

REPORT

TO: Chief Executive
FOR: Council Meeting – 14 February 2018
FROM: Asset Manager – Water Services
DATE: 5 February 2018
SUBJECT: **Stormwater and Drainage Bylaw 2018**

1. RECOMMENDATION

That the Council:

- (a) Approve the adoption, for the purposes of public consultation, the attached draft bylaw and corresponding statement of proposal in relation to the draft Selwyn District Council Stormwater and Drainage Bylaw (the "Draft Bylaw").**
- (b) Use the special consultative procedure in respect of the draft Selwyn District Council Stormwater and Drainage Bylaw in accordance with Section 156(1) of the Local Government Act 2002 (the "Act").**
- (c) Appoint a sub-committee consisting of Councillors X and Y and supported by Council Staff ("Sub-Committee") to consider submissions on the Draft Bylaw and report back to Council at the 18 April 2018 Council meeting for adoption of the Draft Bylaw.**

2. PURPOSE

The purpose of this report is to:

- a) Present the Draft Bylaw for consideration and seek Council approval of the special consultative procedure necessary to adopt the Draft Bylaw.
- b) Recommend the appointment of the Sub-Committee supported by Council staff to hear and consider any submissions made on the Draft Bylaw.

3. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

The intention to adopt the Draft Bylaw has been assessed against the Council's Significance and Engagement Policy. The Draft Bylaw has been determined as being of significant interest to the public as it potentially affects a strategic asset (being the Council's stormwater and land drainage network). It is therefore

appropriate to adopt the special consultative procedure in relation to the Draft Bylaw.

4. HISTORY/BACKGROUND

At the Council Meeting 11 June 2008. resolution 20080611_002 was made to accept the revocation of the current County of Ellesmere Bylaw 1944 (Land Drainage).

At the Council meeting 22 June 2016. resolution 20160622_016 was made to prepare a Stormwater and Land Drainage Bylaw for consultation.

Moved – Councillor Barnett /Seconded – Councillor Hasson

‘That the Council approves the:

(a) Adoption of the new Land Drainage Spoil Removal Policy managed by the land drainage committees,

(b) Update of the Selwyn District Council Policy Manual, and

(c) Preparation of a Stormwater and Land Drainage Bylaw for consultation once the following has occurred:

- a. The Osborne Drain consent application is lodged and granted;*
- b. The decision on the Omnibus Plan Change 4 to Environment Canterbury’s Land and Water Plan is made; and*
- c. The 7 Global Stormwater discharge consents, which are currently lodged, are granted by Environment Canterbury.’*

CARRIED

Items (a) and (b) are complete. In terms of item (c) the following update is provided:

- The Osborne Drain consent was lodged on 14 September 2016 and was granted on 24 February 2017 – **This item is complete.**
- The Omnibus Plan Change 4 which impacts on the management and operation of reticulated stormwater systems became operative 11 March 2017. Council staff made a submission on this plan change including giving evidence at hearing. – **This item is complete.**
- The seven global stormwater consents have been lodged with Environment Canterbury. – **This item has progressed to a point where the preparation of the Bylaw can progress.**

5. PROPOSAL

The proposal is to adopt the Draft Bylaw.

6. OPTIONS

As part of the special consultative procedure, a statement of proposal and Summaries of Information for the Bylaw need to accompany the release of the Draft Bylaw detailing the nature, reasons, statutory requirements, benefits/costs, options, and the consultation and submissions process pertaining to the Draft Bylaw. This enables the public to be fully informed about the process leading to the final adoption of the Draft Bylaw. The statement of proposal for the proposed Bylaw is attached to this report (Appendix Four).

The statement of proposal details the options available to Council in reviewing the Bylaw.

Options Available to Council

1. Do Nothing – The Council has responsibilities to protect the Council's drainage systems from damage and to prevent nuisance from poorly maintained drainage systems. This option is not supported.
2. Rely on other methods (public education) – Council does not see this option as being practical. The Council would have no statutory authority to protect the public asset and would have to rely on the co-operation of several different parties. A number of potential environmental problems may also arise in respect of wastewater drainage. Clear rules about what is permitted, and the penalties for a breach of such rules, will be required. This option is not supported.
3. Establishment of a new bylaw – The implementation of a new bylaw will ensure that all parties are aware of their responsibilities in terms of current management and the operation of best practices. A bylaw is considered necessary because of the potential damage to Council infrastructure and the health and safety of Council staff and the general public.

The statement of proposal has been prepared on the basis that Council wishes to proceed with **Option 3: Proceed with the establishment of the Bylaw.**

Proposed Timeline for Consultation

Consultation on the Draft Bylaw will be carried out as follows:

Timeline	Selwyn District Council Stormwater and Drainage Bylaw
14 February 2018 (Council meeting)	Adoption of the Draft Bylaw for consultation.
21 February 2018 Bylaw advertised	Advertise for public submissions to the Draft Bylaw.
21 March 2018 Submissions close	Written submissions on Draft Bylaw close at 4:00pm at the Council's service centres.
2/3 April 2018 (to be confirmed) Submissions hearing	Hearings of submissions on the Draft Bylaw by the Stormwater and Drainage Bylaw Sub-Committee at the Selwyn District Council Headquarters, Norman Kirk Drive, Rolleston
18 April 2018 (to be confirmed)	Adoption of the Draft Bylaw at its ordinary Council Meeting

Timeline	Selwyn District Council Stormwater and Drainage Bylaw
(Council Meeting)	
25 April 2018 (to be confirmed)	Public notification of the adoption of the Draft Bylaw and its commencement date
1 May 2018	Commencement date of the Draft Bylaw.

7. VIEWS OF THOSE AFFECTED/CONSULTATION

a) Views of those affected

The general public will be invited to make submissions on the Draft Bylaw. Specific groups and organisations who are identified by the Council as being directly impacted or relevant to the Draft Bylaw will be invited to make submissions directly to Council.

b) Consultation

Public consultation on the Draft Bylaw will be undertaken between 21 February 2018 and 21 March 2018.

Public notification of the Draft Bylaw and calls for submissions will be advertised via:

- public notices in the Press;
- Council Call;
- The Council website;
- and other local community papers,

The above public notification measures are considered appropriate.

On receipt of submissions on the Draft Bylaw, the Sub-Committee supported by Council staff will convene to consider and hear the submissions made on the Draft Bylaw. Based on these deliberations, the Draft Bylaw will be amended as necessary and reported to Council.

c) Maori implications

A copy of the Draft Bylaw was provided to Te Taumutu Rūnanga on the 28 November 2017 to seek feedback and inform the Rūnanga of the bylaw review process prior to bringing this report to Council. The Council has not yet received any direct feedback from Te Taumutu Rūnanga on the Draft Bylaw.

The Council considers that the public notification and opportunity for submission process will provide appropriate opportunity for Māori contribution to the decision making process. Local Rūnanga will be directly notified of this consultative process.

8. RELEVANT POLICY/PLANS

Council policies and plans have been considered as part of the review process and no inconsistencies have been identified.

9. COMMUNITY OUTCOMES

The preparation of the Draft Bylaw promotes the following key community outcomes under the Council's Long Term 2015/2015 Plan:

- a clean environment;
- a prosperous community; and
- a rural district.

10. NEGATIVE IMPACTS

The Bylaw are unlikely to negatively impact on the community as a whole or on the Council activities and will assist in the long term sustainable management of Councils wastewater schemes.

11. LEGAL IMPLICATIONS

Under section 155 of the Act, a local authority must, commencing the process to review a bylaw, consider the following three questions:

a) Is a bylaw the most appropriate way to deal with the perceived problems arising from Stormwater and Drainages?

Staff consider that the Bylaw is the most appropriate way to deal with stormwater and drainage issues because, while the Council has a number of wide ranging and general powers in relation to stormwater and drainage management in the Selwyn District under the LGA and the Local Government Act 1974:

- there remain a number of matters of clarification and definition that can, and should, be provided by the Draft Bylaw; and
- a number of stormwater and drainage matters are not addressed by the LGA and the Local Government Act 1974, including:
 - the terms on which the Council may consent to a stormwater service connection;
 - protection of the public stormwater system;
 - maintenance of private systems;
 - removal of redundant private systems;
 - boundary of responsibility between public and private systems; and
 - ability of the Council to recover fees and charges.

b) Is the Draft Bylaw in the most appropriate form to deal with Stormwater and Drainages?

For similar reasons, staff consider that the Bylaw is the most appropriate form of bylaw to deal with stormwater and drainage.

c) Does the Draft Bylaw give rise to any issues arise under the New Zealand Bill of Rights Act ("NZBORA")?

Section 155(2)(b) of the LGA requires that any Bylaw not be inconsistent with the NZ Bill of Rights Act 1990. The Council has obtained legal advice confirming that the Bylaw is consistent with NZBORA.

12. FUNDING IMPLICATIONS

There are not expected to be any operational or capital costs to the Council as a result of adopting the Draft Bylaw.

13. HAS THE INPUT/IMPACT FROM/ON OTHER DEPARTMENTS BEEN CONSIDERED?

The Draft Bylaw have been developed by the Asset Manager – Water Services in conjunction with other Council Staff, the District Land Drainage Committee and Council's Solicitors (Buddle Findlay).



MURRAY ENGLAND – ASSET MANAGER – WATER SERVICES

ENDORSED FOR AGENDA



MURRAY WASHINGTON – ASSET MANAGER

APPENDIX ONE
APPENDIX TWO
APPENDIX THREE

County of Ellesmere Bylaw 1944 (Land Drainage)
The Draft Bylaw
Statement of proposal

APPENDIX ONE

County of Ellesmere Bylaw 1944 (Land Drainage)

County of Ellesmere

BY-LAWS

RELATING TO

Drains, and Crossings over
Watercourses and Drains.

Leeston:
The Ellesmere Guardian,
1944

County of Ellesmere

SPECIAL ORDER

UNDER the authority of "The Counties Act, 1920," and "The Land Drainage Act, 1908" and its Amendments, the Council of the County of Ellesmere doth hereby make and ordain the following by-laws relating to drains and to crossings over watercourses and drains within the said County:—

1. IN the construction of these By-laws the words and expressions following shall have the meanings hereby assigned to them respectively, that is to say—

"County" means the County of Ellesmere constituted under "The Counties Act, 1920."

"Council" means the Council of the said County, constituted as aforesaid.

"Drain" and "Watercourse" shall have the respective meanings prescribed in Section 2 of "The Land Drainage Act, 1908."

"Crossing" includes a bridge or culvert or other thing placed or built across a drain or watercourse.

"Owner" includes the owner of land through which a watercourse or drain runs or land on the banks of any watercourse or drain running upon a road where such road fronts the land of such owner.

2. THE control of any drain constructed by the Council or over which the Council has exercised management or control shall remain with the Council.

3. THE conditions on which any other constructed drain or drains, whether public or private, may be connected with any constructed drain so under the control of the Council, and the continuance of the connection of any drain or drains shall be determined by resolution of the Council in respect of any such connection.

4. THE conditions so imposed may include the payment to the Council of such annual or other charges by way of contribution to the cost of the construction maintenance or extension of the constructed drainage-system under the control of the Council as the Council may determine by resolution.

5. THE owner of any crossing existing at the date hereof over any drain or watercourse shall at his own expense maintain the said crossing and keep the same in good condition and state of repair to the satisfaction of the Council.

6. NO new crossing shall be placed or constructed over any drain or watercourse without the prior consent of the Council. If any person shall wish to erect any such new crossing he shall first make application to the Council in writing for permission to do so and in such application shall give the specifications of the crossing he proposes to erect. Upon such permission being given by the Council such person shall erect such crossing to the satisfaction of the Council.

7. THE Council may by notice in writing to the owner delivered either personally or by registered post addressed to the last known place of address of such owner requiring such owner within the time stated in such notice (being not less than two weeks after the date of the delivery of such notice) to effect such repairs or renewal of any crossing as may seem to the Council to be reasonably required to ensure the safety of the public and/or the proper functioning of any drain or watercourse. If such owner shall fail to effect such repairs or renewal within the time so specified then it shall be lawful but not obligatory upon the Council to do and effect the same and in this case all costs and expenses incurred by the Council in so doing shall be deemed to be a debt due by such owner to the Council and the Council may sue for and obtain judgment for such debt forthwith without any prior notice or demand.

8. IF the Council shall widen any existing drain or watercourse running upon a road and thereby make the existing crossing inadequate, then, either the owner may give to the Council notice in writing that he requires a new crossing to be built, or the Council may give notice in writing to the owner (delivered either personally or by registered post addressed to his last known place of address in New Zealand) that the Council proposes to build a new crossing, and in either of such cases and within three calendar months thereafter the Council will erect a new crossing and the owner shall bear

such proportion of the cost of such new crossing as the Council may determine but not more than half of such cost and the Council may sue for and obtain judgment against the owner for his proportion of such cost without any prior notice or demand.

9. ANY person committing a breach of any of these By-laws shall for each offence forfeit and pay a penalty not exceeding £10.

10. IN addition to the penalties hereby imposed for breaches of these By-laws, the Council may sue for and recover from any person the amount of damage done or caused by such person (including the cost of any work done by the Council) by reason of the failure of such person to comply with the provisions of these by-laws.

THE Resolution to make this By-law was passed by the Ellesmere County Council at a Special Meeting of the Council held on the 4th day of October, 1943, and was confirmed at a subsequent meeting of the Council held on the 1st day of November, 1943.



The Common Seal of the Chairman, Councillors, and inhabitants of the County of Ellesmere was hereunto affixed at the offices of and pursuant to a resolution of the County Council on the 1st day of November, 1943, in the presence of

A. ANDERSON. Chairman.

ROBT. T. McMILLAN, Deputy Chairman.

J. McALLISTER, County Clerk.

APPENDIX TWO

The Draft Bylaw

Selwyn District Council Stormwater and Drainage Bylaw 2018

The Selwyn District Council makes the following bylaw pursuant to sections 145(a) and (b) and 146(b) of the Local Government Act 2002.

Explanatory note

This explanatory note does not form part of this bylaw, but is intended to indicate the general effect of the provisions contained in this bylaw.

*The objective of this bylaw is to manage stormwater and drainage within the Selwyn District to protect people, property and the environment. This bylaw applies to both public and private stormwater and land drainage systems (together, the **Stormwater and Drainage Network**).*

Private Stormwater and Drainage Systems are the responsibility of the owner of the land they serve, and each section of a private drain (including a privately piped watercourse) is the responsibility of the owner of the land it passes beside or through. Although Council does not maintain these private drains, Council has powers under the Local Government Act 2002, Local Government Act 1974 and this bylaw to regulate activities that affect the Stormwater and Drainage Network.

This bylaw is in addition to the requirement to obtain Discharge Consents imposed by the Canterbury Regional Council (Environment Canterbury) and the Selwyn District Council under the Resource Management Act 1991. Obtaining the Council's approval under this bylaw does not remove the need to obtain any consents required under the Resource Management Act 1991, the Building Act 2004 or any other Act, regulation or bylaw. Further, approval under this bylaw will not replace or add to existing resource consents or permitted activity status.

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1. TITLE AND COMMENCEMENT

1.1 This bylaw is the Selwyn District Council Stormwater and Drainage Bylaw 2018.

1.2 This bylaw comes into effect on 1 May 2018.

2. APPLICATION OF BYLAW

2.1 This bylaw applies to the Selwyn District.

2.2 Nothing in this bylaw shall limit the application of any other Act, rules or regulations made under any other Act. If there is inconsistency between any provision of this bylaw and the provisions of any other Act, rule or regulation, the more stringent provision applies.

3. PURPOSE

3.1 The purposes of this bylaw is to:

- (a) manage the development and maintenance of the Stormwater and Drainage Network and the land, structures, and infrastructure associated with that network, so as to protect the public from Nuisance and promote and maintain public health and safety;
- (b) protect and prevent interference with the Stormwater and Drainage Network and the land, structures and infrastructure associated with that system from damage, misuse and loss;
- (c) manage the entry of contaminants into the Stormwater and Drainage Network; and
- (d) prevent the unauthorised use of the land, structures or infrastructures related to the Stormwater and Drainage Network.

4. DEFINITIONS AND INTERPRETATION

4.1 For the purposes of this bylaw, unless the context otherwise requires:

- (a) **Act** means the Local Government Act 2002;
- (b) **Approve, Approval or Approved** means the prior written approval of the Council;
- (c) **Buried Services** means all underground parts of the Public Stormwater and Drainage System;
- (d) **Code of Practice** means the latest approved version of the Selwyn District Council Engineering Code of Practice in relation to stormwater and land drainage;
- (e) **Consent** means any formal acceptance or written approval provided by Council or the Canterbury Regional Council including any resource consent or building consent;
- (f) **Council** means the Selwyn District Council or any person delegated or authorised to act on its behalf;

- (g) **Discharge** means the discharge of Stormwater, groundwater or other substances into the Stormwater and Drainage Network whether directly or indirectly;
- (h) **Disconnect or Disconnection** means to sever or terminate a physical connection to the Public Stormwater and Drainage System;
- (i) **Drain** has the same meaning as in section 2 of the Land Drainage Act 1908;
Explanatory note: Section 2 of the Land Drainage Act 1908 defines drain as including "every passage, natural water course or channel on or under ground through which water flows continuously or otherwise, except a navigable river, but does not include a water race as defined in section 58 thereof"
- (j) **Fees and Charges** means the fees and charges determined by the Council from time to time in accordance with the Act and the Local Government (Rating) Act 2002 for the services provided by the Council associated with the management and Discharge of stormwater and land drainage;
- (k) **Hazardous Substance** means a substance that is hazardous for the purposes of the Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001;
- (l) **Manager** means a person who controls or manages any premises, or any activity on any premises, or operates a part of the Stormwater and Drainage Network on the premises, regardless of whether that person has a proprietary interest in those premises or that activity or that part of the Stormwater and Drainage Network;
- (m) **Material** includes, but is not limited to:
 - (i) hazardous materials;
 - (ii) contaminants;
 - (iii) building material;
 - (iv) structures and equipment;
 - (v) fill material, including soil or sand;
 - (vi) vegetation;
 - (vii) collected debris; and
 - (viii) litter;
- (n) **Nuisance** has the same meaning as section 29 of the Health Act 1956 and in the context of this bylaw includes, but is not limited to:
 - (i) a person, thing, or circumstance causing distress or annoyance or unreasonable interference with the peace, comfort, or convenience of another person;
 - (ii) danger to life;
 - (iii) danger to public health;
 - (iv) flooding of any building floor or sub-floor, or public roadway;

- (v) damage to property;
- (vi) an effect on the efficient operation of a Stormwater and Drainage Network;
- (vii) damage to any part of the Stormwater and Drainage Network;
- (viii) erosion or subsidence of land;
- (ix) long or short term adverse effects on the environment;
- (x) adverse loss of riparian vegetation;
- (xi) wastewater overflow to land or water; or
- (xii) anything that causes a breach of a Consent condition binding Council;
- (o) **Occupier**, in relation to any Premises, means the person occupying that Premises;
- (p) **Overland Flow Path** means the path over which surface water will follow if the Stormwater and Drainage Network becomes overloaded or inoperative;
- (q) **Owner** means the Person who owns the Premises from which Stormwater originates or on which the Private Stormwater and Drainage System is located;
- (r) **Person** means a natural person, corporation or a body of persons whether corporate or otherwise and includes the Crown or any successor of a person;
- (s) **Premises** means:
 - (i) a property or allotment which is held under a separate certificate of title or for which a separate certificate of title may be issued and in respect to which a building consent has been or may be issued;
 - (ii) a building that has been identified as an individual unit by a cross-lease, unit title or company lease and for which a certificate of title is available;
 - (iii) land held in public ownership (e.g. reserve) for a particular purpose; or
 - (iv) an individual unit in a building which is separately leased or separately occupied;
- (t) **Private Stormwater and Drainage System** means any component of the Stormwater and Drainage Network that drains water from Premises to a receiving environment or up to the point of Service Connection with the Public Stormwater and Drainage System and includes pipes, gutters, downpipes, sumps, swales, drains, Overland Flow Path, stormwater treatment devices, rain water tanks and any Stormwater and Drainage Management Device;
- (u) **Public Drain** means any passage, channel, or pipe, over or under the ground by which Stormwater or groundwater is conveyed and which is under the control of the Council;
- (v) **Public Stormwater and Drainage System** includes:
 - (i) any Drain that is a Public Drain;
 - (ii) any Drain on or in a road or on public land;

- (w) **Service Connection** has the same meaning as in the Act;
- (x) **Sewage** is the Discharge from any sanitary fixtures or appliances;
- (y) **Stormwater** in the context of this bylaw means any water which enters directly (via pipe or Drain) or overland to the Stormwater and Drainage Network from land, including from constructed impervious areas such as roads, pavements, roofs and urban areas;
- (z) **Stormwater and Drainage Management Plan** means a plan prepared in accordance with clause 5.8;
- (aa) **Stormwater and Drainage Management Device** means a device or facility used to reduce or manage stormwater runoff volume, flow and or contaminant loads prior to Discharge and includes, but is not limited to:
 - (i) swales;
 - (ii) infiltration basins;
 - (iii) infiltration trenches;
 - (iv) rain gardens;
 - (v) wetlands; and
 - (vi) wetponds;
- (bb) **Stormwater and Drainage Network** means a set of facilities and devices, either natural or man-made, which are used to convey groundwater and stormwater, reduce the risk of flooding and/or to improve water quality and includes:
 - (i) open Drains and watercourses, Overland Flow Paths, inlet structures, pipes and other conduits, manholes, chambers, traps, outlet structures, pumping stations, treatment structures and devices;
 - (ii) the Public Stormwater and Drainage System; and
 - (iii) the Private Stormwater and Drainage System;
- (cc) **Trade Waste** means any liquid with or without matter in suspension or solution Discharged to the sewerage system in the course of any trade or industrial process or operation, or in the course of any activity or operation of a like nature and may include condensing or cooling water, stormwater which cannot be practically separated from wastewater or domestic Sewage;
- (dd) **Watercourse** has the same meaning as section 2 of the Land Drainage Act 1908; and
Explanatory note: Section 2 of the Land Drainage Act 1908 states: "watercourse includes all rivers, streams, and channels through which water flows"
- (ee) **Working Day** means any day of the week other than:
 - (i) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day;

- (ii) a day in the period commencing the 25th day of December in a year and ending with the 2nd day of January in the following year;
- (iii) if 1 January falls on a Friday, the following Monday;
- (iv) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- (v) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.

4.2 Unless the context requires another meaning, a term or expression that is defined in the Act and used, but not defined, in this bylaw has the meaning given by the Act.

4.3 Defined terms expressed in the plural have the same substantive meaning as those expressed in singular form.

4.4 Explanatory notes have been included for information purposes only. They do not form part of this bylaw, and may be made, amended, or revoked without formal process.

5. USE, CONSTRUCTION OR ALTERATION OF THE STORMWATER AND DRAINAGE NETWORK

5.1 Use of a Public Stormwater and Drainage System

No person may make any connection to, or otherwise alter, modify, or interfere with, any part of the Public Stormwater and Drainage System without Approval.

5.2 Acceptance of Discharge

The Council may grant Approval to Discharge water to the Public Stormwater and Drainage System if all of the following conditions are met:

- (a) the Premises is located within an area in which the Council makes Public Stormwater and Drainage System Service Connections available;
- (b) the Premises is located within a service area which is serviced by the Public Stormwater and Drainage System that has been designed to receive the Discharge;
- (c) there is sufficient capacity within the Public Stormwater and Drainage System, or, if the capacity is not sufficient:
 - (i) the Public Stormwater and Drainage System will be upgraded at the cost of the applicant; or
 - (ii) an alternative solution sought (e.g. on-site attenuation up to and including the critical duration event);
- (d) appropriate treatment will be installed if deemed necessary by Council;
- (e) the appropriate rates and charges in respect of that Premises are paid up to date;
- (f) all necessary Approvals are obtained from the Council and the Canterbury Regional Council ;
- (g) provision of a Stormwater and Drainage Management Plan if required by the Council;

- (h) the Owner, Occupier or Manager of the Premises fulfils the requirements of this bylaw the Code of Practice and any relevant Act, Consent, regulation and other bylaw (as applicable); and
- (i) any other reasonable conditions the Council considers appropriate.

5.3 As-Built Plans

As-built plans showing details of all new Service Connections or alterations to the Public Stormwater and Drainage System must be provided to Council within timeframes specified in the Approval. Where Council as-built plans are found or known by the applicant to be incorrect, the applicant must notify the Council.

5.4 Disconnection from the Public Stormwater and Drainage System

- (a) An Owner, Occupier or Manager of a Premises must give seven (7) Working Days' notice in writing to the Council of an intention to Disconnect, whether permanent or temporary, from the Public Stormwater and Drainage System.
- (b) An Owner, Occupier or Manager may only commence works to Disconnect from the Public Stormwater and Drainage System where Approval has been granted.
- (c) Disconnection from the Public Stormwater and Drainage System is at the Owner, Occupier or Manager's cost.

***Explanatory note:** 'relaying any Private Stormwater and Drainage System' is considered a Disconnection where works on a site (e.g. a new dwelling location) require the Stormwater connection to that site to be Disconnected, relayed and reconnected to a Public Stormwater and Drainage System in a new location.*

5.5 Design constraints

All proposed Private Stormwater and Drainage Systems and any proposed alterations to any existing Private Stormwater and Drainage System or any Stormwater and Drainage Device that will be vested in Council, must be designed, constructed and operated in accordance with, if applicable, the:

- (a) Code of Practice;
- (b) relevant Stormwater and Drainage Management Plan;
- (c) Selwyn District Plan;
- (d) Canterbury Land and Water Regional Plan;
- (e) Canterbury Regional Council Erosion and Sediment Control Guidelines;
- (f) Consents relevant to the works; and
- (g) relevant conditions imposed by Council when Approving the works.

5.6 Stormwater and Drainage Management Devices

Council may require the installation and maintenance of a Stormwater and Drainage Management Device for water quality or water quantity reasons. The Owner, Occupier or Manager of a Premises must install and maintain the Stormwater and Drainage Management Device in accordance with the Code of Practice, accepted best practice, Stormwater Discharge Management Plan and Consent (if applicable).

5.7 Consents

- (a) It is an individual property Owner, Occupier or Manager's responsibility to be aware of, and ensure that, all activities undertaken on private property are undertaken in line with the relevant conditions of any Consent.
- (b) Council Approval is required prior to any activity operating under a Canterbury Regional Council resource consent that is held in the Council's name and, in such a case:
 - (i) the applicant must demonstrate to Council that the proposed design and activities on the Premises will comply with the conditions of the relevant resource consent;
 - (ii) the applicant must prepare and the Council must approve a Stormwater and Drainage Management Plan in accordance with clause 5.8(a) before the relevant Discharge commences; and
 - (iii) if, in Council's opinion, the activities undertaken on the property will put at risk Council's ability to comply with Consent conditions, Council may require the applicant to obtain a resource consent from the Canterbury Regional Council in the Owner, Occupier or Manager's own name.

5.8 Stormwater and Drainage Management Plan

- (a) Where a Premises has been identified as presenting a high risk of contamination to the Public Stormwater and Drainage System, the Owner, Occupier or Manager may be required by Council to produce a Stormwater and Drainage Management Plan. These plans shall include:
 - (i) a site layout drawing showing, boundaries, Private Stormwater and Drainage Systems including point of connection to the Stormwater and Drainage Network and building location;
 - (ii) a site assessment identifying all actual and potential sources of contamination;
 - (iii) the methods in place to prevent contamination of the Public Stormwater and Drainage System;
 - (iv) a description of the maintenance procedures in place; and
 - (v) spill prevention and spill response procedures if applicable.

- (b) If the Owner, Occupier or Manager has prepared an alternative plan which addresses those matters set out in clause 5.8(a) above, the alternative plan may be accepted in place of a Stormwater Discharge Management Plan at Council's discretion.
- (c) The Owner, Occupier or Manager must review the Stormwater and Drainage Management Plan if required by Council.

6. PROTECTION OF THE PUBLIC STORMWATER AND DRAINAGE NETWORK

6.1 Prohibited activities

No Person may:

- (a) allow any Material, Hazardous Substance, Sewage or Trade Waste to enter either directly or indirectly (*e.g. via a Private Stormwater and Drainage System*) into the Public Stormwater and Drainage System that causes or is likely to cause a Nuisance;
- (b) allow any Material, chemical or Hazardous Substance likely to cause Nuisance on entering the Public Stormwater and Drainage System to be located so that it is likely to enter a Public Stormwater and Drainage System (*either directly or indirectly*) in any storm event;
- (c) directly or indirectly undertake any action (including allowing any stock to enter an open Drain or Watercourse) that is likely to cause damage to any part of the Public Stormwater and Drainage System or is likely to impact on water quality;
- (d) plant or allow to grow any tree or vegetation in or near any Drain to the extent it causes an obstruction to the Public Stormwater Network;
- (e) restrict Council's access to any part of the Public Stormwater and Drainage System for the purposes of inspection or maintenance; or

***Explanatory note:** this includes erecting any structure, placing any Material, or growing any trees or plants where it could impede access by machinery to clean or upgrade any part of the system.*
- (f) Discharge Stormwater into a water race (as defined in the Act).

6.2 Restricted activities

No Person may, without Approval:

- (a) widen, deepen, infill, divert or otherwise alter any Public Drain;
- (b) erect or construct any bridge, culvert, dam, weir, crossing or other similar structure in or over any Drain or Watercourse that forms part of the Public Stormwater and Drainage System;

***Explanatory note:** Property owners are responsible for installing and maintaining property accessways over Council services including drains and swales. Council must approve all accessway culverts over Council services prior to their installation. Where an existing culvert or lack of culvert causes obstruction to a drain or swale which impacts another property or the road, Council can require it to be upgraded at the property owners cost.*

- (c) remove, adjust, cover or interfere with any structure, or equipment relied on for the operation of any Public Stormwater and Drainage System;
- (d) cause a temporary or permanently sustained excessive load on the Public Stormwater and Drainage System that may cause damage to the Stormwater and Drainage Network;
- (e) undertake any activity which may affect the stability of the bank of an open Drain including spraying or stripping vegetation;
- (f) Discharge water which results in, or has potential to cause, Nuisance to another property or a public road;
- (g) excavate or remove or add additional covering material within one (1) metre of any part of the Public Stormwater and Drainage System;
- (h) Discharge construction dewatering water or swimming pool water such that it enters the Public Stormwater and Drainage System; or

***Explanatory note:** Water Discharge Application forms are available as a PDF document online at www.selwyn.govt.nz*

- (i) construct or locate any structure in, over, through, under or within five (5) metres of any Public Drain including Buried Services.

***Explanatory note:** The setback distances allowed in the Building Act may be less than stated in clause 6.2(i).*

6.3 Buried Services

It is the responsibility of any person proposing to carry out excavation work to obtain the as-built information via *Council or a Council approved third party*. Locating the actual position and depth of Buried Services is the responsibility of the person undertaking the work. The cost of any damage caused to the Buried Services (where the Buried Services were shown in the as-built information) shall be met by the relevant contractor or the person carrying out the excavation.

***Explanatory note:** When excavating and working around Buried Services, due care must be taken to ensure the services are not damaged, and that bedding and backfill is reinstated in accordance with the appropriate Council specification.*

7. OBSTRUCTIONS TO THE STORMWATER AND DRAINAGE NETWORK

7.1 Restricted activities

No person may, without Approval:

- (a) obstruct any part of the Stormwater and Drainage Network in a manner that is likely to cause Nuisance or affect another property owner;
- (b) obstruct any Drain, Watercourse or Overland Flow Path in any way;
- (c) allow Nuisance to occur during a flood event as a result of their action or activity;

- (d) modify or alter a Drain where it affects another property owner without their consent; or
- (e) plant or allow to grow any tree or vegetation in, or near, any Drain to the extent it causes an obstruction.

8. RESPONSIBILITY FOR PRIVATE STORMWATER AND DRAINAGE SYSTEMS

8.1 Maintenance of Private Systems

- (a) Unless the Council Approves otherwise, the cost of maintaining and repairing any Private Stormwater and Drainage System, is the responsibility, as the circumstances require, of:
 - (i) the Owner, Occupier or Manager of a Premises within which the Private Stormwater and Drainage System is located;
 - (ii) if the Private Stormwater and Drainage System is located within a road or a reserve, the Owner, Occupier or Manager of the Premises which is contiguous to that road or reserve; or
 - (iii) if the Private Stormwater and Drainage System is located on or about the common boundary between land in different ownership, the Owners of the land in equal shares.
- (b) The Person(s) responsible for the cost of maintain and repairing the Private Stormwater and Drainage System under clause 8.1(a) must ensure that the Private Stormwater and Drainage System:
 - (i) is maintained in good operating condition, as per the relevant manufacturer's recommendations and Consent conditions, including ensuring that any obstruction to the free flow of water is removed as soon as is reasonably practicable; and
 - (ii) does not cause or contribute to any Nuisance.

8.2 Maintenance of Stormwater and Drainage Management Devices

- (a) The Owner, Occupier, or Manager of a Premises that has a Stormwater and Drainage Management Device must, on request by the Council:
 - (i) provide such information as is required to demonstrate that the Stormwater and Drainage Management Device is operated and maintained to achieve its Approved purpose and not cause Nuisance in a storm event up to the standard specified by the Council or in an operative Consent; and
 - (ii) carry out such works as are required to ensure that the requirements of clause 8.2(a)(i) above are met and any requirements outlined in the Code of Practice or Consent conditions.
- (b) Every person commissioning a Stormwater and Drainage Management Device must:
 - (i) keep a copy of the operations and maintenance manual for the device on the premises and produce a copy of such manual upon request by the Council; and

- (ii) submit copies of the as-built drawings for the Stormwater and Drainage Management Device and the owner's manual to the Council for inclusion in the Council's property file for the premises, if required by Council.

8.3 Deposition of Spoil

- (a) When Council clears, cleans, renovates or improves any part of any Drain whether on private or Council land it may:
 - (i) deposit in the immediate area of the Drain any matter removed from the Drain, in a manner which does not cause a Nuisance; and
 - (ii) if the drain is a private Drain, the Council may charge a fee to the Owner, Occupier or Manager of the Premises to recover the costs of the works.

8.4 Discharging into neighbouring properties

No Person may allow Stormwater to Discharge from their Premises into a neighbouring property via surface flow, other than to the extent to which it would have naturally occurred from pervious areas and from designated Overland Flow Paths.

9. REMOVAL OF A REDUNDANT PRIVATE STORMWATER AND DRAINAGE SYSTEM

- (a) To prevent damage to the Stormwater and Drainage Network, the Council may require the owner of a Private Stormwater and Drainage System to remove or de-commission a Private Stormwater and Drainage System or any part thereof, including any Stormwater and Drainage Management Device, culvert, or stormwater detention pond that has become redundant as part of the primary method of stormwater drainage from a Premise.
- (b) The owner of a redundant Private Stormwater and Drainage System must ensure that the Premises on which the system is located, or was previously located, is restored to the satisfaction of the Council.

10. POINT OF DISCHARGE

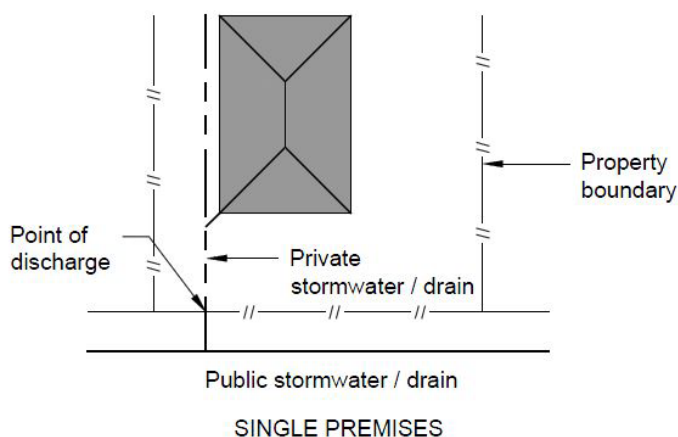
10.1 Boundary of responsibility

- (a) The point of Discharge from a Premises is the point where a Private Stormwater and Drainage System connects to the Public Stormwater and Drainage System. It marks the boundary of responsibility between the Owner, Occupier or Manager of a premises and Council, irrespective of property boundaries, and is shown in figures 1 and 2 below, as applicable.
- (b) Unless otherwise Approved by Council, there shall be only one point of Discharge for each Premises, and any private Drain shall not extend by pipe or any other means to serve another Premises unless it is a common Private Drain and has Council approval.

10.2 Single Premises

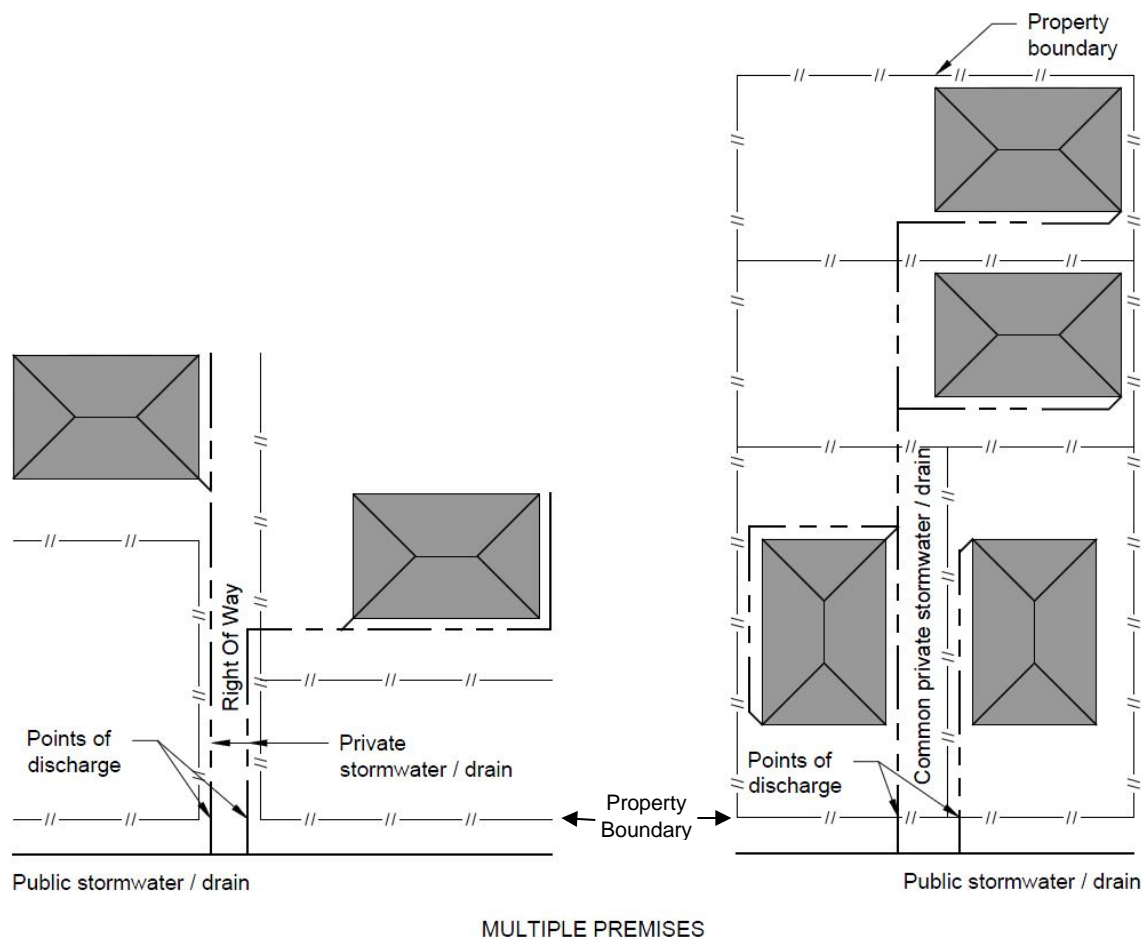
- (a) For a single Premises the point of Discharge shall be located at the boundary as shown in Figure 1 below, or as close as possible to the boundary where fences, walls or other permanent structures make it difficult to locate it at the required position. The Approval of other positions must be by Council and recorded on the drainage plan.
- (b) Where a private piped Drain Discharges into a Public Drain on that same private property, the point of Discharge shall be the upstream end of the pipe fitting which forms the junction with the Public Drain.
- (c) Where a private open Drain Discharges into a Public Drain on that same private property, the point of Discharge shall be the junction where the private Drain meets the Public Drain.

Figure 1 – Single Premises Point of Discharge



10.3 Multiple Premises

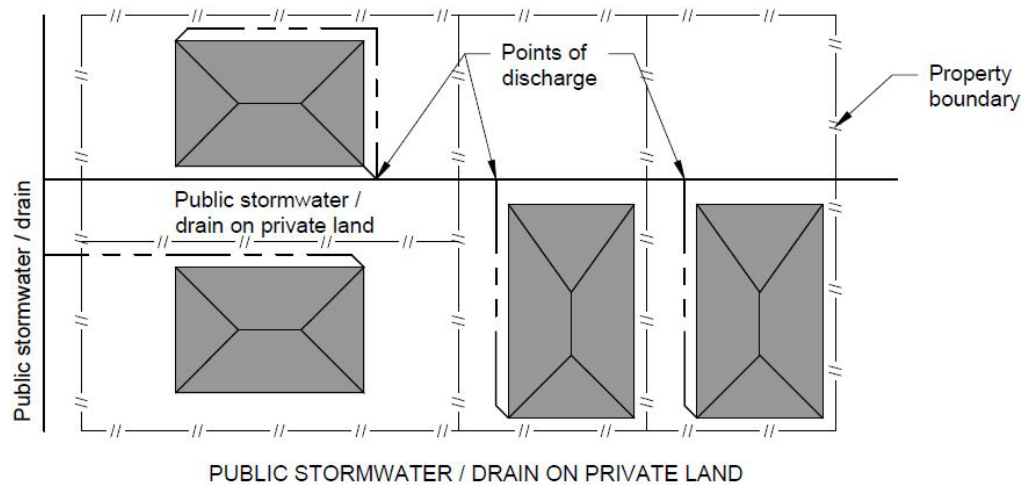
- (a) The point of Discharge for multiple Premises, regardless of land ownership arrangements (e.g. single ownership, body corporate, cross lease or strata title) must either be a direct Service Connection to a Public Drain as for single ownership in clause 10.2 above, or via a common private Drain with one point of Discharge only (*in common*) as shown in Figure 2 below.
- (b) Council may decline approval for the formation of a common private Drain.
- (c) Common private Drains must be subject to a certificate from Council recording the rights of each party, which is registered against the certificate of title.
- (d) Each point of Discharge must be Approved by Council and recorded on the drainage plan. Other arrangements may be considered at the Council's discretion.

Figure 2 – Multiple Premises – Point of Discharge

10.4 Public Drain on Private Property

Where a private Drain Discharges into a Public Drain on that same private property, the point of Discharge shall be the upstream end of the pipe fitting which forms the junction with the public drain or if the Drain is open, the junction where the private Drain meets the Public Drain as shown on Figure 3 below.

Figure 3 – Public Drain on Private Land.



11. OTHER REQUIREMENTS

Compliance with the requirements of this bylaw does not remove the need to comply with the requirements of any enactment, regulations or other bylaw (including, for example, to obtain any Consent, licence, permit or other approvals under any Act, regulation or bylaw).

12. BYLAW ADMINISTRATION

- 12.1 Nothing in this bylaw limits the entitlement of the Council to levy a rate to recover the cost incurred in maintaining the Stormwater and Drainage Network.

13. FEES AND CHARGES

- 13.1 The Council may prescribe fees and charges for a certificate, authority, approval, permit, or Consent from, or inspection by, the Council in respect of a matter provided for in this bylaw in accordance with section 150 of the Act.

14. BREACHES AND REMEDIES

14.1 Breaches of the bylaw

- (a) Every Person commits an offence who -
- (i) fails to do or perform any act, or thing, that he or she is required to do by these bylaws;
 - (ii) permits, allows, or does, any of the acts that are prohibited in this bylaw; or
 - (iii) breaches this bylaw.

14.2 Enforcement

- (a) The Council may use its powers under the Act, the Local Government Act 1974, the Land Drainage Act 1908 and the Health Act 1956 as more particularly set out in the First Schedule to this bylaw.
- (b) Owners, Occupiers and Managers are jointly and individually responsible for compliance with this bylaw.

15. PENALTIES

- 15.1 Every Person who contravenes this bylaw is liable to a penalty not exceeding \$20,000 or other such amount as may be provided for under sections 239 and 242 of the Act and is liable to enforcement action by the Council.
- 15.2 In addition to any penalty imposed by any court for a breach of this bylaw, the Council may sue for and recover from any Person, the cost of damage done or caused to the Stormwater and Drainage Network due to a failure to comply with this bylaw.

16. EXCEPTIONS

- 16.1 A Person is not in breach of this bylaw if that Person proves that the act or omission was in compliance with an approval of the Council.

FIRST SCHEDULE - ENFORCEMENT POWERS AND RELATED LEGISLATION

Legislative Provision	Relevant section and description
Local Government Act 1974	<p>s451 - Council approval is required before commencing any work that requires the diversion, alteration, protection or replacement of any Council drainage works.</p> <p>s459 – The Council may require owners of land in certain cases to provide private drains.</p> <p>s462 – Council may declare a private drain to be a public drain.</p> <p>s467 – Council approval must be obtained prior to connecting any private drain with a public or private drain or covered watercourse.</p> <p>s468 – The Council may require a landowner to remove tree roots obstructing private drains.</p> <p>s509 – the Council may purchase, or make and maintain, or enlarge, and from time to time, alter, extend or repair any drainage channel or land drainage works in any drainage area in the district.</p> <p>s511 – removal of obstructions from a drainage channel or watercourse (to a distance not exceeding 3 metres from the nearest margin of the drainage channel or watercourse) which impedes, or are likely to impede the free flow of water.</p> <p>Schedule 14 – provisions as to the construction and maintenance of waterworks, drainage works and drainage channels on private property.</p>
Subpart 2 of the Local Government Act 2002	<p>s162 – Injunctions restraining commission of offences and breaches of bylaws.</p> <p>s163 – removal of works in breach of bylaws.</p> <p>s164 – seizure of property not on private land.</p> <p>s165 – seizure of property from private land.</p> <p>s168 – power to dispose of property seized and impounded.</p> <p>s171 – general power of entry on to private land.</p> <p>s172 – power of entry for enforcement purposes.</p> <p>s175 – power to recover for damage by wilful or negligent behaviour.</p> <p>s176 – costs of remedying damage arising from breach of bylaw.</p> <p>S178 – enforcement officers may require certain information.</p>
Subpart 3 of Local	183 – removal of fire hazards.

Government Act 2002	<p>185 – occupier may act if owner of premises makes default.</p> <p>186 – local authority may execute works if owner or occupier defaults.</p> <p>187 - recovery of cost of works by local authority.</p> <p>188 – liability for payments in respect of private land.</p>
Health Act 1956	34 – power to abate nuisance without notice
Land Drainage Act 1908	<p>23 – Council may make drains from private lands and attribute costs between the benefitting parties.</p> <p>26 – Prohibits interference with drains (including and private drains to watercourses).</p> <p>27 – Council may require the removal of trees that affects, or is likely to affect any public drain and recover the cost of such removal from the landowner.</p> <p>62 – Council may order removal of obstruction from watercourse or drain (to a distance not exceeding 3m from the nearest margin of watercourse or drain) which impedes, or is likely to impede the free flow of water or cause damage to any property in the district.</p>

APPENDIX THREE

STATEMENT OF PROPOSAL



STATEMENT OF PROPOSAL FOR THE REVIEW OF THE SELWYN DISTRICT COUNCIL STORMWATER AND DRAINAGE BYLAW

**(This statement is made for the purposes of sections 83 and 86
of the Local Government Act 2002)**

Nature of the Proposal:

This is a statement of proposal by the Selwyn District Council (the "**Council**") to make the Selwyn District Council Stormwater and Drainage Bylaw 2018.

Reasons for this Proposal:

The Proposal is that the Council make the Stormwater and Drainage Bylaw 2018 in the attached form (the "**Draft Bylaw**").

The implementation of the Draft Bylaw will ensure that all parties are aware of their responsibilities in terms of current management and the operation of best practices. A bylaw is considered necessary because of the potential damage to Council infrastructure and the health and safety of Council staff and the general public.

It is considered that the attached Draft Bylaw is the most appropriate form of bylaw and is consistent with the New Zealand Bill of Rights Act 1990.

Statutory requirements for making a bylaw:

(a) Appropriateness

The Draft Bylaw has been determined to be the most appropriate mechanism to control the stormwater and drainage network within the Selwyn District. The Draft Bylaw will:

- ensure that stormwater and drainage in the Selwyn District is managed in a way that is appropriate for both the community and the wider environment;
- set clear guidelines and provide information to the public;
- ensure consistency and clarity for persons using or affected by the stormwater and drainage infrastructure; and
- protect Council infrastructure from damage and misuse.

(b) NZ Bill of Rights:

Section 155(2)(b) of the Act requires that any new or reviewed bylaw must be consistent with the NZ Bill of Rights Act 1990. Council has obtained legal advice to ensure that the Draft Bylaw is consistent with the NZ Bill of Rights Act 1990.

The Draft Bylaw is being processed in a democratic manner by the Council by publicly notifying its intentions, the taking and hearing of submissions from the public and the final consideration of the Draft Bylaw being made by elected members of the Council.



STATEMENT OF PROPOSAL FOR THE REVIEW OF THE SELWYN DISTRICT COUNCIL STORMWATER AND DRAINAGE BYLAW

**(This statement is made for the purposes of sections 83 and 86
of the Local Government Act 2002)**

(c) Options Available to Council

1. Do Nothing – The Council has responsibilities to protect the Council's drainage systems from damage and to prevent nuisance from poorly maintained drainage systems. This option is not supported.
2. Rely on other methods (public education) – Council does not see this option as being practical. The Council would have no statutory authority to protect the public asset and would have to rely on the co-operation of several different parties. A number of potential environmental problems may also arise in respect of wastewater drainage. Clear rules about what is permitted, and the penalties for a breach of such rules, will be required. This option is not supported.
3. Establishment of a new bylaw – The implementation of a new bylaw will ensure that all parties are aware of their responsibilities in terms of current management and the operation of best practices. A bylaw is considered necessary because of the potential damage to Council infrastructure and the health and safety of Council staff and the general public.

The statement of proposal has been prepared on the basis that Council wishes to proceed with **Option 3: Proceed with the establishment of the Bylaw.**

Benefits and Costs of the Draft Bylaw:

Benefits of the Draft Bylaw include:

- operation of the Draft Bylaw under current legislation and management practices;
- protection of the Council's staff and contractors and the general public;
- addressing all aspects of the stormwater and drainage network including issues arising from legislation and amendments thereto;
- protection of infrastructure from damage and misuse; and
- to assist Council staff in achieving compliance in a fair and straight forward manner.

Costs of the Draft Bylaw:

- The cost of non-compliance with the bylaw (i.e. the cost of a breach of the Draft Bylaw, will be met by those who damage or misuse the asset).

Consultation:

The following groups and organisations (both internal and external stakeholders) will also be consulted on the Draft Bylaw:

- Council Elected Members and Committees;
- Te Taumutu Rununga;
- Adjoining Local Authorities (Christchurch, Waimakariri, Ashburton); and
- Environment Canterbury.

Council staff and the Land Drainage Sub-Committee have provided feedback on the direction of the Draft Bylaw and the matters considered. The views of the public will be sought through the special consultative procedure.

Provide Māori the opportunity to contribute:

The Council considers that the public notification and opportunity for submission process will provide appropriate opportunity for Māori contribution to the decision making process. Local Rūnunga will be directly notified of this consultative process.

The proposed timeline for the introduction of the bylaw is:

The consultation for the proposed Selwyn District Council Stormwater and Drainage Bylaw is being carried out in conjunction with the review of the Selwyn District Council Water Race Bylaw and the Water Supply Bylaw.

Timeline	Selwyn District Council Stormwater and Drainage Bylaw
14 February 2018 (Council meeting)	Adoption of the Draft Bylaw for consultation.
21 February 2018 Bylaw advertised	Advertise for public submissions to the Draft Bylaw.
21 March 2018 Submissions close	Written submissions on Draft Bylaw close at 4:00pm at the Council's service centres.
2/3 April 2018 (to be confirmed) Submissions hearing	Hearings of submissions on the Draft Bylaw by the Stormwater and Drainage Bylaw Sub-Committee at the Selwyn District Council Headquarters, Norman Kirk Drive, Rolleston
18 April 2018 (to be confirmed) (Council Meeting)	Adoption of the Draft Bylaw at its ordinary Council Meeting
25 April 2018 (to be confirmed)	Public notification of the adoption of the Draft Bylaw and its commencement date
1 May 2018	Commencement date of the Draft Bylaw.

Submissions:

Submissions are invited on the Draft Bylaw to be called the "**Selwyn District Council Stormwater and Drainage Bylaw 2018.**"

At its meeting on 14 February 2018 the Council passed a resolution approving the Draft Bylaw for the purposes of public consultation through the special consultative procedure prescribed in the Act.

The Draft Bylaw can be viewed (and is downloadable in PDF format) on our website www.selwyn.govt.nz. Hard copies are also available during ordinary office hours at the Selwyn District Council Service Centres in Darfield (Darfield Service Centre, South Terrace), Leeston (Leeston Library, High Street), Lincoln (Lincoln Service Centre, Gerald Street) and Rolleston (Norman Kirk Drive, Rolleston).

Copies can also be requested by phoning 347 2800.

Submissions on this proposal may be made until **4:00pm, 21 March 2018.**

Submissions on this proposal can be made either via the online submission form on the Council website www.selwyn.govt.nz, or in writing. In order for a submission to be accepted it must state:

- your name, postal address, phone or fax and e-mail address;
- whether you support or oppose the proposal or particular aspects of it;
- your reasons;
- any changes that you wish us to make;
- whether you wish to speak at a hearing; and
- signed (if posted or faxed) and dated.

Submissions in writing shall be addressed to:

Alicia Paulsen
Proposed Stormwater and Drainage Bylaw
Selwyn District Council
P O Box 90
ROLLESTON 7643

Or similarly faxed to (03) 347 2799.

On receipt of your submission, Council will send an acknowledgement that your submission has been received.

Any person making a submission may request to be heard in person in support of their submission. If required, the **hearing will be held on 2 and 3 April 2018 at 9 am** in the Rolleston Service Centre, Norman Kirk Drive, Rolleston. These details will be further confirmed in advance of any hearing as required.

For more information please contact Alicia Paulsen, Water Services Support Planner, 03 347 2800.

Related documents:

- Draft Selwyn District Council Stormwater and Drainage Bylaw
- Report to Council