12 transport. I support the recommended amendments, and the recommendation that 14.3.1.3 be amended to exclude earthworks in Significant Natural Areas<sup>3</sup>.

15. However, I do not believe that all inconsistencies between permitted activity thresholds and activity status with the zones have been addressed. For example, in relation to vegetation removal, the permitted activity standards under 14.3.1.4 of Section 14.3 General Infrastructure only excludes the removal of trees under schedule 30.2 Notable trees. In contrast, in the Rural Zone *Section 22.2.7 Indigenous vegetation clearance inside a Significant Natural Area* includes a range of permitted activity standards but generally restricts the clearance of indigenous vegetation to the following purposes:

- Removing vegetation that endangers human life or existing buildings or structures;
- Conservation fencing to exclude stock or pests;
- Maintaining existing farm drains;
- Maintaining existing tracks and fences; or
- Gathering plants in accordance with Maaori customs and values.
- Removal of up to 5m<sup>2</sup> of manuka and/or kanuka outside of the Coastal Environment for domestic firewood purposes and arts or crafts

16. There are no restrictions or thresholds for vegetation removal in an SNA for infrastructure. As a result, the permitted activity standards under 14.3.1.4 are inconsistent with the rule framework throughout the rest of the Proposed District Plan. Furthermore, only if vegetation removal becomes a restricted discretionary activity is there a consideration of any effects on the values, qualities and characteristics of the site.

17. I do not consider that this gives effect to WRPS Policy 11.2 and Implementation Method 11.2.2 which requires district plans to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna. I acknowledge that implementation Method 11.2.2 identifies that some activities have a functional need to be located in or near SNAs but these activities still need to be considered in context of the whole of this method, which is set out

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<sup>2</sup> Section 42A Hearing report Infrastructure Section D0 – Infrastructure and Energy overall, Section 2

<sup>3</sup> Section 42A Hearing report Infrastructure Section D3 – General Infrastructure, Section 7

below. I also note the particular wording of (g) uses the much less directive 'have regard' in contrast to (a) to (f).

***Policy 11.2 Protect significant indigenous vegetation and significant habitats of indigenous fauna***

*Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.*

***11.2.2 Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna***

*Regional and district plans shall (excluding activities pursuant to 11.1.4):*

- a) protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
- b) require that activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation;*
- c) require that any unavoidable adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna are remedied or mitigated;*
- d) where any adverse effects are unable to be avoided, remedied or mitigated in accordance with (b) and (c), more than minor residual adverse effects shall be offset to achieve no net loss; and*
- e) ensure that remediation, mitigation or offsetting as a first priority relates to the indigenous biodiversity that has been lost or degraded (whether by on-site or offsite methods). Methods may include the following:*
  - i) replace like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);*
  - ii) involve the re-creation of habitat;*

*iii) develop or enhance areas of alternative habitat supporting similar ecology/significance; or*

*iv) involve the legal and physical protection of existing habitat;*

*f) recognise that remediation, mitigation and offsetting may not be appropriate where the indigenous biodiversity is rare, at risk, threatened or irreplaceable; and*

*g) have regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation and significant habitats of indigenous fauna where no reasonably practicable alternative location exists.*

18. To address this inconsistency, I suggest amending 14.3.1.3 P4 and P5 to set thresholds for vegetation clearance in identified areas and consequently amend 14.3.3 RD2 & RD3 to include a matter of discretion relating to effects on the values, qualities and characteristics of any identified area. Suggested wording is included below.

14.3.1.4 (1)

...

*(c) Any indigenous vegetation alteration or removal with a Significant Natural Area must not:*

*(i) include any trees over 6m in height or 600mm in girth at a height of 1.4m; and*

*(ii) exceed 50m<sup>2</sup> per site over any consecutive 12 month time period.*

19. Further, Policy 6.1.10 uses the wording “Ensure consideration of the values of...”. WRPS implementation methods 11.2.2 (SNAs) and 12.1.1 (ONFLs) use the hierarchy of avoid, remedy and mitigate. Similar wording should be used consistent with the WRPS and to tie back to the objectives and policies in Chapter 3 Natural Environment. This will ensure that there is no risk of Policy 6.1.10 being applied or considered in isolation, or of the policy direction in Chapter 3 being watered down by that in Chapter 6 when considered in light of a consent application.

**Need for a provision framework to provide for regional flood protection infrastructure**

20. WRC submission points 81.190 and 81.191 requested that Chapters 6 and 14 be amended to include a policy and rule framework to provide for the ongoing maintenance, repair,

replacement and upgrade of flood and drainage scheme infrastructure. Submission point 81.192 requested that the definition of 'infrastructure' be amended to include WRC flood infrastructure with associated flood management regime.

21. Waikato Regional Council has a statutory duty under the Soil Conservation and Rivers Control Act 1941 to minimise and prevent damage to property caused by flooding. Given this duty, Waikato Regional Council is a significant landowner and asset manager within the Waikato District. Flood protection reduces the likelihood of floods impacting on our communities. It safeguards lives and property, enables productive use of land, and protects services such as water supply, power, telecommunications and roading networks. WRC launched an awareness campaign called Come High Water earlier this year to highlight the importance of flood protection. The launch video can be viewed at <https://youtu.be/NCKsGMMUxZs>. Appendix One contains a map showing the location of WRC flood and drainage assets across the Waikato District.
22. At present the maintenance and improvement of flooding infrastructure is funded through various methods by Waikato Regional Council. The network has aged considerably since its construction and due to the implications of climate change will require ongoing improvements to maintain the current levels of flood protection. While some Waikato Regional Council properties and infrastructure have designations in place that assist in the management of this nationally significant infrastructure, others do not, and are reliant on a mixture of existing resource consents and permitted activity rules to provide for the regular maintenance, renewal and operation of this infrastructure.



23. Flood and drainage infrastructure managed by the Waikato Regional Council is included in the definition of 'regionally significant infrastructure' under the WRPS<sup>4</sup>, therefore Policy 6.6 and Implementation Method 6.6.1 apply.

*Policy 6.6 Significant infrastructure and energy resources*

*Management of the built environment ensures particular regard is given to:*

- a) that the effectiveness and efficiency of existing and planned regionally significant infrastructure is protected;
- b) the benefits that can be gained from the development and use of regionally significant infrastructure and energy resources, recognising and providing for the particular benefits of renewable electricity generation, electricity transmission, and municipal water supply; and
- c) the locational and technical practicalities associated with renewable electricity generation and the technical and operational requirements of the electricity transmission network.

*6.6.1 Plan provisions*

Regional and district plans shall include provisions that give effect to Policy 6.6, and...

(Emphasis added)

24. Within the Proposed District Plan there is limited recognition of this significant infrastructure in terms of issues, objectives and policies, and only limited activities are provided for as rules.

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<sup>4</sup> **Regionally significant infrastructure** – includes:

- a) pipelines for the distribution or transmission of natural or manufactured gas or petroleum;
- b) infrastructure required to permit telecommunication as defined in the Telecommunications Act 2001;
- c) radio apparatus as defined in section 2(1) of the Radio Communications Act 1989;
- d) the national electricity grid, as defined by the Electricity Industry Act 2010;
- e) a network (as defined in the Electricity Industry Act 2010);
- f) infrastructure for the generation and/ or conveyance of electricity that is fed into the national grid or a network (as defined in the Electricity Industry Act 2010);
- g) significant transport corridors as defined in Map 6.1 and 6.1A;
- h) lifeline utilities, as defined in the Civil Defence and Emergency Management Act 2002, and their associated essential infrastructure and services;
- i) municipal wastewater treatment plants, water supply treatment plants and bulk water supply, wastewater conveyance and storage systems, municipal supply dams (including Mangatangi and Mangatawhiri water supply dams) and ancillary infrastructure;
- j) flood and drainage infrastructure managed by Waikato Regional Council;
- k) Hamilton City bus terminal and Hamilton Railway Station terminus; and
- l) Hamilton International Airport.

The permitted activity standards across all zones do not provide adequately for the ongoing maintenance, renewal and operation of WRC's regionally significant flood scheme infrastructure.

25. As notified, the Proposed District Plan does not recognise regionally significant flood scheme infrastructure and does not provide a clear framework for its operation, maintenance and upgrading. While the notified definition of 'infrastructure' includes drainage networks, it does not include flood scheme infrastructure. I accept the reasoning put forward by Mr Mackie in the S42A report<sup>5</sup> that the notified definition is the same as the definition of "infrastructure" in the Resource Management Act 1991.
26. However, the implications of this is that the rules in Chapter 14: Infrastructure and energy that relate to 'infrastructure' do not apply to WRC flood infrastructure and there is no specific set of rules that do apply.
27. As an example, pump stations are a permitted activity under 14.11.1.6 of the Proposed District Plan, however, maintenance, operation, upgrade and construction of new flood scheme assets and other related activities, other than pump stations (such as flood gates, stopbanks) are reliant on the rule framework in each zone. In the case of the Rural Zone, given that flood scheme activities are not a listed activity under prohibited, permitted, restricted discretionary or discretionary, they become a non-complying activity under *NC5 - Any other activity that is not listed as Prohibited, Permitted, Restricted Discretionary or Discretionary*.
28. Thus, in the absence of a clear rule framework, WRC may be required to lodge non-complying resource consent applications for flood scheme related activities. Given the more stringent assessment required for non-complying activities, gaining resource consent will be an onerous and costly process, the cost of which may increase the level of targeted rates paid by those landowners who benefit from the protection afforded by the flood protection schemes.
29. The best fit for these provisions would be in Chapters 6 and 14, through the inclusions of a district-wide framework, similar in treatment to the national grid infrastructure. This would also allow for permitted activity standards to be included for uses undertaken by other parties near flood infrastructure.

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<sup>5</sup> Section 42A Report – Infrastructure Section D0 – Infrastructure and Energy Overall – Section 13

30. I recognise that identified area rules and any changes relating to SNAs as requested in this evidence would equally apply to flood management infrastructure, particularly in locations along the Waikato River and the Whangamarino Wetland. However, in these instances, flood management activities would be considered as restricted discretionary resource consent applications rather than non-complying.
31. I support the inclusion of policies as recommended in the s42A report<sup>6</sup> (but note that these are not shown in the amended chapter included as Appendix 3 of the s42A) , however, I would recommend the inclusion of a specific objective, as suggested in the WRC submission, particularly if none of the other changes requested in evidence on this matter are made. A specific objective highlighting the importance and essential nature of the flood infrastructure would assist if WRC are required to lodge non-complying resource consent applications for flood scheme activities.
32. I have included suggested amendments, including a new objective and a rule framework, in Appendix Two.

#### **Other submission points**

33. WRC made a number of other submission points in relation to Infrastructure which are address in the Section 42A report. I support a number of the recommendations made in the Section 42A Report – see Appendix Three.

#### **Conclusion**

34. WRC is supportive of a number of the recommendations made in the Infrastructure Section 42A report but requests some changes to better implement regional direction and to recognise WRC's regionally significant flood scheme infrastructure as outlined in this evidence.

Miffy Foley

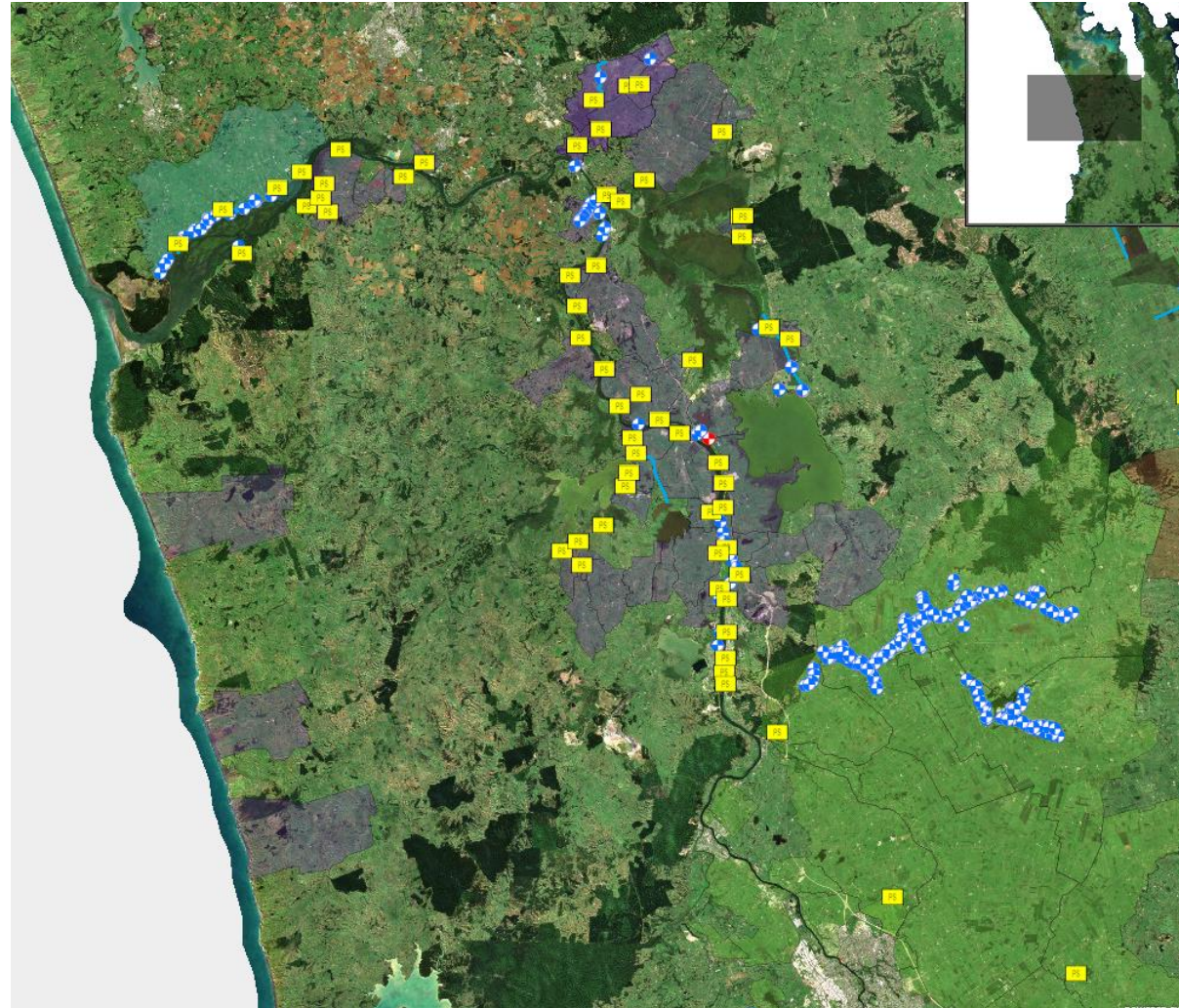
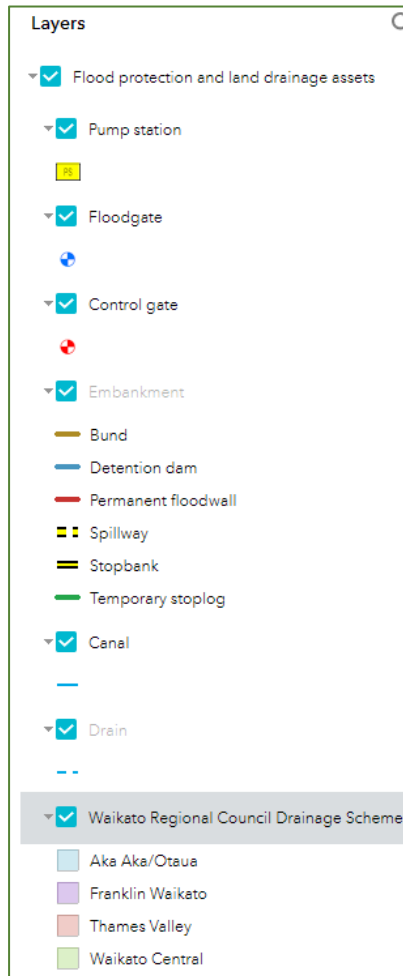
29 September 2020

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<sup>6</sup> Section 42A Hearing Report – Infrastructure Section D13 – Objectives and Policies

## APPENDIX ONE

### WRC flood and drainage assets



<https://waikatoregion.maps.arcgis.com/apps/webappviewer/index.html?id=3dd6ade8c32e4f68a52023569f32cd5f>

## APPENDIX TWO

### Proposed provision framework for regional flood management infrastructure

Insert in Chapter 6:

#### 6.6 Regional flood management Infrastructure

##### 6.6.1 Objective – Regional flood management Infrastructure

- (a) To recognise the importance and essential nature of regional flood management infrastructure to the economic and social wellbeing of the district and the essential, and to provide for their development, operation and maintenance.
- (b) To ensure that regional flood management infrastructure is provided in a manner that:
  - (i) does not adversely affect the health and safety of the people of the district
  - (ii) avoids, remedies or mitigates any adverse effects on the natural and physical resources
  - (iii) is sensitive to the amenity values of the district, and relevant cultural or spiritual values
  - (iv) is efficient.

##### 6.6.2 Policy – Protection of existing regional flood management infrastructure

- (a) The continuing operation of existing regional flood management infrastructure shall be protected from the adverse effects of other activities. In particular consideration shall be given to:
  - (i) Maintaining and enhancing the operational efficiency, effectiveness, viability and safety of regional flood management infrastructure
  - (ii) Protecting investment in existing WRC infrastructure
  - (iii) Retaining the ability to maintain and upgrade regional flood management infrastructure.

##### 6.6.3 Policy – New regional flood management Infrastructure

- (a) To ensure that new **regional flood management infrastructure** is considered having regard to:
  - (i) The environment as it exists
  - (ii) The duration, timing and frequency of the adverse effect
  - (iii) The impact on other existing **regional flood management infrastructure** if the new work is not undertaken
  - (iv) The need for the work in the context of the wider network or in the context of the provision of alternative infrastructure

- (v) The avoidance, remediation or mitigation of anticipated adverse environmental effects to the extent practicable
- (vi) The demand for and benefits of new **regional flood management infrastructure**
- (vii) The route, site, and method selection process
- (viii) The technical and locational constraints
- (ix) The benefits of the **regional flood management infrastructure** in terms of managing climate change effects.

(b) Provision of new **regional flood management infrastructure** occurs in a planned and coordinated manner which recognises and addresses potential cumulative effects and is based on sufficient information to allow assessment of the potential long-term effects on the environment.

Insert in Chapter 13: Definition:

**Regional flood management infrastructure**

Means infrastructure administered by a public authority for the purpose of flood protection, land drainage or erosion control and protection

Insert in Chapter 14:

**14.13 Regional flood management infrastructure**

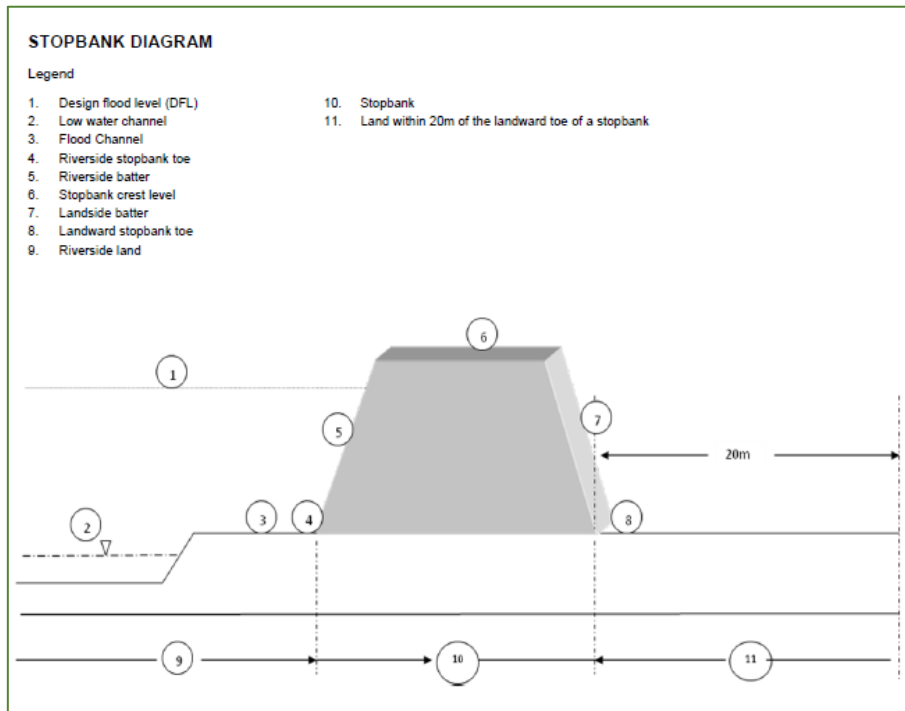
4.13.1 Permitted Activities

(a) The following activities are permitted activities if they meet the activity specific conditions set out in this table. These rules apply throughout the District.

Activity		Activity specific conditions
P1	The construction of new <b>regional flood management infrastructure</b> undertaken by or on behalf of the public authority responsible for the regional flood management infrastructure	14.13.1.1 (1) All activities must comply with the following conditions: (a) Activities are carried out: (i) within 20m of the landward toe of a stopbank (See diagram 1.1 below) (ii) On a stopbank (iii) Within the flood channel (between a stopbank and river bank) (iv) Within a 20m radius of a pump station or floodgate.
P2	Flood control, renewal, maintenance, unscheduled, and storm response works undertaken by or on behalf of the public authority responsible for the regional flood management infrastructure	
P3	The maintenance of existing stock-proof fences	

P4	Grazing of animals	
P5	Any farming activity other than the grazing of animals	
P6	The planting of trees	
P7	The construction of any road or race for the passage of stock or vehicles	
P8	The erection of any new fence, shelter, building or structure	
P9	The excavation or the digging of any drain	
P10	A network utility or private infrastructure including underground pipes and cables with written approval from the	

*Advice note: Flood control schemes are managed by public authorities as such activities associated with flood control schemes require the approval of the relevant public authority.*



**Diagram 1.1**

### 14.13.2 Restricted Discretionary Activities

- (a) The activities listed below are restricted discretionary activities.
- (b) Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in the following table

Activity	Matters of Discretion
RD1 New capital works relating to regional flood management	Discretion is restricted to:

	<b>infrastructure</b> , including but not limited to flood control dams, flood gates, stopbanks, channels, and culverting of waterways.	(a) The extent to which adverse effects are avoided, remedied or mitigated.
RD2	Any other activity that is not permitted shall be a restricted-discretionary activity.	<p>Discretion is restricted to:</p> <ul style="list-style-type: none"> <li>(a) The extent to which the activity will affect the integrity of the flood control asset</li> <li>(b) The extent to which the activity will impede maintenance access</li> <li>(c) Methods to avoid, remedy, or mitigate adverse effects on the integrity of the flood control assets</li> <li>(d) Methods to avoid, remedy, or mitigate adverse effects on maintenance access.</li> </ul> <p><u>Non-notification</u> Applications utilising RD2 that do not simultaneously trigger other consent requirements shall not be publicly notified and shall not be served on any party other than Council and the public authority responsible for the regional flood management infrastructure.</p>

***Advice Note: “Emergency Works” undertaken in accordance with Section 330 of the Resource Management Act 1991 in response to a sudden event causing or likely to cause loss of life, injury, or serious damage to property are a permitted activity.***



### APPENDIX THREE

The table below outlines the WRC submission points and further submission points where the s42A recommendations are supported.

Submission Point	Recommendation
81.144	Accepted WRC requested amendment to Rule 14.11.1.1 P1 Permitted Activities to add advice notes regarding the Waikato Stormwater Management Guideline and Waikato Stormwater Runoff Modelling Guideline
81.145	Accepted WRC requested amendment to Rule 14.11.2 RD1 Restricted Discretionary Activities to include a new point (c) as follows: (c) The potential for adverse effects to the environment in terms of stormwater quantity and stormwater quality effects.
81.147	Accepted WRC requested retention of Table 14.12.5.10 Required bicycle spaces.
81.150	Accepted WRC requested amendment to Rule 14.11.1.1 P1 Permitted Activities to include additional clauses that address: • Water quality treatment • Downstream erosion and scour effects • Cumulative volume effects
81.218	Accepted WRC requested retention of Objective 6.4.1 Integration of infrastructure with subdivision, land use and development.
81.219	Accept in part WRC requested retention of Policy 6.4.2 Provide adequate infrastructure
81.220	Accepted WRC requested retention of Policy 6.4.3 Infrastructure Location and Services
81.221	Accept in part WRC requested retention of Policy 6.4.4 Road and rail network.
81.222	Accept in part WRC requested retention of Policy 6.4.5 Roading infrastructure
81.248	Accepted WRC requested amendments to Rule 14.11.1.1 P1 Permitted Activities (a)(ii) to add retention to detention options for managing stormwater runoff.
FS1277.136	Accepted WRC supported Jackie Colliar's request to amend the Proposed District Plan to include integrated

	catchment management planning as a method of sustainably managing land development and Three Waters infrastructure.
FS1277.141	Accepted WRC opposed FFNZ's request to delete or amend Policy 6.1.16 Water conservation