

# Greater Wellington decision-making process

## Introduction

A decision is an agreement to follow a particular course of action. Most things we do will involve a decision, often many decisions. Each decision must be made in accordance with the relevant decision-making requirements in the Local Government Act 2002 (“the Act”).

The following process is designed to ensure the requirements of the Act are met. It is expected that officers will follow this process when making decisions under delegated authority and when preparing reports which require the Council (or committees) to make a decision.

There are some circumstances where it is not necessary to use this process these are described below.

*For further assistance, refer to your manager, the Know-How guide on Decision-Making or staff in the Council Secretariat*

## When not to use this process:

It is not necessary to use this decision-making process in the following cases:

- Where the Council has determined by resolution that a decision can be made without reference to this process. For example most minor administrative decisions, such as the purchase of stationery or office supplies, can be made in this way (see “exempt” decisions below).
- It is not necessary to use this process when making a decision under another Act where that Act includes a decision making process which is inconsistent with the requirements in the Local Government Act 2002. For example, most decisions under the RMA can be made without reference to the decision-making requirements contained in the Local Government Act 2002.
- It is not necessary to use this policy where a report indicates that “the report be received and the contents noted” i.e there is no requirement for Council (or a committee) to make a decision other than to receive the report.

## “Exempt” decisions

The following decisions can be made without reference to this process or the need to document compliance with the decision-making requirements. This is because the Council considered these types of decisions and concluded that, given the relative significance of the decisions, it is not necessary to keep a written record of the decision (except to the extent that it is necessary to do so for accounting or inventory management purposes):

- Purchase stationery and office supplies provided the amount of any single purchase does not exceed \$15,000

- Seek legal or professional advice, provided the value of the advice or opinion received is not likely to exceed \$15,000
- Purchase any vehicle provided the purchase complies with [the Council policy – name of policy]
- Approve expenditure to give effect to any decision which has been made in compliance with the decision-making requirements of the Local Government Act 2002.

All decisions must be made under delegated authority. Decisions must be documented to the extent required by relevant Council policies. You must still exercise appropriate judgement in terms of the need to seek quotes, consider alternative options and/or seek additional information.

## Decision-making steps

The following diagram illustrates the steps in the decision-making process. There are various procedural requirements at each step, these are described in the Act - and in a more detailed process diagram attached at appendix 1:

**1. Define problems and objectives**

- Who will be affected or have an interest in the decision?
- How will the decision affect these people?
- What do we need to do to consider their views or preferences?

**2. Identify reasonably practicable options**

- What options are there for resolving the problem or achieving the objective?
- Consider whether to include “do nothing” as an option

**3a. Before evaluating options, make judgments about how to achieve compliance with the Act**

- Figure out whether it’s necessary to keep a written record of the decision.
- If it is, to what extent is it necessary to identify options and quantify benefits and costs
- How much detail is required?
- You should make these judgements in light of: the significance of the decision, the resources available, the principles in section 14 of the Act, and whether the decision will allow Greater Wellington to consider a range of options.

*This is a critical step in the process as it ensures the amount of effort involved in complying with the decision-making requirements reflects the significance of the decision being made.*

**3b. Evaluate options**

to the extent required by 3a consider:

- Benefits and costs
- The extent to which community outcomes will be achieved
- The impact of each option on Greater Wellington’s capacity to meet future needs
- Whether community outcomes will be promoted
- The views and preferences of those identified at step 1
- Any other matters that are relevant.

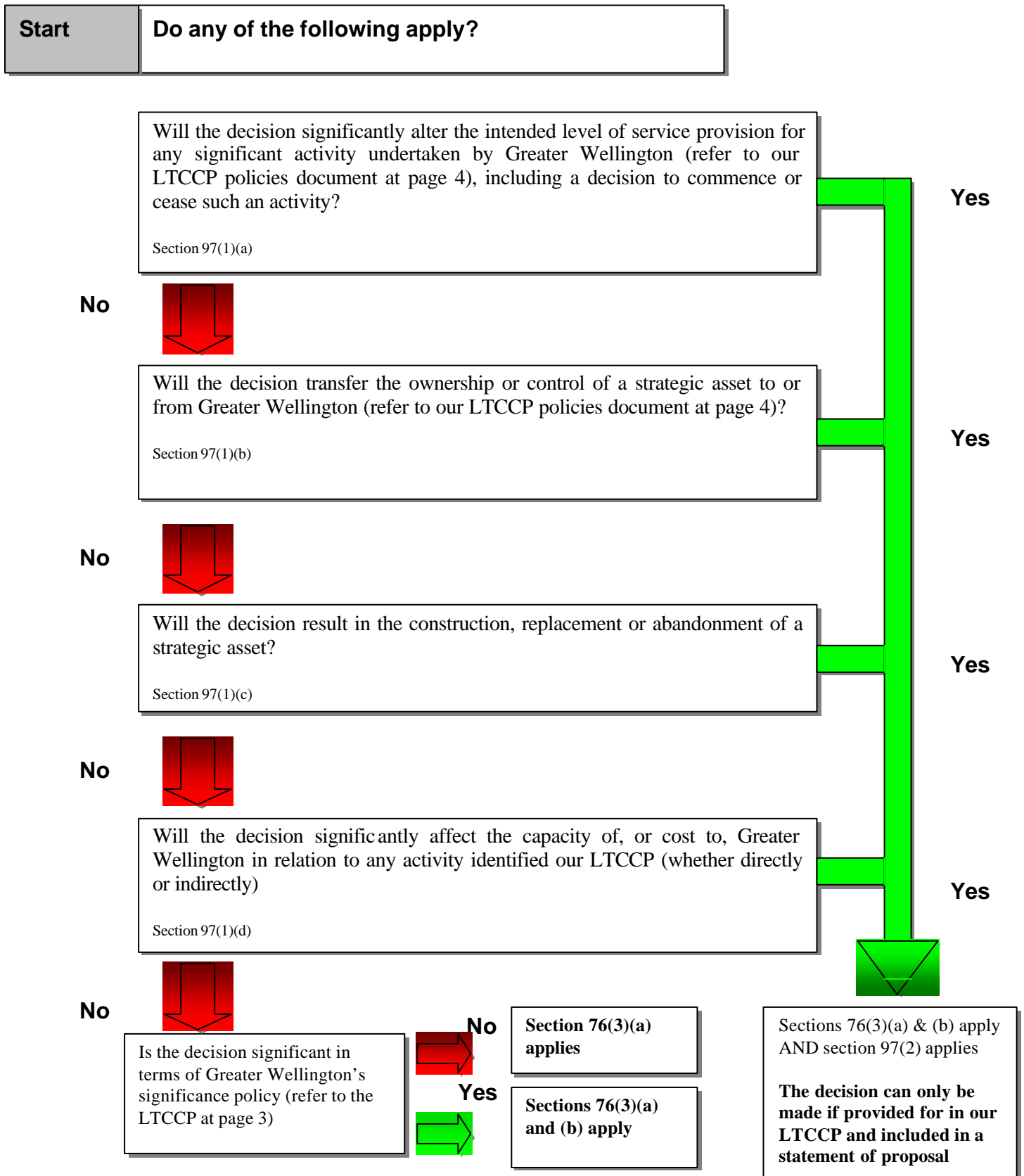
**4. Develop proposals**

**5. Decide**

If a decision is inconsistent with a policy or plan this must be clearly identified when making the decision (refer to the specific requirements in the Act)

# Appendix 1: Detailed process

There are a host of decision-making requirements, all are contained in Part 6 of the Act. Whether specific decision-making requirements are relevant to the decision you're considering will depend on the circumstances. As a first step, it is important to determine which decision-making requirements are relevant. You can do this using the following detailed flow chart:



## Now what?

### If section 76(3)(a) applies...

#### **Legislative requirements:**

Make the decision in accordance with sections 77, 78, 80, 81 and 82 of the Act (as applicable).

Ss 76(1), 76(3)(a), 77, 78, 80, 81 and 82

#### **Action required:**

The decision must be made using checklist 2. Your record of the steps taken to comply with the decision making-process should be clearly marked and filed together with the project record or saved on Powerdocs (or both).

### If section 76(3)(b) also applies...

#### **Legislative requirements:**

In the case of a significant decision, and before the decision is made, Greater Wellington must ensure that the decision will be made in accordance with sections 77, 78, 80, 81 and 82 of the Act (as applicable).

ss76(1), 76(3)(a), 76(3)(b), 77, 78, 80, 81 and 82

#### **Action required:**

The process for making the decision must be approved by Council. Submit a plan of work for making the decision, including plans for considering the views of those affected or have an interest in the matter, and plans for evaluating options, for Council approval before beginning work.

### If section 97(2) also applies...

#### **Legislative requirements:**

Greater Wellington can not make the decision unless:

- (a) the decision is explicitly provided for in our LTCCP
- (b) the proposal to provide for the decision was included in a statement of proposal under section 84 (i.e. special consultation is required)

ss76(1), 76(3)(a), 76(3)(b), 77, 78, 80, 81, 82, 84 and 97(2)

#### **Action required:**

Once the proposal for decision is fully developed, including meeting checklist 2 requirements, it must be included in our LTCCP. This will require special consultation. The decision can not be made until the consultation has been completed and the LTCCP amended.



## Decision-making – Part 6 Local Government Act 2002

### 14. Principles relating to local authorities—

- (1) In performing its role, a local authority must act in accordance with the following principles:
  - (a) a local authority should—
    - (i) conduct its business in an open, transparent, and democratically accountable manner; and
    - (ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner:
  - (b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and
  - (c) when making a decision, a local authority should take account of—
    - (i) the diversity of the community, and the community's interests, within its district or region; and
    - (ii) the interests of future as well as current communities; and
    - (iii) the likely impact of any decision on each aspect of well-being referred to in section 10:
  - (d) a local authority should provide opportunities for Maori to contribute to its decision-making processes:
  - (e) a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources; and
  - (f) a local authority should undertake any commercial transactions in accordance with sound business practices; and
  - (g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and
  - (h) in taking a sustainable development approach, a local authority should take into account—
    - (i) the social, economic, and cultural well-being of people and communities; and
    - (ii) the need to maintain and enhance the quality of the environment; and
    - (iii) the reasonably foreseeable needs of future generations.
- (2) If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).

### 39. Governance principles—

A local authority must act in accordance with the following principles in relation to its governance:

- (a) a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community; and

- (b) a local authority should ensure that the governance structures and processes are effective, open, and transparent; and
- (c) a local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and
- (a) a local authority should be a good employer; and
- (b) a local authority should ensure that the relationship between elected members and management of the local authority is effective and understood.

## **76 Decision-making**

- (1) Every decision made by a local authority must be made in accordance with such of the provisions of sections 77, 78, 80, 81, and 82 as are applicable.
- (2) Subsection (1) is subject, in relation to compliance with sections 77 and 78, to the judgments made by the local authority under section 79.
- (3) A local authority—
  - (a) must ensure that, subject to subsection (2), its decision-making processes promote compliance with subsection (1); and
  - (b) in the case of a significant decision, must ensure, before the decision is made, that subsection (1) has been appropriately observed.
- (4) For the avoidance of doubt, it is declared that, subject to subsection (2), subsection (1) applies to every decision made by or on behalf of a local authority, including a decision not to take any action.
- (5) Where a local authority is authorised or required to make a decision in the exercise of any power, authority, or jurisdiction given to it by this Act or any other enactment or by any bylaws, the provisions of subsections (1) to (4) and the provisions applied by those subsections, unless inconsistent with specific requirements of the Act, enactment, or bylaws under which the decision is to be made, apply in relation to the making of the decision.
- (6) This section and the sections applied by this section do not limit any duty or obligation imposed on a local authority by any other enactment.

## **77 Requirements in relation to decisions**

- (1) A local authority must, in the course of the decision-making process,—
  - (a) seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
  - (b) assess those options by considering—



- (i) the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural well-being of the district or region; and
    - (ii) the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option; and
    - (iii) the impact of each option on the local authority's capacity to meet present and future needs in relation to any statutory responsibility of the local authority; and
    - (iv) any other matters that, in the opinion of the local authority, are relevant; and
  - (c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.
- (2) This section is subject to section 79.

## **78 Community views in relation to decisions**

- (1) A local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.
- (2) That consideration must be given at—
  - (a) the stage at which the problems and objectives related to the matter are defined:
  - (b) the stage at which the options that may be reasonably practicable options of achieving an objective are identified:
  - (c) the stage at which reasonably practicable options are assessed and proposals developed:
  - (d) the stage at which proposals of the kind described in paragraph (c) are adopted.
- (3) A local authority is not required by this section alone to undertake any consultation process or procedure.
- (4) This section is subject to section 79.

## **79 Compliance with procedures in relation to decisions**

- (1) It is the responsibility of a local authority to make, in its discretion, judgments—
  - (a) about how to achieve compliance with sections 77 and 78 that is largely in proportion to the significance of the matters affected by the decision; and
  - (b) about, in particular,—
    - (i) the extent to which different options are to be identified and assessed; and
    - (ii) the degree to which benefits and costs are to be quantified; and
    - (iii) the extent and detail of the information to be considered; and
    - (iv) the extent and nature of any written record to be kept of the manner in which it has complied with those sections.
- (2) In making judgments under subsection (1), a local authority must have regard to the significance of all relevant matters and, in addition, to—
  - (a) the principles set out in section 14; and
  - (b) the extent of the local authority's resources; and
  - (c) the extent to which the nature of a decision, or the circumstances in which a decision is taken, allow the local authority scope and opportunity to consider a range of options or the views and preferences of other persons.

## **80 Identification of inconsistent decisions**

- (1) If a decision of a local authority is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the local authority or any plan required by this Act or any other enactment, the local authority must, when making the decision, clearly identify—
  - (a) the inconsistency; and
  - (b) the reasons for the inconsistency; and
  - (c) any intention of the local authority to amend the policy or plan to accommodate the decision.
- (2) Subsection (1) does not derogate from any other provision of this Act or of any other enactment.

## **81 Contributions to decision-making processes by Maori**

- (1) A local authority must—
  - (a) establish and maintain processes to provide opportunities for Maori to contribute to the decision-making processes of the local authority; and
  - (b) consider ways in which it may foster the development of Maori capacity to

- contribute to the decision-making processes of the local authority; and
  - (c) provide relevant information to Maori for the purposes of paragraphs (a) and (b).
- (2) A local authority, in exercising its responsibility to make judgments about the manner in which subsection (1) is to be complied with, must have regard to—
- (a) the role of the local authority, as set out in section 11; and
  - (b) such other matters as the local authority considers on reasonable grounds to be relevant to those judgements.

## **Commentary on decision-making process**

### **It seems like a lot of work**

The decision-making requirements in the Act attempt to capture what was best practice under the old Local Government Act. When first reading through this process you might think “this will require an incredible amount of work”. It is important to remember that:

- Very few decisions will be “significant” decisions
- Greater Wellington is entitled to make judgements about how to achieve compliance which are in proportion to the significance of the decision. The amount of work involved should reflect the significance of the decision
- As we become used to the decision-making requirements and develop systems and templates, the process will become increasingly streamlined.

### **Record any exercise of discretion under section 79**

Greater Wellington makes literally dozens of decisions every day. However, we do not have to undertake a full analytical and/or consultative process for every decision. Some decisions simply do not warrant the commitment in time and resources that this would require.

Section 79 of the Act allows Greater Wellington to make judgements about how to achieve compliance with decision-making requirements which are in proportion to the significance the decision

As decisions may be the subject of Audit or judicial review, any exercise of discretion under section 79 should be clearly documented.

### **Consider things in context**

Many decisions are inter-related. For example, a decision to appoint a contractor to realign the Hutt River gives effect to a decision in the Annual Plan 02/03 to fund a realignment. This, in turn, gives effect to the decision to include a realignment project in the Annual plan in the first place, which gives effect to the Hutt River Flood Plain Management Plan that was adopted by Council following an extensive consideration of options and public views.

While the decision-making requirements apply to each related decision in turn, it is not necessary to conduct the same analysis and consideration of options at each decision point. As the type of decision narrows in scope from “What are we going to do?” to “how we are going to do it?”:

- Those who are affected or have an interest may change. For example, a decision to award a tender to realign the Hutt River directly affects those who have submitted a tender. The interests of the affected community will have been considered as part of the decision to undertake realignment work.

- The range of options to be considered will change. Before a preferred option is identified and included in an annual plan, the range of options for possible work programmes is likely to be very broad. Once a preferred option has been decided on, the range of options for giving effect to the decision may be narrow (in fact, there may only be one way of achieving a desired result).
- Compliance with the decision-making requirements when making the “What are we going to do” (governance) decisions will make it easier to make judgements about how to achieve compliance when making the “how are we going to do it?” (operational) decisions

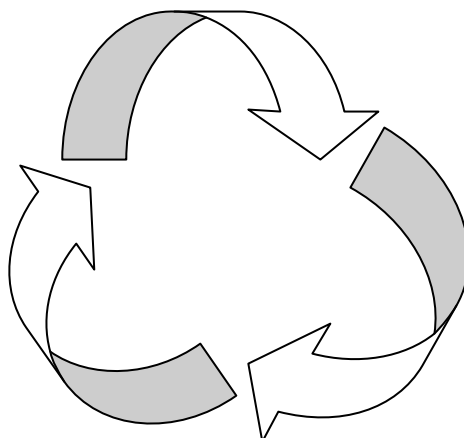
If the decision-making process is complied with and the steps taken well documented for every decision, proving compliance with the Act will become progressively easier. It will also be possible to cross-reference to any record of community views or analysis that is common to related or similar decisions.

# The decision-making cycle

Decisions made in the context of the annual plan process can – in general terms – be represented in the following way:

**Governance decisions**  
“What are we going to do?”  
  
Options identified and assessed according to decision-making criteria  
  
Preferred option identified in draft plan

**Operational decisions**  
“How do we give effect to the preferred option?”  
  
Decision making criteria applied. Greater scope for exercise of discretion under section 79



**Reference to the community**  
“Have we made the right decision?”  
  
Special consultation

**Governance decisions**  
“What are we going to do?”  
  
Views of the community considered.  
Options refined  
  
Preferred option included in plan

## **Example: Emergency repairs to an Asset**

It is February 2004. Greater Wellington has just experienced a hundred-year flood in the Wairarapa. The flood breached stopbanks in a dozen places.

The Council is considering a proposal to replace the stopbanks. Greater Wellington's flood protection assets on the region's major waterways, including stopbanks, are identified as being a strategic asset in our LTCCP (adopted in 2003). Greater Wellington has committed to maintain existing flood protection structures and works to serve future generations as they have served us.

How might section 79 (often referred to as "the compliance provision") apply in this instance?

First, Greater Wellington consulted on the commitments made in the LTCCP before it was adopted less than two years ago. Second, the decision is about maintaining capacity to provide a significant activity, not to stop or start an activity or significantly alter service levels. (Remember, The Council is proposing to restore an asset to service levels that have been consulted on.) Third, if the Council does not restore the asset quickly, there may be a significant impact on those living on the flood plain at the next major storm.

This is a reasonably clear-cut example of where the circumstances in which the decision will be made probably do not allow Greater Wellington the luxury of time to consult and analyse options. It is also important to remember that the Council consulted regarding the commitments it has made in the LTCCP. It can use much of the information it gathered during that process when it considers community views on stop banks.

Suppose the Council was considering a proposal not to replace the stopbanks. Such a proposal would involve altering service levels and would significantly affect our capacity to deliver flood protection in the Wairarapa. Possibly it would involve abandoning a strategic asset (or part of one). This decision can only be taken as an amendment to the LTCCP. This requires consultation under the special consultative procedure. The Council may have to consider community views when generating options because the proposal goes against the decision in the LTCCP to provide a service that the Council consulted on. Greater Wellington would need to document the decision carefully, i.e. provide an explanation for leaving people on the flood plain unprotected or to provide their own stopbanks.

## **Using section 79**

This example shows there are no hard-and-fast rules about when the compliance provision applies and the effect it might have on the scale of work that is consistent with the Act. If Greater Wellington is using section 79, it should be clear:

- About how and why it is using the provision
- Document its considerations (particularly where strategic assets may be involved)
- Take legal advice where the decision relates to the LTCCP or there are significant impacts.

*Acknowledgement: this example is adapted from an example included in the Know-how guide to decision-making.*