

1 SMOKE FREE PREMISES – WAITAKERE CENTRAL CIVIC CENTRE

PURPOSE OF THE REPORT

The purpose of this report is in response to the request by the Projects Special Committee that “*Consideration be given to making the new Civic Centre precinct and Waitakere Central building smoke free and that a report be brought back to the Projects Special Committee on the issue.*”

This report details the legislative position and considers this in the context of the new development to enable the Projects Special Committee to reach an informed position on the issue.

ISSUES

The Smoke-free Environments Act 1990 requires that all internal workplaces (with some limited exceptions) must be 100 percent smoke free. Employers are required to take “all reasonably practicable steps” to ensure that no one smokes in an internal area. Reasonably practicable steps include:

- Display of smoke free signs in the workplace;
- Reference to the smoke free policy in the workplace agreement and recruitment policies;
- Notifying service contractors of the smoke free policy;
- Provision of training for managers and supervisors in the handling of breaches of the policy.

The Smoke-free legislation does not apply to outdoor areas, other than grounds of schools and early childhood centres.

As an employer Council already meets the requirements of the legislation and the current Council policy will only require minor modification to make it applicable to Waitakere Central. In the current accommodation (Civic Centre and Moselle Building) Council has made limited provision for smokers in external areas. Similar provision would need to be made in Waitakere Central, unless the decision is made to implement a total smoking ban within the Civic Centre precinct.

The Legal Services Manager has considered the question of a total smoking ban. The advice is that while a total smoking ban might earn a measure of public support, such a ban would be difficult to enforce.

The Legal Services Manager takes the view that the Civic Centre precinct while technically a private property is a little different to most property in private ownership. While the Council can theoretically resort to the law of trespass to enforce a smoking ban within the Civic Centre precinct it would be more than a little illogical to attempt to enforce a total ban there and not elsewhere in relation to other Council owned public places within the City. To make such ban effective in relation to roads and reserves it would be necessary to resort to a bylaw, but the bylaw making powers under the Reserves Act and the Local Government Act 2002 probably not wide enough to justify such action. When the government last reviewed the Smoke Free legislation it steered clear of legislating against smoking in public places. That is the clearest possible signal that Parliament does not consider such legislation appropriate and that there are therefore potential Bill of Rights issues arising if an attempt is made to achieve the same outcome through the use of a bylaw.

Council staff have ascertained that Waitemata District Health Board made all its sites smoke free from 22 February 2005. Staff, patients and visitors may not smoke in a public area outside on any site owned or leased by WDHB. People must leave the site if they wish to smoke. Employees are encouraged to inform patients and visitors who smoke on site, that the whole site is smoke free and smokers must go off site to smoke. Staff who breach the policy may be subject of normal performance management and disciplinary

processes. The Legal Services Manager comments that the legal basis for this policy is not clear. To the extent that it applies to visitors to the site and patients, it appears to rely on the Trespass Act. However, it is not clear how a policy of this type could be used as a basis for disciplinary action against a staff member when the smoke free legislation makes specific provision for smoking in the work place. It appears that observance of the policy by staff, particularly those staff that smoke and have been employed by the Board for a number of years, may rely upon the voluntary co-operation of those staff. Council staff has no information on the level of consultation undertaken by the Board with staff, and whether in fact the staff supported the adoption of this policy. Before implementing a similar ban Council would need to consult with staff in relation to the proposal. In the absence of staff agreement to implement a ban there must be a possibility of personal grievance claims.

RESOURCES

If a decision to have the Civic Centre precinct smoke free then resources will need to be allocated to provide appropriate information and signage for the area to actively encourage compliance by the public. In an introductory phase it may also be appropriate to allocate resources to providing some "policing" of the policy within the Civic Centre precinct.

As noted above there may be resources issues arising out of action from staff opposed to the ban. This could perhaps be addressed by providing additional support/advice to staff who smoke, under the banner of Heartbeat Challenge, ahead of the move to Waitakere Central.

CONCLUSION

In that background, there is no officer support for a complete smoking ban within the Civic Centre precinct. Officers think that the status quo should be preserved, with areas designated as smoking areas for those staff that cannot be encouraged by other means to quit.

If, however, Elected Members have a different view, some thought will need to be given as to the process to be followed to implement a smoking ban and the area around the Civic Centre to which it will apply. It is suggested that the ban should not apply to "roadways" and the public car parking areas within the site because of difficulties purporting to control the activities of members of the public within private motor vehicles.

RECOMMENDATION

That the Smoke Free Premises – Waitakere Central Civic Centre report be received.

Report prepared by: Jeff Dougal, Manager Human Resources and Organisational Development.

