

# Attachment A

## Proposed Stormwater Drainage Bylaw

### Legislative process, analysis and consultation approach

#### 1. Process overview and application

This section provides an overview of the relevant legislative requirements for the process of amending the Consolidated General Bylaw and making the proposed Stormwater Drainage Bylaw (the Bylaw). It includes an outline of the consultation activities proposed in accordance with these legislative requirements. These steps are based on Council accepting all recommendations in the report relating to the proposal which is being presented to the 28 July 2021 Council Meeting.

The Kaipara District Council (Council) is proposing to:

- a. amend the Consolidated General Bylaw 2020 (CGB) by removing Part 11
- b. make a Stormwater Drainage Bylaw to provide generally for the matters covered in Part 11 of the CGB.

In accordance with section 155 of the Local Government Act 2002 (the Act), before making a bylaw under the Act, Council must determine whether a bylaw is the most appropriate way of addressing the perceived problem.

If Council determines that a bylaw is the most appropriate way of addressing the perceived problem, Council then also needs to determine:

- a. whether the bylaw is the most appropriate form of bylaw
- b. whether the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990.

Section 156 requires Council to use the special consultative procedure under section 83 when making, amending, or revoking a bylaw if Council considers there is likely to be a significant impact on the public due to the proposed bylaw. Otherwise, it can consult in accordance with the principles of section 82.

This process requires both an amendment to an existing bylaw as well as making a new one. Part 11 of the CGB was reviewed, consulted on, and amended in 2020 as part of the review of the whole Bylaw. The process to develop the Bylaw has included a repeat full review of all provisions and has resulted in numerous further proposed changes.

These proposed changes are however predominantly to support a more clearly articulated document, rather than providing any significant changes to the overall purpose and context of the relevant provisions. Staff consider the proposal is not of significant interest to the public (s156(1)(a)(i)), nor will the proposal have a significant impact on the public (s156(1)(a)(ii)). Therefore section 156(1)(b) can be applied and Council must consult in accordance with section 82 and 82A of the Act.

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Section 82 prescribes the principles for consultation, which are addressed in section 3 of this document. Section 82A prescribes the information that must be made publicly available to give effect to section 82, which includes the proposal and the reasons for the proposal, an analysis of the reasonably practicable options under section 77 of the Act and a draft of the proposed Bylaw as well as the details of the proposed amendment to the CGB.

The Consultation Document (**Attachment B**) includes the necessary components as prescribed in section 82A for the two elements of the proposal and these are outlined in detail in section 3.

## 2. Sections 155 and 77 LGA assessment

This section provides the assessment required under section 155 of the Act as well as an analysis of the reasonably practicable options to address the perceived problem together with advantages and disadvantages of each in accordance with section 77 of the Act.

It is noted that the proposed process is not a formal review of the GCB under section 158 or 159 and is therefore not subject to the requirements of section 160 of the Act. A proposal to amend a bylaw outside of a statutory review process is not subject to any specific process requirements other than the necessary consultation requirements under either section 83 or 82/82A of the Act.

### **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.

### **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.

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## 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>

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<p><b>Option 3:</b> Remove Part 11 from the CGB through amendment and provide for the matters with a new Bylaw.</p>	<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>
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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.

## 3. Consultation activities

This section details the proposed process and activities designed to meet the consultation requirements of sections 82/82A of the Act:

- a. Council resolves to consult on the proposed amendment to the CGB to remove Part 11 and to propose a Stormwater Drainage Bylaw at a meeting of Council and to approve the Consultation Document as provided in **Attachment A** to this report.
- b. The Consultation Document contains the following to meet the legislative requirements of sections 82 and 82A of the Act:
  - i. the proposal and the reasons for the proposal
  - ii. a draft of the proposed Bylaw
  - iii. a description of the proposed amendments to the CGB
  - iv. a link to the agenda item for information on the relevant determinations under section 155 of the Act
  - v. a link to the agenda item for information on the reasonably practicable options
  - vi. information on how to provide feedback on the proposal, including through written submissions, attendance at the hearing or both.
- c. Council establishes a Stormwater Drainage Bylaw Panel of three elected members with the delegated authority to undertake the necessary engagement activities and report back to Council with a final recommendation.
- d. Council gives public notice of the proposal on the KDC website and in the Kaipara Lifestyler and the Mangawhai Focus, advising members of the public of the proposal.
- e. The Consultation Document is made available for public inspection on Council's website and at Council offices in Dargaville and Mangawhai and at Council's public libraries.

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- f. The consultation will be further promoted on Council's social media channels and email notifications will be sent to People's Panel members.
- g. Feedback will be invited through written submissions, attendance at a hearing, or both.
- h. The submission period for the proposal is scheduled to start Monday 6 September and close Wednesday 6 October.
- i. A hearing will be scheduled for the week of 18 October 2021 to provide an opportunity for persons to present their views in person to the Panel.
- j. The Panel will consider all feedback received and any other comment or advice sought from staff or other persons and deliberate on these matters at a public meeting. This meeting will be scheduled for the week of 1 November 2021.
- k. Based on the decisions made at the deliberations meeting, staff will make any necessary amendments to the proposal and will prepare a final report on behalf of the Panel to Council.
- l. Subject to the above process and all associated decisions of Council, the amendment of the CGB and the making of the Bylaw is scheduled to be made by resolution at the Council meeting on 24 November 2021.