

RMA Section 32 Report on Proposed Plan Change 2 to the Regional Coastal Plan - March 2008

Section 32 of the Resource Management Act 1991 (RMA) requires an evaluation of the objectives, policies, rules and other methods in a proposed regional plan before it is publicly notified for submissions. This report is the Section 32 evaluation of the Proposed Plan Change 2 to the Regional Coastal Plan for the West Coast.

Background to Plan Change 2

When the Regional Coastal Plan was reviewed in 2006 to assess its efficiency and effectiveness under section 35 of the RMA, it was identified that the Plan did not adequately provide for unblocking river or creek mouths in the coastal marine area. The Plan is silent on this activity as it is not listed as a permitted or controlled activity. A resource consent is therefore required by default under Rule 9.5.3.7, as a discretionary activity. At the Council meeting in October 2006, Council resolved to notify a plan change to the Coastal Plan to address the matter of clearing blocked river mouths.

Unblocking of stream or river mouths in the coastal marine area is estimated to be a relatively common occurrence on West Coast waterways. Blockages occur when wave action builds up foreshore material around waterway mouths, resulting in backing up of creek water on adjacent land, resulting in ponding, flooding, or erosion. This is only an issue where there is adjoining private or public amenity land or infrastructure which is adversely affected. When stream mouths become blocked and water backs up, the mouth sometimes needs to be unblocked quickly to alleviate flooding and damage to property.

There has been some uncertainty in the past about whether District Councils have the authority to clear blockages affecting nearby residences, and whether consent was needed. Examples include the flooding of Granity houses from blocking up of Granity Creek, flooding around the Paroa pub and school, and the Poerua River. These situations were resolved by undertaking minor earthworks with no adverse effects.

It can take several days or weeks to process a resource consent to unblock a river or creek mouth in the coastal marine area (where roads or network utilities are affected, the RMA emergency provisions can be used). This timeframe is not practical for clearing blockages which usually need to be done at short notice. Some District Councils and individuals have obtained resource consent to clear blockages, while it is likely that some creek mouths are unblocked privately without a consent being obtained or the Regional Council knowing about it. In the case of unauthorised clearances, effects of these activities may or may not be being adequately managed under the RMA.

It is therefore proposed to add a new rule to the Coastal Plan permitting unblocking of river and creek mouths in the coastal marine area subject to compliance with conditions. This promotes closer management of the activity. A copy of the proposed rule is attached to this report.

Staff did site visits on the 6th and 9th November 2007 to local river and creek mouths known to block, to better understand the situation.

Section 32 Tests

The following is an assessment of the RMA Section 32 requirements:

S32(3)(a): Are the objectives the most appropriate way to achieve the purpose of the Act?

This is not applicable as no new objectives are considered necessary as part of this plan change. The existing objectives are sufficient, and the proposed new rule is in keeping with Objective 9.3.4 of the Coastal Plan.

S32(3)(b): Are the policies, rules, or other methods the most appropriate (with respect to efficiency and effectiveness) for achieving the objectives?

Making unblocking of river and creek mouths a permitted activity in the Coastal Plan is the most appropriate way of achieving the objectives. The conditions on the proposed rule will minimise potential adverse effects on ecological, cultural, landscape, or recreational values, and on natural character. The point of blockage is usually in the middle section of the beach rather than at the back of the beach, so diggers are unlikely to be working on back dunes with vegetation, bird nests, or sites of importance to iwi. Diggers will be clearing relatively 'fresh' gravel that has built up at the creek mouth, and there is not likely to be any important values established at the point of the blockage which may be significantly adversely affected. The digger or tractor is only at the river mouth temporarily for a short period of time. Clearing the blockage will allow fish passage to resume. Recreational access won't be affected any more than when the creek is naturally flowing. Limiting the creek mouth disturbance to that necessary to clear the blockage means the natural character around the creek mouth will be left intact (Objectives 9.3.1 and 9.3.2).

Effects on coastal processes (Objective 9.3.3) would be virtually no different to what would occur as part of the creek's natural flow.

The permitted rule will give effect to Objective 9.3.4. The rule only applies in the circumstances prescribed, and it doesn't apply to unblocking river mouths, for example, to influence whitebait channels, or re-locate river mouths. If one or more of the conditions of the rule cannot be complied with, a consent will be required to assess the impacts of the opening on a case by case basis. The conditions mean that minor environmental effects can be managed, and non-compliance can be enforced.

Although the Plan provides for voluntary protocols to be established for clearing blocked river mouths, these have not been developed. Method 9.6.1.3 in the Coastal Plan is:

"To promote consultation and the establishment of protocols between the agencies which have the responsibility for unblocking river mouths and tidal inlets, and the Department of Conservation and West Coast Fish and Game Council and Ministry of Fisheries."

There are likely to be few gains in developing voluntary regional protocols for unblocking river mouths compared with adding a permitted rule in the Coastal Plan. The default requirement for consent under the current Plan provisions still needs to

be changed, to avoid unnecessarily catching openings that have minor adverse effects.

A new permitted rule will make Method 9.6.1.3 redundant, and this Method should be deleted.

S32(4)(a): What are the benefits and costs of the policies, rules or other methods?

The main benefit of making unblocking river mouths a permitted activity will be being able to open blocked rivers or creeks quickly to protect property and infrastructure from inundation, in a way that minimises adverse effects.

Landowners and District Councils will benefit from this rule, as it will avoid costs and time delays, which could potentially result in damage to pasture and loss of feed, or erosion of land.

There should not be any substantial additional costs of having to comply with the conditions of the new rule. There is likely to be little difference between operational costs of opening blocked river mouths under this permitted rule, compared with doing it under resource consent, or doing it unauthorised.

The main costs of adding the permitted rule to the Coastal Plan will be to Council, in going through the Plan Change process. It is appropriate to address the matter in the Coastal Plan to give more certainty about this activity and better manage any effects. It is not appropriate to continue with the status quo and unnecessarily require resource consent for openings with no more than minor impacts. Clearing blockages can be efficiently managed by a permitted rule.

S32(4)(b): What is 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?

While Council is aware of a few unauthorised creek openings, many of the reports of this activity are anecdotal, so we cannot confirm how much it occurs. The main affected parties are generally adjoining landowners or occupants, and it is difficult to know with more certainty what effects, if any, are occurring from unauthorised openings on beach stability, lagoon hydrology and habitat, and coastal processes.

If the activity and its potential effects are not addressed in the Coastal Plan, the current situation of unauthorised openings is likely to continue. This creates uncertainty about the potential effects, and leaves an information gap for the Council to effectively deal with any issues arising from unauthorised clearances in the future. For example, with the trend of increased coastal subdivision and development, councils need to know whether blockages from gravel buildup might affect new development, or whether changes in frequency of blockages or beach profile might create an increased hazard risk for adjoining land.

It is anticipated that there will be little risk of negative outcomes from making the activity permitted. It is unlikely that it will result in an increased number of openings, as it is simply assisting a naturally occurring process. The only difference is that some gravel and natural material will need to be disturbed to create the channel. This material will either be scoured as the channel widens and deepens, or will need to be spread out to the side where the majority of it will be subject to wave

action and reworked by the tide to redistribute it. We also do not anticipate an increase in unauthorised relocations of the mouth, as whitebaiters or others who may be affected are likely to police this and notify Council. There is a chance that contractors or operators will forget to notify the Council when they do the work, but this can be addressed by good publicity and education about the new rule. It will be useful to record which rivers are opened and how often to identify trends of coastal processes.

Since sea level rise is a confirmed phenomena, and climate change predictions are for more intense rainfall and storm events, having more information about blockage clearings will enable coastal and freshwater hazard risk to be better managed in the future.

Proposed Coastal Plan Change 2 to the Regional Coastal Plan

Add the following rule to section 9.5.3 Disturbance:

9.5.3.1A (or 9.5.3.5) The disturbance of the foreshore or seabed, including in Coastal Hazard Areas, associated with unblocking a creek or river mouth is a **permitted activity**, provided:

- 1) The blockage is causing a backwater flooding hazard or erosion of adjoining land or infrastructure; and
- 2) The disturbance is limited to the extent necessary to clear the blockage and resume flow; and
- 3) The river mouth shall be reinstated where the channel was last actively flowing prior to becoming blocked; and
- 4) Where practicable, an existing access route shall be used that minimises disturbance to dunes, vegetation, indigenous species nesting areas or habitat, or sites of importance to iwi; and
- 5) The area from which the material is taken is smoothed over and the site is left tidy on completion of the work; and
- 6) No refuelling or lubrication or any mechanical repairs shall be undertaken in the coastal marine area; and
- 7) The Regional Council is notified prior to the works being undertaken; and
- 8) All equipment, machinery, and plant is removed from the coastal marine area at the completion of works.

Note:

The purpose of this rule is to enable the re-opening of river or creek mouths which are blocked, where there is little or no surface flow to the sea, and where the blockage may be creating either a flood risk or causing erosion.

This rule only allows the opening of a river mouth or creek through the last main channel that was flowing before it became blocked. Relocating a river mouth requires a resource consent.

Where practicable, the excavation should be cut to allow release of water immediately after high tide.

Delete Method 9.6.1.3:

9.6.1.3 To promote consultation and the establishment of protocols between the agencies which have the responsibility for unblocking river mouths and tidal inlets, and the Department of Conservation and West Coast Fish and Game Council and Ministry of Fisheries.