

5. **REVIEW OF THE CHRISTCHURCH CITY COUNCIL WATER RELATED SERVICES BYLAW 2001, THE BANKS PENINSULA DISTRICT COUNCIL WATER SUPPLY BYLAW 1998, AND THE BANKS PENINSULA DISTRICT COUNCIL WASTEWATER DRAINAGE BYLAW 2000**

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PURPOSE OF REPORT

1. To recommend the review of the above mentioned three bylaws; the making of one new bylaw and the commencement of the statutory special consultative procedure.

EXECUTIVE SUMMARY

2. The above three bylaws are being reviewed and it is intended to replace them with one comprehensive bylaw. In terms of the provisions of the Local Government Act 2002, the two Banks Peninsula bylaws expire on 30 June 2008 while the Christchurch bylaw needs to be reviewed by 30 June 2010.
3. The proposed changes to the three bylaws are contained in a table (Attachment A) working around the existing Christchurch bylaw format. Also attached is the draft bylaw (Attachment B). Following the committee's consideration of this report and the draft bylaw a statement of proposal (incorporating the draft bylaw) and summary of information, as required in terms of the Local Government Act 2002, will be prepared for formal approval by the Council.
4. Attachment A details the changes to improve the bylaw, and assists in the analysis required of the Council under section 155(1) of the Local Government Act 2002. It includes new clauses that relate mostly to additional definition of terms and clarification of procedures; changed provisions for fire protection service connections and backflow prevention; amended clauses that are changed to clarify and update terminology and improve ability to deliver services; and clauses recommended for deletion which are either redundant or are dealt with by other legislation, including the Local Government Act 2002, the Health (Drinking Water) Amendment Act 2007, and the Resource Management Act 1991.
5. The review process is as follows:
 - (a) The Council resolves that a bylaw is the most appropriate way to address the perceived problems identified in the draft bylaw concerning the management of the municipal water supply and wastewater and stormwater drainage; the proposed bylaw is in the most appropriate form, and that there are no inconsistencies with the New Zealand Bill of Rights Act (see recommendations below);
 - (b) The Council approves the statement of proposal and summary of information and publicises it for public submissions, and appoints a hearings panel to hear submissions (see recommendations below);
 - (c) A special consultative procedure will commence early March 2008.
 - (d) Hearing of submissions to take place late in April 2008; and
 - (e) The Council to receive a report from the Hearings Panel in May 2008 to consider the recommendations of the panel regarding the review of the bylaws.

FINANCIAL IMPLICATIONS

6. The review of the bylaws will not have an impact on rates and charges.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

7. Not affected by the proposed changes.

LEGAL CONSIDERATIONS

8. Section 145 of the Local Government Act 2002 (the Act) provides a general bylaw making power, which includes for the purposes of protecting the public from nuisance and protecting, promoting, and maintaining public health and safety. Section 146 of the Act provides a specific bylaw making power for the purposes of regulating water supply, wastewater drainage and land drainage. It also provides for the review of bylaws made under the Act.
9. Section 160 requires that in reviewing a bylaw a local authority must make the determinations required by section 155. After the review, if a local authority considers the bylaw should be amended, revoked, or revoked and replaced, then it must use the special consultative procedure.
10. Section 155 of the Act requires the Council to determine whether the making of a bylaw (and the review of an existing bylaw) is "*the most appropriate way to address the perceived problem*". The problem in this particular instance is the regulation of the supply of water, and the drainage of wastewater and stormwater.
11. Section 77 of the Act requires the Council, in the course of a decision making process, to seek to identify and assess all reasonably practicable options for the achievement of the objectives. The following options exist:
 - (a) Do nothing i.e. conduct the supply of water to all users, and regulate the drainage of wastewater and stormwater with no regulatory powers. The Councils' previous bylaws worked well but in terms of Local Government Act 2002 provisions need to be reviewed and in doing so certain improvements and changes are proposed.
 - (b) Seek voluntary cooperation. This was presumably deemed impractical by the two respective Councils because they enacted bylaws rather than seek voluntary cooperation, and the bylaws have generally proved to work well;
 - (c) Make a bylaw requiring regulating water supply and wastewater and stormwater drainage. This option was recommended respectively in 1998, 2000 and 2001 when the previous bylaws were made. It is considered that this option meets that duty more effectively than either of the other options above. It is therefore proposed that the draft 2008 bylaw be authorised for special consultative procedure purposes.
12. The regulatory framework for councils has changed since the adoption of the three relevant bylaws, but the need to retain a bylaw regulating these matters still exists. New legislation includes the Local Government Act 2002 and the Health (Drinking Water) Amendment Act 2007. There is also a need to update the bylaws to recognise that the new Christchurch City district includes the Banks Peninsula area. It is considered that the new bylaw is in the most appropriate form.
13. There are no provisions in the New Zealand Bill of Rights Act 1990 which have a bearing on the draft Christchurch City Council Water Related Services Bylaw 2008 and therefore there are no inconsistencies between the draft bylaw and the statute.
14. The special consultative procedure under the Act requires that the Council prepare a statement of proposal that must include:

“(a) as the case may be,—

 - (i) a draft of the bylaw as proposed to be made or amended; or
 - (ii) a statement that the bylaw is to be revoked; and
 - (b) the reasons for the proposal; and
 - (c) a report on any relevant determinations by the local authority under section 155.”

15. The Act also requires the Council to determine the form of the summary of Information and to determine the appropriate manner for distributing that summary. Section 89(c) requires that it be distributed as widely "as reasonably practicable...having regard to the matter to which the proposal relates". In this case as the bylaw concerns property developers, plumbers, owners of properties that may pose a backflow risk, fire protection system providers and fire service providers, and it is considered appropriate to distribute the summary of information to all such water users. Section 83(e) of the Act also requires that the Council must give public notice of the proposal and the consultation being undertaken. These documents will be prepared following the committee meeting for approval by the Council.

Have you considered the legal implications of the issue under consideration?

16. See above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

17. Yes

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

18. Yes.

ALIGNMENT WITH STRATEGIES

19. No existing strategies apply. A new water supply strategy and new surface water strategy are in preparation and will receive consideration by the Council during 2008/09. Should new initiatives arise from these strategies there might be a need to review the bylaw at that stage. Review of the bylaw cannot be delayed until that time due to the expiry of the Banks Peninsula bylaws in June 2008.

CONSULTATION FULFILMENT

20. The statutory special consultative procedure will follow the adoption of the recommendations of this report.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee adopt and recommend to the Council:

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- (a) That a bylaw is the most appropriate way to manage and regulate municipal water supply and wastewater and stormwater drainage.
 - (b) There are no inconsistencies between the draft Christchurch City Council Water Related Services Bylaw 2008 and the New Zealand Bill of Rights Act 1990, and the draft bylaw is in the most appropriate form.
 - (c) That the attached draft bylaw be adopted for consultation;
 - (d) The composition of a Hearings Panel to consider submissions on the draft bylaw.