

15. **HEARINGS PANEL REPORT ON THE REVOCATION OF THE BANKS PENINSULA DISTRICT COUNCIL NUISANCES BYLAW 1996**



<b>General Manager Responsible:</b>	General Manager Strategy and Planning, DDI 941-8281
<b>Officer responsible:</b>	General Manager Regulation & Democracy Services
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**PURPOSE OF REPORT**

1. The purpose of this report is to recommend to the Council that it confirm the revocation of the Banks Peninsula District Council Nuisances Bylaw 1996 (the "Bylaw") following the special consultative procedure on the proposal to revoke the Bylaw, for which no submissions were received.

**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 in the Christchurch district.
3. A review of the Bylaw was undertaken to ascertain whether the provisions of the Bylaw were still required. The Council agreed there was no need to continue or replace the Bylaw because the problems 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. On 28 February 2008 the Council resolved:
  - (a) *To revoke the Banks Peninsula Nuisances Bylaw 1996 following a special consultative procedure.*
  - (b) *To adopt the statement of proposal and summary of information 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.*
5. Public notice was given as required and the statement of proposal and summary of information made available to the public. There were no submissions received in respect of this consultation. Staff therefore recommended to the Hearings Panel that it recommend that the Council confirm its decision to revoke the Bylaw.

**FINANCIAL IMPLICATIONS**

6. None, unless the Council decides to incur the cost of giving public notice of the revocation of the Bylaw.

**LEGAL CONSIDERATIONS**

7. Sections 83 and 86 of the Local Government Act 2002 (LGA) set out the requirements in relation to the use of the special consultative procedure, which must be used when making, amending or revoking a bylaw. These sections do not specify what must happen in relation to the Council's decision to revoke a bylaw following that consultation.
8. Section 157, which requires public notice containing certain details to be given as soon as reasonably practicable after a bylaw is made, does not provide that the same must happen when a bylaw is to be revoked. No other sections of the LGA are applicable.

9. As it is an additional cost on Council to give public notice, and public notice is not required under the Act, the Legal Services Unit advice is not to give public notice of the final resolution to revoke the Bylaw. The Council can, however, update its bylaws review/bylaws pages on its website to state that the bylaw was revoked on the date resolved by Council.
10. It is appropriate to resolve to revoke the Bylaw immediately as no action has been taken under the bylaw since the reorganisation of the two councils, and there are no outstanding actions or other matters that will be affected by an immediate revocation.
11. A bylaw hearing panel has no decision-making powers, but can make recommendations to Council, in accordance with its delegation for that purpose, after considering written and oral submissions.<sup>15</sup> 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".<sup>16</sup> The Council, as final decision-maker, must be in as good a position as the hearing panel in terms of being fully aware of the content of the written submissions, and from the report on the oral submissions. As the Special Consultative Procedure is used for this consultation, the Council cannot introduce anything new into the bylaw that has not arisen out of a submission made during consultation.

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

12. Aligns with the "Strong Communities" strategic direction as the public have had a chance to be consulted, and thereby be involved in the decision making process (even though no submissions were received), before this bylaw is revoked.

**CONSULTATION FULFILMENT**

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

**HEARINGS PANEL RECOMMENDATIONS**

The Hearings Panel recommends that the Council resolve:

- (a) To revoke the Banks Peninsula Nuisances Bylaw 1996.
- (b) That the revocation takes effect from the date of the Council's resolution.

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<sup>15</sup> Clause 32 of Schedule 7 of the Local Government Act 2002 expressly prohibits the power to make a bylaw from being delegated.

<sup>16</sup> 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".