
REPORT 3
(1215/52/IM)

WATER COURSES BYLAW

1. Purpose of Report

To revoke Part 19 of the Wellington Consolidated Bylaw – Watercourses (the Bylaw).

2. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that three submissions have been received in response to the Special Consultative Procedure, undertaken in accordance with section 86 of the Local Government Act 2002.*
3. *Agree that issues raised by submitters on the proposed bylaw have been considered.*
4. *Recommend to the Council that it*
 - a. *Revoke Part 19 of the Wellington Consolidated Bylaw – Watercourses, as it no longer appears to be the most appropriate mechanism to achieve Council's objectives.*
 - b. *Agree that the Special Consultative Procedure has been completed pursuant to section 86 of the Local Government Act 2002.*

3. Background

The Council commenced a review of the bylaw in 2004 in accordance with requirements in the Local Government Act 2002 to review all bylaws. The Watercourses Bylaw purports to control work in watercourses and streams, provide for their maintenance and prohibits discharges that may pollute or contaminate watercourses.

The Council approved minor additions and changes to the existing bylaw prior to the new draft bylaw being released for consultation. Three submissions were received – two submitted on the bylaw and the third submitted on the options in the Statement of Proposal, without commenting on the proposed bylaw.

After due consideration of the three submissions that were received, the bylaw is considered to be unsuitable for adoption either in its original form or in an amended form. The most appropriate course of action is to revoke the bylaw.

4. Discussion

4.1 Consultation

The object of the bylaw was to address the perceived problem of obstruction and pollution of watercourses in Wellington City. The statement of proposal identified additional issues of concern that extend the purpose of the bylaw to include:

- managing artificial water courses (for example, drainage channels)
- controlling watercourses on private land
- fencing of watercourses on private land
- preventing nuisances caused by stagnant water ponding or collecting
- giving Wellington City Council some recourse where resource consents under the Resource Management Act (under the jurisdiction of Greater Wellington Regional Council) are not being effectively monitored and enforced.

The concerns raised by submitters can be summarised as being relevant to the section 155 determination that was made at the beginning of the process.

Submitters pointed out the following:

- As the bylaw covers matters that are already addressed in legislation, it raises questions whether the Council had satisfactorily demonstrated that the bylaw was the most appropriate way of addressing the perceived problem(s).
- It was difficult to see how a bylaw would operate (and be monitored) efficiently and effectively.
- Wellington City Council could do more monitoring and enforcement without needing the bylaw.
- The bylaw involved duplication of consent requirements that created potential jurisdictional conflict between Wellington City Council and Greater Wellington Regional Council through inconsistent conditions being imposed by the two authorities.
- Targeting of specific issues of concern in relation to the different types of watercourses would help remove any jurisdictional overlap / conflict between the two councils.
- The duplication of consent / bylaw permits could deter people from seeking consents.

Discussions amongst the officers on possible ways to change the draft bylaw to resolve submitters' concerns raised procedural concerns because the rationale for the bylaw was being changed.

These concerns pointed to inherent weaknesses in the proposal to an extent that could make the bylaw unenforceable.

4.2 Options

In view of the above, it is recommended that the bylaw be revoked. Council has three options available in terms of revocation processes:

- (a) Special Consultative Procedure
- (b) Ordinary Resolution (Recommended)
- (c) Do nothing

The Local Government Act 2002¹ requires Council to use the Special Consultative Procedure for revoking a bylaw, however as the Council has already commenced the Special Consultative Procedure (SCP) to review the bylaw, and the statement of proposal noted revocation was an option, the Council may conclude the SCP by revoking the bylaw by ordinary resolution. The third option arises due to ss 293 (3) of the Local Government Act 2002, which automatically revokes bylaws made pursuant to repealed provisions of the Local Government Act 1974 on 1 July 2008.

4.3 Addressing the Perceived Problem(s)

Officers are continuing to work on non-bylaw policies that promote the objectives stated in section 3 (above) and this will be reported to the Committee after it is completed.

5. Conclusion

This report presents options for the Committee's consideration that will conclude a Special Consultative Procedure. Concluding the process, by revoking the Watercourses Bylaw will clarify its status.

Contact Officer: *Wayne Murphy, Senior Policy Advisor*

¹ s 86 (1)

Supporting Information

1) Strategic Fit / Strategic Outcome

Maintaining this bylaw does not advance / promote strategic outcomes, which is a further reason for its revocation.

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

There are no direct LTCCP implications.

3) Treaty of Waitangi considerations

Treaty Relations Office consulted.

Note that although this matter involves water bodies it is not a significant decision (s 77 (c)).

4) Decision-Making

The report does not involve significant decisions, in terms of the Council's significance policy.

5) Consultation

a) General Consultation

The recommendation takes account of submissions received to the Special Consultative Procedure.

b) Consultation with Maori

The cultural importance of watercourses to Maori is acknowledged. There were no submissions from Maori on the draft bylaw. Maori interests remain protected under the Resource Management Act 1991.

6) Legal Implications

The report explains legal issues in relation to the background and options. Council's legal advisors have been consulted.

7) Consistency with existing policy

Council has an objective for its bylaws to be effective, efficient and relevant instruments. Concluding the decision making process demonstrates good governance, both in terms of decision making and consultation, and maintaining effective regulatory tools.