

4. HEARING PANEL REPORT ON THE PROPOSED GENERAL BYLAW

Author:	General Bylaw Hearing Panel
---------	-----------------------------

PURPOSE OF REPORT

1. This is a report of the Hearing Panel on its consideration of the proposed Christchurch City Council General Bylaw 2008. It summarises the submissions received through the Special Consultative Procedure on the proposed Bylaw and contains recommendations from the Panel altering the proposed Bylaw in certain respects. The proposed Bylaw (with the recommended changes highlighted) is **attached** to this report.
2. The report recommends the adoption of the Christchurch City Council General Bylaw 2008, as **attached**.

EXECUTIVE SUMMARY

3. On 27 March, the Council adopted the proposed General Bylaw for consultation. Submissions were received between 12 April to 14 May 2008. Three submissions were received¹⁹ with one requesting to be heard by the Hearing Panel.²⁰ The hearings and consideration of all submissions were undertaken on 4 June 2008. The panel was chaired by Councillor Sue Wells, and the Panel members were Councillors Sally Buck, Barry Corbett, and Chrissie Williams.
4. The purpose of the General Bylaw is to have, in one place, a set of provisions which are common to all bylaws. Such provisions will apply to all present and future Council bylaws, except to the extent that those other bylaws or any Act may provide otherwise. This avoids the unnecessary duplication of such provisions in every bylaw and enables the Council to keep its various bylaws succinct. The Council currently has two bylaws dealing with general matters.²¹ Apart from the statutory requirement in the Local Government Act 2002 (LGA) to review the two Bylaws, the recent inclusion of the Banks Peninsula District in the Christchurch City Council's district, means it was also timely to consolidate the two different bylaws into one bylaw.
5. A clause by clause analysis of the clauses in the two general bylaws was undertaken as part of the review process, in order to determine what clauses should be retained and what should be revoked. The clauses that were retained and which were in the Bylaw that was consulted on include:
 - the manner in which notices under any bylaw may be served
 - who may sign notices which are issued under a bylaw
 - the appointment of enforcement officers for bylaw enforcement
 - the manner in which a licence under a bylaw is issued
 - the grounds and procedure for suspending or revoking a licence issued under a bylaw
 - offence provisions which are common to all bylaws
 - the removal of works which exist in contravention of a bylaw
 - authorising the Council to dispense with compliance with a bylaw in certain circumstances.
 - requiring names and addresses to be supplied to an enforcement officer.

SUMMARY OF SUBMISSIONS

Submission from Robin McCarthy

6. Mr McCarthy wished to be heard in relation to his submission, but did not appear for his allotted time. His submission suggested adding an additional paragraph to clause 13 stating that "where a dispensation is declined, reasons for that decision shall be provided to the applicant".

¹⁹ Robin McCarthy, Otto Snoep, and Burwood/Pegasus Community Board

²⁰ The submitter requesting to be heard did not appear at the hearing, however the panel in considering his submission is recommending a change to give effect to his request.

²¹ The Christchurch City General Bylaw 1990 and the Banks Peninsula District Council Introductory Bylaw 1972

7. Staff reported to the Panel that good practice by the Council would be that it has reasons for any decision that it makes, particularly when it is declining or refusing something (this is a requirement in many statutes). This information would be available to anyone if they made a request for information under the Local Government Official Information and Meetings Act 1987. The dispensation power in the current General Bylaw is not something that is used very often, so it would not be an onerous task for the Council to provide reasons in relation to any refusal to grant a dispensation from any bylaw provision.

Hearings Panel Decision

8. The Hearing Panel is recommending to Council that a new clause 13(5) be added to the bylaw as follows:

“(5) If the Council refuses an application for a dispensation it will provide written reasons for the refusal to the applicant.”

Submission from Burwood/Pegasus Community Board

9. The Community Board supported the Council's intention to replace the current bylaws with a consolidated rationalised and modernised general bylaw. It did not wish to be heard in support of its submission.

Hearings Panel Decision

10. The Panel expressed its thanks to the Board for its support .

Submission from Otto Snoep

11. Mr Snoep submitted that in his view clause 13(1) (which provides that the Council may grant a dispensation from full compliance with any provision of a bylaw in a case where the Council considers that full compliance would needlessly and injuriously affect any person or business, without a corresponding benefit to the public), “is contrary to sections 150(3)(b) of the Local Government Act 2002 – consultation”. In his view, if passed in its current form, clause 13(1) would allow the Council or a delegated officer to alter the bylaw as it sees fit without further public consultation procedures. Mr Snoep argued that the Council must comply with the requirements of section 156 to create or amend a bylaw.
12. Staff advised that this latter point was correct, however, all that the Council can do under clause 13(1) is grant a dispensation from the need to comply with a particular provision of another bylaw in a particular instance, after considering the specific circumstances of a person or business. The officer recommended that clause 13(1) be clarified to make it clear that the dispensation be granted to a **person** or **business**.

Hearings Panel Decision

13. The Panel does not accept Mr Snoep's submission that having the power to issue dispensation provides the ability to alter a bylaw without going through a public consultation process. The power to make dispensations is an essential tool for the effective administration of the bylaws. It offers the organisation the opportunity to consider case by case situations and be responsive to them. It does not give the Council or any delegated officer the right to exercise that power in such a way that the integrity of the bylaw is brought into question. For the purposes of clarity it could be recommended to the Council that clause 13(1) be amended to read:

“(1) The Council may grant a dispensation to any person or business from full compliance with any provision of a Bylaw in any case where the Council is of the opinion that full compliance would needlessly and injuriously affect that person or business, without a corresponding benefit to the public or any section of it.”

OTHER MATTERS

14. The proposed bylaw attached to the consultation documents was not in the final form as approved by the Council on 27 March 2008. The version approved by the Council made some minor changes suggested by the Regulatory and Planning Committee. These did not carry over to the consultation version. The changes made were as follows:
- Deletion of the definitions “city” and “empowering statute” in clause 3, and the addition of the bolded words in the definition of licence: “means a licence, **permit, consent or approval** issued under any Bylaw”
 - The addition of the words “**or other document**” after the word “notice” in several places in clause 5 (service of notices)
 - The deletion of “**or order**” from clause 6 (signing of notices)
 - The deletion of “**or approval**” after the word licence in clause 10(1) (offences and breaches)
 - The correct date of the Banks Peninsula bylaw (changed from 1972 to **1996**) in clause 16
 - The replacement of “approvals, permits and” with the words “**licences or**” in clause 16(2).
15. The Hearings Panel recommends to Council minor changes to the bylaw (as shown in the attached suggested revised bylaw) in relation to modernising the language (largely amending the word “shall”, which is an old fashioned term no longer used in modern legislative drafting). The Council has stated in its consultation material that the bylaw is to be a “consolidated, rationalised and modernised general bylaw”.
16. It was not the intention to require Appendices or Schedules to be included as parts of the bylaws, and hence subject to the Special Consultative Process to amend or change these. They contain material that are operational procedures, or management issues that usually need to be changed, within the bounds of the bylaw, and normally can be changed by Council resolution. The words “**or Appendices**” have been removed from the draft bylaw in clause 3.

LEGAL CONSIDERATIONS

17. The Special Consultative Procedure took place from 12 April to 14 May 2008. The consultation documents were sent directly to a range of groups, organisations and individuals, as well as public notices appearing in relevant newspapers, and the consultation documents being made available at service centres, Council libraries and on the internet. Additionally, information sessions were held around the district for interested people to drop-in and talk to staff. The submissions were considered on the 4 June 2008.
18. A bylaw hearing panel has no decision-making powers, but can make recommendations to the Council, in accordance with its delegation for that purpose, after considering written and oral submissions. The Council can then accept or reject those recommendations, as it sees fit, bearing in mind that the Local Government Act requires views presented during consultation to be given “due consideration in decision-making”.²²
19. Section 157 of the Local Government Act 2002 requires that the Council give public notice of the making of a bylaw as soon as practicable after the bylaw is made. A recommendations has been made to this effect. It is appropriate to resolve that the Bylaw will come into effect on 1 July 2008, which is the date by which two of the bylaws being revoked by the new Bylaw would automatically expire.
20. The Legal Services Unit considers that the form of the bylaw, as proposed, is the most appropriate form, and that the bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 (in accordance with section 155 of the Local Government 2002).

²² Section 82(1)(e). This is also supported by the Council's Consultation Policy, which states: “we will receive presented views with an open mind and will give those views due consideration when making a decision”.

HEARING PANEL RECOMMENDATIONS

The Hearing Panel recommends that the Council:

- (a) Adopt the Christchurch City Council General Bylaw 2008, as amended (attached).
- (b) Give public notice as soon as practicable, that the Christchurch City Council General Bylaw has been adopted by Council, that it comes into effect on 1 July 2008, and that copies of the bylaw will be made available.
- (c) Send copies of the Bylaw to those people or organisations that made submissions, and send a letter to those to whom the consultation notification was initially sent, advising them of the outcome.

[Note: Attached to this report are two copies of the bylaw – a marked up copy (showing the changes to the proposed bylaw, as consulted on) and a clean copy (for adoption)]