

Flood Protection Bylaw



April 2015



Flood Protection Bylaw

Approved 14 April 2015

The common seal of the West Coast Regional Council was affixed in the presence of:


.....
A. Robb
Chairman




.....
C. Ingle
Chief Executive Officer

Operative 14 April 2015

Table of Contents

1.	TITLE.....	1
2.	COMMENCEMENT	1
3.	PURPOSE.....	1
4.	ACTIVITIES REQUIRING BYLAW AUTHORITY	1
	4.1 Drains.....	1
	4.2 Overflow	2
	4.3 Defences against water	2
	4.4 Hydrological devices and equipment.....	2
	4.5 Survey benchmarks	2
	4.6 Unauthorised defences against water	3
5.	ACTIVITIES REQUIRED TO BE UNDERTAKEN	3
	5.1 Crossings	3
	5.2 Access	3
	5.3 Obstructions	3
6.	LAND ENTRY	3
	6.1 Survey/ Inspection/ Obstruction	3
	6.2 Maintenance of West Coast Regional Council defences against water by private individuals	3
7.	APPLYING FOR AN AUTHORITY	4
	7.1 Authority	4
	7.2 Fees	4
	7.3 Deeming authority.....	4
8.	COMPLIANCE AND ENFORCEMENT	4
	8.1 Revocation of authority.....	4
	8.2 Offences	5
	8.3 Notice to remedy.....	5
	8.4 Removal of works.....	5
	8.5 Objections process	5
9.	GLOSSARY	6
	9.1 Diagrams of distance	7
	APPLICATION FORM FOR AUTHORITY UNDER THE WEST COAST REGIONAL COUNCIL FLOOD PROTECTION BYLAW.....	8

FLOOD PROTECTION BYLAW

The West Coast 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 West Coast Regional Council Flood Protection Bylaw.

2. COMMENCEMENT

This Bylaw shall come into force on 14 April 2015.

3. PURPOSE

The purpose of this Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the West Coast Regional Council from damage or misuse.

Flood protection works can include drains, floodbanks, overflows, groynes, stopbanks, and any other defences against water.

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

4. 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 West Coast 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.

Note 2: Resource consent or further authorisation may also be required from the West Coast Regional Council, relevant territorial authority or the Department of Conservation to carry out these activities.

4.1 Drains

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

- (a) Widen, deepen, infill, or otherwise alter any drain;
- (b) Dump or deposit anything:
 - i) into a drain; or
 - ii) within 10 metres from the toe of a stop-bank or any drain that may interfere with access for inspection or maintenance purposes;
- (c) Plant or allow to grow, any vegetation within 10 metres of a toe of the stop-bank or any drain that may interfere with access for maintenance or inspection purposes;
- (d) Plant or allow to grow any vegetation in any drain 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
 - ii) on or within 10 metres from the toe of a stop-bank or any drain;
- (f) Remove, adjust or interfere with any structure, or equipment relied on for the operation of any drain;
- (g) Connect any pipe, channel or other flow conduit, to any drain;
- (h) Remove, damage, or allow stock to damage any drain, or the banks of those watercourses.

Explanation: Routine maintenance of structures in and beside drains that existed prior to this Bylaw becoming operative does not require authority under this Bylaw. Authority will however be required if the scale of the structure changes or it needs to be replaced or relocated.

4.2 Overflow

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

- (a) Widen, deepen, infill, divert or otherwise alter any overflow;
- (b) Place or allow to be placed in any overflow any material or object that could impede flood or drainage flows;
- (c) Plant or allow to grow any vegetation in any overflow that may;
 - i) impede 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 overflow.

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

4.3 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;
- (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 10 metres of any defence against water;
- (e) Dump or deposit anything;
 - i) On any defence against water; or
 - ii) Within 10 metres of any defence against water;
- (f) Remove, adjust, or interfere with any equipment 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 10 metres of any defence against water;
- (h) Carry out any earthworks or excavation, including for construction of a drain or for building foundations:
 - i) Within 10 metres of any defence against water; or
 - ii) In, on or between the bank of any watercourse and any adjoining defence against water;
- (i) Construct any crossing in, over, though, 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.

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.

4.4 Hydrological devices and equipment

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

4.5 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.

Such damage will result in the damager being billed for the replacement of such a benchmark.

4.6 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 defence against water; or
- (b) In, over, under or adjacent to any drain shown in the Asset Management Plans (AMPs) on Councils website: <http://www.wcrc.govt.nz>.
- (c) Within any overflow shown in the Asset Management Plans (AMPs) on Councils website: <http://www.wcrc.govt.nz> .

5. ACTIVITIES REQUIRED TO BE UNDERTAKEN

5.1 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.

5.2 Access

All fence crossings that would otherwise deny access to and along the drain margins shall be maintained and made accessible to all Council staff or contractors engaged by Council.

5.3 Obstructions

Every owner and occupier of land on which any Council drain 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. LAND ENTRY

6.1 Survey/ Inspection/ Obstruction

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, including inspections, maintenance, surveys and operating any drain clearing plant or machinery.

6.2 Maintenance of West Coast Regional Council defences against water by private individuals

Land owners and land occupiers who wish to avoid herbicide use for the maintenance of drains and defences against water 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 7.2, 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, may be entitled to compensation from the Council in accordance with section 190 of the Local Government Act 2002.*

7. APPLYING FOR AN AUTHORITY

7.1 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:
 - i) Drainage and flood flow capacity;
 - ii) Stability/scour/erosion risk;
 - iii) On-going functionality;
 - iv) Access for inspection and maintenance purposes;
 - v) 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.

7.2 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.

7.3 Deeming authority

- (a) Any existing resource consent or agreement granted by or made with the Council and issued prior to the Bylaw becoming operative; and
- (b) Any fully discretionary consent granted by Council after the date this Bylaw becomes operative; and authorising the carrying out of any activity listed in Section 1 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.

8. COMPLIANCE AND ENFORCEMENT

8.1 Revocation of authority

- (a) The Council may, in accordance with this clause, revoke any authority granted under this Bylaw if the holder of that authority contravenes or fails to comply with any condition of the authority.
- (b) 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.

8.2 Offences

- (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.

Explanation: To remove any confusion, this means every person or persons who commits an offence who wilfully or maliciously destroys, damages, stops, obstructs, or interferes with the works or property set out in this Bylaw is liable on conviction to a fine not exceeding \$20,000 or three years imprisonment or both (sections S232 and S242 in the Local Government Act 2002).

8.3 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.

8.4 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.

8.5 Objections process

- (a) Any 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 owner or occupier of its determination, including the reasons for that determination.

9. GLOSSARY

Authority means any permit or consent 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 West Coast 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 structure, groyne, seawall, 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 West Coast Regional Council.

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 specified in the Asset Management Plans (AMPs) on Councils website <http://www.wcrc.govt.nz>.

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, or defences against water. For example floodgates, and water level recorders.

Excavation Means the removal of material, which results in a hole or cavity, other than the boring or digging of holes up to 1.5 metres in depth and 300mm in diameter for immediate placement of posts or piles, or driving posts or piles.

Flood protection and flood control works includes defences against water, drains, and overflows.

Overflow means any overflows as shown in the Asset Management Plans (AMPs) on Councils website <http://www.wcrc.govt.nz>.

Toe of Stop-bank where the bottom of the stop-bank meets the natural ground level surface.

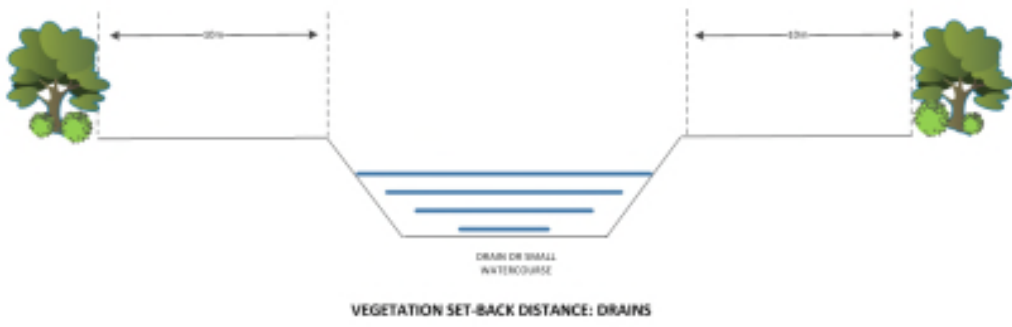
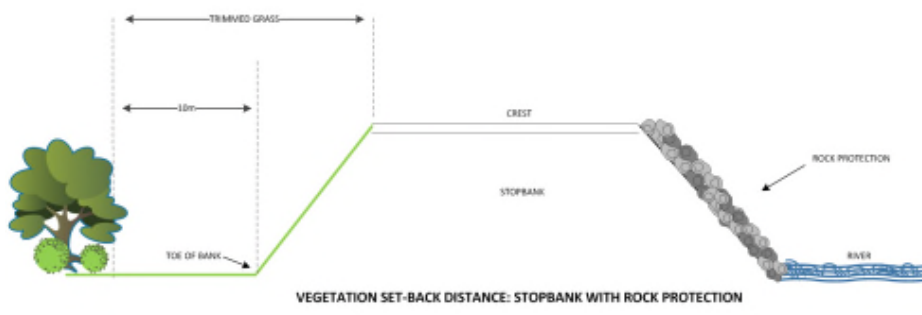
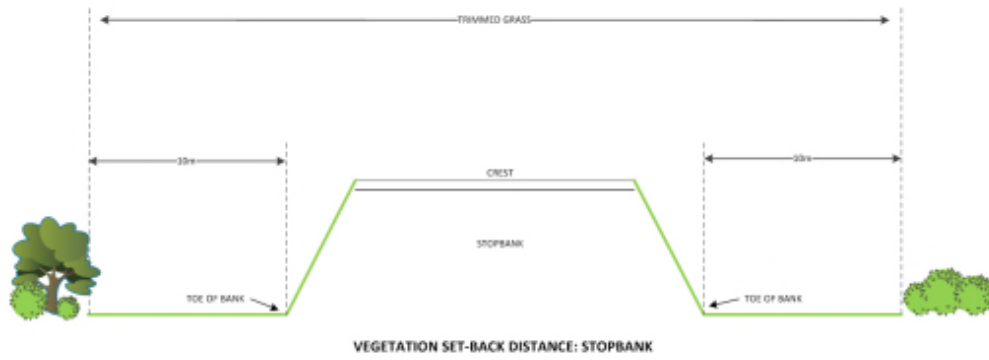
Stock for the purposes of this Bylaw means any land grazing animal managed for recreational or agricultural purposes.

Structure means any building, crossing, equipment or other manmade facility 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, overflows, drains and through which water flows permanently or intermittently, and in respect of which there are flood protection and flood control works.

9.1 Diagrams of distance

The Diagrams below show how the setback distances are to be interpreted by the Proposed Bylaw.



**APPLICATION FORM FOR AUTHORITY UNDER THE WEST COAST REGIONAL COUNCIL
FLOOD PROTECTION BYLAW**

1. Applicant(s) details

Applicant(s) name(s): _____

Organisation Name: _____
(if applicable)

Postal address: _____

_____ Post Code: _____

Phone Number: Business _____ Private: _____

Mobile: _____ Fax: _____

Email Address: _____

2. Property to which this Bylaw authority relates

Property Address: _____

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 acceptable). Please provide photos of the site if possible.

