

# Council

## Open Agenda



Notice is hereby given that an ordinary meeting of Matamata-Piako District Council will be held on:

**Date:** Wednesday 8 March 2017  
**Time:** 9:15am  
**Venue:** Council Chambers  
35 Kenrick Street  
TE AROHA

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### Membership

#### Mayor

Jan Barnes, JP

#### Councillors

Donna Arnold  
Teena Cornes  
Paul Cronin  
Neil Goodger  
Brian Hunter  
Peter Jager

James Sainsbury  
Ash Tanner  
Kevin Tappin  
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**1 Meeting Opening**

**2 Apologies**

At the close of the agenda no apologies had been received.

**3 Leave of absence**

At the close of the agenda no requests for leave of absence had been received.

**4 Urgent Additional Business**

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“An item that is not on the agenda for a meeting may be dealt with at that meeting if-

- (a) The local authority by resolution so decides; and
- (b) The presiding member explains at the meeting, at a time when it is open to the public,-
  - (i) The reason why the item is not on the agenda; and
  - (ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting.”

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“Where an item is not on the agenda for a meeting,-

- (a) That item may be discussed at that meeting if-
  - (i) That item is a minor matter relating to the general business of the local authority; and
  - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
- (b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.”

**5 Declaration of interest**

Members are reminded of their obligation to declare any conflicts of interest they might have in respect of the items on this Agenda.

**6 Confirmation of minutes**

Minutes, as circulated, of the Ordinary Meeting of Matamata-Piako District Council, held on 8 February 2017

**7 Matters Arising**

**8 Announcements**

**9 Notices of Motion**

## Local Alcohol Policy - bringing into force

Trim No.: 1820853

### Executive Summary

This report explains that the Matamata-Piako District Council Local Alcohol Policy (LAP) has been approved by the Alcohol Regulatory and Licensing Authority (ARLA) and outlines what the next steps are to bring the policy into force and the options for doing this.

On 12 February 2016, Council resolved to adopt its Provisional Local Alcohol (LAP). The provisional policy was notified during the week of 26 February 2016. It was then subject to appeal to the Alcohol Regulatory and Licensing Authority (ARLA) by any person or agency that made a submission on the Draft LAP for a period of 30 days.

During the appeal period, three appeals were received. Negotiations were held with the appellants and agreement reached on changes to the Provisional LAP. ARLA has now confirmed that the issues raised in the appeals have been resolved and the Provisional LAP can be now be adopted and brought into force by Council.

### Recommendation

That:

1. **The information be received.**
2. **Council resolves to bring the adopted Local Alcohol Policy into force.**
3. **Council resolves that the Local Alcohol Policy, with the exception of clauses 3.6, 4.6. 5.5 and 6.3, comes into force on 15 March 2017.**
4. **Council resolves that clauses 3.6, 4.6. 5.5 and 6.3 of the Local Alcohol Policy relating to maximum trading hours come into force 3 months later on 15 June 2017.**

### Content

#### Background

##### Development of the draft LAP

The Sale and Supply of Alcohol Act 2012 enables any Council to develop a local alcohol policy for its district, and sets requirements for the development of the policy and what it may contain. The policy can influence the location, number and opening hours of on-licences (cafes, bars and taverns), off-licences (bottle stores and supermarkets), club licences (RSA's, Workingmen's and sports clubs) and special licences (special events).

Once a Local Alcohol Policy is in place, the District Licensing Committee and Alcohol Regulatory and Licensing Authority must have regard to the policy when making decisions on licence applications.

At the Council meeting on 13 February 2013 Council resolved to begin the policy development process for the draft Local Alcohol Policy (LAP) in accordance with the Sale and Supply of Alcohol Act 2012. A Councillor working party was formed to work with staff on the policy consisting of Councillors Cornes, Stanley and Greenville.

The draft LAP was considered and adopted by the Council for consultation at the Council meeting of 9 October 2013. The draft LAP was open for submissions from 16 October – 18 November 2013. A total of 158 submissions were received that highlighted specific issues with the draft (proposed) LAP and requested various changes be made.

On 5 December 2013, a hearing was held and 14 submitters verbally presented their submissions. Deliberations were then held on 12 December 2013 where Council considered all submissions and made a number of changes to the draft (proposed) LAP in response to the issues raised. Council then adopted it as a Provisional LAP at its meeting on 12 February 2014.

The Provisional LAP was open for appeals to the Alcohol Regulatory and Licensing Authority (ARLA) from 26 February to 26 March 2016. During the appeal period, three appeals were received. The only grounds on which an element of the PLAP could be appealed against is that it is deemed unreasonable in light of the object of the Act.

Council met with appellants in March 2015 to attempt to gain agreement on appealed policy elements. As a result of these negotiations changes to some policy elements were agreed and a joint memorandum presented to ARLA at a public hearing in Hamilton on 15 June 2015 after which a consent order was issued formally referring the agreed elements back to Council to reconsider. A copy of the consent order is attached.

Council adopted the provisional LAP on 12 February 2014 and publically notified the adoption 26 February 2014. There was a 30 day appeal period where those people/organisations who submitted on the draft LAP could then appeal the provisional LAP to ARLA. The only ground for an appeal is an element of the provisional LAP is unreasonable in light of the object of the Act (section 84(1)).

#### Appeals to the Provisional LAP

The Council received three appeals to the Provisional LAP from Progressive Enterprises Ltd, Super Liquor Holdings Ltd and The Mill/Independent Liquor Ltd. The New Zealand Police, Waikato District Health Board (Population Health) and later Foodstuffs North Island Ltd joined the proceedings as interested parties.

The appeals were focused on section 4.0 off-licence policies in the Provisional LAP and included appeals against the following clauses:

- 4.2 Location premises holding off-licences by reference to broad areas
- 4.3 Location premises holding off-licences by reference to proximity to premises a particular kind or kinds
- 4.4 Location premises holding off-licences by reference to proximity to facilities a particular kind or kinds
- 4.5 Further issuing of off-licences in the district
- 4.6 Maximum trading hours for premises holding off-licences
- 4.7 Discretionary conditions of off-licences
- 7 Temporary authorities
- Definition of “early childhood facility”
- Definition “new licence”

#### Submission of the amended Provisional LAP to ARLA

Council confirmed the amendments above at its meeting on 27 July 2016 to be resubmitted back to ARLA and circulated to the submitters to the draft LAP. A copy of the resubmitted LAP is attached. This shows the tracked changes made to the Provisional LAP in response to the appeals.



In August/September 2016 Council notified the original submitters to the draft LAP to establish if those submitters wanted to join the proceedings as interested parties. Foodstuffs North Island Ltd joined the proceedings, but did not wish to be heard on the amended Provisional LAP.

Council's legal counsel resubmitted the amended Provisional LAP to ARLA with a joint memorandum of the parties in October 2016. This recorded that the Council and the parties had agreed on amendments that would resolve the appeals and allow the provisional LAP to be adopted. Foodstuffs submitted their own memorandum noting that although they had joined the proceedings they did not wish to appear and be heard on the issue.

ARLA has now approved the changes made to the provisional LAP by issuing a consent order dated 24 January 2017. A copy is attached to the report. A clean-copy of the final policy is also attached which Council is now asked to bring into force.

Council is required to pass a resolution on when the LAP will come into force, and whether parts should come into force at different times. The Act requires that maximum trading hour's provisions come into force no earlier than three months after the required public notice advising the adoption of the policy.

### **Issues – Adoption of the LAP and bringing the policy into force**

#### Adoption of the LAP

ARLA has considered the amended Provisional LAP and is satisfied that all elements of the policy are not unreasonable. Section 87(3) of the Act provides that the provisional LAP is now adopted (being adopted when ARLA makes its decision).

The resubmitted Provisional LAP is therefore deemed to be adopted as Council's LAP on 24 January 2017, the date of the ARLA decision. Therefore Council does not need to adopt the LAP.

#### Process to bring the LAP into force

After it is adopted, a LAP has no effect until it is brought into force. The following steps must be undertaken by the Council to bring the policy into force:

- Give public notice of the Provisional LAP's adoption. The public notice must be published at least twice in a daily newspaper circulating in the councils district before it can come into force
- The LAP must be prominently displayed in the Council's website as a Provisional LAP until it comes into force
- Pass a resolution/s stating which LAP elements come in force and when. *Note: the maximum trading hours (and one-way door restriction) elements cannot come in effect until at least 3 months after the day public notice of the LAP's adoption was given. The reason is to allow time for the parliamentary process outlined below and for licence holders to make any necessary operational changes to their businesses such as signage, staffing)*
- After LAP adoption, the council must give licences affected by the maximum trading hour's written notice of the LAP's adoption and a brief written description of the effect of the element.

#### Parliamentary process for maximum trading hours

Any elements of the LAP relating to maximum trading hours and one-way door policies must be treated as disallowable instruments (effectively a regulation) for the purposes of the Legislation Act 2012.

These provisions require notification to Parliament of the relevant elements so that Parliament's Regulations Review Committee can review them and, if necessary, disallow them. Notification must be made no later than the 16th sitting day of the House of Representatives after the day on

which they are made (day of adoption of the LAP, being the date of the ARLA decision on 24 January 2017).

This is because maximum trading hours and one-way door policies are mandatory aspects of the LAP, meaning that when these provisions of a LAP take effect licence holders must comply with them immediately.

The District Licensing Committee also cannot grant a licence with hours that exceed the maximum specified in the LAP. For all other aspects of the LAP the District Licensing Committee will have regard to the policy upon renewal or issue of a new licence.

There is no mandatory one-way door policy in the LAP so the only disallowable instruments we have are the maximum trading hours.

Once Council brings the LAP into force the LAP will sent the policy to the Minister of Justice, who is presently Hon Amy Adams and the Ministers office has to ensure that established procedure is followed for the disallowable instruments to be presented to the House (Parliament).

### **Options and Risks Considered**

Council has the following options in respect of the policy:

#### 1. Bring the adopted policy into force

The benefit of this option is that the process of developing the policy has been completed, including consultation and dealing with appeals through the statutory process. While some compromises have been made from the adopted provisional policy, key benefits of the policy have been retained.

#### 2. Amend the policy

In this case all of the requirements of the Act will apply in respect of the special consultative procedure and adoption process. This option would involve significant costs in undertaking consultation and developing an amended policy and it is not considered likely that an amended policy, following the consultation and appeal process, would achieve better outcomes than the existing policy.

#### 3. Revoke the policy using the special consultative procedure and adopt another policy in its place

This option would involve significant costs in undertaking consultation and developing a new policy and it is not considered likely that a new policy, following the consultation and appeal process, would achieve better outcomes than the existing policy.

#### 4. Revoke the policy using the special consultative procedure and without adopting another in its place.

This option would involve costs in undertaking consultation. If a policy is not adopted the benefits that exist in the existing policy would be lost.

#### Timing of bringing the policy into force

Section 90 of the Act requires that public notice is given of the adoption of the policy and provides that Council may bring the policy into force on a day stated by resolution. However, as the policy contains provisions stating maximum trading hours for licensed premises that are different to those national maximum default hours set in the Act, those provisions cannot be brought into force earlier than three months after the day public notice of the adoption of the policy is given. The relevant clauses of the policy stating maximum trading hours are clauses 3.6, 4.6, 5.5 and 6.3. While the policy contains reference to one way door policies they are discretionary and will not have statutory effect.

Council can decide either to bring the entire policy into force at the same time, which must be at least 3 months following the public notice of its adoption, or bring the majority of the policy into force earlier and the maximum trading hour's provisions at a later date.

Council has the following options:

1. Bring the policy into force with the 3-month delay on the maximum trading hours clauses taking effect
2. Bring the policy into force (including the maximum trading hours) simultaneously by delaying the full policy from taking effect until the 3 months' notice period has passed

Option 1, would have the effect of bringing the majority of the LAP provisions into force immediately following public notice with the trading hours clauses having delayed effect. Council would notify that the LAP will come into effect on the date specified other than trading hours. A note would be put on the website and the cover the LAP to specify what sections have not yet come into force. This could cause some confusion.

Waipa District Council brought all their LAP provisions in force at the same time.

Option 2, would mean bringing the all aspects of the policy into force at the same time. This means the policy would not apply to licence applications received in the 3 month period. Council would notify that the LAP will come into effect in 3 months' time.

It is recommended by staff that the LAP comes into force in March with delayed introduction of the trading hours (Option 1). This is consistent with how other Councils (such Hauraki, Thames-Coromandel District) have approached implementation of the LAP. It also means the District Licensing Committee can have regard to the LAP when making licensing decisions without further delay.

## **Analysis**

### **Legal and statutory requirements**

The process that has been followed is set out in the Sale and Supply of Alcohol Act 2012 and the 'Practice Note' issued by ARLA.

### **Impact on policy and bylaws**

This process has established new policy for Council.

### **Consistency with the Long Term Plan / Annual Plan**

The PLAP falls within the Strategies and Plans activity of the Long Term Plan.

### **Impact on Significance and Engagement Policy**

Decisions regarding a local alcohol policy are can be considered an important issue due to the level of community interest in the issue of alcohol control and alcohol-related harm and impact on licensees. Council has previously consulted the community and will inform those people/organisations that submitted on the Draft LAP in 2013 and current licence holders about the adoption of the policy and it coming into force.

### **Communication, consultation and decision making processes**

A timeline of the process to develop the LAP is attached.

### **Consent issues**

There are no consent issues.

### Timeframes

The timeframes with the LAP coming into force in March except for trading hours taking delayed effect are as follows:

Task	Timeframe
Council meeting to resolve to bring the LAP into force	8 March 2017
Council sends the LAP to the Minister of Justice for the Parliament's Regulations Review Committee to consider	9 March 2017
Public notice that LAP comes into force in 2 stages	15 March 2017
LAP takes effect (except for trading hours)	15 March 2017
Trading hours take effect	15 June 2017

The alternate timeframes with delayed introduction of the LAP are as follows:

Task	Timeframe
Council meeting to resolve to bring the LAP into force	8 March 2017
Council sends the LAP to the Minister of Justice for the Parliament's Regulations Review Committee to consider	9 March 2017
Public notice of when the entire LAP comes into force	15 March 2017
LAP takes effect (including trading hours)	15 June 2017

### Contribution to Community Outcomes

- 1.f) Council services and activities will contribute to the health and wellbeing of our community/lwi
- 2.a) Our community/lwi will be informed and have the opportunity to comment on significant issues
- 2.c) Council's decision making will be sound, visionary, and consider the different needs of our community/lwi

### Financial Impact

#### i. Cost

The total cost of developing the LAP to date is approximately \$35,000 (excluding staff time and printing costs). Of this, costs of the appeal process are approximately \$23,000 due to legal fees (GST exclusive).

#### ii. Funding Source

The LAP development is funded by the Strategies and Plans budget.

### Attachments

- A. MPDC Local Alcohol Policy Development Process
- B. ARLA Consent Order MPDC - Issued 9 July 2015
- C. Re-submitted PLAP to ARLA
- D. Final ARLA Decision (24 January 2017)
- E. Adopted Local Alcohol Policy (adopted 24 January 2017)
- F. Local Alcohol Policy Appeals Process - flow chart

### Signatories

Author(s)	Niall Baker <b>Policy Planner</b>	
Approved by	Don McLeod <b>Chief Executive Officer</b>	



## Land Transport Bylaw Review

Trim No.: 1845871

### Executive Summary

Under sections 158 to 160 of the Local Government Act 2002 (LGA), Council is required to review all bylaws within five years of their adoption and every 10 years thereafter. The purpose of this report is to review the Land Transport Bylaw 2008 (bylaw). Following the review it is proposed to amend the bylaw. Adoption of the proposed bylaw and corresponding Statement of Proposal for public consultation is sought.

A copy of the Statement of Proposal and draft bylaw amendments are circulated separately.

### Recommendation

**That:**

1. **Council approves the amendments to the draft Land Transport Bylaw as a result of a review of the Bylaw in accordance with section 158 and 160 of the Local Government Act 2002.**
2. **Council determines that in accordance with section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way of addressing the perceived problems.**
3. **Council determines that the proposed amended Bylaw meets the requirements of section 155 of the Local Government Act 2002, in that it:**
  - i. **is the most appropriate form of bylaw**
  - ii. **does not give rise to any implications under the New Zealand Bills of Rights Act**
4. **Council adopts the Statement of Proposal, including the amended Land Transport Bylaw for public consultation using the special consultative procedure in accordance with section 156 of the Local Government Act 2002.**

### Content

#### Background

The Land Transport Bylaw was adopted in 2008 and has been reviewed and amended a number of times since that time mainly relating to Heavy vehicle parking and speed limit changes with the last amendment being made in 2013.

#### Issues

##### Bylaw review

Council staff have undertaken a review of the existing bylaw and consider it remains generally fit for purpose. The key changes are outlined in the statement of proposal.

Discussion of the proposed changes is set out below:

### Speed Limits

Speed limit reviews have been completed for the following sites:

- Hinuera Road,
- Station Road and Smith Street
- Banks Road (2007 and then reviewed in 2017)

A variable 40 kilometre per hour (km/h) speed limit is proposed on Station Road and Smith Street in Matamata. Roads outside schools can be dangerous for children particularly at the beginning and end of the school day. At this time there is a higher volume of traffic, children crossing roads and both parked and manoeuvring vehicles. It is proposed to reduce the speed limit on Station Road and Smith Street using a variable speed limit sign that will reduce the speed limit to 40km/h between 8:15am to 8:55am and 3:00pm and 3:20pm on school days. This is considered the most effective way to reduce the risk to children being dropped off and picked up from the school.

The variable speed limit will benefit Firth Primary, Matamata intermediate and Matamata Christian School. The proposed introduction of a variable 40km/hr speed limit on Station Road, would start 5 metres west of Smith Street for a length of approximately 249 metres to conclude 5 metres west of Rimu Street.

The 40km/hr sign will also include Smith street, from the intersection with Station Road past Matamata Christian School and Matamata intermediate school for a length of approximately 372 metres, concluding approximately 5 metres South of Sheffield Street.

At Hinuera it is proposed to extend the existing 70km/hr speed zone approximately 20 meters North away from the corner on Hinuera Road.

By moving the sign approximately 20m further north, it will be feasible to install a speed threshold on Hinuera Road to help reduce the speeds for the small settlement.

Banks Rd has had one development completed since the last speed review in 2007. This has resulted in 100/50 km/h intersection, which has a higher risk of death or serious injury. A new report proposes different options for the speed management of this area. Staff propose the option to relocate the 70/100km/h speed zone to 30m East of O'Sullivan Drive.

This is for improved safety. The new speed management guideline from the NZ Transport Agency it looks at having speeds of 60km/h or 80km/h zone and moving away from the 70km/h in the longer term. With the existing environment and surrounding speed zones it does not make sense to have this in place in isolation. It is therefore recommended to stay with the 70km/h zone until further work with NZ Transport Agency is completed on the entire speeds in the district.

Council staff also investigated to see whether further speed changes are required as a result of Plan Change 47. It is suggested these are considered when Plan Change 47 urban zoning are finalised and development has initiated.

### Parking

To clarify and improve the Mobility Parking restriction maps has been set up. There are 3 maps, one for each of the Central Business Districts (CBD's). Each map shows the accessible parking locations in that township. All mobility parking uses national standards for line marking and signage. The maps won't be attached to the bylaw but will be available on our website.

Note the current Bylaw refers to sign-posted reserve parks having to be complied with. This theoretically implies that it is an offence to park there if you don't have a permit. The proposal is to provide more clarity around the restriction of the mobility parks in our district by adding more detailed wording into the bylaw documentation.



## Analysis

### Legal and statutory requirements

#### LGA Bylaw considerations

Section 156 of the Local Government Act 2002 (LGA) requires that when making, amending or revoking a bylaw Council must either consult the community using s156(1) or not s156(2).

Section 158/159 of the Local Government Act 2002 (LGA) requires that Councils review bylaws within five years of them being made and every 10 years thereafter. Any bylaw not reviewed is automatically revoked 2 years after the last date on which the bylaw should have been reviewed.

Council has taken the opportunity to bring the review forward from 2018. This allows the bylaw to be considered alongside other bylaws such as the Wastewater, and Stormwater bylaws which are being reviewed at this time.

The LGA outlines the procedure for and nature of a bylaw review. Council must:

- Identify the perceived problem to be addressed by the bylaw
- Determine whether a bylaw is the most appropriate way to address the problem
- Determine whether the proposed bylaw is the most appropriate form
- Determine whether the proposed bylaw raises implications under the New Zealand Bill of Rights Act 1990 (NZBORA) and whether those implications are justified
- Consult the public

These aspects are addressed, each in turn below.

#### Problems to be addressed by this bylaw

Issues considered for regulation through the bylaw:

- A bylaw provides certainty regarding the Council's authority to manage the local roading network to ensure public safety.
- A bylaw allows the Council to comprehensively outline and enforce its land transport requirements.
- The draft bylaw amendments address administrative, compliance, and enforcement matters that have proved problematic in either their application or implementation. For example...relocation of signage to give clear representation of the start and end of the speed zone
- The draft bylaw provides certainty and clear direction around the rights, obligations, and responsibilities of a landowner, occupier, customer, and the Council.

National legislation empowers the council to manage a wide range of land transport issues. However, relying on the provisions of the national legislation alone would result in the council adopting a reactive approach to managing land transport problems, especially for smaller scale issues where invoking statutory powers may be excessive or disproportionate to the problem. Amending the existing bylaw will enable the council to continue to apply the land transport provisions of the local government legislation in a measured and appropriate way for different issues and areas in the district and to enforce the provisions more effectively and efficiently.

Where regulatory approaches have been effective they have been retained in the bylaw. This also applies to the non-regulatory approaches that have consistently worked well. These initiatives, including education (road safety programmes) and provision of other services by the council or other providers, are expected to continue to operate alongside the new bylaw. The proposed

bylaw will provide a mechanism to respond to problems if they cannot be resolved through other means.

The bylaw will help achieve improved safety for vulnerable road users i.e Children. There are national guidelines around safer speeds and speed limits which have been followed. This Bylaw is consistent with the development manual which is Council's engineering standards

Following the council's analysis, the issues noted above are considered appropriate for regulation through a bylaw and the proposed bylaw has been prepared on that basis.

#### Is the Bylaw in the appropriate form?

The proposed amended form of the Bylaw is considered the most appropriate form. It focuses on identified issues and is customised to suit the particular circumstances of the District. This bylaw review provides an opportunity to update the Bylaw to provide additional clarifications. The proposed amended Bylaw is therefore considered to be the most appropriate form of Bylaw.

The proposed bylaw is the most appropriate form of bylaw and meets the following tests:

- The bylaw is not repugnant to the general laws of New Zealand
- The bylaw provides certainty and clear direction
- The bylaw is reasonable
- The bylaw is not overly restrictive, onerous on any person, or impractical

#### New Zealand Bill of Rights Act 1990 implications

The proposed amended Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990. The proposed Bylaw is consistent with the specific empowering provisions prescribed under the LGA and other legislation.

The draft bylaw does not place any limits on freedom of movement, expression or association, and does not isolate any particular social group in terms of the Act. In addition, any offences under the bylaw will require a judicial process through the Courts.

#### Land Transport Rule: Setting of Speed Limits 2003

This rule contains the process needed for reviewing a speed limit, which involves a rating system to determine the appropriate speed for any given road environment.

The proposals of the change in speeds were all assessed against these criteria by an external traffic safety consultant. It was found that although Station Road met the criteria for a variable reduced speed, Smith Street did not. After looking at the proposal in more detail and evaluating against safety it was recommended that Smith Street be included in the reduced variable speed zone. Instead of having isolated reduced speeds outside the three schools it would be beneficial to have a reduced speed zone cover the three schools.

#### Setting speed limits – Speed Limits Validation and Other Matters) Act 2015

The Land Transport (Speed Limits Validation and Other Matters) Act 2015 (The Validation Act) was passed under urgency by Parliament on 21 July 2015 and came into force on 22 July 2015. The Validation Act responded to concerns that some speed limit bylaws made up to that date may have:

- referenced incorrect or revoked empowering provisions
- been made or amended using a non-compliant process
- been revoked due to non-compliance with review requirements in the Local Government Act 2002 (Local Government Act).

In practice, the process for making a speed limit bylaw has changed little from that used previously under Local Government legislation and Land Transport Rule: Setting of Speed Limits 2003 (the Rule). In particular, section 76 of the Local Government Act applies to all local authority decisions and section 22AD of the Land Transport Act says a local authority must still consult as required by section 156 of the Local Government Act.

As speed limit bylaws will be made (and existing bylaws are deemed to have been made) under the Land Transport Act, the review requirements in sections 158 to 160A of the Local Government Act will not apply to them. This means they do not need to be reviewed within the 5 and 10 year periods set by the Local Government Act but other aspects of the Land Transport Bylaw still need to be reviewed in these timeframes regardless.

### **Options considered**

The options considered are included in the Statement of Proposal.

### **Analysis of preferred option**

Staff recommend Option A for the reasons set out in the table above.

### **Impact on policy and bylaws**

Nothing in this report is inconsistent with any Council policy, plan or strategy. The proposal will amend Councils bylaw.

### **Consistency with the Long Term Plan / Annual Plan**

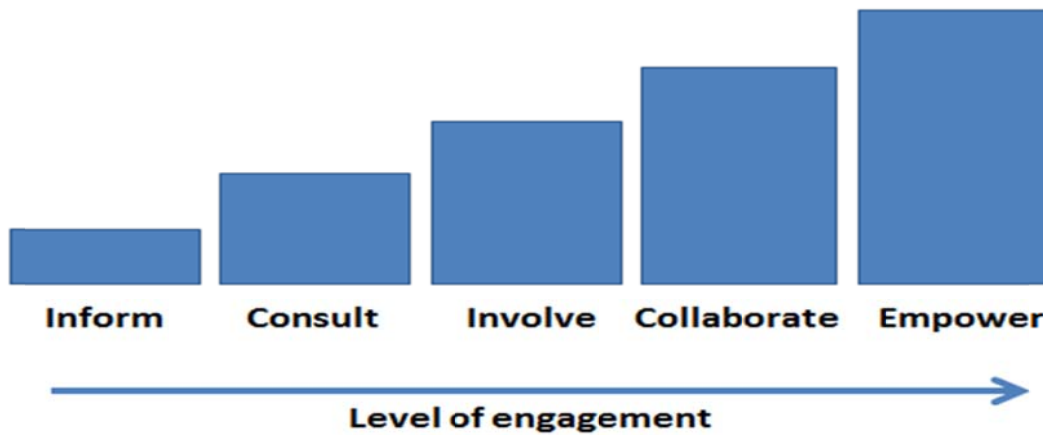
Ongoing policy and bylaw reviews are identified as a project in the Strategies and Plans section of the Long-Term Plan 2015-25. The review of the Land Transport Bylaw forms part of the Long-Term Plan implementation.

### **Impact on Significance and Engagement Policy**

Council's Significance and Engagement Policy (the Policy) requires an assessment of the significance of every issue requiring a decision in accordance with the Policy's criteria for determining significance.

The Policy provides guidance on how to determine significance, and the appropriate levels of engagement in proportion to the level of significance. In general, the more significant an issue is determined to be, the greater the need for community engagement. The Policy sets out the matters which must be taken into account when assessing the degree of significance;

- there is a legal requirement to engage with the community
- the level of financial consequences of the proposal or decision
- whether the proposal or decision will affect a large portion of the community
- the likely impact on present and future interests of the community
- recognising Māori culture values and their relationship to land and water through whakapapa
- whether the proposal affects the level of service of a Significant Activity
- whether community interest is high
- whether the likely consequences are controversial
- whether community views are already known, including the community's preferences about the form of engagement
- the form of engagement used in the past for similar proposals and decisions



In this case the amendments to the bylaw are not considered to have significant impact on the public nor are this issue identified in the significance and engagement policy as being of significant interest to the public.

It is proposed that Council uses the 'Consult' approach to engage with the community on the draft bylaw. This would include newspaper articles, attending community events and stakeholder meetings, inviting submissions and holding a public hearing.

#### **Communication, consultation and decision making processes**

The Local Government Act 2002 requires Council to enable democratic decision-making to promote its purpose *to enable democratic local decision-making and action by, and on behalf of, communities; and to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses within a framework of accountability and prudent financial management.*

Council must, in the course of the decision-making process:

- seek to identify all reasonably practicable options for the achievement of the objective of a decision;
- assess those options in terms of their advantages and disadvantages
- if any of the options identified involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.
- give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

It is the responsibility of Council to make, in its discretion, judgments about how to achieve compliance with its decision-making obligations that is largely in proportion to the significance of the matter affected by the decision.

As part of the consultation process, Council staff will discuss the proposed bylaws with the TeManawhenua Forum Mo Matamata-Piako at their next meeting on 7 March 2017.

#### **Setting of speed limits Rule 2003**

Before setting a speed limit, Council as the road controlling authority must consult with persons that may be affected by the proposed speed limit being:

- road controlling authorities that are responsible for roads that join, or are near, the road on which the speed limit is to be set or changed; and
- a territorial authority that is affected by the existing or proposed speed limit; and

- any local community that the road controlling authority considers to be affected by the proposed speed limit; and
- the Commissioner; and
- the Chief Executive Officer of the New Zealand Automobile Association Incorporated; and
- the Chief Executive Officer of the Road Transport Forum New Zealand; and
- any other organisation or road user group that the road controlling authority considers to be affected by the proposed speed limit; and
- the Director.

A road controlling authority must consult by writing to the persons listed above advising them of the proposed speed limit and giving them a reasonable time, which must be specified in the letter, to make submissions on the proposal.

The speed limit changes have been formally discussed with the regional NZ Transport Agency representative and informally with local police and with all three schools. The response from all parties is positive and they are in support of the changes. Letters will be sent to formally advise stakeholders. Any negative feedback from the formal responses will be discussed as part of the consultation process.

### **Communication, consultation and decision making processes**

Section 156 of the LGA outlines the consultation requirements for making, amending, or revoking amending bylaws made under the LGA.

Section 156 of the LGA sets out that when making amending or revoking a bylaw under the LGA, Council must use the special consultative procedure if:

- the bylaw concerns a matter identified in Councils significance and engagement policy as being of significant interest to the public; or
- Council considers that there is, or is likely to be, a significant impact on the public due to the proposed bylaw or changes to, or revocation of, the bylaw;

If none of these apply Council must consult in a manner that gives effect to the requirements of section 82 (general principles of consultation). Using the special consultative procedure is preferred as this would align with consultation on the other proposals being consulted on alongside this bylaw such as the fees and charges. Using the special consultative procedure would fulfil the requirements of section 82 in any case.

### Special consultative procedure

Section 83 of the LGA details the requirements of special consultative procedure, which include the adoption of a statement of proposal. Section 86 provides further direction on the required content of a statement of proposal. This includes a draft of the proposed amended bylaw, the reasons for the proposal, and a report on the relevant determinations under section 155 of the LGA (refer to the 'Legal and Statutory requirements' heading).

The proposed consultation process includes the following key actions to meet the legislative requirements:

- A statement of proposal, including a draft of the proposed amended bylaw, is prepared and adopted at a meeting of Council (circulated separately).
- Council gives public notice of the proposal in the Piako Post and Matamata Chronicle and invites members of the public to make submissions.
- The statement of proposal will be made available for public inspection on Council's website and at Council offices (via Kiosks) and at public libraries at Matamata, Morrinsville and Te Aroha.

- The period within which views on the proposal must be no less than one month. The submission period for the proposal is scheduled to start 22 March 2017 and close 26 April 2017.
- A hearing will be scheduled for 17 May 2017 to provide an opportunity for persons to speak to Council about the proposal.
- Council considers the submissions received and the further comments of those submitters who wish to be heard and any other comment or advice sought from staff or other persons and deliberates on these matters.
- Council is currently scheduled to make the final bylaw by resolution at the Council meeting on 21 June 2017.
- Subject to the above process, the new Bylaw will be into force in July 2016 (date to be confirmed).

Section 83(1)(a)(ii) of the LGA provides that where necessary to enable public understanding of the proposal, a summary of information may also be required. Due to the nature of the proposal and the fact there are five bylaws being reviewed it is considered that a summary of the information would be appropriate.

At its meeting on 8 February 2017 Council approved a newspaper advertisement for the Bylaw proposals (subject to later Council approval of the draft bylaws). This advertisement will go in the Piako Post and Matamata Chronicle on 22 March 2017.

### Timeframes

The process for this review is as follows:

Process	Date
Council workshop	14 September 2016
Council workshop	30 November 2016
Council adopt bylaws for public consultation	8 March 2017
Consult the community	22 March 2017 – 26 April 2017
Council Hearing	17 May 2017
Adopt Bylaws	21 June 2017
Amended bylaws brought into force	Date to be confirmed

### Contribution to Community Outcomes

The bylaw review contributes to the following Community Outcomes:

- 2 a) Our community/Iwi will be informed and have the opportunity to comment on significant issues
- 2 c) Council's decision making will be sound, visionary, and consider the different needs of our community/Iwi.

### Financial Impact

#### i. Cost

The costs of the bylaw review are advertising and staff time.

There will be some cost for the electronic signage for the variable speed limit and the cost is approximately \$40,000.

#### ii. Funding Source

The costs of the bylaw review are advertising and staff time.

The estimated cost for electronic signage for the variable speed limit is \$40,000

The cost of the signage and threshold proposed is funded from the annual Minor improvement fund as approved by NZ Transport Agency and subsidised by the agency.

## Attachments

- A. Matamata Speed Limit Proposal
- B. Hinuera Proposed Extension of Speed Limit

## Signatories

Author(s)	Raymond Short <b>Roading Asset Engineer</b>	
	Niall Baker <b>Policy Planner</b>	

Approved by	Susanne Kampshof <b>Asset Manager Strategy and Policy</b>	
	Manaia Te Wiata <b>Group Manager Business Support</b>	





# Solid Waste Management and Minimisation Bylaw

Trim No.: 1813682

## Executive Summary

Under sections 158 to 160 of the Local Government Act 2002 (LGA), Council is required to review all bylaws within five years of their adoption and every 10 years thereafter. The purpose of this report is to review the Solid Waste Bylaw 2008. Following the review it is proposed to revoke the existing bylaw and replace with a Solid Waste Management and Minimisation Bylaw 2017. Adoption of the proposed bylaw and corresponding Statement of Proposal for public consultation is sought.

A copy of the Statement of Proposal and draft bylaw amendments are circulated separately.

## Recommendation

### That:

1. **Council approves the proposed Solid Waste Management and Minimisation Bylaw 2017 to revoke and replace the Solid Waste Bylaw 2008 as a result of a review of the Bylaw in accordance with section 158 and 160 of the Local Government Act 2002.**
2. **Council determines that in accordance with section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way of addressing the perceived problems.**
3. **Council determines that the proposed amended Bylaw meets the requirements of section 155 of the Local Government Act 2002, in that it:**
  - i. **is the most appropriate form of bylaw**
  - ii. **does not give rise to any implications under the New Zealand Bills of Rights Act**
4. **Council adopts the Statement of Proposal, including the proposed Solid Waste Management and Minimisation Bylaw 2017 for public consultation using the special consultative procedure in accordance with section 156 of the Local Government Act 2002.**

## Content

### Background

#### Regional Collaboration

The Waikato and Bay of Plenty Councils have collaborated on a number of projects in the past, with the aim of achieving efficiency gains across the two regions. In an effort to prioritise future work, Waikato Regional Council and Bay of Plenty Regional Council coordinated two workshops in 2015/2016 to further explore these opportunities. The goal of these workshops was to identify a potential short-list of initiatives that Councils within, and across, the two regions could productively work together on in the solid waste area. This short-list was then further developed at the second workshop, where the short-list would be refined and action plans developed for each of the priority initiatives.

Following cross regional workshops 2 **priority areas** and 4 non-priority areas for potential collaborative projects were identified as worth exploring further. These included:

1. **Waste bylaws and licensing** (priority area)
2. **Waste Management and Minimisation Plans (WMMPs) and waste assessments** (priority area)
3. Education and communications
4. Rural waste
5. Procurement
6. Biosolids

It was decided that priority be given to 1 & 2 due to timeframes related to these areas. At the second of two workshops on potential collaborative projects for the Bay of Plenty and Waikato regions, work on solid waste bylaws was a potential initiative that deemed to be a high priority, and also had some urgency for many Council's. Licensing of operators and data collection was mentioned by many Council's as a reason for needing to work on their solid waste bylaws.

A solid waste bylaw working group was established (which Council staff have been represented on) to further scope this work and make a recommendation back to the wider group which Council staff have been involved in. Prior to the first meeting of this working group, a briefing paper was circulated summarising the background and outlining three possible options for a collaborative bylaw project.

The briefing paper put forward 3 broad options:

1. Develop standard bylaw clauses and process for adoption by individual Councils
2. Transfer bylaw making and admin powers to a regional/cross regional authority
3. Hybrid option – develop initial standard bylaw clauses and processes and work towards regional administration over medium term

Working group recommendation: To develop standard bylaw clauses and process for adoption by individual TAs was preferred and was recommended by the working group (Option 1). The working group saw benefits in aligning our bylaw content and processes for consistency across the regions to address issues such as storage and stockpiling of tyres, for example.

The working group identified that developing a standard set of clauses and implementation processes, particularly around operator licensing, will be most advantageous for constituent Councils at this time. By aligning bylaw content and processes, it was felt that this would support consistency, efficiencies and minimise costs for councils. Developing standard bylaw clauses aimed to avoid duplication of research effort, help ensure the most appropriate and effective wording is used, help create consistency of expectations for operators, and enable sharing of legal advice and consulting costs during development.

It was considered that putting in place standard solid waste operator licensing provisions and processes will create consistency for operators within the regions, ensure a streamlined effective process is in place, and help ensure consistency of data collection and reporting, which will be vital for reducing the burden on operators and enabling sharing and benchmarking of information across Councils and regionally.

Proposals: The working group sought proposals and quotes from three consultants to undertake this work and Eunomia Research and Consulting Ltd was chosen based on experience and knowledge of Waikato and Bay of Plenty WMMPs and the national waste data work being led by WasteMINZ, previous licensing and data framework project work and price.

Wasteminz alignment: Development of a standard approach to waste bylaws is something that is being considered at a national level facilitated through WasteMINZ (sector representation organisation). The working group discussed the project with Wasteminz and it was considered the bylaw project aligns well with national work being undertaken, and would not duplicate the waste data framework or licensing work being undertaken by WasteMinz. An application was made to the WasteMinz ‘Strategic Investment Fund’ which was successful and the project granted \$6,000 which was used to fund some of the project costs.

Cost of project: The total cost of the project was \$19,950.00+GST. The contribution from Matamata-Piako District Council was \$926.73 which was based on the district population. A funding agreement was entered into to confirm the project cost and deliverables.

Timeframes: the development of a standard bylaw completed in the 2016 calendar year.

Mayoral Forum: The project was presented Craig Hobbs, Chief Executive of South Waikato District Council, who is leading a Mayoral Forum workstream aimed at reducing the number of policies, plans and bylaws/collaborating to develop new ones.

Process to develop the bylaw: The project involved the following key steps:

- Inception process and development of action plan
- Develop bylaw scope
- Industry engagement (Phase 1)
- Development of the bylaw clauses
- Legal advice
- Industry engagement (phase 2)
- Finalisation of the bylaw template
- Implementation processes – development of a standard waste operator licensing process & standard waste data collection process based on the National Waste Data Framework
- Finalisation/agreement on the processes

**Issues**

The outcome of the process outlined above is a ‘template’ bylaw that can be used or modified by Council. Council staff have reviewed the template bylaw and consider it is generally suitable for Council’s needs however some clauses have been removed to suit local circumstances. The clauses removed are those relating to events and constricted sites.

Specific issues Council may wish to give consideration to are:

#	Clause	Issue
2	<b>Purpose</b>	Refers to associated document such as the TA’s Waste Management and Minimisation Plan (WMMP), New Zealand Waste Strategy, Public Health protection, data frameworks, etc.  Council may wish to include more information on the bylaw purpose, for example long-term goals, role of the bylaw in achieving Councils goals/implementation of the WMMP.
5	<b>Interpretation</b>	Define a wide range of terms that are used in the bylaw, some of which may refer to Acts.  Council may wish to consider revising the bylaw definitions. Note that ‘diverted materials’ can often also be ‘waste’ and this may be a communication/enforcement issue for Council.  Refinement of the ‘event’ definition may be useful to clarify

#	Clause	Issue
7	<b>Collection, transportation, processing, and disposal of waste</b>	<p>what is a 'significant' event such as setting a minimum size. The template bylaw does not specify the scale/type of event that would trigger the event waste management clauses of the bylaw as this will vary from Council to Council.</p> <p>The definition of 'green waste' solely relates to clause 7.2 which requires waste containers to be covered (excluding green waste). The definition is included to enable Council to set further controls using this definition, for example Council could ban a specific type of material. The bylaw defines many waste types to make applying further controls in the future easier.</p> <p>With regards to 'multi-unit developments' Council may wish to consider including minimum size of development into this definition.</p> <p>The definition of 'waste management facility' would potentially also include recovered materials such as scrap metal recycling. Legal advice has indicated the difference between 'diverted materials' and 'waste' is that diverted material requires a direct relationship between the customer and the diversion. Council may wish to consider how this definition would apply in our district and the implications of this.</p> <p>Several clauses set out who/what would need to be licensed, and what the requirements of the licensing would be. It also sets out the types of materials that are appropriate for various land disposal options, and in some cases may include additional data collection provisions.</p> <p>Under clause 7.1 Council may wish to further clarify the roles and responsibilities for various people. Currently the bylaw references occupier and manager (where there is no occupier).</p> <p>The powers under this set of clauses could also be used to regulate storage and stockpiling of materials such as tyres and e-waste, by requiring such sites to obtain a license.</p> <p><u>Operator licensing</u> The main reasons for operator licensing is that it creates a level playing field and enables data collection that can inform a robust waste assessment and WMMP. As many waste operators work across Council boundaries this will be a particularly relevant clause.</p> <p>If a licensing system is introduced it will need to be applied in a consistent way and this is the intent of the proposed bylaw.</p> <p>Provision for licensing does not mean all Councils will be licensing. For example Hauraki District Council has indicated they do not view licensing as necessary at this time.</p> <p>Council may also wish to consider including lawn mowing operators within any licensing framework. Council should also consider the threshold (based on minimum tonnage) for an operator to be licensed. It was considered in the development</p>

#	Clause	Issue
		<p>of this bylaw that a threshold of 20 tonnes may be too low while 30 tonnes would be an appropriate level. Council may wish to amend this by resolution.</p> <p>Council should give consideration to whether it wishes to introduce such as system within Matamata-Piako. Councils existing Solid Waste Bylaw requires waste operators collecting or transporting over 30 tonnes or waste or recyclables per annum to be licensed. Council have not been enforcing this requirement.</p> <p>Clause 7.11(d) &amp; (e) - Council may wish to include additional data requirements</p> <p>Clause 7.12 provides for Council powers to suspend a licensing as it sees fit. Council may wish to clarify that its preferred approach would be to discuss issues with the operator first. This clause provides for Council to take action on behaviour it didn't anticipate. Council may wish to give consideration to what the term in 'reasonable' means in this context. In the development of this bylaw it was considered that listing all types of adverse behaviour that may lead to licence suspension is not appropriate as an issue could arise that isn't covered in the bylaw and therefore Council could not take action.</p> <p><u>Multi-unit developments (MUD's)</u> Sets out a number of requirements for MUDs including provision of containers, management, and roles/responsibilities. Council may wish to consider how MUD's are defined for example should they be 10 or more units? Council may consider inclusion or exclusion of pensioner housing units on a single level.</p> <p><u>Event waste</u> Setting the requirements for event waste management and clarifying which events are required to comply with these requirements.</p> <p><u>Construction waste management</u> Requiring the use of Site Waste Management Plans (SWMPs) during construction projects over a certain value and/or size.</p> <p>Council should consider whether it wishes to include this clause. If so, the trigger for a SWMP should be considered. In practice most builders place a rubbish skip on site and take it to the transfer station when it's full. Monitoring and enforcement of this clause may be an issue. This clause is intended for larger construction sites and may not be appropriate for our district.</p> <p><u>Nuisance and litter</u> To clarify the boundaries between the Litter Act and bylaw provisions, and to address issues that are not clearly</p>

#	Clause	Issue
		<p>addressed in the Litter Act. These clauses provide a general requirement that people should not create a nuisance with regard to waste.</p> <p><u>Donation Collection Points</u> Setting out the requirements for operation of these points, and, if necessary, restrictions on locations.</p>
9	<b>Enforcement and Penalties</b>	<p>Setting out any enforcement actions or penalties to be used such as restrictions on licenses; bond retention, etc. In relation to construction site waste management plans (clause 9.5(a)) the Building Act 2004 does not provide the ability to decline building consent for non-compliance of this bylaw. The only practical means of enforcement is by encouraging the construction industry and support through Greenstar.</p> <p>Council's enforcement powers in respect of the bylaw are limited essentially to prosecution under the Local Government Act.</p>
10	<b>Exceptions and saving provisions</b>	<p>This clause aims to future-proof the bylaw by including provision for product stewardship schemes. These are responsible management of the environmental impact of a product to reduce the impact of manufactured products at stages of the product life cycle. The Fonterra milk for schools recycling programme is an example of an accredited product stewardship scheme.</p>
11	<b>Revocation</b>	<p>It is suggested that Council revoke its current Solid Waste Bylaw and create a new bylaw in the proposed form. This would repeal the current bylaw clauses.</p> <p>Council's usual practice is to amend its bylaws, by altering the content of the original bylaw. It is suggested in this instance due to the large number of changes that would need to be made to Councils existing Solid Waste Bylaw 2008 it is more efficient to revoke the current bylaw and replace it with a new one.</p> <p>This would mean a new bylaw is created which would need to be reviewed within 5 years (i.e. 2022). Alternatively, reviewing &amp; amending the existing bylaw would require review within 10 years (i.e. 2027). This can be incorporated into councils bylaw review programme without issue.</p>

### Proposed changes

Circulated separately to this report is tracked changes version of the proposed amendments. A copy of the proposed amended Bylaw is included in the Statement of Proposal which is also circulated separately.

The proposed amendments to the Bylaw are shown in ~~strikethrough~~ (for deletions) and underline (for additions).

## Analysis

### Legal and statutory requirements

#### Waste Minimisation Act 2008

The Waste Minimisation Act 2008 provides for Council to make a bylaw for regulating waste. The Act provides for a bylaw to license persons who carry out the collection and transportation of waste, and the set conditions for licensees. A bylaw must not be inconsistent with the Council's waste management and minimisation plan.

#### Local Government Act 2002

Section 158 of the Local Government Act 2002 (LGA) requires that Councils review bylaws within five years of them being made and every 10 years thereafter. Any bylaw not reviewed is automatically revoked.

Council's Solid Waste Bylaw was made in July 2008 and must be reviewed by July 2018 to remain in force. Council has taken the opportunity of the Waikato and Bay of Plenty collaborative bylaw project to bring the review forward by one year. This also avoids the need to review and consult on the bylaw in 2018 when the Long-Term 2018-28 will be consulted upon.

The LGA outlines the procedure for and nature of a bylaw review. Council must:

- Identify the perceived problem to be addressed by the bylaw
- Determine whether a bylaw is the most appropriate way to address the problem
- Determine whether the proposed bylaw is the most appropriate form
- Determine whether the proposed bylaw raises implications under the New Zealand Bill of Rights Act 1990 (NZBORA) and whether those implications are justified
- Consult the public

#### Problems to be addressed by this bylaw

Issues considered for regulation through the bylaw:

- Limited information about the waste stream from generation to disposal (access to waste data is a national issue – licencing may improve council's understanding of waste issues and where to target future funding)
- Limited knowledge about the location of waste disposal facilities and the volumes and types of waste disposed of
- Divertible materials being disposed of at disposal facilities
- Waste management and minimisation at events – specifically diversion and litter issues
- Failure to meet waste collection standards
- Kerbside collection services terms and conditions are not met by all users
- Accumulation of waste on private property
- Incorrect use of litterbins on public places
- Servicing and maintenance of privately owned litterbins on public places (in private property) does not always occur
- Difficulties of waste and recyclables storage in and collection from multi- unit developments
- Scavenging inorganic waste and recyclables put out for the council's collection services
- Illegal dumping of waste in public places e.g. shopping trolleys and waste at clothing donation bins and shop fronts
- General littering issues

Where regulatory approaches have been effective they have generally been retained in the new proposed bylaw. This also applies to the non-regulatory approaches that have consistently worked well. These initiatives, including education and provision of other services by the council or other providers, are expected to continue to operate alongside the new bylaw. Council has an existing

solid waste contract with Thames Coromandel and Hauraki District Councils and has good relationships with the refuse contractors where issues can often be resolved informally without recourse to the bylaw. The proposed bylaw will provide a mechanism to respond to problems if they cannot be resolved through other means.

The council seeks to minimise potential harm, nuisance or adverse public health effects of waste deposit, collection and disposal in the district. This includes reducing waste, and maximising resource recovery from the waste stream. In addition, the council seeks to understand the flow of waste material deposited, collected and disposed of in the district, to allow it to plan and monitor the effectiveness of waste minimisation strategies and plan future public infrastructure to support waste minimisation initiatives (whether public or private). This will help the council to meet its obligations under the Waste Minimisation Act 2008.

The proposed solid waste bylaw takes direction from the council's Joint Waste Management and Minimisation Plan (WMMP), and cannot be inconsistent with that plan. The WMMP was approved by the council on 8 February 2012 and sets out how Matamata-Piako District Council in conjunction with Thames Coromandel and Hauraki District Councils will be achieving its waste management and minimisation obligations under the WMA for the next six years. The WMMP can be considered as setting out a framework for solid waste management and minimisation, which the proposed bylaw operates within (and will help, in part, to achieve).

While the bylaw will help achieve significant parts of the WMMP, it cannot address all of the matters raised in that plan. The council will take other actions as part of its wider responsibilities. The WMMP is currently being reviewed through a separate process with a Joint Committee established to oversee this process. Councillors Wilcock and Cronin are Councils representatives on this Committee.

Council has identified a range of perceived problems, that cover a diverse range of issues related to waste and resource recovery, and which cover several different policy considerations. There are generally four approaches that are available to the council to achieve its waste management and minimisation objectives as set out in the WMMP. The four broad approaches are:

- No action by the council (also referred to as the "do nothing" option – that is taking a passive approach to the perceived problem, by not making a bylaw to address the problem)
- Education and awareness raising (also referred to as social awareness/behaviour change)
- Industry accords and agreements with the council (also referred to as direct action/partnering with industry).
- Regulation (through a bylaw) and legislative change.

Following the council's analysis, the issues noted above are considered appropriate for regulation through a bylaw and the proposed bylaw has been prepared on that basis.

#### Is a bylaw the most appropriate way of addressing the perceived problem?

In undertaking a review of a bylaw Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem. The bylaw provides a regulatory tool for the management of solid waste operations in the district. Based on the low number of complaints received since the Bylaw was first adopted in 2008 it is considered that a bylaw remains the most appropriate way of addressing the perceived problem.

The council is authorised to make the proposed bylaw under the Local Government Act 2002 (ss145-156), the Waste Minimisation Act 2008 (s56), the Health Act 1956 and the Litter Act 1979. The Local Government Act 2002 notes that solid waste is a core function of the council (s11A).

#### Is the Bylaw in the appropriate form?



The proposed amended form of the Bylaw is considered the most appropriate form. It focuses on identified issues and is customised to suit the particular circumstances of the District. The form of the bylaw has also been informed by engagement with the waste industry; a process co-ordinated regionally.

This bylaw review provides an opportunity to update the Bylaw to meet current legislative requirements and create consistency across the Waikato and Bay of Plenty regions. The proposed amended Bylaw is therefore considered to be the most appropriate form of Bylaw.

#### New Zealand Bill of Rights Act 1990 implications

The proposed amended Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990. The proposed Bylaw is consistent with the specific empowering provisions prescribed under the LGA and Waste Minimisation Act 2008.

#### **Options considered**

The options available are set out in the Statement of Proposal.

#### **Analysis of preferred option**

Staff recommend Option D for the reasons set out in the Statement of Proposal.

#### **Impact on policy and bylaws**

Nothing in this report is inconsistent with any Council policy, plan or strategy. The proposal will amend Council bylaws/create new bylaw.

#### **Consistency with the Long Term Plan / Annual Plan**

Ongoing policy and bylaw reviews are identified as a project in the Strategies and Plans section of the Long-Term Plan 2015-25. The review of the Solid Waste Bylaw forms part of the Long-Term Plan implementation.

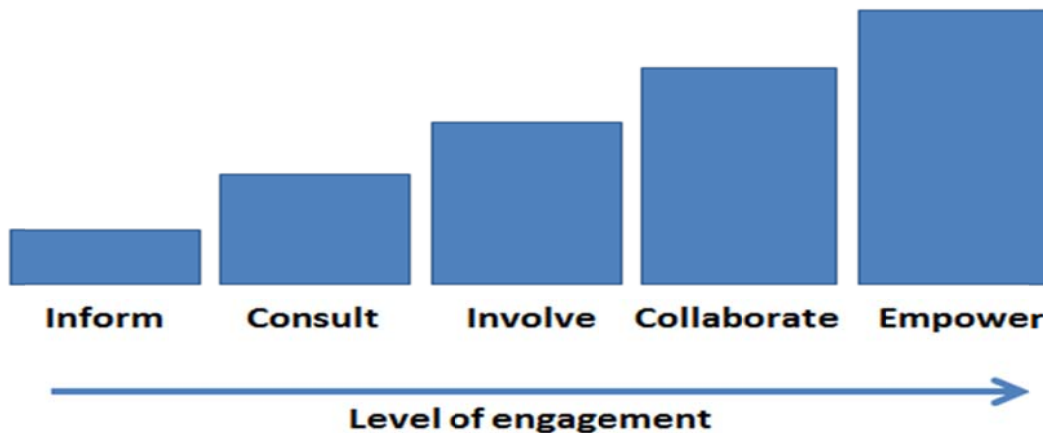
#### **Impact on Significance and Engagement Policy**

Council's Significance and Engagement Policy (the Policy) requires an assessment of the significance of every issue requiring a decision in accordance with the Policy's criteria for determining significance.

The Policy provides guidance on how to determine significance, and the appropriate levels of engagement in proportion to the level of significance. In general, the more significant an issue is determined to be, the greater the need for community engagement. The Policy sets out the matters which must be taken into account when assessing the degree of significance;

- there is a legal requirement to engage with the community
- the level of financial consequences of the proposal or decision
- whether the proposal or decision will affect a large portion of the community
- the likely impact on present and future interests of the community
- recognising Māori culture values and their relationship to land and water through whakapapa
- whether the proposal affects the level of service of a Significant Activity
- whether community interest is high
- whether the likely consequences are controversial

- whether community views are already known, including the community's preferences about the form of engagement
- the form of engagement used in the past for similar proposals and decisions



It is proposed that Council uses the 'Consult' approach to engage with the community on the draft bylaw. This would include newspaper articles, inviting submissions and holding a public hearing.

#### **Communication, consultation and decision making processes**

The Local Government Act 2002 requires Council to enable democratic decision-making to promote its purpose *to enable democratic local decision-making and action by, and on behalf of, communities; and to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses* within a framework of accountability and prudent financial management.

Council must, in the course of the decision-making process:

- seek to identify all reasonably practicable options for the achievement of the objective of a decision;
- assess those options in terms of their advantages and disadvantages
- give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

It is the responsibility of Council to make, in its discretion, judgments about how to achieve compliance with its decision-making obligations that is largely in proportion to the significance of the matter affected by the decision.

#### **Communication, consultation and decision making processes**

Section 156 of the LGA outlines the consultation requirements for making, amending, or revoking amending bylaws made under the LGA. Section 56 of the Waste Minimisation Act 2008 clarifies that the relevant sections (sections 151, 155, and 156) of the LGA still apply to a bylaw made under the Waste Minimisation Act 2008.

Section 156 of the LGA sets out that when making amending or revoking a bylaw under the LGA, Council must use the special consultative procedure if:

- the bylaw concerns a matter identified in Councils significance and engagement policy as being of significant interest to the public; or
- Council considers that there is, or is likely to be, a significant impact on the public due to the proposed bylaw or changes to, or revocation of, the bylaw;

If none of these apply Council must consult in a manner that gives effect to the requirements of section 82. In this case the proposal there could be considered to have a significant impact on the

public (especially the waste industry) and as such Council is required to consult using the special consultative procedure.

Using the special consultative procedure also aligns with consultation on the other proposals being consulted on alongside this bylaw such as the fees and charges.

#### Special consultative procedure

Section 83 of the LGA details the requirements of special consultative procedure, which include the adoption of a statement of proposal. Section 86 provides further direction on the required content of a statement of proposal. This includes a draft of the proposed amended bylaw, the reasons for the proposal, and a report on the relevant determinations under section 155 of the LGA (refer to the 'Legal and Statutory requirements' heading).

The proposed consultation process includes the following key actions to meet the legislative requirements:

- A statement of proposal, including a draft of the proposed amended bylaw, is prepared and adopted at a meeting of Council (circulated separately).
- Council gives public notice of the proposal in the Piako Post and Matamata Chronicle and invites members of the public to make submissions.
- The statement of proposal will be made available for public inspection on Council's website and at Council offices (via Kiosks) and at public libraries at Matamata, Morrinsville and Te Aroha.
- The period within which views on the proposal must be no less than one month. The submission period for the proposal is scheduled to start 22 March 2017 and close 26 April 2017.
- Key Stakeholders (waste industry operators) will be advised directly of the consultation process.
- A hearing will be scheduled for 17 May 2017 to provide an opportunity for persons to speak to Council about the proposal.
- Council considers the submissions received and the further comments of those submitters who wish to be heard and any other comment or advice sought from staff or other persons and deliberates on these matters.
- Council is currently scheduled to make the final bylaw by resolution at the Council meeting on 21 June 2017.
- Subject to the above process, the new Bylaw will be into force in July 2016 (date to be confirmed).

Section 83(1)(a)(ii) of the LGA provides that where necessary to enable public understanding of the proposal, a summary of information may also be required. Due to the nature of the proposal and the fact there are five bylaws being reviewed it is considered that a summary of the information would be necessary. A brief summary of the bylaw changes will be included in the Piako Post and Matamata Chronicle.

#### **Timeframes**

The process for this review is as follows:

<b>Process</b>	<b>Date</b>
Council workshop	14 September 2016
Council workshop	30 November 2016

Council adopt bylaws for public consultation	8 March 2017
Consult the community	22 March 2017 – 26 April 2017
Council Hearing	17 May 2017
Adopt Bylaws	21 June 2017
Amended bylaws brought into force	Date to be confirmed

### Contribution to Community Outcomes

The bylaw review contributes to the following Community Outcomes:

- 2 a) Our community/lwi will be informed and have the opportunity to comment on significant issues
- 2 c) Council's decision making will be sound, visionary, and consider the different needs of our community/lwi.

### Financial Impact

#### i. Cost

The total cost of the project was \$19,950.00+GST which was funded from contributions from Councils in the Waikato and Bay of Plenty regions. The contribution from Matamata-Piako District Council was \$926.73 which was based on our district population. The remaining costs of the project relate to the consultation process being advertising and staff time.

#### ii. Funding Source

\$22,000 is provided annually in the Long-Term Plan 2015-25 for policy and bylaw reviews. The cost of this bylaw review will be covered within these existing budgets.

### Attachments

There are no attachments for this report.

### Signatories

Author(s)	Niall Baker <b>Policy Planner</b>	
	Graham Robertson <b>Senior Utilities Engineer</b>	

Approved by	Susanne Kampshof <b>Asset Manager Strategy and Policy</b>	
	Manaia Te Wiata <b>Group Manager Business Support</b>	

## Stormwater Management Bylaw Review

Trim No.: 1845782

### Executive Summary

Under sections 158 to 160 of the Local Government Act 2002 (LGA), Council is required to review all bylaws within five years of their adoption and every 10 years thereafter. The purpose of this report is to review the Stormwater Management Bylaw 2009 (bylaw). Following the review it is proposed to amend the bylaw. Adoption of the proposed bylaw and corresponding Statement of Proposal for public consultation is sought.

A copy of the Statement of Proposal and draft bylaw amendments are circulated separately.

### Recommendation

**That:**

1. **Council approves the amendments to the draft Stormwater Management Bylaw 2009 as a result of a review of the Bylaw in accordance with section 158 and 160 of the Local Government Act 2002.**
2. **Council determines that in accordance with section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way of addressing the perceived problems.**
3. **Council determines that the proposed amended Bylaw meets the requirements of section 155 of the Local Government Act 2002, in that it:**
  - i. **is the most appropriate form of bylaw**
  - ii. **does not give rise to any implications under the New Zealand Bills of Rights Act**
4. **Council adopts the Statement of Proposal, including the amended Stormwater Management Bylaw for public consultation using the special consultative procedure in accordance with section 156 of the Local Government Act 2002.**

### Content

#### Background

The purpose of the Stormwater Management Bylaw is to manage stormwater within the district, to protect people, property and the environment by minimising the impact of flooding, erosion and environmental pollution. The bylaw is in addition to controls already in place on stormwater management, such as resource consent conditions, regulations and other legislation and Waikato Regional Council requirements.

At its meeting on 11 March 2009 Council received a report which provides background context for the current stormwater bylaw. The report stated:

*In October 2008 Harrison Grierson Consultants were commissioned to prepare a report on a stormwater strategy for Matamata. The Harrison Grierson report set out various options and made comprehensive recommendations for future actions. One specific recommendation was for Council to adopt a Stormwater Management Bylaw.*

*Earlier reports suggest that just having a focus on the public system alone is unlikely to resolve all stormwater issues and a strategic approach is needed. Council agreed that a Stormwater Management Bylaw was the most appropriate way to deal with the district's stormwater issues, and a working party consisting of Councillors and staff was established.*

*For many years there have been concerns over stormwater issues in the district, particularly in Matamata which were brought to a head as a result of a storm in April 2008.*

*The district's growth and environmental factors such as soil type have put pressure on the public stormwater network. There is no spare capacity in the stormwater system throughout some of the district and especially throughout Matamata and in some of Morrinsville.*

Councils Infrastructure Strategy (included in the Long-Term Plan 2015-25) states that:

*Disposal of stormwater is one of the biggest constraints we face in providing for the growth of our communities. Our geography and the existing capacity of our network, streams and rivers as well as environmental rules, means that some areas of our district are harder to develop than others. Our current approach is to require 'infill' and 'brownfield' developments to dispose of stormwater on site. 'Greenfield' developments can discharge existing run off in to our network.*

For many years there have been concerns over stormwater issues in the district, which is directly the result of most of the stormwater infrastructure having been installed when requirements were much lower than now expected. In general most pipes were designed for the 1 in 2 year storm and buildings were constructed on piles well above flooding levels. The cost of upgrading the systems has been costed and to upgrade even to the 1 in 5 storm was deemed not to be cost effective.

As a consequence the bylaw requires that in general all stormwater generated by developments shall be disposed of on the site.

## Issues

### Bylaw review

Council staff have undertaken a review of the existing bylaw and consider it remains generally fit for purpose. A number of minor changes are proposed to provide clarity and consistency through the bylaw. The key changes are outlined in the Statement of Proposal.

Circulated separately to this report is tracked changes version of the proposed amendments. A copy of the proposed amended Bylaw is included in the Statement of Proposal which is also circulated separately.

The proposed amendments to the Bylaw are shown in ~~strikethrough~~ (for deletions) and underline (for additions).

## Analysis

### Legal and statutory requirements

#### Local Government Act 2002

Section 145 of the Local Government Act 2002 (LGA) enables the council to make a bylaw to protect the public from nuisance and protect, promote and maintain public health and safety. Section 146(b) of the Local Government Act 2002 enables the making of a bylaw for the purpose - *of managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with 1 or more of the following:*

*(iv) land drainage*

Under s152(1) of the Local Government Act 2002, the council may not make a bylaw that has the effect of requiring buildings, which includes structures and systems attached to those buildings or structures, to achieve performance standards that are more stringent than those specified in the building code.

Section 232 of the Local Government Act 2002 prevents any person from destroying, damaging, stopping or interfering with drainage work.

Part 29 of the Local Government Act 1974 enables a Council to make bylaws to manage both the existing and future stormwater network. These powers are further clarified under section 517. However, the Local Government Act 1974 does not provide any provisions for the enforcement of a bylaw made under that Act and enforcement of such a bylaw will have to be done under section 20 of the Bylaws Act 1910. The proposed bylaw is therefore made under sections 145 and 146 of the Local Government Act 2002.

The following legislation provides local authorities with extensive powers to regulate stormwater:

Local Government Act 1974

Section 451 of the Local Government Act 1974 requires any person to obtain agreement of the council before doing work that affects the council drainage works or that requires the council's drainage works to be diverted, altered, protected, or replaced. Under section 459 the council may ask a landowner to connect any private drain with any public drain or watercourse and require a landowners do anything it thinks necessary for efficient drainage. No person may connect a private drain with public or private drain or covered watercourse without the council's consent (section 467). The council can require an owner or occupier of land to remove any tree or part of tree if its roots affect the drainage system (section 468) or to remove an obstruction from watercourse or drainage channels (section 511).

Resource Management Act 1991

This legislation provides the main method of managing stormwater. Under section 9 a person may not use any land in breach of the district plan unless expressly allowed. Section 13 limits the use of structures in, on, under, or over lake or river bed without consent and prohibits any person to excavate, drill, tunnel, or otherwise disturb a lake or river bed or remove vegetation from a lake or river bed without consent. Section 14 regulates the taking, use, damming or diversion of water, unless with the consent of the council. Section 15 ensures that no person may discharge a contaminant into water or onto land without consent.

LGA Bylaw considerations

Section 156 of the Local Government Act 2002 (LGA) requires that when making, amending or revoking a bylaw Council must either consult the community using s156(1) or not s156(2).

Section 158/159 of the Local Government Act 2002 (LGA) requires that Councils review bylaws within five years of them being made and every 10 years thereafter. Any bylaw not reviewed is automatically revoked 2 years after the last date on which the bylaw should have been reviewed.

The bylaw was last amended in 2010. Council has taken the opportunity to bring the review forward from 2020. This allows the bylaw to be considered alongside other related bylaws such as the Wastewater and water supply bylaws which are due for review at this time.

The LGA outlines the procedure for and nature of a bylaw review. Council must:

- Identify the perceived problem to be addressed by the bylaw
- Determine whether a bylaw is the most appropriate way to address the problem

- Determine whether the proposed bylaw is the most appropriate form
- Determine whether the proposed bylaw raises implications under the New Zealand Bill of Rights Act 1990 (NZBORA) and whether those implications are justified
- Consult the public

These aspects are addressed, each in turn below.

#### Problems to be addressed by this bylaw

National legislation empowers the council to manage a wide range of stormwater management issues. However, relying on the provisions of the national legislation alone would result in the council adopting a reactive approach to managing stormwater problems, especially for smaller scale issues where invoking statutory powers may be excessive or disproportionate to the problem. Amending the existing bylaw will enable the council to continue to apply the stormwater provisions of the local government legislation in a measured and appropriate way for different issues and areas in the district and to enforce the provisions more effectively and efficiently.

Where regulatory approaches have been effective they have been retained in the bylaw. This also applies to the non-regulatory approaches that have consistently worked well. These initiatives, including education and provision of other services by the council or other providers, are expected to continue to operate alongside the new bylaw. The proposed bylaw will provide a mechanism to respond to issues if they cannot be resolved through other means.

The council seeks to manage stormwater disposal, protect people, property and the environment and to minimise the impact of flooding, erosion and environmental pollution.

The Bylaw is consistent with the development manual which defines the requirements for new developments.

It is also noted that community satisfaction with Councils Management of flooding within urban areas is low with those satisfied or very satisfied ranging from 40% to 45% in the 2014 and 2016 customer satisfaction surveys. The bylaw is one way of clarifying stormwater issues which are generally not widely understood.

Council has identified a range of problems perceived by the community, that cover diverse issues related to stormwater, and which cover several different policy considerations. There are generally four approaches that are available to the council to achieve its stormwater objectives. The four broad approaches are:

- No action by the council (also referred to as the “do nothing” option – that is taking a passive approach to the perceived problem, by not making a bylaw to address the problem)
- Education and awareness raising (also referred to as social awareness/behaviour change)
- Developer accords and agreements with the council (also referred to as direct action/partnering with industry).
- Regulation (through a bylaw) and legislative change.

Following the council’s analysis, the issues noted above are considered appropriate for regulation through a bylaw and the proposed bylaw has been prepared on that basis.

#### Is a bylaw the most appropriate way of addressing the perceived problem?

In undertaking a review of a bylaw Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem. The bylaw provides a regulatory tool for the management of stormwater in the district. Based on the low number of complaints received regarding the bylaw since it was first adopted in 2009 it is considered that a bylaw remains the most appropriate way of addressing the perceived problem.



The council is authorised to make the proposed bylaw under the Local Government Act 2002 (ss145-156), The Local Government Act 2002 notes that network infrastructure (i.e. the provision of roads and other transport, water, wastewater, and stormwater collection and management) is a core function of the council (s11A).

#### Is the Bylaw in the appropriate form?

The proposed amended form of the Bylaw is considered the most appropriate form. It focuses on identified issues and is customised to suit the particular circumstances of the District. This bylaw review provides an opportunity to update the Bylaw to provide additional clarifications. The proposed amended Bylaw is therefore considered to be the most appropriate form of Bylaw.

The proposed bylaw is the most appropriate form of bylaw and meets the following tests:

- The bylaw is not repugnant to the general laws of New Zealand
- The bylaw provides certainty and clear direction
- The bylaw is reasonable
- The bylaw is not overly restrictive, onerous on any person, or impractical

#### New Zealand Bill of Rights Act 1990 implications

The proposed amended Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990. The proposed Bylaw is consistent with the specific empowering provisions prescribed under the LGA and other legislation.

The draft bylaw does not place any limits on freedom of movement, expression or association, and does not isolate any particular social group in terms of the Act. In addition, any offences under the bylaw will require a judicial process through the Courts.

#### **Options considered**

The options are outlined in the Statement of Proposal.

#### **Analysis of preferred option**

Staff recommend Option A for the reasons set out in Statement of Proposal.

#### **Impact on policy and bylaws**

Nothing in this report is inconsistent with any Council policy, plan or strategy such as the the Infrastructure Strategy. The proposal will amend Councils bylaw.

#### **Consistency with the Long Term Plan / Annual Plan**

Ongoing policy and bylaw reviews are identified as a project in the Strategies and Plans section of the Long-Term Plan 2015-25. The review of the Bylaw forms part of the Long-Term Plan implementation.

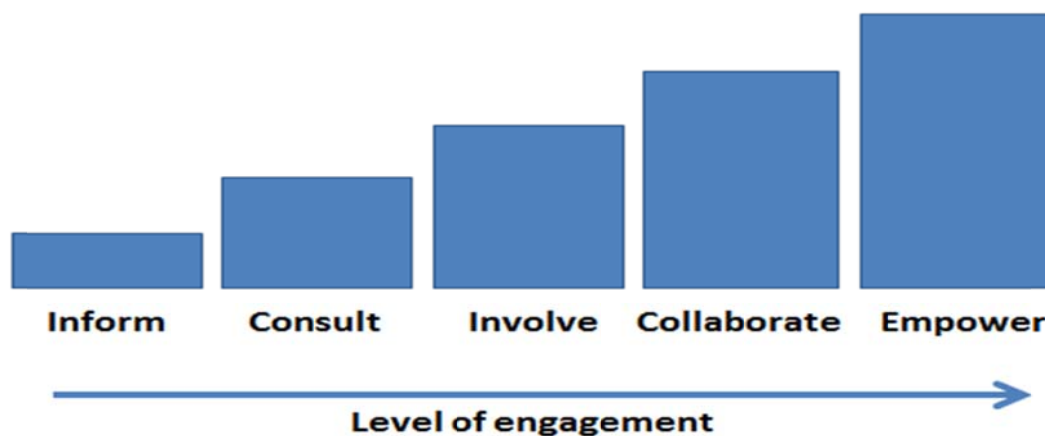
#### **Impact on Significance and Engagement Policy**

Council's Significance and Engagement Policy (the Policy) requires an assessment of the significance of every issue requiring a decision in accordance with the Policy's criteria for determining significance.

The Policy provides guidance on how to determine significance, and the appropriate levels of engagement in proportion to the level of significance. In general, the more significant an issue is determined to be, the greater the need for community engagement. The Policy sets out the matters which must be taken into account when assessing the degree of significance;

- there is a legal requirement to engage with the community

- the level of financial consequences of the proposal or decision
- whether the proposal or decision will affect a large portion of the community
- the likely impact on present and future interests of the community
- recognising Māori culture values and their relationship to land and water through whakapapa
- whether the proposal affects the level of service of a Significant Activity
- whether community interest is high
- whether the likely consequences are controversial
- whether community views are already known, including the community's preferences about the form of engagement
- the form of engagement used in the past for similar proposals and decisions



In this case the amendments to the bylaw are not considered to have significant impact on the public nor are this issue identified in the significance and engagement policy as being of significant interest to the public.

It is proposed that Council uses the 'Consult' approach to engage with the community on the draft bylaw. This would include newspaper articles, inviting submissions and holding a public hearing.

#### **Communication, consultation and decision making processes**

The Local Government Act 2002 requires Council to enable democratic decision-making to promote its purpose *to enable democratic local decision-making and action by, and on behalf of, communities; and to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses within a framework of accountability and prudent financial management.*

Council must, in the course of the decision-making process:

- seek to identify all reasonably practicable options for the achievement of the objective of a decision;
- assess those options in terms of their advantages and disadvantages
- if any of the options identified involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.
- give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

It is the responsibility of Council to make, in its discretion, judgments about how to achieve compliance with its decision-making obligations that is largely in proportion to the significance of the matter affected by the decision.

It is noted that water is of cultural significance to Maori. Streams and watercourses can provide habitats for native wildlife. Stormwater management may be important to mana whenua as kaitiaki who are culturally responsible for the well-being of the mauri (lifeforce) of freshwater, the sea and other receiving waters. Areas of concern to mana whenua may include water quality monitoring and treatment, pest control, waste disposal and stormwater treatment.

As part of the consultation process, Council staff will discuss the proposed bylaws with the Te Manawhenua Forum Mo Matamata-Piako at their next meeting on 7 March 2017.

### **Communication, consultation and decision making processes**

Section 156 of the LGA outlines the consultation requirements for making, amending, or revoking amending bylaws made under the LGA.

Section 156 of the LGA sets out that when making amending or revoking a bylaw under the LGA, Council must use the special consultative procedure if:

- the bylaw concerns a matter identified in Councils significance and engagement policy as being of significant interest to the public; or
- Council considers that there is, or is likely to be, a significant impact on the public due to the proposed bylaw or changes to, or revocation of, the bylaw;

If none of these apply Council must consult in a manner that gives effect to the requirements of section 82 (general principles of consultation). Using the special consultative procedure is preferred as this would align with consultation on the other proposals being consulted on alongside this bylaw such as the fees and charges. Using the special consultative procedure would fulfil the requirements of section 82 in any case.

#### Special consultative procedure

Section 83 of the LGA details the requirements of special consultative procedure, which include the adoption of a statement of proposal. Section 86 provides further direction on the required content of a statement of proposal. This includes a draft of the proposed amended bylaw, the reasons for the proposal, and a report on the relevant determinations under section 155 of the LGA (refer to the 'Legal and Statutory requirements' heading).

The proposed consultation process includes the following key actions to meet the legislative requirements:

- A statement of proposal, including a draft of the proposed amended bylaw, is prepared and adopted at a meeting of Council (circulated separately).
- Council gives public notice of the proposal in the Piako Post and Matamata Chronicle and invites members of the public to make submissions.
- The statement of proposal will be made available for public inspection on Council's website and at Council offices (via Kiosks) and at public libraries at Matamata, Morrinsville and Te Aroha.
- The period within which views on the proposal must be no less than one month. The submission period for the proposal is scheduled to start 22 March 2017 and close 26 April 2017.
- A hearing will be scheduled for 17 May 2017 to provide an opportunity for persons to speak to Council about the proposal.

- Council considers the submissions received and the further comments of those submitters who wish to be heard and any other comment or advice sought from staff or other persons and deliberates on these matters.
- Council is currently scheduled to make the final bylaw by resolution at the Council meeting on 21 June 2017.
- Subject to the above process, the new Bylaw will be into force in July 2016 (date to be confirmed).

Section 83(1)(a)(ii) of the LGA provides that where necessary to enable public understanding of the proposal, a summary of information may also be required. Due to the nature of the proposal and the fact there are five bylaws being reviewed it is considered that a summary of the information would be appropriate.

At its meeting on 8 February 2017 Council approved a newspaper advertisement for the Bylaw proposals (subject to later Council approval of the draft bylaws). This advertisement will go in the Piako Post and Matamata Chronicle on 22 March 2017.

### Timeframes

The process for this review is as follows:

Process	Date
Council workshop	14 September 2016
Council workshop	30 November 2016
Council adopt bylaws for public consultation	8 March 2017
Consult the community	22 March 2017 – 26 April 2017
Council Hearing	17 May 2017
Adopt Bylaws	21 June 2017
Amended bylaws brought into force	Date to be confirmed

### Contribution to Community Outcomes

The bylaw review contributes to the following Community Outcomes:

- 2 a) Our community/lwi will be informed and have the opportunity to comment on significant issues
- 2 c) Council's decision making will be sound, visionary, and consider the different needs of our community/lwi.

### Financial Impact

#### i. Cost

The costs of the bylaw review are advertising and staff time.

#### ii. Funding Source

\$22,000 is provided annually in the Long-Term Plan 2015-25 for policy and bylaw reviews. The cost of this bylaw review will be covered within these existing budgets.

## Attachments

There are no attachments for this report.

## Signatories

Author(s)	Niall Baker <b>Policy Planner</b>	
	Graham Robertson <b>Senior Utilities Engineer</b>	

Approved by	Susanne Kampshof <b>Asset Manager Strategy and Policy</b>	
	Manaia Te Wiata <b>Group Manager Business Support</b>	



## Wastewater Bylaw Review

Trim No.: 1845872

### Executive Summary

Under sections 158 to 160 of the Local Government Act 2002 (LGA), Council is required to review all bylaws within five years of their adoption and every 10 years thereafter. The purpose of this report is to review the Wastewater Bylaw 2008 (bylaw). Following the review it is proposed to amend the bylaw. Adoption of the proposed bylaw and corresponding Statement of Proposal for public consultation is sought.

A copy of the Statement of Proposal and draft bylaw amendments are circulated separately.

### Recommendation

**That:**

**That:**

- 1. Council approves the amendments to the draft Wastewater Bylaw 2008 as a result of a review of the Bylaw in accordance with section 158 and 160 of the Local Government Act 2002.**
- 2. Council determines that in accordance with section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way of addressing the perceived problems.**
- 3. Council determines that the proposed amended Bylaw meets the requirements of section 155 of the Local Government Act 2002, in that it:
  - i. is the most appropriate form of bylaw**
  - ii. does not give rise to any implications under the New Zealand Bills of Rights Act****
- 4. Council adopts the Statement of Proposal, including the amended Wastewater Bylaw 2008 for public consultation using the special consultative procedure in accordance with section 156 of the Local Government Act 2002.**

### Content

Council's wastewater service ensures that wastewater (sewage and grey water that goes down the drains) is collected, treated and disposed of appropriately for the health and wellbeing of our community. Council operates five treatment plants and 240 kilometres of sewer mains that supply wastewater services to the urban areas of Matamata, Morrinsville, Te Aroha, Waihou, Rukumoana, Waharoa and Tahuna.

Council's Wastewater Drainage Bylaw 2001 was reviewed and incorporated into the Consolidated Bylaw in 2008. The bylaw is therefore due for review in 2018.

The purpose of this Bylaw is to manage Wastewater within the Matamata-Piako District so as to protect people, property and the environment by minimising the impact of the disposal of wastewater drainage from domestic and trade premises by the sewerage system or private on site wastewater disposal systems.

It is essential that the Council has the ability to manage and control the type and volume of discharges to the wastewater system in order to prevent overload or damage and avoid any potential risk to public health and the environment.

#### Bylaw review

Council staff have undertaken a review of the existing bylaw and consider it remains generally fit for purpose. A number of minor changes are proposed to provide clarity and consistency through the bylaw. The key changes are outlined in the Statement of Proposal.

Circulated separately to this report is tracked changes version of the proposed amendments. A copy of the proposed amended Bylaw is included in the Statement of Proposal which is also circulated separately.

The proposed amendments to the Bylaw are shown in ~~striketrough~~ (for deletions) and underline (for additions).

#### **Legal and statutory requirements**

##### **LGA Bylaw considerations**

Section 156 of the Local Government Act 2002 (LGA) requires that when making, amending or revoking a bylaw Council must either consult the community using s156(1) or not s156(2).

Section 158/159 of the Local Government Act 2002 (LGA) requires that Councils review bylaws within five years of them being made and every 10 years thereafter. Any bylaw not reviewed is automatically revoked 2 years after the last date on which the bylaw should have been reviewed.

Council has taken the opportunity to bring the review forward from 2018. This allows the bylaw to be considered alongside other related bylaws such as the Water Supply, and Stormwater bylaws which are being reviewed at this time.

The LGA outlines the procedure for and nature of a bylaw review. Council must:

- Identify the perceived problem to be addressed by the bylaw
- Determine whether a bylaw is the most appropriate way to address the problem
- Determine whether the proposed bylaw is the most appropriate form
- Determine whether the proposed bylaw raises implications under the New Zealand Bill of Rights Act 1990 (NZBORA) and whether those implications are justified
- Consult the public

These aspects are addressed, each in turn below.

##### **Problems to be addressed by this bylaw**

Issues considered for regulation through the bylaw:

- A bylaw provides certainty regarding the Council's authority to manage public wastewater network to ensure the supply, the network, the environment, and public health are protected.
- A bylaw allows the Council to comprehensively outline and enforce its wastewater supply network requirements.
- The bylaw amendments address administrative, compliance, and enforcement matters that have proved problematic in either their application or implementation.
- The draft bylaw provides certainty and clear direction around the rights, obligations, and responsibilities of a landowner, occupier, customer, and the Council plus assists the Council to meet environmental and resource consent requirements.



National legislation empowers the council to manage a wide range of wastewater management issues. However, relying on the provisions of the national legislation alone would result in the council adopting a reactive approach to managing wastewater problems, especially for smaller scale issues where invoking statutory powers may be excessive or disproportionate to the problem. Amending the existing bylaw will enable the council to continue to apply the wastewater provisions of the local government legislation in a measured and appropriate way for different issues and areas in the district and to enforce the provisions more effectively and efficiently.

Where regulatory approaches have been effective they have been retained in the bylaw. This also applies to the non-regulatory approaches that have consistently worked well. These initiatives, including education and provision of other services by the council or other providers, are expected to continue to operate alongside the amended bylaw. The proposed bylaw will provide a mechanism to respond to problems if they cannot be resolved through other means.

The Bylaw is consistent with the Development Manual which defines the requirements for any developments..

Council has identified a range of perceived problems, that cover a diverse range of issues related to wastewater services, and which cover several different policy considerations. There are generally four approaches that are available to the council to achieve its wastewater service objectives. The four broad approaches are:

- No action by the council (also referred to as the “do nothing” option – that is taking a passive approach to the perceived problem, by not making a bylaw to address the problem)
- Education and awareness raising (also referred to as social awareness/behaviour change)
- Developer accords and agreements with the council (also referred to as direct action/partnering with industry).
- Regulation (through a bylaw) and legislative change.

Following the council’s analysis, the issues noted above are considered appropriate for regulation through a bylaw and the proposed bylaw has been prepared on that basis.

#### Is a bylaw the most appropriate way of addressing the perceived problem?

In undertaking a review of a bylaw Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem. The bylaw provides a regulatory tool for the management of wastewater services in the district. Based on the low number of complaints received regarding the bylaw since it was first adopted in 2009 it is considered that a bylaw remains the most appropriate way of addressing the perceived problem.

The council is authorised to make the proposed bylaw under the Local Government Act 2002 (ss145-156), The Local Government Act 2002 notes that network infrastructure (i.e. the provision of roads and other transport, water, wastewater, and stormwater collection and management) is a core function of the council (s11A).

Section 146 of the Act allows the Council to make a bylaw to manage, regulate, protect from damage, misuse, or loss, any infrastructure associated with wastewater, drainage, and sanitation.

#### Is the Bylaw in the appropriate form?

The proposed amended form of the Bylaw is considered the most appropriate form. It focuses on identified issues and is customised to suit the particular circumstances of the District. This bylaw review provides an opportunity to update the Bylaw to provide additional clarifications. The proposed amended Bylaw is therefore considered to be the most appropriate form of Bylaw.

The proposed bylaw is the most appropriate form of bylaw and meets the following tests:

- The bylaw is not repugnant to the general laws of New Zealand
- The bylaw provides certainty and clear direction
- The bylaw is reasonable
- The bylaw is not overly restrictive, onerous on any person, or impractical

#### New Zealand Bill of Rights Act 1990 implications

The proposed amended Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990. The proposed Bylaw is consistent with the specific empowering provisions prescribed under the LGA and other legislation.

The draft bylaw does not place any limits on freedom of movement, expression or association, and does not isolate any particular social group in terms of the Act. In addition, any offences under the bylaw will require a judicial process through the Courts.

#### **Options considered**

A bylaw review has been undertaken in accordance with section 160(2) of the LGA. The options available are set out in the Statement of Proposal.

#### **Analysis of preferred option**

Staff recommend Option A for the reasons set out in the Statement of Proposal.

#### **Impact on policy and bylaws**

Nothing in this report is inconsistent with any Council policy, plan or strategy. The proposal will amend Councils bylaw.

Councils Infrastructure Strategy (included in the Long-Term Plan 2015-25) states that: *Our vision is to continue to provide our community with ....reliable....wastewater services in an affordable way that represents good value for money*". The Bylaw provides a tool to protect the network and avoid any potential risk to public health and the environment.

#### **Consistency with the Long Term Plan / Annual Plan**

Ongoing policy and bylaw reviews are identified as a project in the Strategies and Plans section of the Long-Term Plan 2015-25. The review of the Solid Waste Bylaw forms part of the Long-Term Plan implementation.

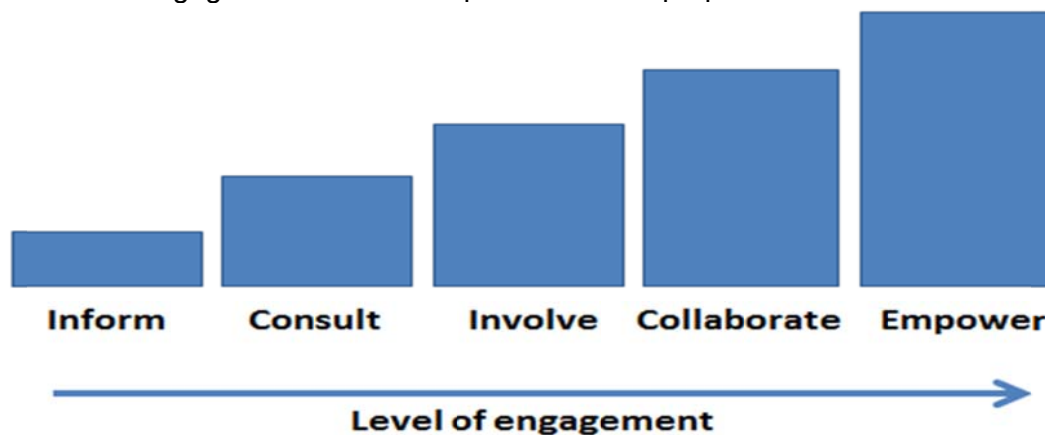
#### **Impact on Significance and Engagement Policy**

Council's Significance and Engagement Policy (the Policy) requires an assessment of the significance of every issue requiring a decision in accordance with the Policy's criteria for determining significance.

The Policy provides guidance on how to determine significance, and the appropriate levels of engagement in proportion to the level of significance. In general, the more significant an issue is determined to be, the greater the need for community engagement. The Policy sets out the matters which must be taken into account when assessing the degree of significance;

- there is a legal requirement to engage with the community
- the level of financial consequences of the proposal or decision
- whether the proposal or decision will affect a large portion of the community
- the likely impact on present and future interests of the community
- recognising Māori culture values and their relationship to land and water through whakapapa
- whether the proposal affects the level of service of a Significant Activity
- whether community interest is high

- whether the likely consequences are controversial
- whether community views are already known, including the community's preferences about the form of engagement
- the form of engagement used in the past for similar proposals and decisions



It is proposed that Council uses the 'Consult' approach to engage with the community on the draft bylaw. This would include newspaper articles, attending community events and stakeholder meetings, inviting submissions and holding a public hearing.

#### **Communication, consultation and decision making processes**

The Local Government Act 2002 requires Council to enable democratic decision-making to promote its purpose *to enable democratic local decision-making and action by, and on behalf of, communities; and to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses within a framework of accountability and prudent financial management.*

Council must, in the course of the decision-making process:

- seek to identify all reasonably practicable options for the achievement of the objective of a decision;
- assess those options in terms of their advantages and disadvantages
- if any of the options identified involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.
- give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

It is the responsibility of Council to make, in its discretion, judgments about how to achieve compliance with its decision-making obligations that is largely in proportion to the significance of the matter affected by the decision.

It is noted that water is of cultural significance to Maori. Streams and watercourses can provide habitats for native wildlife. Wastewater management may be important to mana whenua as kaitiaki who are culturally responsible for the well-being of the mauri (lifeforce) of freshwater, the sea and other receiving waters. Areas of concern to mana whenua may include water quality monitoring and treatment, pest control, waste disposal and stormwater treatment.

As part of the consultation process, Council staff will discuss the proposed bylaws with the TeManawhenua Forum Mo Matamata-Piako at their next meeting on 7 March 2017.

### Communication, consultation and decision making processes

Section 156 of the LGA outlines the consultation requirements for making, amending, or revoking amending bylaws made under the LGA.

Section 156 of the LGA sets out that when making amending or revoking a bylaw under the LGA, Council must use the special consultative procedure if:

- the bylaw concerns a matter identified in Council's significance and engagement policy as being of significant interest to the public; or
- Council considers that there is, or is likely to be, a significant impact on the public due to the proposed bylaw or changes to, or revocation of, the bylaw;

If none of these apply Council must consult in a manner that gives effect to the requirements of section 82 (general principles of consultation).

In this case the amendments to the bylaw are not considered to have significant impact on the public nor are this issue identified in the significance and engagement policy as being of significant interest to the public. As such Council is not required to consult using the special consultative procedure. However using the special consultative procedure is preferred as this would align with consultation on the other proposals being consulted on alongside this bylaw such as the fees and charges. Using the special consultative procedure would fulfil the requirements of section 82 in any case.

#### Special consultative procedure

Section 83 of the LGA details the requirements of special consultative procedure, which include the adoption of a statement of proposal. Section 86 provides further direction on the required content of a statement of proposal. This includes a draft of the proposed amended bylaw, the reasons for the proposal, and a report on the relevant determinations under section 155 of the LGA (refer to the 'Legal and Statutory requirements' heading).

The proposed consultation process includes the following key actions to meet the legislative requirements:

- A statement of proposal, including a draft of the proposed amended bylaw, is prepared and adopted at a meeting of Council (circulated separately).
- Council gives public notice of the proposal in the Piako Post and Matamata Chronicle and invites members of the public to make submissions.
- The statement of proposal will be made available for public inspection on Council's website and at Council offices (via Kiosks) and at public libraries at Matamata, Morrinsville and Te Aroha.
- The period within which views on the proposal must be no less than one month. The submission period for the proposal is scheduled to start 22 March 2017 and close 26 April 2017.
- A hearing will be scheduled for 17 May 2017 to provide an opportunity for persons to speak to Council about the proposal.
- Council considers the submissions received and the further comments of those submitters who wish to be heard and any other comment or advice sought from staff or other persons and deliberates on these matters.
- Council is currently scheduled to make the final bylaw by resolution at the Council meeting on 21 June 2017.
- Subject to the above process, the new Bylaw will be into force in July 2016 (date to be confirmed).

Section 83(1)(a)(ii) of the LGA provides that where necessary to enable public understanding of the proposal, a summary of information may also be required. Due to the nature of the proposal

and the fact there are five bylaws being reviewed it is considered that a summary of the information would be appropriate.

At its meeting on 8 February 2017 Council approved a newspaper advertisement for the Bylaw proposals (subject to later Council approval of the draft bylaws). This advertisement will go in the Piako Post and Matamata Chronicle on 22 March 2017.

### Timeframes

The process for this review is as follows:

Process	Date
Council workshop	14 September 2016
Council workshop	30 November 2016
Council adopt bylaws for public consultation	8 March 2017
Consult the community	22 March 2017 – 26 April 2017
Council Hearing	17 May 2017
Adopt Bylaws	21 June 2017
Amended bylaws brought into force	Date to be confirmed

### Contribution to Community Outcomes

The bylaw review contributes to the following Community Outcomes:

- 2 a) Our community/Iwi will be informed and have the opportunity to comment on significant issues
- 2 c) Council's decision making will be sound, visionary, and consider the different needs of our community/Iwi.

### Financial Impact

#### i. Cost

The costs of the bylaw review are advertising and staff time.

#### ii. Funding Source

\$22,000 is provided annually in the Long-Term Plan 2015-25 for policy and bylaw reviews. The cost of this bylaw review will be covered within these existing budgets.

### Attachments

There are no attachments for this report.

### Signatories

Author(s)	Niall Baker <b>Policy Planner</b>	
	Graham Robertson <b>Senior Utilities Engineer</b>	

Approved by	Susanne Kampshof <b>Asset Manager Strategy and Policy</b>	
	Manaia Te Wiata <b>Group Manager Business Support</b>	



## Water Supply Bylaw Review

Trim No.: 1845874

### Executive Summary

Under sections 158 to 160 of the Local Government Act 2002 (LGA), Council is required to review all bylaws within five years of their adoption and every 10 years thereafter. The purpose of this report is to review the Water Supply Bylaw 2008 (bylaw). Following the review it is proposed to amend the bylaw. Adoption of the proposed bylaw and corresponding Statement of Proposal for public consultation is sought.

A copy of the Statement of Proposal and draft bylaw amendments are circulated separately.

### Recommendation

**That:**

1. **Council approves the amendments to the draft Water Supply Bylaw 2008 as a result of a review of the Bylaw in accordance with section 158 and 160 of the Local Government Act 2002.**
2. **Council determines that in accordance with section 155(1) of the Local Government Act 2002, a bylaw is the most appropriate way of addressing the perceived problems.**
3. **Council determines that the proposed amended Bylaw meets the requirements of section 155 of the Local Government Act 2002, in that it:**
  - i. **is the most appropriate form of bylaw**
  - ii. **does not give rise to any implications under the New Zealand Bills of Rights Act**
4. **Council adopts the Statement of Proposal, including the amended Water Supply Bylaw 2008 for public consultation using the special consultative procedure in accordance with section 156 of the Local Government Act 2002.**

### Content

#### Background

#### Issues

Council owns and operate seven water supply schemes in the district - in Matamata (which includes Waharoa and Raungaiti), Morrinsville, Te Aroha and four small schemes in Te Poi, Tahuna, Hinuera and Te Aroha West. Each area has one or more treatment plants, and the district has a total of 377 kilometres of pipes (excluding service lines). Our water service ensures our communities are supplied with clean, safe drinking water to ensure the health and wellbeing of our residents.

Council's Water Supply Bylaw 2001 was reviewed and incorporated into the Consolidated Bylaw in 2008. The bylaw is therefore due for review in 2018. The purpose of the Bylaw is to enable the Council as a water supply authority to provide for the supply of water to its customers.

### Bylaw review

Council staff have undertaken a review of the existing bylaw and consider it remains generally fit for purpose. A number of minor changes are proposed to provide clarity and consistency through the bylaw. The key changes are outlined below:

Circulated separately to this report is tracked changes version of the proposed amendments. A copy of the proposed amended Bylaw is included in the Statement of Proposal which is also circulated separately.

The proposed amendments to the Bylaw are shown in ~~striketrough~~ (for deletions) and underline (for additions).

### **Legal and statutory requirements**

#### **LGA Bylaw considerations**

Section 156 of the Local Government Act 2002 (LGA) requires that when making, amending or revoking a bylaw Council must either consult the community using s156(1) or not s156(2).

Section 158/159 of the Local Government Act 2002 (LGA) requires that Councils review bylaws within five years of them being made and every 10 years thereafter. Any bylaw not reviewed is automatically revoked 2 years after the last date on which the bylaw should have been reviewed.

Council has taken the opportunity to bring the review forward from 2018. This allows the bylaw to be considered alongside other related bylaws such as the Wastewater, and Stormwater bylaws which are being reviewed at this time.

The LGA outlines the procedure for and nature of a bylaw review. Council must:

- Identify the perceived problem to be addressed by the bylaw
- Determine whether a bylaw is the most appropriate way to address the problem
- Determine whether the proposed bylaw is the most appropriate form
- Determine whether the proposed bylaw raises implications under the New Zealand Bill of Rights Act 1990 (NZBORA) and whether those implications are justified
- Consult the public

These aspects are addressed, each in turn below.

#### **Problems to be addressed by this bylaw**

Issues considered for regulation through the bylaw:

- A bylaw provides certainty regarding the Council's authority to manage public water supply network to ensure the supply, the network, the environment, and public health are protected.
- A bylaw allows the Council to comprehensively outline and enforce its public water supply and public water supply network requirements.
- The draft bylaw amendments address administrative, compliance, and enforcement matters that have proved problematic in either their application or implementation. For example building over pipelines.
- The draft bylaw provides certainty and clear direction around the rights, obligations, and responsibilities of a landowner, occupier, customer, and the Council plus assists the Council to meet environmental and resource consent requirements.

National legislation empowers the council to manage a wide range of water management issues. However, relying on the provisions of the national legislation alone would result in the council



adopting a reactive approach to managing water problems, especially for smaller scale issues where invoking statutory powers may be excessive or disproportionate to the problem. Amending the existing bylaw will enable the council to continue to apply the water provisions of the local government legislation in a measured and appropriate way for different issues and areas in the district and to enforce the provisions more effectively and efficiently.

Where regulatory approaches have been effective they have been retained in the bylaw. This also applies to the non-regulatory approaches that have consistently worked well. These initiatives, including education and provision of other services by the council or other providers, are expected to continue to operate alongside the new bylaw. The proposed bylaw will provide a mechanism to respond to problems if they cannot be resolved through other means.

The Bylaw is consistent with the development manual which defines the requirements for new developments

Council has identified a range of perceived problems, that cover a diverse range of issues related to water supply, and which cover several different policy considerations. There are generally four approaches that are available to the council to achieve its water supply objectives. The four broad approaches are:

- No action by the council (also referred to as the “do nothing” option – that is taking a passive approach to the perceived problem, by not making a bylaw to address the problem)
- Education and awareness raising (also referred to as social awareness/behaviour change)
- Developer accords and agreements with the council (also referred to as direct action/partnering with industry).
- Regulation (through a bylaw) and legislative change.

Following the council’s analysis, the issues noted above are considered appropriate for regulation through a bylaw and the proposed bylaw has been prepared on that basis.

#### Is a bylaw the most appropriate way of addressing the perceived problem?

In undertaking a review of a bylaw Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem. The bylaw provides a regulatory tool for the management of water supply in the district. Based on the low number of complaints received regarding the bylaw since it was first adopted in 2009 it is considered that a bylaw remains the most appropriate way of addressing the perceived problem.

The council is authorised to make the proposed bylaw under the Local Government Act 2002 (ss145-156), The Local Government Act 2002 notes that network infrastructure (i.e. the provision of roads and other transport, water, wastewater, and stormwater collection and management) is a core function of the council (s11A).

Section 146 of the Act allows the Council to make a bylaw to manage, regulate, protect from damage, misuse, or loss, any infrastructure associated with a water supply.

#### Is the Bylaw in the appropriate form?

The proposed amended form of the Bylaw is considered the most appropriate form. It focuses on identified issues and is customised to suit the particular circumstances of the District. This bylaw review provides an opportunity to update the Bylaw to provide additional clarifications. The proposed amended Bylaw is therefore considered to be the most appropriate form of Bylaw.

The proposed bylaw is the most appropriate form of bylaw and meets the following tests:

- The bylaw is not repugnant to the general laws of New Zealand

- The bylaw provides certainty and clear direction
- The bylaw is reasonable
- The bylaw is not overly restrictive, onerous on any person, or impractical

#### New Zealand Bill of Rights Act 1990 implications

The proposed amended Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990. The proposed Bylaw is consistent with the specific empowering provisions prescribed under the LGA and other legislation.

Section 18 (freedom of movement) of the New Zealand Bill of Rights Act is relevant because the draft Water Supply Bylaw proposes to continue restricting activities within the water reserves. However, the proposal is consistent with section 18 of the Act because tramping walking, picnicking, mountain biking; kayaking and swimming can be permitted within these areas. People can also apply for permits to carry out various restricted activities within the water reserves catchments.

The draft bylaw does not place any limits on freedom of movement (other than above) expression or association, and does not isolate any particular social group in terms of the Act. In addition, any offences under the bylaw will require a judicial process through the Courts.

#### **Options considered**

The options are outlined in the Statement of Proposal.

#### **Analysis of preferred option**

Staff recommend Option A for the reasons set out in the Statement of Proposal.

#### **Impact on policy and bylaws**

Nothing in this report is inconsistent with any Council policy, plan or strategy. The proposal will amend Councils bylaw.

Councils Infrastructure Strategy (included in the Long-Term Plan 2015-25) discusses the issues regarding the water supply service. It points to new freshwater standards, environmental standards and likely growth occurring in the district which places demands on the water supply. The bylaw aims to manage the supply of potable water in a way that is consistent with the Infrastructure Strategy.

Council does not currently have water meters for the residential users. The Bylaw reflects this approach.

#### **Consistency with the Long Term Plan / Annual Plan**

Ongoing policy and bylaw reviews are identified as a project in the Strategies and Plans section of the Long-Term Plan 2015-25. The review of the Bylaw forms part of the Long-Term Plan implementation.

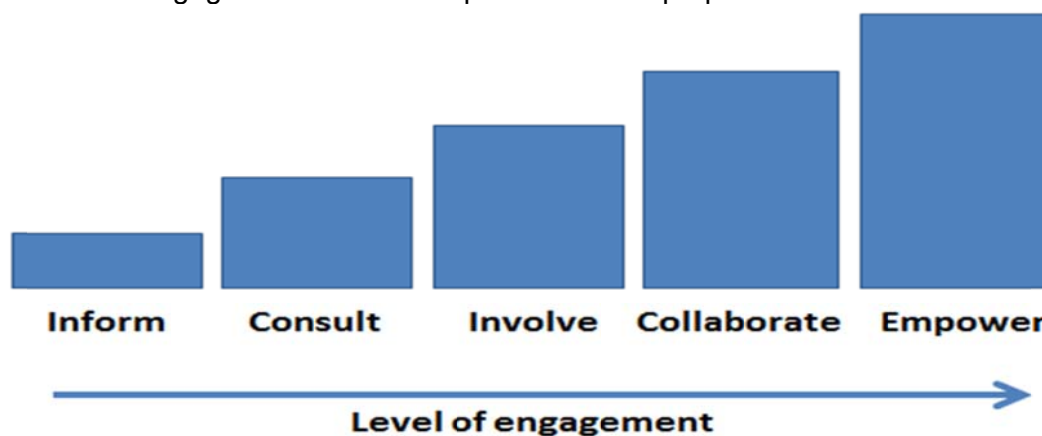
#### **Impact on Significance and Engagement Policy**

Council's Significance and Engagement Policy (the Policy) requires an assessment of the significance of every issue requiring a decision in accordance with the Policy's criteria for determining significance.

The Policy provides guidance on how to determine significance, and the appropriate levels of engagement in proportion to the level of significance. In general, the more significant an issue is determined to be, the greater the need for community engagement. The Policy sets out the matters which must be taken into account when assessing the degree of significance;

- there is a legal requirement to engage with the community

- the level of financial consequences of the proposal or decision
- whether the proposal or decision will affect a large portion of the community
- the likely impact on present and future interests of the community
- recognising Māori culture values and their relationship to land and water through whakapapa
- whether the proposal affects the level of service of a Significant Activity
- whether community interest is high
- whether the likely consequences are controversial
- whether community views are already known, including the community's preferences about the form of engagement
- the form of engagement used in the past for similar proposals and decisions



It is proposed that Council uses the 'Consult' approach to engage with the community on the draft bylaw. This would include newspaper articles, inviting submissions and holding a public hearing.

In this case the amendments to the bylaw are not considered to have significant impact on the public nor are this issue identified in the significance and engagement policy as being of significant interest to the public.

### **Communication, consultation and decision making processes**

The Local Government Act 2002 requires Council to enable democratic decision-making to promote its purpose *to enable democratic local decision-making and action by, and on behalf of, communities; and to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses* within a framework of accountability and prudent financial management.

Council must, in the course of the decision-making process:

- seek to identify all reasonably practicable options for the achievement of the objective of a decision;
- assess those options in terms of their advantages and disadvantages
- if any of the options identified involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.
- give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

It is the responsibility of Council to make, in its discretion, judgments about how to achieve compliance with its decision-making obligations that is largely in proportion to the significance of the matter affected by the decision.

It is noted that Water is sacred to Maori. Streams and watercourses can provide habitats for native wildlife. Water management may be important to Maori as kaitiaki who are culturally responsible for the well-being of the mauri of freshwater, the sea and other receiving waters. Areas of concern to mana whenua may include water quality monitoring and treatment, pest control, waste disposal and water treatment.

As part of the consultation process, Council staff will discuss the proposed bylaws with the TeManawhenua Forum Mo Matamata-Piako at their next meeting on 7 March 2017.

### **Communication, consultation and decision making processes**

Section 156 of the LGA outlines the consultation requirements for making, amending, or revoking amending bylaws made under the LGA.

Section 156 of the LGA sets out that when making amending or revoking a bylaw under the LGA, Council must use the special consultative procedure if:

- the bylaw concerns a matter identified in Councils significance and engagement policy as being of significant interest to the public; or
- Council considers that there is, or is likely to be, a significant impact on the public due to the proposed bylaw or changes to, or revocation of, the bylaw;

If none of these apply Council must consult in a manner that gives effect to the requirements of section 82 (general principles of consultation). Using the special consultative procedure is preferred as this would align with consultation on the other proposals being consulted on alongside this bylaw such as the fees and charges. Using the special consultative procedure would fulfil the requirements of section 82 in any case.

### Special consultative procedure

Section 83 of the LGA details the requirements of special consultative procedure, which include the adoption of a statement of proposal. Section 86 provides further direction on the required content of a statement of proposal. This includes a draft of the proposed amended bylaw, the reasons for the proposal, and a report on the relevant determinations under section 155 of the LGA (refer to the 'Legal and Statutory requirements' heading).

The proposed consultation process includes the following key actions to meet the legislative requirements:

- A statement of proposal, including a draft of the proposed amended bylaw, is prepared and adopted at a meeting of Council (circulated separately).
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- The statement of proposal will be made available for public inspection on Council's website and at Council offices (via Kiosks) and at public libraries at Matamata, Morrinsville and Te Aroha.
- The period within which views on the proposal must be no less than one month. The submission period for the proposal is scheduled to start 22 March 2017 and close 26 April 2017.
- A hearing will be scheduled for 17 May 2017 to provide an opportunity for persons to speak to Council about the proposal.
- Council considers the submissions received and the further comments of those submitters who wish to be heard and any other comment or advice sought from staff or other persons and deliberates on these matters.
- Council is currently scheduled to make the final bylaw by resolution at the Council meeting on 21 June 2017.

- Subject to the above process, the new Bylaw will be into force in July 2016 (date to be confirmed).

Section 83(1)(a)(ii) of the LGA provides that where necessary to enable public understanding of the proposal, a summary of information may also be required. Due to the nature of the proposal and the fact there are five bylaws being reviewed it is considered that a summary of the information would be appropriate.

At its meeting on 8 February 2017 Council approved a newspaper advertisement for the Bylaw proposals (subject to later Council approval of the draft bylaws). This advertisement will go in the Piako Post and Matamata Chronicle on 22 March 2017.

### Timeframes

The process for this review is as follows:

Process	Date
Council workshop	14 September 2016
Council workshop	30 November 2016
Council adopt bylaws for public consultation	8 March 2017
Consult the community	22 March 2017 – 26 April 2017
Council Hearing	17 May 2017
Adopt Bylaws	21 June 2017
Amended bylaws brought into force	Date to be confirmed

### Contribution to Community Outcomes

The bylaw review contributes to the following Community Outcomes:

- 2 a) Our community/lwi will be informed and have the opportunity to comment on significant issues
- 2 c) Council's decision making will be sound, visionary, and consider the different needs of our community/lwi.

### Financial Impact

#### i. Cost

The costs of the bylaw review are advertising and staff time.

#### ii. Funding Source

\$22,000 is provided annually in the Long-Term Plan 2015-25 for policy and bylaw reviews. The cost of this bylaw review will be covered within these existing budgets.

### Attachments

There are no attachments for this report.

### Signatories

Author(s)	Niall Baker <b>Policy Planner</b>	
	Graham Robertson <b>Senior Utilities Engineer</b>	

Approved by	Susanne Kampshof	
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	<b>Asset Manager Strategy and Policy</b>	
	Manaia Te Wiata <b>Group Manager Business Support</b>	

# Resource Consent Funding Application - Starfish Social Services Trust

Trim No.: 1854448

Item 10.7

## Executive Summary

An application for resource consent funding has been received from Starfish Social Services Trust (Starfish Trust), Matamata. Starfish Trust is seeking funding assistance to cover the costs of their resource consent application relating to its new potential property purchase at 15 Gordon Terrace, Matamata.

Matamata-Piako District Council (Council) has an annual fund of \$15,000 to contribute towards the Council related cost of processing resource consents for non-profit community organisations. Council has previously approved two applications for the 2016/17 financial year, leaving a balance available for allocation of \$8,628.83. At the time of writing this report, Starfish Trust has not yet lodged their resource consent application. The cost of processing the application is unknown. Council Policy allows for funding of up to a maximum of \$5,000 (inclusive of GST if any) per application towards Council related costs of processing resource consents.

A copy of the Policy on Resource Consent Funding, previous applications and decisions summary and Starfish Trust's application are attached to this report. Council is asked to consider and make a decision on the funding application.

## Recommendation

That:

1. **The information is received.**
2. **Council considers the funding application from Starfish Social Services Trust and decides to approve or decline the application.**

## Content

### Background

Starfish Trust is applying for Resource Consent in relation to its new potential property purchase at 15 Gordon Terrace, Matamata. They will also likely be applying for a Building Consent to make alterations to the buildings located within the potential new property to enable the trust to continue to host its Alternative Education classes and Afterschool Care programme.

### Starfish's Vision:

The purpose of Starfish Trust is to provide a Matamata based community social service to meet the holistic (mind, body and soul) needs of young people and their families.

### The objectives of the Starfish Trust are to:

- a) Provide group therapeutic programmes and one-on-one counselling to youth and/or their families /Whanau.
- b) To build and support peer mentors to work with other young people
- c) To deliver services in an environment that is youth-friendly, and in a way that is responsive to the unique developmental needs of young people

- d) To strengthen relationships within, and collaborations across, the community to better support youth and families/whanau via the establishment of regular provider forum and the establishment of referral pathways and processes
- e) To improve outcomes of young people and/or their family/Whanau

In addition to the primary function of counselling, Starfish Trust also undertakes the following programmes:

Starfish Afterschool  
Starfish Holiday programme  
YouthWorks  
Alternative Education Programme

### Issues

In hosting their programmes Starfish Trust need to apply for Resource Consent for the following reasons:

- Rule 2.2.2.2 - Education Facilities for more than 10 pupils.
- Rule 10.2.1(b) - Activities affecting the appearance of any buildings in Schedule 1 (the building is a Scheduled Heritage building under the District Plan).

Depending on the application, resource consent may also be triggered for other matters including signage, parking, loading and entranceway requirements. As part of the application it is highly likely that the written approval of the owners and occupiers of the immediately adjoining properties will be required.

The Building Consent is to be submitted for processing end of first quarter 2017.

The Resource Consent application will be submitted for consideration February 2017.

If both the funding and the Consent are approved, Starfish Trust will be able to take possession of the new property in April/May 2017. (The new purchase is subject to a successful Resource Consent).

## Analysis

### Options considered

1. Council approves the grant application, OR
2. Council declines the grant application.

### Analysis of preferred option

There is no preferred option. Council should consider whether to approve or decline the application in light of the policy and criteria.

## Financial Impact

### i. Cost

As the consent application is yet to be lodged, the total cost of processing the application is not known. Council Policy provides for funding of up to a maximum of \$5,000 (inclusive of GST if any) per application to assist with Council related costs of processing the resource consent application.

### ii. Funding Source

Council has allocated \$15,000 funding each financial year in its grant budget for resource consent community funding. There is currently \$8,628.83 available for allocation from the 2016/17 budget as the other approved organisations (Rotary Club, Matamata for \$3817.47 and Oak Lodge Ltd, Morrinsville for \$2553.70) grants confirmed to be paid out in March 2017.



## Attachments

- A. Policy on Resource Consent Funding (Adopted 27 July 2011) - Updated February 2016
- B. Previous applications and decisions on Resource Consent funding - to COC 22 February 2017
- C. Starfish-Application to MPDC for Resource Consent Funding January 2017

## Signatories

Author(s)	Vicky Oosthoek <b>Corporate Strategy Administration Officer</b>	
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Approved by	Don McLeod <b>Chief Executive Officer</b>	
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## Ngati Rahiri Tumutumu representation on Te Manawhenua Forum

Trim No.: 1853973

### Executive Summary

Ngati Rahiri Tumutumu has submitted a letter to inform Council and Te Manawhenua Forum that Ms Jill Taylor and Ms Shelley Turner have been nominated to replace Greg Thorne and Lee Guthrie as the representative and alternative representative for Ngati Rahiri Tumutumu on Te Manawhenua Forum.

Te Manawhenua Forum has previously requested that minutes of the relevant hui should be attached with any request to change iwi representation on the Forum. The minutes of Ngati Rahiri Tumutumu Settlements Komiti hui held 11 February are attached to this report. A copy of the Forum's Heads of Agreement and letter from Ngati Rahiri Tumutumu are also attached.

The purpose of this report is to seek Council's approval of their appointments.

### Recommendation

That:

1. **Ms Jill Taylor (principal) and Ms Shelley Turner (alternate) be appointed as the representatives of Ngati Rahiri Tumutumu on Te Manawhenua Forum Mo-Matamata-Piako.**

### Content

#### Background

The Te Manawhenua Forum Mo-Matamata-Piako (Forum) is a formalised standing committee of Council and was constituted on 8 July 2004. The Heads of Agreement outlines its purposes and principles. Within this agreement the membership of the collective forum is outlined. It outlines that each of the identified member groups shall appoint two representatives; a principal and alternate. Both will attend the meetings and the second representative will act at meetings in the absence of the principal representative.

At the meeting of the Forum 3 March 2015 the Forum discussed the requirement to attach minutes of the relevant hui when requesting a change of appointments to the Forum. The Forum made the following resolution;

*That:*

2. *The minutes of the hui appointing a new member be supplied to Council with the request for a proposed replacement to the Te Manawhenua Forum members.*

*Moved by: Michael Baker*

*Seconded by: Glenice Wigg*

**CARRIED**

Ngati Rahiri Tumutumu currently has two representatives on the Forum. Mr Greg Thorne acts as the principal representative for Ngati Rahiri Tumutumu and Ms Lee Guthrie acts as the alternate

representative. Council has received notice of a request from Ngati Rahiri Tumutumu requesting Ms Jill Taylor be appointed as the principal and that Ms Shelley Turner be appointed as an alternate, replacing Mr Thorne and Ms Guthrie respectively. The letter requesting the appointment is attached to this report, along with the minutes of Ngati Rahiri Tumutumu Settlements Komiti hui 11 February 2017.

#### **Legal and statutory requirements**

Under the Local Government Act 2002 Clause 31 Schedule 7 Council must appoint any non-elected members to any committee.

#### **Impact on policy and bylaws**

There are no policy or bylaw issues.

#### **Impact on significance policy**

This matter is not considered to be significant.

#### **Communication, consultation and decision making processes**

Council has received a letter from the Chair of Ngati Rahiri Tumutumu and is now required to consider and confirm the appointment of Ms Jill Taylor and Ms Shelley Turner as the new representatives for Ngati Rahiri Tumutumu to Te Manawhenua Forum.

#### **Timeframes**

If the appointment is agreed to by Council, notice of Ms Taylor's and Ms Turner's appointments will be given to the Te Manawhenua Forum at its next meeting in June 2017.

### **Financial Impact**

#### **i. Cost**

As the maximum number of representatives for Ngati Rahiri Tumutumu at a meeting remains at two there are no additional costs associated with this decision.

#### **ii. Funding Source**

Funding for the Te Manawhenua Forum Mo Matamata-Piako is provided for in Council budgets.

### **Attachments**

- A. Letter from Ngati Rahiri Tumutumu
- B. Ngati Rahiri Tumutumu minutes of hui 11 Feb 2017
- C. Heads of Agreement: Draft for COC 22 Feb 2017 - Updated Ngati Rahiri Tumutumu representation

### **Signatories**

Author(s)	Ann-Jorun Hunter <b>Policy Planner</b>	
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Approved by	Don McLeod <b>Chief Executive Officer</b>	
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# Health & Safety Report – December 2016 & January 2017

Trim No.: 1858463

Item 11.1

## Executive Summary

Attached is a copy of the Health and Safety report for December 2016 and January 2017.  
The Health and Safety Manager will be in attendance to discuss.

## Recommendation

That:

1. The report be received.

## Attachments

- A. Health & Safety Report-December 2016 & January 2017

## Signatories

Author(s)	Sandy Barnes <b>Health &amp; Safety/Quality Manager</b>	
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Approved by	Dennis Bellamy <b>Group Manager Community Development</b>	
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## Youth Update

Trim No.: 1840177

Item 12.1

### Executive Summary

Following the successful application to Ministry of Youth Development a Matamata-Piako Youth Volunteer Ambassador Group has been set up. The group held its first meeting Tuesday 28 February. Staff will be in attendance to provide a verbal update on the initiative.

### Recommendation

That:

1. The report be received.

### Attachments

There are no attachments for this report.

### Signatories

Author(s)	Ann-Jorun Hunter <b>Policy Planner</b>	
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Approved by	Don McLeod <b>Chief Executive Officer</b>	
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## Mayoral Diary For February 2017

Trim No.: 1858709

The Mayoral Diary for the period 1 February to 28 February 2017 is attached.

### Recommendation

That the report be received.

### Attachments

A. Mayor Diary for February 2017

### Signatories

Author(s)	Jan Barnes <b>Mayor</b>	
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Approved by	Don McLeod <b>Chief Executive Officer</b>	
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