

**CANTERBURY REGIONAL COUNCIL
FLOOD PROTECTION AND DRAINAGE BYLAW**

Under the Local Government Act 2002

Report and recommendations of the Hearing Panel

Hearing Panel:

Independent Commissioner Sharon McGarry (Chair)

Councillor Rod Cullinane

Councillor Lan Pham

CONTENTS

Section		Page No.
1.0	Introduction	2
2.0	Background	3
3.0:	Notification/Submissions/Hearing	4
4.0:	Identification of Issues	6
5.0	Access and Notification of Owners/Occupiers	7
6.0	Definition for 'Owned or Controlled by the Canterbury Regional Council'	10
7.0	Increased Scope of Section 5.1(b)(ii) of the Bylaw	11
8.0	Increased Scope of Section 5.3(d), (e), (g) and (h) of the Bylaw	12
9.0	Recommendation	13
Attachment 1	Hearing Panel's Minute #2 - Appendix 1	
Attachment 2	Recommended Changes to the Canterbury Regional Council Flood Protection and Drainage Bylaw 2013	

1.0 INTRODUCTION

Hearing Panel's Brief

- 1.1 The Canterbury Regional Council (**CRC** or 'the Council') proposes to amend the Canterbury Regional Council Flood Protection and Drainage Bylaw 2013 ('the Bylaw') and has the powers and duties to hear submissions on the Proposal to amend the Bylaw in accordance with sections 82, 83 and 156 of the Local Government Act 2002 (**LGA**).
- 1.2 Under Schedule 7 clause 32 of the LGA the Council delegated independent Hearing Commissioner Sharon McGarry (Chair), Councillor Rod Cullinane and Councillor Lan Pham ('the Hearing Panel') all the powers, functions and duties of the Council to hear and consider the submissions on the proposal to amend the Bylaw and provide a recommendation to the Council. This is the report and recommendation of the Hearing Panel.
- 1.3 The Council has adopted a special consultative procedure in accordance with sections 83, 86 and 156 of the LGA through public notification of the Statement of Proposal, a submission period, and providing the opportunity for people to present their views to the Council.

Preliminary Comments

- 1.4 Before moving on to the substantive portion of this report and recommendation, we make some preliminary comments.
- 1.5 Firstly, we record our appreciation at the manner in which the hearing¹ was conducted by all the parties taking part. The information provided by the Council and submitters has assisted us when assessing and determining the issues.
- 1.6 Secondly, as we noted in the hearing, we are tasked with providing a *recommendation* to the Council, not with making a final decision. The conclusions and recommendations contained in this report are therefore not binding upon the Council. The purpose of this report is to bring to the attention of the Council the relevant information and issues regarding the proposal to amend the Bylaw.

Procedural Matters

- 1.7 Prior to the hearing we issued Minute #1 (dated 17 August 2018) addressing the hearing process and procedural matters. The minute also disclosed to the parties that Councillor Cullinane, as General Manager for the North Canterbury Fish and Game Council, has a business relationship with a submitter, namely the Isaac Conservation and Wildlife Trust. The minute set out a process for any submitter to comment on or object to Councillor Cullinane's appointment to the Hearing Panel. No comment or objections were received.

¹ Although we refer to this as a 'hearing' throughout this report (given that we convened to hear submissions on the Bylaw) it was technically a meeting under the Local Government Official Information and Meetings Act 1987.

2.0 BACKGROUND

What is the Canterbury Regional Council Flood Protection and Drainage Bylaw 2013?

- 2.1 The purpose of the Bylaw 2013 is to manage, regulate and protect flood protection and flood control works belonging to or under the control of the CRC. The Bylaw controls activities that may affect the integrity or effective operation and maintenance of the flood protection and flood control works. The Bylaw enables the CRC to provide agreed levels of service for each river rating district through the preservation of access, and the prevention of damage to river and drainage infrastructure.
- 2.2 The Bylaw applies to the watercourses and drains identified in the attached Schedule 1, 2 and 3 maps, which reflect current river rating districts within the Canterbury Region. The Bylaw also applies to other mapped assets including flood protection vegetation and floodways; and assets not included in the schedules such as survey benchmarks, river flow and stage monitoring sites and groynes. Each river rating scheme has been formed in response to community demand and the service level provided for each scheme reflects the level of protection from flooding risk that the community is prepared to fund. The total value of the rating district infrastructure is estimated to be \$508 million (2017) which is made up of \$222 million for stopbanks, groynes and rock; \$252 million for trees; \$26 million for drains, culverts and floodgates; and \$8 million for tracks and fences.²
- 2.3 The proposed Bylaw identifies all drains and watercourses to which it applies and defines the geographical extent of the 59³ river and drainage rating schemes within the region. Over \$300 million of the flood protection infrastructure is on land not owned by the CRC and much of this not secured through any formal agreement with the landowners.
- 2.4 The Bylaw 2013 enables Council staff to enter private property, subject to advance notice, in order to undertake maintenance or new work for flood protection and drainage purposes. The Bylaw does not give permission to undertake maintenance or to construct new flood protection or drainage works. The majority of physical work is undertaken according to permissions granted under the Canterbury Land and Water Regional Plan (LWRP).⁴

What amendments to the Bylaw 2013 are proposed?

- 2.5 Section 158 of the LGA requires that any new bylaw made under the Act is reviewed within five years of the date on which the bylaw was made. The CRC undertook this review on 15 February 2018 and determined⁵ that the Bylaw 2013 was the most appropriate way of addressing problems relating to the protection and effective management of flood protection and control schemes and drainage network assets owned or controlled by the CRC; and that the Bylaw 2013 does not give rise to any implications under the New Zealand Bill of Rights Act 1990⁶. The Council also determined that a number of amendments should be made to improve the Bylaw 2013.
- 2.6 The 'Statement of Proposal to amend the Canterbury Regional Council Flood Protection and Drainage Bylaw 2013' dated May 2018 ('the proposal') set out the proposed changes to the Bylaw 2013. In summary, these changes include:
- The protection of the rivers associated with the Wairewa/Little River Rating District (established after the Bylaw 2013 came into effect) by adding the rating scheme to the Map Schedules.
 - Amendments to the definition of 'flood protection vegetation' to clarify that both deliberately planted and self-seeded vegetation is included in the Bylaw.

² Evidence of Mr Shaun McCracken, Canterbury Regional Council, dated August 2018 (para. 9, pg. 15).

³ Ibid (para 6, pg. 15).

⁴ Ibid (para 13, pg. 16).

⁵ In accordance with s155 of the LGA.

⁶ CRC Officer's Report by Ms Amy Bennetts, dated August 2018 (pg. 5)

- iii. Amendments relating to the dumping or deposition of material within setback distances of drains and small watercourses and plant debris in drains and small watercourses.
 - iv. Amendments to the application form for Bylaw Authority.
 - v. Wording amendments and the inclusion of advice notes and diagrams to ensure the content is clear, concise and consistent.
 - vi. Map corrections to reflect changes that have occurred to the extent of flood protection and flood control assets and schemes identified since 2013.⁷
- 2.7 Attached to the proposal document was an amended version of the Bylaw 2013 with tracked changes shown in red and a breakdown of the proposed changes and reasoning (as Appendix 2).

3.0 NOTIFICATION/SUBMISSIONS/HEARING

Notification/Submissions

- 3.1 The proposal to amend the Bylaw was publicly notified on 26 May 2018 and the submission period closed on 2 July 2018. Public letters were also sent to interested and potentially affected parties including owners and occupiers of land over which the Bylaw applies.
- 3.2 Due to a database error (caused by using the existing Bylaw Schedules and not the proposed Bylaw Schedules), owners and occupiers of land within the Wairewa/Little River rating district and next to the Chatterton stopbank were not sent a letter at the same time as other potentially affected parties were notified of the proposal.
- 3.3 This error was subsequently addressed by CRC staff by notifying those owners and occupiers missed out and extending the submission period to enable any further submission to be accepted.
- 3.4 A total of 13 submissions were received on the proposed Bylaw.
- 3.5 These submissions were helpfully summarised and commented on in the Reporting Officers' report.

The Hearing

- 3.6 Prior to the hearing, we issued Minute #1 outlining the hearing process and timeframes for the provision of the Reporting Officers' report and submitter expert evidence. The report was made available on the CRC website.
- 3.7 The hearing for those wishing to present submissions to the Hearing Panel was held on Monday 17 September and Tuesday 25 September 2018. We heard from the following people during the course of the hearing:

Submitters:

- Isaac Conservation and Wildlife Trust and Harewood Gravels Company Limited
 - Mr Bruce Rule (Operations Manager, Isaac Conservation and Wildlife Trust)
 - Ms Kim Seaton (Senior Planner, Novo Group Limited)
- Erralyn Farm Limited
 - Mr Errol Begg (Director of Erralyn Farm Limited)
 - Mr Ben Williams (Counsel, Chapman Tripp)
- Estate of DL and RD Parkinson
 - Mrs Annette Parkinson (Trustee)
- Banks Peninsula Community Board

⁷ Ibid (pg. 6)

- Ms Pam Richardson (also individual submitter)
- Ms Gwen Hindmarsh and Mrs Pauline Hindmarsh
- Ashley Gorge Farming Company Limited
- Mr Robert Johnston

Attendance by Canterbury Regional Council Officers:

- Ms Amy Bennetts (River Engineering Planning and Advisory Officer)
- Mr Shaun McCracken (Regional Lead, River Engineering)
- Ms Melissa Shearer (Senior Environmental Advisor, River Engineering)

- 3.8 The hearing was opened at 9.30am and after initial introductions and procedural issues, the hearing commenced with a presentation of the Reporting Officer's report by Ms Bennetts and technical evidence from Mr McCracken, followed by the submitters as outlined above. We exercised our opportunity to question all persons who appeared and Ms Shearer, who processes bylaw authority applications.
- 3.9 The hearing was reconvened on 25 September 2018 to hear from a submitter who could not attend the initial hearing date and for the Reporting Officers to provide a right of reply.
- 3.10 The Council's right of reply ('Reply Report') was provided in writing by Ms Bennetts and Mr McCracken. The Officers provided further revisions of the wording of the amendments to improve clarity and responded to submitter evidence. Attached to the Reply Report was a flow diagram showing the various CRC River Engineering guiding documents, their purpose, legislative directive, frequency of review, and the consultation required, which we had requested during the hearing. Also attached to the Council's reply was a memorandum from Ms Michelle Mehlhopt, Counsel with Wynn Williams Lawyers, commenting on the interaction between the LWRP and the proposal to amend the Bylaw, and the legal definition of the term 'occupier'.
- 3.11 Following the adjournment of the hearing, we issued Minute #2 (dated 28 September 2018) to enable the parties the opportunity to provide further comment on the further revisions of the wording of the amendments discussed during the hearing. These further revisions to the proposed amendments were attached to the minute as Appendix 1 and are appended to this report for reference as **Attachment 1**.
- 3.12 Further comment was received on 12 October 2018 from legal counsel for the Isaac Conservation and Wildlife Trust and Harewood Gravels Company Limited confirming support of the revised wording of the amendments.
- 3.13 We were advised by email on 17 October 2018 that the Reporting Officers had no further final comments for a right of reply following comments from submitters.
- 3.14 We closed the hearing on 23 October 2018 having determined we had sufficient information to complete our report and recommendation.
- 3.15 We have considered all the written and oral submissions in coming to our recommendations, including the submissions by those submitters who chose not to attend the hearing.
- 3.16 In addition, we requested a copy of the CRC's 'Code of Practice for Defences Against Water and Drainage Schemes' (June 2015) and the 'CRC Engineering Specifications' (June 2017) referred to in the Reporting Officers' report.

4.0 IDENTIFICATION OF ISSUES

Principle Issues

- 4.1 In considering the issues raised in submissions, the Officer's Report addressed the following key issues:
- a) Access and notification of owner/occupiers (section 2.1);
 - b) Service provided by the Council to Rating Districts (section 2.2);
 - c) The status of existing activities (section 2.3);
 - d) The extent of Rating Districts (section 2.4);
 - e) Addition of Wairewa/Little River (section 2.5);
 - f) Definition for 'owned or controlled by the Canterbury Regional Council' (section 2.6);
 - g) Increased scope of Section 5.1(b)(ii) of the Bylaw (section 2.7); and
 - h) Increased scope of certain subsections to Section 5.3 of the Bylaw (section 2.8).
- 4.2 We accept this accurately reflects the key issues raised in submissions. We agree with the Reporting Officers that there are a number of issues raised that are not relevant to our consideration of the proposal.
- 4.3 We consider matters regarding the creation of a new rating district; or the level of service provided and frequency of maintenance on existing infrastructure, are outside the scope of the proposed to amend the Bylaw. However, these were matters raised at the hearing by Mr Johnston and Mrs Parkinson and we have sought information on the appropriate processes to address these matters.
- 4.4 We accept that the amendments proposed do not negate any lawfully established commitments, activities or structures. We therefore agree with the Reporting Officers that no changes are required to address these concerns.
- 4.5 While we acknowledge the LWRP references the Bylaw's Map Schedules to define the extent of a 'river bed', the amendments proposed do not propose any significant changes, except to reflect the new Wairewa/Little River Rating District. We agree with the Reporting Officers that the extent of a rating district and the frequency and extent of works undertaken are outside the scope of the proposed amendments to the Bylaw.
- 4.6 We note submissions supporting the Bylaw in general and the addition of the Wairewa/Little River Rating District and accept no changes to the Bylaw are required.
- 4.7 The submission by Erralyn Farm Limited relates to the appropriateness of the flood protection vegetation line, as identified in Schedule 1 of the Bylaw, in relation to the property of Mr Errol Begg. The submission sought an amendment to the flood protection line to exclude a block of land ('the triangle paddock') from the area identified as inside the Bylaw as flood protection vegetation line.
- 4.8 The legal submissions of Mr Ben Williams (Counsel for Erralyn Farm Limited) and the evidence of Dr Mark Mabin (Associate Director, AECOM) set out the background to the Erralyn Farm submission and the reasons for the changes to the flood protection vegetation line sought.
- 4.9 Although we accept that the CRC has not sought to change the flood protection vegetation line, and that we are only required to consider the effect of any changes proposed, we asked the Reporting Officer to provide additional information at the hearing in response to the submissions and evidence provided by Erralyn Farm Limited.
- 4.10 On the basis of the evidence presented and the response of the Reporting Officer and Mr McCracken, we are satisfied that the flood protection vegetation line is the most appropriate for the purpose of the Bylaw.
- 4.11 The legal submission presented by Mr Williams on behalf of Erralyn Farm Limited highlighted the additional 'Note' to be added to Section 5.4 of the Bylaw and the uncertain

legal status of such an advice note. This was addressed in the Council's Reply Report with a recommendation to revise the structure and wording of the Section 5.4, as set out in Appendix 1 of our Minute #2 (see appended **Attachment 1**).

- 4.12 No further comments were received on the revised wording of Section 5.4. We therefore accept the Reporting Officers' recommendation to incorporate the note wording into the wording of Section 5.4.
- 4.13 Our assessment of the remaining relevant issues identified in the Officer's Report (set out above) is addressed below. We then arrive at our **overall recommendation** in section 9.0 below.
- 4.14 We have focussed our assessment on the matters in contention. Where deletions, additions or amendments have been requested by a submitter and accepted by the Reporting Officer, we have generally endorsed those changes without further comment.

5.0 ACCESS AND NOTIFICATION OF OWNERS/OCCUPIERS

Issues Raised

- 5.1 Two submitters raised concerns over access and notification of owners/occupiers.
- 5.2 Mr Stott opposed access to private property under the Bylaw at any time and requested that CRC staff should be trained on how to handle people and better communicate with property owners.
- 5.3 Ms Gwen Hindmarsh outlined the recent experience of her mother Mrs Pauline Hindmarsh when an authority under the Bylaw was granted to a person to establish riparian plantings on road reserve adjacent to a waterway, where the road reserve adjoins Mrs Hindmarsh's property. She was concerned that her mother had not been notified of the application and that approval as the adjoining landowner was not required before the authority was granted. She provided photographs and documents to show how the landowner on the opposite side of the waterway had been granted a Bylaw authority to establish plantings on her mother's side of the waterway, without her approval or approval from the Selwyn District Council as the owner of the road reserve for access. She outlined the difficulties this had caused with the landowner and the process she had followed to object to the granting of the approval without her mother's written approval.
- 5.4 In response to questions, Ms Hindmarsh explained how she had objected to the grant of the Bylaw authority on behalf of her mother, but had been advised that the approval of the adjoining landowner was not required. She said she wanted to ensure no other landowners were affected by the grant of a Bylaw authority like her mother had been.
- 5.5 The written submission by Ms Hindmarsh also stated that surveying should be carried out on all properties where the CRC intends to issue a Bylaw authority.

Evaluation

- 5.6 The Reporting Officer noted that Section 7 of the Bylaw requires CRC staff to give reasonable notice of at least 48 hours for survey work or drain maintenance and five days' notice for maintenance of defences against water, unless for emergency works. They considered no change to the notice requirements of the Bylaw is needed. However, they advised that CRC staff operating under the Bylaw would be reminded of the notice requirements to ensure compliance with the Bylaw.
- 5.7 The Reporting Officer clarified that an application for a Bylaw authority requires the written approval of the owner and/or occupier. In the case of Mrs Hindmarsh, they advised that the Selwyn District Council is the owner of the road reserve where the plantings were established. They noted that Mrs Hindmarsh is the owner of the property

adjoining the road reserve and is therefore not the owner/occupier of the land for which a Bylaw authority is sought.

- 5.8 The Reporting Officers advised they had reviewed the Bylaw authority application form and the objection process provisions of the Bylaw, in light of Mrs Hindmarsh's concerns. They noted that amendments to the application form had been proposed to make it clear that if the applicant for a Bylaw authority is not the owner/occupier, the authority will not be granted without the owner/occupier's written approval.
- 5.9 The Reporting Officers considered it was unnecessary to obtain survey information for every Bylaw authority application given the substantial resources this would require. They advised that the CRC holds the necessary owner/occupier information against which each application is assessed. They noted the authority does not grant access to the site and must be sought from the owner/occupier.
- 5.10 In reply, the Reporting Officers outlined that they considered it was fair and reasonable that only owner/occupiers and applicants are able to object to decisions or authorisations made under the Bylaw. To address this, they recommended the following amendments to Section 9.5 of the Bylaw:
- 'Objections process*
- (a) Any *person who applies for authority under this Bylaw, or owner or occupier of land subject to this Bylaw, within 14 days of receiving any decision or authority in relation to this Bylaw, may 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.*
 - (b) *The Council considering an objection under clause 9.5 (a) above, may uphold or amend or rescind the decision or authority, and in making its determination must have regard to:*
 - i. *The evidence on which the decision or authority was based;*
 - ii. *The matters presented in support of the objection; and*
 - iii. *Any other relevant matters.*
 - (c) *The Council must, as soon as practicable, give written notice to the applicant, owner, or occupier of its determination, including the reasons for that determination.'*
- 5.11 Attached to the Council's Reply Report was a legal opinion from Ms Mehlhopt on the definition of the term 'occupier'. She referred to definition of 'occupier' in Bylaw and the definition of the term 'inhabitant occupier' under the Resource Management Act 1991; and the relevant caselaw regarding the definition of occupier. She considered that in accordance with the Bylaw definition an occupier was a person who exercised actual dominion or control over a property at the relevant time and who had a lease or a license to undertake the activities. She concluded that Mrs Hindmarsh was therefore not an occupier under the Bylaw as she does not live on the road reserve and has no legal right to graze stock on the road reserve.
- 5.12 In reply, on the basis of the advice of Ms Mehlhopt, the Reporting Officers recommended minor amendments to add clarity to the definition of the term 'occupier' as follows:
- 'Occupier - In relation to any property, means the lawfully authorised inhabitant occupier of that property including and persons who have legal right to undertake activities on that property.'*
- 5.13 In response to our questions regarding the Council's ability to invalidate or revoke a Bylaw authority on the basis of inaccurate information, the Reporting Officer reviewed Section 9.1 of the Bylaw. In reply, the Reporting Officer recommended the following amendments:

'Revocation of authority

- (a) *The Council may, ~~in accordance with this clause,~~ revoke any authority granted under this Bylaw where:*

- i. ~~if the holder of that authority contravenes or fails to comply with any condition of the authority;~~ or
 - ii. if the information made available to the consent authority, by the applicant for the authority for the purposes of the application, contained inaccuracies which materially influenced the decision made by Council in respect of the application.
- (b) Where the authority is to be revoked in accordance with clause 9.1(a)(i), ~~the~~ Council shall not revoke any such authority without giving to the holder a notice in writing which:
- i. Sets out the respects in which the holder has contravened or has failed to comply with any condition of the authority; and
 - ii. If the breach or failure is capable of remedy, gives the holder a reasonable time within which to remedy it; and
 - iii. Warns the holder that the Council may revoke the authority if the holder does not either:
 - 1. Remedy the breach or failure within the time specified or within such further time as the Council may allow on application; or
 - 2. Make, within a time to be specified in the notice, a written submission to the Council setting out reasons why the authority should not be revoked.
- (c) On receipt of a request by the holder for further time pursuant to clause 9.1(b)(iii)(1), or of a submission pursuant to clause 9.1(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 revoke the authority.'

Conclusion

- 5.14 The issues raised by Mr Stott regarding access do not relate to the proposed amendments to the Bylaw, as no changes to the Section 7 notice requirements are proposed. We were reassured that CRC staff operating under the Bylaw are made aware of the notice requirements for land entry. We are satisfied that no changes are required to the notice requirements or access provisions of the Bylaw.
- 5.15 We have considered the issues raised by Mrs Hindmarsh and the submissions of Ms Hindmarsh on her mother's behalf. While we acknowledge this is not the appropriate process for objecting to the grant of an authority, we have considered the case of Mrs Hindmarsh to ensure the provisions are appropriate and that an appropriate form of recourse, by way of an objection process, is available.
- 5.16 We agree with the Reporting Officers that it is appropriate that only the applicant, owner and/or occupier can object to the granting of an authority and accept the recommended amendments to Section 9.5 of the Bylaw to reflect this.
- 5.17 Overall, we are satisfied that the requirements of the Bylaw were followed and that no further amendments to the Bylaw are required. However, we accept the recommended changes to the application form to clarify that a Bylaw authority will not be granted without the owner/occupier's written permission.
- 5.18 We do not consider it is necessary to survey land prior to granting a Bylaw authority, unless landownership is unclear or in dispute. We are satisfied CRC staff are required to check land ownership against the land tenure information available to ensure that written approval is obtained from owners/occupiers prior to granting an authority.

6.0 DEFINITION FOR ‘OWNED OR CONTROLLED BY THE CANTERBURY REGIONAL COUNCIL’

Issues Raised

- 6.1 One submitter noted clarity was needed for the definition of ‘owned or controlled by the Canterbury Regional Council’.
- 6.2 Ms Richardson, on behalf of the Banks Peninsula Community Board and herself, requested as much clarification as possible in terms of the responsibilities and functions of the regional council and the district council.

Evaluation

- 6.3 The Reporting Officer clarified that the Bylaw does not apply to all flood protection and flood control works, only those owned or controlled by the Council and mapped in Schedules 1-3. They considered the phrase ‘owned or controlled by the Canterbury Regional Council’ is sufficiently clear and is commonly understood. No inclusion of a definition of ‘owned or controlled by the Canterbury Regional Council’ was therefore recommended.

Conclusion

- 6.4 In having regard to the submission made, we are satisfied that the definition of ‘Flood protection and flood control works’ and the associated definitions of what flood protection and control works are covered by the Bylaw (Schedules 1-3) are sufficient. We therefore accept the recommendation of the Reporting Officer that no definition for ‘owned or controlled by the Canterbury Regional Council’ is required.

7.0 INCREASED SCOPE OF SECTION 5.1(b)(ii) OF THE BYLAW

Issues Raised

- 7.1 One submitter, Hilton Haulage Limited, submitted that the proposed amendment to Section 5.1(b)(ii) was opposed on the basis it was unnecessarily broad and changed the intention of the rule.

Evaluation

- 7.2 The Reporting Officer acknowledged the proposed amendment to the wording would make the application of the provision too broad, but noted that the intention was to capture any activity which may have an adverse effect on the integrity or effective operation of the drains or small watercourses.
- 7.3 The Officer's Report set out further recommended changes based on retaining the original Bylaw wording with the addition of '...affect bank stability, or [have] the effect of a defence against water, or...'.
- 7.4 Following further discussion at the hearing, the Reporting Officer provided a further amendment to provision Section 5.1(b)(ii), as follows:

'within 7.5 metres of the top of the bank of any drain or small watercourse that may interfere with access for inspection or maintenance purposes. affect bank stability, or have the effect of stopping, diverting, controlling, restricting, or otherwise regulating the flow or spread of water, including floodwaters, in or out of a drain or small watercourse.'

- 7.5 This further revision of the amendment was circulated to submitters as part of Appendix 1 attached to our Minute #2, following the hearing adjournment.
- 7.6 No further comment regarding the further revision was received from Hilton Haulage limited or any other submitter.

Conclusion

- 7.7 We are satisfied that the further wording changes recommended by the Reporting Officer address the concerns raised by the submitter and add clarity without changing the intent of the provision. We therefore accept the recommended changes.

8.0 INCREASED SCOPE OF CERTAIN SECTIONS 5.3(d), (e), (g) and (h) OF THE BYLAW

Issue Raised

- 8.1 Two submissions, Harewood Gravels Company Limited and Isaac Conservation and Wildlife Trust, raised concerns that the amendments proposed to Section 5.3(d), (e), (g) and (h) create a broader application of these provisions than intended.
- 8.2 This was addressed at the hearing in the evidence of Mr Bruce Rule (Operations Manager, Isaac Conservation and Wildlife Trust) and Ms Kim Seaton (Senior Planner, Novo Group Limited).

Evaluation

- 8.3 The Officer's Report clarified the intention of the provisions and proposed further changes to address the concerns of the submitters. The Reporting Officer recommended amendments to the wording and inclusion of a diagram to clarify that the provisions are not intended to apply to land located between a waterway and a tertiary or secondary stop bank.
- 8.4 There was discussion in relation to the further revision of the wording and the addition of further words to the diagram to assist with clarity and certainty. This further revision was included in Appendix 1 attached to our Minute #2 (**see Attachment 1**) for further comment.
- 8.5 A response from legal counsel representing Harewood Gravels Company Limited and Isaac Conservation and Wildlife Trust was received stating the submitters supported the further amendments.

Conclusion

- 8.6 We are satisfied that the further recommended changes Section 5.3(d), (e), (g) and (h) and the addition of a diagram to the Bylaw provisions address the concerns raised by submitters. We therefore accept the recommended changes.

9.0 RECOMMENDATION

- 9.1 Having considered all submissions received and evidence presented at the hearing, we conclude that the proposal to amend the Bylaw is the most appropriate way to achieve the protection and effective management of flood protection and flood control assets owned or controlled by the CRC; and that the proposed amendments to the Bylaw do not give rise to any implications under the New Zealand Bill of Rights Act 1990. We therefore resolve to recommend to Environment Canterbury that the Canterbury Regional Council Flood Protection and Drainage Bylaw 2013 be amended, as shown in **Attachment 3** of this report

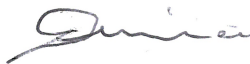
DATED AT CHRISTCHURCH THIS 19th DAY OF NOVEMBER 2018



Sharon McGarry
Independent Commissioner
Chair of Hearing Panel



Lan Pham
ECan Councillor
Member of Hearing Panel



Rod Cullinane
ECan Councillor
Member of Hearing Panel

ATTACHMENT 1.

Hearing Panel's Minute #2 – Appendix 1

1. Section 5.1(b)(ii) to read as follows:

within 7.5 metres of the top of the bank of any drain or small watercourse that may interfere with access for inspection or maintenance purposes, affect bank stability, or have the effect of stopping, diverting, controlling, restricting, or otherwise regulating the flow or spread of water, including floodwaters, in or out of the drain or small watercourse.

2. Subclause (iii) of Sections 5.3(d), (e), (g) and (h) to read as follows:

iii. Between ~~the a defence against water which forms a part of the primary flood defence system of a watercourse and the opposite~~ bank of ~~any the~~ watercourse ~~and any adjoining defence against water in respect to which the defence against water applies."~~

3. Section 5.4 Flood protection to read as follows:

No person shall, without the prior authority of the Council -

(a) Remove, or damage; ~~or allow stock to damage~~

(b) Allow stock to graze within

any flood protection vegetation that is managed, or has been planted adjacent to, on the banks, or within, a river by the Council or its predecessors.

The extent of this vegetation is defined as the area between the Flood protection vegetation lines as shown in Schedule 1 and any other areas of vegetation outside these lines that is specifically identified in Schedule 1.

4. Section 9.1 Revocation of authority to read as follows:

(a) The Council may, ~~in accordance with this clause,~~ revoke any authority granted under this Bylaw where:

i. ~~if~~ the holder of that authority contravenes or fails to comply with any condition of the authority; or

ii. if the information made available to the consent authority by the applicant for the authority for the purposes of the application contained inaccuracies which materially influenced the decision made by Council in respect of the application.

(b) Where the authority is to be revoked in accordance with clause 9.1(a)(i), ~~The~~ Council shall not revoke any such authority without giving to the holder a notice in writing which:

- i. Sets out the respects in which the holder has contravened or has failed to comply with any condition of the authority; and
- ii. If the breach or failure is capable of remedy, gives the holder a reasonable time within which to remedy it; and
- iii. Warns the holder that the Council may revoke the authority if the holder does not either:
 - 1. Remedy the breach or failure within the time specified or within such further time as the Council may allow on application; or
 - 2. Make, within a time to be specified in the notice, a written submission to the Council setting out reasons why the authority should not be revoked.

ATTACHMENT 2.

**Hearing Panel's Recommended Changes to Amend the Canterbury Regional Council
Flood Protection and Drainage Bylaw 2013**

Canterbury Regional Council Flood Protection and Drainage Bylaw 2013

2 April 2013

amended 16 January 2019





This is a true and correct copy of the Canterbury Regional Council Flood Protection and Drainage Bylaw 2013, by the Canterbury Regional Council.

The Common Seal of the Canterbury Regional Council was fixed in the presence of:

**Bill Bayfield
Chief Executive
Canterbury Regional Council**

**Dame Margaret Bazley, ONZ, DNZM, Hon DLit
Chairperson
Canterbury Regional Council**

14 March 2013

**5 Sir William Pickering Drive,
PO Box 345
Christchurch
Phone (03) 365 3828
Fax (03) 365 3194**

**75 Church Street
PO Box 550
Timaru
Phone (03) 688 9060
Fax (03) 688 9067**



Explanatory Note

This note does not form part of the Bylaw.

The Canterbury Regional Council Flood Protection and Drainage Bylaw 2013 has been prepared under the Local Government Act 2002 to provide for the ongoing management and efficient operation of flood protection and flood control works that are owned or controlled by the Canterbury Regional Council. These include drainage schemes, flood protection schemes, floodways and areas of flood protection vegetation constructed and managed to prevent damage, danger, or distress to the community from river flooding and poor drainage. It is crucial that these works function properly when needed.

People undertaking activities within the vicinity of these flood protection and flood control works will require authority from the Council under this Bylaw where the activity could impact on the integrity or efficient operation of the works.

The Bylaw does not apply to any privately owned/managed drainage or flood protection schemes, or those that are managed by other local authorities.

The Bylaw replaces previous bylaws for the management of watercourses under the control of the former North Canterbury and South Canterbury Catchment Boards, prepared under the Soil Conservation and Rivers Control Act 1941, and which ceased to have effect in November 2011 when the Natural Resources Regional Plan became operative. [This Bylaw originally came into effect on 2 April 2013 and underwent its first review in 2018.](#)

Compliance with the Bylaw does not remove the need for activities to comply with the Resource Management Act 1991, and the relevant regional and district plans. Activities within the beds of lakes and rivers may be subject to rules in regional plans in accordance with section 13 of the RMA. Any activity occurring within the Coastal Marine Area ~~will~~may require resource consent under section 12 of the Resource Management Act.



Table of Contents

1. Title	1
2. Commencement.....	1
3. Purpose	1
4. Definition of Terms.....	2
5. Activities Requiring Bylaw Authority	3
5.1 Drains and small watercourses	
5.2 Floodways	
5.3 Defences against water	
5.4 Flood protection vegetation	
5.5 Hydrological devices and equipment	
5.6 Survey benchmarks	
5.7 Unauthorised defences against water	
6. Activities Required to be Undertaken	6
6.1 Crossings	
6.2 Fencing of drains	
6.3 Access	
6.4 Obstructions	
6.5 Pumping stations	
7. Land Entry	7
7.1 Inspection	
7.2 Surveys	
7.3 Drain maintenance works	
7.4 Maintenance of defences against water	
7.5 Access	
7.6 Obstruction to offices and contractors	
7.7 Maintenance of Canterbury Regional Council drains by private individuals	
8. Applying for an Authority.....	9
8.1 Authority	
8.2 Fees	
8.3 Deeming authority	
9. Compliance and Enforcement.....	10
9.1 Revocation of authority	
9.2 Offence	
9.3 Notice to remedy	
9.4 Removal of works	
9.5 Appeals/Objections process	
Schedules	12
See separate Map Volume	
Appendices.....	13
1. Application Form for Authority under the Flood Protection and Drainage Bylaw 2013	
2. <u>Diagrams illustrating the relevant areas referred to in sections 5.1 – 5.3.</u>	

CANTERBURY REGIONAL COUNCIL FLOOD PROTECTION AND DRAINAGE BYLAW 2013

The Canterbury Regional Council, pursuant to the powers contained in the Local Government Act 2002, makes the following Bylaw.

1. Title

This Bylaw shall be known as the Canterbury Regional Council Flood Protection and Drainage Bylaw 2013.

2. Commencement

This Bylaw shall come into force on 2 April 2013.

3. Purpose

The purpose of this Bylaw is to manage, regulate and protect flood protection and flood control works (including drainage networks) belonging to or under the control of the Canterbury Regional Council from damage or misuse.

This Bylaw only controls activities that may affect the integrity or effective operation and maintenance of the flood protection and flood control works.

4. Definition of Terms

Authority	Means any permit issued by the Council in respect of the requirements of this Bylaw.
Construct	Includes erect, alter, reconstruct, replace, extend, remove and demolish.
Council	Means: a) The Canterbury 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.
Crossing	For the purposes of this Bylaw means any bridge, culvert, set of pipes or ford across a watercourse which provides passage for people, stock, vehicles or equipment.
Defence against water	Means any structure or equipment, including any dam, bund, weir, spillway, floodgate, bank, stopbank, retaining wall, rock, protection structures <u>(including erosion protection structures)</u> , groyne, anchored tree protection or reservoir, that is designed to have the effect of stopping, diverting, controlling, restricting or otherwise regulating the flow or spread of water, including floodwaters, in or out of a watercourse, for the purpose of flood mitigation and/or drainage. For the purposes of this Bylaw, means any defence against water that is owned or controlled by the Canterbury Regional Council. This includes all defences located between the flood protection vegetation lines, the floodway lines, and along the drains and small watercourses as shown in
Drain	Means a channel, either artificially constructed or a modified watercourse, which is used to either lower the water table or divert water. For the purposes of this Bylaw, means any drain as shown in Schedules 1 and 2.
Earthworks	Means any activity that exposes, disturbs, places or deposits soil, other than routine cultivation of soil up to a depth of 300 millimetres in preparation for sowing grass or crops.
Equipment	Means any equipment, devices or machinery associated with managing drains, small watercourses or defences against water. For example floodgates, pump stations and water level recorders.
Erosion protection	Means any tree or shrub or part thereof planted, buried or tied within or on any bank of any watercourse, for the purpose of protecting against bank erosion.
Excavation	Means the removal of material, which results in a hole or cavity, other than boring or digging of holes up to 1.5 metres depth for immediate placement of posts or piles, or driving posts or piles.
Flood protection vegetation	Means all trees and shrubs, <u>including those deliberately planted, or self-seeded</u> , owned or controlled by Council for flood <u>or erosion</u> protection purposes occurring between the "Flood protection vegetation" lines on the Schedule 1 maps and any other specific areas of vegetation plantings for flood protection outside these lines that are identified in Schedule 1. Where only one Flood protection vegetation line is shown, the area of vegetation to be managed for flood protection will be the area between the line and the adjacent edge of the active channel. Farm
Flood protection and flood control	Includes defences against water, drains, small watercourses, floodways and flood protection vegetation.
Floodway	Means any floodway as shown in Schedule 3.
Occupier	In relation to any property, means the <u>lawfully authorised</u> inhabitant occupier of that property <u>including and</u> persons who have legal right to undertake activities on that property.
Owner	In relation to any property, means the person or persons entitled to receive the rack rent thereof, or who would be entitled if the property were let to a tenant at a rack rent.
Person	For the purposes of this Bylaw does not include any person duly authorised by Council in the exercise of any powers or duties conferred upon Council under this Bylaw.
Small watercourse	For the purposes of this Bylaw means any small watercourse as shown in Schedule 1.
Stock	For the purposes of this Bylaw means any land grazing animal managed for recreational or agricultural purposes.
Structure	Means any building, crossing, equipment or other facility made by people and which is fixed to land; and includes but is not limited to, any fence, gate, line, raft, pipeline, cable, wire, rock, headwall, bridge or culvert, but excludes fishing nets placed temporarily within a watercourse.
Watercourse	For the purpose of this Bylaw, means all rivers, streams, floodways, drains and small watercourses through which water flows permanently or intermittently, and in respect of which there are flood protection and flood control works.

5. Activities Requiring Bylaw Authority

Note 1: Bylaw Authority only applies to activities undertaken within the vicinity of flood protection and flood control works owned or controlled by the Canterbury Regional Council, and where those activities have the potential to adversely affect the integrity or effective operation and maintenance of the flood protection and flood control works (including drainage networks).

Note 2: Resource consent or further authorisation may also be required from the Canterbury Regional Council, relevant ~~territorial~~ local authority, ~~or the Department of Conservation, New Zealand Historic Places Trust, or other~~ relevant regulatory agencies to carry out these activities.

Note 3: Diagrams are included in Appendix 2 to illustrate the relevant areas covered by sections 5.1-5.3.

5.1 Drains and small watercourses

No person shall, without the prior written authority of the Council -

- (a) Widen, deepen, infill, or otherwise alter any drain or small watercourse;
- (b) Dump or deposit any thing;
 - i. into a drain or small watercourse; or
 - ii. within 7.5 metres of the top of the bank of any drain or small watercourse that may interfere with access for inspection or maintenance purposes, affect bank stability, or have the effect of stopping, diverting, controlling, restricting, or otherwise regulating the flow or spread of water, including floodwaters, in or out of a drain or small watercourse.
- (c) Plant or allow to grow, any vegetation within 7.5 metres of the top of the bank of any drain or small watercourse that may interfere with access for maintenance or inspection purposes;
- (d) Plant or allow to grow any vegetation or leave cut plant debris in, or allow plant debris to enter, any drain or small watercourse that may;
 - i. impede the flow of water; or
 - ii. interfere with access for maintenance or inspection purposes;
- (e) Construct or locate any structure;
 - i. in, over, through or under any drain or small watercourse; or
 - ii. on or within 7.5 metres of the top of the bank of any drain or small watercourse;
- (f) Remove, adjust or interfere with any structure, or equipment relied on for the operation of any drain or small watercourse;
- (g) Connect any pipe, channel or other flow conduit, to any drain or small watercourse; (h) Remove, damage, or allow stock to damage;
 - i. any vegetation adjacent to a drain or small watercourse that has been planted or is required for erosion protection purposes; or
 - ii. any fence that has been erected to protect that vegetation; or
 - iii. any drain or small watercourse, or the banks of those watercourses.

Explanation: Routine maintenance of structures in and beside drains and small watercourses that existed prior to this Bylaw becoming operative does not require authority under this Bylaw, unless that maintenance causes a new adverse effect on the integrity or effective operation and maintenance of the drainage network, flood protection and flood control works. Authority will however be required if the scale of the structure changes or it needs to be replaced or relocated.

5.2 Floodways

No person shall, without the prior written authority of the Council -

- (a) Widen, deepen, infill, divert or otherwise alter any floodway;
- (b) Place or allow to be placed in any floodway any material or object that could impede or deflect flood or drainage flows;
- (c) Plant or allow to grow any vegetation in any floodway that may;
 - i. impede or deflect the flow of water; or
 - ii. interfere with access for maintenance or inspection purposes;
- (d) Construct or locate any structure in, over, through or under any floodway.

Explanation: Fences in, over or through drains and floodways do not require authority if they are constructed and maintained at all times so that they do not impede or deflect the flow of water or block access for maintenance.

5.3 Defences against water

No person shall, without the prior authority of the Council -

- (a) Alter or otherwise interfere with any defence against water;
- (b) Damage or allow damage to occur to any defence against water;

Explanation: The intent of the Bylaw is to control direct forms of damage inflicted on the flood protection or flood control works owned or controlled by the Council. Indirect forms of damage resulting from flow modification or the operational conveyance of water by hydroelectricity infrastructure are not activities controlled by this Bylaw.

- (c) Allow stock to damage or overgraze vegetation on any defence against water;
- (d) Plant or allow to grow any shrub, hedge, tree, or part thereof;
 - i. On any defence against water; or
 - ii. Within 7.5 metres of the landward side of any defence against water; or
 - iii. Between the a defence against water which forms a part of the primary flood defence system of a watercourse and the opposite bank of any the watercourse and any adjoining defence against water in respect to which the defence against water applies;
- (e) Dump or deposit any thing;
 - i. On any defence against water; or
 - ii. Within 7.5 metres of the landward side of any defence against water; or
 - iii. Between the a defence against water which forms a part of the primary flood defence system of a watercourse and the opposite bank of any the watercourse and any adjoining defence against water in respect to which the defence against water applies;
- (f) Remove, adjust, or interfere with any equipment including pump stations, relied on for the operation of any defence against water;

- (g) Construct or locate any structure;
 - i. On, in, under, over or through any defence against water; or
 - ii. Within 7.5 metres of the landward side of any defence against water; or
 - iii. Between ~~the a defence against water which forms a part of the primary flood defence system of a watercourse and the opposite~~ bank of ~~any the~~ watercourse ~~and any adjoining defence against water in respect to which the defence against water applies;~~
- (h) Carry out any earthworks or excavation, including for construction of a drain or for building foundations;
 - i. ~~On, in, under, over or through~~ Within 7.5 metres of any defence against water; or
 - ii. Within 7.5 metres of the landward side of any defence against water, or within 20 metres of the stopbanks for those parts of the lower Ashley/Rakahuri and lower Waimakariri Rivers shown in Schedule 1; or
 - iii. Between ~~the a defence against water which forms a part of the primary flood defence system of a watercourse and the opposite~~ bank of ~~any the~~ watercourse ~~and any adjoining defence against water in respect to which the defence against water applies;~~
- (i) Construct any crossing in, over, through, along or under any defence against water;
- (j) Remove, damage, or allow stock to damage any fence, gate, sign, track, or ford that is owned or controlled by the Council in relation to any defence against water;
- (k) Construct, or form through repeated use, a road, track or ford for the passage of vehicles, people or stock, on any defence against water.

5.4 Flood protection vegetation

No person shall, without the prior authority of the Council,

- (a) ~~Remove, or~~ damage; ~~or allow stock to damage~~
- (b) allow stock to graze within

any flood protection vegetation that is managed, or has been planted adjacent to, on the banks, or within, a river by the Council or its predecessors.

The extent of this vegetation is defined as the area between the Flood protection vegetation lines as shown in Schedule 1 and any other areas of vegetation outside these lines that is specifically identified in Schedule 1.

5.5 Hydrological devices and equipment

No person shall, without the prior authority of the Council, remove, damage, or interfere with hydrological devices or other equipment, or undertake works that would affect the effective operation of hydrological devices or other equipment, such as rain gauges and water level recorders.

Note: All CRC Hydrological devices and equipment are protected by this Bylaw. The location of these devices and equipment may be found using www.CanterburyMaps.govt.nz.

5.6 Survey benchmarks

No person shall, without the prior authority of the Council, remove, damage, or interfere with survey benchmarks established to monitor river bed levels and defences against water.

Note: All CRC Survey benchmarks are protected by this Bylaw. The location of these benchmarks may be found using www.CanterburyMaps.govt.nz.

5.7 Unauthorised defences against water

No person shall, without the prior written authority of the Council, erect, or permit to be erected, any defence against water -

- (a) Between any stopbanks or ~~f~~Flood protection vegetation lines as shown in Schedule 1; or
- (b) In, over, under or within 7.5m of the top of the bank of ~~adjacent to~~ any drain or small watercourse shown in Schedules 1 and 2; or
- (c) Within any floodway shown in Schedule 3.

6. Activities Required to be Undertaken

6.1 Crossings

Every owner and every occupier of land on which any drain crossing is situated, and for which there is an agreement with the owner or occupier that the crossing will be used by Council for drain maintenance or flood protection and flood control work access purposes shall keep that crossing maintained to a standard, agreed between the parties, as will allow the safe passage over the crossing by Council staff and contractors engaged by the Council, and their plant, machinery and vehicles.

Where a crossing has been installed by the Council, the Council will be responsible for its maintenance and safety.

6.2 Fencing of drains

The Council may, by written notice, 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 operational performance and integrity of the drain.

6.3 Access

All fence crossings that would otherwise deny access to and along the drain margins for Council staff or by contractors engaged by the Council shall have a 3.6 metre wide (minimum) gateway providing access for maintenance and inspection purposes.

6.4 Obstructions

Every owner and occupier of land on which any drain or watercourse is situated, or adjacent to any such drain or watercourse shall, if required by the Council, remove any tree, plant or other material or object that obstructs, or is considered by Council to be at high risk of falling and obstructing the free flow of water in that drain or watercourse.

6.5 Pumping stations

Canterbury Regional Council has full rights and powers to temporarily shut down pumping stations during high river and/or drain flows if it considers that there is a risk of a seepage failure occurring in the adjoining stopbanks or

stopbank foundations.

Explanation: The act of pumping during flood events increases the height difference between the floodwaters contained by stopbanks and drain water levels on the landward side of the stopbank. This increases seepage pressures through the stopbank foundations that could lead to failure of the stopbank structure. Canterbury Regional Council shall advise pump operators that pumping may resume as soon as practicable once the flood risk has abated.

7. Land Entry

7.1 Inspection

The Council shall have full powers, rights and authorities, upon giving the owner or occupier of any land reasonable notice, of not less than 48 hours, of its intention to enter onto land to inspect any drain, pump station, watercourse, defence against water, or any device, equipment or machinery used or associated with any defence against water, owned or controlled by the Council.

In the event of emergency the Council does not have to give 48 hours' notice but only what notice (if any) is practicable in the circumstances.

7.2 Surveys

The Council shall have full powers, rights and authorities, upon giving the owner or occupier of any land reasonable notice, of not less than 48 hours, of its intention to enter onto land to survey any drain, watercourse, defence against water, or related devices or installations that are owned or controlled by the Council.

In the event of emergency the Council does not have to give 48 hours' notice but only what notice (if any) is practicable in the circumstances.

7.3 Drain maintenance works

The Council shall have full powers, rights and authorities, upon giving the owner or occupier of any land reasonable notice, of not less than 48 hours, of its intention to enter upon that land for the purposes of carrying out drain and watercourse maintenance activities on drains and watercourses owned or controlled by the Council. Such activities include mechanical cleaning, weed cutting, or spot spraying, and the maintenance or repair of related installations including pump stations.

In the event of emergency the Council does not have to give 48 hours' notice but only what notice (if any) is practicable in the circumstances.

7.4 Maintenance of defences against water

The Council shall have full powers, rights and authorities, upon giving the owner or occupier of any land reasonable notice, of not less than 5 working days, of its intention to enter upon that land for the purposes of carrying out maintenance or repairs to defences against water owned or controlled by the Council.

In the event of emergency the Council does not have to give 5 working days' notice but only what notice (if any) is practicable in the circumstances.

7.5 Access

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 the Council, the restriction or prohibition is necessary to protect the drain or defence against water from damage. Council will give the landowner or occupier reasonable notice, of not less than 48 hours, of its intention to enter that land and restrict access to any drain or defence against water, and shall provide reasons for the need to restrict such access.

In the event of emergency the Council does not have to give 48 hours' notice but only what notice (if any) is practicable in the circumstances.

7.6 Obstruction to officers and contractors

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.

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 in the discharge of those duties.

7.7 Maintenance of Canterbury Regional Council drains by private individuals

Land owners and land occupiers who wish to avoid herbicide use for the maintenance of drains adjacent to or through their properties may undertake the drain clearance themselves, or employ contractors to do so, subject to the following conditions:

- (a) Prior written authority of the Council must be obtained.
- (b) Signs are to be erected by landowners or occupiers to clearly mark the areas where chemicals are not to be used. (This may be achieved using simple signs clearly marked 'Chemical Free Area'.)
- (c) The works are to be carried out to a standard specified by the Council. That standard may include a time period within which the works are required to be carried out.
- (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 the period of one week, may carry out the required maintenance using any method it deems efficient including the use of herbicides.

Explanation:

1. In addition to any other form of notice given under clauses 7.1 to 7.5, Council will endeavour to speak directly to the landowner or occupier before entering land to discuss the reasons for entry and any matters for concern. In determining reasonable terms of entry in the circumstances, the Council will have regard to the interests and convenience of the persons who may be affected and the requirements of any business utilising the land.

2. Any owner or occupier of any land subject to this Bylaw, who suffers any damage from the exercise of any powers by Council under this Bylaw, will be entitled to compensation from the Council in accordance with section 190 of the Local Government Act 2002.

8. Applying for an Authority

8.1 Authority

- (a) An application to the Council for authority under this Bylaw shall be made in writing using the attached Application Form and be accompanied by any fee as prescribed under clause 8.2(a).
- (b) When considering any application for an authority, the Council shall have regard to, but not be limited to, the following assessment criteria, in order to ensure the effective operation and integrity of the flood protection and flood control works (including the drainage network):
 - Drainage and flood flow capacity
 - Stability/scour/erosion risk
 - On-going functionality
 - Access for inspection and maintenance purposes
 - Term of authority
- (c) Any condition imposed under any authority will be commensurate with the scale and nature of the activity proposed and for giving effect to the purpose of the Bylaw.
- (d) In the event of a Council decision to refuse an application for authority, the Council shall include in writing the reasons for that decision.
- (e) Every person to whom an authority is granted shall produce that authority for inspection on request by the Council.
- (f) Every authority granted under this Bylaw to an owner or occupier of any land, shall be binding on every subsequent owner or occupier of that land, unless it specifically states otherwise.
- (g) The Council shall keep a register of all authorities granted and refused.

8.2 Fees

- (a) The Council may, by using the special consultative procedure in Section 83 of the Local Government Act 2002, prescribe any fee payable by any person who applies for an authority under this Bylaw.
- (b) The Council may in its absolute discretion refund, remit or waive the whole or part of such fee.

8.3 Deeming authority

- (a) Any existing resource consent or agreement granted by or made with the Council and issued prior to ~~the Bylaw becoming operative~~ 02 April 2013; and
- (b) Any fully discretionary consent granted by Council after ~~the date this Bylaw became operative~~ 02 April 2013;

and authorising the carrying out of any activity listed in Section 5 of this Bylaw, shall be deemed to be an authority under this Bylaw to carry out such work for the term and on the conditions set out in the resource consent or agreement. This will include any right under that consent or agreement to replace or repair any structure or to undertake any routine maintenance.

9. Compliance and Enforcement

9.1 Revocation of authority

- (a) The Council may, ~~in accordance with this clause,~~ revoke any authority granted under this Bylaw where:
- i. ~~if~~ the holder of that authority contravenes or fails to comply with any condition of the authority; or
 - ii. if the information made available to the consent authority, by the applicant for the authority for the purposes of the application, contained inaccuracies which materially influenced the decision made by Council in respect of the application.
- (b) Where the authority is to be revoked in accordance with clause 9.1(a)(i), ~~the~~ the Council shall not revoke any such authority without giving to the holder a notice in writing which:
- i. Sets out the respects in which the holder has contravened or has failed to comply with any condition of the authority; and
 - ii. If the breach or failure is capable of remedy, gives the holder a reasonable time within which to remedy it; and
 - iii. Warns the holder that the Council may revoke the authority if the holder does not either:
 1. Remedy the breach or failure within the time specified or within such further time as the Council may allow on application; or
 2. Make, within a time to be specified in the notice, a written submission to the Council setting out reasons why the authority should not be revoked.
- (c) On receipt of a request by the holder for further time pursuant to clause 9.1(b)(iii)(1), or of a submission pursuant to clause 9.1(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 revoke the authority.

9.2 Offence

- (a) Every person commits an offence against this Bylaw who:
- i. Commits a breach of any of the provisions of this Bylaw.
 - ii. Causes or permits to be done anything in contravention of this Bylaw.
 - iii. Omits to do anything required by this Bylaw.
 - iv. Fails to comply with any condition of a permit, or written notice served under this Bylaw.
- (b) Every person who commits an offence against this Bylaw is liable to the penalties prescribed by section 242 of the Local Government Act 2002.

9.3 Notice to remedy

The Council may, by written notice, require any mitigation or remediation considered necessary by Council, in relation to the contravention of any provision of this Bylaw, or the conditions of the relevant authority, in the time, and in the manner stated in the notice, at the cost of the ~~owner person who~~ committed the offence, as described by Section 9.2.

9.4 Removal of works

- (a) The Council, or any officer or agent of the Council, may remove or alter any work or anything

constructed after the date at which this Bylaw becomes operative, that is in contravention of any provision of this Bylaw or any conditions of any authority, and may recover the costs incurred by the Council in connection with the removal or alteration.

- (b) The undertaking of this action shall not relieve any person from liability to any penalty incurred by reason of the breach.

9.5 Objections process

- (a) Any person who applies for authority under this Bylaw, or owner or occupier of land subject to this Bylaw, within 14 days of receiving any decision or authority in relation to this Bylaw, may 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.
- (b) The Council considering an objection under clause 9.5 (a) above, may uphold or amend or rescind the decision or authority, and in making its determination must have regard to:
 - i. The evidence on which the decision or authority was based;
 - ii. The matters presented in support of the objection; and
 - iii. Any other relevant matters.
- (c) The Council must, as soon as practicable, give written notice to the applicant, owner, or occupier of its determination, including the reasons for that determination.

SCHEDULES

Note:

1. *Schedule 1-3 maps are contained within a separate Map Volume*
2. *The resolution of lines on maps in the printed Map Volume may not be sufficient to determine the accurate placement of those lines in relation to any property. Refer to the GIS maps on the Council website for more detailed maps at the cadastral scale.*

Schedule 1

Maps showing areas of Flood protection vegetation, Stopbanks, Drains and small watercourses owned or controlled by the Canterbury Regional Council.

Schedule 2

Maps of Major Drainage Networks owned or controlled by the Canterbury Regional Council.

Note:

1. Drains are also shown on Schedule 1 maps. The Major Drainage Networks shown in Schedule 2 are generally at a higher resolution so that names can be applied to each component drain.
2. The access side(s) for normal drain maintenance activities is shown in Schedule 2.

Schedule 3

Maps showing Floodways owned or controlled by the Canterbury Regional Council.

APPENDICES

Appendix 1

Application Form for Authority under the Flood Protection and Drainage Bylaw 2013.

Appendix 2

Diagrams illustrating the relevant areas referred to in sections 5.1 – 5.3.

Appendix 1

APPLICATION FORM FOR AUTHORITY UNDER THE FLOOD PROTECTION AND DRAINAGE BYLAW 2013

1. Applicant(s) details

Applicant(s) name(s): _____

Organisation name _____
(if applicable):If applying on behalf of an Organisation, position within Organisation: _____Confirmation you have the authority to apply on behalf of this Organisation: _____

Postal address: _____

_____ Post Code _____

Phone number: Business _____ ~~Private~~ Alternative _____~~Mobile~~ _____ ~~Fax~~ _____

Email address _____

2. Property to which this Bylaw Authority relates

Property address: _____

Legal description (The legal description can be found on the certificate of title, valuation notice, subdivision plan or rate demand for the site. Please include a copy of one of these with your application):Are you the legal owner of this land, or have the permission of the legal owner of this land?If you are not the legal owner, please provide written evidence that the legal owner approves the works proposed in this application.

3. Diagram and location of proposed works

Please provide a diagram in the box below, and details of where the works are proposed to occur. (~~Hand drawn~~ is may be acceptable for basic works. Sketches marked on aerial photos or plans and engineering drawings may be required for more substantial works). Please provide photos of the site if you are able.

4. Section(s) of the Bylaw to which this authority relates

5. Rules and Regional Plans

Identify any rules in regional plans that apply to this activity, and any consents that may be required.

Note: It is the applicant's responsibility to ensure they have all the required permissions from Environment Canterbury and other regulatory agencies, such as District Councils, Department of Conservation, New Zealand Historic Places Trust. Please contact these agencies to discuss your proposal.

6. Time frame of works

Proposed start date: _____

Proposed end date: _____

7. Description of the proposed works

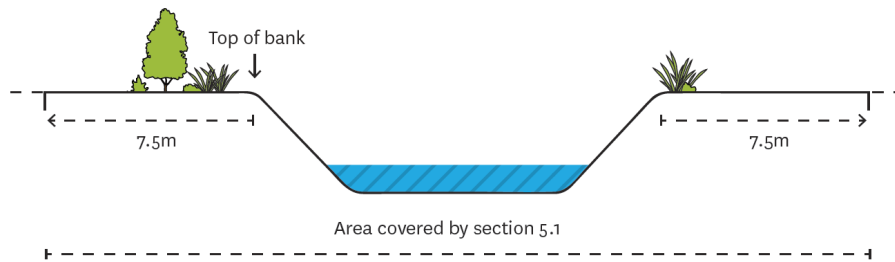
[illegible]

Signed _____ Date _____

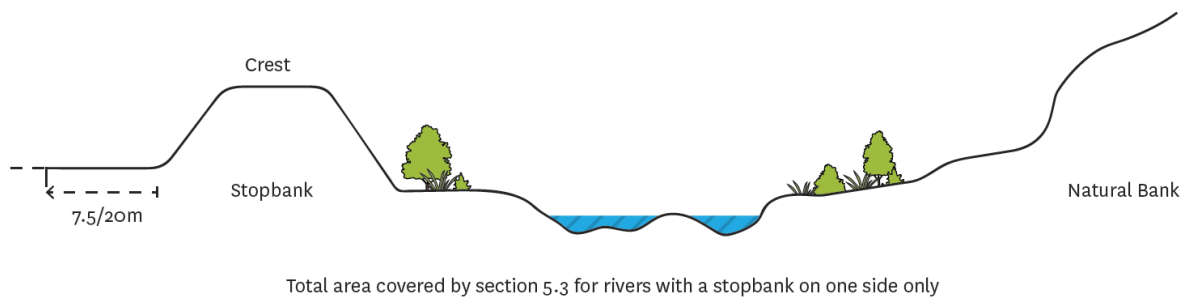
Appendix 2

Note: These diagrams are for illustrative purposes only.

5.1 Drains and small watercourses



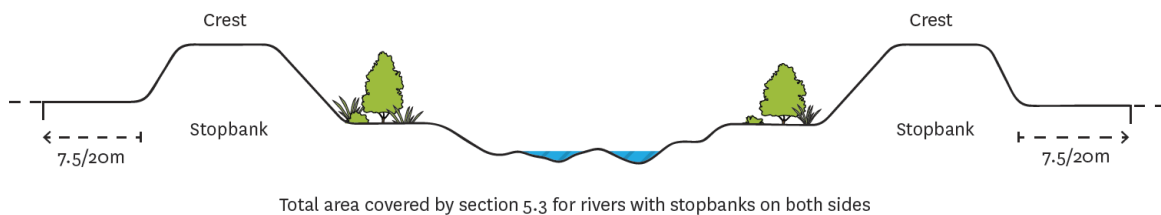
5.3 Defences against water



Subsections



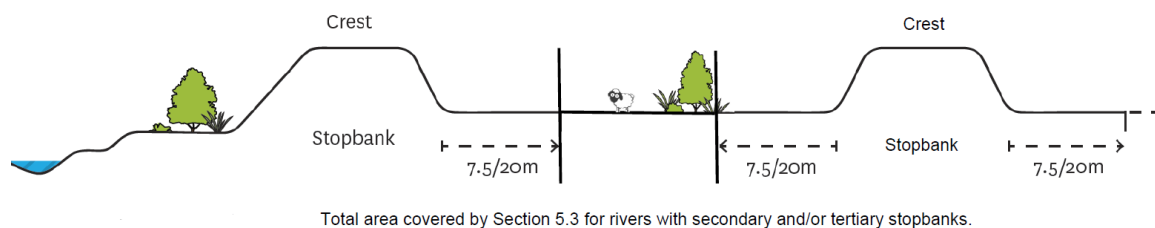
Subsections



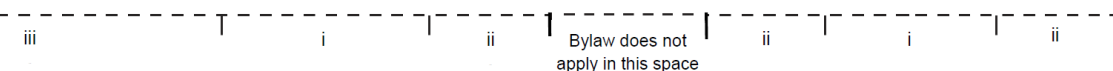
Subsections



Subsections



Subsections



Subsections