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PALMERSTON
NORTH
CITY

PALMERSTON NORTH CITY COUNCIL

MINUTES ATTACHMENTS PLANNING & STRATEGY COMMITTEE

9AM, WEDNESDAY 9 FEBRUARY 2022
COUNCIL CHAMBER, FIRST FLOOR, CIVIC ADMINISTRATION
BUILDING
32 THE SQUARE, PALMERSTON NORTH

PLANNING & STRATEGY COMMITTEE MEETING

9 February 2022

5 Hearing of Submissions - Draft Stormwater Bylaw

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| 1. | Tabled image example of Concrete and tarseal driveway – submitter Chris Teo-Sherrell | 4 |
| 2. | Tabled additional information - submitter Les Fugle | 5 |



Palmerston North City Council draft stormwater Bylaw 2022

On about 23 November 2021, I filed an initial submission with Council, in respect of the proposed draft bylaw. I now take the opportunity to expand on that submission, noting that I will be unable to attend in person to speak to the same.

This supplementary submission/expansion on my initial submission is directed at two aspects of the proposed bylaw.

The first submission is directed to clause 9 of the proposed bylaw.

Clause 9 – Operation and maintenance of private stormwater systems

Clause 9.1 provides that unless the Council approves otherwise, the operation and maintenance requirements for a private stormwater system fall on the owner of the property in which it is instated.

My concern is not that the private stormwater system maintenance obligations fall upon the owner, but rather that there is, in my perception, a shortcoming in the definition of "maintain", given that the costs of maintenance fall upon the property owner.

In the absence of an efficient objection process, or an adequate definition of what is, and is not entailed in the term "maintenance" for the bylaws purposes, the owner of a property is susceptible to the imposition of remedial work expectations by the Council, in circumstances where they may consider that those works do not entail maintenance, or are unnecessary or unreasonable in their nature and extent.

It is easy to perceive the situation arising, whereby increased waterflow into the properties occasioned, for example, from an upstream catchment expanding due to a new development and the existing infrastructure capacity is exceeded, with the property owner being instructed to shoulder maintenance/upgrade costs to manage the water not created by that property.

It is my submission that the bylaw be amended, to clarify that the Council (or the causative developer) will be responsible to meet the costs of such additional maintenance and/or upgrade works, in situations where the need for that arises due to causes outside of the property owner's control.

I note that consideration has been given to whether or not the bylaw would entail an interference with private use rights, with the view expressed that it would not; I do not agree with that view.

It is my view that the warranted enforcement officer powers conferred by the Local Government Act 2002, which afford a right of entry onto private land to assess whether a breach of a bylaw exists, is an investigative function, in my view it is not appropriate to utilise a bylaw in a manner which, as here, overrides private use rights; it being my perspective that to do so exceeds the proper ambit of the delegated authority entailed for the purposes of making a bylaw.

Clause 10 – Removal of redundant private stormwater system

This clause proposes that Council may require a private landowner to remove or decommission a redundant private stormwater system, if Council proceeds to deem that the system may cause or be likely to cause damage to the public stormwater

system.

As it will, almost invariably be the instance that Council has approved the nature of the install private stormwater systems/its construction, it is my view that if the nature of that approved installation becomes unacceptable to Council, then the obligation to meet the costs of its decommissioning ought also to fall upon Council.

The obligation to avoid nuisance.

Council is imposing an obligation upon private property owners to avoid the occasioning of nuisance; as that term is defined within the bylaws' introduction.

It is my submission that the bylaw be extended, to include the attaching of that obligation to Council, and an obligation that Council meet the same criteria, i.e. that its vested infrastructure, and its development and operation of its infrastructure will not occasion nuisance. Situations can readily be perceived, whereby Council would divert, or allow the division of stormwater onto private property, occasioning nuisance to that landowner. Given the preparedness to impose a blanket obligation upon private landowners, it ought to devolve to Council to satisfy the same standards/meet the same expectations of developmental good conduct.

Dated 4/02/2022

Les Fugle