

Auckland Council Trade Waste Bylaw 2013 2018 Review Options Report



Watercare
An Auckland Council Organisation



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Introduction

This report analyses the options available to council in response to the statutory review of the Auckland Council Trade Waste Bylaw 2013 (Bylaw).

The report draws on the “Auckland Council Trade Waste Bylaw 2013: 2018 Review Findings Report”. Staff presented the findings of the statutory review to the Regulatory Committee on 14 June 2018. The Regulatory Committee endorsed the following key findings (decision no. REG/2018/42):

- trade waste discharges continue to pose a risk to the public wastewater system, people and the environment
- the Bylaw has been efficient and effective in managing risk
- stakeholders consider the Bylaw is the most appropriate way to protect the public wastewater system, people and the environment, however some further improvements could be made
- risks are managed by the classification of trade waste, maximum discharge standards, agreements and management plans
- a number of improvements to the Bylaw were identified.

The options considered in this report flow from these findings.

Executive Summary

To enable Auckland Council to decide how to respond to the findings from the statutory review of the Auckland Council Trade Waste Bylaw 2013 (Bylaw), staff assessed options using Local Government Act 2002 criteria, including:

- Option 1 Status quo: Bylaw with agreements
- Option 2: Amended bylaw with agreements
- Option 3: New bylaw with consents
- Option 4: New bylaw with consents and fees
- Option 5: Revoke bylaw and rely solely on existing legislative provisions and negotiated agreements.

Staff recommend Option 2 because it:

- improves on the status quo (Option 1) which stakeholders consider effective and certain, by providing clarification in a number of areas such as the removal of redundant clauses and by improving controls around fats, oils and grease, contaminated groundwater and emerging pollutants
- provides more certainty to business than Option 3 and 4 (which for many businesses would require a transition from a trade waste agreement to a consent), and it builds on Option 1 which stakeholders consider effective and certain
- provides clearer controls and broader enforcement options than Options 3, 4 and 5, in line with the risks.

Options 3 and 4 would also minimise risks and could address some of the gaps and shortcomings of Option 1. However, the key trade-offs are:

- Loss of business confidence by returning to a consent based approach so soon after the introduction of the agreement based approach which has been widely accepted by stakeholders. Business stakeholders have clearly expressed they require an environment of certainty to operate in to enable them to make informed investment decisions.
- Loss of the innovative agreement approach which allows conditions to be discussed compared to imposing conditions with a consent based approach.
- Additional costs would be incurred to implement the required changes with no benefit over Option 2.

Option 4 was discounted because in addition to these key trade-offs this option would be inconsistent with the now well established approach in Auckland of Watercare being responsible for the setting of (contractual) water and wastewater charges.

Option 5 was discounted because it does not respond to the problems, objectives and desired outcomes.

Status quo and problem definition

Status quo

The current bylaw (status quo) is an agreement based bylaw which:

- classifies trade waste by risk
- specifies maximum pollutant levels that may be discharged in trade waste
- identifies which type of trade waste discharges require a trade waste agreement
- identifies which type of trade waste discharges do not require a trade waste agreement, but must still comply with standard requirements
- identifies which type of trade wastes are prohibited for discharge to the public wastewater system.

Original problem statement and status quo

When the Bylaw was made, staff defined the original problem as being that trade waste discharges to the public wastewater system can negatively impact:

- the health and safety of wastewater workers or the public
- wastewater system assets
- the ability of the wastewater system to process wastewater
- the quality of the effluent and biosolids produced
- the environment via network overflows and the inability to treat trade waste adequately.

The Bylaw was introduced to respond to this problem by replacing all legacy bylaws with a single bylaw containing a consistent regulatory framework to service the whole region.

Current and future problem

There is a continuing need to protect the health and safety of people, the wastewater network and treatment plant assets and processes, and the environment from any

negative impacts of trade waste discharges. Therefore the original statement of the problem from when the Bylaw was made in 2013 is still relevant.

The Regulatory Committee (decision no. REG/2018/42) has endorsed the findings in the Findings Report, including that trade waste discharges continue to pose risks that require regulating. The Findings Report identified the problem to be addressed as how to protect the public wastewater system, people and the environment from harmful effects of substances discharged to the public wastewater system, and encourage waste minimisation.

However, the problem statement can be refined further to include how to address identified gaps in the Bylaw, and improve existing controls.

Trade waste dischargers continue to pose a risk through their trade waste discharges to the public wastewater network. Common risks include:

- high flow discharges leading to overflows
- discharges leading to blockages in the network e.g. fat, rags, sand and cement
- discharges of chemicals toxic to people, plants and biota
- discharges of explosive chemicals.

Such risks can be heightened where:

- there are large scale operations
- highly toxic or dangerous chemicals are used
- operators are unaware of the risks that their trade waste discharges pose to the wastewater system, people and the environment
- operators do not take the necessary steps to ensure adequate control over their trade waste discharges.

Scale and magnitude of the problem

Trade waste dischargers represent between five to ten per cent of the total flows to the public wastewater system. However, due to the nature (toxicity, concentration, volume) of the pollutants discharged, they can have very real negative impacts on the health and safety of people, the wastewater network and treatment plant assets and processes, and the environment.

The scale of trade waste discharges has not changed significantly since the introduction of the Bylaw and the number (approximately 750) of conditional (high risk) dischargers has not changed significantly. However, the nature of trade waste discharges has changed with the food and beverage service business sector having expanded by around 30 per cent over the past ten years. Improved controls around fats, oils and grease will seek to reduce blockages in the network.

Stakeholder view of problem

Stakeholders (including industry representatives, trade waste officers, water utility staff, mana whenua and local boards) consider trade waste dischargers continue to pose a risk

to the health and safety of people, the wastewater network and treatment plant assets and processes, and the environment. Stakeholders also consider the current bylaw as the most appropriate approach to address the problem but also identified a number of areas where improvements could be made, as detailed in the findings report.

Fees and Charging

Following consultation, a separate region-wide wastewater tariff outside of the Bylaw was introduced at the time the current bylaw was made. The tariff replaced a range of legacy charges providing consistency in wastewater charging for the Auckland region. The fee structure relates to the provision of water and wastewater services (including trade waste) for a range of services.

Fees and charges do not form part of the current bylaw. For that reason, fees and charges (for example, volumetric charges or charges based on loads of certain contaminants in the discharge) were not a component of Options 1, 2 and 3 assessed by staff. Option 4 (a new, consent based bylaw with fees) includes fees and charges, or provide for the Council to set fees and charges that would apply instead of, or in addition to, the region wide wastewater tariff. Fees and charges in a bylaw are not part of Option 5, as this option involves no bylaw.

Objectives

The objectives of a regulatory response to this problem are to efficiently and effectively manage trade waste discharges to the public wastewater network to:

- 1) protect the health and safety of people, the environment, the wastewater network and the wastewater treatment plants by:
 - i) ensuring that all trade waste dischargers are covered
 - ii) all risks are appropriately identified and controlled.
- 2) meet legislative requirements under the Local Government Act 2002 including:
 - i) giving effect to its identified priorities and desired outcomes in an efficient and effective manner (section 14)
 - ii) ensuring any bylaw does not give rise to any implications under, and is not inconsistent with the New Zealand Bill of Rights Act 1990 (sections 155 and 160).

These objectives are aligned with the council's obligations under the:

- Health Act 1956 to "improve, promote and protect public health within Auckland"
- Health and Safety at Work Act 2015 to "protect workers and other persons against harm to their health, safety and welfare"
- Auckland Plan strategic direction to "improve the education, health and safety of Aucklanders, with a focus on those most in need" and to "grow a business friendly and well-functioning city."

Outcomes

The key desired outcomes are to protect the public wastewater system, people and the environment, from harmful effects of substances discharged to the public wastewater system, and to encourage waste minimisation.

Options

Staff have identified the following options to address the current and future problem:

- Option 1 Status quo: Bylaw with agreements
- Option 2: Amended bylaw with agreements
- Option 3: New bylaw with consents
- Option 4: New bylaw with consents and fees
- Option 5: Revoke bylaw and rely on existing legislative provisions and negotiated agreements.

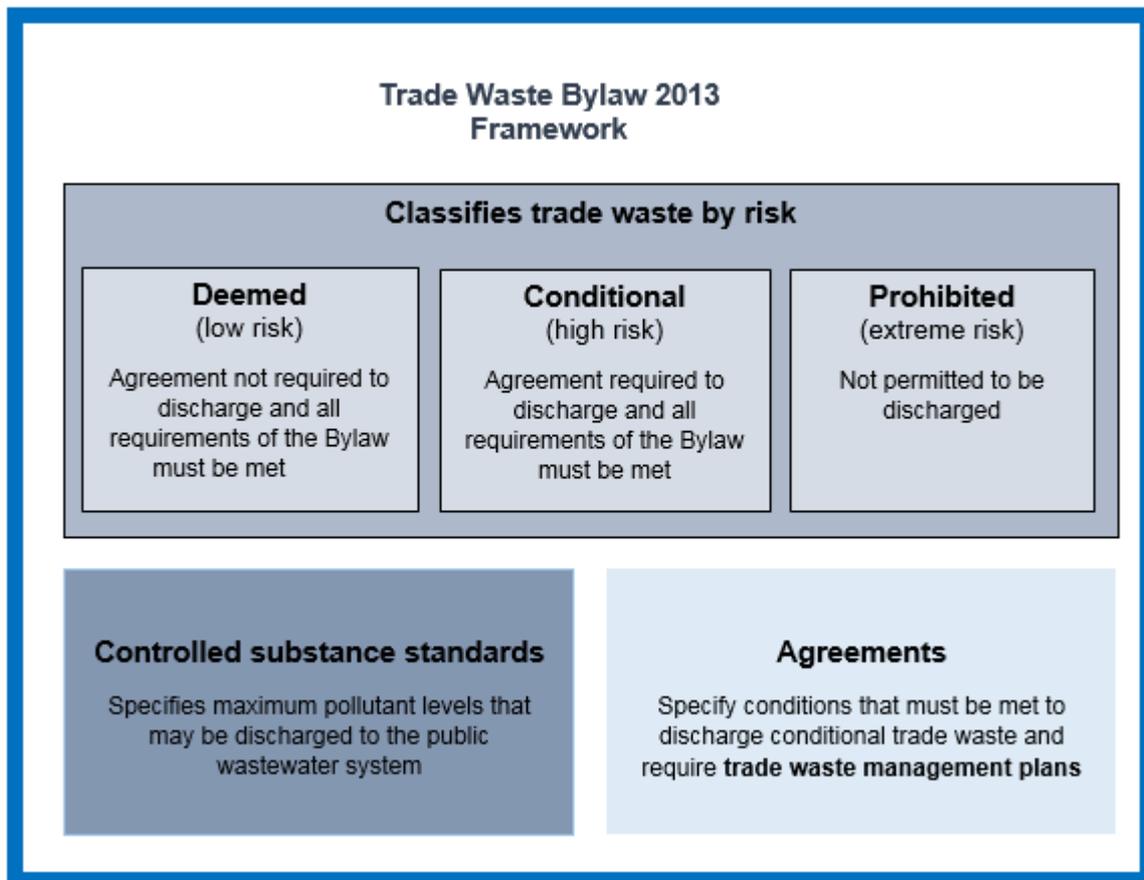
Option 1 Status quo: Bylaw with agreements

Bylaw Form

Option 1 would continue the current bylaw framework which:

- Classifies trade waste by risk as
 - Deemed: Low risk
 - Conditional: High risk
 - Prohibited: Not permitted to be discharged
- Requires dischargers of deemed trade waste to meet minimum requirements of the Bylaw
- Requires dischargers of conditional trade waste to
 - enter into a trade waste agreement
 - produce a trade waste management plan
- Specifies controlled substance standards acceptance limits
- Utilises agreements to detail general and specific conditions that must be met by trade waste dischargers.

Figure 1: Current bylaw framework



Implementation

The Bylaw classifies trade waste dischargers based on risk. Conditional (high risk) trade waste dischargers apply for a trade waste agreement. Trade waste staff consider applications and trade waste management plans and undertake risk assessments to determine the necessary controls and conditions required for each trade waste agreement.

Trade waste staff undertake investigations, inspections, audits and monitoring to identify dischargers of conditional trade waste that do not hold agreements and agreement holders who breach the conditions of their agreement.

Costs related to specific agreement holders are recovered directly as fees.

Enforcement action may be taken under the Local Government Act 2002 for breaches of the Bylaw. A maximum fine of \$200,000 may be imposed.

Breaches of the Bylaw include discharging prohibited trade waste, unauthorised discharge of conditional trade waste, or discharging trade waste in breach of conditions of a trade waste agreement.

In addition, actions for breach of contract may be undertaken where a business has breached the terms of its trade waste agreement. A civil rather than a criminal standard of proof applies in this case i.e. the balance of probabilities, not beyond reasonable doubt.

Trade waste officers have noted that trade waste dischargers have taken more interest in the content of agreements and their obligations since having to sign an agreement.

Pros and cons

Pros

- Risk-based approach – resources are targeted where they are warranted.
- Low compliance costs for low risk (deemed trade waste) activities.
- Conditional trade waste dischargers are required to sign a contract and as a result likely to take more interest in the content of agreements and their obligations.
- High maximum fines (\$200,000) are available for the breach of a trade waste bylaw under the Local Government Act 2002.
- Actions for a breach of contract may be undertaken against a business which has breached a term of its trade waste agreement. This is a significant advantage over a consents-based bylaw (Option 3) when it comes to enforcement.
- Provides certainty to business/industry in terms of the approach to managing trade waste.
- Costs related to specific agreement holders are recovered directly as fees.

Cons

- Retains redundant transitional consent clauses which could lead to confusion.
- Areas recommended for clarification would not be addressed for example:
 - removal of all matters relating to transitional consents
 - ensuring all activities fit into either deemed or conditional trade waste categories
 - addition of criteria that shall be considered when considering applications
 - addition of conditions that may be imposed
- Areas recommended to be expanded or strengthened to cover gaps or weaknesses to reduce risk would not be addressed for example:
 - ability for conditional trade waste customers to be reclassified
 - provisions to better control fats, oils and grease
 - extension of the prohibited substances schedule.
- Provision for conditional trade waste customers to be reclassified as deemed would not be available and would lead to unnecessary regulation.

Risks

- Current reputational risk to Watercare because new/emerging issues are not regulated by the Bylaw. Future reputational risk to council if new services or changes to existing services are not clearly regulated by the Bylaw

Mitigation

- Controlled substance standards updated by resolution
- Information about the practical application of the Bylaw
- Ongoing updates to trade waste dischargers.

Option 2: Amended bylaw with agreements

Bylaw Form

This option retains the same agreement based approach as Option 1 but includes the following amendments:

Table 1: Suggested bylaw amendments

Clarifications	Improvements
<ul style="list-style-type: none"> • Removal of all matters relating to transitional consents that are now redundant • Amend definitions of deemed and conditional trade waste to ensure all activities fit into either category • Expansion of the controlled substance standards to provide more comprehensive guidance on acceptance limits • Clarify definition of “acceptable discharge” • Review schedules 1 & 2 listing deemed and conditional trade waste activities and requirements to provide more guidance • Addition of criteria that shall be considered when considering applications for trade waste agreements • Addition of conditions that may be included in trade waste agreements. 	<ul style="list-style-type: none"> • Increase the flow rate delineation between deemed and conditional trade waste from 0.5 l/s to 1 l/s • Provide for conditional trade waste customers to be able to be reclassified as deemed should risk warrant i.e. low risk • Add provisions to control contaminated groundwater discharges • Add provisions to facilitate better control of dischargers of fats, oils and grease • Extension of the prohibited substances schedule to include substances or emerging pollutants banned under the Hazardous Substances and New Organisms Act • Expand provisions around prohibition of solid materials and materials that form a solid mass • Clarify that the power to amend the controlled substance standards rests with Watercare.

Implementation

Option 2 and Option 1 would be very similar but under Option 2 agreements, compliance activities and costs would decrease marginally with increases to the flow rate limits for deemed trade waste, and the ability to reclassify low risk conditional dischargers to the deemed category.

Agreements, compliance activities and costs would increase with stronger provisions to control dischargers of fats, oils and grease. However, additional activity would be targeted to address problem areas. Increased costs should also be more than offset by a reduction

in costs relating to the cleaning of network pipes and pump stations and the clean-up of overflows related to fat blockages.

The same enforcement options would be available as under Option 1.

Pros and cons

Pros

- Risk-based approach – resources are targeted at where they are warranted. Bylaw can be updated to respond to new and changing issues.
- Low compliance costs for low risk (deemed trade waste) activities.
- Conditional trade waste dischargers are required to sign a contract and as a result likely to take more interest in the content of agreements and their obligations.
- Enforcement action may be taken under the Local Government Act 2002 for a breach of the bylaw. A maximum fine of \$200,000 may be imposed.
- Actions for a breach of contract may be undertaken against a business which has breached a term of its trade waste agreement.
- Provides certainty to business/industry by retaining an accepted approach.
- Expanded schedules for deemed and conditional trade waste activities will provide improved guidance.
- Expansion of provisions around prohibition of solid materials and materials that form a solid mass will strengthen protection of the wastewater network
- Reduced reputational risk that future emerging waste is not clearly regulated by the bylaw.
- Costs related to specific agreement holders are recovered directly as fees.

Cons

- Additional provisions such as those around the control of fat, oil and grease are likely to increase administration costs. However, these are likely to be offset by savings in network cleaning and maintenance.

Risks

- Proposed amendments may be perceived as more restrictive.
- Proposed amendments may create uncertainty with business/industry.

Mitigation

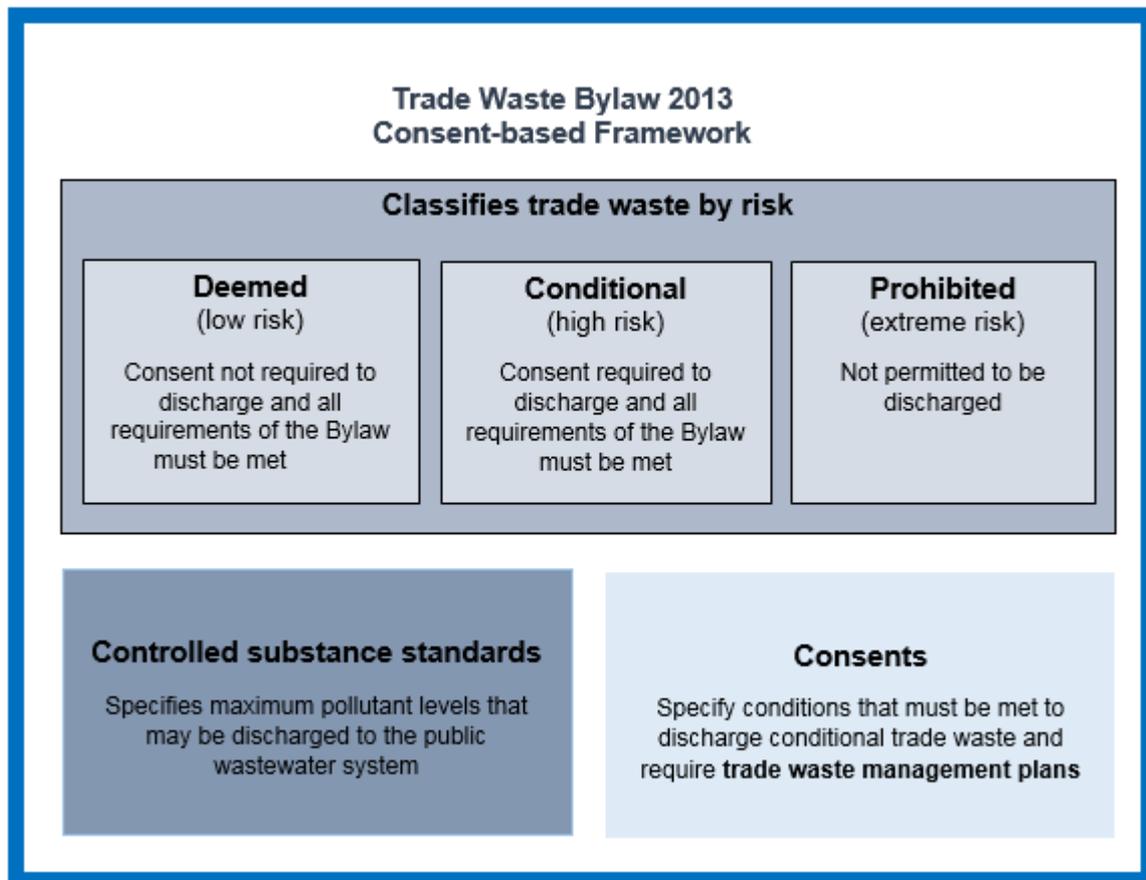
- Provide trade waste dischargers with timely information about the changes.

Option 3: New bylaw with consents

Bylaw Form

This option would regulate trade waste discharges in a similar manner to Option 1 and Option 2, but would require those discharging conditional trade waste to hold consents as opposed to agreements.

Figure 2: Consent-based framework



Staff consider the introduction of a consent based approach would require a new bylaw as changes to the bylaw framework would benefit from a bylaw review in five years.

All of the Option 2 amendments set out above would be included in the new bylaw framework:

Implementation

Implementing a consent based bylaw would require Watercare’s trade waste section to:

- rewrite the bylaw
- reconfigure the trade waste management system
- rewrite documentation and website material
- phase out existing trade waste agreements over several years.

Investigations, audits, inspections, monitoring, and managing non-compliance (short of taking legal action) would be essentially the same as Option 2.

Enforcement action may be taken under the Local Government Act 2002 for breaches of the bylaw. A maximum fine of \$200,000 may be imposed.

Apart from the costs associated with changing from one approach to the other the costs of implementing either Option 2 or Option 3 would be very similar.

Pros and cons

Pros

- Risk-based approach – resources are targeted where they are warranted. The bylaw can be updated to respond to new and changing issues.
- Low compliance costs for low risk (deemed trade waste) activities.
- Requires conditional trade waste dischargers to gain approval to discharge trade waste to the public wastewater system and meet the conditions of the approval.
- Enforcement action may be taken under the Local Government Act 2002. A maximum fine of \$200,000 may be imposed.
- Costs related to specific consent holders are recovered directly as fees.

Cons

- Breach of contract enforcement option unavailable under a consent based approach.
- Consents are less flexible than agreements.
- Implementing a consent based bylaw framework would require reconfiguration of the management systems, documentation and collateral.
- Costs would be incurred in changing management systems and written collateral from an agreement based approach to a consent based approach.
- A long phase out time would be required for existing agreements.
- Consent and agreement systems would need to be run in parallel during phase out adding complexity and additional cost.

Risks

- Risk of making a new bylaw with a consents based approach is that it introduces change and uncertainty for trade waste dischargers.
- Having consents and agreements concurrently during the phase out may lead to confusion with stakeholders and be perceived as unfair.

Mitigation

- Provide trade waste dischargers with timely and comprehensive information about the changes.

Option 4: New bylaw with consents and fees

Bylaw Form

Option 4 is essentially the same as Option 3 except with the addition of fees and charges (for example, volumetric charges or charges based on loads of certain contaminants in the discharge) that would be in addition to or replace the current region wide wastewater tariff for trade waste dischargers.

Contaminant based charges are a common feature of consent based bylaws used elsewhere in New Zealand.

Implementation

Implementing a consent based bylaw with fees would require similar work to Option 3 but in addition it would require implementation of a new consent based fees system that would

either replace or be in addition to the current region wide wastewater tariff for trade waste dischargers.

Additional costs would be incurred in implementing the changes and administering different fee regimes for trade waste dischargers and non-trade waste dischargers.

Pros and cons

Pros

- Risk-based approach – resources are targeted where they are warranted. The bylaw can be updated to respond to new and changing issues.
- Low compliance costs for low risk (deemed trade waste) activities.
- Requires conditional trade waste dischargers to gain approval to discharge trade waste to the public wastewater system and meet the conditions of the approval.
- Enforcement action may be taken under the Local Government Act 2002. A maximum fine of \$200,000 may be imposed.
- Costs related to specific consent holders are recovered directly as fees.
- Contaminant based charges may be seen as an advantage to trade waste dischargers with low contaminant discharges.
- Contaminant based charges can incentivise reduction of key contaminants in the trade waste stream.

Cons

- Breach of contract enforcement option unavailable under a consent based approach.
- Consents are less flexible than agreements.
- Implementing a consent based bylaw framework would require reconfiguration of the management systems, documentation and collateral.
- Costs would be incurred in changing management systems and written collateral from an agreement based approach to a consent based approach.
- Costs would be incurred administering different fee regimes for trade waste dischargers and non-trade waste dischargers.
- A long phase out time would be required for existing agreements.
- Consent and agreement systems would need to be run in parallel during phase out adding complexity and additional cost.
- Contaminant based charges (if they replace the wastewater tariff) may reduce customers' focus on wastewater minimisation.
- Contaminant based charges may be seen as a disadvantage to trade waste dischargers with high contaminant discharges.
- Requires a significant change to an established and certain approach to setting water and wastewater charges.

Risks

- Risk of making a new bylaw with a consents based with fees approach is that it introduces significant change and uncertainty for trade waste dischargers.
- Risk that changes in fees will have a significant negative impact on some businesses.
- Having consents and agreements concurrently during the phase out may lead to confusion with stakeholders and be perceived as unfair.

Mitigation

- Provide trade waste dischargers with timely and comprehensive information about the changes.
- Undertake a full impact analysis related to fees and phase in changes to give trade waste dischargers adequate time to factor in the changes to their business.

Option 5: Revoke bylaw and rely solely on existing legislative provisions and negotiated agreements

Under this option the Bylaw would be revoked. This option would rely on existing legislative provisions in particular section 196 of the Local Government Act 2002. Section 196 requires the occupier of trade premises to gain consent to discharge trade waste to the public wastewater system, unless the discharge is permitted by a trade waste bylaw.

This option would not facilitate the existing risk based classification of trade waste, as a bylaw is required to exempt dischargers of deemed (low risk) trade waste from needing a consent.

Implementation

Without the ability to exempt low risk dischargers from gaining consent, thousands (estimated 22,000) of low risk trade waste approvals would need to be issued and administered. In addition, the turnover of small low risk dischargers is more frequent. Administration requirements and costs would increase significantly with limited improvement in risks mitigated.

Relying solely on the Local Government Act 2002 would require Watercare's trade waste section to:

- reconfigure the trade waste management system
- rewrite documentation and website material.

The process of granting approvals to customers, investigations, audits, inspections, monitoring, and managing non-compliance (short of taking legal action) would be essentially the same as Option 2.

Trade waste officers would have to rely on trade waste dischargers entering into agreements (either individual agreements or a standard "posted terms" agreement based on acceptance by conduct (i.e. by discharging trade waste you accept Watercare's standard customer terms)) to control trade waste discharges.

Enforcement options that would be available under this option would be less and weaker than options 1 to 4. Prosecution for breach of a bylaw (including a fine of up to \$200,000), would not be available under this option. Breaches of conditions of the approval granted by Watercare would not automatically constitute an offence, although a civil action for breach of contract may be available.

Pros and cons

Pros

- No administration of a bylaw is required.

Cons

- A large number of low risk dischargers would need to be given approval to discharge significantly increasing administrative costs.
- Lack of an overarching framework for managing trade waste.
- A more limited range of statutory offence provisions (e.g. relating to damage to the network) would apply (maximum fine \$20,000). The higher fine of \$200,000 for the breach of a trade waste bylaw would not be available.
- Costs related to damage and harm from trade waste discharges are likely to increase.

Risks

- Reputational risk if public are concerned about council reducing trade waste regulation.
- Future reputational risk if council needs to make a new bylaw
- Trade Waste dischargers may not voluntarily enter into an agreement.

Mitigation

- Promoting good practice using non-regulatory tools.

Options Assessment

Preliminary legal assessment

Bylaws must comply with certain legal requirements to be valid, including: that they are authorised by statute, sufficiently certain, and are not repugnant to the general law or unreasonable. Staff consider all four options are capable of meeting these legal requirements.

New Zealand Bill of Rights Act 1990 assessment

Options 1, 2, 3 and 4 do not engage, and therefore do not limit any rights or freedoms under the New Zealand Bill of Rights Act 1990. Therefore, there are no implications, and the options are not inconsistent with the New Zealand Bill of Rights Act 1990.

Option 5 does not require the preparation of a bylaw and therefore a New Zealand Bill of Rights Act 1990 assessment is not required.

Assessment against criteria

Staff have completed a comparative assessment against criteria. These criteria reflect the objectives of a regulatory response to this problem identified above:

To efficiently and effectively manage trade waste discharges to the public wastewater network to:

- 1) protect the health and safety of people, the environment, the wastewater network and the wastewater treatment plants, by:
 - i) ensuring that all trade waste dischargers are covered
 - ii) all risks are appropriately identified and controlled
- 2) meet legislative requirements under the Local Government Act 2002 including:
 - i) giving effect to its identified priorities and desired outcomes in an efficient and effective manner (section 14)

- ii) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (sections 155 and 160).

The criteria and a summary of the assessment is shown in Table 2. The “✓” and “x” reflect the impact of the option against each criterion relative to other options. For instance, the more “✓”, the better the option.

Table 2: Summary of assessment of options against stated objectives

	Effectiveness at minimising risks	Efficiency at minimising risks
Option 1 Status quo: Agreement based bylaw	✓ <ul style="list-style-type: none"> While the status quo proactively minimises risks, it does not regulate all trade waste appropriately e.g. it does not address risks from dischargers of fat, oil and grease. 	✓ <ul style="list-style-type: none"> The status quo is efficient at minimising risks but does not allow for the reclassification of low risk conditional customers to the deemed category thus leads to unnecessary regulation. No implementation costs would be incurred.
Option 2: Amended agreement based bylaw	✓✓ <ul style="list-style-type: none"> Option 2 further minimises risks by addressing identified gaps, improvements and clarifications including coverage of activities that do not fit into existing definitions for deemed or conditional activities and additional controls to address risks from dischargers of fat, oil and grease. 	✓✓ <ul style="list-style-type: none"> Option 2 is more efficient than Option 1 as it allows for the reclassification of low risk conditional customers to the deemed category to remove unnecessary regulation. Minimal implementation costs would be incurred.
Option 3: Consent based bylaw	✓ <ul style="list-style-type: none"> Option 3 would proactively minimize risk through a consenting regime and coverage of activities that do not fit into existing definitions for deemed or conditional activities and additional controls to address risks from dischargers of fat, oil and grease. However, there would be considerable delay in realizing these benefits due to phase in requirements. Breach of contract enforcement option would not be available under a consent based approach. 	✓ <ul style="list-style-type: none"> Option 3 provides similar efficiency as Option 2 as it allows for the reclassification of low risk conditional customers to the deemed category to remove unnecessary regulation. However, additional costs would be incurred in changing from the current agreement based approach to a consent based approach. Moderate implementation costs would be incurred.
Option 4: Consent based bylaw with fees	✓ <ul style="list-style-type: none"> Similar to Option 3, Option 4 would proactively minimize risk through a consenting regime and coverage of activities that do not fit into existing definitions for deemed or conditional activities and additional controls to address risks from dischargers of fat, oil and grease. However, there would be considerable delay in realizing these benefits due to phase in requirements. Breach of contract enforcement option would not be available under a consent based approach. 	x <ul style="list-style-type: none"> Option 4 provides similar efficiency as Options 2 and 3 as it allows for the reclassification of low risk conditional customers to the deemed category to remove unnecessary regulation. However, additional costs would be incurred in changing from the current agreement based approach to a consent based approach. Significant implementation costs would be incurred. Additional costs would be incurred in administering different charging systems for trade waste dischargers and non-trade

		waste dischargers.
<p>Option 5: Rely solely on existing legislative provisions and negotiated agreements</p>	<p style="text-align: center;">x</p> <ul style="list-style-type: none"> • Option 5 would seek to proactively minimise risks but is unlikely to be as effective as any of the above options due to the limited enforcement options. 	<p style="text-align: center;">xx</p> <ul style="list-style-type: none"> • Option 5 is least efficient as it requires a large number of low risk trade waste dischargers to gain approval increasing unnecessary regulation. • Significant implementation costs would be incurred internally. • Additional costs would be incurred by a large number of low risk trade waste dischargers to cover the additional unnecessary administration of approvals.

Analysis and recommendations

Based on analysis against assessment criteria and the pros and cons of each option, staff recommend **Option 2: amended agreement based bylaw** because it:

- further minimises risks by addressing identified gaps, improvements and clarifications including the removal of redundant transitional clauses, some activities not fitting into existing definitions for deemed or conditional activities and additional controls to address risks from dischargers of fat, oil and grease
- improves on the status quo (Option 1) which stakeholders consider effective and certain
- provides more certainty than Option 3 and 4 as it continues the agreement based approach that is accepted by industry stakeholders.

Option 3 (consent based bylaw) would also further minimise risks and could address some of the gaps and shortcomings of Option 1. However, Option 3 would represent another change, incur greater implementation costs than Option 2, and likely raise concerns with industry that have now accepted the agreement based approach.

Option 4 (consent based bylaw with fees) is similar to Option 3 but with increased costs of implementation and raises additional concerns with industry that have now accepted the region wide wastewater tariff.

Staff consider Option 2 addresses identified gaps, clarifies areas that may lead to confusion and suggests improvements on the status quo (Option 1).

Option 1 (status quo) is effective and certain but does not address the identified gaps, clarify areas that now may lead to confusion or address suggested areas for improvement.

Option 5 (rely solely on legislative provisions and negotiated agreements) is the least effective and least efficient option. It is likely to cause concern with small low risk businesses that would have to gain approval due to the increased compliance costs. Existing high risk trade waste dischargers are also likely to be concerned with what might appear as a tightening of controls on low risk operators and the uncertainty that it brings.

Table 3: Detailed assessment of potential Option 2 bylaw amendments

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
<p>Removal of all information relating to transitional consents (Recommended)</p>	<ul style="list-style-type: none"> The bylaw document would be clearer and more concise with less opportunity for confusion once redundant provisions are removed. 	<ul style="list-style-type: none"> May be misinterpreted by stakeholders. 	<ul style="list-style-type: none"> It may be perceived by stakeholders that key elements of the bylaw are being removed. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> Education about the impact to stakeholders (i.e. customers with agreements unaffected). Ensure stakeholders are consulted during special consultative procedure. 	<ul style="list-style-type: none"> Does not give rise to any implications under the New Zealand Bill of Rights 1990.
<p>Amend definitions of deemed and conditional activities to ensure all trade waste activities fit into one or the other category (Recommended)</p>	<ul style="list-style-type: none"> Ensures that all trade waste activities are clearly covered by the categorisation to ensure that the necessary controls would be in place to minimise any potential risks from the discharge. 	<ul style="list-style-type: none"> May be misinterpreted by stakeholders. 	<ul style="list-style-type: none"> It may be perceived that the changes will have negative impact on stakeholders. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> Education about the impact to stakeholders. Ensure stakeholders are consulted during special consultative procedure. 	<ul style="list-style-type: none"> Does not give rise to any implications under the New Zealand Bill of Rights 1990.
<p>Clarify definition of “acceptable discharge”</p>	<ul style="list-style-type: none"> Ensures a clear understanding of what is acceptable to be discharged to minimise any potential 	<ul style="list-style-type: none"> May be misinterpreted by stakeholders. 	<ul style="list-style-type: none"> It may be perceived that the changes will have negative impact on stakeholders. <p><i>Mitigation</i></p>	<ul style="list-style-type: none"> Does not give rise to any implications under the New Zealand Bill of Rights 1990.

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
(Recommended)	risks.		<ul style="list-style-type: none"> • Education about the impact to stakeholders. • Ensure stakeholders are consulted during special consultative procedure. 	
Expansion of the controlled substance standards to provide more comprehensive guidance on acceptance limits (Recommended)	<ul style="list-style-type: none"> • Ensures that limits for contaminants are clearly identified and any necessary pre-treatment of wastewater would be in place to minimise potential risks from the discharge. 	<ul style="list-style-type: none"> • Stakeholders may perceive acceptance limits as new or too stringent. 	<ul style="list-style-type: none"> • Stakeholders may perceive acceptance limits as new or too stringent. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> • Ensure stakeholders are consulted during special consultative procedure. 	<ul style="list-style-type: none"> • Does not give rise to any implications under the New Zealand Bill of Rights 1990.
Review schedules 1 & 2 deemed and conditional activities and requirements to provide more guidance (Recommended)	<ul style="list-style-type: none"> • Ensures that all trade waste activities are clearly categorised and any necessary controls would be in place to minimise any potential risks from the discharge. 	<ul style="list-style-type: none"> • May lead to challenge from stakeholders. 	<ul style="list-style-type: none"> • Stakeholders may disagree on categorisation of activities. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> • Ensure stakeholders consulted during drafting and special consultative procedure. 	<ul style="list-style-type: none"> • Does not give rise to any implications under the New Zealand Bill of Rights 1990.
Amend the definition of conditional and deemed trade	<ul style="list-style-type: none"> • Avoids over-regulation of low-risk flows. • Reduces unwarranted administration and 	<ul style="list-style-type: none"> • In extreme situations it could contribute to surcharges in the network. 	<ul style="list-style-type: none"> • Increasing pressure on the wastewater system could lead to surcharges in the network. 	<ul style="list-style-type: none"> • Does not give rise to any implications under the New Zealand Bill of Rights 1990.

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
waste in respect to flow rate from 0.5 l/s to 1.0 l/s (Recommended)	monitoring.		<ul style="list-style-type: none"> Public perception that environmental protection is decreasing. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> Continued management of discharges e.g. elimination of storm water, and management of flow rates. Deemed customers can be reclassified as Conditional customers and flow rates controlled should the need arise. Public education. 	
Provide for conditional trade waste customers to be able to be reclassified as deemed should low risk warrant (Recommended)	<ul style="list-style-type: none"> Avoids over-regulation of low-risk industry. Reduces unwarranted administration and monitoring. 	<ul style="list-style-type: none"> May be perceived as favouring a particular discharger. 	<ul style="list-style-type: none"> Perception that some customers are treated more favourably than others. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> Requirement to justify reclassification via a risk assessment prior to reclassification. 	<ul style="list-style-type: none"> Does not give rise to any implications under the New Zealand Bill of Rights 1990.
Add provisions to control contaminated groundwater discharges	<ul style="list-style-type: none"> Removes current 'gap' in the Bylaw. Provides better control to minimise risks associated with capacity i.e. overflows. 	<ul style="list-style-type: none"> May be viewed as over-regulating by stakeholders. 	<ul style="list-style-type: none"> Perception that the changes will lead to increased restrictions on stakeholders. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> Education about the impact 	<ul style="list-style-type: none"> Does not give rise to any implications under the New Zealand Bill of Rights 1990.

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
(Recommended)	<ul style="list-style-type: none"> Improves understanding of the requirements of the Bylaw so customers better understand their obligations. 		<ul style="list-style-type: none"> to stakeholders. Ensure stakeholders are consulted during special consultative procedure. 	
Add provisions to facilitate better control of dischargers of fats, oils and grease (Recommended)	<ul style="list-style-type: none"> Minimises blockages associated with fats, oils and grease. Improves understanding of the requirements of the Bylaw so dischargers better understand their obligations. 	<ul style="list-style-type: none"> Is likely to result in additional costs to administer. May be viewed as over-regulating by stakeholders. 	<ul style="list-style-type: none"> Perception of over-regulating small low-risk businesses. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> Education about risks these discharges pose to the wastewater network. Ensure stakeholders are consulted during special consultative procedure. 	<ul style="list-style-type: none"> Does not give rise to any implications under the New Zealand Bill of Rights 1990.
Extension of the prohibited substances schedule to include substances banned under the Hazardous Substances and New Organisms Act 1996 (HASNO) (Recommended)	<ul style="list-style-type: none"> Minimises risks associated with newly identified substances that can cause significant harm. Provides for the inclusion of new substances as prohibited as they are identified as hazardous under HASNO. Improves understanding of the requirements of the Bylaw so customers better understand their obligations. 	<ul style="list-style-type: none"> May be misinterpreted by stakeholders. May be viewed as over-regulating by stakeholders. 	<ul style="list-style-type: none"> Perception that the changes will lead to increased restrictions on stakeholders. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> Education about the impact to stakeholders. Ensure stakeholders are consulted during special consultative procedure. 	<ul style="list-style-type: none"> Does not give rise to any implications under the New Zealand Bill of Rights 1990.
Expand provisions	<ul style="list-style-type: none"> Minimises risks associated with substances that can 	<ul style="list-style-type: none"> May be viewed as over-regulating by 	<ul style="list-style-type: none"> Perception that the changes will lead to increased 	<ul style="list-style-type: none"> Does not give rise to any implications under the New

Proposed Amendment	Pros	Cons	Risks and Mitigation	New Zealand Bill of Rights Act 1990
<p>around prohibition of solid materials and materials that form a solid mass</p> <p>(Recommended)</p>	<p>cause blockages in the network.</p> <ul style="list-style-type: none"> Improves understanding of the requirements of the Bylaw so customers better understand their obligations. 	<p>stakeholders.</p>	<p>restrictions on stakeholders.</p> <p><i>Mitigation</i></p> <ul style="list-style-type: none"> Education about the impact to stakeholders. Ensure stakeholders are consulted during special consultative procedure. 	<p>Zealand Bill of Rights 1990.</p>
<p>Include a list of criteria for the consideration of applications to discharge conditional trade waste and a list of conditions that may be included in agreements</p> <p>(Recommended)</p>	<ul style="list-style-type: none"> Provides direction for trade waste officers. Provides understanding and clarity to trade waste dischargers. 	<ul style="list-style-type: none"> May be misinterpreted by stakeholders. 	<ul style="list-style-type: none"> May lead to uncertainty and challenge from stakeholders on the content. <p><i>Mitigation</i></p> <ul style="list-style-type: none"> Education about the impact to stakeholders. Ensure stakeholders are consulted during special consultative procedure. 	<ul style="list-style-type: none"> Does not give rise to any implications under the New Zealand Bill of Rights 1990.