

7. APPOINTMENT OF REPRESENTATIVE TO BYLAWS REVIEW SUBCOMMITTEE

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| General Manager responsible: | General Manager Strategy and Planning, DDI 941-8177 |
| Officer responsible: | Programme Manager Strong Communities |
| Author: | Terence Moody, Principal Adviser (Environmental Health) |

PURPOSE OF REPORT

1. The purpose of this report is for the Board to nominate a representative to a subcommittee to provide Board members views in to the review of bylaws.

EXECUTIVE SUMMARY

2. A seminar was held on 13 March 2007 of Councillors and Board members to provide information on the required reviews of bylaws under the LGA 2002 and the process that must be undertaken to comply with the Act. Section 158 of the LGA 2002 requires bylaws to be reviewed within five years of 1 July 2003 if they were made prior to the Act coming into force, or if made under the LGA 2002 within five years of the date they were made. Reviews must be carried out in accordance with Section 155 which requires that the Council is satisfied that a bylaw is necessary, and the perceived problems cannot be dealt with in any other manner. At least 24 bylaws are required to be reviewed prior to the end of June 2008 and timetables for these reviews have been set.
3. On 10 May 2007 a Council meeting decision was made to form a subcommittee.¹ The subcommittee will provide a single conduit for communication with Boards about the reviews and highlight specific reviews likely to be of high interest. The subcommittee will gather feedback in a timely and efficient fashion and enable a fast turnaround of initial comments on the reviews prior to the formal consideration by the Council required under the Act. The options analysis for each review will be sent to the subcommittee prior to the matter going on to the Council. It will be necessary to ensure a prescribed turnaround time for responses back to the initiating units to meet timetables for the reviews. The terms of reference for this subcommittee is *to provide a process by which the views of Boards can be collected and considered and to communicate these views to the Council as part of the consideration of options in the reviews of bylaws*. The process is not intended to promote totally new bylaws but to consider the review requirements of the Act. Should the process identify objectives that may need to be considered by totally new bylaws these will be noted and addressed once the review of existing bylaws is completed.

FINANCIAL IMPLICATIONS

4. The input of Boards will be conducted through normal Board processes. The joint committee approach should reduce the potential for duplication and delay, and assist Council in meeting its statutory deadline. There are no extraordinary financial implications from the proposed process.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

5. Yes.

LEGAL CONSIDERATIONS

6. The Council has the power under the LGA 2002 to appoint or discharge committees and subcommittees (clause 30). The Council can also delegate powers to subcommittees in accordance with clause 32, Schedule 7 of the LGA 2002 for the purposes of efficiency and effectiveness in the conduct of the Council's business. In this case, there is no need to delegate any powers to the subcommittee as its primary purpose concerns gathering and distributing information to and from the Boards in respect of the bylaw reviews. The Council has delegate the power to appoint the Board members of the subcommittee to each Board.

Have you considered the legal implications of the issue under consideration?

7. Yes.

¹ Please refer to council meeting minutes on this decision.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

8. The report is consistent with the Democracy and Governance Activity Management Plan in the LTCCP in that the recommendations contribute to ensuring that there is suitable community input to the Council's decision making. See Our Community Plan 2006-2016 Volume 1 Page 111.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

9. Yes.

ALIGNMENT WITH STRATEGIES

10. No specific strategies involved.

Do the recommendations align with the Council's strategies?

11. Compliance with Strategic Directions to promote participation in democratic processes by making it easy for people to understand and take part in Council decision-making processes.

CONSULTATION FULFILMENT

12. An initial seminar was held on 13 March 2007 with Boards and copies were distributed to all Board members. The proposed structure was reported to Council on 10 May 2007 and adopted.

STAFF RECOMMENDATION

That the Board nominate a member as its representative on the Bylaw Reviews Subcommittee to collectively ensure that the views of the Boards are incorporated as part of the review process required for all bylaws under the Local Government Act 2002.

BACKGROUND (THE BYLAW REVIEW PROCESS)

14. A seminar was held on 13 March 2007 of Councillors and Board members to provide information on the required reviews of bylaws under the LGA 2002 and the process that must be undertaken to comply with the Act. Where Board members were unable to attend copies of the material presented and the notes of the meeting were distributed for their information. Section 158 of the LGA 2002 requires bylaws to be reviewed within five years of 1 July 2003 if they were made prior to the Act coming into force, or if made under the LGA 2002 within five years of the date they were made. Reviews must be carried out in accordance with Section 155 which requires that the Council is satisfied that a bylaw is necessary, and the perceived problems cannot be dealt with in any other manner.
15. If it is determined that a bylaw is the most appropriate way of dealing with the problem the Council must decide that the bylaw is the most appropriate form and does not give rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA). This means the Council must be able to show that the bylaw provision being considered serves an important and significant objective, there is a rational connection between the provision and objective and it does not interfere with any right or freedom protected by the NZBORA.
16. The Code of Good Regulatory Practice requires that consideration be given to:
 - Efficiency - by adopting only regulations for which the costs to society are justified by the benefits.
 - Effectiveness - to ensure it can be complied with and enforced at the lowest possible cost.
 - Transparency - by defining the nature and extent of the problem and evaluating the need for action.
 - Clarity - in making things as simple as possible, to use plain language where possible, and keeping discretion to a minimum.
 - Regulation should be fair and treat those affected equitably.
17. Section 145 of the LGA 2002 provides the general bylaw-making power for territorial authorities for the following purposes:
 - (a) Protecting the public from nuisance.
 - (b) Protecting, promoting, and maintaining public health and safety.
 - (c) Minimising the potential for offensive behaviour in public places.
18. Sections 146 and 147 provide specific bylaw-making powers to regulate:
 - On-site wastewater disposal systems.
 - Waste management.
 - Trade wastes.
 - Solid wastes.
 - Keeping of animals, bees, and poultry.
 - Trading in public places.
 - Water races.
 - Water supply.
 - Wastewater, drainage and sanitation.
 - Land drainage.
 - Cemeteries.
 - Reserves or Recreation grounds.
 - Prevention of the spread of fires involving vegetation subject to provisions of the Forest and Rural Act 1977.

For liquor control purposes the Council is empowered to prohibit or regulate the consumption of liquor, bringing of liquor, or possession of liquor in a public place.

19. There remain some provisions which enable territorial authorities to make bylaws which are contained in the Local Government Act 1974, which largely relate to the use of roads and traffic matters. These tend to be more specific in nature than the purposes set out in the LGA 2002. Some of the bylaws due for review may fall within the LGA 1974 provisions.

20. The table below sets out the bylaws that must be reviewed by June 2008.

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| CC Public Places and Signs Bylaw 2003 | BP District Refuse Bylaw 2002 |
| CC Dog Control Bylaw 1997 | BP Trade Wastes Bylaw 2000 |
| CC Refuse Bylaw 1995 | BP Wastewater Drainage Bylaw 2000 |
| CC Bylaw No. 118 (1981) Parks and Reserves | BP Water Supply Bylaw 1998 |
| CC Traffic and Parking Bylaw 1991 | BP Amusement Devices and Shooting Galleries 1996 |
| CC Water Related Services Bylaw 2001 | BP Nuisances 1996 |
| CC Bylaw No. 110 (1980) Cemeteries | BP Public Swimming Pools 1996 |
| CC Bylaw No. 103 (1979) Public Swimming Pools | BP Gin Trap Bylaw 1991 No. 1 |
| CC Bylaw No. 120 (1982) Estuary and Foreshore | BP Cemetery Bylaw 1996 |
| BP Licences for Vehicle Stands on Streets 1996 | BP Marine Facilities Control Bylaw 2002 |
| BP Parks and Reserves 1996 | BP Traffic and Parking Bylaw 1998 |
| BP Mobile or Travelling Shops, and Hawkers and Itinerant Traders 1996 | BP Stock Control Bylaw 1994 No. 1 |

21. A number of Units are involved in the reviews and some bylaws will be considered jointly by more than one Unit. A programme has been developed for consideration of the bylaws and the process must be adhered to whether a bylaw is to have minor or substantive changes, remain unchanged or be revoked. The full process of review requires consultation with the Executive Team, the Council and Boards, and progression through public consultation, submissions and a hearings panel. A minimum of five or six months is commonly required to complete a review. The table above shows that 24 bylaws must be reviewed in the next 12 months although some reviews will be able to be combined and some bylaws will possibly be able to be revoked on the grounds that their objectives are covered by other legislation. The Council must consider the need for Board input, and the time that may be involved in this additional consultation, with the relatively tight timetable legally required to complete the bylaw reviews.
22. The seminar concluded that a small subcommittee of Board members and Councillors formed to undertake an initial consideration of the reviews could be the most efficient, effective and timely method of obtaining Board input. The subcommittee could provide a single conduit for communication with the Boards about the reviews and highlight specific reviews likely to be of high interest. It is expected that the subcommittee could gather feedback in a timely and efficient fashion and enable a fast turnaround of initial comments on the reviews prior to commencement of the formal consultation process required under the Act. The proposal was that the options analysis for each review would be sent to all Board members for comments back through the Board's representative to the subcommittee prior to the matter going on to the Council. It would be necessary to ensure a prescribed turnaround time for responses back to the initiating Units to meet timetables for the reviews. The process is not intended to be used to promote totally new bylaws. These can be raised and considered at any time, but this process is limited to considering the review requirements of the Act. If through the process possible new bylaws are identified for consideration these will be noted and addressed once the review of existing bylaws is completed. It must be noted that the Boards can have another opportunity to provide feedback through the special consultative procedure.
23. Council Decision - On 10 May 2007 the following decisions were made at the Council meeting:
- (a) Resolve to appoint a Subcommittee to consider initial reviews of the Council's bylaws and provide feedback to the appropriate Units on the views of the Boards, prior to the matters being formally considered by the Council.
 - (b) Resolve that the Subcommittee comprise one representative from each of the eight Boards and two Councillors.
 - (c) Appoint two Councillors to be members of the subcommittee.
 - (d) Delegate the power to appoint one Board member of the Subcommittee to each Board.