



greater WELLINGTON
REGIONAL COUNCIL

Pinehaven Stream Floodplain Management Plan Implementation Project

Agreement between Greater Wellington Regional
Council and Upper Hutt City Council

FOR FURTHER INFORMATION

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1. Introduction

Greater Wellington Regional Council (GWRC) and Upper Hutt City Council (UHCC) have agreed to work together to implement the Pinehaven Stream Floodplain Management Plan (FMP). The implementation project (Project) involves a range of structural and non-structural measures designed to reduce the flood risk to the community in the catchment, which are described in the FMP.

2. Summary

The following are the key features of this Agreement:

- The governance group for the project is the Hutt Valley Flood Management Subcommittee (a subcommittee of GWRC).
- A management group comprising of officers from GWRC, UHCC or their appointed representatives has been formed to oversee the implementation of the project
- The project management for implementation will be provided by UHCC.
- The public spokesperson for the project will be the chair of the Hutt Valley Flood Management Subcommittee.
- The funding arrangement is a 50%/50% split between UHCC and GWRC
- UHCC will take over all assets created by the works which are part of the Project upon completion of those works, and will be responsible for all future maintenance of those works as provided for in the FMP.
- The responsibilities under the watercourses agreement for the maintenance of the Pinehaven Stream will pass to UHCC as the upgrade works for each reach 1,2 & 3 is completed..

3. Purpose of Agreement

The purpose of this Agreement is to set out the responsibilities of GWRC and UHCC in relation to the Project, including for funding, governance and reporting structure, and to ensure the projects are completed according to the programme and budgets as agreed by GWRC and UHCC. This Agreement also provides mechanisms for addressing any necessary changes to the scope of the project to implement the FMP and for resolving disputes between the GWRC and UHCC in relation to the Project.

4. Responsibilities of the Two Councils

4.1 Watercourses Agreement

Under applicable legislation, the GWRC is responsible for addressing flood risk in the Wellington region, while the UHCC is generally responsible for the provision of storm water services in Upper Hutt. In practice, the GWRC manages rivers and larger streams

of regional significance, while the UHCC manages smaller streams and storm water channels.

The Administration of Watercourses Agreement in 1977 (**Watercourses Agreement**) sets roles and responsibilities agreed to by the GWRC and the UHCC for managing and funding works along the Pinehaven Stream. Under the Watercourses Agreement, GWRC is responsible for maintaining the downstream section of the Pinehaven Stream (from the Pinehaven Reserve to the Whiteman's Valley Road culvert), while UHCC is responsible for maintaining upstream of the Pinehaven Reserve. GWRC is only responsible for contributing 50% of the costs for the downstream section, with UHCC responsible for contributing the remaining 50%. However, UHCC is responsible for the full costs of the upstream section.

The actual basis for the Watercourses Agreement is open to interpretation as the original focus of the agreement was for maintenance works. However, GWRC and UHCC have agreed that the principles of the Watercourses Agreement are also the basis for allocating responsibilities and funding for flood minimisation and prevention works. Also it generally aligns with the legal and policy context in that:

- the upper catchment (managed by UHCC) focuses more on storm water management,
- the lower catchment (managed by GWRC) focuses on flood minimisation and prevention.

Further, both GWRC and UHCC communicate the management component of the Watercourses Agreement in their Long Term Plans for 2015-25.

4.2 Funding

The core responsibilities for each party are that; GWRC is responsible for the channel works, and UHCC is responsible for the culverts, bridges and other structures over, under or otherwise crossing the stream. Evaluation of these costs showed that as a total they were approximately 50% for GWRC and 50% for UHCC. It is therefore agreed that the general principle will be for costs [of contract works] relating to the Project to be shared 50% to Upper Hutt and 50% to Greater Wellington. Cost overruns will be dealt with as set out in clause 4.3.

As at [the date of this Agreement], the cost estimates for [the contract works components of] the Project for the different parts of the stream, are as set out in Table 2.

Table 1: Current Proportional allocation of costs for Pinehaven FMP

	Responsible Council	Costs
Upstream of Pinehaven Reserve	UHCC	100% UHCC
Downstream of Pinehaven Reserve	GWRC	50% GWRC, 50% UHCC

Table 2: Proposed allocation of costs for Pinehaven FMP Implementation, based on estimated cost of contract works as at [the date of this Agreement]

Reach	GWRC	UHCC	Total
1	\$1,712,500	\$1,712,500	\$3,425,000
2	\$2,145,000	\$2,145,000	\$4,290,000
3	\$922,500	\$922,500	\$1,845,000
4 Upper Catchment	\$92,500	\$92,500	\$185,000
Total	\$4,872,500	\$4,872,500	\$9,745,000

4.3 Cost Overruns

Cost overruns shall continue to be apportioned on the basis in clause 4.2 up until an increase of 10% above the estimated cost for a portion of works is met. Beyond this the Steering Group are to evaluate the reasons for the cost overrun and agree a different apportionment if necessary, based on the [eventual] ownership of the affected infrastructure. If agreement cannot be reached by the steering group it will be treated as a dispute, and dealt with as detailed in the dispute resolution section of this agreement.

5. Project Management and Governance Structure

5.1 Hutt Valley Flood Management Subcommittee

The Hutt Valley Flood Management Subcommittee (HVFMSc) is responsible for governance of the project and is a subcommittee of GWRC reporting to the Environment Committee of GWRC. Its membership comprises elected members from UHCC, GWRC and HCC and its terms of reference and standing orders are set out in the resolution establishing it.

The Project structure is set out in Attachment 3 and as follows:

The HVFMSc is responsible for:

- Governance of the project
- Providing policy guidance and coordination,
- Oversight of community engagement and consultation
- Recommending to the respective the provision of funding and obtaining consents necessary for the FMP
- Recommending to the Councils any change to the scope of work necessary or desirable to achieve the implementation and efficient operation of the FMP.
- Recommending to the Councils any change to the terms of this Agreement.

- Any recommendation of the HVFMSc pertaining to the Pinehaven Floodplain Management Plan shall be referred to GWRC for decision.
- Any decision made by GWRC pertaining to the Pinehaven FMP shall be referred to UHCC to assist its decision making process.

5.2 Steering Group

The Pinehaven FMP Implementation Project Steering Group (**Steering Group**) shall be responsible to the HVFMSc for:

- Management of delivery of the project
- Reporting to the HVFMSc on the progress of the FMP

Membership of the Steering Group shall comprise of senior officers respectively appointed by both UHCC, GWRC, each senior officer may be represented by their nominated alternate. These officers shall include the Director Asset Management and Operations at UHCC, Manager Flood Protection at GWRC. The appointed members of the Steering Group may co-opt other persons to join the Steering Group from time to time as they consider appropriate. The Steering Group will meet on a two monthly basis or as necessary. Officers from the Steering Group report directly to their respective Councils and Committees on Project matters, as appropriate. Routine decisions of each Council may be implemented through the Project Manager, in accordance with the provisions of each Council's annual plan.

5.3 Project Manager

The Project Manager shall be appointed by the Steering Group and shall have overall responsibility for the project management, control of programmes and implementation. The Project Manager shall be a member of the Steering Group and shall be responsible for the overall FMP implementation management, the coordination of the activities of the FMP outcomes, the preparation and control of programmes and budgets and for the management of any public consultation and engagement process. This includes both structural and non-structural outcomes recommended in the floodplain management plan.

The community and community groups existing or established for the floodplain management plan, will be consulted as part of engagement strategy developed for the implementation Project. This consultation will be led by the project manager.

6. Transfer of assets and management to UHCC

Upon practical completion of each aspect of the physical works comprised in the FMP and following implementation of the FMP, ownership of the assets and future management responsibility for the FMP shall, following a decision by GWRC, be transferred to UHCC in accordance with clause 2

7. Programme

The indicative programme for the implementation and completion of the FMP outcomes is based around the councils respective LTP's is shown in Attachment 4. Under the indicative programme the Project will be completed by 2025.

Commencement of the construction of structural works will not begin until the Pinehaven Plan Change methods/controls outlined in the floodplain management plan have been included in the District plan by way of a decision of Upper Hutt City Council. The process to include these methods is yet to be established by Upper Hutt City Council but it is intended to be notified by way of a plan change in February 2017 (*The current indicative programme has been developed based on this date*).

Any substantive change to the programme recommended by the HVFMSc will require ratification by the two contributing Councils having due regard to their respective LTPs.

8. Budget

The budget to complete the FMP outcomes shall be revised and updated each year as an input to each Council's annual plan, or as necessary as agreed by the two Councils. Available funding is shown within each Council's LTP .

Any proceeds from the sale of parcels of land identified by the floodplain management plan will be used to offset costs within the project.

8.1 Invoicing

UHCC will invoice GWRC following each contract progress payment for its 50% share of the costs. If GWRC or UHCC incur any additional cost considered part of the overall costs, it shall agree these sums in advance with the Steering Group and once agreed offset them against the total annual invoice.

9. Changes to the scope of the project

If the scope of the Project needs to be changed during the course of the Project, any substantive change shall be considered by the HVFMSc. Any changes to the scope of the project recommended by the HVFMSc shall be referred to GWRC for decision and referred to UHCC to assist its decision making processes. The change in scope shall only proceed when approved by the two councils having due regard to the requirements of their respective LTP's. Both Council shall act in good faith and give proper consideration to the recommendations of the HVFMSc and their statutory responsibilities.

10. Changes to this Agreement

Any substantive change to this Agreement shall be ratified by the two Councils (having due regard to the requirements of their respective LTPs) and shall be recorded in writing..

11. Insurance

The Project Manager is to ensure the necessary works and public liability insurances are incorporated as part of the project plan

12. No Liability

12.1 Each Council is liable for costs associated with the Project as outlined in this Agreement only to the extent that there is allocated funding in the Long Term Plan.

12.2 Notwithstanding clause 12.1:

- (a) each Council is liable to pay all amounts properly payable by that Council to a third party in relation to this Agreement,
- (b) if either Council recovers compensation from a third party (including an insurer) in respect of any occurrence that Council would, in the absence of clause 12.1, be liable to the other Council for, then that Council will be liable to pay to the other Council the compensation recovered by that Council, less reasonable costs, and
- (c) the two Councils will co-operate and, share information with a view to assisting each other recover compensation from third parties (including insurers), as anticipated by this clause 12.

The provisions of this clause 12 continue to bind the two Councils after this Agreement has expired.

13. Publicity

The two Councils agree to the following communications protocol for all publicity concerning the FMP outcomes:

- The Chair of the HVFMSc is responsible for making all publicity statements
- The Project Manager will prepare all publicity statements on behalf of the Project Team and the two Councils
- In preparing any such publicity statements the Project Manager shall inform and liaise with, the Communications Managers of the two Councils.

14. Representatives

Each Council appoints the Representative named in clause 14 as its Representative under this Agreement. The Representatives are responsible for the day to day administration of this Agreement on behalf of the Council appointing them (except that the Project Manager is responsible for the day to day delivery of the project.

The Representatives must be available and able to be contacted during normal business hours. A Council must notify the other immediately if its Representative is removed or replaced, together with the contact details of its new Representative, or of any change to its Representative's contact details.

The Representatives are:

Greater Wellington Regional Council
 Graeme Campbell
 Manager, Flood Protection
 Phone: 04 830 4062
 Email: graeme.campbell@gw.govt.nz

Upper Hutt City Council
 Lachlan Wallach
 Director, Upper Hutt City Council
 Phone: 04 527 2136
 Email: lachlan.wallach@uhcc.govt.nz

15. Councils' regulatory capacities

The two Councils are entering into this Agreement in their respective property owning capacities, solely to work together on the Pinehaven Stream Floodplain management plan implementation Project and for the purpose set out in clause 2 of this Agreement. Accordingly, the two Councils acknowledge:

- They are not entering into this Agreement in their respective regulatory capacities so, for the purposes of clause they cannot and do not grant any consents, approvals or permits required of either Council in its regulatory capacity (as applicable), which consents and approvals must be obtained from Greater Wellington Regional Council and/or Upper Hutt City Council (as applicable) in their respective regulatory capacities, and
- This Agreement does not purport to authorise the two Councils to carry out any activity in relation to the Project for which a statutory consent, approval or permit is required from the responsible territorial authority.

16. Termination

This Agreement terminates on upon completion of the project (unless otherwise agreed in writing by the two Councils, and subject to any clauses or schedules of this Agreement that make provision for early termination of the agreement or continued operation beyond expiry of this Agreement).

17. Disputes

If there is a dispute between the two Councils in relation to this Agreement, the two Councils will actively and openly endeavour to amicably settle the dispute themselves, with a view to prompt resolution.

If there is a dispute, either Council may give written notice to the other requesting a meeting to seek to resolve the dispute. The Representatives must meet within 5 business days of the giving of the notice and endeavour to resolve the dispute in good faith.

If the Representatives' meeting does not take place, or if 5 business days after the meeting the dispute remains unresolved, the dispute must be referred to the Chief Executives of the two Councils who must negotiate in good faith to resolve the dispute.

If 5 business days after the Chief Executives' meeting the dispute remains unresolved, the dispute may be referred to mediation. If the two Councils do not agree on the mediator, then the mediator must be appointed by the President or Vice President for the time being of the New Zealand Law Society. That appointment shall be binding on the two Councils. Unless the two Councils agree otherwise, the mediator's fee and all other costs of the mediation itself must be shared equally between the two Councils, but each Council must pay its own costs of preparing for and participating in such mediation.

Execution and date

Execution as an agreement.

Date: 16 September 2016



Upper Hutt City Council Authorised Signatory

Lachlan Wallace
Director
Asset Management & Operations



Greater Wellington Regional Council Authorised Signatory

Manager
Flood Protection

- Attachment 1 - Project Area (*Pinehaven Floodplain Management plan, Appendix E, 1%AEP flood extent maps*)
- Attachment 2 - Project Funding Allocation
- Attachment 3 - Project Management Structure
- Attachment 4 - Indicative Programme (*Pinehaven Floodplain Management plan, section 7.4, Implementation Schedule, page 44*)

