

WAITAKERE CITY COUNCIL

AGENDA FOR A MEETING OF THE COUNCIL TO BE HELD
 IN THE COUNCIL CHAMBER AT WAITAKERE CENTRAL,
 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE,
 ON WEDNESDAY, 16 JUNE 2010, COMMENCING AT 9.30 AM

4. BYLAW REPORT - REVIEW AND RECOMMENDATION ON BYLAWS

GLOSSARY

Local Government Act 2002	(LGA 02)
Local Government Act 1974	(LGA 74)
New Zealand Bill of Rights Act 1990	(BORA)
Special consultative procedure	(SCP)
Local Government (Tamaki Makaurau Reorganisation) Act 2009	(the 2009 Act)
Local Government (Auckland Law Reform) Bill	(the Third Bill)

EXECUTIVE SUMMARY

The purpose of this report is to provide an update on the bylaw review programme under the Local Government Act 2002 ("LGA 02") and recommend a scheduled work programme to ensure that Waitakere City has bylaws that are current and relevant and that will transition to the new Auckland Council.

Council endorsed a timetable for the review of all Council bylaws in December 2004 (*resolution 2337/2004*), and in February 2005, the Planning and Regulatory Committee similarly approved the scheduled work programme for the bylaw review (*resolution 136/2005*). This is the conclusion of that programme.

Pursuant to sections 158 and 159 of the LGA 02, all bylaws made under the Local Government Act 1974 ("LGA 74") or the LGA 02 must be periodically reviewed. Those bylaws made under the LGA 74 were required to be reviewed by 1 July 2008, and bylaws made under the LGA 02 after 1 July 2003 were required to be reviewed no later than 5 years after the bylaw was made. Further reviews are required every 10 years. Where no review has taken place, that bylaw will be automatically revoked two years after the date on which the bylaw should have been reviewed (section 160A LGA 02). The majority Waitakere City Council bylaws were in this category as the reviews has commenced in 2004.

The Local Government (Auckland Law Reform) Bill ("the Third Bill") (now enacted), provides for bylaws that are in force on 31 October 2010 to carry over to the Auckland Council. The new Council must then review these bylaws by 31 October 2015.

It is recommended that the Council resolve that certain bylaws be left to expire or be specifically revoked (as appropriate) and the proposed six (6) new bylaws replace those bylaws discussed in this report.

RECOMMENDATIONS:

It is recommended that the Council:

1. **Receive** the Bylaw Report – Review and Recommendation on Bylaws

2. **Agree** in respect of the existing bylaws, That the following bylaws be left to expire:

- Bylaw No 1 - Upper Harbour Bridge (1990)
- Bylaw No 4 - General (Adoption of New Zealand Standard 9201, No.4)
- Bylaw No 4 Chapter 07 - Water Supply (1990)
- Bylaw No 4 Chapter 09 – Scaffolding and Deposit of Building Materials (1990)
- Bylaw No 4 Chapter 11 - Nuisances (1990)
- Bylaw No 6 - Fire Prevention (1990)
- Bylaw No 19 - Septic Tanks and Disposal Systems (1990)
- Bylaw No 20 - Amusement Galleries (1990)
- Bylaw No 25 - Radio Frequency Radiation (1991)
- Bylaw No 27 - Spray Paint Cans (1995)
- Building Bylaw (1990)

3. **Agree** that the following bylaws be revoked and replaced with new bylaws, which are the most appropriate form of regulating use of public places (including cemeteries and Urupa), hygiene and sanitation in commercial premises offering services to the public, use of roads and parking, control of noise from intruder alarms. In a new general administration bylaw is necessary to ensure consistent interpretation of bylaws:

BYLAW TO BE REVOKED	PROPOSED NEW BYLAW
<ul style="list-style-type: none"> • Bylaw No 4 Chapter 02 – Public Places (1990) • Bylaw No 4 Chapter 04 - Mobile or Travelling Shops and Hawkers (1990) • Bylaw No 4 Chapter 17 – Parks and Reserves (1990) • Bylaw No 7 - Traffic (1991) • Bylaw No 8 - Barbed Wire Fences (1990) • Bylaw No 9 - Beaches and Waters (1990) • Bylaw No 18 - Cemeteries and Crematoria (1990) • Bylaw No 22 - Use of Public Roads (1990) 	[Draft] Public Places Bylaw 2010
<ul style="list-style-type: none"> • Bylaw No 31 - Hygienic Operation of Massage Facilities (1999) • Bylaw No 32 - Health Protection - Skin Piercing (2002) 	[Draft] Sanitation and Hygiene in Commercial Premises Bylaw 2010
<ul style="list-style-type: none"> • Bylaw No 2 - Waitakere Scenic Drive (1990) • Bylaw No 7 - Traffic (1991) 	[Draft] Use of Roads and Parking Bylaw 2010
<ul style="list-style-type: none"> • Bylaw No 4 Chapter 20 – Control of Noise (1990) 	[Draft] Control of Intruder Alarm Systems 2010
<ul style="list-style-type: none"> • Bylaw No 28 - Urupa (Maori Burial Site) (1996) 	[Draft] Urupa (Maori Burial Site) 2010
<ul style="list-style-type: none"> • Bylaw No 4 Chapter 01 - Introductory (1990) 	[Draft] General Administration Bylaw 2010

4. **Agree** that officers to commence the special consultative procedure under section 83 of the LGA02 in respect of the following proposed bylaws:
 - [Draft] Public Places Bylaw 2010
 - [Draft] Sanitation and Hygiene in Commercial Premises Bylaw 2010
 - [Draft] Use of Roads and Parking Bylaw 2010
 - [Draft] Control of Intruder Alarm Systems 2010
 - [Draft] Urupa (Maori Burial Site) 2010
 - [Draft] General Administration Bylaw 2010
5. **Note** that the draft bylaws have no implications which are inconsistent with the New Zealand Bill of Rights Act 1990;
6. **Approve** the statement of proposal and summary of information attached at pages A1 to A20 for use as part of the Special Consultative Procedure required by section 83 of the Local Government Act 2002, subject to an amendment to include the rationale for the bylaw review programme and a note that there are no substantive changes to the bylaws.
7. **Agree** that officers to implement the Special Consultative Procedure as set out on Section 83 of the LGA02;
8. **Agree** that the Planning and Regulatory Committee are to hear any submissions arising from the Special Consultative Procedure on these bylaws;
9. **Agree** that when submissions have been heard council officers will prepare an updated report to be presented to Planning and Regulatory Committee for its consideration along with an updated version of the draft bylaw reflecting the changes suggested as a result of the Special Consultative Procedure.

BACKGROUND

1. As set out in the recommendations, certain bylaws are being recommended to be left to expire. These bylaws are:
 - Bylaw No 1 - Upper Harbour Bridge (1990)
 - Bylaw No 4 - General (Adoption of New Zealand Standard 9201, No.4)
 - Bylaw No 4 Chapter 07 - Water Supply (1990)
 - Bylaw No 4 Chapter 09 – Scaffolding and Deposit of Building Materials (1990)
 - Bylaw No 4 Chapter 11 - Nuisances (1990)
 - Bylaw No 6 - Fire Prevention (1990)
 - Bylaw No 19 - Septic Tanks and Disposal Systems (1990)
 - Bylaw No 20 - Amusement Galleries (1990)
 - Bylaw No 25 - Radio Frequency Radiation (1991)
 - Bylaw No 27 - Spray Paint Cans (1995)¹
 - Building Bylaw (1990)

¹ Now an offence under the Summary Offences Act 1981 to sell spray paint cans to certain persons.

2. The reasons why these bylaws are being recommended for expiration can be summarised as follows:
- (a) Under the LGA02, the Council should only continue bylaws if the bylaw is the most appropriate way of addressing the perceived problem at issue.
 - (b) Since they were made, the passage of time has meant that other regulatory instruments are in place to address the subject of the bylaw.
 - (c) A number of the bylaws have also been consequently revoked by the operation of subsequent legislation or have otherwise become essentially redundant, specifically:
 - The Upper Harbour Bridge Bylaw (1990) – Has been consequently revoked by operation of section 8(1) of the Cities of Takapuna and Waitemata (Upper Harbour Bridge) Empowering Act 1976 once the bridge became part of the State highway and under the control of the New Zealand Transport Agency (from 18 June 1992).
 - Water Supply Bylaw (1990) – matters are now covered by the Health Act 1956 as amended by the Health (Drinking Water) Amendment Act 2007.
 - Scaffolding and Deposit of Building Materials Bylaw (1990) – Matters covered under this bylaw are covered by the Waitakere City Council Waste Bylaw (2005) and the Building Act 2004, and Building Regulations 1992: Building Code (clauses F5.2 and F5.3).
 - Nuisances Bylaw (1990) – these matters are now covered by the Health Act 1956, Resource Management Act 1991, Local Government Act 2002, Building Act 2004, Litter Act 1979, Waitakere City Council Waste Bylaw (2005) and the (ARC) Proposed Auckland Regional Plan: Air, Land and Water.
 - Fire Prevention Bylaw (1990) – Matters covered under this bylaw are now covered by the (ARC) Proposed Auckland Regional Plan: Air, Land and Water (Part 2); Health Act 1956 (smoke nuisances), Resource Management Act 1991, Summary Offences Act 1981 (lighting of fires), Forest and Rural Fires Act 1977 and associated regulations, Reserves Act 1977, Hazardous Substances and New Organisms Act 1996 and its associated regulations, and National Environmental Standards (woodburners and air quality).
 - The Restriction on the Use of Jaw Traps Bylaw (1990) – Has been revoked by section 198 of the Animal Welfare Act 1999 (from 31 December 2007).
 - Septic Tanks and Disposal Systems Bylaw (1990) – Matters covered under this bylaw are covered by the (ARC) Proposed Auckland Regional Plan: Air, Land and Water (Rules 5.5.20 to 5.5.28) and Technical Publication 58 (“TP58”), the LGA 02 (Part 7), Building Act 2004 (and Regulations and Building Code), the Resource Management Act 1991, and the Health Act 1956.
 - Amusement Galleries Bylaw (1990) – Matters covered under this bylaw are
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covered by the Health Act 1956, Summary Offences Act 1981, and Building Act 2004.

- Radio Frequency Radiation Bylaw (1991) – Matters covered under this bylaw are now covered by the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008, Telecommunications Act 2001, National Standard (NZS2772.1:1999), National Environmental Standard for Telecommunications Facilities (from 9 October 2008), and National Guidelines for Managing the Effects of Radiofrequency Transmitters (Ministry for the Environment and Ministry of Health, 2000).
 - The Spray Paint Cans Bylaw (1995) – Matters covered under this bylaw are regulated the Summary Offences Act 1981, sections 14A and 14B (inserted by the Summary Offences (Tagging and Graffiti Vandalism) Amendment Act 2008).
 - Building Bylaw (1990) – matters are covered by the Building Act 2004 (and Regulations and Building Code), Health Act 1956, Housing Improvement Regulations 1947, Resource Management Act 1991, and the Waitakere City Council Operative District Plan.
3. A full assessment of the content of each bylaw being left to expire has been set out in Annexure 2 attached at pages A21 to A31.
4. In respect of bylaws being recommended to be replaced by a new bylaw, a summary of reasons is as follows:

(a) Public Places

- (i) The bylaws that currently regulate and manage public places in Waitakere date from 1990, and were largely based on the New Zealand Model General Bylaw NZS 9201 of 1972, namely:
- Bylaw No 4 Chapter 02 – Public Places (1990)
 - Bylaw No 4 Chapter 04 - Mobile or Travelling Shops and Hawkers (1990)
 - Bylaw No 4 Chapter 17 – Parks and Reserves (1990)
 - Bylaw No 7 - Traffic (1991)
 - Bylaw No 8 - Barbed Wire Fences (1990)
 - Bylaw No 9 - Beaches and Waters (1990)
 - Bylaw No 18 - Cemeteries and Crematoria (1990)
 - Bylaw No 22 - Use of Public Roads (1990)
- (ii) Many of the provisions are outdated and are now regulated by the Resource Management Act 1991 and Waitakere City Operative District Plan, the Building Act 2004 (and Building Regulations 1992: Building Code). The use of public places and public expectations has also changed considerably in the last 20 years.
- (iii) In February 2006, the Planning and Regulatory Committee commenced a review of the Public Places Bylaw 1990:
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Date	Resolution Number	Bylaw	Issue
14 February 2006	141/2006	Public Places (1990)	Public Places – general provisions
6 June 2006	1007/2006	Mobile or Travelling Shops and Hawkers (1990)	Trading in Public Places
12 September 2006	1749/2006	Bylaw No 28 (1986) Urupa (Maori Burial Site)	Māori Burial site in Waikumete Cemetary
12 September 2006	1749/2006	Cemeteries and Crematoria (1990)	Cemeteries and Crematoria
11 December 2007	3961/2007	Traffic (1991)	Parking and Traffic
6 June 2006 10 April 2007 8 May 2007		<ul style="list-style-type: none"> • Parks and Reserves (1990) • Barbed Wire Fences (1990) • Beaches and Waters (1990) • Use of Public Roads (1990) 	<ul style="list-style-type: none"> • Parks and Reserves • Barbed Wire Fences • Beaches and Waters • Use of Public Roads

(iv) The review process highlighted the need to make a new, comprehensive, Public Places Bylaw to effectively manage and regulate public places in Waitakere now and in the future. Since then the proposal to amalgamate Auckland into one district has also been enacted by Parliament. As such officers recommend that to ensure continuity in management and enforcement of public places within what was Waitakere city after 1 November 2010 occurs, we recommend an amendment form of bylaw. This will also ensure that the regulation of public places in the current boundaries of Waitakere City is consistent with regulation of public places in other districts within Auckland.

(b) Sanitation and Hygiene in Commercial Premises

- i. Waitakere has two bylaws that set sanitation and hygiene standards within commercial premises namely:
 - Bylaw No 31 - Hygienic Operation of Massage Facilities (1999)
 - Bylaw No 32 - Health Protection - Skin Piercing (2002)
- ii. A review highlighted the fact that these bylaws are outdated and narrow in their application. Matters covered in the Massage Facilities Bylaw are now regulated in part by the Prostitution Reform Act 2003 and the Health Act 1956. The Skin Piercing Bylaw similarly required updating given the passage of time and change in practices since it was adopted..
- iii. The review found that the Massage Facilities Bylaw and the Skin Piercing

Bylaw should continue in some form as matters of hygiene ought to be regulated to protect the health of members of the public using those services. It is recommended that these hygiene requirements are incorporated into a one single bylaw. A new general, comprehensive bylaw would be aimed at protecting the public from infection or contamination by setting sanitation and hygiene standards and requiring certain commercial premises and practices to be licensed. The premises include those offering skin piercing, beauty therapy, massage, and health and fitness services.

(c) Use of Roads and Parking

- (i) Two of bylaws regulate and manage use of roads and parking in Waitakere, including:
 - Bylaw No 2 - Waitakere Scenic Drive (1990)
 - Bylaw No 7 - Traffic (1991)
- (ii) A review of the Traffic Bylaw found that some provisions of the 1991 bylaw should continue, together with the particular provisions of the Waitakere Scenic Drive Bylaw (prohibiting heavy vehicles between Woodlands Park Road and Shaw Road on the Scenic Drive), and that the relevant provisions should be incorporated into one single bylaw.

(d) Control of Intruder Alarm Systems

- i. Council adopted a general noise bylaw in 1990, namely Bylaw No 4, Chapter 20 – Control of Noise. The matters addressed in the 1990 bylaw, namely control of unreasonable noise, are now dealt with by the Waitakere City Council's Operative District Plan and the Resource Management Act 1991. However, the noise of activated intruder alarms continues to be a problem that is best dealt with by a bylaw as it allows an alarm to be cut off if there is no automatic shut off system.
- ii. A new bylaw on intruder alarms would require new and upgraded alarm systems to have an automatic cut-out device and to be maintained.

(e) Urupa (Maori Burial Site)

- (i) In 1996, Council adopted a bylaw to manage and regulate the Urupa at Waikumete Cemetery, namely Bylaw No 28 (1986) Urupa (Maori Burial Site). This bylaw mirrors the general Waitakere City Council Cemeteries Bylaw of 1990, but also contains unique provisions relating to the Urupa and the role of the Urupa Management Trustees (Komiti).
 - (ii) In February 2006, the review of the 1996 Urupa Bylaw commenced in conjunction with a review of the Cemeteries and Crematoria Bylaw (1990). On 12 September 2006, it was resolved (1749/2006) that a bylaw was the most appropriate way of addressing the perceived problem. Council officers were to prepare a new draft bylaw, Statement of Proposal and Summary of Information for consideration and discussion. This report includes a bylaw for the Urupa at Waikumete.
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(f) General Administration

- (i) Bylaw No 4, Chapter 01 - Introductory (1990) was replicated from Model General Bylaw NZS 9201. While this dated from 1972 and dealt with “chapters” in a general bylaw, there is still a need to have a general administration bylaw to govern the machinery provisions, offences and penalties as well as common words being defined. This would provide assistance with the interpretation and general provisions for Waitakere City Council Bylaws.

DECISION MAKING**New Bylaws Recommended**

5. As a result of the review undertaken, it is recommended that the Council adopt six new bylaws as set out earlier, which will replace a number of bylaws.
6. These six bylaws are generic in nature and are required to address:
 - (a) public places and regulate and control a range of activities in parks, reserves, beaches, cemeteries and crematoria, and other places open to members of the public (whether or not there is charge for admission);
 - (b) sanitation and hygiene standards in certain commercial premises (skin piercing, beauty therapy, massage, health and fitness services) to protect the public from infection or contamination;
 - (c) management and regulation of parking and traffic in Waitakere;
 - (d) noise problems associated with intruder alarms by requiring control mechanisms to be fitted to new or upgraded alarms to prevent them from sounding for more than 15 minutes, and for Council to recover its costs where disconnection of offending alarms is necessary;
 - (e) health and safety issues associated with Urupa at Waikumete Cemetery and enabling the exercise of guardianship or kaitiakitanga of the Urupa by the Urupa Komiti;
 - (f) interpretation and administration issues by providing general provisions to assist with the administration of Council’s proposed bylaws.
7. An options analysis has been undertaken to determine whether a bylaw is the most appropriate instrument to regulate the matter of concern.

Issues

8. Local authorities are empowered by various statutes, particularly the Bylaws Act 1910, the Local Government Act 2002 and the Health Act 1956, to make bylaws for one or more of the following reasons (s145 LGA 02):
 - (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.
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9. Specific bylaw-making powers have been given to territorial authorities to manage and regulate activities and protect land, structures or infrastructure from damage or misuse (s146 LGA 02).
 10. The LGA 74 contained a comprehensive list of the range of activities and places that could be regulated and managed by bylaws. However, the majority of purposes listed in section 684 of the 1974 Act have since been repealed. In addition, the LGA 02 now requires that before making or reviewing any bylaw, Council must first determine whether:
 - (a) A bylaw is the most appropriate way of addressing the perceived problem; including (s155(1) LGA 02):
 - i. the definition of the problem and outcome sought;
 - ii. the identification and assessment of options to achieve the outcome sought;
 - iii. the consideration of the views and preferences of affected or interested people;
 - iv. the identification and explanation of any inconsistency with any Council policy or plan;
 - v. providing Maori with opportunity to contribute; and
 - vi. promoting compliance with principles of consultation;
 - (b) The proposed bylaw is the most appropriate form of bylaw (s155(2) LGA 02);
 - (c) The proposed bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 ("BORA"), or is inconsistent with the BORA, in that, bylaws do not unjustifiably interfere with the rights of the public to do what are otherwise legal activities (s 155 LGA 02).
 11. In this process, Council must comply with the general principles of decision-making. Section 77 of the LGA 02 requires local authorities in the course of the decision-making process to seek to identify all reasonably practicable options and to assess those options by considering the benefits and costs, community outcome, statutory responsibilities and any other relevant matters.
 12. The review process identified a number of issues where a bylaw may not meet the criteria in the LGA 02, as a bylaw was not the most appropriate way of addressing perceived problems in those settings, namely:
 - the use of the Upper Harbour Bridge,
 - safe and wholesome water supplies;
 - scaffolding and the deposit of building materials;
 - nuisances;
 - the setting of fires in the open air;
 - the setting of jaw traps;
 - the installation and maintenance of septic tanks and disposal systems;
 - the operation of amusement galleries;
 - radio frequency radiation;
 - tagging and graffiti vandalism by the use of spray paint cans;
 - the placing and occupation of caravans and other temporary accommodation outside of camping grounds; and
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- the placing and occupation of caravans and other temporary accommodation outside of camping grounds.
13. However, a substantial number of issues were identified to justify the making of new bylaws, as there appears to be an increasing need for such bylaws in order to regulate and control a range of activities and issues relating to:
- public places;
 - sanitation and hygiene in commercial premises;
 - traffic;
 - intruder alarm systems;
 - Urupa (Maori burial site); and
 - general administration of bylaws.

Options Identified

14. There are five options open to Council with regard to bylaws:

- Option 1 - Make a new bylaw
- Option 2 - Amend an existing bylaw
- Option 3 - Revoke an existing bylaw by letting it expire
- Option 4 - Revoke an existing bylaw and replace with new bylaw
- Option 5 - Continue an existing bylaw without amendment.

Assessment of Options:

15. A full assessment of each bylaw recommended for revocation and the new proposed replacement bylaws is set out as Annexure 3 attached at pages A32 to A28. Three options (Options 1, 3 and 4) were considered in detail:
- Option 1 - Make new bylaws;
 - Option 3 - Revoke existing bylaws by letting them expire on 30 June 2010 and rely on other methods to manage and regulate places and issues;
 - Option 4 - Revoke an existing bylaw and replace with a new bylaw.

Option 1: Make new bylaws

16. New bylaws could reflect current concerns and protect the public from nuisance and other harms. A cost/benefit analysis of Option 1 (present and future costs/benefits to social, economic, environmental and cultural well-being) highlighted the fact that, while there are costs involved in making new bylaws (particularly related to the requirement for further processes including a SCP), the alternatives to a bylaw are insufficient to protect the public and manage public places and issues within Waitakere with regard to Public Places, Sanitation and Hygiene in Commercial Premises, Use of Roads and Parking, Control of Intruder Alarm Systems, Urupa (Maori Burial Site), and General Administration.
17. New bylaws that consider current use and practice might enable associated problems to be addressed, particularly as it is envisaged that provisions in certain other Council bylaws that have previously controlled such activities and issues will be incorporated into these new bylaws. However, the assessment also showed that it was no longer appropriate to have a bylaw for particular issues and places, namely:
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- the use of the Upper Harbour Bridge,
- safe and wholesome water supplies;
- scaffolding and the deposit of building materials;
- nuisances;
- the setting of fires in the open air;
- the setting of jaw traps;
- the installation and maintenance of septic tanks and disposal systems;
- the operation of amusement galleries;
- radio frequency radiation;
- tagging and graffiti vandalism by the use of spray paint cans;
- the placing and occupation of caravans and other temporary accommodation outside of camping grounds; and
- the placing and occupation of caravans and other temporary accommodation outside of camping grounds.

Option 3: Revoke existing bylaws by letting them expire on 30 June 2010 and rely on other methods to manage and regulate places and issues

18. With this option, Council would not seek to replace the current bylaws that expire on 30 June 2010, but would instead rely on other statutory and non-statutory methods of controlling the harm previously addressed by the bylaw. A cost/benefit analysis of Option 3 (present and future costs/benefits to social, economic, environmental and cultural well-being) highlighted the fact that, there would be no benefit in continuing with certain, outdated bylaws, namely:

- Bylaw No 1 - Upper Harbour Bridge (1990)
- Bylaw No 4 - General (Adoption of New Zealand Standard 9201, No.4)
- Bylaw No 4 Chapter 07 - Water Supply (1990)
- Bylaw No 4 Chapter 09 – Scaffolding and Deposit of Building Materials (1990)
- Bylaw No 4 Chapter 11 - Nuisances (1990)
- Bylaw No 6 - Fire Prevention (1990)
- Bylaw No 19 - Septic Tanks and Disposal Systems (1990)
- Bylaw No 20 - Amusement Galleries (1990)
- Bylaw No 25 - Radio Frequency Radiation (1991)
- Bylaw No 27 - Spray Paint Cans (1995)²
- Building Bylaw (1990)

19. While there may be cost savings in simply letting bylaws expire, as compared to making a new bylaw (which would require further processes, including a SCP), there still appears to be a need for specific bylaws on: Public Places, Sanitation and Hygiene in Commercial Premises, the Use of Roads and Parking, Control of Intruder Alarm Systems, Urupa (Maori Burial Site), and General Administration.

Option 4 – Revoke an existing bylaw and replace with a new bylaw

20. Option 4 envisages that outdated bylaws or those that are narrow in scope would be formally revoked, but relevant provisions retained and incorporated into new, more relevant bylaws. A cost/benefit analysis of Option 4 (present and future costs/benefits to social, economic, environmental and cultural well-being) highlighted the

² Now an offence under the Summary Offences Act 1981 to sell spray paint cans to certain persons.

fact that, while there may be costs involved with revoking and replacing certain bylaws as compared to simply letting the bylaws expire on 30 June 2010, there still appears to be a need for specific provisions and specific bylaws on public places, certain commercial premises, parking and the use of roads, intruder alarms, the Urupa at Waikumete Cemetery, and interpretation and administration of Waitakere City Council Bylaws. Relevant provisions from existing bylaws could be incorporated into the new bylaws, and those particular bylaws then formally revoked, namely:

- Bylaw No 4 Chapter 02 – Public Places (1990)
- Bylaw No 4 Chapter 04 - Mobile or Travelling Shops and Hawkers (1990)
- Bylaw No 4 Chapter 17 – Parks and Reserves (1990)
- Bylaw No 7 - Traffic (1991)
- Bylaw No 8 - Barbed Wire Fences (1990)
- Bylaw No 9 - Beaches and Waters (1990)
- Bylaw No 18 - Cemeteries and Crematoria (1990)
- Bylaw No 22 - Use of Public Roads (1990)
- Bylaw No 31 - Hygienic Operation of Massage Facilities (1999)
- Bylaw No 32 - Health Protection - Skin Piercing (2002)
- Bylaw No 2 - Waitakere Scenic Drive (1990)
- Bylaw No 7 - Traffic (1991)
- Bylaw No 28 - Urupa (Maori Burial Site) (1996)
- Bylaw No 4 Chapter 01 - Introductory (1990).

Preferred Options

21. Three options (Option 1, 3 and 4) are preferred, and the approach set out below is consistent with the practice followed by most territorial authorities:

(a) Option 1 – new bylaws should be made on:

- public places;
- sanitation and hygiene in commercial premises;
- the use of roads and parking;
- the control of intruder alarm systems;
- Urupa (Maori burial site); and
- general administration of bylaws.

(b) Option 3 – outdated bylaws should be revoked by letting them expire on 30 June 2010:

- Bylaw No 1 - Upper Harbour Bridge (1990)
 - Bylaw No 4 - General (Adoption of New Zealand Standard 9201, No.4)
 - Bylaw No 4 Chapter 07 - Water Supply (1990)
 - Bylaw No 4 Chapter 09 – Scaffolding and Deposit of Building Materials (1990)
 - Bylaw No 4 Chapter 11 - Nuisances (1990)
 - Bylaw No 6 - Fire Prevention (1990)
 - Bylaw No 19 - Septic Tanks and Disposal Systems (1990)
 - Bylaw No 20 - Amusement Galleries (1990)
 - Bylaw No 25 - Radio Frequency Radiation (1991)
 - Bylaw No 27 - Spray Paint Cans (1995)
 - Building Bylaw (1990).
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(c) Option 4 – 14 bylaws should be formally revoked and replaced by new bylaws:

- Bylaw No 4 Chapter 02 – Public Places (1990)
- Bylaw No 4 Chapter 04 - Mobile or Travelling Shops and Hawkers (1990)
- Bylaw No 4 Chapter 17 – Parks and Reserves (1990)
- Bylaw No 7 - Traffic (1991)
- Bylaw No 8 - Barbed Wire Fences (1990)
- Bylaw No 9 - Beaches and Waters (1990)
- Bylaw No 18 - Cemeteries and Crematoria (1990)
- Bylaw No 22 - Use of Public Roads (1990)
- Bylaw No 31 - Hygienic Operation of Massage Facilities (1999)
- Bylaw No 32 - Health Protection - Skin Piercing (2002)
- Bylaw No 2 - Waitakere Scenic Drive (1990)
- Bylaw No 7 - Traffic (1991)
- Bylaw No 28 - Urupa (Maori Burial Site) (1996)
- Bylaw No 4 Chapter 01 - Introductory (1990).

Draft bylaws

22. The followed draft bylaws are attached for the Council's consideration as the most appropriate form of bylaw. As noted earlier a full options analysis is attached at pages A32 to A48:

- Public Places (attached at pages A49 to A36)
- Sanitation and Hygiene in Commercial Premises (attached at pages A67 to A84)
- Control of Intruder Alarm Systems (attached at pages A85 to A87)
- Urupa (Maori Burial Site) (attached at pages A88 to A96)
- Use of Roads and Parking (attached at pages A97 to A104)
- General Administration (attached at pages A105 to A111)

Special Consultative Procedure

23. If Council determines to direct Council officers to undertake the special consultative procedure (SCP) under s 83 of the LGA 02 in respect of the six draft bylaws, because it considers that:

- a bylaw is the most appropriate way of addressing the problem of:
 - (a) regulating and controlling public places,
 - (b) protecting the public from infection or contamination by setting sanitation and hygiene standards and requiring certain commercial premises and practices to be licensed,
 - (c) managing and regulating parking and the use of roads,
 - (d) controlling noise problems associated with intruder alarms,
 - (e) managing and exercising guardianship (kaitiakitanga) of the Urupa at Waikumete Cemetery, and
 - (f) interpreting and administrating Waitakere City Council bylaws;
 - the six (6) draft bylaws attached to this report are the most appropriate form of bylaw; and
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- there will be no implications or inconsistencies with the New Zealand Bill of Rights Act 1990 in the recommended option of making these six (6) new bylaws;
24. To do this, the Council is required to adopt a Statement of Proposal and Summary of Information (attached at pages A1 to A20)) for the bylaws. This will assist the public to understand the key issues and respond to frequently asked questions. An Information Pack and Communication Plan will be developed to assist the public in this respect.
 25. Consultation will be conducted in accordance with the SCP provisions of the LGA 02. Dependent on the Council's approval, it is proposed to have a consultation period from 24 June to 23 July, with public notification via a number of media (particularly print).
 26. Submissions received as a result of the consultation process will be heard by the Planning and Regulatory Committee between 9 and 17 August 2010 on scheduled dates which will be notified to those who seek to make oral submissions. Council officers will then prepare a final report (with amendments as appropriate arising from the consultation process) for the Committee's consideration prior to the final bylaws being taken to the full Council for adoption.

STRATEGIC CONTEXT

27. The six draft bylaws have been developed in light of existing Council strategies and priorities, most of which have been developed in conjunction with the community. Council's Safe City and Sustainable Development priorities provide the strategic context for this work.
28. The making of the six new bylaws and the revocation of outdated bylaws will not affect the achievement of any of the Community Outcomes listed in the Council's Long Term Council Community Plan.

Consideration of Community Views

29. Should Council recommend the adoption of six new bylaws and the revocation of outdated bylaws, there will be an opportunity for the public to make formal submissions on the draft bylaw through the SCP. The assessment of available options acknowledges that the six new bylaws would have benefits for the community and community health and safety.
30. Comments have been sought initially from internal stakeholders only, including Environmental Health Officers, Managers, Transport Assets staff, the Cemetery Manager and the Urupa Komiti. The view of the public would be sought through the SCP if Council resolves that the six draft bylaws are the most appropriate form of bylaw to achieve the Council's objective.

Maori Views

31. Section 82 of the LGA 02 sets out the principles of consultation including enabling Maori to participate in the decision-making process. Should Council determine that the six new bylaw should be made, the views of Maori will be sought. Consultation will be in accordance with Council policies and procedures, and advice will be sought from Council's contracted iwi consultants and the Urupa Komiti.
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Inconsistencies with Existing Policies

32. The making of the new bylaws do not appear to be inconsistent with any other plans or policies of the Council.

New Zealand Bill of Rights 1990

33. The proposed bylaws, by managing and regulating certain activities and certain public places, may impact on some freedoms affirmed in section 18 of the New Zealand Bill of Rights Act 1990 (freedom of movement, freedom of expression, freedom of assembly). However, on balance, the limits being imposed on those freedoms are reasonable and justifiable in the circumstances on the grounds of public health and safety, as allowed for in section 5 of the Act. On this basis, it is concluded that the proposed bylaws do not breach or unnecessarily interfere with rights protected by the BORA.

RESOURCES

34. If Council resolves to allow a Public Places Bylaw to be made, there will be costs associated with the SCP on the draft bylaw. The costs associated with undertaking the consultation can be funded from existing budgets. Implementation of the bylaws will continue to be undertaken by the compliance section of the current council and carry over to the new unit of the Auckland Council in charge with bylaw enforcement.

IMPLEMENTATION ISSUES

35. There will be few implementation issues with new bylaws as bylaws currently exist with similar provisions. Other outdated bylaws that are seldom if ever enforced would be either formally revoked or left to expire.
36. Any implementation issues associated with new bylaws should be minor as they may largely reflect current practice. Given this, there will be little noticeable change, with the public perception being "business as usual".

CONCLUSION

37. If the Council determines that the six new bylaws are the most appropriate mechanism of dealing with the perceived problems connected with particular issues and places in Waitakere, and that the draft bylaws annexed to this report are the most appropriate form of bylaw to achieve the Council's objective, then accordingly, the Council should resolve to adopt the draft bylaws for consultation.

AUCKLAND COUNCIL TRANSITION ISSUES

38. The decision-making proposed in this report is not constrained by section 31 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009, as it does not directly or because of its consequences:
- (a) significantly prejudice the reorganisation,
 - (b) significantly constrain the powers or capacity of the Auckland Council or any subsidiary of the Auckland Council following the reorganisation, or
 - (c) have a significant negative impact on the assets or liabilities that are transferred to the Auckland Council as a result of the reorganisation.
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39. The Third Bill (amending the Local Government (Tamaki Makaurau Reorganisation) Act 2009), proposes that the Auckland Council review those bylaws that are in force on the 31 October 2010 (with some exceptions) before 31 October 2015. Those bylaws that will carry over to Auckland Council are:
- Control of Dogs, No 29 (2004)
 - Control of Liquor in Public Places (2008)
 - Food Safety (2005)
 - Waste (2005)
 - West Harbour Marina, No 13 (1990)
40. It is envisaged that two additional bylaws will also be in force on 31 October 2010 and will transition to the new Auckland Council:
- Speed Limits (at SCP phase)
 - Animals Birds and Bees (to be adopted by Council)
 - As well as the proposed bylaws
41. The Third Bill (now enacted) also requires that an Election Signs Bylaw be made by 1 July 2010 for the October 2010 election. This bylaw would be in place for a limited period, and would not carry over to the new Council, the Council should resolve to adopt the draft bylaws for consultation.

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