

Officers report

Proposed River Control and Flood Protection Bylaws for Taranaki

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Officers summary

Three submissions were received on the *Proposed River Control and Flood Protection Bylaws for Taranaki* (Proposed Bylaws). Set out in the tables below, for the Hearing Committee’s consideration, are a summary of the reliefs sought and officers recommendations and responses to those reliefs sought. Requests to amend are either accepted or declined by Council officers with an explanation on the reasons for the response. Changes to the Proposed Bylaws are tracked in red with additions being underlined and deletions showing ~~strikethrough~~.

Please refer to the Appendices of this report for a full copy of the submissions on the Proposed Bylaws.

Submission 1: Powerco Limited

Submitter’s requests	Officers’ recommendations and responses
1 Clause 6 – Floodways	
Amend	Decline
<p>The submitter opposes clause 6.1.</p> <p>The submitter has a number of services located over and under floodways, which do not affect the ability of the floodway to function. In some situations, services are placed on road bridges (e.g. the North Street Bridge crossing the Waitara River - Map 2c) which would require an authority under clause 6.1(d).</p> <p>The submitter seeks the following amendment: <i>6.1 No person, <u>except Network Utility Operators</u>, shall [...]</i></p>	<p>Historically, incidents have occurred in Taranaki and elsewhere in New Zealand where network utility operators have been responsible for damaging floodways. The occurrence of such incidents is one of the main drivers for the creation of bylaws and must target all activities with the potential to compromise the integrity and performance of flood protection assets.</p> <p>Officers note that this clause applies to new activities and structures being placed on flood protection assets only.</p> <p>Existing legally established structures and utilities do not require bylaw authority. However, a new structure or utility that does not meet the requirements of the bylaw will require an authority. This authority is considered essential so that the Council can ensure the performance of the flood protection assets.</p>

Submitter's requests	Officers' recommendations and responses
	<p>Notwithstanding the above, Council will ensure that gaining bylaw authority for the maintenance outlined by the submitter will be a relatively infrequent, cheap, and easy process.</p> <p>Officers recommend declining the relief sought.</p>
<p>2 Clause 7 – Defences against water</p>	
<p>Oppose</p>	<p>Decline</p>
<p>The submitter opposes clause 7.2.</p> <p>The submitter has existing services located on defences against water which may need to be excavated for maintenance purposes. Furthermore, the restriction against carrying out earthworks or locating a structure within 7.5m from any defence against water could become problematic where that defence runs parallel to the legal road (e.g. Queen Street – map 2b). The submitter typically locates its services within the road corridor – and Territorial Authorities (as road corridor managers) typically require those services to be located towards the edge of the road.</p> <p>The submitter seeks the following amendment: 7.2 No person, <i>except Network Utility Operators</i>, shall [...]</p>	<p>Comments as per (1) above.</p> <p>Officers recommend declining the relief sought.</p>

Submitter's requests	Officers' recommendations and responses
3 Clause 17 – Deeming authority	
Oppose	Decline
<p>The submitter opposes clause 17.1.</p> <p>The submitter notes that clause 17.1 only applies to existing resource consents or agreements made with the Council – there can be situations where network utilities have been lawfully established (under previous legislative regimes) without a resource consent or formal agreement.</p> <p>The submitter seeks the following amendment to acknowledge this:</p> <p><i>17.1 Any existing <u>Network Utility installation</u>, resource consent or agreement granted by or made with the Council and issued prior to this bylaw coming into force and which authorizes the carrying out of any activity listed in this bylaw [...]</i></p>	<p>It is appropriate that maintenance works that may affect the integrity of defence structures and floodway areas be regulated. Council officers are particularly concerned about structures and installations that do not have any resource consents as there are no consent conditions that regulate and manage adverse effects that may arise from any maintenance works.</p> <p>Gaining bylaw authority for the works outlined by the submitter is the most appropriate way to ensure that damage to the integrity of defence structures and floodway areas is avoided and to ensure that network utility operators manage their structures appropriately. Notwithstanding, gaining bylaw authority will be a relatively infrequent, cheap, and easy process.</p> <p>Officers note that there will be no need for the submitter to seek authority for existing structures, despite the lack of a resource consent, unless any ongoing maintenance works would trigger anything under clause 6 [Floodways] or clause 7 [Defences against water].</p> <p>Officers recommend declining the relief sought.</p>

Submission 2: New Plymouth District Council

Submitters requests	Officers' recommendations and response
4 Whole bylaws	
Oppose	Decline
<p>The submitter opposes the bylaws in their entirety.</p> <p>The submitter is not certain of the implications of the Proposed Bylaws in relation to potential effects on the submitter's assets and activities.</p> <p>The submitter is also concerned by the lack of pre-engagement and requests meaningful engagement with the Council.</p>	<p>Officers note that the process for notification and consultation followed the statutory process set out in the <i>Local Government Act 2002</i>. As part of the process, the Council contacted the submitter, provided all the relevant information, provided a four week engagement and feedback timeframe and invited the submitter to contact the Council if they had any questions or points requiring clarification.</p> <p>Notwithstanding the above, following the submission period, it was agreed that the submitter could have more time to undertake a thorough analysis of the impact of the Proposed Bylaws on their assets and activities and provide additional feedback. The second submission is also included in Appendix 2 and the officers report on their additional feedback follows below.</p>
5 Application for authority	
Oppose	Decline/no relief required
<p>The submitter opposes the need to pay fees associated with applying for an authority under the bylaws for the following reasons:</p> <ul style="list-style-type: none"> • The fees and charges associated with applying for multiple authorities could potentially impose significant costs on the rate paying community and requests that the works on public infrastructure should be exempt from paying fees; • Infrastructure built prior to the date of the proposed bylaw should be exempt from paying the fees; and • There should be the ability to apply for authority to undertake a 	<p>The submitter proposes a range of changes that are generally operational in approach. Some of which officers consider appropriate. Notwithstanding the above, officers do not consider that any changes are required to the bylaws themselves to address these matters.</p> <p>Officers consider that much of the work undertaken by the submitter to be similar to the work undertaken by other network utilities and therefore the effect of the bylaws on their assets and activities will be the same.</p> <p>It is important to note that most of the area covered by these bylaws is</p>

Submitters requests	Officers' recommendations and response
<p>programme of work that covers reoccurring activities over a period of time instead of having a multitude of individual authorities.</p>	<p>owned by the Council and therefore notifying Council and seeking permission to undertake activities is a reasonable requirement and should already be standard practice by the submitter.</p> <p>However, in the past, seeking such permission and notifying Council of works that the submitter was carrying out in and near Council's flood protection infrastructure has not always occurred. Hence, the need for the Proposed Bylaws. For example, in June 2018, a sub-contractor for the submitter that was relocating a power cable dug out parts of the Waitara stopbanks putting at risk the whole asset and neighbouring areas.</p> <p>It is the view of officers that the Proposed Bylaws are not overly onerous. They are consistent with similar bylaws around the country. The Council will ensure that the permission and notification requirements are a relatively cheap and easy processes that will avoid future problems.</p> <p>Officers note the following in response to the submitters request:</p> <ul style="list-style-type: none"> • Fees associated with applying for authority under the bylaws are administrative fees only. They cover the costs of a Council officer checking to ensure that the activity proposed will not have any adverse effects on the existing infrastructure. Obtaining the appropriate authority from the Council reduces the risk of damage to essential infrastructure. The cost of repairs that are imposed on Council when things go wrong are not even comparable to the minimal costs imposed on the submitter to seek authority and give notice. The payment of a small, administrative fee is appropriate to ensure that greater expense is avoided. Officers recommend declining this relief. • Infrastructure built prior to the date that the bylaws come into effect will not be required to seek retrospective authority under the bylaws. The bylaws are only intended to address new future

Submitters requests	Officers' recommendations and response
	<p>activities captured by the bylaws.</p> <ul style="list-style-type: none"> Where appropriate, the Council will consider applications for authority under the bylaws to undertake a programme of work that covers reoccurring activities. Officers consider this approach to be pragmatic and efficient. However, officers do not consider any changes are required to the bylaws to give effect to this request.
6 Clause 6.1 [Floodways]	
Oppose	No relief required
<p>The prohibition of placing structures over floodways may interfere with NPDC's water supply and wastewater networks, particularly pipe bridge crossings, and road bridges. The submitter also considers this clause to be ambiguous as to whether it only applies to new structures or if it also covers renewal and maintenance of existing structures, for example replacement of water mains suspended on the side of the Waitara road bridge.</p>	<p>Officers consider that the submitter's concerns are already addressed and that no changes to the Proposed Bylaws are required.</p> <p>In relation to structures, clause 6(d) is only concerned with the activity of constructing or locating a structure and not with any ongoing or current occupation of existing structures.</p> <p>Further, as already noted in response to the submission point above, the bylaws will only apply to activities taking place after the Proposed Bylaws have come into force and does not cover maintenance works on the structures themselves. Replacing an existing pipe on an existing structure will not require authority under the Proposed Bylaws.</p>

Submitters requests	Officers' recommendations and response
7 Clause 7.2 [Defences against water]	
Oppose	No relief required
<p>The submitter is concerned that activities, most notably excavation, occurring within 7.5 metres of a defence against water places an encumbrance on parts of NPDC's critical water and wastewater infrastructure, most notably the main transfer pump station and several rising mains.</p>	<p>Officers note that the Proposed Bylaws are not intended to capture maintenance works. However, maintenance works may be captured by the Proposed Bylaws where maintenance activities require excavation within 7.5 metres of a defence against water.</p> <p>Officers consider that the submitters concern can effectively and efficiently be dealt with by applying for a "global authority" for maintenance works that require excavation within the 7.5 metres of a defence against water. Authority conditions are likely to include the need for those undertaking the activity to return the site to the same condition or better than when the activity was undertaken.</p> <p>This would only cover maintenance activities and any new structures or assets would require an authority.</p>

Submitters requests	Officers' recommendations and response
8 Clauses 10.1 and 10.2 [Inspection and surveys]	
Oppose	Decline
<p>The submitter notes that it has wastewater facilities adjacent to flood defences which are hazardous/dangerous and could pose Health and Safety risks if inspections are undertaken without permission and supervision of the submitter. They seek that clauses 10.1 and 10.2 be amended to acknowledge that the Taranaki Regional Council has a duty as a Person Conducting Business or Undertaking under the Health and Safety at Work Act, in particular the duty to consult, coordinate and cooperate with other Persons Conducting Business or Undertaking when undertaking its works.</p>	<p>Council officers point out that the clause already requires officers conducting inspections to give written notice of the inspections, this allows for the Council to consult, coordinate and cooperate with the occupier of the land as appropriate.</p> <p>In addition, officers note that the Council maintains and is conversant with implementing its own Health and Safety policies and would not allow its personnel to enter onto dangerous sites without undertaking the necessary steps with the occupier to ensure the safety of staff.</p> <p>None of the concerns raised by the submitters requires the Council to make reference to the <i>Health and Safety at Work Act</i> within the Proposed Bylaws. These are operational matters that will be addressed as and where appropriate.</p>

Submitters requests	Officers' recommendations and response
<p>9 Clause 11.1 [Defences against water maintenance works]</p>	
<p>Oppose</p>	<p>No relief required</p>
<p>The submitter is concerned that any works undertaken by the Council through clause 11.1 at short notice may create a conflict with the submitters <i>Water, Wastewater and Storm Water Services Bylaw</i> by “interfering” with the submitters water and wastewater infrastructure.</p> <p>The submitter also notes that the minimum requirement to give 5 working days notice must not be allowed to over-ride requirements from the <i>Water, Wastewater and Stormwater Services Bylaw</i> to request the necessary permissions, provide notice, check underground service records, and request and pay for stand-over services if required.</p> <p>The submitter also considers that nothing in the Proposed Bylaws should over-ride NPDC’s <i>Water, Wastewater and Stormwater Services Bylaw</i>, in particular, clauses 6.7 [Building over buried public services], 11.2 [Stormwater flow paths] and 11.3.</p>	<p>Council officers note the comments but do not consider this is an issue. Officers consider the Proposed Bylaws to largely be consistent with New Plymouth District Council’s <i>Water, Wastewater and Stormwater Services Bylaw</i>. The Proposed Bylaw essentially takes the same approach to ensure that those undertaking activities do not “interfere” with Council owned and managed infrastructure that provides an essential service to rate payers.</p> <p>Of particular note, in most instances, the land upon which defences against water and floodways are located is owned by the Council, and therefore, there will be very few instances where clause 11.1 may be triggered.</p> <p>However, where there are instances that clause 11.1 is triggered, five working days notice of the maintenance works should be sufficient for the submitter to conduct the necessary checks. Of note, this is consistent with NPDC’s <i>Water, Wastewater and Stormwater Bylaw</i>, whereby under clause 6.8.4 of their bylaw a person proposing to carry out excavation work in the vicinity of its buried public services on any land must give [NPDC] at least five working days notice in writing. Of note, it is very unlikely that the Council will require to undertake excavation works of this nature and that five working days notice is significantly more time than is required under the <i>Local Government Act 2002</i> under section 171.</p> <p>Further to this, authority gained under the Proposed Bylaws does not replace the need for those conducting the activity to comply with other bylaws or legal requirements including those included in clause 6.7 11.2 and 11.3 of NPDC’s <i>Water, Wastewater and Stormwater Services Bylaw</i>. As indicated in the Proposed Bylaws, the Council will grant authority under the bylaws as they relate to floodways and defences against water only, not against other infrastructure or features.</p>

Submitters requests	Officers' recommendations and response
10 Civil Defence Emergency Management	
Oppose	No relief required
<p>The submitter considers that the Proposed Bylaws are silent on the issue of Civil Defence Emergency Management and is concerned with how the duties of Lifeline Utility operators will be accommodated during an emergency event, particularly where these duties may conflict with the Proposed Bylaw.</p>	<p>Comments noted. However, in the event of a civil defence emergency the <i>Civil Defence Emergency Management Act 2002</i> will apply, which sets out the appropriate powers for dealing with such emergencies and dealing with any conflicts under other statutes.</p>

Submission 3: John Doorbar

Submitters requests	Officers' recommendations and response
11 Bylaw approach and extent of bylaws	
Oppose	Accept
<p>The submitter is the property owner of 1410 Devon Rd, Waitara which includes parts of the bed of the Waitara River and which includes some flood protection works.</p> <p>The submitter opposes the Proposed Bylaws for the following reasons:</p> <ol style="list-style-type: none"> 1. The submitter considers that Council is seeking to use the Proposed Bylaw to take control and confiscate privately owned land; 2. The submitter considers that Council has unlawfully established groynes on private land in the past and is now seeking to legitimise and perpetuate those actions through the Proposed Bylaws 3. The submitter considers that the Council has chosen the policy option for protecting river control and flood protection assets which is most empowering to themselves and has the most detrimental effects on private land owners. <p>The submitter seeks that the Council:</p> <ol style="list-style-type: none"> a) move the arbitrary boundary line for the proposed floodway 160m to the north so that it no longer crosses the property; and/or b) enter into a partnership agreement the submitter and other affected landowners for the maintenance and care of the flood control features on the respective properties. 	<p>Officers note that the bylaw are designed to protect assets and floodways that in turn protect private property from damaging floods, including the submitter's private property. The bylaw rules in this location are not intended to take away any existing property rights.</p> <p>Officers agree with the submitter that other options for protecting that part of the Waitara River could apply. Officers therefore recommend amending the mapped extent of the bylaws to exclude the submitter's property and to establishing an agreement with the submitter as requested.</p> <p>Officers note however that the Soil Conservation and Rivers Control Act 1941 provides the Council with mechanisms to place and maintain structures within the bed of a river to address flooding. This being said, the Council recognises that additional effort is required to work with private land owners when undertaking works on private land. The Council will come to an agreement with the land owner on how to manage these instances.</p>

Appendix 1 - Powerco Limited



**SUBMISSION BY POWERCO LIMITED ON THE PROPOSED RIVER CONTROL
AND FLOOD PROTECTION BYLAW FOR TARANAKI 2020**

To: Taranaki Regional Council
Private Bag 713
Stratford 4352

E-Mail: bylaws@trc.govt.nz

Submitter: Powerco Limited
Private Bag 2061
New Plymouth 4342
(note - this is not the address for service)

INTRODUCTION

1. This is a submission by Powerco Limited (*Powerco*) on the Proposed River Control and Flood Protection Bylaw for Taranaki 2020 (*Bylaw*). Powerco is New Zealand's second largest gas and electricity distribution company and has experience with energy distribution in New Zealand spanning more than a century. The Powerco network spreads across the upper and lower central North Island servicing over 440,000 consumers. These consumers are served through Powerco assets including 28,000 kilometres of electricity lines and 6,200 kilometres of gas pipelines.
2. Powerco owns and operates both the electricity and gas distribution infrastructure located within the Taranaki Region. The draft Bylaw is of interest to Powerco as our assets can sometimes be located under, over or adjacent to *floodways* and / or *defences against water*. Powerco seeks to ensure that the Bylaw does not unnecessarily restrict its ability to install, operate or maintain its assets.
3. Powerco's electricity and gas networks are recognised as Regionally Significant Infrastructure in the Regional Policy Statement for the Taranaki Region. It is therefore appropriate, given the significance of Powerco's networks within the region, that the Bylaw appropriately provides for the activities that Powerco undertakes.

POWERCO'S SUBMISSION

4. Powerco seeks to ensure that the Bylaw does not unreasonably restrict its ability to install, operate or maintain its assets. Specifically, Powerco is opposed to the following provisions:

Provision	Comments
<p>6.1 <i>No person shall</i> ... d) <i>construct or locate any structure in, over, through or under any floodway; without the prior written authority of the Council in accordance with Part 4 [Applying for authority].</i></p>	<p>Powerco opposes clause 6.1 as it has a number of services located over and under floodways, which do not affect the ability of the floodway to function. In some situations we place our services on road bridges (e.g. the North Street Bridge crossing the Waitara River - Map 2c) which would require an authority under clause 6.1(d).</p>
<p>7.2 <i>No person shall</i> ... c) <i>construct or locate any structure; or</i> d) <i>carry out any earthworks or excavation, including for construction of a drain or for building foundations;</i> <i>on any defence against water, within 7.5 metres from any defence against water or between a defence against water and the opposite bank of the watercourse, without the prior written authority of the Council in accordance with Part 4 [Applying for authority].</i></p>	<p>Powerco opposes clause 7.2 as it has existing services located on defences against water which may need to be excavated for maintenance purposes. Furthermore, the restriction against carrying out earthworks or locating a structure within 7.5m from any defence against water could become problematic where that defence runs parallel to the legal road (e.g. Queen Street – map 2b). Powerco typically locates its services within the road corridor – and Territorial Authorities (as road corridor managers) typically require our services to be located towards the edge of the road.</p>
<p>17.1 <i>Any existing resource consent or agreement granted by or made with the Council and issued prior to this bylaw coming into force and which authorizes the carrying out of any activity listed in this bylaw, shall be deemed to be an authority under this bylaw to carry out such work for the term and on the conditions set out in the resource consent or agreement. This will include any right under that consent or agreement to replace or repair any structure or to undertake any routine maintenance.</i></p>	<p>Powerco opposes clause 17.1 as it only applies to existing resource consents or agreements made with the Council – there can be situations where network utilities have been lawfully established without a resource consent or formal agreement.</p>

RELIEF SOUGHT

5. Should the Bylaw proceed, Powerco seeks the following amendments (additions underlined):
 - 6.1 No person, except Network Utility Operators, shall...
 - 7.2 No person, except Network Utility Operators, shall...
 - 17.1 Any existing Network Utility installation, resource consent or agreement granted by or made with the Council and issued prior to this bylaw coming into force and which authorizes the carrying out of any activity listed in this bylaw, shall be deemed to be an authority under this bylaw to carry out such work for the term and on the conditions set out in the resource consent or agreement. This will include any right under that consent or agreement to replace or repair any structure or to undertake any routine maintenance.

CONCLUDING COMMENT

6. Powerco appreciates the opportunity to provide input to this Bylaw. Through the suggested amendments above, Powerco seeks to ensure that access for installation, operation, maintenance and upgrading of its networks are not unduly compromised.
7. Powerco does not wish to be heard in support of this submission.
8. If you have any queries or require additional information on the content of this submission please contact Gary Scholfield.

Signature of person authorised to sign on behalf of Powerco Limited



Gary Scholfield
Environmental Planner

Dated this 21st day of August 2020

Address for Service: Powerco Limited
PO Box 13 075
Tauranga 3141

Attention: Gary Scholfield

Phone: (07) 928 5659
Email: planning@powerco.co.nz

Appendix 2 - New Plymouth District Council

When replying please quote: 8350796



19 August 2020

Taranaki Regional Council
Email: bylaws@trc.govt.nz

Tēnā koutou katoa

SUBMISSION ON THE PROPOSED RIVER CONTROL AND FLOOD PROTECTION BYLAW 2020

This submission is from officers of New Plymouth District Council (NPDC) and has not been endorsed by our elected members.

While NPDC supports the general intention of the Taranaki Regional Council (TRC) proposed River Control and Flood Protection Bylaw 2020 (the proposed Bylaw) we remain unclear regarding the full implications of the proposed Bylaw in relation to all potentially effected NPDC assets and activities. In particular NPDC is concerned at the complete lack of any pre-engagement regarding the potential regulatory implications of the proposed Bylaw on NPDC assets and activities. We therefore **oppose** the proposed Bylaw in its entirety in its current form.

NPDC submits that there needs to be a clear understanding of:

- all NPDC assets and activities potentially impacted and affected by the proposed Bylaw; and
- the potential regulatory implications of the proposed Bylaw for both councils.

NPDC therefore respectfully requests meaningful engagement from the TRC to ensure that both parties clearly understand all of the regulatory implications of the proposed Bylaw between the two organisations. This would then allow NPDC to provide an informed submission response to the TRC on the proposed Bylaw.

We look forward to working with you in advancing this proposed Bylaw to a suitable position.

Yours faithfully

A handwritten signature in black ink, appearing to read "Liam Hodgetts".

Liam Hodgetts
GROUP MANAGER STRATEGY

When replying please quote: ECM 8394948



16 October 2020

Daniel Harrison
Taranaki Regional Council
47 Cloten Rd
Stratford
4332

Dear Daniel

UPDATE TO SUBMISSION ON THE PROPOSED RIVER CONTROL AND FLOOD PROTECTION BYLAW 2020

Further to the New Plymouth District Council (the Council) submission on the Taranaki Regional Council (TRC) proposed River Control and Flood protection Bylaw 2020 (the proposed Bylaw), the Council would now like to update its submission position as follows.

In principal, the Council supports the purpose of the proposed Bylaw; however, the Council also has concerns over how the proposed Bylaw will have consequential impacts on the ongoing operation, maintenance and development of the Councils core municipal infrastructure.

The Council respectfully requests the TRC take into account the following matters on decisions relating to the proposed Bylaw:

- With the high volume of work the Council undertakes on its public infrastructure, the fees and charges associated with applying for multiple authorities from the TRC could potentially impose significant additional costs on our rate paying community. Therefore, works on public infrastructure should be exempt from paying these fees in order to avoid the situation where one council is paying another council when both are funded by the same ratepayer base;
- If not the above, then infrastructure built prior to the date of the proposed Bylaw should be except from paying the fees; and
- Regardless of the above options, in the interest of efficiency, there should be the ability to apply for authority to undertaken programmes of work that cover reoccurring activities over a long period of time rather than having a multitude Of individual authorities.

The Council also respectfully requests the TRC take into account the following matters on decisions relating to the proposed Bylaw:

- Clause 6.1 (floodways) the prohibition of placing structures over floodways will potentially interfere with the council's water supply and wastewater networks, particularly pipe bridge crossings, and road bridges. This clause is also ambiguous as to whether it only applies to new structures or if it also covers the renewal and maintenance of existing structures. This will be an issue, for example, when we replace the water main suspended on the side of the Waitara road bridge.

- Clause 7.2 (defences against water – the prohibition of activities (most notably excavation) “within 7.5 meters of a defence against water” potentially places a significant encumbrance on parts of the council’s critical water and wastewater infrastructure, most notably the main Waitara transfer pump station and several rising mains. This could potentially frustrate the Council’s ability to carry out its obligation and would be in conflict with NPDC’s Waters, Wastewater and Stormwater Services bylaw. It also places an encumbrance on large areas of the Council’s road reserve and associated infrastructure.
- Clause 10.1 & 10.2 inspections and surveys – some of the wastewater facilities (pump stations) adjacent to flood defences are hazardous/dangerous and could pose Health & Safety risks if TRC staff enter them without permission and supervision of NPDC staff. This clause should acknowledge the TRC has a duty as a Person Conducting a Business or Undertaking (PCBU) under the Health & Safety at Work Act, in particular the duty to consult, coordinate and cooperate with other PCBUs when undertaking its works.
- Clause 11.1 defences against water maintenance works – undertaking works on NPDC land (particularly at wastewater pump station site) at short notice may create a conflict with NPDC’s Waters, Wastewater and Stormwater Services bylaw by “interfering” with our water and wastewater infrastructure.

The minimum requirement of the proposed Bylaw to give 5 working days’ notice must not be allowed to over-ride any requirements in NPDC’s Water, Wastewater and Stormwater Services Bylaw to request the necessary permissions, provide notice, check underground service records, and request and pay for stand-over services if they are required.

Furthermore, nothing in these clauses should be allowed to over-ride NPDCs Water Wastewater and Stormwater Services Bylaw, in particularly clauses 6.7 (Building over buried public services) and clause 11.2 (Storm water flow paths).

- Clause 11.1 defence against water maintenance works – nothing in the TRC bylaw should over-ride NPDCs Waters Wastewater and Stormwater Services Bylaw clause 11.3 preventing storm water and surface water entering the council’s wastewater network.

On the proposed Bylaw in general, it is largely silent on the issue of Civil Defence Emergency Management. In particular, how the duties of Lifeline Utility operators during an emergency event will be accommodated within the proposed Bylaw, particularly where these duties may conflict with the proposed Bylaw.

The Council would like the opportunity to work with the TRC to pragmatically and collaboratively work through the aforementioned concerns with a view to finding a way to achieve the purpose of the proposed Bylaw in a way that also protects the Council’s interests and ability to operate, maintain and develop its public infrastructure before a decisions is made the TRC in relation to the proposed Bylaw.

Yours faithfully



David Langford

Group Manager Infrastructure and Assets

Appendix 3 - John Doorbar

Tēnā koe

Ko Taranaki te maunga teitei,
Waitara te awa e rere ki te tai o tāne,
Te Atiawa me ngā iwi o Taranaki mouna oku iwi,
Ko au 'e uri o Otaraua.
Ko John Doorbar a'au

I am the legal owner of a property at 1410 Devon Rd, Waitara. **Legal Description: SECS 32A 35B 36B LOTS 1-6 DP 21164 DIST BLK V WAITARA SD - INT IN ROW**

This property includes parts of the bed of the Waitara river that the TRC is seeking to assume control of through the proposed by-law.

Background

In the 1865 the Governor of New Zealand unlawfully confiscated large tracts of Maori land in Taranaki under the NZ Settlements Act and in response to supposed rebellion by Maori. The Sims Commission and the Waitangi Tribunal concluded that these confiscations were illegal.

The whenua where I reside at 1410 Devon was confiscated from my tupuna, Te Tupe o Tu who lived there. It was then gifted to colonial troops who participated in the illegal land wars and was on-sold over the years on the open market.

In 2000 I bought the property freehold and in my lifetime it will never be taken or sold outside of the descendants of Te Tupe o Tu, no reira, tenei te taonga tuku iho.

My submissions

1. The Crown confiscated this whenua illegally in 1863 and the Taranaki Regional Council (TRC) is seeking to use the proposed by-law to take control and effectively confiscate it again.

This property includes parts of the bed of the Waitara River that the TRC is trying to assume control of through the proposed by-law. The floodway (see Map 2e of the consultation document) is an arbitrary line drawn across the river where my property runs across the river to the eastern side. This includes approximately 17,773 sq meters of my property that runs under the Waitara River to the east bank. There is no explanation given as to why that area of the river is needed for flood control. I assume that this area has been included in the floodway as it is one of a very few areas where the bed of the river is held by a private interest and the TRC wants to use the by-laws to effectively appropriate that whenua.

By including my property in the floodway plan, the TRC is effectively confiscating my control and ownership of te taonga tuku iho by:

- Assuming that myself as a property owner do not give regard to Te Mana o te Wai or Te Ora o te Awa and that I can't be trusted to care for the floodworks on the whenua.
- Giving itself unfettered access and control of my property.
- Removing my rights as a property owner to undertake activities without seeking authorisation, and making me pay for those, from the TRC.

Article two of the Treaty of Waitangi ensures that Māori have "the full exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to

retain the same in their possession." I do not give permission for the TRC to disturb my possession by assuming control and management over my property.

Despite their obligations (and my rights) under the Treaty of Waitangi, the TRC are seeking to assume control and management over my lands when there are other options for working collaboratively to manage the floodway and flood protection assets. TRC should use less directive and more consultative methods to work with the private land owners.

Proposed actions

- a. **The TRC have not clearly identified why my property is required for the proposed floodway and should move the arbitrary boundary line for the proposed floodway 160m to the north so that it no longer crosses my property, and/or**
- b. **The TRC should enter into a partnership agreement with myself and other affected landowners for the maintenance and care of the flood control features on our respective properties.**

2. TRC has acted unlawfully in the past and this by-law seeks to legitimise and perpetuate those actions.

Circa 12 years ago, TRC constructed three stone groynes on my property (the three most southern stone groynes as shown in Map 2e of the consultation document). This work was carried out without seeking my permission, without any notification to me and without consulting with me. There is no legal basis by which TRC could act this way and therefore they have acted illegally.

These stone groynes were installed by the TRC on my private property, without my permission and the TRC has assumed that they now own these groynes. In the time since, I have ensured at my expense that the groynes are in good condition; that stock are excluded from the groynes and riverbank, and; planted the riverbank to protect and enhance the area. I am a responsible guardian of this whenua as are other affected private land owners.

Proposed actions

- a. **The TRC is not to enact by-laws that legitimise illegal activities undertaken by them in the past.**
- b. **The TRC enter into an individual agreement with me as land owner for the maintenance and care of the flood control features on my property.**

3. TRC has identified policy options for protecting river control and flood protection assets and chosen the option that is most empowering to themselves and has the most detrimental effects on private land owners.

In the Statement of Proposal, TRC have identified five options for ensuring the protection and operations of flood protection and drainage systems. The simplest option is "status quo" and the most stringent is the proposed by-law. The TRC have then chosen the by-law

option that gives the most power to TRC and has the most detrimental effect on private land owners.

I submit that TRC should use a less stringent option given that:

- There is no stated issue with private land owners regarding the operation of the flood protection, and
- There are a small number of private land owners that TRC need to work with.

I have reviewed the maps of the proposed floodways and flood protection assets and compared them with the TRC Property Information maps on its website. There are two parcels of private property that are affected by the proposed by-laws on the Waitara river and approximately five others affected by the proposed by-laws on other river catchments.

What is the problem with private land owners that requires by-laws that give draconian controls to the TRC and impinge heavily on private property rights? If there are no problems with the private land owners then use a simpler, cheaper and less draconian option than the proposed by-laws.

The option for "Strategy/collective agreement with land owners" should be implemented rather than going straight to the by-laws option. If there are problems in the future then the TRC could consider introducing by-laws.

Using the option for "Strategy/collective agreement with land owners" would be similar to the approach used effectively by TRC in its work with land owners to implement riparian planting plans on private property. This approach would be even more effective given the low number of private property owners that would need to be consulted.

Actions

- a. **TRC has not clearly stated what problems they have had with private land owners regarding access to flood control assets and cannot justify why they should implement by-laws. Therefore, they should use an option that is less intrusive on my Treaty rights and others private property rights.**
- b. **TRC to use the option for "Strategy/collective agreement with land owners" rather than the introduction of by-laws.**

John Doorbar