

## 8. THE REVOCATION OF THE BANKS PENINSULA DISTRICT COUNCIL NUISANCES BYLAW 1996

<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services, DDI 941 8549
<b>Officer responsible:</b>	Legal Services Manager
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### PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Committee that it recommend to Council the revocation of the Banks Peninsula District Council Nuisances Bylaw 1996 (the "Bylaw") (attached - Appendix 1) on the grounds that adequate provision for the management of the nuisances in the Banks Peninsula area exist under other legislation.

### EXECUTIVE SUMMARY

2. The purpose of the Bylaw was to control various nuisances in the Banks Peninsula District. Prior to the Banks Peninsula District joining the Christchurch City Council the Council did not have a bylaw to cover these nuisances.
3. A review of the Bylaw has been undertaken to ascertain whether the provisions of the Bylaw are still required. There seems to be no need to continue or replace the Bylaw because the problem addressed in the Bylaw can be dealt with by the Council either under the enforcement powers of the Health Act 1956, the Resource Management Act 1991, or in other ways.
4. It is recommended that the Bylaw be revoked by way of a special consultative procedure. This can be carried out concurrently with another special consultative procedure being held in relation to another bylaw review.

### FINANCIAL IMPLICATIONS

5. The financial implications with the revocation of the Bylaw largely relate to whether the special consultative procedure is used to revoke the Bylaw. However, the proposal to revoke this Bylaw can be included at the same time as consultation on other bylaws, under s83A of the Local Government Act 2002 (LGA 02), which would reduce the expense for the Council.

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

6. Not applicable.

### LEGAL CONSIDERATIONS

7. The Banks Peninsula District Council Nuisances Bylaw 1996 that was adopted was the 1972 NZ Standard Model General Bylaw, chapter 11. The Bylaw may have been made under both the Local Government Act 1974 (LGA 74) and the Health Act 1956, although it is not clear. Section 648(1)(8) LGA 74 was the power to make a bylaw for the purposes of "*conserving public health, wellbeing, safety, and convenience, and regulating drainage and sanitation*", but it seems more likely that the Bylaw was made under the more specific provisions of the Health Act 1956, under the bylaw-making powers for local authorities provided for in sections 23(e) and 64 of that Act. In addition, the Bylaw adopted by Banks Peninsula was the pre LGA 74 model bylaw.
8. The Model Bylaw itself does not identify which Act or Acts the various provisions of the Bylaw were made under. The text of the resolution of the Banks Peninsula District Council when it approved the adoption of the Model General Bylaws in 1996, stated that "*in terms of section 716B of the Local Government Act 1974 the following special order on bylaws be confirmed to take effect from 1 July 1996...*" and listed all the bylaws, again without reference back to the Act or Acts they were made under.
9. Section 716B related to the procedural use of special orders to make a bylaw, rather than the authorising bylaw-making power coming from that section. Bylaws made under the Health Act had to be made using a special order (and in accordance with section 681 of the LGA74), because of the former wording of section 67(1) of the Health Act 1956.

10. Section 67 currently provides that: “*All bylaws made by a local authority under this Act must be made in the same manner in all respects as if they were bylaws made pursuant to the Local Government Act 2002*”. However, such bylaws are not *deemed* to have been made under the LGA 02, and there is no requirement that they be reviewed under section 158 of the LGA 02.
11. Council staff have, however, considered this bylaw in the context of the Bylaws review process and concluded that the provisions of this bylaw are not necessary, because there is other legislation that the Council can use instead to enforce the matters covered by the bylaw (see the analysis table attached as appendix 2). This means that the first test in section 155 of the LGA 02, that a bylaw must be the most appropriate way of addressing the perceived problem, is not likely to be met.
12. The LGA 02 specifies in section 156 that the special consultative procedure must be used when making, amending or revoking a bylaw “*made under this Act*”. This may mean that the Council would not have to use the special consultative procedure to revoke this bylaw, because it was not made under the LGA 02 (it has been made under the Health Act, or the Health Act and the LGA 74 together). In addition, section 67 of the Health Act only refers to how bylaws under the Health Act are made; there is nothing about how to revoke a Health Act bylaw. The LGA 74 provisions for revoking a bylaw have been repealed.
13. A Council resolution is definitely required before the Bylaw can be revoked, but it is not clear from the legislation, and there is no case law on this issue, whether or not the special consultative procedure needs to be used first. However, as section 67 provides the manner for making a bylaw (which would require the use of the special consultative procedure), it seems more appropriate that it also be revoked in the same manner.
14. The Legal Services Unit recommends that the special consultative procedure be used, even though there is very little risk of a challenge being made if it is not used. It is a better from a public relations point of view to consult with the Banks Peninsula ward as to whether or not they consider this bylaw is required. Section 83A of the LGA 02 provides that a special consultative procedure can be carried out at the same time as another special consultative procedure.

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

14. As above.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

15. Page 146 of the LTCCP, level of service under regulatory services.

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

16. As above.

**ALIGNMENT WITH STRATEGIES**

**Do the recommendations align with the Council’s strategies?**

17. Aligns with the “Strong Communities” strategic direction by giving the public a chance to be consulted, via an SCP, and thereby be involved in the decision making process before this bylaw is revoked.

**CONSULTATION FULFILMENT**

18. As above for external consultation. Internal consultation has taken place with the Inspections and Enforcement Unit who do not consider this Bylaw to be necessary.

## **STAFF RECOMMENDATION**

It is recommended that the Committee recommend to Council to resolve:

- (a) To revoke the Banks Peninsula Nuisances Bylaw 1996 following a special consultative procedure.
- (b) To adopt the attached statement of proposal and summary of information (Appendix 3) to be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website, from 17 March 2008.
- (c) That public notice of the proposal be given as close as possible to 17 March 2008.
- (d) That the period within which written submissions may be made to the Council be between 17 March and 16 April 2008.
- (e) To appoint a Hearings Panel comprising [the members to be named at the Council meeting] to consider and, where necessary, hear any submissions on the proposal to revoke the Banks Peninsula District Council Nuisances Bylaw 1996.

## **BACKGROUND (THE ISSUES)**

### **Background On Banks Peninsula District Council Nuisances Bylaw 1996**

19. In 1996 the Banks Peninsula District Council adopted a number of chapters of the New Zealand Standard Model Bylaws to apply in the district, including NZS 9201, Chapter 11:1972 Nuisances.
20. The 1972 model bylaw standard was simply a revision of a 1952 standard bylaw. It covered a number of matters that are now covered by the nuisance sections of the Health Act 1956, and indeed were covered at the time of the 1972 review. Section 29 of the Health Act 1956, defines nuisances and then other sections of the Health Act give the Council the powers to take action in relation to those nuisances, including bringing enforcement proceedings and in some cases abating a nuisance without notice. Some parts of the Bylaw are also covered by provisions of the Resource Management Act 1991 and the Building Act 2004. See the table analysing the bylaws provisions attached as appendix 2.
21. Clauses 3, 16 and 17 of the Christchurch City Refuse Bylaw 1995 may also apply to some "nuisance" situations in this Bylaw although they are not intended to be used in this way, and the nuisance sections in the Health Act 1956 would be the preferred option for dealing with any issues.
22. The conclusion is that this bylaw is obsolete and should be revoked, rather than be allowed to continue "on the books", but never acted upon by the Council.

### **THE OBJECTIVES**

23. To recommend the revocation of the Banks Peninsula Nuisances Bylaw 1996, by way of the special consultative procedure.

### **THE OPTIONS**

24. The Council has the following options:
  - (a) Do nothing and not revoke the Bylaw - in which case it will continue until legislation is introduced to revoke the Bylaw, or the Council later chooses to revoke the Bylaw, but the Council would never act upon or enforce the bylaw because it has more relevant powers, with higher penalties, under other legislation.
  - (b) Revoke the bylaw by resolution only – there is a very minor risk that someone could challenge the Council by arguing that the procedure used was not correct, if it does not use the special consultative procedure. However, it is difficult to imagine what loss might be caused to someone if the revocation is not carried out using the correct procedure.
  - (c) Revoke the bylaw by using the special consultative procedure – although it is not clear from the legislation that this procedure is required for a bylaw not made under the LGA 74 or the LGA 02, it seems the likely procedure and it is appropriate to consult with the community on this matter.

### **THE PREFERRED OPTION**

25. Option (c) is the preferred option.

## ASSESSMENT OF OPTIONS

### The Preferred Option (option (c))

26. The Council uses the special consultative procedure before revoking the Bylaw.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	The public can have a say on whether or not the Council should revoke the Bylaws  There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by revoking such Bylaws	None
<b>Cultural</b>	No specific matters	None
<b>Environmental</b>	No specific matters, as other legislation is in effect to deal with the subject matter of the Bylaw's environmental issues	None
<b>Economic</b>	Revoking the Bylaw means there will be no ongoing obligation on Council to monitor this Bylaw	Costs of the SCP
<p><b>Extent to which community outcomes are achieved:</b> Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation deals with the same subject areas. Consulting first will assist in achieving the community outcome "a well governed city".</p> <p><b>Impact on Council's capacity and responsibilities:</b> None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p><b>Effects on Maori:</b> None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.</p> <p><b>Consistency with existing Council policies:</b> Consistent.</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b> The preferred option of Inspections and Enforcement staff.</p> <p><b>Other relevant matters:</b> None known.</p>		

## Option 2

27. The Bylaw is revoked by resolution only, without an SCP.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked	Without consulting with the public first there may be criticism of the Council for not acting transparently
<b>Cultural</b>	No specific matters	None
<b>Environmental</b>	No specific matters, as other legislation in place to deal with Bylaw's environmental issues	None
<b>Economic</b>	Revoking the Bylaw means there will be no ongoing requirement that Council should monitor this Bylaw	No effect on cost, as the Bylaws are not enforced/acted on in anyway currently; any enforcement required is carried out through other legislation

**Extent to which community outcomes are achieved:**

Any community outcomes that are relevant to the Bylaw will still be achieved because other legislation or policies deal with the same subject areas. Failing to consult with the public first means the community outcome "a well governed city" may not be achieved.

**Impact on Council's capacity and responsibilities:**

None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.

**Effects on Maori:**

None, as Council acts on issues that the Bylaw deals with through its powers under other existing legislation and policies.

**Consistency with existing Council policies:**

Consistent.

**Views and preferences of persons affected or likely to have an interest:**

Not the option preferred by Inspections and Enforcement staff.

**Other relevant matters:**

None known.

**Option 1**

28. Do nothing.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	None	<b>No</b> benefit for the community in having an obsolete and redundant Bylaw remain in existence
<b>Cultural</b>	No specific matters	None
<b>Environmental</b>	No specific matters	None
<b>Economic</b>	None	None
<b>Extent to which community outcomes are achieved:</b> "A well governed city" may not be achieved because having old redundant bylaws still current is not good governance.		
<b>Impact on Council's capacity and responsibilities:</b> None.		
<b>Effects on Maori:</b> None.		
<b>Consistency with existing Council policies:</b> Potential for inconsistency.		
<b>Views and preferences of persons affected or likely to have an interest:</b> Not the option preferred by Inspections and Enforcement staff.		
<b>Other relevant matters:</b> None known.		