

**SUMMARY OF INFORMATION AND  
STATEMENT OF PROPOSAL  
ON THE  
REVIEW OF WATER BYLAWS IN THE  
WELLINGTON CONSOLIDATED BYLAW 1991**

**SUMMARY OF INFORMATION IN THE  
STATEMENT OF PROPOSAL  
WATER BYLAWS REVIEW**

The Council has reviewed its Drainage and Plumbing, and Water Supply, bylaws in accordance with an ongoing review of the Consolidated Bylaw. The Council is reviewing the bylaws to meet the requirements of the Local Government Act (LGA) 2002.

In conducting the review, the Council has found that most matters relating to the management and protection of the public water supply, wastewater, drainage and sanitation are controlled by provisions in several enactments and that there was no need to duplicate these matters in a bylaw. The issues covered by a proposed new water services bylaw are confined to addressing perceived problems that are not effectively controlled by any statute.

A water charter has been developed to explain the rights and responsibilities of people who are connected to the public water, wastewater and stormwater system alongside the rights and responsibilities of the Council. This document will promote better understanding of the rules and the Council's management of the networks that service the three waters (drinking water, wastewater and stormwater).

The Council is keen to know what consumers, ratepayers and stakeholders think about the following proposed:

- revocation of the Drainage and Plumbing Bylaw
- revocation of the Water Supply Bylaw
- new Water Services Bylaw
- Water Charter.

Information, along with a submission, form can be obtained from the Council libraries, service centres and Contact Centre. They are also available online at [www.wellington.govt.nz](http://www.wellington.govt.nz)

**Submissions open Monday 5 March 2007 and close at 4pm Friday 6 April 2007.**

# STATEMENT OF PROPOSAL

## Wellington City Council Water Bylaws Review

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## 1. Introduction – Reasons for reviewing the water bylaws

This *Statement of Proposal*, relating to the review of the Wellington City Council’s water bylaws is being published so we can hear the views of consumers, ratepayers and stakeholders on the outcome of a review of two bylaws concerning water. The objectives of the review are:

- to ensure that appropriate rules exist for the management and protection of the public network systems,
- to improve public understanding of the respective responsibilities for water users and the Council, as the supplier of public network services.

The bylaw review is aiming to:

- *streamline the rules that apply to the three water services<sup>1</sup> by not duplicating statutory provisions.* The existing bylaws<sup>2</sup> have been found to be unnecessary because some parts are obsolete and other parts duplicate controls that exist in statute. For these reasons they can be revoked. The bylaws that the Council proposes to revoke can be found in Appendix 3 and Appendix 4.
- *introduce rules that are needed to protect the wider community because alternative statutory controls do not exist.* Where a problem exists that cannot be managed without some regulatory tool, a bylaw is appropriate to protect the public network and the interests of the whole community. The proposed new bylaw, Part 2 Water Services can be found in Appendix 2.
- *provide information that will assist consumers to understand their rights and responsibilities.* The Water Charter (see Appendix 1) has been developed to explain the rights and responsibilities of consumers and the Council.

The Council is reviewing the bylaw to meet the requirements of the Local Government Act (LGA) 2002. The LGA 2002 requires the Council to periodically review all of its bylaws; otherwise they cease to be enforceable. The Council has an objective for its bylaws to be effective, efficient and relevant instruments.

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<sup>1</sup> The three waters refers to drinking water, waste water and storm water.

<sup>2</sup> Consolidated Bylaw Part 20 (Water Supply) and Part 7 (Drainage and Plumbing)

## **2. Have your say**

Wellington City Council is keen to know what you think about the matters covered by this review. Anyone can make a submission on the issues covered by the review. If you wish to make a submission, please ensure you include the following information:

- your name, postal address, phone number, fax number and email address (if applicable)
- your submission, with reasons for your views
- any changes you would like made
- whether you wish to speak to the Council in support of your submission.

A submission form is attached to help you.

Councillors will consider all the submissions before making a decision on whether to adopt it. The process and timetable for conducting this review is shown in section five of this document.

Please fill in the attached submission form or make a submission on line at [www.wellington.govt.nz](http://www.wellington.govt.nz) or email your submission to [wayne.murphy@wcc.govt.nz](mailto:wayne.murphy@wcc.govt.nz)

Submissions can be sent to:

Freepost WCC  
Water Bylaws Review Consultation  
Policy Unit  
Wellington City Council  
P O Box 2199  
Wellington

Submissions open Monday 5 March 2007 and close at 4pm Friday 6 April 2007.

### 3. Background

#### 3.1 Legislation

A number of Acts overlap in terms of scope and application as regulatory tools, especially for the protection of public health. By using these regulatory tools, the Council has recourse to prosecute people for offences and apply penalties. Table 1 indicates the relationship of a number of statutes that are relevant to the bylaw review.

| Perceived Problem Issue                                       | Regulatory Tools           |                            |                  |                                     |                              |                               | Educational Tool         |
|---|----------------------------|----------------------------|------------------|-------------------------------------|------------------------------|-------------------------------|--------------------------|
|   | Local Government Act 2002* | Local Government Act 1974* | Health Act 1956* | Building Act 2004 and Building Code | Resource Management Act 1991 | Wellington Consolidated Bylaw | Wellington Water Charter |
| Health risks  | ◆                          |                            | ◆                |                                     |                              |                               |                          |
| Protection of people and property                             | ◆                          | ◆                          |                  |                                     |                              |                               |                          |
| Contamination of water supply                                 | ◆                          |                            | ◆                |                                     |                              |                               |                          |
| Protecting the assets involved in the three water services    | ◆                          | ◆                          |                  |                                     |                              |                               |                          |
| Decision making processes and disclosures                     | ◆                          |                            |                  |                                     |                              |                               |                          |
| Nuisances   | ◆                          |                            | ◆                |                                     |                              |                               |                          |
| Design and performance of systems                             |                            |                            |                  | ◆                                   |                              |                               |                          |
| Minimising negative effects such as harm to the environment   |                            |                            |                  |                                     | ◆                            |                               |                          |
| Managing a local problem that may be unique to this community | ◆                          |                            |                  |                                     |                              | ◆                             |                          |
| Defining expectations of customers and the Council            |                            |                            |                  |                                     |                              |                               | ◆                        |

\* denotes the Council has bylaw making powers under these statutes.

### *Local Government Act (LGA) 2002*

Part 8 of the LGA 2002 requires councils to periodically review all their bylaws using the process found in section 86. Section 293 of the LGA 2002 provides validation of bylaws that were made under repealed provisions of the Local Government Act 1974; however as this validation expires on 30 June 2008, old bylaws need to be reviewed if they are to continue to be enforceable.

Section 146 of the LGA 2002 enables the Council to make bylaws for the management and protection of infrastructure associated with water supplies, wastewater, drainage, sanitation and land drainage.

Section 155 requires the Council to consider whether a bylaw is the most appropriate way of addressing a perceived problem. A principle we have applied under section 155 is that duplication of statutory controls in a bylaw is unnecessary and unhelpful. While duplication of statutory powers in a bylaw is permissible, such provisions become misleading and unhelpful when the original statute is amended or repealed. Therefore, when a perceived problem is identified for possible inclusion in a bylaw, where we have found that the problem can be addressed through exercise of a statutory power (see examples below), we have purposefully omitted the issue from the bylaw.

Water issues are controlled by a number of statutes, examples of which include the Local Government Act 2002, the Local Government Act 1974, the Building Act 2004 and the Health Act 1956. The Council's ability to exercise powers under these statutes means there are few problems it needs to address through a bylaw.

Subpart 1 of Part 7 of the LGA 2002 requires the Council to periodically assess water, wastewater and stormwater services. These assessments consider current and future demand and state the Council's intentions for its role in managing future demand. Subpart 2 of Part 7 of the LGA 2002 requires the Council to provide and maintain water services. Subpart 1 of Part 9 of the LGA 2002 provides controls and powers that enable the Council to manage and protect water services and associated infrastructure. Subpart 2 of Part 9 of the LGA 2002 provides penalties for offences against water services and associated infrastructure.

### *Local Government Act 1974*

Parts of the Local Government Act 1974 (LG 74) were not repealed with the enactment of the more recent Local Government Act 2002. Parts 26 and 29 of the LG 74 enable the Council to manage and protect sewerage, stormwater and land drainage services and associated infrastructure. Under part 31 of LG 74 the Council has a duty to promote efficient and effective waste management (including liquid wastes).

### *The Building Act 2004*

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work. The Health Act 1956 and the Local Government Act 2002 state that a bylaw cannot require a standard of performance or compliance that is higher than the Building Act 2004 or the building code.

### *The Health Act 1956*

Under the Health Act 1956 the Council has a general duty to improve, protect, and promote public health. Part two of this Act provides powers to the Council to fulfil its duties, enabling it to act where it finds a potential threat to public health. The Government has presented a bill to Parliament, which if enacted, will extend the Council's powers and responsibilities for the protection of water services.

### **3.2     *The role of the Council***

The community recognises that the public's long term environmental health will be protected by well planned and well maintained infrastructure. The Council's role is to ensure that residents have access to safe and reliable water supplies and waste disposal systems that protect public health and ecosystems. The Council owns a substantial number of infrastructure assets for operation of the three water services, which are managed by Capacity (the trading name of Wellington Water Management Ltd), which is a Council Controlled Trading Organisation.

#### *Water Supply*

The water supply network is managed by the Council to ensure that under normal conditions high quality drinking water is available for household and business use and for fire fighting. The public water network includes 76 reservoirs, 34 water pumping stations, more than 7900 hydrants and more than 1,000km of underground pipes. Water conservation is promoted through public education efforts and by installing and reading water meters. Water meters allow trends in water consumption to be monitored and leaks to be detected. Commercial customers are charged for water used and the meters provide an incentive for them to not waste water.

#### *Wastewater and Stormwater*

The Council manages its wastewater and stormwater services in accordance with its Liquid Waste Management Plan, which was developed to meet requirements set out in the NZ Waste Strategy 2002 and Part 31 of the Local Government Act 1974. The goals of the Liquid Waste Management Plan are to:

- lower the social costs and risks of waste
- reduce damage to the environment from waste generation and disposal
- increase economic benefit by more efficient use of materials.

The two networks comprise a substantial asset base which is maintained in accordance with Asset Management Plans that ensure service level requirements such as network condition and criteria for renewals and upgrades are met. The wastewater network includes 1,000 km of wastewater pipes that each year carry more than 29 million cubic meters of liquid waste to treatment plants. The stormwater network includes 700 km of pipes and tunnels and carries about 80 million cubic meters of runoff to discharge points in streams and the harbour.

## 4 The Bylaw review

### 4.1 Local Government Act 2002 requirements

The Council is empowered to make a bylaw to manage and protect infrastructure associated with water and wastewater services by section 146 of the LGA 2002 (refer section 3.1 of this report).

The LGA 2002 has three specific sections that establish the steps to be taken in the bylaw making process:

- *section 155* requires that Council determine that a bylaw is the most appropriate way of addressing the perceived problem. If it is, then the Council must determine if a proposed bylaw is the most appropriate form of bylaw and whether it gives rise to any implications under the New Zealand Bill of Rights Act (BORA) 1990
- *section 156* requires a special consultative procedure contained in section 86 to be followed. This involves preparing a:
  - *statement of proposal* that covers the points outlined in section 155 and a draft of the proposed bylaw
  - *summary of the information* contained in the statement of proposal that must be a fair representation of the major matters in the statement of proposal and be distributed as widely as is reasonably practicable as a basis for general consultation
- *section 76* requires that when the Council is making a decision it considers and assesses practicable options, community views and whether the decision is inconsistent with or is likely to have effects that are inconsistent with the Council's policies.

### 4.2 The perceived problem

Specific problems related to the three water services include:

- health risks
- protection of people and property
- contamination of the water supply
- defining the expectations of customers and the Council
- equity and fairness for recouping the costs of differing levels of service for domestic and non domestic customers
- minimising negative effects such as harm to the environment
- managing a local problem that may be unique to this community
- protecting the substantial assets involved in the three water services

As already shown above, these problems are mostly addressed in statutes, which empower the Council to exercise controls to manage the perceived problems. Bylaws that duplicate statutes can create confusion, especially when the bylaw is inconsistent with the statute, which can occur due to reviews and updates of the statute.

One issue, where we found a problem that is not covered by statutes, was the potential for consumers to use equipment that can adversely affect other users by disrupting the flow pressure in the public network. The proposed new Water Services Bylaw addresses this problem by prohibiting the connection of such devices to the service pipe.

#### **4.3 *Is a bylaw is the most appropriate way to address the problem?***

A bylaw can be a useful way of addressing a problem because people do not want to risk incurring the penalties that can be applied for breach of a bylaw. Therefore, where no controls exist and there is a perceived need to protect the public or to minimise offensive behaviour in public places or minimise a threat to the effective management and protection of public infrastructure, a bylaw can be the most effective way of addressing the problem. However a bylaw is not the most appropriate way to address the perceived problems listed above in 4.2 because alternative controls already exist.

#### **4.4 *Assessment of options for LGA decision making requirements***

The Council has identified the following options that may be used to address the above problems.

*Option 1      Status quo*

The current bylaws will lapse on 1 July 2008 if not reviewed by 30 June 2008. Section 293 of the LGA 2002 provides only a temporary validation of bylaws that were made under the LG 74 and section 293 (3) terminates the temporary validation on 1 July 2008.

*Option 2      Review the current bylaws (recommended)*

The proposals contained within the review ensure that the Council's bylaws and policies are effective, efficient and relevant instruments that accurately communicate the Council's position and intentions. By not duplicating the controls and powers that are covered by statute it avoids risks of the bylaw being inconsistent with statutes and regulations.

Issues of concern that are not addressed in a statute or regulation can and are being addressed in a new bylaw.

A Water Charter informs the public of their rights and responsibilities alongside the Council's expectations.

*Option 3      Detailed prescriptive bylaws*

This is a variation of Options 1 and 2. This would involve renewing the current Water Supply and Drainage and Plumbing bylaws, so that they can continue to be operative after 30 June 2008.

*Option 4      Educational programmes (no bylaw)*

This option would use publications, such as the Charter, and media to educate users of their rights and responsibilities, but would deny the Council recourse to enforcement powers.

The advantages and disadvantages of each of the above options are summarised in Table 1. This illustrates that a bylaw in conjunction with a water charter is the most appropriate way of dealing with the perceived problems outlined in section 4.2 as they would sit alongside the other statutory mechanisms that are available for management and protection of infrastructure associated with water supply, wastewater, and stormwater.

**Table 1: Advantages and disadvantages of each option**

| Advantages   | Disadvantages   |
|--|---|
| <p><i>Option 1</i><br/><i>Status quo</i></p> <ul style="list-style-type: none"> <li>• Certainty around provisions of the current bylaw.</li> </ul>   | <ul style="list-style-type: none"> <li>• Operation of the bylaw is due to expire and will be unenforceable.</li> </ul>  |
| <p><i>Option 2</i><br/><i>Review the current bylaws</i></p> <ul style="list-style-type: none"> <li>• The proposed new bylaw streamlines the controls that apply to water services by recognising the effect of statutory provisions.</li> <li>• Local problems are identified and addressed in the proposed bylaw.</li> <li>• A water charter informs the community of consumers' rights and responsibilities in an easy to understand format.</li> <li>• The water charter can be easily and quickly updated – there is no statutorily prescribed process controlling the way the Council may choose to do this.</li> </ul> | <ul style="list-style-type: none"> <li>• Understanding the relationship and distinction between the Water Charter, a bylaw and statutory powers could be confusing to some people.</li> </ul>   |
| <p><i>Option 3</i><br/><i>Detailed prescriptive bylaw</i></p> <ul style="list-style-type: none"> <li>• Certainty around provisions of the current bylaw.</li> </ul>  | <ul style="list-style-type: none"> <li>• The bylaws contain some obsolete provisions, such as references to statutes or regulations that have been changed or repealed.</li> <li>• Duplication of statutes is unnecessary and unhelpful as the bylaw becomes obsolete when the statutory provisions change.</li> <li>• Including provisions that are already contained in statutes obscures the local problems that are not addressed in statutes.</li> </ul> |
| <p><i>Option 4</i><br/><i>Educational programmes (no bylaw)</i></p> <ul style="list-style-type: none"> <li>• People would be more knowledgeable about their rights and responsibilities and the Council's expectations.</li> </ul>   | <ul style="list-style-type: none"> <li>• The Council would lack recourse to enforcement powers to control a perceived problem.</li> </ul>   |

**4.5 Most appropriate form of bylaw**

The proposed bylaw (attached as Appendix two) reflects Council’s current policies. While it affects private fittings, it does so in the interests of protecting the public network and the level of service to other users of the public network.

The proposed bylaw, attached at Appendix 2, is regarded as being in the most appropriate form to address the perceived problems outlined in section 4.2.

**4.6 Bill of Rights implications**

The Council must determine whether the proposed bylaw gives rise to any implications under the BORA and that it is consistent with BORA. The proposed Bylaw is very limited and arguably does not breach or restrict the BORA rights and freedoms as there is a specific empowering provision<sup>3</sup> that allows Council to make the proposed Bylaw and the controls in the bylaw do not impact on the freedom of expression or the freedom of movement rights.

**4.7 Relationship to the Council’s strategies**

|   |   |
|---|---|
| <i>Community Outcomes</i>               | Wellington’s environmental health will be protected by well-planned and well-maintained infrastructure.   |
| <i>The Council’s Long Term Outcomes</i> | Wellington will have access to safe and reliable energy and water supplies, clean air and waste disposal systems that protect public health and ecosystems. Reliable supply and safer disposal will mean: <ul style="list-style-type: none"> <li>• continued access to quality water supply</li> <li>• sustainable stormwater management practices to prevent flooding</li> <li>• greater protection of receiving waters from polluted stormwater</li> <li>• high – quality treatment of sewage.</li> </ul> |
| <i>Why the activity is important</i>    | <p>A safe, reliable supply of good –quality drinking water is essential for the health and wellbeing of residents and the city as a whole.</p> <p>The stormwater network protects property, human health, and well-being and makes the city viable by reducing the risk of flooding.</p> <p>Management and maintenance of the wastewater network is essential for public health, the environment and viability of the city as a whole.</p>  |

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<sup>3</sup> Section 146 of the LGA 2002

## 5.0 Process and timeline

The proposed bylaw has been developed through internal consultation with Council officers from Building Consents & Licensing, Infrastructure and Capacity.

External consultation will be undertaken in terms of the special consultative procedure required under section 86 of the Local Government Act 2002.

The timeline for the bylaw review from this point is as follows:

|                        |  |
|------------------------|--|
| 15 – 21 February 2007  | The Council considers the proposed bylaw and initiates the special consultative procedure as required under section 86 of the Local Government Act 2002. |
| 5 March – 6 April 2007 | Consultation period.   |
| 19 April 2007          | Strategy and Policy Committee hears the oral submissions.  |
| 7 June 2007            | Strategy & Policy Committee consider report on the special consultative procedure.   |
| 27 June 2007           | The Council will consider confirmation of the special consultative procedure and the adoption of the proposed bylaw.                                     |

## **APPENDICES**

- APPENDIX 1 The Wellington Water Charter
- APPENDIX 2 Proposed Bylaw: Wellington Consolidated Bylaw 1991:  
Part 2 (Water Services)
- APPENDIX 3 Bylaw to be revoked: Wellington Consolidated Bylaw 1991:  
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