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# ***Consultation Document***

## ***Proposed Stormwater Drainage Bylaw***

***(and associated amendments to the Consolidated  
General Bylaw)***

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***Council would like to hear your views on a proposal to remove the stormwater and land drainage matters from the General Consolidated Bylaw and create a separate Stormwater Drainage Bylaw.***

# Attachment B

## Proposal

This Consultation Document includes:

- the reasons for the proposal
- an overview of the purpose of the proposed Bylaw
- the legislative considerations
- how to make a submission
- a draft of the proposed Stormwater Land Drainage Bylaw
- **Part 11 of the General Consolidated Bylaw**
- **a submission form.**

### Reasons for the proposal

The Consolidated General Bylaw 2020 (CGB) includes rules on several matters as diverse as what kind of animals can be kept in a back yard in town to rules about not wasting water. The statutory review of the CGB was completed in 2020 and this review highlighted how challenging it is to have such a range of matters covered in one bylaw. This included feedback that the CGB is difficult to access and understand for our communities.

Council has therefore begun a programme of work to develop a range of single, topic specific bylaws, that over time will replace the entire CGB. This also provides an opportunity to review the provisions of each of the individual bylaw components and consider how these can be improved. The first part to be addressed in this way is Part 11 – Land Drainage. Council is now proposing to amend the CGB by removing Part 11 and making a Stormwater Drainage Bylaw (the Bylaw).

### Overview of the proposed Bylaw

Part 11 of the CGB addresses 'land drainage' and the proposed Bylaw refers to 'stormwater drainage', however both include provisions to address both these matters. For clarification, 'stormwater' is water that falls as rain while 'land drainage' refers to the drainage of any water from land regardless of if it fell on the land as rain, overflowed from a flooded river, was driven upstream by a rising tide or storm surge etc. The proposed new Bylaw addresses both stormwater and land drainage.

Aside from the technical matters above, the provisions of the proposed Bylaw largely address the same matters as the current Part 11 of the CGB, which are:

#### Damage or interference with public stormwater infrastructure and access

Council's stormwater drainage infrastructure includes drains (both open and closed and of varying different sizes), pumps, floodgates and stop banks. This infrastructure is necessary to protect public health and safety, transport links and private property. Protecting this infrastructure is therefore essential and Council needs effective rules to prevent damage or interference with this infrastructure.

Council needs to be able to access drainage infrastructure to inspect and maintain it, including machine access to clean open drains. The proposed Bylaw provisions allow Council access to drainage infrastructure and restrict activities like planting trees or building fences that may obstruct that access.

# Attachment B

## Stormwater management on private property

Issues can occur where an increase in impervious surfaces, often from more houses, increased roof area or driveways, results in more stormwater flowing off these surfaces rather than seeping into the ground. While these issues are primarily addressed through the Kaipara District Plan, the Building Act and our Engineering Standards, these are generally focussed on new builds and can fail to address issues with alterations and additions to existing buildings and properties.

The proposed Bylaw provisions allows Council to act where obstruction to drainage on private property is resulting in nuisance to neighbouring properties.

## Additional changes from Part 11

In developing the proposed Bylaw, a thorough review of the existing provisions of Part 11 was undertaken. This resulted in the removal of those provisions where Council already has authority to act under legislation as these are an unnecessary duplication and can cause confusion. 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.

## Legislative considerations

The CGB and the proposed Bylaw are subject to the provisions of the Local Government Act 2002 (the Act). When making and amending bylaws under this Act, Council is required to make certain determinations before proceeding to make a bylaw and is also required to consult with the community ahead of amending or making a bylaw.

As Council is proposing to make a new bylaw, it is required to make the relevant considerations under section 155 of the Act, as well as considering the reasonably practicable options available in accordance with section 77 of the Act.

Council considers these matters at the July 2021 Council Meeting as part of the process to approve this consultation document. The report containing the relevant matters and the associated minutes of the meeting can be found on Council's website [here](#).

The other part of this proposal is to remove Part 11 from the Consolidated General Bylaw. No other amendments are proposed, however a final review of the definitions section in Part 1 of the Bylaw will be completed to ensure any relevant definitions are removed if required to avoid confusion. The full Consolidated General Bylaw can be found on Council's website [here](#) and Part 11 is included in this Consultation Document for completeness.

# Attachment B

## Tell us what you think

### We want to hear your views

If you would like to make a comment on the proposal to amend the CGB and make the proposed Stormwater Drainage Bylaw, you can do so by making a written submission, presenting your thoughts in person at a hearing, or both.

Timeline for considering the proposed changes:

Submissions period : tbc

Hearing: tbc

### How to give us your feedback

There are a few ways you can tell us what you think. You can submit your feedback in writing and/or in person by presenting your submission to the Bylaw Hearing Panel which comprises of three Elected Members of Council at a hearing.

### Hearing

A hearing is an option if you want to give your feedback to the Panel in person and answer any questions they may have about your feedback. You do not have to provide a written submission to speak.

To register to speak at the hearing you can either:

- do it online [HERE](#) or
- see the submission form at the back of this document for other options.

The hearing will be held on tbc

We will confirm a more exact time and location for you to attend closer to the date. The hearing is open to the public and anyone is welcome to attend and listen to those who have registered to speak.

Information on a hearing process and what to expect will be sent to you when we confirm your time to attend.

### Written submissions

You can provide us with a written submission. There are a few options for how you can do this:

- do it online [HERE](#)
- email us at: [submissions@kaipara.govt.nz](mailto:submissions@kaipara.govt.nz) and put 'Bylaw' in the subject line
- you can call us on 0800 727 059 and our staff can fill the form out for you over the phone
- fill in the form at the back of this document and scan it to the email above, send it to us by post, or drop it off to any one of our offices.

### What will happen with your feedback?

All feedback received will be summarised and reported back to the Panel to support their deliberations on the proposal. They will receive copies of all written submissions as well.



## Proposed Stormwater Drainage Bylaw

## Contents

1. Title	3
2. Commencement	3
3. Application	3
4. Purpose	3
5. Interpretation	3
6. Protection of the public drainage network	6
7. Stormwater management on private property	6
8. Crossings	7
9. Public stopbanks	8
10. Herbicide use in the public drainage network	8
11. Spoil from drains	8
12. Access to public drains	9
13. Consequences of breach of the Bylaw	10
14. Offences	10
15. Penalties	11
16. Permits	11
17. Exceptions	11
18. Savings	11

## Part A

### Preliminary provisions

#### 1. Title

- 1.1 This Bylaw is the Stormwater Drainage Bylaw

#### 2. Commencement

- 2.1 This Bylaw comes into force on ## Month 2021.

#### 3. Application

- 3.1 This Bylaw applies to the Kaipara District.

#### 4. Purpose

- 4.1 The purpose of this Bylaw is to protect people and property by managing stormwater within the Kaipara District by:
- a. protecting Council's public drainage network
  - b. ensuring drainage over private property is managed and maintained appropriately.

#### 5. Interpretation

- 5.1 In this Bylaw, unless the context otherwise requires:

**Approval or Approved** means approved by Council or by an Authorised Officer and includes a permit.

**Authorised Officer** means

- a. a person authorised by Council to perform duties under this Bylaw
- b. a person appointed by Council as an enforcement officer under section 177 of the Local Government Act 2002.

**Crossing** means any structure by which any vehicle, livestock, or person may go over, through, or under any drain or watercourse and includes a bridge, culvert or ford.

**Council** means the Kaipara District Council

**Drain** has the meaning as in the Land Drainage Act 1908 and includes public and private drains.

**Drainage Board** means a Board of Trustees for a District constituted under the Land Drainage Act 1908.

**Drainage District** means a District constituted under the Land Drainage Act 1908.

**Flood Plain** means land which is allowed to flood as a means of managing flood waters.

<b><i>Herbicide</i></b>	means a substance that is toxic to plants and includes chemical sprays used to control unwanted vegetation.
<b><i>Material or Thing</i></b>	means any material or thing of whatever kind, and includes soil, rock, vegetation, vehicles/vehicle parts, household appliances/furniture, litter, chemical, hazardous substance, contaminant, rubber, paper, plastic or metal.
<b><i>Natural flow</i></b>	means the flow of water by gravity and excludes: <ul style="list-style-type: none"><li>a. water discharged from a pipe or hose</li><li>b. water released from an artesian well</li><li>c. water released from an irrigation system</li><li>d. water released under pressure.</li></ul>
<b><i>Nuisance</i></b>	includes but is not limited to the meaning in section 29 of the Health Act 1956 and also includes causing water to pond, flood or flow onto another property.
<b><i>Occupier</i></b>	means a person who inhabits, leases, uses or controls any property, whether as an owner, tenant, licensee or otherwise.
<b><i>Open drain</i></b>	means a drain that is open to the sky above as opposed to a drain that is enclosed in a pipe.
<b><i>Overland flow path</i></b>	The path taken by surface stormwater crossing a property comprising low points in the terrain (not including rivers and identified water courses), which will accommodate flood flows in a one percent annual exceedance probability rainfall event.
<b><i>Owner</i></b>	means, in relation to real property, a registered proprietor, trustee and any person for the time being entitled to receive the rent of the property, land, building, or premises or who would be entitled to the rent if the property were let to a tenant. Where any such person is absent from New Zealand or mentally incapable as defined in section 94 of the Protection of Personal and Property Rights Act 1988, 'owner' includes his or her attorney or agent.
<b><i>Person</i></b>	includes an individual, a corporation sole, a body corporate, and an unincorporated body.
<b><i>Private drain</i></b>	means any drain that is not a public drain.
<b><i>Property</i></b>	means any land, dwelling, storehouse, warehouse, shop, cellar, yard, building, or part of the same, or enclosed space separately occupied, and all lands, buildings, and places adjoining each other and occupied together shall be deemed to be the same property.
<b><i>Public drain</i></b>	means and includes every drain vested in, or under the management or control of, or under the jurisdiction of Council or a Drainage Board.
<b><i>Public drainage network</i></b>	means the Council or Drainage Board infrastructure used to manage stormwater and includes any drain, floodgate, stopbank, pipe, pump, reservoir or other fixture forming part of that infrastructure.



<b>Public stopbank</b>	means an embankment bordering one or both sides of a drainage channel or watercourse to contain flows of water and that is vested in, or under the management or control of, or under the jurisdiction of Council or a Drainage Board.
<b>Stock</b>	means any cattle, deer, alpaca, llama, sheep, goat, donkey, mule, horse and any other animal kept in captivity, or farmed, and dependent on humans for their care and sustenance.
<b>Stormwater</b>	means any water that falls as rain.
<b>Vegetation</b>	means any plant or part thereof whether living or dead and includes both vascular and non-vascular plants including algae.
<b>Watercourse</b>	has the meaning in the Land Drainage Act 1908.
<b>Wetland</b>	has the meaning in the Resource Management Act 1991.

- 5.2 Words implying the singular include the plural and vice versa.
- 5.3 The Interpretation Act 1999 applies to this Bylaw.
- 5.4 Where the meaning of a word has been determined to have the same meaning as provided for that word or term in a stated piece of legislation or other regulatory tool, for completeness, in the event of the meaning of a word or term changing in the relevant legislation or regulatory tool, then the meaning of the word or term changes for the purposes of this bylaw as well.
- 5.5 Any explanatory notes and attachments are for information purposes, and do not form part of this Bylaw, and may be inserted, amended, or revoked without formality. Explanatory notes are provided within the boxes throughout this Bylaw.

## **Relationship between this Bylaw and Acts, regulations, bylaws and Council's District Plan**

Compliance with the Bylaw does not remove the need to comply with all other applicable Acts, regulations, bylaws, the Kaipara District Plan and the Regional Plan for Northland. Where there is any conflict between this Bylaw and any Act or Regulation, the Act or Regulation will take precedence.

In addition to this Bylaw, Council has a range of powers with respect to stormwater drainage. These include powers under the Land Drainage Act 1908 (LDA), the Local Government Act 1974 (LGA74), the Local Government Act 2002 (LGA02), the Resource Management Act 1991 (RMA), the Building Act 2004 and the Public Works Act 1981 (PWA).

## Part B

### Stormwater management

#### 6. Protection of the public drainage network

- 6.1 No person may damage the public drainage network or cause a nuisance to the public drainage network, including by:
- allowing stock to access the public drainage network
  - allowing any material or thing to enter the public drainage network
  - allowing dead stock to be placed or remain in the public drainage network.
- 6.2 Clause 6.1 does not apply to any damage caused by water entering a drain as a result of natural flow.
- 6.3 No person may obstruct the public drainage network, including by:
- placing any material or thing into, over or near the public drainage network, that in the opinion of an Authorised Officer is causing, or is likely to cause, an obstruction.
  - growing, or allowing any vegetation to grow in, or within the vicinity of the public drainage network that in the opinion of an Authorised Officer is likely to impede the flow of water.

#### Further protection

In addition to enforcement action under this Bylaw, Council can prosecute:

- a person who wilfully and maliciously damages anything built under s82 of the LDA
- anyone who excavates or otherwise interferes with any land in the vicinity of the public drainage network (ss 237 and 238 PWA)
- anyone who, without the written authority of Council, connects any private drain with a public or private drain, or covered watercourse; and recover the costs of replacing or repairing any property destroyed or damaged as a result (s467 LGA74).

#### 7. Stormwater management on private property

- 7.1 The owner, occupier, or manager of any property must ensure that any drain, watercourse, flood plain, overland flow path or wetland on the property is kept free from obstruction or interference, that in the opinion of an Authorised Officer may
- adversely affect the performance of the drain, watercourse, flood plain, overland flow path or wetland
  - adversely alter the velocity of stormwater
  - adversely divert or obstruct the flow of stormwater
  - cause a nuisance,
- unless the obstruction or interference has been authorised by a resource consent or building consent.

The purpose of clause 7.1 is to prevent actions affecting drainage on one property impacting adversely on another. Examples may include where alterations to drainage divert water onto a downstream property or prevent water draining away from an upstream property causing ponding.

Under legislation, Council can also:

- require any tree, plant, weed or growth, the roots of which in the opinion of the Council may enter any drainage channel or watercourse, to be cut down or removed (s468 LGA74).
- order the removal of an obstruction from a drain or water course (s62 LDA)
- cause unauthorised drains to be remade as it thinks fit and recover the costs of this work (s 459 LGA74)
- order land owners to connect any existing private drain with any public drain or watercourse other than the public drain or watercourse with which the private drain was previously connected. Or to relay or alter the course, direction, and outfall of any existing private drain (s 459 LGA74)
- require new drains to be constructed through adjoining private land (s 460 LGA74)
- require an owner to provide and affix to any private drain all such traps, methods of ventilation, and other fittings whatever as the council directs (s 459 LGA74)
- remove an unauthorised connection to a public or private drain and fix anything that was broken and recover the cost of these works (s 467 LGA74).

## 8. Crossings

- 8.1 A person must not construct or maintain a crossing in or over any part of the public drainage network without a vehicle crossing permit, or a permit under this Bylaw.
- 8.2 Council may issue permits for the construction or maintenance of crossings over any part of the public drainage network.
- 8.3 Where an Authorised Officer considers damage may occur from crossing the public drainage network without a properly constructed crossing, an Authorised Officer may:
- a. require any owner of a property to construct, maintain or renew a crossing to meet specified requirements
  - b. construct, maintain or renew a crossing, and recover the cost incurred from the owner of the property.

### Vehicle crossing permits

A [vehicle crossing permit](#) is a permit issued under the [Kaipara District Council Consolidated General Bylaw](#), which authorises the building of a crossing from a public road to private land, including addressing the crossing of any footpath, water table or drain within the road corridor. Where a person has obtained a vehicle crossing permit which addresses the crossing of part of the public drainage network, a permit under this Bylaw is not required.

## 9. Public stopbanks

- 9.1 No person may damage or cause a nuisance on or within the vicinity of a public stopbank, including by:
- allowing stock to access the public stopbank
  - undertaking earthworks or causing other structural changes to the public stopbank.
- 9.2 No person may, within 15 metres of the foot of a public stopbank, obstruct access (including machine access) to the public stopbank, including by:
- constructing, erecting or placing any building, fence or structure
  - allowing vegetation to grow in a manner that in the opinion of an authorised officer would obstruct access.

## 10. Herbicide use in the public drainage network

- 10.1 Council may use any chemicals, including the use of chemical sprays and herbicides, in the construction and maintenance of the public drainage network.
- 10.2 An owner or occupier can request alternative approaches to weed management on the public drainage network located on or adjacent to their property. Council may recover any additional costs incurred from the owner or occupier for an alternative weed management approach.
- 10.3 An owner or occupier can apply for a permit to manage weeds in the public drainage network located on or adjacent to their property themselves.

If a person is issued a permit under clause 10(3) but does not comply with the conditions of the permit, Council may give notice of its intent to maintain the public drainage network in accordance with the Local Government Act 1974 (ss 459, 460, 468, 511) or the Land Drainage Act 1908 (s 62), and may carry out the required maintenance using any method it deems efficient, including the use of herbicides.

- 10.4 No person may apply herbicide within 1 metre of the edge of any open drain that is a public drain.

Spraying the grass/vegetation growing on the edges of open drains can cause the banks to become unstable and collapse. Council generally only sprays the base of drains to ensure weeds do not obstruct the flow of water.

Anyone wanting to apply herbicides and chemicals to land and waterways also needs to consider the Regional Plan for Northland.

## 11. Spoil from drains

- 11.1 The owner or occupier of property adjoining a public drain must accept the spoil from that drain because of Council maintenance works.
- 11.2 Council shall not be responsible for spreading or moving spoil deposited in accordance with clause 11.1 beyond what is necessary to remove it from the public drain.

## **Spoil**

The cleaning of drains inevitably results in spoil. This is usually piled up on either side of the drain on the adjacent properties. Council generally will advise of drain cleaning ahead of time. If a landowner does not wish to accept the spoil, Council will seek an agreed alternative solution. This may include owners or occupiers being asked to pay for the costs of the agreed solution.

## **Part C**

### **Powers of access**

#### **12. Access to public drains**

- 12.1** No person may within one (1) metre of a public drain (measured from the bank of an open drain or from the edge of a drainage pipe), obstruct access of an Authorised Officer, or any plant or machinery to be used under the instruction of an Authorised Officer, including by
- planting, growing or allowing any vegetation to grow in a manner that in the opinion of an authorised officer would obstruct access
  - erecting or maintaining any fence, building, bridge or other construction
  - undertaking earthworks.
- 12.2** If a public drain is within a drainage district, no person may, within 15 metres of the public drain (measured from the bank of an open drain or from the edge of a drainage pipe), obstruct access by an Authorised Officer, or any plant or machinery to be used under the instruction of an Authorised Officer, including by
- planting, growing or allowing any vegetation to grow in a manner that in the opinion of an authorised officer would obstruct access.
  - erecting or maintaining any fence, building, bridge or other construction
  - undertaking earthworks in a manner that in the opinion of an authorised officer would obstruct access.
- 12.3** No person may cover any service opening such as manholes, catchpits or any other surface infrastructure associated with the public drainage network.

Council has general powers of entry onto private land to inspect, repair and maintain the public drainage network and to inspect private drains (ss 171, 172, 181 and 182 LGA02, s 510 LGA74, ss 17 and 18 LDA).

## **Part D**

### **Enforcement powers**

#### **13. Consequences of breach of the Bylaw**

- 13.1 In addition to the powers conferred on it by any other Act, Council may
- a. remove or alter a work or thing that is, or has been, constructed in breach of this Bylaw
  - b. remove or alter an obstruction or vegetation that is in breach of this Bylaw
  - c. repair any damage resulting from a breach of this bylaw.
- 13.2 Council may recover from the person who committed the breach of this Bylaw the reasonable costs in connection with any action under clause 13.1.

## **Part E**

### **Offences and Penalties**

#### **14. Offences**

- 14.1 It is an offence to breach this Bylaw.
- 14.2 Any person commits a breach of this Bylaw who:
- a. does, or causes to be done, or knowingly permits or suffers to be done anything contrary to the provisions of this Bylaw
  - b. omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the purpose of this Bylaw, ought to be done by that person at the time and in the manner provided for by this Bylaw
  - c. does something which under this Bylaw they are required not to do
  - d. knowingly permits or suffers any condition or thing/s to exist contrary to any provision/s in this Bylaw
  - e. fails to comply with any notice or direction given to that person under this Bylaw
  - f. obstructs or hinders any Authorised Officer in the performance of any duty to be discharged by that Officer under or in the exercise of any power conferred upon them by this Bylaw.
- 14.3 Where it is suspected that any person has committed a breach of this Bylaw, that person shall, on the direction of an Authorised Officer provide their full name and address.

## 15. Penalties

- 15.1 Every person who commits an offence against this Bylaw is liable to the penalty set out in section 242 of the Local Government Act 2002.

### Bylaw breaches

A breach of the bylaw is an offence under s 239 of the LGA02 and the fine of up to \$20,000 is provided under s 242 of that Act.

In accordance with section 162 of the Local Government Act 2002 Council may apply to the District Court for an injunction to restrain a person from committing a breach of this Bylaw.

A person may also be guilty of an offence punishable under the Resource Management Act 1991, the Health Act 1956, the Land Drainage Act 1908, the Building Act 2004, the Litter Act 1979, and any other applicable Act, depending on the circumstances.

## Part F

# Permits, exceptions and savings

## 16. Permits

- 16.1 Council may issue permits under clauses 8.2 and 10.3 of this Bylaw.
- 16.2 Council may request specific information for an application for a permit and prescribe any conditions on permits issued in accordance with clause 16.1.
- 16.3 Council may by resolution
- charge a fee for receiving and processing an application and issuing a permit
  - determine situations when permit fees may be remitted, refunded or waived.
- 16.4 A permit under this Bylaw may be cancelled by Council at any time.

## 17. Exceptions

- 17.1 A person is not in breach of this Bylaw if that person proves that the act or omission followed the directions of an Authorised Officer or was in accordance with an approval of Council.

## 18. Savings

- 18.1 Any permissions, approvals or other authorisations issued under part 11 of the Consolidated General Bylaw 2020 continue to be in force in accordance with their terms, unless re-negotiated, renewed, or cancelled by Council.