



STATEMENT OF PROPOSAL

Draft
STORMWATER
Bylaw 2019

FOR PUBLIC CONSULTATION



NAPIER
CITY COUNCIL
Te Kaunihera o Ahuriri

Proposal

Napier City Council proposes to revoke its existing Stormwater Bylaw 2012 and adopt a new Stormwater Bylaw 2019.

This statement of proposal is prepared under Sections 83, 83AA and 86 of the Local Government Act 2002. This document contains:

- A summary of the information contained in the statement of proposal;
- A copy of the draft bylaw

Summary of Information

Napier City Council is proposing to change its approach to protecting and managing the stormwater network to ensure requirements are clear and enforceable. The Council wants to hear what ratepayers and stakeholders think of the revised approach.

The Bylaw has been revised to:

- Make it clear that certain activities that damage or pose a threat to the stormwater network are prohibited and will need to be managed through an approval with Council;
- require all new connections to the public stormwater network to have an approval from the Council;
- Require discharges of certain types of stormwater to the public stormwater network require an approval (even if there is already a connection in place);
- Clarify obligations in relation to private stormwater systems;
- Outline the process for obtaining an approval where one is required under the Bylaw, and the matters Council may take into account, and make the subject of conditions;
- Detail the implications of failing to comply with the conditions of an approval, or with the Bylaw itself.

Before making any final decisions on the proposed Bylaw, the Council wishes to hear from you. You can make a submission by going online at www.sayitnapier.nz or visiting the Napier City Council Customer Service Centre.

Background Information

There is a rising awareness of the importance of water quality in New Zealand, and Napier City Council has a commitment to maintaining or improving water quality in the District.

Discharges from the public stormwater network are regulated by discharge consents issued by Hawkes Bay Regional Council to Napier City Council. These consents contain a number of conditions aimed at protecting the receiving environment. Additional requirements are expected

to arise over the next 10 years as a result of the introduction of the TANK Plan Change to the Hawkes Bay Regional Resource Management Plan, and the related implementation plan. In order to ensure its ability to meet its Resource Management Act obligations, Napier City Council needs to know what is being discharged to the network, and to be able to appropriately manage and control discharges to the network.

The current Stormwater Bylaw goes a significant way to providing the Council with control over discharges to the public network. However, a review identified a number of gaps and ways the Bylaw could be clarified to ensure its requirements are clear and that the process for obtaining approval to discharge to the network is transparent.

Problems to be addressed by the Bylaw

There are three main issues that need to be addressed by the Stormwater Bylaw.

Protection of the Public Stormwater Network

The public stormwater network is susceptible to physical damage or obstruction, for instance as a result of building works which damage the network or from waste materials being disposed to the network or washed into the network in a storm event. It is important that the network be protected from such damage by having in place clear rules for working in close proximity to the network and the ability for Council to control any such work and enforce those rules if necessary.

Managing the use of the Public Stormwater Network

It is important that Council knows what is being discharged to its system, so it can ensure the network itself, or its ability to comply with regional consent or plan requirements is not compromised. The key times for Council involvement in stormwater management are when new connections are made to the stormwater network, or when the type of discharge to the network through an existing connection changes. There needs to be a clear system for Council to be fully informed about the type of connection and discharge, and appropriate mechanisms to ensure discharges do not contain contaminants or that might otherwise undermine the efficiency of the network.

Managing the use of Private Stormwater Systems

The proper functioning of the public stormwater network requires private stormwater systems, including any management devices for improving water quality, to be operated and maintained to ensure their design purpose is achieved, especially during storm events. Council reserves the right to monitor, inspect and request works be carried out by the owner, occupier or manager of private stormwater systems to ensure they do not cause a nuisance or adversely impact on the public stormwater network.

Options to address these Issues

1. Status Quo

The Stormwater Bylaw 2012 contains provisions protecting the stormwater network primarily in relation to construction activities, by reference to requirements of the Napier City Council District Plan, and the associated Code of Practice for Subdivision and Land Development. The District Plan and the Code of Practice is currently subject to review. A key objective of this review is to tighten provisions relating to stormwater management. It is considered that the current approach of the bylaw that focuses on construction activities only, does not capture all possible risks to the stormwater network. A review of the bylaw, alongside a review of the District Plan and Code of Practice, provides an opportunity to align Council's main regulatory tools for managing stormwater.

2. Amend the Bylaw

The revised Bylaw aims to ensure the issues outlined above are comprehensively addressed in a clear way, such that readers know what they can and cannot do, whether they require an approval from Council, and if so, the process and matters that might be taken into account. While there is the option under the revised Bylaw to include controls in an external document such as a Code of Practice, it is made clear that any such document will need to go through a public process and be the subject of a Council resolution. This provides an appropriate balance between public input and flexibility to ensure accordance with best practice over the 10 year life of the Bylaw.

3. Public Education

An important part of stormwater management is public awareness and education, and Napier City Council is continuing its efforts to ensure site owners are aware of their obligations and best practice. Having a bylaw which clearly sets out obligations, prohibitions and means of obtaining approval to access the stormwater network will assist Council officers in ensuring site owners understand their role in achieving good water quality in the District.

4. Reliance on existing statutory powers

Legislation such as the Local Government Act 2002 and 1974 provide certain controls, such as that is an offence to connect a private drain to a public drain without the written authority of the Council. However some powers in legislation need to be 'activated' by inclusion in a bylaw, such as Local Government Act 2002, Section 163 which gives Council the power to remove or alter works in breach of a bylaw if authorised by the bylaw to do so. As a whole, revocation of the bylaw, and relying on legislative requirements and public education only, is not considered a viable option. It would not provide comprehensive and easily understood protection of the network or allow Council to manage discharges to the network to protect the environment and ensure compliance with its regulatory requirements. It is considered sufficient to rely on legislation in relation to enforcement which prescribes set processes, rather than to specify or restrict enforcement options under the Bylaw.

Preferred Option

Of the options above, Council considers a combination of options 2, 3 and 4 provide the most appropriate way to address issues around stormwater management in the District. This involves amending the Bylaw as outlined above, while relying on legislation for enforcing the Bylaw. Council's approach to public education will be assisted by, and continue in parallel with administration of the Bylaw.

Statutory Requirements

Under the Local Government Act 2002, Napier City Council must have determined that a bylaw is the most appropriate way of addressing the perceived problem. This occurred at a Council meeting held on September 3, 2019 where Council adopted a resolution that confirmed the draft bylaw is the most appropriate way of addressing the perceived problem, as set out in the purpose of the bylaw.

Council must then determine whether the proposed bylaw is the most appropriate form of bylaw, and whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990. The Council has determined that the draft Bylaw is the most appropriate form of bylaw and is satisfied that no issues arise under the Bill of Rights. However, a final determination of these matters under the Local Government Act 2002, Section 155(2), will be made following the hearing of submissions, prior to adopting the final version of the Stormwater 2019 Bylaw.

The Council is using the special consultative procedure as amended by the Local Government act 2002, Section 86, in relation to the making of the Bylaw and revoking of the 2012 Bylaw. The process for making and hearing of submissions on the draft Bylaw is set out above.

Napier City Council Stormwater Bylaw 2019

Draft for Consultation

Title

1. This bylaw is the Stormwater Bylaw 2019.

Commencement

2. This bylaw comes into force on [TBC].

Purposes

3. The purposes of this bylaw are to:
 - a) Protect the public stormwater system, and the land, structures, and infrastructure associated with that network from damage, misuse or loss.
 - b) Manage the development, maintenance and use of the public stormwater network, and the land, structures, and infrastructure associated with that network, and provide for the conditions on which connections to the public stormwater network may be made or maintained.
 - c) Ensure that discharges into the public stormwater network are appropriately managed, and do not damage the network or compromise the Council's ability to comply with any applicable network discharge consent and Council's water quality targets.

Definitions

4. In this bylaw, unless the context otherwise requires;

Approval means a written approval issued by Council in accordance with the process set out in clauses 9 – 11 below, or an equivalent approval issued by Council prior to this bylaw commencing.

Contaminant has the same meaning as in the Resource Management Act 1991

Control means a prohibition, restriction or control relating to stormwater management specified in any guideline or Code of Practice confirmed by a Council resolution after giving consideration to the views and preferences of persons likely to be affected by, or have an interest in, the matter.

Council means the Napier City Council or any authorised officer.

Industrial or trade premises has the same meaning as in the Resource Management Act 1991.

Manager means a person who controls or manages any premises, or any activity or event on any premises, or operates a part of the stormwater network on the premises,

regardless of whether that person is the owner of those premises or that part of the stormwater network.

Nuisance has the same meaning as in section 29 of the Health Act 1956 and in the context of this bylaw includes:

- (a) danger to life;
- (b) danger to public health;
- (c) flooding of any building floor or sub-floor, or public road;
- (d) damage to property;
- (e) damage to the stormwater network;
- (f) erosion or subsidence of land;
- (g) adverse effects on the environment;
- (h) adverse loss of riparian vegetation;
- (i) anything that causes a breach or potential breach of any stormwater discharge consent condition binding the Council (including an accumulation of chemicals causing a breach).

Owner means the person who owns premises from which stormwater originates or on which stormwater is located.

Private Stormwater System means any component of the stormwater network that drains water from premises on private land to a receiving environment or up to the point of service connection with the public stormwater network and includes pipes, gutters, downpipes, catchpits, swales, subsoil drains, stormwater treatment devices, and any stormwater management device or redundant stormwater system.

Public Stormwater Network means any component of the stormwater network vested in, or under the control of, the Council, whether or not any part of the network passes through private land.

Redundant system means a system, structure or device that has been replaced by another system, structure or device and is no longer required as part of the stormwater network under any building consent or resource consent condition or engineering approval related to the site.

Regulated Stormwater means any stormwater which:

- (a) Contains contaminants;
- (b) Discharges from industrial or trade premises;
- (c) Is required by a Control to obtain an Approval.

Service connection has the same meaning as in the Local Government Act 2002.

Stormwater means surface water run-off resulting from rainfall.

Stormwater management device means a device or facility used to reduce stormwater runoff volume, flow and/or contaminant loads prior to discharge. Including, but not limited to:

- rain gardens
- porous paving
- infiltration trenches
- sand filters
- green roofs
- wetlands
- ponds
- rain water tanks
- propriety devices.

Stormwater network includes any land, structure or infrastructure associated with stormwater drainage, including but not limited to:

- (a) open drains and watercourses, overland flow paths, drainage reserves, inlet structures, pipes and other conduits, manholes, chambers, traps, outlet structures, pumping stations, attenuation and treatment structures, and devices;
- (b) the public stormwater network; and
- (c) private stormwater systems.

Environmental management plan means a plan, howsoever named, which relates to a specific site and/or activity being carried out on the site and addresses the specific stormwater management approach for that site and/or activity.

Explanatory Note: *This definition encompasses 'pollution prevention plans', 'urban site specific stormwater management plans', 'operation and maintenance plans' and other documents meeting the purpose described in the definition.*

4.2 Unless the context requires another meaning, a term or expression that is defined in the Council's Introductory Bylaw 2014 and used but not defined in this bylaw has the meaning given by the Introductory Bylaw 2014.

4.3 Unless the context requires another meaning, a term or expression that is defined in the Act and used, but not defined, in this bylaw or the Introductory Bylaw 2014 has the meaning given by the Act.

Protection of Stormwater Network

5. No person shall:

- a) cause or allow to be caused, any damage to the stormwater network;
- b) allow any material, chemical (including chlorine and detergents), rubbish, litter, or other substance that causes or is likely to cause a nuisance, directly into the public stormwater network;

Explanatory Note: *Without limiting the scope of this rule, but for the avoidance of doubt, swimming or spa pool water arising from emptying or backwashing may not*

be discharged into the stormwater network. Disposal of such water is to the wastewater network as provided for in the Wastewater Drainage Bylaw.

- c) deposit or permit any material, chemical (including chlorine and detergents), rubbish, litter, or other substance likely to cause a nuisance on entering the public stormwater network, to be located so that it is likely to enter the public stormwater network in any storm event;
- d) obstruct any stormwater network, in a manner that adversely affects or may affect the efficiency and/or safety of the public stormwater network;
- e) remove vegetation from or damage vegetation in any wetland on a premises that the person owns, occupies, or manages, if the removal or damage is likely to adversely affect the ability of the wetland to contribute to the performance of the stormwater network, unless the Council approves or that person is expressly authorised by an operative resource consent.

5.2 Every person excavating or working around the stormwater network must take due care to ensure the excavation or work does not damage and/or compromise the integrity of the stormwater network.

5.3 Any person who knows of damage to the stormwater network must report it to the Council immediately.

Approvals for works affecting Stormwater Network

6.1 A person must obtain an Approval before:

- a) Erecting any structure on, over, or within the distance from the public stormwater network specified in any relevant Control;
- b) undertaking any excavation or work that is likely to result in damage to the public stormwater network;
- c) removing any existing cover material or placing any additional material over the public stormwater network that is likely to result in damage to the public stormwater network;
- d) covering any stormwater inlet, outlet, treatment device, service opening or manhole in a way that is likely to restrict access to the public stormwater network or detrimentally affect the performance of the public stormwater network; or
- e) causing a temporarily or permanently sustained excessive load on the public stormwater network that is likely to result in damage to the network.

Connections to Public Stormwater Network

7.1 No person may, without an Approval:

- a) make any new service connection to the public stormwater network; or

- b) alter or modify any part of the public stormwater network or the hydraulic performance of the public stormwater network.

Discharges to Public Stormwater Network

- 8.1 No person may discharge, directly or indirectly, Regulated Stormwater, into the public stormwater network without an Approval.

Private Stormwater Systems

- 9.1 The owner, occupier and manager of a private stormwater system must ensure that the system:
 - a) Complies with any relevant Control;
 - b) is maintained in good operating condition; and
 - c) does not cause or contribute to nuisance.
- 9.2 The owner, occupier, or manager of a premises that has a soakage system as part of a private stormwater system must ensure that the soakage system disposes of the stormwater from the site in accordance with any Control.
- 9.3 The owner, occupier or manager of a private stormwater management device must, on request by the Council:
 - a) provide such information as is required to demonstrate that the stormwater management device is operated and maintained to achieve its purpose and not cause nuisance in a storm event; and
 - b) carry out such works as are required to ensure the stormwater management device meets its purpose.
- 9.4 The owner, occupier or manager of a private on-site stormwater management device must:
 - a) keep a copy of the operations and maintenance manual (owner's manual) and as built drawings for the device available; and
 - b) produce that copy of the owner's manual and as built drawings upon request by the Council.
- 9.5 The owner of a redundant system must remove or de-commission a redundant system if required by the Council to do so and within the time specified by Council.
- 9.6 The owner of a redundant system that has been removed or de-commissioned must ensure that the premises on which the system is located or was previously located is restored to the satisfaction of the Council.

Applications for Approval

- 10.1 An application to obtain the approval of the Council under this bylaw must be:
- a) made in the prescribed form; and
 - b) accompanied by:
 - (i) payment of the application and processing fees; and
 - (ii) a proposed environmental management plan, if required by Council;
 - (iii) such further supporting information as the Council requires to process the application.
- 10.2 Having received and considered an application for approval, the Council may at its discretion:
- a) grant the application subject to such conditions as the Council considers fit; or
 - b) decline the application.

Consideration of application for Approval

- 11.1 When considering an application for Approval, and the conditions to which the Approval will be subject should the application be granted, the Council may take into account any of the following:
- a) Consistency with the purposes of the bylaw;
 - b) any known past operational or compliance issues which may affect, or may in the future affect, the performance of the stormwater network;
 - c) the characteristics, features, and nature of the infrastructure, premises, stormwater asset, device, private stormwater system, and public stormwater network;
 - d) consistency with any catchment management plan and/or integrated management plan for the catchment;
 - e) compliance with any relevant Control;
 - f) the extent to which the Approval will impact on Council's compliance with any network discharge consent;
 - g) any operational policy, guidance document, or management practice approved by the Council;
 - h) any potential cumulative harmful effect which may arise over time or in combination with other effects due to approvals granted by the Council in the affected sub-catchment;
 - i) the complexity of the issue and the cost required to suitably resolve it;

- j) whether any other approvals are held in relation to the activity requiring Approval, such as resource consents; and
- k) any other reasonable considerations the Council considers appropriate.

Conditions of Approval

12.1 The Council may make an Approval subject to conditions addressing the following matters:

- a) Implementation of, and ongoing compliance with, an environmental management plan which has been prepared to the satisfaction of Council;
- b) the location, design and specifications, of the work or activity;
- c) construction and maintenance requirements for the work or activity;
- d) the specific approved point(s) of service connection into which the stormwater must be discharged;
- e) the average and maximum volume of the discharge of stormwater, the average and maximum rate of the discharge of stormwater, and the duration of any maximum volume or rate of the discharge of stormwater;
- f) the provision of appropriate screens, filters, silt traps, or other partial or preliminary pre-treatment process, equipment, or storage facilities designed to regulate the quality, quantity, and rate of discharge or other characteristics of stormwater prior to the point of discharge to the public stormwater network;
- g) the frequency with which any equipment required by the approval must be maintained and cleaned;
- h) the design, location, and specification of, and any material alteration to, the private stormwater system;
- i) the provision of a bond or insurance in favour of the Council where failure to comply with the approval could result in damage to the public stormwater network or the Council being in breach of any statutory obligation;
- j) recording the presence of any on-site stormwater management device as an encumbrance on the certificate of title for the premise; and
- k) any other reasonable conditions the Council considers appropriate.

Maintenance and construction requirements

13.1 The owner, occupier or manager of a premises on which work occurs for which the Council has given Approval must comply with all conditions of the Approval.

- 13.2 The Council may inspect the work at suitable intervals and notify the owner, occupier or manager of a premises if maintenance must be carried out. Maintenance must be carried out within the advised timeframe and to the standard specified by the Council.
- 13.3 The costs associated with the inspection by the Council and maintenance required by the Council under this clause must be borne by the owner or manager of a premises, unless required otherwise by the Council.

Non-compliance with conditions of an Approval

- 14.1 Where a person does not comply with the terms and conditions of the Approval granted by the Council, including compliance with an environmental management plan for the site, without limiting Council's enforcement options, the Council may take one or more of the following steps:
- a) Issue a written warning to the person, which may be considered as evidence of a prior breach of a condition of the approval during any subsequent review of the Approval;
 - b) Review the Approval, which may result in:
 - i) amendment of the Approval; or
 - ii) suspension of the Approval; or
 - c) withdrawal of the Approval.

Enforcement

- 15.1 It is a breach of this bylaw to fail to comply with any requirement of this bylaw.
- 15.2 Owners, occupiers, and managers of premises on private land are jointly and individually responsible for compliance with this bylaw in respect of those premises.
- 15.3 The Council may require the owner, occupier or manager of a premises by written notice to remedy any breach of this bylaw.
- 15.4 The Council may, pursuant to section 163 of the Local Government Act 2002:
- a) remove or alter a work or thing that has been constructed in breach of this bylaw; and;
 - b) recover any costs of removal or alteration from the person who committed the breach.