



**GISBORNE
DISTRICT COUNCIL**

**Gisborne District
Floodways and Drainage Bylaw
2008**

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1. Title

This bylaw may be cited as the “Gisborne District Floodways and Drainage Bylaw 2008”.

2. Commencement and Application

This bylaw shall come into force on the ___ of _____ 2008 and shall apply to the whole of the Gisborne District.

3. Enabling Enactments

This Part of this Bylaw is made pursuant and subject to the Local Government Act 2002, the Local Government Act 1974, the Land Drainage Act 1908, the Resource Management Act 1991 and the Soil Conservation and Rivers Control Act 1941.

4. Scope

The purpose of the Gisborne District Floodways and Drainage Bylaw 2008 is to control and protect watercourses, drains, defences against water, rivers edge protection works and floodways vested in or under the management or jurisdiction of the Council or incorporated in its drainage system.

5. Definitions and Interpretations

5.1 The Interpretation Act 1999 shall apply to this bylaw.

5.2 In this Bylaw, unless the context otherwise requires:

Access Ramp	Is any means by which any vehicle, livestock, or person may go over, through, or under any drain, defence against water, or floodway; and includes a bridge, culvert or ford.
Act	Means the Local Government Act 2002.
Approval	Means approval by Council or any authorised officer so authorised on behalf of the Council and any approval may include conditions.
Authorised Officer	Means any person delegated, appointed or authorised in writing by the Council to act on its behalf and with its authority and includes a contractor.

Council	Means the Gisborne District Council or any Committee of the Council or officer delegated to exercise the authority of Council.
Council Drain	Means: (a) Every drain vested in or under the management of the Council that is included in the Council's asset register, and (b) Any watercourse vested in, or under the jurisdiction of the Council, or incorporated in its drainage system.
Construct	Includes alter, reconstruct, extend, remove and demolish.
Access way	Includes any means by which any vehicle, livestock, or person may go over, through, or under any drain, defence against water, or floodway; and includes a bridge, culvert or ford.
Defence against Water	Includes any dam, 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.
District	Means the territory of Council.
Drainage & Drainage works	Have the same meanings as in section 2 of the Land Drainage Act 1908.
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.
Enactment	Has the same meaning as in section 29 of the Interpretation Act 1999.
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.
Floodway	Means the land area between the bed of a river or drain and the crest of a stopbank.
Occupier	In relation to any property, means the inhabitant occupier of that property.

Owner	In relation to any property, means the person entitled to receive the rack rent thereof, or who would be entitled if the property were let to a tenant at rack rent.
Permit	Means the written authority issued by Council granting approval to operate or act in terms of this Bylaw.
Permit holder	Means the holder or holders of a permit issued in terms of this Bylaw.
Person	Includes a corporation and also a body of persons whether corporate or unincorporated.
Private drain	Means any drain constructed by or vested in an owner and not being a Council drain.
Public Notice	Has the same meaning as assigned to it in the Local Government Act 2002 and 'published' and 'publicly notified' have corresponding meanings. A public notice setting forth the object, purport, or general effect of a document shall in any case be sufficient notice of that document.
Road	Has the same meaning as in section 315 of the Local Government Act 1974.
Stock	Has the same meaning as it has in Section 2 of the Impounding Act 1955.
Stopbank	Means an embankment bordering one or both sides of a watercourse or drain designed to control floodwaters.
Structure	Has the same meaning as in section 2 of the Resource Management Act 1991.
Vegetation	Has the same meaning as in Section 2 of the Forest and Rural Fires Act 1977.
Vehicle	Has the same meaning as it has in Section 2(1) of the Land Transport Act 1998.
Watercourse	Has the same meaning as in section 2 of the Land Drainage Act 1908.
Work	Includes any excavation or disturbance.

6. Defences against Water

6.1 Except with the prior written authority of the Council no person shall, in respect of any defence against water vested in or under the management or jurisdiction of the Council or incorporated in its drainage system:

- (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 4 metres of the landward side of any defence against water, or
 - (iii) Between the bank of any drain and any defence against water.
- (e) Dump or deposit any thing:
 - (i) On any defence against water, or
 - (ii) Between the bank of any drain and any defence against water.
- (f) Remove or interfere with any plant, equipment or machinery used or associated with any defence against water.
- (g) Construct any structure:
 - (i) On any defence against water;
 - (ii) Within 4 metres of the landward side of any defence against water; or
 - (iii) Between the bank of any drain and any defence against water.
- (h) Carry out any excavation in, on or between the banks of any drain and any defence against water.
 - (i) Carry out any excavation, within 10 metres of any defence against water.
- (i) Dig a drain or undertake earthworks in or on a stopbank or within 10 metres of the landward toe of a stopbank.

- (j) Construct any access way in, over, through, along or under any defence against water.
 - (k) Remove, damage or allow stock to damage any vegetation that has been planted adjacent to a river by the Council or its predecessors.
 - (l) Adjust or interfere with any pump station or pump station equipment.
 - (m) 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.
- 6.2 Except with the prior written authority of the Council no person shall erect or permit to be erected any defence against water.
- 6.3 Every owner or occupier upon whose land any stopbank is located that is vested in or under the management or jurisdiction of the Council or incorporated in its drainage system, whether for the protection of that land or not, shall maintain such stopbank according to the standards and within the time specified by the Council.

7. Drains

7.1 Restricted Activities in Drains

Except with the prior written authority of the Council, no person shall in respect of any drain:

- (a) Deposit or allow to be deposited in a drain any material that is likely to obstruct the free flow of water.
- (b) Connect any private drain, pipe, channel or other conduit to any Council drain or private drain connected with a Council drain ¹.
- (c) Allow any vegetation 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.

¹ 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.

- (d) Construct any structure in any drain or on any bank of a drain or within 4 metres of a drain (measured from the lip of the drain).
- (e) Permit any dead stock or any part thereof to be or remain in any drain on that person's property.

7.2 Restricted Activities in Council Drains

Except with the prior written authority of the Council, no person shall in respect of any Council drain or private drain connected to a Council drain:

- (a) Widen, deepen or otherwise alter any drain.
- (b) Remove or interfere with any plant or equipment relating to any drain.
- (c) Plant, or allow to grow, any shrub, hedge, tree or part thereof on a stop bank or within 4 metres of a drain (measured from the lip of the drain).
- (d) Remove, damage or allow stock to damage any vegetation that has been planted adjacent to a drain, or any fence that has been erected to protect that vegetation by Council or its predecessors.
- (e) Construct a bridge, culvert or access way in or over any drain.
- (f) Construct, or form through repeated use, a road or race for the passage of vehicles or stock on a stop bank or within 4 metres of a drain.
- (g) Undertake any other works that will interfere with the access of authorised officers to drains.
- (h) Allow stock access to a drain if, in the opinion of the Council, this is likely to cause damage to the drain.
- (i) Damage, interfere with, or allow damage to occur to any drain or drain bank.

7.3 Watering Places

- 7.3.1 Except with the prior written authority of the Council, no person shall construct or maintain in any Council drain a watering place for stock.

7.3.2 The owners and occupiers of land adjoining watering places shall so use and maintain the watering places that no damage to the Council drain will result from their use.

7.4 Fencing Of Drains

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

7.5 Obstruction of Drains

7.5.1 Except with the prior written authority of the Council, no person shall stop, obstruct or interfere with or divert the flow of water in any Council drain or private drain connected with a Council drain.

7.5.2 Every owner and every occupier of land on which any Council drain or private drain connected with a Council drain is situated shall remove any vegetation or other material that obstructs or would be likely by falling or otherwise to obstruct the free flow of water in that drain.

7.6 Drains through Watersheds

Except with the prior written authority of the Council, no owner or occupier of land shall construct or maintain any private drain or system of private drains if such drain or system of drains passes through any raised level of land or watershed.

7.7 Artificial Obstruction or Addition of Water to and from Drains

7.7.1 Except with the prior written authority of the Council no person shall release any water into any Council drain or private drain connected with a Council drain other than by natural flow.

7.7.2 Except with the prior written authority of the Council no person shall abstract any water from any Council drain or private drain connected with a Council drain.

8. Accessways

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

9. Access to Drains and Defences against Water

The Council may, by a notice conspicuously displayed adjacent to any Council 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.

10. Land Entry

10.1 Inspection

The Council shall pursuant to section 517 of the Local Government Act 1974 have full powers, rights and authorities to enter onto land to inspect any drain or installation or to carry out spot spraying activities on Council drain banks.

10.2 Maintenance Works

The Council shall pursuant to section 171, 172, and 173 of the Local Government Act 2002 have access to any premises for the purpose of.

10.3 Maintenance of Council Drains by Owners and Occupiers

10.3.1 Owners and occupiers of land who wish to avoid herbicide use for maintenance of Council drains 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 by the permit holder to clearly mark the areas where chemicals are not to be used².

² 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 and within the time specified by the Council.
- 10.3.2 If the works are not carried out to the prescribed standard, the Council may give notice of its intention to maintain the Council drain pursuant of clause 12 of this Bylaw and may carry out the required maintenance using any method it deems efficient including the use of herbicides.
- 10.3.3 The Council and the holders of permits pursuant to this clause may agree to the Council maintaining the drains adjacent to or through the properties to the specified standard and time upon payment to the Council of prescribed fees.

11. Permits and Approvals

11.1 Permit Applications

- 11.1.1 An application to the Council for a permit under this Bylaw shall be made in writing and be accompanied by the prescribed fee.
- 11.1.2 Any permit under this Bylaw may be granted on such conditions, as the Council considers appropriate. When considering any application for a permit, the Council shall have regard to good environmental practice.
- 11.1.3 Every person to whom a permit is granted shall produce that permit for inspection on request by the Council.

11.2 Fees

- 11.2.1 The Council may prescribe fees for the administration of this Bylaw in accordance with section 150 of the Local Government Act 2002.
- 11.2.2 The prescribed fees specified in this clause shall be paid on demand for the exercise of any authority or function under this Bylaw.
- 11.2.3 The Council may in its absolute discretion refund, remit or waive the whole or any part of such fee.

11.3 Transfer of Permit

A permit issued by the Council to a person named in that permit shall not be transferable to any other person and no permit shall authorise any person other than the person named therein to act in any way under its terms or conditions.

12. Notice of Remedy

The Council may, by written notice, require:

- (a) The reinstatement of any defence against water or drain contravening Clauses 6.1(a), 6.1(b), 6.1(j), 7.1(e), 7.2(a), 7.2(b), 7.2(d), 7.2(f), 7.2(g) or 7.2(i) of this Bylaw.
- (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 private drain, pipe, channel or other conduit to any drain contravening Clauses 7.1(b) or 7.7 of this Bylaw.
- (d) The removal of any vegetation contravening Clauses 6.1(d), 6.1(l), 7.1(c) or 7.2(c) of this Bylaw.
- (e) The removal of any structure bridge, culvert or access way contravening Clauses 6.1(g), 6.1(k), 7.1(d), 7.2(e) or 7.2(g) of this Bylaw.
- (f) The maintenance of any accessway, watering place or stopbank by the owner or occupier of the land on which that accessway, watering place or stopbank is situated.
- (g) The removal of any material contravening Clauses 6.1(e) or 7.1(e) of this Bylaw.
- (h) The filling of any excavation contravening Clauses 6.1(h) and (i) of this Bylaw.
- (i) The reinstatement of vegetation removed or damaged in contravention of Clauses 6.1(l) or 7.2(d) of this Bylaw.
- (j) The reinstatement of plant, equipment pumps or machinery used or associated with any defence against water or drain removed or interfered with in contravention of clauses 6.1(m) or 7.2(b) of this Bylaw.

- (k) The reinstatement of fencing in contravention of Clauses 6.1(n) or 7.4 of this Bylaw.
- (l) The removal of any stoppage, obstruction, interference or diversion of water contravening Clauses 6.1(a), 7.1(c), 7.1(e) or 7.2(e) of this Bylaw.
- (m) The reinstatement and repair of any private drain or system of drains constructed through a watershed or raised ground contravening Clauses 7.6 of this Bylaw.
- (n) The termination of any activity that results in the release or abstraction of water contravening Clauses 7.7 of this Bylaw.

13. Suspension and Revocation of Permit

13.1 The Council shall not revoke any permit pursuant to clause 13.3 without giving to the holder a notice in writing which:

- (a) Sets out the respects in which the holder has contravened or has failed to comply with any condition of the permit; and
- (b) If the breach or failure is capable of remedy gives the holder a reasonable time within which to remedy it; and
- (c) Warns the holder that the Council may revoke the permit if the holder does not either:
 - (i) 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
 - (ii) Make, within a time to be specified in the notice, a written submission to the Council setting out reasons why the permit should not be revoked.

13.2 On receipt of a request by a holder of a permit for further time pursuant to clause 13.1 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, in accordance with to clause 13.4, revoke, suspend or amend that permit .

- 13.3 If the holder of a permit is convicted of an offence constituting a breach of the terms of, or conditions included in that permit, or of an offence touching his character as a person who has been approved to undertake an activity restricted by this Bylaw, the Council may issue a notice pursuant to clauses 13.1(a) and (c)(ii) and may, in accordance with to clause 13.4, revoke, suspend or amend that permit.
- 13.4 If the Council considers the acts or failures of the holder of a permit, or if there is no response by the holder of a permit to the notice issued in terms of clause 13.1 then the Council may revoke the permit or suspend it or impose further or amended conditions on it for as long as the Council thinks fit.
- 13.5 A person whose permit has been suspended under clauses 13.3 or 13.4 shall, during the period of that suspension, be deemed to be without authority for that activity.

14. Serving of Orders and Notices

- 14.1 Except where otherwise provided for in any enactment, in any case in which it is provided by this Bylaw, that an order may be made upon or notice be given to any person requiring them to do or abstain from doing anything, or any notice is required by this Bylaw to be given or sent to any person, such order or notice shall be delivered to such person and may be delivered to them either personally or by sending the same, by courier, post, fax or electronic means, to them at their last-known place of abode or business.
- 14.2 If such person is absent from New Zealand the order or notice may be sent to their agent instead of to such person, in the manner mentioned in clause 14.1.
- 14.3 If such a person is not known, or is absent from New Zealand, and has no known agent in New Zealand, and the order or notice relates to any land or building, the order or notice addressed to the owner or occupier of such building or land, as the case may require, may be served on the person in occupation thereof, or left with some other resident of the abode; or, if there is no person in occupation, may be put up on some conspicuous part of such building or land. It shall not be necessary in such notice to name the occupier or the owner of such land or building.

- 14.4 Where an order or notice is sent by registered post it shall be sent so as to arrive on or before the latest time on which such order or notice is required to be served.
- 14.5 Unless evidence indicates the contrary where an order or notice is sent by:
- (a) Post it will be deemed received on the first day (excluding weekends and public holidays) after posting.
 - (b) Facsimile or email and the sender's facsimile or email machine produces a transmission report indicating that the facsimile or email was sent to the addressee, the report will be prima facie evidence that the facsimile or email was received by the addressee in a legible form at the time indicated on that report.
 - (c) Courier and the courier obtains a receipt or records delivery on a courier run sheet, the receipt or record of delivery on a courier run sheet will be prima facie evidence that the communication was received by the addressee at the time indicated on the receipt or courier run sheet.

15. Obstruction to Officers

The provisions of sections 229 and 242(2) of the Local Government Act 2002 shall apply to any person who obstructs an authorised officer in the discharge of his or her duties pursuant to this Bylaw.

16. Removal by Council of Works Executed Contrary to Bylaw or Section 163 of the Local Government Act 2002

- 16.1 The Council may pull down, remove or alter or cause to be pulled down, removed or altered any defence against water, stopbank, accessway, watering place, vegetation, structure, work, material or object erected or being in contravention of this Bylaw or section 163 of the Local Government Act 2002.
- 16.2 The Council may recover from any person responsible for the erection or from any person permitting the continued existence of any such defence against water, stopbank, accessway, watering place, vegetation, structure, work, material or object all costs incurred by it, in connection with such pulling down, removal or alteration.

- 16.3 The exercise of this authority shall not relieve any such person from responsibility for any penalty for erecting or permitting the continued existence of any such defence against water, stopbank, accessway, watering place, vegetation, structure, work, material or object.

17. Offences and Breaches

- 17.1 No person shall do anything or cause any condition to exist for which prior written approval from the Council is required under this Bylaw without first obtaining a permit and the failure to do so shall constitute a breach of this Bylaw.
- 17.2 No application for a permit from the Council, and no payment of or receipt for any fee paid in connection with such application or permit, shall confer any right, authority, or immunity on the person making such application or payment.
- 17.3 Any person commits a breach of this Bylaw who:
- (a) Does, or causes to be done, or knowingly permits or suffers to be done anything whatsoever contrary to or otherwise than as provided by this Bylaw: or
 - (b) Omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of this Bylaw, ought to be done by them at the time and in the manner there in provided; or
 - (c) Does not refrain from doing anything which under this Bylaw they are required to abstain from doing; or
 - (d) Knowingly permits or suffers any condition of or things to exist contrary to any provision contained in this Bylaw; or
 - (e) Refuses or neglects to comply with any notice duly given to him/her under the Bylaw; or
 - (f) Obstructs or hinders any authorised officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon them by this Bylaw; or
 - (g) Fails to comply with any notice or direction given under this Bylaw.

- 17.4 Any person commits a breach of this Bylaw who:
- (a) Having constructed, affixed or provided, or caused to be constructed, affixed, or provided, any defence against water, stopbank, accessway, watering place, vegetation, structure, work, material or object of any description whatsoever, contrary to, or otherwise than in accordance with the provision of this Bylaw; or
 - (b) Having omitted to construct, affix, or provide access way, work, material or object as required thereby, and who does not within a reasonable time after notice in writing has been given to them by the Council or any authorised officer of the Council, fails to carry out the remedial action specified in that notice.

18. Penalties for Breach of the Bylaw

- 18.1 Every person who fails to comply with any part of this Bylaw commits an offence and shall be subject to the penalty provisions outlined in the offences, penalties, infringement offences, and legal proceedings provisions of the Local Government Act 2002 and the enabling enactments.
- 18.2 Where any person is alleged to have committed an infringement offence, that person may either:
- (a) Be proceeded against summarily for the offence; or
 - (b) Be served with an infringement notice as provided in the Act or the enabling enactments.
- 18.3 The Council may in accordance with Section 162 of the Act apply for an injunction restraining a person from committing a breach of this Bylaw or an offence against the Act.
- 18.4 The continued existence of any work or object in a state contrary to this Bylaw shall be deemed a continuing offence within the meaning of this Clause.

19. Delegation and Appeal

- 19.1 Where pursuant to this Bylaw any powers or duties are imposed on any authorised officer of the Council that officer may, with the consent of the Chief Executive delegate any of those powers or duties delegated to him, generally or particularly to any other officer of the Council.
- 19.2 In all cases where this Bylaw provides for the issue of any notice or permit, such notice or permit shall be deemed to be issued in compliance with this Bylaw if the same is issued by any officer of the Council authorised by the Council for that purpose.
- 19.3
- 19.3.1 There shall be a right of appeal by an affected party from any decision by a delegated authority to original holder of the power and duty. Provided that the original holder of the power and duty may, after consultation with the Chief Executive refer the appeal to the Council when in his opinion this is justified.
- 19.3.2 Where the original holder of the delegated power and duty is the Council the right of appeal may be to a committee of the Council appointed for this purpose, who shall be the final arbitrator of the merits of the matter.

20. Dispensing Power

- 20.1 Where in the opinion of the Council full compliance with any of the provisions of this Bylaw would needlessly or injuriously affect any person, or the course or operation of the business of, or be attended with loss or inconvenience to any person without any corresponding benefit to the community, the Council may, on the special application of that person, dispense with the full compliance with the provisions of this Bylaw; provided that any other terms or conditions (if any) that Council may deem fit to impose shall be complied with by that person.
- 20.2 The Council may, after consideration of any representation by affected persons and if in its opinion it is justified, extend, withdraw or amend the dispensation granted in terms of clause 19.1

- 20.3 Except if expressly granted otherwise, the dispensation by the Council in terms of clause 19.1 shall only be applicable to the person it is granted to and shall be restricted to the particular issue considered by the Council and such dispensation will not constitute a justification for the breach of the provisions of this Bylaw outside the expressed terms of the dispensation.

THE COMMON SEAL OF GISBORNE DISTRICT COUNCIL WAS HERETO
AFFIXED PURSUANT TO RESOLUTION PASSED AT A MEETING OF THE
GISBORNE DISTRICT COUNCIL HELD ON _____ (DAY) OF _____
(MONTH) 2008.

----- MAYOR

----- CHIEF EXECUTIVE