



# Statement of Proposal – Draft Drainage Bylaw 2022

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## 1 Introduction

- 1.1 Manawatū District Council's (Council's) Drainage Bylaw manages, regulates and protects the public drainage network, and ensures that private drains are properly managed and maintained.
- 1.2 The 2015 Drainage Bylaw has been reviewed and forms the basis for Council's draft Drainage Bylaw 2022 (the "draft Bylaw") that Council is now consulting on. This Statement of Proposal outlines the:
- purpose and application of the draft Bylaw;
  - how Council's proposes to manage the public drainage network in line with this purpose; and
  - the key differences between the 2015 Drainage Bylaw and the draft Bylaw
- 1.3 The draft Bylaw is largely a continuation of the 2015 Bylaw, with one key proposed change and several minor proposed changes (see sections 6 and 7 of this document).
- 1.4 Included with this Statement of Proposal are the following documents:
- Council's Draft Drainage Bylaw 2022
  - Public submission form
- 1.5 Council welcomes feedback on the draft Drainage Bylaw 2022. The closing date for feedback is **5pm on 13 June 2022**. See section 13 for more information on the consultation process.
- 1.6 Supporting documents can be found on Council's "Have Your Say" webpage, including a copy of the s155(1) assessment that evaluates whether a bylaw is the most appropriate way to address the perceived problems identified in relation to the public drainage network.

## 2 Why is a review of the 2015 Bylaw required?

- 2.1 The main reason for the proposal is that Council's Drainage Bylaw 2015 was due for review by 18 November 2020. Due to resourcing constraints the review has been delayed. The 2015 Bylaw still has legal effect under section 160A of the Local Government Act 2002 until it is automatically revoked on 18 November 2022 (unless replaced sooner). By replacing the expired Bylaw with a new, updated Bylaw, Council can continue to manage, regulate and protect the public drainage network.
- 2.2 The proposed changes to the bylaw will enable more effective administration of the Bylaw and better environmental outcomes.

## 3 Purpose and Application of the bylaw

- 3.1 The purpose of Council's Drainage Bylaw is to:
- (a) to manage, regulate and protect from damage, misuse or loss, or for preventing the use of, the land, structures, or infrastructure associated with the public wastewater network and the public stormwater network defined as the "public drainage network"; and

- (b) ensure that private drains are properly managed and maintained in order to protect the public from nuisance, and protect, promote and maintain public health and safety, including by minimising flood risk.

3.2 As illustrated in Figure 1, the Drainage Bylaw applies to:

- Discharges of domestic wastewater (i.e. waste from toilets, showers and baths, sinks and appliances);
- Discharges of stormwater from roofs and yards; and
- Works in, on or near the public drainage network.

3.3 The Drainage Bylaw does not apply to discharges of trade waste into the public wastewater network. These discharges are managed under Council’s Trade Waste Bylaw (also currently under review). It also does not apply to on-site wastewater systems or stormwater run-off into drains or waterways that are outside of Council’s public stormwater network as these are managed by the Manawatū-Whanganui Regional Council (“Horizons”). Section 8 of this Statement of Proposal provides further detail of the relationship of this bylaw to the controls around wastewater and stormwater discharges in the Horizons One Plan.

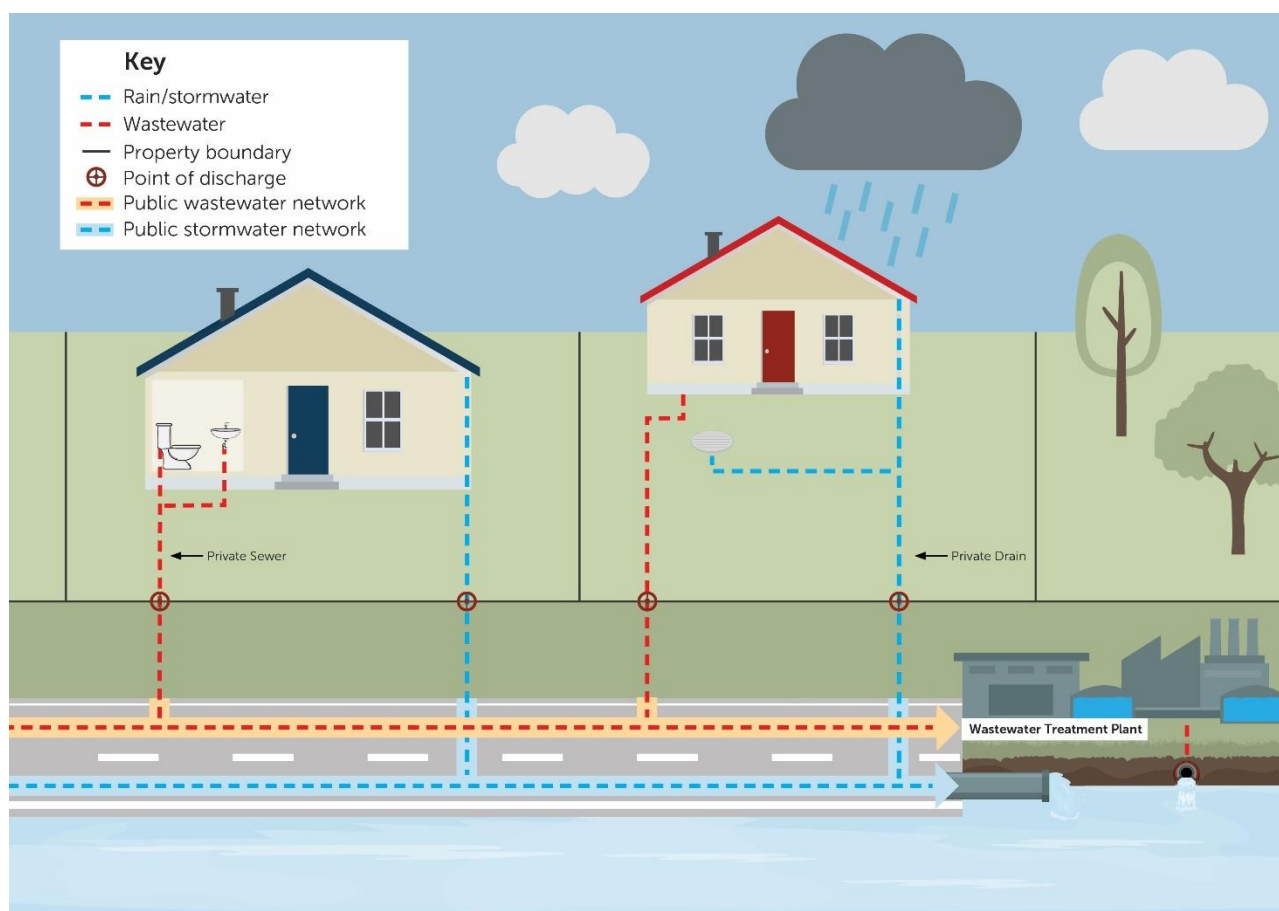


Figure 1: Overview of the Drainage Bylaw

### 3.4 The Drainage Bylaw achieves its purpose through requiring that:

- people apply to Council before connecting to, or discharging into Council's public wastewater or stormwater networks.
- restrictions are placed on what can be discharged into the drainage network. For example, stormwater cannot be discharged into wastewater and vice versa. Trade waste can only be discharged into the public wastewater network in accordance with the Trade Waste Bylaw 2022.
- limits are placed on the flow rate and daily flow rate of domestic wastewater discharges into the public wastewater network.
- stormwater discharges from domestic premises into the public stormwater network comply with quality standards, including controls over sediment and concentrations of contaminants.
- trade premises obtain a permit for their stormwater discharges. This is one of the key changes proposed in the draft Drainage Bylaw and is described in more detail in section 6 of this Statement of Proposal.
- points of discharge into the drainage network are located in accordance with Council's requirements.
- any new connections to the drainage network be carried out by a Council officer, authorised agent or approved Council contractor, and in accordance with any conditions attached to the approval.
- customers allow Council or its contractors reasonable access onto their premises to confirm compliance with the bylaw or to carry out monitoring, testing or maintenance work on the drainage network.
- customers are responsible for maintaining their private sewer and any private drain(s) on their premises, including meeting any costs associated with clearing any blockages.
- any pump station on a private sewer may only be installed if expressly approved by Council and where there are no practical alternatives for a gravity flow discharge into the public wastewater network. Pump station agreements are required for any pump station on a common private sewer.
- Council be given at least 15 working days' notice of any intention to disconnect from the drainage network. Any disconnection must be carried out in accordance with any conditions imposed by Council or the works will be arranged by Council and costs recovered from the customer.
- any person carrying out building or excavation work near buried services must first obtain written approval from Council and comply with any restrictions necessary to protect those services.
- customers comply with the bylaw and any notice issued by Council in relation to any non-compliance. Failure to comply with the requirements of Council under this bylaw may result in enforcement action, including issuing of a fine, prosecution, or disconnection from Council's drainage network.

## 4 Relationship to Council's Engineering Standards for Land Development

- ### 4.1
- The Drainage Bylaw manages connections of private premises to the public drainage network (the public stormwater and wastewater networks). The design of new stormwater and wastewater pipelines that is carried out as part of any land

development must comply with Council's Engineering Standards for Land Development.

## 5 Current approach to managing stormwater quality

5.1 Under the 2015 Drainage Bylaw, every premises is entitled to have its stormwater accepted by the Council subject to certain requirements. The requirements that relate to the quality of the stormwater being discharged include:

- installation of appropriate treatment systems on private stormwater systems such as silt control measures or petrol interceptors to prevent contamination of stormwater run-off (clause 8.1(e))
- compliance with this bylaw and other applicable legislative requirements, including requirements around sediment control during earthworks, drainage works and building extensions (clause 8.1(f))

5.2 Under clause 8.2 of the current 2015 Bylaw, stormwater cannot contain:

- wastewater, including wash-down from vehicle servicing areas or stockyards;
- prohibited trade waste
- high levels of suspended solids (where water clarity is changed by more than 30% from areas of earthworks or building construction)
- contain contaminants above which, after reasonable mixing in the receiving environment, exceed the ANZECC trigger values in Table 1.

5.3 Clause 17.4 gives Council the right to disconnect customers in certain circumstances, including if stormwater is excessively contaminated (with reference to clause 8.2).

5.4 Clause 29.2 requires that all stormwater run-off from areas of earthworks be intercepted and treated to remove suspended solids and building materials prior to discharge into the public stormwater network. Council can inspect the sediment control provisions as frequently as necessary (clause 29.3).

5.5 Where treatment devices are required to ensure compliance with clauses 8.1-8.3, a Stormwater Management Plan that sets out the core requirements for the operation and maintenance of these devices is to be made available to Council upon request (clause 30.1).

### **Problems with the current approach to managing stormwater quality**

5.6 In practice, the controls in clauses 8.1 and 8.2 of the 2015 Drainage Bylaw over the quality of stormwater discharges into the public network are insufficient for the following reasons:

1. Council has no record of those commercial, industrial or trade premises that have interceptor systems in place (required by clause 8.1(e)).
2. The bylaw leaves it up to the owner of the premises to determine whether their stormwater quality complies with the requirements in clauses 8.1 – 8.3 of the bylaw and to determine what type of treatment system is required to ensure compliance.

3. Council has no control over ongoing maintenance of stormwater treatment measures, including when there is a change in use of a commercial, industrial or trade premises.
  4. Those premises that have treatment devices are only required to provide Council with a copy of their Stormwater Management Plan “upon request.” This means that such a plan will likely only be provided (and possibly even only written) in response to instances of contamination or other bylaw breaches (i.e. when issues at the premises are brought to Council’s attention).
- 5.7 If the quality of discharges into the public stormwater network are not appropriately controlled, the quality of discharges from the network into the receiving environment will be poor. This will impact on Council’s ability to comply with its stormwater consent from Horizons, as well detrimentally affecting the receiving environment. This in turn has flow on impacts on people’s social and cultural wellbeing and enjoyment of these environments.

## **6 Key proposed change to the Drainage Bylaw – Permit for Stormwater from a trade premises**

- 6.1 Council’s proposed response to the problems outlined in paragraphs 5.6 and 5.7 is the introduction of a new permit regime for stormwater discharges from trade premises.
- 6.2 Clause 36.1 of the draft Drainage Bylaw requires owners of trade premises to apply to Council for a stormwater discharge permit within 12 months of the new bylaw commencing. The purpose of this new permit regime is to ensure that all stormwater discharges from trade premises meet the stormwater quality standards in clause 33.1 of the bylaw and do not otherwise damage or harm the public stormwater network.
- 6.3 The draft bylaw sets out how to apply for a permit (clause 37), the matters that Council will consider when determining whether to approve a permit application (clause 38), duration of the permit (clause 39), permit variations (clause 40) and suspension or cancellation of permits (clause 41).
- 6.4 The proposal is that permits are issued to a permit holder for a period of five years (unless otherwise specified by Council). Permits cannot be transferred to another person or premises. Council may vary a permit where there is good reason to do so (refer to clause 40.2 of the draft bylaw). Council may also suspend or cancel a permit in specific circumstances (refer to clause 41.1 of the draft bylaw), with notice.
- 6.5 The requirement to obtain a permit will apply to existing trade premises as well as those that apply to connect to the public stormwater network in the future. Council is proposing that the new permit requirements apply from 12 months after the commencement of the 2022 Drainage Bylaw. This is to allow trade premises time to understand the new requirements and to prepare the necessary information for their permit application.
- 6.6 As the 2015 drainage Bylaw already requires that stormwater discharges comply with quality standards, it is expected that the majority of trade premises will already have compliance stormwater treatment systems in place. Those premises that do not currently treat their stormwater to the standard required by the updated bylaw

would need to install stormwater treatment systems to ensure compliance with the conditions of the bylaw and their permit.

### **Cost implications of the proposed permit regime**

6.7 Permit fees will be set out in Council’s schedule of fees and charges (published on council’s website). The fees are likely to be similar to the fees for permits under the Trade Waste Bylaw 2015, which are currently set as follows:

Application fee: \$234.00 (including the first two hours of processing)

Processing fee: \$115 per hour

6.8 The cost of any new stormwater treatment systems or upgrades to existing treatment systems will be met by the permit holder. Council cannot be specific on the costs of installing new stormwater treatment systems as the costs are site-specific. However, installation costs are likely to range from \$10,000 to \$100,000. The cost of any maintenance of repair of stormwater systems is also the responsibility of the permit holder.

## **7 Minor proposed changes to Council’s Drainage Bylaw**

7.1 The draft Bylaw proposes a number of minor changes to the 2015 Bylaw. These changes, and the reasons for them, are detailed in Table 1.

**Table 1: Proposed minor changes to the Drainage Bylaw**

<b>Recommended Change</b>	<b>Reasons for change</b>
Reordering and restructuring the bylaw.	To improve the logical flow of the bylaw and remove duplication.
Change from “System” to “Network.”	To better align the terminology used in the Bylaw with that used in other Council documents, including the 10 Year Plan 2021-31, Infrastructure Strategy, Asset Management Plans and Council’s Engineering Standards for Land Development.
Amendments to the purpose of the bylaw.	To better align the bylaw with the special bylaw-making powers for territorial authorities under s146(b) of the Local Government Act 2002.
Amendments to definitions.	To align them with relevant legislation, remove redundant terms, and to improve understanding.
Amendments to the standards for stormwater quality (clause 8.2 in the current bylaw and clause 33.1 in the draft bylaw) to: <ul style="list-style-type: none"> <li>- Capture all trade waste discharges to stormwater;</li> <li>- Include hydrocarbons;</li> </ul>	The overall purpose of these changes are to ensure that the quality of stormwater discharges entering the public network are acceptable.  The 2015 Drainage Bylaw only bars “prohibited trade waste” from entering the stormwater network. All trade waste should be prevented from entering stormwater as this should be



Recommended Change	Reasons for change
<ul style="list-style-type: none"> <li>- Refer to the 95% ANZECC guidelines for discharges to natural waterways and to the 90% ANZECC trigger values for discharges to open drains; and</li> <li>- Include Regional Council requirements as an advice note, not requirements of the bylaw.</li> </ul>	<p>discharged to the wastewater network for treatment at the wastewater treatment plant.</p> <p>There is currently no reference to hydrocarbons within the list of matters that stormwater must not contain.</p> <p>The 2015 Bylaw includes a table of determinants with trigger values based on the Australian and New Zealand Environment and Conservation Council (ANZECC) guidelines. This approach means that the bylaw would become outdated if any of the values in the guidelines are amended through review. By referencing the “95% value of the current guidelines” rather than the values themselves, this will ensure that the bylaw always remains current and consistent with the appropriate standards.</p>
Introduction of a new clauses relating to the storage of dangerous materials (clauses 35.3 and 35.4).	To help Council manage the risk associated with the discharge of contaminants into the public stormwater network, particularly from industrial or trade premises.
Changes to the maintenance and access requirements in clause 17.	Ensure they align with Council’s powers of entry under section 172 of the Local Government Act 2002.
Relocate responsibilities for maintenance of private drains from being within definition of “Riparian Owner” to being within the body of the bylaw (clause 23.3 in the draft bylaw).	To make these responsibilities more transparent and enforceable.
Insertion of a diagram (Figure 1) in relation to setback requirements for new buildings near buried services.	To make these requirements easier to understand.
New clause 31.5 that requires any customer whose swimming pool or spa pool is not connected to the public wastewater network to have a management plan that sets out an alternative discharge, approved by the Council in writing.	To address a gap in the current bylaw. There was previously no clause that outlined the requirements should a pool or spa pool not be connected to the public wastewater network.
Introduction of a new clause (clause 44.6) that relates to the powers given to Council under s163 of the Local Government Act to remove or alter	While Council has always had this authority under the Local Government Act 2002, including this as a clause within the bylaw makes these powers more transparent for the public.

Recommended Change	Reasons for change
anything constructed in breach of the bylaw and to recover costs.	

## 8 Relationship with Horizons One Plan

- 8.1 The Manawatū District Council is responsible for managing the quality of stormwater and wastewater being discharged into the public drainage network, while the Manawatū-Whanganui Regional Council (“Horizons”) is responsible for managing the quality of the wastewater and stormwater from public networks at the point where it enters the receiving environment (onto land or into rivers or streams). Council needs to make sure that the wastewater and stormwater discharged from private premises into the public drainage network is of an appropriate standard to protect the environment and to comply with the consent requirements. The Drainage Bylaw is the main legal document that Council uses to manage connections to the Public Drainage Network.

## 9 Statutory Requirements

### Council's authority to make a bylaw

9.1 Section 145 of the Act gives council the power to make bylaws for one or more of the following purposes:

- a) protecting the public from nuisance;
- b) protecting, promoting, and maintaining public health and safety;
- c) minimising the potential for offensive behaviour in public places.

Specific bylaw-making powers under section 146 of the Act that are relevant to this review include:

- S146(1)(b) which gives Council the authority to make bylaws for the purposes of *"managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with:*
  - ...(iii) wastewater, drainage, and sanitation:*
  - (iv) land drainage..."*

9.2 The Act requires that a new bylaw is reviewed within 5 years of it being made. The Drainage Bylaw was made on 18 November 2015, so was due for review by 18 November 2020. However, in accordance with s160A of the Act, the current bylaw continues to have legal effect until 18 November 2022 (if not reviewed prior).

9.3 The Act sets out the required process for bylaw reviews.

## 10 Determining the need for a Bylaw

### Section 155(1)

10.1 According to s155(1) of the Act, Council must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problems.

10.2 On 7 April 2022 Council received a report that detailed the perceived problems for drainage. It also evaluated whether a bylaw was the most appropriate way for addressing the perceived problems.

10.3 The report to Council and the minutes from the 7 April 2022 Council meeting are available on Council's website ([Manawatū District Council Agendas & Minutes](#)). Paper copies can also be provided from Council on request.

10.4 In summary, on 7 April 2022 Council determined that a bylaw is the most appropriate way of addressing the following perceived problems in relation to drainage:

1. Sewer blockages due to wet wipes, rags or other foreign materials being flushed down toilets.
2. Contaminated stormwater from industrial and trade premises entering the public stormwater network that can adversely affect the quality of stormwater discharges to the receiving environment.

3. Stormwater devices are not being maintained by the premises or being checked by Council to ensure they are operating correctly.
  4. Cross connections between wastewater and stormwater pipelines – in relation to enforcement of illegal connections.
  5. Flood risk from stormwater drainage – where this relates to maintenance of private drains.
  6. Poor maintenance of private sewers and stormwater drains.
  7. Damage to buried services from excavating or drilling in close proximity.
- 10.5 The 2022 Drainage Bylaw will be used in conjunction with other tools or standards, to manage some of the perceived problems. Examples of these tools include education, Council’s Engineering Standards for Land Development and powers existing under other legislation (such as the Building Act 2004, Resource Management Act 1991 and the Local Government Act 2002). For example, Council may use CCTV footage to identify cross-connections between wastewater and stormwater pipelines but use the enforcement provisions within the bylaw to deal with them.
- 10.6 Council may also use education as a means of promoting behaviour change, eg. in relation to the flushing of foreign materials down the toilet or the run-off of contaminants into the stormwater network. However, Council cannot rely on education alone when considering its obligations to public health and safety and environmental well-being.
- 10.7 The main benefits of a bylaw over other options for addressing the perceived problems listed in paragraph 10.4 are as follows:
1. All of the drainage requirements can be found in the one place without having to refer to separate pieces of legislation such as the Building Act 2004, Resource Management Act 1991, Land Drainage Act 1908, and the Local Government Act 2002.
  2. Provides Council with powers to control activities and behaviours that could adversely affect Council’s sewer and drainage network.
  3. Applies to developments that do not require building consent or resource consent and are therefore not able to be controlled through consent conditions.
  4. Enables Council to recover costs through prosecution for behaviours that are contrary to the bylaw.

## **11 Determining the appropriate form of the Bylaw**

- 11.1 Section 155(2)(a) of the Act requires that before adopting a bylaw, Council determines whether the proposed bylaw is *“the most appropriate form of the bylaw”*.
- 11.2 Council will make a formal determination on whether Council’s proposed Drainage Bylaw 2022 is the most appropriate form of the bylaw after considering submissions on the draft Bylaw. However, it is also worthwhile to consider the form of the bylaw at the drafting stage of the process.

- 11.3 The draft Bylaw (attached) is considered to be an appropriate form of the bylaw. External advisors have reviewed the draft bylaw to help ensure this is the case. The draft Bylaw is lawfully authorised under s146(1)(b)(iii) of the Act, consistent with all relevant legislation, and sufficiently clear and certain so that those who are subject to the bylaw will understand its effect.

## 12 Preliminary Assessment against the Bill of Rights Act 1990

- 12.1 Section 155(2)(b) of the Act requires that before adopting a bylaw, Council determine whether the proposed bylaw will give rise to any implications under the New Zealand Bill of Rights Act 1990.
- 12.2 An assessment of whether the Council’s proposed Drainage Bylaw 2022 give rises to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA) cannot be fully considered until after Council has deliberated on submissions on the draft Bylaw and the proposed Bylaw has been finalised for consideration by Council. However, a preliminary assessment can be made as to whether a bylaw that regulates matters such the protection of, and connections and discharges to, the public wastewater and stormwater assets may give rise to any implications under the NZBORA.
- 12.3 The NZBORA sets out specific rights and freedoms which are protected by legislation. The NZBORA states that the rights and freedoms covered by the Act *“may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”*
- 12.4 It is not expected that a drainage bylaw to address the perceived problems identified above would give rise to any implications against the NZBORA, such as the right to be secure against unreasonable search and seizure. However, a further assessment against the NZBORA will be undertaken prior to Council passing a resolution to adopt Council’s Drainage Bylaw 2022.

## 13 Consultation Process

- 13.1 Anyone can make a submission about Council’s draft Drainage Bylaw 2022 described in this Statement of Proposal. Submissions can be made electronically through the Council’s “Have Your Say” webpage (<https://www.mdc.govt.nz/Contact-Us/Have-Your-Say>). Alternatively, a submission form can be downloaded from Council’s “Have Your Say” webpage or detached from the back of this document and emailed to [submissions@mdc.govt.nz](mailto:submissions@mdc.govt.nz) (subject heading “Draft Drainage Bylaw”), hand delivered to the Council office at 135 Manchester Street, Feilding, or posted to:

Manawatū District Council  
Private Bag 10001  
Feilding 4743  
New Zealand

- 13.2 Submissions close at **5pm on 13 June 2022.**
- 13.3 Any written form of submission will be received and considered.
- 13.4 Submitters should note that their submission will be copied and made available to the public after the submission period closes. You may opt to have your personal contact details kept confidential.
- 13.5 Please state in your submission whether or not you wish to present your submission in person at a hearing.

## 14 Proposed Timeline

### 14.1 7 July 2022 – Hearings

A hearing will be held for those who wish to present their submission to council in person. Each submitter who wishes to speak at the hearing will be contacted after 13 June 2022 and assigned a speaking time.

### 14.2 4 August 2022 – Deliberations

Council will deliberate on all written and oral submissions.

### 14.3 1 September 2022 - Adoption

Following the consideration of submissions on the draft Bylaw, the proposed Manawatū District Council Drainage Bylaw 2022 will be considered for adoption by Council.