

Proposed Land Drainage Bylaw Statement of Proposal

Introduction

A 'Statement of Proposal' (SOP) document is a legal requirement when Council is proposing to make, amend or revoke a bylaw. The SOP is the document that is made available to you as part of the consultation process to provide background information on the proposal to assist you in providing your thoughts to Council on the topic.

This SOP includes a summary of information and the proposed policy and bylaw.

Reason for the proposal

There are four land drainage districts in the Far North District, all situated in the Northern Ward. These are:

- The Kaitia Land Drainage district which covers the flood plain area from just south of Kaitia Township through to Awanui and to its northern extremity at Paparore.
- Three smaller districts are the Motutangi district, Waiharara district and Kaikino district all situated on the eastern coast in their respective areas.

The origin of many of these drainage areas date back to the early 20th century, when they were developed for the purpose of converting wetlands and swamps into productive farm land. They were then expanded to provide a measure of safety for the district's urban areas. Now, the land drainage areas reduce flooding in urban Kaitia and Awanui, while also protecting rural land, lowering groundwater levels to improve productivity.

The management of these drainage areas is split between the Far North District Council (which manages farm drainage) and the Northland Regional Council (rivers and main tidal flows) to maintain the standard/quality of land and drainage. These drainage districts are overseen by a Council officer and managed in conjunction with the landowners of the various districts through drainage committees. Targeted rates are collected separately in the respective areas.

The Local Government Act 1974 and the Local Government Act 2002 give the Council the power to make bylaws to regulate the use and management of these drainage assets.

The Far North District Council Land Drainage Bylaw 2009 regulated the drainage assets within these four land drainage districts. It was automatically revoked pursuant to section 160A of the Local Government Act 2002 on 16 October 2016.

An independent review has been undertaken of this revoked bylaw and it has been determined that a land drainage bylaw is the most appropriate way to regulate and manage drainage assets within the four land drainage districts situated within the Northern Ward.

Summary

Problem definition

Improperly managed and maintained land drainage assets can impact negatively on contiguous properties. This proposed bylaw is a necessary tool required to ensure the efficient management of the key assets within these designated areas.

This proposed bylaw:

- Ensures the safe and efficient creation, operation, maintenance and renewal of land drainage networks;
- Ensures proper hazard management to prevent or minimise flooding and erosion;
- Minimises adverse effects on the local environment particularly freshwater ecological systems quality, and assists in maintaining receiving water quality;
- Ensures that land drainage networks are properly maintained;
- Ensures protection of Council land drainage assets and the health and safety of employees;
- Sets out acceptable types of connection to land drainage networks

Options

In order to assess whether a bylaw is most appropriate method of addressing the perceived problem, the following options have been considered.

1. **Do not regulate (do nothing):** Effectively Council takes a “hands off” or reactive approach. The drainage assets would be regulated under the provisions of the Local Government Act 1974, Local Government Act 2002, and Drainage Act 1908. This would provide Council with limited powers to ensure the drainage assets are properly maintained, that the flow of water through the drainage channels is appropriately controlled, and any adverse effects on the local environment are minimised.
2. **Rely on non-regulatory options (such as education):** This brings similar issues as those associated with option 1. Education can be an effective supplement to regulation, but on its own, it has no legal standing and brings no enforcement powers.
3. **Enact a bylaw:** A bylaw enables Council to clearly articulate the expectations and obligations of landowners within drainage districts. The Land Drainage Bylaw 2009 has proven to be an effective method of addressing problems and issues associated with managing land drainage schemes.

Option 3 will deliver the required outcomes and is the recommended option.

Key Features of the Proposed Bylaw

The proposed Land Drainage Bylaw 2019 is essentially the same as the previous Land Drainage Bylaw 2009 and contains the following provisions.

- Ensures Council access to and along the banks of a drainage channel and restricts landowner actions which may interfere with this access.
- Places restrictions on the connection of a private drain to a drainage channel.
- Places obligations on landowners and other persons to ensure that the drainage channel and the flow of water is not in any way obstructed (and requires the removal of obstructions if any occur)
- Contains provisions governing alterations to the drainage channel and the construction and use of stopbanks, crossings, and watering places.
- Sets out requirements relating to damage, maintenance and repair to drainage assets.
- Contains provisions relating to inspections, obstruction of officers, and penalties for breach of the bylaw.

Regulatory Impact Statement

The proposed Land Drainage Bylaw 2019 will enable the Far North District Council to control and regulate the management and use of land drainage assets in the most effective manner.

How to give us your feedback

The community can give feedback on the Land Drainage Bylaw 2019 in July and August 2019. You can make a submission in support of the proposal as it is, or recommend changes be made to the policy or bylaw before final adoption. To make a submission you can:

- submit online at www.fndc.govt.nz/drainage2019
- email your comments to submissions@fndc.govt.nz
- drop-off a written submission at any Council service centre or library
- post your submission to: Freepost Authority 6124
Submissions – Land Drainage
Far North District Council
Private Bag 752
Kaikohe 0440



THE FAR NORTH DISTRICT COUNCIL

LAND DRAINAGE BYLAW 2009

To come into force: 1 December 2009

For the purpose of: Enabling the regulation of land drainage assets within the Far North District

THE FAR NORTH DISTRICT COUNCIL

LAND DRAINAGE BYLAW 2009

1. INTRODUCTION

- 1.1 This Bylaw is made by the Far North District Council in accordance with the provisions of Pt 8 of the Local Government Act 2002, Pt XXIX of the Local Government Act 1974, the Land Drainage Act 1908 and every other enabling power and authority. ***Statutory authority for Bylaw***
- 1.2 The short title of this Bylaw is “The Far North District Council Land Drainage Bylaw 2009”. ***Short title***
- 1.3 The purpose of this Bylaw is to enable regulation of land drainage assets within the Far North District. ***Purpose of Bylaw***
- 1.4 This Bylaw comes into force on the 1 December 2009. ***Effective date***

2. INTERPRETATION

- 2.1 “**Authorised person**” means any person authorised in writing by The Far North District Council.

“**Council**” means The Far North District Council.

“**Drain**” means that part of a drainage channel from the invert to the top of the bank on either side of the invert but does not include the land abutting the top of the banks of the drain.

“**Drainage assets**” refers to land drainage works including drainage channels, stopbanks, flood storage areas, floodgates, overflow channels, channel throttling, and scour protection or riparian planting to throttle flows along waterways, which works are vested in the Council or acquired or constructed or operated under the control of the Council, as described in the attached Schedules and shown on the maps attached to this Bylaw.

“**Drainage channel**” means every drain, passage or channel on or under the ground through which water flows, continuously or otherwise, and which -

- a) Immediately before the commencement of the Bylaw was a drainage channel under the control of the Council; or
- b) Is constructed by the Council as a drainage channel after the commencement of this Bylaw; or

- c) Is vested in the Council as a drainage channel; -

And includes the land occupied by the drain itself plus all that land abutting each side of the drain to a distance of 3.5 metres from the top of the banks of the drain; -

But does not include a water race.

“Landowner” means the owner of any property, or as applied to any land, building, or premises means any person for the time being entitled to receive the rack rent of such land, building, or premises, and where the content so requires or admits the expression shall include the habitant occupier of any such land, building or premises, and where such owner is absent from New Zealand the expression shall include his attorney or agent or any other person acting for him or on his behalf.

“Obstruction” includes earth, stone, timber and material of all kinds and trees, plants, rubbish, weeds and growths of all kinds.

“Person” includes a corporation sole, a body corporate, and an unincorporated body.

“Private drain” means any drain constructed by or vested in a private owner and not managed by Council.

3. ACCESS TO AND ALONG DRAINS

- 3.1 Without the prior consent of Council and then only subject to such conditions as Council shall impose, no owner of any land on the banks of any drainage channel shall plant or permit to grow any tree, shrub or hedge, or erect or maintain any fence, building, bridge or other construction or make any excavation in such a position as to interfere with or obstruct the free access of Council’s workmen or agents, plant or machinery along such drain or to any part thereof, for a distance of 10 metres from the edge of the drain, or such other distance as Council may specify in respect to any drain or part thereof. ***No obstructions within 10 metres of drain***
- 3.2 No person shall construct or maintain any road or accessway for the passage of stock, machines or other vehicles along the bank of any drain under the control of Council, within 3.5 metres of the edge of the drain, without having first obtained the prior written consent of Council, which may impose any conditions it thinks fit if such consent is granted. ***No roadway within 3.5 metres of drain***

4. PRIVATE DRAIN CONNECTION

- 4.1 No landowner shall connect a private drain with a drainage channel or enlarge a connected private drain or branches thereof, or add new branch drains thereto without obtaining the prior written consent of Council. ***No connections to drainage channels without consent***

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| 4.2 | Any owner applying for such consent shall submit to Council such plans and specifications as may be required by Council showing the exact location of the private drain and branches (if any) giving details of the length, size and construction and indicating the approximate area to be drained. | <i>Plans required</i> |
| 4.3 | Council may impose such conditions as it thinks fit upon the connection or continuance of the connection of private drains including the payment of a fee to cover the cost of inspection and report to Council relating to any such drain. | <i>Conditions may be imposed</i> |
| 5. <u>OBSTRUCTION TO FLOW</u> | | |
| 5.1 | No person shall stop, obstruct, increase or interfere with or divert the flow of water in any drainage channel, without the prior written consent of Council. | <i>No person shall interfere with the water flow</i> |
| 5.2 | No owner of the land on either side of any drainage channel shall allow, permit, or suffer to grow therein or on the banks thereof any plant growth that may be likely to impede the flow of any water in any drainage channel. | <i>No plants to impede water flow</i> |
| 5.3 | No owner of the land on either side of any drainage channel shall throw into the drain, or cause, permit or suffer to be thrown or to fall therein any material that may be likely to impede the flow of water in any drainage channel. | <i>Nothing can be thrown into drains</i> |
| 5.4 | No person shall deposit any debris or rubbish, in or on land in the drainage channel on which, if no such impediment was created, flood water might encroach and cause a nuisance. | <i>New Drains</i> |
| 5.5 | No person shall stop or obstruct any drainage channel or erect any barrier [other than required by law], buildings, structures or alter level or grades of landscapes [e.g. filling], or defence against water in or near any drainage channel; [e.g. fencing not to cause a barrier]. | <i>Prohibited barriers, buildings, structures etc</i> |
| 5.6 | No person shall allow any private channel or watercourse to become blocked in a way which may endanger or become a hazard or impede the water flow of any drainage channel or watercourse under the control of Council. | <i>Blockages</i> |
| 5.7 | No person shall allow animals, or machines or other vehicles to damage drainage assets. Grazing cattle are to be kept a minimum distance of 2 metres from any drain. | <i>No damage to drainage assets</i> |
| 5.8 | Any damage so caused by animals or machines shall be reported immediately to Council and any costs associated with repairing such assets shall be the responsibility of the landowner concerned. | <i>Cost of repairing damage to be responsibility of landowner</i> |

- 5.9 Any permitted development affecting or likely to affect any drainage channel shall be designed and carried out so as to safely accommodate a 100 year storm flow, and without causing more than minor damage. ***Water courses and flood plains to be accommodated***
- 6. REMOVAL OF OBSTRUCTIONS**
- 6.1 The Council may require the removal of any growth or other obstruction that is, or is likely to obstruct the free flow of any water in any watercourse - and in default thereof Council may do the work required and recover the cost thereof from such owner or owners. ***Removal of obstructions***
- 7. ALTERATIONS TO DRAINAGE CHANNEL**
- 7.1 No person shall widen or deepen a drainage channel, or stop or obstruct the same or alter the course thereof or in any way interfere with any drainage channel or associated works or structures without the prior written consent of Council. ***Drains cannot be altered***
- 8. POLLUTION AND NUISANCES**
- 8.1 No person shall discharge or cause, permit or suffer to be discharged onto a drainage channel or private drain connected therewith, any liquid, gaseous or solid matter which shall be likely to be a nuisance or injurious to health or to the proper care of the drainage channel. ***No discharge into a drain***
- 8.2 No owner or occupier of the land on either side of a drainage channel or private drain connected therewith, shall permit or suffer any dead stock or animals or any part thereof, to be or remain in any drainage channel or private drain connected therewith. ***No dead stock in drains***
- 9. STOPBANKS**
- 9.1 No person shall erect or cause or permit to be erected any stopbank, on or along any drainage channel, without the prior written consent of Council and in accordance with such terms and conditions as Council may impose. ***Stopbanks not to be erected without consent***
- 9.2 Every owner upon whose land a stopbank adjoining a drainage channel is located, whether for the protection of the land or not, shall not remove it or suffer or permit it to be removed, lowered or breached without the prior written consent of Council. ***Stopbanks not to be changed***
- 10. CROSSINGS**
- 10.1 No person shall cross or pass over a drainage channel with any vehicle, or drive any stock or convey any implement or machinery or goods or materials thereover except at crossings appointed by Council. ***Only approved crossings to be used***

10.2 No person shall construct any culvert, bridge or crossing in upon or over any drainage channel without the prior consent of Council. ***Consent to build crossings required***

10.3 Council may require the owner or owners of properties on which there is a drainage channel, to construct, maintain or renew crossings at places and in such manner approved by Council and in default thereof Council may do the work required and recover the cost thereof from such owner or owners. ***Crossings to be maintained***

11. WATERING PLACES

11.1 No owner shall construct in any drainage channel a watering place for stock or maintain or use the same without the prior consent of Council which may impose such conditions for mode of construction and for fencing and otherwise as it decides and such consent may be suspended or revoked at any time. ***No stock watering places without consent***

11.2 The owner or owners of land adjoining watering places shall use and maintain the same so that no damage to the drainage channel can result from their use. In the event of damage Council may call upon the owner or owners responsible to repair the same and in default thereof may do the work and recover the cost thereof from such owner or owners. ***No damage to drainage channel***

12. DAMAGE, MAINTENANCE AND REPAIR

12.1 No person shall injure, destroy, cause damage to or interfere with any dam, reservoir, stopbank, headworks, building or any installation connected with drainage assets, or allow, permit or suffer any stock to damage or destroy the same. ***No damage to drainage works***

12.2 Where any drainage channel is damaged by stock, or otherwise, Council may require the owner responsible for such damage to repair such drainage channel to the satisfaction of Council and on default thereof may have the necessary repairs executed and recover the costs thereof from the said owner. ***Channel damaged by stock***

13. INSPECTION

13.1 Council, members, officers, workmen or agents shall have the power, right, and authority to inspect any installation set up for the withdrawal or diversion of water from any drainage channel, whether authorised or not and the Council may direct any alteration or improvement to or replacement of such installation or request its removal or demolition at any time. ***Right to inspect***

14. OBSTRUCTION TO OFFICERS ETC

14.1 No person, whether on private land or not, shall obstruct any member, appointee, employee or agent of Council, with or ***No obstruction to agents***

without drain cleaning machinery or plant, in the performance of anything which such member, appointee, employee or agent is or may be required to do in the discharge of their duties.

15. PENALTY

- 15.1 Any person who commits a breach of this Bylaw shall be liable to a fine not exceeding \$20,000 and in addition to any penalty imposed for breach of this Bylaw, Council may sue any person for the amount of damage done by them to the drainage assets and for any penalty fine or fee which is prescribed by any statutory enactment whatsoever. ***Penalties for offences***

16. OTHER REQUIREMENTS

The provisions of this Bylaw do not remove the need for any resource or other consents required under the Resource Management Act 1991, Building Act 2004. Where consents are required under this chapter of this Bylaw and other acts or regulations, all shall be lodged with the Council at the same time. ***Other requirements***

17. PREVIOUS BYLAW REVOKED

The Far North District Council Land Drainage Bylaw 2001 is revoked with effect from midnight Monday 30th November 2009. ***Previous bylaw revoked***

The foregoing bylaw was made by The Far North District Council by a special consultative procedure initiated on the 8 July 2009 and confirmed on the 29 October 2009, and ordered to come into force on the 1 December 2009.

THE COMMON SEAL of the
FAR NORTH DISTRICT COUNCIL
was affixed hereto, in the presence of

CHIEF EXECUTIVE

The foregoing bylaw was publicly notified in the "Northland Age" on the _____
and the "Northern News" on the _____.

DRAINAGE ASSETS OF THE FAR NORTH DISTRICT COUNCIL

KAITAIA DRAINAGE DISTRICT	LENGTH (m)	MAP No.
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WAIPAPAKAURI COMPARTMENT

2

All drains associated / connected to the Waipapakauri outfall from harbour end in order

Waipapakauri Outfall	4,400
Paparore Bank	4,000
Waipapakauri Bank	1,710
Thodes	1,206
Evans	443
Yates	945
Sandhills	7,502
Wests	684
Birds Boundary	1,521
Abbots	422
Government Drain	3,012
Waimanone - Walkers	4,221
Spains Drain	3,490
WAIPAPAKAURI TOTAL	33,556

LOWER AWANUI COMPARTMENT

2

All drains associated / connected to the Lower Awanui river From Puckeys Outfall to sea

Prices Bank (Unahi)	2,615
McMillans - Tupes	6,840
Factory Bend-Michies	6,035
Flemings	764
H Subritzky	1,127
Awanui	2,313
Gills	2,008
Sankeys No.1	362
Sankeys No.2	201
LOWER AWANUI TOTAL	22,265

PUCKEYS OUTFALL COMPARTMENT

2

All drains associated / connected to Puckeys Outfall

Puckeys Outfall	2,940
Foleys	656
Lisle	1,710
Wireless	1,800
Bells Rd	1,743
PUCKEYS OUTFALL TOTAL	8,849

WHANGATANE COMPARTMENT**2***All drains associated / connected to Whangatane Spillway*

Maimaru	1,127
Johnsons	150
Kareponia	402
Kumi Road	1,006
Oinu Stream	1,650
Pairatahi Bank	2,716
Texifros	704
Birds	504
WHANGATANE TOTAL	8,259

PUKEPOTO OUTFALL COMPARTMENT**3***All drains associated / connected to Pukepoto Outfall*

Pukepoto Outfall	5,100
Brass	1,388
W.Masters C.	1,207
W.Masters E.	1,207
Campbells	684
L Masters W.	1,046
L Masters C.	1,207
School	1,509
Reynolds (West Bank)	2,213
Maori	2,012
Pukepoto Creek	805
Houstons (West Bank)	2,213
Parkers	1,813
McKentys	483
Reids West	2,615
PUKEPOTO OUTFALL TOTAL	25,502

KAITAIA COMPARTMENT**3***All drains associated / connected to Kaitaia urban surrounds*

Lewis Junction - Boundary	443
Lewis Junction - Road	322
Church Gully	3,500
Mathews Outfall	4,200
Wilds	503
Hanlons	322
KAITAIA TOTAL	9,290

TANGONGE COMPARTMENT**3***All drains associated / connected to Tangonge Channel*

Reids East	3,017
Hoddles	1,667
Millers	2,615
McKenzies	634
Sharps	634
Lewis & Crown land	1,851
TANGONGE TOTAL	10,418

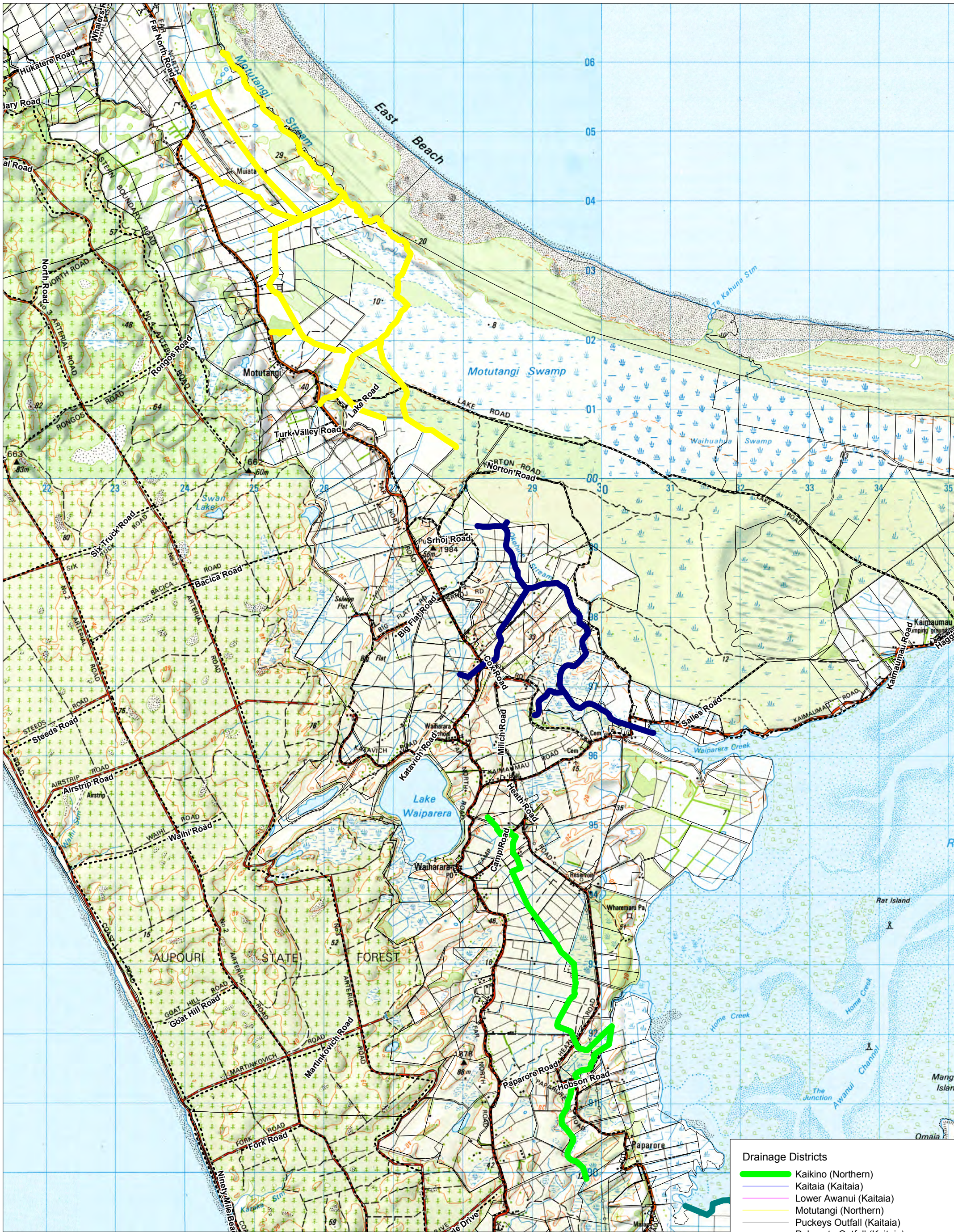
WAIROA COMPARTMENT**3***All drains associated / connected to Wairoa River (Ahipara)*

Berghans	1,005
Wairoa Stream	2,543
Blairs	805
WAIROA TOTAL	4,353

TOTAL LENGTHS MAINTAINED BY FNDC**122,492**

NORTHERN DRAINAGE SCHEMES

DRAINAGE DISTRICT	LENGTH (m)	MAP No.
<u>KAIKINO</u>		<u>1</u>
Kaikino	5,500	
Hobson	1,050	
Hobson extension	1,005	
Total	<u>7,555</u>	
<u>MOTUTANGI</u>		<u>1</u>
Motutangi Stream	4,225	
Main Outfall	1,147	
Bryan	2,716	
Beazley's	2,012	
Aspin	2,200	
Cut to lands end	1,609	
Selwyn	2,750	
Bacica's	2,414	
Seymour	800	
Subritzky	200	
Total	<u>20,073</u>	
<u>WAIHARARA</u>		<u>1</u>
Okohine	5,200	
Cox's Branch	805	
Biicich Branch	800	
Tunnel traverse	100	
Biicich ext.	1,000	
Total	<u>7,905</u>	
Assets includes 300mm floodgate		
Total lengths maintained by FNDC	<u>35,533</u>	



Map 1

Drainage Districts



Far North
District Council

Date Printed
20/08/2009

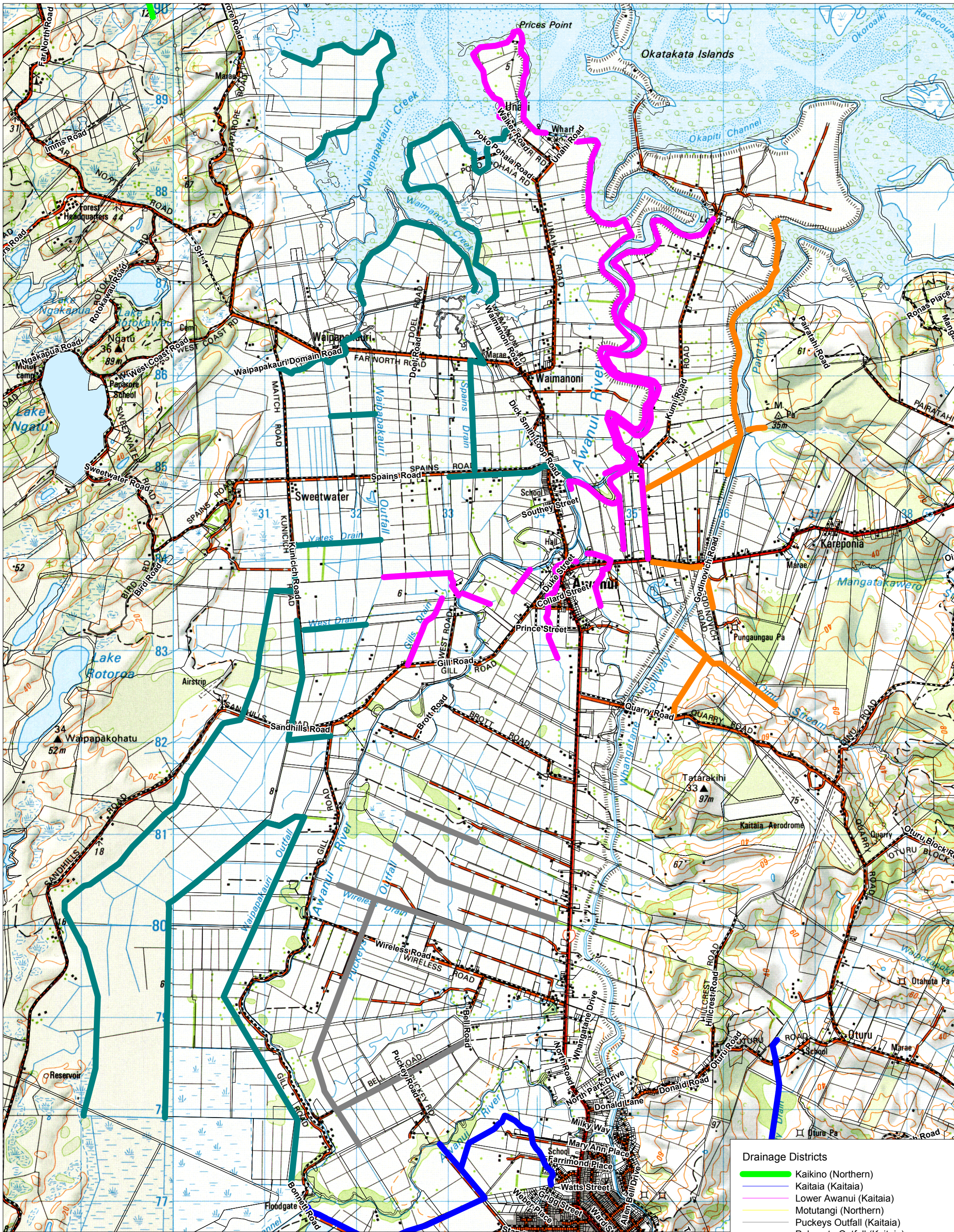
The information shown on this plan may not be accurate and is indicative only. The Far North District Council accepts no responsibility for incomplete or inaccurate information.

Contractors are to verify the exact location of all Council services on site, before work commences. Contractors are liable for any damage they may cause to Council services, including any services not identified on this plan.



- Drainage Districts
- Kaikino (Northern)
 - Kaitaia (Kaitaia)
 - Lower Awanui (Kaitaia)
 - Motutangi (Northern)
 - Pukekeys Outfall (Kaitaia)
 - Pukepoto Outfall (Kaitaia)
 - Tangonge (Kaitaia)
 - Waiharara (Northern)
 - Waipapakauri Outfall (Kaitaia)
 - Wairoa (Kaitaia)
 - Whangatane (Kaitaia)

- Land Parcel
- Property
 - Road
 - Road



Map 2

Drainage Districts



Far North
District Council

Date Printed
20/08/2009

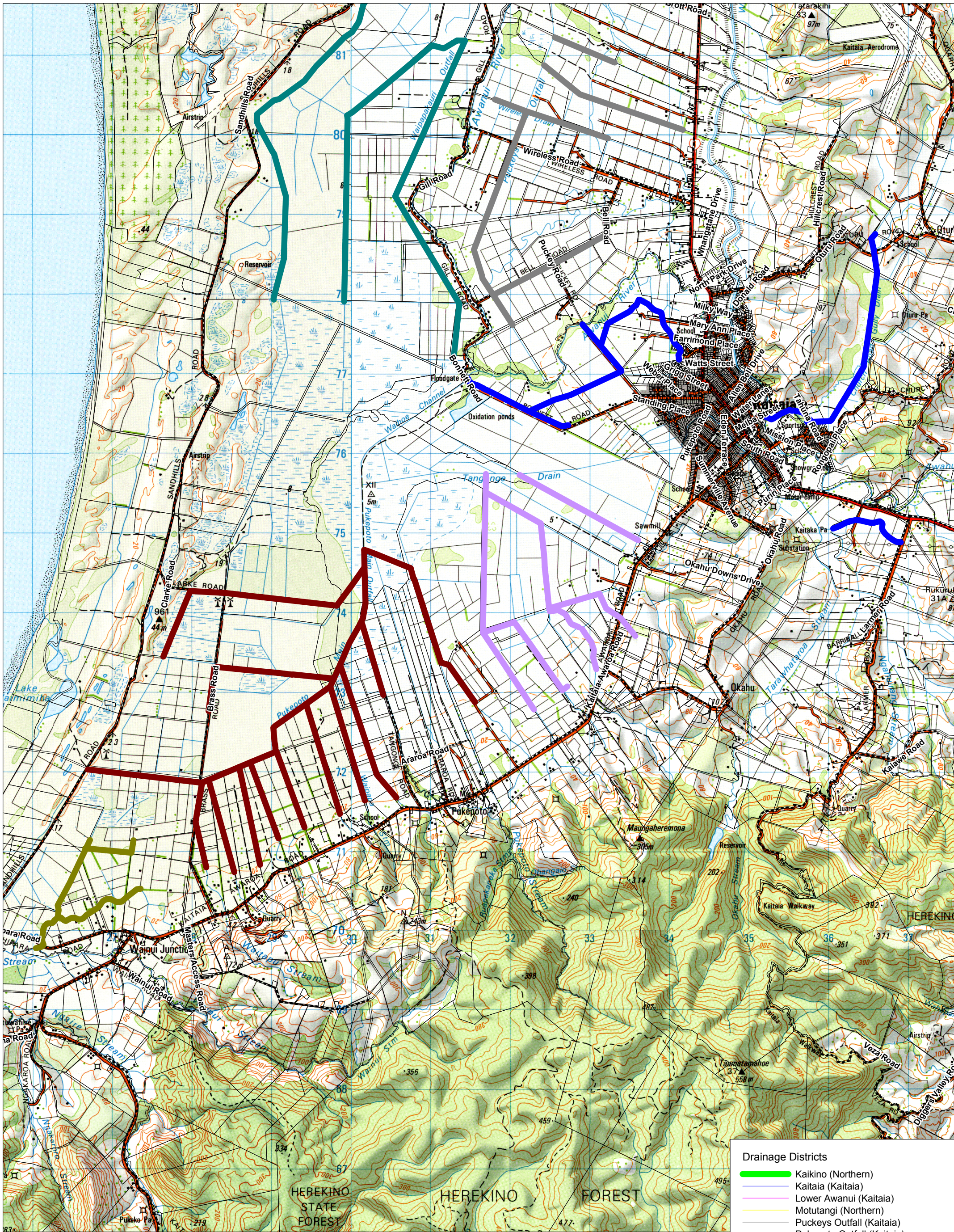
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 - Wairoa (Kaitaia)
 - Whangatane (Kaitaia)

- Land Parcel
- Property
 - Road
 - Road



Map 3

Drainage Districts



Far North
District Council

Date Printed
20/08/2009

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Drainage Districts

- Kaikino (Northern)
- Kaitaia (Kaitaia)
- Lower Awanui (Kaitaia)
- Motutangi (Northern)
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- Tangonge (Kaitaia)
- Waiharara (Northern)
- Waipapakauri Outfall (Kaitaia)
- Wairoa (Kaitaia)
- Whangatane (Kaitaia)

Land Parcel

- Property
- Road
- Road