

# Wastewater Drainage Bylaw – Proposal for Consultation

**Meeting:** Kaipara District Council  
**Date of meeting:** 25 August 2021  
**Reporting officer:** Shireen Munday, Policy Team Leader

## Purpose | Ngā whāinga

To make the necessary determinations under section 155 of the Local Government Act 2002 for the statutory review of the Wastewater Drainage Bylaw (the Bylaw) and to approve the associated Consultation Document.

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 revoke and replace Council's Wastewater Drainage Bylaw after making the relevant determinations in relation to the statutory review requirements of the current Bylaw.

Before making the new Bylaw and revoking the existing Bylaw, 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, that the proposed Bylaw is the most appropriate form of bylaw, and that it does not give rise to any implications under the New Zealand Bill of Rights Act 1990. Following that, Council is requested to 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 scheduled 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 and that the proposed Wastewater Drainage Bylaw as included in Attachment B
  - i. Is the most appropriate form of bylaw
  - ii. Does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- 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 Wastewater 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

The statutory review of Council's Wastewater Drainage Bylaw is due. Staff presented a draft Bylaw to the April 2021 Briefing and further information on the coverage area of the Bylaw to the June 2021 Briefing, for comment and feedback. Following this, staff have now finalised a draft proposed Bylaw 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. This has two elements, firstly to make the relevant determination under section 155 of the Act and then to proceed to consultation following these decisions.

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 or summarised here for completeness.

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

The Bylaw addresses two key issues:

1. the protection of Council's wastewater infrastructure system and asset
2. the protection of public health and safety through a monitoring regime for on-site wastewater systems.

The perceived problems are unchanged from the 2016 review of the Bylaw. A bylaw provides Council with an effective set of tools to provide for the necessary protection of the assets.

The onsite wastewater system provisions provide the appropriate systems and powers to ensure Council can work with property owners to make sure their onsite systems are functioning properly.

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

The review of the current Bylaw indicates that in its current form, it is not the most appropriate form of bylaw. It contains duplications with existing legislative powers, is not written in plain English and some elements of the associated policy should be included in the Bylaw.

The proposed Bylaw has addressed the above issues. Additional information has been included to make it easier to understand the purpose and framework of the Bylaw as well as relevant legislative provisions that also apply. The format and structure of the Bylaw has been updated to reflect current best practice approaches.

It is considered the proposed Bylaw, as included in the Consultation Document in **Attachment B** is the most appropriate form of bylaw.

### **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 wastewater drainage assets and linked to this, associated matters of public health and safety. It also requires the appropriate maintenance and operations of onsite wastewater systems to protect 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> Retain the Bylaw in its current format	<ul style="list-style-type: none"> <li>None identified.</li> </ul>	<ul style="list-style-type: none"> <li>Does not allow for the inclusion of appropriate clauses from the existing non-statutory policy</li> <li>Retains the existing confusion between the Bylaw and the policy.</li> <li>Does not allow for the issues of duplication with legislation and other issues such as the lack of plain English usage to be addressed.</li> </ul>
<b>Option 2:</b> Revoke the Bylaw	<ul style="list-style-type: none"> <li>Reduces costs to Council for the administration, implementation, and enforcement of the monitoring regime.</li> </ul>	<ul style="list-style-type: none"> <li>Removes Council's ability to provide a clear set of expectations regarding the protection of Council's wastewater drainage assets.</li> <li>Removes the ability for staff to undertake necessary enforcement actions to protect Council assets.</li> <li>Removes the ability to support public health and safety by ensuring onsite wastewater systems are functioning appropriately.</li> </ul>
<b>Option 3:</b> Revoke the Bylaw and replace it with a new bylaw	<ul style="list-style-type: none"> <li>Allows for identified shortcomings in the current Bylaw and associated policy to be corrected.</li> <li>Supports better community understanding through a more clearly articulated document.</li> </ul>	<ul style="list-style-type: none"> <li>None identified.</li> </ul>
<b>Option 4:</b> Amend the Bylaw	<ul style="list-style-type: none"> <li>As per option 3 above.</li> </ul>	<ul style="list-style-type: none"> <li>Practically, there is no difference between option 3 and 4. However often current practices are to provide a 'mark-up' version for proposed amendments for consultation. Due to the extent of the revisions and the new format and structure a markup version would not be easy to read and therefore may cause community confusion.</li> </ul>

**Option 3** is the recommended option. The review and the resulting proposed replacement Bylaw will provide clarity for the community, staff, and elected members, while maintaining the overall context and approach of the current Bylaw.

### 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.

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 intended to be combined with the consultation on the Stormwater Drainage Bylaw as indicated in the relevant item to Council at the July Council meeting.

## **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