

NAPIER CITY COUNCIL WATER SUPPLY BYLAW

STATEMENT OF PROPOSAL MARCH 2022

The Napier City Council (**the Council**) is seeking public feedback on its proposal to make a new water supply bylaw for Napier City (**City**) on largely the same terms as the Napier City Council Water Supply Bylaw 2012.

What is a bylaw?

Bylaws are rules or regulations made by local authorities under national legislation that are created to control specific activities of potential concern within the boundaries of a particular district or region. They allow a local authority to address local problems with local solutions.

The Local Government Act 2002 (**LGA**) enables local authorities to adopt bylaws for the following general reasons:

- To protect the public from nuisance (section 145(a));
- To protect, promote and maintain public health and safety (section 145(b)); and
- To minimise the potential for offensive behaviour in public places (section 145(b)).

Section 158 of the LGA requires local authorities to review all bylaws within five (5) years of the date on which they were first made. After a bylaw has been reviewed in accordance with section 158, it can then be reviewed every 10 years thereafter. Bylaws that are not reviewed within the statutory timeframes are then revoked under section 160A of the LGA.

The proposal

The Council's Water Supply Bylaw regulates Napier's drinking water network and provides Council with the ability to protect critical water infrastructure from damage or inappropriate use. The proposed Bylaw covers such as issues as taking water from fire hydrants, water quality and standards for new connections and water infrastructure.

The previous Water Supply Bylaw was adopted in 2012 and created a framework that was successfully used for a number of years. However, the Council's Water Supply Bylaw 2012 was revoked on 26 June 2019 pursuant to s 160A of the LGA.

As the Bylaw has been revoked (i.e. is no longer in force), Council staff have needed to review it and analyse what improvements need to be made to create a new bylaw. The Council officers consider that the framework of the Water Supply Bylaw remains sound and only needs some minor updates to capture legislative and policy changes and reflect new operational practices, such as changes to hydrant access. It is therefore proposed that it be replaced with a new bylaw that is made on largely the same terms as the 2012 Water Supply Bylaw, with only minor changes to:

- Resolve typographical and formatting errors;
- Update dates;
- Modernise and simplify the language used;
- Incorporate amendments for consistency with other relevant Napier City Bylaws; and

- Update or remove references to primary legislation, standards, and codes.

Making new bylaws

To make new bylaws, the Council is required by section 155 of the LGA to determine whether a bylaw is the most appropriate way of addressing the perceived problem and, if so, whether the proposed form of bylaw is appropriate and whether there are any implications under the New Zealand Bill of Rights Act 1990 (**NZBORA**).

The Council has undertaken these assessments and considers that the Water Supply Bylaw is appropriate and necessary, for the reasons set out in **Schedule 1** to this Statement of Proposal.

The Council has also undertaken an assessment under section 77(1) of the LGA to identify all reasonably practicable options that may be available to achieve the Council's objectives. An assessment of the advantages and disadvantages of each option can be found at **Schedule 2** to this Statement of Proposal.

Consultation process

The proposal to make the Water Supply Bylaw must follow the special consultative procedure in the LGA.

Proposed bylaw

A copy of the proposed bylaw can be found on the Napier City Council Website: www.sayitnapier.nz.

Print copies of the proposed bylaw may be inspected from **Monday, 28 March 2022 to Wednesday, 25 May 2022** at the following places during normal office and library hours:

Customer Service Centre

215 Hastings St
Napier

Napier Library

1 Tennyson St
Napier

Taradale Library

24 White St
Taradale

Right to make a submission and be heard

The Council is now seeking your views and wants to hear from any person, group or business that would like to make submissions with respect to the proposed Water Supply Bylaw.

Any person or organisation has a right to be heard in regard to this Statement of Proposal and the Council encourages everyone with an interest to do so. Submissions should be directed toward matters that are within the scope of the Statement of Proposal.

Parties intending to make a submission are encouraged to set those submissions out in writing and submit them to the Council by:

- **Online form:** Go to our consultation website at www.sayitnapier.nz
- **Post to:** Private Bag 6010, Napier 4142, New Zealand

- **Delivery to:** Customer Service Centre, 215 Hastings St, Napier

All submissions must be made in writing (hardcopy or electronic) and received by **5pm on Wednesday, 25 May 2022**.

Making an effective submission

Written submissions can take any form (e.g. email or letter). An effective submission references the clause(s) of the proposed Bylaw, states why the clause is supported or not supported, states what change to the clause is sought, and why. Submissions on matters outside the scope of the proposal cannot be considered by the Council.

Hearing

After submissions have been received, the Council will convene hearings on **22 and 23 June 2022**. Any party who wishes to do so can present their submission in person. The Council will give equal consideration to written and oral submissions.

The Council will permit parties to make oral submissions (without prior written material) or to make a late submission, only where it considers that special circumstances apply.

Every submission made to the Council will be acknowledged in accordance with the LGA, will be copied and made available to the public, and every submission will be heard in a meeting that is open to the public.

Consultation timeline

The key dates in the Council's consultation programme are set out below:

- The Council resolved to undertake public consultation regarding the proposal at its meeting of **24 March 2022**.
- Public consultation to commence on **28 March 2022**. This will involve:
 - Targeted consultation with mana whenua through Te Waka Rangapū.
 - Community drop-in sessions. These will allow interested members of the community to learn more about the Bylaw and have their questions answered by relevant council officers.
 - Advertising across digital, social and print media to ensure public awareness and participation in the review.
 - Online and hard copy submission forms that will be available at Council's libraries and Customer Service Centre
- Submissions on the proposal will close at midday on **Wednesday, 25 May 2022**.
- Submissions will be heard by Councillors on **22 and 23 June 2022**.
- The Council will consider the outcome of the consultation and hearing process and make a decision on the proposal on **14 July 2022**.

Schedule 1

Section 155 determinations

Section 155 of the LGA requires that the Council assess whether a bylaw is the most appropriate way of addressing the perceived problem and, if so:

- whether the proposed form of bylaw is appropriate; and
- whether the proposal gives rise to any implications under the NZBORA.

Those assessments are set out below.

Problem identification and assessment

The public water supply network is core infrastructure managed by the Council, and provides for safe drinking water, reliable and adequate pressure and flow, compliance with the Fire Fighting Standard FW2 for all areas, and ensures that water is used and allocated efficiently within the City by minimising losses and excessive water consumption.

Perceived problems

In addressing the risks associated with the operation of the public water supply network the Council has identified the need to:

- allow only Council authorised contractors to connect or disconnect from the water supply;
- ensure appropriate standards for any new infrastructure under Council's control;
- enable Council to refuse connections where there is insufficient network capacity;
- protect the quality of the water supply, assisting compliance with the drinking water standards;
- protect the water supply network from damage;
- manage work near the water supply network;
- allow for restricting the water supply to maintain enough drinking water, in the event of drought or other emergency; and
- prohibit taking of water from a hydrant except for fire-fighting purposes.

Is a bylaw the most appropriate way of assessing the perceived problems?

There is an identified need for Council to continue to regulate water supply in the City. The Council considers that a bylaw is the most appropriate way to address these issues, as a bylaw allows the Council to effectively regulate behaviours that affect water management and the use of water supply systems in the City (including by using the enforcement powers provided under the LGA).

The purposes of the former Water Supply Bylaw 2012 included:

- Promoting the efficient use of water and protect against waste or misuse of water from the water supply system;
- Protecting the water supply and water supply system from pollution and contamination;
- Managing and protecting from damage, misuse, or loss of land, structures and infrastructure associated with the water supply system; and
- Preventing the unauthorised use of land, structures or infrastructure associated with the water supply system.

The Council considers that the purposes of the bylaw remain important and that the most appropriate way to respond to the perceived problems described above is through replacing the existing bylaw with a bylaw on largely the same terms, so that the Council can continue to regulate water supply in the City via the proposed bylaw.

Is the proposed bylaw the most appropriate form of bylaw?

The previous Water Supply Bylaw was adopted in 2012 and created a framework that was successfully used for a number of years. The proposed bylaw has only minor changes due to its operational effectiveness to date in managing the water supply infrastructure and level of services requirements. No complaints on the use of the Water Supply Bylaw 2012 have been received since its time of adoption.

In coming to this conclusion, the Council officers have undertaken an assessment of a range of options pursuant to section 77 of the LGA, which are summarised in **Schedule 2** below.

NZBORA implications

The Council considers that the proposed Bylaw does not give rise to any implications under the NZBORA.

Determinations

For the reasons given above the Council determines that:

- A bylaw is the most appropriate way to address the perceived problem, pursuant to section 155(1) of the LGA;
- The proposed bylaw is the most appropriate form of bylaw, pursuant to section 155(2)(a) of the LGA; and
- The proposed bylaw does not give rise to any implications under the NZBORA, pursuant to section 155(2)(b) of the LGA.

Schedule 2

Section 77(1) assessment of all reasonably practicable options

Option(s)	Advantages and disadvantages
<p>Option 1</p> <p>Do not have a bylaw which regulates water supply</p>	<p>Advantages</p> <p>As part of this review, the Council has considered the option of not replacing the 2012 bylaw and instead regulating the water supply network using other means. This option would require the Council to rely on existing legislation and an educative approach to ensure its network was not compromised.</p> <p>Costs associated with setting up and implementing a new bylaw could be allocated to other Council projects and to increasing awareness to change behaviour using a programme of educational outreach, industry guidelines and targeted programmes to improve outcomes.</p> <p>Disadvantages</p> <p>The disadvantages with this option are that high risk activities and behaviours cannot be monitored and investigated to provide control. The Council runs the risk of not taking all practical steps to protect, promote and maintain public health and safety and the natural environment. The Council also runs the risk of not meeting environmental standards, not protecting public health and safety and not protecting its water supply infrastructure. There is a risk that a purely educative approach will not be as successful as immediate or readily enforceable measures provided under a bylaw.</p> <p>Conclusion</p> <p>Overall, the Council does not consider that this option would be effective at achieving its desired objectives and has therefore discounted it.</p>
<p>Option 2</p> <p>Have a bylaw which regulates water supply on similar terms to the 2012 Bylaw.</p>	<p>Advantages</p> <p>The previous Water Supply Bylaw was adopted in 2012 and created a framework that was successfully used for a number of years. During the period that the Water Supply Bylaw 2012 was in force, there were no operational issues with enforcing control or risk mitigation in managing Council water supply infrastructure, therefore no major change is considered to be required to the Water Supply Bylaw 2012 terms and framework.</p> <p>A new bylaw will have the same advantages of the 2012 bylaw. The cost of establishing the new bylaw would be minimal in this</p>

	<p>case as it would be replaced on largely the same terms as the 2012 bylaw.</p> <p>Under this option Council will be seen as continuing to actively protect the City's water supply network, including maintaining public health and safety.</p> <p>There is no statutory reason why the terms of the 2012 bylaw should be significantly amended.</p> <p>Disadvantages</p> <p>The cost of setting up the bylaw. However the cost of establishing the new bylaw is minimal in this case as it is proposed that the bylaw be replaced on the same terms as the current bylaw.</p> <p>Conclusion</p> <p>The Council has considered the options available to address the problems identified in respect of water supply and determined that promulgating a new Water Supply Bylaw on similar terms to the 2012 bylaw is the most appropriate form of bylaw for addressing the identified issues.</p>
<p>Option 3</p> <p>Make a new Water Supply Bylaw on substantially different terms to the 2012 bylaw.</p>	<p>Advantages</p> <p>This option would allow the Council to revisit the 2012 bylaw framework and make improvements or amendments to the bylaw. Under this option Council will also be seen as continuing to actively protect the City's water supply network, including maintaining public health and safety.</p> <p>Disadvantages</p> <p>Community resistance to increased levels of regulatory management and the costs associated with adopting a Bylaw on new terms.</p> <p>The previous Water Supply Bylaw was adopted in 2012 and created a framework that was successfully used for a number of years. During the period that the Water Supply Bylaw 2012 was in force, there were no operational issues with enforcing control or risk mitigation in managing Council water supply infrastructure, therefore no major change is considered to be required to the Water Supply Bylaw 2012 terms and framework.</p> <p>Conclusion</p> <p>Overall, the Council does not consider that this option would be effective at achieving its desired objectives and has therefore discounted it.</p>