

RMA Section 32 Report on Proposed Change to the permitted stormwater discharge rules – September 2010

Section 32 of the Resource Management Act 1991 (RMA) requires an evaluation of the objectives, policies, rules and other methods in a proposed regional plan before it is publicly notified for submissions. This report is the Section 32 evaluation of the Proposed Change to the permitted on-site sewage effluent discharge to land rule.

Background

A review of the permitted stormwater discharge to land rule has come about as a result of Council's decision to merge the Discharge to Land, Land and Riverbed, and Water Management Plans into one plan. The Discharge to Land Plan was made operative seven years ago, so in terms of RMA plan timeframes the 10 year review is due in 2012. Stormwater discharges to land are one of the most common discharges to land.

The main problem has been with understanding which rules apply to which situations, as there is some overlap with rules for stormwater discharges from earthworks, and discharges into and from drains, to land and water. The wording of the current rules is mostly sound; some minor changes are suggested to fill in gaps and improve the links between the rules.

As a result of reviewing permitted Rule 5 (renumbered Rule 80), some minor consequential changes are also proposed to permitted earthworks and discharge to water rules, and the controlled rule for stormwater discharges to land. A copy of the proposed changes with new rule numbers are attached at the end of this report.

Section 32 Tests

The following is an assessment of the RMA Section 32 requirements.

S32(3)(a): Are the objectives the most appropriate way to achieve the purpose of the Act?

This is not applicable as no new objectives are considered necessary as part of this plan change. The existing objectives relevant to stormwater discharges are sufficient, and the proposed changes to the rules are in keeping with Objectives 3.2.1, 6.2.4, 8.2.1, and 13.2.1 of the Merged Plan.

S32(3)(b): Are the policies, rules, or other methods the most appropriate (with respect to efficiency and effectiveness) for achieving the objectives?

The proposed changes to the rules will make them more efficient and effective by addressing potential adverse effects that have not previously been covered, clarifying what the rules cover, and removing unnecessary parts.

The titles of Rules 79 and 86 are changed to clarify that the rule applies to stormwater runoff. Runoff on or from a site where earthworks, vegetation disturbance or development occurs can have adverse effects the same as a discharge because of the regional rainfall levels. A minor change is made to the beginning of Rule 48 to refer to "stormwater runoff" for consistency with using these terms, and a definition of stormwater runoff is added to the Glossary.

With respect to Rule 79, there has been some confusion around the exclusion of roads and footpaths from the rule. The beginning of the rule is reworded to address this. Changes to condition a) cover potential effects which weren't previously covered, and make the condition consistent with conditions for stormwater discharges into water. The current condition b) is unnecessary as stormwater discharges and runoff/flowpaths to water are now covered by the permitted rule for discharges from drains into water, and the earthworks rules.

Changes to the controlled Rule 86 for stormwater discharges are consistent with changes to the permitted rule.

The proposed new condition in Rules 61, 79 and 86 addresses a potential adverse effect which is occurring more often with rural-residential, unreticulated subdivisions, whereby extra drains are added to existing pilot drains. This increases volumes or velocity of water being channelled and discharged into main drains, which can affect downstream properties cumulatively. The new condition restricts any increase in flow in the receiving water body so it doesn't exceed the carrying capacity of existing infrastructure. This is the same as condition j)(2) of Rule 3 for new drain formation associated with permitted earthworks. The new condition should help to target potential flooding effects from new discharges or new drains, as dischargers may need to check capacity specifications for their drain, and so source discharges can be more easily traced.

The change to the beginning of Rule 61 clarifies that the rule applies to stormwater discharges into drains containing water, as well as discharges from drains to water bodies. Adverse effects can occur from discharges into drains.

An amendment is proposed to the condition in the permitted earthworks rules for "no conspicuous deposition of sediment on the bed of any waterbody", so that the condition also restricts sedimentation or other effects on adjoining land. The amendment fills a gap in the plans, and should give more certainty about dealing with sediment-laden runoff.

Cross-references clarify the links between rules relating to stormwater discharges.

S32(4)(a): What are the benefits and costs of the policies, rules or other methods?

The main benefit of the changes to the rules will be better environmental outcomes. Better management of individual stormwater discharges will help to reduce the flood hazard risk. Not exceeding the infrastructure capacity will avoid cumulative adverse effects of multiple stormwater discharges overflowing downstream. The proposed changes to the rules make it clear to contractors and landowners what the standards are for managing sediment and stormwater and meeting the permitted rules.

The cross-references will enable Plan users to more easily find which rules apply to various stormwater activities.

The changes to the rules may require more care being taken by contractors, builders, and developers to control sediment, and extra cost and time to check the capacity specifications of existing drains before discharging stormwater into them from a new subdivision or dwelling. If the new provisions can't be met, there will be consent costs for contractors and landowners. Any additional time and costs are not unreasonable, compared to the potential for adverse effects.

The proposed changes are in effect no different to current obligations under section 17 of the RMA to avoid, remedy, or mitigate adverse effects. Compliance with the new provisions will avoid more costly enforcement and mitigation action or damage remediation if good practice sediment and stormwater discharge control is carried out. The changes reflect a user pays approach rather than other ratepayers bearing the cost to mitigate adverse effects of these activities. This approach is consistent with the principles of the Local Government Act.

S32(4)(b): What is the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods?

Information available indicates the proposed changes are warranted. Sedimentation on land or in water is one of the main types of complaint received by Council. Fewer complaints are received about stormwater discharges, but there has been enough confusion in the past over how the stormwater rules apply, and how overflowing rural drains are managed, to prompt the changes.

If the proposed changes are not adopted, the status quo will continue under the current rules. This continues the uncertainty about the potential future effects of stormwater discharges into rural drains and sediment loss, and whether these will become an increasing hazard risk. In the last 5-7 years there has been increased rural-residential development around the outskirts of existing towns and settlements. Residential growth has spread into foothills, which means there is a higher risk of sediment runoff down slopes, and increased velocity of stormwater entering drains. Some issues with stormwater overflow in drains can be dealt with under the Drainage Act 1908, but this legislation has limited scope. If the changes to the rules aren't made, complaints will continue to be received and investigated at increasing cost to Council and ratepayers.

Since climate change predictions are for more intense rainfall and storm events, the proposed changes will enable potential adverse effects to be better managed in the future.

Proposed Changes to Rules for Stormwater Discharges

Rule 1. Humping and hollowing, flipping, or v-blading outside riparian margins

Humping and Hollowing, Flipping, or V Blading in the Non-Erosion Prone Area (less than 12° slope) outside of riparian margins are **permitted activities** if **all** of the following conditions are met:

- (a) (1) For Humping & Hollowing and Flipping, the area of the activity does not exceed 5 Hectares per landholding in any continuous 12 month period; and
- (2) For V-blading **either**:
 - (i) The land area for new works does not exceed 10 Hectares per landholding in any 12 month period; **or**
 - (ii) The activity is undertaken on land that has previously been V-bladed; and
- (b) The activity must not cause the visual clarity of any receiving water to decrease by more than 40%, as measured by black disc beyond 12 times the river's width or 200 metres of the activity, whichever is the lesser; and
- (c) No soil or debris is placed directly in any river or lake bed; and
- (d) There is no conspicuous deposition of sediment on the bed of any water body, or on land beyond the boundary of the subject property, and

Make the above same change to:

- Rule 3 Earthworks in the Non Erosion Prone Area, outside riparian margins
- Rule 4 Earthworks in Erosion Prone Area One, outside riparian margins
- Rule 5 Earthworks in Erosion Prone Area Two, and the Greymouth Earthworks Control Area, outside riparian margins
- Rule 6 Earthworks for the purpose of maintenance or repair
- Rule 8 Vegetation Disturbance in Erosion Prone Area One, Two, or the Greymouth Earthworks Control Area and outside any riparian margins

Rule 48. Diversion of contaminated and uncontaminated runoff

The diversion (whether in pipes, constructed channels or otherwise) of natural **stormwater** runoff that is not contaminated, or of runoff that is contaminated to a water treatment system, is a **permitted activity** provided:

- (a) For the non-contaminated water:
 - (i) The diversion does not cause or exacerbate: flooding or ponding of water on another person's property, erosion, land instability, sedimentation or property damage; and
 - (ii) The diversion does not affect any natural wetland;
 - (i) The diversion is incidental to permitted or consented earthworks; and
 - (ii) The diversion does not relate to the diversion of runoff from an area greater than 20ha.
- (b) For contaminated water:
 - (i) The water is diverted to a water treatment system or plant; and
 - (ii) The diversion is incidental to permitted or consented earthworks.

Explanation

Rules 44, 45, 46, and 47 provide for activities that will result in no more than minor effects and avoid the need for a resource consent. Rule 48 reflects the requirements of the Grey River Water Conservation Order.

Rule 61. Discharge from any drain to a water body

The discharge from any drain to a water body, *or another drain beyond the property boundary*, is a **permitted activity** if all the following conditions are met:

- (a) The discharge does not cause or exacerbate flooding of another person's property, erosion, land instability, sedimentation or property damage; and
- (b) Beyond a mixing zone of 12 times the width of the receiving water body, or 200 metres, whichever is the lesser, the discharge does not give rise to the following effects:
 - (i) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
 - (ii) Any conspicuous change in the colour or visual clarity;
 - (iii) Any emission of objectionable odour;
 - (iv) The rendering of fresh water unsuitable for consumption by farm animals; or
 - (v) Any significant adverse effects on aquatic life; or
 - (vi) Adverse effects on any take of water for human consumption.
- (c) Any discharge to the Rahu River, Station Creek, Wooley River or Buller River upstream of Te Kuha must meet the requirements of Clause 11 of the Buller River Conservation Order (see Schedule 4).
- (d) The discharge does not increase the flow in the receiving water body to the extent that it exceeds the carrying capacity of existing infrastructure.

Note: ~~Permitted activity Rule 1 in the Land and Riverbed Plan~~ must also be met for humping and hollowing.

Cross reference: Stormwater discharge or runoff containing sediment from earthworks that enters a waterbody is dealt with under the permitted earthworks rules (Rule 3).

Rule 79. Discharge of stormwater runoff

The discharge of collected stormwater runoff into or onto land is a permitted activity provided that all of the following conditions are met:

- a) The discharge does not cause or exacerbate erosion, scouring, land instability, sedimentation or ponding beyond the boundary of the subject property;
- b) The discharge does not contain any hazardous substances or wastes;
- c) Where the discharge into or onto land enters water, it does not increase the flow to the extent that it exceeds the carrying capacity of existing drainage infrastructure.

Cross-references: Point-source stormwater or runoff containing sediment from earthworks that flows or is discharged to land or enters a waterbody is dealt with under the permitted earthworks rules (Rule 3). Stormwater discharges directly into water are dealt with under Rule 61.

Rule 86. Discharge of stormwater runoff not permitted by Rule 80

The discharge of any contaminant into or onto land in connection with the discharge of stormwater *runoff* is a **controlled activity** unless permitted by Rule 80, and shall comply with the following standards and terms:

- a) ~~there is no direct runoff into, or contamination of, water bodies, groundwater or coastal water;~~
- b) the discharge does not cause ~~siltation~~, sedimentation, erosion, scouring, *land instability*, ponding, or flooding;
- c) stormwater runoff from the facility or site containing hazardous substances is collected and discharged via a containment and treatment device or system.

d) Where the discharge into or onto land enters water, it does not increase the flow in the receiving water body to the extent that it exceeds the carrying capacity of existing drainage infrastructure;

The Regional Council has reserved control over the following matters:

- a) the location, method, rate, and quality of the stormwater discharge;
- b) design and operation of the treatment system;
- c) effects of the discharge on the receiving environment;
- d) stormwater management and spill contingency plans;
- e) monitoring requirements;
- f) the duration of the resource consent;
- g) review conditions of the resource consent.

Glossary

Stormwater runoff refers to the overland flow of rainwater not contained within or forming part of a water body.