

24 October 2019

Napier City Council
Private Bag 6010
NAPIER 4142

Attn: Cameron Burton

Dear Cameron

SUBMISSION ON DRAFT NAPIER CITY STORMWATER BYLAW 2019

Thank you for the opportunity to submit on the Napier City Council Stormwater Bylaw 2019 (the Bylaw).

BACKGROUND

Resource consents under RMA

As a consent authority under the RMA, HBRC assesses resource consent applications for discharges of stormwater (and many other discharges of contaminants) to land or water. The consented status of stormwater discharges in Napier City is mixed insofar as:

- resource consents have been granted for some discharges, and those consents have a few more years before they expire;
- applications for some discharges have been lodged and are currently being processed by HBRC such as the Westshore Tidal Gates replacement, Landcorp Farm discharge application and Lagoon Farm discharge application; and
- Napier City Council (NCC) is still preparing a resource consent application for the Onehunga Pump Station stormwater discharge which is likely to be a joint application with Landcorp Farming Limited.

Given this, our comments in this submission are made ‘without prejudice’ to any decisions HBRC might be required to make in respect of its own plan making and consent authority roles under the RMA.

We note that in some locations, HBRC and NCC are joint consent holders and managers of drainage and flood control assets within Napier City. In a small number of instances, stormwater from HBRC’s drainage assets will enter NCC’s open channel drainage network. In these cases, we assume HBRC will be subject to NCC’s Bylaw just like any other person.

Regional Policy Statement (RPS)

The RPS, which is included in the Hawke's Bay Resource Management Plan (see chapters 2-4), includes provisions specific to stormwater. Of particular relevance to this Bylaw are Policies UD12 and UD13.

Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments Plan Change 9 (TANK Plan Change)

When implemented, the TANK Plan Change will update the Regional Resource Management Plan to consider the management requirements for land and surface water and their connected groundwater systems in the TANK catchments. We note that although this plan change is not yet publicly notified, it reflects the aspirations of the community of the four catchments.

In the discussion material provided with the Bylaw, NCC note the TANK Plan Change will result in changes to stormwater requirements in the next 10 years, particularly TANK Policies 28 - 32 and TANK Rules 19 - 23.

Heretaunga Plains Urban Development Strategy (HPUDS)

The 2010 Heretaunga Plains Urban Development Strategy contains several key approaches and actions in chapter 5.34 which directly relate to management of stormwater in the Heretaunga Plains sub-region which Napier City falls. These relate to active avoidance of pollution, using low impact technology, having appropriate plans in place and Comprehensive Stormwater Consent processes.

COMMENTS

In general, HBRC is supportive of the proposed Bylaw. We believe that it appropriately focusses on stopping pollution at source and supports the introduction of "user pays" clauses and the preferred option of amending the Bylaw, while continuing with public education initiatives. We encourage NCC to continue working with HBRC's Marketing & Communications Team to educate and promote awareness of stormwater issues.

HBRC consider stormwater bylaws to be complementary to the various implementation tools that are noted in section 5.34.4. Actions of HPUDS (2010). The Bylaw also particularly supports Key Approach 6 "*pollution of waterways is actively avoided*", by making it clear that no person may allow anything that will cause or is likely to cause a nuisance to enter the stormwater network. Further comments regarding the alignment of the Bylaw with HPUDS are included below.

NCC's approach to stormwater also largely aligns with the TANK Plan Change. In particular, the Bylaw supports an integrated catchment management approach and is to be delivered alongside education and public awareness initiatives. Comments related to improving alignment with the TANK Plan Change are included below.

High risk sites

We understand that the Bylaw has been reviewed to widen its scope beyond an overly restrictive focus on high risk facilities and that high risk activities are intended to be controlled

through environmental management plans. In accordance with the TANK Plan Change and HPUDS which both include provisions specific to “at risk” or “high risk” activities, sites or facilities, we recommend NCC provide a clear connection between high risk sites and the need for regular inspection, Site Management Plans and good site management practices. We understand that this may also involve a rework of the matrix used to identify high risk sites.

Low impact design

Chapter 5.34 of HPUDS establishes a preference for low impact stormwater design and the RPS sets a similar preference through Policy UD12(k). HBRC suggest that there is opportunity for NCC to signal this preference through Clause 11.1.

References to other documents

We suggest the Bylaw is amended to include references and clarify links to related documents in order to improve usability. For example, it would be helpful to clarify and specify links to the Introductory Bylaw 2014, District Plan, Code of Practice, HPUDS and Local Government Act 2002. Given the changing nature of some of these documents (e.g. the Introductory Bylaw and District Plan which have specific review periods), it may be most appropriate to note that the Bylaw should be read in conjunction with them and why, rather than including specific clause references. It may also be worthwhile including an advisory note with Clauses 10.1 and 10.2 that resource consents may be required from the Regional Council for some stormwater activities.

HBRC note that Central Government recently consulted on a proposed National Policy Statement for Urban Development (NPS-UD) to replace the National Policy Statement on Urban Development Capacity (NPS-UDC). We encourage NCC to ensure that any changes made to the Bylaw are made to align with the upcoming NPS-UD.

Definition of nuisance

It is unclear if the definition of nuisance is helpful for the purpose of the Bylaw, namely protection of the stormwater system and NCC’s ability to comply with resource consents and water quality targets. Although using this definition aligns with NCC’s Introductory Bylaw 2014 and Section 29 of the Health Act 1956 does not limit the meaning of the term nuisance, the examples given in that Act do not seem to be particularly relevant to the Bylaw. We suggest NCC ensure the definition of nuisance enables you to achieve the purpose of the Bylaw, particularly in complying with any applicable network discharge consent and water quality targets.

Consistency and collaboration

As part of an integrated catchment management approach we encourage you to continue working with HDC to ensure a joined up approach. The usability of your respective Bylaws may be improved by further aligning definitions and approval conditions and considerations according to TANK Policy 31.

Enforcement

We note that with the broader scope and lack of prescription, a greater burden of enforcement and discretion is required. We support the approach but recognise that greater resourcing may be required for it to be effective. We also encourage continued dialogue with the HBRC Compliance Team as we see value in undertaking joint site visits and responding to pollution call-outs together.

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Should you have any queries with regards to the content of this submission please do not hesitate to contact Ellen Humphries, as above.

Yours sincerely



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