
REPORT 15
(1215/11/IM)

COMPLETION OF THE BYLAW REVIEW

1. Purpose of Report

To request that Council complete the bylaw review, initiated in 2003, by:

- adopting Part 1: Introduction (Introduction Bylaw) of the Wellington City Consolidated Bylaw 1991
- consolidating its bylaws, including the Introduction Bylaw, into the 'Wellington City Consolidated Bylaw 2008'.

2. Executive Summary

The Local Government Act 2002 (LGA) requires the Council to review, by 1 July 2008, its bylaws made prior to 1 July 2003 (the commencement date of the relevant provisions in the Act).¹

Since 2003, the Council has reviewed 23 bylaws. Appendix 2 details the outcome of each review and whether the bylaw was updated, replaced, revoked or will lapse.

The review of the Introduction Bylaw (attached as Appendix 1) was commenced in 2003. The special consultative procedure was undertaken and the results considered by the Regulatory Committee in February 2004. The Committee agreed to refer the bylaw to the Council for adoption upon completion of the bylaw review process.

As the bylaw review is complete, the amended Introduction Bylaw can now be considered by full Council and the Council's bylaws can be consolidated into a new 'Wellington City Consolidated Bylaw 2008'.

The consolidation process can be achieved through a resolution of Council. It does not require a further special consultative procedure. At the same time as making the Wellington City Consolidated Bylaw 2008, the Wellington City Consolidated Bylaw 1991 will be revoked.

3. Recommendations

It is recommended that the Council:

1. *Receive the information.*

¹ Section 158(2) of the LGA 2002

2. *Agree to the Regulatory Committee's recommendations, from its meeting of 17 February 2004, referred to Council for consideration at the completion of the bylaw review:*

- (a) *Note that one written submission on the proposed Wellington City Consolidated Bylaw Part 1: Introduction was received during the special consultative procedure.*
- (b) *Note that the one submitter also made an oral submission which was heard by the Regulatory Committee at its meeting of 9 December 2003.*
- (c) *Agree that the special consultative procedure has been completed pursuant to sections 83 and 86 of the Local Government Act 2002.*
- (d) *Consider the key points raised by the submission, attached at Appendix 3, for the proposed bylaw.*
- (e) *Agree to adopt the Wellington City Consolidated Bylaw 1991 Amendment 16: Part 1 – Introduction, **including minor administrative changes that have been made to the bylaw as a result of the review process**, and agree that it will commence on **1 July 2008** (the bylaw is attached at Appendix 1)*

Note: the text in bold differs from the recommendation resolved by the Regulatory Committee. The original recommendation stated that the bylaw would “commence from a date to be determined by further resolution at the completion of the Wellington City Consolidated Bylaw 1991 (the principal bylaw) review process”.

3. *Note that recommendations 6(f) and (g) of the Regulatory Committee's resolution are not being referred to the Council as they have been replaced with the following recommendations 4, 5 and 6, which broaden the scope of the recommendations to all of the bylaws requiring consolidation.*

4. *Consolidate the following bylaws into the Wellington City Consolidated Bylaw 2008:*

Part 1 – Introduction

Part 2 – Animals

Part 3 – Fire Prevention

Part 4 – Liquor Control

Part 5 – Public Places

Part 6 – Speed Limits

Part 7 – Traffic

Part 8 – Water services

Note: All the bylaws have been renumbered as part of the consolidation.

5. *Agree that the Wellington Consolidated Bylaw 2008 commence from 1 July 2008.*
6. *Revoke the Wellington Consolidated Bylaw 1991 from 1 July 2008.*

4. Background

The Local Government Act 2002 (LGA) requires the Council to review, by 1 July 2008, all of its bylaws made prior to 1 July 2003 (the Act's commencement date).

All but two² of the Council's current bylaws are consolidated into the 'Wellington City Consolidated Bylaw 1991'. Most new or updated bylaws resulting from the review process have been agreed to as amendments to the 1991 consolidated bylaw – for example, the Introduction Bylaw is amendment 16 to the bylaw.³

The consolidated bylaw enables the Council to address all administrative, offence and enforcement provisions through the Introduction Bylaw (this is discussed further in section 5.2 below). Many of the bylaws to be consolidated refer directly to the provisions in the Introduction.

5. Discussion

5.1 Bylaws Review

The bylaw review process has covered 23 bylaws. The review has not included the Liquor Control and Speed Limits bylaws made since 1 July 2003.

The purpose of the bylaw review was to:

- ensure the individual bylaws were still relevant and required (for example, in light of new Council policy and/or guidelines or government legislation)
- simplify and streamline the bylaws, by removing inconsistencies and duplication.

Appendix 1 describes the results of the review process for each of the reviewed bylaws. Some bylaws have been:

- revoked – if the bylaw is no longer needed or obsolete
- updated – to remove provisions either rendered obsolete or unnecessary⁴
- merged – to incorporate similar provisions from different bylaws into a new or alternative bylaw⁵
- allowed to lapse – if the provisions will be covered elsewhere (including in a new bylaw or alternative policy that may still be under development).⁶

² The Trade Waste and Local Public Health bylaws are separate from the consolidated bylaw.

³ The Local Public Health Bylaw is an exception as it has been agreed to as a stand-alone bylaw.

⁴ For example, the Introduction and Animals bylaws.

⁵ For example, the new Local Public Health Bylaw combines provisions from the Reserves and Swimming Pools, Commercial Pools and Saunas and Public Health bylaws

As a result of the review, the Council's current bylaws are:

- Introduction
 - Animals
 - Fire Prevention
 - Liquor Control
 - Public Places
 - Speed Limits
 - Traffic
 - Water Services
 - Local Public Health
 - Trade Waste
- } To be consolidated under the Wellington City Consolidated Bylaw 2008 (see below for details)
- } To remain as stand-alone bylaws

Further bylaw reviews planned outside of this review are:

- a potential **Waste Bylaw** as a merge of the Trade Waste Bylaw and lapsed Refuse and Collection and Transportation of Wastes bylaws
- a review of the Traffic Bylaw.

5.2 Introduction Bylaw

The Introduction Bylaw (attached as Appendix 2) performs an administrative function. It has a number of core clauses that apply to all parts of the consolidated bylaw. For example, it:

- provides information about how Council will provide a licence, authority or written permission to enable some activity to occur
- clarifies how Council shall handle fee changes
- covers enforcement details such as issuing and serving notices to people
- details when a person commits a general offence against the consolidated bylaws.

The Introduction Bylaw was consulted on between August and November 2003, and reported back to the Regulatory Committee in February 2004. Appendix 3 outlines the key points raised by the one written submission received through the special consultative procedure.

5.2.1 Amendments to the Introduction Bylaw

As a result of the review process the following minor administrative amendments are recommended for the Introduction Bylaw (these are 'track changed' in Appendix 2).

⁶ For example, lapsed bylaws are:

- Collection and Transportation of Waste – as this is to be replaced with a "Waste Bylaw", once the Waste Minimisation Bill currently before Parliament is enacted
- Earthworks Bylaw – as these provisions are being picked up in the District Plan (though the provisions are still to be finalised).

- **Clause 1.3.1 clarified** – so that it only refers to revoking the Wellington City Consolidated Bylaw 1991.
- **Replacement of the “Public Places” definition** – with that approved in the newly amended Public Places Bylaw.

Definitions in other bylaws also differ from those in the Introduction Bylaw.⁷ These definitions, however, fit within the context of those bylaws, so no changes are recommended (the Introduction clearly states that the definitions apply “unless the context otherwise requires”).

- **Removal of section 1.6.2** – the requirement that Council pass its fees by resolution and publicly notify them was not carried over from the LGA 1974 into the LGA 2002. This section has been removed to make the bylaw consistent with the LGA 2002.

These amendments are considered to be administrative rather than substantive and do not require an additional formal consultation process.

5.3 Consolidating the Bylaws

The bylaws are simplified by consolidation as the administrative, offence and enforcement provisions are captured in one place (the Introduction Bylaw) rather than being duplicated in each bylaw.

Consolidation is done by Council resolution, and does not require the special consultative procedure (this has already been done for each of the individual bylaws).

Consolidation includes the reviewed bylaws as well as the two new bylaws made since 1 July 2003. The bylaws have been renumbered as a simple administrative procedure that does not require separate resolution.

The amended Liquor Control and Public Places bylaws, which are also being considered as part of this Council agenda, are also being incorporated into the Wellington City Consolidated Bylaw 2008 (although their respective reports refer to their incorporation into the Wellington City Consolidated Bylaw 1991). The reports have deliberately been ordered so that the resolution regarding the 2008 consolidated bylaw will be the most recent one, taking precedence.

5.4 Recommendations

The Regulatory Committee agreed that the Introduction Bylaw would be referred to Council for consideration at the completion of the consolidated bylaw review process.

⁷ For example, the definitions of “road” and “owner” in the Speed Limits Bylaw.

Because the Regulatory Committee could not set a commencement date and did not make a recommendation to consolidate all of the bylaws, officers have:

- inserted a commencement date
- included a recommendation for consolidation
- removed the Regulatory Committee's recommendation on commencement (see Appendix 4 for the Regulatory Committee's original recommendations).

6. Conclusion

The review of the Wellington City Consolidated Bylaw 1991 is complete. The Council is now able to adopt the Introduction Bylaw and consolidate all of its reviewed and new bylaws under the Wellington City Consolidated Bylaw 2008.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The Introduction Bylaw supports the Council's outcomes around Governance, particularly outcome 7.2.B that "Wellington will operate an open and honest decision-making process that generates confidence and trust in the democratic system".

2) LTCCP/Annual Plan reference and long term financial impact

No annual plan or LTCCP implications have been identified.

3) Treaty of Waitangi considerations

Treaty issues were discussed with mana whenua as part of the formal consultation.

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

Formal consultation was undertaken under the special consultative procedure required in terms of section 83 of the Local Government Act 2002.

b) Consultation with Maori

Mana whenua were consulted during the special consultative procedure.

6) Legal Implications

Council's lawyers have been consulted during the development of this report and have confirmed the process for amendments and consolidation.

7) Consistency with existing policy

The bylaw is consistent with existing Council policy.

APPENDIX 2

Bylaws Reviewed

Bylaws prior to Review	Result
Wellington Consolidated Bylaw 1991	Wellington Consolidated Bylaw 2008
• Introduction	Updated through review process
• Air Conditioning	Revoked
• Animals	Updated through review process
• Apartment Buildings and Residential Buildings	Revoked
• Buildings	Revoked
• Cemetery and Cremation	Revoked – some provisions included in the amended Public Places Bylaw
• Commercial Pools and Saunas	Revoked – provisions included in the Local Public Health Bylaw
• Commercial Sex Premises	Revoked – provisions on signage included in the Public Places Bylaw
• Drainage and Plumbing	Revoked – provisions included in the Water Services Bylaw
• Earthworks	Bylaw to lapse – will be replaced by District Plan provisions that are currently being developed
• Fire Prevention	Updated through review process
• Food Premises	Revoked – provisions included in the Local Public Health Bylaw
• Harbours, Beaches and Foreshore	Revoked – provisions included in the Public Places Bylaw
• Hawkers and pedlars	Revoked – provisions included in the Trading in Public Places and Footpath Management policies
• Noise Control	Revoked
• Refuse	Bylaw to lapse. A new Waste Bylaw will be developed once the Waste Minimisation Bill is enacted.
• Reserves and Swimming Pools	Revoked – provisions included in the Public Places (reserves) and Local Public Health (swimming pools) bylaws
• Roads and Public Places	Replaced with the Public Places Bylaw. Amended in 2008 to include provisions from other bylaws
• Traffic	Updated through review process
• Watercourses	Revoked – replaced with the Water Services Charter
• Water Supply	Revoked – provisions included in the Water Services Bylaw and the Water Services Charter
Collection and Transportation of Wastes	Bylaw to lapse. A new Waste Bylaw will be developed once the Waste Minimisation Bill is enacted.
Trade Waste	Updated. Potentially to be included in new Waste Bylaw
New Bylaws – since 1 July 2003	
Liquor Control	Amendment currently being considered
Speed Limits	Review required prior to September 2009.

APPENDIX 3

KEY POINTS IN SUBMISSIONS

On 12 August 2003 Council considered the proposed Introduction Bylaw and resolved to initiate the special consultative procedure. This was undertaken in accordance with sections 83 and 86 of the LGA 2002 with the public consultation occurring between 27 August and 7 November 2003.

One written submission was received from the Federation of Wellington Progressive and Residents Association. The Federation also made an oral submission that covered the points in their written submission at the Regulatory Committee meeting on 9 December 2003.

Key points raised in submissions

Key points	Council consideration
There is no reference to the legislation to which this bylaw might apply (as in the existing bylaw) to explain the wide effect of this bylaw.	There is no legal obligation for the bylaw to refer to the empowering legislation which enables it to be introduced. The only obligation is to ensure that the bylaw does not exceed the scope of the Council's powers. Adding a list of legislation adds little to the understanding of the bylaw and may become outdated through legislative change. The proposed Bylaw does include some introductory wording that makes reference to the LGA 2002. No changes to the bylaw are required.
The use of the expression 'Council' in the bylaw does not clearly distinguish whether it is the elected Council, or officers of the Council e.g. the CEO, who make the necessary decisions.	There is no need to make any distinction between elected Council and Council officers. The question of who can make decisions is subject to the delegations from elected Council to the CEO and/or various Council officers. Delegations change over time. No change to the bylaw is required.
<i>Clause 1.6 Fees (Previously 1.8)</i> We note and disagree that the previous clause 1.8.2 has been omitted which gives Council the freedom to establish any fee at all without justification.	Council's ability to prescribe fees by bylaw is dictated by section 150 of the LGA 2002. The previous clause 1.8.2 is now addressed by section 150(4) of the LGA 2002 which states that the Council cannot recover any more than the reasonable costs incurred. There is no need for the bylaw to repeat existing legislation as the Council can not change or exceed the requirements of section 150(4) of the LGA. No change to the bylaw is required.

APPENDIX 3

<p><i>Clause 1.11 Compliance waiver (Previously 1.17)</i></p> <p>The person authorised by Council to exercise any compliance waiver needs to be identified i.e. CEO or alternate.</p>	<p>The officer who grants the waivers for each aspect of the bylaw is subject to delegations made separate to the bylaw. There is no need for the bylaw to specify the person or position especially as it can cause problems if the position (title) changes. No change to the bylaw is required.</p>
<p><i>Clause 1.12 Discretionary powers (Previously 1.21)</i></p> <p>The delegation to 'any person' in 1.12.2 is too broad as it can include any person outside Council. The previous bylaw limited that discretion to a Council resolution. Discretions belong to senior personnel in Council if discretion is considered unwieldy. Our preference is the retention of the status quo.</p> <p>In clause 1.12.3, any person directly affected by the exercise of a discretionary power will, or must, (not may) have their application for review of that decision, reviewed accordingly. It has also not been explained why the reference to 'any' discretionary power in the existing bylaw, has been limited to 'a' discretionary power in the proposed bylaw.</p>	<p>The Council has the legal power to delegate functions. Sometimes the Council delegates statutory functions to appropriate non-Council employees e.g. dog and noise control officers and parking wardens.</p> <p>The ability to apply to Council to review a decision under clause 1.12.3 is an option and not an obligation. The change from 'any' to 'a' is a plain English language change. No change to the bylaw is required.</p>
<p><i>Section 2.0 Interpretation (Previously 1.4)</i></p> <p>The redefinition of public place is unclear, particularly when reference is made to 'Part 17B of this bylaw'. The definition of ROAD suffers from the same difficulty as it is now LGA 2002 (not LGA 1974) under which council maintains its statutory direction.</p>	<p>The definition of 'public place' seems clear and is included in this part of the bylaw as other bylaws also refer to it. The reference to Part 17B: Roads and Public Places will allow the interpretation to be more specific for that particular part of the bylaw. The statement regarding the LGA 1974 is correct as section 315 of the LGA 1974 (which includes the interpretation for 'road') is not repealed by the LGA 2002. There is no definition of 'road' in the LGA 2002 as the relevant provisions have been retained in the LGA 1974. No changes are required.</p>

APPENDIX 3

<p><i>Clauses 1.3 Principles of interpretation and 1.14 Penalties</i></p> <p>Why have they been omitted from the proposed bylaw?</p>	<p>The principles of interpretation were deleted because the clause did not assist the bylaw as the principles of statutory interpretation are established by statute and therefore apply to bylaws.</p> <p>The penalties section was deleted because the penalties for breaches of the bylaw are set by section 242 of the LGA 2002 and do not need to be repeated in the bylaw. No change to the bylaw is required.</p>
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Recommendations of the Regulatory Committee, 17 February 2004

ADOPTION OF WELLINGTON CONSOLIDATED BYLAW – AMENDMENT NO 16: PART 1 (INTRODUCTION)

THAT the Regulatory Committee:

- 1. Receive the information.*
- 2. Note that one written submission (attached at Appendix 1 (of the officer's report)) was received during the special consultative procedure that was undertaken in accordance with sections 83 and 86 of the Local Government Act 2002.*
- 3. Note that the one submitter also made an oral submission which was heard by the Regulatory Committee at its meeting of 9 December 2003.*
- 4. Consider the points raised by the submission (section 4.2 of this report).*
- 5. Agree to the proposed Wellington Consolidated Bylaw - Amendment No 16: Part 1 (Introduction), attached at Appendix 3 (of the officers report).*
- 6. Recommend to Council that it:*
 - (a) Note that one written submission on the proposed Wellington City Consolidated Bylaw Part 1 Introduction was received during the special consultative procedure.*
 - (b) Note that the one submitter also made an oral submission which was heard by the Regulatory Committee at its meeting of 9 December 2003.*
 - (c) Agree that the special consultative procedure has been completed pursuant to sections 83 and 86 of the Local Government Act 2002.*
 - (d) Consider the key points raised by the submission, attached at Appendix 4, for the proposed bylaw.*
 - (e) Agree to adopt the Wellington City Consolidated Bylaw 1991 Amendment 16: Part 1 (Introduction) attached at Appendix 3 and that it will commence on a date to be determined by further resolution at the completion of the Wellington City Consolidated Bylaw 1991 (the principal bylaw) review process 1 July 2008.*
 - (f) Agree that on the date of commencement the Wellington City Consolidated Bylaw 1991 Amendment 16: Part 1 (Introduction) is part of the principal bylaw.*
 - (g) Agree to amend the principal bylaw by revoking the existing Wellington City Consolidated Bylaw 1991 Part 1 (Introduction) and replacing it with the new bylaw, attached at Appendix 3, on the date of commencement.*