

# Stormwater Bylaw 2020

## Explanatory note

The objective of this bylaw is to prevent the misuse of Council's public stormwater network.

The bylaw does this by:

- controlling the discharge of contaminants into the public stormwater network.
- protecting the public stormwater network from damage or alteration.

This bylaw does not override any conditions of a resource consent granted by Bay of Plenty Regional Council that address the quality of discharges into the public stormwater network.

**Western Bay of Plenty District Council**

# **Stormwater Bylaw 2020**

## **Authority**

Pursuant to the powers vested in it under Sections 145 and 146 of the Local Government Act 2002, the Western Bay of Plenty District Council makes this bylaw.

## **Title and Commencement**

This Bylaw is the Western Bay of Plenty District Council Stormwater Bylaw 2020. It is in force from 5<sup>th</sup> October 2020.

## **Bylaw Structure**

This Bylaw comprises the document.

## **Scope**

This Bylaw applies to the whole of the district administered by Western Bay of Plenty District Council, and other locations that are controlled by Western Bay of Plenty District Council, now and in the future. This bylaw applies to both public and private stormwater networks.

## **Compliance with other Acts**

Compliance with the requirements of this bylaw does not remove the need to comply with the requirements of any Act, regulation or other bylaw.

## **Validation**

The Western Bay of Plenty District Council Stormwater Bylaw 2020 was duly made at a meeting of the Western Bay of Plenty District Council held on 24<sup>th</sup> September 2020, after completion of a Special Consultative Procedure.

# Table of Contents

Stormwater Bylaw 2020 .....	1
Stormwater Bylaw 2020 .....	2
Table of Contents .....	3
1. Definitions.....	4
2. Controlling the discharge of contaminants into the stormwater network .....	6
3. Protecting the network from damage or alteration .....	7
4. Monitoring.....	8
5. Offences and Breaches.....	9
6. Penalties and Remedies.....	9
7. Right of Appeal.....	9
8. Fees .....	10

## 1. Definitions

For the purpose of this Bylaw, the following definitions apply:

**Authorised Officer** means any officer appointed by the Council as an enforcement officer under s. 177 of the Local Government Act 2002 as an enforcement officer with powers of entry as prescribed by sections 171-174.

**Contaminant** is as defined by the Resource Management Act 1991. It means any substance (including gases, odorous compounds, liquids, solids, and microorganisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat:

- a) When discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or
- b) When discharged onto or into land or into air, changes or is likely to change the physical, chemical or biological condition of the land or air onto or into which it is discharged.

**Council** means the Western Bay of Plenty District Council.

**Discharge** is as defined by the Resource Management Act 1991 and includes emit, deposit, and allow to escape.

**Overland Flow Path** means the route along which stormwater flows. A subset of overland flow path is a secondary overland flow path. These routes carry water which cannot flow through the primary stormwater system (usually piped) because the water flow has exceeded the capacity of that network.

**Owner** in relation to any land or Premises, means the person for the time being entitled to receive the rent of the land or Premises, whether on his or her own account or as the agent of or trustee for any other person, or who would be so entitled if the land or Premises were let at a rent.

**Occupier** means in relation to any Premises, the owner and includes any tenant, agent, Manager, foreperson or other person apparently acting in the general management or control of the Premises.

**Person** includes a corporation sole and also a body of persons, whether corporated or unincorporated.

**Pollution Prevention Plan** means a Council-approved plan that identifies actual or potential risks of discharge of contaminants from a specific site or operation, and the management strategies implemented or proposed to mitigate against these risks. The plan identifies the mechanisms to reduce the potential for breaching the minimum water quality standards as specified in this Bylaw or Regional Plans.

**Premises** means either –

- (a) A property or allotment which is held under a separate certificate of title or for which a separate certificate of title may be issued and in respect to which a building consent has been or may be issued; or

- (b) A building that has been defined as an individual unit by a cross-lease, unit title or company lease and for which a certificate of title is available; or
- (c) Land held in public ownership (e.g. reserve) for a particular purpose; or
- (d) Individual units in buildings which are separately leased or separately occupied.

**Private Stormwater Network** means all privately owned components of a stormwater system that are located on private property, up to the point of discharge into the public stormwater network.

**Public Stormwater Network** includes:

- a) Any pipe, drain, drainage channel, land drainage work or treatment facility, vested in or under the control of Council, which serves more than one freehold lot; and,
- b) Any drain, drainage channels, land drainage works or treatment facilities within a legal road reserve or other public places; and any drain, drainage channel, land drainage work or treatment facility over which the Council has exercised control for a period of not less than 20 years; and any drain, drainage channel, land drainage work or treatment facility declared to be a public drain under section 462 of The Local Government Act 1974.

**Regional Natural Resources Plan** means the Bay of Plenty Regional Council's Operative Regional Natural Resources Plan.

**Stormwater** means surface water run-off resulting from rainfall.

Note:

References to any legislative provision include any legislative provision, and any subsequent changes that amend or replace it.

References to any regional plan (including any schedule in a regional plan) include any amendment or replacement to it.

## **2. Controlling the discharge of contaminants into the stormwater network**

### **2.1 Minimum Water Quality Standards**

No person shall allow the discharge of contaminants, either directly or indirectly, into any part of the public stormwater network unless;

- The discharge is permitted by a rule in a regional plan or
- Is authorised by a resource consent.

### **2.2 Treatment or works to be undertaken**

2.2.1 Council may require the owner or occupier to implement management options, treatment or works in order to:

- a) prevent the discharge or contaminants into the public stormwater network and / or
- b) protect the public stormwater network from damage or alteration.

2.2.2 Any management options, treatment or works shall be implemented in a timeframe stipulated by Council, and shall be undertaken and / or maintained at the owner or occupier's expense.

### **2.3 Pollution Prevention Plans**

2.3.1 Where a site is deemed to be a high risk under Schedule 4 of the Bay of Plenty Regional Natural Resources Plan, and the site discharges to the public stormwater network, the owner or occupier of the site may be required to prepare a Pollution Prevention Plan and submit the plan to Council for approval.

The Plan must include:

- a) A suitably scaled drawing showing the site layout, boundaries, all private stormwater and wastewater drainage including the point of connection to the public networks, relevant buildings and outdoor spaces (including their use); and
- b) A site assessment identifying all actual and potential sources of stormwater pollution; and
- c) Methods in place to control contamination of the public stormwater network; and
- d) Methods and timeframes proposed to control contamination of the public stormwater network; and
- e) A description of the maintenance procedures in place and proposed; and
- f) Spill prevention and spill response procedures.

If another plan has been prepared which addresses these issues, it may be used in place of a Pollution Prevention Plan at the sole discretion of the Council.

- 2.3.2 Within three months of being requested to do so, the owner / occupier must provide a Pollution Prevention Plan to Council for review and approval.
- 2.3.3 Once a Pollution Prevention Plan has been approved by Council, the owner / occupier must comply with all provisions, including timeframes specified, of the Pollution Prevention Plan.
- 2.3.4 The owner / occupier must review the Pollution Prevention Plan every three years and provide it to Council for review and approval.

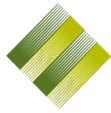
### **3. Protecting the network from damage or alteration**

#### **3.1 Damage to Public Stormwater Network**

- 3.1.1 No person shall destroy or cause or allow any damage to be caused to any
  - a) Dam
  - b) Weir
  - c) Stormwater detention device
  - d) Swale
  - e) Overland flow paths identified in a consent notice, other documents of Council or illustrated in integrated catchment management plans.
  - f) Stopbank
  - g) Headworks
  - h) Building; or, treatment device
  - i) Drainage reserve land
  - j) Ecological device
  - k) Erosion and scour control structures
  - l) Stormwater inlet and outlet structures
  - m) Stormwater pipes
  - n) Any other installation connected with the public stormwater network and under control of the Council.
- 3.1.2 No person shall modify, interfere with or remove items listed in Clause 3.1.1 without the prior approval of Council.
- 3.1.3 Every person excavating or working around the public stormwater network must take due care to ensure that the excavation or work is carried out in a manner that does not damage and/or compromise the integrity of the public stormwater network. If any damage occurs, the person must report it to Council or an Authorised Officer as soon as possible.

#### **3.2 Obstructions and capacity of the public stormwater network**

- 3.2.1 A person must not, without the prior written approval of Council:
  - a) Do anything that directly or indirectly obstructs, alters or impedes the natural flow of the public stormwater network.
  - b) Obstruct or hinder any part of any public or private stormwater network in a manner that is likely to cause nuisance.



- c) Erect any structure or stop bank, grow any vegetation, deposit any waste or carry out any activity that is likely to cause nuisance to the public stormwater network during a storm event.
- d) Obstruct or alter any overland flow paths identified in a consent notice, or other documents of council with any material or structures such as earth bunds, buildings, fences, retaining walls and rock gardens.
- e) Pump or divert water into any watercourse or the public stormwater network.
- f) Cause water to flow into a watercourse or the public stormwater network from outside the catchment area where, in the opinion of the Authorised Officer, the water will overload the capacity or will otherwise interfere with the proper functioning of the watercourse or the public stormwater network.

3.2.2 A person must not, without the prior written approval of Council:

- a) Stop, modify, divert or deepen any open drain or,
- b) Divert any open drain or otherwise cause stormwater to flow into the wastewater system.

### **3.3 Private Stormwater Network**

3.3.1 Council may require an owner/ occupier to fix or upgrade a private stormwater network, at the owners cost, to meet original design specifications.

3.3.2 No owner or occupier may, without Council's written approval, remove a private stormwater network or do anything which reduces it effectiveness.

3.3.3 No person shall allow stormwater to enter the wastewater system without prior written approval from Council.

3.3.4 The owner / occupier is responsible for ensuring the maintenance of any watercourse on their premises, including the removal of any obstruction that impedes or is likely to impede the free flow of water.

## **4. Monitoring**

### **4.1 Monitoring Discharges**

Council may inspect private and public stormwater networks in order to ensure compliances with Clauses 2 and 3 of this Bylaw.

### **4.2 Access**

4.1 In accordance with section 171 of the Local Government Act 2002, an Authorised Officer may enter and inspect any land or building (other than a dwelling house):

- For a routine inspection or monitoring of a post breach inspection. The Authorised Officer must give at least 24 hours notice of the intended entry.
- Of a high risk facility for routine inspection and monitoring. The Authorised Officer must give at least 24 hours notice of the intended entry.



- 4.2 In accordance with section 172 of the Local Government Act 2002, an Authorised Officer may enter and inspect any land for the purpose of detecting a breach of this bylaw if the Authorised Officer has reasonable grounds for suspecting that a breach has occurred or is occurring on the land. The Authorised Officer must give reasonable notice unless the giving of notice would defeat the purpose of entry.
- 4.3 In accordance with section 173 of the Local Government Act 2002, in the event of a sudden emergency causing or likely to cause damage to property or the environment or where there is danger to any works or adjoining property, an Authorised Officer may enter occupied land or buildings. Notice is not required.

## **5. Offences and Breaches**

- 5.1 Any person offending contravening, or committing or permitting a breach of, any of the provisions of this Bylaw commits an offence.
- 5.2 Without prejudice to any of the provisions of this Bylaw, Council may pursue any legal remedies available to it pursuant to the provisions of the Local Government Acts 1974 and 2002, or any other act or regulation applicable to the public stormwater network.
- 5.3 In addition to any legal penalties arising from any breach, offence, or dispute Council may seek to recover all costs arising from and associated with any such breach, offence or dispute.

## **6. Penalties and Remedies**

- 6.1 Every person who commits an offence against this bylaw is liable to –
- a) The penalty set out in section 242(4) of the Act, in relation to the provisions of the bylaw that are made under Part 8 of the Act; or
  - b) Where another enactment specifies the penalty for a breach of the Bylaw, that other penalty in relation to the provisions of this Bylaw that are made under that other enactment.

## **7. Right of Appeal**

- 7.1 Any person who claims to be unfairly or adversely affected by any decision, order, or direction, given by an Authorised Officer has the right of appeal to the Council.
- 7.2 The appeal must be in writing setting out the reasons for the appeal and must be lodged within fourteen (14) days of the date on which the decision, order, or direction was given.

- 7.3 The Council may appoint any standing committee of Council to consider the appeal and to hear written or personal submissions from the appellant if the committee so decides.
- 7.4 The committee, after considering such evidence as it thinks necessary, may revoke, confirm, or modify the decision, order, or direction giving rise to the appeal.

## **8. Fees**

- 8.1 If this bylaw provides for the Council to issue a certificate, permit, or consent or gives it authority or approval for anything, or to carry out an inspection, the Council may require the payment of a fee.
- 1.2 Any such fee must be prescribed by the Council under Section 150 of the Local Government Act 2002.
- 8.3 Fees may differ for any class of certificate, permit, consent, authority, approval or licence.