

Chairperson and Committee Members
REGULATORY MANAGEMENT COMMITTEE

17 MAY 2012

Meeting Status: **Public**

Purpose of Report: For Decision

INFRINGEMENT PROVISIONS OF THE LITTER ACT 1979

PURPOSE OF REPORT

- 1 This report seeks the Committee's approval to adopt the infringement notice provisions under sections 13 & 14 of the Litter Act 1979.

SIGNIFICANCE OF DECISION

- 2 This report does not trigger the Council's Significance Policy.

BACKGROUND

- 3 In late February 2012 Council became aware that green waste had been deposited on an area of a Council reserve. A Council Compliance Officer followed what has been our standard practice by contacting the offender asking for the green waste to be removed. In this instance the offender, rather than removing the green waste as requested, responded by simply scattering the waste over a larger area.
- 4 Council Officers then decided it was appropriate to consider enforcement action either by prosecution or by issuing an infringement fine. Given the nature of the offence it was considered an infringement notice under section 14 of the Litter Act 1979 (the Act) was the most appropriate action.

CONSIDERATIONS

- 5 On checking the Act it became apparent the Council had never adopted the provisions of the Act in respect to infringement notices and that amendments to the Governance Structure would be required to enable use of these provisions, (Sections 13 and 14 of the Act are attached in Appendix 1 of this report).although the Council was still able to prosecute offenders through the court system]
- 6 The proposed changes will enable Council Compliance officers to impose infringement notices 'on the spot'. This will not replace Council's capacity to pursue prosecutions through the court system but will provide a more cost-effective approach to enforcement in this area.

Changes to Governance Structure

- 7 It was determined these provisions would fit best within the delegations of the Regulatory Management Committee. Within Section 14 of the Act there are provisions for the recipient of an infringement notice to request a hearing by

Council. It was considered that the Appeals Hearing Committee is the most appropriate forum for these hearings.

- 8 Appropriate amendments to the Governance Structure were considered and adopted by the Council at its meeting of 5 April 2012. (Report Corp-12-489 refers.)

Adoption of the Act's provisions

- 9 Section 13 of the Litter Act 1979 permits territorial authorities to adopt infringement notice provisions by resolution. Without a resolution, infringement notices may not be issued. The Act requires 14 days public notice of intention to adopt such a resolution and this was published on 3 May in the *Kapiti Observer*.
- 10 The resolution required under the Act forms the recommendation of this report.

Financial Considerations

- 11 There are no financial implications in adopting this recommendation

Legal Considerations

- 12 Legal considerations have been discussed in this report.

Delegation

- 13 This Committee has the following delegation to consider this report

Regulatory and Legal Proceedings

- 7.9 *Authority to enforce provisions under the Litter Act 1979 (sections 13 and 14) relating to infringement offences committed within the Kāpiti Coast District.*

Consultation

- 14 Section 13(2A) of the Act requires that: *A Territorial Authority may not pass a resolution under subsection (1) (adoption of this provision) unless it has given at least 14 days public notice of its intention to do so.*
- 15 A Public Notice was placed in the Observer on Thursday 3 May 2012 advising of the Councils intention to pass a resolution adopting sections 13 & 14 (Infringement notice provisions) of the Litter Act 1979. There were no responses to the 3 May Public Notice.

Policy Implications

- 16 There are no policy implications.

Tāngata Whenua Considerations

- 17 There are no tāngata whenua considerations.

Publicity Considerations

- 18 There are no other publicity considerations.

RECOMMENDATIONS

19 That the Regulatory Management Committee adopts the infringement notice provisions under sections 13 and 14 of the Litter Act 1979.

Report prepared by:

Approved for submission by:

Ken Smith

Tamsin Evans

Regulatory Manager

**Group Manager
Community Services**

ATTACHMENTS:

Appendix 1 Extracts from the Litter Act 1979

Appendix 1**Extract from the Litter Act 1979****Infringement notices****13 Territorial authorities may adopt infringement notice provisions**

- (1) This section and section 14 of this Act shall be in force only within the district of a territorial authority which has adopted them pursuant to subsection (2) of this section.
- (2) Any territorial authority which has appointed any Officer (other than a Warden) pursuant to this Act whether alone or jointly with another public authority or other public authorities or which has appointed any traffic officers may, by [resolution], adopt the provisions of this section and section 14 of this Act to apply in respect of any infringement offence committed within its district.

[(2A)] A territorial authority may not pass a resolution under subsection (1) unless it has given at least 14 days' public notice of its intention to do so.

14 Infringement notices

[(4)] Every infringement notice shall be in such form as the Governor-General may from time to time by Order in Council prescribe, and shall contain the following particulars:

- a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and
- b) The amount of the infringement fee for the offence; and
- c) The address at which the infringement fee may be paid; and
- d) The time within which the infringement fee may be paid; and
- e) A summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
- f) A statement of the right of the person served with the notice to request a hearing; and
- g) A statement of the consequences if the person served with the notice does not pay the infringement fee and does not make a request for a hearing; and
- h) Such other particulars as are prescribed.

(9) for the purposes of this section, a territorial authority may delegate its powers and functions under this section to a committee of the territorial authority or to its [chief executive] but to no other person.