

Proposed



BAY OF PLENTY
REGIONAL COUNCIL
TOI MOANA

Flood Protection and Drainage Bylaw 2020

Statement of Proposal



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STATEMENT OF PROPOSAL

Overview

Bay of Plenty Regional Council is seeking public comment on a proposal to amend the “Bay of Plenty Regional Council Floodway and Drainage Bylaws 2008.

The Bylaws document is developed to protect and control drains and assets, including pumping stations, defences against water, river edge protection works and floodways managed by, or under the control of, the Bay of Plenty Regional Council (the ‘Council’).

The current Bylaws, “Bay of Plenty Regional Council Floodway and Drainage Bylaw 2008” (referred to as the ‘Bylaw’), were adopted in June 2008.

The Local Government Act (LGA) 2002 s159, requires that all Council Bylaws be reviewed every ten years, with two years to adopt a reviewed Bylaw.

Problem definition

The purpose of local government is to:

- enable democratic local decision-making and action by, and on behalf of, communities; and
- to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

In order to effectively manage local flood protection and drainage infrastructure, the Council has the ability, under the Local Government Act 2002, to develop specific rules to manage and control this infrastructure through Bylaws.

Council also needs to keep these Bylaws as current and fit for purpose as possible to reflect latest engineering thinking and science; previous experience gained through past flood events and asset failure; and information around current issues and risks.

The best way to do this is through formal consultation with those affected under a prescribed process outlined in the LGA.

Purpose of the Bylaw

The Bylaws are necessary for the protection and efficient operation of flood protection and drainage schemes managed by Council.

Flood protection and drainage scheme assets are constructed to prevent damage, danger and distress to the community from river flooding and problems associated with a lack of drainage. It is crucial that these assets are functioning properly when needed.

The Bylaws **do not apply** to any privately owned/managed drainage or flood protection systems or those that are managed by other local authorities.

Under the Bylaws, Council issues “Bylaw Authorities” to allow landowners to carry out works within Bylaw Applicable Areas.

Review

An internal review of the ongoing effectiveness of the existing Bylaws has now been completed. In most cases it has been decided that the existing Bylaw rules are effective for protection and effective operation of the flood protection and drainage scheme assets managed by Council.

However, in the ten years since the last Bylaws were developed, there have been new developments in geotechnical thinking; a number of significant flood events; and progress in scientific fields such as climate change, water management and flood management. All of which Council have taken into account when reviewing the Bylaws.

The review has highlighted some additional activities that when carried out in close proximity to assets, could have a detrimental effect on the integrity of these assets.

These activities include repeated ploughing, some methods of fence and pole installation, and the installation of intensified infrastructure for horticulture close to stopbanks.

Proposed new Bylaws outline the need for prior written authority from the council to undertake these activities and could have a significant impact on some landowners near assets in the lower reaches of the Rangitāiki, Tarawera and Kaituna Rivers in particular.

The amended, proposed Bylaws are attached as “Draft Bay of Plenty Regional Council Flood Protection and Drainage Bylaws 2020” (referred to as the ‘proposed Bylaws’).

A table of changes is also attached for ease of reading and to offer a rationale for these changes.

LEGISLATIVE COMPLIANCE

Under section 155 of the LGA 2002 the Bylaws review has to consider:

- That Bylaws are the most appropriate way of addressing a perceived problem.
- That the proposed Bylaws are the most appropriate form of Bylaws, and
- That the Bylaws are not inconsistent with the New Zealand Bill of Rights Act 1990.

Appropriateness of Bylaws to address a perceived problem

Under **s 155(1)** of the LGA, Council must determine whether a Bylaw is the most appropriate way of addressing a perceived problem.

To that end, alternative methods to using Bylaws to ensure protection and efficient operation of the flood protection and drainage systems, have been investigated. These include:

Adding rules to the Regional Natural Resources Plan

The Resource Management Act 1991 (RMA) provides for the Bay of Plenty Regional Council to develop Regional Plans; for example, the Regional Policy Statement or the Regional Natural Resources Plan; to assist it to carry out its functions under the RMA.

Because these are RMA-based documents they are not considered appropriate instruments for outlining the protection and control of drains and assets, especially as Bylaws are mandated through the Local Government Act 2002, not the RMA.

Regional Plans are typically developed to manage complex natural resource issues or implement a national policy statement. The time and cost of preparing a regional plan for the addition of rules relating to the flood protection and drainage schemes would be significant, and could not be justified against the lesser cost of adopting Bylaws.

The process for subsequently amending a regional plan in the future is also not considered efficient as an interim Bylaws document would still need to be adopted.

The process for establishing Regional Plans involves significant public input. The level of public consultation required for the preparation and review of Bylaws is, though still formal, a more appropriate level for this type of matter.

A Regional Plan would require a person to apply for a resource consent to authorise any non-compliance with the rules in the plan. Resource consents are

costly, and take time to process, as they may require public input (hearings) depending on the significance of the consent.

A Bylaw only requires 'prior written authority' which can be negotiated between Council and the applicant. Public input into the Bylaw authority process is not necessary because it is a matter between the landowner/occupiers and Council, working on behalf of the community.

The Bylaw authority process has proven to work well in the past.

The decision-making process under the Local Government Act 2002 for preparing and amending Bylaws is robust and comprehensive. It appropriately reflects the significance of the matter to be addressed maintaining the integrity of the river and drainage schemes.

Adding rules to a District Plan

Bay of Plenty Regional Council could transfer the responsibility for monitoring and enforcing clauses under the Bylaws to relevant territorial authorities (district councils under section **161(2)** of the Local Government Act). Rules would then be enacted under the District Plan.

This raises similar concerns to establishing a Regional Plan as outlined above.

The Regional Council sees itself in a more appropriate position to protect the integrity of these assets for the benefit of the whole region because of its role as manager of the flood protection schemes.

Some territorial authorities within the region may lack the capacity and resources to successfully monitor and/or enforce such rules in their District Plans. There is also a risk of the District Plan prioritising the best interests of the district above the region.

Developing Strategy/Collective Agreements

A strategy or collective agreement between landowners/occupiers and the Regional Council could be prepared with guidelines for landowners/occupiers.

A strategy or collective agreement would follow extensive public consultation to determine the roles and obligations of each party to protect the assets.

A strategy would work by relying on the goodwill of landowners/occupiers to ensure their actions are in accordance with the guidelines in the strategy. But unlike a regional plan or Bylaw, this option does not have any legal standing that could be enforced if necessary.

It is important that Council has an enforcement tool because unauthorised actions and works may result in adverse effects or damage to assets, putting lives, property and/or livelihoods at risk.

Develop Bylaws under the Local Government Act

Bay of Plenty Regional Council considers the continued use of a Flood Protection and Drainage Bylaws document to be the most effective method for ensuring the protection and ongoing efficient operation of the schemes.

The Local Government Act 2002 **s149** outlines the power of regional councils to make bylaws “...for the purpose of managing, regulating against, or protecting from, damage, misuse or loss...” of flood protection and flood control works.

The Bylaw Authority method is administratively quick, reasonably priced and effective. All of the other alternative methods have inherent monetary disadvantages and council considers the ongoing use of the Bylaws is the most effective for our ratepayers,

Most Appropriate Form of Bylaw

Under the LGA 2002, council must determine whether the bylaws are in the most appropriate form (e.g. standalone, amendment to existing document, consolidation with other bylaws).

There are a number of reasons why Council believes a standalone, written document is the most appropriate form of Bylaw (though this is an amendment of the previous 2008 Bylaw).

A standalone document:

- Hold all of the regulations in one place and is easily accessible
- The document focusses only on the Flood Protection and Drainage Bylaws and cannot be confused with others
- The document is relatively short and concise and can be easily printed or referenced in its entirety
- Becomes a repository for all the legal matters associated with Flood Protection and Drainage.

NZ Bill of Rights Act 1990

Under section **155(3)** of the Local Government Act 2002 Council must determine that the Bylaws are not inconsistent with the New Zealand Bill of Rights Act 1990.

The Bill of Rights Act 1990 protects the civil and political rights of all New Zealanders. The Act covers:

- Life and security of the person
- Democratic and civil rights
- Non-discrimination and minority rights
- Search, arrest and detention
- Criminal procedure
- The right to justice

Council considers the Bylaws as proposed here, are not inconsistent with the Bill of Rights Act 1990.



AMENDED BYLAW

The Flood Protection and Drainage Bylaws 2020 have a number of amendments from the 2008 document. This is due to new developments in geotechnical, hydrological and engineering thinking; Council learnings from a number of significant flood events; and the progress made in scientific fields such as climate change, water management and flood management.

The rationale for the proposed changes is outlined in the accompanying track changes tables.

BYLAW AUTHORITY FEES

The existing Bylaws contains a schedule of fees including a Standard Application Fee.

A Bylaw authority is the written approval from Bay of Plenty Regional Council to carry out a work or activity that would otherwise contravene the Bylaw.

Council intend to waive the application fee in the proposed Bylaws 2020, to encourage affected landowners to contact the Council when they wish to undertake activities outlined in the Bylaws, and to ensure these activities do not compromise the integrity of the flood protection and drainage systems.

Fees would only be charged for technical review and expert advice. The fees will be set as part of the Annual Plan 20/21 process – as an update to the Revenue and Finance Policy.

The new schedule of Bylaw authority fees is recommended as follows:

Proposed Schedule of Fees	All fees are exclusive of GST.
Standard Application Fee	For routine authority applications: \$0.00
Other Functions or Services	Authority applications that are not routine and require technical investigation (e.g. engineering design and/or surveying and site visits) will be recovered at the actual and reasonable costs.

PUBLIC CONSULTATION AND SUBMISSIONS



*Let us know
what you
think*

Any organisation or member of the public may make a submission on the proposed Flood Protection and Drainage Bylaws 2020.

Bay of Plenty Regional Council welcomes your views and feedback.

If you are a directly affected party (i.e. a person who owns land within a Bylaw Applicable Area) you will have received a letter outlining the review and process for consultation already.

Public submissions start at 8am on 27 March 2020 and close at 4pm on Tuesday 28 April 2020. Further information regarding the submissions process is provided at the end of this statement of proposal.

In light of the COVID-19 outbreak, all submissions will need to be made via our website www.boprc.govt.nz/bylawreview

Hearings relating to the proposed Bylaws will take place on 26 - 28 May 2020. We'll keep our website updated with how you will be able to participate in this process. Council will adopt the reviewed Bylaws on 25 June 2020 after considering all submissions.

The full proposed Bylaws document is available on our website www.boprc.govt.nz

And is also available from all Bay of Plenty Regional Council offices or by phoning to have a hard copy sent by mail.

Making a submission

A submission is your chance to tell us what you think about the content of the Statement of Proposal for the Bylaw Review.

We've got lots of information about making a submission on our website. It includes more information about how to make a submission, what you should put in your submission and whether you want to present it in person.

What's a submission?

It's a statement in support of, or in opposition to, any part of this statement of proposal and the proposed Flood Protection and Drainage Bylaws 2020.

How long do I have to make a submission?

The closing date for submissions is 28 April 2020. Between now and then Councillors and staff are available to answer any queries. Contact us, as outlined on the following page.

How do I make a submission?

Fill in the form and send or email it back to us. You can also visit our website and download a form, or make a submission electronically.

Be brief and clear about the matters that you support or oppose.

Remember:

- State the most important points you want Bay of Plenty Regional Council to consider
- Make your comments as specific as possible
- Note which part of the draft Bylaws, statement of proposal or summary your comments refer to by including page numbers and sections
- Clearly state your name, address, email and telephone number

Can I present my submission to Council?

Yes. If you want to present your submission in person please tick the box on the submission form. If you choose to do this, you will need to appear before council at a public meeting – these hearings are set for **26 - 28 May 2020** and more information can be found on our website.

Please note that due to COVID-19 we are looking at how these hearings are held.

Make an online submission

If you prefer, you can visit our website and make a formal submission electronically. Visit www.boprc.govt.nz and follow the links.

How to get a full copy of the Draft Flood Protection and Drainage Bylaws 2020

- visiting www.boprc.govt.nz and reading it online
- phoning us on **0800 884 880**
- emailing us on annualplan@envbop.govt.nz and we'll send one to you.



Find out more at
www.boprc.govt/drainagebylaw