

## Attachment A

### Legislative process, analysis and consultation requirements

This document summarises all relevant legislative requirements for the process of reviewing all 17 Parts of the Consolidated General Bylaw 2008. It provides an overview of the associated analysis undertaken. It includes the consultation activities proposed in accordance with legislative requirements. These steps are based on Council accepting all recommendations in the report relating to the proposal.

#### 1. Process overview

- 1) All bylaws are made under the Local Government Act 2002 (LGA), specifically sections 145 and 146. Part 15 - Traffic Bylaw is also made under the Land Transport Act 1998 (LTA).
- 2) Other relevant Acts include:
  - a) Health Act 1956
  - b) Waste Minimisation Act 2008
  - c) Litter Act 1979
- 3) Sections<sup>1</sup> 158 and 159 LGA stipulate that bylaws must be reviewed five years after they were first made and then every ten years thereafter per section 160A.
- 4) The Bylaw 2008 was last fully reviewed in June 2008.
- 5) The review of the Bylaw 2008 was due in June 2018 in accordance with section 159.
- 6) An initial review of the bylaw was undertaken in late 2017, with an agenda item going to the February Council meeting outlining the potential changes to the Bylaw 2008. Since then Council staff have been making those changes. Follow up of changes were provided to Council's working group in 11 February 2019, where additional issues were asked to be addressed.
- 7) A conservative interpretation of section 160A provides that a bylaw remains in force for another two years after the five or ten-year review is due and is thereafter automatically revoked. This effectively means the Bylaw 2008 would be revoked in June 2020.
- 8) Section 160 prescribes the procedure for a review under section 159.
- 9) The first step in a review is to make the determinations required by section 155.
- 10) Under section 155, Council must determine whether a bylaw remains the most appropriate way of addressing the perceived problem.
- 11) If Council determines that a bylaw remains the most appropriate way of addressing the perceived problem, Council also needs to determine:
  - a) Whether the existing bylaw is the most appropriate form of the bylaw;
  - b) Whether the bylaw gives rise to any implications under the New Zealand Bill of Rights 1990; and
  - c) That there are no implications under the New Zealand Bill of Rights Act 1990.
- 12) Once the section 155 analysis has been completed, Council has four options under section 160(3) to give effect to the outcome of the review:

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<sup>1</sup> All sections of an Act referred to hereinafter are sections of the Local Government Act 2002 unless stated otherwise.

- a) amend the bylaw;
  - b) revoke the bylaw;
  - c) revoke the bylaw and replace it with a new bylaw; or
  - d) keep the bylaw as it is without any amendments.
- 13) In each case, Council is required to consult with the community before making a final decision.
- 14) Section 156 requires Council to use the special consultative procedure under section 83 as modified by section 86 when making, amending or revoking a bylaw if Council considers there is likely to be a significant impact on the public due to the proposed bylaw. Otherwise it can consult in accordance with the principles of section 82.
- 15) The special consultative procedure requires the adoption of a Statement of Proposal.
- 16) Section 86 prescribes the content of a Statement of Proposal (section 83(1)(a)) for the purposes of public consultation in relation to bylaws. This includes a statement that a bylaw is to be revoked and/or a draft of an amended or new bylaw, the reasons for the proposal and a report on any relevant determinations under section 155.
- 17) Section 83 (1)(a)(ii) provides that where necessary to enable public understanding of a proposal, a summary of information may also be required.

## **2. Analysis and application of the process requirements**

- 1) The section 155 analysis report (Attachment 2) provides that some Parts of the Bylaw 2008 remain the most appropriate way of addressing the perceived problem(s), these Parts are:
- a) Part 1 – Introductory,
  - b) Part 2 – Public Places,
  - c) Part 3 - Trading in Public Places
  - d) Part 4 - Solid Waste,
  - e) Part 5 - Signs,
  - f) Part 8 - Animals, Poultry and Bees,
  - g) Part 9 – Cemeteries and Crematoria,
  - h) Part 12 - Nuisances,
  - i) Part 15 - Traffic,
  - j) Part 16 - Water supply, and
  - k) Part 17 - Land Drainage.
- 2) The section 155 analysis report (Attachment 2) provides that some parts of the Bylaw 2008 are no longer the most appropriate way of addressing the perceived problem therefore it is appropriate that these Parts are revoked. These Parts are:
- a) Part 6 – Amusement Galleries,
  - b) Part 7 – Fires in the Open Air (already been revoked),
  - c) Part 10 - Libraries,
  - d) Part 11 – Reserves and Recreational Facilities
  - e) Part 13 – Skateboards, and
  - f) Part 14 – Gin Traps.
- 3) The section 155 analysis details the requirements of section 77 (requirements in relation to decisions) which requires the identification of all reasonably practicable options and the associated advantages and disadvantages of these options.

- 4) This component of the analysis provides Council with the basis to make a determination for one of the four options available under section 160(3).
- 5) Due to the extent of the proposal it is considered that a summary of the information is necessary. The draft Bylaw 2020 has been included in the Statement of Proposal.
- 6) The Statement of Proposal (Attachment C) includes the necessary components as prescribed in section 86 for both the revocation of the existing bylaw Part and the making of the new one.
- 7) Section 22AD of the LTA provides that section 156 (and the associated consultation requirements) applies to a bylaw being made under section 22AB LTA. This is relevant for Part 15 – Traffic.
- 8) The section 155 analysis (Attachment B) provides that while a bylaw remains the most appropriate way of addressing the perceived problem, the existing bylaw is not the most appropriate form of the bylaw.
- 9) The section 155 analysis details the requirements of section 77 (requirements in relation to decisions) which requires the identification of all reasonably practicable options and the associated advantages and disadvantages of these options.
- 10) The analysis provides Council with the basis to make a determination for one of the four options available under section 160(3). As discussed elsewhere in this document, it is proposed to revoke the whole Bylaw 2008 and replace with a new bylaw.
- 11) The draft Bylaw 2020 is predominantly based on the content of the existing one with amendments as outlined in the assessment