

# SOUTH WAIRARAPA DISTRICT COUNCIL

28 JUNE 2017

---

## AGENDA ITEM C2

### CONSOLIDATED BYLAWS REVIEW

---

#### **Purpose of Report**

To seek Council approval to commence a review of the Consolidated Bylaws (Masterton / South Wairarapa) in the 2017/18 year and to delegate this task to the Wairarapa Policy Working Group.

#### **Recommendations**

Officers recommend that the Council:

1. *Receive the Consolidated Bylaws Review Report.*
2. *Agree that a full review of the MASTERTON AND SOUTH WAIRARAPA DISTRICT COUNCILS' CONSOLIDATED BYLAW 2012 Parts 1 to 13 be commenced in the 2017/18 year.*
3. *That the task of undertaking the review be delegated to the Wairarapa Policy Working Group.*

#### **1. Executive Summary**

South Wairarapa and Masterton currently have joint Consolidated Bylaws. These bylaws are approaching the time for review, which is within 5 years of adoption (due 2018, it will be 10 yearly after this review round).

In addition Carterton District has indicated a desire to now align their Consolidated Bylaws with those of MDC and SWDC. This means that Carterton would now take part in any review process.

This would create in effect a fully consistent set of Consolidated Bylaws across the whole of the Wairarapa.

It is proposed that the review process be undertaken by the Wairarapa Policy Working Group on behalf of the 3 Councils. This group has Councillor representatives (2 each) from the 3 Councils and is supported by a Technical Advisory Group comprised of senior officers from each Council.

Masterton have resolved (on 17 May 2017) to adopt this approach subject to this Council and CDC being in agreement.

## **2. Background**

2.1.1 The Wairarapa Policy Working Group was initially established as the Combined Alcohol Policy Working Group to develop the combined Wairarapa Local Alcohol Policy (LAP). It has since been agreed that it would be used as a mechanism for the development/ review of other joint policy/regulatory initiatives.

2.1.2 Core membership consists of two elected members from each Council.

2.1.3 Masterton District Council representatives are Cr Brent Goodwin and Cr Frazer Mailman, South Wairarapa representatives are Crs Craig and Harwood, while Carterton District are yet to appoint their representatives.

2.1.4 The three Group Managers who are responsible for implementation of regulatory policies and bylaws at each Council are members of the Technical Advisory Group (Tania Madden, Dave Gittings, and Murray Buchanan) which services the working group. Administrative and policy support is provided by MDC with funding from all 3 Councils.

## **3. Discussion**

### **3.1 Consolidated Bylaws Review process**

3.1.1 The process for the Bylaw Review is similar to any other statutory policy/rule review process. It will result in updated and specific policy and rule structures dealing with a wide range of matters (e.g. stock on roads, food, public nuisances, keeping of animals, solid waste, water supplies, traffic, trade waste etc).

3.1.2 It should be noted that, while the Working Group would carry out the "frontline work", the revised Bylaws will still need to be considered and adopted by each Council (using the Special Consultative provisions of the Local Government Act).

3.1.3 Each Council will also need to hear and determine any submissions received (obviously there will however be a need to ensure consistency in that process which may mean a joint panel is used) before the Bylaws can be finally adopted.

### **3.2 Timetable**

3.2.1 Many aspects of the current joint Bylaws remain valid and are unlikely to change in consequence of the review, even so the law requires they be reviewed by the end of 2018.

3.2.2 Over the years since the bylaws were enacted, a number of aspects have been identified by Officers, that need to be adjusted and these aspects need to be considered by the Working Group.

3.2.3 These generally fall into either specific wording issues (for instance, capable of more than a single interpretation) or a lack of a provision (making other provisions unenforceable or too vague to rely on).

3.2.4 Perhaps the biggest issue found relates to the enforcement provisions.

3.2.5 The current bylaws do not specify sufficiently clearly the penalties that apply to various offences against the bylaws. This needs correction (legal advice has previously been sought on this aspect by both MDC and SWDC).

3.2.6 Considering the existing provisions and re-affirming them, correcting current flaws and then designing better enforcement and penalties systems are reasonably complex processes.

3.2.7 Because of these matters the review process is likely to take a relatively lengthy time to be concluded.

3.2.8 It is therefore anticipated that up to 9 months will be required to complete those tasks and prepare all the necessary documentation to commence the Special Consultative Process.

3.2.9 If allowance for hearings and reporting back to Council of decisions for adoption is also made, the whole process will likely take a year or longer to complete.

### **3.3 Legal Implications**

3.3.1 There are few if any direct legal risks for Council in this process as it is provided for under statute and will be undertaken with due diligence (the test for this is that of reasonableness).

3.3.2 Indirect legal risks would arise if the proposed bylaws (after review) are challenged, as hearings before the District Court could ensue. Again though, this is simply due legal process and must be accepted.

### **3.4 Financial Considerations**

3.4.1 Undertaking such a review requires commitment of Councillor time and staff resources, and on occasion acquisition of legal or technical external expert advice.

3.4.2 By combining with MDC and CDC and sharing these costs, efficiencies are gained so that the cost for each individually should be reduced.

3.4.3 At this time, while Council has given notice to the community of the upcoming review through the 2017/18 Annual Plan consultation process, no specific funding was set aside.

3.4.4 Provision for sharing costs with MDC who will provide administrative support and a policy analyst to undertake various tasks (rewriting of sections of the bylaws, researching and drafting reports), therefore needs to be covered within current budget allocations, but should not be a significant cost in any event.

3.4.5 As noted above, what costs will arise can likely be covered within current budget allocations, until the backend of the review process is reached.

3.4.6 At that time Council will be able to provide a specific budget allocation for any external legal costs in the 2018/19 Annual Plan (to deal with any appeals to the District Court and beyond).

## **4. Conclusion**

Council is required to review its Consolidated Bylaws by the end of 2018. It is proposed that this review commence in the 2017/18 year. It is also proposed that the review take place as a joint exercise with MDC and CDC.

The best vehicle for undertaking this joint process is considered to be the Wairarapa Policy Working Group which has operated successfully previously.

Masterton has already resolved this, subject to SWDC and CDC agreement.

It is recommended by Officers that Council support this task being undertaken and by the Wairarapa Policy Working Group.

Reporting and Contact Officer: Murray Buchanan, Group Manager, Planning and Environment Group

