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Committee Council  
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## **Bylaw for the Greater Wellington Regional Council forests, parks and reserves**

### **1. Purpose**

To propose a new bylaw for Greater Wellington Regional Council's (GWRC) forests, parks and reserves. The existing Bylaws (Attachment 1) lapsed as from 1 July 2008. Those bylaws were made pursuant to the *Local Government Act 1974* and were adopted by the Wellington Regional Council on 8 August 1994.

The proposed new Forests, Parks and Reserves Bylaw has been prepared under section 149 of the *Local Government Act 2002*.

### **2. Consideration by Committee**

The matters raised in this report were considered by the Parks, Forests and Utilities Committee at its meeting on 23 October 2008. The recommendations contained in this report have been endorsed by the Committee for the Council's consideration and decision.

### **3. Significance of the decision**

Before making any decision on the draft proposed Bylaw, the Council will be following the special consultative procedure as set out in the *Local Government Act 2002*.

### **4. Background**

The Council's previous bylaws for forests, parks and recreation areas were made in 1994 under the *Local Government Act 1974*. In accordance with section 293 of the *Local Government Act 2002* these bylaws were automatically revoked on 1 July 2008.

While Greater Wellington does not have current bylaws covering our Region's forests, parks and recreation areas, GWRC officers still have powers to deal with inappropriate activities on GWRC land, as many of these activities are

also covered to varying extents by other legislation, i.e., *Reserves Act 1977*, *Wellington Regional Water Board Act 1972*. This paper explores whether or not new bylaws are the most appropriate regulatory mechanism.

## **5. Making bylaws**

### **5.1 Procedure to make bylaws**

The *Local Government Act 2002* specifies the process for making bylaws. The Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem. If the Council determines that a bylaw is the most appropriate way, it must determine whether the proposed bylaw is the most appropriate form of bylaw (s. 155(2)(a)). The Council must also determine whether the proposed bylaw gives rise to any implications under the *New Zealand Bill of Rights Act 1990* (s. 155(2)(b)). Each of these tests is examined further below.

## **6. Is the bylaw the most appropriate way?**

### **6.1 The problem**

In order to quantify and clarify the range and extent of the perceived and known issues, a survey was undertaken of the park and forest rangers. The survey ranked the extent of non-compliance with the existing bylaw provisions and whether those issues were of low, medium or high significance. A high level of non-compliance indicated which issues were the most difficult to deal with or which issues arose most frequently.

There were a number of issues and activities that rated “high” on the survey of park rangers. Those issues included:

- Damage to property
- Damage and removal of vegetation and other natural materials
- Inappropriate alcohol use
- Littering
- Illegal use of firearms/weapons
- Use of vehicles in non-designated places

The following activities occurred less frequently and had a “medium” rating but were considered as damaging or destructive as those activities rated as “high”:

- Compliance with speed limits and dangerous driving
- Very intoxicated youth
- Damage or destruction of notice boards and posters
- Illegal erection of structures and/or tents
- Refusing to leave a park or forest after being requested to do so

Those activities rated as having “low” significance were for some individual parks or forests considered to be either of “medium” or even “high”

significance. Because these activities were generally rated “low” across the majority of parks and forests, the cumulative rating was allocated as “low”. However, a “low” rating does not necessarily mean that the issue does not need to be addressed for some parks and forests. Those activities with a low rating included:

- Access into closed parks and forests
- Damage to protected sites (e.g., sites of cultural or historical significance)
- Interference with water supplies or watercourses
- Interference with gates
- Illegal commercial operations
- Signage and advertising
- Non-compliance with prohibited activity status activities (e.g., non-compliance with management plans)
- Out of control dogs
- Undertaking restricted activity status activities (e.g., non-compliance with management plans)
- Trading
- Illegal animal presence
- Aircraft movements into and out of a regional park or forest

## **6.2 Ways of addressing the problem**

Possible approaches to addressing the issues are considered below.

### **6.2.1 Have no bylaws**

The possibility of having no bylaws and using existing legislation for any issues that could arise was explored. The activities currently managed by the bylaws would then either be controlled through individual pieces of legislation governing those lands, e.g., the *Reserves Act 1977*, through management and access plans or through non-regulatory methods such as education, signage and ranger activity.

A “gaps analysis” was completed to identify whether or not each issue was covered by existing legislation governing a park or a forest (e.g., under the *Reserves Act 1977* or the *Health and Safety in Employment Act 1992*). The “gaps analysis” identified that there are inconsistencies in the degree to which various landholdings are covered by existing legislation. While the *Reserves Act 1977* legislation covers many of the bylaws, the *Wellington Regional Water Board Act 1972* covers a smaller number. In the case of freehold land (e.g., Battle Hill Farm Forest Park), the issues identified above are not covered by legislation. The “gaps analysis” also showed that the fines and enforcement proceedings were different according to different legislation. *The Local Government Act 2002* had the highest penalties, set at up to \$20,000 for a breach of a bylaw.

### **6.2.2 Make bylaws for those issues not covered by legislation**

Bylaws could be made under the *Local Government Act 2002* for only those

issues which are not covered by any legislation. This would result in the controls over the forests and parks being spread across the bylaws and a number of different statutes. If GWRC is not the body responsible for the enforcement of the statutory powers, GWRC would be reliant on other enforcement agencies, or the activities would need to be managed in a non-regulatory manner.

Bylaws would need to be created specifically for the freehold land parcels and individual bylaws would be needed to cover issues where there are no specific controls in legislation or in management plans. Examples of these issues are:

- Littering (the *Litter Act 1979* only requires deposit of litter in a public place into a rubbish bin but not for litter to be removed entirely from a park or forest)
- Movement of aircraft (not covered by legislation but is provided for in the management plans).

### 6.2.3 Create a new Bylaw

The benefit of creating a new Bylaw (see Attachment 2) is that all potential and existing activities are managed via one piece of legislation and its supporting enforcement provisions. This is the option that Auckland Regional Council has chosen and on which this draft Bylaw has been modelled. The draft Bylaw has a dual purpose of addressing nuisance and destructive behaviour affecting other park users and/or the park environment. The draft Bylaw also addresses non-compliance with park, forest, and reserve management plans and/or access plans.

In terms of the latter point, the individual management plans for the parks and forests identify bylaws as one of the regulatory implementation methods for the plans objectives, policies and rules. Therefore, there is currently an expectation within the park and forest management plans that the activities will be enforced via bylaws.

In addition, section 149 of the *Local Government Act 2002* gives regional councils specific power to make bylaws in relation to the following land:

- Forests that the regional council owns or controls, whether or not the forest is within the region of the regional council
- Parks, reserves, recreation grounds, or other land that the regional council owns or controls
- Flood protection and flood control works undertaken by, or on behalf of, the regional council
- Water supply works undertaken by, or on behalf of, the regional council.

Officers are of the view that creating a new Bylaw is the most practical and effective method of controlling the significant issues detailed in section 6.1. While a non-confrontational, educative approach is usually taken in the first instance by ranging staff, there are situations where a more authoritative

approach is required. In these instances the rangers cite the bylaws and their ability to deal with the situation is backed by their standing as authorised officers.

A draft Bylaw has been prepared for all parks, forests and reserves managed by GWRC, as well as all flood protection and flood control works.

## **7. Are the proposed bylaws the most appropriate form of bylaws?**

The new draft Bylaw has been developed by reviewing the 1994 Bylaws. The terminology and layout of the 1994 bylaws has been simplified. A new framework divides activities into those that are prohibited, e.g., damage, nuisance behaviours and those that require approval, e.g., erection of tents. The majority of the 1994 Bylaws have been retained but adapted or amended to fit into the new framework. Deleted bylaws are either covered by existing legislation, e.g., the opening and closing of parks, or have been covered elsewhere in the new Bylaw.

It is not necessary to specifically exclude GWRC approved or endorsed works or activities within each Bylaw, as these activities are excluded. The Bylaw does not apply to:

- Officers or agents of GWRC exercising their lawful functions
- Emergency services and civil defence personnel carrying out public duties
- Volunteer groups activities agreed with GWRC officers

An activity undertaken within the terms of prior written approval from GWRC, including concessions and leases

## **8. Are there any implications under *The New Zealand Bill of Rights Act 1990*?**

Any bylaws must be consistent with the *New Zealand Bill of Rights Act 1990*. The proposed bylaws must meet the legal standards of reasonableness, and cannot be inconsistent with the freedoms protected and affirmed in the *New Zealand Bill of Rights Act 1990*. Officers do not believe that there are any implications under the *New Zealand Bill of Rights Act 1990*.

## **9. Proposed Bylaw**

A copy of the proposed Bylaw is included as Attachment 2 to this report (Statement of Proposal). The special consultative procedure requires the Council to prepare a summary of the proposed changes (Summary of Information). This is included as Attachment 3.

## **10. The special consultative procedure**

The special consultative procedure is outlined in the *Local Government Act 2002* (section 83). It is essentially a community consultation process.

The proposed timetable for the special consultative procedure is as follows:

Regional Council approval	3 November 2008
First public notice	Mid-November 2008
Second public notice	End November 2008
Close of submissions	Mid-February 2009
Hearing of submissions	March 2009
Regional Council report back and approval	May 2009
Bylaw comes into effect	Mid-2009

Six principles of consultation are set out in the Local Government Act 2002. One of these principles is that views presented to a local authority should be accepted with an open mind and should be given due consideration by the local authority in making a decision.

## **11. Main changes in relation to the 1994 Bylaws**

### **11.1.1 Land subject to the new Bylaw**

The lands to be managed by the proposed draft Bylaw are the five regional parks, four regional forests (including the current and future water collection areas and recreational areas), three conservation forests and the flood protection reserves held under the *Soil Conservation and Rivers Control Act 1941*.

GWRC's flood protection and flood control works are also to be subject to the new Bylaw but water supply works undertaken by or for GWRC are not. Any water supply assets or operations within the forests and parks will be covered by the bylaws that relate to damage or obstruction. Reserves held under the *Soil Conservation and Rivers Control Act 1941* were not previously covered by the 1994 Bylaws but it is proposed to make these reserves subject to these new draft Bylaw.

### **11.1.2 Management plans**

Bylaws are identified in the management plans for the parks, forests and floodplains as one of the regulatory implementation methods for the plans' objectives, policies and rules. However, the previous Bylaws did not give effect to the rules in the management plans, e.g., motorised recreation is prohibited in Queen Elizabeth Park.

The new Bylaw includes generic catch-all provisions that prohibit any activity that is not permitted by a management plan or access plan, as well as provisions for compliance with those plans for activities requiring approval. Where there are no management plans (i.e., for those reserves held under the *Soil Conservation and Rivers Control Act 1941*), the specific bylaws apply to individual activities.

### **11.1.3 Fireworks and open fires**

Under the new draft Bylaw, letting off fireworks in a park, forest or reserve is

proposed to become a prohibited activity. This is a variation to the existing Bylaws, which stated that fireworks were permitted with the consent of an authorised officer or if signs permit the activity. The restriction has been imposed to reduce risk of fires and avoid potentially threatening behaviour. Such controls are welcomed by the New Zealand Fire Service, which is seeking fireworks displays to occur as part of a publicly organised event.

While open fires are generally prohibited in most parks, forests and reserves, they are permitted with approval from the ranger in the Kaitoke Regional Park. Visitors to Kaitoke Regional Park have had a history of being allowed to light open fires down on the riverbeds, provided there are no fire bans imposed by the territorial authority. It is considered appropriate to allow open fires, subject to the visitor obtaining approval to do so first, or for fires only to be allowed in a GWRC approved fireplace.

#### 11.1.4 Penalty increase

The penalties for anyone who breaches the bylaws have increased to a maximum penalty of up to, but not exceeding, \$20,000. In the 1994 Bylaws the fine does not exceed \$500 or, where the offence continues, the penalty is a fine of up to \$50 for each day that the offence continues.

## 12. Next steps

It is proposed that consultation on the draft Bylaw will take place from mid-November.

The new Committee meeting timetable is not finalised as yet but it is planned that consultation on the draft Bylaw will begin in mid-January and end in mid-February. It is likely that Hearings would take place in March.

## 13. Communications

The draft Bylaw will be publicly notified and submissions invited over a one month period.

The draft Bylaw will be available on the web site, at GWRC offices and at main libraries. A media release will be issued when submissions are called for.

## 14. Recommendations

*That Council:*

1. *Agrees that the proposed Greater Wellington Regional Council Parks, Forests and Reserves Draft Bylaw (2008):*
  - (a) *Is the most appropriate way for the Council to regulate and control behaviour and activities within the parks, forests and reserves*
  - (b) *Is the most appropriate form of bylaw*
  - (c) *Does not contravene the New Zealand Bill of Rights Act 1990.*

2. ***Approves the provisions of the new Greater Wellington Regional Council Parks, Forests and Reserves Draft Bylaw (2008).***
3. ***Agrees to the Statement of Proposal and Summary of Information included as attachments 2 and 3 of this report.***
4. ***Agrees to a process of consultation with iwi, special interest groups and the public, as per the special consultative procedure in section 83 of the Local Government Act 2002.***
5. ***Delegates to the Parks, Forests and Utilities Committee the authority to consider any submissions made to the Council as a consequence of the consultative procedure and to report and make recommendations to the Council for the Council's further consideration and action.***

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**Attachments:**

- 1 *Wellington Regional Council Bylaws for Forests, Parks and Recreation Areas, August 1994*
- 2 *Statement of Proposal containing the Greater Wellington Regional Council Parks, Forests and Reserves Draft Bylaw, October 2008*
- 3 *Summary of Information*