

Water Supply Bylaw 2023 – analysis of issues raised by submitters

The following is an analysis of the issues raised by submitters to the draft Water Supply Bylaw 2023. Please refer to the full submissions received by the Council (available on the Council website - http://palmerstonnorth.infocouncil.biz/Open/2023/06/SAFC1_20230607_AGN_11171_AT_EXTRA.PDF)

Overview of proposals

These are the notable changes proposed in the Statement of Proposal:

Purpose of the Bylaw – we proposed to amend clause 2.2 to acknowledge tangata whenua as kaitiaki of water, and particularly Rangitāne o Manawatū's role as mana whenua.

Backflow prevention – we proposed to provide more explicitly for backflow prevention through revisions to clause 12 of the Bylaw and clause 14 of the Administration Manual.

Water supply areas – we proposed to revise clauses 16.5 and 16.6 to make it clear that Council assesses the serviceability of water supply connections outside the water supply area before making a decision to approve the connection as an extraordinary supply connection. Similar changes were also proposed to clause 28.2 with respect to restricted flow supply connections, and clause 6.5 of the Administration Manual with respect to extraordinary supply connections.

Maps – we proposed to update the map for the Turitea Reserve Controlled Catchment Area and the map for the Water Supply Area (which shows where water supply connections may be made).

Council proposals: issues raised by submitters and suggested responses

The following section addresses the issues raised by submitters on the proposals included in the consultation document.

Part 1 – clause 2.2 'Purpose of the Bylaw'

The proposed changes to clause 2.2 attracted the highest number of comments by submitters and commenters. Several submitters expressed support for part 1 of the Bylaw, and specifically for the proposed changes to clause 2.2, supporting the acknowledgement of Rangitāne o Manawatū as kaitiaki of the awa.

However, there were many submitters who expressed opposition to this part of the proposal, with 14 submitters (35%) indicating that they were opposed to Part 1 of the bylaw. The submitters argued that all citizens are joint guardians, or that all people own the water (or that no-one owns the water). Some argued that one group should not have more rights than others, or that there should not be Māori ownership of the water. Some submitters suggested that this proposal was about supporting the government's political agenda or linked it to the government's water reform proposals commonly referred to as "Three Waters".

One submitter argued that the emphasis of the purpose of the Bylaw should be on qualified assessments of our stopbanks to safeguard from flooding.

Te Tūmatakahuki hapū expressed concern that by expressly acknowledging Rangitāne in clause 2.2, this could prejudice the recognition of other iwi or hapū in the future. They argued that it is not necessarily possible to consider geographic rohe when it comes to water as there are overlapping areas of interest. Other iwi and hapu may also have a whakapapa relationship to these water bodies, and what happens upstream can impact those downstream. The submitter sought changes to the wording of clause 2.2 that could be more inclusive of other iwi and hapū with a connection to the awa.

Analysis

Many submitters misunderstood the intent of the proposed amendments to clause 2.2. They appeared to conclude that acknowledging Rangitāne o Manawatū as kaitiaki of the awa equated to granting special rights to the iwi or transferring ownership or control of the water supply to them.

While there has been a clear expression of concern from many submitters about the language used in the proposed changes to clause 2.2, these concerns are largely based on a fundamental misunderstanding of the role of iwi in relation to land and water, and the concept of kaitiaki. While it is not always possible to effectively translate cultural and spiritual concepts into a western legal framework, it should be noted that the concept of kaitiakitanga is recognized within the Resource Management Act 1991 as a matter that should be given regard by persons exercising functions and powers under that Act. The inclusion of concepts such as kaitiakitanga in a regulatory context has precedence. Furthermore, kaitiaki is not something that the Council is granting to Rangitāne o Manawatū; it is something that they already exercise as tangata whenua. The intent of the wording in the draft Bylaw is to acknowledge that they hold this role already. The purpose of clause 2.2 is to acknowledge that when the Council is making decisions about water supply it will recognize the particular relationship that Rangitāne have with water within Palmerston North. The proposed wording in the Bylaw does not grant or modify any statutory or legal rights that they do not already hold.

There is merit, however, in adjusting the proposed wording to be less exclusive to Rangitāne. Officers recognize that other iwi and hapu may have a whakapapa relationship to water bodies within Palmerston North. However it is not for Palmerston North City Council to determine which iwi or hapu have those relationships. More inclusive language allows for other iwi and hapu to be acknowledged as tangata whenua.

Recommendation: amend clause 2.2 of the Bylaw to read “The Council, in making this Bylaw, acknowledges the particular interest in this Bylaw of tangata whenua ~~as~~ and those who exercise mana whakahaere and kaitiaki of water, and particularly recognizes the role of hapū and iwi and Rangitāne o Manawatū as mana whenua.”

Part two – clause 12 ‘Backflow prevention’

One submitter made comments about the sections of the Bylaw and Administration Manual in relation to backflow prevention. They suggest that as many commercial customers don’t operate differently from residential customers, they shouldn’t require testable backflow prevention devices.

Analysis

The Bylaw does not require backflow prevention devices to be testable. The Engineering Standards for Land Development states “testable double check valves or RPZs may be required for commercial and industrial sites at the Council’s discretion on the basis of the levels of potential risk.” Council has an obligation to ensure that water supply meets drinking water standards. Where there is a credible risk, Council must reserve the right to require a testable double check valve, in order to protect the water supply for the entire city.

Recommendation: no change recommended.

Part three – clause 16 ‘Water Supply Areas’

Two separate points were raised with regards to clauses 16.5 and 16.6 in relation to water supply areas. The first submitter expressed concern about how clause 16.5 would apply to their situation. Their home is outside the water supply area and has an existing extraordinary supply connection. Their concern is that clause 16.5 could be interpreted to mean that pre-existing extraordinary supply connections outside the water supply area could be reviewed, and that it was within Council’s discretion to approve the connection (and, by inference, to not approve the connection).

The second submitter queried the application of clause 16.6, arguing that it should be possible to connect new subdivisions in rural areas subject to a number of conditions. The suggested conditions included:

- the costs of connection being met by the applicant;
- acknowledging that there is no firefighting capacity (or requiring firefighting storage tanks to be installed);
- where the network has no spare capacity, the costs of upgrading the network to be borne by the applicant;
- permitting a restricted supply connection where the network is limited.

The submitter contended that given the costs of installing water tanks, an applicant would be prepared to contribute a significant amount to connect to the network, with the Council receiving water usage fees.

Analysis

With regards to the issues raised by the first submitter, clause 16.5 and 16.6 were redrafted from the current Bylaw to provide greater clarity on Council’s ability to review connections made to the water supply outside the designated water supply area. The Council is aware that there may be unauthorized connections which may pose a significant risk to the security of the water supply.

There are also some water supply connections which may have been previously approved, but which may pose a risk to Council’s compliance with the drinking water standards. Where the Council becomes aware of such a connection, clause 16.5 would give Council the ability to review whether that connection poses a risk to the safety and integrity of the network. Following that review, if the risk is manageable, the Council may approve the connection as “extraordinary supply.” However, if

the risk cannot be managed or mitigated then Council can take reasonable action, which in some situations could include disconnection. The clause requires that such action is “reasonable”, and as such the Council would work with the property owner to reach a reasonable outcome.

Staff contacted this submitter to discuss their particular situation. It appears that the connection is already approved as an extraordinary supply, and does not pose a risk to the water supply.

With regards to the issues raised by the second submitter, while their suggested approach seems, on the first glance, to bear little cost to the Council there are some hidden costs not identified by the submitter. Firstly, the provision of a connection in the rural area can have the effect of bestowing a “right” for further development and subdivision within that property, and cascading to other properties within the area. This has the effect of intensifying development outside of structured plans for urban growth and development. Secondly, the downstream effects of that development creates additional maintenance costs, not only of the immediate connection but also the increased demand on the water supply network. Granting such connections within the rural zone can have the effect of increasing the level of service. Finally, when considering the full costs of increasing network capacity over the life of the network to support the additional connection (along with any subsidiary connections it could generate), the cost is likely to be prohibitive.

Recommendation: no change recommended.

Schedule 1 – Turitea Reserve Controlled Catchment Area Map and Appendix One – Water Supply Area Map

With respect to the Turitea Reserve Controlled Catchment Area, one submitter queried whether hunting access will be reinstated when the wind farm has been completed.

Another submitter commented in support of the Turitea Reserve Controlled Catchment Area, noting that vehicle access should be restricted, but foot and cycle access needs to be assured.

Analysis

Access to the controlled catchment area for the purposes of hunting and pest control is limited to approved contractors. This is due to the need for tighter hygiene controls in the water catchment areas, in order to further safeguard the city’s water supply. General access for hunting by members of the public represents a significantly higher risk, and consequently there is no plan to reintroduce hunting permits for the Turitea Reserve Controlled Catchment Area.

Recommendation: no change recommended.

Other matters raised by submitters

Submitters raised a number of additional matters outside those changes proposed by the Council. The following section summarises the points made by those submitters, with recommendations from officers on whether the draft Bylaw should include any further changes.

Water metering

Several submitters expressed concern about water metering. It appears that some interpreted the draft Bylaw as introducing universal water metering for all residents, and argued against this. They asked why people needed to pay for water again when it is already included in rates, or suggested

meters are an example of public control and that instead there should be better maintenance of water supplies, culverts, hose pipe bans in the summer and penalties for wasting water.

Analysis

There appears to be a misconception that through this draft Bylaw the Council is introducing universal water metering. An ordinary supply (as for most residents) is not normally metered. Commercial premises typically have a metered water supply connection, though they can apply for an exemption.

However, Council reserves the right to fit a water meter and charge for water by meter where it has reasonable grounds for believe that water use at a customer's premises is excessive. There is a current process (continued in the draft Bylaw and Administration Manual) that guides how a decision is made to install a water meter on an ordinary supply connection. The vast majority of ordinary supply connections are not metered, and the Council has no plans to switch to universal water metering.

Recommendation: no change recommended.

Fees and Charges

There were two issues raised by submitters regarding the fees and charges (though the draft Bylaw did not propose any changes to the types of fees and charges that may be imposed).

The first submitter was opposed to the provision in clause 8.3 which enables the Council to charge a fee for a return visit if they are unable to access the point of supply on private property. Clause 8.2 sets out the reasonable requirements that property occupiers are asked to meet when the Council requires access to the point of supply. These include access between the hours 7.30am and 6pm on working days without prior notice for the purposes of reading a water meter, or for checking, testing or maintenance work during the same hours with notice being given when reasonable to do so. It also provides for leak detection or other urgent work at any time with 24 hours' notice or responding to emergency conditions at any time with notice being given when reasonable to do so.

The second submitter alleged that the fees are likely to include a levy paid to iwi for their oversight.

Analysis

With regards to the first issue, if the Council is unable to access the point of supply within the terms set out in clause 8.2 then a specific arrangement needs to be made with the property occupier to gain access. This can involve additional cost to the Council. The fee that the Council charges is intended to recover that additional cost, and is reasonable.

The second issue is related to the concerns raised in relation to clause 2.2 of the Bylaw, but has no basis in fact. The fees and charges that can be imposed for water supply activities are listed in schedule 2 of the Bylaw and do not include any fees to be paid to any iwi group.

Recommendation: no change recommended.

Protection of water supply

One submitter observed that those on tanked water have to be careful not to waste water and have to buy additional water if they run out. They suggested that the same principle should apply to town dwellings, and that town dwellings should have water tanks to save water used for gardens, cleaning cars etc.

Analysis

If the Council required all residential properties to purchase and install a rainwater collection tank this would represent a significant additional cost for households and would be impractical in some situations, while increasing the risk of contamination. If the Council wishes to improve resilience of the water supply, then there are alternative approaches to include such a requirement in the Water Supply Bylaw. For instance, the Council can promote or incentivize the installation of rainwater tanks to residents who have an identified need for regular water use for gardening or other purposes.

Recommendation: no change recommended.

Water pressure

Two submitters commented about water pressure, though there was no proposal in the draft Bylaw to make any changes to water pressure requirements in the Bylaw. The first suggested that the Bylaw should state a maximum pressure as well as a minimum pressure, recognizing the potential for damage from over pressure and water hammer. The second submitter noted that they had very poor pressure at their home.

Analysis

The pressure of the water supply varies within the network in different parts of the city. However, the water pressure does not exceed the rated capacity of water infrastructure, including residential pipes and fittings that meet the Building Code, so there is little to no risk of the water pressure causing damage to internal plumbing systems.

Recommendation: no change recommended.

Extraordinary use

One submitter suggested that the definition of 'extraordinary use' should be amended to reduce the capacity of domestic spas and swimming pools from 10m³ to 5m³, saying there is "a propensity for people to use portable pools on rental properties and treat the water supply as a free infinite resource." As extraordinary use is metered, lowering the threshold from 10m³ to 5m³ would increase the number of properties with pools that need to be on a metered supply. A modestly-sized inflatable pool with dimensions 3.05m diameter and 0.75m high would have a capacity in excess of 5m³.

The submitter also suggested that the water from pools should be discharged to the stormwater system rather than to the ground, which can lead to flooding on neighbouring properties.

Analysis

There isn't a compelling reason to lower the threshold for swimming pools being included as extraordinary use. While the Council is responsible for enforcing requirements for fencing of swimming pools, it does not keep records on the size of those pools or distinguish between "portable" above-ground pools vs permanent in-ground pools. Without this data, it is not possible to accurately estimate the impact of moving all properties with a pool in excess of 5m³ to a metered water supply. However, the popularity of smaller portable swimming pools suggests that such a change would likely substantially increase the number of households that are required to be on a metered supply. Without a substantial argument for the benefits of such a change, officers do not recommend that it be made.

With regards to discharging water from a swimming pool into the stormwater network, this is not recommended. Swimming pool water is often treated with chemicals such as chlorine. As with water used to wash cars at home, it is recommended that the water is discharged onto the lawn. Large, permanent swimming pools are required to have a building consent and be connected to the wastewater network. Officers do not recommend making the change suggested by the submitter.

Recommendation: no change recommended.

Fluoridation

One submitter noted that there is no mention of fluoridation in the Water Supply Bylaw, and suggested that there must be a clear position on fluoridation as a key public health matter.

While local authorities are responsible for adding fluoride to drinking-water supplies, the Director-General of Health has the authority to direct local authorities to add – or not to add – fluoride to a drinking-water supply. Consequently, there is no advantage to the Council establishing a position on fluoridation in the Bylaw as it is set to be consistent nationally.

Recommendation: no change required.

Miscellaneous amendments

One submitter (Horizons Regional Council) suggested a number of minor amendments. These included:

- Referring to meters as “water meters” throughout the Bylaw and Administration Manual;
- Including backflow prevention devices in clause 8.2(a) alongside reading water meters as a reason why Council may need to access the point of supply on private property between 7.30am and 6pm;
- Including installation and replacement of water meters and backflow prevention devices in clause 8.2(b) as a reason for access to the point of supply on private property;
- Amending clause 12.1 of the Bylaw to refer specifically to the installation of an automatic backflow prevention device;
- Updating clause 27.1 to define the minimum frequency for undertaking maintenance and accuracy checks;
- Updating clause 27.10 to specify a timeframe that repair or replacement of a water meter must be completed.

Analysis

Most of these suggestions are minor or technical changes which are accepted.

The subclauses of clause 8.2 provide a range of circumstances for when the Council may need access to the point of supply. It isn't considered necessary to specify backflow prevention devices specifically in clause 8.2(a) as this is generally covered by the checking, testing and maintenance work covered in clause 8.2(b).

The reference to an “automatic backflow prevention device” is unnecessary, as the operation of a backflow prevention device is inherently automatic.

The minimum frequency for undertaking maintenance and accuracy checks is stipulated in the drinking water standards (currently it is annually). There is little value in including this frequency in

the Bylaw, when it could change if the drinking water standards change and require the Bylaw to be amended. Therefore it is not recommended that this be stipulated in the Bylaw.

The timeframe for repair or replacement of a water meter is currently determined by the urgency of the issue. However, a timeframe of up to three months is suggested as an appropriate timeframe.

Recommendations

- Replace “meters” with “water meters” wherever it appears in the Bylaw and Administration Manual.
- Include installation and replacement of water meters and backflow prevention devices in clause 8.2(b) as a reason for why Council may need to access the point of supply.
- Update clause 27.10 to indicate a three month timeframe for repair or replacement of a water meter.

Social media comments

The following is a summary of the issues raised by commenters on Council's social media posts during the consultation period:

- The meaning of clause 2.2, specifically “what does recognition of tangata whenua as kaitiaki of water mean?” Several commenters believed that this clause would be used to give greater powers over the water supply to iwi and hapū, or that it was transferring ownership of the water supply to tangata whenua.
- Some commenters queried the process of consultation, and whether the Council would listen to the issues and concerns raised during the consultation process.
- Several commenters referred to the central government water reforms, and inferred a connection between this review of the Bylaw and the reforms happening at the national level.
- Some were concerned about the existing quality of the water supply, such as water staining in the Kelvin Grove area.
- A question was asked about whether this review was going to introduce water metering. This was answered by staff, affirming that water meters are currently used for commercial users and those with a higher water usage such as those with swimming pools. However, the Bylaw does not propose to introduce universal water metering for all properties.

Many of the comments related to issues raised in the written submission. The nature of social media means that commenters engaged in conversation with each other, and those conversations ranged across topics beyond the scope of the proposals. For instance, a frequent discussion related to the incorrect assumption that the Bylaw was introducing universal water metering, which led to discussion about the value or otherwise of water metering, Council rates, and the central government water reforms. These comments are noted, but are often duplicating the issues raised by written submitters or are outside the scope of the Bylaw.