

Otago Regional Council Proposed Flood Protection Management Bylaw

Staff response to Panel requests #2 - deliberations

2 June 2022

Background

1. A public hearing in respect of the Otago Regional Council (ORC) Proposed Flood Protection Management Bylaw (Proposed Bylaw) was held in the ORC Council Chamber, Philip Laing House, Dunedin, on Friday 13 May 2022. Deliberations were held in the ORC Council Chamber on Thursday 19 May 2022.
2. The Hearing Panel comprised Councillor Kate Wilson (Chair), Councillor Gretchen Robertson and Mr Allan Cubitt (independent commissioner).
3. The Hearing Panel requested clarification or advice on various matters from Council Staff at the public hearing. This response was presented in a document titled “Staff response to Panel requests” and presented at the deliberations on 19 May 2022.
4. The Hearing Panel has requested further clarification or advice from Council Staff on the following matters during deliberations. One further amendment from Council Staff is proposed and a statement on the status of the Contour Channel is also included. These have been addressed below under the following headings:
 - Use of term “authorised” in Rule 3.0
 - Definition of “owner” and use of term “rack rent”
 - Inclusion of definition of “flood protection works” in the purpose statement
 - Use of terms “rule” and “clause” throughout the Proposed Bylaw
 - Amendments to diagrams in Appendix One
 - Requirement to provide reasons for objections
 - Use of terms “groyne” and “groynes” throughout the Proposed Bylaw
 - Minor wording amendment – “respects” to “matters”
 - Removal of statement allowing dumping or deposition where it is an inherent part of a permitted activity

- Status of Contour Channel
5. This report is as an addendum to the Summary of Submissions report dated 9 May 2022. An amended Appendix 2 (Proposed Flood Protection Management Bylaw) is attached to this report.

Use of term “authorised”

6. Cr Wilson raised the matter that the following statement in Rule 3.0 uses the word “authorised” and it was unclear whether this meant the same as the term “authority” as defined in the Proposed Bylaw (*“Authority means written approval issued by the Council under this Bylaw”*).
7. This was initially addressed in points 40-41 of the “Staff response to Panel requests” document (presented on Thursday 19 May 2022 at Deliberations). However, during deliberations further questions were raised as to whether consequential changes should then be made to the definition of “Council” to remove the use of the term “authorise”.
8. Council Staff sought legal advice on this matter. Based on this advice, we confirm that the words from the definition of Council *“any person duly authorised by the Council to exercise any of the powers conferred upon the Council by this Bylaw”* is intended to comprehend:
- Any transfer of functions under section 17 of the Local Government Act.
 - Delegations under Clause 32(1) Schedule 7 of the Local Government Act; under this clause a local authority may delegate to a committee, sub-committee, member or officer of the local authority.
 - Clause 32(5) Schedule 7 authorises the Council to delegate to any other local authority, organisation, or person the enforcement, inspection, licensing and administration relating to bylaws and other regulatory matters.
 - Section 179 Local Government Act expressly authorises contracting out of the administration of regulatory functions including enforcement, inspection, licensing and other administrative matters.
 - Under section 180 of the Local Government Act a Regional Council may consent to a territorial authority undertaking the enforcement and administration of a regional bylaw within a territorial authority’s jurisdiction.

9. We consider this interpretation issue has partly arisen from changing references from “approval” to “authority” throughout the Proposed Bylaw, which has led to ambiguity around the use of the term “authorise”.
10. Legal advice has recommended to revert to using the term “approval” with respect to the written approvals issued by Council under the Proposed Bylaw throughout the document rather than “authority”. This will remove the ambiguity around the term authorise and allow the word “authorised” to be retained in the definition of “Council” and in Rule 3.0. This approach is preferred (rather than changing the word “authorised” in the definition of “Council” and in Rule 3.0) because they are entirely appropriate to be used in these situations.

Definition of “owner” and use of term “rack rent”

11. The Hearing Panel has requested clarity around the use of the term “rack rent” in the definition of “owner”. Council Staff have sought legal advice which has confirmed that, whilst the definition may seem quite quaint, it is paralleled in statutes such as the Building Act 2004 and Resource Management Act 1991.
12. “Rack Rent” is a term not now commonly used in New Zealand, but in a legal setting means the full market rent for land including improvements. That may or may not be the actual rent (if any) payable under contract or by law.
13. Council Staff have been advised that this definition is comprehensive in embracing all potential owners of land, and legal advice has suggested the following addition to the definition to assist in giving a more modern perspective and readability:

“Owner in relation to any property, means the person 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, and includes the owner of the fee simple of the land.”

Inclusion of definition of flood protection works in the purpose statement

14. The Hearing Panel has requested further information relating to the inclusion of the definition of flood protection works in the Purpose of the Proposed Bylaw (Rule 1.0) and that the definition is not copied word-for-word (the Purpose instead says “Flood protection works can include...” while in the definition said “Flood protection works include...”).
15. Council Staff have sought legal advice on this matter. We have been advised that, whilst it is not inappropriate for the purpose to include a description of what flood protection works are, in this case it is problematic because of the word “can”. As such, the definition should be removed from the purpose statement.

Use of terms “rule” and “clause” throughout the Proposed Bylaw

- 16. Commissioner Cubitt raised the inconsistency of the use of the words “rule” and “clause” throughout the Proposed Bylaw.
- 17. We propose that only the term “clause” is used.

Amendments to diagrams in Appendix One

- 18. Cr Wilson requested the following details be added to the diagrams in Appendix One:
 - Identification of the “top of bank” on the right-hand side of the scheduled drain (Figure 1)
 - Identification of 20m exclusion zone from a defence against water (Figures 2 and 3)
- 19. The diagrams have been amended to address this request, shown below:

Figure 1: Scheduled drains and overland flow paths

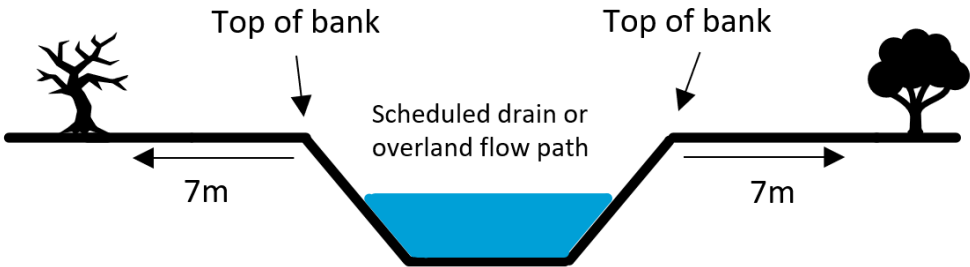


Figure 2: Defences against water - floodbank

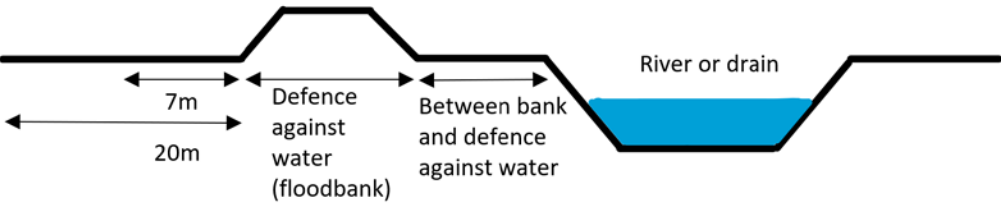
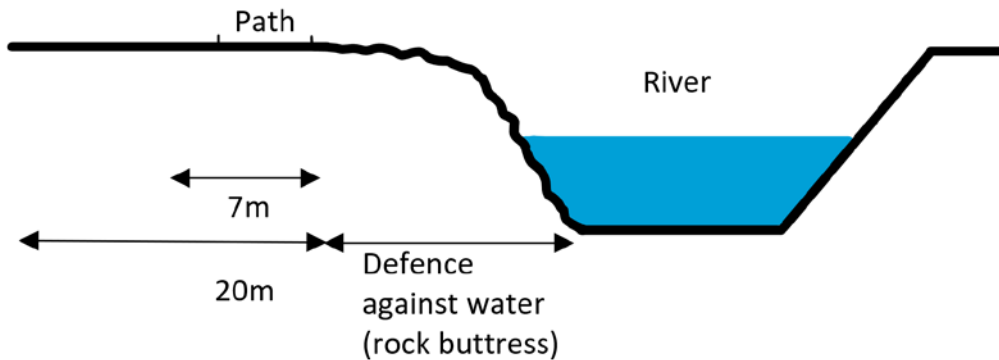


Figure 3: Defences against water – rock buttress



Requirement to provide reasons for objections

20. The Hearing Panel requested that any objection to a decision or authority under clause 5.3(a) state the reasons for the objection, similar to any objections under the Resource Management Act 1991.
21. We suggest that the wording of clause 5.3(a) be amended as follows:

“Any person who applies for approval under this Bylaw, within 20 working days of receiving any decision or approval in relation to this Bylaw, may object in writing to the Council in regard to that decision or approval. Objections to a decision or approval are limited to a refusal of the approval or the conditions placed on the approval and must state the reasons for the objection.”

Use of terms “groyne” and “groynes” throughout the Proposed Bylaw

22. Cr Wilson raised the point that the terms “groyne” and “groynes” appear to have been used interchangeably throughout the Proposed Bylaw and requested clarity on this.
23. We consider the term “groynes” (plural) should be used in the relevant rule title and schedule title, definition of flood protection works, title of clause 3.4 (Groynes, Cross-banks and Training Lines) and title of the Fourth Schedule (Groynes, Cross-banks, Training Line and Flood Protection Vegetation). The term “groyne” (singular) should be used in the body of the rule (e.g., no person shall... alter any groyne...).
24. To reflect how the terms have been used throughout the document, we consider that the use of “groynes” in the definition (Rule 2.0) should be changed to refer to “groyne” singular.

Minor wording amendment – “respects” to “matters”

25. The Hearing Panel consider the word “respects” in clause 6.1(b)(i) should be replaced with “matters” so that it reads:

“sets out the matters in which the holder has contravened or failed to comply with any condition of the approval”

26. Council Staff do not have any concerns with this amendment or consider that it results in any unintended consequences.

Removal of statement allowing dumping or deposition where it is an inherent part of a permitted activity

27. In response to the University of Otago submission (submitter 9) point 5, Council Staff stated:

“We acknowledge that the wording ‘Dump or deposit any thing’ is broad and consider this could be refined to somewhat to address the submitters concerns by adding an exclusion to this clause that allows dumping or depositing if it is a permitted activity under another clause in the Bylaw. We propose amending the final sentence of 3.2(g) to say: ‘excluding materials for maintenance of existing authorised access or where dumping or deposition of material is an inherent part of an activity that is permitted under any other rule in this Bylaw’. For consistency we consider this should also be added to clauses 3.3(e) and 3.4(f).

This would, for example, authorise deposition activities such as the placement of compost associated with gardening, replacement of a fence and placement of fill material associated with repairing footpaths to be an inherent part of those permitted activities.”

28. Council Staff have since received legal advice stating that the addition of this wording may unintentionally extend the ambit of the Bylaw and the use of the term “permitted” is confusing given that the Bylaw does not permit, but prohibits, activities. As such, it was recommended that this statement was removed.
29. It is noted that inherent activities will ordinarily be part of the activity permitted or approved.

Status of the Contour Channel

30. In the Summary of Submissions dated 9 May 2022 prepared by Council Staff in response to the submissions received during the public consultation period, Council Staff were of the understanding that the Contour Channel was a natural waterbody. Based on the information heard during the Hearing on 13 May 2022, Council Staff are investigating further the status of the channel.
31. We note that the outcome of this assessment does not impact the Proposed Bylaw, or change Council Staff’s recommendations in relation to submissions 4 and 10.

Proposed
Flood Protection
Management Bylaw
20122

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Chairperson's Foreword

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First Schedule

Maps of scheduled drains and overland flow paths.

Second Schedule

Maps of defences against water and excavation-sensitive areas.

Third Schedule

Descriptions and maps of floodways.

Fourth Schedule

Maps of groynes, cross-banks, training lines and flood protection vegetation, ~~anchored tree protection and plantings.~~

Appendix One

Diagrams referencing Activities requiring Bylaw [Authority Approval](#)

Appendix Two

Bylaw Approval [Authority Approval](#) Application Form.

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FLOOD PROTECTION MANAGEMENT BYLAW 20122

The Otago Regional Council, pursuant to the powers contained in the Local Government Act 2002, makes the following Bylaw:

Title

This Bylaw shall be known as the Flood Protection Management Bylaw 20122.

Commencement

This Bylaw shall come into force on the 1st of September [date] 20122.

1.0 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 ~~Otago Regional Council~~ *Council*.

~~Flood protection works can include scheduled drains, overland flow paths, defences against water, floodways, groynes, cross banks, training lines and flood protection vegetation, anchored tree protection and plantings.~~

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This Bylaw ~~only~~ controls activities that may affect the integrity or operation of flood protection works.

2.0 DEFINITIONS

Note: ~~W~~ where a word is defined it is shown in the Bylaw text in *italics*.

~~**Anchored Tree Protection**~~ means any anchored tree protection shown in the Fourth Schedule.

~~**Approval**~~ means written approval issued by the *Council* under this Bylaw.

~~**Authorised access**~~ means legally established access that was in place prior to this Bylaw coming into effect or access that is authorised under this Bylaw.

~~**Authority**~~ means written approval issued by the *Council* under this Bylaw.

~~**Bed**~~ means the space of land which the waters of the *river* cover at its fullest flow without overtopping its banks.

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

~~**Cross-bank**~~ means any cross-bank shown in the Fourth Schedule.

Cultivation means the alteration or disturbance of land (or any matter constituting land including soil, clay, sand and rock) to a depth of no more than 300 millimetres below the existing ground surface for the purpose of sowing, growing or harvesting of pasture, ~~or~~ crops or domestic gardening. Cultivation does not include the planting of trees, shrubs or hedges, ~~to a depth of no more than 300 millimetres below the existing ground surface.~~

Defence against water means any defence against water shown in the Second Schedule. The beds ~~and includes the bed~~ of the Water of Leith and Lindsay Creek and associated flood protection structures are defences against water. The locations of the Water of Leith and Lindsay Creek areas marked in ~~red-blue on the Leith Lindsay map~~ in the Second Schedule.

Ditches ~~means any drainage network, other than scheduled drains.~~

Drain, in clause 3.3 Floodways, means any drain shown in the First Schedule artificial watercourse designed, constructed, or used for the drainage of surface water or subsurface water, but excludes artificial watercourses used for the conveyance of water for electricity generation, irrigation, or water supply purposes (note also the definition of Scheduled drain).

Earthworks means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock).

Excavation means the removal of material, which results in a hole or cavity.

Excavation-sensitive areas means any excavation-sensitive area shown in the Second Schedule.

Flood protection works include scheduled drains, overland flow paths, defences against water, floodways, groynes, cross-banks, training lines and flood protection vegetation, anchored tree protection and plantings.

Flood protection vegetation means all trees and shrubs, including those deliberately planted, or self-seeded, owned or controlled by Council for flood or erosion protection purposes occurring between the 'Flood protection vegetation' lines in the Fourth Schedule. Where only one 'flood protection vegetation' line is shown, the area of vegetation to be managed for flood protection will be the area between the line and the adjacent edge of the active channel in the Fourth Schedule.

Floodway means any floodway shown in the Third Schedule.

Groynes means any groyne shown in the Fourth Schedule.

Occupier in relation to any property, means the lawfully authorised inhabitant occupier of that property and persons who have legal right to undertake activities on that property.

Overland flow path means any overland flow path shown in the First Schedule.

Owner in relation to any property, means the person 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, [and includes the owner of the fee simple of the land.](#) |

Plantings means any planting shown in the Fourth Schedule.

River means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse.

Scheduled drain means any drain or river shown [as a Scheduled drain](#) in the First Schedule.

Structure includes any building, crossing, equipment, device or other facility made by people and which is fixed to land; and includes any raft (and also includes, but is not limited to, any [driveway](#), fence, gate, line or cable and any culvert, pipe, or other kind of conduit) but does not include any lines or cables to be carried upon existing bridges or utility support structures authorised in accordance with this Bylaw.

Training line means any training line shown in the Fourth Schedule.

3.0 ACTIVITIES REQUIRING BYLAW ~~AUTHORITY~~ APPROVAL

Nothing in this Bylaw applies to Council employees or persons authorised by Council undertaking maintenance or emergency works on those flood protection works subject to the Bylaw

Resource consent or authorisation may also be required from the ~~Otago Regional Council~~ Council, relevant territorial authority or the Department of Conservation.

Note: Diagrams are included in Appendix 1 to illustrate the relevant areas of the flood protection works covered by ~~sections~~ clauses 3.1 and 3.2.

3.1 Scheduled Drains and Overland Flow Paths

No person shall, without the prior ~~authority~~ approval of the Council –

- a. Alter any scheduled drain or overland flow path;
- b. Remove or interfere with any machinery or equipment relating to any scheduled drain;
- c. Plant ~~or allow to grow~~ any tree, shrub, hedge or part thereof
 - i. in any scheduled drain or overland flow path, or
 - ii. on, or within, seven metres of the top of the bank of, any scheduled drain;
- d. Construct or put any *structure*
 - i. in, over, through or under any scheduled drain or overland flow path, or
 - ii. on, or within, seven metres of the top of the bank of, any scheduled drain;
- e. Dump or deposit any thing in any scheduled drain or overland flow path;
- f. Obstruct any scheduled drain or overland flow path;
- g. Drive, take or operate any vehicle, machinery or equipment, in or through any scheduled drain;
- h. Allow livestock in or through any scheduled drain;
- i. Connect any pipe, channel or other conduit to any scheduled drain or overland flow path.

3.2 Defences Against Water and Excavation-Sensitive Areas

No person shall, without the prior ~~authority approval~~ of the Council –

- a. Alter any *defence against water* except as provided for by ~~rule clause~~ 3.2 (~~fg~~);
- b. Remove or interfere with any machinery or equipment relating to any *defence against water*;
- c. Plant ~~or allow to grow~~ any tree, shrub, hedge or part thereof
 - i. on any *defence against water*, or
 - ii. within seven metres of the landward side of any *defence against water*, or
 - iii. between the bank of any river and associated *defence against water*;
- d. Cut down or remove any tree
 - i. on any *defence against water*, or
 - ii. within seven metres of the landward side of any *defence against water*, or
 - iii. between the bank of any river and associated *defence against water*;
- ~~d.e.~~ Construct or put any *structure*
 - i. in, on, over, through or under any *defence against water*, or
 - ii. within seven metres of the landward side of any *defence against water*, or
 - iii. between the bank of any river and associated *defence against water*;
- ~~e.f.~~ Remove or alter any *structure*
 - i. in, on, over, through or under any *defence against water*, or
 - ii. within seven metres of any *defence against water*, or
 - iii. between the bank of any river and associated *defence against water*, or
 - ~~iv.iii.~~ within any *excavation-sensitive area*;
- ~~f.g.~~ Dump or deposit any thing
 - i. on any *defence against water*, or
 - ii. within seven metres of the landward side of any *defence against water*, or
 - iii. between the bank of any river and associated *defence against water*; excluding materials for maintenance of existing authorised access;
- ~~g.h.~~ Allow livestock, vehicles, machinery or equipment to adversely affect the integrity of any *defence against water*;

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- h.i. Carry out any ~~excavation~~ earthworks
- i. in, on, through or under any *defence against water*, or
 - ii. ~~within 20 metres of the landward side of any *defence against water* which lowers the existing ground surface by more than 300 millimetres in depth, or~~
 - ii. within 20 metres of the landward side of any *defence against water* unless the earthworks relate to *cultivation*, or
 - iii. between the bank of any river and associated *defence against water*, or
 - iv. within any *excavation-sensitive area*, if the *earthworks* involve *excavation*.

3.3 Floodways

No person shall, without the prior ~~authority approval~~ of the Council –

- a. Alter any *floodway* except as provided for by ~~rules-clauses~~ 3.3 (e) and (g);
- b. Remove or interfere with any machinery or equipment relating to any *floodway*;
- c. Plant ~~or allow to grow~~ any tree, shrub, hedge or part thereof in any *floodway*;
- d. Construct or put any *structure* in, on, over, through or under any *floodway*;
- e. Dump or deposit any thing in any *floodway*, excluding materials for maintenance of existing authorised access, or as a result of maintenance of ~~ditches drains~~ undertaken in accordance with ~~rule-clause~~ 3.3 (g);
- f. Obstruct any *floodway*;
- g. Carry out any ~~excavation~~ earthworks in any *floodway*, excluding maintenance of ~~ditches drains~~;
- h. Connect any pipe, channel or other conduit to the Hilderthorpe or Hendersons and Waikoura Creeks floodways.

3.4 Lower Waitaki River Groynes ~~and~~, Cross-banks ~~and~~ Training Lines ~~and~~ Anchored Tree Protection

No person shall, without the prior [authority approval](#) of the Council—

- a. Alter any ~~groyne~~ or cross-bank or training line ~~or anchored tree protection~~;
- b. Remove or interfere with any machinery or equipment relating to any ~~groyne~~ or cross-bank or training line ~~or anchored tree protection~~;
- c. Plant or allow to grow any tree, shrub, hedge or part thereof ~~on, or within seven metres, of any groyne, cross-bank or anchored tree protection~~;
 - i. ~~on any groyne, or cross-bank or training line~~; or
 - ii. ~~within seven metres of any groyne or cross-bank or training line~~;
- d. Construct or put any ~~structure~~
 - i. in, on, over, through or under any ~~groyne, or cross-bank or training line or anchored tree protection~~, or
 - ii. within seven metres of any ~~groyne, or cross-bank or training line or anchored tree protection~~;
- e. Remove or alter any ~~structure~~
 - i. in, on, over, through or under any ~~groyne, or cross-bank or training line or anchored tree protection~~, or
 - ii. within seven metres of any ~~groyne, or cross-bank or training line or anchored tree protection~~;
- f. Dump or deposit any thing on, or within fifty metres of any ~~groyne, or cross-bank or training line or anchored tree protection~~; excluding materials for the purpose of [authorised](#) access [authorised](#) maintenance;
- g. Carry out any ~~excavation earthworks~~
 - i. in, on, through or under any ~~groyne, or cross-bank or training line or anchored tree protection~~, or
 - ii. ~~within fifty metres of any groyne, or cross-bank or training line unless the earthworks relate to cultivation or anchored tree protection which lowers the existing ground surface by more than 300 millimetres in depth, or~~
 - iii. ~~between the bank of any river and associated groyne, or cross-bank or training line or anchored tree protection~~;
- h. Allow livestock, vehicles, machinery or equipment to adversely affect the integrity of any ~~groyne, or cross-bank or training line or anchored tree protection~~.

3.5 ~~Lower Waitaki Plantings~~ Flood Protection Vegetation

No person shall, without the prior ~~authority approval~~ of the Council –

- a. Remove, alter or interfere with any ~~plantings~~ flood protection vegetation; or
- b. Add to any ~~plantings~~. Plant ~~or allow to grow~~ any tree, shrub, hedge or part thereof within any flood protection vegetation;
- c. Allow stock to graze within any flood protection vegetation.

~~Note: The extent of this vegetation is defined as the area between the 'flood protection vegetation' lines, or where there is only one 'flood protection vegetation' line, the area of vegetation to be managed for flood protection will be the area between the line and the adjacent edge of the active channel as shown in the Fourth Schedule.~~

4.0 ACTIVITIES REQUIRED TO BE UNDERTAKEN

4.1 Structures

The *owner* of every *structure* [impacted by clause 3.1 to 3.4](#) shall keep it in good repair.

4.2 Floodways

- a. Within any *floodway* every fence and gate shall be maintained free of debris.
- b. Within the Hilderthorpe *Floodway*, every fence shall include a floodgate which enables the free flow of flood water.

4.3 Fencing of Drains

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

4.4 Access

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

5.0 APPLYING FOR AN ~~AUTHORITY~~APPROVAL

5.1 ~~Authority~~Approval

- a. An application to the *Council* for ~~authority approval~~ under this Bylaw shall be made in accordance with the Bylaw Approval Application Form (Appendix ~~One~~Two) and be accompanied by the prescribed fee;
- b. Any ~~authority approval~~ under this Bylaw may be granted on such conditions as the *Council* considers appropriate. When considering applications for ~~authority approval~~, the *Council* shall have regard, but not be limited to, the following assessment criteria, in order to ensure the effective operation and integrity of the *flood protection works*:
 - Capacity
 - Stability, scour and erosion risk
 - Access for inspection and maintenance purposes
 - Duration of ~~authority approval~~
 - Water quality
- c. If *Council* refuses an application for ~~authority approval~~, the *Council* shall give written reasons for that decision.
- d. Every person to whom an ~~authority approval~~ is granted shall produce that ~~authority approval~~ for inspection on request by the *Council*.

5.2 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 approval~~ under this Bylaw.
- b. The *Council* may, in such situations as the *Council* may determine, refund, remit, or waive the whole or any part of any fee payable under this Bylaw.

5.3 Objections Process

- a. Any person who applies for ~~authority approval~~ under this Bylaw, within ~~five-20~~ working days of receiving any decision or ~~authority approval~~ in relation to this Bylaw, may object in writing to the *Council* in regard to that decision or ~~authority approval~~. Objections to a decision or ~~authority approval~~ are limited to a refusal of the ~~authority approval~~ or the conditions placed on the ~~authority approval~~ and must state the reasons for the objection.

b. The Council may uphold, amend or rescind the decision or ~~authority approval~~, and in making its determination must have regard to:

i. the evidence on which the decision or ~~authority approval~~ 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, including the reasons for that determination.

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6.0 COMPLIANCE AND ENFORCEMENT

6.1 Revocation of ~~Authority~~Approval

- a. The *Council* may, in accordance with this clause, revoke any ~~authority approval~~ granted under this Bylaw, if the holder of the ~~authority approval~~ contravenes or fails to comply with any condition of the ~~authority approval~~.
- b. Subject to 6.1(d), ~~Before~~ revoking any ~~authority approval~~, the *Council* shall give written notice to the holder of the ~~authority approval~~ that the *Council* may revoke the ~~authority approval~~ which:
- i. ~~written notice to the holder of the *authority* that the *Council* may revoke the *authority* sets out the *respects matters* in which the holder has contravened or failed to comply with any condition of the ~~authority approval~~; and~~
 - ii. ~~the holder an opportunity of making, within 14 days, written submissions relating to the possible revocation of the *authority*. 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 approval~~ 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 ~~2014~~ working days, a written submission to the *Council* setting out reasons why the ~~authority approval~~ should not be revoked.~~
- c. ~~On receipt of a request by the holder for further time pursuant to clause 6.1(a)(iii)(1), or of a submission pursuant to clause 6.1(a)(iii)(2), the *Council* may at its sole discretion:~~
- i. ~~grant the further time sought; or~~
 - ii. ~~accept the submission made (as the case may be); or~~
 - iii. ~~or revoke the ~~authority approval~~.~~
- d. ~~*Council* may revoke ~~authority approval~~ to obtain immediate efficacy and effectiveness of the *flood protection works* or in the event of pending or current flood events.~~
- e. ~~Nothing in this clause applies to a revocation of ~~authority approval~~ under clause 6.1(d).~~

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6.2 Offence

- a. Every person commits an offence against this Bylaw who -
 - i. Commits a breach of ~~any clauses of Section 3~~ or 4 of this Bylaw;
 - ii. Causes or permits to be done anything in contravention of ~~any clauses of Section 3~~ or 4 of this Bylaw;
 - iii. Omits to do anything required by this Bylaw or the conditions of the relevant ~~authority approval~~;
 - iv. Fails to comply with any 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.

6.3 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 clause of Section 3~~ or 4, or the conditions of the relevant ~~authority approval~~, in the time, and in the manner stated in the notice, at the cost of the *owner*.

6.4 Removal of Works

The *Council*, or any agent of the *Council*, may remove or alter any work or any thing, constructed or being in contravention of any provision of this Bylaw, or any conditions of an ~~authority approval~~, and may recover the costs incurred by the *Council* in connection with the removal or alteration.

The undertaking of this action shall not relieve any person from liability to any penalty incurred by reason of the breach.

First Schedule - Drains and Overland Flow Paths

Maps of *scheduled drains* and *overland flow paths* owned by or under the control of the *Council*, to which this Bylaw applies.

Lower Clutha Scheduled Drains
Tokomairiro Scheduled Drains
East Taieri Scheduled Drains and Overland Flow Paths
West Taieri Scheduled Drains and Overland Flow Paths

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Second Schedule – Defences Against Water and Excavation-Sensitive Areas

Maps of *defences against water* and *excavation-sensitive areas* owned by or under the control of the *Council*, to which this Bylaw applies.

Lower Clutha Defences Against Water
Lower Taieri Defences Against Water and Excavation-Sensitive Areas
Leith Lindsay Defences Against Water
Alexandra Defences Against Water
Albert Town Defences Against Water

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Third Schedule - Floodways

Descriptions and maps of *floodways* owned by or under the control of the *Council*, to which this Bylaw applies.

Lower Clutha Floodway
Lower Taieri (Upper Pond) Floodway
East Taieri Silver Stream Floodway
Lower Taieri River Floodway
Miller Road and Otokia Road Contour Channel Floodways
Hendersons and Waikoura Creeks Floodway
Hilderthorpe Floodway

Lower Clutha Floodway

This channel provides flood relief to Balclutha, shortening the flow path of the Koau branch between the Bifurcation (point at which the Clutha splits into the Koau and Matau branches) and Finegand. It runs in a SSE direction, is approximately 500 m wide and 1.9 km long. The floodway is grass-lined (pastoral farmland when not in operation) with floodbanks on either side and a lower height sill at the bottom end (to prevent the bottom end being drowned in river flows less than the operating threshold).

Lower Taieri (Upper Pond) Floodway

The Lower Taieri Flood Protection Scheme incorporates two flood storage ponds designed to maximise the peak flow the Scheme can accommodate. The northern most pond (upper pond) has a defined spill point from the Taieri River. A demountable barrier structure (with collapsible props) gives some control to the discharge but most of the spillway is 'uncontrolled' (flatter riverward batter and a steeper landward batter lined with rock, with concrete grouting). Although not physically delineated, the area of pastoral farmland between the spillway and Riverside Road conveys flow spilled from the Taieri River to the upper ponding area.

East Taieri Silver Stream Floodway

Although not physically delineated, this floodway encompasses an area adjacent to the Silver Stream (Gordon Road) Spillway. This floodway conveys flow spilled from the Silver Stream which eventually discharges to the Upper Ponding Area via gated culverts through the cutoff bank.

The Silver Stream (Gordon Road) Spillway is a lowered section (approximately 1km long) of the true right Silver Stream floodbank between Gordon Road and Riccarton Road. This section is a design feature of the Lower Taieri Flood Protection Scheme. It is designed to mitigate the flood risk for Mosgiel (protected by the true left floodbank) by allowing spilling over the true right floodbank. ~~Spill starts when the flow in the Silver Stream reaches approximately 170 m³/s.~~

Lower Taieri River Floodway

The Taieri River Floodway defines the area of river berm between Allanton and the Waipori River confluence that assists with the conveyance of flood flows. The true left extent of the floodway between Allanton and the Waipori River confluence is defined

by higher ground (lower than the opposite bank floodbank crest level). The true right side of the river from Otokia to the Waipori River confluence is defined by floodbanks or elevated sections of State Highway 1 (locally known as the “Flood Free Highway”).

Miller Road and Otokia Road Contour Channel Floodways

Two uncontrolled spillways are located on the Contour Channel left bank, one just upstream of Miller Road and one immediately downstream of Otokia Road. These spillways consist of a lowered (relative to adjoining sections) section of Contour Channel floodbank. Thus when the water level in the Contour Channel reaches the spillway crest level, spill will begin automatically. The spilled water occupies the floodways before reaching the old course of Lee Creek (now a scheduled drain). This water eventually reaches the Waipori pump station and is discharged into Lake Waipori.

Hendersons and Waikoura Creeks Floodway

The Hendersons and Waikoura Creeks floodway consists of artificially constructed channels designed to collect flood flows on the north-eastern side of Georgetown-Pukeuri Road (SH83) and convey them to the Waitaki River during significant rainfall events. This floodway is not part of a wider flood protection scheme.

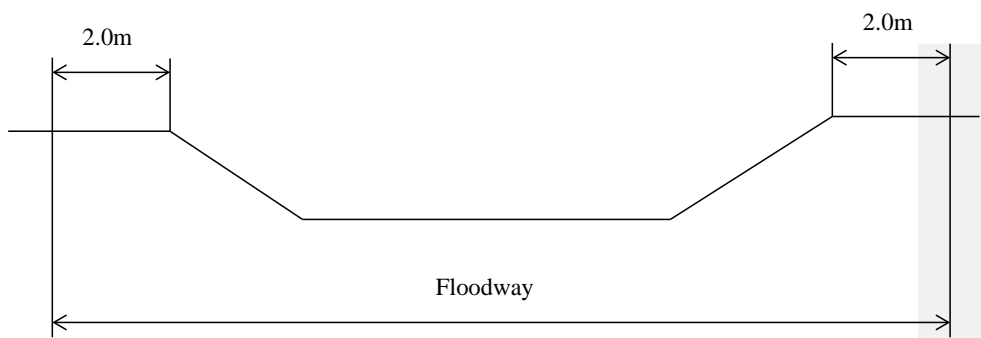
The floodway starts at the artificially constructed sections of the creeks and join at Irvine Road where combined, they follow Irvine Road for approximately 800 metres then follow Jardine Road for about 2,500 metres before entering the Waitaki River through a drop structure.

Hilderthorpe Floodway

The Hilderthorpe Floodway is a channel, both natural and artificially constructed, designed to convey overland flow from Gray Road to the Hilderthorpe Race alongside Steward Road during significant rainfall events. This floodway is not part of a wider flood protection scheme.

The natural sections of the channel follow the course of a paleochannel.

The map indicates the extent of the Hilderthorpe floodway. The general cross section of the Hilderthorpe floodway is shown below.



**Fourth Schedule – Groynes, Cross-Banks, Training Line,
~~Anchored Tree Protection and Plantings~~ and
Flood Protection Vegetation**

Maps of groynes, cross-banks, training line, ~~anchored tree protection and plantings~~
and flood protection vegetation owned by or under the control of the *Council*, to which
this Bylaw applies.

Lower Waitaki River Groynes, Cross-Banks and Flood Protection Vegetation,
~~Anchored Tree Protection and Plantings~~
Shotover River Training Line and Flood Protection Vegetation

Appendix One: Diagrams referencing Activities requiring Bylaw Authority Approval

Note: These diagrams are for illustrative purposes and are not to scale.

Figure 1: Scheduled drains and overland flow paths

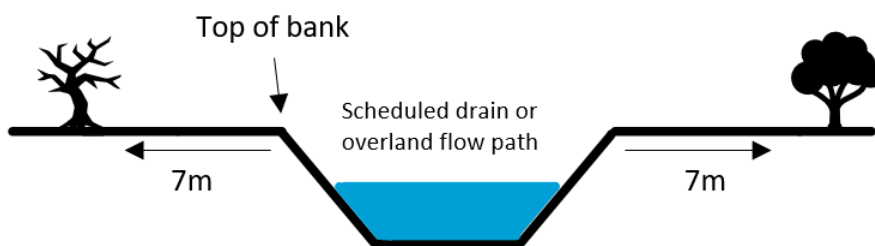


Figure 1: Scheduled drains and overland flow paths

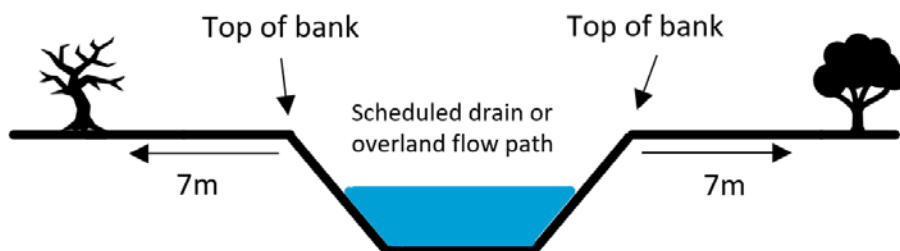


Figure 2: Defences against water - floodbank

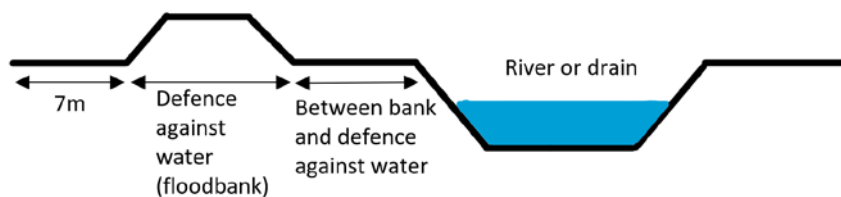


Figure 2: Defences against water - floodbank

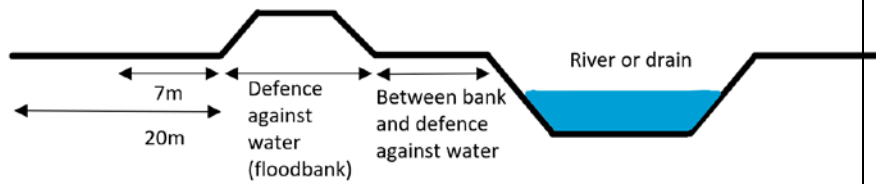


Figure 3: Defences against water – rock buttress

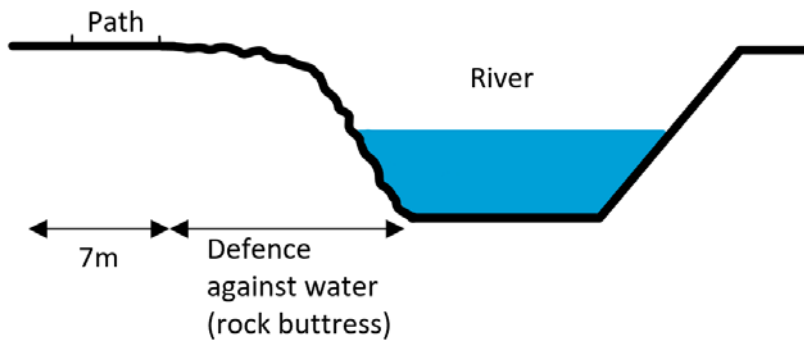
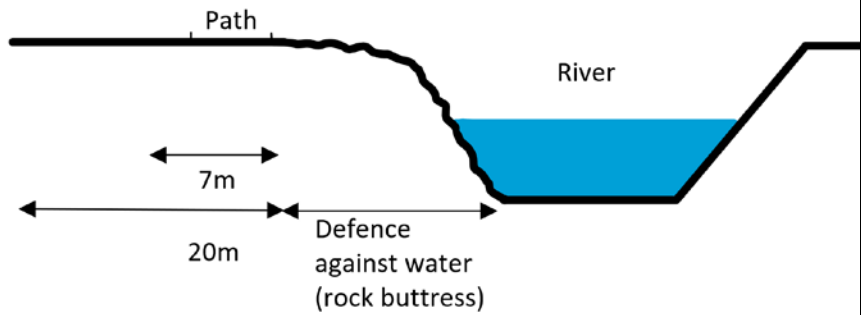


Figure 3: Defences against water – rock buttress



Appendix Two: Bylaw Approval Authority Approval Application Form

Bylaw ~~Approval~~ Authority Approval Application Form



1. Applicant(s) Details

Name: _____

Organisation name (if applicable): _____

Are you: the owner an occupier agent on behalf

Key contact details for applicant:

Postal Address _____

Post Code _____

Phone Number Business _____ Private _____

Mobile _____ Fax _____

Email Address _____

Key contact details for consultant (if applicable):

Postal Address _____

Post Code _____

Phone Number Business _____

Mobile _____

Email Address _____

2. Property to which this Bylaw ~~Approval~~ Authority Approval Relates

Property Address _____

Legal description: _____

Co-ordinates (NZTM 2000): Northing – _____ Easting - _____

3. ~~Section~~ Clause(s) of the Bylaw to which this ~~Approval~~ Authority Approval Relates

Bylaw ~~Approval~~ Approval Application Form



4. Diagram of Location of Proposed Works

Please provide a diagram of the property below, detailing where the works are proposed to occur and other relevant diagrams (e.g. cross-section). If possible please also provide photos of the location.

5. Description of the Proposed Works

Please describe the proposed works, the reasons for them, when and how they will be undertaken, who will be doing the works, and any other relevant information.

Bylaw ~~Approval~~ Authority Application Form



6. Assessment against the assessment criteria

Please assess the effects of the proposed works against the following assessment criteria.

Capacity:

Stability, scour and erosion risk:

Access for inspection and maintenance purposes:

Water quality:

Duration of ~~authority~~ approval sought

Proposed start date:

Proposed end date:

Signed _____ Dated _____

Note: It is the applicant's responsibility to ensure they have all the required permissions from Otago Regional Council and other regulatory agencies, such as District Councils, Department of Conservation, Heritage New Zealand Pouhere Taonga. Please contact these agencies to discuss your proposal.