



Memorandum

To	Phil Duncan
Copy	
From	Hannah Gully (Graduate Planner), Andrew Sowersby (Principal Planner)
Office	Napier
Date	13 February 2024
File/Ref	2-T4441.00
Subject	Wairoa Flood Optioneering Consent Review

D1. Introduction

The following document provides a high-level review of the resource consenting implications for the four short listed flood protection options for Wairoa.

The proposed flood protection options are described in the report above. The relevant planning documents considered in this review are as follows:

- Operative Wairoa District Plan (WDP)
- Hawke's Bay Regional Resource Management Plan (HBRRMP)
- National Policy Statement for Freshwater Management (NPSFW)
- National Policy Statement for Highly Productive Land (NPSHPL)
- National Environmental Standards for Freshwater (NESFW)
- National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)
- National Policy Statement for Indigenous Biodiversity (NPSIB)

In undertaking this review we have assumed that the conventional resource consenting pathway will be followed. The fast-track consenting process for infrastructure projects might be an alternative pathway and Orders in Council may be adopted by the government. Other consenting pathways such as the designation process could be considered in conjunction with the consenting of the regional aspects. The findings in this review are also likely to be relevant to the consideration of a notice of requirement for a designation and fast-track consenting.

In preparing this assessment, the expert reports appended to the Multi-criteria Analysis have been reviewed.

In summary, district and regional resource consents will be required from both the Hawke's Bay Regional Council (HBRC) and Wairoa District Council (WDC) for all options.

D2. Wairoa District Plan

The Operative Wairoa District Plan (WDP) is the relevant district plan. Provided in Sections D2.1 – D.2.4 below is a review of the relevant provisions of the WDP; the identification of whether a resource consent is likely to be required or not, and the relevant matters in the assessment of an application.

D2.1 District Plan Zones and Layers Summary

The table below provides a summary of the relevant WDP zones and overlays for each option. All sites are predominantly located with the Rural Zone. Option 1B also crosses some Residential and Industrial zoned land. Option 7 intercepts the Conservation and Reserves Zone at the start and end of the floodway. Copies of the relevant plan maps are included in Appendix A.

Table 1 WDC Relevant Zones/Overlays

Options	WDC Zones and Overlays					
	Rural Zone	Conservation and Reserves Zone	Residential Zone	Reserves - Wairoa Riverbank Reserve (C44)	Industrial Zone	Historic Places, Sites, Waahi Tapu Sites of Significance to Tangata Whenua, and Notable Trees - A139 (Pa, Ruataniwha)
Option 1A						
Option 1B						
Option 5						
Option 7						

Table 1 - WDP Zones/Overlays

D2.2 Relevant WDP Provisions

An assessment of the relevant WDP rules is included in Table D.2 below along with comments on rule compliance. In summary, all options will require land use consent for non-compliance with the earthworks standards. Additionally, Option 5 is likely to trigger resource consent for land disturbance near a Schedule 1 site (Schedule 1 is a list of Historic Sites and Waahi Tapu).

The activity of a 'stopbank' or 'floodway' itself is not explicitly covered by any activity rules in any zone.

Table 2 - WDC Relevant Rules/Performance Standards

Rule / Performance Standard	Status	Comment						
<p>16 Rural Zone Rule 16.7.2 – Any activity unable to comply with all the standards and conditions for permitted activities.</p> <p>Performance Standard 16.8.18 – Earthworks</p> <p>Earthworks activities shall meet the following standards:</p> <table border="1"> <tr> <td>Max Vol (m³) over 12 months per site</td> <td>250</td> </tr> <tr> <td>Max face height (m)</td> <td>1.5</td> </tr> <tr> <td>Max area of work per site (m²)</td> <td>400</td> </tr> </table>	Max Vol (m ³) over 12 months per site	250	Max face height (m)	1.5	Max area of work per site (m ²)	400	Discretionary	All options will not comply with the permitted activity standards for earthworks in Performance Standard 16.8.18. Therefore, this rule is triggered and a Discretionary Activity resource consent will be required pursuant to Rule 16.7.2.
Max Vol (m ³) over 12 months per site	250							
Max face height (m)	1.5							
Max area of work per site (m ²)	400							

Rule / Performance Standard	Status	Comment								
<table border="1" data-bbox="204 210 724 293"> <tr> <td>Proximity to water body measured from the bank edge at bank full height, or MHWS</td> <td>No closer than 20m</td> </tr> </table> <p>Note: The volume of earthworks is to be measured prior to excavation.</p>	Proximity to water body measured from the bank edge at bank full height, or MHWS	No closer than 20m								
Proximity to water body measured from the bank edge at bank full height, or MHWS	No closer than 20m									
<p>14 Conservation and Reserves Zone Rule 14.7.3 – Any activity that is unable to comply with all the standards and conditions for permitted activities and is not provided for in any relevant approved Management Plan.</p> <p>Performance Standard 14.8.11 – Earthworks</p> <p>Earthworks activities shall meet the following standards:</p> <table border="1" data-bbox="204 696 724 902"> <tr> <td>Max Vol (m³) over 12 months per site</td> <td>50</td> </tr> <tr> <td>Max face height (m)</td> <td>1.5</td> </tr> <tr> <td>Max area of work per site (m²)</td> <td>300</td> </tr> <tr> <td>Proximity to water body measured from the bank edge at bank full height, or MHWS</td> <td>No closer than 20m</td> </tr> </table> <p>Note: The volume of earthworks is to be measured prior to excavation.</p>	Max Vol (m ³) over 12 months per site	50	Max face height (m)	1.5	Max area of work per site (m ²)	300	Proximity to water body measured from the bank edge at bank full height, or MHWS	No closer than 20m	Discretionary	<p>Option 7</p> <p>Option 7 is partly within the Conservation and Reserves Zone. The option will not comply with the permitted earthworks standards in Performance Standard 14.8.11. Therefore, this rule is triggered, and a Discretionary Activity resource consent is required pursuant to Rule 14.7.3.</p>
Max Vol (m ³) over 12 months per site	50									
Max face height (m)	1.5									
Max area of work per site (m ²)	300									
Proximity to water body measured from the bank edge at bank full height, or MHWS	No closer than 20m									
<p>18 Residential Zone Rule 18.7.2 – Any activity unable to comply with all the standards and conditions for permitted activities.</p> <p>Performance Standard 18.8.16 – Earthworks</p> <p>Earthworks activities shall meet the following standards:</p> <table border="1" data-bbox="204 1245 724 1451"> <tr> <td>Max Vol (m³) over 12 months per site</td> <td>150</td> </tr> <tr> <td>Max face height (m)</td> <td>3.0</td> </tr> <tr> <td>Max area of work per site (m²)</td> <td>150</td> </tr> <tr> <td>Proximity to water body measured from the bank edge at bank full height, or MHWS</td> <td>No closer than 20m</td> </tr> </table> <p>Note: The volume of earthworks is to be measured prior to excavation.</p>	Max Vol (m ³) over 12 months per site	150	Max face height (m)	3.0	Max area of work per site (m ²)	150	Proximity to water body measured from the bank edge at bank full height, or MHWS	No closer than 20m	Discretionary	<p>Option 1B</p> <p>Option 1B is partly within the Residential and Industrial Zones. The option will not comply with the permitted earthworks standards in Performance Standards 18.8.16 and 20.8.18. Therefore, these rules are triggered, and a Discretionary Activity resource consent is required pursuant to Rules 18.7.2 and 20.7.2.</p>
Max Vol (m ³) over 12 months per site	150									
Max face height (m)	3.0									
Max area of work per site (m ²)	150									
Proximity to water body measured from the bank edge at bank full height, or MHWS	No closer than 20m									
<p>20 Industrial Zone Rule 20.7.2 – Any activity unable to comply with all the standards and conditions for permitted activities.</p> <p>Performance Standard 20.8.18 – Earthworks</p> <p>Earthworks activities shall meet the following standards:</p> <table border="1" data-bbox="204 1794 724 2000"> <tr> <td>Max Vol (m³) over 12 months per site</td> <td>150</td> </tr> <tr> <td>Max face height (m)</td> <td>3.0</td> </tr> <tr> <td>Max area of work per site (m²)</td> <td>150</td> </tr> <tr> <td>Proximity to water body measured from the bank edge at bank full height, or MHWS</td> <td>No closer than 20m</td> </tr> </table> <p>Note: The volume of earthworks is to be measured prior to excavation.</p>	Max Vol (m ³) over 12 months per site	150	Max face height (m)	3.0	Max area of work per site (m ²)	150	Proximity to water body measured from the bank edge at bank full height, or MHWS	No closer than 20m		
Max Vol (m ³) over 12 months per site	150									
Max face height (m)	3.0									
Max area of work per site (m ²)	150									
Proximity to water body measured from the bank edge at bank full height, or MHWS	No closer than 20m									

Rule / Performance Standard	Status	Comment
22 Cultural Heritage Rule 22.1.7 – Cultural Heritage Any land disturbance occurring in any defined area of significance to tangata whenua identified in Schedule 1.	Discretionary	Option 5 The construction of the stopbank may trigger this rule with respect to Item A139 (Ruataniwha Pa). Therefore, this rule is triggered, and a Discretionary Activity resource consent is required pursuant to Rule 16.7.2. It is noted that the archaeological items in Schedule 1 are not as extensive as the archaeological items listed in ARCHSITE.

Table 2 – WDP Rules

D2.3 Consents Required and Likely Activity Status

Based on the above rule review, land use consent will be required for all options under the WDP. The activity status for the applications will be **Discretionary**.

D2.4 Key Matters for Consideration of the Consent

Based on the objectives and policies in the WDC, the relevant matters in the consideration of the application are considered to be (taken from all relevant objectives for each rule triggered):

- Life supporting capacity of rural land resource;
- Maintenance and enhancement of biodiversity;
- Protection of any significant habitats;
- Maintenance of amenity values;
- Protection of land, water, riparian margins and features that have cultural and spiritual significance to Maori;
- Identify, protect and preserve areas of importance for future generations;
- Minimise vulnerability of the community to the effects of natural hazards on people, property, and community services and infrastructure and no increase in risk of natural hazard events;

D3 Hawke’s Bay Regional Resource Management Plan Overview

The HBRMP is the relevant regional plan. Provided in Section D3 below is a review of the relevant provisions of the HBRMP; the identification of whether a resource consent is likely to be required or not, the relevant matters in the assessment of an application.

The relevant rules are identified on the Table D.3 below:

Table 3 HBRC Relevant Rules/Provisions

Rule / Performance Standard	Status	Comment
Rule 7 - Vegetation Clearance and Soil Disturbance a. All cleared vegetation, disturbed soil or debris shall be deposited or contained to reasonably prevent the transportation or deposition of disturbed matter into any water body. b. Vegetation clearance or soil disturbance shall not give rise to any significant change in the colour or clarity of any adjacent water body, after reasonable mixing.	N/A (Permitted)	All options require vegetation clearance within 5 metres of the river. Therefore, this rule is not met and the activity becomes Restricted Discretionary pursuant to Rule 8.

Rule / Performance Standard	Status	Comment
<ul style="list-style-type: none"> c. No vegetation clearance shall occur within 5 metres of any permanently flowing river, or any other river with a bed width in excess of 2 metres, or any other lake or wetland, except that this condition shall not apply to: <ul style="list-style-type: none"> ii. The areas identified in Schedule X to this Plan. d. Deposition of soil or soil particles across a property boundary shall not be objectionable or offensive, cause property damage or exceed 10 kg/m². e. Where the clearance of vegetation or the disturbance of soil increases the risk of soil loss the land shall be: <ul style="list-style-type: none"> i. re-vegetated as soon as practicable after completion of the activity, but in any event no later than 18 months with species providing equivalent or better land stabilisation; or retained in a manner which inhibits soil loss. 		
<p>Rule 8 – Vegetation clearance and soil disturbance.</p> <p>Vegetation clearance and soil disturbance activities which do not meet the conditions in Rule 7.</p>	<p>Restricted Discretionary</p>	<p>All options require vegetation clearance within 5 metres of the river.</p> <p>Therefore, this rule is not met and the activity becomes Restricted Discretionary pursuant to Rule 8.</p>

Rule / Performance Standard	Status	Comment
<p>Rule 48 - Discharges of solid contaminants, including cleanfill, to land that will not enter water.</p> <p>The discharge of solid contaminants, including cleanfill, onto or into land in circumstances that will not result in any contaminant entering water, pursuant to section 15 (1) (d) and section 15 (2) RMA, except as expressly regulated by other rules in this Plan.</p> <ol style="list-style-type: none"> a. The discharge shall not increase land instability or the risk of erosion. b. The discharge shall not cross the boundary of the subject property onto any other property, unless written approval is obtained from the affected property owner. c. The discharge shall not cause any increase in the concentration of any hazardous substances or pathogenic organisms on or in any land. d. The discharge shall not cause any increase in the risk of human or animal disease. e. The discharge shall not have any acid producing potential. f. Upon request by the HBRC, a management plan, setting out how the conditions above will be met shall be prepared and provided to the HBRC. g. There shall be no discharge within 20 m of any surface water body, or over the Heretaunga Plains or Ruataniwha Plains unconfined aquifers as shown in Schedule IV, or within 20 metres of the coastal marine area, except for material extracted from a surface water body associated with the maintenance of legally established structures. <p>Where the volume of solid contaminants on the subject property is greater than 100 m³ the person responsible for the discharge shall notify the Hawke's Bay Regional Council within 7 days of that volume being reached or exceeded.</p>	<p>N/A (Permitted)</p>	<p>All options will potentially require the placement of cleanfill within 5 metres of a watercourse and there may be a reduction in bank stability.</p> <p>Therefore, this rule is not met and the activity becomes Discretionary pursuant to Rule 52.</p>
<p>Rule 52 - Discharges that do not comply with Rule 48.</p>	<p>Discretionary</p>	<p>All options will potentially require the discharge of contaminants onto land or into water.</p> <p>Therefore, this rule may not be met and the activity becomes Discretionary pursuant to Rule 52.</p>
<p>Rule 56 Minor Diversion</p> <ol style="list-style-type: none"> a. Either: <ol style="list-style-type: none"> i. The catchment area above the diversion shall not exceed 50 hectares, or ii. The diversion shall remain within the bed of the affected water body, or iii. The diversion shall divert no more than 10% of the flow of the affected water body, and the diverted water shall be returned to the affected water body no more than 100 m downstream of the point at which the water is diverted. b. The activity shall not adversely affect any wetland. c. The diversion shall not be from one catchment to another. 	<p>N/A (Permitted)</p>	<p>All options are not likely to comply with the conditions of this rule and therefore the diversion of floodwater will be a Discretionary activity pursuant to Rule 59.</p>

Rule / Performance Standard	Status	Comment
<p>d. The diversion shall not cause any scouring or erosion of any land or any water course beyond the point of discharge.</p> <p>e. The diversion shall not adversely affect any lawfully established take, which existed at the time that the diversion commenced.</p> <p>f. The activity shall be undertaken in a manner that continues to provide for the existing passage of fish past the diversion.</p> <p>There shall be no adverse flooding effects on any property owned or occupied by another person, as a result of the diversion activity.</p>		
<p>Rule 59 - Diversions than cannot comply with rules 56-58</p> <p>Any diversion of water which cannot comply with any condition on a permitted activity rule, or any standard or term on a controlled activity rule within this Plan, but which is not expressly classified as a discretionary or non-complying activity.</p>	Discretionary	The construction of the options will not fit with this permitted activity rule. Rule 59 specifies that where this rule cannot be complied with, the activity is a Discretionary activity pursuant to Rule 59.
<p>Rule 69 -River and lake bed activities that are not expressly regulated by other rules.</p>	Discretionary	Rule 69 is triggered due no non compliance with the permitted activity standards in Rules 70 and 72 (refer to comments below).
<p>Rule 70 River control & drainage works & structures</p> <p>Any activity, as described in the Hawke's Bay Regional Council Environmental Code of Practice for River Control and Drainage Works (1999), that is carried out by a local authority exercising its powers, functions and duties under the Soil Conservation and Rivers Control Act 1941, the Land Drainage Act 1908, or the Local Government Act 1974, in relation to flood control and drainage, including:</p> <ul style="list-style-type: none"> • edge protection works • planting • river protection maintenance works • irrigation intake maintenance • weed and vegetation control (excluding spraying) • drain maintenance, and drainage outlet maintenance • drain crossings • river mouth openings for the purpose of flood mitigation • river management and drainage for the maintenance of surface water quality <p>channel diversions within a river bed or drain, ancillary to the above activities that would otherwise contravene: section 13 or section 14 of the RMA, or section 15 of the RMA in relation to the discharge of sediment.</p>	N/A (Permitted)	The construction of the options will not fit with this permitted activity rule. Rule 70 specifies that where this rule cannot be complied with, the activity is a Discretionary activity pursuant to Rule 69.
<p>72 - Erection & placement of other structures, including bridges, culverts & other access structures</p> <p>The erection or placement of any structure in, on, under, or over the bed of a river or lake, that is not expressly regulated by other rules within this Plan, and</p> <ul style="list-style-type: none"> • any associated disturbance of the river or lake bed, and • any associated discharge of sediment, and any associated damming or diversion of water. 	N/A (Permitted)	The construction of the floodway interface with the river may not comply with the conditions in this rule. As such, Discretionary Rule 69 is likely to be triggered.

Table 3 HBRC Relevant Rules/Provisions

D3.3 Consents Required and likely activity status

All options will require a water permit for the diversion of floodwaters; a discharge consent for earthworks near water bodies; and the floodways may also require land use consents for works within the bed of a river. The likely activity status for these consents will be **Discretionary**.

D3.4 Key matters for consideration of the consent

Based on the Objectives and Policies in the HBRRMP, the relevant matters in the consideration of the applications will be:

- Effects on people and property from the diversion of flood flows.
- Protection of wetlands.
- Maintenance of water quality.
- Maintenance of amenity values.
- Maintenance and enhancement of uses and values of the river.
- Maintenance or avoidance of effects on aquatic habitats.
- Effects of river bank and bed erosion.
- Impacts on lawfully established structures such as bridges.
- Maintenance of natural landscape character.
- Cultural values.
- Archaeological values.

D4 National Policy Statement for Freshwater Management 2020

The freshwater provisions of the HBRRMP predate the NPSFM, and therefore the NPSFM should be assessed and be taken into account as a relevant higher order planning instrument.

The NPSFM provides clear national guidance and direction to manage water resource needs and different demands on the freshwater resource to achieve the purpose of the Act. Particular emphasis is given to Te Mana o te Wai as an important part of achieving the quality of freshwater that all New Zealanders desire, including ecosystem health and human health.

Part 2.1 of the NPSFM provides that the objective of the document is that natural and physical freshwater resources are managed in a way that prioritises the health and well-being of water bodies and freshwater ecosystems, the health needs of people (such as drinking water) and the ability of people and communities to provide for their social, economic and cultural well-being.

The relevant policies of the NPSFM are discussed as follows:

***Policy 1:** Freshwater is managed in a way that gives effect to Te mana o te Wai.*

***Policy 2:** Tangata Whenua are actively involved in freshwater management (Including decision-making processes), and Māori freshwater values are identified and provided for.*

***Policy 3:** Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*

***Policy 4:** Freshwater is managed as part of New Zealand's integrated response to climate change.*

***Policy 5:** Freshwater is managed (including through a National Objectives Framework) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.*

***Policy 7:** The loss of river extent and values is avoided to the extent practicable.*

Policy 9: The habitats of indigenous freshwater species are protected.

Policy 10: The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.

Policy 15: Communities are enabled to provide for their social, economic and cultural well-being in a way that is consistent with this National Policy Statement

The policies set out above will be relevant to the resource consent applications.

D5 National Environmental Standards for Freshwater (2020)

This National Environmental Standard (NES) regulates activities that pose a risk to the health or freshwater and freshwater ecosystems. The relevant standards in this document relate to activities impacting natural wetlands and the maintenance of fish passage. Options 1A and possibly 1B, will impact 'natural wetlands' as defined in the NES. The flood protection options fall within the definition of 'specified infrastructure' and the consent application to affect these wetlands will be a **Discretionary** activity pursuant to Regulation 45 of the NES. The natural wetlands identified in the High-Level Ecological Values Assessment (WSP Jan 2024) all have low values and if compensation to off-set for their loss is considered necessary, it is likely to be feasible and acceptable in this instance.

D6 The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (2011)

The NES seeks to manage actual and potential adverse effects of contamination in soil on human health from particular activities that have occurred on the site. The NES includes a Hazardous Activities and Industries List (HAIL) that sets out which activities may have potentially contaminated the soil. The NES applies when a person wants to undertake an activity described in subclauses (2) to (6) on a piece of land described in subclause (7) or (8). It is possible that the NES will be triggered for the soil disturbance associated with all options. However, there are likely to be only limited implications in terms of the likelihood of obtaining resource consent. Cost implications for removal of contaminated soil have been factored into the high-level cost estimates.

D7 National Policy Statement for Indigenous Biodiversity (2023)

The National Policy Statement for Indigenous Biodiversity (NPSIB) sets out direction for the identification and protection of significant indigenous biodiversity and management of the adverse effects of land use and development. There several habitats identified in the High Level Ecological Values Assessment (WSP Jan 2024) that will be affected by the options. The Objectives and Policies of the NPSIB will be relevant in the consideration of the assessment of the resource consent applications. It is likely that mitigation of effects and/or off-setting will be possible for the habitats identified, if deemed necessary. Therefore, there is a reasonable likelihood that the impacts on these habitats will not prevent the granting of a resource consent.

D8 National Policy Statement for Highly Productive Land (2022)

The National Policy Statement for Highly Productive Land (NPSHPL) seeks to protect highly productive land from inappropriate subdivision, use, and development. All options affect highly productive land, as defined in the NPS. The NPSHPL will be a relevant matter in the consideration of the resource consent applications for all options, but there is a reasonable likelihood that the loss of any highly productive land will not prevent the granting of a resource consent in this instance due to flood protection being a specified infrastructure and because of the benefits to public safety.

Land Use Capability

Parcel Land Use Capability



Land Use Capability

- 1 - Land with virtually no limitations for arable use and suitable for cultivated crops, pasture or forestry
- 2 - Land with slight limitations for arable use and suitable for cultivated crops, pasture or forestry
- 3 - Land with moderate limitations for arable use, but suitable for cultivated crops, pasture or forestry
- 4 - Land with moderate limitations for arable use, but suitable for occasional cropping, pasture or forestry
- 5 - High producing land unsuitable for arable use, but only slight limitations for pastoral or forestry use
- 6 - Non-arable land with moderate limitations for use under perennial vegetation such as pasture or forest
- 7 - Non-arable land with severe limitations to use under perennial vegetation such as pasture or forest
- 8 - Land with very severe to extreme limitations or hazards that make it unsuitable for cropping, pasture or forestry

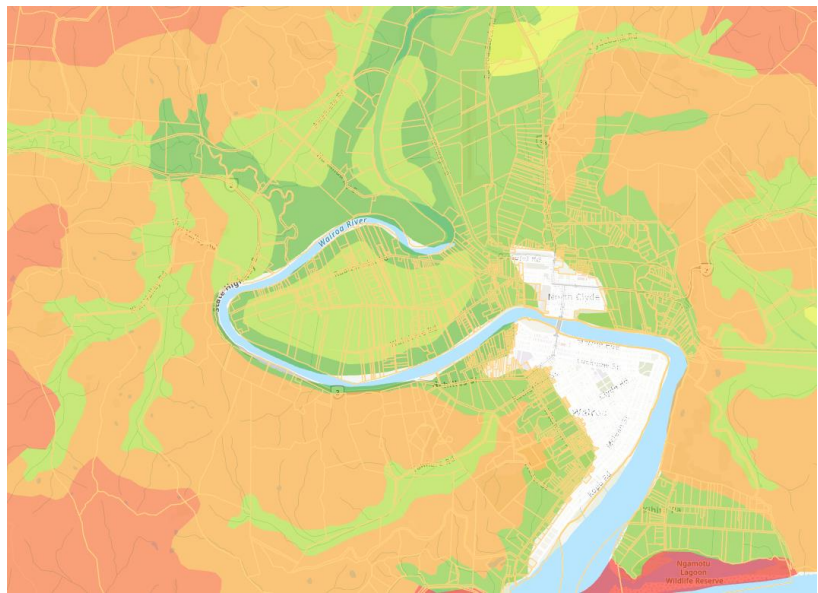


Figure 1. Showing the HPL in the potential affected flood protection work areas

D9 Likelihood of Obtaining Consent

All options have been given a moderate negative score in the MCA for consentability. This is because all of the options impact many persons and properties and involve a range of complex matters. Therefore, all of the consenting pathways are likely to be high risk with low to moderate certainty of obtaining consent under the normal consenting pathways. The adverse effects that need to be carefully considered are the negative effects from changes to the behavior of flood waters; the effects on safety of persons and social effects; effects from changes to the landscape and visual amenity values; and effects on cultural values and archaeology, amongst others.

If landowner and affected person support could be obtained for an option, the consenting pathway would likely become simpler, resulting in a residual slight negative score in the MCA.