

23. 4. 2009

**REGULATORY AND PLANNING COMMITTEE  
2 APRIL 2009**

**A meeting of the Regulatory and Planning Committee  
was held on 2 April 2009 at 9am**

**PRESENT:** Councillors Sue Wells (Chairperson), Helen Broughton, Sally Buck, Yani Johanson, Claudia Reid and Mike Wall

**IN ATTENDANCE:** Deputy Mayor Norm Withers

**APOLOGIES:** Apologies for absence were received and accepted from Councillors Ngaire Button, Bob Shearing and Chrissie Williams.

Councillor Claudia Reid arrived at 9.12am.

Councillor Sally Buck arrived at 11.02am

The Committee reports that:

**PART A - MATTERS REQUIRING A COUNCIL DECISION**

**1. BYLAW REVIEW PROCESS**

<b>General Manager responsible:</b>	Chief Executive Officer, DDI 941-8554
<b>Officer responsible:</b>	Chief Executive Officer
<b>Author:</b>	Tony Marryatt, Chief Executive Officer

**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 a 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 co-ordinate 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.

**COMMITTEE RECOMMENDATION**

That the staff recommendation be adopted by the Council.

1 Cont'd

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 the Council for adoption as a result of a review of 23 of the Council's bylaws.
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.

1 Cont'd

**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.

**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.

1 Cont'd

**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.

**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).

## 2. PLAN CHANGE 6 – RESIDENTIAL SITE DENSITY

<b>General Manager responsible:</b>	General Manager, Strategy and Planning Group, DDI: 941 8281
<b>Officer responsible:</b>	Team Leader City Plan
<b>Author:</b>	Keri Davis-Miller

**PURPOSE OF REPORT**

1. The purpose of this report is to identify a plan change to the City Plan and recommend that the Council close a loophole that currently exists in the land use standards in parts of the Living 1A, HA and HB zones that allows the creation of house lots detached from the balance of the land in the allotment concerned.

**EXECUTIVE SUMMARY**

2. Variation 90 to the City Plan (made operative in 2006) closed a loophole in the plan that allowed the creation of house lots detached from the balance of the land in the allotment concerned. This enabled the creation of clusters of dwellings in a rural zone in a manner more like an urban area, with the balance of the rural allotment being held elsewhere. Variation 90 altered this situation from as of right status to one requiring resource consent.
3. A further change to the City Plan is required due to an omission from Variation 90. It applies in the rural zones but could equally have been applied to the low density living zones. The proposed plan change (**Attachment 1**), changes existing rules in those zones to make it consistent with the other changes introduced by Variation 90 that relate to the location of residential units on physically contiguous areas of land that meet the minimum area requirements for their respective zone.

**FINANCIAL IMPLICATIONS**

4. No particular legal issues arise other than the standard Resource Management Act 1991 (RMA) process for Plan Changes.

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

5. The costs of public notification are able to be covered by existing unit budgets.

**LEGAL CONSIDERATIONS**

6. Section 74 of the Resource Management Act allows the Council to change its Plan or Proposed Plan in accordance with its functions under section 31, having regard to the provisions of Part II and its duties under section 32. Clause 16A of the First Schedule to the Act specifically gives Council the ability to initiate changes to the Proposed Plan by way of variation. Section 32 of the RMA requires the Council to evaluate the proposed change or variation, to examine the extent to which each objective is the most appropriate way to achieve the purpose of the RMA; and whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

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

7. No particular legal issues arise other than the standard RMA process for Plan Changes.

**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.

**2 Cont'd**

**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. Not applicable.

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

11. Yes.

**CONSULTATION FULFILMENT**

12. Consultation was undertaken as part of Variation 90 with survey firms who were considered to be in a good position to provide informed comments on the proposed plan change on their own behalf and for any clients that may have an interest in this matter. Proposed Plan Change 6 is effectively a follow up to the earlier Variation 90. Both Plan Changes intend to reduce the potential for clusters of residential units within zones that require larger site areas for residential units in order to (among other reasons) maintain character and amenity values.

**STAFF RECOMMENDATION**

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

- (a) Adopt the section 32 assessment for Plan Change 6.
- (b) Agree to publicly notify Plan Change 6 pursuant to Clause 16a of Schedule 1 to the Resource Management Act 1991.

**COMMITTEE RECOMMENDATION**

That the staff recommendation be adopted by the Council.

**BACKGROUND TO CLUSTER HOUSING ISSUES**

13. Variation 90 to the proposed City Plan was notified on 3 September 2004. This variation was intended to prevent the clustering of residential units in all low density living and rural zones in the City. While Variation 90 altered Living Zone critical standard 3.4.1 to ensure that clustering could not occur as of right in the low density living zones, clause (b) of this rule, which relates to the development of residential units in parts of the Living 1A, 1C, HA and HB zones, was inadvertently omitted from the changes introduced. The rule as amended by Variation 90 therefore is only partially achieving the outcomes sought for these low density living zones. Note that, unlike Variation 90, which dealt with Rural zones, and Variation 95 which dealt with the Living 1A zone, the Livings Hills A & B zone minimum lot size is a prohibited activity.
14. The existing wording within subclause (b) of critical standard 3.4.1 Residential Site Density may potentially allow clustering of residential units to occur, contrary to the intent of the Plan and for the other low density living zones as expressed through Variation 90. As Variation 90 has been completed and made operative, a further change to the Plan is necessary to ensure the intent of the original variation is carried through to all these living zones.

**2 Cont'd**

15. In 2007 Plan Change 6 had been partially completed in preparation of being presented to the Council when legal advice was sought from Anderson Lloyd Lawyers, with regard to whether Plan Change 6 satisfactorily addressed potential inconsistencies and loopholes in respect of the establishment of residential units within the Living 1A, HA, RS and HB zones. The legal advice confirmed that the proposed Plan Change closed the said loopholes and addressed inconsistencies (**Attachment 2**). However, the advice also recommended that Plan Change 6 should not proceed until Variation 95 / Plan Change 1 was declared operative:

“Given the Council’s intention to amend this particular provision (Critical Standard 3.4.1 (iii) in respect of the Living 1A zone) under Plan Change 6, we have advised that Plan change 6 should not proceed until the provisions of the plan subject to Variation 95/ Plan Change 1 are declared operative”.

16. Presenting Plan Change 6 to the Council was postponed until Variation Plan 95/Plan Change 1 became operative. Plan Change 1 was approved by the Council in December 2008 and became operative 2 February 2009.

**THE OBJECTIVES**

17. The purpose of this Plan Change is to bring about consistency with existing rules introduced by Variation 90, notified in September 2004. Variation 90 reduces the potential for cluster development in rural zones, in order to maintain amenity values and character, by ensuring that new residential dwellings are situated on physically contiguous land parcels that meet the minimum site area. This Plan Change (an omission to Variation 90) intends to close a loophole that potentially allows clusters of dwellings within low density living zones, namely 1A, HA and HB zones.

**THE OPTIONS**

18. The options are:
- (a) to notify the Plan Change and therefore completely close the loophole that was originally intended to be closed via Variation 90. Submissions and further submissions can then be made on the Plan Change.
  - (b) to leave the subclause unchanged and therefore not prevent as-of-right clustering in the Living Hills and other low density living zones, with the associated adverse amenity effects.

**PREFERRED OPTION**

17. The preferred option is (a).

**ASSESSMENT OF OPTIONS**

18. See Section 32 Report (**Attachment 3**).

### 3. APPEAL ON THE DECISION OF ENVIRONMENT CANTERBURY ON PROPOSED CHANGE 3, TRANSITIONAL REGIONAL PLAN

<b>General Manager responsible:</b>	General Manager Strategy & Planning, DDI 941-8281
<b>Officer responsible:</b>	Programme Manager - Healthy Environment
<b>Author:</b>	Peter Kingsbury, Principal Adviser Natural Resources

#### PURPOSE OF REPORT

1. To seek retrospective approval by the Council of the attached appeal on the decision of Environment Canterbury (ECan) on Proposed Change 3 to the Canterbury Regional Council Transitional Regional Plan (TRP)). The appeal was lodged with the Environment Court by the closing date of 16 March 2009.
2. For the Council to decide to either endorse or withdraw the appeal.
3. The report contains the following attachments:
  - **Attachment 1** - Notice of appeal to Environment Court against decision on the Transitional Regional Plan Change 3

There are three appendices to the above attachment:

- **Appendix 1(a)** - Council submission on Change 3 to the Transition Regional Plan
- **Appendix 1(b)** - Decisions of Council on Proposed Change 3 to the Canterbury Regional Council Transitional Regional Plan
- **Appendix 1(c)** - Name and address list of interested parties

#### EXECUTIVE SUMMARY

4. This appeal originated at the request of ECan in order to resolve an oversight in their decision on Proposed Change 3 to the TRP.
5. The General Authorisation (GA) for the discharge of stormwater contained in the TRP relates to local authority boundaries as they were in September 1991 when the GA became part of the TRP. The listed exclusions to the GA, for the discharge of roof stormwater from buildings and structures either into the ground or directly into groundwater to land, are appropriate for the areas identified in September 1991. The City Council submitted on the plan change in good faith to reflect the change that occurred in our jurisdiction with the merging of Banks Peninsula District Council (BPDC) and Christchurch City Council, and asked paragraph "(1)(d) the Banks Peninsula District Council area" of the TRP be deleted.
6. The ECan officer's report supported that request without realising the significance of including the additional area and the paragraph was subsequently deleted by the ECan hearings committee (decisions adopted by ECan 29 January 2009). It went unnoticed by both ECan and the City Council that the GA referenced the old boundary and that the effect was to now permit roof stormwater discharge to land in the former BPDC area. Because of the soil types in the BPDC area and the effects of erosion and slope instability, and high water table, the discharge of roof stormwater to land as a permitted activity is considered highly undesirable to both ECan and the Council.
7. In order to resolve this in a straightforward way, and to avoid the time and resources required for a further variation, ECan requested that the City Council appeal the decision and request that paragraph (1)(d) be reinstated in the TRP.
8. Retrospective Council approval of the appeal is being sought because the appeal had to be lodged with the Environment Court by 16 March 2009.
9. Since the lodging of the appeal, negotiation has taken place, an agreement has been reached between Environment Canterbury and Christchurch City Council. By way of a Memorandum of Consent, the parties will seek an order from the Court that the consent sought by Christchurch City Council be granted, subject to amendments to the General Authorisation for Stormwater.



**3 Cont'd**

**FINANCIAL IMPLICATIONS**

10. There are no financial implications for the City Council. If the City Council does not appeal, ECan will be required, at some considerable expense, to re-notify TRP Proposed Change 3.

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

11. The cost of preparing and lodging the appeal is covered by existing Strategy and Planning Unit budget.

**LEGAL CONSIDERATIONS**

12. The Resource Management Act 1991 (First Schedule, Part 1(14)) allows the Council to appeal a decision on a Regional Plan.

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

13. The proposal to appeal the decision was reviewed by the Legal Services Unit and the advice was to proceed with the appeal as it made good business sense to do so.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

14. The appeal seeks to ensure that the Plan Change more appropriately protects groundwater quality and is consistent with achieving the LTCCP objective "To conserve and protect the long-term availability and quality of the city's water" (p.166).

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

15. By better protecting the quality of Christchurch groundwater and avoiding the potential adverse effects of erosion, this action supports the LTCCP objectives for stormwater which includes identifying risks and managing stormwater in a sustainable manner (p.224)

**ALIGNMENT WITH STRATEGIES**

16. This action supports the approach taken in the Council's Draft Water Supply Strategy and being considered in the preparation of a Draft Surface Water Strategy. In particular, it will assist in protecting water quality and avoiding adverse effects from the management of stormwater.

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

17. As above.

**CONSULTATION FULFILMENT**

18. Not applicable.

**STAFF RECOMMENDATION**

It is recommended that the Regulatory and Planning Committee recommend that the Council appeal the decision of Environment Canterbury to delete paragraph (1)(d) in Proposed Change 3 to the Transitional Regional Plan, and request that the original paragraph (1)(d) be re-instated and a footnote attached to paragraph (1)(d), the footnote being – "The area defined by the Banks Peninsula District Council boundary prior to amalgamation", or similar wording.

**3 Cont'd**

**COMMITTEE RECOMMENDATION**

The Regulatory and Planning Committee recommends that the Council:

- (a) Appeal the decision of Environment Canterbury to delete paragraph (1)(d) in Proposed Change 3 to the Transitional Regional Plan, and request that the original paragraph (1)(d) be re-instated and a footnote attached to paragraph (1)(d), the footnote being – “The area defined by the Banks Peninsula District Council boundary prior to amalgamation”, or similar wording.
- (b) Prepare a Memorandum of Consent seeking an order from the Court that the consent sought by the Council be granted, subject to amendments to the General Authorisation for Stormwater, as set out in recommendation (a) above.

**PART B - REPORTS FOR INFORMATION**

**4. PROPOSED CHRISTCHURCH CITY COUNCIL COMMERCIAL SEXUAL SERVICES SIGNAGE BYLAW 2009**

The Committee received a report regarding a proposed Christchurch City Council commercial sexual signage bylaw.

The Committee **decided** to:

- (a) Receive the report for information.
- (b) Instruct staff to clarify and seek further legal advice on potential grey areas associated with the proposed bylaw.
- (c) Provide a further report to the Regulatory and Planning Committee on the proposed bylaw at its May 2009 meeting.

**5. PLANNING ADMINISTRATION MONTHLY REPORT (AUGUST 2008 TO FEBRUARY 2009)**

The Committee received a monthly report to provide information about resource consent applications received and processed by the Planning Administration and Subdivision teams. It contained information from August 2008 to February 2009.

The Committee **decided** to receive this report for information.

**6. PROPOSED APPROACH FOR CONSIDERING THE REVIEW OF CURRENT POLICIES RELATED TO THE PUBLIC PLACES BYLAW**

The Committee received a report from the Public Places Policy Working Party proposing to provide staged reports to the Committee instead of a single final report.

The Committee **decided** to receive this report for information.

The meeting concluded at 12.30pm.

**CONSIDERED THIS 23RD DAY OF APRIL 2009**

**MAYOR**