

### 3. BYLAW REVIEW PROCESS



<b>General Manager responsible:</b>	Chief Executive Officer, DDI 941-8554
<b>Officer responsible:</b>	Chief Executive Officer
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#### PURPOSE OF REPORT

1. At a special Council meeting to consider proposed new bylaws on 19 June 2008, the Council made a series of resolutions seeking a review and report-back on the bylaw review process.
2. This report is intended to address the resolutions from that meeting.

#### STAFF RECOMMENDATION

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

- (a) Adopt the ten-year bylaw review timetable which coordinates the review of bylaws across the Council in order to avoid bottlenecks, local body elections and LTCCP consultation (consider the attached draft timetable as a starting point) by December 2009.
- (b) Note for information that Council management will have three General Managers to coordinate the bylaw review work and monitor progress.
- (c) Agree that officers, in conjunction with the Regulatory and Planning Committee, will develop a standard bylaw review process, based on the lessons learnt from the recent reviews, that clearly sets out likely processes and timeframes, and includes templates and advice.
- (d) Note that it is intended, where possible, to complete bylaw reviews within a triennial Council term.
- (e) Agree that a seminar will be presented to relevant staff and Councillors at the beginning of each bylaw review.

#### INTRODUCTION

3. At the 19 June 2008 special Council meeting, the Council resolved to:
  - Ask the Chief Executive Officer, in consultation with the Mayor and Chairperson of the Regulatory and Planning Committee, to undertake a review of the bylaw process to date, and to report to the Council by 31 December 2008 on how matters which arose during the reviews are being dealt with.
  - Ask the Chief Executive Officer, in conjunction with the Regulatory and Planning Committee, to consider the process by which future bylaws will be made to ensure greater consistency across the organisation.
  - Direct the Chief Executive Officer to review the process leading to the development of the Traffic and Parking Bylaw and issues arising during deliberations, and to report back within six months.
4. It is with regret this report could not have been put before the Council by the 31 December 2008 date referred to in the Council resolutions. However there was a need for Council officers to carry out the review then consider the advice to the Council.
5. In June 2008, eight new bylaws were recommended to Council for adoption as a result of a review of 23 of the Council's bylaws.

## 2. 4. 2009

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6. The bylaws were reviewed because of the Local Government Act 2002 requirement to renew all Council bylaws by 30 June 2008. Work on meeting this statutory review deadline began in 2004, but progressed slowly over several years. It was then suspended during the 2007 local body elections, and subsequently restarted with urgency early in 2008, leading up to the 30 June statutory review deadline.
7. The Council's resolutions sought a review of the process leading to the development of the new bylaws, in order to improve the bylaw-making process in the future, with a separate recommendation on the Traffic and Parking Bylaw. (There were also resolutions made regarding other bylaw-related matters and a progress report on these is attached – **Attachment 2**).
8. The set of circumstances surrounding these reviews was unique, for three main reasons:
  - It was the first time we had reviewed bylaws under the new Local Government Act 2002 (LGA02) (there was no review requirement in the Local Government Act 1974) and the review requirements involved looking at and thinking about bylaws differently, with a higher threshold about what should appropriately be included in a bylaw.
  - As well as reviewing bylaws for the first time, we also had to review 23 bylaws by 30 June 2008, and because work was not progressed over the years leading up to the 30 June deadline, we ended up having to review 23 bylaws more or less simultaneously.
  - The third factor was the reorganisation of the Christchurch City Council with the Banks Peninsula District Council. This Council also had to review the Banks Peninsula District Council bylaws which multiplied the number of bylaws that had to be reviewed.

### BACKGROUND

9. The requirement to review many of the Council's bylaws has been apparent since the adoption of the new Local Government Act in late 2002. Work began to review the required bylaws under the previous Council (2004-2007 terms). However, in mid-late 2007, the decision was made that the bylaw review process should occur under a single council term, rather than being split across two terms by a local body election.
10. This resulted in the reviews being put on hold. The election break then combined with the new-term of Council and the Christmas/January break resulted in an almost six month hiatus, which considerably compressed the available time to put information before Councillors. Bylaws can take between six months and one year to review.
11. In order to assist Councillors in their decision-making, a number of seminars were held in early 2008, both on bylaws generally, and on their enforcement. Several seminars were also held on specific bylaws. Community Board members were invited to attend the seminars, for their information. A guidance document (the Blue Bylaws Book) was prepared for Councillors, setting out background and other information on bylaws.
12. Some of the bylaws were made many years ago and had not been updated for some time. The review process revealed some assumptions, activities and approaches that were out of step with current practice or had not taken account of legislative change. This is what was intended by the LGA02 requirement to review bylaws, and it provided a good opportunity to reassess the Council's bylaws.
13. A final note on background, is that all local councils in New Zealand have had to review bylaws made under the old Local Government Act 1974 (LGA74). Some councils were in a similar position to Christchurch and had to review a number of bylaws simultaneously, with significant time constraints. Other councils staggered their bylaw reviews over a longer period and did not face the same issues as Christchurch.

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**Bylaw-making context**

14. Local councils can only make a bylaw if there is a bylaw-making power specified in an Act, and bylaw-making must follow the process set out in the LGA02, which includes the first step in the section 155 analysis (generally: what is the problem and is a bylaw the most appropriate way of dealing with the problem?). The requirements in section 155 also align to some extent with the general decision making requirements in sections 77-82 of the LGA02. Applying these considerations and analysis tools was different to the review of bylaws under the LGA74, and most staff had not reviewed bylaws using this new approach.
15. The review of the Council's bylaws was the first time the 23 bylaws had been reviewed under the new Act. This required applying the section 155 analysis for the first time, as well as general good regulatory practice considerations to the existing bylaws to assess:
  - whether there was still a problem, and if so, what the problem was and how serious it was
  - whether the problem could be dealt with in other ways, eg through existing legislation
  - that the bylaw clauses did not contradict any legislation, including infringing rights under the New Zealand Bill of Rights Act
  - that the Council still had the power to make a bylaw to cover the matter (as some bylaw-making powers from the Local Government Act 1974 were revoked by the LGA02)
  - that the bylaw was practical and enforceable.

**THEMES ARISING FROM THE SURVEY RESPONSES AND INTERVIEWS**

16. The bylaw review process involved discussion with Councillors and staff regarding lessons that could be learnt from that process. There were views expressed around the tight timeframe and the need to plan for the review process as a whole and this had been addressed through the timetable which is attached to this report as **Attachment 1**. There are also lessons to be learned around the staff analysis in the review process, together with consultation and communication and the need to adopt a more robust project management approach to the bylaw reviews when they occur.
17. There was general consensus that the blue bylaws book was seen as a valuable resource for Councillors and staff and there was a clear desire to have, for the bylaws going forward, seminars to enable a higher level look to be taken as to what the objectives of each bylaw are.
18. All of the issues which emerged from the review process have been picked up in the recommendations in this report.
19. There was reference made to funding in areas such as enforcement, signage and communication costs. There are budgets for these activities and whether or not these budgets are adequate for any particular bylaw review is a matter that will be considered by the team of three General Managers which I have established to co-ordinate and monitor the ongoing bylaw reviews.

**Future steps**

20. The review of each bylaw is the responsibility of the appropriate unit manager. For example, the Dog Control Bylaw is the responsibility of the Inspections and Enforcement unit manager. Support for the review of each bylaw is provided by the Legal Services Unit and the Strategy and Planning Group.
21. It is considered appropriate that, as far as possible, bylaw reviews will be completed within a triennial Council term.
22. From a management perspective I have asked the General Managers of Regulation and Democracy Services, City Environment, and Strategy and Planning, to co-ordinate and monitor the staff resource needed to support the bylaw review process going forward. Those General Managers will meet quarterly to ensure that the resolutions referred to in this report are adequately addressed.

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**Openness of deliberations**

23. A further issue that arose in discussions, particularly with Councillors, was the issue of whether or not Hearings Panel deliberations are public excluded or not. Legal advice was sought on this issue. A summary of that advice is that section 83(1)(j) of the LGA02 requires that every meeting at which a Hearings Panel deliberates on a Special Consultative Procedure proposal must be open to the public. This is subject to the right to exclude the public at any stage by applying, in accordance with section 48, one of the grounds provided by section 7 of the Local Government Official Information and Meetings Act 1987(LGOIMA).