

**Hearing Panel recommendations to Otago Regional Council**

**13 June 2022**

**1. Introduction and structure of report**

This report presents the recommendations of the Hearing Panel to Otago Regional Council in relation to the Proposed Flood Protection Management Bylaw 2022.

Consultation on the reviewed Bylaw was agreed to by Council at its meeting on 23 March 2022. At that meeting a panel of Councillors Kate Wilson and Gretchen Robertson and independent commissioner Allan Cubitt was also appointed to hear submissions and make a recommendation back to Council.

The Flood Protection Management Bylaw 2022 incorporating all the changes recommended for acceptance by Council is attached to this report as Attachment 1.

The consultation period ran from 31 March to 2 May. Prior to closure of submissions two parties sought short extensions, which were granted. Three late submissions were also received as outlined below, which the Panel subsequently also accepted. This report presents the decision to accept late submissions (section 2), recommendations on the submissions received (section 3), recommendations on additional changes proposed by Council Staff (section 4), and other recommendations made by the Hearing Panel (section 5).

In this report we make reference to three documents prepared by Council Staff (listed below) and attached to this report:

- Summary of Submissions dated 9 May 2022 prepared by Council Staff in response to the submissions received during the public consultation period (Attachment 2);
- "Staff response to Panel requests" document (undated, presented on 19 May 2022 at Deliberations) which presents Council Staff response to questions and clarification sought by the Hearing Panel at the public hearing on 13 May 2022 (Attachment 3); and
- "Staff response to Panel requests #2 - deliberations" document (2 June 2022) which presents Council Staff response to questions and clarification sought by the Hearing Panel at the deliberations session on 19 May 2022 (Attachment 4) as amended to correct an error

**2. Acceptance of late submissions**

Three submissions were received after the close of submissions, without the prior approval of the Hearing Panel. We confirm that we accept the following late submissions:

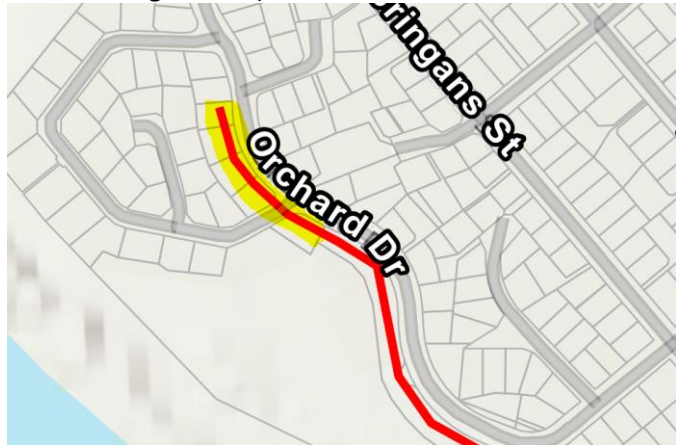
- 20 – Leigh Griffiths, Environment Canterbury
- 22 – Colin Brown, Taieri Trails Trust
- 23 – Ian Bryant, IH & DJ Bryant


### 3. Recommendations on submissions recieved

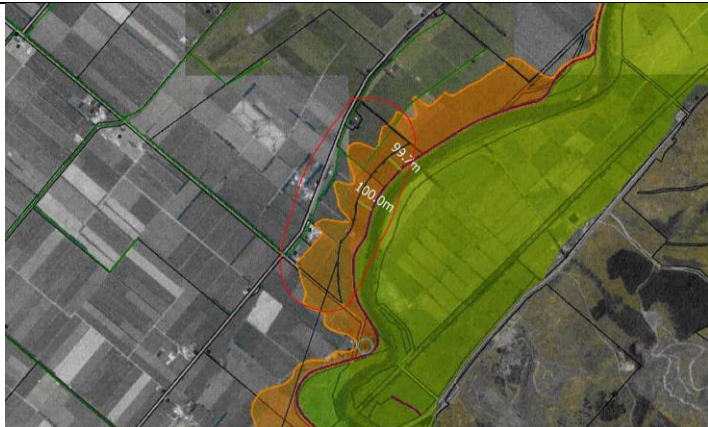
We have worked through the submissions in the order they were presented in the Summary of Submissions report (ordered by topics), followed by additional amendments to the Bylaw proposed by Council Staff in the Summary of Submissions report.

#### Recommendations on submissions

*Topic: Amendments to schedules and submissions relating to specific locations*

Submitter number	Name	Overall Hearing Panel recommendation	Resultant changes to the Proposed Bylaw
4	Colin Scurr, Taurima Farms	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 6-8) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None-except staff are seeking a legal opinion on the status of the Contour Chanel</li> </ul>
5	Kirk Pritchard	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (page 8) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>The Second Schedule be amended to remove the Defence Against Water on 12, 14, 16, 18 and 20 Orchard Drive (shown highlighted in yellow in image below).</li> </ul> 
7	Submitter 7	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 8-9) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None – this was beyond the scope of the bylaw review, and the suggestion could not be considered in time for inclusion in the review. Staff will follow up with the submitter the proposal.</li> </ul>

10	J.K. Miller, Maungatua Dairies Ltd	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 10-11) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None- except staff are seeking a legal opinion on the status of the Contour Chancel</li> </ul>
11	Daniel Lyders, P R Lyders Trust	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 11-12) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>The Second Schedule be amended to remove the Defence Against Water adjacent to the property owned by P R Lyders Trust (shown highlighted in yellow in image below).</li> </ul> 
23	Ian Bryant, IH & DJ Bryant	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 12-13) has been superseded by an updated comment in the "Staff response to Panel requests" document and the original Staff Comment is <b>not</b> adopted.</li> <li>The updated Staff Comment presented in paragraphs 31 and 32 (deletion of excavation sensitive area) of the "Staff response to Panel requests" document is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>Based on previous advice in the Tonkin + Taylor report the Second Schedule be amended to reduce the Excavation Sensitive Area on the IH &amp; JD Bryant property to the black line (shown circled in red in image below).</li> </ul>

			
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*Topic: Public access and trails on floodbanks*

Submitter number	Name	Hearing Panel recommendations	Resultant changes to the Proposed Bylaw
6	Brian Peat, Taieri Plains Environmental Trails Group	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 14-16) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None- but the advice is noted that a policy is to be developed for council on public access to flood and drainage infrastructure</li> </ul>
12	Lindsay Dey, Dunedin Tracks Network Trust	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 16-17) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None- but the advice is noted that a policy is to be developed for council on public access to flood and drainage infrastructure</li> </ul>
22	Colin Brown, Taieri Trails Trust	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 17-19) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None- but the advice is noted that a policy is to be developed for council on public access to flood and drainage infrastructure</li> </ul>

*Topic: Planting of vegetation and ecological effects*

Submitter number	Name	Hearing Panel recommendations	Resultant changes to the Proposed Bylaw
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1	Alan Cutler	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 20-21) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
8	Craig Simpson, Watershed Solutions Ltd	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 21-23) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None -noting that the submitter could apply for a programme of work that could alleviate the need for multiple applications, and that there are provisions to waiver costs on suitable applications.</li> </ul>
21	Nicole Foote, NZ Landcare Trust	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 23-26) is adopted.</li> <li>We recommend the powerpoint presented by Ms Foote be provided to Council to consider, outside of this bylaw review process.</li> </ul>	<ul style="list-style-type: none"> <li>None – noting that the submitter could apply for a programme of work that could alleviate the need for multiple applications, and that there are provisions to waiver costs on suitable applications.</li> </ul>
25	Open Valley Urban Ecosanctuary	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 26-30) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None - noting that the submitter could apply for a programme of work that could alleviate the need for multiple applications, and that there are provisions to waiver costs on suitable applications.</li> </ul>

*Topic: Specific provisions*

Submitter number	Name	Hearing Panel recommendations	Resultant changes to the Proposed Bylaw
14	Emma Peters, Sweep Consultancy Ltd	<ul style="list-style-type: none"> <li>The Staff Comments numbered 1 and 2 presented in the Summary of Submissions (pages 30-31) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>Remove the phrase 'allow to grow' from 3.1(c), 3.2(c), 3.3(c), 3.4(c) and 3.5(b).</li> <li>Clause 5.3(a) and and clause 6.1(b)(ii)(2) to be extended to 20 working days.</li> </ul>

		<ul style="list-style-type: none"> <li>The Staff Comments numbered 3 and 4 (extension of objection periods) presented in the Summary of Submissions (pages 31-32) has been superseded by an updated comment in the “Staff response to Panel requests” document and the original Staff Comment is <b>not</b> adopted.</li> <li>The updated Staff Comment presented in paragraphs 21-30 (extension of objection period) of the “Staff response to Panel requests” document is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>Amend definition of “earthworks” to exclude filling, such that it says: <i>“Earthworks means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring or excavation of earth (or any matter constituting the land including soil, clay, sand and rock)”</i>.</li> </ul>
15	Steve White, Thorndale Farm Ltd	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>
16	Charlotte Young	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>
17	Charlotte Farming Trust	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>
18	Grasslands Farm Ltd	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>
19	Jason Coutts	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>	<ul style="list-style-type: none"> <li>Same as response to submission 14 by Ms Peters, Sweep Consultancy Ltd.</li> </ul>
9	Kevin Wood, University of Otago	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 34-41), except for the response to point 5, is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>Remove the phrase ‘allow to grow’ from 3.1(c), 3.2(c), 3.3(c), 3.4(c) and 3.5(b).</li> <li>Amend definition of cultivation to say: <i>“Cultivation means the alteration or disturbance of land (or any other matter constituting land</i></li> </ul>

		<ul style="list-style-type: none"> <li>• The updated Staff Comment presented in paragraphs 6-20 of the “Staff response to Panel requests” document is adopted.</li> <li>• The updated Staff Comment presented in paragraphs 27-29 of the “Staff response to Panel requests #2 - deliberations” document is adopted.</li> </ul>	<p><i>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, crops, or domestic gardening. Cultivation does not include the planting of trees, shrubs or hedges.”</i></p> <ul style="list-style-type: none"> <li>• Amend the location of the Leith Lindsay defence against water mapped line so that it is along the rivers.</li> <li>• Amend the definition of defence against water to say: <i>“Defence against water means any defence against water shown in the Second Schedule. The beds 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 are marked in blue in the Second Schedule.</i></li> <li>• Amend the map legend description in the Leith Lindsay map from “Floodbank” to “Leith Lindsay Defence Against Water”.</li> <li>• Note staff advise that the University can apply for a work programme to alleviate the need for multiple applications</li> </ul>
13	Oliver Hornbrook	<ul style="list-style-type: none"> <li>• The Staff Comments numbered 1-6 and 8-36 presented in the Summary of Submissions (pages 41-48) are adopted.</li> <li>• The Staff Comments numbered 6 (italicising terms in definition in purpose), 7 (removal of definition in purpose) 26 (replacing “approval” with “authority”), 27 (italicising “authority”), 29 (in part - italicising “authority”), 30 (in part -</li> </ul>	<ul style="list-style-type: none"> <li>• Add “4.2 Floodways... 16” to table of contents.</li> <li>• Add full stop to Fourth Schedule definition.</li> <li>• Replace two references to “Otago Regional Council” (clauses 1.0 and 3.0) with “Council”</li> <li>• Capitalise ‘W’ in ‘where’ in clause 2.0</li> <li>• Add definition of ‘authorised access’ to clause 2.0: <i>“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.”</i></li> </ul>

		<p>italicising “authority”) and 35 (replacing “approval” with “authority”) have been superseded by updated comments in the “Staff response to Panel requests #2 – deliberations” and the original Staff Comment is <b>not</b> adopted (however Council Staff have confirmed the recommendations in these points relating to italicisation have been carried forward to the term “approval”).</p> <ul style="list-style-type: none"> <li>The updated Staff Comment presented in paragraphs 14 – 15 (definition in purpose) of the “Staff response to Panel requests #2 - deliberations” document are adopted.</li> </ul>	<ul style="list-style-type: none"> <li>Add clarity that the definition of drain is used only in clause 3.3.</li> <li>Delete reference to “scheduled drain” from the “drain definition”.</li> <li>Amend the definition of “scheduled drain” to: <i>“Scheduled drain means any drain or river shown as a Scheduled drain in the First Schedule”</i>.</li> <li>Remove the phrase ‘allow to grow’ from 3.1(c), 3.2(c), 3.3(c), 3.4(c) and 3.5(b).</li> <li>Italicise “structure” in clause 3.2(e).</li> <li>Replace “access authorised maintenance” in clause 3.4(f) with “authorised access maintenance”.</li> <li>Amend clause 3.4(g)(ii) by removing erroneous space at the beginning of “ within”</li> <li>Remove the entire paragraph beginning “Note:” in clause 3.5.</li> <li>Amend clause 4.1 to state: “The owner of every structure impacted by clauses 3.1 to 3.4...”</li> <li>Correct formatting in clause 5.3(b)(i)</li> <li>Italicise reference to “Council”.</li> </ul>
24	Eleanor Linscott, The Federated Farmers of New Zealand	<ul style="list-style-type: none"> <li>The Staff Comment numbered 8 – 11, 13 – 26 and 28 presented in the Summary of Submissions (pages 48-56) are adopted.</li> <li>The Staff Comments numbered 12 and 25 (replacing “approval” with “authority” in the application form; consistency of terminology in clause 5.1) have been superseded by the proposed use of the term</li> </ul>	<ul style="list-style-type: none"> <li>Remove the phrase ‘allow to grow’ from 3.1(c), 3.2(c), 3.3(c), 3.4(c) and 3.5(b).</li> <li>Amend the grammar in clauses 3.1(c)(ii) and 3.1(d)(ii) to say: <i>“on, or within seven metres of the top of, any scheduled drain”</i>.</li> <li>Replace ‘access authorised maintenance’ in clause 3.4(f) with ‘authorised access maintenance’.</li> <li>Remove the entire paragraph beginning ‘Note:’ in clause 3.5.</li> </ul>

		<p>“approval”; and 27 (stating the period to make a submission on a revocation is 15 working days) has been superseded by the proposal to make the submission period 20 working days. As such, these points have <b>not</b> been adopted.</p> <ul style="list-style-type: none"> <li>The updated Staff Comment presented in paragraphs 22-25 (objection period) of the “Staff response to Panel requests” document is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>Clause 5.3(a) and and clause 6.1(b)(ii)(2) to be extended to 20 working days.</li> </ul>
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*Topic: Targeted Rates*

Submitter number	Name	Hearing Panel recommendations	Resultant changes to the Proposed Bylaw
2	Peter Whitlock	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 56-57) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>

*Topic: Support for Proposed Bylaw with no requested amendments*

Submitter number	Name	Hearing Panel recommendations	Resultant changes to the Proposed Bylaw
3	Submitter 3	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (pages 57-58) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
20	Leigh Griffiths, Environment Canterbury	<ul style="list-style-type: none"> <li>The Staff Comment presented in the Summary of Submissions (page 58) is adopted.</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>

#### 4. Recommendations on additional changes proposed by Council Staff

##### *Scheduled drain O6*

The Staff Comment presented on page 59 in relation to the removal of scheduled drain O6 is adopted.

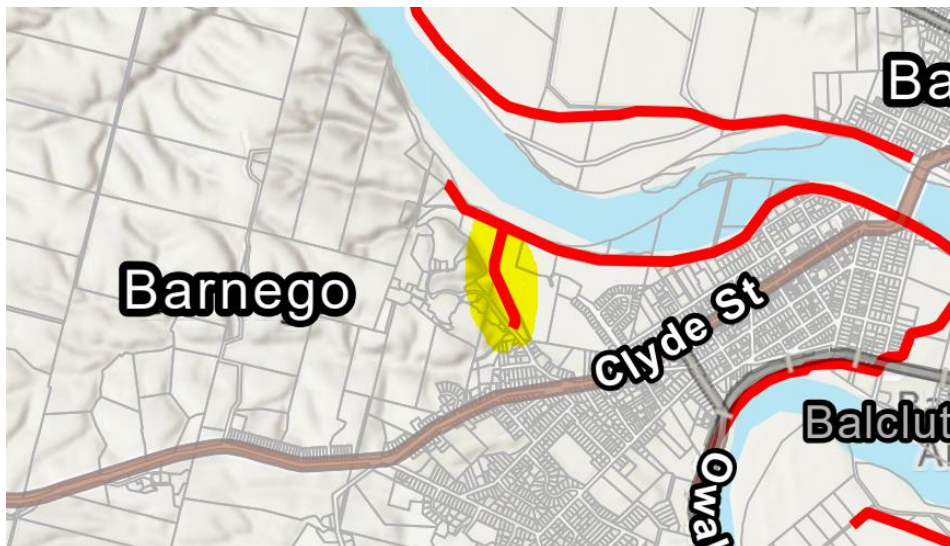
We recommend the First Schedule should be amended to remove the this scheduled drain (shown highlighted in yellow in image below).



##### *Hospital Creek floodbank*

The Staff Comment presented on page 60 in relation to the removal of the Hospital Creek floodbank is adopted.

We recommend the Second Schedule be amended to remove this floodbank (shown highlighted in yellow in image below).



## 5. Other recommendations made by the Hearing Panel

### *Use of term “authorised”*

The Staff Comment presented in paragraphs 40 – 41 of “Staff response to Panel requests” has been superseded and is **not** adopted.

The updated Staff Comment presented in paragraphs 6 – 10 of the “Staff response to Panel requests 2- deliberations” document are adopted.

We recommend the word “authority” when referencing a Bylaw application approval is changed to “approval” throughout the Proposed Bylaw.

### *Definition of “owner”*

The Staff Comment presented in paragraphs 11- 13 of the “Staff response to Panel requests #2- deliberations” document are adopted.

We recommend the definition of “owner” be amended to:

*“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.”*

### *Definition of flood protection works in the purpose statement*

The Staff Comment presented in paragraphs 14 - 15 of the “Staff response to Panel requests #2 - deliberations” document are adopted.

We recommend the definition be deleted from the purpose statement.

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

The Staff Comment presented in paragraphs 16 -17 of the “Staff response to Panel requests #2 - deliberations” document are adopted.

We recommend the term “clause” is used throughout the document.

### *Amendments to diagrams in Appendix One*

The Staff Comment presented in paragraphs 18 - 19 of the “Staff response to Panel requests #2 - deliberations” document are adopted.

We recommend the diagrams are amended as copied below:

Figure 1: Scheduled drains and overland flow paths

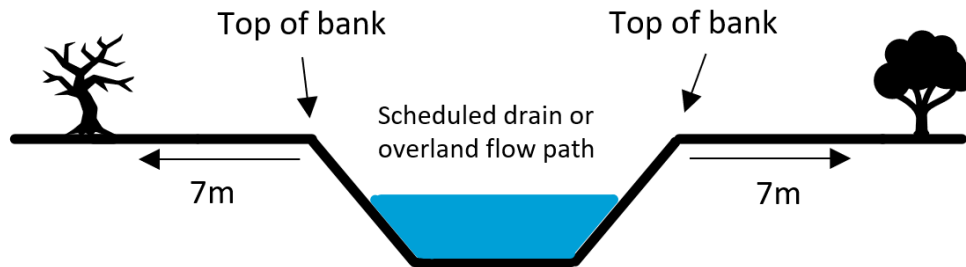


Figure 2: Defences against water - floodbank

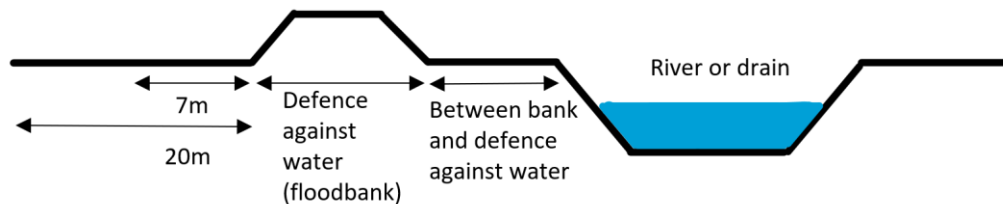
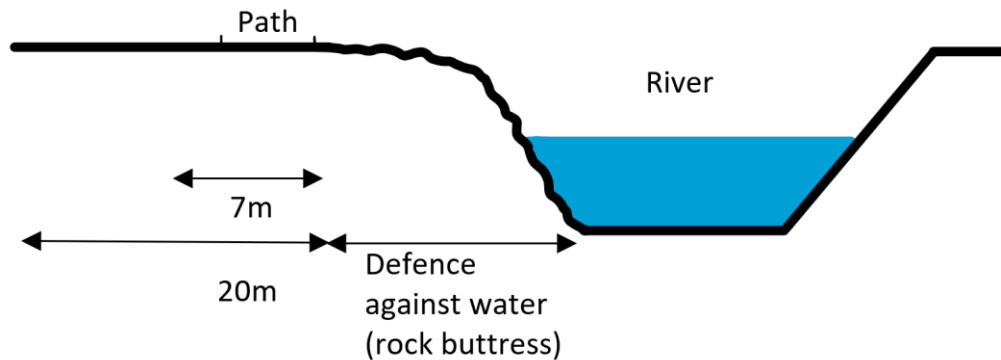


Figure 3: Defences against water – rock buttress



#### *Requirement to provide reasons for objections*

The Staff Comment presented in paragraphs 20 - 21 of the "Staff response to Panel requests #2 - deliberations" document are adopted.

We recommend the wording of clause 5.3(a) be amended to say:

*"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 term “groynes” in definitions*

The Staff Comment presented in paragraphs 22 - 24 of the “Staff response to Panel requests #2 - deliberations” document are adopted.

We recommend the use of the term “groynes” in the definition be changed to refer to “groyne”.

*Minor wording amendment*

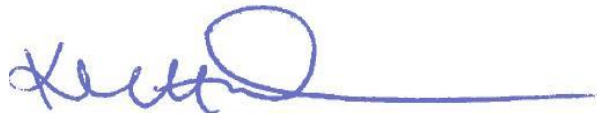
The Staff Comment presented in paragraphs 25 - 26 of the “Staff response to Panel requests #2 - deliberations” document are adopted.

We recommend the word “respects” be replaced with “matters” in clause 6.1(b)(i).

**6. Hearing Panel Recommendation**

Having considered all submissions received we resolve to recommend to Otago Regional Council that the Flood Protection Management Bylaw 2012 be replaced with the proposed Flood Protection Management Bylaw 2022 in Attachment 1 to this report.

Dated this 13th day of June 2022



Kate Wilson  
Otago Regional Councillor  
Chair of Hearing Panel



Gretchen Robertson  
Otago Regional Councillor  
Member of Hearing Panel

A handwritten signature in black ink, appearing to read 'Allan Cubitt', enclosed within a light gray rectangular border.

Allan Cubitt  
Independent Panel Member

**Flood Protection Management Bylaw 2022 – For approval by Council**

For approval

## Chairperson's Foreword

*This page has deliberately been left blank. The Chairperson's Foreword will be inserted at a later date.*

For approval

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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.

### Appendix One

Diagrams referencing Activities requiring Bylaw Approval

**Appendix Two**

Bylaw Approval Application Form.

For approval

## FLOOD PROTECTION MANAGEMENT BYLAW 2022

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 2022.

### Commencement

This Bylaw shall come into force on the [date] 2022.

## 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 *Council*.

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

## 2.0 DEFINITIONS

Note: Where a word is defined it is shown in the Bylaw text in *italics*.

**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.

**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, crops or domestic gardening. Cultivation does not include the planting of trees, shrubs or hedges.

**Defence against water** means any defence against water shown in the Second Schedule. The beds 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 are marked in blue in the Second Schedule.

***Drain***, in clause 3.3 Floodways, means any 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.

***Earthworks*** means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring 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.

***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.

***Groyne*** 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.

***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.

For approval

### 3.0 ACTIVITIES REQUIRING BYLAW 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 *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 clauses 3.1 and 3.2.*

#### 3.1 Scheduled Drains and Overland Flow Paths

No person shall, without the prior *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 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 *approval* of the Council –

- a. Alter any *defence against water* except as provided for by clause 3.2 (g);
- b. Remove or interfere with any machinery or equipment relating to any *defence against water*;
- c. Plant 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*;
- 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*;
- 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. within any *excavation-sensitive area*;
- 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;

- h. Allow livestock, vehicles, machinery or equipment to adversely affect the integrity of any *defence against water*;
- i. Carry out any *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* 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 *approval* of the *Council* –

- a. Alter any *floodway* except as provided for by clauses 3.3 (e) and (g);
- b. Remove or interfere with any machinery or equipment relating to any *floodway*;
- c. Plant 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 *drains* undertaken in accordance with clause 3.3 (g);
- f. Obstruct any *floodway*;
- g. Carry out any *earthworks* in any *floodway*, excluding maintenance of *drains*;
- h. Connect any pipe, channel or other conduit to the Hilderthorpe or Hendersons and Waikoura Creeks floodways.

### 3.4 Groynes, Cross-banks and Training Lines

No person shall, without the prior *approval* of the Council—

- a. Alter any *groyne cross-bank* or *training line*
- b. Remove or interfere with any machinery or equipment relating to any *groyne cross-bank* or *training line*
- c. Plant any tree, shrub, hedge or part thereof
  - i. on any *groyne, 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, cross-bank* or *training line*, or
  - ii. within seven metres of any *groyne, cross-bank* or *training line*;
- e. Remove or alter any *structure*
  - i. in, on, over, through or under any *groyne, cross-bank* or *training line*, or
  - ii. within seven metres of any *groyne, cross-bank* or *training line*;
- f. Dump or deposit any thing on, or within fifty metres of any *groyne, cross-bank* or *training line*; excluding materials for the purpose of authorised access maintenance;
- g. Carry out any *earthworks*
  - i. in, on, through or under any *groyne, cross-bank* or *training line*, or
  - ii. within fifty metres of any *groyne, cross-bank* or *training line* unless the earthworks relate to *cultivation*, or
  - iii. between the bank of any river and associated *groyne, cross-bank* or *training line*;
- h. Allow livestock, vehicles, machinery or equipment to adversely affect the integrity of any *groyne, cross-bank* or *training line*.

### **3.5 Flood Protection Vegetation**

No person shall, without the prior *approval* of the *Council* –

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

## **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 APPROVAL

### 5.1 Approval

- a. An application to the *Council* for *approval* under this Bylaw shall be made in accordance with the Bylaw Approval Application Form (Appendix Two) and be accompanied by the prescribed fee;
- b. Any *approval* under this Bylaw may be granted on such conditions as the *Council* considers appropriate. When considering applications for *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 approval
  - Water quality
- c. If *Council* refuses an application for *approval*, the *Council* shall give written reasons for that decision.
- d. Every person to whom an *approval* is granted shall produce that *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 *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 *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.
- b. The *Council* may uphold, amend or rescind the decision or *approval*, and in making its determination must have regard to:
  - i. the evidence on which the decision or *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.

For approval

## 6.0 COMPLIANCE AND ENFORCEMENT

### 6.1 Revocation of Approval

- a. The *Council* may, in accordance with this clause, revoke any *approval* granted under this Bylaw, if the holder of the *approval* contravenes or fails to comply with any condition of the *approval*.
- b. Subject to 6.1(d), before revoking any *approval*, the *Council* shall give written notice to the holder of the *approval* that the *Council* may revoke the *approval* which:
  - i. sets out the matters in which the holder has contravened or failed to comply with any condition of the *approval*; 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 *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 20 working days, a written submission to the *Council* setting out reasons why the *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 *approval*.
- d. *Council* may revoke *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 *approval* under clause 6.1(d).

### 6.2 Offence

- a. Every person commits an offence against this Bylaw who -
  - i. Commits a breach of clauses 3 or 4 of this Bylaw;
  - ii. Causes or permits to be done anything in contravention of clauses 3 or 4 of this Bylaw;

- iii. Omits to do anything required by this Bylaw or the conditions of the relevant *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 clauses 3 or 4, or the conditions of the relevant *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 *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 – Scheduled 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

For approval



## **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





## 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.

### 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.

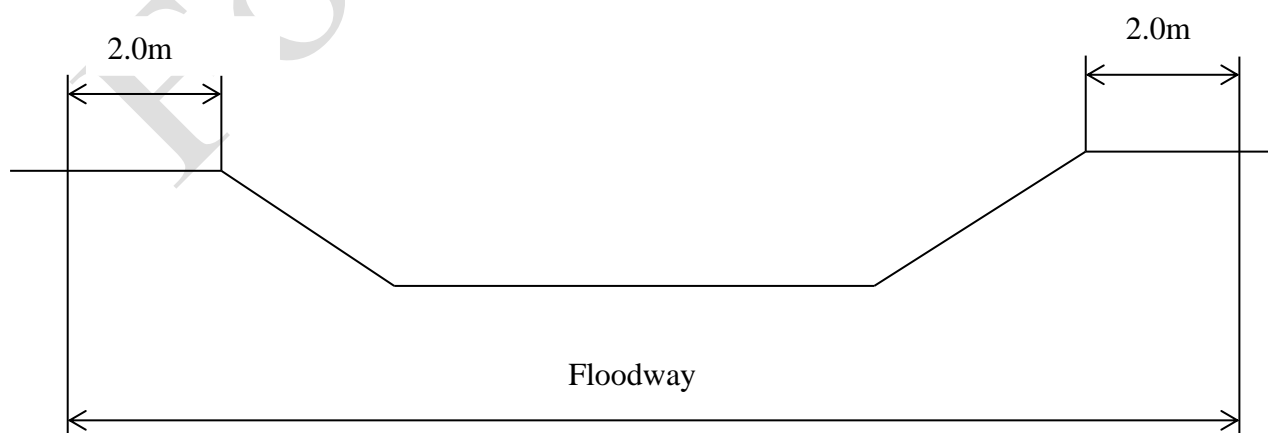
The floodway starts at the artificially constructed sections of the creeks and join at Irvine Road where combined, they follow Irvine Road for approximately 800 metres then follow Jardine Road for about 2,500 metres before entering the Waitaki River through a drop structure.

#### **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 and Flood Protection Vegetation**

Maps of groynes, cross-banks, training line 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,  
Shotover River Training Line and Flood Protection Vegetation

For approval



## Appendix One: Diagrams referencing Activities requiring Bylaw Approval

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

Figure 1: Scheduled drains and overland flow paths

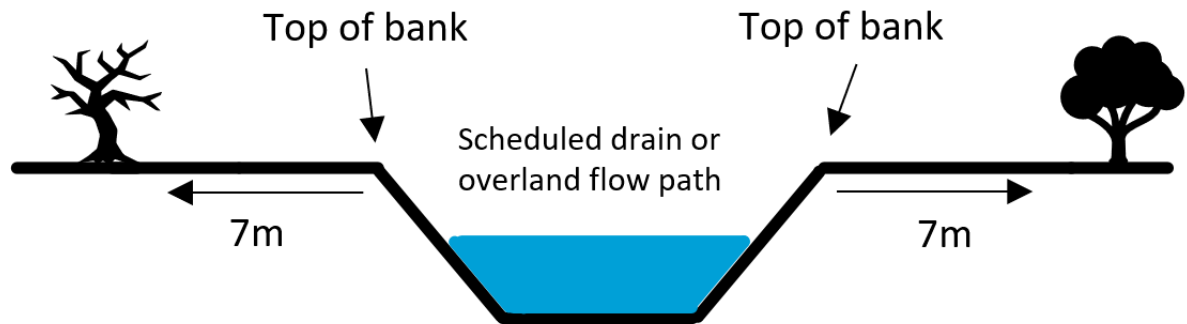


Figure 2: Defences against water - floodbank

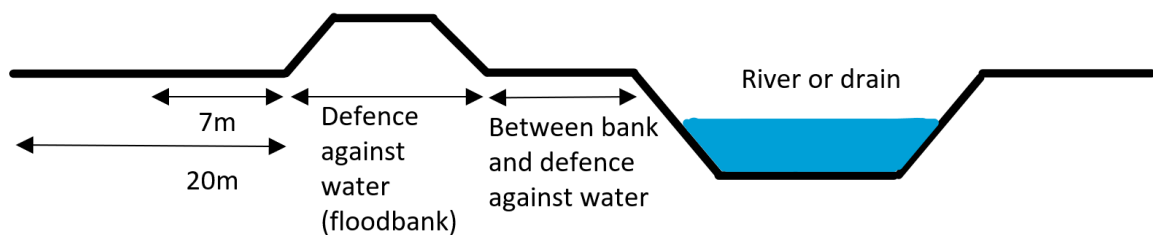
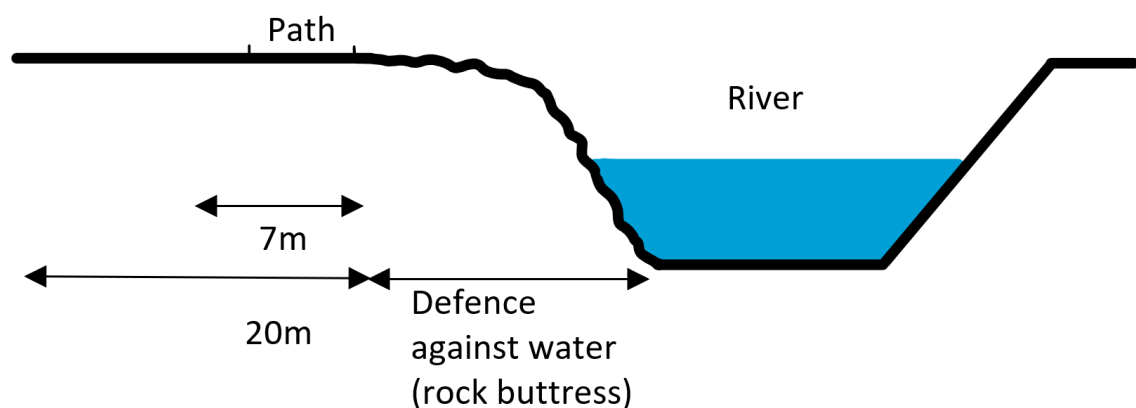


Figure 3: Defences against water – rock buttress



## **Appendix Two: Bylaw Approval Application Form**

For approval

# Bylaw 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 \_\_\_\_\_

Mobile \_\_\_\_\_

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 relates

Property Address \_\_\_\_\_  
\_\_\_\_\_

Legal description: \_\_\_\_\_

Co-ordinates (NZTM 2000): Northing – \_\_\_\_\_ Easting - \_\_\_\_\_

## 3. Clause(s) of the Bylaw to which this Approval relates

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# Bylaw Authority 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 Application Form



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**6. Assessment against the assessment criteria**

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

Capacity:

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Stability, scour and erosion risk:

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Access for inspection and maintenance purposes:

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Water quality:

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**Duration of approval sought**

Proposed start date:

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Proposed end date:

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**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.*

# **Otago Regional Council**

## **Flood Protection Management Bylaw Review**

### **Summary of Submissions**

9 May 2022



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## **1. Readers Guide**

This document is a summary of the 25 submissions received in response to public consultation on the Otago Regional Council (ORC) Proposed Flood Protection Management Bylaw (Proposed Bylaw).

The summary of engagement is described in section 2 of this report.

In section 3 of this report, every submitter has been allocated a submitter number and whether they wish to be heard in the hearing is identified. The submissions have been split into those submissions received on time, those submissions received late with an extension having been granted by the Hearing Panel prior to their late submission, and late submissions which the Hearing Panel has not yet considered.

Section 4 presents a summary of the submissions and Council staff comment on each submission. This section is ordered according to broad submission topics (rather than submitter number) to allow for similar submissions to be addressed in a group.

In section 5 of this report, two changes for consideration by the Hearing Panel are also sought by ORC staff to the maps in the First and Second Schedules.

This report has been prepared by Josie Burrows (Environmental Planner, Beca Ltd) with assistance and input from Council staff.

## **2. Engagement Activity Summary:**

Council resolved on 23 March 2022 to approve the Proposed Flood Protection Management Bylaw for public consultation.

A website was set up containing all relevant information (<https://yoursay.orc.govt.nz/flood-bylaw-review>) and copies of the Summary of Proposal, Statement of Proposal and hard copy consultation forms were made available at ORC and district council offices, libraries and service centres around the region.

A media release and several social media updates were released. Letters were sent to landowners and emails sent to mana whenua and key stakeholders. Staff were available to respond to queries during the consultation period.

The submission period ran between 31 March 2022 through until 12pm on Monday 2 May 2022. During this consultation period submissions were able to be made through the website via a Have Your Say portal (<https://yoursay.orc.govt.nz/flood-bylaw-review>), email address (floodbylawreview@orc.govt.nz and floodbylaw@orc.govt.nz), freepost and hand delivery.

A total of 25 submissions on the Proposed Bylaw were received. Twenty submissions were received within the submission period, two submissions were received after the close of submissions with the

prior agreement of the Hearing Panel. Three other submissions were received after the close of submissions.

### 3. Submitter Details

The following submissions shown in Table 1 were received within the submission period. Two submissions are referred to by submitter number rather than their name, due to privacy reasons.

*Table 1: Submissions received within the submission period*

Submitter #	Contact name/Organisation	Wishes to be heard
1	Alan Cutler	No
2	Peter Whitlock	Yes
3	Submitter 3	No
4	Colin Scurr, Taurima Farms	No
5	Kirk Pritchard	No
6	Brian Peat, Taieri Plains Environmental Trails Group	Yes
7	Submitter 7	To be confirmed
8	Craig Simpson, Watershed Solutions Ltd	Yes
9	Kevin Wood, University of Otago	Yes
10	J K Miller, Maungatua Dairies Ltd	Yes
11	Daniel Lyders, P R Lyders Trust	No
12	Lindsay Dey, Dunedin Tracks Network Trust	Yes
13	Oliver Hornbrook	No
14	Emma Peters, Sweep Consultancy Ltd	Yes
15	Steve White, Thorndale Farm Ltd	No
16	Charlotte Young	Yes
17	Charlotte Farming Trust	No
18	Grassyards Farm Ltd	No
19	Jason Coutts	Yes
21	Nicole Foote, NZ Landcare Trust	Yes

The following submissions shown in Table 2 were received after the close of submissions with the prior approval of the Hearing Panel.

*Table 2: Submissions received after the close of submissions with the prior approval of the Hearing Panel*

24	Eleanor Linscott, Federated Farmers of New Zealand	No
25	Open VUE	To be confirmed

The following submissions shown in Table 3 were received after the close of submissions.

*Table 3: Submissions received after the close of submissions*

20	Leigh Griffiths, Environment Canterbury	No
22	Colin Brown, Taieri Trails Trust	Yes
23	Ian Bryant, IH & DJ Bryant	Yes



## 4. Submission Summary by topic

All submitters have been allocated a submitter number (see details in section 3) and the full submissions are provided in Appendix 1 of this report. This section responds to the matters in each submission individually, or where submissions are very similar it refers to the comments made on the first of that similar submission.

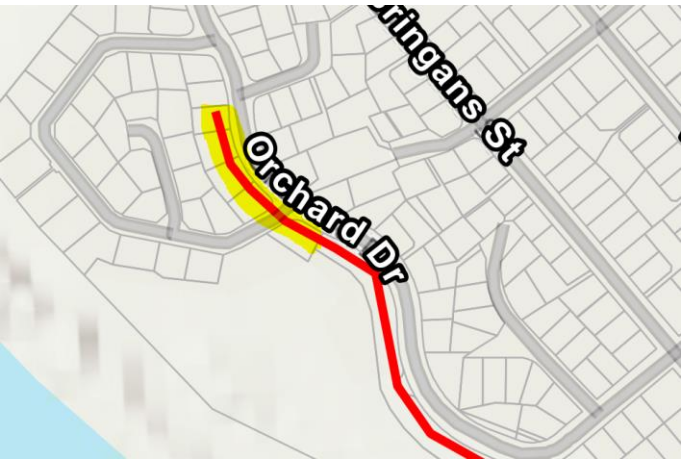
The submissions have been broadly categorised into topics to allow for similar submissions to be addressed together. The submissions have been categorised into one of the following topic areas:

- Amendments to schedules and submissions relating to specific locations
- Public access and trails on floodbanks
- Planting of vegetation and ecological effects
- Specific provisions
- Targeted rates
- Support for Proposed Bylaw with no requested amendments

An amended Proposed Bylaw (track changes) addressing the submission comments and snips of the Schedule maps to be updated is provided in Appendix 2 and Appendix 3 to this report for the Hearing Panel's reference.

Topic: Amendments to schedules and submissions relating to specific locations			
Submitter #	Name	Summary of submission	Staff Comment
4	Colin Scurr, Taurima Farms	<p>Taurima Farms consider the Contour Channel on the West Taieri should be added to the First Schedule (Scheduled Drains) of the Proposed Bylaw.</p> <p>They consider that the Contour Channel is an artificial drain that is vital for the drainage and flood protection of the West Taieri, and that ORC staff need to have the</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>The Contour Channel is currently not identified in the First Schedule of the Proposed Bylaw, however the adjacent floodbank(s) and excavation sensitive area are identified in the Second Schedule, and the Otokia Floodway and Miller Road Floodway are identified in the Third Schedule.</p>


Topic: Amendments to schedules and submissions relating to specific locations			
Submitter #	Name	Summary of submission	Staff Comment
		<p>right to maintain the capacity of the channel without getting resource consent.</p> <p>They state that ORC staff have previously advised landowners that they cannot remove gravel in the channel below the water level, which they consider results in the channel invert not being maintained.</p>	<p>The Contour Channel is understood to be a natural waterbody (not an artificial drain as put forward by Taurima Farms) and classified as a 'river' under the Resource Management Act by the ORC regulatory team. As such, any works in the Contour Channel require assessment under the relevant regional plan rules, and resource consent if any permitted activity rules cannot be complied with.</p> <p>ORC Engineering are seeking a global resource consent for river management and vegetation control activities, including gravel extraction, and are now looking to include the Contour Channel in that application for resource consent.</p> <p>Adding the Contour Channel to the First Schedule will not change its status as a 'river' under the Resource Management Act, and assessment under the regional plan rules/resource consent would still be required to undertake any maintenance works regardless of whether the Contour Drain is identified in the First Schedule.</p> <p>The Contour Channel is not identified as a Scheduled Drain in the ORC asset management system, and Council staff consider that the adjacent floodbanks (defences against water) and floodways are appropriately managed, regulated and protected by the provisions in the Proposed Bylaw.</p>

Topic: Amendments to schedules and submissions relating to specific locations			
Submitter #	Name	Summary of submission	Staff Comment
			OVERALL STAFF COMMENT: No further action required.
5	Kirk Pritchard	<p>Mr Pritchard's submissions states that the location of the Alexandra Defence Against Water has been incorrectly placed over five houses on Orchard Drive (12, 14, 16, 18 and 20 Orchard Drive) in the Second Schedule.</p> <p>Mr Pritchard considers the line should be removed from this location.</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>Council staff agree that the Alexandra Defence Against Water has been incorrectly placed over the properties at 12, 14, 16, 18 and 20 Orchard Drive.</p> <p>OVERALL STAFF COMMENT: The Second Schedule be amended to remove the Defence Against Water on those properties (as shown highlighted yellow in the image below).</p> 
7	Submitter 7	Submitter 7's submission relates to a scheduled drain (identified as drain A3) which, in its current configuration, restricts	Council thanks the submitter and acknowledges the submission.

Topic: Amendments to schedules and submissions relating to specific locations			
Submitter #	Name	Summary of submission	Staff Comment
		<p>the flow of water and in their opinion puts the adjacent properties at risk of flooding.</p> <p>The submission explains observations of the March 2018 flooding event at that location, and then proposes an alternate configuration of the scheduled drain which they consider would reduce flooding risk in this area.</p>	<p>The submission relates to potential changes to the configuration of the scheduled drain network.</p> <p>If to be addressed within the bylaw review process, a full review of the existing flood risks, potential consequences and priority of the proposal would need to be completed to ensure that it is appropriate.</p> <p>We consider that it would be more appropriately addressed outside of the bylaw review process as the assessment of these matters cannot be undertaken in the timeframe associated with the bylaw review.</p> <p>If, following an assessment of the proposal, ORC agree that a change to the scheduled drain configuration in this area is appropriate, the works can be undertaken (subject to any required authorisations) and changes to the First Schedule (scheduled drains) maps can be amended at a later date.</p> <p>As such, this submission will be passed to Commercial &amp; Regulatory Team (Neil Shearer and Alison Weaver), who will contact Submitter 7 about their submission to discuss it further (subject to Hearings Panel agreement).</p> <p>OVERALL STAFF COMMENT: No further action required with respect to the Proposed Bylaw at this stage.</p>

Topic: Amendments to schedules and submissions relating to specific locations			
Submitter #	Name	Summary of submission	Staff Comment
10	J. K. Miller, Maungatua Dairies Ltd	<p>Maungatua Dairies submit to allow for the maintenance of the Contour Channel through the taking of gravel deposits.</p> <p>The submission describes that the Contour Channel is not a natural waterway and describes that it was constructed in the early 1900s by horse and cart. The channel intercepts runoff from the various steep stream on the Maungatua Range and conveys this to the Waipori River, with several spillways built into the floodbank to allow for controlled spills.</p> <p>Maungatua Dairies Ltd describe that the profile of the channel promotes concentration of overtopping during flood events, which can lead to relatively rapid floodbank failure. Failure could potentially inundate 7,300ha of highly productive agricultural land and Dunedin International Airport. The submission reflects on a failure of the floodbank during the 1980 flood which resulted, most notably, in the Airport being underwater for six weeks.</p> <p>The submitter describes that the steep creek on their property brings varying quantities of gravel downstream. If the</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>The purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC. Council is comfortable that the provisions of the Proposed Bylaw will effectively manage, regulate and protect the effective operation and integrity of the flood protection works.</p> <p>We note that the Contour Channel is understood to be a natural waterbody (not an artificial drain as put forward by Maungatua Dairies Limited) and classified as a 'river' under the Resource Management Act by the ORC regulatory team. As such, any works in the Contour Channel require assessment under the relevant regional plan rules, and resource consent if any permitted activity rules cannot be complied with.</p> <p>ORC Engineering are seeking a global resource consent for river management and vegetation control activities, including gravel extraction, and are now looking to include the Contour Channel in that application for resource consent.</p> <p>OVERALL STAFF COMMENT: No further action required with respect to the Proposed Bylaw.</p>

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		<p>gravel is not removed from the streams weir and gravel trap, it causes a bottleneck and continues to accumulate, resulting in water ponding upstream and flowing over the spillway above Miller Road (rather than flowing into the Waipori River. The submission reflects on the 2006 rainfall event when this occurred).</p> <p>They conclude that if maintenance of the flood protection scheme is not completed, then land in the area will be flooded unnecessarily, causing significant costs to landowners.</p>	
11	Daniel Lyders, P R Lyders Trust	<p>P R Lyders Trust submission advises that there are floodbanks identified in the Second Schedule that are not an ORC asset.</p> <p>The submission relates to the Meggatburn floodbanks located adjacent to property owned by P R Lyders Trust and references a court case which determined that the banks were not an ORC asset because Council had not built or ever done any work on the said banks.</p> <p>P R Lyders Trust considers that the Meggatburn floodbank at the</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>The Proposed Bylaw maps were updated as part of the bylaw review but did not remove all the floodbank in question from the property. Council staff agree with the submission of P R Lyders Trust and consider that the referenced portion of the Meggatburn floodbank should be removed from the Second Schedule).</p> <p>STAFF COMMENT: The Second Schedule be amended to remove the Defence Against Water on those properties (as shown highlighted yellow in image below).</p>

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Submitter #	Name	Summary of submission	Staff Comment
		<p>aforementioned location should be removed from the Second Schedule.</p>	
23	Ian Bryant, IH & DJ Bryant	<p>IH &amp; DJ Bryant submission requests the Excavation Sensitive Area boundaries as it relates to their property are amended.</p> <p>They advise that the outer border of the zone was based on a desktop analysis, whereas a later report based on fieldwork showed minimal risk of piping under the floodbanks on their property.</p> <p>They consider a more acceptable boundary would be a uniform 100m from the floodbank, rather than the current extent which is up to 1km from the floodbank.</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>Council staff have reviewed the Proposed Bylaw schedules and identified the extent of the excavation sensitive area on IH &amp; DJ Bryant's property. It does not appear to be 1km from the floodbank, but closer to 300m.</p> <p>Excavation sensitive areas are those areas where if excavation is undertaken there is increased risk of seepage and piping (internal erosion) to the floodbanks.</p> <p>This submission has been sent to the relevant engineering experts who have, on initial review, advised an excavation sensitive zone that extends up to 1km would be unreasonable. They have advised that 100m may be reasonable, depending on the site-specific conditions.</p>

Topic: Amendments to schedules and submissions relating to specific locations			
Submitter #	Name	Summary of submission	Staff Comment
			<p>This submission was received following the close of submissions and as such we have not have sufficient time to seek site-specific advice regarding whether the extent of the excavation sensitive area at this location should be amended.</p> <p>If to be addressed within the bylaw review process, a full review of the risk to the floodbank from nearby excavation activities would need to be completed to determine the appropriate extent of the zone.</p> <p>We consider that it would be more appropriately addressed outside of the bylaw review process as the assessment cannot be undertaken in the timeframe associated with the bylaw review.</p> <p>If, following an assessment of the submission, ORC agree that a change to the excavation sensitive zone in this area is appropriate, it can be undertaken and changes to the Second Schedule maps can be amended at a later date.</p> <p>As such, this submission will be passed to Commercial &amp; Regulatory Team (Neil Shearer and Alison Weaver), who will contact IH &amp; DJ Bryant about their submission to discuss it further (subject to Hearings Panel agreement).</p> <p>OVERALL STAFF COMMENT: No further action required with respect to the Proposed Bylaw at this stage.</p>



Topic: Public access and trails on floodbanks			
Submitter #	Name	Summary of submission	Staff Comment
6	Brian Peat, Taieri Plains Environmental Trails Group	<p>Taieri Plains Environmental Trails Group consider that the Proposed Bylaw should be amended to allow access to the floodbanks for public use.</p> <p>They state that the public currently use the Silverstream and Taieri floodbanks as cycle and walking trails, and request that this is formalised through the Proposed Bylaw.</p> <p>They also advise that farmers who graze stock on the floodbanks often use vehicles on the floodbanks, and there are numerous road crossings over the floodbanks which are normally gravelled, with one situation near Outram where the farmers regular use heavy trucks on the floodbanks. They note that approvals must have been obtained for these purposes.</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>The power of the Regional Council to make bylaws is contained in s149 of the Local Government Act 2002 ("LGA"). Councils may make bylaws for "flood protection and flood control works undertaken by, or on behalf of, the regional councils" (s149(1(c))).</p> <p>The primary purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC. Floodbanks are integral components of the flood management undertaken by ORC and it is of major importance that their function is not compromised.</p> <p>The Proposed Bylaw does not exclude public use of the floodbanks, for example for walking or cycling activities, but nor does it not explicitly allow the use of floodbanks for public use.</p> <p>ORC recognizes that public access to these assets is desired and as such intends to address this matter through the preparation of a policy, as discussed during the Council meeting on 23 March, 2022.</p> <p>It is noted that there are various aspects that need to be worked through to address public access to floodbanks, including but not limited to land</p>

Topic: Public access and trails on floodbanks			
Submitter #	Name	Summary of submission	Staff Comment
			<p>ownership (not all land on which floodbanks are located is owned by ORC), lease agreements between ORC and private parties which do not provide for public access, and maintenance responsibilities that are associated with dedicated trails. Policy and other approaches can allow for consideration of access which is not appropriate in this forum.</p> <p>With respect to the second part of Taieri Plains Environmental Trails Group's submission, the Proposed Bylaw does provide for livestock, vehicles, machinery, and equipment to be used on the floodbanks, provided they do not adversely affect their integrity (clause 3.2(h)).</p> <p>Council staff consider that this is appropriate, as it allows the use of that land for standard farming activities without compromising the flood protection works.</p> <p>With respect to the reference to the construction of gravelled road crossings and use of heavy trucks (if they adversely affect the integrity of the floodbank), it is considered appropriate that Bylaw Authorisations be required. These activities have the potential to adversely affect the integrity and operation of the flood protection works, and as such it is important that they are regulated activities and</p>

Topic: Public access and trails on floodbanks			
Submitter #	Name	Summary of submission	Staff Comment
			<p>adequate assessment of any effects of the proposal can be made prior to any works being undertaken.</p> <p>OVERALL STAFF COMMENT: No further action required with respect to the Proposed Bylaw.</p>
12	Lindsay Dey, Dunedin Tracks Network Trust	<p>Dunedin Tracks Network Trust seek that ORC take an enabling stance with respect to the development of shared trails leading to and running beside waterways, including floodbanks.</p> <p>Further to this they request ORC take an enabling stance allowing access to trail development and biodiversity groups and the commitment to connecting to Trails of Regional Significance, and recognise the safety provided by creating off-road shared paths for the community. They request consideration of creating or setting aside access strips to facilitate public access. considering public access to Outstanding Natural Features and Landscapes on the rivers, and recognizing the value of low carbon commuter, recreational and tourist trails that encourage local vacations. They request that Otago Regional Council work with Iwi, territorial authorities, Department of Conservation, Waka Kotahi and Trail groups to support a regional trail network supporting</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>The power of the Regional Council to make bylaws is contained in s149 of the Local Government Act 2002 ("LGA"). Councils may make bylaws for "flood protection and flood control works undertaken by, or on behalf of, the regional councils" (s149(1(c))).</p> <p>The primary purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC. Floodbanks are integral components of the flood management undertaken by ORC and it is of major importance that their function is not compromised.</p> <p>The Proposed Bylaw does not exclude public use of the floodbanks, for example for walking or cycling activities, but nor does it not explicitly allow the use of floodbanks for public use.</p> <p>ORC recognizes that public access to these assets is desired and as such intends to address this matter</p>

Topic: Public access and trails on floodbanks			
Submitter #	Name	Summary of submission	Staff Comment
		<p>social, human, natural and economic capital wellbeing.</p> <p>The submission provides details of the Hawkes Bay Trails group model who are undertaking similar collaborative works.</p>	<p>through the preparation of a policy, as discussed during the Council meeting on 23 March 2022.</p> <p>It is noted that there are various aspects that need to be worked through to address public access to floodbanks, including but not limited to land ownership (not all land on which floodbanks are located is owned by ORC), lease agreements between ORC and private parties which do not provide for public access, and maintenance responsibilities that are associated with dedicated trails. Policy and other approaches can allow for consideration of access which is not appropriate in this forum.</p> <p>OVERALL STAFF COMMENT: No further action required with respect to the Proposed Bylaw.</p>
22	Colin Brown, Taieri Trails Trust	<p>Taieri Trails Trust request the bylaw be amended to allow for greater public access to the Taieri River and Silverstream floodbanks.</p> <p>They also request that the removal of grass surfaces of the floodbanks and replacement with compacted metal be permitted to allow the construction of a hard surface trail, provided that the work has had the design approval of Council Engineers.</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>The power of the Regional Council to make bylaws is contained in s149 of the Local Government Act 2002 ("LGA"). Councils may make bylaws for "flood protection and flood control works undertaken by, or on behalf of, the regional councils" (s149(1(c))).</p> <p>The primary purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or</p>

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		<p>The group wishes to construct a safe off-road walking and cycling network which connects the existing Clutha Gold Trail with the Wingatui Tunnel Project, to 'complete the loop' and provide for greater recreational access for locals and tourists. Using the Taieri River and Silverstream floodbanks are a logical means of achieving this trail network.</p>	<p>under the control of the ORC. Floodbanks are integral components of the flood management undertaken by ORC and it is of major importance that their function is not compromised.</p> <p>The Proposed Bylaw does not exclude public use of the floodbanks, for example for walking or cycling activities, but nor does it not explicitly allow the use of floodbanks for public use.</p> <p>ORC recognizes that public access to these assets is desired and as such intends to address this matter through the preparation of a policy, as discussed during the Council meeting on 23 March 2022.</p> <p>It is noted that there are various aspects that need to be worked through to address public access to floodbanks, including but not limited to land ownership (not all land on which floodbanks are located is owned by ORC), lease agreements between ORC and private parties which do not provide for public access, and maintenance responsibilities that are associated with dedicated trails. Policy and other approaches can allow for consideration of access which is not appropriate in this forum.</p> <p>Taieri Trails Trust also request the bylaw permits the construction of a hard surface trail, provided that the</p>

Topic: Public access and trails on floodbanks			
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			<p>work has had the design approval of Council Engineers.</p> <p>As described above, floodbanks are integral pieces of the flood management undertaken by ORC and it is of major importance that they are not compromised. The construction of hard surface trails could potentially adversely affect the integrity of floodbanks, for example by compromising the structural integrity and the overtopping of flood waters, which could lead to floodbank failure].</p> <p>We agree that any designs should be approved by Council Engineers, and the process for this is via the bylaw application assessment process. We do not consider it appropriate to allow for Council approval of designs outside of the formal bylaw approval process.</p> <p>OVERALL STAFF COMMENT: No further action required with respect to the Proposed Bylaw.</p>

Topic: Planting of vegetation and ecological effects			
Submitter #	Name	Summary of submission	Staff Comment
1	Alan Cutler	<p>Mr Cutler opposes the restrictions placed on the Albert Town Buttress (Defence Against Water) in the Proposed Bylaw.</p> <p>He considers that the recent construction works have destroyed the ecological, aesthetic and natural values of the area. He considers that the Proposed Bylaw cements a “very limited and sterile approach to the river margin and corridor” and reinforces a single engineering approach and failure to protect an Outstanding Natural Feature.</p> <p>Mr Cutler requests that the Proposed Bylaw be amended to enable and advance opportunities for ecological and aesthetic enhancement through plantings on the riverbank.</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>The primary purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC.</p> <p>The Proposed Bylaw places restrictions on planting any tree, shrub, hedge or part thereof on the defence against water, within 7m of the landward side of the defence against water or between the bank of the river and the defence against water (Rule 3.2). Smaller plants that are not trees, shrubs or hedges (e.g., grasses or groundcover) can be planted without requiring a Bylaw Authority.</p> <p>The interactions between planting and flood effects are complex, and there are risks that inappropriate planting can adversely affect the integrity and operation of flood protection works, for example by increasing erosion and scour.</p> <p>As such, Council staff consider that it is appropriate that the current provisions (as outlined above) remain, enabling planting of small plants and requiring Bylaw Authority be obtained for larger plantings.</p>

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Submitter #	Name	Summary of submission	Staff Comment
			<p>Council staff would then have an opportunity to assess the potential risks of planting to the integrity and operation of flood protection works on a case-by-case basis. We add that Council staff are available to provide pre-application advice with respect to appropriate plantings in different locations.</p> <p>With respect to Mr Cutler's comments on the effects of the Albert Town rock buttress works on ecological, aesthetic and natural values, we advise that these are assessed through the consenting process under the Resource Management Act 1991, not under the Proposed Bylaw, which is restricted only to assessing effects on the integrity and operation of the flood protection works.</p> <p>OVERALL STAFF COMMENT: No further action required.</p>
8	Craig Simpson, Watershed Solutions Ltd	Watershed Solutions Ltd state that many of the scheduled drains are straightened channels, full of sediment with eroding banks, where aquatic life is struggling. They request that wider holistic and catchment management approaches, including water quality and biodiversity requirements, are considered while maintaining the flood assets. To do this, they consider that	<p>Council thanks the submitter and acknowledges the submission.</p> <p>Watershed Solutions Ltd comment requesting ORC take a holistic and catchment management approach is acknowledged and ORC is working towards implementing these type of integrated management approaches through mechanisms such as its new Land and Water Plan and its Integrated Catchment Management framework. It is also noted that many</p>



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		<p>communications across Otago Regional Council teams and different stakeholders is required.</p> <p>With respect to the planting restrictions (sections stating you cannot plant 'any tree, shrub, hedge, or part thereof'), Watershed Solutions Ltd consider an enabling approach should be taken, giving the community information about what they can do as well as what they cannot do, and what could be planted that will not impede flood flows.</p> <p>Watershed Solutions Ltd state that environmental enhancement projects can, and if appropriate should, occur on flood protection lands. Due to funding being tight when these projects are driven by community groups, they request that consideration should be given to waiving bylaw authority application fees.</p>	<p>of the drains are considered as rivers and subject to Resource Management Act processes.</p> <p>However, we note that the purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC, and at this stage this remains its primary focus. As such, any changes to the Proposed Bylaw are not considered necessary or appropriate in response to the above comment relating to holistic and catchment management.</p> <p>With respect to the planting restrictions, the Proposed Bylaw places restrictions on planting any tree, shrub, hedge or part thereof in proximity to scheduled drains and overland flow paths (Rule 3.1), defences against water and excavation sensitive areas (Rule 3.2), floodways (Rule 3.3), groynes, crossbanks and training lines (Rule 3.4) and flood protection vegetation (Rule 3.5). Smaller plants that are not trees, shrubs or hedges (e.g., grasses or groundcover) can be planted without requiring a Bylaw Authority. We note that the phrase 'or allow to grow' should be deleted from the Proposed Bylaw for reasons outlined in response to submissions 9, 13 and 14.</p>

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			<p>The interactions between planting and flood effects are complex, and there are risks that inappropriate planting can adversely affect the integrity and operation of flood protection works, for example restricting flow capacity or diverting flows, resulting in changed flow direction and increased erosion and scour.</p> <p>There are riparian planting guides available on the ORC website (<a href="https://www.orc.govt.nz/managing-our-environment/water/good-practice-information">https://www.orc.govt.nz/managing-our-environment/water/good-practice-information</a>) and Council staff are available to provide advice with respect to appropriate plantings in different locations.</p> <p>With respect to the request to waive bylaw application fees by community groups, clause 5.2(b) of the Proposed Bylaw states that Council may waive the whole or any part of a fee payable under this bylaw. This would be considered on a case-by-case basis.</p> <p>OVERALL STAFF COMMENT: No further action required.</p>
21	Nicole Foote, NZ Landcare Trust	NZ Landcare Trust submission seeks to support holistic management in the Owhiro catchment and to align the Proposed Bylaw with Otago Regional Council strategies.	<p>Council thanks the submitter and acknowledges the submission.</p> <p>NZ Landcare Trust's comment requesting ORC take a holistic management approach and to align with</p>

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Submitter #	Name	Summary of submission	Staff Comment
		<p>They consider that holistic management of the Owhiro catchment would include considerations of instream habitat, water quality, biodiversity and the requirements for flood management; and that management of this catchment should align with the objectives, visions, goals and outcomes sought from the Otago Regional Council Rural Water Quality Strategy, Urban Water Quality Strategy and Biodiversity Strategy.</p> <p>They state that the Owhiro Stream has degraded water quality, including sediment and erosion issues from eroding/undercutting banks due to lack of stream edge vegetation, and the bylaw restricts the ability to create habitat and plant vegetation which can assist with keeping the streambanks intact (time and financial constraints associated with applying for a Bylaw Authority for community environmental efforts).</p> <p>NZ Landcare Trust Requests that barriers to environmental enhancement are removed where possible. They request a list of native species within the scope of the bylaw (e.g., not shrubs or trees) that can be planted for enhancement be released. They advise that some native vegetation like native grasses and sedges have no impact on hydraulic roughness than exotic vegetation/rank grass but do come</p>	<p>other ORC strategy and policy direction is acknowledged and ORC is working towards implementing these type of integrated management approaches through mechanisms such as its new Land and Water Plan and its Integrated Catchment Management framework. It is also noted that many of the drains are considered as rivers and subject to RMA processes.</p> <p>However, we note that the purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC, and at this stage this remains its primary focus. As such, any changes to the Proposed Bylaw are not considered necessary or appropriate in response to the above comment relating to holistic management.</p> <p>With respect to the planting restrictions, the Proposed Bylaw places restrictions on planting any tree, shrub, hedge or part thereof in proximity to scheduled drains and overland flow paths (Rule 3.1), defences against water and excavation sensitive areas (Rule 3.2), floodways (Rule 3.3), groynes, crossbanks and training lines (Rule 3.4) and flood protection vegetation (Rule 3.5). Smaller plants that are not trees, shrubs or hedges (e.g., grasses or groundcover) can be planted without requiring a Bylaw Authority. We note that the phrase 'or allow</p>

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		<p>with additional benefits including higher biodiversity outcomes, enhanced filtering capacity and aesthetic values.</p> <p>They also request that there is an efficient application process for community and catchment enhancement projects - to enable the enhancement of ecosystem health while accounting for the 'asset' value of the waterway in a timely manner, to provide a cost-effective process where applications are required (funding for ecological enhancement projects is limited and where effects are minor applications shouldn't require expensive consultancy services), and provide a time-efficient process for communities to connect with and enhance their local waterways.</p>	<p>to grow' should be deleted from the Proposed Bylaw for reasons outlined in response to submissions 9, 13 and 14.</p> <p>The interactions between planting and flood effects are complex, and there are risks that inappropriate planting can adversely affect the integrity and operation of flood protection works, for example restrict flow capacity or diverting flows, resulting in changed flow direction and increased erosion and scour.</p> <p>There are riparian planting guides available on the ORC website (<a href="https://www.orc.govt.nz/managing-our-environment/water/good-practice-information">https://www.orc.govt.nz/managing-our-environment/water/good-practice-information</a>) and Council staff are available to provide advice with respect to appropriate plantings in different locations.</p> <p>The assessment of bylaw applications follows a clear process, similar to the non-notified resource consent process. Council staff are available for pre-application advice and encourage the community to take them up on this.</p> <p>With respect to cost-effective application processes for community groups, clause 5.2(b) of the Proposed Bylaw states that Council may waive the whole or</p>

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			<p>any part of a fee payable under this bylaw. This would be considered on a case-by-case basis.</p> <p>OVERALL STAFF COMMENT: No further action required.</p>
25	Open Valley Urban Ecosanctuary	<p>Open Valley Urban Ecosanctuary (Open VUE) have submitted on a number of points, which have been combined and summarised into the points below:</p> <ol style="list-style-type: none"> <li>1. Request to ensure that restrictions around planting of trees, shrubs and hedges enables scope for riparian vegetation to be planted to enable high quality habitat for freshwater species. If trees are not able to be planted, they request that there is a structure in place to allow for habitat to ensure the protection of native species.</li> <li>2. Request a clear definition of 'defences against water'; description of the difference between 'plantings' and 'anchored tree protection'; and to clarify definitions of anchored tree protection, cross-bank, defence against water, drain, excavation-sensitive area, floodway, groyne, overland flow path and plantings – on layperson terms if there is scope to.</li> </ol>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>1 The primary purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC.</p> <p>The Proposed Bylaw places restrictions on planting any tree, shrub, hedge or part thereof on the defence against water, within 7m of the landward side of the defence against water or between the bank of the river and the defence against water (Rule 3.2). Smaller plants that are not trees, shrubs or hedges (e.g., grasses or groundcover) can be planted without requiring a Bylaw Authority.</p> <p>The interactions between planting and flood effects are complex, and there are risks that inappropriate planting can adversely affect the integrity and operation of flood protection works, for example restricting flow capacity or diverting flows, resulting</p>

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		<p>3. Provide allowance for the removal of invasive tree species (e.g., willows, sycamores), and request the removal of invasive tree species be given priority and if removal impacts flood protection work other options be explored.</p> <p>4. Request that where structures are added or removed, provision for native species is given (e.g., considering the impact to the wider ecosystem and preference is given to soft over hard surfaces, creating habitat for freshwater species and not restricting fish passage); and consideration for impacts to freshwater and riparian habitat and impacts on freshwater and riparian species to clause 5.1(b).</p> <p>5. Support the inclusion of diagrams.</p> <p>6. Consider that the fees required to submit an application are reduced as \$300 is costly for individual landowners.</p> <p>7. The Statement of Proposal considers that a bylaw is the most appropriate way of addressing the perceived problem and offers other options which are not considered appropriate. Open VUE considers some of these alternative options should be considered in conjunction with the Proposed Bylaw.</p>	<p>in changed flow direction and increased erosion and scour.</p> <p>As such, Council staff consider that it is appropriate that the current provisions (as outlined above) remain, enabling planting of small plants and requiring Bylaw Authority be obtained for larger plantings.</p> <p>Council staff would then have an opportunity to assess the potential risks of planting to the integrity and operation of flood protection works on a case-by-case basis. We add that Council staff are available to provide pre-application advice with respect to appropriate plantings in different locations.</p> <p>2. The definitions in the Proposed Bylaw are considered sufficient for the purposes of the bylaw. The definitions refer only to the schedules, and if a structure is identified in the schedule, then it is subject to the provisions of the bylaw. ORC staff are available to discuss any flood protection works, their purpose, how they work, etc. with interested parties.</p> <p>3. The removal of trees presents a significant risk to defences against water by changing flow paths and/or resulting in holes susceptible to erosion and scour. This risk remains regardless of whether they are native species or pest plant species such as</p>

Topic: Planting of vegetation and ecological effects			
Submitter #	Name	Summary of submission	Staff Comment
		<p>8. Open VUE request the community are consulted by authority holders if changes are being made to existing works.</p> <p>9. Request clarity on whether the Proposed Bylaw has an impact on the Land and Water Plan and vice versa.</p>	<p>willows and sycamores. The requirement to obtain a bylaw authority means that appropriate consideration of the risk occurs, and any mitigation measures are addressed, and for this reason we do not consider it appropriate to exclude the pest plants from this clause</p> <p>4. The primary purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC. As such, the matters of consideration are restricted only to matters that may adversely affect the effective operation and integrity of the flood protection works. Effects of any works proposed will be addressed where appropriate through the resource consenting process under the Resource Management Act 1991.</p> <p>5. No response required.</p> <p>6. We clarify that the deposit costs associated with the submission of a bylaw application are \$300, and actual costs may be higher than this depending on the time spent processing the application and expert input required. Clause 5.2(b) of the Proposed Bylaw states that Council may waive the whole or any part of a fee payable under this bylaw. This would be considered on a case-by-case basis.</p>

Topic: Planting of vegetation and ecological effects			
Submitter #	Name	Summary of submission	Staff Comment
			<p>Generally, we do not consider it appropriate to waive costs for all residential applications. Applications cost the ORC to process, requiring planning and expert engineering inputs. It is appropriate that these costs are borne by the applicant due to the benefit they will receive, rather than be borne by the ratepayer.</p> <p>7. We agree with this point. The Bylaw is the main way to provide the level of protection required and it is the intention of ORC that other options will also be progressed.</p> <p>8. As described above, the purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC and a such that is the scope for what might be included in the Proposed Bylaw. Requiring consultation does not fit within the scope of the Proposed Bylaw, however, may be required under the resource consenting process.</p> <p>9. The Proposed Bylaw and any ORC Land and Water Plan will not impact one another, but any works proposed will be subject to assessment under both. For example, if ORC wish to undertake maintenance relating to the removal of gravel from a scheduled drain that is also classified as a river under the RMA, they will require a resource consent. The resource</p>



Topic: Planting of vegetation and ecological effects			
Submitter #	Name	Summary of submission	Staff Comment
			<p>consent would assess the effects of the proposal on, for example, ecological values and condition any mitigation measures considered to be required to avoid, remedy or mitigate adverse effects of the proposal.</p> <p>OVERALL STAFF COMMENT: No further action required.</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
14	Emma Peters, Sweep Consultancy Ltd	<p>1. Ms Peters submission requests the deletion of 'or allow to grow' from clause 3.2(c), because it is contradictory with clause 3.2.d.</p> <p>2. She also requests reference to '20 metres' in clause 3.2(i)(ii) is replace with '7 metres', to provide consistency with the other permitted activity provisions referencing 7 metres (e.g., planting vegetation, structures and depositing material) and to provide for earthworks activities which have obtained resource consent from other territorial authorities.</p> <p>3. Ms Peters requests that, with respect to the objections process (clause 5.3(a)), a person has 20 working days to object to a decision or</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>1. The phrase 'allow to grow' was added to 'plant' in the Proposed Bylaw to encompass both planted and self-seeded vegetation because plants can block water flows and cause floodwaters to back up (we note this is a phrase used in other flood management bylaws in New Zealand). The Council do not want plants growing in places where they might adversely affect the integrity or operation of flood protection works, regardless of whether they have been explicitly planted or rather just 'allowed to grow'.</p> <p>However, we do see there could be instances where the phrases 'allow to grow' in the Proposed Bylaw</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
		<p>authority (instead of five days as in the Proposed Bylaw).</p> <p>4. Ms Peters also requests that, with respect to the revocation of an authority (clause 6.1.b(iii)(2)), a person has 20 working days to make a written submission outlining why the authority should not be revoked (instead of 14 days as in the Proposed Bylaw).</p>	<p>could cause issues for existing authorised planting areas. In these circumstances, we consider the term 'planting' is sufficient to control the risk to the integrity and operation of the flood protection works and reference to 'allow to grow' can be removed from the Proposed Bylaw.</p> <p>2. The intention of the Proposed Bylaw is to restrict earthworks within 20 metres of the landward side of a defence against water (unless the earthworks are cultivation). This is because earthworks are a greater risk to the defences against water than, for example, trees, planting and altering structures, because disturbance of the ground within this distance of flood protection works may contribute to creating adverse piping and/or erosion towards the toe of the floodbanks.</p> <p>Further, whilst resource consents for earthworks activities may have been obtained from territorial authorities under the respective district plan, resource consents are authorised under the Resource Management Act (RMA). Under the RMA, while it is possible that effects of any proposed earthworks on the operation and integrity of the flood protection works may be considered, it will not have the same focus and weighting as is provided for under the Proposed Bylaw.</p> <p>3. In response to Ms Peters request that a person have 20 working days to object to a decision or</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
			<p>authority, we consider that amending this timeframe to 15 working days would provide sufficient time for the provision of legal or expert advice to support any objection.</p> <p>4. In response to Ms Peters request that a person have 20 working days to present a written submission to Council setting out reasons why an authority should not be revoked, we consider that amending this timeframe to 15 working days would provide sufficient time for the provision of legal or expert advice to support any objection.</p> <p>For both above points relating to timeframes for objection/written submission, we note that Council is open to discussing reasonable extensions to these timeframes with applicants/authority holders, provided they approach Council within the periods specified in the Proposed Bylaw.</p> <p>OVERALL STAFF COMMENT:</p> <ul style="list-style-type: none"> <li>• Reference to 'allow to grow' to be removed from the Proposed Bylaw</li> <li>• Clause 5.3(a) to be amended, with reference to 'five working days' change to '15 working days'.</li> <li>• Clause 6.1(b)(iii)(2) to be amended, with reference to '14 days' change to '15 working days'.</li> </ul>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
15	Steve White, Thorndale Farm Ltd	Mr White's submission is identical to Ms Peters submission (submission number 14) and as such has not been repeated here.	<p>Council thanks the submitter and acknowledges the submission.</p> <p>Mr White's submission is identical to Ms Peters submission (submission number 14) and Council staff's comments are the same in response to Mr White's submission as to Ms Peters submission. As such, it has not been repeated here.</p>
16	Charlotte Young	Ms Young's submission is nearly identical to Ms Peters submission (submission 14), with some different wording but the same amendments requested and supporting reasons.	<p>Council thanks the submitter and acknowledges the submission.</p> <p>Ms Young's submission is nearly identical to Ms Peters submission (submission number 14) and Council staff's comments are the same in response to Ms Young's submission as to Ms Peters submission. As such, it has not been repeated here.</p>
17	Charlotte Farming Trust	Charlotte Farming Trust's submission is nearly identical to Ms Peters submission (submission 14), with some different wording but the same amendments requested and supporting reasons.	<p>Council thanks the submitter and acknowledges the submission.</p> <p>Charlotte Farming Trust's submission is nearly identical to Ms Peters submission (submission number 14) and Council staff's comments are the same in response to Charlotte Farming Trust as to Ms Peters submission. As such, it has not been repeated here.</p>
18	Grassyards Farm Ltd	Grassyards Farm Ltd's submission is nearly identical to Ms Peters submission (submission	Council thanks the submitter and acknowledges the submission.

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
		14), with some different wording but the same amendments requested and supporting reasons.	Grassyard Farm Ltd's submission is nearly identical to Ms Peters submission (submission number 14) and Council staff's comments are the same in response to Grassyards Farm Ltd as to Ms Peters submission. As such, it has not been repeated here.
19	Jason Coutts	Mr Coutts' submission is nearly identical to Ms Peters submission (submission 14), with some different wording but the same amendments requested and supporting reasons.	<p>Council thanks the submitter and acknowledges the submission.</p> <p>Mr Coutts' submission is nearly identical to Ms Peters submission (submission number 14) and Council staff's comments are the same to Mr Coutts' as in response to Ms Peters submission. As such, it has not been repeated here.</p>
9	Kevin Wood, University of Otago	<p>1. The University of Otago oppose the inclusion of the Leith Lindsay floodbank from the St David Street footbridge to the harbour in the Second Schedule and request that this is removed. They advise that this portion of the Leith Lindsay is a concrete channel passing through a highly urbanized environment and is fundamentally different from other reaches. They add that the University has undertaken considerable beautification both within and adjacent to the flood protection works in this area.</p> <p>2. The University of Otago requests that an exception from the St David Street footbridge to</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>Our overall comment in response to this submission is that the Proposed Bylaw aims to be an easily read and interpreted document. It is not designed to exclude specific locations but rather identify proximities to flood protection works where, if the identified activities were undertaken, they could adversely affect the operation and integrity of flood protection works.</p> <p>1. With respect to the request to remove the Leith Lindsay defence against water from the St David Street footbridge to the harbour from the Second</p>

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		<p>the harbour is provided for in clause 3.2(c) (planting or allowing to grow any tree, shrub, hedge or part thereof). They advise that the campus has been ranked amongst the 16 most beautiful in the world because of the buildings and campus, and the entire University Memorial Garden is within the area subject to the bylaw restrictions.</p> <p>They ask, if the root systems of plants are a risk to the concrete channel, then will all existing plants need to be cut down or removed (including the Memorial Garden). They also ask whether it is intentional that all plant growth will trigger the need for a bylaw permit (either under rule 3.2c if the plant is retained or 3.2d if it is removed). They believe this rule will have immediate and long-term impacts on landscaping.</p> <p>3. The University of Otago requests that rule 3.2d (cut down or remove any tree) is deleted or an exception is added which excludes the length from St David Street footbridge to the harbour from being subject to the rule. They advise that the University does sometimes need to remove trees (e.g., to replace infrastructure or where a tree dies or becomes diseased).</p>	<p>Schedule (Defences Against Water and Excavation-Sensitive Areas), we advise that this area is one part of the larger scheme, and it is integral to the scheme operating effectively. Maintenance and management would be more difficult to control without the provisions of the Proposed Bylaw. The failure of this flood protection work in a flood could cause widespread damage. For these reasons we do not consider it appropriate to remove the Leith Lindsay defence against water between the St David Street footbridge to the harbour from the Second Schedule</p> <p>2. With respect to the request to exclude the area from the St David Street footbridge to the harbour from clause 3.2(c) (planting), planting can cause damage to the flood protection works. For example, in the case of concrete panels or bluestone block work, plant roots can grow into cracks and spaces and affect the integrity of the flood protection works. The requirement to obtain a bylaw authority means that appropriate consideration of the risk occurs, and any mitigation measures are addressed, and for this reason we do not consider it appropriate to exclude the requested area from this clause.</p> <p>We note that the provisions of the Proposed Bylaw will only come into effect from the date it comes into force (if approved by Council), and therefore</p>

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		<p>They also ask whether the term tree refers to a type or size of woody perennial plant.</p> <p>4. The University of Otago requests that an exception is made to Rule 3.2(f) (remove or alter any structure) from the St David Street footbridge to the harbour. They advise that the University has several structures that cross the Water of Leith, and from time to time they need to alter or remove components of the structure (e.g., paint, repairs) or add items to the structure (e.g., new data or electrical conduits) which they consider to be <i>de minimis</i>.</p> <p>5. The University of Otago request that an exception is made to Rule 3.2(g) (dump or deposit anything, excluding materials for maintenance of existing authorised access) from the St David Street footbridge to the harbour. They advise that landscaping and infrastructure works requires soil disturbance and consider that the wording is very broad so that adding new soil/compost to a garden, replacing a fence or repairing a concrete footpath will require a bylaw authority.</p> <p>6. The University of Otago request that Rule 3.2(i) (relating to earthworks) be amended to add an exception from the St David Street</p>	<p>while future planting may require a Bylaw Authority, the University of Otago would not be required to remove any existing trees. It is an option for the University to seek a 'global' bylaw approval, for example to undertake regular planting of trees, shrubs, hedges in the memorial garden or specified areas of the site.</p> <p>The phrase 'allow to grow' was added to 'plant' in the Proposed Bylaw to encompass both planted and self-seeded vegetation because plants can block water flows and cause floodwaters to back up (we note this is a phrase used in other flood management bylaws in New Zealand). The Council do not want plants growing in places where they might adversely affect the integrity or operation of flood protection works, regardless of whether they have been explicitly planted or rather just 'allowed to grow'.</p> <p>However, we see there could be instances where the phrases 'allow to grow' in the Proposed Bylaw could cause issues for existing authorised planting areas. In these circumstances, we consider the term 'planting' is sufficient to control the risk to the integrity and operation of the flood protection works and reference to 'allow to grow' should be removed from the Proposed Bylaw.</p>

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		<p>footbridge to the harbour. They describe that, because of the definition of earthworks in the Proposed Bylaw, all soil disturbance will trigger the need for a bylaw authority, including several <i>de minimis</i> activities such as ground maintenance, planting of memorial trees, repairs and maintenance, new signposts, light standards and artwork.</p>	<p>3. With respect to the request to either delete rule 3.2(d) (cut down or remove any tree) or to exclude the area from the St David Street footbridge to the harbour from Rule 3.2(d), we advise that the removal of trees presents a significant risk to defences against water by changing flow paths and/or resulting in holes susceptible to erosion and scour. With respect to concrete walls, tree roots can grow into the panels, and the removal of the tree can then exacerbate damage and risk to the flood protection works. The requirement to obtain a bylaw authority means that appropriate consideration of the risk occurs, and any mitigation measures are addressed, and for this reason we do not consider it appropriate to exclude the requested area from this clause</p> <p>To respond to the point asking whether a tree refers to a type or size of woody perennial plant, we consider it is appropriate to use the ordinary dictionary definition of tree and what is commonly considered a tree, coupled with the circumstances in question (e.g., linking back to the purpose of the Proposed Bylaw, the definition allows consideration of the risk to the flood scheme, so for example, a sapling may not be an issue).</p> <p>4. With respect to the request to exclude the area from the St David Street footbridge to the harbour from Rule 3.2(f) (remove or alter any structure), we</p>



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			<p>clarify that the Proposed Bylaw intends to capture <u>structural</u> alterations to structures, as they can change flows and upstream or downstream flooding effects (e.g., adding pipes underneath a bridge can restrict flows, removing a bridge or structure can increase flows).</p> <p>It is considered appropriate that bylaw authority be obtained for any works that alter the structure, even if they do seem quite small to the applicant, due to the risks associated with compromising the flood protection works. The requirement to obtain a bylaw authority means that appropriate consideration of the risk occurs, and any mitigation measures are addressed, and for this reason we do not consider it appropriate to exclude the requested area from this clause. A practical application of the bylaw is unlikely to require a Bylaw Authority for painting as it does not alter the physical envelope of the structure and could be considered <i>de minimis</i>.</p> <p>5. The University of Otago request to exclude the area from the St David Street footbridge to the harbour from Rule 3.2(g) (dumping and deposition of any thing).</p> <p>It is important that dumping and deposition of material does not occur within the identified because, for example, the placement of stockpiles of</p>

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			<p>soil or building supplies, can restrict flow capacity, divert flows or be carried away during flood events and result in blockages of bridges, etc. The requirement to obtain a bylaw authority means that appropriate consideration of the risk occurs, and any mitigation measures are addressed, and for this reason we do not consider it appropriate to exclude the requested area from this clause.</p> <p>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: <i>'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'</i>. For consistency we consider this should also be added to clauses 3.3(e) and 3.4(f).</p> <p>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</p>

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			<p>repairing footpaths to be an inherent part of those permitted activities.</p> <p>6. In response to the University of Otago request to exclude the area from the St David Street footbridge to the harbour from Rule 3.2(i) (earthworks), we advise that earthworks present a major risk to flood protection works as they can alter the land surface and change flow patterns (both during and after completion of earthworks activities) and can cause erosion and scour. The requirement to obtain a bylaw authority means that appropriate consideration of the risk occurs, and any mitigation measures are addressed, and for this reason we do not consider it appropriate to exclude the requested area from this clause</p> <p>OVERALL STAFF COMMENT:</p> <ul style="list-style-type: none"> <li>• The phrase 'allow to grow' to be removed from 3.1(c), 3.2(c), 3.3(c), 3.4(c) and 3.5(b).</li> <li>• The identified statement to be added to the 'dump or deposit' rules 3.2(g) 3.3(e) and 3.4(f) such that they say: <i>excluding materials for maintenance of existing authorised access and where dumping or deposition of material is an inherent part of an activity</i></li> </ul>

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			<i>that is permitted under any other rule in this Bylaw’.</i>
13	Oliver Hornbrook	<p>Mr Hornbrook’s submission details several legal and grammatical-related points.</p> <ol style="list-style-type: none"> <li>1. Add ‘4.2 Floodways... 16’ to table of contents (simple correction)</li> <li>2. Add full stop to Fourth Schedule definition (simple correction)</li> <li>3. Amend preamble to read: The Otago Regional Council, pursuant to the powers contained in section 149 of the Local Government Act 2002, makes the following Bylaw:” (secondary legislation should state the empowering legislation to enable reader to discern intended scope and purpose of the Bylaws and conclude whether they are <i>ultra vires</i>)</li> <li>4. Replace two references to ‘Otago Regional Council’ (rule 1.0 and 3.0) with ‘Council’ (as currently drafted references to ‘Otago Regional Council’ as opposed to ‘Council’ excludes “any person duly authorised by the Council to exercise any of the powers conferred upon the Council by this Bylaw.”</li> </ol>	<p>Council thanks the submitter and acknowledges the submission.</p> <ol style="list-style-type: none"> <li>1. We agree this should be added.</li> <li>2. We agree this should be added.</li> <li>3. We disagree with the amendment proposed by Mr Hornbrook as there are provisions other than section 149 which are relevant.</li> <li>4. We agree with this amendment.</li> <li>5. We disagree with the recommendation to delete Rule 1.0 in its entirety. The bylaw is made in relation to flood protection and flood control works undertaken by or on behalf of the Regional Council. Section 149(1)(c) applies. Section 149(2) does not limit subsection (1).</li> <li>6. We agree with this amendment.</li> <li>7. We disagree with the recommendation to delete paragraph 2 of the Purpose as it helps to explain the scope of the Proposed Bylaw.</li> <li>8. We disagree with the recommendation to rephrase or delete paragraph 3 of the Purpose, because it sets out the ‘mischief’ which the Proposed Bylaw is intended to address. We do, however, consider that the</li> </ol>

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		<p>5. Delete Rule 1.0 PURPOSE in its entirety and then make all further consequential numbering amendments as a result (purpose clauses in secondary legislation are fraught with risk, as the purpose can only be accurately prescribed by the empowering legislation and to express the purpose differently from sections 149(1)(c) and 149(2) of the Local Government Act invites argument that the bylaws are <i>ultra vires</i>).</p> <p>6. If keeping purpose clause, italicise several the terms (flood protection works, scheduled drains, overland flow paths, defences against water, floodways, groynes, cross-banks, training lines and flood protection vegetation)</p> <p>7. If keeping purpose clause, delete paragraph 2 beginning "Flood protection works can..." (reciting definition has no place in the purpose).</p> <p>8. If keeping purpose clause, rephrase or delete paragraph 3 stating "This Bylaw only controls activities that may affect the integrity or operation of flood protection works" (including this paragraph creates a situation whereby a</p>	<p>word 'only' in that paragraph may justify the potential misinterpretation highlighted here, and consider 'only' should be deleted.</p> <p>9. We agree with this amendment.</p> <p>10. We agree a definition of 'authorised access' should be added. We propose the following definition for 'authorised access' be added to Rule 2.0 of the Proposed Bylaw: <i>"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."</i></p> <p>11. The definition of drain used in the Proposed Bylaw has been taken from the National Planning Standards definition and it is considered appropriate to use this definition for consistency between different regulatory documents. Whilst it is a broad definition, it is used only in Rule 3.3 (floodways) and is appropriate for the purposes sought in the Proposed Bylaw. For clarity, we propose to detail within the definition that it relates to clause 3.3 (Floodways) only. Agree that reference to the 'scheduled drain' definition within the 'drain' definition can be removed for clarity and consistency.</p> <p>12. We agree to amend the definition of 'scheduled drain' in part as proposed by the</p>

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		<p>person may first assess whether their actions affect the integrity or operation of the flood protection works, and if they determine that they do not then the Bylaw does not apply and the onus of proving otherwise will be on the Council).</p> <p>9. Capitalise 'W' in 'where' in Rule 2.0 (consistency in formatting).</p> <p>10. Add definition of 'authorised access' to Rule 2.0 (defining the term will remove ambiguity where referred to in clause 3.2(g)(iii) and 3.4(f))</p> <p>11. Amend the definition of 'drain' (as the proposed definition is broad and introduces ambiguity). Remove the reference to 'scheduled drain' within the 'drain' definition.</p> <p>12. Amend the definition of 'scheduled drain' to 'means any drain or river designated as a scheduled drain in the First Schedule' (current definition covers all rivers within the maps).</p> <p>13. In rule 3.0 (activities requiring bylaw) remove the words 'Council employees or' (this confers broader powers than those envisioned by the legislation).</p>	<p>submitter to tighten the definition. The wording has been amended to avoid the use of 'designated' which suggests a 'designation' under the Resource Management Act. We propose the following definition <i>"Scheduled drain means any drain or river shown as a Scheduled drain in the First Schedule"</i>.</p> <p>13. The exemption is a policy matter and not a legal matter. We do not understand the Submitter's rationale for removing "Council employees" if the exemption is retained as notified and it is considered that the words should be retained.</p> <p>14. We agree with this amendment.</p> <p>15. The phrase 'allow to grow' was added to 'plant' in the Proposed Bylaw to encompass both planted and self-seeded vegetation because plants can block water flows and cause floodwaters to back up (we note this is a phrase used in other flood management bylaws in New Zealand). The Council do not want plants growing in places where they might adversely affect the integrity or operation of flood protection works, regardless of whether they have been explicitly planted or rather just 'allowed to grow'. However, we see there could be</p>

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		<p>Defined words need to be italicized in this section.</p> <p>14. Amend the word 'sections' with 'clauses' (a Bylaw is comprised of rules and clauses, not sections).</p> <p>15. Amend clause 3.1c by removing the proposed works 'or allow to grow' (this creates a retroactive offence that will be hard to enforce, creates an offence by omission impacting innocent third parties and becomes contradictory whereby the act of complying with clause 3.1(c)(i) creates an offence under clause 3.1(a)).</p> <p>16. Amend clause 3.2(c) by removing the proposed works 'or allow to grow' (for reasons specified in point 15).</p> <p>17. Italicise 'structure' in clause 3.2(e) (simple correction).</p> <p>18. Amend clause 3.3(d) by removing the proposed words 'or allow to grow' (for reasons specified in point 15).</p> <p>19. Amend clause 3.4(c) by removing the proposed works 'or allow to grow' (for reasons specified in point 15).</p> <p>20. Replace 'access authorised maintenance' in clause 3.4(f) with 'authorised access maintenance' (simple correction).</p>	<p>instances where the phrase 'allow to grow' in the Proposed Bylaw could cause issues for existing authorised planting areas. In these circumstances, we consider the term 'planting' is sufficient to control the risk to the integrity and operation of the flood protection works and reference to 'allow to grow' should be removed from the Proposed Bylaw.</p> <p>16. We agree that that phrase 'allow to grow' should be removed for the same reasons as specified in point 15 above.</p> <p>17. We agree with this amendment.</p> <p>18. We agree that that phrase 'allow to grow' should be removed for the same reasons as specified in point 15 above, however note that, in the context of the submission, Mr Hornbrook was likely referring to clause 3.3(c) rather than 3.3(d).</p> <p>19. We agree that that phrase 'allow to grow' should be removed for the same reasons as specified in point 15 above.</p> <p>20. We agree with this amendment.</p> <p>21. We agree with this amendment.</p> <p>22. We agree that that phrase 'allow to grow' should be removed for the same reasons as specified in point 15 above, however proposed to keep the wording 'plant any</p>

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		<p>21. Amend clause 3.4(g)(ii) by removing erroneous space at the beginning of 'within' (simple correction).</p> <p>22. Amend clause 3.5(b) to read 'Add a plant, tree, shrub, hedge or part thereof within any flood protection vegetation' (creates issues with respect to self-seeding).</p> <p>23. Remove the entire paragraph beginning 'Note:' in clause 3.5 (no benefit in repeating the definition, would potentially fall short of the plain language standard for drafting legislation).</p> <p>24. Amend clause 4.1 by including the words "The <i>owner</i> of every <i>structure</i> [impacted by clauses 3.1 to 3.4] shall keep it in good repair".</p> <p>25. Consider the inter-relationship between the duty to keep structures in good repair under clause 4.1 and the inability to construct, remove or alter any structure under clauses 3.1(d), 3.2(e), 3.2(f), 3.3(d), 3.4(d) and 3.4(e).</p> <p>26. Replace 'Bylaw Approval Application Form' in clause 5.1(a) with 'Bylaw Authority Application Form' (simple correction)</p>	<p>tree...' for consistency with the other clauses.</p> <p>23. We agree with this amendment.</p> <p>24. We agree with this amendment.</p> <p>25. The inter-relationship between the provisions has been considered in the drafting of the Proposed Bylaw. We are of the opinion that keeping structures in good repair means 'to maintain' (i.e., to keep in good condition or like-for-like replacement). We do not consider maintenance required under clause 4.1 would trigger any requirements under the 'construct', 'remove' or 'alter' clauses. If, for example, a fence located within 7m of a drain needs to be maintained (e.g., involving temporary removal of fenceposts and replacement in a like-for-like manner), we consider this is provided for under clause 4.1. However, if the works would alter a structure (e.g., by adding or extending the fence) then it falls under the respective 'alter' clause and should be addressed through a Bylaw application due to the potential for adverse effects on the integrity and operation of flood protection works.</p> <p>26. We agree with this amendment.</p> <p>27. We agree with this amendment.</p>



Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
		<p>27. Amend clause 5.3(a) by italicising 'authority' (simple correction)</p> <p>28. Amend clause 5.3(b)(i) by formatting the paragraph in a manner consistent with the other paragraphs in the Bylaw (simple correction)</p> <p>29. Amend clause 6.1(b)(iii) by italicizing 'authority'; amend clause 6.1(b)(iii)(1) by italicizing 'Council' (simple correction).</p> <p>30. Amend clause 6.1(d) by italicizing 'authority' and 'Council' (simple correction).</p> <p>31. Amend clauses 6.2(a)(i) and 6.2(a)(ii) by replacing the word 'section' with 'rule'.</p> <p>32. Amend clause 6.2 (offence) by adding an additional clause: "Every person has a defence to liability under this clause 6.2, if that person's actions relate solely to the reasonable ongoing maintenance or, if applicable, cultivation of any existing structure, tree, shrub, hedge or part thereof" (to provide a common-sense defence to people maintaining their assets such as driveways, gates and gardens that are situated within 7m of scheduled drains and defences against water – specific examples provided in submission).</p>	<p>28. We agree with this amendment.</p> <p>29. We agree with this amendment.</p> <p>30. We agree with this amendment.</p> <p>31. We agree with this amendment.</p> <p>32. We have reviewed this submission point carefully and sought legal advice. We have been advised that the wording put forward by the submitter is problematic because it appears to put the onus of proof on the defendant which may not be permissible in a bylaw without express statutory authorisation; the language merges maintenance and cultivation which is clunky; there is a high degree of uncertainty associated with the word 'reasonable'; and finally there is an overlap between what is prohibited in the Proposed Bylaw and what would be excused by this defence making it confusing if not contradictory. Overall, it would make parts of the Proposed Bylaw unworkable and unenforceable. We did look at whether specific areas should be excluded from those provisions by a defence similar to what is described by the submitter (including Orchard Grove, the example used in the submission) and concluded that the provisions of the Proposed Bylaw should apply to all</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
		<p>33. Replace the word 'section' with 'rule' in clause 6.3.</p> <p>34. Consider the mechanism developed in clause 6.3 (consider it is wider than the powers capable of being delegated to a local authority under sections 175 and 176 of the Local Government Act – while it may be a more convenient mechanism for many owners, if an owner refused to comply with Council's demands, then they may be held to be <i>ultra vires</i>).</p> <p>35. Amend Appendix Two by changing the headers on pages 30, 31 and 32 to Bylaw 'Authority' Application Form (current wording encompasses the act of approval so proposed wording is more appropriate and provides consistency with the rest of the bylaw).</p> <p>36. Amend section 3 of the Bylaw Approval Application form by replacing the word 'section(s)' with 'rule(s)'.</p>	<p>properties to ensure the adequate protection of the integrity and operation of the flood protection works.</p> <p>In response to the Orchard Grove examples, we note that the term 'allow to grow' is to be deleted from the Proposed Bylaw, planting of a garden is a permitted activity if it falls within the definition of cultivation, authority would not be required for like-for-like maintenance works (e.g. fixing potholes and replacing a mailbox) but would be required for alteration or placement of structures (e.g., installation of a heatpump). We consider this is appropriate and necessary to ensure the adequate protection of the integrity and operation of the flood protection works.</p> <p>33. We agree with this amendment.</p> <p>34. We disagree that the notice to remedy is wider than the powers capable of being delegated to a local authority, and consider that provision for a direction to comply with the obligations in the Proposed Bylaw is lawful (section 13 Bylaws Act, Section 151(1) Local Government Act)</p> <p>35. Agree with this amendment.</p> <p>36. Agree with this amendment.</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
			<p>OVERALL STAFF COMMENT:</p> <ul style="list-style-type: none"> <li>The amendments as proposed in points 1, 2, 4, 6, 9, 10, 14, 16, 17, 18, 19, 20, 21, 23, 24, 26, 27, 28, 29, 30, 31, 32 33, 35 and 36 of Mr Hornbrook's submission should be made in full.</li> <li>The amendments as proposed in points 8, 11, 12, 15 and 22 of Mr Hornbrook's submission should be made in part, as described above.</li> </ul>
24	Eleanor Linscott, The Federated Farmers of New Zealand	The Federated Farmers of New Zealand (Federated Farmers) has made a submission where they describe that the communities and farms within flood prone areas are most affected, as any floods directly affect their livelihoods and ability to continue to operate their business. Farmers on flood protection schemes pay rates to maintain and improve this flood protection and as a result it is crucial that any decisions relating to the management of these schemes involve a balancing of the likelihood of floods occurring, the potential impact of flooding and level of protection and risk management desired by affected communities. They highlight that it is important that the purpose of the Bylaw is not intended to control normal farming activities which do not	<p>Council thanks the submitter and acknowledges the submission.</p> <p>We acknowledge the context in which the submission has been made and agree that the Bylaw is only to control activities which have the potential to adversely affect the integrity or operation of flood protection works.</p> <p>To respond to the point made requesting clarity with how the Bylaw aligns with farm environment plans and riparian planting, the Bylaw is a legal mechanism and if requirements of farm environment plans or riparian planting cannot comply with the provisions of the Bylaw, authorisation under the Bylaw is required.</p> <p>8. The Statement of Proposal is a document required for consultation under the Local Government Act</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
		<p>affect the integrity or operation of flood protection works.</p> <p>They state that clarity would be helpful to understand how the Bylaw aligns with landowner requirements for farm environment plans and potentially riparian planting through catchment groups, and state that clear and early engagement with landowners is beneficial in helping provide clarity in what is required.</p> <p>The general points in the submission are numbered 8 – 28 (points 1 – 7 present a summary) and have been summarised below using that numbering for ease of reference and response.</p> <p>8. Federated Farmers advise that the Statement of Proposal does not make it clear what the actual activities captured by the Bylaw are.</p> <p>9. The definition 'structure' includes 'driveway' as a proposed change. All the other examples of structure include physical things that are fixed to land (e.g., gate, cable, culvert, pipe). Federated Farmers consider that 'driveway' should not be included in the definition as it does not fit with the other examples of a structure, and it is confusing as driveways are used to move stock.</p>	<p>2002 but does not form part of the actual Proposed Bylaw. The activities requiring authorisation are clearly defined in the Proposed Bylaw.</p> <p>9. 'Driveway' has explicitly been added to this definition. Driveways have always been included in the definition, but as Council have received numerous enquiries on this matter 'driveway' has been added to the definition to provide clarity. The purpose of the Proposed Bylaw is to maintain the integrity and operation of the flood protection works. We consider that the construction of driveways can adversely affect the integrity and operation of the flood protection works and should be included in the definition. An alternative would be that 'driveway' could be defined specifically and then referred to alongside structure (e.g., structure or driveway) in the relevant clauses, but do not consider anything would be gained by doing this.</p> <p>10. Cultivation is a type of earthworks because it involves the alteration and disturbance of land and as such do not consider it appropriate to exclude it from this definition. Cultivation has been explicitly defined in Rule 2.0 so that it is clear what type of earthworks are excluded from the rules that it is referred to in, being Rules 3.2(i)(ii) and 3.4(g)(ii).</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
		<p>10. Federated Farmers suggests that the definition of 'earthworks' includes an exclusion for cultivation, so cultivation is not inadvertently captured by the earthworks definition.</p> <p>11. They suggest that the diagrams in Appendix 1 include more detail on what is described in terms of distances.</p> <p>12. Appendix 2 refers to 'Bylaw Authority Application Form', however the template still references 'Approval' and should be changed for consistency.</p> <p>13. Rule 3.1 refers to the phrase 'plant or allowed to grow'. Federated Farmers request explanation on what 'allowed to grow' means and how this relates to indigenous vegetation where there are restrictions on clearance.</p> <p>14. Federated Farmers request clarification on the meaning of the phrase 'hedge or part thereof' and confirmation as to whether 'part thereof' is also part of shrub or tree.</p> <p>15. With respect to Rule 3.1, Federated Farmers state it would be helpful to relate that directly to what is intended in Appendix 1 and consider that the diagrams provided do not have enough detail to provide clarity to Rule 3.1. They</p>	<p>11. The diagrams have been included for illustrative purposes only as to the different terms referred to in the Proposed Bylaw (e.g., location of the top of the bank and extent of the defence against water). The reference to 7 metres is showing where the 7m exclusion zone referred to in various rules extends from. We do not consider any changes need to be made to the diagrams.</p> <p>12. We agree that the title of the application form should be changed to 'Bylaw Authority Application Form', as should the reference to this form in clause 5.1(a).</p> <p>13. The phrase 'allow to grow' was added to 'plant' in the Proposed Bylaw to encompass both planted and self-seeded vegetation because plants can block water flows and cause floodwaters to back up (we note this is a phrase used in other flood management bylaws in New Zealand). The Council do not want plants growing in places where they might adversely affect the integrity or operation of flood protection works, regardless of whether they have been explicitly planted or rather just 'allowed to grow'.</p> <p>However, we see there could be instances where the phrase 'allow to grow' in the Proposed Bylaw could cause issues for existing authorised planting areas. In these circumstances, we consider the term 'planting'</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
		<p>consider that Rule 3.1(c)(ii) is confusing, in particular “on, or within, seven metres of the top of the bank...”.</p> <p>16. The definition of authority means written approval of the Council. Federated Farmers advise that it would be helpful if authority as a term in the Bylaw is capitalised to show that it is a defined term.</p> <p>17. The submitter requests clarification on what ‘landward’ means.</p> <p>18. Federated Farmers request clarification on how clauses 3.2(c) and 3.2(d) align as they seem to be directly opposed in that (c) refers to no person being allowed to plant or allow any tree to grow, whereas (d) prohibits a person from cutting down or removing a tree.</p> <p>19. Rule 3.3(d) refers to no person being able to construct or put any structure in or on, or over a floodway. The proposed definition now includes driveways which does not fit with the current definition of structure.</p> <p>20. Federated Farmers describe that the Floodway descriptions in the Bylaw include ‘pastoral farmland when not in operation’ for the Lower Clutha Floodway and Lower Taieri</p>	<p>is sufficient to control the risk to the integrity and operation of the flood protection works and reference to ‘allow to grow’ should be removed from the Proposed Bylaw.</p> <p>14. ‘part thereof’ applies to tree, shrub and hedge. It means that the clause applies to a tree, shrub, hedge, or any part of a tree, shrub or hedge.</p> <p>15. The diagrams have been included for illustrative purposes as to the different terms referred to in the Proposed Bylaw (e.g., location of the top of the bank and extent of the defence against water). We can see where confusion may come from in clause 3.1(c)(ii) due to the placement of the comma after ‘within’. The intent is that the rule restricts activities ‘on’ and ‘within 7m’ of a scheduled drain. We propose the wording is amended to: ‘on, or within seven metres of the top of, any scheduled drain’. We propose that this amendment is made in clause 3.1(d)(ii) as well for consistency.</p> <p>16. The terms that have been defined are italicised throughout the Proposed Bylaw. We consider that this is sufficient, and the term does not require capitalisation.</p> <p>17. The term ‘landward’ is used in Rule 3.2, where it references ‘within seven metres of the landward side</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
		<p>(Upper Pond). They request that Rule 3.3 include permission for those areas to be used as pastoral farmland when not in use as is described in the schedule, to provide clarity.</p> <p>21. Rule 3.4(f) does not make sense with the addition of the word 'authorised', making it 'access authorised maintenance'.</p> <p>22. The submitter advises that it is unclear what the difference between Rules 3.5(a) and 3.5(b) are and consider that it is not clear what is flood protection vegetation and what is vegetation that they are not supposed to allow to grow.</p> <p>23. Federated Farmers submit that the associated note in Rule 3.3(c) does not provide clear guidance on what is required, and the phrasing is confusing, particularly reference to 'extent of vegetation'.</p> <p>24. With respect to Rule 4.3, Federated Farmers suggest that the fencing proposed here include only temporary fencing. (e.g., electric fencing) due to the potential costs of permanent fencing which they consider should potentially be a cost covered by ORC as it is a structure associated with maintenance. They also request clarity on</p>	<p>of any defence against water'. Landward means 'toward land'. A defence against water will have one side that is located closer to the waterbody and one side that is away from the waterbody. Landward refers to that side of the defence against water that is furthest from the waterbody (e.g., the left side of the diagram in Figure 2 of Appendix 1).</p> <p>18. Please see response to point 13, where the term 'allow to grow' is recommended to be removed.</p> <p>19. Please see response to point 9, which describes driveways have always been considered to fall within the definition of structure, and that ORC consider this is appropriate as they can adversely affect the integrity and operation of flood protection works.</p> <p>20. The purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and integrity of flood protection works owned by or under the control of the ORC. It describes just those activities which can adversely affect the integrity and operation of flood protection works, and not those activities that can be undertaken without authority approval. Section 3.3 of the Proposed Bylaw (floodways) does not restrict the use of floodways for pastoral farmland. As such, no changes are considered necessary.</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
		<p>who would be responsible for fencing and request early engagement with landowners.</p> <p>25. With respect to Rule 5.1, consistency between terminology (Bylaw Approval Application and Bylaw Authority Application are both used) is requested.</p> <p>26. Clarification on whether the authority referred to under Rule 5.1 is the signed form by the Council or the same as the definition in the Proposed Bylaw (written approval issued by the Council under this Bylaw).</p> <p>27. Under clause 6.1(b)(iii)(2) a person has only 14 days to send a written submission to Council. Federated Farmers request whether the 14 days is based on issue of notice from the Council, whether that notice is posted or by email, and highlight that if posted by mail then it is unfair to expect a party to receive that notice and respond within 14 days.</p> <p>28. Federated Farmers consider that new rule 6.1(e) is 'orphaned' as it is not clear whether it is referring to 6.1 in its entirety or just in the context of 6.1(d).</p>	<p>21. Agree. We propose this is amended to 'authorised access maintenance'.</p> <p>22. Please see response to point 13 above where we propose that the term 'allow to grow' is removed from the Proposed Bylaw. To clarify, flood protection vegetation is a term that is defined within the Proposed Bylaw and identified in the maps in the Fourth Schedule. The rules restrict anybody from removing, altering or interfering with flood protection vegetation; and planting any new tree, shrub or hedge (or part thereof) within the area identified in the Fourth Schedule as being flood protection vegetation. We note that areas subject to Rule 3.5 are confined to only particular areas adjacent to the Waitaki River and an area adjacent to the Shotover and Kawarau Rivers.</p> <p>23. We propose to remove the full note from this section (understood to be referencing 3.5(c)) as we do not consider repeating the definition adds benefit. The same phrasing is, however, used in the definition of flood protection vegetation. The phrasing 'extent of the vegetation' simply refers the extent of vegetation that is classified as being flood protection vegetation (where there is one line on the maps being the vegetation between that line and the adjacent edge of the active channel, and where there</p>



Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
			<p>are two lines being the vegetation between those two lines).</p> <p>24. Clause 3.1(h) requires that livestock are not permitted in or through any scheduled drain. Rule 4.3 goes on to require that the Council may require every owner and occupier of land adjoining a scheduled drain to prevent livestock entering that scheduled drain at the cost of the landowner, to prevent livestock from entering the drain. The purpose of this rule is to ensure the ongoing integrity and operation of flood protection works. We note that it is the landowner/occupier's responsibility to comply with the provisions of any Bylaw, and if an electric fence would be sufficient to exclude livestock from drains and provide for the integrity and operation of flood protection works then this could be appropriate. Any fencing would be owned by, and be the responsibility of, the landowner/occupier.</p> <p>25. We proposed to amend reference to 'approval' to 'authority', to provide for consistency throughout the document.</p> <p>26. Authority in this section is the same as defined in Rule 2.0.</p> <p>27. We propose to amend the timeframe from 14 days to 15 working days. Any notice would be both</p>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
			<p>posted and emailed (if Council holds the landowners email address). The usual rules of notice apply, and in most cases the notice will be emailed. The fifteen days applies from when the submission is first received and is considered an adequate time frame.</p> <p>28. We consider that clause 6.1(d) reads correctly, in that it is saying that if Council need to revoke an authority to obtain immediate efficacy and effectiveness of the flood protection works or in the event of pending or current flood events, clauses 6.1(a) – (c) do not apply. The reasons for this are due to the urgency that is associated with a revocation under clause 6.1(d).</p> <p>OVERALL STAFF COMMENT:</p> <ul style="list-style-type: none"> <li>• Reference to the form in clause 5.1(a) be amended to 'Bylaw Authority Application Form'.</li> <li>• The phrase 'allow to grow' to be removed from 3.1(c), 3.2(c), 3.3(c), 3.4(c) and 3.5(b).</li> <li>• Grammatical amendments made with reference to 'within 7m of the top of, any scheduled drain' in clause 3.1(c)(ii) and 3.1(d)(ii).</li> <li>• Reference to 'access authorised maintenance' be amended to 'authorised access maintenance' in clause 3.4(f).</li> </ul>

Topic: Specific provisions			
Submitter #	Name	Summary of submission	Staff Comment
			<ul style="list-style-type: none"> <li>• Remove note in Rule 3.5(c)</li> <li>• Amendment of 'approval' to 'authority' in Rule 5.1.</li> <li>• Amendment of timeframes relating to making a writing submission in relation to a bylaw revocation from 14 days to 15 working days.</li> </ul>

Topic: Targeted rates			
Submitter #	Name	Summary of submission	Staff Comment
2	Peter Whitlock	Mr Whitlock's submission opposes rate 1A, raises concerns with the effects of the Meridian Energy Waitaki Hydropower Dam, and the requirement for Waitaki District landowners to pay a power charge to Meridian Energy and targeted rates to Otago Regional Council (which are then passed to Environment Canterbury).	<p>Council thanks the submitter and acknowledges the submission.</p> <p>It is understood that 'rate 1A' is referencing the targeted rate for river management and flood protection works. It is unclear what a 'power charge' is.</p> <p>The purpose of the Proposed Bylaw is to manage, regulate and protect the effective operation and</p>

Topic: Targeted rates			
Submitter #	Name	Summary of submission	Staff Comment
			<p>integrity of flood protection works owned by or under the control of the Otago Regional Council.</p> <p>Targeted rates, power charges and the effects of the Meridian Energy Waitaki Hydropower Dam are not within the scope of this bylaw review.</p> <p>Rates are addressed through the Annual Plan consultation process, power charges are presumably a commercial payment, and effects of activities are addressed under the Resource Management Act 1991 (e.g., regional and district plans or resource consents).</p> <p>OVERALL STAFF COMMENT: No further action required.</p>

Topic: Support for Proposed Bylaw with no requested amendments			
Submitter #	Name	Summary of submission	Staff Comment
3	Submitter 3	Submitter 3 advises that they support adding the recently completed Albert Town Buttress Defence Against Water to the ongoing flood protection works schedule.	<p>Council thanks the submitter and acknowledges the submission.</p> <p>OVERALL STAFF COMMENT: No further action required.</p>

Topic: Support for Proposed Bylaw with no requested amendments			
Submitter #	Name	Summary of submission	Staff Comment
		They believe that proactive ongoing management is required to maintain that section of riverbank.	
20	Leigh Griffiths, Environment Canterbury	<p>Environment Canterbury submit in support of the bylaw with no amendments requested.</p> <p>They advise that the Otago Regional Council and Canterbury Regional Council co-manage the Waitaki River, and Canterbury Regional Council support any initiative that further protects the critical flood assets on this river.</p> <p>They consider that the proposed amendments increase consistency with the existing Canterbury Flood Bylaw, which should create consistent outcomes and make it easier for people with a property classified as being in both regions to understand.</p>	<p>Council thanks the submitter and acknowledges the submission.</p> <p>OVERALL STAFF COMMENT: No further action required.</p>

## 5. Additional amendments to the Proposed Bylaw

### 5.1. Schedule drain O6

ORC staff have identified that scheduled drain O6 should also have been removed from the First Schedule. Scheduled drain O6 historically ran between Hagart-Alexander Drive and Gladstone Road North in Mosgiel. During the subdivision in this location, the drain was removed in favour of a DCC reticulated stormwater network.

The Proposed Bylaw applies only to flood protection works owned by or under the control of the Otago Regional Council for the purpose of managing, regulating and protecting the effective operation and integrity of flood protection works. Given the flood protection works (scheduled drain O6) in this area has been removed, they should also be deleted from the First Schedule maps (East Taieri Scheduled Drains and Overland Flow Paths).

Whilst ideally the proposed deletion would have occurred prior to public consultation, we do not consider that it will adversely affect any party as the flood protection works no longer exist.

The scheduled drain that should be deleted is shown in Figure 1 below.

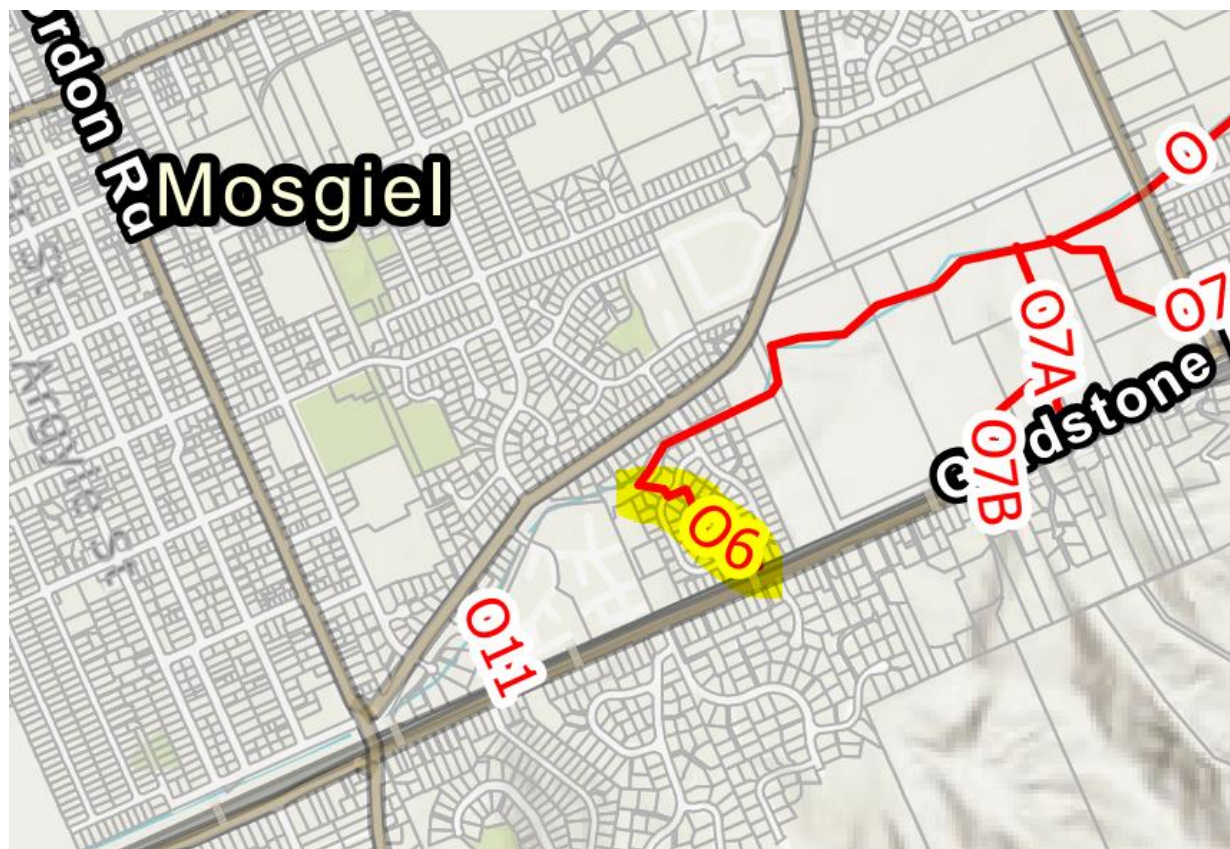


Figure 1: Scheduled drain O6 to be deleted, shown highlighted yellow



### Hospital Creek floodbank

ORC staff have confirmed that the floodbank at Hospital Creek (Hospital Creek Embankment) is owned and maintained by Clutha District Council (CDC).

The Proposed Bylaw applies only to flood protection works owned by or under the control of the Otago Regional Council for the purpose of managing, regulating and protecting the effective operation and integrity of flood protection works. Given the flood protection works (floodbank) in this area is not owned or under the control of ORC, it should be deleted from the Second Schedule maps (Lower Clutha Defences Against Water).

Whilst ideally the proposed deletion would have occurred prior to public consultation, we do not consider that it will adversely affect any party. The floodbank will still be maintained by the CDC.

The floodbank that should be deleted is shown in Figure 2 below.



Figure 2: Floodbank to be deleted, shown highlighted yellow

## **Appendix 1: Submissions received**



**Respondent No:** 3**Login:** Anonymous**Email:** n/a**Responded At:** Mar 31, 2022 12:50:10 pm**Last Seen:** Mar 31, 2022 12:50:10 pm**IP Address:** n/a

- Q1. **Please enter your full name.\*\*This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.**
- Alan Cutler
- 
- Q2. **Name of your organisation (if applicable):**
- not answered
- 
- Q3. **Postal address:**
- 
- Q4. **Address postcode:**
- 
- Q5. **Contact phone number:**
- 
- Q6. **Email address:**
- 
- Q7. **State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.**
- Albert Town Bankworks. Oppose . Amend to enable and advance opportunities for ecological and aesthetic enhancement via river margin planting. Bylaw reinforces ORC single engineering approach and a failure to protect Outstanding Natural Feature.
- 
- Q8. **State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...**
- Amend document to enable and facilitate future riverbank and margin planting along Albert Town bankworks..
- 
- Q9. **Give reasons for the decision you want made.e.g., I want rule 'y' changed because...**
- Recent bankworks destroyed ecological, aesthetic and natural values. Bylaw merely cements a very limited and sterile approach to the river margin and corridor.
- 
- Q10. **Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.**
- No, I do not wish to be heard in support of my submission.
- 
- Q11. **If other people have made a similar submission, do you wish to present jointly with them?**
- No, if others have made a similar submission, I will not consider presenting jointly with them at a hearing.
-

**Respondent No:** 4**Login:** Anonymous**Email:** n/a**Responded At:** Apr 05, 2022 11:22:43 am**Last Seen:** Apr 05, 2022 11:22:43 am**IP Address:** n/a

<b>Q1. Please enter your full name.**This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.</b>	Peter Leslie WHITLOCK
<b>Q2. Name of your organisation (if applicable):</b>	not answered
<b>Q3. Postal address:</b>	
<b>Q4. Address postcode:</b>	
<b>Q5. Contact phone number:</b>	
<b>Q6. Email address:</b>	
<b>Q7. State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.</b>	Rate 1a OPPOSED
<b>Q8. State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...</b>	Leave the Waitaki District alone. We already pay rate 1A to ORC, which is generously donated to Environment Canterbury annually
<b>Q9. Give reasons for the decision you want made.e.g., I want rule 'y' changed because...</b>	<p>The Waitaki District has the misfortune to be located in the tailrace for the Waitaki Hydro Dam. Landowners here must endure the depredations and degradations of Meridian Energy and just to add insult to injury, pay for it as well, both in our Power charge and in the ORC rate 1a</p>
<b>Q10. Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.</b>	Yes, I wish to be heard in support of my submission.
<b>Q11.If other people have made a similar submission, do you wish to present jointly with them?</b>	Yes, if others have made a similar submission, I will consider presenting jointly with them at a hearing.

**Josie Burrows**

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**From:** [REDACTED]  
**Sent:** Tuesday, 5 April 2022 2:09 pm  
**To:** Flood Bylaw Review  
**Subject:** Albert Town Rock Buttress

Hello

In response to your newsletter of 29 March and as property owners on Alison Avenue, Albert Town adjacent to the Clutha River, we fully support the ORC adding the newly completed rock buttress immediately upstream of the Clutha river bridge to your schedule for ongoing flood protection management.

We applaud the work that was done to this area a year or so ago and believe it needs proactive ongoing management to maintain the investment that has been made in protecting this section of riverbank.

regards

[REDACTED]

**Respondent No:** 5**Login:** Anonymous**Email:** n/a**Responded At:** Apr 06, 2022 21:10:07 pm**Last Seen:** Apr 06, 2022 21:10:07 pm**IP Address:** n/a

- Q1. **Please enter your full name.\*\*This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.** Coli Scurr
- 
- Q2. **Name of your organisation (if applicable):** Taurima Farms
- 
- Q3. **Postal address:**
- 
- Q4. **Address postcode:**
- 
- Q5. **Contact phone number:**
- 
- Q6. **Email address:**
- 
- Q7. **State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.** First Schedule (Schedule Drains)
- 
- Q8. **State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...** The first schedule should include the Contour Channel on the West Taieri
- 
- Q9. **Give reasons for the decision you want made.e.g., I want rule 'y' changed because...**
- The Contour Channel is an artificial drain that is vital for the drainage and flood protection of the West Taieri. The bylaw needs to give ORC staff the right to maintain the capacity of the channel without getting a resource consent. ORC staff have told land owners that they cannot remove gravel deposited into the channel from the side streams below water level. This results in the channel invert not being maintained. The bylaw needs to allow for the maintenance of the flow capacity of this important piece of infrastructure by the Otago Regional Council.
- 
- Q10. **Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.** No, I do not wish to be heard in support of my submission.
- 
- Q11. **If other people have made a similar submission, do you wish to present jointly with them?** No, if others have made a similar submission, I will not consider presenting jointly with them at a hearing.
-

**Respondent No:** 6**Login:** Anonymous**Email:** n/a**Responded At:** Apr 14, 2022 13:11:13 pm**Last Seen:** Apr 14, 2022 13:11:13 pm**IP Address:** n/a

<p><b>Q1. Please enter your full name.**This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.</b></p>	Kirk Pritchard
<p><b>Q2. Name of your organisation (if applicable):</b></p>	not answered
<p><b>Q3. Postal address:</b></p>	
<p><b>Q4. Address postcode:</b></p>	
<p><b>Q5. Contact phone number:</b></p>	
<p><b>Q6. Email address:</b></p>	
<p><b>Q7. State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.</b></p>	Amend Alexandra Defences Against Water Plan
<p><b>Q8. State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...</b></p>	Remove line over 5 houses on Orchard Drive (12, 14, 16, 18 and 20 Orchard Drive) where the stopbank does not exist
<p><b>Q9. Give reasons for the decision you want made.e.g., I want rule 'y' changed because...</b></p>	Error made in drawing. This location is not part of the stop bank/defence
<p><b>Q10. Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.</b></p>	No, I do not wish to be heard in support of my submission.
<p><b>Q11.If other people have made a similar submission, do you wish to present jointly with them?</b></p>	No, if others have made a similar submission, I will not consider presenting jointly with them at a hearing.

**Respondent No:** 7**Login:** Anonymous**Email:** n/a**Responded At:** Apr 21, 2022 21:29:23 pm**Last Seen:** Apr 21, 2022 21:29:23 pm**IP Address:** n/a

Q1. <b>Please enter your full name.**This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.</b>	Brian Peat
Q2. <b>Name of your organisation (if applicable):</b>	Taieri Plains Environmental Trails Group
Q3. <b>Postal address:</b>	
Q4. <b>Address postcode:</b>	
Q5. <b>Contact phone number:</b>	
Q6. <b>Email address:</b>	
Q7. <b>State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.</b>	Access to Flood Banks of Public Use
Q8. <b>State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...</b>	Allow access to the flood banks so that the public can use them for cycleways and walkways
Q9. <b>Give reasons for the decision you want made.e.g., I want rule 'y' changed because...</b>	
	The public is currently using the floodbanks of the Silverstream and Taieri River now as cycle and walking trails. The request is merely to formalise what is actually happening now in reality. Another example is the farmers who use the floodbanks to graze their stock are in many situations using vehicles along the floodbanks. There are also numerous road crossings over the floodbanks and these roads are normally gravelled. There is one situation just outside Outram where the farmers regularly has heavy trucks crossing the floodbanks. Therefore, approvals have obviously been obtained for these purposes.
Q10. <b>Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.</b>	Yes, I wish to be heard in support of my submission.
Q11. <b>If other people have made a similar submission, do you wish to present jointly with them?</b>	Yes, if others have made a similar submission, I will consider presenting jointly with them at a hearing.

Greetings,

At a recent public meeting on Taieri flood protection at the Coronation Hall in Mosgiel, I spoke with Gary Bayne, ORC, who was in agreeance with me that the present configuration of the flood drain around our property is restricting the flow of water, which puts properties at risk of flooding rather than prevention.

The following was my observation of the March 2018 flooding around 392 Riccarton Road. I made my way home at 4pm on the 18<sup>th</sup> of March and noticed major pooling of floodwater along the North side of State Highway 87 and properties flooding on the North side of the School Road/ State Highway 87/ Riccarton Road West intersection. Flood water from the North side of State Highway 87 goes under that road, through our neighbour Harry Cuttance's, then makes a 90° turn to the right, then a 90° turn to the left, then a 90° turn to the left, then a sharp 90° turn under Riccarton Road then a straight run of some km's. The flood water on the North side of Highway 87 needs a straight flow to drain quickly.

Closer to our dwelling, the water peaked around midnight with the flood water banking up at the Riccarton Road 90° left hand turn. On this turn, the water travels three metres to a 1.200mtre diameter pipe then down to the 90° turn through a bigger 1.5 x 1.5metre culvert under Riccarton Road. This all seems an unnecessary restriction for flood water which bottle necks on the North/ West side of our property and puts our neighbours at extreme risk of coping the overflow if the water peaks over Riccarton Road it will travel directly at their dwelling. In 2018 flood water reached the centre of Riccarton when the pipe filled. Overflow went South, along the hedge line onto our lawn, around the house to the culvert under Riccarton Road. Our dwelling is 200mm higher than the top of Riccarton Road at the North /West corner.

As shown in an attached pic with this email, the flood drain should be on the South boundary of our property. We would give permission for this to be actioned under consultation because there would be a couple of small issues.

At The West end, the row of Macrocarpas is gone but one, tree stumps remain in places. If the existing tree is fallen, we do not have a problem with that if it is ringed up to manageable sized pieces. This is also the case for more smaller Birch trees on the South boundary.

My wife has recently grown native trees along the fence line and further out on that boundary and notice to us on early decisions from you guys would be appreciated and any further plantings will be evaluated.

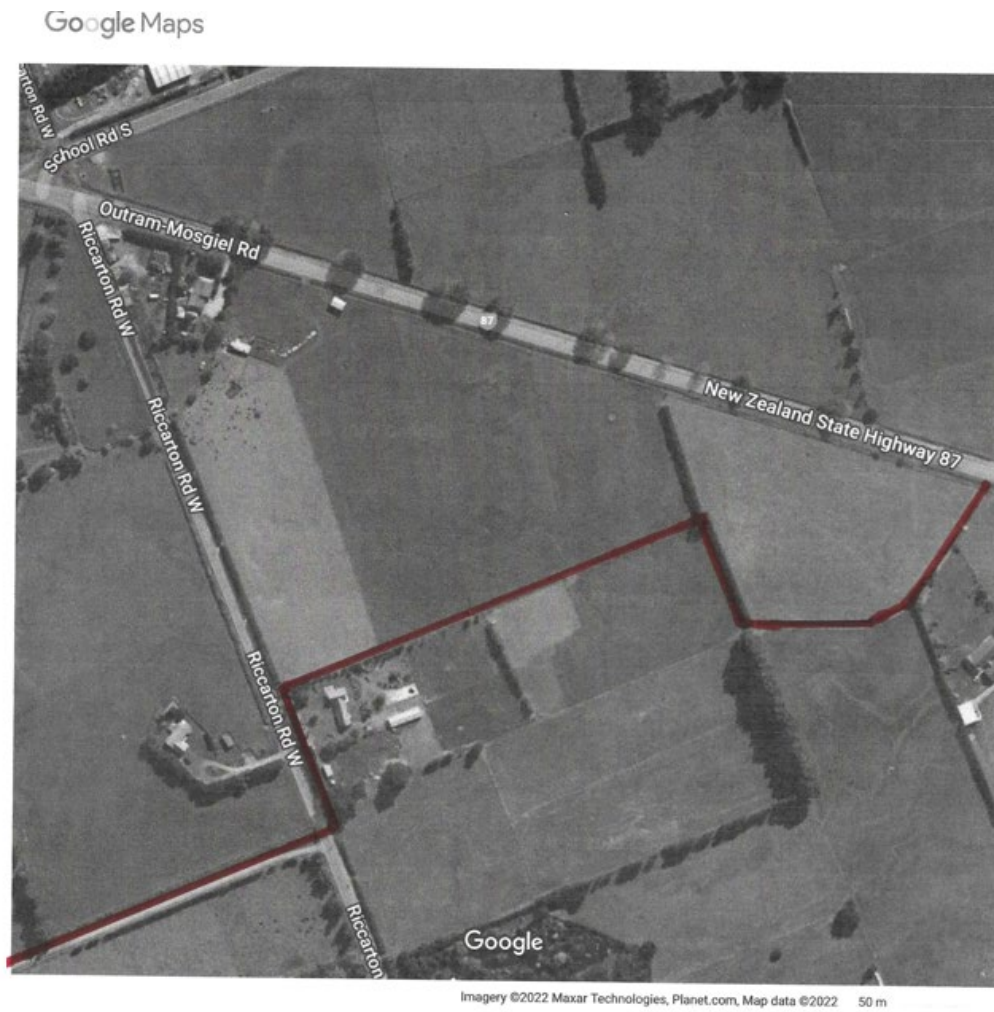
I realise we are not in Russia and the NZ Government will make good on any workings to be done on private landowners' property, for instance making good fence lines, gateways and filling redundant ditches but I will ask that a small amount of previous ditch not be filled as drains are laid towards there.

That's about all for now.

Thanks for the opportunity to voice any concerns.

[REDACTED]

[REDACTED]







## Josie Burrows

---

**From:** [REDACTED]  
**Sent:** Sunday, 1 May 2022 11:05 pm  
**To:** Henry Jian; Alison Weaver; Josie Burrows  
**Subject:** Anonymous User completed Flood Bylaw Submission

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Anonymous User just submitted the survey Flood Bylaw Submission with the responses below.

**Please enter your full name.\***

\*This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.

Craig Simpson

---

**Name of your organisation (if applicable):**

Watershed Solutions Ltd

---

**Postal address:**

[REDACTED]

---

**Address postcode:**

[REDACTED]

---

**Contact phone number:**

[REDACTED]

---

**Email address:**

[REDACTED]

---

**State what your submission relates to and if you support, oppose or want it amended.**

First schedule Owhiro Stream and tributaries. Section 3.1c

---

**State what decision you want the Otago Regional Council to make.**

e.g., rule 'y' should say...

ORC should consider wider management options. Take an enabling approach

---

**Give reasons for the decision you want made.**

e.g., I want rule 'y' changed because...

Many of these drainage schemes are straightened channels, with little natural character, full of sediment, eroding banks. Aquatic life within is struggling, but is there. There are opportunities to consider not just asset requirements, but also wider environmental, water quality and biodiversity requirements, while maintaining flood assets. To do this we need to talk across ORC teams and different stakeholders. To take an enabling approach means to help give the community information about what they can do, as well as what they can't. What can we plant that will not impede flood flows?

---

**Do you wish to be heard regarding the support of your submission?**

If you wish to be heard, we will contact you using the contact details you have supplied.

Yes, I wish to be heard in support of my submission.

---

**If other people have made a similar submission, do you wish to present jointly with them?**

No, if others have made a similar submission, I will not consider presenting jointly with them at a hearing.

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**Respondent No:** 10**Login:** Anonymous**Email:** n/a**Responded At:** May 01, 2022 23:05:24 pm**Last Seen:** May 01, 2022 23:05:24 pm**IP Address:** n/a

- Q1. **Please enter your full name.\*\*This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.** Craig Simpson
- 
- Q2. **Name of your organisation (if applicable):** Watershed Solutions Ltd
- 
- Q3. **Postal address:**
- 
- Q4. **Address postcode:**
- 
- Q5. **Contact phone number:**
- 
- Q6. **Email address:**
- 
- Q7. **State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.** First schedule Owhiro Stream and tributaries. Section 3.1c
- 
- Q8. **State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...** ORC should consider wider management options. Take an enabling approach
- 
- Q9. **Give reasons for the decision you want made.e.g., I want rule 'y' changed because...**
- Many of these drainage schemes are straightened channels, with little natural character, full of sediment, eroding banks. Aquatic life within is struggling, but is there. There are opportunities to consider not just asset requirements, but also wider environmental, water quality and biodiversity requirements, while maintaining flood assets. To do this we need to talk across ORC teams and different stakeholders. To take an enabling approach means to help give the community information about what they can do, as well as what they can't. What can we plant that will not impede flood flows?
- 
- Q10. **Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.** Yes, I wish to be heard in support of my submission.
- 
- Q11. **If other people have made a similar submission, do you wish to present jointly with them?** No, if others have made a similar submission, I will not consider presenting jointly with them at a hearing.
-

## Josie Burrows

---

**From:** [REDACTED]  
**Sent:** Sunday, 1 May 2022 11:15 pm  
**To:** Flood Bylaw Review  
**Subject:** Bylaw Submission

Hi was filling out my Bylaw submission and I hit return in a section, but I wasn't finished. Please consider this as my complete submission.

The three things I wanted to address were:

1. Holistic management approach
2. Sections stating you cannot plant "any tree, shrub, hedge, or part thereof"
3. Consider including bylaw application fee waiving in environmental enhancement project funding scheme

### Decision

1. ORC should consider wider catchment management options
2. Take an enabling approach rather than what we can't do, also include what is allowed
3. Waive fees involving bylaw applications for environmental enhancement projects

### Reasons

1. Many of these drainage schemes are straightened channels, with little natural character, full of sediment, eroding banks. Aquatic life within is struggling, but is there. There are opportunities to consider not just asset requirements, but also wider environmental, water quality and biodiversity requirements, while maintaining flood assets. To do this we need to talk across ORC teams and different stakeholders. To take an enabling approach means to help give the community information about what they can do, as well as what they can't. What can we plant that will not impede flood flows?
2. To take an enabling approach means to help give the community information about what they can do, as well as what they can't. What can we plant that will not impede flood flows?
3. Environmental enhancement projects can, and if appropriate should occur on flood protection lands, and funding will be tight if they are driven by community groups

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Thank you for your consideration.

**Craig Simpson**  
Watershed Solutions  
[REDACTED]





## SUBMISSION FORM (Print clearly on both sides) Proposed Flood Protection Management Bylaw 2022

Office use only

Name of submitter: **Kevin Wood**Name of organisation (if applicable): **University of Otago**

Postal address: [REDACTED]

Postcode: [REDACTED]

Telephone: [REDACTED]

Email: [REDACTED]

A hearing will be held on Wednesday 4 May 2022

I wish / ~~do not wish~~ (circle preference) to be heard in support of my submission.

If others made a similar submission, I ~~will~~ will not consider presenting jointly with them at a hearing (*circle preference*).

**Signature of submitter** (or person authorised to sign on behalf of person making submission):

Date: 28 April 2022

Please note that all submissions are made available for public inspection.

SUBMISSIONS MUST BE RECEIVED BY 12:00 PM, MONDAY 2 MAY 2022.



**Send to:**  
Freepost ORC 1722  
Attn: Otago Bylaw Submissions  
Otago Regional Council  
Private Bag 1954, Dunedin 9054

1 State what your submission relates to and if you support, oppose or want it amended	2 State what decision you want the Otago Regional Council to make	3 Give reasons for the decision you want made
<i>e.g. amend rule 'y'</i>	<i>e.g. rule 'y' should say...</i>	<i>e.g. I want rule 'y' changed because...</i>
Oppose the Leith Lindsay Defence Against Water map in Second Schedule	Delete the Leith Lindsay Floodbank from the St David Street footbridge to the harbour	<p>This portion of the Leith Lindsay is a concrete channel passing through a highly urbanised environment. This area is fundamentally different from other reaches of the Leith.</p> <p>Considerable beautification of the University has been undertaken using vegetation both within and adjacent to the flood protection works.</p>
Amend 3.2c, specifically the wording 'plant or allow to grow any tree, shrub, hedge or part thereof'	Add an exception from the St David Street footbridge to the harbour	<p>The Water of Leith runs through the centre of the University's Dunedin campus. The campus has been ranked amongst the 16 most beautiful in the world because of our buildings and gardens.</p> <p>In 2018, Sarah Gardner (ORC Chief Executive) agreed to improve the surroundings to the Water of Leith and the University of Otago's future Memorial Garden. The entire University's memorial is within the Defence against Water (<a href="https://www.orc.govt.nz/news-and-events/news-and-media-releases/2018/october/special-trees-to-be-replaced-for-university-of-otago-memorial-garden">https://www.orc.govt.nz/news-and-events/news-and-media-releases/2018/october/special-trees-to-be-replaced-for-university-of-otago-memorial-garden</a>).</p> <p>If the root systems of plants are a risk to the concrete channel then will all existing plants need to be cut down or removed? Will the University's memorial garden need to be removed and repositioned?</p> <p>Is it intentional that all plant growth will trigger the need for a bylaw permit (either 3.2c if the plant is retained or 3.2d if the plant is removed)?</p> <p>This rule will have immediate and long term impacts on landscaping.</p>
Oppose 3.2d, specifically the wording 'Cut down or remove any tree'	Delete this in its entirety or add an exception from the St David Street footbridge to the harbour	<p>The Water of Leith runs through the centre of the University's Dunedin campus. The operational requirements of the University does, from time to time, need to remove trees (i.e. to replace infrastructure) or a mature tree dies or becomes diseased beyond rescue.</p> <p>Does the term tree refer to the type or the size of a woody perennial plant?</p> <p>This rule will have immediate and long term impacts on the operation of the University.</p>
Amend 3.2f, specifically the wording 'remove or alter any structure'.	Add an exception from the St David Street footbridge to the harbour	<p>The University has several structures that cross the Water of Leith (i.e. St. David Street bridge, ITS building). The operational requirements of the University does from time to time need to alter or remove components of the structure (e.g. paint, repairs) or items attached to the structure (e.g. new data or electrical conduits). These activities would be De Minimis.</p>

		This rule will have immediate and long term impacts on the operation of the University.
Amend 3.2g, specifically the wording 'dump or deposit any thing'	Add an exception from the St David Street footbridge to the harbour	<p>Landscaping or infrastructure changes require soil disturbance. The wording 'deposit any thing' is very broad, so adding new soil/compost to a garden, replace a fence, or repairing a concrete footpath will require a permit under the bylaw to occur.</p> <p>This rule will have immediate and long term impacts on the operation of the University.</p>
Amend 3.2i, specifically the wording 'earthworks'	Add an exception from the St David Street footbridge to the harbour	<p>All soil disturbance, because of the definition of earthworks, will trigger the need for a permit. This rule impacts a significant number of De Minimis activities (i.e. ground maintenance, planting of memorial trees, repairs and maintenance, new sign posts, light standards, art work) within 20 metres of the Leith.</p> <p>This rule will have immediate and long term impacts on the operation of the University.</p>





**SUBMISSION FORM (Print clearly on both sides)**  
**Proposed Flood Protection Management Bylaw 2022**



Office use only

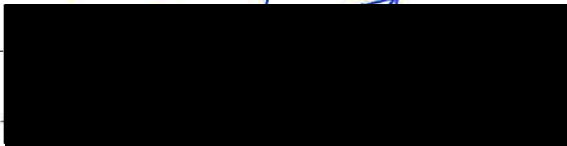
Name of submitter:

I.K. Miller

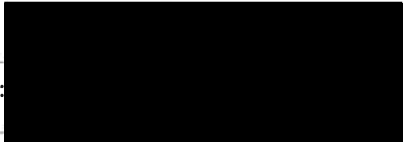
Name of organisation (if applicable):

Maungatua Dairies Ltd.

Postal address:



Postcode:



Telephone:

Email:



A hearing will be held on Wednesday 4 May 2022

☒ **wish** / **do not wish** (circle preference) to be heard in support of my submission.

If others made a similar submission, **I will /will not** consider presenting jointly with them at a hearing (circle preference).

**Signature of submitter** (or person authorised to sign on behalf of person making submission):

I.K. Miller

Date:

29th April 2022

Please note that all submissions are made available for public inspection.

SUBMISSIONS MUST BE RECEIVED BY 12:00 PM, MONDAY 2 MAY 2022.



**Send to:**

Freepost ORC 1722  
Attn: Otago Bylaw Submissions  
Otago Regional Council  
Private Bag 1954, Dunedin 9054



## A submission to the Otago Regional Council from J.K.Miller on behalf of Maungatua Dairies.

This submission is to allow for the proper maintenance of the Contour Channel.

As the Council aware the Contour Channel is not a natural waterway. It is an integral part of the Taieri Flood Protection Scheme, an important piece of infrastructure, originally constructed in the early 1900<sup>s</sup> using horse and cart construction techniques. The channel intercepts runoff from the various steep streams located on the Maungatua Range and conveys this runoff by gravity to the Waipori River. There are a number of spillways built into the flood bank to allow for controlled spill in a flood event- where the banks are in danger of breach.

Before the channel was in place, large parts of the area were unworkable at any time and regular flooding occurred. It has an undulating longitudinal profile, which promotes concentration of overtopping during flood events, potentially exposing parts of the floodbank to relatively rapid failure. The allocation of 5 million dollars to bring the Contour Channel up to a standard that can be relied upon as a flood defence is testament to its importance.

The Council has acknowledged "failure could potentially inundate 7,300 hectares of highly productive agricultural land and Dunedin International Airport". Indeed, it was failure of the stock bank on this property during the 1980 flood that compounded the flooding of the lower Plain. Most notably the Airport being underwater for 6 weeks.



The creek which runs through our property is one of the larger creeks to flow into the channel. It is fast running off the hill and especially at times of significant rainfall, will bring down varying quantities of gravel which is deposited in the slower flowing channel. Up to 150 m<sup>3</sup> of fine gravel can be removed from the "weir" at the Channel in a season and in excess of 200 m<sup>3</sup> from a gravel trap in the creek.

If not removed the gravel plug will cause a bottleneck or choke point. This blockage will continue to build and fill the channel downstream. When we have a significant rainfall event the bottleneck causes water to pond upstream and flow over the spillway above Miller Road rather than flowing to the Waipori.

We have had first hand experience of this. In April 2006 a heavy rainfall event flushed even more gravel into the channel (which had not been cleaned out that year) at our then Huntly Road property. The resulting bottleneck caused water to flow over Huntly Road then top the flood bank. If it was not for the vigilance and quick reactions of our neighbours there would have been a catastrophic failure of the flood bank. As it was it had to be repaired (twice) at some considerable cost to the council. No water had even looked like flowing over the spillway downstream.

If maintenance of the flood protection scheme is not completed then land in the area will be flooded unnecessarily. This will result in significant costs for land owners. Not only for those in the immediate area but perhaps even more so for those in the Henley Berwick area who would be flooded for a longer time than would otherwise be the case.

The proper maintenance of (taking of gravel deposits from) the Contour Channel will not result in any adverse outcomes but will reduce the possibility of considerable damage and costs to framers and ratepayers in the West and South Taieri area.





Looking from the Channel up the creek. The Weir circled in red should be 1m high rather than the 20cm showing.

The gravel plug at what should be the edge of the channels flow is higher than the bed of the creek.

Water flow over the plug is only 5 cm and this extends over 100m downstream.







Above: looking up stream from the plug the Channel is 5m wide and over 1m deep.

Left: 100 m downstream looking upstream from farm the bridge.

**Respondent No:** 8**Login:** Anonymous**Email:** n/a**Responded At:** Apr 29, 2022 11:45:56 am**Last Seen:** Apr 29, 2022 11:45:56 am**IP Address:** n/a

**Q1. Please enter your full name.\*\*This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.**

Daniel Walmar Lyders for P R Lyders Trust

**Q2. Name of your organisation (if applicable):**

P R Lyders Trust

**Q3. Postal address:**

**Q4. Address postcode:**

**Q5. Contact phone number:**

**Q6. Email address:**

**Q7. State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.**

Error on O R C map of floodbanks claimed as assets.

**Q8. State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...**

Meggatburn floodbanks adjacent to property owned by P R Lyders Trust removed from ORC map of list of floodbank assets.J

**Q9. Give reasons for the decision you want made.e.g., I want rule 'y' changed because...**

Judge in case of ORC v D W Lyders stated that banks could not be ORC asset as ORC had not built or ever done any work on said banks.

**Q10. Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.**

No, I do not wish to be heard in support of my submission.

**Q11. If other people have made a similar submission, do you wish to present jointly with them?**

No, if others have made a similar submission, I will not consider presenting jointly with them at a hearing.

**Respondent No:** 9**Login:** Anonymous**Email:** n/a**Responded At:** May 01, 2022 22:29:48 pm**Last Seen:** May 01, 2022 22:29:48 pm**IP Address:** n/a

<b>Q1. Please enter your full name.**This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.</b>	Lindsay Dey
<b>Q2. Name of your organisation (if applicable):</b>	Dunedin Tracks Network Trust
<b>Q3. Postal address:</b>	
<b>Q4. Address postcode:</b>	
<b>Q5. Contact phone number:</b>	
<b>Q6. Email address:</b>	
<b>Q7. State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.</b>	Tracks accessing waterways and natural attractions
<b>Q8. State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...</b>	That the Otago Regional Council take an enabling stance when it comes to the development of shared trails leading to, and running beside, waterways - including the ORC's stop bank networks
<b>Q9. Give reasons for the decision you want made.e.g., I want rule 'y' changed because...</b>  Trails across our landscapes connect us... • to the land of our ancestors, to te taiao, and our unique natural world • to our stories and our heritage • to active lifestyles and health and wellbeing, and to each other • to recreational and commuter routes and connections between communities and regions • to low carbon tourism opportunities that bring economic benefits to regions and the communities they travel through • to access for hunting and gathering • to restoration projects of natural habitats and pest control • to other recreational opportunities Please also refer submission document emailed separately	
<b>Q10. Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.</b>	Yes, I wish to be heard in support of my submission.
<b>Q11. If other people have made a similar submission, do you wish to present jointly with them?</b>	Yes, if others have made a similar submission, I will consider presenting jointly with them at a hearing.





## SUBMISSION FORM (Print clearly on both sides) Proposed Flood Protection Management Bylaw 2022

Office use only

Name of submitter: **Oliver Hornbrook**

Name of organisation (if applicable): N/A

Postal address: N/A

Postcode: N/A

Telephone: N/A

Email: N/A

A hearing will be held on Wednesday 4 May 2022

I wish / **do not wish** (circle preference) to be heard in support of my submission.

If others made a similar submission, I will / **will not** (circle preference) consider presenting jointly with them at a hearing (circle preference).

**Signature of submitter** (or person authorised to sign on behalf of person making submission):

Oliver Hornbrook

2<sup>nd</sup> of May 2022

Date: \_\_\_\_\_

Please note that all submissions are made available for public inspection.

SUBMISSIONS MUST BE RECEIVED BY 12:00 PM, MONDAY 2 MAY 2022.



**Send to:**

Freepost ORC 1722  
Attn: Otago Bylaw Submissions  
Otago Regional Council  
Private Bag 1954, Dunedin 9054

1 State what your submission relates to and if you support, oppose or want it amended	2 State what decision you want the Otago Regional Council to make	3 Give reasons for the decision you want made
<i>e.g. amend rule 'y'</i>	<i>e.g. rule 'y' should say...</i>	<i>e.g. I want rule 'y' changed because...</i>
<b>Amend Table of Contents 4.0</b> <b>ACTIVITIES REQUIRED TO BE UNDERTAKEN</b>	Add "4.2 Floodways.... 16"	Simple correction of an oversight.
<b>Amend Table of Contents Fourth Schedule</b>	Add back "." at the end.	Simple correction of an oversight.
<b>Amend preamble FLOOD PROTECTION MANAGEMENT BYLAW 2022</b>	Amend preamble to read "The Otago Regional Council, pursuant to the powers contained in section 149 of the Local Government Act 2002, makes the following Bylaw:"	Secondary legislation should specifically state the section of the empowering legislation that delegates its creation. This enables readers to discern the intended scope and purpose of the Bylaws and conclude whether they are <i>ultra vires</i> .
<b>Amend two references to Otago Regional Council</b>	Find and replace two instances of "Otago Regional Council" with " <i>Council</i> " (rule 1.0 and rule 3.0). Keep the term when it appears in the preamble, the definition of <i>Council</i> in rule 2.0 and also at the bottom of appendix two.	As currently drafted, it can be inferred that specific references to "Otago Regional Council" as opposed to subsequent references to " <i>Council</i> " excludes "any person duly authorised by the Council to exercise any of the powers conferred upon the <i>Council</i> by this Bylaw."
<b>Delete rule 1.0 PURPOSE</b>	Delete rule 1.0 PURPOSE in its entirety and then make all further consequential numbering amendments as a result.	Purpose clauses in secondary legislation are fraught with risk. The express purpose of secondary legislation can only be accurately prescribed by its associated empowering legislation. To express a purpose differently from sections 149(1)(c) and 149(2) of the Local Government Act 2002, as you have done here, merely

		invites an argument that the Bylaws are <i>ultra vires</i> . Note: I also suggest amendments below if the <i>Council</i> decides to retain the purpose clause.
<b>Amend rule 1.0 PURPOSE</b>	Italicise the defined terms "flood protection works" [three times], "scheduled drains", "overland flow paths", "defences against water", "floodways", "groynes", "cross-banks", "training lines" and "flood protection vegetation".	Retains the internal consistency of defined terms as set out in rule 2.0 DEFINITIONS.
<b>Amend rule 1.0 PURPOSE</b>	Delete paragraph two beginning "Flood protection works can...."	Reciting the definition of "Flood protection works" has no place in the purpose of an enactment. Especially when the definition does not advance a purposive interpretation of the Bylaw.
<b>Amend rule 1.0 PURPOSE</b>	Rephrase or delete paragraph three "This Bylaw only controls activities that may affect the integrity or operation of flood protection works."	Under section 5(1) of the Interpretation Act 1999 "the meaning of an enactment must be ascertained from its text and in light of its purpose." Including paragraph three creates a situation where any person may first assess whether their actions affect the integrity or operation of flood protection works. If they conclude that their actions do not, then naturally, the Bylaw does not apply. The onus of proving otherwise will always be on the <i>Council</i> .
<b>Amend rule 2.0 DEFINITIONS</b>	Amend by capitalising the first note. "Note: [W]here a word is defined it is shown in the Bylaw text in <i>italics</i> ."	When using APA style the "where" forming part of a complete sentence could be either capitalised or uncapitalised. However, grammatical treatment should be consistent throughout the document. In every other instance in this Bylaw capitalisation has been used.

<b>Amend rule 2.0 DEFINITIONS</b>	Amend by adding a definition for "Authorised Access".	The term "authorised access" is used in clauses 3.2(g)(iii) and 3.4(f). Ambiguity should be removed by clearly stating what an authorised access is and whose authority is required. It is currently ambiguous due to both rules beginning with "No person shall, <i>without the prior authority of the Council</i> ".
<b>Amend rule 2.0 DEFINITIONS</b>	Amend the definition of "Drain" to "means any artificial watercourse [within a <i>floodway</i> ] designed, constructed, or used for the drainage... or water supply purposes."	The proposed definition of "drain" is exceedingly broad and introduces ambiguity. As written, it literally encompasses the kitchen sink. The Bylaw's mechanisms are not limited by confining the definition of "drain" to those occurring within a <i>floodway</i> . There is also no utility in pointing readers to the definition of <i>Scheduled drain</i> from within the definition of "drain".
<b>Amend rule 2.0 DEFINITIONS</b>	Amend the definition of "Scheduled drain" to "means any <i>drain</i> or <i>river</i> designated as a <i>scheduled drain</i> in the First Schedule."	The maps in the First Schedule show many <i>rivers</i> (as that term is defined) that are clearly not intended to be <i>scheduled drains</i> . By tightening the definition of <i>scheduled drain</i> we encompass only those shown in red and specifically designated as <i>scheduled drains</i> .
<b>Amend rule 3.0 ACTIVITIES REQUIRING BYLAW AUTHORITY</b>	Amend by removing the words "Council employees or".	Providing a class exemption to "Council employees" from this Bylaw confers broader powers than those envisioned by the empowering legislation. Confining the exemption to "persons authorised by <i>Council</i> undertaking maintenance or emergency works...." is broad enough to further the intention of the Bylaw and prevent the unintended consequences mentioned in the <i>Council's</i> statement of proposal. Also, remember to italicise defined words in this

		rule.
<b>Amend rule 3.0 ACTIVITIES REQUIRING BYLAW AUTHORITY</b>	Amend by replacing the word “sections” with “clauses”.	The Bylaw is deemed secondary legislation under section 161A the Local Government Act 2002 and is therefore comprised of rules and clauses not sections.
<b>Amend clause 3.1(c) Scheduled Drains and Overland Flow Paths</b>	Amend by removing the proposed words “or allow to grow”.	There are a multitude of legal issues created by the inclusion of this phrase. First, in combination with clause 6.2, it creates a retroactive offence that will be hard to enforce in light of section 7 of the Interpretation Act 1999. Second, clause 3.1(c)(ii) authorises any person to remove any tree, shrub, hedge etc... within seven metres of a <i>scheduled drain</i> without seeking <i>authority</i> from the <i>Council</i> . It is easy to see how individuals can “prevent the growth of trees within seven metres of <i>scheduled drains</i> ” in a way that counters the intention of the Bylaw. Third, the proposed clause creates an offence by omission impacting otherwise innocent third parties. For example, a legally consented property developed fifty years ago with any form of garden or shrubbery within seven metres of a subsequently <i>scheduled drain</i> would now be committing an ongoing offence. An offence that would dictate the immediate removal of that garden. The removal of which – could severely impact the integrity of <i>flood protection works</i> thus defeating the intention of the Bylaw. Fourth, the clauses become internally contradictory. For example, if a tree or shrub is growing in a <i>scheduled drain</i> then a person shall prevent its growth by removal (clause 3.1(c)(i)) but shall not alter the <i>scheduled drain</i> (clause

		3.1(a)). The very act of complying with clause 3.1(c)(i) creates an offence under clause 3.1(a). If you were to wait to apply for <i>authority</i> to remove the tree under clause 3.1(a) then you have already committed an offence under clause 3.1(c)(i) by “allowing the tree to grow”.
<b>Amend clause 3.2(c) Defences Against Water and Excavation-Sensitive Areas</b>	Amend by removing the proposed words “or allow to grow”.	Remove for the same reasons specified above under my proposed amendment to clause 3.1(c). For example, if we read clauses 3.2(c) and 3.2(d) together, we get the following situation: No person shall cut down or remove any tree (3.2(d)) nor allow any tree to grow (3.2(c)) within seven metres of the landward side of any <i>defence against water</i> .
<b>Amend clause 3.2(e) Defences Against Water and Excavation-Sensitive Areas</b>	Amend by italicising “structure”.	Simple correction of an oversight.
<b>Amend clause 3.3(c) Floodways</b>	Amend by removing the proposed words “or allow to grow”.	Remove for the same reasons specified above under my proposed amendment to clauses 3.1(c) and 3.2(c).
<b>Amend clause 3.4(c) Groynes, Cross-banks and Training Lines</b>	Amend by removing the proposed words “or allow to grow”.	Remove for the same reasons specified above under my proposed amendment to clauses 3.1(c), 3.2(c) and 3.3(c).
<b>Amend clause 3.4(f) Groynes, Cross-banks and Training Lines</b>	Amend by replacing the proposed words “access authorised maintenance” with “authorised access maintenance”.	Simple correction of an oversight.

<b>Amend clause 3.4(g)(ii) Groynes, Cross-banks and Training Lines</b>	Amend by removing the erroneous space at the beginning “[ ]within”.	Simple correction of an oversight.
<b>Amend clause 3.5(b) Flood Protection Vegetation</b>	Amend clause 3.5(b) to read “Add a plant, tree, shrub, hedge or part thereof within any <i>flood protection vegetation</i> ”.	While the term “allow to grow” creates less issues in this clause than it does elsewhere – it still creates material issues with regards to “self-seeding”.
<b>Amend clause 3.5(Note) Flood Protection Vegetation</b>	Amend by removing the entire paragraph beginning “Note:”.	There is no utility in repeating the definition of “ <i>flood protection vegetation</i> ” especially given the repetition is not verbatim. This note would potentially fall short of the plain language standard for drafting legislation.
<b>Amend clause 4.1 Structures</b>	Amend clause 4.1 by including the words “The owner of every <i>structure</i> [impacted by clauses 3.1 to 3.4] shall keep it in good repair.”	The Bylaw’s definition of <i>structure</i> is extremely broad and unconfined by geography. The degree of affixation that constitutes being “fixed to land” was discussed in <u><i>Lockwood Buildings Ltd v Trust Bank Canterbury Ltd</i></u> [1995] 1 NZLR 22. When you take account that decision, the ambit of <i>structure</i> as defined in this Bylaw is further enlarged well beyond the power conferred by the empowering legislation. As currently written, this Bylaw gives the <i>Council</i> a mechanism to find any Otago resident with a house, garage, driveway, mailbox etc... in a state of disrepair as liable under clause 6.2. For this reason, it is important to explicitly state that clause 4.1 only covers those <i>structures</i> covered in clauses 3.1 to 3.4. This is largely <i>structures</i> in, on, over, under, through or within seven metres of a <i>scheduled drain, defence against water, floodway, groyne, cross-bank or training line</i> .

<b>Consider clause 4.1 Structures</b>	Consider the interrelationship between the duty to keep <i>structures</i> in good repair under clause 4.1 and inability to construct, remove or alter any <i>structure</i> under clauses 3.1(d), 3.2(e), 3.2(f), 3.3(d), 3.4(d) and 3.4(e) without the <i>authority</i> of the <i>Council</i> . Is the <i>Council</i> truly requiring an application for <i>authority</i> to be submitted for every pothole repair or damaged mailbox replaced? If not, then a maintenance threshold for <i>structures</i> and <i>cultivation</i> threshold for trees, shrubs etc needs to be incorporated into the 2022 Bylaws. I believe that the intended purpose of these Bylaws would be more efficiently and unambiguously furthered by embedding such a structure.	
<b>Amend clause 5.1(a) Authority</b>	Amend clause 5.1(a) by replacing "Bylaw Approval Application Form" with "Bylaw Authority Application Form".	Simple correction of an oversight.
<b>Amend clause 5.3(a) Objections Process</b>	Amend clause 5.3(a) by italicising the two unitalicised instances of <i>authority</i> .	Simple correction of an oversight.
<b>Amend clause 5.3(b)(i) Objections Process</b>	Amend clause 5.3(b)(i) by formatting the paragraph in a manner consistent with the other paragraphs in the Bylaw.	Simple correction of an oversight.
<b>Amend clauses 6.1(b)(iii) and 6.1(b)(iii)(1)</b>	Amend clause 6.1(b)(iii) by italicising "authority". Amend clause 6.1(b)(iii)(1) by italicising	Simple correction of an oversight.



<b>Revocation of Authority</b>	"Council".	
<b>Amend clause 6.1(d) Revocation of Authority</b>	Amend clause 6.1(d) by italicising "Council" and "authority".	Simple correction of an oversight.
<b>Amend clauses 6.2(a)(i) and 6.2(a)(ii) Offence</b>	Amend clauses 6.2(a)(i) and 6.2(a)(ii) by replacing the word "Section" with "rule".	The Bylaw is deemed secondary legislation under section 161A the Local Government Act 2002 and is therefore comprised of rules and clauses not sections.
<b>Amend clause 6.2 Offence</b>	Amend by adding an additional clause 6.2(c): "Every person has a defence to liability under this clause 6.2, if that person's actions relate solely to the reasonable ongoing maintenance or, if applicable, <i>cultivation</i> of any existing <i>structure</i> , tree, shrub, hedge or part thereof."	The addition of this clause provides a common-sense defence to people maintaining their existing assets such as driveways, gates and gardens that are situated within seven metres of <i>scheduled drains</i> and <i>defences against water</i> . For example, if we look at <i>scheduled drain</i> 4 (Jaffray Stream) running through the Orchard Grove development in East Taieri. <i>Scheduled drain</i> 4 is situated within seven metres of numerous houses, gardens, trees, shrubs, garages, gates, roads, driveways and roundabouts. As this Bylaw is currently written: <ol style="list-style-type: none"> <li>1. Many of the occupants of Orchard grove and also likely the <i>Council</i> via <i>Council</i> assets are guilty of the offence stipulated by clause 3.1(c)(ii) of allowing trees, shrubs or hedges to grow;</li> <li>2. <i>Authority</i> would need to be obtained to maintain their garden by say planting a pansy or sowing a small vegetable garden;</li> <li>3. <i>Authority</i> would need to be obtained to maintain a driveway to ensure it's free of pot holes etc....;</li> <li>4. <i>Authority</i> would need to be obtained to replace a</li> </ol>

		<p>damaged mailbox; and given the broad definition of <i>structure</i></p> <p>5. <i>Authority</i> would need to be obtained to install a heat-pump in a house or garage within seven metres of <i>scheduled drain 4</i>.</p> <p>When you consider these realistic examples, it becomes clear that the substance of the proposed Bylaws 2022 fall outside the limits of the power delegated under section 149 of the Local Government Act 2002. In other words, provisions of the proposed Bylaws 2022 are <i>ultra vires</i> and unenforceable. A court would be required to determine the extent of any severability or even whether it is fatal to the Bylaws as a whole.</p>
<b>Amend clause 6.3 Notice to Remedy</b>	Amend clause 6.3 by replacing the word "Section" with "rule".	The Bylaw is deemed secondary legislation under section 161A the Local Government Act 2002 and is therefore comprised of rules and clauses not sections.
<b>Consider clause 6.3 Notice to Remedy</b>	Consider the mechanism developed in clause 6.3.	The mechanism developed in clause 6.3 is wider than the powers capable of being delegated to a local authority under sections 175 and 176 of the Local Government Act 2002. While it may be a more convenient mechanism for many <i>owners</i> - if an <i>owner</i> refused to comply with <i>Council's</i> demands then those demands may be held to be <i>ultra vires</i> .
<b>Amend Appendix Two</b>	The three headers on pages 30, 31 and 32 should be changed to Bylaw "Authority" Application Form.	The defined term "Authority" already encompasses the act of approval rendering "Bylaw Authority Application Form" more apt. The title of the form is then consistent with its

		introduction in the table of contents and the appendix two title.
<b>Amend section 3 of the Bylaw Approval Application Form</b>	Amend section 3 by replacing the word "Section(s)" with "Rule(s)".	The Bylaw is deemed secondary legislation under section 161A the Local Government Act 2002 and is therefore comprised of rules and clauses not sections.

Please add pages as required

**SUBMISSION FORM (Print clearly on both sides)**  
**Proposed Flood Protection Management Bylaw 2022**

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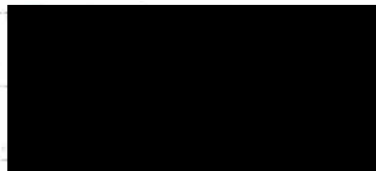
Name of submitter:

Erin Peters

Name of organisation (if applicable):

Swepe Consultancy Ltd

Postal address:



Postcode:

Telephone:



Email:



A hearing will be held on Wednesday 4 May 2022

☒ I wish / ☐ do not wish (circle preference) to be heard in support  
of my submission.If others made a similar submission ☒ I will / ☐ will not consider presenting  
jointly with them at a hearing (circle preference).**Signature of submitter** (or person authorised to sign on behalf of person  
making submission):

Date:

2/5/2022

Please note that all submissions are made available for public inspection.

SUBMISSIONS MUST BE RECEIVED BY 12:00 PM, MONDAY 2 MAY 2022.

**Send to:**Freepost ORC 1722  
Attn: Otago Bylaw Submissions  
Otago Regional Council  
Private Bag 1954, Dunedin 9054







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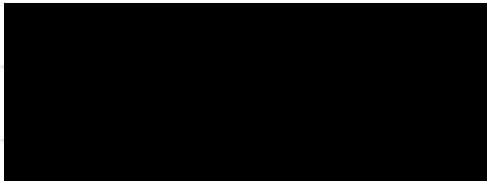
Name of submitter:

Steve White

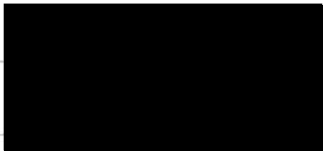
Name of organisation (if applicable):

Thorndale Farm Ltd

Postal address:

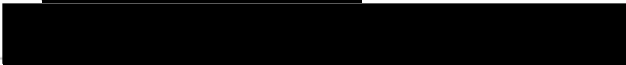


Postcode:



Telephone:

Email:



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**I wish / do not wish** (circle preference) to be heard in support  
of my submission.

If others made a similar submission, **I will / will not** consider presenting  
jointly with them at a hearing (circle preference).

**Signature of submitter** (or person authorised to sign on behalf of person  
making submission):

Emma Peters, Sweep Consulting Ltd.

Date:

2/5/22

Page 40

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Otago Regional Council  
Private Bag 1954, Dunedin 9054

Submission 1, page 1



## SUBMISSION FORM (Print clearly on both sides) Proposed Flood Protection Management Bylaw 2022

Office use only

Name of submitter: Charlotte Young

Name of organisation (if applicable):

Postal address:

Postcode:

Telephone:

Email:

A hearing will be held on Wednesday 4 May 2022

I wish / ~~do not wish~~ (circle preference) to be heard in support of my submission.

If others made a similar submission, I will / ~~will not~~ (circle preference) consider presenting jointly with them at a hearing.

Signature of submitter (or person authorised to sign on behalf of person making submission):

A large, stylized handwritten signature in black ink, appearing to read "Charlotte Young".

Date: 1.5.2022

Please note that all submissions are made available for public inspection.

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Private Bag 1954, Dunedin 9054



<b>1</b> State what your submission relates to and if you support, oppose or want it amended	<b>2</b> State what decision you want the Otago Regional Council to make	<b>3</b> Give reasons for the decision you want made
e.g. amend rule 'y'	e.g. rule 'y' should say...	e.g. I want rule 'y' changed because...
3.2 c. and d.	Delete "or allowed to grow"	Contradictory between c. and d.
3.2 l. ii.	Oppose in it's entirety	I oppose to the amendment in it's entirety because it doesn't
		account for earthworks that have DCC earthworks consent.
		Earthworks that include increasing the ground level should
		be permitted from water 7m from the top of the bank, or 7m
		from a defense against , as with other permitted activities ie.
		trees, shrubs, hedges, structures
5.3 a	Change 5 days to 20 days	I object to the timeframe of 5 working days and request
		that this be extended to 20 days in order for evidence in
		support of objections to be produced
6.0 b. iii. 2	Change 14 days to 15 working days	I object to the timeframe of 14 days and request
		that this be extended to 15 working days in order for evidence
		in support of objections to be produced

Please add pages as required



## SUBMISSION FORM (Print clearly on both sides) Proposed Flood Protection Management Bylaw 2022

Office use only

Name of submitter: Charlotte Farming Trust

Name of organisation (if applicable):

Postal address:

Postcode:

Telephone:

Email:

A hearing will be held on Wednesday 4 May 2022

**I wish / ~~do not wish~~** (circle preference) to be heard in support of my submission

If others made a similar submission, **I will / ~~will not~~** consider presenting jointly with them at a hearing (circle preference).

**Signature of submitter** (or person authorised to sign on behalf of person making submission):

Date: 1.5.2022

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		in support of objections to be produced

Please add pages as required



**SUBMISSION FORM (Print clearly on both sides)**  
**Proposed Flood Protection Management Bylaw 2022**

Office use only

Name of submitter: Grassyards Farm Ltd

Name of organisation (if applicable):

Postal address:

Postcode:

Telephone:

Email:

A hearing will be held on Wednesday 4 May 2022

**I wish / ~~do not wish~~** (circle preference) to be heard in support of my submission.

If others made a similar submission, **I will / ~~will not~~** consider presenting jointly with them at a hearing (circle preference).

**Signature of submitter** (or person authorised to sign on behalf of person making submission):

**Date:** 1.5.2022

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## SUBMISSION FORM (Print clearly on both sides) Proposed Flood Protection Management Bylaw 2022

Office use only

Name of submitter: Jason Coutts

Name of organisation (if applicable):

Postal address:

Postcode:

Telephone:

Email:

A hearing will be held on Wednesday 4 May 2022

**I wish / ~~do not wish~~** (circle preference) to be heard in support of my submission.

If others made a similar submission, **I will / ~~will not~~** consider presenting jointly with them at a hearing (circle preference).

**Signature of submitter** (of person authorised to sign on behalf of person making submission):

**Date:** 1.5.2022

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<i>e.g. amend rule 'y'</i>	<i>e.g. rule 'y' should say...</i>	<i>e.g. I want rule 'y' changed because...</i>
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		in support of objections to be produced

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**Respondent No:** 11**Login:** Anonymous**Email:** n/a**Responded At:** May 02, 2022 13:47:13 pm**Last Seen:** May 02, 2022 13:47:13 pm**IP Address:** n/a

**Q1. Please enter your full name.\*\*This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.**

Canterbury Regional Council (Leigh Griffiths, Rivers Manager)

**Q2. Name of your organisation (if applicable):** Environment Canterbury

**Q3. Postal address:**

**Q4. Address postcode:**

**Q5. Contact phone number:**

**Q6. Email address:**

**Q7. State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.**

Support review of Bylaw - no amendments requested

**Q8. State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...**

Amend the Bylaw as proposed

**Q9. Give reasons for the decision you want made.e.g., I want rule 'y' changed because...**

Otago Regional Council (ORC) and Canterbury Regional Council (CRC) co-manage the Waitaki River as the regional boundary wiggles on part on the lower river. CRC supports any initiative that further protects critical flood assets on this river. The proposed amendments to the Bylaw also make it more consistent with the existing CRC Flood Bylaw which should create consistent outcomes and make them easier for the communities to understand where they have proprieties both regions.

**Q10. Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.**

No, I do not wish to be heard in support of my submission.

**Q11.If other people have made a similar submission, do you wish to present jointly with them?**

No, if others have made a similar submission, I will not consider presenting jointly with them at a hearing.



**Respondent No:** 13**Login:** Anonymous**Email:** n/a**Responded At:** May 02, 2022 21:06:27 pm**Last Seen:** May 02, 2022 21:06:27 pm**IP Address:** n/a

<p><b>Q1. Please enter your full name.**This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.</b></p>	<p>Nicole Foote</p>
<p><b>Q2. Name of your organisation (if applicable):</b></p>	<p>NZ Landcare Trust</p>
<p><b>Q3. Postal address:</b></p>	
<p><b>Q4. Address postcode:</b></p>	
<p><b>Q5. Contact phone number:</b></p>	
<p><b>Q6. Email address:</b></p>	
<p><b>Q7. State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.</b></p>	<p>1. First schedule: East Taieri Area, namely the Owhiro Stream and associated tributaries. 2. Activities requiring Bylaw authority 3.1c. 3. Bylaw application process.</p>
<p><b>Q8. State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...</b></p>	<p>1. Support the holistic management of the Owhiro catchment and align the Bylaw with ORC strategies. 2. Enable: Explicitly list native species that can be planted for enhancement. 3. An efficient process to facilitate ecological outcomes for the catchment.</p>

**Q9. Give reasons for the decision you want made.e.g., I want rule 'y' changed because...**

1. Holistic management of the Owhiro catchment should include considerations of instream habitat, water quality, biodiversity and the requirements for flood management. Streams such as the Owhiro are not just "drains" or infrastructure "assets", they have cultural, community, and ecological values. The flood bylaw should align with ORC Rural Water Quality Strategy, ORC Urban Water Quality Strategy and ORC Biodiversity Strategy. The Owhiro Stream has degraded water quality, including significant issues from sediment directly related to the management of the flood protection "assets"; • Sediment deposition from straight eroding/undercutting banks (e.g. downstream of Cemetery Rd bridge). • Sediment deposition from exposed banks due to a lack of stream edge vegetation (often sprayed with herbicide and lacking plant roots for cohesion) (e.g. stream running through East Taieri School). Experience to date has meant that efforts to enhance habitat and water quality within the Owhiro catchment have been restricted by the requirements of seeking bylaw approval. The bylaw authority approval process is financially and time dense and prevents community/environmentally good projects from progressing. The process needs to be more enabling for such groups where possible.

2. Remove barriers and enable the environmental enhancement of the catchment where possible. Some vegetation like native grasses and sedges (e.g. *Carex secta*) has no additional impact on the hydraulic roughness (which impacts the movement of water during a flood event) than that of exotic vegetation/rank grass, yet native vegetation has additional benefits including; • Higher biodiversity outcomes • Enhanced filtering capacity • Enhances aesthetic values. A specified list of plants (sedges and grasses) not requiring bylaw approval would enable communities to enhance the health of streams (through riparian planting) without requiring approval from the bylaw authority, a win-win for all.

3. An efficient bylaw application process; • To enable the enhancement of ecosystem health while accounting for the "asset" value of the natural waterway • A cost-effective process for when an activity does not fit within the bylaw. Funding for ecological enhancement projects is limited and where the effects are minor it shouldn't require expensive consultancy services (on the part of the applicant and Council). • Have a time-efficient process which allows communities to connect and enhance their local waterways with the least number of impediments.

---

**Q10. Do you wish to be heard regarding the support of your submission? If you wish to be heard, we will contact you using the contact details you have supplied.**

Yes, I wish to be heard in support of my submission.

---

**Q11. If other people have made a similar submission, do you wish to present jointly with them?**

No, if others have made a similar submission, I will not consider presenting jointly with them at a hearing.

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**Respondent No:** 14**Login:** Anonymous**Email:** n/a**Responded At:** May 02, 2022 11:33:38 am**Last Seen:** May 02, 2022 11:33:38 am**IP Address:** n/a

Q1. **Please enter your full name.\*\*This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.**

Nicole Foote

Q2. **Name of your organisation (if applicable):**

Q3. **Postal address:**

Q4. **Address postcode:**

Q5. **Contact phone number:**

Q6. **Email address:**

Q7. **State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.**

1. First schedule: East Taieri Area, namely the Owhiro Stream and associated tributaries. 2. Activities requiring Bylaw authority 3.1c. 3. Bylaw application process.

Q8. **State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...**

1. Support the holistic management of the Owhiro catchment and align the Bylaw with ORC strategies. 2. Enable: Explicitly list native species that can be planted for enhancement. 3. An efficient process to facilitate ecological outcomes for the catchment.

**Q9. Give reasons for the decision you want made.e.g., I want rule 'y' changed because...**

1. Holistic management of the Owhiro catchment would include considerations of instream habitat, water quality, biodiversity and the requirements for flood management. Management of the Owhiro Catchment (including for flood protection) should align with the objectives, visions, goals and outcomes sought from the ORC Rural Water Quality Strategy, ORC Urban Water Quality Strategy and ORC Biodiversity Strategy. The Owhiro Stream has degraded water quality, including issues relating to sediment; • Sediment is deposited from straight eroding/undercutting banks • Exposed banks (and associated erosion issues) due to a lack of stream edge vegetation (often sprayed with herbicide, or no roots to assist with holding banks together). In the Owhiro catchment, the bylaw restricts the ability to create habitat and plant vegetation which can assist with keeping stream banks intact. The process of undertaking a bylaw authority application process is both financially and time constrained for community environmental efforts meaning less effort for action on the ground. 2. Remove barriers and enable the environmental enhancement of the catchment where possible. Some native vegetation like native grasses and sedges (e.g. *Carex secta*) has no additional impact on the hydraulic roughness (i.e. why planting is often discouraged) than that of exotic vegetation/rank grass, yet native vegetation has additional benefits; • Associated with higher biodiversity outcomes • Enhanced filtering capacity • Enhances aesthetic values. A specified list of native plants within the scope of the bylaw (e.g. not shrubs or trees) would enable communities to enhance the health of streams (through bank and riparian planting) without requiring approval from the bylaw authority. 3. An efficient bylaw application process for community and catchment enhancement projects; • To enable the enhancement of ecosystem health while accounting for the "asset" value of the natural waterway • A cost-effective process for when an activity does not fit within the bylaw. Funding for ecological enhancement projects is limited and where the effects are minor it shouldn't require expensive consultancy services (on the part of the applicant and Council) • Have a time-efficient process which allows communities to connect and enhance their local waterways with the least number of impediments.

**Q10. Do you wish to be heard regarding the support of your submission? If you wish to be heard, we will contact you using the contact details you have supplied.**

Yes, I wish to be heard in support of my submission.

**Q11. If other people have made a similar submission, do you wish to present jointly with them?**

No, if others have made a similar submission, I will not consider presenting jointly with them at a hearing.

**Respondent No:** 12**Login:** Anonymous**Email:** n/a**Responded At:** May 02, 2022 13:11:41 pm**Last Seen:** May 02, 2022 13:11:41 pm**IP Address:** n/a

<p><b>Q1. Please enter your full name.**This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.</b></p>	<p>Colin Brown</p>
<p><b>Q2. Name of your organisation (if applicable):</b></p>	<p>Taieri Trails Trust</p>
<p><b>Q3. Postal address:</b></p>	
<p><b>Q4. Address postcode:</b></p>	
<p><b>Q5. Contact phone number:</b></p>	
<p><b>Q6. Email address:</b></p>	
<p><b>Q7. State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.</b></p>	<p>Access to and use of floodbanks. Amend the bylaws to allow for greater public access to the Taieri &amp; Silverstream floodbanks, and permit changes to the floodbank top to allow construction of a hard surface cycle/walkway.</p>
<p><b>Q8. State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...</b></p>	<p>Permit removal of the grass surface of designated floodbanks and replacement with compacted metal, PROVIDED THAT all work has had design approval of the council engineers.</p>
<p><b>Q9. Give reasons for the decision you want made.e.g., I want rule 'y' changed because...</b></p>	
	<p>Our group wishes to construct a safe offroad walking and cycling network connecting the existing Clutha Gold trail with the Wingatui tunnel project, thus "completing the loop" and providing for far greater recreational access for mlocals and tourists. Using the Taieri &amp; Silverstream floodbanks are a logical means of achieving this trail network.</p>
<p><b>Q10. Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.</b></p>	<p>Yes, I wish to be heard in support of my submission.</p>
<p><b>Q11. If other people have made a similar submission, do you wish to present jointly with them?</b></p>	<p>Yes, if others have made a similar submission, I will consider presenting jointly with them at a hearing.</p>

**Respondent No:** 15**Login:** Anonymous**Email:** n/a**Responded At:** May 03, 2022 23:27:21 pm**Last Seen:** May 03, 2022 23:27:21 pm**IP Address:** n/a

Q1. **Please enter your full name.\*\*This consultation is a statutory process, meaning it is meeting a legal requirement. Your name/organisation name will be made public along with your submission. However, other personal information such as phone, address and email will not be made public; any personal information collected will be retained within Otago Regional Council.**

Ian Bryant

Q2. **Name of your organisation (if applicable):** IH & DJ Bryant

Q3. **Postal address:**

Q4. **Address postcode:**

Q5. **Contact phone number:**

Q6. **Email address:**

Q7. **State what your submission relates to and if you support, oppose or want it amended.e.g., amend rule 'y'.**

Excavation Sensitive Zones

Q8. **State what decision you want the Otago Regional Council to make.e.g., rule 'y' should say...**

Amend the boundaries as it relates to our property north of Otokia Road East

Q9. **Give reasons for the decision you want made.e.g., I want rule 'y' changed because...**

The outer border of the ESZ was drawn based on the Tomkin Taylor Report which was a desk top analysis whereas the later Golder report based on actual fieldwork showed minimal risk of piping under flood banks on our property. The fact that the border follows the legal boundary where it meets the neighbouring lifestyle block shows the border was not based on any engineering data. A more acceptable border would be a uniform 100 metre from the floodbank rather than the up to 1 km border now shown.

Q10. **Do you wish to be heard regarding the support of your submission?If you wish to be heard, we will contact you using the contact details you have supplied.**

Yes, I wish to be heard in support of my submission.

Q11. **If other people have made a similar submission, do you wish to present jointly with them?**

Yes, if others have made a similar submission, I will consider presenting jointly with them at a hearing.

**SUBMISSION**

**TELEPHONE** 0800 327 646 | **WEBSITE** [WWW.FEDFARM.ORG.NZ](http://WWW.FEDFARM.ORG.NZ)

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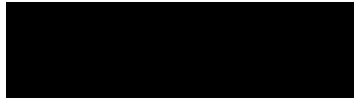
To: Otago Regional Council

Submission on: Consultation on proposed Flood Protection Management Bylaw 2022

From: Federated Farmers of New Zealand

Date: 4 May 2022

Contact: Eleanor Linscott  
Senior Policy Advisor  
Federated Farmers of New Zealand



**Federated Farmers requests a meeting with your policy team to discuss this matter**

## **SUBMISSION FLOOD PROTECTION BYLAW**

### **FEDERATED FARMERS SUBMISSION**

1. Federated Farmers welcomes the opportunity to make this submission to the Otago Regional Council on the flood protection management bylaw 2022.

### **ABOUT FEDERATED FARMERS**

2. Federated Farmers of New Zealand is a primary sector organisation that represents farming and other rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of farmers.
3. The Federation aims to add value to its members' farming businesses. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:
  - a. Our members may operate their business in a fair and flexible commercial environment;
  - b. Our members' families and their staff have access to services essential to the needs of the rural community; and
  - c. Our members adopt responsible management and environmental practices.

### **SUMMARY**

1. Federated Farmers submissions are made in the context of encouraging and seeking policy frameworks that provide certainty, allow flexibility, minimise transaction costs and encourage the efficient use of resources, while sustaining the natural capacity of property and therefore the natural resources of New Zealand.
2. Having clear, objective certainty within the wording of the bylaw's purpose ensures the bylaw is workable, user-friendly and can be successfully implemented.
3. Those communities and farms within flood prone areas are most affected, as any floods directly affect their livelihoods and their ability to continue to operate their business, it is important that the bylaws ensure that their lives and businesses are able to continue
4. Farmers on flood protection schemes pay thousands of dollars annually via rates to maintain and improve this flood protection. As a result, it is crucial that any decisions relating to the management of these schemes involve a balancing of the likelihood of floods occurring, the potential impact of any flooding on people, livestock and property and the desired level of protection and risk management desired by affected communities. It is important that the purpose of the Bylaw is not intended to control those normal farming activities which do not



affect the integrity or operation of flood protection works. That is, if the activities do not affect the flood protection works, they are not controlled.

5. Clarity would be helpful to understand how the Bylaw aligns with landowner requirements for farm environment plans and potentially, riparian planting through catchment groups.
6. Clear and early engagement with landowners is beneficial in helping provide clarity in what is required.

#### **7. General points**

8. The Statement of Proposal itself (on page 5) refers to activities which require written approval (authority) from the council before those activities are undertaken on or near flood protection works, as they could adversely affect the operation or integrity of these works. These “activities include, but are not limited to...”. The issue of including the catch all “include, but not limited to” extends the catch all of items listed to include other things not specifically listed. This makes it very difficult for a person to apply for Authority, if it is not clear what the actual activities are.
9. We note that the definition of “Structure” includes “driveway” as a proposed change. All of the other examples of structure include physical things that are fixed to land (eg gates, cables, culverts, pipes etc). We do not think that “driveway” should be included as it does not fit with the other examples of a structure. Driveway is also confusing as driveways are also used to move stock.
10. For clarity, we would suggest that the definition of “Earthworks” includes and exclusion for cultivation – ie so cultivation is not inadvertently captured by the earthworks definition.
11. For clarity, we would also suggest that the diagrams included in Appendix 1 include more details of what is described, in terms of distance measurements.
12. Appendix two refers to Bylaw Approval Application Form, which is now being proposed to be changed to “Bylaw Authority Application Form”, however the referencing in the template form still refers to “Approval”. For clarity, the terminology should be consistent.
13. Rule 3.1 refers to the phrase “plant or allowed to grow”. We would need some explanation of what “allowed to grow” means? How does this also relate to indigenous vegetation where there are restrictions on clearance? Does allowed to grow mean that it is vegetation that is ignored or actively allowed to grow?
14. We also do not understand what the phrase “hedge or part thereof” means? Is it part thereof of a hedge or a shrub or tree? Section 3.1 is restrictive in that “no person shall”, but the requirement for “allowing to grow” is quite restrictive and confusing. Clarity in meaning would be helpful.

15. In regard to rule 3.1 it would also be helpful to relate that directly to what is intended in Appendix 1 – the diagrams provided do not have enough detail to provide clarity to rule 3.1. In particular, rule 3.1(c)(ii) “on, or within, seven metres of the top of the bank of any scheduled drain” is confusing.
16. The definition of authority means “written approval of the council”. It would be helpful then if authority as a term in the Bylaw is Capitalised to show that it is a defined term.
17. Clarification is required on what “landward” means.
18. Clarification is required on how rule 3.2(c) and 3.2(d) align as they seem directly opposed. That is, (c) refers to no person to plant or allow to grow any tree whereas the new proposed (d) prohibits any person from cutting down or removing any tree.
19. Rule 3.3(d) refers to no person construct or put any structure in or on, or over a floodway. The proposed definition now includes driveways, which as described above, does not fit with the current definition of a structure.
20. The Floodways described in the Bylaw describe areas that include “pastoral farmland when not in operation”. This includes Lower Clutha Floodway, and the Lower Taieri (Upperpond). We would suggest that for Rule 3.3 that it include permission for those areas to be used as pastoral farmland when not in use as it is described in the schedule. This would help provide clarity.
21. Rule 3.4 (f) does not make sense with the proposed addition of the word “authorised”, ie “excluding materials for the purpose of access authorised maintenance”.
22. In Rule 3.5, it is unclear what the difference is between (a) and (b) is. That is, if no person can *(a) remove, alter or interfere with any flood protection vegetation; or (b) plant or allow to grow any tree, shrub, hedge or part thereof within any flood protection vegetation*, it is very confusing for a landowner, in terms of what at a practical level is the flood protection vegetation and what is the vegetation that they are not supposed to allow to grow. Clarification is required to understand how this would work in practice on farm?
23. In regards to rule 3.3(c), and the associated Note, it is very unclear what is meant by the “extent of the vegetation”. The maps provided in the fourth schedule do not provide clear guidance on what is required – and the phrasing is confusing:  
*“Note: the extent of this vegetation is defined as the area between the ‘flood protection vegetation’ lines or where there is one ‘flood protection vegetation’ line, the area of vegetation to be maintained for flood protection will be the area between the line and the adjacent edge of the active channel as shown in the fourth schedule”*
24. For rule 4.3, we would suggest that the fencing proposed here include temporary fencing (eg electric), as to push this cost onto the landowner at notice only provide by the public notification is not reasonable. Fencing is a costly undertaking – and potentially should be a

cost covered by council as it is a structure associated with maintenance. Clarity on who is responsible for what would be helpful. Early engagement with landowners is preferred.

25. For rule 5.1, clarification is required to ensure that the terminology is consistent, ie Bylaw Approval Application and Bylaw Authority Application are both used.
26. Is the Authority under rule 5.1 the signed form by the council or as under the definition “written approval issued by the council under this Bylaw”.
27. Under rule 6.1(b)(iii)(2) a person only has 14 days to send a written submission to the council to outline the reasons why an authority should not be revoked. Is the 14 days based on issue of the notice from the Council? Is that notice based on posted mail or email? If it is posted, then based on the rural delivery, it is unfair to expect a party to receive that notice and respond within 14 days.
28. Under new rule 6.1(e) *“Nothing in this clause applies to a revocation of authority under clause 6.1(d).* This clause seems to be in error as it is orphaned. That is, it is not clear if it is referring to 6.1 in its entirety, or just in context of 6.1(d).





## Submission on the Flood Protection Management Bylaw 2012 Review

Prepared by [REDACTED] for the Open Valley Urban Ecosanctuary project.

### Open Valley Urban Ecosanctuary

The Open Valley Urban Ecosanctuary (VUE) project is a collaborative project, bringing together the community, the Valley Project, Orokonui Ecosanctuary and the University of Otago. The Open VUE project seeks to utilise the unique spatial structure of North East Valley as a defined catchment area for Lindsay Creek (the Lindsay Creek Catchment), and as a green habitat corridor with the potential to link the Dunedin Town Belt with Orokonui Ecosanctuary.

Thank you so much for giving us the opportunity to submit on the Flood Management Bylaw 2012 review, we greatly appreciate it.

### Comments on Statement of Proposal

In reference to the Otago Regional Council's Statement of proposal:

- Page 6
  - Item 4: Please ensure that with restrictions around planting of trees, shrubs and hedges, to enable scope for riparian vegetation to be planted to enable high quality habitat for freshwater species.
- Page 7
  - Item 6: We would like to see a clear definition of “defences against water”, neither the definition in 2.0 of the 2012 bylaw (page 2), nor the Second Schedule (page 17) clearly state what a “defence against water” is.
    - Allowance for removal of invasive tree species (e.g. willows, sycamores)
  - Item 7: Where structures are added or removed, ensure that provision for native freshwater species is given. i.e., the addition of structures considers the impact on the wider ecosystem and preference is given to soft (sand, boulders) over hard (concrete) surfaces.
    - Additional structures can create habitat for freshwater species, e.g. pools, or these are created otherwise.
    - Structures do not restrict native species movement (e.g. preventing migration)
  - Item 11: We would like to see clear definitions to tell the difference between “plantings” and “anchored tree protection”, as this is not so clear on either page 2 of the 2012 bylaw, “definitions” or page 43 - “fourth schedule”.
  - We would like to see that plants and vegetation used are the preferred types of species for enhancing riparian habitat.
- Page 8
  - Item 14: We agree with this, it's really good to include diagrams that reference activities that require bylaw Authority.

## Submission 25, page 2

- Item 15: We would like that the fees required to submit an application form are reduced as \$300 is a lot of money for individual (e.g. residential) landowners.
- Item 17: We agree, it's great to see an update and to amend definitions. These need to be clear and easy to understand. Please clarify definitions of: Anchored tree protection, cross-bank, defence against water, drain, Excavation-sensitive area, floodway, groyne, overland flow path, plantings. This will be incredibly important to ensure that anyone wishing to submit for approval understands the rules of the bylaw. We wonder if there is scope for the use of layman's definitions.
- Pages 9-11
  - The Statement of proposal considers if a bylaw is the most appropriate way of addressing the perceived problem and offers other options which are then not considered appropriate options. We think that some of these proposed alternative options should be considered in conjunction with the bylaw. Developing strategies and agreements with landowners and education are both important strategies that can sit alongside the bylaw to ensure the integrity of flood protection management is maintained. These options can ensure that landowners and communities are aware of the bylaw, particularly in relation to riparian habitat for native species.

## Comments on Flood Protection Management Bylaw 2012

In reference the to current 2012 Flood Protection Management Bylaw

- Page 2: As above, update and amend definitions to be clear and easily understood. We wonder if there is scope for the use of layman's definitions.
- Page 3: If trees are not able to be planted, are there options to ensure structures are in place that still allow for habitat to ensure protection of native species.
- Page 4: Can removal of invasive tree species be given priority and if removal of trees impacts flood protection work, other options are explored.
  - We would like to see that structures in place that still allow for natural regeneration of freshwater habitat
- Page 8: 5.1 b. Include consideration here for impacts to freshwater and riparian habitat and impacts on freshwater and riparian species.
  - 5.2 a. Ensure clarity here to enable private landowners to contact the ORC to waive fees if required, particularly when conducting habitat restoration efforts.
- Page 9: Include any notices here for Authority holders if changes are being made (e.g. alteration of previous works)
  - Consult community if any changes are being made particularly any major changes and all options are considered i.e. use of soft vs hard flood protection structures, inclusion of riparian habitat, walking tracks etc.

## General comments

- Flood protection works will likely have great impacts on freshwater ecosystems, works carried out should not be at the detriment of freshwater ecosystems. Does this have an impact on the Land and Water Plan and vice versa?
- We would like to see clearer maps associated with the bylaw, particularly around definitions. The online map refers to items that are not so clearly defined in the current 2012 bylaw.

Many thanks for considering our submission, again we greatly appreciate the opportunity to submit.

## **Appendix 2: Amended Proposed Bylaw (tracked changes)**



Otago  
Regional  
Council

Proposed  
Flood Protection  
Management Bylaw  
20~~12~~22

[Date]  
[ISBN]

Common Seal page



## Chairperson's Foreword

*This page has deliberately been left blank. The Chairperson's Foreword will be inserted at a later date.*

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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

## **Appendix Two**

Bylaw ~~Approval~~ Authority 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 1<sup>st</sup> 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.*

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

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### 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.~~

***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) for the purpose of sowing, growing or

harvesting of pasture or crops, 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 and includes the *bed* of the Water of Leith and Lindsay Creek as marked in red 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.

**~~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

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* 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* of the *Council* –

- a. Alter any *defence against water* except as provided for by rule 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*;
- ~~e.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 ~~or~~ where dumping or deposition of material is an inherent part of an activity that is permitted under any other rule in this Bylaw;

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- ~~g-h.~~ Allow livestock, vehicles, machinery or equipment to adversely affect the integrity of any *defence against water*;
- ~~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* of the Council –

- a. Alter any *floodway* except as provided for by rules 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, ~~where dumping or deposition of material is an inherent part of an activity that is permitted under any other rule in this Bylaw~~, or as a result of maintenance of ~~ditches~~ drains undertaken in accordance with rule 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* 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 training line ~~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 or where dumping or deposition of material is an inherent part of an activity that is permitted under any other rule in this Bylaw;
- 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* 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

### 5.1 Authority

- a. An application to the *Council* for *authority* under this Bylaw shall be made in accordance with the Bylaw ~~Approval-Authority~~ Application Form (Appendix ~~One~~Two) and be accompanied by the prescribed fee;
- b. Any *authority* under this Bylaw may be granted on such conditions as the *Council* considers appropriate. When considering applications for *authority*, 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
  - Water quality
- c. If *Council* refuses an application for *authority*, the *Council* shall give written reasons for that decision.
- ~~c.d.~~ Every person to whom an *authority* is granted shall produce that *authority* 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* 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* under this Bylaw, within ~~five~~ 15 working 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. Objections to a decision or *authority* are limited to a refusal of the *authority* or the conditions placed on the *authority*.
- b. The *Council* may uphold, amend or rescind the decision or *authority*, and in making its determination must have regard to:

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- 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, including the reasons for that determination.

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## 6.0 COMPLIANCE AND ENFORCEMENT

### 6.1 Revocation of Authority

- a. The *Council* may, in accordance with this clause, revoke any *authority* granted under this Bylaw, if the holder of the *authority* contravenes or fails to comply with any condition of the *authority*.
- b. Subject to 6.1(d), Bbefore revoking any *authority*, the *Council* shall give written notice to the holder of the *authority* that the *Council* may revoke the *authority* which:
  - i. written notice to the holder of the *authority* that the *Council* may revoke the *authority* sets out the respects in which the holder has contravened or failed to comply with any condition of the *authority*; 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* 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 145 working days, 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 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*.
- d. *Council* may revoke *authority* 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 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 clause of ~~Rule~~Section 3 or 4 of this Bylaw;
  - ii. Causes or permits to be done anything in contravention of any clause of ~~Section~~Rule 3 or 4 of this Bylaw;
  - iii. Omits to do anything required by this Bylaw or the conditions of the relevant *authority*;
  - 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~~Rule 3 or 4, or the conditions of the relevant *authority*, 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*, 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 m<sup>3</sup>/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.

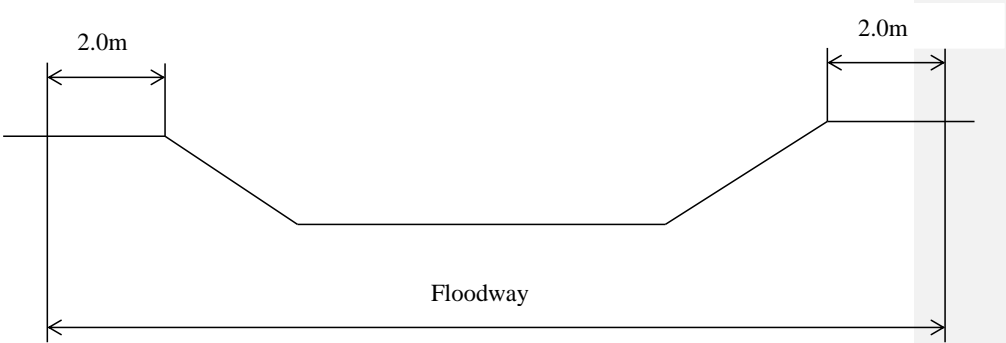
The floodway starts at the artificially constructed sections of the creeks and join at Irvine Road where combined, they follow Irvine Road for approximately 800 metres then follow Jardine Road for about 2,500 metres before entering the Waitaki River through a drop structure.

**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**

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

Figure 1: Scheduled drains and overland flow paths

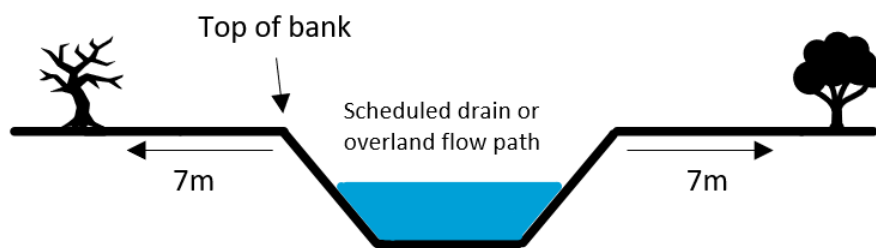


Figure 2: Defences against water - floodbank

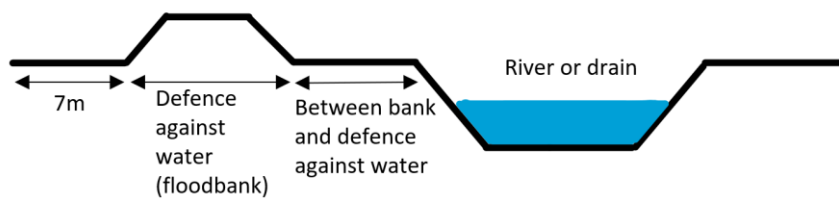
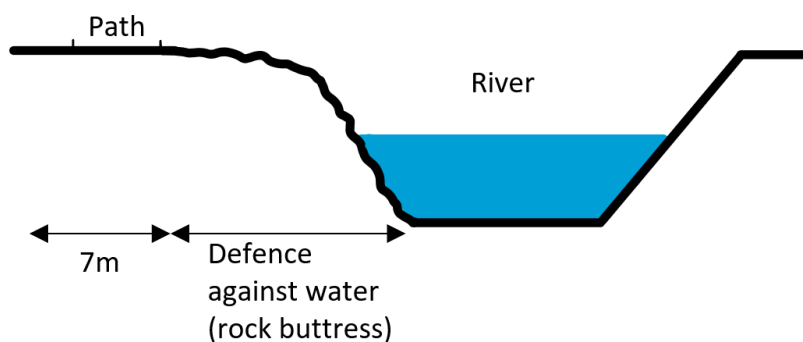


Figure 3: Defences against water – rock buttress



**Appendix Two: Bylaw Approval Authority Application Form**

# Bylaw ~~Approval Authority~~ 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 ~~Authority Approval~~ Relates

Property Address \_\_\_\_\_  
\_\_\_\_\_

Legal description: \_\_\_\_\_

Co-ordinates (NZTM 2000): Northing – \_\_\_\_\_ Easting - \_\_\_\_\_

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

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# Bylaw ~~Approval~~ Authority 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.

A large, empty rectangular box with a thin black border, intended for the applicant to draw a diagram of the property and the location of proposed works.

## 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.

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# Bylaw ~~Approval~~ Authority Application Form



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## 6. Assessment against the assessment criteria

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

Capacity:

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Stability, scour and erosion risk:

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Access for inspection and maintenance purposes:

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Water quality:

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### Duration of authority sought

Proposed start date:

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Proposed end date:

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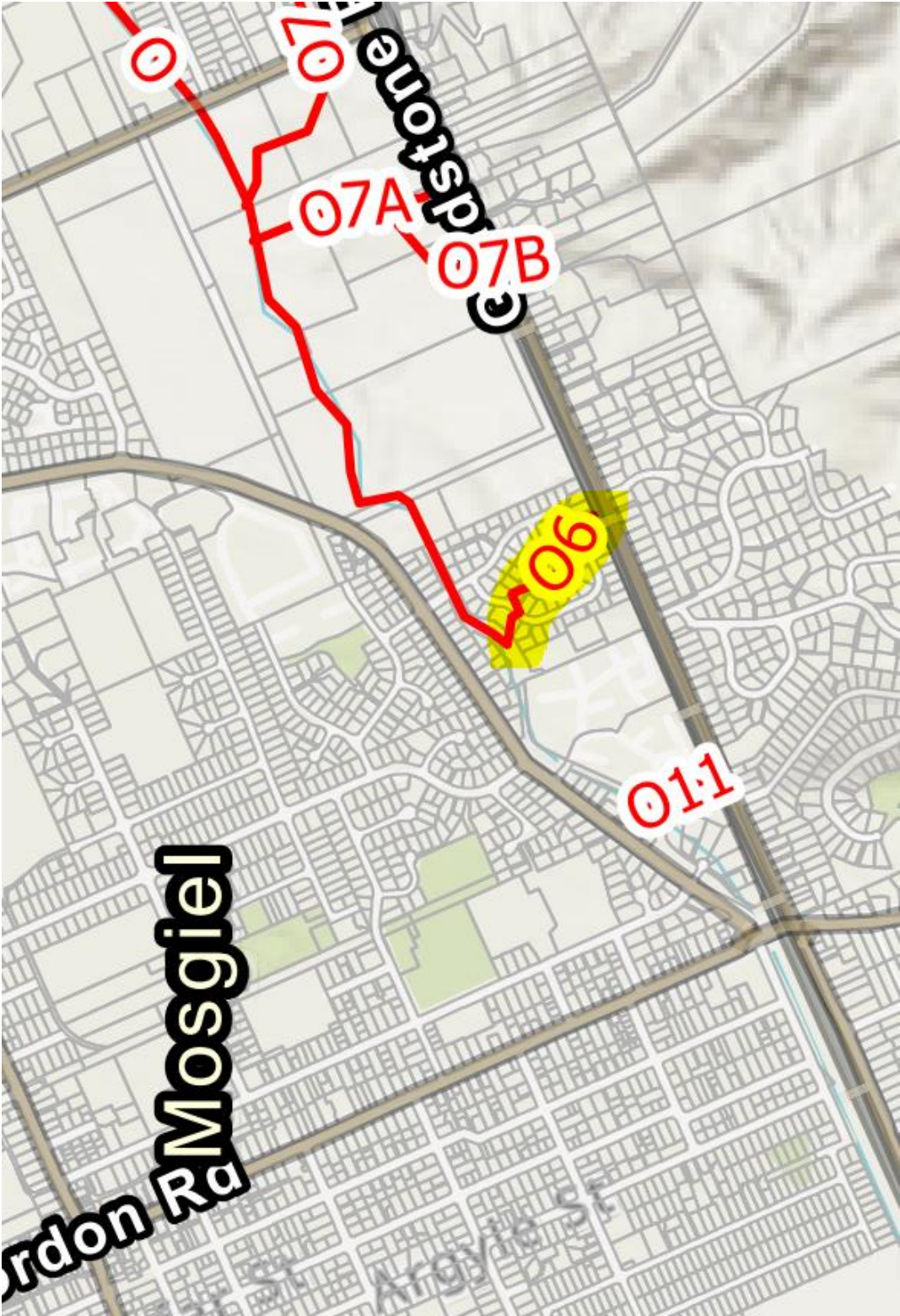
Signed \_\_\_\_\_ Dated \_\_\_\_\_

*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.*

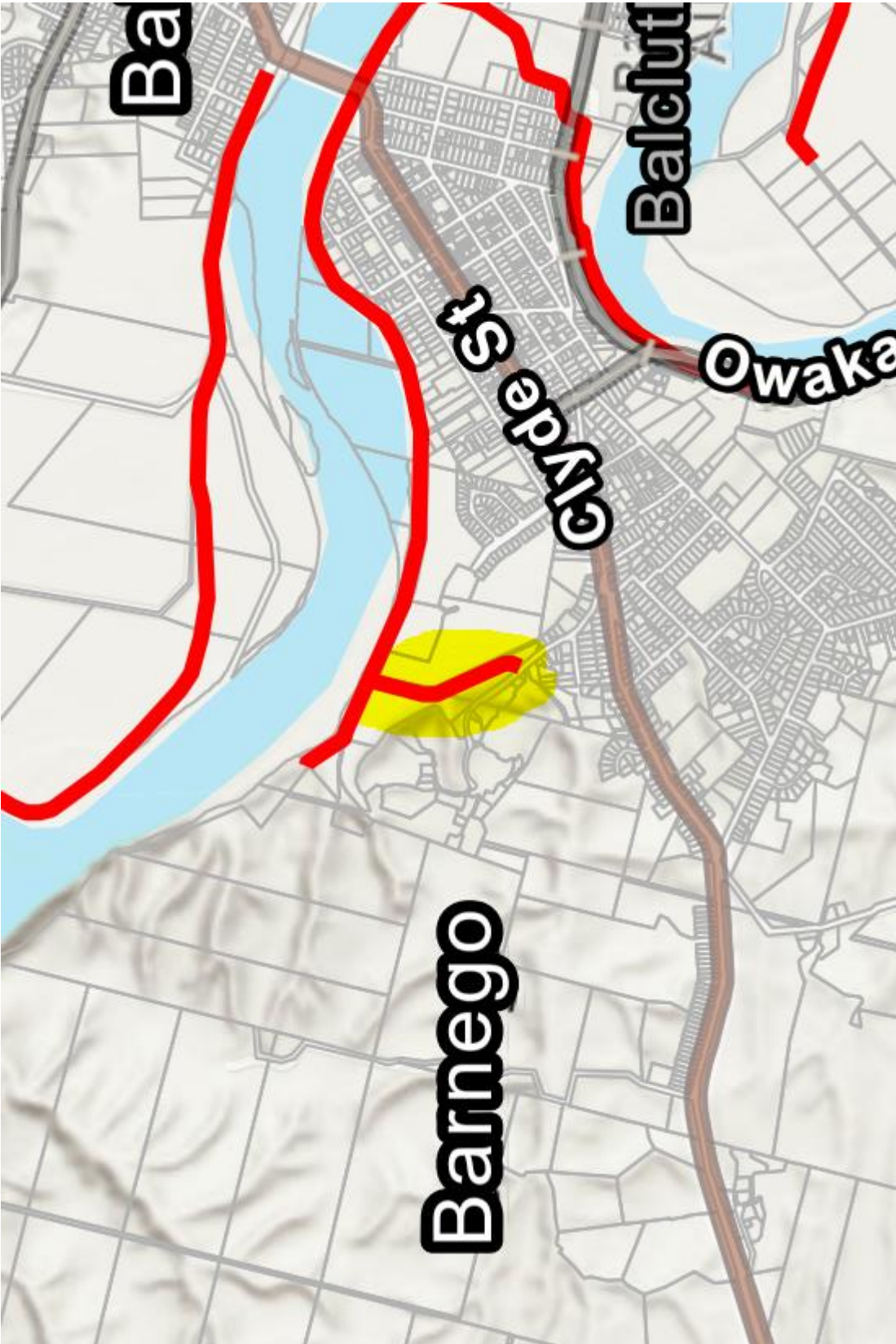


## **Appendix 3: Amendments to Schedule maps**

First Schedule – East Taieri Scheduled Drains and Overland Flow Paths. Area highlighted yellow to be deleted.



Second Schedule maps - Lower Clutha Defences Against Water. Area highlighted yellow to be deleted.

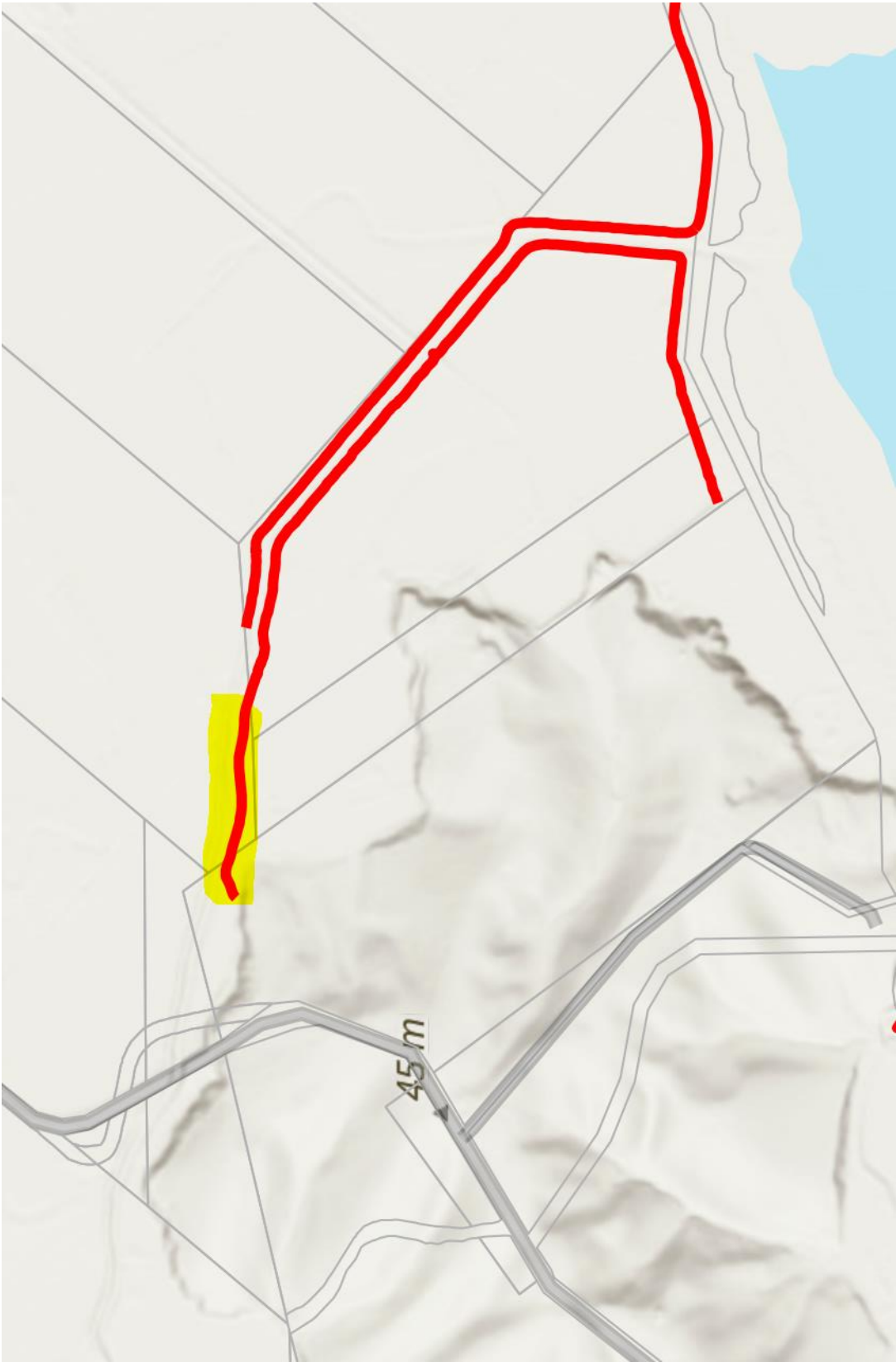




Second Schedule – Alexandra Defences Against Water. Area highlighted yellow to be deleted.



Second Schedule – Lower Taieri Defences Against Water Sheet 5. Area highlighted yellow to be deleted.



**Otago Regional Council Proposed Flood  
Protection Management Bylaw**

**Staff response to Panel requests**

**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.
2. The Hearing Panel comprised Councillor Kate Wilson (Chair), Councillor Gretchen Robertson and Mr Allan Cubitt (independent commissioner).
3. The Hearing Panel has requested clarification or advice on various matters. These have been addressed below under the following titles:
  - Submission 9, University of Otago
  - Submissions 14, 16 and 19, Emma Peters – Sweep Consultancy Ltd, Charlotte Young and Jason Coutts
  - Submission 23, IH & DJ Bryant
  - Other matters
4. 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.

**Submission 9, University of Otago**

5. The Hearing Panel has requested the following information to address points raised by the University of Otago submission:
  - Provision for minor earthworks associated with repair/replacement of services (e.g., cables and pipes).
  - Provision for gardening within 20m of a defence against water.
  - Accuracy of Leith Lindsay defence against water mapping, and any implications of this.
  - Confirmation of measurement of 7m and 20m from the Leith Lindsay defence against water.

Provision for minor earthworks within 20m of a defence against water

6. Rule 3.2(i) restricts earthworks in, on, through, under, within 20m of a defence against water (unless those earthworks relate to cultivation), between the bank of a river and the defence against water, and within any excavation sensitive area.
7. The University of Otago advised that they undertake minor services works (e.g., placement, replacement or maintenance of cables and pipes) around 10-20 times a year.
8. Earthworks can present a major risk to flood protection works as they can alter the land surface and change flow patterns (both during and after the completion of earthworks activities), and it is important that there is appropriate consideration of risk and mitigation measures, even for what may appear to be relatively minor earthworks.
9. As such, we consider that it is appropriate that the University of Otago obtain Bylaw Authority for the types of works described, particularly given their relative frequency. We consider this Bylaw Authority could be in the form of a global bylaw authority which references a Works Programme required to be approved by ORC prior to works being undertaken. This would allow for flexibility as the Works Programme could be periodically updated, rather than the University of Otago having to apply for new Bylaw Authorities each time.

1.9.1 Provision for gardening within 20m of a defence against water

10. Rule 3.2(i) restricts earthworks in, on, through, under, within 20m of a defence against water, between the bank of a river and the defence against water, and within any excavation sensitive area. Rule 3.2(i)(ii) restricts earthworks within 20m of a defence against water unless those earthworks relate to cultivation.
11. Cultivation is defined in the Proposed Bylaw as:

*Cultivation means the alteration or disturbance of land (or any matter constituting land including soil, clay, sand and rock) for the purpose of sowing, growing or harvesting of pasture or crops, to a depth of no more than 300 millimetres below the existing ground surface.*
12. It is considered that cultivation is allowable within 20m of a defence against water, because by its nature (minor land disturbance and planting of small crops) it is not likely to adversely affect the integrity or operation of flood protection works. We consider that cultivation can also be extended to include planting associated with gardening which is comparable to crops, and includes grasses, ground cover, bulbs

and small flowering plants but which excludes large plants such as shrubs, hedges or trees.

13. As such, we propose that the definition of cultivation is amended as shown below, to allow for small scale gardening activities within 20m of a defence against water:

*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.)*

Accuracy of Leith Lindsay defence against water mapping, and any implications of this

14. A question was raised regarding the accuracy of the Leith Lindsay maps showing defences against water adjacent to the Leith channel, through buildings, etc., and not down the middle of the river bed.
15. We clarify that the Leith Lindsay defence against water is the concrete-lined bed and concrete walls of the river and/or earth bunds adjacent to the river and is not the line shown on the map.
16. We propose to amend the location of the Leith Lindsay defence against water lines in the Second Schedule by showing it in the location identified above. We also consider the definition of defence against water could be amended to say:

*Defence against water means any defence against water shown in the Second Schedule ~~and includes the bed.~~ The beds 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 are marked in red on the Leith Lindsay map blue in the Second Schedule.*

Confirmation of measurement of 7m and 20m from the Leith Lindsay defence against water

17. Rules 3.2(c), (d), (d), (e), (f), (g) and (i) restrict activities within either 7m or 20m of the landward side of a defence against water. There was some confusion relating to from where the distances from the Leith Lindsay defence against water should be measured.
18. The relevant statement of the rules is copied below:

*“within seven metres of the landward side of any defence against water”*

*“within 20 metres of the landward side of any defence against water”*



19. In our view this rule applies to the distance measured from the landward edge of the defence against water. In the Leith Lindsay, this is considered to be from the outer edge of the top of the concrete wall or the landward toe of the earth bund.
20. We also note that the Leith Lindsay map legend incorrectly refers to the defence against water as a 'floodbank' and propose that this is amended to 'Leith Lindsay defence against water'.

**Submissions 14, 16 and 19, Emma Peters – Sweep Consultancy Ltd, Charlotte Young and Jason Coutts**

21. The Hearing Panel has requested the following information to address points raised in the titled three submissions:
  - Appropriate time for objections to be made, and if the objection made within this time must contain all objection material.
  - Filling restrictions between 7m and 20m from a defence against water.

Appropriate time for objections to be made, and if the objection made within this time must contain all objection material

22. The submitters stated that 15 working days was not long enough to prepare an objection (Rule 5.3(a)), given that it may require technical and expert inputs. A question was also raised whether it was expected that all information in relation to the objection is included within the stated timeframe.
23. The Local Government Act 2002 does not require an objections process or define any time period associated with an objection, but to provide more time it could be extended out to 20 working days which is consistent with the Resource Management Act 1991.
24. Clause 5.3(b)(ii) states that matters that the Council must have regard to when making its determination, including the matters presented in support of the objection. As such, we consider that all information being presented in the objection should be provided within the stated timeframe. We note that there is nothing restricting a person requesting an extension to the objection period.
25. For consistency, we consider that the period for making a written submission on the revocation of an Authority also be extended to 20 working days (Rule 6.1(b)(ii)(2)).

Filling restrictions between 7m and 20m from a defence against water

26. Submissions 14, 16 and 19 raised the matter that under the 2012 Bylaw, filling is allowed between 7 and 20metres from a defence against water, but that the Proposed Bylaw amendment has removed this allowance.
27. We note the proposed change from the use of the term 'excavation' to 'earthworks' in Rule 3.2(i) results in any filling activities within 20m of the landward side of a defence against water requiring an Authority. The submissions highlighted that this would cause them operational issues on their farm.
28. We have discussed the risks of undertaking excavation and fill works within 7 and 20 metres from a defence against water with Council Staff. We have been advised that excavation earthworks need to be restricted up to 20m from a defence against water because they contribute to increased risk of piping, erosion and floodbank failure. Earthworks involving fill, however, need only be restricted to within 7m from a defence against water for the operation or integrity of flood protection works.
29. As such, we propose that the term 'filling' be deleted from the definition of earthworks, to allow for fill earthworks more than 7m from a defence against water.

*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).*

30. We acknowledge that this also impacts Rules 3.3 (floodways) and 3.4 (groynes, cross-banks and training lines) and are comfortable that this is appropriate with respect to those flood protection works.

### **Submission 23, IH & DJ Bryant**

31. IH & DJ Bryant's submission raised that their property has been identified as an Excavation Sensitive Area, but noted that various reports stated that there is minimal risk to floodbanks from excavation on their property.
32. We have sought advice from Tonkin + Taylor and concluded that it is appropriate for the Excavation Sensitive Area on IH & DJ Bryant's property to be reduced. A map showing the extent to be deleted is attached to this addendum.

### **Other matters**

#### Removal of pest tree plants (e.g., willows, sycamores)

33. Cr Wilson requested clarification on whether the removal of pest tree plants, such as willows and sycamores should be enabled.

34. The removal of trees presents a significant risk to defences against water by changing flow paths and/or resulting in holes susceptible to erosion and scour. This risk remains regardless of whether they are native species or pest plant species such as willows and sycamores. The requirement to obtain a bylaw authority means that appropriate consideration of the risk occurs, and for this reason we consider it appropriate to include the pest plants in this clause.
35. If landowners are looking to remove pest plant species from their properties, it is likely ORC staff would work with the landowner with respect to their removal and any Bylaw Authority. We note that the Proposed Bylaw states that Council may waive the whole or any part of a fee payable under this bylaw and this could be a situation where a waiver may apply. This would be considered on a case-by-case basis.

#### Permitted planting guidance

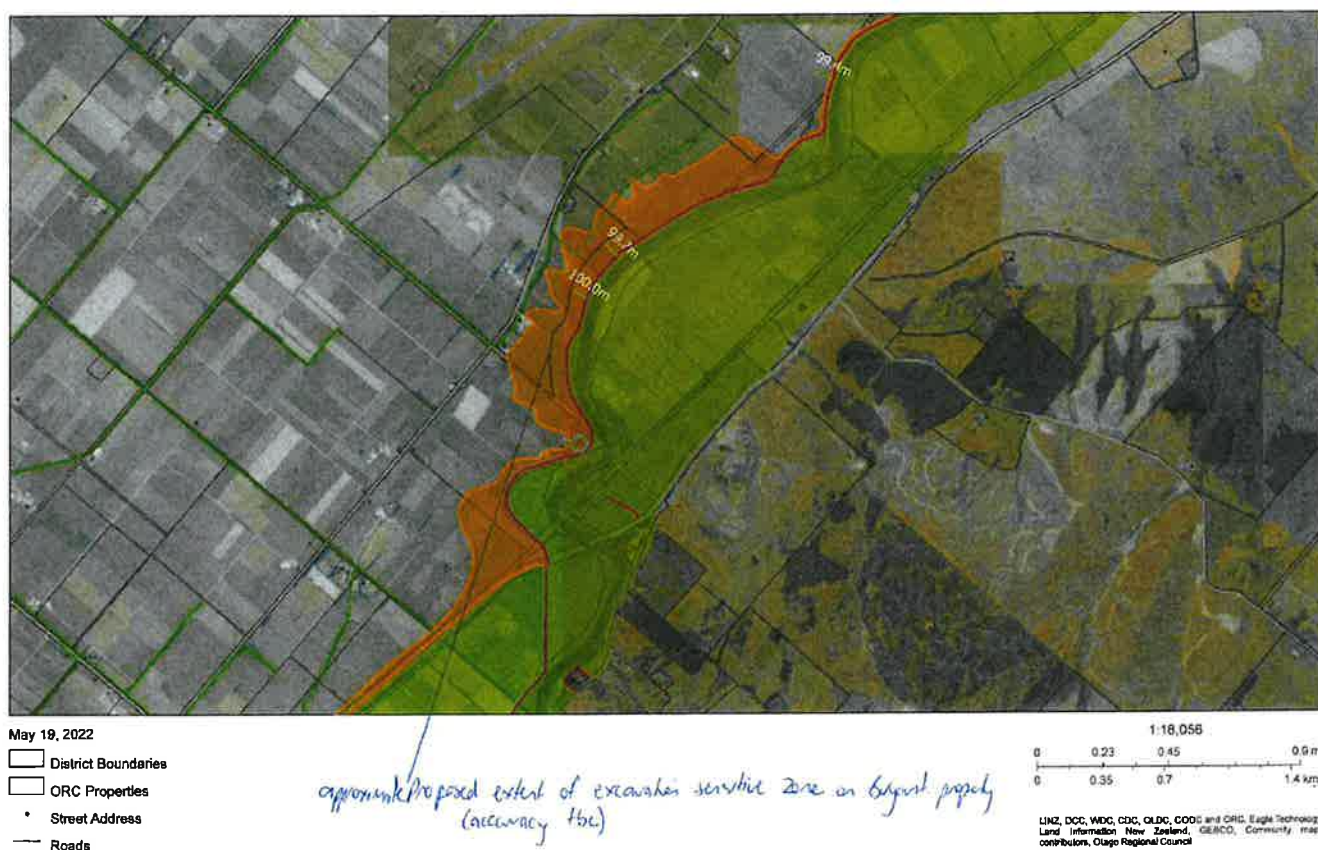
36. The Proposed Bylaw places restrictions on planting any tree, shrub, hedge or part thereof within 7m of a scheduled drain, defence against water, groyne, cross-bank or training line, or in a floodway or within flood protection vegetation. Smaller plants that are not trees, shrubs or hedges (e.g., grasses, groundcover, bulbs and small flowering plants) can be planted without requiring a Bylaw Authority (please see paragraphs 12 - 15 which recommend authorising planting associated with gardening. Cr Wilson requested more information on whether ORC can provide some guidance to assist people wishing to undertake riparian planting works that don't require Bylaw Authority.
37. There are riparian planting guides available on the ORC website (<https://www.orc.govt.nz/managing-our-environment/water/good-practice-information>), however we acknowledge that there are not many plants in these lists that can be planted without a Bylaw Authority.
38. The interactions between planting and flood effects are complex, and there are risks that inappropriate planting can adversely affect the integrity and operation of flood protection works, for example restricting flow capacity or diverting flows, resulting in changed flow direction and increased erosion and scour. The risks of plantings adversely affecting flood protection works are site-specific.
39. We have consulted with Council Staff and consider the best approach is for individual groups to approach ORC staff for site-specific guidance on plantings that would be appropriate from a flood management perspective, rather than to provide blanket recommendations which could present a risk to flood management works in some

locations. We suggest a statement inviting people to discuss could be added to the website.

#### Use of term authorised in Rule 3.0

40. Cr Wilson raised the matter that the statement following statement in Rule 3.0 uses the word 'authorised' and that it was unclear if 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), or instead meant "permitted/allowed/approved".
41. In our view, the term 'authorised' means "permitted/allowed/approved", rather than requiring 'authority' as defined in the Proposed Bylaw. We consider this could be clarified by amending the wording to say:

*"Nothing in this Bylaw applies to Council employees or persons contracted by Council undertaking maintenance or emergency works on flood protection works"*



Proposed  
Flood Protection  
Management Bylaw  
20122

[Date]  
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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

## **Appendix Two**

Bylaw Approval Authority 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 1<sup>st</sup> 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: ~~Where~~ 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.~~

**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.

**~~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

Nothing in this Bylaw applies to Council employees or persons ~~authorised~~ contracted 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 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* of the Council –

- a. Alter any *defence against water* except as provided for by rule 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 ~~or where dumping or deposition of material is an inherent part of an activity that is permitted under any other rule in this Bylaw;~~

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- ~~g-h.~~ Allow livestock, vehicles, machinery or equipment to adversely affect the integrity of any *defence against water*;
- ~~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* of the Council –

- a. Alter any *floodway* except as provided for by rules 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, where dumping or deposition of material is an inherent part of an activity that is permitted under any other rule in this Bylaw, or as a result of maintenance of ~~ditches~~ drains undertaken in accordance with rule 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 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 or where dumping or deposition of material is an inherent part of an activity that is permitted under any other rule in this Bylaw;
- 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* 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

### 5.1 Authority

- a. An application to the *Council* for *authority* under this Bylaw shall be made in accordance with the Bylaw ~~Approval~~ *Authority* Application Form (Appendix ~~One~~ *Two*) and be accompanied by the prescribed fee;
- b. Any *authority* under this Bylaw may be granted on such conditions as the *Council* considers appropriate. When considering applications for *authority*, 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
  - Water quality
- c. If *Council* refuses an application for *authority*, the *Council* shall give written reasons for that decision.
- ~~e.d.~~ Every person to whom an *authority* is granted shall produce that *authority* 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* 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* under this Bylaw, within ~~five~~ 20 working 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*. Objections to a decision or *authority* are limited to a refusal of the *authority* or the conditions placed on the *authority*.
- b. The *Council* may uphold, amend or rescind the decision or *authority*, and in making its determination must have regard to:

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- 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, including the reasons for that determination.

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## 6.0 COMPLIANCE AND ENFORCEMENT

### 6.1 Revocation of Authority

- a. The *Council* may, in accordance with this clause, revoke any *authority* granted under this Bylaw, if the holder of the *authority* contravenes or fails to comply with any condition of the *authority*.
- b. Subject to 6.1(d), ~~Before~~ revoking any *authority*, the *Council* shall give written notice to the holder of the *authority* that the *Council* may revoke the *authority* which:
  - i. ~~written notice to the holder of the *authority* that the *Council* may revoke the *authority* sets out the respects in which the holder has contravened or failed to comply with any condition of the *authority*; 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* 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* 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*.
- d. *Council* may revoke *authority* 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 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 clause of ~~Rule~~Section 3 or 4 of this Bylaw;
  - ii. Causes or permits to be done anything in contravention of any clause of ~~Section~~Rule 3 or 4 of this Bylaw;
  - iii. Omits to do anything required by this Bylaw or the conditions of the relevant *authority*;
  - 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~~Rule 3 or 4, or the conditions of the relevant *authority*, 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*, 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 m<sup>3</sup>/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.

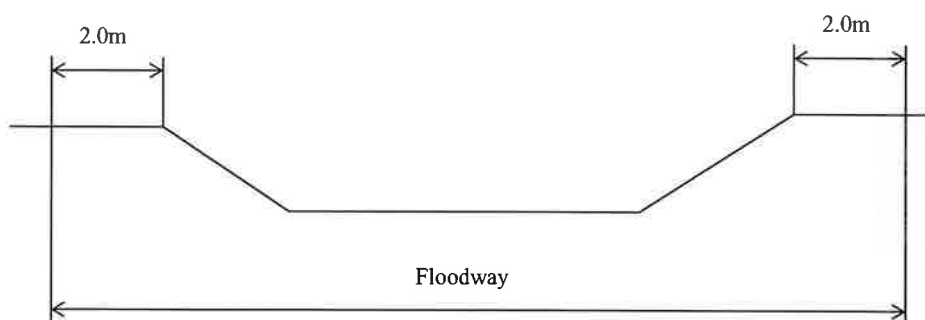
The floodway starts at the artificially constructed sections of the creeks and join at Irvine Road where combined, they follow Irvine Road for approximately 800 metres then follow Jardine Road for about 2,500 metres before entering the Waitaki River through a drop structure.

#### **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.



# Bylaw ~~Approval Authority~~ Application Form



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## 6. Assessment against the assessment criteria

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

Capacity:

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Stability, scour and erosion risk:

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Access for inspection and maintenance purposes:

---

---

---

Water quality:

---

---

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Duration of authority sought

Proposed start date:

---

Proposed end date:

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**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.

# Bylaw ~~Approval~~ Authority 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.

A large, empty rectangular box with a thin black border, intended for the applicant to draw a diagram of the property and the location of proposed works.

## 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.

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# Bylaw ~~Approval~~ Authority 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 ~~Authority~~ Approval Relates

Property Address \_\_\_\_\_

\_\_\_\_\_

Legal description: \_\_\_\_\_

Co-ordinates (NZTM 2000): Northing – \_\_\_\_\_ Easting – \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Appendix Two: Bylaw Approval Authority Application Form**

**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

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

Figure 1: Scheduled drains and overland flow paths

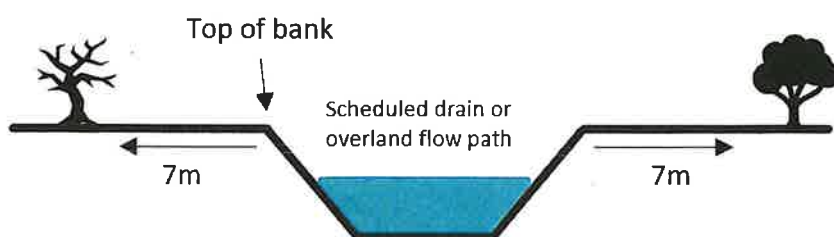


Figure 2: Defences against water – floodbank

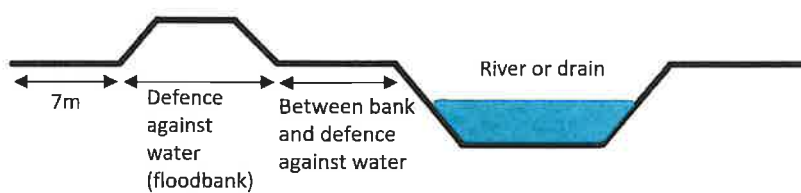
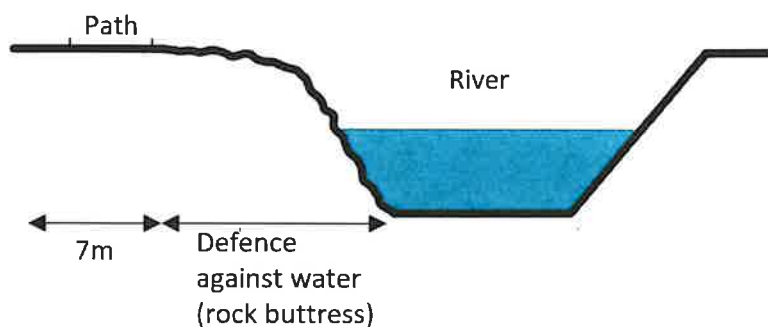


Figure 3: Defences against water – rock buttress



**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

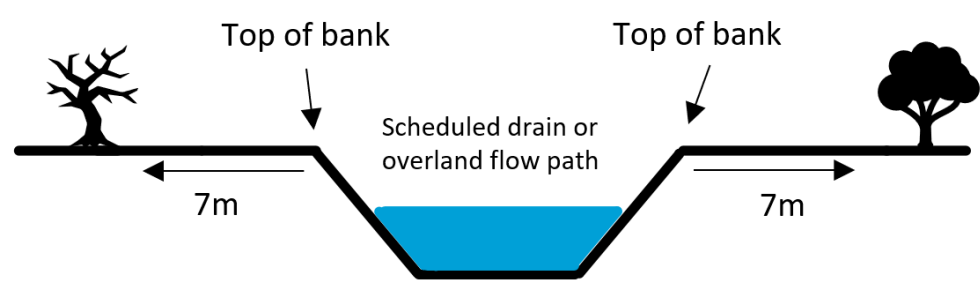


Figure 2: Defences against water - floodbank

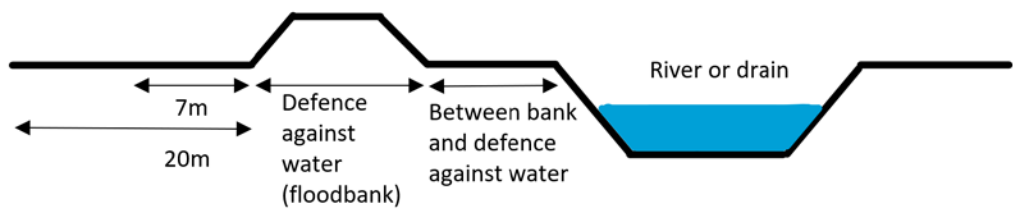
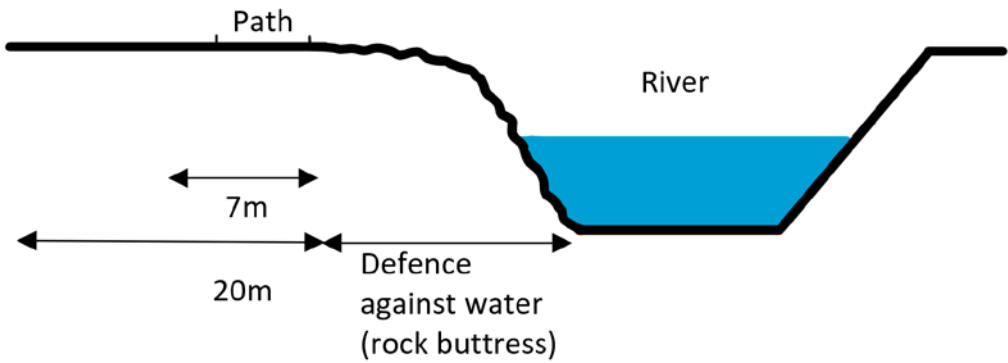




Figure 3: Defences against water – rock buttress



**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.



Otago  
Regional  
Council

Proposed  
Flood Protection  
Management Bylaw  
20~~1~~22

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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 1<sup>st</sup> 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: ~~Ww~~ 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 training line ~~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.
- ~~c.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), ~~B~~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 m<sup>3</sup>/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.

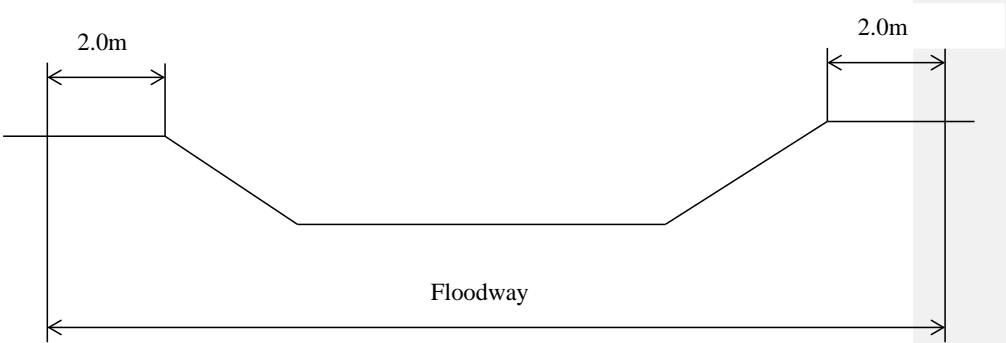
The floodway starts at the artificially constructed sections of the creeks and join at Irvine Road where combined, they follow Irvine Road for approximately 800 metres then follow Jardine Road for about 2,500 metres before entering the Waitaki River through a drop structure.

**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

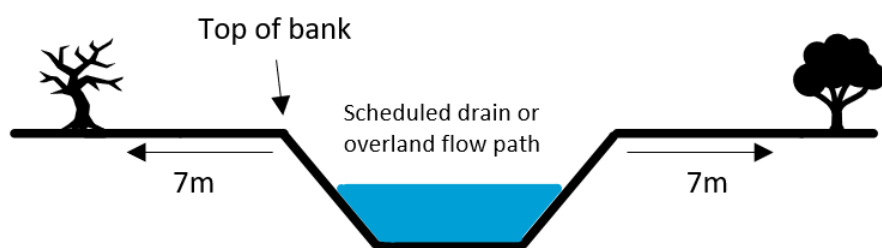


Figure 1: Scheduled drains and overland flow paths

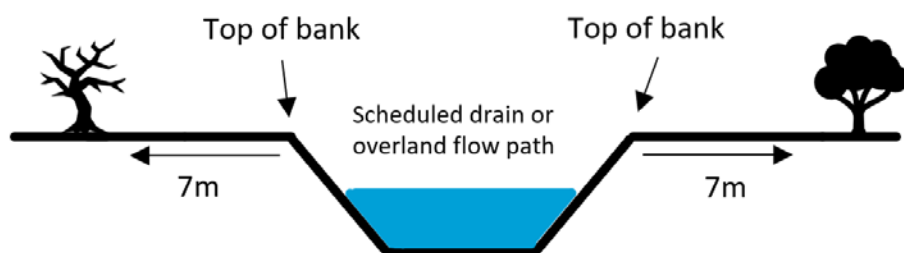


Figure 2: Defences against water - floodbank

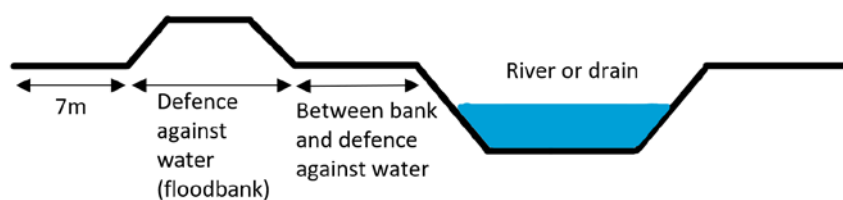




Figure 2: Defences against water - floodbank

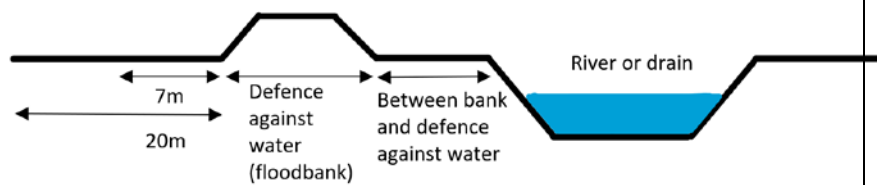


Figure 3: Defences against water – rock buttress

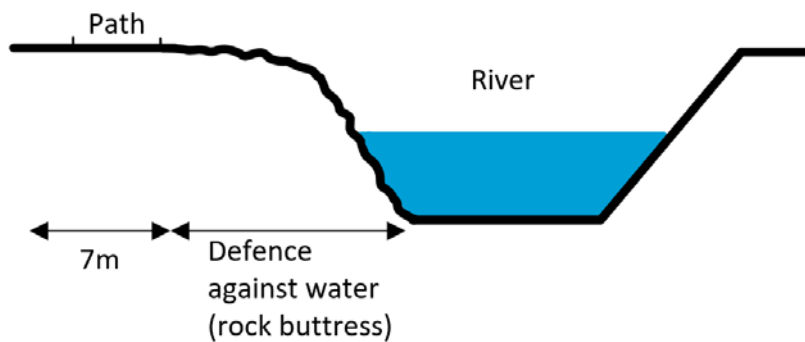
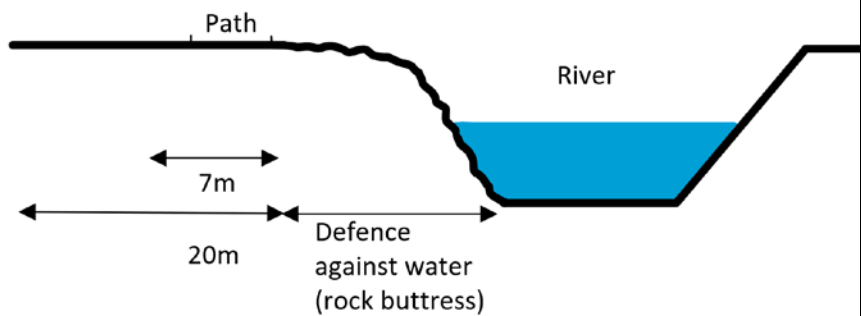


Figure 3: Defences against water – rock buttress



**Appendix Two: Bylaw Approval Authority Approval Application Form**

# Bylaw ~~Approval~~ Authority 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 ~~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 ~~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.

A large, empty rectangular box with a thin black border, intended for the applicant to draw a diagram of the property and the location of proposed works.

## 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.

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# Bylaw ~~Approval~~ Authority Application Form



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## 6. Assessment against the assessment criteria

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

Capacity:

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Stability, scour and erosion risk:

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Access for inspection and maintenance purposes:

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Water quality:

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Duration of ~~authority~~ approval sought

Proposed start date:

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Proposed end date:

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Signed

---

Dated

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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.