

NAPIER CITY COUNCIL INTEGRATED TRADE WASTE AND WASTEWATER BYLAW

STATEMENT OF PROPOSAL MARCH 2022

Napier City Council (**the Council**) is seeking public feedback on its proposal to make a new integrated bylaw that will provide a regulatory framework to effectively manage all wastewater (including trade waste) in Napier City (**City**).

What is a bylaw?

Bylaws are rules or regulations made by local authorities under national legislation that are created to control specific activities of potential concern within the boundaries of a particular district or region. They allow a local authority to address local problems with local solutions.

The Local Government Act 2002 (**LGA**) enables local authorities to adopt bylaws for the following general reasons:

- To protect the public from nuisance (section 145(a));
- To protect, promote and maintain public health and safety (section 145(b)); and
- To minimise the potential for offensive behaviour in public places (section 145(b)).

In addition, section 146 of the Local Government Act specifically enables the Council to make bylaws for the purposes of managing and protecting its wastewater network, and the natural environment into which wastewater is discharged.

Section 158 of the LGA requires local authorities to review all bylaws within five (5) years of the date on which they were first made. After a bylaw has been reviewed in accordance with section 158, it can then be reviewed every 10 years thereafter. Bylaws that are not reviewed within the statutory timeframes are then revoked under section 160A of the LGA.

The Wastewater Drainage Bylaw 2014 was revoked on 17 December 2021. The existing Trade Waste Bylaw 2014 is overdue for review, and is due to be revoked under section 160A of the LGA in December 2022.

The proposal

The Council proposes that:

- A new bylaw that regulates wastewater and trade waste (**Integrated Trade Waste and Wastewater Bylaw**) be made. A copy of the draft bylaw is included at **Schedule 3**.
- The existing Trade Waste Bylaw 2014 is revoked when the new Integrated Trade Waste and Wastewater Bylaw comes into force.
- An Administration Manual accompany the Integrated Trade Waste and Wastewater Bylaw to provide material complementary to each of the matters covered by the bylaw by bringing

together those aspects which are of a more administrative nature and which may need regular review and updating. The Administration Manual includes an explanation of the Council's new Trade Waste Charging Model. The Charging Model is a user pays trade waste scheme that prescribes which charges for trade waste discharges are calculated over a certain threshold. A copy of the draft Administration Manual is included at **Schedule 4**.

Making new bylaws

To make new bylaws, the Council is required by section 155 of the LGA to determine whether a bylaw is the most appropriate way of addressing the perceived problem and, if so, whether the proposed form of bylaw is appropriate and whether there are any implications under the New Zealand Bill of Rights Act 1990 (**NZBORA**).

The Council has undertaken these assessments and considers that the Integrated Trade Waste and Wastewater Bylaw is appropriate and necessary, for the reasons set out in **Schedule 1** to this Statement of Proposal.

The Council has also undertaken an assessment under section 77(1) of the LGA to identify all reasonably practicable options that may be available to achieve the Council's objectives. An assessment of the advantages and disadvantages of each option can be found at **Schedule 2** to this Statement of Proposal.

Consultation process

The proposal to make the Integrated Trade Waste and Wastewater Bylaw must follow the special consultative procedure in the LGA.

Additionally, section 148 of the LGA provides special requirements for bylaws relating to trade waste, including that:

- The Council send a copy of the proposed bylaw to the Minister of Health for his or her comments.
- Before sending the proposed bylaw to the Minister, the Council must give the public notice of its intention to make the bylaw, and stating:
 - The trade wastes to which the bylaw relates;
 - That copies of the bylaw are able to be inspected free of charge at the place specified; and
 - That the Council is prepared to receive and consider any representation about the bylaw made to it by owners or occupiers of trade premises within its district at the time specified in the notice, being not less than two months after publication of the notice.
- Before making the bylaw, the Council consult any body of persons the Minister specifies to the Council as being representative of—
 - the interests of the owners or occupiers of trade premises in the district of the territorial authority; or
 - any class of those owners or occupiers.

Council officers have consulted with stakeholders to identify matters within the current trade waste and wastewater bylaws that require updating, and to address specific concerns they have with these existing bylaws, which will be incorporated into the Integrated Trade Waste and Wastewater Bylaw.

- Consultation with businesses in relation to the trade waste aspects of the Bylaw:
 - All consent holders under the current Trade Waste Bylaw 2014 were informed of and given the opportunity to attend one of three workshops regarding the proposal held in October 2021. 18 attendees representing 16 sites holding current trade waste consents attended the workshops, with general agreement and support for the proposed changes.
 - More information will be shared with current consent holders as the Trade Waste Charging Model is finalised. Council Officers have regular contact with this group through monitoring of current Trade Waste consents so are able to pass on regular updates through informal meetings on sites.
 - A workshop has been organised with representatives of businesses from the Napier CBD with the assistance of Napier City Businesses Incorporated (NCBI). They will be introduced to the topic and consulted on ways to engage with business owners during the consultation period.
 - Separate tours of the wastewater treatment plant could be held with businesses owners if interest was expressed, providing an opportunity for targeted workshops.
 - All businesses will be sent a letter to inform them of the Bylaw review prior to public consultation commencing, explaining the expanded definition and new categorisation of Trade Waste.
 - The Council's Customer Services Team will be briefed on some expected Frequently Asked Questions (FAQs) so that they are prepared to respond to a high level of queries from businesses.
 - Tanker operators will be contacted individually due to the small number of operators in the District.
- Te Waka Rangapu will assist with engagement with mana whenua and the wider Māori community in Napier during the consultation process.
- Members of the public will be invited to an open day at the Awatoto Wastewater Treatment Plant where small groups will be taken on tours to learn more about Wastewater in Napier and ask any questions to Council Officers from the Environmental Solutions Team.

Proposed bylaw

A copy of the proposed bylaw, draft Administration Manual and Charging Manual can be found at **Schedules 3 and 4** to this Statement of Proposal and on the Napier City Council Website: www.sayitnapier.nz

Print copies of the draft bylaw may be inspected from **Monday, 28 March 2022 to Wednesday, 25 May 2022** at the following places during normal office and library hours:

Customer Service Centre

215 Hastings St
Napier

Napier Library

1 Tennyson St
Napier

Taradale Library

24 White St
Taradale

Right to make a submission and be heard

The Council is now seeking your views and wants to hear from any person, group or business that would like to make submissions with respect to the proposed Trade Waste and Wastewater Bylaw (including any operators of trade premises in the City).

Any person or organisation has a right to be heard in regard to this Statement of Proposal and the Council encourages everyone with an interest to do so.

Submissions should be directed toward matters that are within the scope of the Statement of Proposal. Submissions may be made on any aspect of the proposed Bylaw, however the Council is particularly interested to hear feedback from:

- Trade waste operators in relation to:
 - The timeframes for registration and obtaining consents compliance
 - The proposed trade waste consenting regime;
 - The proposed Charging Model; and
 - The requirements for grease traps to be installed and maintained at all food premises; and
 - The proposed timing of the new requirements being implemented.
- Liquid and Hazardous Waste (Tanker) operators in relation to:
 - The proposed trade waste consenting regime; and
 - The proposed implementation of WasteTRACK; and
 - The proposed timing of these regulations being implemented.
- Mana whenua in relation to:
 - The characteristics of trade waste that are considered culturally offensive to Māori and how these may be managed or mitigated by trade waste operators (for example, whether the use pre-treatment methods such as diversion or Rakahore rock channels may be appropriate);
 - The addition of Cultural significance of water to the definition of 'Cleaner Production' and how best to implement and educate Operators and Customers in relation to this.
- The wider community in relation to:
 - The proposed Charging Model and changes to rates calculations; and
 - Part C of the Bylaw and Admin Manual relating to Domestic Wastewater.

Parties intending to make a submission are encouraged to set those submissions out in writing and submit them to the Council by:

- Online form: **Go to our consultation website at www.sayitnapier.nz**
- Post to: **Private Bag 6010, Napier 4142, New Zealand**

- Delivery to: **Customer Service Centre, 215 Hastings St, Napier**

All submissions must be made in writing (hardcopy or electronic) and received by **midday on Wednesday, 25 May 2022**.

Making an effective submission

Written submissions can take any form (e.g. email or letter). An effective submission references the clause(s) of the proposed Integrated Trade Waste and Wastewater Bylaw, states why the clause is supported or not supported, states what change to the clause is sought, and why. Submissions on matters outside the scope of the proposal cannot be considered by the Hearings Panel.

Hearing

After submissions have been received, the Council will convene a hearing, which it intends to hold in Napier City on **22 and 23 June 2022**. Any party who wishes to do so can present their submission in person. The Council will give equal consideration to written and oral submissions.

The Council will permit parties to make oral submissions (without prior written material) or to make a late submission, only where it considers that special circumstances apply.

Every submission made to the Council will be acknowledged in accordance with the LGA, will be copied and made available to the public, and every submission will be heard in a meeting that is open to the public.

Consultation timeline

The key dates in the Council's consultation programme are set out below:

- The Council resolved to undertake public consultation regarding the proposal at its meeting of **24 March 2022**.
- Public consultation will commence on **Monday, 28 March 2022**. This will involve:
 - Targeted consultation with owners or occupiers of trade premises within the district.
 - Targeted consultation with mana whenua through Te Waka Rangapū.
 - Community drop-in sessions. These will allow interested members of the community to learn more about the bylaw and have their questions answered by relevant council officers.
 - An open day at the Awatoto Wastewater Treatment Plant for anyone to book and attend.
 - Advertising across digital, social and print media to ensure public awareness and participation in the bylaw-making process.
 - Online and hard copy submission forms that will be available at Council's libraries and Customer Service Centre
- The proposal will also be provided to the Ministry of Health for comment on **Monday, 28 March 2022**.
- The proposal will also be provided to the Hawkes Bay Regional Council for comment on **Monday, 28 March 2022**.

- Submissions on the proposal will close at midday on **Wednesday, 25 May 2022**.
- Submissions will be heard by Councillors on **22 and 23 June 2022**.
- The Council will consider the outcome of the consultation and hearing process and make a decision on the proposal on **14 July 2022**.

Schedule 1

Section 155 determinations

Section 155 of the LGA requires that the Council assess whether a bylaw is the most appropriate way of addressing the perceived problem and, if so:

- whether the proposed form of bylaw is appropriate; and
- whether the proposal gives rise to any implications under the NZBORA.

Those assessments are set out below.

Problem identification and assessment

The public wastewater network is a piece of core infrastructure managed by the Council, and provides for the collection, treatment, and discharge of wastewater. Wastewater includes domestic sewage and wastewater from trade premises. Trade waste comprises a significant part of the wastewater that is conveyed, treated and discharged into Hawke's Bay by the Council, both in terms of volume and loads of contaminants which are detrimental to the environment and can damage infrastructure.

Perceived problems

In addressing the risks associated with the operation of the public wastewater network, and trade waste, the Council has identified the need to:

- Improve the health of the Hawke's Bay Marine environment into which treated trade waste and wastewater is currently discharged.
- Reduce maintenance requirements by reducing load on the Public Wastewater System.
- Allow for accurate and fair cost recovery of the industrial load on the wastewater network and treatment plant.
- Set effective control mechanisms for the discharge of trade waste into the network in compliance with the trade waste consent granted.
- Meet best practice standards, regional consistency and compliance with the Council's own wastewater discharge consent.
- Provide a common framework that enables the council to control discharges which ultimately protects the receiving environment, public health and people working on the network.
- Ensure any regulatory mechanism is as streamlined and efficient as possible to promote public understanding of sustainable behaviours and activities including water conservation, waste minimisation, cleaner production and on-site pre-treatment.

Is a bylaw the most appropriate way of assessing the perceived problems?

There is an identified need for Council to continue to regulate wastewater (including trade waste) in the City. The Council considers that bylaws are the most appropriate way to address these

issues, as bylaws allow the Council regulate behaviours that affect three waters management and the use of three waters systems in the District.

The purpose of the Wastewater Drainage Bylaw 2014 is to prevent the misuse of the Council's wastewater system, ensure the protection of personnel and the general public, protect the ability of the Council to meet the requirements of legislation and, protect investment in the existing and any future infrastructure, treatment plant and disposal facilities.

The purpose of the Trade Waste Bylaw 2014 is to protect the Council's wastewater infrastructure and regulate the disposal and treatment of trade waste in the City. The aim is to ensure effective and efficient trade waste management, and to meet requirements of Council's discharge consents for treated waste to the marine environment by imposing performance standards and requirements for trade waste disposal.

The Council considers that the purposes of the current bylaws remain important and that the most appropriate way to respond to these perceived problems described above is through revoking and replacing the existing bylaws so that the new bylaw can more efficiently and effectively regulate wastewater and trade waste in the district.

Is the proposed bylaw the most appropriate form of bylaw?

The need for improved outcomes for the management of these wastewater streams has become evident with the City's increase in population and development, and the need to protect the natural receiving environment and Council's infrastructure from harm, and comply with the conditions of the coastal permit that the Council holds from the Hawke's Bay Regional Council.

Given that trade waste is also discharged into the Council's wastewater system, incorporating general wastewater controls for the City together with those for trade waste would enable the Council to take an integrated, consistent, and simplified approach to the management of its wastewater services and the associated network.

The Council has undertaken a review of the Trade Waste Bylaw 2014 and the Wastewater Drainage Bylaw 2014 and has prepared:

- A gap analysis from its review of the Napier City Trade Waste Bylaw 2014 (**Appendix 1**); and
- A gap analysis from its review of the Napier City Wastewater Drainage Bylaw 2014 (**Appendix 2**).

The above reports highlight the interdependency of the trade waste and wastewater issues identified in the City. It is considered that the most appropriate way of addressing the perceived problems in respect of trade waste and wastewater is through a new integrated bylaw that addresses both wastewater and trade waste management.

In coming to this conclusion, the Council officers have undertaken an assessment of a range of options pursuant to section 77 of the LGA, which are summarised in **Schedule 2** below.

NZBORA implications

The Council considers that the proposed Integrated Trade Waste and Wastewater Bylaw is consistent with NZBORA because it seeks to impose justifiable and reasonable limitations on persons in the interests of environmental quality and public health and safety.

There may be some restriction to personal freedom arising from the bylaw, however the Council considers that these restrictions are justified for the prevention of nuisance to others and to the environment, and are provided for under the NZBORA.

Determinations

For the reasons given above the Council determines that:

- A bylaw is the most appropriate way to address the perceived problem, pursuant to section 155(1) of the LGA;
- The proposed bylaw is the most appropriate form of bylaw, pursuant to section 155(2)(a) of the LGA; and
- The proposed bylaw does not give rise to any implications under the NZBORA, pursuant to section 155(2)(b) of the LGA.

Schedule 2

Section 77(1) assessment of all reasonably practicable options

Option(s)	Advantages and disadvantages
<p>Option 1</p> <p>Not replace the Trade Waste Bylaw 2014 and Waste Water Drainage Bylaw 2014</p>	<p>Advantages</p> <p>As part of this review, the Council has considered the option of not replacing the existing bylaws and instead regulating wastewater and trade waste management using other means. This option would require the Council to rely on existing legislation and an educative approach to ensure its wastewater network was not compromised.</p> <p>Costs associated with setting up and implementing a new bylaw (or bylaws) could be allocated to other Council projects and to increasing awareness to change behaviour using a programme of educational outreach, industry guidelines and targeted programmes to improve outcomes.</p> <p>Disadvantages</p> <p>The disadvantages with this option are that high risk activities and behaviours cannot be monitored and investigated to provide control. The Council runs the risk of not taking all practical steps to protect, promote and maintain public health and safety and the natural environment. The Council also runs the risk of not meeting environmental standards, not protecting public health and safety and not protecting its wastewater infrastructure or meeting its own obligations pursuant to its wastewater discharge consent. There is a risk that a purely educative approach will not be as successful as immediate or readily enforceable measures provided under a bylaw.</p> <p>Conclusion</p> <p>Overall, the Council does not consider that this option would be effective at achieving its desired objectives and has therefore discounted it.</p>
<p>Option 2</p> <p>Roll over / renew the Bylaws without any changes.</p>	<p>Advantages</p> <p>New bylaws will have the same advantages of the current bylaws. The cost of establishing the new bylaws would be minimal in this case as they would be replaced on largely the same terms.</p> <p>Disadvantages</p> <p>The disadvantages with this option are that it would not improve the efficacy of the Bylaw nor address trade waste and wastewater related problems faced by the district that are not currently addressed by the existing bylaws, and which have been identified in the gap analyses referred to above. The integration outcomes sought from the</p>

	<p>proposed Integrated Trade Waste and Wastewater Bylaw would also not be achieved.</p> <p>Conclusion</p> <p>Overall, the Council does not consider that this option would be effective at achieving its desired objectives and has therefore discounted it.</p>
<p>Option 3</p> <p>Replace the Trade Waste Bylaw 2014 and Waste Water Drainage Bylaw 2014 separately.</p>	<p>Advantages</p> <p>Under this option Council would review the current trade waste and wastewater bylaws and incorporate the recommendations identified within separate bylaws. The Council would be actively engaged in meeting environmental standards, protecting public health and the natural environment with regards to trade waste and wastewater discharges and seen as actively engaging in protecting the City's wastewater network. With a bylaw, high risk activities and behaviours can be monitored and investigated to provide control. The new bylaws would address the trade waste and wastewater related problems faced by the district that are not currently addressed by the existing bylaws, as identified in the gap analyses referred to above.</p> <p>Disadvantages</p> <p>The disadvantages with this option are that the integration outcomes sought from the proposed Integrated Trade Waste and Wastewater Bylaw would not be achieved. The process of making the bylaws would also be more costly compared to an integrated bylaw as the Council would have to go through separate consultation processes to update each bylaw.</p> <p>Conclusion</p> <p>Overall, the Council does not consider that this option would be the most effective at achieving its desired objectives and has therefore discounted it.</p>
<p>Option 4</p> <p>Make a new Integrated Trade Waste and Wastewater Bylaw.</p>	<p>Advantages</p> <p>The proposed Integrated Trade Waste and Wastewater Bylaw would incorporate the regulation of trade waste and wastewater into a single integrated, regulatory framework.</p> <p>With this option, the Council would be seen as actively engaging in protecting the City's wastewater infrastructure in an integrated and comprehensive manner that better controls and regulates the quality of discharges to the natural environment. There are numerous advantages with this option:</p> <ul style="list-style-type: none"> • Protection of the built environment in an integrated, sustainable and planned manner will provide for positive environmental, social, cultural and economic outcomes that will follow through to future generations. • Provision of a common framework that enables the Council to control discharges which ultimately protects the receiving

environment, public health and safety and people working on the network.

- Clear regulatory direction for Council's role in decision making on what is discharged into the environment, regardless of the source of the discharge to the wastewater network.
- A consistent approach across the City that will improve organisational efficiency that is effective and easily understood.
- Future bylaw reviews will take an overall holistic approach to any issues affecting the wastewater network.
- A consistent and holistic approach to the promotion of sustainable behaviours and activities including water conservation, waste minimisation, cleaner production and on-site pre-treatment.

The proposed Integrated Trade Waste and Wastewater Bylaw would provide a proactive and responsive regulatory framework to manage the risks associated with the operation of the Council wastewater network, including the quality of discharges to the natural environment and enable the Council to fulfil its own environmental responsibilities, including in respect of the Council's own wastewater discharge consent.

Disadvantages

Disadvantages include community resistance to increased levels of regulatory management and the relatively high costs associated with reviewing the existing bylaws, preparing, consulting on, and adopting an Integrated Bylaw and Administration Manual.

Conclusion

The Council has considered the options available to address the problems identified in respect of trade waste and wastewater and determined that the proposed Integrated Trade Waste and Wastewater Bylaw is the most appropriate form of bylaw for addressing the identified issues.