



Statement of Proposal to Adopt a Nelson City Council Water Supply Bylaw (Bylaw No. 223)

June 2014

This document constitutes the Statement of Proposal for the purposes of Section 83(1)(a) of the Local Government Act 2002.

1. Introduction

- 1.1. The Nelson City Council Water Supply Bylaw 2008 is due to expire in October 2015. Council proposes to revoke that bylaw and replace it with a new bylaw.
- 1.2. Adopting a replacement water supply bylaw will enable the Council to continue to control customer activities which have the potential to impact on the water supply network.
- 1.3. The draft bylaw is attached to this Statement of Proposal. The draft bylaw consists of the existing Water Supply Bylaw 2008 with suggested changes shown in strikethrough and underlining.

2. Proposal

- 2.1. Council proposes to adopt a new Nelson City Council Water Supply Bylaw 2014 (Bylaw No. 223).
- 2.2. In accordance with section 86(2) of the Local Government Act 2002, when adopting a bylaw the Council is required to include the following in the Statement of Proposal:
 - a) A draft of the bylaw proposed to be made;
 - b) A statement that the existing bylaw is to be revoked;
 - c) The reasons for the proposal; and
 - d) A report of any relevant determinations by Council under section 155 of the Local Government Act 2002.

3. Reasons for the proposal to adopt a Water Supply Bylaw

- 3.1. The existing bylaw is to be revoked as the timeframes for reviewing the bylaw under section 158 of the Local Government Act 2002 have passed.
- 3.1. Adopting a Water Supply Bylaw enables the Council to protect the quality of the urban water supply. Activities which have potential to impact on the water supply are most effectively addressed through bylaw provisions, including:
 - access to the supply via fire hydrants
 - below ground excavations near the water supply network
 - activities in the water supply catchments, including washing or bathing, or depositing refuse or waste material, or spillages which could compromise the water supply.
- 3.2. The draft bylaw also includes provisions related to the supply and metering of water, and the ability to charge for the availability and supply of water to premises. It establishes terms and conditions for connection to the water supply system, including the customer's agreement to pay for the supply of water in accordance with the Council's schedule of rates and charges. These provisions, and the water usage restrictions in the bylaw, enable the Council to manage demand for water, and to restrict supply during water shortages or in emergencies.

- 3.3. The draft bylaw also includes provisions related to connections to the water supply system. It sets out that the Council is not responsible for supplying water at any particular rate of flow or pressure and is not responsible for any loss, damage or inconvenience that may arise as a result of any interruption in the supply of water. This avoids liability issues.
- 3.4. It is an offence against this bylaw to interfere with the water supply network either directly or indirectly, or to waste water. This helps the Council to protect the quality and quantity of the urban water supply.
- 3.5. Where breaches of the bylaw occur, Council can restrict or disconnect the water supply, and can also prosecute any person offending against the bylaw.
- 3.6. A proposed change from the existing water supply bylaw is to remove the specific detailing of fees and charges, including remission and credit criteria, from the bylaw and allow them to be dealt with under the financial charges section of future Annual or Long Term Plans rather than within the bylaw. This will avoid the need to go through a change of bylaw every time Council wishes to amend the charges or credit criteria.

4. Issues and options to address them

- 4.1. In developing a draft Water Supply Bylaw, the Council considered how best to address the issues identified in section 3 of this Statement of Proposal.

4.2. Option A

Council's preferred option is to adopt a new Water Supply Bylaw which is an amended version of the existing Water Supply Bylaw 2008. The draft bylaw is attached to this Statement of Proposal.

4.3. Option B

Council also considered the status quo option of adopting a new Water Supply Bylaw that is the same as the Water Supply Bylaw 2008. The disadvantage of this option is it is not aligned with the Council's process for setting other fees and charges, through the Annual Plan/Long Term Plan. Any changes to the fees and charging regime would trigger a review of the whole bylaw.

This option does not allow for minor changes to the 2008 bylaw to remove uncertainties in interpretation.

4.4. Option C:

Another option is to not have a water supply bylaw. This option is the least acceptable because it removes the Council's ability to regulate activities that could impact on the quality and quantity of the urban water supply.

5. Ability to make bylaws related to water supply

- 5.1. Section 146(b)(ii) of the Local Government Act 2002 provides for a territorial authority to make bylaws for its district for the purposes of managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with water supply.

6. Section 155 of the Local Government Act 2002

- 6.1. Section 155 (1) of the Local Government Act 2002 requires a local authority to determine whether a bylaw is the most appropriate way of addressing a perceived problem.
- 6.2. It is not a legal requirement to have a water supply bylaw. However, as outlined in section 3 of this Statement of Proposal, there are a number of potential risks to the water supply system which are most appropriately addressed through a bylaw.
- 6.3. The bylaw regulates activities which pose a risk to the quality of the water supply. In addition, metering and charging for water based on the volume used has significantly reduced peak demand since this was established in 1999. Managing water demand helps the Council to meet the conditions of the resource consents to take water from the Maitai and Roding rivers for the urban water supply.
- 6.4. Section 155 (2) states that if a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw –
- a) Is the most appropriate form of bylaw, and
 - b) Gives rise to any implications under the New Zealand Bill of Rights.
- 6.5. The draft Water Supply Bylaw 2014 is the most appropriate form of bylaw because it meets the following tests:
- It is authorised by statutory authority under section 146(b)(ii) of the Local Government Act 2002
 - It is not repugnant to the general laws of New Zealand
 - The bylaw is certain and provides clear direction
 - The bylaw is reasonable
 - The bylaw is not overly restrictive, onerous on any person, or impractical.

7. Does the Proposed Bylaw give rise to any implications under the New Zealand Bill of Rights Act 1990

- 7.1 Part 2 of the New Zealand Bill Of Rights Act (the "Act") sets out 20 rights that are affirmed and protected, subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" (section 5 of the Act). Section 18 (freedom of movement) of the Act is particularly relevant because the draft Water Supply Bylaw proposes to restrict activities within the water reserves. However, the proposal is consistent with section 18 of the Act because walking, jogging and biking on existing tracks is permitted within these areas, as is driving a two wheeled motor vehicle on the Maungatapu Track. People can also apply for permits to carry out the following restricted activities within the water reserves catchments:

Activities permitted in catchments pursuant to a permit

No person shall carry out any of the following activities within any catchment without first obtaining a permit from the Council or its approved agent, authorising the same:

- i) Camping*
- ii) Hunting, trapping, shooting or fishing or carrying any rifle or other hunting or fishing equipment*
- iii) Distributing or removing any soil rock or tree, shrub or other vegetation*
- iv) Removing any mineral or any artefact or historic object*
- v) Lighting or maintaining any fire other than in a barbeque or other contained cooking apparatus*
- vi) Using pesticides or other poisons or toxic substances other than personal insect repellents*
- vii) Using the Maungatapu Track for organised motor sport or other four wheeled motor vehicle activity*
- viii) Walking any dog or taking or allowing any livestock into any area*
- ix) Walking/jogging/biking off existing tracks.*

Prohibited activities

No person shall in any catchment carry out any of the following activities:

- i) Washing or bathing in any natural water*
- ii) Depositing any refuse or waste material of any kind, including defecating, in other than an authorised facility*
- iii) Damaging or destroying any artefact or historic place or object*

8. Submissions

- 8.1. Any person or organisation is welcome to make a submission on this Statement of Proposal to adopt a Nelson City Council Water Supply Bylaw (Bylaw No. 223). Council will be taking account of all submissions made when it decides on the final content of the Water Supply Bylaw.
- 8.2. Submissions must be received by Council no later than 4.00pm on Monday, 21 July 2014.
- 8.3. A submission form is available on the Nelson Council website www.nelson.govt.nz or can be obtained from Nelson City Council offices at 110 Trafalgar Street Nelson.
- 8.4. Submissions can also be sent in letter or email form and should be:

Posted to: Water Supply Bylaw Consultation
Nelson City Council
PO Box 645
Nelson 7040

Or emailed to: submissions@ncc.govt.nz

Please state in your submission whether or not you wish to speak at a hearing in support of your submission.

- 8.5. Submitters should note that their submission will be copied and made available to the public after the submission period closes.
- 8.6. Council will contact all submitters who wish to be heard, in writing to advise the confirmed time, date and venue of the hearing.
- 8.7. All enquiries should be directed to Phil Ruffell, Senior Asset Engineer - Utilities, on telephone 545-8739 or by email to phil.ruffell@ncc.govt.nz.

9. Related Documents

- 9.1. The Nelson City Council Draft Water Supply Bylaw (Bylaw No. 223) is attached to this Statement of Proposal. Additional copies are available to view or download from the Nelson City Council website www.nelson.govt.nz (search phrase = draft water supply bylaw).
- 9.2. Copies of the Nelson City Council Draft Water Supply Bylaw (Bylaw No. 223) are available free of charge from the customer service centre at Civic House, or on request.