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Committee Parks, Forests and Utilities Committee  
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## Local Government Act 2002 Review

### 1. Purpose

- To seek confirmation from the Committee of the content of the Parks submission to the Local Government Commission (LGC) review of the Local Government Act 2002 (the Act).
- To raise additional issues for Council to consider adding to the submission for consideration by the LGC during its review of the Act.

### 2. Significance of the decision

The matters for decision in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

### 3. Background

The LGC is required by section 32 of the Local Government Act 2002 to review the operation of the Act. This review is currently underway and a report from the LGC is due to the Minister of Local Government in mid 2008.

The Divisional Manager of the Water Supply, Parks & Forests Division submitted a letter to the Chairperson of the LGC on 12 December 2007 (see Attachment 1). This letter indicated Parks interest in the review of the Act. In preparing the letter, staff also read the industry-wide submissions made by Local Government New Zealand (LGNZ) and the Society of Local Government Managers (SOLGM), as well as the submission made by Auckland Regional Council (ARC). Council Officers identified the following issues as items to be considered as part of the review.

1. Section 147 – power of regional councils to make bylaws for liquor control purposes

2. Part 7, subpart 3 - restrictions on disposal of parks, reserves, and endowment properties
  - (a) Exemption from Gift Duty
  - (b) Restriction on disposal of parks (by sale or otherwise)
    - (i) The relevance of section 138
    - (ii) The Local Government Act 2002 Amendment Act 2006 amended section 138 to provide a definition of 'dispose of'
  - (c) Classification of parks
  - (d) Management plans.

The LGC had a scheduled meeting on the 19<sup>th</sup> December 2007 at which they were examining a number of issues including bylaws for alcohol and gift duty. Due to this timeframe, officers were not able to gain approval for items 1 and 2(a) above before preparing a formal submission from Council. The letter indicated to the LGC that we would also be interested in submitting on items 2(b), (c), & (d) above, however these points needed to be discussed with Council prior to the submission being made.

In addition to these items, since the letter was submitted, a couple of other issues have been unearthed as part of the work we have been undertaking as part of the current bylaws review. Officers recommend these new items would also be valuable for the Commission to consider as part of their review. These issues relate to:

- section 149 – Power of Regional Councils to make Bylaws that conflict with section 20 of the Dog Control Act 1996
- Powers of Local Authorities to serve infringement notices.

This report and Council's recommendations will form the basis of GW's formal submission to the review. A formal submission from GW will need to be presented to the Local Government Commission no later than early March to ensure that these items can be considered as part of the review. Officers are requesting that Council:

- Endorse the officers' earlier submission, and
- Consider including additional comments for submission to the LGC

Once we gain Committee views, a submission will be prepared for consideration by full Council.

The sections of legislation referred to in this paper are reproduced in attachment 2.

## **4. Discussion**

### **4.1 Items already submitted (included in letter to LGC)**

#### **4.1.1 Section 147 - power for regional councils to make bylaws for liquor control purposes**

The December 2007 letter to the LGC indicated that GW officers supported both the SOLGM and ARC's recommendation that Regional Councils be given the ability to make Bylaws for liquor control purposes on land that they own and/or manage.

GW's powers as landowner/manager are limited. It is unable to make liquor control bylaws or enforce an alcohol ban in any of its regional parks, as such powers are restricted to territorial authorities as a 'specific power' under section 147 of the Act.

GW staff have been required to deal with increasing numbers of incidents resulting from alcohol and disorderly behaviour. As a result of fewer places being available for people to drink to excess, pressure is increasing to undertake this activity in GW owned and controlled land - in particular regional parks.

Without the ability to control liquor, GW staff have had to rely on alternative and less adequate ways of dealing with this issue. These have included hiring additional security guards and increasing staff presence, especially on New Year's Eve.

These issues have the potential to affect an increasing amount of land within Wellington's regional parks network in the future.

There are other tools and mechanisms that exist which might be used to deal with the issue of alcohol and its associated behavioural issues, however officers consider that a change to section 147 of the Act to allow Regional Councils the same powers as those held by territorial authorities to place controls on the consumption and possession of alcohol on land owned or controlled by it, including regional parks, is considered to be appropriate to deal with the issue.

(See recommendation 2a.)

#### **4.1.2 Restrictions on disposal of parks, reserves, and endowment properties**

##### **(a) Exemption from Gift Duty**

The December 2007 letter to the LGC indicated that GW officers supported the ARC submission that Part 7, subpart 3 of the Act should be amended so that land gifted to Regional Councils to be held for certain purposes is exempted from Gift Duty under section 73(1) of the Estate and Gift Duties Act 1968.

GW staff consider it is important that potential donors of land to Regional Councils for use by the public are not discouraged by Gift Duty.

Officers recommend that GW supports ARC's recommendation to provide (at a minimum) an exemption from the liability to pay Gift Duty where land is gifted to a Regional Council to be held as open space, provided that such land is made subject to:

- An Order in Council under section 139 of the Act; and
- In the event that such land is no longer required by a Regional Council for the purposes for which it was gifted and the Order in Council is able to be uplifted, it must be offered back to the donor or donor's family for no consideration.

(See recommendation 2b.)

## 4.2 Items referred to in LGC letter (Council stance required)

### 4.2.1 Restriction on disposal of parks (by sale or otherwise)

Section 138 of the Act requires local authorities proposing to '*sell or otherwise dispose of*' non-Reserves Act 1977 parks to consult. The Reserves Act 1977 includes controls on the disposal of reserves and it was thought reasonable that some fetter should also apply to other parks.

The parks and forests of the Wellington region are managed under a variety of different statutes including the Wellington Water Board Act 1972, Reserves Act 1977, the Local Government Act 1974 and the Local Government Act 2002. Accordingly, there are a number of overlaying provisions across different legislation that GW Parks must consider when making management decisions on land use and activities undertaken within parks and forests.

Although the majority of GW's parks are reserves under the Reserves Act 1977, section 138 remains relevant. Further, GW has other land (that is not Regional Park land) that is affected by section 138.

Officers note that there is merit in simplifying the regimes under which land owned and managed by Regional Councils is regulated and removing section 138 is one way this can be achieved, and believe that at the very least, if section 138 is to be retained, it should be clarified.

The definition of 'dispose of' currently reads:

**“dispose of**, in relation to a park, includes the granting of a lease for more than 6 months that has the effect of excluding or substantially interfering with the public's access to the park.”

Officers consider that this definition leads to uncertainty about what else might qualify as a disposal. For instance, in what circumstances (if ever) would an easement or a licence be regarded as disposing of park land?

The phrase 'excluding or substantially interfering with the public's access to the park' is also difficult to interpret with certainty. For instance, is the definition intended to apply where the public is excluded from small parts of a park (say where a lease is granted to facilitate the erection of a structure to which the

public will not have access e.g. storage facilities, barns, wireless masts, pylons, turbines etc)

On the basis of legal advice, officers consider that the current definition of 'dispose of' in section 138 is both difficult to apply and, to avoid risk, can require consultation on relatively minor issues.

Officers recommend that GW submits to the LGC that, if a restriction on the disposal of parks is to be retained, section 138 should be amended to provide:

1. *A local authority proposing to transfer the estate in fee simple in a park or part of a park must consult on the proposal before doing or agreeing to do so.*
2. *A local authority proposing to lease or licence a park or part of a park must consult on the proposal before doing or agreeing to do so, if either —*
  - (a) *the term of the lease or licence (including rights of renewal or extensions, whether in the lease or licence or granted separately) is, or could be, for 35 years or longer; or*
  - (b) *the term of the lease or licence (including rights of renewal or extensions, whether in the lease or licence or granted separately) is, or could be, for 6 months or longer and granting the lease or licence would have the effect of substantially interfering with the public's access to the park as a whole.*
3. *In this section, —*

**Park —**

- (a) *means land acquired or used principally for community, recreational, environmental, cultural, or spiritual purposes; but*
- (b) *does not include land that is held as a reserve, or part of a reserve, under the Reserves Act 1977:*

**Lease means a grant of any right or interest in land that—**

- (a) *gives exclusive possession of the land; and*
- (b) *makes provision for any activity on the land that the lessee is permitted to carry out.*

**Licence means a grant of any right or interest in land, not being an easement or a restrictive covenant, that—**

- (a) *gives any non-exclusive interest in the land (including a profit a pendre) or makes provision for any activity on the land that the licensee is permitted to carry out; and*

- (b) *enables the exclusion of or has the effect of excluding public access to any part of the land.*

Note:

- The definitions of lease and licence above are adapted from the Reserves Act 1977.
- The drafting concept is to require consultation when:
  - part of a park is sold; or
  - a 6 month or more lease or licence is granted over part of a park with the effect of substantially interfering with the public's access to the park as a whole; or
  - a 35 year or more lease or licence is granted over part of a park with the potential effect of excluding the public from that part of the park.
- Consultation would not be required as a consequence of s138 for the granting of an easement or restrictive covenant.

Confirmation is sought from Committee that this recommendation to the Local Government Commission is supported by Council.

(See recommendation 2c.)

#### 4.2.2 Classification of park land

ARC submitted that Regional Councils should be empowered to classify park land under the Act in a manner similar to the Reserves Act 1977.

ARC's submission is unclear about what the consequences of classification would be. Under the Reserves Act 1977, classification results in statutory directives as to how the particular reserve must be administered. GW already has management plans and policies in place which provide transparency around its administration of parks. Care would be needed to ensure any mandatory system of classification did not cut across existing and well functioning management practices.

Officers recommend that the additional power sought by ARC would not be useful unless GW could adopt classifications which matched the mixed uses that its parks have historically accommodated. The Wellington region is not confronted with issues of consistency amongst local legislation similar to those raised by ARC's submission.

Officers consider that external requirements or internal decisions to hold land for a particular purpose (for instance as 'a scenic park') can be adequately complied with by adopting and implementing policies on how particular parks are to be managed. Regional Councils also have the ability to declare land vested in it to be a reserve under section 14 of the Reserves Act 1977. (see recommendation 2d)

### 4.2.3 Management plans

ARC submitted that the Act should be amended to include a management plan regime similar to that provided under section 619D-616I of the Local Government Act 1974. GW can either support, not support or stay silent on this stance.

Management plans are a useful tool for the administration of regional parks, but officers do not believe that management plans must be prescribed by legislation. Parks has the ability to continue to prepare management plans and administer its Regional Parks in accordance with them. This is consistent with good practice, and further the decision making processes under the Act will guide the making and administration of the management plans.

Officers recommend that Council does not fully support ARC's position, but rather recommends amendments to the Act so that it provides for:

- The preparation of management plans following a process of consultation
- Parks to be administered in accordance with the relevant management plan. Officers recommend against a regime that dictated or limited what a management plan must provide for
- The ability to amend and review an operative management plan as required and without reverting to the full plan preparation process. Parks' experience of reviewing management plans under the Local Government Act 1974 regime is that it is expensive, lengthy and time consuming. In most cases minor or issue-specific amendments should be possible without a full plan preparation process.

Confirmation is sought from Committee whether or not to support ARC's submission to the LGC.

(See recommendation 2e.)

## 4.3 New items for inclusion in the next submission

### 4.3.1 Section 149 – Power of Regional Council to make Bylaws and conflict with Section 20 of the Dog Control Act 1996

Officers are currently working on a review of the existing Parks & Forest Bylaws as required under Section 158 of the Act. Section 149 of the Act gives Regional Councils the general power to make Bylaws on land that the Regional Council owns or controls, for the purposes of managing and protecting the land and its values.

The Dog Control Act 1996 limits the control and management of dogs in public places (eg prohibiting dogs from certain areas, requiring dogs to be on a leash, requiring owners to clean up after their dogs) to territorial authorities. Officers feel it would be advantageous if Regional Councils had the ability to make dog Bylaws for the purposes laid out in Section 20 (1) (a,b,c,d,h,j,k,& l) of the Dog Control Act 1996 either through the Act, or the Dog Control Act 1996.

Officers have sought legal advice and spoken with the DIA (Department of Internal Affairs) to clarify whether Regional Councils are able to implement Bylaws under the section 149 of the Act that would control and manage dogs on land in the ownership or control of the Regional Council. However the issue is still unclear. The DIA is currently holding a review of the Dog Control Act 1996, with submissions closing at 5pm, Monday 31<sup>st</sup> March 2008.

Officers recommend that GW seeks clarification from the LGC as to whether Regional Councils are able to make dog control Bylaws under Section 149 of the Act, and make a submission on the Dog Control Act Review asking that Regional Councils be given the powers to make Bylaws under Section 20 (1) (a,b,c,d,h,j,k,& l) of the Dog Control Act 1996 in accordance with Section 149 of the Act.

(See recommendation 2f & 2g.)

#### 4.3.2 Powers of local authorities to serve Infringement Notices

As the Act currently stands, any infringement of a Bylaw made under the act would require court action to prosecute or impose a penalty upon those who contravene the Bylaw. These processes are long and costly for local authorities, and often result in bylaws being unenforceable.

Officers consider that the Act imposes strict procedures regarding local authorities Bylaw making powers. The special consultative procedures apply to the making, amendment or revoking of a Bylaw made under the Act, and that they are consistent with the NZ Bill of Rights Act 1990.

Officers consider that it is appropriate, (taking into account the thoroughness of the procedures required for the making, amendment or repeal of a Bylaw) that should GW decide to have Bylaws under the Act, that Warranted Officers should have the powers to serve Infringement Notices with fixed penalty fines for breaches of Bylaws made under the Act. GW's Navigation and Safety Bylaws are set under the Local Government Act 1974 and in accordance with section 699A of that Act. GW has sought regulations which specify infringement offences and fees. The power to serve infringement notices works well. There is an established framework that is robust and efficient and could be applied to other Bylaws made under the Act. There is a similar precedent within the RMA.

(See recommendation 2h.)

## 5. The way forward

A formal submission from Greater Wellington will need to be presented to the Local Government Commission no later than early March to ensure that these items can be considered as part of the review.



## 6. Recommendations

*That the Committee:*

1. **Receives and notes** the contents of the report.
2. **Recommends** that Council adopts the following position in relation to the Local Government Commission's review of the Local Government Act 2002:
  - 2a. **Amend** section 147 of the Local Government Act 2002 to allow regional councils the same powers as those held by territorial authorities to place controls on the consumption and possession of alcohol on land owned or controlled by it.
  - 2b. **Support** Auckland Regional Council's recommendation to provide an exemption from the liability to pay Gift Duty where land is gifted to a regional council to be held as open space
  - 2c. **Amend** section 138 of the Local Government Act 2002 to provide for:
    - A local authority to consult when proposing to transfer a fee simple estate park or part of a park or proposing to lease a park or part of a park
    - An amendment the definitions of Park and Lease as recommended in the report
  - 2d. **Not support** Auckland Regional Council's submission on classifying park land that is consistent with Reserves Act 1977.
  - 2e. **Partially support** Auckland Regional Council's submission relating to mandatory requirements for management plans under the Local Government Act 2002 by recommending amendments to the Local Government Act 2002 so that it provides:
    - For the preparation of management plans following a process of consultation.
    - For parks to be administered in accordance with the relevant management plan.
    - For the ability to amend and review an operative management plan as required and without reverting to the full plan preparation process.
  - 2f. **Submit** to the Local Government Commission for clarification as to whether regional councils have the powers to make dog control bylaws under s149 of the Local Government Act 2002
  - 2g. **Submit** to the DIA review of the Dog Control Act 1996 that Section 20 be amended to allow Regional Councils to make dog control bylaws for the purposes laid out in Section 20 (1) (a,b,c,d,h,j,k, & l)

*in accordance with or under section 149 of the Local Government Act 2002.*

- 2h. ***Submit*** to the Local Government Commission that local authorities be given the powers to serve Infringement Notices with fixed penalty fines for breaches of bylaws made under the Local Government Act 2002.

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**Attachment 1: Letter to Local Government Commission re: Local Government Act 2002 review**

**Attachment 2: List of sections referred to in this report (#08.6)**