

# Stormwater Drainage Bylaw – Proposal for Consultation

**Meeting:** Kaipara District Council  
**Date of meeting:** 28 July 2021  
**Reporting officer:** Shireen Munday, Policy Team Leader

## Purpose | Ngā whāinga

To approve a Consultation Document for an amendment to the Consolidated General Bylaw 2020 (to remove Part 11) and to replace it with a separate new Stormwater Drainage Bylaw.

To delegate the associated consultation activities to a panel of elected members to report back to Council on a recommended final proposal.

## Executive summary | Whakarāpopototanga

It is proposed to make a new bylaw to address issues around the drainage of stormwater and to concurrently amend the Consolidated General Bylaw 2020 (CGB) to remove Part 11, which currently addresses these matters.

Before making the new Bylaw and amending the CGB, Council must consider the relevant statutory matters of the Local Government Act 2002 (the Act) and consult with the community. This report and the attachments address these necessary statutory matters.

The next step is for Council to determine that a bylaw is the most appropriate way of addressing the perceived problem and following that, approve the Consultation Document, including the proposed Bylaw for public consultation in accordance with the requirements of sections 82 and 82A of the Act.

Consultation is proposed to start in September, with an associated recommendation to establish a panel to hear and deliberate on community views, with a final proposed Bylaw to be presented to the November 2021 Council meeting for consideration.

## Recommendation | Ngā tūtohunga

That Kaipara District Council

- a) Approves the legislative process, analysis and consultation approach outlined in Attachment A.
- b) Determines that a bylaw is the most appropriate way of addressing the perceived problem.
- c) Approves the Consultation Document provided in Attachment B.
- d) Delegates **[insert Elected Members' names]** to form the Bylaw Panel to hear and consider community views, consider written submissions and to make recommendations to Council on a final proposed Stormwater Drainage Bylaw.
- e) Authorises the Chief Executive to make any necessary minor drafting or presentation amendments to the Consultation Document prior to final printing and publication.

## Context | Horopaki

Council has begun a comprehensive bylaw review programme that includes splitting the Consolidated General Bylaw 2020 (CGB) into individual bylaws. The programme is anticipated to

be staged over five years. The first element of this programme is Part 11, which deals with stormwater and land drainage.

Staff presented a draft Stormwater Drainage Bylaw (the Bylaw) to the April Briefing for comment and feedback and have now finalised a revised draft for consultation.

Council can now commence the process to make the relevant legislative determinations and to proceed with formal consultation.

## **Discussion | Ngā kōrerorero**

In undertaking the proposed process, Council must proceed in accordance with the requirements of the Act, which for this process has two elements. Council is proposing to amend the CGB to remove Part 11 and to make a new bylaw which addresses the matters currently contained within Part 11.

The legislative steps and requirements for each element, including the associated consultation requirements are provided in **Attachment A**.

Two key considerations are the assessment of reasonably practicable options under section 77 and the relevant determinations under section 155 of the Act. These matters are introduced and addressed in the attachment but are repeated here for completeness.

### **Section 155 considerations**

#### **1. What is the perceived problem and is a bylaw the most appropriate way of addressing the problem?**

The perceived problem is unchanged from the 2020 review of the CGB, in that Council requires appropriate powers to protect and maintain stormwater and land drainage infrastructure.

A bylaw provides Council with an effective set of tools to provide for the required protection of the stormwater and land drainage assets. It allows Council to take remedial action where necessary as well as providing for related access issues. It provides a framework of what people can do in the vicinity of the assets.

Section 155(1) requires that Council must make this determination before commencing the process of making a bylaw and the recommendations of this report address this.

#### **2. Is the proposed new bylaw the most appropriate form of bylaw?**

In developing the proposed Bylaw, a thorough review of the existing provisions of Part 11 of the CGB was undertaken. This resulted in the removal of duplications, where Council already has authority to act under legislation. All remaining provisions have been reworded in 'plain English' and revised to ensure clarity and transparency.

Additional information has been included in the Bylaw to make it easier for both staff and the community to understand the purpose of the clauses, as well as where other legislative provisions are available or apply. It is considered the draft Bylaw as included in the Consultation Document is the most appropriate form of bylaw.

#### **3. Does the proposed bylaw give rise to any implications under the New Zealand Bill of Rights Act 1990?**

The key purpose of the Bylaw is to provide for the protection of Council's stormwater and land drainage assets and linked to this, associated matters of public health and safety. It is considered the proposal does not give rise to any implications under the New Zealand Bill of Rights Act 1990.

## Reasonably practicable options

In accordance with section 77 of the Act, the table below identifies the reasonably practicable options including the associated advantages and disadvantages:

Options	Advantages	Disadvantage
<b>Option 1:</b> Status Quo	<ul style="list-style-type: none"> <li>Part 11 of the CGB currently provides relatively appropriate provisions rules to manage issues around stormwater drainage.</li> <li>No consultation requirements and associated staff and Council resources and time.</li> </ul>	<ul style="list-style-type: none"> <li>Having so many issues covered under a single bylaw with multiple parts is problematic for two reasons; the review requirements mean a significant workload for Council and staff in undertaking a review and a less accessible set of rules for the community.</li> <li>Does not allow the community to focus on the topics individually during consultation processes to allow more detailed review and feedback.</li> <li>Does not allow for the issues of duplication with legislation and other issues such as the lack of plain English usage found in Part 11 to be addressed.</li> </ul>
<b>Option 2:</b> Amend Part 11 only.	<ul style="list-style-type: none"> <li>Correction of identified shortcomings in the current provisions of Part 11.</li> </ul>	<ul style="list-style-type: none"> <li>Having so many issues covered under a single bylaw with multiple parts is problematic for two reasons; the review requirements mean a significant workload for Council and staff in undertaking a review and a less accessible set of rules for the community.</li> <li>Does not allow the community to focus on the topics individually during consultation processes to allow more detailed review and feedback.</li> </ul>
<b>Option 3:</b> Remove Part 11 from the CGB through amendment and provide for the matters with a new Bylaw.	<ul style="list-style-type: none"> <li>Allows for identified shortcomings in the current provisions of Part 11 to be corrected.</li> <li>Supports better community engagement through developing a topic specific bylaw.</li> <li>Ensures staff and Council can provide sufficient attention to review processes in the future.</li> </ul>	<ul style="list-style-type: none"> <li>Staff and Council time requirements.</li> <li>Potential community confusion regarding consultation on this matter in 2020.</li> </ul>

Option 3 is the recommended option, the existing bylaw is not the most appropriate form of bylaw and there are significant advantages for the community, staff and elected members in creating a separate bylaw for stormwater and land drainage matters.

### Impacts on Māori

This proposal was discussed with Mana Whenua at the Mana Whenua Quarterly Hui on 12 November 2020 and 09 February 2021. Mana Whenua indicated that they were satisfied they did not need to be engaged specifically but would consider making a submission during the statutory consultation period.

The Consultation Document provided in **Attachment B** contains all the relevant information and references to sources of information to meet the legislative requirements as outlined in **Attachment A**, including the proposed Bylaw.

The final dates of the hearing and deliberations meetings and the submission form are yet to be finalised and these will be completed and included for approval by the Chief Executive in accordance with the recommendations of this report, ahead of the consultation period commencing, as well as the current Part 11 of the CGB.

The recommendations in this report include the establishment of a Bylaw Panel that is delegated the authority to hear and consider community views, before making recommendations to Council for a final decision.

Subject to the decisions made at this meeting, the consultation on the proposal is scheduled to start on Monday 6 September 2021, with a final proposal to be presented to the November Council meeting for consideration. It is noted that this consultation is delayed in anticipation of an item being presented to the August Council Meeting on the Wastewater Bylaw review and that both processes will be consulted on at the same time.

### Significance and engagement | Hirahira me ngā whakapāpā

This report and the associated decisions relate to a statutory consultation matter and therefore consultation will be undertaken in accordance with the legislative requirements and following the process outlined in this report and its attachments, and as provided for in Council's Significance and Engagement Policy.

### Next steps | E whaiake nei

Staff will undertake the necessary actions to implement the consultation and Panel activities as outlined in this report.

### Attachments | Ngā tapiritanga

	Title
A	Legislative process, analysis and consultation approach
B	Consultation Document