

# Attachment A

## Review - Wastewater Drainage Bylaw

### Legislative process, analysis and consultation approach

This document summarises all relevant legislative requirements for the statutory process of reviewing the Wastewater Drainage Bylaw and the proposed amendments as a result of that review. It provides an overview of the necessary analysis and assessments and includes the consultation activities proposed in accordance with legislative requirements.

Noting these steps are based on Council accepting all recommendations in the report relating to the proposal which is being presented to the 25 August 2021 Council Meeting.

#### 1. Process overview

1. Kaipara District Council had a Wastewater Drainage Bylaw prior to making the current Wastewater Drainage Bylaw in 2016 (the Bylaw). However, the review process undertaken at that time did not meet the review requirement timeframes of section 160A of the Local Government Act 2002, and the previous Bylaw was deemed to have been automatically revoked.
2. As a result, Council made a new Bylaw, rather than amend the revoked one as part of the review process, in September 2016.
3. The Local Government Act 2002 (LGA), specifically s158, requires a review of a bylaw no later than 5 years after the date on which the bylaw was made.
4. The review must be undertaken in accordance with the requirements of s160 of the LGA, which includes meeting requirements of s155 (analysis and decision-making) and s156 (consultation) of the LGA.
5. Section 155(1) requires Council to determine that a bylaw is the most appropriate way of addressing the perceived problem before commencing the process of amending a bylaw (as modified by s160).
6. Section 155(2) requires Council to determine whether the proposed bylaw is the most appropriate form and whether it give rise to any implications under the New Zealand Bill of Rights Act 1990.
7. The determinations of section 155 must be completed ahead of 26 September 2021 to meet the timeframe requirements for the review in accordance with ss158 and160 of the LGA to allow for a future review to be undertaken within 10 years, in accordance with section 159 of the LGA.
8. Under section 160(3) of the LGA, Council must, after review, propose to do one of the following:
  - a) amend the bylaw
  - b) revoke the bylaw
  - c) revoke the bylaw and replace it with a new bylaw
  - d) keep the bylaw as it is without any amendments.
9. Section 156 (in conjunction with s160(3)) requires Council to use the special consultative procedure under section 83 of the LGA following the outcome of the review process if Council considers there is likely to be a significant impact on the public due to the

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proposed bylaw. Otherwise, it can consult in accordance with the principles of section 82.

10. Section 82 of the LGA outlines the principles of consultation.
11. Section 82A of the LGA provides further information requirements for any consultations that are required to be undertaken in accordance with s82, which includes that the following items must be made publicly available for the proposed process:
  - the proposal and the reasons for the proposal
  - an analysis of the reasonably practicable options, including the proposal identified under section 77(1) LGA
  - details of the proposed changes to the proposed document.

## 2. Sections 155 and 77 LGA assessment

This section provides the assessment required under section 155 of the LGA 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 LGA. This analysis provides Council with the basis to decide on one of the four options available under section 160(3).

Staff have undertaken a review of the Bylaw and have presented items detailing proposed changes to Council at the November 2020, and April and June 2021 Briefings that have informed this assessment.

It is of relevance to note that in 2016 Council adopted the Wastewater Drainage Bylaw but also a Wastewater Drainage Policy. This document is not a statutory policy and therefore is not subject to any formal review requirements. The staff review concluded, among other things addressed elsewhere that the Wastewater Drainage Policy is an unnecessary document and where appropriate some of its content should be transferred to the proposed Wastewater Drainage Bylaw. Subject to the decisions of Council throughout this process, it is intended that the Wastewater Drainage Policy is formally revoked at the meeting to amend the Wastewater Drainage Bylaw.

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

The Bylaw addresses two key issues:

- the protection of Council's wastewater infrastructure system and asset
- 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, in that Council requires appropriate powers to protect the wastewater infrastructure network and to support public health and safety matters through a monitoring system that supports the efficient and effective operations of onsite wastewater systems in identified areas.

A bylaw provides Council with an effective set of tools to provide for the required protection of these assets. It allows Council to take remedial action where necessary and provides a framework of what people can do in the vicinity of the assets.

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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. These provisions are predominantly in place to ensure older systems that were not subject to more recent legislative requirements, including the Building Act 2004, are maintained appropriately.

## **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. The review resulted in a complete rewrite of the bylaw. This was to remove duplications, where Council already has authority to act under legislation, and reword and revise all remaining provisions in 'plain English' to ensure clarity and transparency.

In 2016 Council adopted a non-statutory policy alongside the current Bylaw. A review of this policy has resulted in some clauses being incorporated into the proposed Bylaw as this provides a more consistent and appropriate approach. Other matters addressed in the policy will be included in operational policy to assist in the administration and implementation of the Bylaw.

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. And finally, 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 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.

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## 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. It is important to note that for each option, Council would be required to consult with the community and therefore community consultation related issues, such as costs, have not been included in the option analysis.

Options	Advantages	Disadvantage
<b>Option 1:</b> Status Quo, 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 mark up version would not be easy to read and therefore may cause community confusion.</li> </ul>

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**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.

## 3. Consultation requirements and associated activities

As outlined in section 1 of this Attachment, Council must determine whether it should consult in accordance with section 83 of the LGA and adopt a Statement of Proposal, or whether the proposal is not of significant interest to the public nor will have a significant impact on the public and therefore consultation in accordance with sections 82 and 82A of the LGA are appropriate.

Staff consider that due to the retained overall context and purpose of the proposed Bylaw in comparison to the existing Bylaw, the proposal is not of significant interest to, nor will it have a significant impact on, the public. A such, section 156(1)(b) can be applied and consultation in accordance with ss82 and 82A should be undertaken.

Section 82 prescribes the principles for consultation and 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.

The following details provide the proposed process and activities designed to meet the legislative requirements:

- a. Council resolves to consult on the proposal to revoke and replace the Wastewater Drainage Bylaw at a meeting of Council and to approve the Consultation Document as provided in **Attachment B** 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 proposal to revoke the existing Bylaw
  - iv. a link to the agenda item for information on the relevant determinations under section 155 of the LGA
  - 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 Wastewater 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.
- f. The consultation will be further promoted on Council's social media channels and email notifications will be sent to People's Panel members.

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- 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 revoking of the existing Bylaw and the making of the new Bylaw is scheduled to be made by resolution at the Council meeting on 24 November 2021.