

File Ref: C135-E01

Ask For: Mr Porter

21 November 2008

## **Notice of Committee Meeting - Thursday, 27 November 2008**

A meeting of the Environment Committee will be held in the Council Chambers, District Council Administration Building, Seymour Street, Blenheim on **Thursday, 27 November 2008 commencing at 1.30 pm.**

### **B U S I N E S S**

As per Agenda attached.

**ANDREW BESLEY**  
**CHIEF EXECUTIVE**

# Marlborough District Council

**Meeting of the ENVIRONMENT COMMITTEE  
to be held in the Council Chambers, District Administration Building, Seymour Street,  
on THURSDAY 27 NOVEMBER 2008 commencing at 1.30 pm**

**Committee**

Clr G Taylor (Chairman)  
Clr J L Andrews (Deputy)  
Clr A D Barker  
Clr G S Barsanti  
Clr C R Bowers  
Clr E I Davidson  
Clr T Harrison  
Ms T Williams  
Mr C Bowron

**Departmental Head**

Mr H Versteegh (Manager, Regulatory Department)

**Staff**

Kathy Payne (Committee Secretary)

---

## IN PUBLIC

- |    |   |             |
|----|---|-------------|
| 1. | Confirmation of Sub-Committee Business                                  | Page 1      |
| 2. | The Marlborough Sounds Restoration Trust Wilding Pine Control Programme | Page 2      |
| 3. | Deep Wairau Aquifer Sustainability Review                               | Pages 3-4   |
| 4. | Navigation Bylaws Review  | Pages 5-15  |
| 5. | ENSCO 056 Load-Out  | Pages 16-17 |
| 6. | Road Naming - R K de Castro Limited - Blenheim                          | Pages 18-21 |
| 7. | Top of the South Island Marine Biosecurity Strategic Plan               | Pages 22-24 |
| 8. | Information Package   | Page 25     |
| 9. | Decision to Conduct Business with Public Excluded                       | Page 26     |

## PUBLIC EXCLUDED

- |     |                             |             |
|-----|-----------------------------|-------------|
| 10. | Effluent Management Plan    | Pages 27-36 |
| 11. | Contract Tender             | Page 37     |
| 12. | Infringement Notice Appeals | Pages 38-45 |

13. Update on Complaint	Pages 46-47
14. Breaches of the Building Act	Pages 48-52
15. Determination of Items able to be Released to the Public	Pages 53

## **1. Confirmation of Sub-Committee Business**

### **RECOMMENDED**

**That the following approvals granted by the Swimming Pools Sub-Committee under delegated authority (Environment Committee Minute R.07/08.263) be confirmed:**

- **M J & A M Porter, 5 Avening Close, Blenheim - approval to use a lockable cover on an unfenced spa pool (exemption pursuant to section 6 of the Fencing of Swimming Pools Act 1987).**
- **S & M Leigh-Lancaster, 93 Guernsey Road, Renwick - exemption for doors opening into pool area (exemption pursuant to section 6 of the Fencing of Swimming Pools Act 1987).**

## **2. The Marlborough Sounds Restoration Trust Wilding Pine Control Programme (R390-11/01)**

(Report prepared by Dave Grueber)

### **Purpose**

1. The purpose of this report is to introduce to the Environment Committee to the Marlborough Sounds Restoration Trust Wilding Pine Control Programme in Inner Queen Charlotte Sound.

### **Background**

2. The Marlborough Sounds Restoration Trust was established by a group of Sounds' landowners in 2007 to manage a Wilding Pine Control Programme in the Inner Queen Charlotte Sound.
3. In 2008, the Trust received more than \$130,000 funding from the NZ Lottery Grants Board, the Biodiversity Condition Fund, and New Zealand King Salmon, to implement a control programme in the area, which is now on-going. It has also received in-kind support from the Council (GIS support) and Department of Conservation.
4. The Trust anticipates it will require an additional \$450,000 over the following two years, in order to complete initial wilding pine control in the Inner Queen Charlotte Sound.
5. A comprehensive Strategic Plan has been developed to manage that programme, which fits in with the Council's own management objective of facilitating and supporting a community-led response to the wilding pine problem in the Sounds.
6. In order for the Trust to be successful, it will need to raise at least \$60,000 locally in each of the next two years, in order to meet its fund-raising targets. It has already had an excellent response from the local community and other organisations.
7. The Trust would like to introduce the programme to the Committee, and to discuss ways the Council and Trust may work co-operatively on the programme.

### **Comments**

8. The presentation will be facilitated by Mr Andrew McAlister, Trust Chairman.

### **Summary**

9. The Marlborough Sounds Restoration Trust was established by a group of Sounds' landowners in 2007.
10. The Trust has received over \$130,000.00 of funding and support in kind.
11. Substantial extra funding will be required for the next two years to complete the wilding pine programme, much of which will be raised from "local" communities and organisations.
12. **A 20 minute power point presentation will be made to the Committee by Mr McAlister.**

### **RECOMMENDED**

**That the Committee receive the Marlborough Sounds Restoration Trust report.**

### **3. Deep Wairau Aquifer Sustainability Review (G045-01)**

(Report prepared by Peter Davidson)

#### **Purpose**

1. The aim of this report is to summarise the findings of a review into the response of the Deep Wairau Aquifer to consented abstraction over the past decade.

#### **Background**

2. The Deep Wairau Aquifer (DWA) represents the most recently exploited but poorly understood underground water resource in Marlborough. It was discovered during the 1997/98 summer drought as part of exploratory drilling by irrigators, following the failure of several shallow wells in the Fairhall area. Its recent discovery reflects the historic availability of more accessible groundwater at shallower depths. Because of its inferior quality due to mineralisation, most groundwater pumped from the DWA is used for vineyard irrigation only.
3. Its extent is poorly understood as only a small number of wells intercept it, but it is known to exist beneath the Fairhall, Woodbourne and the Southern Valleys areas. Future drilling is the only means of accurately defining its boundary.
4. Its name was coined by Marlborough District Council staff to distinguish it from the shallower Wairau Aquifer, which represents the predominant groundwater system beneath the Wairau Plain. However while it shares a name with the Wairau Aquifer, it is much lower yielding; with testing demonstrating a clear hydraulic link with the heavily committed Southern Valleys Aquifers.
5. DWA water is very old having been underground for 9,100 to 39,000 years depending on well location. As a consequence of being in contact with the rocks forming the aquifer for so long, DWA groundwater is highly mineralised which means its quality is not ideal for all purposes, particularly human consumption.
6. Because of its recent discovery, no policy or rules exist in the Proposed Wairau/Awatere Resource Management Plan to govern its use. This is understandable given the paucity of knowledge about the resource, but a consequence is the need for active management and a reliance on real time hydrological information.
7. Due to the complexity of DWA structure and uncertainty over its rate of recharge or size, standard analytical methods of assessing its usefulness as a groundwater reservoir are not valid. For example a pre-requisite for a numerical model to predict future behaviour of the DWA, is a good understanding of how the aquifer works now.
8. The only method available to regulators at this early phase of resource development is to review trends in aquifer parameters including groundwater age, chemistry and variation in aquifer level, in relation to pumping.
9. Marlborough District Council staff have been collecting this information since the discovery of the DWA in 1998 when the first water permits were issued. The necessity for a formal performance review has long been recognised and this science is central to the process. However community understanding remains inadequate to provide a clear picture for water management decision making.
10. There is broad community interest in the current state of the DWA and the effects of abstraction based on the controversial nature of the original water permit application hearings. The Council also has a regulatory interest in terms of reviewing its plans and dealing with expiring water permits to take from the DWA. It is important to note that only a small number of permits exist which reflects uncertainty over the quantum of the resource and its uniqueness.

11. The review was undertaken in 2008 for the Marlborough District Council by staff member Peter Davidson in collaboration with crown research institute scientists, and central Government funding from Envirolink.
12. Three separate reports were prepared as part of this Council coordinated review:
  - (i) The first report entitled: **Deep Wairau Aquifer Sustainability Review 2008 Part 1 : Aquifer Response to Abstraction 1998-2008** was prepared in-house by groundwater scientist Peter Davidson. It concluded that a close correlation between aquifer trends proved the hydraulic connection with the Southern Valleys Aquifers, and that current pumping rates were not causing downward trends in aquifer levels.
  - (ii) The second report entitled: **Review of Deep Wairau Aquifer - Groundwater Chemistry Aspects** was prepared by Murray Close at ESR in Christchurch. He concluded the resource is larger than previously thought based on the fact that aquifer levels remain relatively stable over time and the age of water being pumped from wells is getting older.
  - (iii) The third report entitled: **Deep Wairau Aquifer Sustainability Review 2008 - Isotopic Indicators** was prepared Dr Uwe Morgenstern and others at GNS Science in Lower Hutt. The report found that the DWA is more complex than originally thought and does not represent a single interconnected aquifer. Furthermore, pumping is inducing changes that are likely to affect the Southern Valleys Aquifers.

### **Review Conclusions**

13. Current levels of consented abstraction appear in balance with aquifer storage.
14. There is still insufficient understanding of key DWA processes to be definitive about its sustainable yield.
15. The DWA hydraulically interacts with the Southern Valleys Aquifers and as such its management cannot be considered in isolation.

### **Summary**

16. Based on the conclusion that taking groundwater from the DWA affects levels in the heavily committed Southern Valleys Aquifer Management Zone, it follows that any decision on future increases in demand needs to be consistent between resources.

### **Comments**

17. **Peter Davidson will provide a short presentation on the conclusions of the science review.**

### **RECOMMENDED**

1. **That the Committee receive the three hydrological science reports.**
2. **That the Council take into account the conclusions of the three reports when considering applications for existing water permits to take from the Deep Wairau Aquifer.**
3. **That decisions on new applications to take from the Deep Wairau Aquifer be consistent with the long-term sustainable management of the Southern Valleys Aquifer Management Zone.**
4. **That Marlborough District Council staff continue the current Deep Wairau Aquifer monitoring programme in recognition of the importance of science in underpinning future resource management decisions and plan review.**

## 4. Navigation Bylaws Review (L225-01)

(Report prepared by Mike Porter)

### Purpose

1. To consider reviews of the Navigation Bylaw 2000 and Navigation Bylaw 2002 in accordance with the requirements of the Local Government Act 2002 (the Act).

### Background

2. This report covers the Navigation Bylaws (Navigation Bylaw 2000 made 15 December 2000 and Navigation Bylaw 2002 made 1 October 2002) only. Other bylaws will be the subject of a separate report.
3. Members will be aware that Council, under the Act must review any of its bylaws made prior to 1 July 2003. Bylaws made after 1 July 2003 must be reviewed 5 years from the date the bylaw came into force.
4. There are a number of statutory provisions which confer bylaw making powers on Council. These include sections 542, 591A and 684 of the Local Government Act 1974, sections 145, 146 and 147 of the Local Government Act 2002, section 72 of the Transport Act 1962, section 64 of the Health Act 1956, section 20 of the Dog Control Act 1996 and section 65 of the Reserves Act 1977. Council has exercised these powers to make the various bylaws which it now administers.
5. The process to review certain bylaws is set out in sections 158 and 160 of the Act. A review of a bylaw requires that the Council make the determinations in section 155 and then whether the bylaw is to be continued without amendment, amended or revoked, or revoked and replaced, the Special Consultative Procedure must be used. The Act sets out the procedural requirements for making, amending or revoking bylaws (sections 155 and 156). In each case, the Special Consultative Procedure must be used as set out in sections 83 and 86.
6. At its meeting on 13 December 2007 Council delegated the Environment Committee the role of reviewing any bylaws, including the hearing of any submissions following the public consultation phase of the review and formulating a recommendation to Council on the final makeup of the bylaws.
7. Under the Act (schedule 7, clause 32(1)(b)), Council cannot delegate the power to make a bylaw to a committee or other subordinate decision-making body, or member or officer of the local authority. Consequently, the final decisions on the making of bylaws must be made through a Council meeting.

### Information Booklet

8. A booklet has been produced based on a much larger publication completed by Christchurch City Council. The intention of the booklet is to assist Councillors understand the Bylaw Review process. The Information Booklet is **attached** as an appendix to this report.

### Process

9. The Act requires Council in reviewing the bylaws to determine that they that are still necessary, that they are appropriate and that they meet the purpose they were designed for. This report relates to a review of just the Navigation Bylaws.
10. An analysis of the current existing bylaws has been undertaken in order to determine what clauses should be retained, what should now be revoked and what should be amended.
11. This report also outlines the options for dealing with the various problems which the bylaws are designed to address. Options include doing nothing (which generally means that the bylaw would

automatically be revoked on 30 June 2010), retaining the existing bylaw, amending the existing bylaw, or revoking the existing bylaw.

12. The report asks the question whether Council considers that a bylaw is the most appropriate way of addressing the perceived problem, and if the answer is yes, then is the proposed bylaw is the most appropriate form of bylaw.
13. The existing Navigation Bylaws were assessed to ascertain whether:
  - the issues they were designed to address still exist
  - the issues are significant, either by frequency or seriousness
  - the issues need to be controlled by regulatory means or can be dealt with by other means
  - the issues are covered by other legislation
  - the clauses are reasonably able to be enforced
  - the clauses are consistent with the New Zealand Bill of Rights Act 1990.

### **Navigation Bylaw 2000**

14. The Local Government Amendment Act (No. 2) 1999 (s684B of the Local Government Act 1974) gave to Council authority to enable Council to enact bylaws in relation to waters within its region for various purposes. The purposes included regulation and control for the purposes of navigation and safety. Those powers given to Council were in addition to other existing powers to deal with navigation and safety either itself or through the Harbourmaster.
15. The rationale behind the Bylaw was that by reducing the speed of the fast ferries it was possible to convert their wake outputs so they are basically the same as those from the conventional ferries. Council decided that the threshold of acceptable wake impacts was that of the conventional ferries and Council therefore required that the speeds of the fast ferries be reduced so that their wake outputs were no different or more severe than those of the conventional ferries.
16. In undertaking the Bylaw review Council must, in accordance with section 155 of the Act make the following determinations:
  - (a) Identification of a perceived problem and consideration of whether a bylaw is the most appropriate way of addressing the perceived problem; and
  - (b) If it has determined that a bylaw is the most appropriate way of addressing the perceived problem then whether:
    - (i) A new bylaw or the reviewed bylaw is the most appropriate form of bylaw (s155(2)(a)); and
    - (ii) A new bylaw or the reviewed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (no bylaw can be made which is inconsistent with this Act (s155(3))).
17. The section 155 analysis follows the guidance in the Local Government New Zealand guide on regulation and enforcement. This guide requires Council to take into account:
  - the identification of the problems being addressed
  - whether they need to be controlled by regulatory means or can be dealt with by other means
  - whether the perceived problems are significant, either by frequency or seriousness, and
  - whether regulatory action is available under other legislation, or is reasonably able to be enforced.
18. When the fast ferries were introduced in the mid 1990s concerns were expressed by residents and others that they were causing adverse environmental effects. What were seen to be problems then became the subject of proceedings before the Planning Tribunal. These proceedings resulted in the Planning Tribunal holding that the evidence available then did not justify any interference with the

activities of the fast ferries. The consideration of the Planning Tribunal was directed at environmental issues under the Resource Management Act 1991 and was not directed at safety issues which were not argued before the Tribunal.

19. Having heard the concerns expressed in the community about safety and environmental issues Council decided something had to be done. Council had statutory responsibilities in both areas and it was felt that it could not simply ignore the concerns as expressed and hope they would go away.
20. Council commissioned a risk assessment from Risk & Reliability Associates (R2A) and on 3 February 2000 the resulting report was presented by its authors to a meeting of Council over a period of some hours. In summary the report indicated that the fast ferries were creating a new set of hazards. Council having taken legal advice concluded it had to address the question of whether or not the introduction of a bylaw under Section 684B of the Local Government Act 1974 was justified. Council felt that as a matter of public duty given to it by Parliament it had to address the issues although it foresaw that considerable controversy would arise.
21. A process of consultation and consideration then followed over many months in 2000. In that process consultation papers were issued and comments sought and received. The preparation of a draft bylaw was commenced and went out into the public arena for comment.
22. For the reasons mentioned above, it is considered a bylaw is still the most appropriate way to address the safety concerns expressed by Council and the public regarding the waters of the Marlborough Sounds.
23. The New Zealand Bill of Rights Act 1990 sets the minimum standards to which public decision making must conform.
24. It is the view of staff, confirmed previously when the bylaw was introduced in 2000, that the bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
25. In addition, under the general law, there are four requirements for a valid bylaw. These are:
  - (a) An Act of Parliament must empower Council to make the bylaw;
  - (b) The bylaw must not be repugnant to the general laws of New Zealand;
  - (c) The bylaw must be certain; and
  - (d) The bylaw must be reasonable.
26. This report also covers matters relating to section 77 of the Act. That section relates to decision making and requires the Council to identify all practical options and to assess the options in relation to their costs and benefits, community outcomes and the impact on the Council's capacity.
27. Four options have been identified:
  - Option 1: Do nothing – this is not considered to be acceptable as the bylaw must be reviewed under section 158 of the Act.
  - Option 2: Retaining the content of the existing bylaw – this is considered the best option.
  - Option 3: Amending the existing bylaw – this is not considered to be the best option.
  - Option 4: Revoking the existing bylaw – this is again seen as unacceptable as there is a demonstrated requirement for a bylaw covering navigational safety issues.
28. The legal process for reviewing, making, amending or revoking bylaws is the same and is outlined in sections 83, 86, 155 and 156 of the Act.
29. Section 81 of the Act requires the Council to establish and maintain processes to provide opportunities for Maori to contribute to the decision making processes. Council, through its iwi representatives and the Environmental Policy Iwi Liaison Group has provided this opportunity and it is further considered that public notification and opportunity for submissions processes will provide adequate opportunity for public response including Maori.

30. To summarise the conclusions reached:

- The content of the Navigation Bylaw 2000 is considered to be the appropriate way to address the safety concerns expressed by Council and the public regarding the waters of the Marlborough Sounds.
- The **separately attached** draft Navigation (Vessel Speed) Bylaw is considered to be the most appropriate form of bylaw.
- The draft Navigation (Vessel Speed) Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- The draft Navigation (Vessel Speed) Bylaw is authorised by the statutory provisions referred to above.
- The draft Navigation (Vessel Speed) Bylaw is not considered to be repugnant to the general laws of New Zealand.
- The draft Navigation (Vessel Speed) Bylaw is certain.
- The draft Navigation (Vessel Speed) Bylaw is reasonable.

#### **RECOMMENDED**

**That Council agree the separately attached draft Navigation (Vessel Speed) Bylaw, in terms of section 155 of the Local Government Act 2002:**

- **is the most appropriate way to address perceived problems relating to the safety concerns expressed by Council and the public regarding the waters of the Marlborough Sounds; and**
- **is the most appropriate form of bylaw; and**
- **does not give rise to any implications under the New Zealand Bill of Rights Act 1990.**

#### **Navigation Bylaw 2002**

31. This Bylaw, made under the Local Government Act 1974, is a bylaw that covers navigation and safety in relation to waters within its region, not covered by the Navigation Bylaw 2000.

32. Section 684B of the Local Government Act 1974 gives Council the power to do all or any of the following things in relation to waters within its region:

- (a) *Generally regulate and control, for the purposes of navigation and safety, the use or management of ships (including the mode and place of their mooring, anchoring, position, unmooring, and removal):*
- (b) *Regulate the placing and maintenance of moorings and maritime facilities (which bylaws may not be inconsistent with the Resource Management Act 1991):*
- (c) *Regulate and control, and prevent nuisances arising from,—*
  - (a) *The speed, use, anchoring, mooring, and management of ships and seaplanes:*
  - (b) *The towing of any thing or person:*
- (d) *If the council is satisfied that such action is necessary in the interests of navigation safety,—*
  - (i) *Reserve any specified waters for use by any specified kind of ship or seaplane, or by any persons:*
  - (ii) *Regulate or prohibit the use of those waters by other ships or persons:*
  - (iii) *On the occasion of boat races, yacht races, launch races, or swimming races, or similar events,—*
    - (A) *Provide for the prohibition or regulation of the use of specified classes of ships:*

- (B) *Regulate admission to specified areas or authorise the organisers of the event to regulate admission to specified areas:*
- (e) *Regulate and control the use of any anchorage:*
- (f) *Put in place ship traffic separation schemes and ship traffic management schemes:*
- (g) *Specify requirements (which may not be inconsistent with maritime rules) for—*
- (i) *The provision of life jackets and buoyancy aids on pleasure craft:*
- (ii) *The wearing of life jackets and buoyancy aids by persons on pleasure craft:*
- (iii) *The marking and identification of personal water craft; and, for the purposes of this subparagraph, a personal water craft is a power driven ship that—*
- (A) *Has a fully enclosed hull; and*
- (B) *Does not take on water if capsized; and*
- (C) *Is designed to be operated by a person standing, sitting astride, or kneeling on it, but not seated within it:*
- (h) *Fix fees and charges in respect of the use of any land, building, equipment, or other property, that is owned by the council and operated for navigation-related purposes, and in respect of navigation-related activities the council undertakes, including (without limitation) bylaws—*
- (i) *Fixing fees and charges for any function, duty, power, or service carried out or exercised or provided by the council in respect of any ship, maritime facility, offshore installation, pipeline, oil transfer site, navigational aid, or marine farm, or in respect of navigation generally:*
- (ii) *Fixing such fees and charges on the basis of the nature of the facility, the location and use of the facility, the size of the vessel, or on any other differential basis:*
- (iii) *Specifying the persons who are liable to pay such fees and charges:*
- (i) *Exempting specified classes of persons from compliance with any provision of the bylaws or providing for the council to exempt any person from compliance with any provision of the bylaws; and providing for the council to suspend the operation of any provision of the bylaws, in any class of case or in any particular case, in circumstances specified in the bylaws.]*
33. In undertaking the bylaw review Council must, in accordance with section 155 of the Act make the following determinations:
- (a) Identification of a perceived problem and consideration of whether a bylaw is the most appropriate way of addressing the perceived problem; and
- (b) If it has determined that a bylaw is the most appropriate way of addressing the perceived problem then whether:
- (i) A new bylaw or the reviewed bylaw is the most appropriate form of bylaw (s155(2)(a)); and
- (ii) A new bylaw or the reviewed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (no bylaw can be made which is inconsistent with this Act (s155(3))).
34. The section 155 analysis follows the guidance in the Local Government New Zealand guide on regulation and enforcement. This guide requires Council to take into account:
- the identification of the problems being addressed
  - whether they need to be controlled by regulatory means or can be dealt with by other means
  - whether the perceived problems are significant, either by frequency or seriousness, and
  - whether regulatory action is available under other legislation, or is reasonably able to be enforced.

35. Based on information and concerns known to Councillors; Council staff and members of the public, the problem has been identified as the need to ensure appropriate behaviour and address potential risks within Marlborough's waterways.
36. A number of errors, inconsistencies and omissions have been identified that bring into question the ability to legally and effectively implement the Navigation Bylaw 2002 as it currently stands. The errors and omissions relate to a number of clauses where there was either a lack of clarity or an inconsistency with other legislation - Maritime Rules made pursuant to the Maritime Transport Act 1994. Omissions stem largely from areas where it was considered, in the interest of navigation safety, that a more formal regulatory regime was appropriate (for example, licensing of commercial operations not already subject to such regulation, licensing regime concurrent with the issuing of resource consents for moorings).
37. Council has recognised that a large majority of the Marlborough Sounds users do not contribute towards navigation safety, particularly in the recreational boating sector. The Function Review undertaken has reinforced the Council's statutory responsibility as a Harbour Authority and, in order to reduce the Harbour Function's dependence on General Rates, Council intends to levy the fees outlined in the Bylaw.
38. The proposed bylaw must meet the legal standards of reasonableness, and cannot be inconsistent with the freedoms protected and affirmed in the New Zealand Bill of Rights Act 1990. Legal advice and staff analysis have indicated that the proposed amendments to the Navigation Bylaws 2002, amended as proposed, is not inconsistent with the rights and freedoms protected by that Act.
39. In addition, under the general law, there are four requirements for a valid bylaw. These are:
  - (a) An Act of Parliament must empower Council to make the bylaw;
  - (b) The bylaw must not be repugnant to the general laws of New Zealand;
  - (c) The bylaw must be certain; and
  - (d) The Bylaw must be reasonable.
40. This report also covers matters relating to section 77 of the Act. That section relates to decision making and requires the Council to identify all practical options and to assess the options in relation to their costs and benefits, community outcomes and the impact on the Council's capacity.
41. Four options have been identified:
  - Option 1: Do nothing – this is not considered to be acceptable as the bylaw must be reviewed under section 158 of the Act.
  - Option 2: Retaining the existing bylaw – this is not considered to be the best option as in reviewing the current Navigation Bylaws 2002, staff considered that there were major changes to the wording of the bylaw required.
  - Option 3: Amending the existing bylaw – this is considered to be the best option.
  - Option 4: Revoking the existing bylaw - this is again seen as unacceptable as there is a demonstrated requirement for a bylaw covering navigational safety issues.
42. The legal process for reviewing, making, amending or revoking bylaws is the same and is outlined in sections 83, 86, 155 and 156 of the Act.
43. Section 81 of the Act requires the Council to establish and maintain processes to provide opportunities for Maori to contribute to the decision making processes. Council, through its iwi representatives and the Environmental Policy Iwi Liaison Group has provided this opportunity.
44. To summarise the conclusions reached:

- The content of the Navigation Bylaw 2002, amended as proposed, is considered the appropriate way to address problems about unsafe behaviour and potential risks within Marlborough's waterways.
- The **separately attached** draft Navigation Bylaw is considered to be the most appropriate form of bylaw.
- The draft Navigation Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
- The draft Navigation Bylaw is authorised by the statutory provisions referred to above.
- The draft Navigation Bylaw is not considered to be repugnant to the general laws of New Zealand.
- The draft Navigation Bylaw is certain.
- The draft Navigation Bylaw is reasonable.

#### **RECOMMENDED**

**That Council agree the separately attached Navigation Bylaw, in terms of section 155 of the Local Government Act 2002:**

- **is the most appropriate way to address perceived problems relating to unsafe behaviour and potential risks within Marlborough's waterways; and**
- **is the most appropriate form of bylaw; and**
- **does not give rise to any implications under the New Zealand Bill of Rights Act 1990.**

#### **RECOMMENDED**

1. **That the separately attached draft Statements of Proposal for both Navigation Bylaws be adopted, subject to any changes the Committee resolves.**
2. **That the separately attached draft Summaries of Information for both Navigation Bylaws be adopted, subject to any changes that the Committee resolves.**
3. **That the period within which submissions may be made to the Council in the course of the Special Consultative Procedure be from 8 January until 27 March 2009 (inclusive).**

## 5. ENSCO 056 Load-Out (H090-07)

(Report prepared by the Harbour Master)

### Purpose

1. The purpose of this report is to inform the Committee of an oil rig load-out in Admiralty Bay due to take place in November/December 2008.

### Background

2. The Harbourmaster has been advised by Phoenix Shipping that it is the intention to load-out a production platform in Admiralty Bay towards the end of November early December. The primary reason Admiralty Bay has been chosen is due to the shelter it provides for this type of operation and where environmental limits were a critical element.
3. The Marlborough Sounds Harbour Risk Assessment has identified Admiralty Bay as having: *“limited information available at present about navigation in the areas. It is thought to generally comprise only local leisure vessels, visiting yachts or fishing related activities”*. Admiralty Bay is also a recognised marine farming area, particularly in the vicinity where the off-load is to be undertaken.
4. The Marlborough Harbour Navigational Safety Management System (SMS) recognises that circumstances can and do change and sets out policies that should be followed should this occur:
  - i. *“whenever circumstances change to bring in activities outside the existing scope of the Navigational SMS, the Harbour Master will, in full collaboration with the relevant stakeholders, undertake a risk assessment of the intended operation. This process is likely to include the activation of a meeting of the Navigational Management Advisory Team (NMAT).”*
5. Due to the short notification period, it simply has not been feasible to convene representatives of the vessel owners, ENSCO and Council’s Risk Consultant, to develop a list of issues, translate these into risks and identify appropriate Risk Control Measures that would reduce risks to an acceptable level. However, with experience gained during previous similar operations, it was considered that a review of previous risk assessments of off-load operations would result in a list of ranked hazards which would assist in defining appropriate Risk Control Measures. At the time of preparing this report, work on this component is underway. A verbal up-date on progress will be provided at the Committee meeting.
6. At the time of preparing this report, ENSCO 056 is due in Admiralty Bay on about 16 November 2008 under tow by two tugs. Once in Admiralty Bay, the rig will be soft-pinned and the platform raised approximately 4 metres above the water. The carrying vessel “Heavylift Falcon” is due about 30 November 2008.
7. The load-out operation is, in itself, quite simple. The carrying vessel is ballasted to a suitable draft and the rig is manoeuvred over the submerged deck of the carrying vessel by attending tugs. However, there are critical elements in the process, particularly when the carrying vessel’s deck breaks the water during the de-ballasting phase. It is at this stage where vessels have got into difficulty due to a sudden loss of stability at this critical point, this having the potential to result in the carrying vessel foundering.
8. Critical elements of the operation will be restricted to daylight hours only.

9. As with previous operations, this is seen as ideal for a practical training opportunity for members of the Council's Marine Oil Spill Response team. An Incident Action Plan that identifies at risk environmental areas and outlines response options in the event of oil escaping from the carrying vessel will be developed. In support of the plan, a small team of responders from Council and Maritime New Zealand established a forward response base at Catherine Cove and appropriate oil spill response equipment sourced from the oil spill response shed in Picton as well as Nelson will be relocated to Catherine Cove. Additional responders have been invited from the Nelson and Maritime New Zealand's Marine Pollution Response Services has indicated that they would like to send at least two staff to attend. The team will remain on site with essential elements of the response equipment ready for immediate deployment until the load-out is completed and the vessel departed Admiralty Bay.
10. On completion of de-ballasting, the rig will be fastened to the carrying vessel prior to departing Admiralty Bay. This phase is anticipated to take two days.
11. The Oil Spill Response team will be stood down and all equipment returned to store once "Heavylift Falcon" has departed Admiralty Bay.

### **Conclusion**

12. The load-on of the rig ENSCO 056 in Admiralty Bay has resulted in a further comprehensive review of the risk assessment information held to date and will initiate further amendments to the existing risk assessments specific to this activity.
13. Initiatives to reduce the elevated risk profile will be acted on prior to the carrying vessel arriving on-site.
14. Marine Oil Spill Response team members and appropriate equipment will be re-located to Catherine Cove so as to be in a position to respond to any release of oil in the event of a mishap.

### **RECOMMENDED**

**That the information be received.**

## **6. Road Naming - R K de Castro Limited - Blenheim (U071344)**

**(Report prepared by Bruno Brosnan)**

### **Purpose**

1. The purpose of this report is to consider a road name for a new road to serve as access to Proposed Lots 1 and 4 as part of a new subdivision on the eastern side of Tremorne Street, Blenheim.

### **Background**

2. Resource consent has been granted to J & R K de Castro Limited to create five allotments on the eastern side of Tremorne Street between lots 134 & 136 DP 370613.
3. The subdivision is to create a new road (Proposed Lot 3) being 16.0 metres wide and 30 metres long, which is to be vested in Council. This new road is to serve as access to Proposed Lots 1 and 4, with the potential to be further developed if the land to the east is subdivided.
4. Condition 14 of this consent required the developer to provide two names for road naming. The developer has provided three names being:
  - Connor Drive.
  - Peters Drive.
  - Hamama Drive.
5. The relevant background for these suggestions are:
  - (a) *Connor Drive* - being the name of the owner whose land the road will eventually cross.
  - (b) *Peters Drive* - being the maiden name of the owner whose land the road will eventually cross.
  - (c) *Hamama Drive* - being the historical/family attachment of the origins of the owners Mr and Mrs Connor in Golden Bay.

### **Evaluation against Road Naming Policy**

6. The policy requires that the names be forwarded to iwi for their consideration. That occurred on 8 August 2008, with no response from iwi being received at time of writing (21 August 2008).
7. The road naming policy also requires that the road type terms be used in circumstances appropriate to the physical situation. The type 'Drive' should denote a main connecting route in a suburb or a road with scenic attraction. Given that the new road has no exit, is relatively short (30 metres), and is to serve a small number of properties (two lots), it is my view that the use of 'Drive' is inappropriate. The descriptions of 'Close' in the Road Naming Policy would better describe this new road.
8. The applicant states that the adjacent land is to be subdivided at some time in the future but no application for this property has been received. It is unknown when an application is likely to be received and therefore granting a road type based on a potential subdivision is in my view not appropriate.
9. Section 3.0 of the road naming policy requires that duplication of names in the Marlborough District not be permitted. A search through the existing road names shows no close approximation of any name.
10. These proposed names meet the recommendation that road names are 15 characters or less, and iwi have not indicated any concern with the suggestions.

11. However, the Road Naming Policy discourages the use of names unless the name has a historical significance with the property being subdivided, or is that of a well known local identity or prominent Marlburian or New Zealander. F T Connor is a well known Marlburian and the only one of the names that has some significance to Marlborough.

### **Summary**

12. As part of a subdivision to create two new lots and a road to vest in Council, the developer was required to provide three possible names for the new road. The proposed names have been assessed against the requirements of Council's Road Naming Policy and only one is considered to satisfactorily meet the standards.

### **RECOMMENDED**

**That the new road on the eastern side of Tremorne Street, Blenheim be named 'Connor Close'.**

## 7. Top of the South Island Marine Biosecurity Strategic Plan (R390-13)

(Report prepared by Alan Johnson and Keith Heather)

### Purpose

1. The purpose of this report is to provide an update to the Committee on the development of a Top of the South Island Marine Biosecurity Strategic Plan and seek:
  - (a) Council adoption of the strategic plan, and;
  - (b) To make funding provision for Council's contribution to a regional coordinator position in the 2009/10 Long Term Council Community Plan.

### Background

2. The Committee is aware that Council have been working closely with stakeholders over the last few years managing a range of marine biosecurity threats in the Marlborough sounds. The most recent example has been the management of *Didemnum vexillum*, and an extensive advocacy programme focused on educating the public on mitigating vector related marine biosecurity risks.
3. Valuable lessons have been gained during this process. Control of marine biosecurity incursions are complex and adequate resourcing will always be a challenge. The experience has also highlighted a level of uncertainty in governance, roles and responsibilities, particularly management of an organism once it has leaked through the national border system.
4. What remains apparent is our valuable resources in the coastal marine area are threatened by unwanted marine organisms and a way forward is for stakeholders to work in partnership to achieve collective outcomes.
5. In order to promote a co-ordinated and collaborative approach to managing marine biosecurity risks, a regional plan has been prepared (**attached**) as a national pilot programme. The plan has been prepared within the framework of national biosecurity led by The Ministry of Agriculture Biosecurity New Zealand (MAFBNZ). This strategic plan has been initiated and developed by the members of the Top of the South Marine Biosecurity Partnership coordinated by MAFBNZ. It includes representation from Tasman District Council, Nelson City Council, Marlborough District Council, Ministry of Fisheries, Department of Conservation, the aquaculture industry, port companies, tangata whenua and other stakeholders.
6. The plan has evolved over the last 12 months to reach its current form and consultation has occurred with a number of stakeholders.
7. The overall objective of the strategic plan is to prevent the introduction, and minimise the spread, of damaging marine species throughout the top of the south region by coordinating actions of all partners. In other words a partnership approach to enhancing biosecurity by committing organisations to a collective set of operating principals and alignment of actions.
8. The plan sets out a range of operating principles, and priority actions for implementation. The actions as contained in the document are summarised as follows;
  - (a) coordination processes and development of strategies
  - (b) planning and preparedness plans
  - (c) implementation of plans
  - (d) communication and chance behaviour programmes

- (e) monitoring and review.
9. In terms of roles and responsibility MAFBNZ continue to be responsible and accountable for the management of pre and post border incursion management systems, the development of risk assessments, national surveillance programmes and providing expertise in control tools, techniques and social marketing strategies. The role of the partnership is to enable a framework to enhance the post border management of risks through joint action.
  10. While Council has no statutory role under the Biosecurity Act 1993 to undertake marine pest management, without a Regional Pest Management Strategy. A role exists in terms of responsibilities under the Resource Management Act 1991 to manage and monitor adverse effects in the coastal marine area, while under the Local Government Act 2002 local authorities are able to undertake a range of functions for the good of the community. One can argue that Council has a pivotal role in the community, particularly with stakeholders and industry assisting in reducing the effects from biosecurity threats in a precious marine environment where commercial and recreational activities coexist.
  11. A workshop attended by the three top of the south Councils was convened on 11 November 2008 and representatives from this Council included Councillors Graeme Taylor, Cliff Bowers and staff. The consensus of the meeting was to recommend to the respective Councils approval of the concept and to allocate funding in order to engage the services of a regional coordinator. The funding for a coordinator is anticipated to be funded by all partners with Council's level of contribution set at \$20,000 per annum.
  12. The regional coordinator position is seen as a fundamental step to ensure all stakeholders actions in biosecurity are coordinated and joint initiatives remain cost effective.
  13. Future funding for service delivery outputs associated with pest monitoring, surveillance and any physical control of an organism are not currently a component of this plan. Council will continue to have discretion in terms of ongoing roles and funding. It is anticipated that future resourcing of marine biosecurity activities will need to be carefully considered on a case by case basis. Furthermore, funding sources require further development in terms of providing for a sustainable and equitable funding source that targets both beneficiaries and exacerbators, and not necessarily funded through a land based rating system.

## Summary

14. In order to mitigate risks associated with marine organisms at a regional level, and protect the valuable resources of the region a collective approach and decision making framework is seen as the most appropriate way to enhance existing processes, and develop future marine biosecurity programmes of mutual benefit.
15. The partnership approach is seen as a pilot model for New Zealand and will act to achieve coordination, effective responses and communication in the most cost effective manner until other frameworks or roles and responsibilities in the coastal marine area are clarified.
16. An annual funding provision of \$20,000 is recommended to be budgeted under the Long Term Council Community Plan for 2009/10. The funding is for a Council contribution towards a regional coordinator for the coordination, development of operational plans and communication strategies.

## RECOMMENDED

1. **That the information be received.**
2. **That Council adopt the Top of the South Island Marine Biosecurity Strategic Plan.**
3. **That Council make annual budget provision in the 2009/10 Long Term Council Community Plan of \$20,000, subject to funding being provided by the other stakeholders.**



## **8. Information Package**

### **RECOMMENDED**

That the Regulatory Department Information Package dated 27 November 2008 be received and noted.

## 9. Decision to Conduct Business with the Public Excluded

**Decided** That the public be excluded from the following parts of the proceedings of this meeting, namely:

- Effluent Management Plan
- Contract Tender
- Infringement Notice Appeals
- Update on Complaint
- Breaches of the Building Act

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

<b>General subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Ground(s) under section 48(1) for the passing of this resolution</b>
Effluent Management Plan Contract Tender Infringement Notice Appeals Update on Complaint Breaches of the Building Act	In order to protect the privacy of natural persons, as provided for under Section 7(2)(a).	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under Section 7 of the Local Government Official Information and Meetings Act 1987.