

**Mayor and Councillors
COUNCIL**

5 APRIL 2012

Meeting Status: **Public**

Purpose of Report: For Decision

**AMENDMENTS TO THE GOVERNANCE STRUCTURE 2010-
2013 TRIENNIUM - LITTER ACT 1979**

PURPOSE OF REPORT

- 1 This report seeks Council's approval of a number of amendments to the Governance Structure and Delegations 2010-2013 Triennium (26 January 2012 version).

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 practise 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 that, for the first time, it was appropriate to consider enforcement action either by prosecution or to issue 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.
- 5 On checking the Act it became apparent that the Council had never adopted the provisions of the Act in respect to infringement notices and was currently unable to utilize these provisions of the Act. Sections 13 and 14 of the Act are attached in Appendix 1 of this report.
- 6 It also became apparent that these provisions of the Act best sat within the delegations of the Regulatory Management Committee and that would require and amendment to the Committee's current delegations. It was further identified that within Section 14 of the Act there are provisions for the recipient of an infringement notice to request a hearing by Council. It is considered that the Appeals Hearing Committee is the most appropriate forum for these hearings.
- 7 Adopting the relevant provisions of the Act can be achieved through Council's consideration and approval of appropriate amendments to the Governance Structure delegations for the Regulatory Management Committee and the

Hearings Appeal Committee. Draft delegations for both committees are attached in Appendix 2 of this report.

CONSIDERATIONS

Issues

- 8 The proposed changes will enable Council Compliance officers to impose infringement notices 'on the spot'. This will not replace Council's capacity to pursue infringements through the court system but will provide a more streamlined and cost-effective approach to compliance in this area.

Financial Considerations

- 9 There are no financial considerations.

Legal Considerations

- 10 Legal considerations have been discussed in this report.

Delegation

- 11 Council has not delegated this power to any of its Standing Committees.

Consultation

- 12 There are no consultation considerations.

Policy Implications

- 13 There are no policy implications.

Tāngata Whenua Considerations

- 14 There are no tāngata whenua considerations.

Publicity Considerations

- 15 The new provisions will be publicised via a press release and in the Kapiti Update.

RECOMMENDATIONS

- 16 That Council approve the amendments to the Governance Structure and Delegations for the 2010-2013 Triennium (26 January 2012) as attached at Appendix 2 of report Corp-12-489, and authorises the Chief Executive to prepare an updated Governance Statement.

Report prepared by:

Approved for submission by:

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Democratic Services Team Leader

Group Manager Corporate Services

ATTACHMENTS:

Appendix 1 Extracts from the Litter Act 1979

Appendix 2 Extracts from the Governance Structure and delegations (26 January 2012 version) showing proposed amendments as track changes

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.

Extract from Governance Structure and Delegations (26 January 2012)

Section B.2 REGULATORY MANAGEMENT COMMITTEE

DELEGATED AUTHORITY

- 6 Generally this delegation provides authority to exercise all functions, duties and powers relating to all matters assigned to this Committee, as adopted by the Council from time to time, where financial provision has been made in the Annual Plan or LTCCP, and where the action proposed is not contrary to established Council strategy and/or policy or the power of delegation.
- 7 Without limiting the generality of this delegation, and except where otherwise delegated to officers, the Committee has the following functions, duties and powers:

Animal Control

- 7.1 Authority to exercise the functions, duties and powers of the Council under the Dog Control Act 1996 and the Kāpiti Coast District Council Dog Control Bylaw 2008, and the Impounding Act 1955;
- 7.2 Authority to develop, review and recommend to Council a Dog Control Policy under section 10 and 10AA of the Dog Control Act 1996;
- 7.3 Authority to consider and adopt an Annual Report on Dog Control Policy and Practices in the District under section 10A of the Dog Control Act 1996.

Building Control

- 7.4 Authority to exercise all of the Council's functions, duties and powers under the Building Act 2004 including the following:
 - (a) Authority, on behalf of the Council to make any complaint or query about the conduct or ability of any building certifier to the Department of Building and Housing in relation to a Building Consent Authority pursuant to Section 200 of the Building Act 2004;
 - (b) Authority to make an application to the District Court for an order authorising the Council to carry out work in respect of dangerous, earthquake prone or insanitary buildings pursuant to Section 126 of the Building Act 2004;

- (c) Authority to exercise all of the Council's functions, duties and powers under the Fencing of Swimming Pools Act 1987.

Regulatory and Legal Proceedings

- 7.5 Authority to initiate or dispose of prosecutions or enforcement or other legal proceedings, relating to any matter assigned to this Committee, including health, plumbing and drainage, radio frequency emissions, hazardous substances, agricultural chemicals, pesticides, graffiti, pest control, explosives, water conservation, fire hazards, fire prevention, and nuisances including smoke and noise.
- 7.6 Authority to consider all matters relating any Court, commission or tribunal dealing with matters assigned to this Committee.
- 7.7 Authority to recommend to Council the Committee's preferred position in regards to instituting and/or settling High Court proceedings dealing with matters assigned to this Committee.
- 7.8 Authority to prepare and recommend to Council a waste management and waste minimisation plan under the provisions of the Waste Minimisation Act 2008.

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.

Policy

- 7.9 Develop (within any wider existing strategic framework) regulatory policies.
- 7.10 Monitor the effectiveness of such policies over time and amend or revoke them.

Bylaws

- 7.11 Authority to review all or any Council bylaws, to approve draft bylaws for public consultation, to hear submissions, and to recommend to the Council amendments to the bylaws.

Liquor

- 7.12 Authority to exercise all of the Council's functions, duties and powers under the Sale of Liquor Act 1989, and authority to sub-delegate those powers, duties and discretions to the Chief Executive, the Deputy Chief Executive, and the Group Manager responsible for this function or any officer acting in that Group Manager role.

[etc.....]

Section B.5 APPEALS HEARING COMMITTEE

DELEGATED AUTHORITY

- 5 Generally this delegation provides authority to exercise all functions, duties and powers relating to all matters assigned to this Committee, as adopted by the Council from time to time, and where the action proposed is not contrary to established Council strategy and/or policy or the power of delegation.
- 6 The decisions of this Committee are binding and cannot be overturned by Council.
- 7 Without limiting the generality of this delegation, and except where otherwise delegated to officers, the Committee has the following functions, duties and powers:

Dog Owners Objections Hearings

- 7.1 Authority to hear and adjudicate objections from dog owners to classifications of dog owners and/or dogs under the Dog Control Act 1996, within the following prescribed terms of reference:
 - 7.1.1 Section 22 of the Dog Control Act 1996 – Objection to Classification as Probationary Owner.
 - 7.1.2 Section 26 of the Dog Control Act 1996 – Objection to Disqualification.
 - 7.1.3 Section 31(3) of the Dog Control Act 1996 – Objection to classification of Dangerous Dog.
 - 7.1.4 Section 33B of the Dog Control Act 1996 – Objection to Classification of Menacing Dog (by nature).
 - 7.1.5 Section 33D of the Dog Control Act 1996 – Objection to Classification of Menacing Dog (by breed).
 - 7.1.6 Section 55(2) Barking Dog Abatement Notice.
 - 7.1.7 Section 9 of the Kāpiti Coast District Council Dog Control Bylaw 2008.
- 7.2 Authority to consider and determine applications made under the Kāpiti Coast District Council Dog Control Bylaw 2008, as follows:
 - 7.2.1 Authority to hear applications from dog owners, for medical exemption for their dogs from clauses 6.1 to 6.4 of the Kāpiti Coast District Council Dog Control Bylaw 2008.

- 7.2.2 Authority to grant medical exemptions where considered appropriate after hearing applications, and impose any conditions surrounding those exemptions.

District Licensing objections and provision of information

- 7.3 Authority to conduct such inquiries and make such reports as may be required of the Council by the Licensing Authority under section 95 of the Sale of Liquor Act 1989;
- 7.4 Authority to convene and conduct hearings of objections under Section 106 of the Sale of Liquor Act 1989.

Development Contributions hearings

- 7.5 In response to appeals against determinations made by the Chief Executive or the Sustainable Development Manager regarding requests for remissions of development contributions or where the remissions request exceeds the delegated authority of the Chief Executive, the authority to convene and conduct hearings of such appeals.

Transport and Roothing

- 7.6 Authority to hear and determine objections to the fixing of road levels (13th Schedule, Local Government Act, 1974).

Littering

- 7.7 Authority to hear appeals against infringement notices issued under Sections 13 and 14 of the Litter Act 1979.