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Committee Council
Author Fiona Colquhoun, Parks Planner

Review of Greater Wellington Parks, Forests and Reserves Bylaws 2009

1. Purpose

The purpose of this report is to brief the Council on the Greater Wellington Parks, Forests and Reserves Bylaws 2009, the requirements of the Local Government Act 2002 for maintaining currency of the bylaws, and to recommend public notification of two minor amendments to Bylaw definitions.

2. Background

The function of Bylaws

The Local Government Act 2002 (LGA) provides regional councils with the powers to make bylaws in relation to forests, parks and reserves and other Council owned or managed land such as flood protection areas and water collection areas.

Bylaws provide for the enforcement of rules for park and forest use and development which are defined in policies such as the GWRC Parks Network Plan 2011 (PNP). They enable formal enforcement by authorised officers when other methods of park visitor management have not been effective.

Current Park Bylaws

The current Greater Wellington Parks, Forests and Reserves Bylaws 2009 (Park Bylaws) were made under the Local Government Act 2002, they were adopted by Council and brought into effect in May 2009. They cover all regional parks, forests, water collection, and flood protection areas managed by GWRC.

The LGA requires bylaws to be reviewed periodically; first within five years of adoption, and then every ten years, and they will be revoked if not reviewed within the timeframes specified in the LGA. Additional reviews may take place outside those timeframes.

3. Process for reviewing Bylaws

Sections 160 and 155 of the LGA identify the process for reviewing bylaws. Section 160 states that 'A local authority must review a bylaw by making determinations required by section 155'. Section 155 then requires that 'A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem'. This requires addressing what is the perceived problem and the options to address it. If the local authority determines that a bylaw is the most appropriate way of addressing a perceived problem, it must determine if the bylaw is the most appropriate form and if the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (section 155(2) (b)).

3.1 Are there any implications under the New Zealand Bill of Rights Act 1990?

In addition to the considerations undertaken above, the proposed bylaw 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 or any inconsistencies with the rights contained in that statute. The Council will only seek to impose justifiable and reasonable limitations on persons in the interests of public safety and protection of both public and private property and a number of the restrictions simply reflect those in place through other legislative mechanisms.

The current Park Bylaws are considered to be relevant and adequate for meeting enforcement needs and as drafted and approved, and are consistent with the New Zealand Bill of Rights Act 1990 (LGA s155).

Section 160 of the LGA identifies the procedure for the review of the Park Bylaws. Section 155 outlines considerations including, the perceived problem, whether a bylaw is the most appropriate way of addressing that perceived problem, and if it is consistent with the NZ Bill of Rights Act.

3.2 What is the perceived problem?

The policy directions of the Parks Network Plan (PNP) are the primary guidance for identifying what activities should and should not take place in parks and the broad parameters for park management. The 'Rules for use and development' section of the plan outline 'allowed', 'managed', 'restricted', and 'prohibited' activities and provide detailed guidance about different activities in parks and restrictions placed on them.

The purpose of the Park Bylaws is to enable enforcement of rules identified in the PNP, and assist in providing protection from damage or loss through human activity to natural values and cultural values, and the safe recreation enjoyment of others in parks, reserves and other managed areas.

Identification of perceived problems

A review of effectiveness of the bylaws indicates that overall, they are addressing perceived problems very well.

To determine the nature of perceived issues with the current Park Bylaws a full review was undertaken. This included a survey completed by parks department managers and rangers, verbal feedback at a parks department meeting, a review of infringement notice letters issued and discussions with various GWRC officers. **Attachment 1** details the issues raised and outlines officer recommendations for addressing each of them.

Very few issues were identified with the Park Bylaws. Perceived problems were either already accommodated within the provisions of the bylaw or addressed by new GWRC guidelines.

The majority of issues raised relate to policies and rules of the Parks Network Plan, which will be addressed as amendments to the plan are made, and when a full review of the PNP is undertaken. Most park management issues are addressed by management policies and a common sense approach by rangers, not enforcement activities and this is reflected in the feedback received.

The key park management issues identified related to the relatively new park activities of using unmanned aerial vehicles (UAVs) or drones and electric bicycles or mobility scooters in parks where there are sealed trails. However, rangers reported that they have not encountered any particular concerns or issues with visitors undertaking these activities in parks and reserves, and that the current rules and guidance sufficiently informs and facilitate their day to day park management activities. They noted that existing Park Bylaws relating to dangerous behaviour and nuisance are available should enforcement should they be required.

Minor issues to maintain consistency with other legislation and rules

As a result, the review undertaken suggests that no significant changes are required, but that the Park Bylaws need to remain current and reflect changes to other legislation and rules. Accordingly, it is recommended that two very minor changes to the definitions (Section 2 of the Park Bylaws) are made. The Park Bylaws currently have descriptive definitions of 'aircraft' and 'vehicles' and no definition of either unmanned aircraft or motorised vehicles. It is recommended that both these definitions are removed and replaced with a reference to the definitions provided by the agency that manages the rules associated with these activities. In particular to change the definition of aircraft/ unnamed aircraft to reference the definition in the New Zealand Civil Aviation Authority Rules, and to change the definition of vehicle/ motorised vehicle to reference the Land Transport Act 1998 definitions and Rules.

The reason for the proposed change is to maintain currency of definitions and to better differentiate different activities:

1. The current Bylaw aircraft definition does not encompass 'unmanned aircraft' (drones/UAVs) and the Parks Network Plan (2011) rules identify landing aircraft as a 'restricted' activity. CAA Rules introduced in August

2015 require that people flying drones require permission from the land owners and managers for areas people wish to fly over. GWRC has provided general approval for flying UAVs or drones in particular locations in a new guideline, refer **Attachment 2**. The proposed definition change is “Aircraft and unmanned aircraft have the same meaning as in Part 1 of the as defined by the Civil Aviation Authority of New Zealand Civil Aviation Rules”. This change identifies that different rules apply for unmanned aircraft.

2. The Park Bylaws include a definition of ‘vehicle’ but also refers to motorised vehicles without encompassing a definition. Electric powered bicycles are increasingly being used in parks and reserves. Section 168A of the Land Transport Act 1998 was amended in 2013 to identify that power assisted cycles are deemed not to be motor vehicles (with a motor output not exceeding 300W which is the majority of e-bikes). The proposed definition change is “Vehicles and motor vehicles have the same meaning as in section 2(1) of the Land Transport Act 1998.”

A guideline to provide further information about the many different types of bicycle, and powered devices for rangers and park visitors is also proposed to help clarify applicable rules.

Effects of proposed minor definition changes

These minor definition changes will ensure that the Park Bylaws remain current in future as definitions in other legislation change. No other changes are required because the review process has not identified any perceived problems that are not already addressed by the current Park Bylaws.

The changes to definitions proposed are not expected to affect park or reserve visitors because the changes are of a technical nature. Approval to fly drones/ UAVs in parks has already been publicly provided via a detailed guideline for this activity published on the GWRC website, and an additional internal guideline provides further detail for park rangers. The development of a guideline is in progress for use of electric bikes in parks which is an existing activity, with no perceived management issues reported. More highly powered cycles are considered to be motorised recreation and also already provided for in the Akatarawa Forest Park via the PNP provisions. The changes to definitions proposed will not change operational management or affect existing visitor uses in parks and reserves.

3.3 Is the bylaw the most appropriate way of addressing the issue and what are the alternatives?

On a day to day basis, GWRC staff utilise a range of methods to influence visitor behaviour and address real and perceived issues. Management interventions include signs, fencing, temporary closures, formal and informal education activities, and ranger patrol to provide face to face encouragement about the appropriate behaviour where required. By far the majority of visitors value park facilities and experiences and want to do the right thing. Simply providing reasons why a particular behaviour is not appropriate is often sufficient to modify behaviour. Enforcement of bylaws is generally a last resort response when all other methods of encouragement have failed. However, it is important to have the ability to formally enforce the provisions of the Bylaw,

when necessary and to ensure that certain activities are prevented and others obtain prior Council approval.

As noted above, the majority of issues raised relate to policies and rules of the Parks Network Plan, which will be addressed as amendments to the plan are made, and when a full review of that Plan is undertaken.

The current Park Bylaws were extensively reviewed prior to their adoption in 2009. They were crafted to broadly encompass the management of undesirable visitor behaviour or actions, and park rangers report that they have been able to address the majority of issues encountered, and that the general nuisance Park Bylaw (3.21) accommodates new activities such as use of drones or UAVs.

Accordingly, the most appropriate way of addressing the issues relating to use of Regional Parks is through the current bylaw provisions, subject to two suggested amendments.

3.4 **Future review of the Parks Network Plan**

Under section 41 of the Reserves Act, preparation of management plans for parks and reserves is required, and these plans must be kept under continuous review so that changing circumstances and knowledge are reflected in them. The Parks Network Plan (2011) is the overarching management plan for most GWRC parks and reserves. Policy 100 of the PNP identifies that the plan will be reviewed every ten years with analysis of the effectiveness of the plan undertaken every three years. To date the currency of the plan has been maintained through the development and council adoption of two amendments; Parangarahu Lakes area 2014 and Baring Head/ Orua-pouanui 2012. Another amendment with two minor changes is in progress. A review of the effectiveness of the PNP is taking place throughout 2016-17 in preparation for a full review of the plan which will involve extensive public consultation and commence in 2017-18.

Officers have found no issues of any significance with the *Greater Wellington Parks, Forests and Reserves Bylaws 2009*. However, because there is a direct relationship between the Activity Rules in the Parks Network Plan and the Bylaws, feedback during the consultation process for the Plan may identify the need to undertake further amendment of the bylaws in the future. If this is the case, the LGA process will need to be followed.

Other planning processes and other bylaws

A draft management plan is being prepared for the Hutt and Wainuiomata/ Orongorongo water collection areas. As a separate process, the Wellington Regional Water Board Bylaws 1976 which apply to these and other water collection areas will be reviewed. These bylaws have largely been replaced by the *Greater Wellington Parks, Forests and Reserves Bylaws 2009*. The future of the Water Board Bylaws will be determined through this planning process.

4. The decision-making process, significance and consultation

While there are provisions in the Reserves Act 1977 and the Wellington Regional Water Board Act 1972 for making and reviewing bylaws, councils are required to follow LGA processes when reviewing them.

Section 160 of the LGA states that if after reviewing the bylaw the Council determines that the bylaw should be amended, then it must act under section 156 of the LGA. That section identifies the consultation requirements when making amendments as a result of a review. The special consultative procedure is required where a bylaw addresses a matter identified in the Council's Significance Policy as being of significant interest to the public or where the Council considers there is likely to be a significant impact on the public due to the proposed changes. If that is not the case, then the Council must consult in a manner that gives effect to the requirements of section 82.

Section 82 identifies the principles of consultation which Council must consider when undertaking consultation in relation to any decision. These principles are:

1. Persons affected by the decision have reasonable access to relevant information in an appropriate manner and format and should be encouraged to present their views to Council.
2. Those encouraged to present their views should be given clear information concerning the purpose of the consultation and the scope of the decisions to be taken, following provision of their views.
3. Those who wish to have their views considered should be provided with a reasonable opportunity to present those views to Council in an appropriate manner and format and those views should be received with an open mind and given due consideration by Council when making its decision.
4. Those who present their views should have access to a clear record or description of relevant decisions made by the Council and explanatory material relation to the decisions.

These principles are to be observed by the Council in such a manner as the Council considers, in its discretion, to be appropriate in any particular instance, but must have regard to the matters set out in section 82(4) of the LGA:

- the requirements of section 78; and
- the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the local authority; and
- the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter; and

- the provisions of Part 1 of the Local Government Official Information and Meetings Act 1987 (which Part, among other things, sets out the circumstances in which there is good reason for withholding local authority information); and
- the costs and benefits of any consultation process or procedure.

5. The decision-making process and significance

The matter requiring decision in this report has been considered by officers against the requirements of Part 6 of the Local Government Act 2002.

5.1 Significance of the decision

The term 'significance' has a statutory definition set out in the LGA.

Officers have considered the significance of the matter, taking the Council's significance and engagement policy and decision-making guidelines into account. Officers consider that the matter has low significance. While the change in the 'aircraft/ unmanned' definition means that drones will now be subject to the Park Bylaws when they weren't before, GWRC has at this stage provided approval for flying UAVs or drones in particular locations in its Parks. Even without this change in the Park Bylaws, those using drones would have to obtain consent of the property owner (GW) to fly over their land (Parks) as a result of the CAA Rules. In addition, the decision required by this report does not trigger the significance policy of the Council or otherwise trigger section 76(3) (b) of the LGA. Accordingly, the special consultative procedure is not required.

While the proposed changes do not affect any existing rights of the public, officers have considered the requirements of section 82 of the LGA and consider that feedback should be sought on the proposed changes. This would ensure no unanticipated issues arise. Accordingly, it is suggested that public notice of the review and intended changes is given and submissions sought, as well as the notice being included on GW's website. The notice will identify the where copies can be inspected and obtained, and invite persons who may have an interest to present their views to the Council. The Council website will also be updated to provide details of the proposed changes.

Subject to submissions received and Council's consideration of them, the final version of the Bylaw will considered at a later date.

6. Communication

Consultation is proposed which is commensurate with the minor nature of change proposed to the Park Bylaw definitions. A public notice will be prepared to inform the public of the intention to review the current Bylaw with the minor definition amendments as proposed. The Council website will also be updated to provide details of the proposed definition changes, and submissions invited for a one month period.

7. Recommendations

That the Council

1. **Receives** the report and information.
2. **Notes** the content of the report and attachments and the review of the bylaw.
3. **Agrees** that as a consequence of the review, the changes to the bylaw should be limited to the proposed changes to the two definitions.
4. **Determines** that special consultative procedure is not required under section 156(1)(a) of the LGA and that the consultation proposed (public notice) will give effect to the section 82 LGA requirements.
5. **Agrees** that the proposed amendments to the bylaw:
 - 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 Right Act 1990.
6. **Agrees** to officers preparing the public notification and information to be put on the Council's website.
7. **Delegates** to the Environment Committee the authority to consider any submissions made to the Council as a consequence of the consultation and to report and make recommendations to the Council for the Council's further consideration and action.

Report prepared by:

Fiona Colquhoun
Parks Planner

Report approved by:

Nicola Shorten
Team Leader, Corporate &
Strategic Planning

Report approved by:

Amanda Cox
Manager Parks

Report approved by:

Francis Ryan
Manager Democratic Services

Report approved by:

Nigel Corry
General Manager
Environment Management

Report approved by:

Luke Troy
Manager Strategy

Attachment 1. Review summary

Attachment 2. Drones/ UAV guideline