

2017 COMBINED WATERS BYLAW

STATEMENT OF PROPOSAL

Introduction

The Whakatāne District Council (the Council) seeks your views on a new Combined Waters Bylaw.

The proposed bylaw contains a revised, updated version of three existing bylaw parts of Whakatāne District Council's Consolidated Bylaw which are due to expire in 2018. They are:

- Part 2 - Tradewaste
- Part 7 - Wastewater
- Part 8 - Water Supply.

In addition, the proposed bylaw contains a new Stormwater section, which will enable the Council to control the quality of stormwater flowing into the waterways.

Proposal

The Council proposes to revoke Part 2 (Trade-Waste), Part 7 (Wastewater Drainage) and Part 8 (Water Supply) of the Whakatāne District Council's Consolidated Bylaw and replace these three parts with a stand-alone proposed Combined Waters Bylaw 2017.

The Draft Combined Waters Bylaw is being released for public consultation using the Special Consultative Procedure as outlined in section 86 of the Local Government Act 2002 (the Act).

In accordance with section 86(2) of the Act, the Council is required to include the following in a statement of proposal:

- A draft of the proposed bylaw;
- The reasons for the proposal; and
- A report of any relevant determinations by Council under section 155 of the Act.

The attached copy of the proposed Whakatāne District Council Combined Waters Bylaw 2017 forms part of this statement of proposal.

Reasons for the proposal

Under sections 158 to 160 of the Act, the Council is required to review all bylaws within five years of their adoption and every 10 years thereafter.

Council staff have undertaken a review of the Tradewaste, Wastewater Drainage and Water Supply bylaws and consider they generally remain fit for purpose. A number of minor technical changes are proposed to these bylaws to increase clarity and bring about consistency across all four sections of the proposed Combined Waters bylaw. In addition, the wording of all three bylaws has been simplified and streamlined where appropriate.

The review has highlighted the interdependency of wastewater, tradewaste, water supply and stormwater and has shown that all four elements need to be managed as individual components of a single water system. For example, stormwater and tradewaste products can directly pollute waterways, affect the functioning of the wastewater system and can ultimately affect the quality of the water supply. For this reason, the existing bylaws are being brought together into a single Combined Waters Bylaw along with a new stormwater section.

The proposed Combined Waters Bylaw 2017 provides certainty and clear direction around the rights, obligations and responsibilities of landowners, occupiers, businesses, customers and the Council with regard to all aspects of water use. The proposed bylaw will also assist the Council in meeting its environmental and resource consent responsibilities. Each section enables the Council to manage specific aspects of water use in the District.

Part 2: Water Supply enables the Council to:

- Preserve, protect and manage the quantity and quality of the District's water supply
- Meet the water supply needs of all stakeholders in the District
- Protect the physical infrastructure of the water supply system from damage.

Part 3: Wastewater Drainage enables the Council to:

- Efficiently and safely remove all wastewater from all connected properties
- Safeguard community health and wellbeing through the effective collection, treatment and disposal of wastewater
- Control the volume and type of wastewater entering sewerage networks
- Keep stormwater and wastewater clearly separated
- Protect the physical infrastructure of the wastewater system from damage.

Part 4: Trade Waste Discharges and Consents enables the Council to:

- manage the quantity and quality of tradewaste at source
- ensure the treatment process meets resource consent standards
- ensure the tradewaste treatment process is adequately and appropriately funded by those discharging trade waste.

Part 5: Stormwater enables the Council to:

- Protect public health and safety
- Manage the environmental impacts of stormwater
- Ensure a clear distinction is maintained between stormwater and wastewater.

Reasons for the consultation

Three sections of the proposed bylaw remain largely the same as the existing Water Supply, Wastewater and TradeWaste bylaws that were publicly notified on 1 July 2008.

The proposed changes are minor technical changes that will enable Council to fulfil its responsibilities under the Local Government Act 2002 and the Health Act 1956. The proposed changes will enable Council to meet the progressively higher standards of discharge required by the Bay of Plenty Regional Council in order to get resource consents for sewage treatment and discharge.

The specific changes being proposed for each bylaw are outlined in the Tables below. Other amendments relate to minor editorial changes including deleting or replacing words and rephrasing sentences or paragraphs in order to make the bylaw easier to read. In addition to these changes in the proposed Bylaw, some technical changes will be made to the attached schedules of the bylaw to reflect the proposed changes and raise the standards of discharge to protect the Council's wastewater and stormwater systems.

Water Supply

Table 1 Specific change proposed for the Water Supply Bylaw

Section in existing Bylaw	Reason for proposed change	Proposed change	Outcome if change approved	Section in Draft Combined Waters Bylaw
S8.1.2 Fire Hydrants	No current requirement to protect fire hydrants	Add new clause requiring protection device	Fire Hydrants will be protected from damage.	S18 Fire Hydrants

Wastewater

Table 2 Specific changes proposed for the Wastewater Drainage bylaw

Section om existing Bylaw	Reason for proposed change	Proposed change	Outcome if change approved	Section in Draft Combined Waters Bylaw
S7.4.3 Waste Minimisation	Council does not enforce waste minimisation recommendations.	Delete this entire section	All clauses that the Council does not enforce are removed.	
s7.4.5 Prevention of Inflow and Infiltration	Current bylaw: Customer is required to prevent stormwater or wastewater entering the wastewater system. No permit required. This limit's Council's ability to manage stormwater or tradewaste entering	Requires customers to get a tradewaste consent before letting stormwater or groundwater enter the wastewater.	Revision will: <ul style="list-style-type: none"> Enhances Council's ability to prevent tradewaste entering wastewater drainage system Enables Council to prosecute if it happens without 	S27 (3) Control of Discharges

	the wastewater system.		consent.	
S7.5 Disconnection	Current bylaw: Customer has to give 7 days' notice of intention to disconnect. Currently Council has no ability to manage disconnections because it has control over when they take place.	Requires customer to apply for and receive written Council approval before disconnecting from the wastewater network.	Enhances Council's ability to manage wastewater drainage system.	S26 Approval to Connect and Disconnect
S7.6.4 Excavation near public sewers	Current bylaw specifies 5m distance from centre line of any rising main or sewers. Sewers have been damaged.	Requires Council permission before an operator excavates, drills or carries out piling closer than 25m of centre line of any rising main or sewer	Greater distance from sewers will better protect the physical infrastructure.	S25 (f) Protection of Drainage Works

Tradewaste

Table 3 Specific changes proposed for the Tradewaste Bylaw.

Section in existing Bylaw	Reason for proposed change	Proposed change	Outcome if change approved	Section in Draft Combined Waters Bylaw
s 2.12 Conditions of Trade Waste Consent	Currently Council cannot determine pre-treatment or how often grease-traps are cleaned.	Add a new condition that needs to be met enabling Council to determine pre-treatment and how often grease-traps are cleaned.	Council will have a greater ability to manage	S38 (7) Pre-Treatment Requirements
S 2.26 Invoicing	Currently the invoice is issued to the property owner who needs is responsible for payment and getting reimbursement from the permit holder as outlined the LGA 2002.	Add an explanation regarding why the property owner, not the permit holder is invoiced.	Clarifies the invoicing process for property owners and business owners	S45 (3) Fees and Charges

Stormwater – Proposed clauses

The most significant change proposed in the Combined Waters Bylaw is the addition of Part 5: Stormwater.

Stormwater management has historically centred on the most efficient way to remove stormwater through a system (reticulated or otherwise), with little thought given to the impact on receiving environments. The focus is now on achieving sustainable environmental outcomes. Due to the range of land uses and zoning in and around the District, there is potential for a wide range of pollutants to enter the waterways and coastal environment.

The Council’s Stormwater Drainage Asset Management Plan identifies the effects of stormwater drainage on the District’s streams, rivers, lakes, harbours and beaches as a key challenge. It recognises the need to manage pollution at source.

The proposed Stormwater section of the bylaw will enable Council to manage the impact of stormwater on the receiving environments. It will give Council the means to control the quality of stormwater flowing into the waterways.

The bylaw outlines the obligations on property owners, especially those with commercial properties, around releasing stormwater into the stormwater system. It provides Council with the tools for control and enforcement. It also closes the gap in the current Wastewater bylaw which does not control the discharge of waste going into the stormwater system.

These requirements will enable Council to meet its responsibilities as outlined in the National Policy Statement for Fresh Water Management and to meet the higher consent conditions required by the Regional Council for our stormwater resource consent application.

Table 4 Proposed clauses for the Stormwater section of the Combined Waters Bylaw.

Section	New Clause	Reason
S51	Objectives	Outlines the objectives of this section of the bylaw
S52	Minimum quality standards	This section: <ul style="list-style-type: none"> • Prohibits the discharge of contaminants, directly or indirectly, into any part of the stormwater network • Describe exemptions
S53	Treatment of Works to be Undertaken	This section gives Council the authority to require owner/occupier to implement management options or treat discharges.
s54	Monitoring Discharges	This section gives Council the authority to inspect private or public stormwater networks to ensure compliance
S55	Pollution and Prevention Plans	Where a site is deemed high risk, Council is able to require that the owner/occupier prepares and submits a Pollution Prevention Plan to Council for approval.
S56	Restricted Activities	This section outlines activities that are prohibited in relation to the public stormwater system. Prohibitions are necessary to protect the physical infrastructure and ensure the ability of the stormwater system to function effectively or efficiently is not compromised.
S57	Maintenance Responsibilities	This section ensures privately owned stormwater systems are properly designed, constructed and maintained.
S58	Disconnection from public stormwater system	This section enables Council to manage all disconnections from the public stormwater system.
S59	Point of Discharge – Boundary of Responsibility	This section defines point of discharge on the public stormwater system, which marks the boundary of responsibility between land owner and Council.
S60	Offences and Breaches	This section defines an offence
S61	Fees	Enables Council to prescribe fees and/or charges for any certificate, licence, approval, permit, consent or Council

		inspection.
S62	Notices	This section enables Council to give notice for remedial actions required.
S63	Penalties	This section outlines legislation under which penalties can be invoked.
S64	Dispensing Powers	This section enables Council to waive full compliance with this bylaw and the conditions under which a waiving of compliance could occur.

Other options to the proposed bylaw that were considered

The Council considered two other options:

- keeping the three existing bylaws separate
- having no bylaw at all.

Keeping separate bylaws results in duplication of work, content and consultation.

Having no bylaw would remove the Council's ability to protect and manage the water supply, to control discharges and would adversely affect the functioning of the water supply, wastewater and stormwater systems and could potentially negatively impact public health and the environment.

Ability to make a Combined Waters Bylaw

The Local Government Act 2002 (the Act) sets out the procedure for making a bylaw.

Section 146 allows the Council to make a bylaw to manage, regulate, protect from damage, misuse, or loss, any infrastructure associated with water supply and wastewater systems.

Section 155(1) of the Act requires the Council to determine whether a bylaw is the most appropriate way of addressing a perceived problem and Section 155(2) requires the Council to determine whether the proposed bylaw:

- Is the most appropriate form of bylaw, and
- Gives rise to any implications under the NZ Bill of Rights.

The proposed bylaw is the most appropriate form of bylaw because it meets the following tests:

- The bylaw is authorised by statutory authority under the Local Government Act 2002
- The bylaw is not repugnant to the general laws of New Zealand
- The bylaw provides certainty and clear direction
- The bylaw is reasonable
- The bylaw is not overly restrictive, onerous on any person, or impractical

There are no implications under the New Zealand Bill of Rights Act. The draft bylaw does not place any limits on freedom of movement, expression or association, and does not isolate any particular

social group in terms of the Act. In addition, any offences under the bylaw will require a judicial process through the Courts.

Section 156 of the Act requires the Council to use the Special Consultative Procedure set out in section 83 when making a bylaw and continues to apply.

Consultation

The statement of proposal, a summary of information and a copy of the proposed bylaw are available for viewing during normal Council hours at the Council offices and District Libraries during the formal consultation process which is scheduled to take place from 29 May to 30 June 2017 with a Submissions Hearing taking place on 27 July 2017.

These documents will also be available on the Council's website www.whakatane.govt.nz.

Submissions

Any person or organisation is welcome to make a submission on the proposed Whakatāne District Council Combined Waters Bylaw 2017. The Council will be taking into account all submissions when it decides on the final content of the bylaw.

A submission form is available on the Whakatāne District Council website www.whakatane.govt.nz or can be obtained from:

- Whakatāne District Council 14 Commerce Street, Whakatāne
- Whakatāne Library 49 Kakahoroa Drive, Whakatāne
- Edgecumbe Library 38 College Road, Edgecumbe
- Ōhope Library 4 Harbour Road, Ōhope
- Murupara Library/Service Centre Civic Square, 48 Pine Drive, Murupara

Formal submissions may be made:

Online: www.whakatane.govt.nz
Posted to: Bylaw Review, Private Bag 1002, Whakatāne 3158.
Delivered to: Bylaw Review, Whakatāne District Council, 14 Commerce Street, Whakatāne.
Emailed to: submissions@whakatane.govt.nz Attention Bylaw Review

Informal submissions can be made by commenting on our Facebook page at www.facebook.com/WhakataneDistrictCouncil

Submitters should note that their submission will be copied and made available to the public after the submission period closes.

Submissions close at 5pm on 30 June 2017.

Submissions should include your name, address, telephone number and email address and should state if you wish to speak to Council in support of your submission in July. The Council will contact all submitters who wish to be heard in writing to advise the confirmed time, date and venue of the hearing.