

E mahi ngatahi e pai ake ai te taiao



Working with our communities for a better environment

**BAY OF PLENTY REGIONAL COUNCIL
FLOODWAY AND DRAINAGE
BYLAW 2008
for adoption on 19 June 2008**

Bay of Plenty Regional Council Floodway and Drainage Bylaw 2008

The Common Seal of the Bay of Plenty Regional Council was hereunto affixed to this Certified True Copy of the Bylaws duly made pursuant to a resolution of the Council dated 19 June 2008.

.....
Chief Executive

These Bylaws came into force on 1 July 2008

Explanatory Note

This note does not form part of the Bylaw.

Bylaws are necessary for the security and efficient operation of flood protection and drainage schemes. The Bylaws are established to protect the scheme assets that have been constructed to prevent damage, danger and distress to the community from river flooding and problems associated with a lack of drainage. It is crucial that these assets are functioning properly when needed.

This Bylaw does not apply to any privately owned/managed drainage or flood protection systems or those that are managed by other local authorities.

The Bay of Plenty Regional Council Floodway and Drainage Bylaw 2002 was prepared under the Local Government Act 1974 for the protection of community assets such as drainage works and defences against water, which are owned or are under the control of the Bay of Plenty Regional Council. The Local Government Act 2002 requires that all Bylaws adopted prior to July 2003 be reviewed or renewed before 1 July 2008. This "Bay of Plenty Regional Council Floodway and Drainage Bylaw 2008" is the amended and renewed version resulting from that review, and was adopted by Council on 19 June 2008.

The Bylaw consists of two parts. The Bylaws specified in Part I apply to all river and drainage schemes in the region (that are managed by Environment Bay of Plenty), including the Rangitaiki Drainage District, utilising section 149 of the Local Government Act 2002. The set of Bylaws identified in Part II apply only to the Rangitaiki Drainage District, utilising section 517 of the Local Government Act 1974, as well as section 149 of the Local Government Act 2002.

While the purpose of this Bylaw is asset protection, the Bay of Plenty Regional Council will follow good environmental practice in its application.

Compliance with these Bylaws does not remove the need for activities to also comply with the Resource Management Act 1991 and the requirements of regional and district plans.

Regulation of any adverse effects on the environment, of the construction or modification of drainage works and defences against water is provided by the Regional Water and Land Plan, which has been prepared under the Resource Management Act 1991.

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Bay of Plenty Regional Council Bylaw 2008

The Bay of Plenty Regional Council, pursuant to the powers contained in the Local Government Act 1974 and Local Government Act 2002, makes the following Bylaw:

Title

This Bylaw shall be known as the Bay of Plenty Regional Council Floodway and Drainage Bylaw 2008.

Commencement

This Bylaw shall come into force on the 1st day of July 2008

1 Purpose

The purpose of the Bylaw is to control and protect drains, pumping stations defences against water, rivers edge protection works and floodways belonging to or under the control of the Bay of Plenty Regional Council.

2 Definition of Terms

This Bylaw applies to drains, pumping stations, defences against water, rivers edge protection works and floodways owned by or under the control of the Bay of Plenty Regional Council.

Unless the context otherwise requires:

- Words importing the singular include the plural and vice versa;
- Words applying to any person include any body of persons, whether incorporated or not.
- References to a statute or section of a statute are also references to statutes or sections of statutes which amend or replace them.

“**Authority**” means any licence, permit or consent issued by the Council in respect of the requirements of this Bylaw.

“**Bund**” means a barrier or embankment constructed near or alongside a river or drain to contain and prevent high flows flooding onto adjacent land. A bund is not designed or constructed to provide a specific level of service in terms of flood protection and can be the result of river or drain dredging and piling of dredging alongside the river or drain.

“**Construct**” includes alter, reconstruct, extend, remove and demolish.

“**Council**”

- (a) means the Bay of Plenty Regional Council; and
- (b) includes any person duly authorised by the Council to exercise any of the powers conferred upon the Council by this Bylaw.

“Crossing”

(a) Is any means by which any vehicle, livestock, or person may go over, through, or under any drain, defence against water, or floodway; and

(b) Includes a bridge, culvert or ford.

“Defence against Water” includes any dam, bund, weir, bank, stopbank, carriageway, groyne, pumping station or reservoir, and any structure or appliance of whatsoever kind which has, or may have the effect of stopping, diverting, controlling, restricting, or otherwise regulating the flow or spread, in or out of a watercourse, of water, including floodwaters, which is developed or retained for the purpose of flood mitigation.

“Discharge” includes emit, deposit, and allow to escape.

“Drain” means a watercourse or channel, either occurring naturally or artificially constructed or a modified watercourse, which is used to either lower the water table or divert water.

“Earthworks” means any activity that exposes, disturbs, places or deposits soil other than routine cultivation of soil up to a depth of 300 millimetres in preparation for sowing grass or crops.

“Excavation” means the removal of soil other than boring or digging of holes up to 1.5 metres in depth for immediate placement of posts or piles, or driving posts or piles.

“Floodgate” means a structure that restricts the direction of flow of water from one drain, stream or river into another part of the same drain, stream or river or another drain, stream or river. Sometimes referred to as non-return valve.

“Floodway” means the land area between the bed of a river or drain and the crest of a stopbank.

“Grass carp” are fish whose scientific name is *Ctenopharyngodon idella*. (See Appendix I for grass carp description).

“Notice” means written notice authenticated and served in accordance with sections 252 and 253 of the Local Government Act 1974.

“Occupier” in relation to any property, means the inhabitant occupier of that property.

“Plant” unless inconsistent with the context includes a tree, shrub or other vegetative growing thing.

“Rangitaiki Floodway” means the floodway shown as Schedule 1.

“Rangitaiki Spillway” means the spillway shown in Schedule 1.

“Spillway” means a passage in or about a hydraulic structure for escape of surplus water.

“Stopbank” means an embankment bordering one or both sides of a river or drainage channel to contain flows. A stopbank is designed and constructed to provide a specific level of flood protection.

“Structure” means any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft.

“Te Rahu Ponding Area” means the area shown as Schedule 2.

“Weir” means a structure within a waterway to elevate water levels and/or control and measure flows within the waterway.

Part I — Bylaws applying to all drains, defences against water and floodways belonging to or under the control of the Bay of Plenty Regional Council (Including the Rangitaiki Drainage District)

3 Application of Part I

Part I of this Bylaw applies to all stopbanks, bank protection works, bunds, crossings, drains, pumps, structures and other scheme assets which are owned by or under the control of the Council.

Part I does not apply to stopbanks, bank protection works, crossings, drains, pumps, structures and other scheme's assets which are not owned by or under the control of the Council.

3.1 Drains

Except with the prior written authority of the Council, no person shall in respect of any drain owned by or under the control of the Council:

- (a) Widen, deepen or otherwise alter any drain.
- (b) Deposit or allow to be deposited in a drain any material that is likely to obstruct the free flow of water.
- (c) Remove or interfere with any device or equipment relating to any drain.
- (d) Connect any pipe, channel or other conduit to any drain.

Explanation: This Bylaw allows the installation of new subsoil drainage pipes providing they are draining land that is already contributing to the receiving drain i.e. no diversion of water may happen without approval.

- (e) Plant, or allow to grow, any shrub, hedge, tree or part thereof on a stopbank or within 12 metres of a drain (measured from the lip of the drain).
- (f) Allow any plant to grow on or in a drain or on the banks of a drain that may impede the flow of water in the drain, or interfere with access along the drain for maintenance or inspection purposes.
- (g) Remove, damage or allow stock to damage any vegetation that has been planted adjacent to a drain, or river bank, or any fence that has been erected to protect that vegetation by Council or its predecessors.
- (h) Construct any structure in any drain or on any bank of a drain or within 12 metres of a drain (measured from the lip of the drain).
- (i) Construct a bridge, culvert or crossing in or over any drain.
- (j) Construct, or form through repeated use, a road or race for the passage of vehicles or stock on a stopbank or within 12 metres of a drain.
- (k) Allow stock access to a drain if, in the opinion of the Council, this is likely to cause damage to the drain or drain banks.
- (l) Undertake any other works that will interfere with the access of Council staff to river and drainage scheme assets.

- (m) Permit any dead stock or any part thereof to be or remain in any drain on that person's property.
- (n) Allow any object or structure to be located within 1.5 metres (vertical) above the normal drain water level.

Explanation: This rule applies to drains and canals that are maintained by the weed cutter boat and/or spray boat that requires a minimum clearance of 1.5 metres beneath obstacles overhanging the drain.

- (o) Damage, interfere with, or allow damage to occur to any drain or drain bank.

3.2 Defences against water

Except with the prior written authority of the Council no person shall, in respect of any defence against water owned or controlled by the Council –

- (a) Widen, raise, lower, reduce in width, or otherwise alter or interfere with any defence against water.
- (b) Damage, interfere with, or allow damage to occur to any defence against water.
- (c) Allow stock to damage or overgraze any defence against water.
- (d) Plant or allow to grow any shrub, hedge, tree or part thereof:
 - (i) On any defence against water,
 - (ii) Within 12 metres of the landward side of any defence against water, or
 - (iii) Between the bank of any watercourse and any defence against water.
- (e) Dump or deposit any thing:
 - (i) On any defence against water, or
 - (ii) Between the bank of any watercourse and any defence against water.
- (f) Remove or interfere with any device, equipment or machinery used or associated with any defence against water.
- (g) Construct any structure:
 - (i) On, in, or through any defence against water,
 - (i) Within 12 metres of the landward side of any defence against water, or
 - (ii) Between the bank of any watercourse and any defence against water.
- (h) Carry out any excavation in, on or between the banks of any watercourse and any defence against water.
- (i) Carry out any excavation, including for building foundations, within 20 metres of any defence against water.

[Note: Excavations in the vicinity of Rangitaiki and Tarawera Rivers has a wider exclusion width – Refer to rule 9.1 below for these rivers]

- (j) Dig a drain or undertake earthworks in or on a stopbank or within 20 metres of the landward toe of a stopbank.

[Note: Excavations in the vicinity of Rangitaiki and Tarawera Rivers has a wider exclusion width – Refer to rule 9.1 below for these rivers]

- (k) Construct any crossing in, over, through, along or under any defence against water.
- (l) Remove, damage or allow stock to damage any vegetation that has been planted adjacent to a river by the Council or its predecessors.
- (m) Adjust or interfere with any pump station or pump station equipment.
- (n) Remove, damage, or allow stock to damage any fence that has been erected by Council, or its predecessors, for the protection of vegetation on a riverbank.
- (o) Construct, or form through repeated use, a road or race for the passage of vehicles or stock on any defence against water.

3.3 Grass Carp

- (a) Catch, take, or harvest or engage in any activity which may reasonably be expected to result in the catching, taking or harvesting of grass carp from any drain, river or floodway owned by or under the control of the Council; or
- (b) Kill, maim, injure or engage in any activity, which may reasonably be expected to result in the killing, maiming or injury of grass carp in any drain, river or floodway owned by or under the control of the Council.

(See Appendix I for grass carp description).

3.4 Stopbanks

Except with the prior written authority of the Council no person shall erect or permit to be erected any stopbank, or defence against water without the prior written authority of the Council.

3.5 Crossings

Every owner and every occupier of land on which any drain crossing is situated, unless the crossing exists for the sole use of the Council, shall keep that crossing maintained to such a standard as will allow the safe passage over the crossing by Council staff and contractors engaged by the Council and their plant, machinery and vehicles.

3.6 Fencing of Drains

The Council may, by written notice, require any owner, and any occupier of land adjoining any drain within the time and in the manner stated in the notice, to erect fencing to prevent livestock entering the drain if, in the opinion of the Council fencing is necessary to protect the drain.

3.7 Access

- (a) The Council may, by a notice conspicuously displayed adjacent to any drain or defence against water prohibit or restrict access to that drain or defence against water if, in the opinion of Council, the restriction or prohibition is necessary to protect the drain or defence against water from damage.
- (b) All fence crossings that would otherwise deny access along the drain margins for Council staff or by contractors engaged by the Council shall have a 3.6 metre wide (minimum) gateway to provide access for maintenance and inspection purposes.

3.8 Obstructions

Every owner and every occupier of land on which any Council owned or controlled drain is situated shall, if required by the Council, remove any tree, plant or other material that obstructs or would be likely by falling or otherwise to obstruct the free flow of water in that drain.

3.9 Pumping Stations

Environment Bay of Plenty has full rights and powers to temporarily shut down pumping stations during high river and/or drain flows if it considered that there is a risk of a seepage failure occurring in the adjoining stopbanks or stopbank foundations.

Explanation: The act of pumping during flood events increases the height difference between the floodwaters contained within stopbanks and the surrounding land. This increases seepage pressures through the stopbank foundations that could lead to a seepage failure of the stopbank structure. Environment Bay of Plenty shall advise pump operators that pumping may resume as soon as practicable once the flood risk has abated.

4 Land Entry

4.1 Inspection

The Council shall have full powers, rights and authorities to enter onto land to inspect any drain or watercourse or installation or to carry out spot spraying activities on drain banks that are owned or controlled by the Council.

Council shall try wherever practicable to give landowners notice prior to entering land to undertake inspection.

4.2 Maintenance works

The Council shall have full powers, rights and authorities, upon giving to the owner or occupier of any land not less than 48 hours prior notice, to enter upon that land for the purposes of carrying out mechanical cleaning and desilting of drains and carrying out minor earthworks and repairs on drains or structures that are owned or controlled by the Council.

Council staff shall try wherever practicable to give landowner notice prior to entering land to undertake maintenance works.

4.3 Surveys

The council shall have full powers, rights, and authorities to enter onto land to survey any drain, watercourse, defence against water and installation that are owned or controlled by the council.

5 Obstruction to officers and contractors

No person whether on private land or not shall unreasonably obstruct or hinder any employee of the Council or any contractor engaged by the Council in the performance of anything which that employee or contractor of the Council is or may be required to do in the discharge of his/her duties and no person shall unreasonably obstruct or hinder any such employee or contractor from bringing onto any land or from operating any drain clearing plant or machinery which is being used or is to be used in the discharge of those duties.

6 Maintenance of Bay of Plenty Regional Council drains by private individuals

Land owners and land users who wish to avoid herbicide use for drain maintenance adjacent to or through their properties may undertake the drain clearance or employ contractors to do so subject to the following conditions:

- (a) Prior written authority of the Council must be obtained.
- (b) Signs are to be erected to clearly mark the areas where chemicals are not to be used. (This may be achieved by landowners erecting simple signs clearly marked 'Chemical Free Area'.)
- (c) The works are to be carried out to a standard specified by the Council.
- (d) If the works are not carried out to the prescribed standard, the Council may give notice of its intention to maintain the drain, and following a period of one week, may carry out the required maintenance using any method it deems efficient including the use of herbicides.

7 Applying for an authority

7.1 Authority

- (a) An application to the Council for authority under this Bylaw shall be made in writing and be accompanied by the prescribed fee (refer Schedule 3 below).
- (b) Any authority under this Bylaw may be granted on such conditions, as the Council considers appropriate. When considering any application for an authority, the Council shall have regard to good environmental practice.
- (c) Every person to whom an authority is granted shall produce that authority for inspection on request by the Council.

7.2 Fees

- (a) The fees and charges specified in the Schedule to this Bylaw shall be paid on demand for the exercise of any authority or function under this Bylaw.
- (b) The Council may in its absolute discretion refund, remit or waive the whole or any part of such fee.

8 Compliance and enforcement

8.1 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) The Council shall not revoke any such authority without giving to the holder a notice in writing which:
 - (i) Sets out the respects in which the holder has contravened or has failed to comply with any condition of the authority, and
 - (ii) If the breach or failure is capable of remedy gives the holder a reasonable time within which to remedy it, and

- (iii) Warns the holder that the Council may revoke the authority if the holder does not either:
- Remedy the breach or failure within the time specified or within such further time as the Council may allow on application to be made within such time is as specified in the notice or
 - Make, within a time to be specified in the notice, a written submission to the Council setting out reasons why the authority should not be revoked.

- On receipt of a request by a holder for further time pursuant to Clause 8.1(b)(iii)(a) or of a submission pursuant to Clause 8.1(b)(iii)(b), the Council, if not immediately willing to grant the further time sought or to accept the submissions made (as the case may be), shall endeavour to negotiate in good faith a settlement with the holder employing a facilitator or mediator for the purpose should either the Council or the holder so require but if within 21 days after the commencement of negotiations no settlement is negotiated the Council may revoke the authority.

8.2 Offence

- (a) Every person commits an offence against this Bylaw who –
- (i) Commits a breach of any of the provisions of this Bylaw.
 - (ii) Causes or permits to be done anything in contravention of this Bylaw.
 - (iii) Omits to do anything required by this Bylaw.
 - (iv) Fails to comply with any written notice served under this Bylaw.

8.3 Notice to Remedy

The Council may, by written notice, require:

- (a) The reinstatement of any drain or defence against water contravening Clauses 3.1(a) or 3.1(c) or 3.1(j) or 3.1(n) or 3.1(o) or 3.2(a) or 3.2(b) or 3.2(c) or 3.2(f) or 3.2(l) or 3.2(n) or 3.2(o) or 9.1(a) or 9.1(b) or 9.3(a) or 9.3(b) of these Bylaws.
- (b) The removal of any obstruction from any drain or floodway by the owner or occupier of the land on which the drain or floodway is situated.
- (c) The disconnection of any pipe, channel or other conduit to any drain contravening Clause 3.1(d) of this Bylaw.
- (d) The removal of any tree, shrub, hedge or plant contravening Clauses 3.1(e) or 3.1(f) or 3.2(d) or 9.2(a) or 9.3(a) of this Bylaw.
- (e) The removal of any structure contravening Clauses 3.1(h) or 3.1(i) or 3.2(g) or 9.2(a) or 9.3(c) of this Bylaw.
- (f) The removal of any crossing contravening Clauses 3.1(i) or 3.2(k) of this Bylaw.
- (g) The maintenance of any crossing by the owner or occupier of the land on which that drain crossing is situated.
- (h) The removal of any material contravening Clauses 3.1(b) or 3.2(e) of this Bylaw.
- (i) The filling of any excavation contravening Clauses 3.1(l) or 3.2(h) or 3.2(j) or 3.2(i) or 9.1(a) or 9.1(b) or 9.2(c) or 9.3(b) of this Bylaw.

Every notice given under this Clause 8.3 may be given to any person described in Clause 8.2 (whether or not prosecution or other enforcement action for breach of these Bylaws is commenced) and shall set out the manner in which the action required is to be undertaken and the time within which it is to be completed.

Where a notice is to be given by the Council to a person for the purposes of Clause 8.3 of these Bylaws, it may be given –

- (a) By delivering it personally to the person; or

- (b) By delivering it at the usual or last known place of residence or business of the person, including by facsimile; or
- (c) By sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person.

If the action so required is not undertaken and completed in the manner and within the time set out in the notice the Council may undertake the necessary work by its staff or by employing contractors and recover the cost of doing so from the person to whom the notice was given.

8.4 Removal of Works

The Council, or any officer or agent of the Council may pull down, remove, or alter any work or any thing created or being in contravention of any provision of this Bylaw and may recover the costs incurred by Council in connection with the pulling down, removal, repair, reinstatement or alteration.

The undertaking of this action shall not relieve any person from liability to any penalty for which that person may be liable by reason of the breach.

Part II — Additional Bylaws Applying to the Rangitaiki Drainage District Only

9 Application of Part II

Part II of this Bylaw applies to stopbanks, bunds, bank protection works, crossings, drains, pumps, structures and other scheme assets in the Rangitaiki Drainage District that are owned by or under the control of the Council.

Part II of this Bylaw does not apply to stopbanks, bunds, bank protection works, crossings, drains, pumps, structures and other scheme assets that are not owned by or under the control of the Council.

9.1 Earthworks

No person shall, without the prior written authority of the Council undertake any of the following activities –

- (a) The digging or maintenance of any drain, or any excavation, including building foundations, within 150 metres from the landward toes of the Rangitaiki River stopbanks:
 - On both riverbanks, where stopbanks are located, from Te Teko to the river mouth.
- (b) The digging or maintenance of any drain or any excavation within 60 metres of the landward toes of the Tarawera River stopbanks;
 - On the true right of the river from the State Highway 30 bridge to the mouth; and
 - On the true left of the river from 800 metres downstream of the Tumurau Lagoon structure to the mouth.

Explanation: The lower reaches of the Rangitaiki and Tarawera Rivers have layers of soils that are susceptible to piping failures beneath the stopbanks during flood events. The purpose of this rule is to minimise the risk of such failures occurring.

9.2 Rangitaiki Floodway

No person shall, without the prior written authority of the Council in respect of the Rangitaiki Floodway –

- (a) Plant any tree or construct any building or structure or deposit any material in the Rangitaiki Floodway that is likely, in the opinion of the Council, to obstruct the free flow of water.
- (b) Remove any vegetation cover from the ground within 20 metres of the spillway structure.
- (c) Carry out any excavation or cultivation within 20 metres of the spillway structure.

9.3 Te Rahu Ponding Area

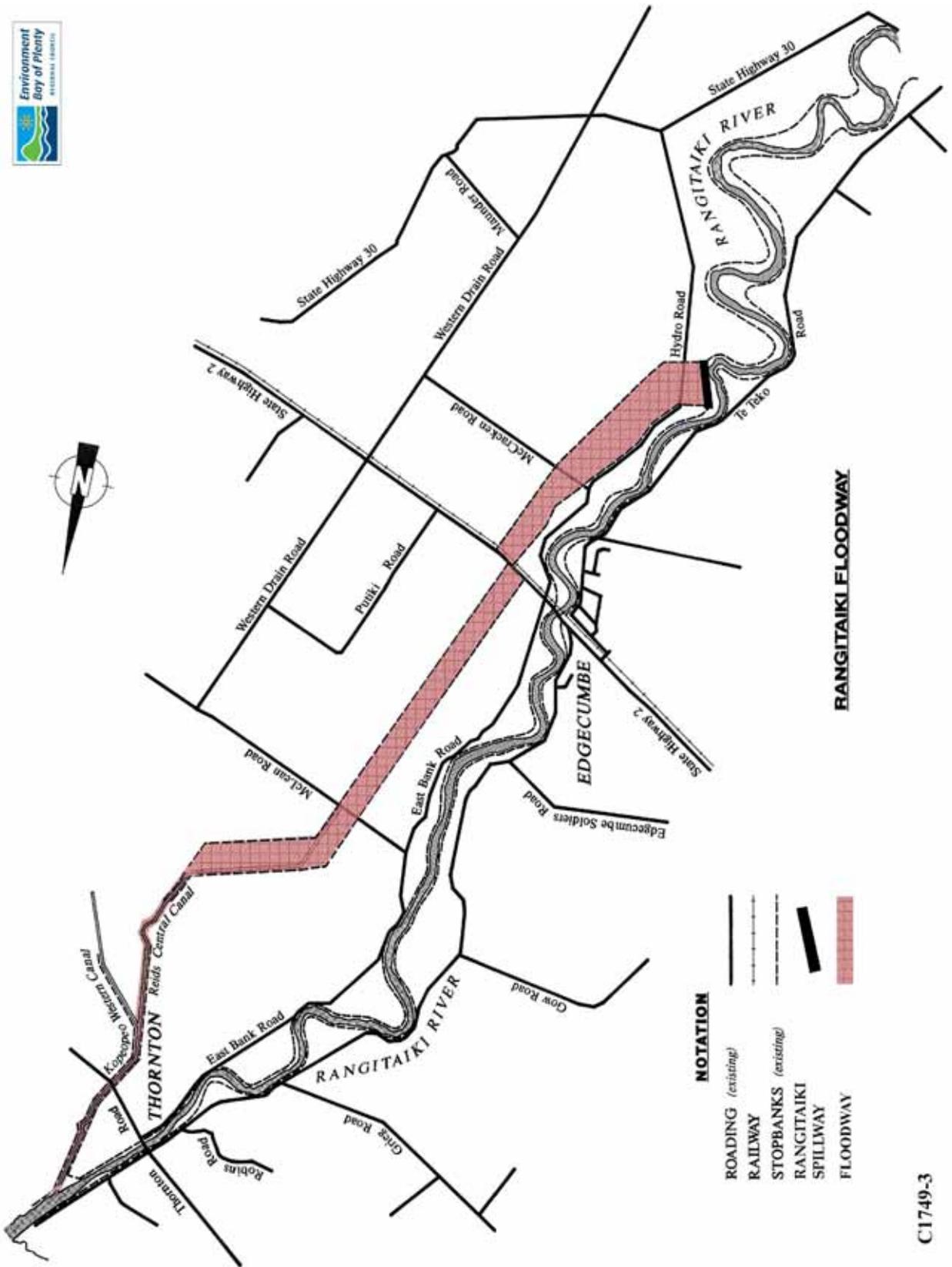
No person shall, without the prior written authority of the Council in respect of the Te Rahu Ponding Area–

- (a) Remove any vegetation cover from the ground within 20 metres of the spillway structure.
- (b) Carry out any excavation or cultivation within 20 metres of the spillway structure.

Explanation: Dwelling within the Te Rahu Ponding Area (refer Schedule 2 map following) are subject to specific minimum floor levels set by Whakatane District Council. Enquire with Whakatane District Council to establish minimum dwelling floor levels in this area.

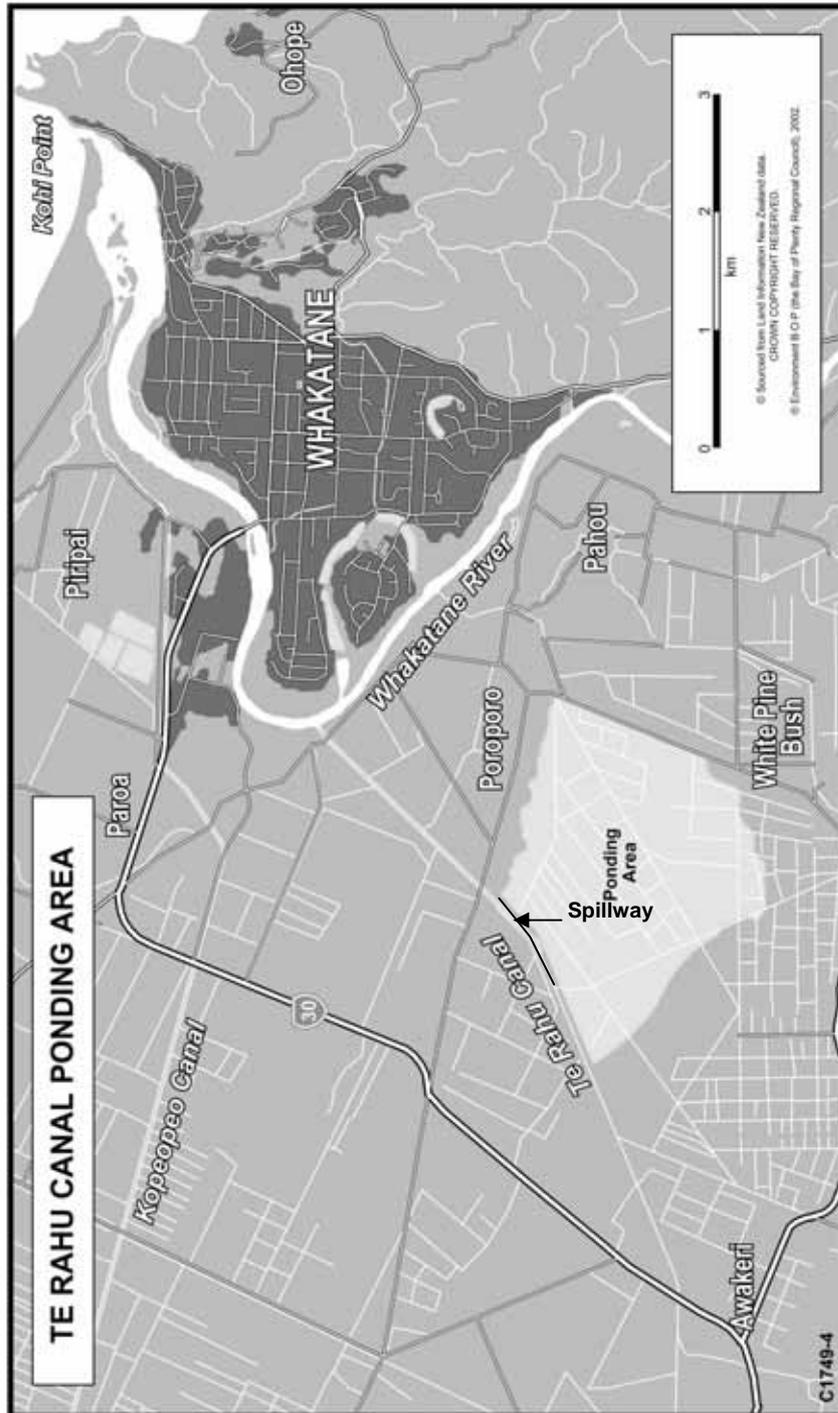
[Note: any farm buildings that are not dwellings will have no controls over floor levels and may be partially inundated by ponded water during flood events.]

Schedule 1 – Rangitaiki Floodway



C1749-3

Schedule 2 – Te Rahu Ponding Area



Schedule 3 – Schedule of Fees

All fees are exclusive of GST.

Standard Authority Fee

For routine authority applications \$150.00

Other Functions or Services

Authority applications that are not routine and require technical investigation (e.g. engineering design and/or surveying) will be recovered at the actual and reasonable cost for staff and vehicles used.

Appendix 1 – Grass carp (*Ctenopharyngodon idella*)



Grass carp are a handsome, robust fish and commonly exceed 500 mm in length.

Their backs are a dark bronze colour, but this gradually fades to silver on the belly. The margins of their large scales are outlined in a darker colour, giving them a crosshatched appearance. Grass carp have no barbells, but can be distinguished from goldfish by the short dorsal fin with only 7–9 rays.