

# Statement of Proposal

## Introduction

The Southland Regional Council (Council) has prepared the proposed Southland Flood Protection and Drainage Management Bylaw 2019 to replace the Southland Flood Control Management Bylaw 2010.

Council has the power to make bylaws under section 149(1)(c) of the Local Government Act 2002 (LGA). The LGA requires that Council follows the special consultative procedure to make the proposed bylaw. This Statement of Proposal is made for the purposes of Sections 83, 86 and 156 of the LGA, and includes:

- Background to the proposal
- The reasons and purpose of the proposed bylaw
- Legislative requirements
- Summary of the proposed changes
- How you can have your say

## Background to the proposal

Council maintains flood protection and control schemes to protect property, lives and livelihoods. Council owns flood control assets, including:

- Stop banks;
- Detention dams;
- Bridges;
- Culverts; and
- Tide gate structures.

Flooding has been the cause of most declared Civil Defence emergencies in Southland in the past. Over time, flood alleviation efforts have reduced the frequency of damaging floods. Section 149 of the LGA enables regional councils to make bylaws for flood protection and flood control works undertaken by, or on behalf of, the regional council, and for the purpose of managing, regulating against, or protecting from, damage, use, misuse, or loss, of property owned or controlled by the regional council in relation to its flood protection and control works.

## Reasons and purpose of the proposed bylaw

Council has prepared a replacement bylaw to enable it to continue controlling the use of land which might affect flood control works and will need to seek the views of the community.

The purpose of the bylaw is to manage, regulate and protect the effective operation and integrity of flood control works owned by, or under the control of the Southland Regional Council. The Bylaw would only control activities that may affect the integrity or operation of the flood control works.

The proposed bylaw modifies and enhances the 2010 bylaw by:

- Simplifying wording to ensure that it is clear, concise and consistent; and
- Including maps to identify the flood control works owned or controlled by Council

## Legislative requirements

Under Section 155 of the LGA, Council must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived issues. If it is, Council must determine whether the proposed bylaw is the most appropriate form of bylaw and whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990. Council's Strategy and Policy Committee at its 4 September 2019 meeting, resolved that the bylaw is the most appropriate way of addressing the perceived issues, noted the content of the proposed bylaw and directed staff to prepare documentation for the special consultative procedure.

*Is a bylaw the appropriate means to address the perceived issues?*

Council has a responsibility to provide and maintain flood control works and a number of assets have been established to provide this protection. The perceived problem is that third parties may cause damage to or otherwise interfere with the flood control works and affect the efficiency and/or integrity of the flood control works and cause unnecessary costs for Council.

Council considered that a bylaw is still the most appropriate way of ensuring Council's flood control works are protected for the following reasons:

- Section 149 of the LGA provides power to regional councils for the specific purpose of protecting flood control works;
- A bylaw provides a formal process where the public can be made aware of the requirements in the bylaw and Council is able to enforce its provisions in circumstances where a third party refuses to comply; and
- A bylaw provides an open and transparent process for the public to provide input into the preparation and adoption of the rules that will be applied.

*Is the bylaw in the most appropriate form?*

The 2010 bylaw has proven to be a simple method for achieving its objectives. The 2010 bylaw requires amendment to improve the substance of the bylaw and provide clarity to the public around when the rules apply. The proposed bylaw is of similar format and content to bylaws used by other regional councils to protect their flood control assets. The review of the 2010 bylaw provided an opportunity to update the bylaw to ensure it meets current Council and community needs in a clear and comprehensible way. The bylaw is therefore in the most appropriate form.

*Does the bylaw give rise to any implications under the New Zealand Bill of Rights Act 1990?*

The New Zealand Bill of Rights Act 1990 establishes certain fundamental human rights as well as rights in relation to offences and other matters. The proposed bylaw contributes to the security and safety of people and property and does not place any limitations on the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

## Summary of proposed changes

The proposed bylaw modifies and enhances the 2010 bylaw by simplifying wording to ensure that it is clear, concise and consistent and includes maps to identify the flood control works owned or controlled by Council. A summary of these changes includes:

- further definitions to clarify which flood control works the bylaw applies too;
- amendments to the activities that require Council approval, to clarify and expand on the provisions contained in the 2010 bylaw;
- additional compliance and enforcement provisions, to give Council the ability to revoke an Authority, give a notice to remedy any contravention of the bylaw, remove any works in contravention of any authority or the bylaw;
- inclusion of maps identifying the areas of flood control works, the drainage network and floodways; and
- the inclusion of more detail around the Bylaw Authority process including:
  - an assessment criteria for Council to have regard to;
  - placing an onus on Council to provide reasons for any refusal to grant an authority under the bylaw;
  - further provisions to ensure that flood control works that are situated on private land are kept to a standard to allow Council unimpeded access for maintenance and inspection purposes; and
  - provision for an objections process.

Council encourages anyone who is interested in the proposal to review the proposed bylaw set out in full in Appendix One.

## Have your say

Council is inviting submissions on the proposed Southland Flood Protection and Drainage Management Bylaw 2019. Any person or organisation can make a submission on the proposal.

Submission forms can be obtained from:

- The Environment Southland website [www.es.govt.nz](http://www.es.govt.nz)
- The offices of Environment Southland: Cnr North Road & Price Street, Waikiwi, Invercargill 9810
- Customer Services on 0800 76 88 45 or by email to [service@es.govt.nz](mailto:service@es.govt.nz)

The closing date for submissions is **Friday, 8 November 2019**

Submissions can be made:

Online at: [www.es.govt.nz/bylawreview](http://www.es.govt.nz/bylawreview)

By email to: [service@es.govt.nz](mailto:service@es.govt.nz)

By post to: Environment Southland  
Private Bag 90116  
Invercargill 9840

By hand to: Environment Southland office  
Cnr North Road & Price Street  
Waikiwi  
Invercargill 9810

Please ensure that if you wish to speak to your submission at the hearing, you indicate this in your written submission.

A hearing panel will hear submissions received on the proposal. It is anticipated that a hearing will occur around March 2020. Submitters who give notice in their submission of their wish to be heard will be advised of the date and location of the hearing.

## **Appendix One**

Proposed bylaw

**PROPOSED SOUTHLAND FLOOD CONTROL AND DRAINAGE MANAGEMENT  
BYLAW 2019**

That pursuant to Sections 149(1)(c), 155 and 156 of the Local Government Act 2002, the Southland Regional Council hereby resolves that the Flood Protection and Drainage Mangement Bylaw 2019 adopted on [                      ] 2019, is hereby confirmed, and shall come into force on [                      ]2019.

The foregoing resolution was passed at a meeting of the Southland Regional Council on [                      ]2019.

The Common Seal of the                      )  
Southland Regional Council                      )  
Was hereunto affixed in                      )  
The presence of:                      )

.....  
Chairperson

.....  
Chief Executive

## **Explanatory Note**

This note does not form part of the Bylaw.

The Southland Flood Control and Drainage Management Bylaw 2019 has been prepared under the Local Government Act 2002. Management, regulation and protection of flood control works is necessary in order to ensure the effective operation and integrity of flood control works owned by, or under the control of, the Southland Regional Council.

Climate change is expected to lead to increases in the frequency and intensity of extreme rainfall in the future. Council anticipates that its flood control works identified in this bylaw will change in the future in order to effectively prepare for climate change.

This Bylaw must be reviewed no later than .....

Section 158 of the Local Government Act 2002 requires a local authority to review a bylaw made under the Act no later than 5 years after the date on which the bylaw was made. Section 159 requires further reviews no later than 10 years after it was last reviewed.



- (ii) in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks; and
- (b) in relation to any lake, except a lake controlled by artificial means,—
  - (i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the lake cover at its annual highest level without exceeding its margin;
  - (ii) in all other cases, the space of land which the waters of the lake cover at its highest level without exceeding its margin; and
- (c) in relation to any lake controlled by artificial means, the space of land which the waters of the lake cover at its maximum permitted operating level; and
- (d) in relation to the sea, the submarine areas covered by the internal waters and the territorial sea

**Body of Water** includes that part of a lake, wetland, river, stream, passage, drain and channel on or under the ground, whether natural or not, through which water flows, whether continuously or intermittently and in respect of which there are flood control works.

**Construct** means to erect, install, carry out, alter, extend, fence, plant, reconstruct, remove, renew, repair, replace and demolish.

**Council** means the Southland Regional Council and includes any person duly authorised by the Council to exercise any of the powers conferred upon the Council by this Bylaw.

**Drain** means a channel, either artificially constructed or a modified watercourse, which is used to manage the water table. For the purposes of this Bylaw, means any drain as shown in Appendix 2.

**Flood control works** means:

- (a) any dam, weir, bank, spillway, groyne, reservoir;
- (b) any structure or appliance of any kind;
- (c) any drain, excavation, floodway;
- (d) any vegetation planting and/or vegetation management;

that is managed by or on behalf of the Council and that has or is intended to have the effect of stopping, diverting, controlling or restricting or otherwise regulating the flow or spread of flood water in or out of a body of water or the flow or spread of flood water including surface flood water.

For the purposes of this Bylaw, flood control works include, but are not limited to, any dam, drain, fence, flap gate, floodway, stopbank or tide gate as shown in Appendix 2.

**Floodway** means an area managed by the Council that has the effect or is intended to have the effect of regulating or controlling the flow or spread of flood water. For the purposes of this Bylaw, means any floodway as shown in Appendix 2.

**Occupier** in relation to any property, means the lawfully authorized inhabitant occupier of that property and 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 so entitled if the property were let to a tenant at a rack rent.

**Spillway** is a structure used to provide the controlled release of flows from a dam or levee into a downstream area

**Structure** means any building, crossing, equipment or other 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.

## 5. Activities Requiring Bylaw Authority

*Note: Resource consent or authorisation may also be required from the Southland Regional Council, relevant territorial authority, Land Information New Zealand, the Department of Conservation or other relevant regulatory agencies to carry out these activities.*

5.1 No person shall, without the prior authority of the Council granted in accordance with this bylaw:

- (a) Damage or allow damage to occur to any flood control works;
- (b) Alter, modify or otherwise interfere with any flood control works;
- (c) Remove, adjust or interfere with any machinery or equipment relating to any flood control works;
- (d) Plant or allow to grow any vegetation:
  - (i) in, on, over, through or under any flood control works;
  - (ii) in any place where that vegetation may reduce the efficiency and/or integrity of the flood control works or impede access by the Council for maintenance or inspection purposes;
  - (iii) or within 7.5 metres of the landward side of any flood control works;
- (e) Construct any structure:
  - (i) in, on, over, through or under any flood control works;
  - (ii) or within 7.5 metres of the landward side of any flood control works;
- (f) Dump, deposit or store any thing:
  - (i) on, in or within any flood control works;
  - (ii) or within 7.5 metres of the landward side of any flood control works;

- (g) Allow livestock, vehicles, machinery or equipment to alter or damage the integrity or proper operation of any flood control works, or any fence erected to protect any flood control works;
- (h) Undertake or carry out any excavations or earthworks:
  - (i) in, on, under, over or through any flood control works; or
  - (ii) within 7.5 metres of the landward side of any flood control works.

## **6. Applying for an Authority**

### **6.1 Authority**

- (a) Any person wishing to carry out any work described in Clause 5 shall first apply in writing to the Council for authority to carry out the work. Such application shall be made on the Form in Appendix 1 to this Bylaw and shall be accompanied by the prescribed fee.
- (b) The Council may grant any authority on such conditions and for such period as the Council considers appropriate. 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 control works:
  - (i) drainage and flood flow capacity;
  - (ii) stability / scour / erosion risk;
  - (iii) on-going functionality;
  - (iv) access for inspection and maintenance purposes;
- (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 and shall make it available to the relevant territorial authorities.

### **6.2 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 such circumstances as the Council may determine, refund, remit, or waive the whole or any part of any fee payable under this Bylaw.

### 6.3 Deeming Authority

(a) A resource consent granted by the Council or agreement between the Council and any other public body authorising the carrying out of any work described in Clause 5 shall be deemed to be an authority to carry out such work for the period and on the conditions set out in the resource consent or agreement.

## 7. Activities Required to be Undertaken

7.1 Every owner or occupier on whose land there is, or through which there flows a body of water, shall keep the body of water and the adjoining land for a distance of 7.5 metres from the body of water free of all vegetation likely to obstruct the free flow of water in the body of water or to impede access for machinery to the water body to construct or maintain flood control works.

7.2 Every owner or occupier of land on which any flood control works are situated, shall keep any accessways maintained to a standard, agreed between the parties, as will allow the safe passage by Council staff and contractors engaged by the Council, and their plant, machinery and vehicles.

7.3 Every owner or occupier of land on which flood control works are situated, or adjacent to any flood control works, shall, if required by Council, remove any tree or vegetation or any other material or object that obstructs, or is considered by Council to be at high risk of falling or obstructing the free flow of water.

7.4 The Council may, by written notice, require every owner or occupier of land adjoining any drain to, in the time and manner stated in the notice, erect fencing to prevent livestock entering the drain at the cost of the owner, if in the opinion of the Council, fencing is necessary to ensure the effective operation and integrity of the drain.

7.5 If any owner fails to comply with the requirements in clauses 7.1 to 7.4, the Council may, by written notice, specify the work required to be undertaken in accordance with that clause and require the owner within a period specified in the notice to carry out that work to the satisfaction of the Council.

7.6 If the owner fails to comply with the conditions of a notice under Clause 7.5 the Council by its servants and agents may enter upon the land of the owner and carry out the work and the cost of doing so shall be a debt due by the owner to the Council.

7.7 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 for the purposes of:

- inspecting;
- surveying; or

➤ carrying out maintenance;  
in regard to any flood control works. In the event of an emergency, the Council does not have to give 48 hours' notice but only the notice (if any) is practicable in the circumstances.

7.8 No person whether on private land or not, shall unreasonably obstruct or hinder any employee or contractor of the Council in the performance of anything which that employee or contractor is or may be required to do in the discharge of his/her duties.

7.9 The Council may, by way of notice displayed on site, prohibit or restrict access to any flood control works, if, in the opinion of the Council the restriction or prohibition is necessary to ensure the effective operation and integrity of the flood control works.

## **8. Compliance and Enforcement**

### **8.1 Revocation of authority**

(a) The Council may revoke any authority granted under this Bylaw where:

- (i) 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 8.1(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 8.1(b)(iii)1., or of a submission pursuant to clause 8.1(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 Offence**

(a) Every person commits an offence against this Bylaw who:

- (i) commits a breach of any of the provisions of this Bylaw.

- (ii) does anything or causes anything to be done in contravention of this Bylaw;
- (iii) omits to do anything required to be done by this Bylaw, the conditions of an authority, or a notice under clause 7.5.

(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.

### 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 provisions 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 person who committed the offence, as described by clause 8.2.

### 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 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 8.5(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.

# Appendix 1 – Bylaw Approval Application Form

Office Use Only - IRIS ID: REQ-.....

## 1. Applicant(s) Details

Applicant(s)  
name(s):.....

Organisation name (if applicable):.....

Postal Address:.....

..... Post code:.....

Phone Number: Business..... Private:.....

Mobile..... Email:.....

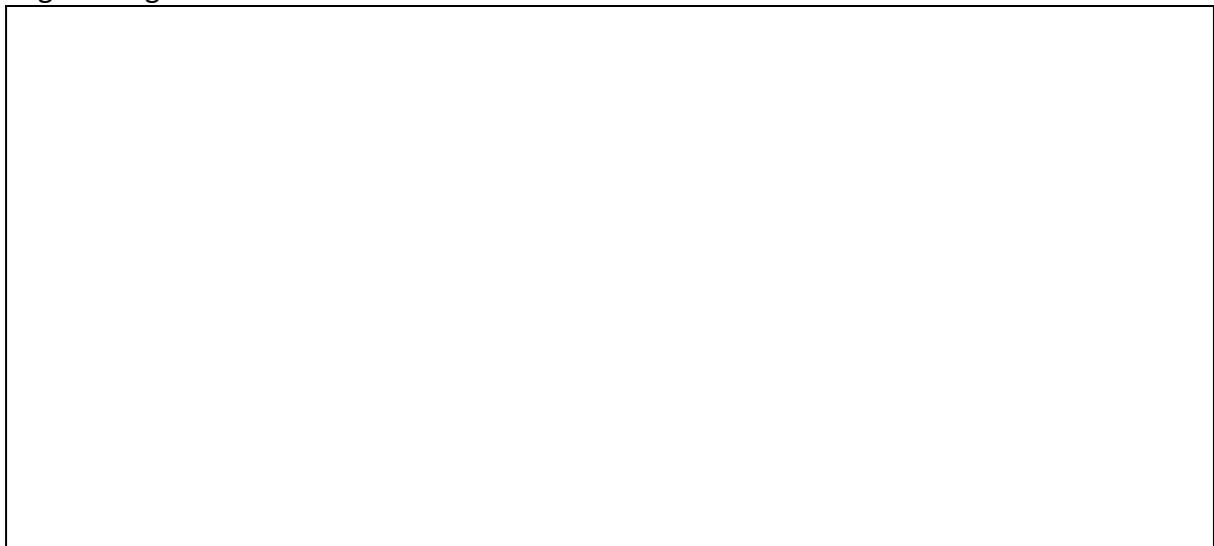
## 2. Property to which this Bylaw Approval Relates

Property address: .....  
.....

NZTM 2000 Coordinates: .....E .....N

## 3. Diagram of Location of Proposed Works

Please provide a diagram of the property in the box below, detailing where the works are proposed to occur (hand drawn is acceptable). If you are also able to provide a photo of the location where the works are proposed to occur, that would be beneficial for the Engineering Unit.





## **Appendix 2 – Bylaw Maps**