

16. HEARINGS PANEL REPORT ON THE PROPOSED WATER RELATED SERVICES BYLAW



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| General Manager Responsible: | General Manager Strategy and Planning, DDI 941-8281 |
| Officer responsible: | Senior Resource Planner, Asset and Network Planning Unit |
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PURPOSE OF REPORT

1. This is a report of the Water Related Services Bylaw Hearings Panel. It summarises the submissions received on the proposed Water Related Services 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 as **Attachment 3**.
2. This report includes the review of the Christchurch City Council Water Related Services Bylaw 2001, Banks Peninsula District Council Water Supply Bylaw 1998 and Banks Peninsula District Council Wastewater Drainage Bylaw 2000 and recommends the adoption of the Christchurch City Council Water Related Services Bylaw 2008, as **attached**.

EXECUTIVE SUMMARY

3. 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 needs to be reviewed by 30 June 2010.
4. On 28 February 2008 the Council resolved:
 - (a) *That a bylaw is the most appropriate way to manage and regulate municipal water supply and wastewater and stormwater drainage.*
 - (b) *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) *That the Statement of Proposal (including the draft bylaw) and the Summary of Information be adopted for consultation.*
5. On 27 March 2008 the Council appointed a Hearings Panel to consider submissions on the draft bylaw. The Panel consisted of Councillors Button, Wall, Withers and Wells.
6. Nine written submissions were received, four of which were heard by the Hearings Panel on 28 April 2008.
7. Having considered all the submissions, as well as a submission from Council's Water and Waste Manager (**Attachment 2**), and responses from staff to the issues raised (**Attachment 1** to this report) the Hearings Panel resolved to recommend to Council that the draft bylaw as publicly notified be amended. Incorporating the proposed changes, the proposed new Christchurch City Council Water Related Services Bylaw (**Attachment 3**) is recommended for approval, to come into effect on 1 July 2008.

SUMMARY OF CHANGES TO THE BYLAW

8. The hearings panel deliberated on the issues raised in submissions, and as a result, made several changes to the Bylaw now being recommended to Council. A small number of editing changes were also recommended by the panel, and have been included. The Hearings Panel recommendations can be found in the background section of this report (under the heading "Changes to the Bylaw recommended by the Hearing Panel") and are highlighted in the **attached** proposed bylaw.

LEGAL CONSIDERATIONS

9. The Council has complied with the requirements of section 83 of the Local Government Act 2002 in relation to the hearing of submissions in relation to the special consultative procedure. The statutory special consultative procedure took place from 8 March 2008 to 9 April 2008.
10. Section 157 requires that the Council, as soon as practicable after a bylaw is made, give public notice of the making of the bylaw. The public notice must state the date on which the bylaw will come into operation and that copies of the bylaw may be inspected and obtained at the office of the local authority on payment of a specified amount.
11. 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 anyway.
12. 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.¹⁷ 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”.¹⁸ 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.

ALIGNMENT WITH STRATEGIES

13. No existing strategies apply. A new water supply strategy and 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. Making of the bylaw cannot be delayed until that time due to the expiry of the Banks Peninsula bylaws in June 2008.

HEARINGS PANEL RECOMMENDATIONS

The Hearings Panel recommends that the Council:

- (a) Adopt the new Christchurch City Council Water Related Services Bylaw 2008, which will come into effect on 1 July 2008.
- (b) Give public notice as soon as practicable, that the Christchurch City Council Water Related Services Bylaw has been made by the Council, that it comes into effect on 1 July 2008 and that copies of the bylaw may be inspected and obtained at the Council's offices or on its website, without payment.

¹⁷ Clause 32 of Schedule 7 of the Local Government Act 2002 expressly prohibits the power to make a bylaw from being delegated.

¹⁸ 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”.

BACKGROUND

14. This section provides a brief summary of the submissions received on the proposed Bylaw, followed by a detailed outline of the changes to the Bylaw recommended by the Hearings Panel.

SUMMARY OF SUBMISSIONS

15. Nine submissions were received with four indicating that they wished to be heard. A brief summary of the submissions is included below with those heard indicated in brackets. Full copies of all the submissions received are publicly available.

Warwick Taylor & Brandon Koolen (Heard)

The submission focused on the effects of a meter on the water supply to a fire sprinkler system, the restrictions on use of fire hose reels and the provision of appropriate connections from main supply for domestic systems.

Russell Gregory, Wormald (Heard)

The submission commented on the definitions of fire protection and services, the issue of water meters and their impacts on fire protection systems, proposed measures to restrict inappropriate water use and outlined recommendations for changes to section 26 (Water for Extinguishing Fires) in particular.

Ross Aitken, Chubb Fire and Services

The submission focused on water meter types for fire sprinkler systems and issues related to backflow prevention devices.

Sumner Residents' Association

The submission commented on the arbiter of imposing restricting or prohibition of water supply, the effects of free-running domestic irrigation systems and visible water infrastructure pipes.

Andrea Lobb for Mahaanui Kurataiao Ltd (Heard)

The submission from Nga Papatipu Runanga was supportive of the bylaw in principle, but commented that some matters addressed in the bylaw would be more appropriately addressed when the Water Supply Strategy and Surface Water Strategy are further through in their development. The submission made comment on prohibition of some activities in relation to waterways, consideration of waterways as not simply infrastructure but which are also naturally occurring waterways, issues around waterways being used for drainage and comments on run-off issues in relation to residential properties.

Federated Farmers (North Canterbury)

The submitter recommended changes to the explanatory note to better clarify the intent of the Bylaw.

Leslie Griffiths

The submission suggested a minimum pressure rate for water supply at the domestic Toby. It also raised concerns about excessive planting and the extraction of water at Kaputone Stream.

Fendalton/Waimairi Community Board

The Fendalton/Waimairi Community Board commented on the quality of water in the North-west area and expressed concerns with the effects of single-section developers removing all vegetation near streams and requested greater enforcement of this.

Brian Sandle (Heard)

The submission focused on the definition of sprinklers in the draft Bylaw, water conservation measures, the reading of meters and rendering of accounts and biodiversity issues.

OTHER MATTERS CONSIDERED BY THE HEARING PANEL

16. The Panel noted that Council staff would have further discussions with submitters Taylor and Koolen to explore future policy changes of mutual interest, outside the scope of this bylaw.
17. The Panel noted that issues raised in relation to clause 33 of the bylaw (Water Used for Cooling) would be tagged by staff to address in the next review.
18. The Panel acknowledged the excellent work that had been done on this bylaw review and expressed its thanks to all the staff involved.

CHANGES RECOMMENDED BY THE PANEL

19. Having considered all written and oral submissions, the submission from the Manager City Water and Waste and staff responses to the issues raised in the submissions, the Hearings Panel recommends that the following changes be made to the draft bylaw:

CHANGES TO THE BYLAW RECOMMENDED BY THE HEARING PANEL

A. Rename clause 1 to "Short title, Commencement and Purpose", and add a new sub-clause 3:

(3) The purpose of this bylaw is to manage and regulate the Council's water supply, wastewater and stormwater drainage. The Bylaw does not manage or regulate matters that are already provided for in the Local Government Act 2002, the Building Act 2004, or the Health (Drinking Water) Amendment Act 2007 or the Resource Management Act 1991 (RMA). Any person who has permission under any other bylaw, act, regulation, or resource consent to carry out any activity, that conflicts with any requirement of this bylaw, does not breach this bylaw when acting in accordance with that permission.

Reason: Two submitters requested that part of the "explanatory note" at the end of the consultation copy of the bylaw be included in the bylaw itself, which is achieved by creating this new sub-clause, and explains why certain water or drainage matters are not dealt with in the bylaw, when they are regulated elsewhere. The rationale for the reference to permissions under other legislation, such as the RMA, is that it clarifies the hierarchy of these as against the bylaw, and is in accord with the submissions of Federated Farmers, Mahaanui Kurataiao Ltd and the Fendalton/Waimairi Community Board, which focussed on the RMA/environmental issues in particular. It makes it clear that permission for an activity under the RMA/a resource consent, or any other legislation, constitutes permission under, and will not breach, the bylaw.

B. Clause 2 Interpretation

"Fire Protection System" means a fixed system of pipes, control valves, outlets and related fixed components used to control or extinguish fires. [Note: This does not include fire hose reels].

Reason: Based on a submission, the definition has been shortened which clarifies more clearly what is intended to be covered by the definition, i.e. any such fixed system.

"Restricted Supply" means water supplied via a Restrictor at a regulated flow rate as determined by the Council and charged on a per unit basis.

Reason: The underlined word clarifies the definition.

Delete "Sprinkler".

Reason: The definition referred to a mechanism for lawn sprinkling, which is not included in the bylaw.

C. Clause 3: Compliance

Delete the entire clause.

Reason: The requirement to comply with other Acts as well as the Bylaw is not required, and the addition of clause 1(3) also makes this clause redundant.

D. Clause 10: Shut-off Valves

Add the underlined words

(1) The Council does not guarantee that any Council shut-off valve will be operational at all times.

(2) Consumers or their agents must check that private shut-off valves are operational prior to carrying out any testing or maintenance on their Private Water Supply.

Reason: To clarify that a private water supply shut-off valve is required for private plumbing work .

E. Clause 11: One Point of Supply

Amend sub-clause (1) to read as follows:

(1) The Council may require one Point of Supply to each parcel of land for which a separate certificate of title is held, or to each dwelling or premises on that parcel of land.

Reason: Based on a submission during the hearing of submissions the amended clause will now also include separate dwelling units on a single title. Under the old bylaw, Council's position was passive in that it would permit a point of supply. It did not mean the owner had to have one if they had multiple dwellings. It now means that the Council has the ability to determine that EACH parcel has a separated point of supply which is a change. That is to enable each title to be separately metered should Council wish to do so. The panel recommends that it stops short of REQUIRING a separated point of supply because there may well be situations where that is not appropriate.

(2) The Council may approve and provide more than one Ordinary Supply at its discretion and on written application being made to the Council in accordance with clause 5.

It is recommended that sub-clause 11(2) becomes clause 6 (2) with the current clause 6 becoming clause 6 (1).

Reason: This sub-clause fits better with clause 6, and referring to "Ordinary Supply" instead of "Point of Supply" it clarifies that it does not refer to supplies for extinguishing fires, a point raised by one submitter.

F. Clause 15: Prohibition or restriction of supply in special circumstances

Delete sub-clause (5).

Reason: Clause 12 (1) covers the same situation as clause 15 (5).

G. Clause 22: Reading of meters and accounts

Add the underlined words

(1) Meters will be read, and where applicable, accounts rendered, at such intervals as the Chief Executive may determine.

Reason: To clarify that domestic water use is metered but not charged for. There are situations where it is not necessary or appropriate for an invoice to be issued. It is not a universal situation.

H. Clause 26: Water for extinguishing fires

Add the underlined words:

(1) All new connections for Fire Protection Systems must have a Meter of a type that has minimal pressure loss characteristics as specified by the Council.

Reason: This provides direction to stakeholders as to the type of meter Council will approve. The reason for this is to give effect to concerns raised by submitters that requiring a water meter on fire protection systems had the potential to undermine the flow. The submission sought no metering at all. The panel was quite certain that metering was absolutely essential to ensure there was less potential for "diversion" of water from those systems. It was also of the view that it was quite reasonable to ensure that such meters did not impede the flow of water. This clause satisfied the concerns of submitters about flow rate and the concerns of the panel about "diversion" of water.

I. Clause 31: Prevention of backflow

First sentence remains the same. Second sentence to read:

"Consumers with existing Connections that do not have a Backflow prevention system may be required by Council to install appropriate devices if required by the Council to prevent an unsanitary situation".

Reason: The underlined words correctly makes provision for, where required, more than one device - not just one device as referred to before.

J. Clause 34: Objective

Expand this clause to read

The objective of this part of the Bylaw is to define the Council's requirements and provide for the protection of the land, structures, and infrastructure associated with wastewater drainage and stormwater drainage.

Reason: To bring the wording of the clause in alignment with the words used in section 146 of the Local Government Act 2002.

K. Clause 37: Protection of stormwater system

Add the underlined words:

Unless authorised by the Council no person may:

(1) Conduct surface water or subsoil water into a Stormwater Drain, except through a master trap or silt traps, or similar devices, situated in an approved position within the premises;

Reason: To include other devices that perform the same functions as a master trap or silt device.

L. Clause 44: Maintenance of private drainage systems

Delete the underlined word "and" from sub-clause (4)

" Where there is failure to comply with a notice the Council may cause a blocked Private Drainage System to be cleared, and whether this action is taken or not, may recover the cost of the work from the owner(s) and/or occupier(s) of the premises served with the notice.

Reason: The rest of clause 44, where relevant, refers to "owner or occupier". This change aligns sub-clause 4 with the rest of the clause.