

# Proposed changes and rationale

This table outlines proposed changes made to the 2008 Bylaws. Changes and additions are **emphasised**. Deletions are ~~identified~~.

Clause	2008 Bylaws	2020 Bylaws	Rationale
	<b>Title</b>		
	Bay of Plenty Regional Council Floodway and Drainage Bylaw	Bay of Plenty Regional Council Flood <b>Protection</b> and Drainage Bylaws 2020	Title change to better include defences against water and erosion protection works.
<b>1.</b>	<b>Introduction</b>		
<b>Explanatory Note</b>	<p>Change to: <b>Introduction</b></p> <p>This introduction does not form part of the Bylaws.</p> <p>This Bylaw document is developed to protect and control drains, <b>and assets including</b> pumping stations, defences against water, river edge protection works and floodways managed by, or under the control of, the Bay of Plenty Regional Council.</p> <p><b>These drains and assets have</b> been constructed to increase land productivity; prevent damage, danger and distress to the community from river flooding and problems associated with a lack of drainage.</p> <p>It is crucial that these assets are functioning properly when needed.</p> <p>These Bylaws do not apply to any privately owned/managed drainage or flood protection systems or those that are</p>	<p>Changes and additions emphasised bold</p> <p>Note: Bylaws are noted as plural in this document, with the definition taken literally as: <b>“bylaw</b> means <u>any rule</u> or regulation which is made by any local authority by virtue of any Act now or hereafter to be in force, and which is termed a bylaw in the Act by virtue of which it is so made” under the Bylaws Act 1910.</p> <p>The document Floodway and Drainage Bylaws is a set of Bylaws made under the Local Government Act 2002.</p>	<p>The introduction prefaces the Bylaws with an overall rationale for the Bylaws.</p> <p>The Introduction does not form part of the Bylaws and is not legally binding.</p>

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	<p>managed by other local authorities.</p> <p>The Bylaw document <b>consists of three parts.</b> Part I apply to <b>all</b> river and drainage schemes in the region (that are managed by, or under the control of, Bay of Plenty Regional Council).</p> <p><b>Part II apply only to the lower reaches of the Rangitāiki, Tarawera and Kaituna Rivers where pumiceous soils dominate and provide additional protection measures for drains and assets.</b></p> <p><b>Part III identifies the region's designated floodways, spillways and ponding areas and provides additional protection measures for the areas.</b></p> <p>Compliance with these Bylaws does not remove the need for activities to also comply with the Resource Management Act 1991 and the requirements of other regional and district plans.</p> <p>Regulation of any adverse effects on the environment, of the construction or modification of drainage works and defences against water is provided by the <b>Bay of Plenty Regional Council Natural Resources Plan</b>, which has been prepared under the Resource Management Act 1991.</p> <p>While the purpose of this Bylaw is asset protection, the Bay of Plenty Regional Council will follow good environmental practice in its application. <b>This Bylaw is intended to be used in conjunction with</b></p>		

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	<p><i>current national direction, other Bay of Plenty Regional Council statutory documents, and industry standards.</i></p> <p><i>At the time of writing the Minister for the Environment has released the Essential Freshwater management package. 'Essential Freshwater' outlines proposed freshwater management mechanisms for driving improvements in water quality and water allocation.</i></p> <p><i>Of particular note is the risk that pump stations operated by the regional council may be unable to operate in the future if the agricultural drainage water these pumps discharge to the receiving environment cannot meet the water quality standards set by the Minister.</i></p> <p><i>As a minimum Bay of Plenty Regional Council would expect land owners to be complying with their industry standards.</i></p> <p><i>Regional Council's land management staff are available to assist landowners in adjusting their on farm practices so that drainage water entering the Council scheme drains is of appropriate quality.</i></p>		<p>Management of freshwater, though not directly addressed in these Bylaws does have an impact on the level of service of specific assets (i.e. pump stations).</p> <p>Specific clauses in the National Policy Statement for Freshwater Management outline the need to manage freshwater quality through regulatory means (Policy A3).</p> <p>This will have a flow on effect to resource consenting and Farm Management Plans.</p>
	<p><b>Draft Bay of Plenty Regional Council Bylaw 2008</b></p> <p>The Bay of Plenty Regional Council, pursuant to the powers contained in the <del>Local Government Act 1974</del> and Local Government Act 2002, makes the following Bylaw:</p>	<p>Update the title to:</p> <p><b>Draft Bay of Plenty Regional Council Flood Protection and Drainage Bylaws 2020</b></p> <p>The Bay of Plenty Regional Council, pursuant to the powers contained in The Local Government Act 2002, <b>make these Bylaws.</b></p>	<p>Year of adoption. This will be year of adoption and fits within timeframe of LGA: review every 10 years and 2 year extension.</p> <p>Take out LGA 1974 as powers under LGA 2002 supersede.</p>

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	<b>new</b>	The following statutes also give mandate to Bay of Plenty Regional Council to undertake management and control of flood protection and drainage assets:  The Land Drainage Act 1908 The Soil Conservation and Rivers Control Act 1941 The Public Works Act 1981.	Added to explain that Council powers come from several Acts.
<b>2.</b>	<b>Title</b> <del>This Bylaw shall be known as the Bay of Plenty Regional Council Floodway and Drainage Bylaw 2008.</del>	<b>The title of these Bylaws is the <i>Bay of Plenty Regional Council Flood Protection and Drainage Bylaws 2020.</i></b>	Replacement - plain language
	<b>Commencement</b> This Bylaw shall come into force on the 1 <sup>st</sup> day of July 2008.	<b>These Bylaws will</b> come into force on the 1 <sup>st</sup> day of July <b>2020</b>	Year of adoption
<b>3.</b>	<b>Purpose</b>		
	The purpose of the Bylaw is to control and protect drains, pumping stations, defences against water, rivers edge protection works and floodways belonging to or under the control of the Bay of Plenty Regional Council.	Change made in text ... The purpose of these Bylaws is <b>to protect and control...</b> to emphasise protection over control.	
<b>4.</b>	<b>Definition of Terms</b>		
	<del>This Bylaw applies to drains, pumping stations, defences against water, rivers edge protection works and floodways owned by or under the control of the Bay of Plenty Regional Council.</del>	Delete as repetition of purpose above	
	Unless the context otherwise requires: <ul style="list-style-type: none"> <li>Words importing the singular include the plural and vice versa,</li> </ul>	No change	

Clause	2008 Bylaws	2020 Bylaws	Rationale								
	<ul style="list-style-type: none"> <li>Words applying to any person include any body of persons, whether incorporated or not,</li> </ul>	No change									
	<ul style="list-style-type: none"> <li>References to a statute or section of a statute are also references to statutes or sections of statutes which amend or replace them.</li> </ul>	No change									
	<p><del>“Authority” means any licence, permit or consent issued by the Council in respect of the requirements of this Bylaw.</del></p>	<p>Take this out and add “<b>Prior Written Authority</b>” in alphabetical order.</p> <ol style="list-style-type: none"> <li>Emphasis is in ‘<i>written</i>’ his will ensure all records are written and recorded.</li> <li>All reference in text is to <b><i>prior written authority</i></b> not just ‘Authority’</li> </ol>	<p>Changed for clarity and consistency. <i>Licence, permit</i> and <i>consent</i> have very specific (different) meanings in council terms and none of these are appropriate mechanism to use in terms of a Bylaw</p>								
<b>New</b>	<b>“Asset”</b>	<p>Add definition for “<b>Asset</b>”. This will ensure better understanding of what the Bylaw is protecting and controlling – not explicit anywhere else in text.</p> <p>Table of asset types also inserted and taken directly from BOPRC Rivers &amp; Drainage AMP:</p> <table border="1"> <thead> <tr> <th>Asset Group</th> <th>Asset</th> </tr> </thead> <tbody> <tr> <td>Erosion protection</td> <td> <ul style="list-style-type: none"> <li>Buffer zone</li> <li>Edge planting</li> <li>Fencing</li> <li>Rock work</li> <li>Rubble</li> <li>Trenched willows</li> <li>Gabion</li> </ul> </td> </tr> <tr> <td>Pump Stations</td> <td> <ul style="list-style-type: none"> <li>Pumps</li> <li>Pump stations</li> <li>Pump - electrical</li> <li>Pump - electronics</li> <li>Pump - ancillary</li> </ul> </td> </tr> <tr> <td>Stopbanks</td> <td> <ul style="list-style-type: none"> <li>Stopbanks</li> </ul> </td> </tr> </tbody> </table>	Asset Group	Asset	Erosion protection	<ul style="list-style-type: none"> <li>Buffer zone</li> <li>Edge planting</li> <li>Fencing</li> <li>Rock work</li> <li>Rubble</li> <li>Trenched willows</li> <li>Gabion</li> </ul>	Pump Stations	<ul style="list-style-type: none"> <li>Pumps</li> <li>Pump stations</li> <li>Pump - electrical</li> <li>Pump - electronics</li> <li>Pump - ancillary</li> </ul>	Stopbanks	<ul style="list-style-type: none"> <li>Stopbanks</li> </ul>	<p>Changed for clarity and consistency</p> <p>Also added:</p> <p><b><i>For the avoidance of doubt, all assets referred to in the Bylaw are those that provide flood protection and water control in the Bay of Plenty regions rivers and drainage schemes.</i></b></p> <p>as suggested by Ross Dowling (Independent Legal Review)</p>
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			<ul style="list-style-type: none"> <li>• Geotechnical treatments, including:               <ul style="list-style-type: none"> <li>○ Overlays</li> <li>○ Pressure relief wells/ trenches</li> <li>○ Wick drains</li> </ul> </li> </ul>	
		Structures	<ul style="list-style-type: none"> <li>• Bund</li> <li>• Crossing</li> <li>• Culvert</li> <li>• Concrete wall</li> <li>• Dam</li> <li>• Drop structure</li> <li>• Flood gate</li> <li>• Radial gate</li> <li>• Sluice gate</li> <li>• Stop log</li> <li>• Timber wall</li> <li>• Headwalls</li> <li>• Gauging station</li> <li>• Rock groynes</li> </ul>	
		Waterways	<ul style="list-style-type: none"> <li>• Canals</li> <li>• Drains</li> </ul>	
		Biological Weed control	<ul style="list-style-type: none"> <li>• Grass carp</li> </ul>	
		<p><b>For the avoidance of doubt, all assets referred to in the Bylaw are those that provide flood protection and water control in the Bay do Plenty regions rivers and drainage schemes.</b></p>		
<b>New</b>		<p>Add definition for “<b>Bank</b>”.</p> <p>“<b>Bank</b>” means verge, embankment or edge of a watercourse.</p>		Added for clarity and consistency

Clause	2008 Bylaws	2020 Bylaws	Rationale
		Which closes the loop of definition of Defences Against Water in which it is included.	
	<b>“Bund”</b> means a barrier or embankment constructed near or alongside a river or drain to contain and prevent high flows flooding onto adjacent land. A bund is not designed or constructed to provide a specific level of service in terms of flood protection and can be the result of river or drain dredging and piling of dredging alongside the river or drain.	No change	
	<b>“Construct”</b> includes alter, reconstruct, extend, remove and demolish.	Add text: <b>Construct”</b> includes <i>add to</i> , alter, <i>build</i> , reconstruct, expand, extend.	“...remove and demolish” are <i>de</i> -construction. Specific rules in the document refer to removal or demolition separately.
	<b>“Council”</b> a. means the Bay of Plenty Regional Council; and b. includes any person duly authorised by the Council to exercise any of the powers conferred upon the Council by this Bylaw.	Add “...its predecessors and successors...”  <b>“Council”</b> “...means the Bay of Plenty Regional Council, <b>its predecessors and successors</b> ; and...”	“...predecessors and successors...” added here and taken out of rest of document.  as suggested by Ross Dowling (Independent Legal Review)
<b>New</b>	<b>“Cropping”</b>	Add definition for <b>“Cropping”</b> “...means to plant, grow and harvest cultivated plants.”	
	<b>“Crossing”</b> a. Is any means by which any vehicle, livestock, or person may go over, through, or under any drain, defence against water, or floodway; and	No change	

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	b. Includes a bridge, culvert or ford.		
<b>New</b>	<b>“Culvert”</b>	Add definition for <b>“Culvert”</b> . <b><i>“...means a structure that allows water to flow under a road, railway, trail, or similar obstruction from one side to the other side. Typically embedded so as to be surrounded by soil, a culvert may be made from steel, plastic, reinforced concrete or other material.”</i></b> Which closes the loop of definition of <i>Crossing</i> in which it is included.	Clarity and consistency
	<b>“Defence against Water”</b> includes any dam, bund, weir, bank, stopbank, <del>carriageway</del> , groyne, pumping station or reservoir, and any structure or appliance of whatsoever kind which has, or may have the effect of stopping, diverting, controlling, restricting, or otherwise regulating the flow or spread, in or out of a watercourse, of water, including floodwaters, which is developed or retained for the purpose of flood mitigation.	Take out “carriageway”	Carriageway is a historic part of the defence against water definition and is taken out due to: <ul style="list-style-type: none"> <li>• Carriageway means road – BOPRC does not manage or control any roads for the use of defence against water</li> <li>• A carriageway not being an asset (managed or controlled by council). Purpose of Bylaws is to protect and control assets.</li> </ul>
	<b>“Discharge”</b> includes emit, deposit, and allow to escape.	No change	
	<b>“Drain”</b> means a watercourse or channel, either occurring naturally or artificially constructed or a modified watercourse, which is used to either lower the water table or divert water.	No change	
		Add definition for <b>“Dwelling”</b> <b>“Dwelling”</b> means any building or part of a building used, or intended to be used, for a residential activity on a permanent basis, and may include an apartment, a semi-detached or detached house, mobile and relocatable building, home unit, town	(example definition taken from WDC Operative District Plan 2017) Plus: mobile and relocatable building as suggested by Ross Dowling (Independent Legal Review)



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		house, papakāinga unit, kaumatua flat, rest home for the rehabilitation and care of any group and similar forms of permanent residential development.	Relevant for part III. This definition identifies any building/structure in which people live, and could be directly affected by the risks and consequences of flooding.
	<b>“Earthworks”</b> means any activity that exposes, disturbs, places or deposits soil <del>other than routine cultivation of soil up to a depth of 300 millimetres in preparation for sowing grass or crops.</del>	Change definition to: <b>“Earthworks”</b> means any activity that disturbs soil, including any activity that exposes, disturbs, places, deposits or removes soil. See also the definition for “small-scale backyard cultivation”	Implications for fencing, planting, ploughing, digging.  Note: this definition is specific to the F&D Bylaws and is dissimilar to the BOPRC NRP definition for Earthworks.  The act of disturbing the soil profile near an asset can increase the chances of soil heave and piping leading to failure of the asset, and stopbanks in particular. This risk increases significantly in areas where there are pumiceous soils (See Part II).  Council's intention is to work with landowners, leasees and contractors, through application of a Bylaw Authority, which would detail any specific risk mitigation measures that can be put in place for an activity to ensure the ongoing integrity of the adjacent asset.
		Add definition for <b>“Erosion Protection Works”</b> . This is not specifically defined in the 2008 document. <b>“Erosion Protections Works“</b> means erosion protection assets which are used to:	Clarity and consistency  Erosion protection assets (as defined above) comprise of, but are not limited to: <ul style="list-style-type: none"> <li>• Buffer zone.</li> </ul>

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		<ul style="list-style-type: none"> <li>Protect stopbanks and natural channel banks from erosion.</li> <li>Maintain channel stability.</li> <li>Reduce sediment deposition.</li> </ul>	<ul style="list-style-type: none"> <li>Buffer zone plantings</li> <li>Edge planting.</li> <li>Fencing.</li> <li>Rockwork.</li> <li>Rubble.</li> <li>Trenched willows.</li> </ul> <p>This definition is taken from AMP.</p>
	<p><b>“Excavation”</b> means the removal of soil (other than boring), or digging of holes up to 1.5 metres in depth for immediate placement of posts or piles, or driving posts or piles.</p>	Deleted definition and combined in new definition of Earthworks above	
	<p><b>“Floodgate”</b> means a structure that restricts the direction of flow of water from one drain, stream or river into another part of the same drain, stream or river or another drain, stream or river. Sometimes referred to as non-return valve.</p>	No change	
	<p><b>“Floodway”</b> means the land area between the bed of a river or drain and the crest of a stopbank.</p>	<p>Change text:  <b>“Floodway”</b> means a defined corridor that confines floodwaters, up to a specified design level and reduces flood damage to the surrounding land.</p>	
<b>New</b>		<p>Add definition for <b>“Ford”</b>.  <b>“...means a shallow place where water can be crossed, usually in a stream, drain or river.”</b>  Which closes the loop of definition of <i>Crossing</i> in which it is included.</p>	Clarity and consistency
<b>New</b>		<p>Add definition for <b>“Geotechnical treatments”</b> means any asset feature constructed to manage specific hazards:  See “Assets” definition above.</p>	

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	<p><b>“Grass carp”</b> are fish whose scientific name is <i>Ctenopharyngodon idella</i>. (See Appendix I for grass carp description).</p>	<p>Added: <b>“These fish are used for biological weed control and are considered a Council Asset.”</b> (See Appendix I for grass carp description). Appendix updated with explanation of why we use grass carp.</p>	<p>Grass carp are noted in Council’s Asset Register.</p>
<b>New</b>		<p>Add definition for <b>“Groyne”</b>. <b>“...means a low wall or sturdy barrier built out into a river to control erosion.”</b> Which closes the loop of definition of Defences against water in which it is included.</p>	<p>Clarity and consistency</p>
	<p><del><b>“Notice”</b> means written notice authenticated and served in accordance with sections 252 and 253 of the Local Government Act 1974.</del></p>	<p>This definition has been removed. The sections of the LGA it refers to have been repealed. Replaced with definition: <b>“Notice”</b> means signage, electronic mail, written letter, verbal notification.” Also note: The section <b>“Notice to remedy”</b> has been replaced by 3 new sections: <b>Remediation</b> (new) <b>Suspension of Written Authority</b> (new) <b>Revocation of Written Authority</b> (updated previous section – see below)</p>	<p>Redundant legislation.</p>
	<p><b>“Occupier”</b> in relation to any property, means the inhabitant/occupier of that property.</p>	<p>No change</p>	
<b>New</b>	<p><b>“Overgrazing:</b> means the tracking, pugging or loss of grass thatch caused by stock that can weaken the integrity of the defence against water.</p>	<p>Added: as suggested by Ross Dowling (Independent Legal Review)</p>	<p>Particularly in relation to 3.2.2 (ii)</p>

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	<p><b>“Plant”</b> unless inconsistent with the context, includes a tree, shrub, bush or other vegetative growing thing.</p>	<p>Add text for clarity:  <b>“Plant” (also “Planting”)</b> unless inconsistent with the context, it is a living thing that grows in the ground such as a tree, shrub or other vegetative herb.</p>	
		<p>Add definition <b>“Prior Written Authority”</b> to replace definition “Authority” and as outlined above.</p>	<p>Clarity and consistency</p>
<p><b>New</b></p>		<p>Add definition <b>“Pump Station</b>  “...means an electrical pump system that is used to discharge drainage and flood flows in low lying areas.”  ... as this is referred to in text but not explicitly defined</p>	<p>Clarity and consistency</p>
	<p><b>“Rangitaiki Floodway”</b> means the floodway shown as Schedule 1.</p>	<p>No change</p>	
	<p><b>“Rangitaiki Spillway”</b> means the spillway shown in Schedule 1.</p>	<p>No change</p>	
<p><b>New</b></p>	<p><b>“Small-scale backyard cultivation</b></p>	<p>Add definition for <b>“small-scale backyard Cultivation”</b>  <b><i>“...means the disturbance of soil for the purpose of small-scale growing of crops (vegetables), ornamentals (flowers) and small shrubs; to a depth of no more than 300mm.”</i></b></p>	<p>Added for clarity – small-scale activities are permitted under the Bylaws, unlike other ‘earthworks’ activities that may need to be managed.  A distinction is made between domestic “gardening” to a depth of 300mm which was previously (2008) under the wider ‘earthworks’ definition but in this version is split out and re-worded to avoid confusion.  Note: this definition is specific to the F&amp;D Bylaws and is dissimilar to the BOPRC NRP definition for Cultivation</p>

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			which applies to different types of rules.
	<b>“Spillway”</b> means a passage in or about a hydraulic structure for escape of surplus water.	Change definition to <b>“Spillway”</b> means a conveyance structure that allows passage for escape of surplus water from a waterway, in time of flood, to a floodway.	
	<b>“Stopbank”</b> means an embankment bordering one or both sides of a river or drainage channel to contain flows. A stopbank is designed and constructed to provide a specific level of flood protection.	No change	
	<b>“Structure”</b> means any building, equipment, device, or other facility made by people and which is fixed to land; <del>and includes any raft.</del>	Add text: <b>“...means any building, equipment, apparatus, culvert, drain, equipment, floodgate, stopbank, spillway, weir or other feature made by people and which is fixed to land;</b>  Removed “...and includes any raft.” A ‘raft’ is theoretically an ‘apparatus’ or ‘feature’ that is covered in the definition anyway.  (though raft is included in the structure definition in the RMA)	
	<b>“Weir”</b> means a structure within a waterway to elevate water levels and/or control and measure flows within the waterway.	No change	

Clause	Tracked changes	Comment	Rationale
	<b>Part 1</b>		
<b>5.</b>	<b>Application of Part I</b>		
	Part I of these Bylaws applies to all stopbanks, <del>erosion bank</del> protection works, bunds, crossings, drains, pumps, structures and other scheme assets which are <b>managed</b> <del>are owned</del> by or under the control of the Council.	Replace “bank” with “erosion” for consistency of terms Add: “...are managed by...”	
	Part I <b>does not</b> apply to stopbanks, <del>bank</del> <b>erosion</b> protection works, crossings, drains, pumps, structures and other scheme’s assets which are not <b>managed</b> <del>owned</del> by or under the control of the Council.	Emphasis added: Replace “bank” with “erosion”  Replace “owned” with “managed”	
<b>New</b>		Part I does not apply to any river edge where there are no defences against water, edge protection, or any other Council asset.  <b>Explanation:</b> For the avoidance of doubt, the Bylaws <b>do not</b> apply to any area that does not contain council assets.	Regional council has no legal jurisdiction over privately owned assets, defences against water or drains.
<b>5.1</b>	<b>Drains</b>		
<b>New</b>		Added a diagram of a drain with Bylaw Applicable Areas to provide clarity and reference	Clarity, consistency and reference
5.1.1	Except with the prior written authority of the Council, no person will <del>shall</del> , in respect of any drain managed <del>owned</del> by or under the control of the Council:	Replace “shall” with “will” to provide certainty to the statement. Replace “owned” with “managed”	To replace dated legal language. This rule allows council to manage the integrity and capacity of the interconnected drainage systems
	(a) Widen, deepen or otherwise alter any drain.	No change	

Clause	Tracked changes	Comment	Rationale
	(b) Deposit or allow to be deposited in a drain any material that is likely to obstruct the free flow of water.	No change	
	(c) Remove or interfere with any device or equipment relating to any drain.	No change	
	(d) Connect any pipe, channel or other conduit to any drain.	No change	
	<b>Explanation:</b> This Bylaw allows the installation of new subsoil drainage pipes providing they are draining land that is already contributing to the receiving drain i.e. no diversion of water may happen without approval.	Change to “ <b>With prior written authority, installation of new subsoil drainage pipes is allowable, providing they are draining land that is already contributing to the receiving drain i.e. there is no diversion of water.</b> ”	Changed for clarity and consistency. Diversion of water into or out of separate drainage catchment changes the hydrology of each catchment and could affect the ability to manage catchment flow in high water events, and therefore increases the risk of flooding.
	(e) Plant, or allow to grow, any shrub, hedge, tree or part thereof <del>on a stopbank or</del> <b>within 12 metres</b> of a drain (measured from the lip of the drain- Area 2 in diagram above).	Take out “... on a stopbank or...” as Stopbank specific rule is covered in section 3.2 Defences against water, sub-section (d) Bold “12 metres” for emphasis.	This rules ensures adequate room for drain maintenance by council and contractors.
	(f) Allow any plant to grow on or in a drain or on the banks of a drain that may impede the flow of water in the drain, or interfere with access along the drain for maintenance or inspection purposes. (Area 1 in diagram above).	Change in text to: “Allow any plant to grow over or <del>on or</del> in a drain or on the banks of any drain that may impede the flow of water in the drain, or interfere with access along the drain for maintenance or inspection purposes.	Nothing can grow <i>on</i> a drain.

Clause	Tracked changes	Comment	Rationale
	(g) Remove, damage or allow stock to damage any <del>vegetation</del> that has been planted adjacent to a drain, <del>or river bank</del> ; or any fence that has been erected to protect that <del>vegetation</del> by Council or its predecessors.	Need to think through the intent of this clause 1. Add text: "Remove, damage or allow stock to damage, any <b>plants</b> that have been planted adjacent to a drain by Council to act as stabilization; or any fence that has been erected to protect those plants." 2. Remove "...or river bank..." as this is covered in 3.2. sub-section (l)	Changed the word <i>vegetation</i> to <i>plant</i> This has several implications if vegetation is interpreted as <i>grass or crops</i> .
<b>new</b>	(h)	Allow stock to access any drain or the bank of any drain.	NEW: Add new specific clause to prohibit stock access to drains or banks causing damage to the integrity of the drainage system.
	(i) Construct any structure in any drain, or on any bank of a drain, or within 12 metres of a drain (measured from the lip of the drain).	Add text: Construct any structure in <b>or under</b> any drain, or on any bank of a drain, or within 12 metres of a drain (measured from the lip of the drain).	This provides a mechanism for the need to apply for prior written authority for operations such as thrusting cables or pipes under drains.
	(j) Construct a bridge, culvert or crossing in or over any drain.	No change	This action would prevent adequate maintenance to occur in or around a drain.
	(k) Construct, or form through repeated use, a road or race for the passage of vehicles <del>or stock on a stopbank</del> or within 12 metres of a drain.	Wording taken out as covered in 3.2 (m)	The repeated use of a race or road within 12 metres of a drain would, over time, damage the structure of the banks of a drain.
	<del>Allow stock access to a drain if, in the opinion of the Council, this is likely to cause damage to the drain or drain banks.</del>	Deleted. Updated and moved in line with other stock focussed clauses above 3.1 (h)	It is unlikely a situation would arise where stock accessed a drain or its banks and did NOT cause damage.
	(l) Undertake any <del>other</del> works that will interfere with the access of Council staff to river and drainage scheme assets.	Remove <b>"...other..."</b>	This removes any ambiguity around what 'other' works might be - now applies to 'all'



Clause	Tracked changes	Comment	Rationale
			works that will interfere with access
	(m) Allow any object or structure to be located within 1.5 metres (vertical) above the normal drain water level.	<b>Add:</b> <b>Explanation:</b> This clause applies to drains and canals that are maintained by the weed cutter boat and/or spray boat that requires a minimum clearance of 1.5 metres beneath obstacles overhanging the drain. <b>Add:</b> Refer to <b>Schedule 9:</b> Drains maintained by weedcutter or spray boats.	Addition as suggested by Ross Dowling (Independent Legal Review). Map indicating drains that are maintained with boats is added as a schedule to give clarity.
	(n) <del>Damage, interfere with, or allow damage to occur to any drain or drain bank.</del>	Move to separate drains clause 3.1.8	Move from clause 3.1.1 as even with written authority authorisation would not be granted.
<b>5.1.2</b>	Every owner and every occupier of land on which any Council owned or controlled drain is situated <b>will</b> , if required by Council, remove any tree, plant or other material that obstructs or would be likely by falling or otherwise to obstruct the free flow of water in that drain.	<b>Moved</b> Changed “shall” to “will” to remove ambiguity.	Moved into Drains section instead of own miscellaneous section below- as is clause specifically for drains. No need to have separated clause (previously 3.8)
<b>5.1.3</b>	The Council may, by <b>written notice</b> , require any owner, or any occupier, of land adjoining any drain within the time and in the manner stated in the notice, to erect fencing to prevent livestock entering the drain. <del>if, in the opinion of the Council fencing is necessary to protect the drain.</del>	<b>Take out:</b> “...if, in the opinion of the Council fencing is necessary to protect the drain.” As this is redundant due to the update of clause (h) above. Changed: “livestock” to “stock” for consistency	<b>Moved</b> into Drains section instead of own miscellaneous section below- as is clause specifically for drains. No need to have separated clause (previously 3.6)
<b>5.1.4</b>	All fence crossings that however prevent access along drain margins to Council staff or contractors engaged by the Council, shall have a 3.6 metre wide (minimum) gateway to provide access for maintenance and inspection purposes.	Changed to: <b>“All fenced crossings that may prevent access along drain margins to Council staff or contractors, shall have 3.6 metre wide (minimum) gateways to provide access for maintenance and inspection purposes”</b>	<b>Moved</b> into Drains section instead of own miscellaneous section below- as is clause specifically for drains. No need to have separated clause (previously 3.7 (b))

Clause	Tracked changes	Comment	Rationale
5.1.5	Permit any dead stock or any part thereof to be or remain in any drain on that person's property.	<b>Change to:</b> Every owner and every occupier of land on which any Council managed or controlled drain is situated, shall not permit any dead stock or any part thereof to be or remain in any drain on that person's property.	<b>Moved</b> away from 3.1 as no person is going to be 'authorised' to do this. (previously 3.1 (m))
5.1.6	Every owner and every occupier of land on which any authorised drain crossing is situated, unless the crossing exists for the sole use of the Council, shall keep that crossing maintained to such a standard as will allow the safe passage over the crossing by Council staff and contractors engaged by the Council and their plant, machinery and vehicles.		<b>Moved</b> into Drains section instead of own miscellaneous section below- as is clause specifically for drains. No need to have separated clause (previously 3.5)
5.1.7	The Council may, by signage (a notice), conspicuously displayed adjacent to any drain, prohibit or restrict access to that drain if, in the opinion of Council, the restriction or prohibition is necessary <b>to protect the drain from damage.</b>	Emphasis added	Moved into Drains section instead of own miscellaneous section below- as is clause specifically for drains. No need to have separated clause (previously 3.7 (a))
5.1.8	No owner or occupier shall damage, interfere with, or allow damage to occur to, any drain or drain bank.		Moved from clause 3.1.1
<b>5.2</b>	<b>Defences against water</b>		
<b>New</b>		Added a diagram of a drain with zones and measurements to provide clarity and reference	Clarity, consistency and reference
5.2.1	Except with the <b>prior written authority</b> of the Council no person shall, in respect of any defence against water managed or controlled by the Council –	Except with the <b>prior written authority</b> of the Council no person <b>will</b> , in respect of any defence against water owned or controlled by the Council –	Replace "shall" with "will" to provide certainty to the statement

Clause	Tracked changes	Comment	Rationale
	a. Widen, raise, lower, reduce in width, or otherwise alter or interfere with, any defence against water.	No change	
	<del>(a) Damage, interfere with, or allow damage to occur to any defence against water.</del>	Take out text “ <b>... interfere with...</b> ” This is specifically mentioned in sub-part (a) above. Moved to new rule 3.2.2.	Prior written authority would never been given to damage or allow damage.
	<del>(b) Allow stock to damage or overgraze any defence against water.</del>	Moved to 3.2.2	Prior written authority would never been given to damage or allow damage.
	b. Plant or allow to grow any shrub, hedge, tree or part thereof: (i) On any defence against water, (ii) Within 12 metres of the landward side of any defence against water, or (iii) Between the bank of any watercourse and any defence against water.	Change: Plant or allow to grow any shrub, hedge, tree or part thereof: i. Between the bank of any watercourse and any defence against water (Area 1 in diagram above) ii. on, in or over any defence against water (Area 2 in diagram above) iii. <b>within 12 metres</b> of the landward toe of any defence against water (Area 3 in diagram above). (emphasis added)	Consistency with other related wording.
<b>New</b>		<b>Note:</b> No person will undertake cropping for the purposes of hay, silage or maize in Area 1 without <b>prior written authority</b> . Cropping in Area 2 is not permitted.	
<b>New</b>		<b>Added:</b> <b>c.</b> In the case of established trees, no tree shall be cut down or removed within 12 metres of the landward toe of any defence against water	The cutting down or removal of trees, especially when it affects the soil profile integrity is considered an ‘activity’ similar to ‘earthworks’ and therefore needs to have to same type of clause.

Clause	Tracked changes	Comment	Rationale
		<p><b>Explanation:</b> Though it is not ideal to have trees planted near a defence against water; in the case of established trees, with established root systems, cutting down or removing these trees may affect the integrity of the soil system near a defence against water. Applying for a Bylaw Authority allows the Council to work with the landowner to discuss the best course of action for tree removal, root excavation and re-compaction.</p>	Removal of extensive root systems can be detrimental to the integrity and stability of stopbanks in particular.
	<p>d. Dump or deposit any thing:</p> <ul style="list-style-type: none"> <li>(i) On any defence against water, or</li> <li>(ii) Between the bank of any watercourse and any defence against water.</li> </ul>	<p>Change to:</p> <p>“Dump or deposit any <b>item</b>: “</p>	
	<p>e. Remove or interfere with any device, equipment or <del>machinery used or associated with any defence against water.</del></p>	Remove or interfere with any structure or equipment in, on or under, any defence against water.	Changed for consistency
	<p>f. Construct any structure:</p> <ul style="list-style-type: none"> <li>(i) On, in, or through any defence against water,</li> <li>(i) Within 12 metres of the landward side of any defence against water, or</li> <li>(ii) Between the bank of any watercourse and any defence against water.</li> </ul>	<p><b>Changed to:</b></p> <ul style="list-style-type: none"> <li>(i) between the bank of any watercourse and any defence against water (Area 1 in diagram above)</li> <li>(ii) on, in or over any defence against water (Area 2 in diagram above)</li> <li>(iii) <b>Within 12 metres</b> of the landward toe of any defence against water (Area 2 in diagram above).</li> </ul>	Changed for clarity
	<p>g. Carry out any <del>excavation</del> in, on or between the banks of any watercourse and any defence against water.</p>	<p><b>Changed to:</b></p> <ul style="list-style-type: none"> <li>(i) Carry out any earthworks including for building foundations or digging a drain: <ul style="list-style-type: none"> <li>i. on or between the banks of any watercourse and any defence</li> </ul> </li> </ul>	Change of definitions of excavation with earthworks

Clause	Tracked changes	Comment	Rationale														
		against water (Area 1 diagram above) ii. on, over or through any defence against water (Area 2 in diagram above) iii. in the specified Bylaw Applicable Area of any defence against water (Area 3 in the diagram above) The specified margins for the Bylaw Applicable Areas being:															
	<p>Carry out any excavation, including for building foundations, within 20 metres of any defence against water.</p> <p><b>[Note: Excavations in the vicinity of Rangitaiki and Tarawera Rivers has a wider exclusion width – Refer to rule 9.1 below for these rivers]</b></p>	<table border="1"> <thead> <tr> <th data-bbox="958 627 1346 719">Waterway</th> <th data-bbox="1346 627 1496 719">Margin distance</th> </tr> </thead> <tbody> <tr> <td data-bbox="958 719 1346 783">Rangitaiki River</td> <td data-bbox="1346 719 1496 783">200m</td> </tr> <tr> <td data-bbox="958 783 1346 847">Tarawera River</td> <td data-bbox="1346 783 1496 847">120m</td> </tr> <tr> <td data-bbox="958 847 1346 943">Kaituna River (includes. Okere)</td> <td data-bbox="1346 847 1496 943">140m</td> </tr> <tr> <td data-bbox="958 943 1346 1038">Whakatāne, Tauranga, Otara and Waioeka</td> <td data-bbox="1346 943 1496 1038">40m</td> </tr> <tr> <td data-bbox="958 1038 1346 1246">Rotorua streams (Waingaehe, Puarenga, Utuhina, Mangikakahi, Otamatea, Waiowhiro, Ngongataha, Waitetī) (incl. Ōhau Channel)</td> <td data-bbox="1346 1038 1496 1246">20m</td> </tr> <tr> <td data-bbox="958 1246 1346 1342">Drainage scheme canals, drains and canals</td> <td data-bbox="1346 1246 1496 1342">20m</td> </tr> </tbody> </table>	Waterway	Margin distance	Rangitaiki River	200m	Tarawera River	120m	Kaituna River (includes. Okere)	140m	Whakatāne, Tauranga, Otara and Waioeka	40m	Rotorua streams (Waingaehe, Puarenga, Utuhina, Mangikakahi, Otamatea, Waiowhiro, Ngongataha, Waitetī) (incl. Ōhau Channel)	20m	Drainage scheme canals, drains and canals	20m	<p>Note: that these new margin distances are <b>proposed</b>.</p> <p>Extensive modelling using specialist SEEP/W Groundwater Flow Analysis (Geo-Slope 2018) software and comprehensive analysis of a number of unique simulations and is outlined in a BOPRC technical report.</p>
Waterway	Margin distance																
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Clause	Tracked changes	Comment	Rationale
<b>New</b>		<b>Added:</b> <b>Explanation:</b> For the purpose of small-scale backyard cultivation (for example: vegetable and flower gardens) digging to a depth of <b>300mm</b> into the topsoil is permitted. Any digging further than 300mm into the soil profile cannot be carried out <b>except with prior written authority of Council</b> . This includes <i>urban</i> areas.	This clause is added for clarity around small-scale gardening which in the previous version was ambiguous, especially in the urban environment.
	<del>Dig a drain or undertake earthworks in or on a stopbank or within 20 metres of the landward toe of a stopbank.</del> [Note: Excavations in the vicinity of Rangitaiki and Tarawera Rivers has a wider exclusion width – Refer to rule 9.1 below for these rivers]	Replaced by wording in <b>clauses 3.2.1 (i) and 3.2.1 (j)</b>	
	h. Construct <b>or remove</b> any crossing in, over, through, along or under any defence against water.	<b>“remove”</b> added	
	i. Remove, damage or allow stock to damage any <del>vegetation that has been planted adjacent to a river by the Council or its predecessors.</del>	Remove, damage or allow stock to damage <b>any plants that have</b> been planted adjacent to a river and are managed by the Council.	Consistency change.
	Adjust or interfere with any pump station or pump station equipment.	Removed as covered by <b>clause 3.5</b>	
	j. Remove, damage, or allow stock to damage any fence that has been erected by Council, or its predecessors, for the protection of <del>vegetation</del> on a riverbank.	Remove, damage, or allow stock to damage, any fence that has been erected by Council for the protection of <b>plants</b> on a riverbank.	
	k. Construct, <b>remove</b> , or form through repeated use, a road or race for the passage of vehicles or stock on any defence against water.	<b>“remove”</b> added	

Clause	Tracked changes	Comment	Rationale
5.2.2	No person will under any circumstance will:  a. Damage, or allow damage to occur to any defence against water.	Moved from 3.2.1 to 3.2.2	Prior written authority would never been given to damage or allow damage.
	b. Allow stock to damage or overgraze any defence against water.	Moved from 3.2.1 to 3.2.2 Add: <b>Explanation:</b> Stock on stopbanks is not ideal but grazing is sometimes used as a method to maintain the grass cover height e.g. long grass restricts inspections and condition assessments, is a fire hazard during summer, can hide rabbit holes and bank erosion. Controlled grazing by young cows is allowable with <b>prior written authority</b> . Grazing by bulls, horses and pigs is not permitted.	as suggested by Ross Dowling (Independent Legal Review) Prior written authority would never been given to damage or allow damage.
5.2.3	Except with the prior written authority of the Council no person shall erect or permit to be erected any stopbank, or defence against water <del>without the prior written authority of the Council.</del>	Changed to: <b><i>Except where the prior written authority,</i></b> no person shall erect or permit to be erected any stopbank, or defence against water. (emphasis added)	Moved into defences against water section instead of own miscellaneous section below- as is clause specifically for defence against water. No need to have separated clause (previously 3.4)
5.2.4	The Council may, by signage (a notice), conspicuously displayed adjacent to any defence against water, prohibit or restrict access to that defence against water if, in the opinion of Council, the restriction or prohibition is necessary to protect the defence against water from damage.	Added ... (a <b>written</b> notice)...	Moved into Defences Against Water section instead of own miscellaneous section below- as is clause specifically for Defences Against Water. No need to have separated clause (previously 3.7 (a))

Clause	Tracked changes	Comment	Rationale
<b>6</b>	<b>Edge Protection Works</b>	<b>NEW SECTION</b>	
<b>New</b>		<b>Except with the prior written authority of the Council</b> no person will, in respect of any erosion protection works managed or controlled by the Council:	Previously missing specific protection clauses around edge protection works
<b>New</b>		(a) Remove, damage or allow stock to damage any erosion protection works that have been placed or planted adjacent to a river by the Council or its predecessors,	
<b>New</b>		(b) Dump or deposit any item on, in or beside an erosion protection works,	
<b>7</b>	<b>Grass Carp</b>		
		Add <b><i>“Grass carp are used in some drains in the region as biological weed control, and are considered a Council asset, therefore no person will:”</i></b> as introduction to clause.	Explanatory note added. Grass carp are considered ‘assets’ as they are owned by council and have an economic value (i.e. they are purchased by council to perform a specific service).
	a. Catch, take, or harvest or engage in any activity which may reasonably be expected to result in the catching, taking or harvesting of grass carp from any drain, canal or river managed by or under the control of the Council	Replace “owned” with “managed”	



Clause	Tracked changes	Comment	Rationale
	<p>b. Kill, maim, injure or engage in any activity, which may reasonably be expected to result in the killing, maiming or injury of grass carp in any drain, canal or river managed by or under the control of the Council.</p> <p><b>(See Appendix I for grass carp description).</b></p>	Replace “owned” with “managed”	
<b>new</b>	<p>c. Interfere with any structure that contains or restricts grass carp in a release area of a drain, canal or river</p>		
<b>3.4 3.5</b>	<b>Stopbanks</b>		
	<p>Except with the <del>prior written authority</del> of the Council no person shall erect or permit to be erected any stopbank, or defence against water without the prior written authority of the Council.</p>	Moved to Defences Against water section	
<b>3.5 3.6</b>	<b>Crossings</b>		
	<p><del>Every owner and every occupier of land on which any drain crossing is situated, unless the crossing exists for the sole use of the Council, shall keep that crossing maintained to such a standard as will allow the safe passage over the crossing by Council staff and contractors engaged by the Council and their plant, machinery and vehicles.</del></p>	Moved to drains section	
<b>3.6 3.7</b>	<b>Fencing of Drains</b>		
	<p>The Council may, by <del>written notice</del>, require any owner, and any occupier of land adjoining any drain within the time and in the manner stated in the notice, to erect fencing to prevent livestock entering the drain if, in the opinion of the Council fencing is necessary to protect the drain.</p>	Moved to drains section	
<b>3.7 3.8</b>	<b>Access</b>		

Clause	Tracked changes	Comment	Rationale
	<del>(a) — The Council may, by a notice, conspicuously displayed adjacent to any drain or defence against water prohibit or restrict access to that drain or defence against water if, in the opinion of Council, the restriction or prohibition is necessary to protect the drain or defence against water from damage.</del>	moved	
	<del>(b) — All fence crossings that would otherwise deny access along the drain margins for Council staff or by contractors engaged by the Council shall have a 3.6 metre wide (minimum) gateway to provide access for maintenance and inspection purposes.</del>	moved	
<b>3.8</b>	<b>Obstructions</b>		
	<del>Every owner and every occupier of land on which any Council owned or controlled drain is situated shall, if required by the Council, remove any tree, plant or other material that obstructs or would be likely by falling or otherwise to obstruct the free flow of water in that drain.</del>	Moved to Drains section above	
<b>8</b>	<b>Pumping Stations</b>		
	Bay of Plenty Regional Council has full rights and powers to temporarily shut down pumping stations during high river and/or drain flows if it considered that there is a risk of a seepage failure occurring in the adjoining stopbanks or stopbank foundations.	Changed to: a. Council has full rights and powers to temporarily shut down pumping stations during high river and/or drain flows if it is considered that there is a risk of a seepage failure occurring in the adjoining stopbanks or stopbank foundations	as suggested by Ross Dowling (Independent Legal Review) Pump Stations act to move water from low lying (below sea level e.g. Rangitāiki Plains) land through a drainage system to the sea.
		Moved: b. to a. <b>Explanation:</b> The act of pumping during flood events increases the height difference	In a flooding situation the act of actively pumping would continue to add water to an

Clause	Tracked changes	Comment	Rationale
		between the floodwaters contained within stopbanks and the surrounding land. This increases seepage pressures through the stopbank foundations that could lead to a seepage failure of the stopbank structure. It also increases the risk of downstream banks overtopping and adversely affecting downstream properties.	already flooding or overflowing system. Turning the pump station off would decrease the pressure on the system and some of the downstream flooding effects.
		b. <b>No person will</b> interfere with the operation of pumping stations at any time.	No person can negligently destroy, damage, interfere with, or obstruct the works of a local authority (LGA s232(3))
	<del><b>Explanation:</b> The act of pumping during flood events increases the height difference between the floodwaters contained within stopbanks and the surrounding land. This increases seepage pressures through the stopbank foundations that could lead to a seepage failure of the stopbank structure.</del>	Moved to above	
<b>9</b>	<b>Land Entry</b>		
<b>9.1</b>	<b>Inspection</b>		
	The Council shall have full powers, rights and authorities to enter onto land to inspect any drain or watercourse or installation or to carry out spot spraying activities on drain banks that are owned or controlled by the Council.	Change to “ <b>Council has full rights and powers to enter onto land to inspect any drain, watercourse or asset;</b> ”	Minor word change for consistency.  Council has full legal rights and powers under the Local Government Act 2002 and the Land Drainage Act 1908.
<b>9.2</b>	<b>Maintenance works</b>		
	The Council shall have full powers, rights and authorities, upon giving to the owner or occupier of any land not less than 48 hours prior notice, to enter upon that land for the	Change to “ <b>Council has full rights and powers, upon giving to the owner or occupier of...</b> ”	Minor word change for consistency

Clause	Tracked changes	Comment	Rationale
	purposes of carrying out mechanical cleaning and desilting of drains and carrying out minor earthworks and repairs on drains or structures that are owned or controlled by the Council.		Council has full legal rights and powers under the Local Government Act 2002 and the Land Drainage Act 1908.
<b>9.3</b>	<b>Surveys</b>		
	The council shall have full powers, rights, and authorities to enter onto land to survey any drain, watercourse, defence against water and installation that are owned or controlled by the council.	“The Council” changed to “Council”	Consistency  Council has full legal rights and powers under the Local Government Act 2002 and the Land Drainage Act 1908.
<b>9.4</b>	<b>Emergency Action</b>	<b>NEW SECTION</b>	
		Council will, for the purpose of doing anything that it is authorised to do under these Bylaws, enter occupied land or buildings without giving prior notice, if: <ul style="list-style-type: none"> <li>a. there is a sudden emergency causing, or likely to cause: <ul style="list-style-type: none"> <li>i. loss of life or injury to a person</li> <li>ii. damage to property</li> <li>iii. damage to the environment</li> </ul> </li> <li>b. there is danger to any assets or adjoining property.</li> </ul>	Acknowledges our right under Local Government Act 2002 (s173) to take action in the case of emergencies.  This means that we don't have to give notice or issue a notice first if immediate action needs to be taken.
<b>10</b>	<b>Maintenance of Bay of Plenty Regional Council Drains by private individuals</b>	Moved	
	Land owners <del>and land users</del> who wish to avoid herbicide use for drain maintenance adjacent to or through their properties may undertake the drain clearance or employ contractors to do so subject to the following conditions:	Removed ambiguity	Council has full legal rights and powers to act under the Land Drainage Act 1908 (s62(c))

Clause	Tracked changes	Comment	Rationale
	a) Prior written authority of the Council must be obtained.	Moved only	
	b) The works are to be carried out to a standard specified by the Council, as specified in the written authority	Moved only	
	c) Signs are to be erected to clearly mark the areas where chemicals are not to be used. (This may be achieved by landowners erecting simple signs clearly marked 'Chemical Free Area'.)	Moved only	
	d) If the works are not carried out to the prescribed standard, the Council may give notice under clause 8 <del>intention to maintain the drain, and following a period of one week, may carry out the required maintenance using any method it deems efficient</del> remedial action and may include the use of herbicides.	If the works are not carried out to the specified standard, Council may give notice under clause 5.1 Remediation and may include the use of herbicides.	
<b>11</b>	<b>Obstruction to officers and contractors</b>		

Clause	Tracked changes	Comment	Rationale
	<p>No person whether on private land or not, shall unreasonably obstruct or hinder any employee of the Council or any contractor <del>engaged by the Council</del> in the performance of anything which that employee or contractor of the Council is or may be required to do in the discharge of his/her duties and no person shall unreasonably obstruct or hinder any such employee or contractor from bringing onto any land or from operating any drain clearing <del>plant</del> or machinery which is being used or is to be used in the discharge of those duties.</p>	<p>(a) No person whether on private land or not, shall unreasonably obstruct or hinder any employee of the Council or any contractor engaged by the Council in the performance of anything which a Council employee or contractor is, or may be required to do in the discharge of his/her duties.</p> <p>(b) No person shall unreasonably obstruct or hinder any such employee or contractor from bringing onto any land, or from operating, any drain clearing equipment or machinery which is being used, or is to be used, in the discharge of those duties.</p>	<p>Change for clarity and ease of reading.</p> <p>Council has full legal rights and powers to act under the Local government Act 2002 (s229)</p>
<b>6</b>	<b>Maintenance of Bay of Plenty Regional Council drains by private individuals</b>	Moved above to 4.3	
	<p><del>No person whether on private land or not shall unreasonably obstruct or hinder any employee of the Council or any contractor engaged by the Council in the performance of anything which that employee or contractor of the Council is or may be required to do in the discharge of his/her duties and no person shall unreasonably obstruct or hinder any such employee or contractor from bringing onto any land or from operating any drain clearing plant or machinery which is being used or is to be used in the discharge of those duties.</del></p>	Moved above to 4.3	
	<p><del>(a) — Prior written authority of the Council must be obtained.</del></p>	Moved above to 4.3	
	<p><del>(b) — Signs are to be erected to clearly mark the areas where chemicals are not to be used. (This may be achieved by</del></p>	Moved above to 4.3	

Clause	Tracked changes	Comment	Rationale
	landowners erecting simple signs clearly marked 'Chemical Free Area'.)		
	<del>(c) The works are to be carried out to a standard specified by the Council.</del>	Moved above to 4.3	
	<del>(d) If the works are not carried out to the prescribed standard, the Council may give notice of its intention to maintain the drain, and following a period of one week, may carry out the required maintenance using any method it deems efficient including the use of herbicides.</del>	Moved above to 4.3	
<b>11</b>	<b>Applying for an authority</b>	<b>Applying for <i>Prior Written Authority</i></b>	
<b>11.1</b>	<b>Authority</b>	<b>7.1 <i>Written Authority</i></b>	
	<del>(a) An application to the Council for authority under this Bylaw shall be made in writing and be accompanied by the prescribed fee (refer Schedule 3 below).</del>	Change text:  Prior Written Authority must be sought before undertaking any activity outlined in these Bylaws.  a. An application to the Council for written authority under these Bylaws will be made in writing.  Text around fees removed and separate Fees section added (7.2)	The overall goal of council, in relation to the Bylaws, is for landowners to work with council to develop the best options for undertaking certain activities near drains, defences against water and erosion protection works. The application of prior written authority supports the process of land owner and council working together to develop the best way to approach an activity that may have an effect on the integrity of a drain, defence against water or edge protection works.
	<del>(b) Any authority under this Bylaw may be granted on such conditions, as the Council considers appropriate. When considering any application for an authority, the Council shall have regard to good environmental practice.</del>	Change text:  <b>b. <i>Written authority</i></b> under this Bylaw <b>will</b> be granted on such conditions, as the Council considers appropriate.	As suggested by Ross Dowling (Independent Legal Review) " <i>current best practice</i> " is uncertain and therefore legally unacceptable.

Clause	Tracked changes	Comment	Rationale
	(c) Every person to whom an authority is granted shall produce that authority for inspection on request by the Council.	Change text: c. Every person to whom <b>written authority</b> is granted <b>will</b> produce that authority for inspection on request by the Council.	
<b>12</b>	<b>Fees</b>		
	(a) <del>The fees and charges specified in the Schedule to this Bylaw shall be paid on demand for the exercise of any authority or function under this Bylaw.</del>	Change to: a) Council reserves the right to set and charge reasonable fees and charges under s150 of the Local Government Act 2002 b) Fees will be set annually under s82 of the Local Government Act 2002. Refer to <b>Schedule 10</b>	Decision was made to waive general application fee in order to encourage application for written authority. Fees may be payable by an applicant if site inspections and technical work is needed to support written authority to act. This would then be in the form of recovery costs. Under Council's Revenue and Financing Policy.
	b) The Council may in its absolute discretion refund, remit or waive the whole or any part of such fees.	No change	
<b>13</b>	<b>Compliance and enforcement</b>		
<b>13.1</b>	<b>Remediation</b>	<b>NEW SECTION</b>	
	.	a. The Council may, by written notice, require any remediation considered necessary by the Council, in relation to the contravention of any provision of	(a) and (b) replace the current (2008) 8.3 Notice to Remedy clause. The current wording is too long and specific meaning can be



Clause	Tracked changes	Comment	Rationale
		<p>this Bylaw or any conditions of the relevant authority.</p> <p>b. The notice will advise the nature and steps to be taken within a specified period, to remedy the breach, at the cost of the person who committed the breach.</p> <p>c. If, after the specified period, the breach has not been remedied, the Council reserves the right to undertake remedial work required in order to make good the breach.</p> <p>d. Remedial work may include, but it is not limited to, the removal or alteration of any unauthorised activity, works, vegetation or structures.</p> <p>e. If the Council decides to undertake remedial work, the Council has the right to recover from the person committing the breach reasonable costs incurred in connection with the remedial work, as per section 163 of the Local Government Act 2002.</p> <p>f. The undertaking of this action by Council shall not relieve any person from liability to any penalty incurred by reason of the breach.</p> <p>g. These clauses are subject to the legal powers that allows Council to carry out emergency action as per Clause 4.4 above without giving prior notice.</p>	<p>hard to follow and apply. Having a shorter, broader clause means it will be easier and faster to read, as well as covering many more situations which could arise.</p> <p>Replace the previous 8.4 Removal of Works clause, combining the clauses in relation to remedial work flows better. It follows well from notice to remedy, so if that notice is not complied with, we can undertake the remedial work. Links back to powers under the Local Government Act.</p> <p>(g) Links back to 4.4 for emergency action so that it is clear that any written notices are subject to clause 4.4, meaning written prior notice may not be provided in an emergency situation.</p>
<b>New 13.2</b>	<b>Suspension of Written Authority</b>		
		<p>(a) The Council may, suspend any authority granted under this Bylaw, if the holder of that authority contravenes or fails to comply with any condition of that authority.</p> <p>(b) The Council may suspend any authority until:</p>	<p>Adding a suspension clause to have another option before revoking the authority. It provides an interim option, and give time for the authority holder to remedy the issue,</p>

Clause	Tracked changes	Comment	Rationale
		<p>(i) The contravention has been remedied; or  (ii) After the authority holder objects to the suspension in accordance with Clause 8.5, the Council deems it reasonable to remove the suspension; or  (iii) If it is clear the contravention will not be remedied, the Council decides under Clause 8.3 to revoke the authority.</p> <p>(c) The effect of a suspension is that the holder of the authority may not do anything that the authority previously authorised them to do, except to take measures to remedy the failure or contravention.</p>	<p>instead of going straight to revocation.</p>
<b>New 13.3</b>	<b>Revocation of Written Authority</b>		
		<p>(a) The Council may, in accordance with this clause, revoke any authority granted under this Bylaw if the holder of the authority contravenes or fails to comply with any condition of the authority, or is still non-compliant following a period of suspension.</p> <p>(b) The Council will not revoke any such authority without giving to the holder a notice in writing which:</p> <p>(i) Sets out the respects in which the holder has contravened or has failed to comply with any condition of the authority, and</p> <p>(ii) If the breach or failure is capable of remedy gives the holder a reasonable time within which to remedy it, and</p> <p>(iii) Warns the holder that the Council may revoke the</p>	<p>.</p>

Clause	Tracked changes	Comment	Rationale
		<p>authority if the holder does not either:</p> <ul style="list-style-type: none"> <li>a. Remedy the breach or failure within the time specified or within such further time as the Council may allow on application to be made within such time as specified in the notice, or</li> <li>b. Object to the decision in accordance with Clause 8.5.</li> </ul> <p>(c) On receipt of a request by a holder for further time pursuant to Clause 8.3(b)(iii)(1) or of a submission pursuant to Clause 8.3(b)(iii)(2), the Council may at its sole discretion grant the further time sought or accept the submission made (as the case may be), or proceed to revoke the authority</p>	
<b>13.4</b>	<b>Offences</b>		
		<p>(a) Every person commits an offence against this Bylaw when they:</p> <ul style="list-style-type: none"> <li>(i) Commit a breach of any of the provisions of this Bylaw; or</li> <li>(ii) Cause or permits to be done anything in contravention of this Bylaw; or</li> <li>(iii) Omit to do anything required by this Bylaw; or</li> <li>(iv) Fail to comply with any condition of any authority, or written notice served under this Bylaw.</li> </ul>	<p>Adding (b) to clarify the possible penalties and reflect the empowering provision.</p>

Clause	Tracked changes	Comment	Rationale
		(b) Every person who commits an offence against this Bylaw is liable to the penalties as prescribed by section 242 of the Local Government Act 2002.	
<b>13.5</b>	<b>Objection Process</b>		
		<p>(a) Any authority holder subject to this Bylaw may, within 10 working days of receiving any decision or authority in relation to this Bylaw, object in writing to the Council in regard to that decision or authority, and has the right to be heard in support of that objection.</p> <p>(b) The decision will be reviewed within Council by an authorised person, other than the original decision maker within 20 working days.</p> <p>The Council in considering an objection shall have regard to:</p> <ul style="list-style-type: none"> <li>(i) The evidence on which the decision or authority was based; and</li> <li>(ii) The matters presented in support of the objection; and</li> <li>(iii) Any other relevant matters.</li> </ul> <p>(c) The Council may dismiss the objection or uphold the objection wholly or in part, and shall give the reasons for that determination to the authority holder.</p> <p>(d) This clause is subject to the power to carry out emergency action as per Clause 4.4.</p>	<p>Added in to have a clear path for people to use if they want to object or make a submission to the Council.</p>

<b>Part II – Additional Bylaws Applying to the Rangitāiki Drainage District</b>				
<b>Part II – Additional Bylaws Applying to the Lower Rangitāiki River, the Lower Tarawera River and the Lower Kaituna River</b>				
	<b>Clause</b>	<b>Tracked changes</b>	<b>Comment</b>	<b>Rationale</b>
		<b>Application of Part II</b>		
		The lower reaches of the Rangitaiki and Tarawera Rivers have layers soils that are susceptible to piping failures beneath the stopbanks during flood events. The purpose of this rule is to minimise the risk of such failures occurring.	Change text to include: The lower reaches of the <b>Kaituna</b> , Rangitaiki and <b>Tarawera</b> Rivers have layers of <b>pumiceous</b> soils that are susceptible to piping failures beneath the stopbanks during flood events. The purpose of this rule is to minimise the risk of such failures occurring.	Added Lower Kaituna on advice from engineers – this part then includes all pumiceous dominant soils that are prone to piping failures.
		Part II of this Bylaw applies to all stopbanks, bunds, bank protection works, crossings, drains, pumps, structures and other scheme assets in the Rangitaiki Drainage District that are owned by or under the control of the Council.	Part II of this Bylaw applies to all stopbanks, bunds, bank protection works, crossings, drains, pumps, structures and other scheme assets in the <b>Lower Tarawera, Kaituna</b> and Rangitaiki Rivers that are managed by or under the control of the Council.	
			Add text:  <b>Specifically these areas include:</b> <ul style="list-style-type: none"> <li>• <b>On both Rangitaiki riverbanks, where stopbanks are located, from approximately 700m above the State Highway 30 bridge at Te Teko to the river mouth.</b></li> <li>• <b>On the Tarawera River on the true right of the river from the State Highway 30 bridge to the mouth and true left of the river from 800 metres downstream of the Tumurau Lagoon structure to the mouth.</b></li> <li>• <b>On the lower reaches of the Kaituna River catchment and maintenance area.</b></li> </ul>	

Part II – Additional Bylaws Applying to the Rangitāiki Drainage District				
Part II – Additional Bylaws Applying to the Lower Rangitāiki River, the Lower Tarawera River and the Lower Kaituna River				
	Clause	Tracked changes	Comment	Rationale
			<b>Note:</b> Part I still applies to these areas.	
		Part II of this Bylaw <b>does not</b> apply to stopbanks, bunds, bank protection works, crossings, drains, pumps, structures and other scheme assets that are not managed by or under the control of the Council.	No change	
		No person shall, <b>without the prior written authority</b> of the Council undertake any of the following activities	Emphasis added No person will, <b>without the prior written authority</b> of the Council undertake any of the following activities:	
		<del>a. The digging, maintenance, or <b>any other earthworks</b> in any drain</del>	Delete: already covers in Part I	
			(a) Digging, maintenance or <b>any other earthworks</b> , including building foundations <ul style="list-style-type: none"> <li>• within <b>200 metres</b> from the landward toe of the prescribed <b>Rangitaiki River stopbanks and Rangitaiki Floodway stopbanks</b></li> <li>• within <b>120 metres</b> of the prescribed <b>Tarawera stopbanks</b></li> <li>• within <b>140 metres</b> of the prescribed <b>lower Kaituna stopbanks</b></li> </ul>	
			<b>Note: For the purpose of <i>small scale backyard cultivation</i>, disturbing soil to a depth of 300mm is permitted. Any digging deeper than 300mm into the soil profile</b>	

<b>Part II – Additional Bylaws Applying to the Rangitāiki Drainage District</b>				
<b>Part II – Additional Bylaws Applying to the Lower Rangitāiki River, the Lower Tarawera River and the Lower Kaituna River</b>				
	<b>Clause</b>	<b>Tracked changes</b>	<b>Comment</b>	<b>Rationale</b>
			<b>cannot be carried out except with prior written authority of Council.</b>	
		<p>(a) The digging or maintenance of any drain, or any excavation, including building foundations, within 150 metres from the landward toes of the Rangitāiki River stopbanks:</p> <ul style="list-style-type: none"> <li>On both riverbanks, where stopbanks are located, from Te Teko to the river mouth.</li> </ul>	<p>(b) Undertake earthworks for the fencing, replacement fencing, or for the purposes of intensifying infrastructure including (but not limited to), new shelterbelt planting, subsoil irrigation or drainage:</p> <ul style="list-style-type: none"> <li>within <b>200 metres</b> of the landward toe of the of the prescribed <b>Rangitāiki River stopbanks and the Rangitāiki Floodway Stopbanks</b></li> <li>within <b>120 metres</b> of the prescribed <b>Tarawera stopbanks</b></li> <li>within <b>140 metres</b> of the prescribed <b>lower Kaituna stopbanks</b></li> </ul>	
			<b>Note:</b> Anyone undertaking new fencing or replacing old fencing within the Bylaw Applicable Area will need to work with Council on the best practice methods for fencing, which may include, but not limited to, filter collars for posts.	
			<p>d. Undertake any type of ploughing:</p> <ul style="list-style-type: none"> <li>within <b>200 metres</b> of the landward toes of the <b>Rangitāiki River</b></li> </ul>	The addition of ploughing rules has been developed through extensive GeoSlope Seep/W modelling. Modelling outlined the significance of plough pan development in

<b>Part II – Additional Bylaws Applying to the Rangitāiki Drainage District</b>				
<b>Part II – Additional Bylaws Applying to the Lower Rangitāiki River, the Lower Tarawera River and the Lower Kaituna River</b>				
	<b>Clause</b>	<b>Tracked changes</b>	<b>Comment</b>	<b>Rationale</b>
			<p><b>stopbanks and the Rangitāiki Floodway Stopbanks</b></p> <ul style="list-style-type: none"> <li>• within <b>120 metres</b> of the landward toes of the <b>Tarawera River stopbanks</b></li> <li>• within <b>140 metres</b> of the landward toe of the <b>lower Kaituna stopbanks</b></li> </ul>	contributing to heave and piping in soils with an underlying sand or pumice layer.
		<p>(b) <del>The digging or maintenance of any drain or any excavation within 60 metres of the landward toes of the Tarawera River stopbanks;</del></p> <ul style="list-style-type: none"> <li>• <del>On the true right of the river from the State Highway 30 bridge to the mouth; and</del></li> <li>• <del>On the true left of the river from 800 metres downstream of the Tumurau Lagoon structure to the mouth.</del></li> </ul>		
80.		<p><b>Explanation:</b> <del>The lower reaches of the Rangitāiki and Tarawera Rivers have layers of soils that are susceptible to piping failures beneath the stopbanks during flood events. The purpose of this rule is to minimise the risk of such failures occurring.</del></p>	<b>Move to start of Part II above</b>	



Part III - Additional Bylaws Applying to Floodways, Spillways and Ponding Areas <b>NEW</b>				
			<p>Part III of this Bylaw applies to Floodways, Spillways and Ponding areas, <b>specifically:</b></p> <ul style="list-style-type: none"> <li>• <b>Rangitaiki Floodway</b> (refer to Schedule 1 for map)</li> <li>• <b>Waioeka Floodway</b> (refer to Schedule 2 for map)</li> <li>• <b>Mangorewa Floodway</b> (refer to Schedule 3 for map)</li> <li>• <b>Waingaehe Floodway</b> (refer to Schedule 4 for map)</li> <li>• <b>Ngongataha Floodway</b> (refer to Schedule 5 for map)</li> <li>• <b>Te Rahu Ponding Area</b> (refer to Schedule 6 for map)</li> </ul>	

Floodways and Spillways				
			<p>No person shall, <b>without the prior written authority</b> of the Council in respect of the <b>Floodways or spillways:</b></p> <p>(a) Plant any tree or construct any dwelling or structure, or deposit any material in the Floodway or spillway that is likely, in the opinion of the Council, to obstruct the free flow of water.</p> <p>(b) Remove any <b>plant cover</b> from the ground within 20 metres of any spillway structure.</p> <p><b>Explanation:</b> For the avoidance of doubt, plant cover for Part III means any type of grass or low lying ground cover. This type of planting ensures ground protection of the floodway/spillway area without inhibiting the free flow of water in a flooding situation.</p> <p>(c) Carry out any earthworks or ploughing within 20 metres of any spillway structure.</p>	<p>Add</p> <p><b>Explanation:</b> For the avoidance of doubt, plant cover for Part III means any type of grass or low lying ground cover. This type of planting ensure ground protection of the floodway/spillway area without inhibiting the free flow of water in a flooding situation.</p> <p>As suggested by Ross Dowling (Independent Legal Review)</p>

Te Rahu Ponding Area and Spillway			
		<p>No person shall, <b>without the prior written authority</b> of the Council in respect of the <b>Te Rahu Ponding Area</b>:</p> <p>(a) Remove any plant cover from the ground within 20 metres of the spillway structure.</p> <p>(b) Carry out any earthworks or ploughing within 20 metres of the spillway structure.</p> <p>(c) Construct <b>any dwelling</b> within the Te Rahu Ponding Area.</p> <p><b>Note:</b> any farm buildings that are not dwellings will have no controls over floor levels and may be partially inundated by ponded water during flood events.</p>	<p>NZ4404:2010 Standard: Land Development and Subdivision infrastructure standard. Clause 4.3.5.1.</p> <p>Building Act 2004 s 71 building on land subject to natural hazards.</p> <p>Whakatāne District Plan 2017. Clause 18.2.3 Flooding.</p>

<b>Schedules - Draft Bay of Plenty Regional Council Flood Protection and Drainage Bylaw 2020</b>		
<b>Paragraph</b>	<b>Tracked changes</b>	<b>Comment</b>
<b>Schedule 1</b>	<b>Rangitāiki Floodway</b>	
Map	Rangitāiki Floodway.	
<b>Schedule 2</b>	<b>Waioeka Floodway</b>	
Map	Waioeka Floodway	
<b>Schedule 3</b>	<b>Mangorewa Floodways</b>	
Map	Mangorewa Floodways	
<b>Schedule 4</b>	<b>Waingaehe Floodway</b>	
map	Waingaehe Floodway	
<b>Schedule 5</b>	<b>Ngongataha Floodway</b>	
map	Ngongataha Floodway	
<b>Schedule 6</b>	<b>Te Rahu Ponding Area and Spillway</b>	
Map	Te Rahu Ponding Area and Spillway	
<b>Schedule 7</b>	<b>Schedule of Fees</b>	
	All fees are exclusive of GST.	
	<b>Breakdown of Recovery Fees</b>	
	<b>Other Functions or Services</b> Authority applications that are not routine and require technical investigation (e.g. engineering design and/or surveying) will be recovered at the actual and reasonable cost for staff and vehicles used.	
<b>Schedule 8</b>	<b>Weedcutter and spray boat capable drains</b>	

<b>Appendices - Draft Bay of Plenty Regional Council Floodway and Drainage Bylaw 2008</b>		
<b>Paragraph</b>	<b>Tracked changes</b>	<b>Comment</b>
<b>Appendix 1</b>	<b>Grass carp (<i>Ctenopharyngodon idella</i>)</b>	

Photo	Grass carp	
	Grass carp are a handsome, robust fish and commonly exceed 500 mm in length.	
	Their backs are a dark bronze colour, but this gradually fades to silver on the belly. The margins of their large scales are outlined in a darker colour, giving them a crosshatched appearance. Grass carp have no barbells, but can be distinguished from goldfish by the short dorsal fin with only 7-9 rays.	
	<p>Grass Carp are used as biological control agents and are an effective method of control for aquatic pest weeds and nuisance algae's within New Zealand.</p> <p>In fact they are frequently a more economic method for control than any of the alternatives such as manual harvesting or the use of chemical herbicides. In addition the on-going cost of managing a water body where Grass Carp have been stocked is negligible and when compared to the use of mechanical harvesters, suction dredging or chemical herbicides where repetitive applications or removals are required (typically every summer) comes out economically favourable for the use of Grass Carp.</p> <p>Grass carp are sourced from independent breeders and stocked into specific drains. Stock that are provided are free of known diseases and other potential pest organisms and are often sterile. They are also only stocked in enclosed drains to ensure an ecological effects on populations are prevented.</p>	Added text for explanation as to why they have specific protections clauses in the Bylaw