

28. 2. 2008

**REGULATORY AND PLANNING COMMITTEE
13 FEBRUARY 2008**

**A meeting of the Regulatory and Planning Committee
was held on Wednesday 13 February 2008 at 9.30am
(having been reconvened from Thursday 7 February 2008)**

PRESENT: Councillor Sue Wells (Chairperson)
Councillors Helen Broughton, Sally Buck, Yani Johanson,
Claudia Reid and Chrissie Williams

IN ATTENDANCE: **Christchurch City Council**
Councillors Barry Corbett (from 11am to 12.45pm)
Gail Sheriff (to 12.40pm) and Mike Wall

Community Board
Stewart Miller

APOLOGIES: Apologies for absence were received and accepted from
Councillors Ngaire Button and Norm Withers.

The Committee reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

**1. 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**

General Manager responsible:	General Manager City Environment DDI 9418656
Officer responsible:	City Water and Waste Manager DDI 941 8384
Author:	Zefanja Potgieter DDI 941 8271

PURPOSE OF REPORT

1. The purpose of this report is 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, if not reviewed, will expire by 30 June 2010.
3. Attachment A (separately circulated) is a Statement of Proposal (incorporating the draft bylaw and a table of proposed changes) and Attachment B (separately circulated) is a Summary of Information, as required in terms of the Local Government Act 2002, for formal approval by the Council.
4. The table of proposed changes 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.

1 Cont'd

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;

1 Cont'd

- (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 a bylaw is still required in 2008 to provide appropriate regulation around the supply of water by Council to premises and to deal with certain land drainage issues. It is considered that this option addresses these issues 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, drain layers, owners of properties that may pose a backflow risk, fire protection system providers and fire service providers, 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.

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 a 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.

1 Cont'd

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:

- (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.

COMMITTEE RECOMMENDATION

It is recommended that the Council:

- (a) Resolve that a bylaw is the most appropriate way to manage and regulate municipal water supply and wastewater and stormwater drainage.
- (b) Resolve that 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) Resolve that the attached Statement of Proposal (including the draft bylaw) and the Summary of Information be adopted for consultation;
- (d) Appoint a Hearings Panel to consider submissions on the draft bylaw.

2. **VARIATION TO BANKS PENINSULA PROPOSED DISTRICT PLAN**

General Manager responsible:	General Manager Strategy & Planning, DDI 941 8177
Officer responsible:	City Plan Team Leader
Author:	Keri Davis-Miller

PURPOSE OF REPORT

1. The purpose of this report is to seek direction from the Council about private requests for variations to the Proposed Banks Peninsula District Plan.

EXECUTIVE SUMMARY

2. The Council has been approached to consider varying the Banks Peninsula Plan to enable a development in Akaroa to proceed by way of a rezoning. The application would be assessed for its impact on the environment including the impacts of increased density and traffic and the implications for the existing servicing infrastructure and the impact on landscape values and vegetation. It would also be subject to a section 32 report to evaluate the alternatives and benefits and costs of the proposed changes and assessment against the purpose of the Act.

2 Cont'd

3. If the Banks Peninsula Plan was operative this variation request would proceed as a plan change and the Council would be obliged under the Resource Management Act to process the request at the applicant's cost. However, there is no similar right to request a variation from a proposed plan.

FINANCIAL IMPLICATIONS

4. Within City Plan Budget

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

5. Covered by existing unit budgets.

LEGAL CONSIDERATIONS

6. No particular legal issues arise other than the standard RMA process for a plan variation.

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

7. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

8. Aligned with City Plan Activity Management Plan. Supports the LTCCP City Plan measure that 10 variations or plan changes be prepared and notified annually.

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

9. As above.

ALIGNMENT WITH STRATEGIES

10. N/A

Do the recommendations align with the Council's strategies?

11. Yes

STAFF RECOMMENDATION

It is recommended that the Council adopt the policy (separately circulated) on private requests for variations to the Banks Peninsula Proposed District Plan and delegate to the Team Leader City Plan the power to allow private requests to vary the plan to be prepared in accordance with the policy, for consideration by the Council.

COMMITTEE RECOMMENDATION

It is recommended:

- (a) That the Council adopt the policy (separately circulated) on private requests for variations to the Banks Peninsula Proposed District Plan, and delegate to the Team Leader City Plan the power to allow private requests to vary the plan to be prepared in accordance with the policy, for consideration by the Council.
- (b) That a new clause 2 "*That no requests will be considered for the rezoning of rural land until the decision of the Environment Court on the Variation 2 appeals is received*" be inserted in the draft policy.

(Note: Councillor Yani Johanson recorded his vote against the above resolution.)

2 Cont'd

BACKGROUND (THE ISSUES)

12. The Council has been approached to consider varying the Banks Peninsula District Plan (BPDP) to enable a development in Akaroa to proceed by way of a rezoning. The application would be assessed for its impact on the environment including the impacts of increased density and traffic and the implications for the existing servicing infrastructure and the impact on landscape values and vegetation. It would also be subject to a section 32 report to evaluate the alternatives and benefits and costs of the proposed changes and assessment against the purpose of the Act.
13. The BPDP has been in preparation since 1997 and has at least 12 months before it can be made operative in part. The expectation of the Resource Management Act is that people should be able to make applications to change a district plan. However, this opportunity is not given until the plan becomes operative. Much of the BPDP has been beyond challenge for several years but has not been made operative because of several important issues which are going through the Environment Court. The Council itself can vary the proposed plan but other parties cannot apply for this until the plan is operative. The effect is that the RMA opportunity to apply for a plan change has not been available since 1997, even though some provisions have been completed for several years. This is not considered to be a particularly user-friendly situation.
14. The Council has previously considered the question of variations to a proposed plan when in 2003 the same issue arose due to approaches to the Council for variations to the Proposed Christchurch City Plan. At that time the Council adopted a policy for handling such requests. An adapted version of this policy is attached should the Council wish to adopt this course. Factors which could influence a Council policy on requests for variations are the same now as they were in 2003, they are:
 - The first consideration should be the impact on staff resources for making the Banks Peninsula Plan operative. This means completing existing appeals and variations. This should be the primary task of the City Plan team and related staff.
 - The second issue is time delays in making the plan operative. New variations may be controversial and give rise to references, thus delaying the ability to make that part of the plan operative.
 - The third issue is the desirability of being helpful to the community whenever possible. There are occasions when the plan could be more helpful to parties without compromising its overall role.
 - A fourth factor is the complexity in administering the Plan. If people cannot get the Plan varied they are likely to apply for resource consents instead and these applications may be much more complex and difficult than they would be if the Plan was less restrictive.
 - A fifth factor is cost. The plan changes are not of any great public interest or benefit, even though they may be suitable and appropriate for adoption under the Resource Management Act. In other words the benefits are largely private rather than public.
15. A technique which addresses most of these factors is for an applicant to prepare a potential variation itself, generally using consultants, in consultation with Council staff. This gives the Council input without demanding large amounts of time. Such proposals should be specific to a particular site, or perhaps a particular objective, policy, rule or zoning. A typical example would be a request to rezone a particular piece of land. This would have no impact on the rest of the Plan. The rest of the Plan could be made operative in part. Alternatively such proposals may be small-scale or have little potential for controversy, so that they can be completed in the time before the Plan is made operative.

2 Cont'd

16. It is likely that most of the Plan will be operative by late 2008. Therefore any policy would have a relatively short life and the number of applications is likely to be low. There will come a time, probably in late 2008, when all such requests should be declined to enable staff to get the Plan document corrected, formatted and made operative.

THE OPTIONS

Option 1

17. Reject the application for a variation to the Banks Peninsula Plan relating to rezoning land to enable private development.

Option 2

18. Adopt the attached Council policy on private variations to the Banks Peninsula Proposed District Plan under which officers are able to deal with all such applications on a one-off basis as and when they arise.

Option 3

19. Advise the applicant, Mrs Dunster, that if she prepares a draft variation and section 32 report, at their expense, the Council will consider it for possible adoption and public notification but can give no assurance at this stage as to its adoption or otherwise.

PREFERRED OPTION

Option 2 & 3

20. Adopt a policy on private variations to the Banks Peninsula Plan and advise applicant that they can prepare a draft variation for consideration by the Council.

PROPOSED POLICY

Policy on Private Requests for Variations to the Banks Peninsula District Plan

That privately initiated requests for variations to the Banks Peninsula District Plan be considered on the following basis:

1. That the requests are to be in relation to specific sites only by the owner of the fee simple of the land or any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, while the agreement remains in force, and shall not affect broadly applicable Banks Peninsula Plan provisions.
2. That no requests will be considered for the rezoning of rural land until the decision of the Environment Court on the Variation 2 appeals is received.
3. That the proposal is not contrary to any adopted strategy or area plan for the site in question.
4. That the proposal will not create a demand for additional infrastructure to be provide by the council, or deplete available capacity to service and supply appropriately zoned land.
5. That the requests will not be granted where applying for resource consents would be a practical alternative.
6. That such requests should not delay the Council's ability to make the majority of the Banks Peninsula District Plan operative in part.

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2 Cont'd

7. That applicants shall agree to reimburse the Council for its actual and reasonable costs in processing the request and any subsequent variation, to the conclusion of the hearings phase.
8. That any such variations are to be prepared by the applicants, at their expense, in consultation with relevant Council staff.
9. That the Council will consider any such variation on its merits but gives no assurance that it would introduce it, or if introduced as to its eventual decision on it.
10. That the Council will reserve the right to withdraw any such variation at any stage if it became protracted to the point where it affected the ability to make important parts of the Banks Peninsula District Plan operative.
11. That the Team Leader City Plan be given delegated authority to decide on requests to prepare variations to the Banks Peninsula District Plan under this policy. All such variations, authorised to be prepared by the Team Leader City Plan, are to be considered by the Council.

PART B - REPORTS FOR INFORMATION

3. PROPOSED DRAFT TRAFFIC AND PARKING BYLAW 2008

The purpose of this report was to seek agreement that a bylaw was the most appropriate way of addressing traffic and parking issues, including the movement of stock and to adopt the proposed "*draft Traffic and Parking Bylaw 2008*" for consultation and commence the special consultative procedure.

It was agreed that the report be held over to the next meeting of the Committee pending receipt of further information as requested by the Committee.

The meeting concluded at 1.05pm.

CONSIDERED THIS 28TH DAY OF FEBRUARY 2008

MAYOR