

10. APPOINTMENT OF BYLAWS REVIEW SUBCOMMITTEE



General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
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PURPOSE OF REPORT

1. The purpose of this report is to have the Council appoint a subcommittee consisting of one representative of each of the Community Boards and two Councillors (a total of 10), to consider on behalf of Community Boards the bylaws being reviewed during the next year.

EXECUTIVE SUMMARY

2. A seminar was held on 13 March 2007 of Councillors and Community 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. The means of obtaining Community Board input into the initial review of such bylaws was discussed at the seminar taking into account the legislative need to complete the reviews in a period of just over a year.
3. The seminar considered that a small subcommittee of community board members and Councillors formed to undertake an initial consideration of the reviews could be the most efficient, effective and timely method of obtaining community board input. The subcommittee could provide a single conduit for communication with community 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 the formal consideration by the Council required under the Act. The proposal is that the options analysis for each review would be sent 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 terms of reference for the subcommittee would be *to provide a process by which the views of Community 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 financial costs involved in ensuring community boards have appropriate input to the bylaw reviews are already budgeted for as part of the provision for the salaries of elected members in the LTCCP 2006-2016. There are no other costs involved in review.

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

5. See above Volume 1 Page 115.

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 Community Boards in respect of the bylaw reviews. The Council should, however, delegate the power to appoint the Community Board members of the subcommittee to each Community Board, unless it wishes to choose these members itself.

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

7. Yes

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. As above under clause 8.

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. Seminar held on 13 March 2007 with community boards and copies of presentations sent to Community Board Principal Advisers for putting to Community Boards.

STAFF RECOMMENDATION

It is recommended that the Council:

- (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 Community Boards, prior to the matters being formally considered by the Council.
- (b) Resolve that the subcommittee comprise one representative from each of the eight community boards and two Councillors.
- (c) Appoint two Councillors to be members of the subcommittee.
- (d) Delegate the power to appoint one Community Board member of the subcommittee to each Community Board.

BACKGROUND (THE ISSUES)

13. A seminar was held on 13 March 2007 of Councillors and Community 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 Community 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.
14. 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.
15. 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; and
 - Regulation should be fair and treat those affected equitably.
16. Section 145 of the LGA02 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
17. 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, and
 - 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.

18. 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 1974 Act provisions.

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

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

20. 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 Community 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 community 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.
21. The seminar concluded that a small subcommittee of community board members and Councillors formed to undertake an initial consideration of the reviews could be the most efficient, effective and timely method of obtaining community board input. The subcommittee could provide a single conduit for communication with the Community 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 is that the options analysis for each review would be sent to the community board members for comments back through 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.

THE OBJECTIVES

22. To appoint a subcommittee comprising Community Board members and Councillors to consider initial reviews of bylaws in a timely fashion and to provide feedback to the appropriate units on the views of community boards, prior to the matters being formally considered by the Council. The terms of reference for the subcommittee would be *to provide a process by which the views of community 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 OPTIONS

23. The “do nothing” option is to not have any formal consideration of proposed bylaw reviews by community boards prior to the matters being considered by the Council. This does not comply with the decision of the Council to involve Community Boards early in the process as part of the governance of the Council.

24. The option to present bylaw reviews to each Community Board individually prior to presentation to the Council is considered to be neither efficient nor effective in obtaining an overall view of the reviews. It would increase the time and a cost involved in the process and would be unlikely to fulfil the timetable requirements needed to ensure the reviews are completed expediently.

THE PREFERRED OPTION

25. The formation of a subcommittee which could be representative of all Community Boards to undertake initial viewing of proposed bylaw reviews has a number of advantages. It could firstly enable time saving in that the members would become knowledgeable of the bylaw review and development process. Secondly it could ensure the appropriate community boards are made aware of the bylaws they may be interested in giving consideration to. Thirdly it would provide one point of contact for units undertaking reviews and save time and costs for initial reviews. It would hopefully enable informed consensus to be reached on a community board view of the review but still leave it open for community boards to make submissions through the SCP once the proposal is adopted by the Council.

ASSESSMENT OF OPTIONS

The Preferred Option

26. The formation of a subcommittee which could be representative of all Community Boards to undertake initial viewing of proposed bylaw reviews has a number of advantages. It could firstly enable time saving in that the members would become knowledgeable of the bylaw review and development process. Secondly it could ensure the appropriate community boards are made aware of the bylaws they may be interested in giving consideration to. Thirdly it would provide one point of contact for units undertaking reviews and save time and costs for initial reviews. It would hopefully enable informed consensus to be reached on a community board view of the review but still leave it open for community boards to make submissions through the SCP once the proposal is adopted by the Council.

	Benefits (current and future)	Costs (current and future)
Social	Involves wider governance group in regulatory issues decisions, hopefully obtain greater understanding of bylaw processes.	Time spent by subcommittee some costs to members . Some further delays in reaching decisions could add to costs.
Cultural	None apparent	None apparent
Environmental	No specific effects	No specific effects
Economic	Could reduce costs of large submissions being heard.	Some costs in arranging meetings and staff attendance.
<p>Extent to which community outcomes are achieved:</p> <p>Supports the community outcome of <i>A Well Governed City</i> in that our values and ideas are reflected in the actions of the decision makers, and to a degree <i>A City of Lifelong Learning</i> helping community boards to participate in community processes.</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>No significant impact.</p> <p>Effects on Maori:</p> <p>Specific consultation with Maori runanga and other representative groups, would be undertaken as part of the Special Consultative Process.</p> <p>Consistency with existing Council policies:</p> <p>Consistent with the <i>Seeking Community Views</i> policy, in particular: <i>The views of individuals and groups within the community will provide further information valuable to the decision making process</i></p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Enables views of community boards to be suitably considered by the Council. Wider public consultation will take place through the Special Consultative Procedure for each bylaw being reviewed, amended or revoked.</p>		

Maintain the Status Quo (if not preferred option)

27. The “do nothing” option is to not have any formal consideration of proposed bylaw reviews by community boards prior to the matters being considered by the Council. This does not comply with the decision of the Council to involve community boards early in the process as part of the governance of the Council

	Benefits (current and future)	Costs (current and future)
Social	Does not involve wider governance group in regulatory issues decisions. Does not provide the opportunity for community boards to obtain greater understanding of bylaw processes. Possibly could increase the level of misunderstanding.	Reduces further delays in reaching decisions on bylaw reviews.
Cultural	None apparent	None apparent
Environmental	No specific effects	No specific effects
Economic	Could increase costs of large submissions being received and heard.	Reduces costs in arranging meetings and staff attendance.
<p>Extent to which community outcomes are achieved:</p> <p>Does not support the community outcome of <i>A Well Governed City</i> in that our values and ideas are reflected in the actions of the decision makers, and to a degree <i>A City of Lifelong Learning</i> helping community boards to participate in community processes.</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>No significant impact.</p> <p>Effects on Maori:</p> <p>Specific consultation with Maori runanga and other representative groups, would be undertaken as part of the Special Consultative Process</p> <p>Consistency with existing Council policies:</p> <p>Not consistent with the <i>Seeking Community Views</i> policy, in particular: <i>The views of individuals and groups within the community will provide further information valuable to the decision making process</i></p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Not supported by the Council's decision to include community boards at the initial stage of bylaw reviews/</p> <p>Other relevant matters:</p>		

At Least one Other Option (or an explanation of why another option has not been considered)

28. The option to present bylaw reviews to each community board individually prior to presentation to the Council is considered to be neither efficient nor effective in obtaining an overall view of the reviews. It would increase the time and a cost involved in the process and is unlikely to fulfil the timetable requirements needed to ensure reviews are completed expediently

	Benefits (current and future)	Costs (current and future)
Social	Provides each community board with the opportunity to consider bylaw reviews in detail and understand regulatory issues decisions. Could assist in a greater understanding of bylaw processes.	Some further delays in reaching decisions could add to costs. Particularly a problem given the tight timetable for bylaw reviews.
Cultural	None apparent	None apparent
Environmental	No specific effects	No specific effects
Economic	Could increase costs of presenting individually to eight separate community board meetings and receiving separate submissions.	Costs in arranging meetings and staff attendance.

Extent to which community outcomes are achieved:

Supports the community outcome of *A Well Governed City* in that our values and ideas are reflected in the actions of the decision makers, and to a degree *A City of Lifelong Learning* helping community boards to participate in community processes.

Impact on the Council's capacity and responsibilities:

No significant impact.

Effects on Maori:

Specific consultation with Maori runanga and other representative groups would be undertaken as part of the Special Consultative Process.

Consistency with existing Council policies:

Consistent with the *Seeking Community Views* policy, in particular: *The views of individuals and groups within the community will provide further information valuable to the decision making process*

Views and preferences of persons affected or likely to have an interest:

Enables views of community boards to be suitably considered by the Council. Wider public consultation will take place through the Special Consultative Procedure for each bylaw being reviewed, amended or revoked.

Other relevant matters:

Time delays within this option are considered neither efficient nor effective.