



Hauraki District Council Consolidated Bylaw

PART 7: (LAND DRAINAGE)

BYLAW PARTS

PART 7 (LAND DRAINAGE)

Purpose

The purpose of Part 7 (Land Drainage) of the Hauraki District Council Consolidated Bylaw is to control and protect land drainage works vested in or under the management or jurisdiction of the Council.

Part 7 (Land Drainage) is part of the Hauraki District Council Consolidated Bylaw. Part 1 (Introduction) of the Consolidated Bylaw contains provisions that apply to Part 7 (Land Drainage) by providing generally applicable definitions, administrative measures and enforcement measures.

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PART 7: (LAND DRAINAGE)

INTRODUCTION

1.1 SCOPE

The purpose of Part 7 (Land Drainage) of this Bylaw is to control and protect land drainage works vested in or under the management or jurisdiction of the Council.

1.2 TITLE

This Part of this Bylaw shall be known and cited as the Part 7 (Land Drainage) of the Hauraki District Council Consolidated Bylaw 2007 and shall come into operation on the date specified by public notice after the Hauraki District Council makes this Bylaw. For expediency this Part of this Bylaw may be referred to in this or other Parts of this Bylaw as Part 7 (Land Drainage).

1.3 ENABLING ENACTMENTS

This Part of this Bylaw is made pursuant and subject to the Local Government Act 2002, the Local Government Act 1974, the Land Drainage Act 1908, the Resource Management Act 1991 and the Soil Conservation and Rivers Control Act 1941.

2.0 DEFINITIONS AND INTERPRETATIONS

2.1

The provisions of the Part 1 (Introduction) shall apply to this Part of the Bylaw.

2.2

For the purposes of this Part the following definitions shall apply:

COUNCIL DRAIN means every drainage channel or watercourse vested in or under the management of the Council.

CONSTRUCT includes alter, reconstruct or extend.

CROSSING means any means by which any vehicle, livestock, or person may go over, through, or under any drainage channel or water course or defence against water and includes a bridge, culvert or ford.

DEFENCE AGAINST WATER has the same meaning as in section 2 of the Soil Conservation and Rivers Control Act 1941.

DRAIN and DRAINAGE WORKS have the same meanings as in section 2 of the Land Drainage Act 1908.

DRAINAGE CHANNEL has the same meaning as in section 503 of the Local Government Act 1974.

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.

EXCAVATION means the removal of soil other than boring or digging of holes up to 1.5 metres in depth for immediate placement of posts or piles, or driving posts or piles or the drilling of boreholes for subsoil or groundwater investigations.

GATEWAY means an opening that may be closed by a gate.

PERMIT means the written authority issued by Council granting approval to operate or act in terms of this Part of this Bylaw.

PERMIT HOLDER means the holder or holders of a permit issued in terms of this Part of this Bylaw.

PRIVATE DRAIN means any drain constructed by or vested in an owner and not being a Council drain.

STOPBANK means an embankment bordering one or both sides of a drainage channel or watercourse to contain flows of water.

STRUCTURE has the same meaning as in section 2 of the Resource Management Act 1991.

WATERCOURSE has the same meaning as in section 2 of the Soil Conservation and Rivers Control Act 1941.

WATERSHED is the boundary of a catchment or sub-catchment, and may include:

- a) any earthen dam; or
- b) any artificial control structure generally constructed of concrete or timber; or
- c) any floodgate; or
- d) any manually operated sluice gate;

constructed with the approval of the Council to divert the flow of water.

3.0 DEFENCES AGAINST WATER

3.1

Except with the prior written authority of the Council no person shall, in respect of any land, structure or infrastructure associated with land drainage vested in or under the management of the Council:

- a) Widen, raise, lower, reduce in width, or otherwise alter any defence against water.
- b) Damage, interfere with, or allow damage to occur to any defence against water.
- c) Allow stock access to any defence against water.
- d) Plant or allow to grow any shrub, hedge, tree or part thereof:
 - i) On any defence against water,
 - ii) Within 15 metres of the landward side of any defence against water, or
 - iii) Between the bank of any drainage channel or water course and any defence against water.
- e) Dump or deposit any thing:
 - i) On any defence against water, or
 - ii) Within 15 metres of the landward side of any defence against water, or
 - iii) Between the bank of any drainage channel or watercourse and any defence against water.
- f) Remove or interfere with any plant, equipment or machinery used or associated with any defence against water.
- g) Construct any structure:
 - i) On any defence against water,
 - ii) Within 15 metres of the landward side of any defence against water, or
 - iii) Between the bank of any drainage channel or watercourse and any defence against water.
- h) Carry out any excavation in, on or between the banks of any drainage channel or watercourse and any defence against water.
- i) Carry out any excavation, within 15 metres of any defence against water.
- j) Excavate a drain or undertake earthworks in or on a stopbank or within 15 metres of the landward toe of a stopbank.

- k) Construct any crossing in, over, through, along or under any defence against water.
- l) Remove, damage or allow stock to damage any vegetation that has been planted adjacent to a drainage channel or water course by the Council or its predecessors.
- m) Adjust or interfere with any pump station or pump station equipment.
- n) Remove, damage, or allow stock to damage any fence that has been erected by Council, or its predecessors, for the protection of vegetation on a riverbank.

3.2

Except with the prior written authority of the Council no person shall erect or permit to be erected any defence against water.

4.0 DRAINS

4.1 RESTRICTED ACTIVITIES IN DRAINS

In respect of any land within the district the Council may, pursuant and subject to section 459 of the Local Government Act 1974 require by notice the owner or occupier thereof to¹:

- a) To provide, construct, and lay a private drain from any land which is not drained by some drain to the satisfaction of the Council, and to connect that private drain with any drainage channel or watercourse as the Council thinks fit;
- b) To cleanse and repair or to relay or alter the course, direction, and outfall of any existing private drain of or belonging to the land;

¹ Every notice under this section of the LGA 1974 shall specify the works, materials, and things to be executed, provided, or done thereunder, and the drainage channel or watercourse with which any private drain is required to be connected, and shall limit a time within which the works, materials, and things shall be so executed, provided, and done. The foregoing powers shall, among other things, enable the Council to require any owner of premises to cause any pollutant and any water that does not contain any pollutant to be drained respectively by sewerage drains and stormwater drains to separate outfall. If the owner fails to do any work specified in the notice and as therein directed, the Council may, if it thinks fit, cause the work to be done, and may recover from him the costs and expenses of the work together with 10 percent of those costs and expenses for supervision by the officers or agents of the Council, and interest at a rate per annum, as fixed by the Council, on the total sum until payment thereof.

- c) To connect any existing private drain with any drainage channel or watercourse other than the drainage channel or watercourse with which the private drain was previously connected;
- d) To provide and affix in and to any existing private drain, and in and to any such new private drain, all such traps, methods of ventilation, and other fittings whatever as the Council directs;
- e) To connect or disconnect any existing or new private drain with or from any water closet, urinal, bath, sink, grease trap, or other sanitary appliance;
- f) To execute, provide, and do generally any works, materials, and things which in the opinion of the Council are necessary or expedient for the efficient drainage of the land and every part thereof.

4.2 RESTRICTED ACTIVITIES IN COUNCIL DRAINS

Except with the prior written authority of the Council, no person shall in respect of any drainage channel or watercourse vested in or under the management of the Council:

- a) Widen, deepen or otherwise alter any drainage channel or watercourse;
- b) Remove or interfere with any plant or equipment relating to any drainage channel or watercourse;
- c) Allow any vegetation to grow on or in a drainage channel or watercourse or within 15 metres of a drainage channel or watercourse (measured from the lip of the drainage channel or watercourse) that may impede the flow of water in that drainage channel or watercourse or interfere with access along the drainage channel or watercourse for maintenance or inspection purposes;
- d) Remove, damage or allow stock to damage any vegetation that has been planted adjacent to a drainage channel or watercourse, or any fence that has been erected to protect that vegetation by Council or its predecessors;
- e) Construct a bridge, culvert or crossing in or over any drainage channel or watercourse;
- f) Construct, or form through repeated use, a road or race for the passage of vehicles or stock on a stop bank or within 15 metres of a drainage channel or watercourse;

- g) Damage, interfere with, or allow damage to occur to any drainage channel or watercourse;
- h) Allow stock access to any drainage channel or watercourse;
- i) Connect any private drain, pipe, channel or other conduit to any drainage channel or watercourse or private drain connected with a drainage channel or watercourse in breach of section 467 of the Local Government Act 1974;
- j) Deposit or allow to be deposited in a drainage channel or watercourse any material that is likely to obstruct the free flow of water;
- k) Permit any dead stock or any part thereof to be or remain in any drainage channel or watercourse;
- l) Undertake any works that will interfere with the access of authorised officers to drainage channel or watercourses;

5.0 CROSSINGS

Every owner and every occupier of land on which any crossing is situated shall keep that crossing maintained to such a standard as will allow the safe passage over the crossing by authorised officers and contractors engaged by the Council and their plant machinery and vehicles.

6.0 WATERING PLACES

6.1

Except with the prior written authority of the Council, no person shall construct or maintain in any drainage channel vested in or under the management of the Council a watering place for stock.

6.2

The owners and occupiers of land adjoining watering places shall so use and maintain the watering places that no damage to such drainage channels will result from their use.

7.0 FENCING OF DRAINAGE CHANNELS AND DEFENCES AGAINST WATER

Every owner and occupier of land shall at their own costs erect and maintain fencing to prevent stock entering any drainage channel, watercourse or defence against water vested in or under the management of the Council.

8.0 ACCESS²

All fences that are constructed from the date that this Bylaw comes into effect that would otherwise deny access along the drainage channel or watercourse margins for authorised officers or by contractors engaged by the Council shall have a 4 metre wide (minimum) gateway to provide access for maintenance and inspection purposes.

9.0 OBSTRUCTION OF DRAINAGE CHANNEL OR WATERCOURSE

9.1

Except with the prior written authority of the Council, no person shall stop, obstruct or interfere with or divert the flow of water in any drainage channel or watercourse vested in or under the management of the Council.

9.2

Every owner and every occupier of land on which any drainage channel or watercourse is situated shall remove any tree, plant, weed or growth that obstructs or would be likely by falling or otherwise to obstruct the free flow of water in that drainage channel or watercourse.

9.3

The Council may pursuant to section 468 of the Local Government Act 1974 require the owner or occupier of any land in the district by written notice to cut down or remove any

² A gateway may consist of an opening between two posts at least 4 metres apart that may or may not, at the owner or occupier's discretion be closed by a gate allowing contiguous access by vehicles to the adjacent drain.

tree, plant, weed or growth, the roots of which in the opinion of the Council enter or are likely to enter any drainage channel or watercourse³.

10.0 DRAINS THROUGH WATERSHEDS

Except with the prior written authority of the Council, no owner or occupier of land shall construct or maintain any private drain or system of private drains if such drain or system of drains passes through any raised level of land or watershed.

11.0 ARTIFICIAL OBSTRUCTION OR ADDITION OF WATER

11.1

Except with the prior written authority of the Council no person shall release any water into any drainage channel or watercourse vested in or under the management of the Council or into private drain that is connected with such a drainage channel or watercourse other than by natural flow.

11.2

Except with the prior written authority of the Council no person shall abstract any water from any drainage channel or watercourse vested in or under the management of the Council or from private drain that is connected with such a drainage channel or watercourse.

³ The section of LGA 1974 provides that, if the occupier or owner fails to do any such act in compliance within one month from the service thereof, he or she commits an offence and is liable to a fine not exceeding \$5 for every day during which the failure has continued, and the Council, by its officers, or agents, may enter on the land and do that act and recover the cost from him. The said cost shall be a charge upon the land. The Council may remove or cut down any tree after the giving of oral notice by an authorised officer to the occupier or owner if life, property, or any road is in imminent danger. The cost of the work shall be a charge against the land as if notice had been given. The term cut down means cutting down and keeping cut down or removing or controlling by chemical means the stem and roots of any tree so as to prevent its throwing out any leaf, offshoot, or flower.

12.0 LAND ENTRY

12.1 INSPECTION AND MAINTENANCE WORKS

The Council shall pursuant to sections 171 and 181(4) of the Local Government Act 2002 have full powers, rights and authorities, upon giving to the owner or occupier of any land not less than 24 hours prior notice, to enter upon that land for the purposes of inspection and carrying out mechanical cleaning, weed spraying and desilting of any drainage channel or watercourses and carrying out minor earthworks and repairs on any drainage channel or watercourses or structures that are vested in or under the management of the Council.

12.2 MAINTENANCE OF COUNCIL DRAINS BY OWNERS AND OCCUPIERS

12.2.1

Owners and occupiers of land who wish to avoid the use of herbicide for maintenance of any drainage channel or watercourse vested in or under the management of the Council adjacent to or through their properties may agree to the Council maintaining the drainage channel or watercourses adjacent to or through the properties to the standard specified without the use of herbicide by the Council upon payment to the Council of the fees, or such part of the fees thereof as the Council requires⁴.

12.2.2

- a) Owners or occupiers of land who wishes to avoid the use of herbicide may with the prior written approval of the Council be authorised to maintain or engage a contractor to maintain any drainage channel or watercourse vested in or under the management of the Council adjacent to or through that person's property provided that:
- i) Prior written authority of the Council must be obtained.

⁴ The Council normally requires the payment of the difference between the costs of the maintaining the drain in the normal manner with herbicide and mechanical maintenance.

- ii) Signs are to be erected by the permit holder to clearly mark the areas where chemicals are not to be used.
 - iii) The works are to be carried out to a standard and within the time specified by the Council.
- b) If the works are not carried out to the specified standard or time, the Council may give notice of its intention to maintain the drainage channel or watercourse pursuant to section 468 of the Local Government Act 1974, and following a period of ten days, may carry out the required maintenance using any method it deems efficient including the use of herbicides.

13.0 PERMIT APPLICATIONS

13.1

An application to the Council for a permit under this Part of the Bylaw shall be made in accordance with the clause 6 of the Part 1 (Introduction) of this Bylaw.

13.2

When considering any application for a permit the Council shall have regard to good environmental practice.

14.0 FEES

14.1

The Council may prescribe fees for this Part of this Bylaw in accordance with section 150 of the Local Government Act 2002.

14.2

The prescribed fees specified in this clause shall be paid on demand for the exercise of any authority or function under this Part of this Bylaw.

15.0 NOTICE TO REMEDY

15.1

The Council may require any person who breaches or fails to comply with the conditions of a permit or provisions of this Part of this Bylaw to remedy the breach or comply by giving such person a notice in writing which:

- a) Sets out the respects in which the person has breached or has failed to comply with any condition of the permit or provisions of this Part of the Bylaw, and
- b) If the breach or failure is capable of remedy gives the person a reasonable time within which to remedy it, and
- c) If the breach or failure relates to the conditions of a permit warns the permit holder that the Council may revoke the permit if the holder does not either:
 - i) Remedy the breach or failure within the time specified or within such further time as the Council may allow on application to be made within such time as specified in the notice or
 - ii) Make, within a time to be specified in the notice, a written submission to the Council setting out reasons why the permit should not be revoked.

15.2

The Council shall not revoke any permit pursuant to clauses 5.1(b) and 5.2 of Part 1 (Introduction) of this Bylaw without giving to the holder a notice in writing in accordance with this clause.

16.0 OFFENCES AND BREACHES

Every person who fails to comply with this Part of this Bylaw commits an offence and shall be subject to the penalty provisions outlined in the offences, penalties, infringement offences, and legal proceedings provisions of the Act, Part 1 (Introduction) of this Bylaw and the other enabling enactments contained in clause 1.3 of this Part of this Bylaw.



THE COMMON SEAL OF HAURAKI DISTRICT COUNCIL was hereto affixed pursuant to resolution passed at a meeting of the Hauraki District Council held on 30th of January, 2008.

_____ Mr. John Tregidga, MAYOR

_____ Mr. Langley Caver, CHIEF EXECUTIVE