

Plan Change 15 Impermeable surfaces Hearing at Waipā District Council – 14 April 2021

Response of Julie Hansen – Policy Advisor to tabled evidence

Right of reply

Key concerns of the submitter

The submitter has identified two key concerns in their previously circulated evidence.

The first is that the proposed change from discretionary to restricted discretionary where the performance standards cannot be met will not provide notable benefits. For example, the time and cost involved is similar for both levels of consent, and it will not reduce the number of resource consent applications.

The second area of concern for the submitter is that despite positive amendments included in the plan change such as improved definitions and using net site area to calculate impermeable surfaces (both of which are supported by the submitter), their belief is that there will still not be a reduction in the number of resource consent applications.

The proposed solution put forward by the submitter is to introduce alternative or additional performance standards, and to streamline the planning process to reduce time and cost to both applicants and Council.

I intend to address the matters raised in the submitters evidence, in particular the activity status of a resource consent application when the permitted activity threshold for impermeable surfaces is breached.

Necessity of the rule

It is important to give context to the rationale for the rule as it is currently in the district plan.

Waipā District Council holds several resource consents from the Waikato Regional Council to discharge stormwater from public infrastructure to various waterbodies, including the Waikato River, Waipā River and their tributaries. These consents form our over-arching comprehensive discharge consents that are based on infrastructure capacity in various locations throughout the district.

The consents allow this Council to enable sustainable growth in the district, through managed control of stormwater through both the public stormwater infrastructure and on individual sites. It also allows this Council to meet other nationally directed obligations with regards to freshwater such as the National Policy Statement on Freshwater Management, and Te Ture Whaimana o Te Awa o Waikato – Waikato River Vision and Strategy.

The thresholds used in the impermeable surfaces rule are calculated based on the discharge consents i.e. the amount and location of stormwater allowed to be discharged by Waipā District Council as per those consents. Anything below those thresholds will not impose a greater burden on the stormwater system provided by Waipā District Council and will not breach the consents currently held.

However, where additional development generates higher quantities of stormwater due to an increase in impermeable surfaces, that stormwater must be discharged by some other method in order to avoid Waipā District Council potentially being in breach of its consents from the Regional Council.

Hence a rule in the district plan that regulates the area of a site that may be covered by impermeable surfaces.

Activity status

As previously mentioned, the submitter concludes that the proposed activity status of restricted discretionary where performance standards are breached, will not reduce time, cost or the number of resource consent applications. The solution proposed by the submitter is to introduce new performance standards as part of the permitted activity.

The current district plan already allows as a **permitted activity** impermeable surfaces in the Cambridge North area up to 45%, and in the rest of the Residential Zone up to 60%. To reiterate, these thresholds are based on the discharge consents already held by Council and accommodate a certain amount of stormwater being discharged on site or via public infrastructure.

The proposed plan change does not alter these thresholds and there was no submission that sought to do so. They are therefore not in contention.

Where an activity breaches these thresholds, i.e. by having a higher proportion of a property covered in impermeable surfaces, a resource consent for a discretionary activity is required. This is so that any stormwater management plan proposed for the site can be assessed for suitability.

It is recognised that a discretionary consent requires a full resource management assessment and that this has cost implications for the applicant, both in having the application prepared, and in the processing of it by Council.

The submitter suggests that instead of restricted discretionary status as proposed, the rule should be permitted, with a comprehensive set of performance standards, using an example from the Hamilton City Plan (listed under paragraph 4.4 of his evidence).

The s42A report notes that performance standards need to be measurable and enforceable and they should not convey an element of subjectivity or discretion.

The submitter contends that the text proposed in the evidence includes standards that are measurable and enforceable, and have been subjected to the Schedule 1 process as part of their introduction into the Hamilton City Plan.

I strongly disagree that the standards proposed by the submitter are measurable and enforceable. "Measurable" means able to be measured or described in specific terms such as size, amount, duration or mass, and is usually expressed as a quantity.

The text proposed by the submitter cannot be considered measurable as it does not express a quantity, is completely subjective and would likely be interpreted differently by different people. As a reminder, the rule is already a permitted activity subject to a measurable threshold i.e. percentage of site covered by impermeable surfaces. It is preferred that the District Plan continue to use this standard as it is easily understood, easy to measure and can be assessed and monitored by both Council staff and customers.

As a second option although not a preferred option, the submitter suggests that activities that breach the rule could be controlled activities. This also is not a suitable option in my mind.

A council must grant consent for a controlled activity, unless it has insufficient information to determine that the activity is controlled. A controlled activity would still need to include measurable performance standards, the same as for a permitted activity. Council may impose conditions based on the matters over which control is reserved as identified in the district plan but would be in a position of having to approve all applications, even if the stormwater management plan provided by the applicant is not suitable. In some cases, Council would like to decline such applications.

In addition, controlled activities must be approved within 10 working days. Given that both consent planning and engineering staff need to have input into the processing of any resource consents in relation to stormwater management, it is unlikely that timelines prescribed in the Resource Management Act could be met.

Processing of consents

Paragraph 4.5 of the submitter's evidence outlines a pathway to consent that reduces the costly regulatory process. While the submitter is correct that all building consents are checked by planning staff for compliance with the district plan, it is not a simple matter of directing the building consents back to Building Compliance or forward on to Development Engineering for acceptance.

The Council is bound by both the Building Act and the Resource Management Act and must follow due process as set out in those statutes. The Resource Management Act does not allow the resource consent process to be bypassed without proper consideration because it would be more expedient for the applicant.

Volume of consents

The submitter indicates a key area of concern is that the volume of consents triggered will not be reduced as a result of the proposed plan change. While a smaller number of consent applications is often an ideal outcome, and indeed often the reason for plan changes, I don't believe that it is appropriate in this case.

Retaining some measure of control over any engineering solution on site reduces the risk to Council in relation to their own discharge consents. This can only be achieved if a resource consent is required when the existing threshold is breached and the applicant can demonstrate that all stormwater can be adequately disposed of.

The objective of Proposed Plan Change 15 is to "improve provisions in the District Plan relating to permeable and impermeable surfaces, and site coverage, in order that they are more effective and efficient". The purpose of the plan change was never to reduce the number of consents being applied for.

Notwithstanding the above, I do anticipate a lower level of resource consent applications as a result of the plan change. It is expected that the calculation based on the net site area, instead of gross site area will have obvious benefits for rear sites.

Other matters

In paragraph 3.2 of the submitter's evidence, the submitter asserts that no resource consent applications are declined for breaching the current impermeable surfaces rule, where the applicant provides a suitable stormwater management plan. While this is generally true, there are many instances in which resource consent applications could have been returned to an applicant for lack of detail or clarity on the stormwater management plan proposed for a particular site. However, it is Council practice that engineering and planning staff work closely with applicants and their engineers in order to achieve compliance, and this has always been achieved within the 20 working day timeframe.

Potential solution

A potential solution that could satisfy some of the concerns of the submitter is that where a breach of the impermeable surfaces rule is the only reason for a resource consent application, Council could introduce a streamlined process that would meet all of its Resource Management Act obligations. This could be in the form of a standard report template for such applications and would remove some of the "thinking" involved around the more common aspects of similar consent applications. This could address one of the key concerns of the submitter which is that the time and cost of consent applications is too high. While it would not eliminate the need for a resource consent entirely, it would have an effect on the time spent assessing such applications by Council planning staff, thus reducing cost.

Conclusion

In conclusion:

- Impermeable surfaces are already provided for as a permitted activity
- The performance standards suggested by the submitter are not measurable or enforceable
- Some measure of control is required by Council where the proposed activity cannot meet the performance standards e.g restricted discretionary status at the very least
- Council must abide by the process set out in legislation and has an obligation to fully consider any resource consent application
- Council could introduce a streamlined resource consent process for applications where a breach of the impermeable surfaces rule is the only non-compliance.