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**REPORT 2**  
*(1215/52/IM)*

## **CONSOLIDATED BYLAW REVIEW - OPEN SPACES**

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### **1. Purpose of Report**

To revoke parts of the consolidated bylaw and amend the Public Places Bylaw and to recommend that the Committee refer the attached Statement of Proposal to Council to initiate the special consultative procedure.

### **2. Recommendations**

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that the Council is required to review its bylaws pursuant to section 158 and 293 of the Local Government Act 2002.*
3. *Note that the Statement of Proposal includes a proposal to revoke the following parts of the Wellington Consolidated Bylaw 1991:*
  - *Cemetery and Cremation (Part 5),*
  - *Harbour, Beaches and Foreshore (Part 11)*
  - *Commercial Sex Premises (Part 17A)*
  - *Smoking Ban in Cable Car Lane (Part 17B)*
  - *Reserves and Swimming Pools (Part 16)**and to amend the Public Places Bylaw (Part 17, Consolidated Bylaw).*
4. *Authorise the Chief Executive, the Environment Portfolio Leader, the Social Portfolio Leader and the Economic Development and Recreation Portfolio Leader to make minor editorial changes to the Statement of Proposal, if required as a result of SPC amendments.*
5. *Recommend to the Council that it:*
  - a) *Note that the Council is required to review the bylaws pursuant to section 158 and 293 of the Local Government Act 2002.*
  - b) *Agree that the proposal proceed through the special consultative procedure, as required by sections 86, 156, 158, and 160 of the Local Government Act 2002.*

- c) *Agree that the proposed amendment to the Public Places Bylaw (Part 17, Consolidated Bylaw) does not give rise to any implications under the New Zealand Bill of Rights Act 1990.*
- d) *Agree that the proposed amendment to the Public Places Bylaw (Part 17, Wellington Consolidated Bylaw) is the most appropriate way of addressing the perceived problems of managing the risk of potential conflict between users of public places, protecting the public from nuisance, protecting, promoting and maintaining public health and safety, and minimising the potential for offensive behaviour in public places*
- e) *Agree that the proposed amendment to the Public Places Bylaw is the most appropriate form of bylaw as it provides the Council with the ability to exercise effective control public land*
- f) *Note that consultation will take place from 1 April 2008.*

### **3. Background**

The Council controls various types of public land and is empowered by the Local Government Act 2002 and the Reserves Act 1977, amongst others, to make bylaws to manage public places. In this regard the following parts of the consolidated bylaw have been reviewed:

- Cemetery and Cremation (Part 5),
- Harbour, Beaches and Foreshore (Part 11),
- Commercial Sex Premises (Part 17A)
- Smoking Ban in Cable Car Lane (Part 17B)
- Reserves and Swimming Pools (Part 16),

These parts have been reviewed at this time so that they can be updated, and to enable the Council to continue to exercise the necessary regulatory tools in the future. If the bylaw parts are not reviewed they will expire on 1 July 2008.<sup>1</sup>

The review found that substantial sections of the current bylaws were obsolete or duplicated provisions in other bylaw parts or in statutes or were inappropriate for reasons of form.

The proposed bylaw provides the Council with the necessary tools to continue to exercise traditional controls over public places and amalgamates the previously separate bylaw parts to eliminate the repetition that was found.

The proposed bylaw will show the rules for public places in one place which will make it easier for people to locate the information.

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<sup>1</sup> S293 (3) Local Government Act 2002 (LGA)

## **4. Discussion**

Revoking, reviewing and making bylaws is a statutorily prescribed process that includes following the Special Consultative Procedure. Community views will be sought from the consultation process as shown in section five of the Statement of Proposal, attached as appendix A.

### **4.1 Options**

#### *Status quo – multiple parts*

Maintaining the controls that are lawfully available to the Council is considered desirable, however having separate bylaws gives rise to duplication, confusion and inconsistencies in managing problems in public places. Some changes are necessary because the form of the open spaces bylaws is no longer considered appropriate and, in some cases, the Council no longer has jurisdiction to make a bylaw.

#### *Amend the Public Places Bylaw (recommended)*

The proposed bylaw draws together the various controls that Council requires to continue to effectively manage the lands under its control. It also avoids the disadvantages outlined in the option above.

#### *Educational programmes (no bylaw)*

The bylaws could be allowed to lapse. The Council would rely on voluntary compliance to publications, notices and public education messages to manage the problems listed above, instead of a bylaw. This option is not considered appropriate because the Council would lack recourse to enforcement powers.

## **5. Conclusion**

The Council's bylaws relating to Cemetery and Cremation (Part 5), Harbour, Beaches and Foreshore (Part 11), Commercial Sex Premises (Part 17A), Smoking Ban (Part 17B), Reserves and Swimming Pools (Part 16), are being reviewed as a requirement of the Local Government Act 2002. Incorporating the provisions that are still needed into the Public Places Bylaw, by way of amendment, is proposed.

Contact Officer: *Wayne Murphy, Senior Policy Advisor*

## **Supporting Information**

### **1) Strategic Fit / Strategic Outcome**

*The proposed bylaw supports Council's outcomes under the Environment and Social and Recreation strategies for safe and accessible public places.*

### **2) LTCCP/Annual Plan reference and long term financial impact**

*The bylaws are monitored and enforced by the Transport, Parks and Gardens and Building Consents and Licensing Business Units. No long term financial impacts have been identified.*

### **3) Treaty of Waitangi considerations**

*No Treaty of Waitangi issues have been identified through the review process.*

### **4) Decision-Making**

*The report and Statement of Proposal outlines the various options that were considered in the review.*

*The proposed bylaw, if adopted, is not expected to generate change to any material extent in terms of the criteria in the Significance Policy.*

### **5) Consultation**

*Consultation will occur through following the Special Consultative Procedure.*

### **6) Legal Implications**

*Council's lawyers have been consulted during the development of this report.*

### **7) Consistency with existing policy**

*The proposed bylaw retains the intent of the existing bylaws and has been drafted to meet Council's responsibilities as the controller of public places.*